



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, November 6, 2019 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Bigelow

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Martinez Beltran

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)

PUBLIC COMMENT 01

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. REPORT REGARDING UPCOMING 2020 COMMISSION VACANCIES - PER MADDY ACT

Recommendation:

Receive report.

2. APPROVE APPROPRIATION FOR FIRE DEPARTMENT REPLACEMENT VEHICLE

Recommendation:

1. Accept insurance settlement for approximately \$66,948;
2. Adopt resolution amending the adopted Fiscal Year 2019-20 Budget appropriating \$76,100 from the Equipment Replacement Fund (790) for the purchase of a replacement 2020 Ford F250 Truck for the Fire Department; and
3. Declare the collision-damaged 2013 F150 to be salvage for disposal in accordance with the City Municipal Code.

3. APPROVE CALIFORNIA CLIMATE INVESTMENTS - DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S (CAL FIRE) FIRE PREVENTION GRANT APPLICATION RESOLUTION

Recommendation:

Adopt resolution authorizing an application for the California Climate Investments-Department of Forestry and Fire Protection's (CAL FIRE) Fire Prevention Grant Program funded with Cap-and-Trade auction proceeds appropriated by the California Legislature.

4. AWARD CENTENNIAL RECREATION CENTER GENERATOR PROJECT

Recommendation:

1. Adopt resolution amending the Fiscal Year 2019-20 Budget to appropriate an additional \$98,800 from the Recreation Center Impact Fund (360), for the Centennial Recreation Generator Project (CIP#229018);
2. Approve the Centennial Recreation Center Generator plans and specifications;
3. Award contract to PC Inc. for the Centennial Recreation Center Generator Project in the amount of \$243,000;
4. Authorize expenditure of construction contingency funds not to exceed \$24,300; and
5. Authorize the City Manager to execute and administer the construction contract with PC Inc. pending review and approval by the City Attorney.

5. ADOPT ORDINANCE ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL CODE PROHIBITING NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE MARCH 1, 2020

Recommendation:

Waive the reading, adopt Ordinance No. 2306, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. ADOPT ORDINANCE AMENDING CHAPTERS 15.08 (BUILDING CODE), 15.12 (ELECTRICAL CODE), 15.16 (MECHANICAL CODE), 15.20 (PLUMBING CODE), 15.24 (HOUSING CODE), 15.25 (PROPERTY MANAGEMENT) AND 15.44 (FIRE CODE) TO ADOPT BY REFERENCE THE 2019 CALIFORNIA STATE BUILDING STANDARDS CODES KNOWN AND DESIGNATED AS CALIFORNIA CODE OF REGULATIONS, TITLE 24 AND TO AMEND, DELETE, AND ADD CERTAIN OTHER BUILDING AND CONSTRUCTION STANDARDS AND TO MAKE MINOR CHANGES TO SECTIONS IN CHAPTERS 15.40 (BUILDING SECURITY) AND 15.64 (WOOD-BURNING APPLIANCES) OF TITLE 15 (BUILDING AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

Waive the reading, adopt Ordinance No. 2307, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. APPROVE THE OCTOBER 2, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE OCTOBER 9, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

9. APPROVE THE OCTOBER 23, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

10. INTRODUCE ZONING ORDINANCE AMENDMENT TO CONDITIONALLY PERMIT CANNABIS USES IN NON-RESIDENTIAL ZONES AND PROVIDE DIRECTION REGARDING CANNABIS LICENSING REGULATIONS ORDINANCE

Recommendation:

1. Receive report on Planning Commission recommendation regarding number of retail cannabis licenses and land use recommendations;
2. Open and close the public hearing;
3. Proceed with allowing commercial cannabis in City limits by:
 - a. Waiving the first and second reading of the zoning ordinance amendment;
 - b. Introducing the zoning ordinance amendment;
 - c. Providing direction regarding cannabis licensing regulations ordinance;

OR

4. Continue maintaining Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis.

Estimated Time: 90 Minutes

11. REVENUE MEASURES POLLING RESULTS

Recommendation:

1. Accept report on polling results; and
2. Direct staff to continue with the Engage Morgan Hill process and provide any additional direction.

Estimated Time: 45 Minutes

12. PROVIDE DIRECTION REGARDING RATE OF RETURN VERSUS LONG TERM AFFORDABILITY POLICY CHANGE TO THE BELOW MARKET RATE (BMR) OWNERSHIP PROGRAM - REQUEST OF MADRONE HOMEOWNER TO AMEND RESTRICTED RESALE CONTRACT BY REPLACING THE EXISTING RESALE FORMULA THAT USES AREA MEDIAN INCOME WITH CONSUMER PRICE INDEX

Recommendation:

1. Receive a report on the request made to consider changing the focus of the BMR program to be Rate of Return for owners versus long-term affordability by modifying the Madrone Restricted Resale Contract; replacing the existing resale formula that uses Area Median Income with Consumer Price Index; and
2. Maintain existing affordable housing ownership contract and not shift the focus of the affordable ownership program.

Estimated Time: 30 Minutes

PUBLIC HEARING

13. ADOPT UPDATED DEVELOPMENT USER FEE SCHEDULE

Recommendation:

1. Open/Close Public Hearing; and
2. Adopt resolution updating Development User Fee Schedule.

Estimated Time: 15 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



From: [John Lang](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: FW: ATA's Truck Tonnage Index Rises 3.5% Over September 2018: TT Express
Date: Wednesday, October 23, 2019 2:18:37 PM

For public comment next CC

From: Joseph Patrick Thompson <translaw@pacbell.net>
Sent: Wednesday, October 23, 2019 10:29 AM
To: Barry Holtzclaw <bholtzclaw@newsmedia.com>; Nathan Mixter <nmixter@newsmedia.com>; Marty Richman <mgr42@charter.net>; Robert T. Dillon <rtdillon@garlic.com>; SBC Board of Supervisors <sbcsuper@supervisor.co.san-benito.ca.us>; Sbccog <info@sanbenitocog.org>; Mary Dinkuhn <mary@sanbenitocog.org>; Sally Bettencourt <sallybettencourt@gmail.com>; Sbcrc Balers <onemorejones@yahoo.com>; Pat Loe <donpatloe@att.net>; Tammy Brownlow <president@gilroyedc.org>; Gary Walton <gary@custom-1.com>; Eric Howard <ehoward1965@gmail.com>; Shawna Freels <shawna.freels@ci.gilroy.ca.us>; roland.velasco@bos.sccgov.org <roland.velasco@ci.gilroy.ca.us>; fred.tovar@ci.gilroy.ca.us; Peter Leroe-Munoz <peter.leroe-munoz@ci.gilroy.ca.us>; carol.marques@ci.gilroy.ca.us; Cat Tucker <cat.tucker@ci.gilroy.ca.us>; Dion Bracco <dion.bracco@ci.gilroy.ca.us>; John Lang <John.Lang@morganhill.ca.gov>; Mike Wasserman <askmike@garlic.com>
Subject: Fw: ATA's Truck Tonnage Index Rises 3.5% Over September 2018: TT Express

Dear Barry,

More fatalities from big rigs? Thank SBCCOG. Thank VTA. Thank TAMC. Thank SCCRTC. They all sacrifice motorists safety on our highways so that they can spend more of our taxes on public sector boondoggles. Thanks to the "experts" at our "authorities" SBCCOG, VTA, TAMC, SCCRTC, AMBAG, etc., etc., etc., the Central California Coast Region remains the largest urban area (combining Silicon and Salinas Valleys) without intermodal facilities.

Before we were blessed with the unelected "directors" of our "authorities" the SPRR had piggyback ramps in San Jose and Salinas.

Now that our unelected "directors" at our "authorities" make their insane decisions on transport policy, those tons have to be drayed to or from piggyback ramps (a/k/a intermodal facilities) in Lathrop (UPRR) or Stockton (BNSF).

But our experts and directors at the unelected transit agencies crow about their "success."

Yep. Emperor Transit First is stark naked, as I've told the COG Directors from the podium many times. Public sector transit is their #1 Top Priority; motorists' safety is not, even though 99.6% of all trips in SBC are in private vehicles and trucks. Which I've also told COG's Directors without getting any reply for ten years that I served on SBCCOG's Citizens Transit Task Force or Citizens Rail Advisory Committee or did pro bono services for COG's deaf, dumb and blind "Directors."

But you never mention it to your readers. Why not?

Joe Thompson
(408) 607-----7351 cell phone

cc: PUBLIC COMMENT:- NEXT MEETING, REGULAR, SPECIAL, STUDY SESSION, PRIVATE RETREAT, PUBLIC WORKSHOP, AND/OR NON-BROWN ACT COMPLIANT MEETING OF THE SO-CALLED "MOBILITY PARTNERSHIP"--MORE UNCONSTITUTIONAL GOVERNANCE ABUSE

----- Forwarded Message -----

From: Transport Topics <noreply@ttnews.com>
To: "translaw@pacbell.net" <translaw@pacbell.net>

Communication: Public Comment 01 (PUBLIC COMMENT)

Sent: Wednesday, October 23, 2019, 09:06:46 AM PDT

Subject: ATA's Truck Tonnage Index Rises 3.5% Over September 2018: TT Express

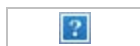
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October 23, 2019

IN THIS ISSUE:

- ▣ **ATA's Truck Tonnage Index Rises 3.5 % Over September 2018**
- ▣ **Fatalities in Crashes Involving Large Trucks Increased by Just Under 1 % From 2017 to 2018**
- ▣ **Layoffs Hit Stevens Tanker, Amazon Contractors**
- ▣ **And more...**

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[ATA's Truck Tonnage Index Rises 3.5 % Over September 2018](#)

Truck tonnage for the month of September rose 3.5% compared with year-ago levels, and inched up on a sequential basis over August 2019, according to American Trucking Associations' For-Hire Truck Tonnage Index.

[Fatalities in Crashes Involving Large Trucks Increased by Just Under 1 % from 2017 to 2018](#)

Fatalities in crashes involving large trucks increased by just under 1% from 2017 to 2018, to 4,951 from 4,905, according to statistics released by the National Highway Traffic Safety Administration.

[Layoffs Hit Stevens Tanker, Amazon Contractors](#)

Closures and layoffs continue to vex the trucking industry in 2019, but three recent downsizings were attributed by the companies involved more to the vicissitudes of the energy, retail and final-mile industries than to a slowdown in the overall freight market.

[This week's cartoon: "Detention Time Is the Worst!"](#)

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Communication: Public Comment 01 (PUBLIC COMMENT)

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SPONSORED CONTENT

Diesel Technicians Talk Biodiesel

As a diesel technician with 15 years' experience, Joe Siadak knows truck engines well. But biodiesel taught him something new. When Mahoney Environmental, where he is lead technician, decided to run its fleet on biodiesel, he had some concerns.

Covenant Transportation Posts \$3.2 Million Net Loss in Q3

Covenant Transportation Group Inc. reported a net loss of \$3.2 million in the third quarter of 2019, compared with net income of \$11.6 million in the same quarter of 2018.

CN Reports Strong Q3 Earnings, but Officials Say Rail Volume is Dropping

Canadian National Railway joined the growing list of Class 1 railroads to report strong third-quarter financial results, and at the same time drive down costs by improving efficiency by adopting the principle of precision scheduling railroading.

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Federal Officials Highlight Disaster Mitigation Program

WASHINGTON — A Federal Emergency Management Agency official addressing a House transportation panel Oct. 22 touted a disaster mitigation program established last year.

Energy Experts Remain Cautious About Price Hikes as IMO Mandate Looms

The price of low-sulfur diesel is expected to surge in the near future as a mandate that cargo ships dramatically cut sulfur emissions takes effect.

'Multi-Year Plan' Unveiled for Illinois Infrastructure

Illinois Gov. Jay "J.B." Pritzker and the Illinois Department of Transportation have released the Multi-Year Plan, which dedicates \$23.5 billion to infrastructure projects throughout the state.

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GM Strike Vote Is Going Down to Wire

General Motors Co. employees near Nashville, Tenn., narrowly rejected a proposed contract with the United Auto Workers, an early indication that the union's vote to end a more than five-week strike could be a close call.

UPS Predicts Record Holiday Season

UPS Inc. says it has been preparing for what it expects to be a record-breaking holiday shipping season by building additional automated facilities and adding jets to its fleet to handle more packages as online shopping continues to grow.

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CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

PREPARED BY: Irma Torrez, City Clerk
APPROVED BY: City Manager

REPORT REGARDING UPCOMING 2020 COMMISSION VACANCIES - PER MADDY ACT

RECOMMENDATION(S)

Receive report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving Our Community History
Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Community Engagement and Messaging

REPORT NARRATIVE:

Government Code Section 54972 (Maddy Act) requires that before December 31 of each year, the City Council cause to be prepared a list of appointments of all ongoing boards, commissions and committees that are appointed by the City Council. The list includes which terms will expire during the next calendar year with the name of the incumbent appointee, the date of appointment, the date the term expires, and the necessary qualifications for the position.

Chapter 2.22.010 - Master Provisions for Boards and Commissions of the Municipal Code established the following commissions: Planning Commission; Parks & Recreation Commission; and the Library, Culture & Arts Commission. Chapter 2.22.010, Section B, states that: "Unless otherwise set forth, all members of boards, commissions and committees shall be residents of the city and shall continue to be residents of the city during their terms of office. Notwithstanding the foregoing, individuals who reside within the Morgan Hill Unified School District boundary and who do not otherwise reside in any city other than Morgan Hill may be appointed to boards, commissions and committees provided that no more than thirty percent of the members of any board, commission or committee shall be non-Morgan Hill residents."

Library, Culture & Arts and Parks & Recreation Commissioners with terms due to expire in 2020 are highlighted in the attached "Local Appointment List". Both of these Commissions will have three (3) members with terms due to expire on April 1, 2020. No terms on the Planning Commission are due to expire in the 2020 calendar year.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the upcoming board, commission, and committee vacancies.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Per Resolution No. 7082 adopted by the City Council on December 17, 2014, this report is being presented as an informational item. The City Clerk's Office will post the "Local Appointment List" in accordance with Government Code Section 54972 prior to December 31, 2019 and every year before December 31, thereafter.

FISCAL AND RESOURCE IMPACT:

The time necessary to prepare this report is accommodated in the Administrative Services Budget.

CEQA (California Environmental Quality Act):

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

LINKS/ATTACHMENTS:

1. chapter 2.22 Master Provisions for boards and commissions
2. chapter 2.32 Parks and Rereation Commission
3. Chapter 2.36 Planning Commission
4. chapter 2.68 Library, Culture and Arts Commission
5. Local Appt Term Draft
6. Resolution 7082

Chapter 2.22 - MASTER PROVISIONS FOR BOARDS AND COMMISSIONS*

Sections:

2.22.010 - Establishment of boards and commissions.

- A. There are established within the city the following boards and commissions:
 - 1. Planning commission;
 - 2. Parks and recreation commission;
 - 3. Library, culture and arts commission; and
 - 4. Disaster council.
- B. Unless otherwise set forth, all members of boards, commissions and committees shall be residents of the city and shall continue to be residents of the city during their terms of office. Notwithstanding the foregoing, individuals who reside within the Morgan Hill Unified School District boundary and who do not otherwise reside in any city other than Morgan Hill may be appointed to boards, commissions and committees provided that no more than thirty percent of the members of any board, commission or committee shall be non-Morgan Hill residents.
- C. Members shall be appointed by the mayor subject to approval of a majority vote of the city council and may be removed without cause by vote of any three members of the city council.
- D. The appointment terms of members may be extended, at the discretion of the city council, until such time as a successor member may be appointed and take office.
- E. Vacancies in the commission occurring other than by expiration of term shall be filled for the unexpired term in the same manner as original appointments.
- F. The members of the commission shall organize the commission and shall elect from its members a chair and vice-chair and such other officers as may be necessary in accordance with adopted city council policy.

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No 1930 N.S., § 2, 4-22-2009; Ord. No. 1935 N.S., § 1, 6-3-2009)

2.22.030 - Clerk and secretary.

The city clerk or designate shall also act as clerk for each of the boards and commissions and shall have authority to sign any official notices and also to certify any resolution of the commissions or boards. The city council may appoint a person not a member of the commission or board to act as secretary of the

commission or board. The secretary shall keep a record of all proceedings of said board or commission, its resolutions, its findings and actions, which records shall be a public record and kept with the city clerk in the City Hall building.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.040 - Rules of procedure.

- A. The chair shall preside at all meetings of the board or commission. The vice chair shall assume the duties of the chair in the absence of or in case of inability of the chair.
- B. A majority of the members of the commission or board shall constitute a quorum for the transaction of business.
- C. Unless otherwise specified herein, each board or commission may adopt its own rules and regulations for the transaction of its business. Such rules shall be subject to approval of the city council before becoming effective.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.050 - Rules of attendance.

If any member is absent from three of any six consecutive regular board or commission meetings, unless such absence is with the permission of the chair, or vice chair in absence of the chair, expressed in the official minutes, the member's seat shall be deemed vacated. The city manager shall so notify the city council and the council shall take action to fill the seat within a reasonable period of time.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.060 - Meetings.

Unless otherwise specified, the commission shall hold regular meetings once every two months at a designated time and place which shall be fixed and determined by the commission and entered upon in its minutes. Special meetings of the commission may be called at any time by the chair or by a majority of the members of the board upon notice being given to all members of the board and to all news media at least twenty-four hours in advance of the meetings, as required by the laws of the state of California.

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No. 1930 N.S., § 3, 4-22-2009)

2.22.070 - Compensation.

Members of the boards and commissions shall serve without compensation but may receive reimbursement for actual and necessary expenditures made or incurred in the performance of their prescribed duties in accordance with state law and the Municipal Code and policies of the city of Morgan Hill.

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.080 - Effect.

Nothing in this chapter shall be construed as restricting or curtailing any of the powers of the city council or city officers as defined by the laws of the state of California or by this Municipal Code. Except as otherwise set forth in Chapter 2.36, the city council declares that the public interest and convenience require the appointment of the boards and commissions established pursuant to Section 2.22.010 to act purely in an advisory capacity to the city council.

(Ord. 1778 N.S. § 2 (part), 2006)

Chapter 2.32 - PARKS AND RECREATION COMMISSION*

Sections:

2.32.010 - Created.

There is established a new commission which is entitled the "Morgan Hill parks and recreation commission" to serve in an advisory capacity to the city council.

(Ord. 1778 N.S. § 4 (part), 2006)

2.32.020 - Membership—Terms of office.

The commission shall consist of seven members. Members shall not be officials or employees of the city nor be paid members of any organization receiving financial support from the city. Notwithstanding any language to the contrary, the mayor and city council may appoint a Morgan Hill Unified School District official as a member of the commission.

For the first seven members appointed, the terms of three of the members shall expire on May 1, 1999, and the terms of four of the members shall expire on May 1, 2000. All new full term appointments after April 1, 2006 shall be for a period of four years.

(Ord. 1778 N.S. § 4 (part), 2006)

2.32.030 - Powers and duties.

The powers and functions of the commission shall be as follows, provided that nothing in this Chapter 2.32 shall be construed to give the commission power or duty to supervise or administer any public buildings, public parks, streets or other public property or programs:

- A. To hold hearings on matters pertaining to planning and development of parks, trails, recreation programs for all segments of the population, bicycle facilities, and capital expenditures related to parks, trails, recreational facilities, and bicycle facilities;
- B. To facilitate coordination of the efficient and effective use of recreation facilities by other public, private, and non-profit groups and organizations to city residents;
- C. To consider, formulate and propose fiscally prudent programs, activities, resources, plans and development designed to provide for, regulate, and direct the future growth and development of the parks facilities and recreation programming for the people of the city;
- D. To make investigations and reports for future acquisition of park sites;
- E. To review opportunities for joint use of recreation/parks, and storm retention/detention;
- F. To act on behalf of the city and function as the City of Morgan Hill Bicycle and Trails Advisory Committee;
- G. To conduct such other hearings as are necessary and in accordance with its own rules and regulations for the transaction of its business, or rules for conduct; and
- H. To report its decisions and recommendations relating to the above matters, in writing to the city council.

(Ord. 1778 N.S. § 4 (part), 2006)

(Ord. No. 1930 N.S., § 4, 4-22-2009)

Chapter 2.36 - PLANNING COMMISSION*

Sections:

2.36.010 - Created—Statutory authority.

The planning commission is established pursuant to the authority contained in Chapter 3 of Title VII of the California Government Code, entitled "Local Planning, " as existing or hereafter amended. Reference shall be made to said Chapter 3 for interpretation of this chapter.

(Ord. 811 N.S. § 1 (II-3-1), 1987)

2.36.020 - Membership—Terms of office—Vacancies.

- A. The city planning commission shall consist of seven members. Members of the planning commission shall serve the following terms:
1. In the year 1998, three members shall be appointed to serve terms ending June 1, 2001;
 2. The four members who were appointed in 1996 shall serve terms ending June 1, 1999;
 3. Thereafter, all terms shall be for four years and shall expire on June 1st.

(Ord. 1778 N.S. § 5, 2006; Ord. 1407 N.S. § 2, 1998; Ord. 1083 N.S. § 1, 1992; Ord. 811 N.S. § 1 (II-3-2), 1987)

2.36.030 - Meetings.

The commission shall hold regular meetings at least twice a month or as otherwise deemed necessary by the commission. All meetings of the commission shall be held in the city council chambers at City Hall or other location designated by minute order of the city council or at a location deemed necessary or appropriate by the planning commission.

(Ord. 1197 N.S. § 1 (part), 1994; Ord. 811 N.S. § 1 (II-3-3), 1987)

2.36.040 - Powers and duties.

The planning commission shall have the powers and shall perform all the duties conferred and imposed upon city planning commissions by the applicable provisions of Chapter 3 of Title VII of the Government Code of the state and, in addition, the planning commission shall:

- A. Perform all the functions assigned to the commission by the subdivision and zoning ordinances (Titles 17 and 18 of this code) of the city, and all general laws of the state of California;
- B. Serve as an advisory body to the city council on matters related to city growth and

development and on such other matters as may be requested by the council;

- C. Promote public interest in and understanding of the subdivision and zoning ordinances of the city, and also of all master plans and other official plans and regulations pertaining to planning which have been approved officially by the city council;
- D. Review and advise the city council on all proposed amendments to Title 17, Subdivisions, and Title 18, Planning and Land Use Regulations;
- E. Approve or disapprove application for designation of cultural resources and historic districts pursuant to Chapter 18.75 of this code, or as amended;
- F. Approve or disapprove permits sought to remove or demolish a cultural resource, cultural resource site or historic district pursuant to Chapter 18.75 of this code, or as amended.

(Ord. 1111 N.S. §§ 2, 3, 1992; Ord. 899 N.S. § 18, 1989; Ord. 811 N.S. § 1 (II-3-4), 1987)

Chapter 2.68 - LIBRARY, CULTURE AND ARTS COMMISSION

Sections:

2.68.010 - Created.

There is established a new commission which is entitled the "library, culture and arts commission" to serve in an advisory capacity to the city council.

(Ord. 1778 N.S. § 9 (part), 2006: Ord. 1374 N.S. § 1 (part), 1998)

2.68.020 - Membership—Terms of office.

The commission shall consist of seven members. Members shall not be officials or employees of the city, county library employees nor paid members of any organization receiving financial support from the city for library and art services.

(Ord. 1778 N.S. § 9 (part), 2006: Ord. 1559 N.S. § 1, 2002: Ord. 1407 N.S. § 5, 1998; Ord. 1382 N.S. § 1, 1998; Ord. 1374 N.S. § 1 (part), 1998)

2.68.030 - Powers and duties.

The powers and functions of the commission shall be as follows:

- A. To act in an advisory capacity to the city council in all matters pertaining to library, culture and arts in the community;
- B. To serve as a liaison between the city and the Santa Clara County library;
- C. To consult with private community groups supportive of library, culture and art programs and serve as a liaison between such groups and the city;
- D. To provide advice and recommendations regarding the adequacy of existing library facilities and operations;
- E. To look for opportunities for participation of artists and performers in city-sponsored activities, and ways to encourage community involvement in the arts;
- F. To work cooperatively with city boards and commissions and other public and private organizations in creating and promoting art and cultural programs and activities within the city;
- G. To coordinate and strengthen existing organizations in the arts and develop cooperation with regional organizations;
- H. To make recommendations to the city council regarding the funding of community art projects, including the search for private and public grants, and regarding the disbursement of revenues consistent with the needs of the community;
- I. To review and make recommendations to the city council upon all works of art to be acquired by the city, either by purchase, gift or otherwise, and exterior works of art installed in the city on public property;
- J. To recommend to the city council the adoption of such ordinances or policies as it may deem necessary for the administration and preservation of the arts and cultural development of the city;
- K. To perform such other tasks as may be expressly requested of it by the city council;

- L. To conduct such other hearings as are necessary and in accordance with its own rules and regulations for the transaction of its business, or rules for conduct; and
- M. To report its decisions and recommendations relating to the above matters, in writing to the city council.

(Ord. 1778 N.S. § 9 (part), 2006: Ord. 1374 N.S. § 1 (part), 1998)



17555 PEAK AVENUE MORGAN HILL CALIFORNIA 95037

general@morganhill.ca.gov

POSTED ON ____, 2019 PER MADDY ACT

LOCAL APPOINTMENTS LIST

Unless otherwise set forth, all members of boards, commissions and committees shall be residents of the city and shall continue to be residents of the city during their terms of office. Notwithstanding the foregoing, individuals who reside within the Morgan Hill Unified School District boundary and who do not otherwise reside in any city other than Morgan Hill may be appointed to boards, commissions and committees provided that no more than thirty percent of the members of any board, commission or committee shall be non-Morgan Hill residents.

LIBRARY, CULTURE & ARTS COMMISSION

(Two Year Term)

Serves as liaison with the County Library and meets monthly to advise on the adequacy of library services.

<u>Date Appointed</u>	<u>Name</u>	<u>Term Expires</u>
February 21, 2018	Bob Benich	April 1, 2020
June 6, 2018	Poonam Chabra	April 1, 2021
June 21, 2017	Brigitte Crawford	April 1, 2020
March 20, 2019	Suman Ganapathy	April 1, 2021
May 3, 2017	Katie Khera	April 1, 2021
April 16, 2014	Paul Lake	April 1, 2020
March 20, 2019	Jake Thompson	April 1, 2021

PARKS & RECREATION COMMISSION

(Four Year Term)

Meets monthly to make recommendations regarding the planning and development of parks, cultural facilities and recreation programs.

<u>Date Appointed</u>	<u>Name</u>	<u>Term Expires</u>
November 28, 2018	Neil Berman	April 1, 2022
February 21, 2018	Maureen Grzan-Pieracci	April 1, 2022
October 2, 2013	Ronald Locicero	April 1, 2022
February 17, 2016	Richard Scott	April 1, 2020
April 16, 2014	Mary Seehafer	April 1, 2020
May 4, 1998	Craig C. van Keulen	April 1, 2022
February 17, 2016	Matthew Wendt	April 1, 2020

PLANNING COMMISSION

(Four Year Term)

Meets twice monthly to advise on matters related to City growth and development.

<u>Date Appointed</u>	<u>Name</u>	<u>Term Expires</u>
July 15, 2015	Liam Downey	June 1, 2023
May 3, 2017	Mohammad Habib	June 1, 2021
April 17, 2019	Laura Gonzalez Escoto	June 1, 2021
April 17, 2019	Malisha Kumar	June 1, 2021
January 28, 1989	Joseph Mueller	June 1, 2023
June 21, 2017	Juan Miguel Munoz Morris	June 1, 2023
April 25, 2007	Wayne Tanda	June 1, 2023

Note: Yellow Highlighted Commissioners have terms expiring in 2020

Attachment: Local Appt Term Draft (2516 : Upcoming 2020 Commission Vacancies - Maddy Act)

RESOLUTION NO. 7082

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, ACCEPTING THE CITY CLERK'S REPORT ON UPCOMING 2015 COMMISSION VACANCIES, DIRECTING THE CITY CLERK TO PREPARE A "LOCAL APPOINTMENT LIST" OF ALL ONGOING BOARDS, COMMISSIONS AND COMMITTEES APPOINTED BY THE CITY COUNCIL, AND THAT THE LIST OF APPOINTMENTS TO BE POSTED ACCORDING TO LAW PRIOR TO DECEMBER 31, 2014 AND PRIOR TO EVERY DECEMBER 31, THEREAFTER

WHEREAS, the "Maddy Act" was enacted to maximize public awareness of local appointments made by the City Council; and

WHEREAS, the Maddy Act takes into consideration a vast and largely untapped reservoir of talent which exists among the citizenry that all too frequently are not aware of the opportunities for participation on local regulatory and advisory boards and commissions; and

WHEREAS, in accordance with Government Code Sections 54972, the City Council shall cause to be prepared a list of appointments (Local Appointment List) of all ongoing boards, commissions and committees that are appointed by the City Council; and

WHEREAS, the "Local Appointment List" is to include the terms due to expire during the next calendar year with the name of the incumbent appointee, the date of appointment, the date the term expires, and the necessary qualifications for the position.

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

SECTION 1. Pursuant to Government Code 54972, the City Council directs the City Clerk to prepare the "Local Appointment List" to include all the information required by law.

SECTION 2. That the City Clerk, or his/her designee, is directed to post the "Local Appointment List" according to law prior to December 31, 2014 and every December 31 thereafter.

SECTION 3. That the City Clerk shall forward to the City Council the "Local Appointment List," as an informational report.

SECTION 4. That City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

City of Morgan Hill
 Resolution No. 7082
 Page 2 of 3

PASSED AND ADOPTED by the City Council of the of the City of Morgan Hill at a Regular Meeting held on the 17th day of December 2014 by the following vote:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Marilyn Librers, Gordon Siebert, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

ATTEST:


 IRMA TORREZ
 City Clerk


 STEVE TATE, Mayor

∞ **CERTIFICATION** ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 7082, adopted by the City Council at the meeting held on December 17, 2014.

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

DATE: 1/15/2015


 IRMA TORREZ, City Clerk



17575 PEAK AVENUE MORGAN HILL CALIFORNIA 95037
general@morganhill.ca.gov

POSTED ON _____, 2014 PER MADDY ACT

LOCAL APPOINTMENTS LIST

Unless otherwise set forth, all members of boards, commissions and committees shall be residents of the city and shall continue to be residents of the city during their terms of office. Notwithstanding the foregoing, individuals who reside within the Morgan Hill Unified School District boundary and who do not otherwise reside in any city other than Morgan Hill may be appointed to boards, commissions and committees provided that no more than thirty percent of the members of any board, commission or committee shall be non-Morgan Hill residents

LIBRARY, CULTURE & ARTS COMMISSION

(Two Year Term)

Serves as liaison with the County Library and meets monthly to advise on the adequacy of library services.

<u>Date Appointed</u>	<u>Name</u>	<u>Term Expires</u>
January 13, 2011	Susan Brazelton	April 1, 2015
May 16, 2012	Loren Burks-Winzeler.	April 1, 2016
September 17, 2014	Cecilia Clark	April 1, 2015
April 16, 2014	Judith Cowan	April 1, 2016
April 16, 2014	Bill Haskell	April 1, 2016
April 25, 2007	Tim Hennessey	April 1, 2015
April 16, 2014	Paul Lake	April 1, 2016

PARKS & RECREATION COMMISSION

(Four Year Term)

Meets monthly to make recommendations regarding the planning and development of parks, cultural facilities and recreation programs.

<u>Date Appointed</u>	<u>Name</u>	<u>Term Expires</u>
November 7, 2007	Martin Cheek	April 1, 2016
April 16, 2014	LaRene Green	April 1, 2018
May 16, 2012	Matthew Kelly	April 1, 2016
April 26, 2006	Kimberly Leiser	April 1, 2018
October 2, 2013	Ronald Locicero	April 1, 2018
April 16, 2014	Mary Seehafer	April 1, 2016
May 4, 1998	Craig C. van Keulen	April 1, 2018
<i>School District Liaison</i>	Bob Benevento	N/A
<i>Ex-Officio Member:</i>		

PLANNING COMMISSION

(Four Year Term)

Meets twice monthly to advise on matters related to City growth and development.

<u>Date Appointed</u>	<u>Name</u>	<u>Term Expires</u>
May 18, 2011	John Kim KcKay	June 1, 2017
February 9, 2005	Susan Koepp-Baker	June 1, 2015
February 5, 2014	Zenon Komarczyk	June 1, 2015
January 28, 1989	Joseph Mueller	June 1, 2015
September 1, 2014	Michael Orosco	June 1, 2017
May 16, 2012	Rene Angelo Spring	June 1, 2017
April 25, 2007	Wayne Tanda	June 1, 2015

Attachment: Resolution 7082 (2516 : Upcoming 2020 Commission Vacancies - Maddy Act)



CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

PREPARED BY: Dwight Good, Fire Marshal
APPROVED BY: City Manager

APPROVE APPROPRIATION FOR FIRE DEPARTMENT REPLACEMENT VEHICLE

RECOMMENDATION(S)

1. Accept insurance settlement for approximately \$66,948;
2. Adopt resolution amending the adopted Fiscal Year 2019-20 Budget appropriating \$76,100 from the Equipment Replacement Fund (790) for the purchase of a replacement 2020 Ford F250 Truck for the Fire Department; and
3. Declare the collision-damaged 2013 F150 to be salvage for disposal in accordance with the City Municipal Code.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

NARRATIVE:

On August 20, 2019, a Fire Department vehicle, a F150 pickup truck, was involved in a traffic collision and suffered significant rear-end damage. The vehicle is no longer roadworthy and the City's insurance carrier has declared the vehicle a "total loss." Fire Department staff recommends selling the following vehicle to a local salvage yard at a value exceeding \$2,500:

<u>Year</u>	<u>Make/Model</u>	<u>Description</u>	<u>VIN</u>
2013	Ford F150	Pick Up Truck	1FFTFX1EF8DFA80823

Staff requests to salvage the vehicle through Copart USA to acquire the highest possible revenue from the salvage/disposal. Proceeds will be deposited into the Equipment Replacement Fund (790) to be utilized towards the replacement purchase.

The Fire Department has no surplus vehicle inventory and needs to replace the vehicle as soon as possible. Staff has been renting a vehicle in the interim for use. Staff has determined that the F150 platform is inadequate for Fire Department use and recommends purchasing a 2020 Ford F250.

Although the purchase of the replacement truck falls within the City Manager's current authority of \$60,000, there are insufficient budget appropriations for the replacement and outfitting of the vehicle, as this was an unforeseeable event and Council's

authorization of the budgetary appropriations is required. The total replacement and outfitting cost will be approximately \$76,100.

Staff obtained three bids for the replacement vehicle.

<u>Dealership</u>	<u>Price</u>
Santos Ford, Los Banos	\$33,998 plus taxes and fees
The Ford Store, Morgan Hill	\$34,500 plus taxes and fees
National Auto Fleet Group, Watsonville	\$35,837 plus taxes and fees

At \$34,500 (plus tax and fees), The Ford Store price is 1% higher than the lowest bid received. Staff recommends accepting The Ford Store bid and using the local vendor. Using the local vendor will ensure the City receives the full 1% local share of the Bradley Burns sales tax for the City, which will essentially offset the increase.

The outfitting will be done by various vendors depending on the equipment and the need.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the public of the recommendations to declare a vehicle as salvage for sale and the recommended replacement purchase.

ALTERNATIVE ACTIONS:

None.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The full cost of the vehicle, including purchase price and build-out, is estimated at \$76,100. Staff anticipates receiving \$66,948 in insurance proceeds. The net cost for this vehicle replacement is estimated at \$9,152 (upgrade to F250) to the Equipment Replacement Fund (790), utilizing the Fire Department's reserve.

<u>Replacement Vehicle</u>	<u>Cost</u>
2020 Ford F250	\$34,500
Emergency System Build-out	\$35,000
Tax, documentation, fuel, and delivery fees	\$6,600
Total Cost	\$76,100
Insurance Payment	\$(66,948)
Net Equipment Replacement Fund Cost	\$9,152

Due to this unforeseen replacement of a collision-involved vehicle, staff recommends Council adopt a resolution amending the FY2019-20 adopted budget to appropriate \$76,100 in the Equipment Replacement Fund (790), for the purchase of the replacement 2020 Ford F250.

CEQA (California Environmental Quality Act):

Not a Project. Continuing administrative or maintenance activities, including the disposal of property is exempt from CEQA.

LINKS/ATTACHMENTS:

1. Budget Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 BUDGET IN THE EQUIPMENT REPLACEMENT FUND (790) TO APPROPRIATE \$76,100 FOR THE PURCHASE AND OUTFITTING OF A REPLACEMENT FIRE DEPARTMENT PICK UP TRUCK THEREFORE

WHEREAS, the subject of, this Resolution is set forth in detail in that certain City Council Staff Report entitled "Fire Department Replacement Vehicle Appropriation" submitted for City Council consideration at its meeting of November 6, 2019, submitted to the City Council by the City Manager (the "Staff Report"), the contents of the Staff Report are incorporated herein by this reference; and

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2019-20, as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2019-20 Budget, as the same has been amended to date, is hereby further amended in accordance with and as

reflected on Exhibit A attached hereto and incorporated herein by this reference;
and

- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 6th day of November, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

COUNCIL MEMBERS:

DATE: _____

Rich Constantine, MAYOR

☞ CERTIFICATION ☞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.XXXX , adopted by the City Council at the meeting held on November 6, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

EXHIBIT A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2019-20

ADJUSTMENT #

008

FUND:

790 Equipment Replacement Fund

DEPARTMENT:

8500 Equipment Replacement

OBJECT:

43830 AUTO/TRUCKS

AGENDA DATE:

11/06/19

AGENDA ITEM TITLE:

Fire Department Vehicle Replacement

	07/01/19 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/20 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	5,235,129	1,052,269	1,136,915	5,150,483
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	-	-
RECOMMENDED ACTION		66,948	76,100	(9,152)
RESULT OF RECOMMENDED ACTION	<u>5,235,129</u>	<u>1,119,217</u>	<u>1,213,015</u>	<u>5,141,331</u>

Attachment: Budget Resolution (2498 : Fire Department Vehicle Replacement)



CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

PREPARED BY: Barbara Voss, Management Analyst
APPROVED BY: City Manager

APPROVE CALIFORNIA CLIMATE INVESTMENTS - DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S (CAL FIRE) FIRE PREVENTION GRANT APPLICATION RESOLUTION

RECOMMENDATION(S)

Adopt resolution authorizing an application for the California Climate Investments-Department of Forestry and Fire Protection's (CAL FIRE) Fire Prevention Grant Program funded with Cap-and-Trade auction proceeds appropriated by the California Legislature.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Advancing Regional Initiatives

2019 Strategic Priorities

Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The purpose of this staff report is to request the City Council's authorization to submit a grant application to Cal Fire which will assist the City with the development of a long-range wildfire mitigation plan.

CAL FIRE's Fire Prevention Grants Program provides funding for local projects and activities that address the risk of wildfire and reduce wildfire potential to forested and forest adjacent communities. Funded activities include hazardous fuel reduction, fire prevention planning, and fire prevention education with an emphasis on improving public health and safety while reducing greenhouse gas emissions. Up to \$49.7 million is being allocated to the 2019-2020 grant program which aims to reduce the risk of wildland fires to habitable structures and communities, while maximizing carbon sequestration in healthy wildland habitat and minimizing the uncontrolled release of emissions emitted by wildfires. More information can be found on the CAL FIRE website at: <https://www.fire.ca.gov/grants/fire-prevention-grants/>.

The Santa Clara County Community Wildfire Protection Plan's annex 11 (CWPP) identifies strategic goals and specific mitigation projects for the City of Morgan Hill. This document serves as a reference framework for the City to address and remedy noted

wildfire hazard assessments. City Staff has determined that the fire prevention planning aspect of the CAL FIRE grant opportunity will support the development of a long-range planning document which addresses the CWPP recommendations specific to the City of Morgan Hill, prioritizes projects by critical need, provides applicable design concepts, and outlines an implementation timeline. This will be a critical first step in furthering the City's efforts related to community-wide wildfire protection and risk mitigation. The resulting planning document will support future specific grant applications for projects relating to fuel reduction and physical improvements for fire protection.

COMMUNITY ENGAGEMENT: Inform

City staff are using the CWPP as the basis for the development of the grant application. Fire protection is an expected maintenance service, no efforts were made to inform the community about this specific grant opportunity in advance, however, Fire Department staff regularly engage with the Community in relation to fire safety and prevention activities.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 15, 2019, the City Council adopted the Santa Clara County CWPP Annex 11, the Morgan Hill Community Wildfire Protection Plan.

FISCAL AND RESOURCE IMPACT:

The grant does not require matching funding and administrative costs are eligible for reimbursement, so it is not anticipated that there will be a significant fiscal impact associated with the grant. The resources for developing the grant application are included in the Community Services Department's work program.

CEQA (California Environmental Quality Act):

Not a Project.

The submission of a grant application is an administrative action and does not constitute a project under CEQA. However, should a grant agreement be executed with CAL FIRE, proof of adequate compliance with CEQA is required within one year of that execution.

LINKS/ATTACHMENTS:

1. CalFire Grant Resolution
2. CWPP - Annex 11 - City of Morgan Hill (web link)

RESOLUTION NO: XX-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE SUBMITTAL OF A CALIFORNIA CLIMATE INVESTMENTS FIRE PREVENTION GRANT APPLICATION TO THE CALIFORNIA DEPARTMENT OF FORESTRY & FIRE PROTECTION AND AUTHORIZING THE CITY MANAGER TO EXECUTE DOCUMENTS REQUIRED TO APPLY AND ACCEPT THE GRANT FOR THE CITY, IF AWARDED, AND DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH

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

WHEREAS, the Governor of the State of California in cooperation with the California State Legislature has enacted State of California **Climate Investment**, which provides funds to the State of California and its political subdivisions for **fire prevention programs**; and

WHEREAS, the State Department of Forestry and Fire Protection (CAL FIRE) has been delegated the responsibility for the administration of the program within the State, setting up necessary procedures governing the application by local agencies, non-profit organizations, and others under the program; and

WHEREAS, said procedures established by the State Department of Forestry and Fire Protection require the Applicant to certify by resolution the approval of the application before submission of said application to the State; and

WHEREAS, successful Applicants will enter into a contract with the State of California to complete the project; and

WHEREAS, the City desires to apply for the grant funds through the State of California, Department of Forestry and Fire Protection; and

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

NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY: APPROVES THE FILING OF AN APPLICATION FOR THE MORGAN HILL WILDFIRE MITIGATION PLAN; AND

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

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

1. Certifies the approval of the filing of an application for “**California Climate Investment Fire Prevention Grant Program**”; and
2. Certifies that if the project is awarded, the Applicant has or will have sufficient funds to operate and maintain the project; and
3. Certifies that said Applicant has or will have available, prior to commencement of any work on the project included in this application, the sufficient funds to complete the project; and
4. Certifies that the Applicant will expend grant funds prior to the Grant Deadline of March 15, 2024; and
5. Delegates the authority to the City Manager, or his or her designee, to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of Grant Scope;

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the November 6, 2019.

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.xx-xxx, adopted by the City Council at a regular meeting held on November 6, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

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

AWARD CENTENNIAL RECREATION CENTER GENERATOR PROJECT

RECOMMENDATION(S)

1. Adopt resolution amending the Fiscal Year 2019-20 Budget to appropriate an additional \$98,800 from the Recreation Center Impact Fund (360), for the Centennial Recreation Generator Project (CIP#229018);
2. Approve the Centennial Recreation Center Generator plans and specifications;
3. Award contract to PC Inc. for the Centennial Recreation Center Generator Project in the amount of \$243,000;
4. Authorize expenditure of construction contingency funds not to exceed \$24,300; and
5. Authorize the City Manager to execute and administer the construction contract with PC Inc. pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On October 4, 2017, the City of Morgan Hill adopted resolution 17-078, which approved the City of Morgan Hill's 5-year Hazard Mitigation Plan (Plan). This Plan outlines disaster mitigation efforts to be undertaken by the City and its agency partners over the next 5 years.

The adoption of the Plan allows the City of Morgan Hill to be eligible to pursue hazard mitigation project funding from Federal and State governments from both the Pre-Disaster Mitigation and the Hazard Mitigation Grant Programs. On December 19, 2018, City Council approved the acceptance of a grant of \$140,250 from the State of California Hazard Mitigation Program to purchase and install a backup generator at the Centennial Recreation Center.

Staff worked with Weston Miles Architects to complete the design of the Centennial Recreation Center Generator Project and received building permit approval in July 2019. The project plans and specifications were completed in August 2019 and the project was advertised for bidding in September 2019. The scope of work includes the

installation of a 400kw diesel generator with the necessary fencing and electrical conduit. The bid opening for this project was held on October 8, 2019 and the bids were received as listed below:

PC Inc.	\$243,000
ERBCO Construction	\$296,500
CRW Industries, Inc.	\$308,905
SilMan Industries	\$311,658

PC Inc. is the apparent low bidder for this project and their bid is approximately 7.5% above the engineer's estimate of \$225,000. PC Inc. has many years of experience performing similar work and staff recommends the award of the contract to PC Inc., in the amount of \$243,000. This project includes a 10% contingency of \$24,300. The project is scheduled to begin in November 2019 and be completed by April 2020, assuming no project delays.

The project plans and specifications are accessible on the city's webpage within the Community Projects [Link](#).

While the overall cost of the budget is higher than originally anticipated, staff is recommending continuing to move forward with this project as it will provide consistency and expansion of uses of the facility during power shutoffs. This includes normal operations as well as use of the facility for emergency operations such as sheltering. The need for backup power at City facilities has increased dramatically with the anticipated increased frequency of planned power shutoffs. The facility provides important day-to-day services to youth and seniors as well as acts as a cooling center for the community when temperatures escalate. Lastly, the facility has shower and kitchen facilities and is a designated Red Cross Emergency shelter.

COMMUNITY ENGAGEMENT: Inform

Staff is committed to providing weekly updates through City social media accounts and on City's website.

ALTERNATIVE ACTIONS:

City Council may elect to reject all bids and direct staff to abandon the project. Rebidding the project is not recommended as it is not believed significant savings will be available. Waiting on commencement of the project for a significant period of time is not feasible due to grant requirements.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

October 4, 2017 – City Council adopted resolution 17-078, which approved the City of Morgan Hill's 5-year Hazard Mitigation Plan and it outlined disaster mitigation efforts to be undertaken over the next 5 years.

December 19, 2018 – City Council accepted Grant Funding for an Emergency Backup Generator for the Centennial Recreation Center.

FISCAL AND RESOURCE IMPACT:

Description	Amount
Construction - PC Inc. (Including 10% contingency)	\$267,300
Project Implementation and Other Construction Related Costs	\$66,500
Total Project Cost	\$333,800
Existing Adopted Project Budget	(\$235,000)
Additional Budget Recommended	\$98,800

If approved as recommended, the total contract amount for construction is \$243,000. In addition, staff is requesting an authorization of a 10% contingency of \$24,300. The total project cost includes additional project expenses, including project implementation, equipment, permit fees, design, and other construction related costs outside of the contract.

After Council's acceptance of the grant and approval of the project, the FY 2019-20 Capital Improvement Program was subsequently amended to add this (CIP#229018) Centennial Recreation Center Generator Project with a total of \$235,000 appropriated. With existing appropriations, and the additional appropriation of \$98,800, this project will be fully funded. It is recommended the additional appropriations of \$98,800 be made from the Community/Recreation Centers Impact Fund (360), which has adequate funds to support the increase in this project (Attachment 2).

The overall total project cost is \$333,800, of which \$140,250 will be reimbursed through the State of California Hazard Mitigation Program Grant.

CEQA (California Environmental Quality Act):**Categorical Exemption**

The Centennial Recreation Center Generator Project is exempt from the California Environmental Quality Act (CEQA) under Section 15301 (Existing Facilities) through minor alteration of an existing facility.

LINKS/ATTACHMENTS:

1. Vicinity Map
2. Resolution for Centennial Recreation Center Generator Project



Attachment: Vicinity Map (2495 : Award Centennial Recreation Center Generator Project)



CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP Engineering Division**

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

CENTENNIAL RECREATION

CENTER GENERATOR PROJECT



0 75 150 300 450 600
Feet

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE CITY'S FISCAL YEAR 2019-20 ADOPTED BUDGET TO APPROPRIATE \$98,800 IN THE RECREATION CENTER IMPACT FUND (360) FOR THE PURCHASE AND INSTALLATION OF THE EMERGENCY GENERATOR

WHEREAS, recommended amendments are needed and proposed to the City's previously adopted Budget for Fiscal Year 2019-20 as set forth on Exhibit A to this Resolution, to appropriate the requisite funds to implement the actions authorized by this Resolution; and

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

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

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

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

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

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

- a. That the City's previously adopted Fiscal Year 2019-20 Budget, as the same has been amended to date, is hereby further amended in accordance with and as reflected on Exhibit A attached hereto and incorporated herein by this reference; and
- b. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution pertaining to the Fiscal Year 2019-20 Budget of City.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 6th day of November 2019 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

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

DATE: _____

RICH CONSTANTINE, MAYOR

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at the meeting held on November 6, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

Exhibit A

AGENDA BUDGET SCORECARD

FISCAL YEAR 2019-20

ADJUSTMENT #

010

FUND:

DEPARTMENT:

OBJECT:

360	Com. Rec. Centers Impact Fund
8065	Com/Rec Center Impact
86360	CONSTRUCTION

AGENDA DATE:

AGENDA ITEM TITLE:

11/06/19
Emergency Backup Generator

	07/01/19 PROJECTED BEGINNING FUND BALANCE	ESTIMATED REVENUES	AMENDED APPROPRI- ATIONS	06/30/20 PROJECTED ENDING FUND BALANCE
ORIGINAL BUDGET	2,121,250	1,359,693	458,875	3,022,068
CUMULATIVE REVISIONS PRIOR TO RECOMMENDED ACTION	-	-	805,000	(805,000)
RECOMMENDED ACTION		-	98,800	(98,800)
RESULT OF RECOMMENDED ACTION	<u>2,121,250</u>	<u>1,359,693</u>	<u>1,362,675</u>	<u>2,118,268</u>



CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

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

ADOPT ORDINANCE ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL CODE PROHIBITING NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE MARCH 1, 2020

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2306, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

REPORT NARRATIVE:

On October 23, 2019, the City Council introduced Ordinance No. 2306 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Martinez Beltran; NOES: Constantine; ABSTAIN: None; ABSENT: None.

In response to the growing climate crisis, staff has determined that natural gas use in local buildings, which accounts for approximately one-third of the community's carbon footprint, represents the City's greatest opportunity to reduce future greenhouse gas emissions. By requiring all new buildings to be constructed without natural gas, the introduced ordinance will dramatically reduce future emission growth as electricity procured by Silicon Valley Clean Energy is 100% carbon free.

All-electric construction is considered to be substantially less expensive and property owners will have the ability to completely offset their utility bill by adding to the solar energy at their building. Protection from outages, and increased energy independence, can easily be achieved through battery storage units installed at the time of construction or added after the building is constructed. Per the Council's direction, staff is evaluating future amendments to the City's code addressing the mandatory inclusion (or prewiring) of batteries in new developments and will return to the Council in 2020 with this information.

Residential projects that are currently under construction are exempt from the requirements of this ordinance.

COMMUNITY ENGAGEMENT: Consult

Based on the Council's policy direction on September 4, staff shared the proposed ordinance with members of the development community and received communication from one developer. At the Council meeting on October 23, input was received from one local developer and several members of the public. If the ordinance is adopted, notifications will be sent out to the development community informing them about the new City law and providing them with guidance on submitting building permit applications once the ordinance is in effect.

ALTERNATIVE ACTIONS:

Council can choose not to adopt the ordinance.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The proposed ordinance follows the policy guidance received from the Council on September 4, 2019. Prior to that meeting, the Council had last adopted a green building ordinance in 2009.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts from this item and no budget adjustment is requested at this time. Evaluating program options is included in the work program of the Community Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

In accordance with CEQA Guidelines section 15378(b)(5), action on this item is not a project subject to CEQA because policy direction is an administrative action that will not result in a physical change to the environment.

LINKS/ATTACHMENTS:

1. 2306 Building Electrification Ordinance

ORDINANCE NO. 2306, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL CODE PROHIBITING NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE MARCH 1, 2020

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

Section 1. Chapter 15.63 of the Morgan Hill Municipal Code is hereby added to read as follows:

Chapter 15.63

PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS

Sections:

15.63.010 Findings and Purpose.

15.63.020 Applicability.

15.63.030 Definitions.

15.63.040 Prohibited Natural Gas Infrastructure in Newly Constructed Buildings.

15.63.050 Public Interest Exemption.

15.63.060 Periodic Review of the Ordinance.

15.63.070 Severability.

15.63.080 Effective Date.

15.63.010 Findings and Purpose.

The Council finds and expressly declares as follows:

- A. Scientific evidence has established that natural gas combustion, procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change.
- B. The following addition to the Morgan Hill Municipal Code is reasonably necessary because of local climatic, geologic and topographical conditions as listed below:
 - (1) Morgan Hill is situated along a wildland-urban interface and is extremely vulnerable to wildfires and firestorms, and human activities releasing greenhouse gases into the atmosphere cause increases in worldwide average temperature, drought conditions, vegetative fuel, and length of fire seasons.
 - (2) Morgan Hill relies on water imported into the region for groundwater recharge and climate change is already causing changes in rainfall and snowfall which threaten to interrupt the supply of imported water.
 - (3) Structures in Morgan Hill are located along or near the Calaveras fault and the City is

- close enough to the San Andreas and Hayward faults. All of these faults are capable of producing large earthquakes in the Bay Area.
- C. The following addition to the Morgan Hill Municipal Code is also reasonably necessary because of health and safety concerns as Morgan Hill residents suffer from asthma and other health conditions associated with poor indoor and outdoor air quality exacerbated by the combustion of natural gas.
 - D. Substitute electric heating and cooling infrastructure in new buildings fueled by less greenhouse gas intensive electricity is linked to significantly lower greenhouse gas emissions and is cost competitive because of the cost savings associated with all- electric designs that avoid new gas infrastructure.
 - E. All-electric building design benefits the health, welfare, and resiliency of Morgan Hill and its residents.
 - F. The most cost-effective time to integrate electrical infrastructure is in the design phase of a building project because building systems and spaces can be designed to optimize the performance of electrical systems and the project can take full advantage of avoided costs and space requirements from the elimination of natural gas piping and venting for combustion air safety.
 - G. It is the intent of the council to eliminate obsolete natural gas infrastructure and associated greenhouse gas emissions in new buildings where all-electric infrastructure can be most practicably integrated, thereby reducing the environmental and health hazards produced by the consumption and transportation of natural gas.

15.63.020 Applicability.

- A. The requirements of this Chapter shall apply to Building Permit Applications submitted on or after the effective date of this Chapter for all Newly Constructed Buildings proposed to be located in whole or in part within the City, except that the requirements of this Chapter will not apply to residential projects that are subject to an executed development agreement and that have obtained building permits for more than 10% of their allotted units.
- B. The requirements of this Chapter shall not apply to the use of portable propane appliances for outdoor cooking and heating.
- C. This chapter shall in no way be construed as amending California Energy Code requirements under California Code of Regulations, Title 24, Part 6, nor as requiring the use or installation of any specific appliance or system as a condition of approval.

15.63.030 Definitions.

- A. "Applicant" shall mean an applicant for a Building Permit Application.
- B. "Energy Code" shall mean the California Energy Code as amended and adopted in MHMC Chapter 15.12.
- C. "Greenhouse Gas Emissions" mean gases that trap heat in the atmosphere.
- D. "Natural Gas" shall have the same meaning as "Fuel Gas" as defined in California Plumbing Code and Mechanical Code.
- E. "Natural Gas Infrastructure" shall be defined as fuel gas piping, other than service pipe, in or in connection with a building, structure or within the property lines of premises, extending from the point of delivery at the gas meter as specified in the California Mechanical Code and Plumbing Code.

- F. “Newly Constructed Building” shall be defined as a building that has never before been used or occupied for any purpose.

15.63.040 Prohibited Natural Gas Infrastructure in Newly Constructed Buildings.

- A. Natural Gas Infrastructure shall be prohibited in Newly Constructed Buildings.
1. Exception: Natural Gas Infrastructure may be permitted in a Newly Constructed Building if the Applicant establishes that it is not physically feasible to construct the building without Natural Gas Infrastructure. For purposes of this exception, “physically feasible” to construct the building means either an all-electric prescriptive compliance approach is available for the building under the Energy Code or the building is able to achieve the performance compliance standards under the Energy Code using commercially available technology and an approved calculation method.
- B. To the extent that Natural Gas Infrastructure is permitted, it shall be permitted to extend to any system, device, or appliance within a building for which an equivalent all-electric system or design is not available.
- C. Newly Constructed Buildings shall nonetheless be required at a minimum to have sufficient electric capacity, wiring and conduit to facilitate future full building electrification.
- D. The requirements of this section shall be deemed objective planning standards under Government Code section 65913.4 and objective development standards under Government Code section 65589.5.

15.63.050 Public Interest Exemption.

- A. Notwithstanding the requirements of this Chapter and the Greenhouse Gas Emissions and other public health and safety hazards associated with Natural Gas Infrastructure, minimally necessary and specifically tailored Natural Gas Infrastructure may be allowed in a Newly Constructed Building provided that the entitling body establishes that the use serves the public interest. In determining whether the construction of Natural Gas Infrastructure is in the public interest, the City may consider:
1. The availability of alternative technologies or systems that do not use natural gas;
 2. Any other impacts that the decision to allow Natural Gas Infrastructure may have on the health, safety, or welfare of the public.
- B. If the installation of Natural Gas Infrastructure is granted under a public interest exemption, the Newly Constructed Buildings shall nonetheless be required at the minimum to have sufficient electric capacity, wiring and conduit to facilitate future full building electrification.

15.63.060 Periodic Review of Ordinance.

The City shall review the requirements of this ordinance every 18 months for consistency with the California Energy Code and the Energy Commission’s mid-cycle amendments and triennial code adoption cycle as applicable.

Section 2. This Ordinance shall be submitted to the California Building Standards Commission following adoption as consistent with state law.

Section 3. 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 4. This Ordinance shall take effect on March 1, 2020. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 23RD DAY OF OCTOBER 2019 AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF NOVEMBER 2019 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

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

APPROVED:

RICH CONSTANTINE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: _____

Effective: March 1, 2020

∞ 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. 2306, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of November 2019.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

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

ADOPT ORDINANCE AMENDING CHAPTERS 15.08 (BUILDING CODE), 15.12 (ELECTRICAL CODE), 15.16 (MECHANICAL CODE), 15.20 (PLUMBING CODE), 15.24 (HOUSING CODE), 15.25 (PROPERTY MANAGEMENT) AND 15.44 (FIRE CODE) TO ADOPT BY REFERENCE THE 2019 CALIFORNIA STATE BUILDING STANDARDS CODES KNOWN AND DESIGNATED AS CALIFORNIA CODE OF REGULATIONS, TITLE 24 AND TO AMEND, DELETE, AND ADD CERTAIN OTHER BUILDING AND CONSTRUCTION STANDARDS AND TO MAKE MINOR CHANGES TO SECTIONS IN CHAPTERS 15.40 (BUILDING SECURITY) AND 15.64 (WOOD-BURNING APPLIANCES) OF TITLE 15 (BUILDING AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE

RECOMMENDATION(S)

Waive the reading, adopt Ordinance No. 2307, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Financial Stewardship
Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks and Recreation Masterplan

REPORT NARRATIVE:

On October 23, 2019, the City Council introduced Ordinance No. 2307 New Series, by the following roll call vote: AYES: Carr, McKay, Spring, Martinez Beltran, Constantine; NOES: None; ABSTAIN: None; ABSENT: None.

This Ordinance adopts the 2019 California Building Standards with local amendments and makes minor changes to the Building Security and Wood-burning Appliance chapters of the City's Municipal Code.

COMMUNITY ENGAGEMENT: Inform

The Building Division will provide building code update outreach to the local development community, contractors, and homeowners.

ALTERNATIVE ACTIONS:

Not applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 2, 2016, Council adopted Ordinance 2221 adopting the 2016 California State Building Standards Code.

FISCAL AND RESOURCE IMPACT:

Periodic reviews and updates of the City's Municipal Code, including Building Standards, are part of the staff's annual workplan. The primary resources allocated to this update were from the Development Services Department.

CEQA (California Environmental Quality Act):

Not a Project.

Pursuant to Title 14 of the California Code of Regulations, Section 15061(b) (3), the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no potential for causing a significant effect on the environment. The California codes adopted by this ordinance will automatically become effective within the City's jurisdiction with the exception of the local amendments proposed for the City. The local amendments serve to strengthen the codes to provide greater protection for public health, safety, and the environment, and provide for clearer administration of these codes.

LINKS/ATTACHMENTS:

1. 2307 Building Standards Ordinance

ORDINANCE NO. 2307, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING CHAPTERS 15.08 (BUILDING CODE), 15.12 (ELECTRICAL CODE), 15.16 (MECHANICAL CODE), 15.20 (PLUMBING CODE), 15.24 (HOUSING CODE), 15.25 (PROPERTY MANAGEMENT), 15.40 (BUILDING SECURITY), 15.44 (FIRE CODE), AND 15.64 (WOOD-BURNING APPLIANCES) TO ADOPT BY REFERENCE THE 2019 CALIFORNIA STATE BUILDING STANDARDS CODES KNOWN AND DESIGNATED AS CALIFORNIA CODE OF REGULATIONS, TITLE 24 AND TO AMEND, DELETE, AND ADD CERTAIN OTHER BUILDING AND CONSTRUCTION STANDARDS AND TO MAKE MINOR CHANGES TO SECTIONS IN CHAPTERS 15.40 (BUILDING SECURITY) AND 15.64 (WOOD-BURNING APPLIANCES) OF TITLE 15 (BUILDING AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE

WHEREAS, Health and Safety Code Section 17922 requires that the State adopt building standards and rules and regulations (“State Building Standards Code”) and that such State Building Standards Code impose substantially the same requirements as are contained in the most recent editions of specified uniform industry codes; and

WHEREAS, Health and Safety Code Section 17958 allows the City Council to adopt ordinances or regulations which impose the same requirements as the State Building Standards Code or make changes or modifications to the State Building Standards Code upon express findings that such modifications or changes are reasonably necessary because of local climatic, geological, or topographical conditions; and

WHEREAS, the Building Standards, along with any changes or modifications made by the City Council, become effective 180 days after publication by the California Building Standards Commissions; and

WHEREAS, the City Council desires to adopt the 2019 State Building Standards Code, including the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, and the California Fire Code, as published by the California Building Standards Commission, along with changes and modifications reasonably necessary because of local climatic, geological, or topographical conditions, based on findings set forth in this ordinance; and

WHEREAS, the City Building Official and the Fire Department have determined that local amendments to the State Building Standards Codes are necessary due to unique conditions that exist in the City of Morgan Hill; and

WHEREAS, amendments related to fire and life-safety contained in the 2019 State Building Standards Code as recommended by the City Building Official and the Fire Department are hereby found to be reasonably necessary due to the following local conditions, along with additional express findings that are already on file with the California Building Standards Commission:

A. Climatic Conditions

Santa Clara County and the City of Morgan Hill are located in a semi-arid Mediterranean type climate which predisposes all fuels to rapid ignition and spread of fire. Hot, dry winds and low humidity are common to all areas within the City of Morgan Hill and Santa Clara County in general. Winter rains promote the growth of grass and brush. This vegetation presents heavy dry fuel loads in the summer months. These conditions are conducive to the ready ignition, propagation, and spread of grass, brush, and structure fires. These conditions, which can cause small brush fires that spread quickly, are a contributing factor to the high fire danger in the area and create the need for an increased level of fire protection. This added protection will supplement normal fire department response and provide immediate protection for life and safety of multiple occupancy occupants during fire occurrences.

B. Topographic Conditions

The topography of Morgan Hill has hillside homes on each side of the City with long response times for safety equipment. The City foothills cause many problems for firefighters, including long response times, inadequate water supply, and unlimited fuel. Fog, heavy rains, mud slides, and earthquakes are other common occurrences which negatively affect the ability of the City's public safety resources to respond to emergency situations. The City is in a Category D seismic activity classification. Many traffic corridors such as Highway 101, Monterey Road, Union Pacific Railroad, related bridges, underpasses, and crossings are subject to obstruction in the event of an earthquake, traffic accident, hazardous material spill, or other disaster.

C. Geographic Conditions

1. Santa Clara County and the City of Morgan Hill are located within the seismically active San Francisco Bay region. The significant earthquakes in the region are generally associated with the crustal movements along well-defined, active fault zones. The nearest known active faults are the San Andreas Fault, approximately 12 miles southwest of Morgan Hill and the Calaveras Fault, approximately one mile northeast. Both faults have produced major earthquakes in the past and have estimated maximum credible Richter magnitudes of 8.3 and 7.3, respectively. The Sargent-Berrocal Fault, a potentially active fault, lies approximately ten miles away and has an estimated maximum credible Richter magnitude of 7.3. The Coyote Creek Fault is located in Morgan Hill and is classified as potentially active as well. In addition, several unnamed faults traverse the western slopes of the upland areas.
2. Regional planning for reoccurrence is recommended by the State Department of Conservation. The October 17, 1989 Santa Cruz earthquake resulted in only one major San Francisco fire in the Marina district but, when combined with the 34 other fires and over 500 responses, the fire department was taxed to its full capabilities.

The Marina fire was difficult to contain because mains supplying water to the district burst during the earthquake. If more fires had been ignited by the earthquake, it would have been difficult for the fire department to contain them. Experts predict a major earthquake in our area. This situation creates the need for both additional fire protection measures and automatic on-site fire protection for building occupants since a multitude of fires may result from breakage of gas lines and electric lines as a result of an earthquake.

3. Traffic and circulation congestion presently existing in the City of Morgan Hill often places fire department response time to fire occurrences at risk. This condition will be exacerbated by any major disaster, including any earthquake where damage to the highway system will occur. This condition makes the need for additional on-site protection for property occupants necessary.
4. The City of Morgan Hill is located in an area subject to a climatic condition of high winds and low humidity. This combination of events creates an environment which is conducive to rapidly spreading fires. Control of such fires requires rapid response. Obstacles generated by a strong wind, such as fallen trees, streetlights, and utility poles, greatly impact the response time to reach an incident scene.
5. The City of Morgan Hill is located in the middle of a seismically active area. The viability of the public water system would be questionable at best after a major seismic event. A severe seismic event has the potential to negatively impact any rescue or fire suppression activities because it is likely to create obstacles similar to those indicated under the high wind section above. With the probability of strong aftershocks, there exists a need to provide increased protection for anyone on upper floors.
6. The City of Morgan Hill is located approximately sixteen miles from the ocean. The City's typical ground water level is between ten and twenty feet. This condition makes the City more prone to subsidence issues than most inland communities; and

WHEREAS, the 2019 Building Standards corrects unnecessary and duplicative provisions of the Municipal Code; and

WHEREAS, the 2018 International Property Maintenance Code corrects unnecessary duplicative provisions of the Municipal Code Housing Code Chapter (Chapter 15.24) and;

WHEREAS, minor changes are also proposed by the Building Official to two sections in the Building Security Chapter (Chapter 15.40) and one section in the Wood-Burning Appliance Chapter (Chapter 15.64) of the Morgan Hill Municipal Code.

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

SECTION 1. Chapter 15.08 (Building Code) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code is hereby amended to read:

"Chapter 15.08 - BUILDING CODE

Sections:

- 15.08.010 Adoption of the 2019 California Building Code and the 2019 California Residential Code, and other parts of the State Buildings Standards Code.**
- 15.08.020 Short title.**
- 15.08.030 Organization, enforcement, fees, and inspections.**
- 15.08.040 Additions, amendments, and deletions.**
- 15.08.050 Sections 1505.1.4 and R902.1.4 amended – Construction of roof coverings in wildland-urban interface areas.**
- 15.08.060 Building over utility easements.**
- 15.08.070 Section R313.1 and R313.2 amended – Automatic Fire Sprinklers Systems**
- 15.08.080 Section 2308.6.3 and R602.10.4 , amended – Braced wall panel methods (gypsum board and Portland cement plaster).**
- 15.08.090 Section 1907.1 and R506.1 amended - Minimum slab provisions.**
- 15.08.100 Violation—Penalty.**

15.08.010 - Adoption of the 2019 California Building Code, the 2019 California Residential Code and other parts of the State Building Standards Code.

There is hereby adopted by reference that certain code known and designated as the California Code of Regulations, Title 24, Parts 1, 2, 2.5, 3, 4, 5, 6, 7, 8, 10, 11, and 12 as published by the California Building Standards Commission, as further described and including the following:

- 2019 California Administrative Code (California Code of Regulations Title 24, Part 1).
- 2019 California Building Code (California Code of Regulations Title 24, Part 2) based on the 2018 International Building Code; as prepared by the International Code Council, and as amended by the State of California.
- 2019 California Residential Code (California Code of Regulations Title 24, Part 2.5) based on the 2018 International Residential Code; as prepared by the International Code Council, and as amended by the State of California.
- 2019 California Energy Code (California Code of Regulations Title 24, Part 6).
- 2019 California Historical Building Code (California Code of Regulations Title 24, Part 8).
- 2019 California Existing Building Code (California Code of Regulations Title 24, Part 10) based on the 2018 International Existing Building Code; as prepared by the International Code Council, and as amended by the State of California.
- 2019 California Green Building Standards Code (California Code of Regulations Title 24, Part 11).
- 2019 California Referenced Standards Code (California Code of Regulations Title 24, Part 12).

Such code shall include those sections requiring enforcement by the Morgan Hill Building Department, and, as further amended by the City of Morgan Hill, provisions intended to address

local climatic, geologic, and topographic conditions as permitted by state law. Adoption of said code shall include the adoption of Appendices B, I, and J, including Division II Scope and Administration, contained in the 2019 California Building Code.

Such code shall be and become the City of Morgan Hill Building Code regulating the erection, construction, alteration, repair, relocation, demolition, occupancy, use, height, area, and maintenance of all buildings and structures and certain equipment therein specifically regulated. The provisions of said code shall provide for the issuance of permits and certificates of occupancy, the collection of fees thereof, and penalties for violation of such code.

At least one copy of the City of Morgan Hill Building Code has been deposited in the office of the city building official and is available for public inspection.

15.08.020 - Short title.

This chapter shall be known as the "building code" and may be cited as such.

15.08.030 - Organization, enforcement, fees, and inspections.

The organization, enforcement, fees, and inspections shall comply with the 2019 California Building Code. The building official shall use the building valuation data from the International Code Council for "cost per square foot."

15.08.040 - Additions, amendments, and deletions.

The following provisions of the California Building Code and California Residential Code shall be added, amended, or deleted as follows:

- A. The following sections in the California Building Code are amended by this chapter: 1505.1.4, 2308.6.3, and 1907.1.
- B. The following section in the California Residential Code is amended by this chapter: R506.1, R602.10.4 and R902.1.4.

15.08.050 - Sections 1505.1.4 and R902.1.4 amended—Construction of roof coverings in wildland-urban interface areas.

- A. Section 1505.1.4 of the 2019 California Building Code is hereby amended to read in its entirety:

1505.1.4 Roofing requirements in a Wildland-Urban Interface Fire Area. Roofing requirements for structures located in a Wildland-Urban Interface Fire Area shall comply with Section 705A. The entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, the entire roof covering of every new structure, and any roof covering applied in the alteration, repair or replacement of the roof of every existing structure, shall be a fire-retardant roof covering that is at least Class A.

- B. Section R902.1.4 of the 2019 California Residential Code is hereby amended to read in its entirety:

R902.1.4 Roofing requirements in a wildland-urban interface fire area. Roofing requirements for structures located in a Wildland-Urban Interface Fire Area shall comply with Section R337.5. The entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, the entire roof covering of every new structure, and any roof covering applied in the alteration, repair or replacement of the roof of every existing structure, shall be a fire-retardant roof covering that is at least Class A.

C. Findings.

1. The council finds and declares that the areas as defined in the open space and conservation element of the general plan are considered a hazardous fire area and that it is, therefore, necessary to establish special minimum fire-resistive requirements in these areas for the protection of life and property. The fire hazard of untreated wood roofs has long been recognized by the National Fire Protection Association. The city's foothills cause many problems for firefighters including long response times, inadequate water supply, and unlimited fuel. The city is in a region which experiences high winds and low humidity during summer months. Winter rains promote the growth of grass and brush. This vegetation presents heavy dry fuel loads in the summer months. These conditions are conducive to the ready ignition, propagation, and spread of grass, brush, and structure fires. Fog, heavy rains, mud slides, and earthquakes are other common occurrences which negatively affect the ability of the city's public safety resources to respond to emergency situations. The topography of Morgan Hill has hillside homes on each side of the city, causing long response time for safety equipment. The city is in a Category D seismic activity classification. Many traffic corridors, such as Highway 101 and Monterey Road, Union Pacific Railroad, and related bridges, underpasses, and crossings are subject to obstruction in the event of an earthquake, traffic accident, hazardous material spill, or other disaster.
2. Any of the above factors could quickly exhaust the fire department's resources and prevent the assistance of mutual aid resources. Therefore, Class A roofing would provide the fire protection needed through this amendment.

15.08.060 - Building over utility easements.

It is unlawful for any person, firm, or corporation to erect, construct, or maintain any structure, building, garage, carport, storage shed, or other similar building over or within the boundary of any utility easement. "Utility easement" as used in this section includes any easement for a gas line, water line, storm drainage line, sewer line or buried or overhead electrical or telephone lines.

15.08.070 – Section R313.1 and R313.2 amended—Automatic Fire Sprinkler Systems.

A. Section R313.1 of the California Residential Code, is hereby amended to read in its entirety: R313.1 Townhouse automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in townhouses.

Exception: An automatic residential fire sprinkler system shall not be required where additions or alterations are made to existing townhouses if the addition does not exceed 1200 square feet or result in a total building area of more than 3600 square feet and an existing automatic residential fire sprinkler system is not installed.

B. Section R313.2 of the California Residential Code is amended to read in its entirety: R313.2 One- and two-family dwellings automatic fire sprinkler systems. An automatic residential fire sprinkler system shall be installed in one- and two-family dwellings.

Exception:

1. An automatic residential fire sprinkler system shall not be required where additions or alterations are made to existing buildings if the addition does not exceed 1200 square feet or result in a total building area of more than 3600 square feet and an existing automatic residential fire sprinkler system is not installed.
2. Accessory Dwelling Unit, provided that all of the following are met:

- 2.1. The unit meets the definition of an Accessory Dwelling Unit as defined in the Government Code Section 65852.2.
- 2.2. The existing primary residence does not have automatic fire sprinklers.
- 2.3. The accessory detached dwelling unit does not exceed 1,200 square feet in size.
- 2.4. The unit is on the same lot as the primary residence.

C. Findings. The City of Morgan Hill is located in an area subject to a climatic condition of high winds and low humidity. This combination of events creates an environment which is conducive to rapidly spreading fires. Control of such fires requires rapid response. Obstacles generated by a strong wind, such as fallen trees, streetlights, and utility poles, greatly impact the response time to reach an incident scene. This condition makes the requirement for additional on-site protection for property occupants necessary.

15.08.080 - Section 2308.6.3 and R602.10.4 amended—Braced wall panel methods (gypsum board and Portland cement plaster).

- A. Section 2308.6.3 of the 2019 California Building Code, which allows the use of gypsum board and Portland cement plaster for wall bracing, is hereby amended to read in its entirety:

2308.6.3 Braced wall panel methods

Construction of braced wall panels shall be by one or a combination of the methods in Table 2308.6.3(1). Braced wall panel length shall be in accordance with Section 2308.6.4 or 2308.6.5. The use of Gypsum Board (GB) or Portland Cement Plaster (PCP) type braced wall panels are not allowed.

- B. Section R602.10.4 of the California Residential Code, which allows the use of gypsum board and Portland cement plaster for wall bracing, is hereby amended to read in its entirety:

R602.10.4 Construction methods for braced wall panels.

Intermittent and continuously sheathed braced wall panels shall be constructed in accordance with this section and the methods listed in Table R602.10.4. The use of Gypsum Board (GB) or Portland Cement Plaster (PCP) type braced wall panels are not allowed.

- C. Findings. The city is in a Category D seismic activity classification. Gypsum wallboard and exterior Portland cement plaster have performed poorly during California seismic events. Shear values for gypsum wallboard and Portland cement plaster contained in the code are based on monodirectional testing. It is appropriate to eliminate the use of these materials until cyclic loading tests are performed and evaluated.

15.08.090 - Section 1907.1 and R506.1 amended—Minimum slab provisions.

- A. Section 1907.1 of the 2019 California Building Code is hereby amended to read in its entirety:

1907.1 General. The thickness of concrete floor slabs supported directly on the ground shall be not less than 3-1/2 inches (89 mm). The slab shall be reinforced with not less than six inches by six inches ten-gauge wire mesh or an approved alternate. A 6-mil (0.006 inch; 0.15 mm) polyethylene vapor retarder with joints lapped not less than 6 inches (152 mm) shall be placed between the base course or subgrade and the concrete floor slab, or other approved equivalent methods or materials shall be used to retard vapor transmission through the floor slab.

Exception: A vapor retarder is not required:

1. For detached structures accessory to occupancies in Group R-3, such as garages, utility buildings or other unheated facilities.
2. For unheated storage rooms having an area of less than 70 square feet (6.5 m²) and carports attached to occupancies in Group R-3.
3. For buildings of other occupancies where migration of moisture through the slab from below will not be detrimental to the intended occupancy of the building.
4. For driveways, walks, patios and other flatwork that will not be enclosed at a later date.
5. Where approved based on local site conditions.

B. Section R506.1 of the 2019 California Residential Code is hereby amended to read in its entirety:

R506.1 General. Concrete slab-on-ground floors shall be designed and constructed in accordance with the provisions of this section or ACI 332. Floors shall be a minimum 3-1/2

inches (89 mm) thick (for expansive soils, see Section R403.1.8). The slab shall be reinforced with not less than six inches by six inches ten-gauge wire mesh or an approved alternate. The specified compressive strength of concrete shall be as set forth in Section R402.2.

C. Findings. To avoid damage due to soil expansion, shrinkage and seismic activity which causes damage to concrete slab flooring throughout the city, imposing the above requirements eliminates the need for a soils report for some small projects.

15.08.100 - Violation.

A. A violation of the code adopted by this chapter occurs when a person:

1. Fails to comply with this code;
2. Violates or fails to comply with any order made under this code;
3. Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or
4. Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.

B. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time.

C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

SECTION 2. Chapter 15.12 (Electrical Code) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code is hereby amended to read:

"Chapter 15.12 - ELECTRICAL CODE

Sections:

- 15.12.010** **Short title.**
15.12.020 **Adoption of the 2019 California Electrical Code.**
15.12.030 **Scope, organization, enforcement, fees, and inspections.**
15.12.040 **Violation.**

15.12.010 - Short title.

This chapter shall be known as the "electrical code" and may be cited as such.

15.12.020 - Adoption of the 2019 California Electrical Code.

There is adopted by reference that certain code known and designated as the California Code of Regulations, Title 24, Part 3, further described and referred to as the 2019 California Electrical Code published by the California Building Standards Commission and based on the National Electric Code, 2017 Edition, prepared by the National Fire Protection Association. Adoption of said code shall include those sections and annexes requiring enforcement by the Morgan Hill Building Department and, as further amended by the City of Morgan Hill, provisions intended to address local climatic, geologic, and/or topographic conditions, as permitted by state law. Adoption of said code shall include adoption of the following annexes of the California Electrical Code: Annex A, Annex B, Annex C, Annex D, Annex E, and Annex F. Such code shall be and become the Morgan Hill Electrical Code, regulating and controlling the design, construction, installation, quality of materials, location, operation, and maintenance of electrical systems, equipment, and appliances. The provisions of said Code shall provide for the issuance of permits and collection of fees thereof and penalties for violation of such code.

At least one copy of the city electrical code has been deposited in the office of the city building official and is available for public inspection.

15.12.030 - Scope, organization, enforcement, fees, and inspections.

The scope, organization, enforcement, fees, and inspections of the 2019 California Electrical Code must comply with those set forth in the 2019 California Building Code and 2017 National Electrical Code.

15.12.040 - Violation.

A. A violation of the code adopted by this chapter occurs when a person:

1. Fails to comply with this code;
2. Violates or fails to comply with any order made under this code;
3. Builds in violation of any detailed statement of specifications or plan submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or
4. Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.

B. Such person shall be liable severally and for each and every violation and noncompliance respectively.

- C. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

SECTION 3. Chapter 15.14 (Mechanical Code) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code is hereby amended to read:

"Chapter 15.16 - MECHANICAL CODE

Sections:

- 15.16.010 Short title.**
- 15.16.020 Adoption of the 2019 California Mechanical Code.**
- 15.16.030 Scope, organization, enforcement, fees, and inspections.**
- 15.16.040 Violation—Penalty.**

15.16.010 - Short title.

This chapter shall be known as the "mechanical code" and may be cited as such.

15.16.020 - Adoption of the 2019 California Mechanical Code.

There is hereby adopted by reference that certain code known and designated as the California Code of Regulations, Title 24, Part 4, further described and referred to as the 2019 California Mechanical Code published by the California Building Standards Commission and based on the Uniform Mechanical Code, 2018 Edition, prepared by the International Association of Plumbing and Mechanical Officials. The adoption of said Code shall include those sections requiring enforcement by the Morgan Hill Building Department. Such code shall be and become the Morgan Hill Mechanical Code, regulating heating, ventilating, comfort cooling, refrigeration systems, and other miscellaneous heating appliances, prescribing conditions under which such work may be performed within the city, and providing for the issuance of permits and the collection of fees therefore and penalties for violation of such code.

At least one copy of the city mechanical code has been deposited in office of the city building official and is available for public inspection.

15.16.030 - Scope, organization, enforcement, fees, and inspections.

The scope, organization, enforcement, fees, and inspections of the California Mechanical Code must comply with those set forth in the 2019 California Building Code.

15.16.040 - Violation.

A. A violation of the code adopted by this chapter occurs when a person:

1. Fails to comply with this code;
2. Violates or fails to comply with any order made under this code;
3. Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or

4. Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.
- B. Such person shall be liable severally and for each and every such violation and noncompliance respectively.
- C. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

SECTION 4. Chapter 15.20 (Plumbing Code) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code is hereby amended to read:

"Chapter 15.20 - PLUMBING CODE

Sections:

- | | |
|------------------|---|
| 15.20.010 | Short title. |
| 15.20.020 | Adoption of the 2019 California Plumbing Code. |
| 15.20.030 | Scope, organization, fees, and inspections. |
| 15.20.040 | Amendments and deletions. |
| 15.20.050 | Section 604.3 amended--Copper tube. |
| 15.20.060 | Sections 609.3 amended-- Under concrete slab. |
| 15.20.070 | Violation-Penalty. |

15.20.010 - Short title.

This chapter shall be known as the "plumbing code" and may be cited as such.

15.20.020 - Adoption of the 2019 California Plumbing Code.

There is hereby adopted by reference that certain code known and designated as the California Code of Regulations, Title 24, Part 5, further described and referred to as the 2019 California Plumbing Code published by the California Building Standards Commission and based on the Uniform Plumbing Code, 2018 Edition, prepared by the International Association of Plumbing and Mechanical Officials. The adoption of said code shall include those sections requiring enforcement by the local building department as mandated by the State and as further amended by the City of Morgan Hill with provisions intended to address local climatic, geologic, and topographic conditions, as permitted by state law. Such code shall be and become the Morgan Hill Plumbing Code, regulating plumbing and drainage systems, house sewers, private sewage disposal, drainage systems, and prescribing conditions under which such work may be carried on within the city and providing for the issuance of permits and the collection of fees therefore.

At least one copy of the city plumbing code has been deposited in the office of the city building official and is available for public inspection.

15.20.030 - Scope, organization, fees, and inspections.

The scope, organization, enforcement, fees, and inspections of the 2019 California Plumbing Code must comply with those set forth in the 2019 California Building Code.

15.20.040 - Amendments and deletions.

The following provisions of the 2019 California Plumbing Code shall be amended or deleted:

- A. The following sections of the California Plumbing Code are amended by this chapter: 604.3, 609.3, 710.1 and 1002.1 - 1002.3.

15.20.050 - Section 604.3 amended—Copper tube.

- A. Section 604.3 of the 2019 California Plumbing Code is hereby amended to read in its entirety:

604.3 Copper or Copper Alloy Tube. Copper or copper alloy tube for potable water piping shall have a weight of not less than type "L."

- B. Finding. Due to water hardness in the city, type "L" copper shall be required.

15.20.060 - Sections 609.3 amended—Under concrete slab.

- A. Section 609.3 of the 2019 California Plumbing Code is hereby amended to read in its entirety:

609.3 Under Concrete Slab. Water piping shall not be installed directly in or under a concrete floor slab within a building without prior approval of the Building Official.

- B. Findings.

1. Most of the surface soils in Morgan Hill are relatively young and unconsolidated sedimentary materials formed from a wide variety of parent materials. The varying chemical composition, degree of weathering, and the relatively acid environment have created soils of varying types, which are peculiarly corrosive in nature.
2. Much of the surface soil in Morgan Hill is characterized by peculiarly high expansivity (i.e., shrink-swell behavior) and low bearing strength. There are two types of expansive soils in the area:
 - a. The organic silty clays which are the recent bay muds; and
 - b. The plastic silty clays which weather from the shale found in the hills surrounding Santa Clara Valley.
3. The local climate is characterized by markedly delineated rainy and dry seasons, which tend to maximize the volume changes occurring within the soil.
4. Areas of the city have hard water, which may be corrosive to ferrous pipe.
5. The groundwater table is unusually high in many places.
6. Morgan Hill is a seismically active region.

15.20.070 - Violation.

- A. A violation of the code adopted by this chapter occurs when a person:

1. Fails to comply with this code;
2. Violates or fails to comply with any order made under this code;
3. Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or

4. Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.
- B. Such person shall be liable severally and for each and every such violation and noncompliance respectively.
- C. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

SECTION 5. Chapter 15.24 (Housing Code) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code is hereby deleted in its entirety:

SECTION 6. Chapter 15.25 (Property Management) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code is hereby amended to read:

"Chapter 15.25 - PROPERTY MAINTENANCE

Sections:

15.25.010

Short title.

15.25.020

Adoption of the International Property Maintenance Code.

- 15.25.030** Scope, organization, enforcement, fees and inspections.
- 15.25.040** Amendments and deletions.
- 15.25.050** Section 101.1 amended – Title.
- 15.25.060** Section 102.3 amended – Application of other codes.
- 15.25.070** Section 103.5 amended - Fees.
- 15.25.080** Section 112.4 amended - Failure to comply.
- 15.25.090** Section 302.4 amended – Weeds.
- 15.25.100** Section 303.2 amended – Enclosures.
- 15.25.110** Section 304.14 amended – Insect screens.
- 15.25.120** Section 602.3 amended – Heat supply.
- 15.25.130** Section 602.4 amended – Occupiable workspaces.
- 15.25.140** Violation.

15.25.010 - Short title.

This chapter shall be known as the "Property Maintenance Code" and may be cited as such.

15.25.020 - Adoption of the International Property Maintenance Code.

Pursuant to Sections 50022.1 through 50022.4, inclusive, of the Government Code of the state of California, the text of that certain publication copyrighted and published by the ICC entitled "2018 International Property Maintenance Code" is adopted as the rules, regulations, and standards within this city as to all matters therein contained except as otherwise provided in this chapter. Adoption of said code shall include adoption of Appendix A. One copy of the International Property Maintenance Code will at all times be kept on file in the office of the city building official and is available for public inspection.

15.25.030 - Scope, organization, enforcement, fees and inspections.

The scope, organization, enforcement, fees and inspections of the 2018 International Property Maintenance Code must comply with those set forth in the 2019 California Building Code (see Chapter 15.08 of this Title).

15.25.040 – Amendments and deletions.

The following sections of the 2018 International Property Maintenance Code shall be amended or deleted: 101.1, 102.3, 103.5, 112.4, 302.4, 303.2, 304.14 602.3, and 602.4.

15.25.050 – Section 101.1 amended – Title.

A. Section 101.1 of the International Property Maintenance Code is hereby amended to read in its entirety:

101.1 Title. These regulations shall be known as the International Property Maintenance Code of the City of Morgan Hill, hereinafter referred to as “this code.”

15.25.060 – Section 102.3 amended – Application of other codes.

A. Section 102.3 of the International Property Maintenance Code is hereby amended to read in its entirety:

102.3 Application of other codes. Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the California Building Code, California Existing Building Code, California Energy Code, California Fire Code, California Plumbing Code, California Mechanical Code, California Residential Code, and California Electrical Code. Nothing in this code shall be construed to cancel, modify or set aside any provision of the Zoning Code.

15.25.070 – Section 103.5 amended - Fees.

A. Section 103.5 of the International Property Maintenance Code is hereby amended to read in its entirety:

103.5 Fees. The fees for activities and services performed by the department in carrying out its responsibilities under this code shall be the fully burdened hourly rate.

15.25.080 – Section 112.4 amended - Failure to comply.

A. Section 112.4 of the International Property Maintenance Code is hereby amended to read in its entirety:

112.4 Failure to comply. Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not less than \$100 dollars.

15.25.090 – Section 302.4 amended – Weeds.

A. Section 302.4 of the International Property Maintenance Code is hereby amended to read in its entirety:

302.4 Weeds. Premises and exterior property shall be maintained free from weeds or plant growth in excess of 10 inches. Noxious weeds shall be prohibited. Weeds shall be defined as all grasses, annual plants and vegetation, other than trees or shrubs provided; however, this term shall not include cultivated flowers and gardens. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of a notice of violation, they shall be subject to prosecution in accordance with Section 106.3 and as prescribed by the authority having jurisdiction. Upon failure to comply with the notice of violation, any duly authorized employee of

the jurisdiction or contractor hired by the jurisdiction shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property.

15.25.100 – Section 303.2 amended – Enclosures.

A. Section 303.2 of the International Property Maintenance Code is hereby amended to read in its entirety:

303.2 Enclosures. Private swimming pools, hot tubs and spas, containing water more than 24 inches (610 mm) in depth shall be completely surrounded by a fence or barrier not less than 60 inches (1219 mm) in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than 60 inches (1372 mm) above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of 6 inches (152 mm) from the gatepost. An existing pool enclosure shall not be removed, replaced or changed in a manner that reduces its effectiveness as a safety barrier.

Exception: Spas or hot tubs with a safety cover that complies with ASTM F1346 shall be exempt from the provisions of this section.

15.25.110 – Section 304.14 amended – Insect screens.

A. Section 304.14 of the International Property Maintenance Code is hereby amended to read in its entirety:

304.14 Insect screens. Every door, window and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored shall be supplied with approved tightly fitting screens of minimum 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition.

Exception: Screens shall not be required where other approved means, such as air curtains or insect repellent fans, are employed.

15.25.120- Section 602.3 amended – Heat supply.

A. Section 602.3 of the International Property Maintenance Code is hereby amended to read in its entirety:

602.3 Heat supply. Every owner and operator of any building who rents, leases or lets one or more dwelling units or sleeping units on terms, either expressed or implied, to furnish heat to the occupants thereof shall supply heat to maintain a minimum temperature of 68°F (20°C) in all habitable rooms, bathrooms and toilet rooms.

15.25.130 – Section 602.4 amended – Occupiable workspaces.

A. Section 602.4 of the International Property Maintenance Code is hereby amended to read in its entirety:

602.4 Occupiable workspaces. Indoor occupiable workspaces shall be supplied with heat to maintain a minimum temperature of 65°F (18°C) during the period the spaces are occupied.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions.
2. Areas in which persons are primarily engaged in vigorous physical activities.

15.25.0140 - Violation.

- A. A violation of the code adopted by this chapter occurs when a person:
 1. Fails to comply with this code;
 2. Violates or fails to comply with any order made under this code;
 3. Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or
 4. Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.
- B. Such person may be liable severally and for each and every such violation and noncompliance respectively.
- C. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time.
- D. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

SECTION 7. Sections 15.40.310 and 15.40.400 of Chapter 15.40 (Building Security) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code are hereby amended to read:

15.40.310 - Open parking lots.

Open parking lots and access thereto, for the use of the general public, shall be provided with a maintained average of two foot-candles and a minimum of five tenths (.5) foot-candles maintained lighting on the parking surface from dusk until the beginning of business every operating day.

15.40.400 - Open parking lots.

Open parking lots and carports shall be provided with a maintained average of two foot-candles and a minimum of five tenths (.5) foot-candles of light on the parking surface during the hours of darkness. Lighting devices shall be protected by vandalism-resistant covers.

SECTION 8. Chapter 15.44 (Fire Code) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code is hereby amended to read:

"Chapter 15.44 FIRE CODE

Sections:

- 15.44.010 Adoption of the 2019 California Fire and 2018 International Fire Codes.**
15.44.015 Adoption of appendix chapters

- 15.44.020 **Short title; International Fire Code and California Fire Code Defined.**
- 15.44.030 **Establishment and duties of the bureau of fire prevention.**
- 15.44.040 **Modification of provisions by chief.**
- 15.44.050 **Establishment of limits of districts.**
- 15.44.060 **Additions, amendments, and deletions.**
- 15.44.070 **Scope and general requirements.**
- 15.44.080 **Modification relating to violations.**
- 15.44.090 **Inspections.**
- 15.44.100 **Chapter 2 - Definitions.**
- 15.44.110 **Chapter 3 - General Precautions Against Fire.**
- 15.44.120 **Chapter 5 – Fire Service Features.**
- 15.44.130 **Chapter 6 – Electrical Equipment, Wiring and Hazards.**
- 15.44.140 **Chapter 9 – Fire Protection Systems.**
- 15.44.150 **Chapter 22 – Combustible Dust-Producing Operations.**
- 15.44.160 **Chapter 33 - Fire Safety During Construction and Demolition.**
- 15.44.170 **Chapter 34 – Indoor Storage Arrangements.**
- 15.44.180 **Chapter 35 – Fire Safety Requirements.**
- 15.44.190 **Chapter 49 – Requirements for Wildland-Urban Interface Fire Areas.**
- 15.44.200 **Chapter 50 - Hazardous Materials - General Provisions.**
- 15.44.210 **Chapter 56 – Explosives and Fireworks.**
- 15.44.220 **Chapter 57 – Flammable and Combustible Liquids.**
- 15.44.230 **Chapter 58 – Flammable Gases and Flammable Cryogenic Fluids.**
- 15.44.240 **Chapter 64 – Pyrophoric Materials.**
- 15.44.250 **Appendix B.**
- 15.44.260 **Violation.**

15.44.010 - Adoption of the 2019 California and 2018 International Fire Codes.

There is hereby adopted by reference that certain code known and designated as the California Code of Regulations, Title 24, Part 9, further described and referred to as the 2019 California Fire Code published by the California Building Standards Commission and based on the International Fire Code, 2018 Edition, prepared by the International Code Council, including Appendix Chapters B, C, and K, save and except such portions as are hereinafter deleted, modified, or amended by this chapter. Such code shall be and become the Morgan Hill Fire Code, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling, and use of hazardous substances, materials, and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Morgan Hill.

One (1) copy of the code shall be kept on file at all times in the office of the city building official and the administrative offices of the Morgan Hill Fire Department for use and examination by the public.

15.44.015 - Adoption of appendix chapters.

The following Appendix Chapters from the 2019 California Fire Code are hereby adopted:

Appendix B: Fire Flow Requirements for Buildings.

Appendix C: Fire Hydrant Locations and Distribution.

Appendix K: Temporary Haunted Houses, Ghost Walks and Similar Amusement Uses.

15.44.020 - Short Title; International Fire Code and California Fire Code Defined.

This chapter shall be known as the "Fire Code" and may be cited as such. Whenever the phrase "International Fire Code" appears in this code or any ordinance of the city, such phrase shall be deemed and construed to refer to and apply to the International Fire Code, 2018 Edition, as adopted and amended by this chapter. Whenever the phrase "California Fire Code" appears in this code or any ordinance of the city, such phrase shall be deemed and construed to refer to and apply to the 2019 California Fire Code, as adopted and amended by this chapter. Sections amended or modified in this chapter shall refer to the sections of the California Fire Code unless otherwise specified.

15.44.030 - Establishment and duties of bureau of fire prevention.

The California Fire Code and International Fire Code shall be enforced by the bureau of fire prevention in the Morgan Hill Fire Department, which shall be operated under the supervision of the chief of the fire department.

15.44.040 - Modification of provisions by chief.

- A. The Chief of the Morgan Hill Fire Department shall have power to modify any of the provisions of the fire code upon application in writing by the owner or lessee, or their duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the codes, provided that the spirit of the codes shall be observed, public safety secured, and substantial justice done.
- B. The particulars of such modification, when granted or allowed, and the decision of the chief shall be entered in the records of the fire department and a signed copy shall be furnished to the applicant for modification.

15.44.050 - Establishment of limits of districts.

- A. Storage of stationary tanks of flammable cryogenic fluids are to be prohibited. The limits referred to in Section 5806.2 of the 2019 California Fire Code, in which the storage of flammable cryogenic fluids in stationary containers is prohibited, are hereby established as to all locations of the City of Morgan Hill which are residential and congested commercial areas as determined by the fire code official.
- B. Storage of Class I and II liquids in outside aboveground tanks is prohibited. The limits referred to in Section 5704.2.9.6.1 of the 2019 California Fire Code, in which the storage of flammable or combustible liquids in aboveground tanks is prohibited, are hereby established as to all locations of the City of Morgan Hill that are residential or congested commercial areas as determined by the fire code official.
- C. Storage of Class I and II liquids in aboveground tanks is prohibited. The limits referred to in Section 5706.2.4.4 of the 2019 California Fire Code, in which the storage of flammable or combustible liquids in aboveground tanks is prohibited, are hereby established as to all locations of the City of Morgan Hill that are residential or other locations as determined by the fire code official.
- D. Storage of liquefied petroleum gases ("LPG") is prohibited. The limits referred to in Section 6104.2 of the 2019 California Fire Code, in which storage of liquefied petroleum gas is restricted, are hereby established as to all locations of the City of Morgan Hill that are residential or congested commercial areas as determined by the fire code official.

Exceptions: LPG may be used for industrial operations or when natural gas is not available or would not provide a viable substitute for LPG. Portable containers for temporary heating and/or cooking uses may be permitted if stored and handled in accordance with this code. Facilities in commercial areas for refueling portable or mobile LPG containers may be approved by the fire code official on a case by case basis.

15.44.060 - Additions, amendments, and deletions.

- A. In accordance with California Health and Safety Code Section 17958.7, certain modifications to the California Fire Code as set forth in this Chapter are reasonably necessary because of local climatic, geologic, or topographical conditions.

B. Climatic Conditions

Santa Clara County and the City of Morgan Hill are located in a semi-arid Mediterranean type climate which predisposes all fuels to rapid ignition and spread of fire. Hot, dry winds, and low humidity, are common to all areas within the City of Morgan Hill and Santa Clara County in general. Winter rains promote the growth of grass and brush. This vegetation presents heavy dry fuel loads in the summer months. These conditions are conducive to the ready ignition, propagation and spread of grass, brush and structure fires. These conditions, which can cause small brush fires which spread quickly, are a contributing factor to the high fire danger in the area, and create the need for an increased level of fire protection. This added protection will supplement normal fire department response available and provide immediate protection for life and safety of multiple occupancy occupants during fire occurrences.

C. Topographic Conditions

The topography of Morgan Hill has hillside homes on each side of the city with long response times for safety equipment. The city foothills cause many problems for firefighters, including long response times, inadequate water supply and unlimited fuel. Fog, heavy rains, mud slides and earthquakes are other common occurrences which negatively affect the ability of the city's public safety resources to respond to emergency situations. The City is in a Category D seismic activity classification. Many traffic corridors such as Highway 101 and Monterey Road, Southern Pacific Railroad, related bridges, underpasses and crossings are subject to obstruction in the event of an earthquake, traffic accident, hazardous material spill or other disaster.

D. Geographic Conditions

1. Santa Clara County and the City of Morgan Hill are located within the seismically active San Francisco Bay region. The significant earthquakes in the region are generally associated with the crustal movements along well-defined, active fault zones. The nearest known active faults are the San Andreas Fault, approximately 12 miles southwest of Morgan Hill, and the Calaveras Fault, approximately 1 mile northeast. Both faults have produced major earthquakes in the past, and have estimated maximum credible Richter magnitudes of 8.3 and 7.3, respectively. The Sargent-Berrocal Fault, a potentially active fault, lies approximately 10 miles away and has an estimated maximum credible Richter magnitude of 7.3. The Coyote Creek Fault is located in Morgan Hill and is classified as potentially active as well. In addition, several unnamed faults traverse the western slopes of the upland areas.
2. Regional planning for reoccurrence is recommended by the State of California,

Department of Conservation. The October 17, 1989, Santa Cruz earthquake resulted in only one major San Francisco fire in the Marina district, but when combined with the 34 other fires and over 500 responses, the department was taxed to its full capabilities. The Marina fire was difficult to contain because mains supplying water to the district burst during the earthquake. If more fires had been ignited by the earthquake, it would have been difficult for the fire department to contain them. Experts predict a major earthquake in our area within the next 50 years. This situation creates the need for both additional fire protection measures and automatic on-site fire protection for building occupants since a multitude of fires may result from breakage of gas lines and electric lines as a result of an earthquake.

3. Traffic and circulation congestion presently existing in the City of Morgan Hill often places fire department response time to fire occurrences at risk. This condition will be exacerbated by any major disaster, including any earthquake where damage to the highway system will occur. This condition makes the need for additional on-site protection for property occupants necessary.
4. The City of Morgan Hill is located in an area subject to a climatic condition of high winds and low humidity. This combination of events creates an environment which is conducive to rapidly spreading fires. Control of such fires requires rapid response. Obstacles generated by a strong wind, such as fallen trees, streetlights and utility poles greatly impact the response time to reach an incident scene.
5. The City of Morgan Hill is located in the middle of a seismically active area. The viability of the public water system would be questionable at best after a major seismic event. A severe seismic event has the potential to negatively impact any rescue or fire suppression activities because it is likely to create obstacles similar to those indicated under the high wind section above. With the probability of strong aftershocks, there exists a need to provide increased protection for anyone on upper floors.
6. The City of Morgan Hill is located approximately sixteen miles from the ocean. The City's typical ground water level is between ten and twenty feet. This condition makes the City more prone to subsidence issues than most inland communities.

15.44.070– Scope and general requirements.

A. Section 101.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

[A] 101.1 Title. These regulations shall be known as the *Fire Code* of Morgan Hill, hereinafter referred to as "this code."

15.44.080 - Modifications relating to permits.

A. Section 105.6.53 of the 2019 California Fire Code is hereby added to read:

105.6.53 Lithium batteries. An operational permit is required to store or handle lithium batteries or cells in quantities exceeding 1,000 pounds.

15.44.090 - Inspections.

A. Section 107.5 of the 2019 California Fire Code is hereby added to read:

107.5 Final Inspection. No final inspection as to all or any portion of a development shall be deemed completed until the installation of the required fire protection facilities and access ways have been completed and approved. No final certificate of occupancy may be granted until the fire department issues notice of final clearance of such fire protection facilities and access ways to the building department.

15.44.100- Chapter 2—Definitions.

A. The following definitions in Section 202 of the 2019 California Fire Code is hereby added to read:

3D PRINTER. A machine used in the additive manufacturing process for fabricating objects through the deposition of a material using a print head, nozzle, or another printer technology.

ADDITIVE MANUFACTURING. A process of joining materials to make objects from 3D model data, usually layer upon layer, sometimes referred to as 3D printing. The Code recognizes two types of additive manufacturing:

1. Industrial additive manufacturing. 3D printing operations that typically utilize combustible powders or metals, an inert gas supply, a combustible dust collection system. or that create a hazardous (classified) location area or zone outside of the equipment.
2. Non-industrial additive manufacturing. 3D printing operations that do create a hazardous (classified) location area outside of the equipment, and do not utilize an inert gas supply or a combustible dust collection system.

CORROSIVE LIQUID. Corrosive liquid is

- 1) any liquid which, when in contact with living tissue, will cause destruction or irreversible alteration of such tissue by chemical action; or
- 2) any liquid having a pH of 2 or less or 12.5 or more; or
- 3) any liquid classified as corrosive by the U.S. Department of Transportation; or
- 4) any material exhibiting the characteristics of corrosivity in accordance with Title 22, California Code of Regulations §66261.22.

DUST COLLECTION SYSTEM. A combination of equipment designed to contain, capture and collect airborne combustible dusts.

MODERATELY TOXIC GAS. A chemical or substance that has a median lethal concentration (LC50) in air more than 2000 parts per million but not more than 5000 parts per million by volume of gas or vapor, when administered by continuous inhalation for an hour, or less if death occurs within one hour, to albino rats weighing between 200 and 300 grams each.

OTHER HEALTH HAZARD MATERIAL. A hazardous material which affects target organs of the body, including but not limited to, those materials which produce liver damage, kidney damage, damage to the nervous system, act on the blood to decrease hemoglobin function, deprive the body tissue of oxygen or affect reproductive capabilities, including mutations (chromosomal damage),

sensitizers or teratogens (effect on fetuses).

SECONDARY CONTAINMENT. Secondary containment is that level of containment that is external to and separate from primary containment and is capable of safely and securely containing the material, without discharge, for a period of time reasonably necessary to ensure detection and remedy of the primary containment failure.

SPILL CONTROL. That level of containment that is external to and separate from the primary containment and is capable of safely and securely containing the contents of the largest container and prevents the materials from spreading to other parts of the room.

WORKSTATION. A defined space or an independent principal piece of equipment using hazardous materials with a hazard rating of 3 or higher as ranked by or 4 in accordance with NFPA 704 here a specific function, laboratory procedure or research activity occurs. Approved or listed hazardous materials storage cabinets, flammable liquid storage cabinets or gas cabinets serving a workstation are included as part of the workstation. A workstation is allowed to contain ventilation equipment, fire protection devices, detection devices, electrical devices and other processing and scientific equipment.

15.44.110 - Chapter 3—General Precautions Against Fire.

A. Section 315.8 of the 2019 California Fire Code is hereby added to read:

SECTION 315.8 LITHIUM BATTERY STORAGE AND HANDLING

315.8 Lithium Battery Storage and Handling. The storage and handling of lithium ion and lithium metal batteries or cells in quantities exceeding 1,000 pounds (4086 kg) shall comply with Section 315.8.1 through 315.8.10, and Chapter 32 where applicable.

315.8.1 Permits. Permits shall be required as set forth in Section 105.6.

315.8.2 Maximum quantity in a fire area. The aggregate amount of lithium batteries stored and handled in a single fire area shall not exceed 9,000 pounds (4086 kg).

315.8.3 Construction requirements. Fire areas shall be separated from each other by fire barriers having not less than 2-hour fire resistance rating constructed in accordance with Section 707 of the Building Code and horizontal assemblies constructed in accordance with Section 711 of the Building Code.

315.8.4 Number of fire areas. The maximum number of fire areas within a building shall be four.

315.8.5 Group H, Division 2 occupancy. Storage and handling of more than 9,000 pounds of lithium batteries per fire area shall be in an approved Group H, Division 2 occupancy constructed in accordance with the Building Code and provided throughout with approved automatic smoke detection and radiant-energy detection systems.

315.8.6 Automatic sprinkler system. Buildings containing fire areas used for lithium battery storage or handling shall be equipped throughout with an approved automatic sprinkler

system in accordance with Section 903.3.1.1. The design of the sprinkler system within each fire area shall not be less than that required for Extra Hazard Group 2 with a minimum design area of 2,500 square feet. Where the storage arrangement is required by other provisions of this code to be provided with a higher level of sprinkler system protection, the higher level of sprinkler system protection shall be provided.

315.8.7 Automatic smoke detection system. An approved automatic smoke detection system that activates an approved occupant notification system shall be provided throughout each fire area in accordance with Section 907.

315.8.8 Radiant energy detection. An approved radiant-energy detection system that activates an approved occupant notification system shall be installed throughout each fire area in accordance with Section 907.

315.8.9 Collection containers. Containers used to collect or store lithium batteries shall be noncombustible and shall not have an individual capacity exceeding 30 gallons (113.6 L), or be approved for transportation in accordance with the Department of Transportation (DOT).

315.8.10 Storage configuration. Lithium batteries shall be considered a high-hazard commodity in accordance with Chapter 32 and where applicable, lithium battery storage shall comply with Chapter 32 in addition to Section 315.8.

B. Section 321 of the 2019 California Fire Code is hereby added to read:

SECTION 321 ADDITIVE MANUFACTURING

321.1 General. Additive manufacturing equipment and operations shall comply with Section 321.

321.1.1 Scope. Additive manufacturing shall comply with one of the following:

1. Non-industrial additive manufacturing shall comply with Section 321.2.
2. Industrial additive manufacturing shall comply with Section 321.3.

321.1.2 Installation, operation and maintenance. 3D printers and associated additive manufacturing equipment shall be installed, operated and maintained in accordance with this Code, the listing and the manufacturer's instructions.

321.1.3 Production materials. Only the production materials listed for use with the equipment and included in the manufacturer's instructions shall be used.

321.2 Non-industrial additive manufacturing. Non-industrial additive manufacturing equipment and operations shall comply with Section 321.2.1 through 321.2.4. Additive manufacturing equipment and operations that do not comply with Section 321.2 shall comply with Section 320.3.

321.2.1 Listing. 3D printers used in non-industrial additive manufacturing shall be listed and labeled in accordance with UL 60950-1, UL 62368-1 or UL 2011. The listing shall also verify:

1. The 3D printers are self-contained and utilize maximum 30 liter pre-packaged production materials.
2. The operation of the 3D printers shall not create a hazardous (classified) electrical area or outside of the unit.
3. If any hazardous (classified) electrical area or zone exists inside of the unit's outer enclosure, the area shall be protected by intrinsically safe electrical construction or other acceptable protection methods.
4. The 3D printers shall not utilize inert gas or an external combustible dust collection.

321.2.2 Occupancies. Non-industrial additive manufacturing shall be permitted in all occupancy groups.

321.3 Industrial additive manufacturing. Industrial additive manufacturing equipment and operations shall comply with Section 321.3.1 through 321.3.13.

321.3.1 Permits required. Permits shall be obtained from the fire code official in accordance with Section 105.6 prior to engaging in industrial additive manufacturing operations.

321.3.2 Listing. 3D printers used in industrial additive manufacturing shall be listed and labeled in accordance with UL 2011 or approved for the application based on a field evaluation conducted by an approved agency.

321.3.3 Combustible dusts and metals. Industrial additive manufacturing operations that store, use or produce combustible dust, combustible particulate solids or combustible metals shall comply with Chapter 22 and this section.

321.3.4 Powder evaluation. Printing powders used in industrial additive manufacturing operations shall be tested for combustibility in accordance with NFPA 484 or NFPA 652 as applicable. A copy of test reports shall be provided to the fire code official upon request.

321.3.5 Combustible (non-metallic) dusts. Industrial additive manufacturing that uses operations that store, use or produce combustible (non-metallic) dusts shall comply with NFPA 654.

321.3.6 Combustible metals. Industrial additive manufacturing operations that store or use combustible metals shall also comply with NFPA 484.

321.3.7 Ancillary equipment. Ancillary equipment provided for recycling, sieving, vacuuming or handling combustible powders shall be designed and approved for such use.

321.3.8 Hazardous materials. Industrial additive manufacturing operations that store or use hazardous materials exceeding the maximum allowable quantity limits shall comply with Chapter 50.

321.3.9 Inert Gas. Additive manufacturing processes that utilize inert gases shall comply with Chapter 53. Ventilation or gas detection shall be provided in accordance with Section 5307.

321.3.10 Technical assistance. Where required by the fire code official, a report evaluating the acceptability of technologies, processes, products, facilities, materials and uses associated with the operation shall be provided in accordance with 104.7.2 and approved.

321.3.11 Performance based design alternative. Where approved by the fire code official, buildings and facilities where industrial additive manufacturing is performed shall be permitted to comply with the performance-based design options in Section 5001.3 as an alternative to compliance with the other requirements set forth in this Section.

321.3.12 Occupancies. Industrial additive manufacturing shall only be conducted in the occupancy groups associated with manufacturing operations. The occupancy may be required by the fire code official to comply with Chapter 50 maximum allowable quantity tables. Where approved, the requirements in Sections 321.2.5 and 321.3.6 shall be permitted to provide the technical basis for determining compliance with Table 5003.1.1(1), footnote q.

321.3.13 Safety Certification. The equipment, process, training procedures and occupancy associated with industrial additive manufacturing may be required by the fire code official to receive a safety certification from Underwriter's Laboratory or equivalent.

15.44.120 - Chapter 5—Fire Service Features.

A. Section 503.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

503.1 Where required. Fire apparatus access roads shall be provided and maintained in accordance with Sections 503.1.1 through 503.1.3 and as per Fire Department access road Standards.

B. Section 503.2.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

503.2.1 Dimensions. Fire apparatus access roads shall have an unobstructed width of not less than 20 feet (6096 mm), except for approved security gates in accordance with Section 503.6, and an unobstructed vertical clearance of 13 feet 6 inches (4115 mm).

Exception: When there are not more than two Group R, Division 3, or Group U occupancies, the access road width may be modified by the fire code official.

C. Section 503.2.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

503.2.2 Authority. The fire code official shall have the authority to require or permit modifications to the required access widths and/or vertical clearance where they are inadequate for fire or rescue operations or where necessary to meet the public safety objectives of the jurisdiction.

D. Section 504.5 of the 2019 California Fire Code is hereby added to read:

504.5 Access control devices. When access control devices including bars, grates, gates, electric or magnetic locks or similar devices, which would inhibit rapid fire department emergency access to within and throughout the building, are installed, such devices shall be approved by the fire code

official. All electrically powered access control devices shall be provided with an approved means for deactivation or unlocking from a single location or otherwise approved by the fire department. Access control devices shall also comply with Chapter 10 entitled Egress in the California Fire Code.

E. Section 507.5.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

507.5.1 Where required. Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

F. Section 507.5.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

507.5.2 Inspection, testing and maintenance. Fire hydrant systems shall be maintained in an operative condition at all times and shall be repaired where defective. Additions, repairs, alterations and servicing shall comply with approved standards. Records of tests and required maintenance shall be maintained.

G. Section 508.1.2 of the California Fire Code is hereby amended to read in its entirety:

508.1.2 Separation. The fire command center shall be separated from the remainder of the building by not less than a 2-hour fire barrier constructed in accordance with Section 707 of the California Building Code or horizontal assembly constructed in accordance with Section 711 of the California Building Code, or both.

15.44.130 - Chapter 6—Electrical Equipment, Wiring, and Hazards.

A. Section 603.4.2.1.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

603.4.2.1.1 Prohibited locations. The storage or use of portable outdoor gas-fired heating appliances is prohibited in any of the following locations:

1. Inside of any occupancy where connected to the fuel gas container.
2. Inside of tents, canopies and membrane structures.
3. On exterior balconies. and rooftops.

B. Section 604.12 of the 2019 California Fire Code is hereby added to read:

605.13 Immersion heaters. All electrical immersion heaters used in dip tanks, sinks, vats and similar operations shall be provided with approved over-temperature controls and low liquid level electrical disconnects. Manual reset of required protection devices shall be provided.

15.44.140 - Chapter 9—Fire Protection Systems.

A. Section 901.6.3 of the 2019 California Fire Code is hereby amended to read in its entirety:

901.6.3 Records. Records of all system inspections, tests and maintenance required by the referenced standard shall be maintained on the premises for a minimum of five years. Inspections and tests performed on fire alarm systems shall be documented on NFPA 72 forms.

B. Section 903.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

903.2 Where required. Approved automatic sprinkler systems in new and existing buildings and structures shall be provided in the locations described in this Section or in Sections 903.2.1 through 903.2.19 of the California Fire Code, whichever is the more restrictive. For the purposes of this section, firewalls and fire barriers used to separate building areas shall be constructed in accordance with the California Building Code and shall be without openings or penetrations.

1. An automatic sprinkler system shall be provided throughout all new buildings and structures greater than 1,200 square feet of building area.

Exceptions:

- a. Group S-2 or U occupancies used exclusively for vehicle parking or solar arrays and meeting all of the following conditions:
 - i. Noncombustible construction;
 - ii. Maximum building areas not to exceed 5,000 square feet;
 - iii. Structure is open on three (3) or more sides; and
 - iv. Minimum of 10 feet separation from existing buildings unless area is separated by fire walls.
- b. Accessory Dwelling Unit, provided that all of the following are met:
 - i. The unit meets the definition of an Accessory Dwelling Unit as defined in the Government Code Section 65852.2.
 - ii. The existing primary residence does not have automatic fire sprinklers.
 - iii. The accessory detached dwelling unit does not exceed 1,200 square feet in size.
 - iv. The unit is on the same lot as the primary residence.
2. An automatic sprinkler system shall be provided throughout existing Group A, B, E, F, I L, M, R, S and U buildings and structures, when additions are made that increase the building area by more than 1,200 square feet or where the resulting area exceeds 3,600 square feet.
3. An automatic sprinkler system shall be provided throughout all new basements regardless of size and throughout existing basements that are expanded by more than 50%.
4. Any change in the character of occupancy or in use of any building which, in the opinion of the fire code official or building official, would place the building into a more hazardous division of the same occupancy group or into a different group of occupancies and constitutes a greater degree of life safety ¹ or increased fire risk ², shall require the installation of an approved fire automatic fire sprinkler system.

¹ Life Safety—Increased occupant load, public assembly areas, public meeting areas, churches, indoor amusement attractions, buildings with complex exiting systems due to increased occupant loads, large schools/daycare facilities, large residential care facilities with non-ambulatory.

² Fire Risks—High-piled combustible storage, woodworking operations, hazardous operations using hazardous materials, increased fuel loads (storage of moderate to highly combustible materials), increased sources of ignition (welding, automotive repair with use of flammable liquids and open flames).

C. Section 909.20.1 of the California Fire Code is hereby amended to read in its entirety:

909.20.1 Schedule. A routine maintenance and operational testing program shall be initiated immediately after the smoke control system has passed the acceptance tests. A written schedule for routine maintenance and operational testing shall be established and both shall occur at least annually.

15.44.150 - Chapter 22—Combustible Dust-Producing Operations.

A. Section 2203 of the 2019 California Fire Code is hereby amended to read in its entirety:

2203 DUST EXPLOSION PREVENTION

2203.1 Critical Depth Layer. The maximum dust layer on all surfaces, including but not limited to walls, ceilings, beams, equipment, furniture, pipes and ducts, shall not exceed the Critical Depth Layer specified in Table 2203.1. The critical depth layer depth is permitted to be adjusted for explosion hazard further evaluated in accordance with one of the following:

1. Section 6.1.1.3 of NFPA 654.
2. Section 4.2.2 of NFPA 664 for wood flour.

Accumulated combustible dust shall be collected by one of the methods listed in 2203.5.

Table 2203.1 Critical Depth Layer

Type of Dust	Critical Depth Layer (Inches)
Wood Flour	1/8
All Other Dusts	1/32

For SI: 1 inch = 25.4 mm

2203.2 Dust Producing and Dust Handling Equipment. Dust producing equipment and dust handling equipment, including but not limited to vacuums, dust collection systems, dryers, mixers, blenders, separators, conveyors, storage containers, silos or other similar devices shall be listed and shall be maintained in accordance with the manufacturer's recommended standards.

2203.2.1 Signages and Markings. Signages and markings shall be provided in accordance with Section 2203.2.1.1 through 2203.2.1.3.

2203.2.1.1 Deflagration Vent Discharge Area Markings. Where dust collection systems and other equipment, systems, or systems components are provided with deflagration vents, the area within the deflagration vent's discharge area shall be marked in an approved manner.

2203.2.1.2 Caution Signs. Signs shall be posted near the dust containing equipment with deflagration vents that reads as follows:

CAUTION: THIS EQUIPMENT CAN CONTAIN EXPLOSIVE DUST.

KEEP OUTSIDE THE MARKED AREA WHILE EQUIPMENT IS OPERATING.

2203.2.1.3 Warning Signs. Where dust collection systems and other equipment, systems, or systems components are provided with deflagration vents, vent closures shall be clearly marked as follows:

WARNING: EXPLOSION RELIEF DEVICE. STAY CLEAR.

2203.3 Dust Collection and Conveying Systems. Dust collection and conveying systems shall be in accordance with Sections 2203.3.1 through 2203.3.3.

2203.3.1 Dust Collection Systems. Dust collection systems shall be designed to collect dust emissions from dust-producing equipment at the point of generation. Dust collection systems shall be in accordance with Section 511 of the California Mechanical Code.

Exception: Closed systems using listed equipment and designed in accordance with manufacturer's recommendations and specifications, where cleanouts are provided in accordance with Section 2203.3.3.

Heating, ventilation, and air conditioning (HVAC) systems shall not be used as the means to collect dust from localized sources.

2203.3.1.1 Location. Dust collectors shall be located outside of buildings.

Exceptions:

1. Dust collectors inside of buildings complying with Section 511 of the California Mechanical Code.
2. Wet-type dust collectors when specifically listed for the type of dust conveyed shall be permitted inside of buildings where in accordance with the manufacturer's instructions and specifications.
3. Dust collectors designed to specific NFPA standards listed in Table 2204.1 for the specific type of dust conveyed.

2203.3.1.2 Minimum Conveying Velocities. The minimum velocities within ducts used as part of the dust collection system shall be in accordance with Table 2203.3.1.2.

Table 2203.3.1.2

Minimum Conveying Velocities

Type of Product	Feet Per Minute
Fine light dust, such as cotton, lint, and wood flour (100 mesh and under)	2000 (10 m/s)
Dry dust such as fine rubber molding powder	2500 (13 m/s)
Average dust such as sawdust, grinding dust, coal dust	3500 (18 m/s)
Heavy dust such as metal turnings, including aluminum and magnesium powder	4000 (20 m/s)

2203.3.2 Plastic Ducts and Conveying Systems. Plastic, fiberglass and other nonconductive ducts, duck liners or pipes shall not be used as a part of duct and conveying systems. Ductwork utilizing combustible lines shall be permitted only in high impact areas and where approved. Flexible hose shall be permitted if designed and installed in accordance with the following requirements:

1. Manufactured of static dissipative construction.
2. Used only for connections and isolation purposes.
3. Limited to 18 inches (457 mm) in length.
4. Properly grounded.

2203.3 Cleanouts. Openings shall be provided in enclosed equipment and conveyors to allow access to all parts of the equipment and conveyors to permit inspection, cleaning, maintenance and the effective use of portable extinguishers or hose streams. Cleanouts for ducts uses as part of the dust collection system shall be in accordance with California Mechanical Code.

2293.4 Sources of Ignition. Sources of ignition shall be controlled in accordance with Sections 2203.4.1 through 2203.4.9.5.

2203.4.1 Classified Electrical. Classified electrical shall be in accordance with NFPA 70. Electric motors and electrical components of the equipment shall not be installed in the dust laden air stream unless listed for Class II, Division 1 locations.

2203.4.2 Static Electricity. Bonding and grounding is required to minimize accumulation of static electric charge in the following locations:

1. Dust producing equipment.
2. Dust collection system.
3. Pneumatic dust conveying systems conveying combustible dust from one location to another, combustible dust conveyors, piping and conductive components. Conveying systems include transport modes such as railcars, hopper cars, boxcars, tank cars and trucks into which or from which commodities or products are pneumatically conveyed.
4. Conveying systems using metallic piping.

2203.4.3 Hot Works. Hot work and similar spark-producing operations shall not be conducted in or adjacent to combustible dust producing areas unless precautions have been taken to provide safety. Hot work shall be permitted only in safe, designated areas in accordance with Chapter 35. Hot work is prohibited on equipment that is operating.

2203.4.3.1 Signs. Conspicuous signs with the following warning shall be posted in the vicinity of combustible dust producing areas or in the vicinity of combustible dust use:

NO WELDING. THE USE OF WELDING OR CUTTING EQUIPMENT IN OR NEAR THIS AREA IS DANGEROUS BECAUSE OF FIRE AND EXPLOSION HAZARDS. WELDING AND CUTTING SHALL BE DONE ONLY UNDER THE SUPERVISION OF THE PERSON IN CHARGE.

2203.4.4 Hot Surfaces and Hot Equipment. In areas where a dust explosion hazard or dust flash fire hazard exists, the temperature of external surfaces, shall be maintained below 80 percent (in degrees Celsius) of the lower of the dust surface ignition temperature or the dust-cloud ignition temperature for worst-case dusts. External surfaces shall include but not limited to:

1. Compressors.
2. Steam, water or process piping.
3. Ducts.
4. Conveyors.
5. Process equipment.

Where steam pipes or hot surfaces occur in dust producing or dust handling areas, accumulation of dust on the surfaces shall be minimized by an approved method.

Exception: Drying apparatus listed for the intended use and installed in accordance with the manufacturer's instructions.

2203.4.5 Powered Industrial Trucks. Powered industrial trucks used in electrically classified areas shall be listed for such use.

2203.4.6 Smoking Prohibited. Smoking shall be prohibited in or adjacent to dust producing or dust handling areas.

"No Smoking" signs complying with Section 310 shall be conspicuously posted in such areas. Smoking shall be permitted only in designated areas.

2203.4.7 Spark-Producing Devices. Spark-producing devices shall not be located within 20 feet (6096 mm) of areas requiring classified electrical unless separated by a permanent partition.

2203.4.8 Self-heating materials. Materials in silos and other large storage piles of particulates prone to self-heating shall be in accordance with Section 8.5.11 of NFPA 652.

2203.4.9 Open Flames and Fuel Fired Equipment. Open flames and fuel fired equipment shall be in accordance with Section 2203.4.9.1 through 2203.4.9.5.

2203.4.9.1 Release of Airborne Combustible dust. Production, maintenance or repair activities that have the potential to release or force combustible dust to become airborne shall not be conducted within 35 feet (11 m) of an open flame or pilot flame.

2203.4.9.2 Space Heaters. Fuel-fired space heaters drawing local ambient air shall not be located within electrically classified areas. Space heating appliances in dust producing or dust handling areas shall be located where not subject to accumulation of deposits of combustible dust.

2203.4.9.3 Equipment Listing. Fuel-fired process equipment shall be listed for its intended use and shall be operated and maintained in accordance with the manufacturer's instructions.

2203.4.9.4 Inspection and Preventative Maintenance. Inspection and maintenance of fuel-fired process equipment shall include verification that significant combustible dust accumulations do not exist within or around the equipment.

2203.4.9.5 Sources of Combustion Air. In Class II electrically classified locations, heating units shall be provided with a source of combustion air ducted directly from the building exterior or from an unclassified location.

2203.5 Housekeeping. Accumulation of combustible dust on surfaces inside buildings shall be maintained below the critical depth layer in Section 2203.1. Pressurized air or similar methods shall not be used to remove dust from surfaces. Accumulated combustible dust shall be collected by one of the following methods:

1. Portable vacuum cleaners listed for use in Class II, Group G, Division 1 atmospheres as defined in NFPA 70.
2. Dust collection systems.
3. Other approved means that will not place combustible dust into suspension in air.

2203.6 Standard Operational Procedures. Dust producing equipment and all associated equipment including dust collection equipment shall be maintained in accordance with the manufacturer's instructions and specifications and applicable codes. The inspection, testing and maintenance program shall include the following, as applicable:

1. Fire and explosion protection and prevention equipment, as applicable, in accordance with the applicable NFPA standards.
2. Dust control equipment.
3. Control of potential ignition sources.

4. Electrical, process and mechanical equipment, including applicable process interlocks.
5. Lubrication of bearings for dust collection, dust handling and dust producing equipment.
6. Additional maintenance in accordance with the manufacturer's instructions and specifications for dust collection, dust handling and dust producing equipment.
7. Records shall be kept of maintenance and repairs performed. The standard operating procedures shall be submitted to the fire code official for review and approval. The written standard operating procedures shall be signed by the person responsible for facility operations.

2203.7 Emergency Response Plan. A written emergency response plan shall be developed for preventing, preparing for and responding to work-related emergencies including but not limited to fire and explosion. The following information shall be developed into the plan:

1. Identification of dust hazards.
2. Identification and location of all utilities to affected areas.
3. Site plans or floor plans locating utility shut-off controls including water, gas and power.
4. Identify the potential for explosion.
5. Identify the location of fire extinguishing equipment compatible with the hazards present.
6. Any additional information required by the fire code official.

2203.8 Training. The plans and procedures required in Sections 2203.5, 2203.6 and 2203.7 shall be approved by the fire code official. The plans and procedures shall be reviewed annually and updated as required by process changes. Initial and annual refresher training shall be provided to employees who are involved in operating, maintaining and supervising facilities that handle combustible dust. Initial and annual re fresher training shall include:

1. Workplace hazards.
 2. General orientation, plant diagrams and plant safety rules.
 3. Process description or flowchart.
 4. Equipment operation, safe startup and shutdown, and response to hazard conditions or an incident.
 5. The location and use of all related fire and explosion protection and prevention systems.
 6. Equipment maintenance requirements and practices, including visual inspections of conveyors and ducts.
 7. Housekeeping requirements, including the maintenance of the critical depth layer in Section 2203.1.
 8. Emergency response plans as required in Section 2203.7.
- The employer shall maintain records of initial and annual training and for review.

B. Section 2204 of the 2019 California Fire Code is hereby amended to read in its entirety:

2204 DUST EXPLOSION SCREENING TESTS

2204.1 Combustibility and Explosivity Tests. Where combustibility or explosivity screening tests are required to analyze the combustible dust as part of compliance with Section 414.1.3 of the California Building Code and Section 104.7 of this Code, it shall be in accordance with Section 5.4 of NFPA 652.

2204.2 Samples. Representative samples for the screening test shall be obtained in accordance with Section 5.5 of NFPA 652.

C. Section 2205 of the California Fire Code is hereby added to read:

2205 STANDARDS

2205.1 Specific Hazards Standards. The fire code official is authorized to enforce additional industry or material specific provisions of the codes and standards listed in Table 2205.1 as applicable to prevent and control dust explosions.

Table 2205.1 Explosion Protection Standards

Standard	Subject
NFPA 61	Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities
NFPA 69	Standard on Explosion Prevention Systems
NFPA 70	National Electrical Code
NFPA 77	Recommended Practice on Static Electricity
NFPA 85	Boiler and Combustion System Hazards Code
NFPA 120	Standard for Fire Prevention and Control in Coal Mines
NFPA 484	Standard for Combustible Metals
NFPA 652	Standard on the Fundamentals of Combustible Dust
NFPA 654	Standard for Prevention of Fire and Dust Explosions from the Manufacturing, Processing and Handling of Combustible Particulate Solids
NFPA 655	Standard for the Prevention of Sulfur Fires and Explosions
NFPA 664	Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities

2205.1.1 Dust Hazard Analysis. If a dust hazard analysis (DHA) is required by the fire code official to new or existing facilities and operations, it shall be in accordance with NFPA 652. The DHA for existing facilities shall be in accordance with Section 7.1.2 of NFPA 652.

15.44.160 - Chapter 33—Fire Safety During Construction and Demolition.

A. Section 3303.3 of the 2019 California Building Code is hereby amended to read in its entirety:

3303.3 LP-gas heaters. Fuel supplies for liquefied-petroleum gas-fired heaters shall comply with Chapter 61 and the International Fuel Gas Code.

3303.3.1 Use in Buildings. Propane containers may be used in buildings under construction or undergoing major renovation as a fuel source for temporary heating for curing concrete, drying plaster and similar applications in accordance with the following:

1. Heating elements (other than integral heater-container units) shall be located at least 6 feet from any LP Gas container.
2. Integral heater-container units specifically designed for the attachment of the heater to the container, or to a supporting standard attached to the container, may be used provided they are designed and installed so as to prevent direct or radiant heat application to the LP-Gas container.
3. Blower and radiant type units shall not be directed toward any LP-Gas container within 20 feet.
4. Heat producing equipment shall be installed with clearance to the combustibles in accordance with the manufacturer's installation instructions.
5. Cylinders shall comply with DOT cylinder specifications and shall be secured in an upright position.
6. Regulators shall be approved for use with LP-Gas. Fittings shall be designed for at least 250 p.s.i.g. service pressure.
7. Hose shall be designed for a working pressure of at least 350 p.s.i.g. (unless limited to 5 p.s.i.g.) and shall be a maximum of 6 feet in length.
8. Portable heaters shall be equipped with an approved automatic device to shut off the flow of gas to the main burner and to the pilot in the event of flame extinguishment or combustion failure. Portable heaters with an input of more than 50,000 Btu/hr shall be equipped with either a pilot that must be proved before the main burner can be turned on or an approved electronic ignition system.

3303.3.2 Use in Occupied Buildings. In addition to the above, for LPG storage/use in buildings undergoing alteration and that are fully or partially occupied, the following shall also apply:

1. Specific approval must be obtained from the fire department prior to bringing LP-Gas containers on-site.
2. The maximum water capacity of individual containers shall be 5-gallon water capacity and the number of containers in the building shall not exceed the number of workers assigned to using the LP-Gas.
3. Containers having a water capacity greater than 2½ pounds (1 quart) shall not be left unattended.

B. Section 3304.1 of the 2019 California Building Code is hereby amended to read in its entirety:

3304.1 Smoking. Smoking is prohibited anywhere inside or on the roof of new buildings under construction or in the project work area of buildings undergoing alteration. A suitable number of 'No Smoking' signs shall be posted to ensure that smoking is controlled.

Smoking shall be prohibited except in approved areas. Signs shall be posted in accordance with Section 310. In approved areas where smoking is permitted, approved ashtrays shall be provided in accordance with Section 310.

C. Section 3304.9 of the 2019 California Fire Code is hereby added to read:

3304.9 Fire walls. When firewalls are required in combustible construction, the wall construction shall be completed (with all openings protected) immediately after the building is sufficiently weather-protected at the location of the wall(s).

D. Section 3304.10 of the 2019 California Fire Code is hereby added to read:

3304.10 Vehicle Parking. All vehicles shall be parked a minimum of 20 feet from new buildings under construction.

Exceptions:

1. Vehicles that are temporarily parked for loading/unloading or other construction related operations. Such vehicles shall not be left unattended.
2. Private vehicles may be parked in parking garages of Type I construction if the automatic fire sprinkler system is in service and vertical openings are protected.

E. Section 3304.11 of the 2019 California Fire Code is hereby added to read:

3304.11 Compressed Gas Containers. Gas containers/cylinders shall be protected as follows:

1. Combustible materials shall be kept a minimum of 10 feet from gas containers.
2. Cylinders shall be protected against physical damage.
3. Cylinders shall be stored upright and secured to prevent falling.
4. Cylinders shall not be placed near elevators, unprotected platform edges or other areas where they would drop more than 2 feet.
5. Cylinders shall not be placed in areas where they may be damaged by falling objects.
6. When cylinders are not in use, valve protective caps shall be in place.
7. Ropes, chains or slings shall not be used to suspend gas cylinders, unless the cylinder was manufactured with appropriate lifting attachments.

3304.11.1 Separation. When stored, gas cylinders shall be separated from each other based on their hazard classes.

3304.11.2 Marking. Gas cylinders shall be marked with the name of the contents.

F. Section 3305.2.1 of the California Fire Code is hereby added to read:

3305.2.1 Containers. Metal containers for Class I or II liquids shall be in accordance with DOT requirements or shall be of an approved design. Discharge devices shall not cause an internal pressure on the container. Individual containers shall not be interconnected and shall be kept closed when not in use.

3305.2.2 Secondary Containment. Secondary containment or a means of spill control, drainage control, and diking shall be required for containers and tanks as approved by the fire department and, if applicable, local hazardous materials program agency.

3305.2.3 Marking. Tanks and containers shall be marked with the name of the product and “FLAMMABLE — KEEP FIRE AND FLAME AWAY.” Tanks (i.e., containers in excess of 60 gallons) shall also be labeled “KEEP 50 FEET FROM BUILDINGS.”

3305.2.4 Tank Installation Plans/Permit. Plans for the installation/use of any aboveground storage tank (i.e., container greater than 60 gallons) shall be submitted to the fire department and, if applicable, local hazardous materials program agency for review and permit prior to the proposed tank arriving at the site.

G. Section 3308.1.1 of the 2019 California Fire Code is hereby added to read:

3308.1.1 Fire Protection Plan. The Fire Protection Plan shall include the following:

1. Procedures for reporting emergencies to the Fire department.
2. Procedures for emergency notification, evacuation and/or relocation of all persons in the building under construction and on the site.
3. Procedures for hot work operations, management of hazardous materials and removal of combustible debris and maintenance of emergency access roads.
4. Floor plans identifying the locations of exits, exit stairs, exit routes and portable fire extinguishers.
- 4.1. All new buildings under construction shall have a least one unobstructed exit.
5. Site plans identifying the designated exterior assembly areas for each evacuation route.
6. Site plans identifying required fire apparatus access roadways and on-site fire hydrants.
7. The name and contact phone number of the person(s) responsible for compliance with the Fire Protection Plan.

H. Section 3308.6 of the 2019 California Fire Code is hereby amended to read in its entirety:

3308.6 Hot work operations. Hot work includes any work involving operations capable of initiating fires or explosions, including cutting, welding, brazing, soldering, grinding, thermal spraying, thawing pipe, torch applied roofing, or any other similar activity. The fire prevention program superintendent shall be responsible for supervising the permit system for hot work operations in accordance with Chapter 35.

I. Section 3308.7 of the 2019 California Fire Code is hereby amended to read in its entirety:

3308.7 Impairment of fire protection systems. Fire alarm systems shall be maintained operational at all times during building alterations. Impairments to any fire protection system shall be in accordance with Section 901. When an alteration requires modification to a portion of the fire alarm system, the portion of the system requiring work shall be isolated and the remainder of the system shall be kept in service whenever practical. When it is necessary to shut down an entire fire alarm system a fire watch or other mitigation approved by the fire department shall be implemented by the general contractor until the system is returned to full service.

J. Sections 3308.9 and 3308.10 of the California Fire Code are hereby added to read:

3308.9 Premises Identification. The address numbers of the property or project location shall be plainly visible and legible from the street or road fronting the property at the fire apparatus access point or as otherwise approved.

3308.10 Area Separation Walls. When area separation walls are required, the wall construction shall be completed (with all openings protected) immediately after the building is sufficiently weather-protected at the location of the wall(s).

K. Section 3310.1.1 of the 2019 California Fire Code is hereby added to read:

3310.1.1 Gates. No gate may be installed across a required fire department access road or driveway without prior approval from the local fire agency.

3310.1.2 Fire Apparatus Access Roadway Signs. Where required by the Fire Code Official, fire apparatus access roads shall be designated and marked as a fire lane as set forth in CVC §22500.1. The designation shall be indicated by:

1. A sign posted immediately adjacent to and visible from the designated place, clearly stating in letters not less than one inch in height that the place is a fire lane; or
2. Outlining or painting the place in red and, in contrasting color, marking the place with the words "FIRE LANE," which are clearly visible from a vehicle; or
3. A red curb or red paint on the edge of the roadway upon which is clearly marked the words "FIRE LANE."

L. Section 3311.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

3311.1 Stairways required. Each level above the first story in new multi-story buildings that require two exit stairways shall be provided with at least two usable exit stairways after the floor decking is installed. The stairways shall be continuous and discharge to grade level. Stairways serving more than two floor levels shall be enclosed (with openings adequately protected) after exterior walls/windows are in place. Exit stairs in new and in existing, occupied buildings shall be lighted and maintained clear of debris and construction materials at all times.

Exception: For new multi-story buildings, one of the required exit stairs may be obstructed on not more than two contiguous floor levels for the purposes of stairway construction (i.e., installation of gypsum board, painting, flooring, etc.).

M. Section 3311.1.1 of the 2019 California Fire Code is hereby added to read:

Section 3311.1.1 Required Means of Egress. All new buildings under construction shall have at least one unobstructed means of egress. All means of egress shall be identified in the prefire plan see Section 3308.2.

N. Section 3311.3 of the 2019 California Fire Code is hereby added to read:

3311.3 Storage. Combustible construction materials shall be stored a minimum of 20 feet from buildings under construction or undergoing remodel. Combustible materials associated with construction, demolition, remodeling or alterations to an occupied structure shall not be stored in exits, enclosures for stairways and ramps, or exit access corridors serving an occupant load of 30 or more.

Exceptions:

1. Where the only occupants are construction workers.
2. Combustible materials that are temporarily accumulated to support work being performed when workers are present.
3. Materials that are staged for installation on a floor level.
4. When approved by the Fire Department, materials may be stored in parking garages of Type I construction if the automatic fire sprinkler system is in service and vertical openings are protected.

O. Section 3312.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

3312.1 When required. An approved water supply for fire protection, either temporary or permanent, shall be completed, and in service prior to combustible construction materials accumulating on site.

P. Section 3313.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

3313.1 Where required. In buildings required to have standpipes the standpipes shall be installed when the progress of construction is not more than 35 feet in height above the lowest level of the fire department access. Standpipes shall be provided with fire department hose connections and outlets at accessible locations adjacent to usable stairs. As construction progresses, such standpipes shall be extended to within one floor of the highest point of construction having secured decking or flooring. Each floor shall be provided with a 2½-inch valve outlet for fire department use. Where construction height requires installation of a Class III standpipe, fire pumps and water main connections shall be provided to serve the standpipe.

Q. Section 3314.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

3314.1 Completion before occupancy. Where automatic fire sprinkler systems are required to be installed in new buildings, the system shall be placed in service as soon possible. For buildings of Type I or II noncombustible construction, activation of the fire sprinkler system may be delayed until combustible finishes, furnishings or equipment are installed, if the building or area is not used for combustible storage or any other purpose.

Immediately upon the completion of sprinkler pipe installation on each floor level, the piping shall be hydrostatically tested and inspected. After inspection approval from the Fire department, each floor level of sprinkler piping shall be connected to the system supply riser and placed into service with all sprinkler heads uncovered. Protective caps may be installed on the active sprinklers during the installation of drywall, texturing and painting, but shall be removed immediately after this work is completed. For system activation notification, an exterior alarm bell shall be installed and connected to the sprinkler water flow device prior to installation of the monitoring system.

It shall be unlawful to occupy any portion of a building or structure until the automatic sprinkler system installation has been tested and approved, except as provided in Section 105.3.4.

R. Section 3314.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

3314.2 Operation of valves. For buildings equipped with fire sprinkler systems that are undergoing alterations, the sprinkler system(s) shall remain in service at all times except when system modifications are necessary. Operation of sprinkler control valves shall be allowed only by properly authorized personnel and shall be accompanied by notification of duly designated parties. Fire sprinkler systems undergoing modifications shall be returned to service at the end of each workday unless otherwise approved by the fire department. The General contractor or his/her designee shall check the sprinkler control valve(s) at the end of each workday to confirm that the system has been restored to service.

S. Section 3315.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

3315.1 Where required. Structures under construction, alteration or demolition shall be provided with not less than one approved portable fire extinguisher in accordance with Section 906 and sized for not less than ordinary hazard as follows:

1. Portable fire extinguishers shall be provided and shall be mounted on a wall or post at each usable stairway and such that the travel distance to any extinguisher does not exceed 75 feet.
 - 1.1. Mounting height to the top of the extinguisher shall not exceed 5 feet.
 - 1.2. Extinguishers shall not have less than a 2A:10BC rating or as otherwise directed by the fire department.
2. In every storage and construction shed.
3. Additional portable fire extinguishers shall be provided where special hazards exist including, but not limited to, the storage and use of flammable and combustible liquids.
4. The general contractor shall ensure that an adequate number of individuals are trained in the proper use of portable fire extinguishers.

15.44.170 – Chapter 34 — Indoor Storage Arrangement.

A. Section 3404.6 of the 2019 California Fire Code is hereby amended to read in its entirety:

3404.6 Telephone number. Communication equipment shall be maintained at all waste tire facilities and solid waste facilities, if they are staffed by an attendant, to ensure that the site operator can contact local fire authority in the event of fire. The telephone number of the local fire authority and location of the nearest telephone shall be posted conspicuously in attended locations.

B. Section 3405.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

3405.1 Individual piles. Tire storage shall be restricted to individual piles not exceeding 5,000 square feet (464.5 m²) of continuous area. Piles shall not exceed 50,000 cubic feet (1416 m³) in volume or 10 feet (3048 mm) in height. *Pile widths shall not exceed 50 feet.*

C. Section 3407.5 of the 2019 California Fire Code is hereby added to read:

3407.5 Signs. A sign shall be posted at the facility entrance stating the name of the operator, operating hours, and site rules.

3407.6 Attendant. An attendant shall be present when the facility is open for business if the facility receives tires from persons other than the operator of the facility.

3407.7 Access. An access road to the facility must be maintained passable for emergency equipment at all times. Unauthorized access must be strictly controlled.

D. Section 3408.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

3408.1 Water supply. An adequate water supply shall be provided for use by the local fire authority. The water supply shall be capable of delivering at least 1,000 gallons per minute for a duration of at least three hours and at least 2,000 gallons per minute for a duration of at least three hours if the sum of altered plus whole waste tires exceeds 10,000. The water supply shall be arranged such that any part of the storage yard can be reached by using not more than 500 feet (152 m) of hose.

Adequate equipment to aid in the control of fires shall be provided. At a minimum, the following items shall be maintained on site and in working order at all times:

1. One pike pole at least 10 feet in length to separate burning from nonburning tires, and
2. One round point and one square point shovel.

E. Section 3408.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

3408.2 Fire extinguishers. Buildings or structures shall be provided with portable fire extinguishers in accordance with Section 906.

1. Fuel-fired vehicles operating in the storage yard shall be equipped with a minimum 2-A:20-B:C-rated portable fire extinguisher.

2. One portable fire extinguisher with a minimum rating of A:40-B:C shall be carried on each piece of fuel-powered equipment used to handle waste tires.

F. Section 3409.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

3409.1 Pile dimensions. Where tires are stored on-tread, the dimension of the pile in the direction of the wheel hole shall be not more than 50 feet (15 240 mm). Tires stored adjacent to or along one wall shall not extend more than 25 feet (7620 mm) from that wall. Other piles shall be not more than 50 feet (15 240 mm) in width.

1. Where the top of the storage is greater than six feet in height, tires shall be stored in accordance with the following:

(a) Indoor storage areas between 500 square feet and 2,500 square feet shall maintain aisles with access to exits and fire access doors in accordance with the following requirements:

(i) In sprinklered buildings aisles shall be a minimum of 44 inches wide.

(ii) In non-sprinklered buildings aisles shall be a minimum of 96 inches wide.

(iii) The required aisle width shall extend from floor to ceiling.

(b) Indoor storage areas exceeding 2,500 square feet shall maintain aisles with access to exits and fire access doors in accordance with the following requirements:

(i) In non-sprinklered buildings aisles shall be a minimum of 96 inches wide.

(ii) In sprinklered buildings where the waste tire piles are accessible to the public aisles shall be a minimum of 96 inches wide.

(iii) In sprinklered buildings where the waste tire piles are not accessible to the public aisles shall be a minimum of 44 inches wide.

(iv) The required aisle width shall extend from floor to ceiling.

(c) For storage areas greater than 500 square feet the dimensions of the waste tire piles shall not exceed 50 feet in any direction, 30 feet in height, and 75,000 cubic feet in volume.

(d) No facility shall store waste tires in an area greater than 500,000 square feet.

(e) Facilities with an indoor storage area greater than 500 square feet shall be equipped with an automatic fire extinguishing system.

(f) Facilities with an indoor storage area greater than 2,500 square feet shall be equipped with smoke and heat vents.

(g) For purposes of determining the square footage, the aggregate of all tire storage areas within a building which are designated, intended, proposed or actually used for storing tires at a maximum height of more than six feet shall be used, unless such areas are separated from each other by 1-hour fire barriers that have been approved by the local fire code official. Openings in 1-hour fire barriers shall be protected by opening protectives having a 1-hour fire protection rating.

15.44.180 – Chapter 35— Fire Safety Requirements.

A. Section 3504.2.3 of the 2019 California Fire Code is hereby amended to read in its entirety:

3504.2.3 Duties. The sole duty of fire watch personnel shall be to watch for the occurrence of fire during and after hot work operations. Individuals designated to fire watch duty shall have fire-extinguishing equipment readily available and shall be trained in the use of such equipment. Individuals assigned to fire watch duty shall be responsible for extinguishing spot fires and communicating an alarm. Hot work conducted in areas with vertical and horizontal fire exposures that cannot be observed by a single individual shall have additional personnel assigned to fire watches to ensure that all exposed areas are monitored.

15.44.190 - Chapter 49—Requirements for Wildland-Urban Interface Fire Areas.

A. Section 4901.3 and 4901.4 are hereby added to read:

4901.3 Where applicable. These requirements shall apply to all areas within the City of Morgan Hill as set forth and delineated on the map entitled "Wildland-Urban Interface Fire Area" which map and all notations, references, data and other information shown thereon are hereby adopted and made a part of this Chapter. The map properly attested, shall be on file in the Office of the City Clerk.

4901.4 Exemptions. These requirements shall not apply to any land or water area acquired or managed for one or more of the following purposes or uses:

- (1) Habitat for endangered or threatened species, or any species that is a candidate for listing as an endangered or threatened species by the state or federal government.
- (2) Lands kept in a predominantly natural state as habitat for wildlife, plant, or animal communities.
- (3) Open space lands that are environmentally sensitive parklands.
- (4) Other lands having scenic values, as declared by the local agency, or by state or federal law.

B. The following definition in Section 4902 of the 2016 California Fire Code is hereby amended to read in its entirety:

WILDLAND-URBAN INTERFACE FIRE AREA is a geographical area identified by the state as a "Fire Hazard Severity Zone" in accordance with the Public Resources Code Sections 4201 through 4204 and Government Code Sections 51175 through 51189, or other areas designated by the City to be at a significant risk from wildfires.

The Wildland-Urban Interface Fire Area shall be defined as all areas within the City of Morgan Hill as set forth and delineated on the map entitled "Wildland-Urban Interface Fire Area" which map and all notations, references, data and other information shown thereon are hereby adopted and made a part of this Chapter. The map properly attested, shall be on file in the Office of the City Clerk.

C. Section 4906 of the 2019 California Fire Code is hereby amended to read in its entirety:

4906.1 General. Hazardous vegetation and fuels shall be managed to reduce the severity of potential exterior wildfire exposure to buildings, to reduce the risk of fire spreading to buildings, and provide for safe access for emergency wildland fire equipment and civilian evacuation concurrently, as required by applicable laws and standards.

4906.1.1 Maintenance required. Maintenance is required to ensure conformance with these standards and measures, and to assure continued availability, access, and utilization, of the defensible space during a wildfire.

4906.1.2 Additional measures. No person subject to these regulations shall permit any fire hazard, as defined in this chapter, to exist on premises under their control, or fail to take immediate action to abate a fire hazard when requested to do so by the enforcing agency.

4906.1.3 Exemption. For the purposes of this chapter, vegetation removal or management, undertaken in whole or in part, for fire prevention or suppression purposes shall not be deemed to alter the natural condition of public property.

4906.2 Application. Buildings, roads, driveways, and structures located in the following areas shall maintain the required hazardous vegetation and fuel management:

1. All unincorporated lands designated by the State Board of Forestry and Fire Protection as State Responsibility Areas (SRA) including:

- 1.1. Moderate Fire Hazard Severity Zones
- 1.2. High Fire Hazard Severity Zones
- 1.3. Very-High Fire Hazard Severity Zones

2. Land designated as a Wildland Urban Interface Fire Area by the City of Morgan Hill.

4906.3 Requirements. Hazardous vegetation and fuels around all applicable buildings, roads, driveways, and structures, within these areas shall be maintained in accordance with the following laws and regulations:

1. Public Resources Code, Sections 4290 through 4296.
2. California Code of Regulations, Title 14, Division 1.5, Chapter 7.
3. California Government Code, Sections 51175 – 51189.
4. California Code of Regulations, Title 19, Division 1, Chapter 7, Subchapter 1.
5. Any local ordinance of the City of Morgan Hill.

D. Section 4907 of the 2019 California Fire Code is hereby amended to read in its entirety:

4907.1 General. Defensible space will be maintained around all buildings and structures within the Wildland Urban Interface Fire Areas of Morgan Hill as required in Public Resources Code 4290, California Code of Regulations, Title 14, Division 1.5, Chapter 7, Government Code 51175 – 51189, this Chapter, and any local ordinance. Defensible space shall also be provided around water tank structures, water supply pumps and pump houses.

4907.2 Where required. Persons owning, leasing, controlling, operating or maintaining buildings or structures in the locally adopted Wildland-Urban Interface Fire Area and persons owning, leasing or controlling land adjacent to such buildings or structures, shall at all times:

1. Maintain effective defensible space by maintaining a noncombustible zone within 5 feet of the structure.
2. Maintain effective defensible space by removing brush, flammable vegetation and combustible growth located within 30 feet of buildings or structures, but not beyond the property line.
 - 2.1 Weeds, grass, vines or other growth that is capable of being ignited and endangering property, shall be cut down and removed. Grass shall not exceed 4 inches in height.
 - 2.2. Remove any tree limbs located within 10 feet of a chimney,
 - 2.3. Maintain any tree, scrub, or other plant overhanging or within 30 feet of any building, road, driveway, or property line, free of dead or dying wood,
 - 2.4 Remove tree limbs located within 6' of ground level or 1/3 of plant height, whichever is less,
 - 2.5. Maintain the roof of a building or structure free of leaves, needles or other vegetative materials,
 - 2.6. Remove flammable vegetation a minimum of 10 feet around liquefied petroleum gas tanks/containers, water tanks, and small outbuildings,
 - 2.7. Remove firewood, vegetative growth, and combustible materials from unenclosed spaces beneath buildings or structures, or on decks or under eaves, canopies or other projections or overhangs.
 - 2.8. The storage of firewood and combustible material within the defensible space shall be located a minimum of 30 feet from structures and separated from the crown of trees by a minimum horizontal distance of 15 feet.

Exception: Firewood and combustible materials not for consumption on the premises shall be stored as approved by the Fire Code Official.

3. Maintain effective defensible space of 100 feet from each side and from the front and rear of the structure, but not beyond the property line, by removing brush, flammable vegetation and combustible growth.

- (a) Weeds, grass, vines or other growth that is capable of being ignited and endangering property, shall be cut down and removed. Grass shall not exceed 6 inches in height.
- (b) Dead and dying woody fuels within this zone shall be removed.
- (c) Loose surface litter within this zone shall be permitted to a depth of 3 inches.
- (d) Dead standing and downed trees within this zone shall be removed.

Exception: Grass and other vegetation located more than 30 feet from buildings or structures and less than 18 inches (457 mm) in height above the ground need not be removed where necessary to stabilize the soil and prevent erosion.

5. Maintain a firebreak by removing brush and clearing away all flammable vegetation or other combustible growth for a distance of not less than 30 feet on each side thereof or to the property line, whichever is nearer.

- (a) Weeds, grass, vines or other growth that is capable of being ignited and endangering property, shall be cut down and removed. Grass shall not exceed 4 inches in height.
- (b) Dead and dying woody fuels within this zone shall be removed.
- (c) Loose surface litter within this zone shall be permitted to a depth of 3 inches.

Exception: Single specimens of trees, ornamental vegetative fuels or cultivated ground cover, such as green grass, ivy, succulents or similar plants used as ground cover, provided they do not form a means of readily transmitting fire.

E. Section 4908 of the 2019 California Fire Code is hereby added to read:

SECTION 4908 - FIRE PROTECTION PLAN

4908.1 General. New developments and projects proposed within a locally adopted Wildland-Urban Interface Fire Area shall include a plan for the protection of the community from any unreasonable risks associated with the effects of wildland and urban fires.

4908.2 Content. The plan shall be based upon a site-specific wildfire risk assessment that includes considerations of location, topography, aspect, flammable vegetation, climatic conditions and fire history. The plan shall address water supply, access, building ignition and fire-resistance factors, fire protection systems and equipment, defensible space and vegetation management, evacuation routes, peak load water supply requirements, and minimum road widths, as those items relate to identified fire hazards.

4908.3 Cost. The cost of fire protection plan preparation and review shall be the responsibility of the applicant.

4908.4 Plan Retention. The fire protection plan shall be retained by the fire code official.

F. Section 4909 of the 2019 California Fire Code is hereby added to read:

SECTION 4909 Access, Egress and Identification.

4909.1 General. Road and street networks, whether public or private, shall provide for safe access for emergency firefighting equipment and civilian evacuation concurrently, and shall provide unobstructed traffic circulation during a wildfire emergency.

4909.2 Where required. Any person who owns, leases, controls, operates, or maintains lands in, upon, or adjoining a locally adopted Wildland-Urban Interface Fire, and persons owning, leasing or controlling land adjacent to buildings or structures within these areas, shall at all times do all of the following:

(a) Maintain all roads, driveways, turnarounds, turnouts, and roadway structures, crossing or bordering their lands at full original design width. In all cases, the minimum clear width and height dimensions described below shall be maintained. Trees, brush, and other vegetative growth, encroaching on or obstructing these dimensions shall be removed.

(b) Clear all flammable vegetation within 10 feet of all roads, driveways, turnarounds, turnouts, and roadway structures.

(i) Weeds, grass, vines, brush, or other growth that is capable of being ignited and endangering property or limiting access/egress during a fire, shall be cut down and removed. Grass generally shall not exceed 6 inches in height.

(ii) Maintain all trees, shrubs, or other plants within this zone free of dead or dying wood.

(iii) Dead and dying woody fuels within this zone shall be removed. Loose surface litter shall be permitted to a depth of 3 inches.

(iv) Dead standing and downed trees within this zone shall be removed.

Exception: Logs or stumps, when embedded in the soil, may be retained when isolated from other vegetation.

(v) Remove lower limbs of trees (prune) to at least 6 feet or the lower 1/3 branches for small trees.

(vi) All trees 3 inches or less in diameter at breast height (dbh) shall be removed with the exception of indigenous, native species. The removal of live trees over 3 inches dbh, should only occur:

- 1) when needed to remove adjacent dead trees;
- 2) to achieve tree/shrub vertical requirements; or
- 3) where deemed a specific liability or fire safety hazard by the authority having jurisdiction.

4909.3 Road Width. All two-way roads, and driveways serving more than 2 single family residential structures, shall have a minimum 20 foot unobstructed and continuous horizontal clearance, and a minimum 15 feet unobstructed and continuous vertical clearance.

4909.4 One-Way Roads. All one-way roads, and driveways serving 2 or fewer residential structures, shall have a minimum 12 foot unobstructed and continuous horizontal clearance, and a minimum 15 feet unobstructed and continuous vertical clearance.

4909.5 Gates. Gate entrances shall be at least 2 feet wider than the traffic lane(s) served by that gate. In all cases, the minimum clear horizontal width shall be 14 feet and the minimum clear vertical height shall be 15 feet.

(a) All gates providing access from a public road shall be located at least 30 feet from the intersecting roadway and shall open to allow a vehicle to stop without obstructing traffic on that road.

(b) Security gates shall not be installed without approval from authority having jurisdiction and where security gates are installed, they shall have an approved means of emergency operation.

(c) The security gates and their emergency operation shall be maintained at all times.

4909.6 Street and Road Signs. The numbers, letters, and symbols, used on street and road signs shall be a minimum 4 inches height and minimum .5 inch stroke, reflectorized, and contrasting with the background color of the sign. On a two-way street, signs shall be visible and legible from either direction of travel.

4909.7 Premises Identification. Address identification shall be plainly legible and visible from the street or road fronting the property. Lettering shall be Arabic numbers or alphabetical letters.

(a) On a two way street, addressing shall be visible and legible from either direction of travel from a distance of 100 feet.

(b) Where access is by means of a private road and the address identification cannot be viewed from the public way, a monument, pole, or other sign or means, shall be used to identify the address.

(c) The numbers, letters, and symbols, used for street address signs shall be a minimum 4 inches height and minimum .5 inch stroke, reflectorized, and contrasting with the background color of the sign.

15.44.200 - Chapter 50—Hazardous Materials—General Provisions.

A. Section 5001.2.2.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

5001.2.2.2 Health hazards. The material categories listed in this section are classified as health hazards. A material with a primary classification as a health hazard can also pose a physical hazard.

1. Highly toxic and toxic materials.
2. Corrosive materials.
3. Moderately toxic gas.
4. Other health hazards.

B. Section 5001.5.3 is hereby added to read:

5001.5.3 Hazardous materials business plan. Facilities that are required to submit a Hazardous Materials Business Plan (HMBP) as required by Health and Safety Code (HSC), Chapter 6.95, Sections 25500 through 25545, and Title 19, Division 2, Chapter 4, and facilities required to maintain a hazardous materials-related permit in accordance with Section 105.6 of this code, shall electronically submit a HMBP every year on or by the last day of the assigned month and no less frequently than that required by the HSC.

Exception: The following facilities shall electronically submit a HMBP at least once every three years on or by the last day of the assigned month and no less frequently than that required by the HSC.

1. Cell tower sites.
2. Facilities with no other hazardous materials permits other than a permit for carbon dioxide system used in beverage dispensing.
3. Dental offices with no other hazardous materials permits other than a permit for a fixed medical gas system and/or small quantity waste generator permit.

C. Section 5003.1.3.1 of the 2019 California Fire Code is hereby added to read:

5003.1.3.1 Toxic, highly Toxic, moderately toxic gases and similarly used or handled materials. The storage, use, and handling of toxic, highly toxic and moderately toxic gases in amounts exceeding Table 6004.2 or 6004.3 shall be in accordance with this Chapter and Chapter 60 of the California Fire Code. Any toxic, highly toxic or moderately toxic material that is used or handled as a gas or vapor shall be in accordance with the requirements for toxic, highly toxic or moderately toxic gases.

D. Section 5003.1.5 of the 2019 California Fire Code is hereby added to read:

5003.1.5 Other health hazards. The storage, use, and handling of materials classified as other health hazards including carcinogens, irritants and sensitizers in amounts exceeding 810 cubic feet for gases, 55 gallons for liquids and 5,000 pounds for solids shall be in accordance with this Section 5003.

E. Section 5003.1.6 of the 2019 California Fire Code is hereby added to read:

5003.1.6 Additional Spill Control and Secondary Containment Requirements. In addition to the requirements set forth in Section 5004.2. An approved containment system is required for any quantity of hazardous materials that are liquids or solids at normal temperature, and pressure (NTP) where a spill is determined to be a plausible event and where such an event would endanger people, property or the environment. The approved containment system may be required to include a combination of spill control and secondary containment meeting the design and construction requirements set forth in Section 5004.2.

F. Section 5003.2.2.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

5003.2.2.1 Design and construction. Piping, tubing, valves, fittings and related components used for hazardous materials shall be in accordance with the following:

1. Piping, tubing, valves, fittings, and related components shall be designed and fabricated from materials compatible with the material to be contained and shall be of adequate strength and durability to withstand the pressure, structural and seismic stress, and exposure to which they are subject.
2. Piping and tubing shall be identified in accordance with ASME A13.1 and Santa Clara County Fire Chiefs Marking Requirements and Guidelines for Hazardous Materials and Hazardous Waste to indicate the material conveyed.

3. Readily accessible manual valves or automatic remotely activated fail-safe emergency shutoff valves shall be installed on supply piping and tubing at the following locations:
 - 3.1 The point of use.
 - 3.2 The tank, cylinder or bulk use.
4. Manual emergency shutoff valves and controls for remotely activated emergency shutoff valves shall be identified and the location shall be clearly visible accessible and indicated by means of a sign.
5. Backflow prevention or check valves shall be provided when the backflow of hazardous materials could create a hazardous condition or cause the unauthorized discharge of hazardous materials.
6. Where gases or liquids having a hazard ranking of Health hazard Class 3 or 4, Flammability Class 4, or Reactivity Class 4 in accordance with NFPA 704 are carried in pressurized piping above 15 pounds per square inch gauge (psig)(103 Kpa), an approved means of leak detection, emergency shutoff and excess flow control shall be provided. Where the piping originates from within a hazardous material storage room or area, the excess flow control shall be located within the storage room or area. Where the piping originates from a bulk source, the excess flow control shall be located as close to the bulk source as practical.

Exceptions:

1. Piping for inlet connections designed to prevent backflow.
 2. Piping for pressure relief devices.
7. Secondary containment or equivalent protection from spills shall be provided for piping for liquid hazardous materials and for highly toxic and toxic corrosive gases above threshold quantities listed in Tables 6004.2 and 6004.3. Secondary containment includes but is not limited to double walled piping.

Exceptions:

1. Secondary containment is not required for toxic corrosive gases if the piping is constructed of inert materials.
 2. Piping under sub-atmospheric conditions if the piping is equipped with an alarm and fail-safe-to-close valve activated by a loss of vacuum.
8. Expansion chambers shall be provided between valves whenever the regulated gas may be subjected to thermal expansion. Chambers shall be sized to provide protection for piping and instrumentation and to accommodate the expansion of regulated materials.

G. Section 5003.2.2.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

5003.2.2.2 Additional regulation for supply piping for health hazard materials. Supply piping and tubing for gases and liquids having a health hazard ranking of 3 or 4 shall be in accordance with ASME B31.3 and the following:

1. Piping and tubing utilized for the transmission of toxic, highly toxic, or highly volatile corrosive liquids and gases shall have welded, or brazed connections throughout except

for connections within an exhausted enclosure if the material is a gas, or an approved method of drainage or containment is provided for connections if the material is a liquid.

2. Piping and tubing shall not be located within corridors, within any portion of a means of egress required to be enclosed in fire-resistance-rated construction or in concealed spaces in areas not classified as Group H Occupancies.

Exception: Piping and tubing within the space defined by the walls of corridors and the floor or roof above or in concealed space above other occupancies when installed in accordance with the California Building Code as required for Group H, Division 5 Occupancies.

3. All primary piping for toxic, highly toxic and moderately toxic gases shall pass a helium leak test of 1×10^{-9} cubic centimeters/second where practical, or shall pass testing in accordance with an approved, nationally recognized standard. Tests shall be conducted by a qualified "third party" not involved with the construction of the piping and control systems.

H. Section 5003.3.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

5003.3.1 Unauthorized discharges. In the event hazardous materials are released in quantities reportable under state, federal or local regulations or when there is release or a threatened release that presents a threat to health, property or the environment, the fire code official shall be notified immediately in an approved manner and the following procedures required in accordance with Sections 5003.3.1.1 through 5003.3.1.4.

I. Section 5003.5.2 of the 2019 California Fire Code is hereby added to read:

5003.5.2 Ventilation ducting. Ducts venting hazardous materials operations shall be labeled with the hazard class of the material being vented and the direction of flow.

J. Section 5003.5.3 of the 2019 California Fire Code is hereby added to read:

5003.5.3 "H" occupancies. In "H" occupancies, all piping and tubing may be required to be identified when there is any possibility of confusion with hazardous materials transport tubing or piping. Flow direction indicators are required.

K. Section 5003.9.11 of the 2019 California Fire Code is hereby added to read:

5003.9.11 Fire extinguishing systems for workstations dispensing, handling, or using hazardous materials. Combustible and non-combustible workstations, which dispense, handle or use hazardous materials, shall be protected by an approved automatic fire extinguishing system in accordance with Section 2703.10.

Exception: Internal fire protection is not required for Biological Safety Cabinets that carry NSF/ANSI certification where quantities of flammable liquids in use or storage within the cabinet do not exceed 500 ml.

L. Section 5003.4.10.4.3 of the 2019 California Fire Code is hereby amended to read in its entirety:

5003.10.4.3 Highly toxic, toxic, and moderately toxic, gases shall be limited to a container of a maximum water capacity of 1 lb.

M. Section 5004.2.1 of the 2019 California Fire Code is hereby amended to read in its entirety:

5004.2.1 Spill control for hazardous material liquids. Rooms, buildings or areas used for storage of hazardous material liquids shall be provided with spill control to prevent the flow of liquids to adjoining areas. Floors in indoor locations and similar surfaces in outdoor locations shall be constructed to contain a spill from the largest single vessel by one of the following methods:

1. Liquid-tight sloped or recessed floors in indoor locations or similar areas in outdoor locations.
2. Liquid-tight floors in indoor and outdoor locations or similar areas provided with liquid-tight raised or recessed sills or dikes.
3. Sumps and collection systems, including containment pallets in accordance with Section 5004.2.3.
4. Other approved engineered systems.

Except for surfacing, the floors, sills, dikes, sumps and collection systems shall be constructed of noncombustible material, and the liquid-tight seal shall be compatible with the material stored. When liquid-tight sills or dikes are provided, they are not required at perimeter openings having an open-grate trench across the opening that connects to an approved collection system.

N. Section 5004.2.2.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

5004.2.2.2 Incompatible materials. Incompatible materials shall be separated from each other in independent secondary containment systems.

O. Section 5004.2.3 of the 2019 California Fire Code is hereby amended to read in its entirety:

5004.2.3 Containment pallets. Combustible containment pallets shall not be used inside buildings to comply with Section 5004.2 where the individual container capacity exceeds 55 gallons (208 L) or an aggregate capacity of multiple containers exceeds 1,000 gallons (3785 L) for liquids or where the individual container capacity exceeds 550 pounds (250 kg) or an aggregate of multiple containers exceeds 10,000 pounds (4540 kg) for solids.

Where used as an alternative to spill control and secondary containment for outdoor storage in accordance, with the exception in Section 5004.2, containment pallets shall comply with all of the following:

1. A liquid-tight sump accessible for visual inspection shall be provided;
2. The sump shall be designed to contain not less than 66 gallons (250L);
3. Exposed surfaces shall be compatible with material stored;
4. Containment pallets shall be protected to prevent collection of rainwater within the sump of the containment pallet.

15.44.210 – Chapter 56 — Explosives and Fireworks.

A. Section 5601.1.3 of the 2019 California Fire Code is hereby amended to read in its entirety:

5601.1. 3 Fireworks. The possession, manufacture, storage, sale, handling, and use of fireworks, including those fireworks classified as Safe and Sane by the California State Fire Marshal, are prohibited.

Exception: The use of fireworks for fireworks displays as allowed in Section 5608.

15.44.220 - Chapter 57—Flammable and Combustible Liquids.

A. Section 5704.2.7.5.8 of the 2019 California Fire Code is hereby amended to read in its entirety:

5704.2.7.5.8 Overfill prevention. An approved means or method in accordance with Section 5704.2.9.7.5 shall be provided to prevent the overfill of all Class I, II and IIIA liquid storage tanks. Storage tanks in refineries, bulk plants or terminals regulated by Sections 5706.4 or 5706.7 shall have overfill protection in accordance with API 2350.

Exception: Outside aboveground tanks with a capacity of 1320 gallons (5000 L) or less need only comply with Section 5704.2.9.7.5.1 (1.1)

An approved means or method in accordance with Section 5704.2.9.7.5 shall be provided to prevent the overfilling of Class IIIB liquid storage tanks connected to fuel-burning equipment inside buildings.

B. Section 5704.2.7.5.9 of the 2019 California Fire Code is hereby added to read:

5704.2.7.5.9 Automatic filling of tanks. Systems that automatically fill flammable or combustible liquid tanks shall be equipped with overfill protection, approved by the fire code official, that sends an alarm signal to a constantly attended location and immediately stops the filling of the tank. The alarm signal and automatic shutoff shall be tested on an annual basis and records of such testing shall be maintained on-site for a period of five (5) years.

15.44.230 – Chapter 58 — Flammable gases and flammable cryogenic fluids.

A. Section 5803.3 of the 2019 California Fire Code is hereby added to read:

5803.3 Mobile fueling of hydrogen vehicles. Mobile fueling of hydrogen vehicles is prohibited unless approved by the *fire code official*.

B. Section 5809.3.4 of the 2019 California Fire Code is hereby amended to read in its entirety:

5809.3.4 Site plan. For other than emergency roadside service, a site plan shall be developed for each location at which mobile gaseous hydrogen fueling occurs. The site plan shall be in sufficient detail to indicate: all buildings, structures, lot lines, property lines and appurtenances on site and their use and function, and the scale of the site plan.

15.44.240 - Chapter 64—Pyrophoric Materials.

A. Section 6405.3.1 of the 2019 California Fire Code is hereby added to read:

6405.3.1 Silane distribution systems automatic shutdown. Silane distribution systems shall automatically shut down at the source upon activation of the gas detection system at levels above the alarm level and/or failure of the ventilation system for the silane distribution system.

15.44.250 – Appendix B

A. Table B105.2 of the 2019 California Fire Code is hereby amended to read in its entirety:

TABLE B105.2

REQUIRED FIRE FLOW FOR BUILDINGS OTHER THAN ONE- AND

TWO-FAMILY DWELLINGS, GROUP R-3 AND R-4 BUILDINGS AND TOWNHOUSES

AUTOMATIC SPRINKLER SYSTEM (Design Standard)	MINIMUM FIRE FLOW (gallons per minute)	FLOW DURATION (hours)
No automatic sprinkler system	Value in Table B105.1(2)	Duration in Table B105.1(2)
Section 903.3.1.1 of the California Fire Code	50% of the value in Table B105.1(2)a	Duration in Table B105.1(2) at the reduced flow rate
Section 903.3.1.2 of the California Fire Code	50% of the value in Table B105.1(2)a	Duration in Table B105.1(2) at the reduced flow rate

For SI: 1 gallon per minute = 3.785 L/m.

- The reduced fire flow shall be not less than 1,000 gallons per minute.
- The reduced fire flow shall be not less than 1,500 gallons per minute.

15.44.260 - Violation.

- A violation of the code adopted by this chapter occurs when a person:
 - Fails to comply with this code;
 - Violates or fails to comply with any order made under this code;
 - Builds in violation of any detailed statement of specifications or plans submitted and approved thereunder or any certificate or permit issued thereunder and from which no appeal has been taken; or
 - Fails to comply with such an order as affirmed or modified by the city council or by a court of competent jurisdiction, within the time fixed in this chapter.
- Such person may be liable severally and for each and every such violation and noncompliance respectively.
- The imposition of one penalty for any violation shall not excuse the violation or permit it to continue and all such persons shall be required to correct or remedy such violations or defects within a reasonable time.
- The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

SECTION 9. Sections 15.64.040 of Chapter 15.64 (Wood-Burning Appliances) of Title 15 (Buildings and Construction) of the Morgan Hill Municipal Code is hereby amended to read:

15.64.040 - Application.

- A. Only E.P.A. pellet-fueled wood heaters and E.P.A. certified wood-burning appliances may be installed.
- B. This chapter does not prohibit the repair, reconstruction or replacement of an existing wood-burning appliance or wood-burning appliances that are designed primarily for food preparation.

Section 10. References to Prior Code. Unless superseded and expressly repealed, references in City forms, documents and regulations to the chapters and sections of the former Morgan Hill Building Code 2016, shall be construed to apply to the corresponding provisions contained within the Morgan Hill Building Code 2019. Ordinance No. 2221 of the City of Morgan Hill and all other ordinances or parts of ordinances in conflict herewith are hereby superseded and expressly repealed.

Section 11. CEQA. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because it can be seen with certainty that there is no potential for causing a significant effect on the environment.

Section 12. 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 14. Effective Date; Publication. This Ordinance shall take effect on January 1, 2020. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 23RD DAY OF OCTOBER 2019 AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 6TH DAY OF NOVEMBER 2019 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH THE LAW BY THE FOLLOWING VOTE:

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

APPROVED:

 RICH CONSTANTINE, Mayor

ATTEST:

 IRMA TORREZ, City Clerk

DATE: _____

Effective: January 1, 2020

⌘ 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. 2307, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 6th day of November 2019.

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

DATE: _____

 IRMA TORREZ, City Clerk

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, October 2, 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 pm for the purpose of conducting a closed session.

6:00 pm Closed Session

7:00 pm Regular Meeting

SPECIAL MEETING

6:00 pm. Closed Session

CALL TO ORDER

Mayor Constantine called the special meeting to order at 6:00 pm.

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	Present	

Minutes Acceptance: Minutes of Oct 2, 2019 6:00 PM (CONSENT CALENDAR)

Yvonne Martinez Beltran	Council Member	Present	
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 announced the closed session item.

OPPORTUNITY FOR PUBLIC COMMENT

The public comment was opened at 6:01 pm.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 6:01 pm.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

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

Number of Cases: One (1)

REGULAR MEETING

7:00 pm

Mayor Constantine called the regular meeting to order at 7:04 pm.

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

Minutes Acceptance: Minutes of Oct 2, 2019 6:00 PM (CONSENT CALENDAR)

CITY COUNCIL REPORTS

Council Member Carr spoke about the road work that is going on around town and asked for the community's patience as we work to improve our streets. Hopefully the long term benefits of the improved roads will outweigh the frustration of the construction.

He shared that CalTrain will be making some changes to their service in South County. Starting on October 7th, Train 262 will get into Morgan Hill just after 6:00 pm which is more than an hour earlier than the current train arrives. This is a direct result of Morgan Hill residents telling us that they want to get home earlier. In addition, we are still working with CalTrain on adding the fourth train for both the morning and evening. They expect to be ready to do that in 2021 and are currently refurbishing trains to provide that service. The Mayor works with CalTrain directly going to meetings in San Carlos regularly and we will keep pushing for 2021.

He explained that as of today, we have express bus service which stops in Morgan Hill and then traveling directly to the major job centers in the north part of the County. Those buses at times are not very full and are costing the Valley Transportation Authority (VTA) a lot of money to run. The VTA is looking at dropping some of those lines. If you are an express bus rider, please reach out to VTA and the City Council to express your opinions about the express buses. If you happen to work with people that go to work at the job centers in the north, we need your help. We need more people to ride those buses and we need to get the word out about those buses. Buses 121 and 185 are the lines that are at risk. The good news is that there is a fairly new line called 168, which will be turned into a regional express line to improve what is now line 68 by speeding up that service going into San Jose.

CITY MANAGER'S REPORT

City Manager Christina Turner thanked Council Member Carr for bringing up the Pavement Resurfacing Project and echoed his thanks to the community for their patience and shared that the striping will be completed within the next couple weeks. She announced that another major project is starting on Tennant Avenue. The Sewer Main Project started this week and will take about six months to complete. It will require various levels of traffic control on Tennant Avenue between Railroad Avenue and Monterey Road. The project replaces an aging sewer line and is necessary to ensure safety for the public and the environment. To stay up to date on our City maintenance projects and traffic impacts visit our website and sign up for the Scoop Weekly newsletter.

She announced that the Library Expansion Project is set to start next week. The addition will include a community meeting room, as well as, an expanded children's area. She mentioned that Healthy Aging Week is coming up on October 7th through 12th. Our Older Adult Services Teammates have done an excellent job coordinating events each day from 9:00 am to 5:00 pm. Everything from hiking and biking to bocce ball and a Senior Resource Fair on Thursday next week from 9:30 am to 12:30 pm at the Community and Cultural Center. All activities and events are free. Please contact the Senior Center or visit our website for more information.

She announced that the next event in the Choose Morgan Hill Speaker Series will be on innovation and manufacturing and will take place on Thursday, October 10th at the Granada Theatre from 6:30 pm to 8:00 pm. You can visit www.choosemorganhill.com to sign up. We also have Manufacturing Day coming up tomorrow, October 3rd starting at 9:30 am with a panel at the Community and Cultural Center. This event is held in conjunction with the Chamber of Commerce, Morgan Hill Unified School District, and the City of Morgan Hill. You can sign up for this event online as well.

She reminded the community that text to 911 is now available in most cities within Santa Clara County. The tagline here is call if you can, text if you can't.

She shared that on Tuesday, October 15th at 7:00 pm here in the Council Chamber, we will hold a Special Planning Commission meeting to hold a public hearing to receive input only on the proposed preliminary review application for the Morgan Hill Technology Park Project by Trammell Crow. A preliminary review must be completed prior to consideration of the project related to the General Plan Amendment and Zoning Amendment Applications. All interested persons are invited to attend this public hearing. For more

information visit the initiatives page under community projects on our website. This public hearing has been noticed via email to approximately 13,000 email addresses, as well as, on Facebook, Next Door, and in both the Morgan Hill Times and the Mercury News.

She concluded by announcing that the City will be reviewing its development services application processes in advance of the new state laws taking effect on January 1, 2020. We plan to hold a community meeting at an upcoming Planning Commission meeting to discuss our current practices, any recommendations on the notification process and for community input, as well as, the review by our Planning Commission and City Council.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin shared that there is no reportable action from the closed session that took place earlier in the evening.

OTHER REPORTS

Council Member McKay shared that in an effort to keep the community informed, a community meeting was held last night hosted by one of the local homeowner associations (HOA). It was a very informative meeting where we were able to bring in some City staff, representatives from Trammell Crow and himself. It was a very good discussion. He shared that if any other members of the community would like to hold a meeting at their HOA's, he would be more than happy to attend.

Council Member Spring recognized the Chamber of Commerce and the hundreds of volunteers that put on the Taste of Morgan Hill. He also thanked the Police Department for their presence and for making the community feel safe.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

PUBLIC COMMENT

PUBLIC COMMENT SUPPLEMENT 1

The public comment was opened at 7:40 pm. The following people were called to speak:

Allan Abrams

Joe Baranowski

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

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 3.

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

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.

City Attorney Donald Larkin provided the report.

The public comment was opened at 8:10 pm. The following people were called to speak:

Jeff Burrus

Mary Patterson

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

The meeting recessed at 8:21 pm.

The meeting reconvened at 8:31 pm.

Council provided direction to the City Attorney.

RESULT: DIRECTION PROVIDED TO STAFF

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.

Associate Planner Tiffany Brown presented the report, along with Community Development Director Jennifer Carman and City Engineer Scott Creer.

The public hearing was opened at 9:38 pm.

Paul Latala was called to speak.

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

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

The meeting recessed at 10:00 pm.

The meeting reconvened at 10:05 pm.

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.

Public Services Director Chris Ghione provided the report.

The public comment was opened at 10:18 pm.

Dick Oliver was called to speak.

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

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	WAIVED [UNANIMOUS]
MOVER:	Rene Spring, Mayor Pro Tem
SECONDER:	Rich Constantine, Mayor
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

MOTION:

Introducing the ordinance.

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

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.

Housing Manager Rebecca Garcia and Assistant City Manager Leslie Little provided the report.

The public comment was opened at 10:54 pm.

Sally Casas was called to speak.

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

MOTION:

Approving the recommended action.

RESULT:	AUTHORIZED [4 TO 1]
MOVER:	Larry Carr, Council Member
SECONDER:	John McKay, Council Member
AYES:	Constantine, Spring, Carr, McKay
NAYS:	Martinez Beltran

MOTION:

Extending the meeting to 11:12 pm.

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

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.

Assistant City Manager Leslie Little provided the report.

The public comment was opened at 11:09 pm.

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

MOTION:

Extending the meeting to 11:22 pm.

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

RESULT:	DIRECTION PROVIDED TO STAFF
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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.

Item moved to a Special Meeting scheduled for October 9, 2019 at 7:00 pm.

RESULT:	CONTINUED TO A FUTURE MEETING
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FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business, the meeting adjourned at 11:15 pm.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk

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, October 9, 2019 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL MEETING

A Special Meeting of the City Council was called at 7:00 p.m. for the purpose of receiving an Update on Housing Legislation.

CALL TO ORDER

Mayor Constantine called the special meeting to order at 7:01 p.m.

ROLL CALL ATTENDANCE

Minutes Clerk Angie Gonzalez called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Present	
Rene Spring	Mayor Pro Tem	Present	
Yvonne Martinez Beltran	Council Member	Late	7:02 PM
Larry Carr	Council Member	Present	
John McKay	Council Member	Present	

DECLARATION OF POSTING OF AGENDA

Minutes Clerk Angie Gonzalez declared the posting of the agenda.

Minutes Acceptance: Minutes of Oct 9, 2019 7:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Mayor Constantine opened the public comment at 7:02 p.m.

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

ADOPTION OF AGENDA

ADOPTING THE AGENDA AS AMENDED

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

EMERGENCY ACTION

1. RESOLUTION RATIFYING THE ACTION OF THE DIRECTOR OF EMERGENCY SERVICES PROCLAIMING THE EXISTENCE OF A LOCAL EMERGENCY AND CONTINUING SUCH EMERGENCY

Recommendation:

Adopt resolution ratifying the action of the Director of Emergency Services proclaiming a local emergency and continuing such emergency.

City Attorney Donald Larkin, City Manager Christina Turner and Emergency Services Coordinator Jennifer Ponce presented the report and answered questions.

Mayor Constantine opened the public comment at 7:26 p.m. The following people were called to speak:

Anonymous

Paul Lake

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

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

OTHER BUSINESS

2. 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.

Assistant City Manager Leslie Little gave a presentation.

Mayor Constantine opened the public comment at 8:37 p.m. The following people were called to speak:
 Steve Bolaris
 Allen Palmer
 Jody McRoberts
 Assemblymember Robert Rivas
 There being no further requests to speak, the public comment was closed.

RESULT:	ACCEPT REPORT
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City Manager Christina Turner gave an update on the Public Safety Power Shutoff; PG&E is now saying that the timing of the power shutoff is uncertain and is based on how weather develops.

FUTURE COUNCIL INITIATED AGENDA ITEMS

None.

ADJOURNMENT

There being no further business Mayor Constantine adjourned the special meeting at 10:18 p.m.

MINUTES PREPARED BY:

Angie Gonzalez, Minutes Clerk

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, October 23, 2019 7:00 pm

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:00 pm.

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	Present	
Yvonne Martinez Beltran	Council Member	Present	
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.

Minutes Acceptance: Minutes of Oct 23, 2019 7:00 PM (CONSENT CALENDAR)

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PRESENTATIONS

YAC PRESENTATION - ASSET #31 HEALTHY LIFESTYLE

PROCLAMATIONS

Proclaiming the Month of November 2019 as Philanthropy Month
Pamala Meador

RECOGNITIONS

Recognizing those who were instrumental in establishing the relationship with our Sister City, Ameca in Mexico

Rotary Morgan Hill
Morgan Hill Sister Cities
John Kelley
Peter Anderson
David and Lesley Allen

Recognizing the AAUW Young Women Leaders for Organizing the Climate Change Rally in conjunction with the Global Climate Strike

Makayla Phea
Ria Deshpande
Diya Kandra
Gelasia Tiwans
Grace Taira

Q

Molly Waddington
Amiriah Alexander
Hassti Tirgardoorn
Lili Jaquet

CITY COUNCIL REPORTS

Council Member Spring highlighted some of the recent events in the community including the tree planting event that took place about three weeks ago, the Historical Society's monthly History Talk, the National Coming out event, and the LGBTQ Youth event. He shared that he was proud to be a part of the panel for the National Coming out event and thanked all of those who attended both events. He is very proud to announce that thanks to friends and allies, we now have safe places in both Morgan Hill and Gilroy for our LGBTQ youth. Homelessness and suicide rates are the highest among LGBTQ youth and we really need to pay attention to that segment of our community and do what we can to help them get through their youth the best way they can. He thanked everyone that stayed calm during the Public Safety Power Shutoff (PSPS) and curfew. He shared how his neighbors came together during the event. He concluded by announcing the Downtown Trick-or-Treat event and encouraged families to get out and enjoy the festivities.

CITY MANAGER'S REPORT

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

She shared that yesterday marked the second Planning Commission meeting held for the preliminary review of the Trammell Crow Morgan Hill Technology Park Project. The developer showed their

willingness to revise the project to address the concerns of the community and Planning Commission. The Planning Commission provided comments to staff which will be considered in the review of the project.

She thanked all of the City teammates who planned and prepared for the PSPS, especially the utilities, maintenance, and public safety teams who successfully anticipated the impacts and made the necessary arrangements to continue providing water and protecting the safety of the community. We are confident in the response plans we have in place should we lose power again. Due to the PSPS, the October 10th Choose Morgan Hill Speaker Series on Innovation and Manufacturing has been rescheduled to Thursday, October 24th at 6:30 pm at the Granada Theatre.

She announced that the Tourism Symposium will take place on Monday, October 28th at Cordevalle. This is the kickoff for the Visit Morgan Hill's strategic planning process involving industry leaders who will be sharing their ideas on how to promote tourism in Morgan Hill. Also, that evening at 6:00 pm here in the Council Chamber, we will be hosting a joint meeting of the Valley Water Board, Morgan Hill City Council, and Gilroy City Council to discuss topics of mutual interest.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin had no reports.

OTHER REPORTS

Mayor Constantine shared that the next coffee with the Mayor will take place on Saturday, November 2nd from 10:00 am to 11:30 am at the Centennial Recreation Center.

PUBLIC COMMENT

The public comment was opened at 7:29 pm.

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

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

CONSENT CALENDAR

MOTION:

Approving consent calendar items 1 through 5.

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

1. ADOPT RESOLUTION TERMINATING LOCAL EMERGENCY

Recommendation:

Adopt Resolution terminating the local emergency proclaimed on October 8, 2019 and ratified on October 9, 2019.

2. ACCEPT NEW COMMUNITY GARDEN INSTALLATION PROJECT

Recommendation:

1. Accept as complete the New Community Garden Installation Project in the final amount of \$178,671;
2. Authorize the Public Services Director to sign the attached Notice of Completion; and
3. Direct the City Clerk to file said Notice of Completion with the County Recorder's Office.

3. ACCEPT AUGUST 2019 FINANCIAL AND INVESTMENT REPORT

Recommendation:

Accept and file report.

4. APPROVE PURCHASE OF TWO 150 KILOWATT GENERATORS

Recommendation:

1. Approve the purchase of two replacement 150kW trailer-mounted diesel generators from Leete Generators, and authorize the City Manager to approve the purchase order in the amount of \$169,552;
2. Adopt resolution amending the adopted 2019-20 Fiscal Year Budget appropriating \$84,776 from the Water Operations Fund (650); and
3. Declare generator W02017 to be surplus for disposal in accordance with the City Municipal Code.

5. APPROVE FIRST AMENDMENT TO GIS SERVICES AGREEMENT WITH GEOGRAPHIC TECHNOLOGIES GROUP, INC.

Recommendation:

1. Approve First Amendment to the Agreement with Geographic Technologies Group, Inc. for an additional \$78,500 to implement the GIS tasks identified in the GIS Strategic Plan, for a total not to exceed amount of \$137,500; and
2. Authorize the City Manager to execute and administer the amended agreement.

6. ITEM PULLED FOR DISCUSSION

ITEM PULLED FOR DISCUSSION

6. ADOPT ORDINANCE 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

Recommendation:

Waive the reading, adopt Ordinance No. 2305, 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.

The public comment was opened at 7:40 pm.

Dick Oliver was called to speak.

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

Public Services Director Chris Ghione answered questions.

MOTION:

Approving the recommended action.

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

OTHER BUSINESS

7. INTRODUCE ORDINANCE ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) TO THE MORGAN HILL MUNICIPAL CODE REDUCING CLIMATE IMPACTS BY REQUIRING NEW BUILDINGS TO BE ALL-ELECTRIC

Recommendation:

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

Program Administrator Anthony Eulo along with John Supp with Silicon Valley Clean Energy provided the report.

The meeting recessed at 8:16 pm.

The meeting reconvened at 8:23 pm.

The public comment was opened at 8:30 pm. The following people were called to speak:

Dick Oliver
Doug Muirhead
Swanee Edwards
Dashiell Leeds
Ida Rose Sylvester
Sharon Duncan

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

MOTION:

Waiving the first and second reading of the ordinance.

RESULT:	WAIVED [4 TO 1]
MOVER:	John McKay, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Spring, Martinez Beltran, Carr, McKay
NAYS:	Constantine

MOTION:

Introducing the ordinance adding that projects that are approved and under construction have the ability to be included under the exemptions section of the ordinance.

RESULT:	INTRODUCED [4 TO 1]
MOVER:	Larry Carr, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Spring, Martinez Beltran, Carr, McKay
NAYS:	Constantine

8. INTRODUCE AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING TITLE 15 (BUILDING AND CONSTRUCTION) TO ADOPT BY REFERENCE, THE 2019 CALIFORNIA STATE BUILDING STANDARDS CODE KNOWN AND DESIGNATED AS CALIFORNIA CODE OF REGULATIONS, TITLE 24 AND THE 2018 INTERNATIONAL PROPERTY MAINTENANCE CODE; AND TO AMEND, DELETE AND ADD CERTAIN OTHER BUILDING AND CONSTRUCTION STANDARDS

Recommendation:

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

Building Official Eric Blomquist provided the report.

The public comment was opened at 9:24 pm.

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:	John McKay, Council Member
SECONDER:	Larry Carr, Council Member
AYES:	Constantine, Spring, Martinez Beltran, Carr, McKay

MOTION:

Introducing the ordinance.

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

9. RECEIVE REPORT REGARDING MORGAN HILL AND GILROY SUSTAINABLE WATER MANAGEMENT PLANNING

Recommendation:

1. Receive the technical memorandum on sustainable water management planning; and
2. Provide policy direction.

Public Services Director Chris Ghione, Program Administrator Anthony Eulo, and Deputy Director for Utility Services Dan Repp provided the report.

The public comment was opened at 10:25 pm.

Doug Muirhead was called to speak.

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

Council received the report and provided direction to staff.

RESULT:	DIRECTION PROVIDED TO STAFF
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PUBLIC HEARING

10. 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 provided the report.

The public hearing as opened at 10:44 pm.

Robia Crisp was called to speak.

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

MOTION:

Approving the recommended actions exclusive of the water and library fees.

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

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Carr would like to engage in a conversation about e-bikes and e-scooters and what Gilroy is doing with them.

Council Member Spring asked for a Legislative Update in regard to Police services.

Council Member Spring asked for a conversation about how our City will look in the future as far as a "Smart City."

Council Member Martinez Beltran asked staff to look into Mobile Cancer Screenings.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:57 pm.

MINUTES PREPARED BY:

Michelle Bigelow, Deputy City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

PREPARED BY: David Swing, Police Chief
APPROVED BY: City Manager

INTRODUCE ZONING ORDINANCE AMENDMENT TO CONDITIONALLY PERMIT CANNABIS USES IN NON-RESIDENTIAL ZONES AND PROVIDE DIRECTION REGARDING CANNABIS LICENSING REGULATIONS ORDINANCE

RECOMMENDATION(S)

1. Receive report on Planning Commission recommendation regarding number of retail cannabis licenses and land use recommendations;
2. Open and close the public hearing;
3. Proceed with allowing commercial cannabis in City limits by:
 - a. Waiving the first and second reading of the zoning ordinance amendment;
 - b. Introducing the zoning ordinance amendment;
 - c. Providing direction regarding cannabis licensing regulations ordinance;

OR

4. Continue maintaining Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2019 Strategic Priorities

Cannabis Policy

POLICY CONSIDERATIONS:

1. What type of cannabis businesses, if any, should be allowed in Morgan Hill and what buffer zones are appropriate?
2. How many of each use should be allowed?
3. What requirements should be included in the licensing ordinance?

REPORT NARRATIVE:

In November 2016, California voters approved Proposition 64 – the Adult Use of Marijuana Act (AUMA) - allowing for the recreational possession, sale and use of marijuana. Under the AUMA, local jurisdictions may choose to allow or disallow any commercial uses associated with the marijuana industry. Local jurisdictions must now allow for personal indoor cultivation of up to six marijuana plants per residence. Morgan Hill voters approved Proposition 64 by 58%.

In July 2018, Council approved a ballot measure regarding the taxation of cannabis business in Morgan Hill to be placed on the November 2018 elections, Measure I, which was approved by the Morgan Hill voters.

On February 27, 2019, staff presented a workshop on cannabis where Council expressed interest in exploring the uses of retail sales, manufacturing, distribution and testing labs. Council also expressed that if they were to consider commercial cannabis within Morgan Hill City limits, Council would like for staff to obtain a Planning Commission (PC) recommendation regarding the number of allowable retail licenses and the required buffer zones around sensitive areas such as schools, day care centers and youth centers.

Planning Division staff presented a workshop to the PC on July 23, 2019 and returned with a draft zoning ordinance on August 27, 2019, for the PC to consider. At the August 27th meeting, the PC voted to conditionally permit the following uses: manufacturing, distribution, testing and four (4) retail licenses within a recommended land use ordinance to implement the changes. The land use ordinance regulations recommended by the PC are included for consideration (Attachment 1).

Should the City Council choose to proceed with allowing cannabis within the City limits, the PC recommends that all cannabis uses require a conditional use permit, identifies zones of certain cannabis uses and utilizes buffer zones for sensitive areas to align with the State requirements of 600 feet from schools, youth centers and daycare facilities.

Staff, in consultation with HdL, has also prepared a draft licensing regulation ordinance that allows for Retail Sales, Delivery, Manufacturing, Testing and Distribution (Attachment 2).

During the initial conversation about cannabis, staff polled other Santa Clara County cities and found that only the City of San Jose allows retail cannabis and Mountain View, Santa Clara and Milpitas were considering its use. Since that time, the City Councils of Mountain View and Milpitas have decided to no longer pursue retail cannabis sales and the City of Santa Clara is considering retail sales. The table below reflects other cities' positions on January 17, 2018 and the current positions of those same cities as of September 20, 2019.

Jurisdiction	Jan 2018 Position	Current Position	Notes
Campbell	Voter enacted moratorium	Not allowed	
County	Not allowed	Not allowed	
Gilroy	Not allowed	Not allowed	
Los Gatos	Not allowed	Not allowed	
Milpitas	Not Allowed	Not allowed	
Mt. View	Moratorium but planned regulations by October 2018	Changed from allowing retail sales to ban	Retail sales were initially allowed; however, the Council voted to change course and not allow retail sales.
Palo Alto	Not allowed	Not allowed	
San Jose	Regulations for all uses	Regulations for all uses	

Santa Clara	Ban in place and studying the issue.	Studying and returning to Council	Returning to Council for direction on retail sales in December 2019.
Sunnyvale	Not allowed	Not allowed	

Next Steps

If the Council decides to proceed with allowing commercial cannabis in the City limits by introducing the zoning ordinance and providing direction regarding cannabis licensing, the staff would then return with a licensing ordinance addressing the Council's input, as well as, a resolution to establish the tax rates based on the voter approved cannabis business tax ordinance. In addition, an ordinance repealing the prohibition of commercial cannabis (Chapter 9.16 of Morgan Hill Municipal Code) would also be brought back.

Alternatively, the Council could continue maintaining Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis for the exception of out-of-town deliveries which is pre-empted by state law.

Should the Council prohibit all activities but delivery of commercial cannabis from out of town operators, staff will return with a regulatory ordinance to address regulating delivery services in the City.

Other Relevant Information/Material Included:

- Cannabis Informational Document – describes various cannabis license types, their pros and cons, regulatory issues and applicable regulatory tools. (Attachment 3)
- Morgan Hill Unified School District adopted a resolution on March 19, 2019, opposing youth access to marijuana through retail storefronts, cultivation, manufacturing, and testing of commercial cannabis. (Attachment 4)
- Supplements from community member:
 - The impacts of legalization of marijuana in Colorado – report serves to provide data and information so that policy makers and citizens can make informed decisions regarding marijuana legalization. (Attachment 5)
 - Stanford University Article: Reducing the Risks of Distortion in Cannabis Research (Attachment 6)
 - Email correspondence (Attachment 9)
- Previous Cannabis presentation slides for reference. (Attachment 7)
- November 2018 voter approved Cannabis Business Tax Ordinance - Chapter 5.06 (Attachment 8)

COMMUNITY ENGAGEMENT: Inform, Involve and Collaborate

This staff report and previous workshops serve to inform the community about Council's actions to date on the subject of cannabis, as well as Planning Commission's recommendations and the community's input.

ALTERNATIVE ACTIONS:

See “Next Steps” above.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council has engaged on this topic on multiple occasions since the passage of Proposition 64 to include:

- Workshops
February 1, 2017, September 27, 2017, and February 27, 2019
- Staff Reports
February 15, 2017, July 19, 2017, February 7, 2018, and July 18, 2018

The Morgan Hill Municipal Code (MHMC) was updated on July 26, 2017 to ensure alignment with the requirements of the Adult Use of Marijuana Act (AUMA).

The Planning Commission held a workshop on July 23, 2019, and provided a land use and licensing recommendation at its August 27, 2019 meeting.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts in receiving this report and providing direction for any next steps.

If the Council wants to move forward with commercial business, below is a discussion of latest estimated revenues and expenditures.

Revenue:

Retail Sites:

The forecasted tax revenue at the time of the ballot measure was an estimated \$340,000 to \$750,000 annually based on two of each commercial cannabis use types. It is anticipated that revenue from those uses will be realized within 9-12 months after approval of an ordinance. It is important to note that the actual revenue received by other cities and the State has not reached the initial projections.

Manufacturing and Testing:

Anticipated tax revenue from a manufacturing site and a testing site is \$400,000 (assuming 2 sites of each), which will likely take 2-3 years to be realized.

Expenditure:

As stated in the tax measure, the tax revenue would fund general municipal expenses such as police, fire, roads, recreation, and drug abuse prevention. These expenditures would offset the tax revenue generated by commercial cannabis.

The implementation of cannabis related activities would require the establishment of a regulatory program, including additional staffing, based on the scope of the program. Any costs related to program compliance will be borne by the businesses through a cost-recovery fee schedule.

CEQA (California Environmental Quality Act):

Neither the adoption of a zoning ordinance, the adoption of a regulatory ordinance, or providing direction that could lead to the adoption of such ordinances, will constitute a CEQA project in and of themselves. These are purely organizational or administrative activities of local governing bodies that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Cannabis Zoning Ordinance
2. Cannabis Licensing Ordinance
3. Cannabis Background Document
4. 2019 MHUSD Opposing Cannabis Reso
5. Legalization of Marijuana in Colorado: The Impact (web link)
6. Stanford University Article
7. Previous Cannabis Presentation
8. Cannabis Business Tax Ordinance
9. Correspondence from Ronald Kirkish

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 18.92.090 (MARIJUANA) IN ITS ENTIRETY AND REPLACING IT WITH SECTION 18.92.090 (CANNABIS) WITHIN CHAPTER 18.92 (SUPPLEMENTAL STANDARDS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL PROHIBITING CULTIVATION AND MICROBUSINESS, AND REGULATING THE LOCATION OF CANNABIS MANUFACTURING, TESTING, DISTRIBUTION, AND RETAIL SALES, OF ADULT-USE AND MEDICAL CANNABIS WITHIN THE CITY

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

Section 1. Section 18.92.090 (Marijuana) of Chapter 18.92 (Supplemental Standards) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in strikeout):

18.92.090 - ~~Marijuana.~~ Cannabis.

~~Marijuana cultivation, marijuana delivery, and marijuana distribution facilities, as defined in Chapter 9.16 (Marijuana), are prohibited uses in all zoning districts in the city of Morgan Hill.~~

A. Purpose. The purpose of this section is to regulate the manufacturing, testing, distribution, cultivation, microbusiness and retail sale of adult-use and medical cannabis that is grown in accordance with State law in order to promote the health, safety and general welfare of the residents and businesses within the City. The City is authorized to regulate this activity pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA).

B. Definitions. For the purposes of this section, certain terms are defined as follows:

1. “Bureau of Cannabis Control” means the lead state agency in charge of regulating commercial cannabis licenses for medical and adult-use cannabis in California. The Bureau is responsible for licensing retailers, distributors, testing laboratories, microbusinesses, and temporary cannabis events.

2. “Cannabis” means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this division, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the Health and Safety Code.
3. “Cannabis Business” means a person, partnership, corporation, company, association, collective, or cooperative which engages in commercial cannabis use(s) of manufacturing, testing, distribution or retail.
4. “Cannabis Retail (Non-Storefront)” means a cannabis business that sells cannabis products for either medical or recreational use exclusively through delivery from a licensed physical location that is not open to the public and is operated in accordance with state and local laws and regulations.
5. “Cannabis Retail (Storefront)” means a cannabis business that sells, on premises or by delivery, cannabis products for either medical or recreational use from a licensed physical location and is operated in accordance with state and local laws and regulations.
6. “Commercial Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, trimming, or otherwise processing of marijuana plants or any part thereof, excluding only personal cultivation as allowed pursuant to the Compassionate use Act of 1996 and MAUCRSA.
7. “Commercial Daycare Center” means a child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child-care centers, and includes child-care centers licensed pursuant to California Health and Safety Code Section 1596.951

8. “CUP” means a Conditional Use Permit issued by the City in accordance with Morgan Hill Municipal Code Section 18.108.030.
9. “Dispensary” and “Dispense” shall be defined in accordance with the MAUCRSA and other applicable State laws. Dispensing shall include the acts of advertising, offering for sale, selling, providing, giving away, and delivering any adult-use and/or medical cannabis products to any individual, customer, qualified patient, primary care provider, or end user.
10. “Distribution” shall be defined in accordance with the MAUCRSA, Business and Professions Code section 26001, and other applicable State laws. Distribution shall include the commercial acts of shipping, storing, and warehousing medical cannabis.
11. “Fully enclosed and secure structure” means a space within a building, which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and is inaccessible to minors.
12. “Manufacturing” or “manufacturing operation” means all aspects of the extraction process, infusion process, and packaging and labeling processes, including processing, preparing, holding, and storing of cannabis products. Manufacturing also includes any processing, preparing, holding, or storing of components and ingredients.
13. “MAUCRSA” means the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). (Bus. & Prof. Code, section 26000 et seq.)
14. “Microbusiness” means a business that contains cannabis cultivation (on an area less than 10,000 square feet), manufacturing, distribution, and retail sale, or any combination of the four activities.
15. “Physical Location” means a physical place of business, facility, office, or warehouse owned or operated by a Distribution Permittee for the distribution or storage of cannabis.
16. “Testing Facility” and “Testing Laboratory” means a laboratory, facility, or entity in the state that offers or performs tests of cannabis or cannabis products and that is both of the

following:

- (a) Accredited by an accrediting body that is independent from all other person involved in commercial cannabis activity in the state.
- (b) Licensed by the Bureau of Cannabis Control

17. “Youth Center” means— any public or private facility that is primarily used to host recreational or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades, or similar amusement park facilities.

C. Commercial Cannabis Cultivation Prohibited. All commercial cannabis cultivation within the City is prohibited.

D. Cannabis Microbusiness Prohibited. All cannabis microbusinesses within the City are prohibited.

E. Cannabis Business. A cannabis business may be established under this section only under the following conditions:

1. A conditional use permit (CUP) is required for all cannabis land uses, including cannabis businesses and cannabis retail. The application shall be considered by the Planning Commission.
2. Cannabis businesses must be located in the zoning districts as identified below:
 - (a) Storefront and Non-Storefront Retail uses must be located in the following districts: CN (Neighborhood Commercial), CG (General Commercial), CH (Highway Commercial), CS (Service Commercial), Mixed-Use Flex (MUF) and must meet all of the requirements for development in these zones.
 - (b) Manufacturing, Distribution, and Testing Facilities or Laboratories must be located in the following districts: CI (Commercial Industrial), IO (Office Industrial), IC (Campus Industrial), IL (Light Industrial), and IG (General Industrial) and must meet all of the requirements for development in these zones.

3. A retail cannabis business shall be located no closer than 600 feet from the following:

- (a) A school providing instruction in kindergarten or any grades 1 through 12, (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12), unless the State licensing authority or the City specifies a different radius in the findings for a Conditional Use Permit;
- (b) A commercial daycare center licensed by the State, County or City or that is in existence at the time the license is issued, unless the State licensing authority or the City specifies a different radius in the findings for a Conditional Use Permit;
- (c) A youth center that is in existence at the time the license is issued, unless the State licensing authority or the City specifies a different radius in the findings for a Conditional Use Permit.

F. Findings. In addition to the standard findings for approval of a conditional use permit (Section 18.108.030.E), the Planning Commission shall make the following additional findings in support of approval of a use permit for a cannabis business.

- 1. That the location and site characteristics of the proposed cannabis business are consistent with all applicable state laws, Chapter 5.48 of the Morgan Hill Municipal Code and all other city standards or guidelines.
- 2. That all provisions have been made to ensure that the operation of the cannabis business will not create excessive demands for police service or other public services, and that the cannabis business will benefit the city.

G. Cannabis Business Standards. All cannabis businesses within the City shall be in conformance with the following general standards:

- 1. Cannabis businesses are allowed only within fully enclosed and secure structures that are inaccessible to minors.
- 2. Cannabis businesses shall not exceed the square footage authorized pursuant to the CUP.
- 3. From any public right-of-way, there shall be no visible exterior evidence of any cannabis business unless specifically approved by the Planning Commission.

4. Cannabis businesses shall not adversely affect the health or safety of the nearby residents by creating objectionable odor, dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products, or wastes.
5. Commercial cannabis businesses shall operate only during the hours specified in the commercial cannabis business permit issued by the City in accordance with Chapter 5.48. Restricted hours of operation may be established as a condition of approval of the applicable CUP.
6. All cannabis shall be kept in a secured manner during all business and nonbusiness hours.
7. A Cannabis business shall operate within a legal structure that is compliant with all applicable State and local laws.
8. Signage for a cannabis manufacturing facility shall be limited to name of business only, shall be in compliance with the City's sign code and Chapter 5.48 of the Municipal Code, and shall contain no advertising of any companies, brands, products, goods, or services.
9. Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises. A Cannabis business facility shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.
10. Physician services shall not be provided on the premises.
11. The building in which any Cannabis business facility is located, as well as the operations as conducted therein, shall fully comply with all applicable rules, regulations, and laws including, but not limited to, zoning and building codes, the City's business license ordinances, the Revenue and Taxation Code, the Americans with Disabilities Act, and the MAUCRSA.
12. A Cannabis business facility shall be operated in accordance with the conditions of approval associated with the applicable CUP for the parcel of real property upon which the Cannabis business activities occur.

H. Cannabis Business Applications. All applicants wishing to obtain a Commercial Cannabis Business Permit from the City shall file an application for both a Commercial Cannabis

Business Permit in accordance with Chapter 5.48 and a Conditional Use Permit in accordance with Chapter 18.108.030 with the City upon forms provided by the City and shall pay the appropriate application fees as established by the City.

Section 2. 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 3. 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.

DATE: _____

IRMA TORREZ, City Clerk

Chapter 5.48 COMMERCIAL CANNABIS ACTIVITY.

Section 5.48.010. Purpose and Intent.

It is the purpose and intent of this Chapter to implement the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA") to accommodate the needs of medically-ill persons in need of and provide access to cannabis for medicinal purposes as recommended by their health care provider(s), and to provide access to adult-use for persons over the age of 21 as authorized by the Control, Tax & Regulate the Adult Use Cannabis Act ("AUMA" or "Proposition 64" passed by California voters in 2016), while imposing sensible regulations on the use of land to protect the City's residents, neighborhoods, and businesses from disproportionately negative impacts. As such, it is the purpose and intent of this Chapter to regulate the cultivation, processing, manufacturing testing, sale, delivery, distribution and transportation of cannabis and cannabis products in a responsible manner to protect the health, safety, and welfare of the residents of the City of Morgan Hill and to enforce rules and regulations consistent with state law. It is the further purpose of intent of this Chapter to require all commercial cannabis operators to obtain and renew annually a permit to operate within the City of Morgan Hill. Nothing in this Chapter is intended to authorize the possession, use, or provision of cannabis for purposes that violate state or federal law. The provisions of this Chapter are in addition to any other permits, licenses and approvals which may be required to conduct business in the City, and are in addition to any permits, licenses and approval required under state, City, or other law.

Section 5.48.020. Legal Authority.

Pursuant to Sections 5 and 7 of Article XI of the California Constitution, the provisions of the Medicinal and Adult Use Cannabis Regulation and Safety Act (hereinafter "MAUCRSA"), any subsequent state legislation and/or regulations regarding same, the City of Morgan Hill is authorized to adopt ordinances that establish standards, requirements and regulations for the licensing and permitting of commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, security, and worker protections established by the State of California, or any of its departments or divisions, shall be the minimum standards applicable in the City of Morgan Hill to all commercial cannabis activity.

Section 5.48.030. Cannabis Cultivation and Commercial Cannabis Activities Prohibited Unless Specifically Authorized by this Chapter.

Except as specifically authorized in this Chapter, the commercial cultivation, manufacture, processing, storing, laboratory testing, labeling, sale, delivery, distribution or transportation (other than as provided under Bus. & Prof. Code Section 26090(e)), of cannabis or cannabis product is expressly prohibited in the City of Morgan Hill.

Section 5.48.040. Compliance with State and Local Laws.

It is the responsibility of the owners and operators of the commercial cannabis business to ensure that it is, always, operating in a manner compliant with all applicable state and local laws, and any regulations promulgated thereunder. Nothing in this Chapter shall be construed as authorizing any actions that violate federal, state law or local law with respect to the operation of a commercial cannabis business. It shall be the responsibility of the owners and the operators of the commercial cannabis business to ensure that the commercial cannabis business is, at all times, operating in a manner compliant with all applicable federal, state and local laws, including the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA"), and any subsequently enacted state law or regulatory, licensing, or certification requirements, and any specific, additional operating procedures or requirements which may be imposed as conditions of approval of the commercial cannabis business permit. Nothing in this Chapter shall be construed as authorizing any actions that violate federal or state law regarding the operation of a commercial cannabis business.

Section 5.48.050. Definitions.

All definitions pertaining to cannabis regulation that appear in Business and Professions Code Section 26001, as codified by Senate Bill 94, the Medical and Adult Use Cannabis Regulation and Safety Act of 2017 (MAUCRSA), are hereby incorporated by reference. Definitions appearing in this ordinance are either those that are not covered by state law, pre-date Proposition 64 and the MAUCRSA, or are outside the scope of Section 26001.

- (a) "Canopy" shall have the same meaning as that appearing in Title 3, Section 8000(f) of the California Code of Regulations.
- (b) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.
- (c) "Distributor" shall have the same meaning as that appearing in Section 26070 of the Business and Professions Code.
- (d) "Commercial cannabis business" means any business or operation which engages in medicinal or adult-use commercial cannabis activity.
- (e) "Commercial cannabis business permit" means a regulatory permit issued by the City of Morgan Hill pursuant to this Chapter, to a commercial cannabis business and is required before any commercial cannabis activity may be conducted in the City. The initial permit and annual renewal of a commercial cannabis business is made expressly contingent upon the business' ongoing compliance with all of the requirements of this Chapter and any regulations adopted by the City governing the commercial cannabis activity at issue.
- (f) "Dispensing" means any activity involving the retail sale of cannabis or cannabis products from a retailer.
- (g) "Limited-access area" means an area in which cannabis is stored or held and is only accessible to some licensee and authorized personnel.

(h) “Manufactured cannabis” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, extraction or other manufactured product intended for internal consumption through inhalation or oral ingestion or for topical application.

(i) “Manufacturing site” means a location that produces, prepares, propagates, or compounds cannabis or cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a person issued a valid commercial cannabis business permit for manufacturing from the City of Morgan Hill and, a valid state license as required for manufacturing of cannabis products.

(j) “Non-volatile solvent” means any solvent used in the extraction process that is not a volatile solvent as defined by state law. For purposes of this chapter, a nonvolatile solvent includes carbon dioxide (CO₂) used for extraction and ethanol used for extraction or post-extraction processing.

(k) “Microbusiness” shall have the same meaning as that contained in Section 26070(a)(3) of the Business and Professions Code.

(l) “Package” means any container or receptacle used for holding cannabis or cannabis products.

(m) “Patient” or “qualified patient” shall have the same definition as California Health and Safety Code Section 11362.7 et seq., as it may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.22.

(n) “Person with an identification card” shall have the meaning given that term by California Health and Safety Code Section 11362.7.

(o) “Processing” means a cultivation site that conducts only trimming, drying, curing, grading, packaging, or labeling of cannabis and nonmanufactured cannabis products.

(p) “Retailer” shall have the same meaning as the definition appearing in Section 26070(a)(1) of the Business and Professions Code.

(q) “State license” means a permit or license issued by the State of California, or one of its departments or divisions, under MAUCRSA and any subsequent State of California legislation regarding the same to engage in commercial cannabis activity. A state license alone will not authorize the holder to operate a cannabis business, as state law also requires a permit or other authorization issued by a local jurisdiction.

(r) “Topical cannabis” means a product intended for external application and/or absorption through the skin. A topical cannabis product is not considered a drug as defined by Section 109925 of the California Health and Safety Code.

(s) “Transport” means the transfer of cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized by MAUCRSA which may be amended or repealed by any subsequent State of California legislation regarding the same.

Transport can only be performed by licensed distributors and does not include deliveries of cannabis or cannabis products.

(t) "Youth center" means any public or private facility that is primarily used to host recreation or social activities for minors, including, but not limited to, private youth membership organizations or clubs, social service teenage club facilities, video arcades where 10 or more video games or game machines or devices are operated, and where minors are legally permitted to conduct business, or similar amusement park facilities. It shall also include a park, playground or recreational area specifically designed to be used by children which has play equipment installed, including public grounds designed for athletic activities such as baseball, softball, soccer, or basketball or any similar facility located on a public or private school grounds, or on City, county or state parks. This definition shall not include any private martial arts, yoga, ballet, music, art studio or similar studio of this nature nor shall it include any private gym, athletic training facility, pizza parlor, dentist office, doctor's office primarily serving children or a location which is primarily utilized as an administrative office or facility for youth programs or organizations.

Section 5.48.060. Commercial Cannabis Business Permit Required to Engage in Commercial Cannabis Business.

- (a) No person may engage in any commercial cannabis business or in any commercial cannabis activity within the City of Morgan Hill including cultivation, manufacture, processing, laboratory testing, transporting, dispensing, distribution, or sale of cannabis or a cannabis product unless the person (1) has a valid commercial cannabis business permit from the City of Morgan Hill; (2) has a valid State of California Seller's Permit; and (3) is currently in compliance with all applicable state and local laws,

including Section 18.92.090 and regulations pertaining to the commercial cannabis business and the commercial cannabis activities, including the duty to obtain any required state licenses.

- (b) No permit shall be issued pursuant to this Chapter for commercial cannabis cultivation, which is prohibited. It is a violation of this Chapter for any person or entity to engage in any indoor, mixed-light or outdoor commercial cannabis cultivation of any kind.

Section 5.48.070. Evidence of Cannabis Employee Background Check Required.

- (a) Any person who is an owner, manager, supervisor or employee or who otherwise works within a commercial cannabis business must be legally authorized to do so under applicable state law.
- (c) Commercial cannabis business owners and operators shall be required to have all owners, operators, managers, supervisors or employees submit to a Live Scan, and provide additional background information as determined by

the Chief of Police prior to working at the permitted location. Failure to comply with this requirement or be approved by the Chief of Police shall disqualify the individual from being authorized to work in the City.

- (d) The criminal background checks completed by commercial cannabis business owners, operators, managers, supervisors or employers must at a minimum identify the following:
 - 1) Whether the individual applying for employment has ever been convicted of a violent felony as defined by California Penal Code 667.5, or equivalent offenses in other states;
 - 2) Whether the individual applying for employment has ever been convicted of a crime involving dishonesty, fraud or deceit, including but not limited to fraud, forgery, theft, or embezzlement as those offenses are defined in California Penal Code Sections 186.11, 470, 484, and 504a, respectively; or equivalent offenses in other states; or
 - 3) Whether the individual applying for employment has ever been convicted of the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, not including cannabis-related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996.
- (e) Evidence of a conviction of any the offenses enumerated in Section 5.48.070(d) shall be grounds for denial of employment. Employers who wish to hire an individual notwithstanding this rule shall apply to the Chief of Police, who at his/her sole discretion may issue a written waiver.
- (f) Violation of this section shall be grounds for immediate suspension of the business' operating permit, pending a hearing before the Chief of Police and the Chief of Police within 30 days for a final determination of the status of the permit.

Section 5.48.080. Personnel Prohibited from Holding a License or from Employment with a Cannabis Business Permittee.

- (a) Any person, including but not limited to any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, in which any of the following actions or notices have been issued for non-compliance, shall be prohibited from holding a cannabis commercial license or from employment with a cannabis business permittee in the City of Morgan Hill:
 - (1) The applicant has been denied a license or has had a license suspended or revoked by any City, county, City and county or any other state cannabis licensing authority;
 - (2) The applicant was notified that it was conducting commercial

cannabis activity in violation of Title 18 or other City of Morgan Hill ordinances, codes and requirements, and failed to cure the violation in a timely manner;

- (3) Evidence that the applicant is delinquent in payment of federal, state or local taxes and/or fees, and took no steps to cure the delinquency when notified by the appropriate agencies;
- (4) As of July 1, 2019, applicant was conducting commercial cannabis activity in the City of Morgan Hill in violation of local and state law.
- (5) No person shall be issued a commercial cannabis permit to operate who enters into either a verbal or written agreement to lease, sublease, or any other agreement for any terms of use of the premises granted by a property owner, commercial broker or any third party, that is in violation of Section 5.48.060 unless that property is leased at fair market value. Any such lease, sublease or agreement shall not contain terms or conditions requiring the cannabis permit licensee to pay the property owner, commercial broker, or any third party a percentage of gross receipts, royalties, equity, or other unreasonable compensation as determined by the City. In addition, all leases, subleases, or other agreements must be based a monthly rate.

Section 5.48.090. Maximum Number and Type of Authorized Commercial Cannabis Businesses Permitted.

The number of each type of commercial cannabis business that shall be permitted to operate in the City shall be established by resolution by the City Council.

- (a) Section 5.48.090 is only intended to create a maximum number of commercial cannabis businesses that may be issued permits to operate in the City under each category. Nothing in this Chapter creates a mandate that the City Council must issue any or all of the commercial cannabis business permits if it is determined that the applicants do not meet the standards which are established in the application requirements or further amendments to the application process or that the City Council upon further deliberation determines that the issuance of any or all commercial cannabis business permits will impact the public safety, welfare or other policy concerns which may be detrimental in the issuance of these permits.
- (b) Each year following the City Council's initial award of permits, if any, or at any time in the City Council's discretion, the City Council may reassess the number of commercial cannabis business permits which are authorized for issuance. The City Council at its discretion, may determine that the number of commercial cannabis permits should stay the same, or be expanded.

Section 5.48.100. Initial Application Procedure.

- (a) The Chief of Police, upon final approval by the City Council, shall adopt the procedures to govern the application process, and the manner in which the decision will ultimately be made regarding the issuance of any commercial cannabis business permit(s), which shall include or require the Chief of Police to provide detailed objective review criteria to be evaluated on a point system or equivalent quantitative evaluation scale tied to each set of review criteria ("Review Criteria"). The Chief of Police or his/her designee(s) shall be authorized to prepare the necessary forms, adopt any necessary rules to the application, regulations and processes, solicit applications, conduct initial evaluations of the applicants.
- (b) At the time of filing, each applicant shall pay an application fee established by resolution of the City Council, to cover all costs incurred by the City in the application process.
- (c) After the initial review, ranking, and scoring under the Review Criteria, the Chief of Police or his/her designee(s) will make a final determination in accordance with this section.
- (d) The application procedure process shall include a component on community benefits. Any community benefits that a commercial cannabis business agrees to provide shall be incorporated into the terms and conditions under which the commercial cannabis business will operate with the City's approval, if and when an operating permit is issued. Such terms and conditions shall be in addition to the requirements of this Chapter. Community benefits shall include, but not be limited to: in-kind donations; sponsorship of community events; support, financial or otherwise, for special community events such as fairs, afterschool programs, youth centers, Boys and Girls Clubs, local schools whether public or private; school athletic programs; school clubs; community centers, senior centers and senior living facilities, and parks and recreation.
- (e) **The City's Reservation of Rights.**
The City reserves the right to reject any or all applications. Prior to permit issuance, the City may also modify, postpone, or cancel any request for applications, or the entire program under this Chapter, at any time without liability, obligation, or commitment to any party, firm, or organization, to the extent permitted under California state law. Persons submitting applications assume the risk that all or any part of the program, or any particular category of permit potentially authorized under this Chapter, may be cancelled at any time prior to permit issuance. The City further reserves the right to request and obtain additional information from any candidate submitting an application. In addition to any other justification provided a failure to comply

with other requirements in this Chapter, an application RISKS BEING REJECTED for any of the following reasons:

- (1) The application was received after the designated time and date of the deadline.
- (2) The application did not contain the required elements, exhibits, or was not organized in the required format.
- (3) The application was considered not fully responsive to the request for a permit application, i.e. was substantially incomplete.

Section 5.48.110. Permittee Selection Process.

- (a) The Chief of Police, upon final approval by the City Council, shall adopt a procedure guideline and Review Criteria by which the top applicants in each category of each commercial cannabis business shall be evaluated in a final determination by the Chief of Police.
- (b) Once the proposed locations of the applicants' businesses have been determined upon an initial examination by the Development Services staff, and zoning verification letters have been issued to the applicants, a public hearing shall be set in which concerns of residents and affected businesses alike may be brought before the City. At the discretion of the City Council, the hearing may be before the Council itself, or conducted by the Chief of Police and/or his/her designee.
- (c) At least ten (10) days prior to the public hearing, notice of the public hearing shall be sent to all property owners located within ~~four-six~~ **four-hundred** ~~(400-600)~~ **(400-600)** feet of the proposed business locations of each of the finalists to be considered by the Chief of Police.
- (d) Applications shall be vetted by the Chief of Police and a team of his/her choice, or his/her designee, consistent with Section **5.48.010(c)**. At the conclusion of the vetting process, staff shall prepare a report making the case for recommendations for approval by the Chief of Police. The recommendations shall include a summary of the concerns voiced by the community at the public hearing.
- (e) Official issuance of the commercial cannabis business permit(s), however, is conditioned upon the prevailing candidate(s) obtaining all required land use approvals. Upon reporting to the City Council on the businesses that were awarded a permit, the Chief of Police shall transmit the list of permittees to the Development Services Department. Following the Chief of Police's selection, the prevailing candidate(s) shall apply to the City's

Development Services Department to obtain any required land use approvals or entitlements for the permittee's location, if any. Land use approvals shall include compliance with all applicable provisions of CEQA. The Chief of Police or his/her designee(s) shall formally issue the commercial cannabis business permit(s) once the Development Services Director or his/her designee(s) affirms that all of the required land use approvals have been obtained.

- (d) The Chief of Police shall either deny or approve the final candidates and shall select the top candidates in each category of the commercial cannabis businesses. The Chief of Police's decision as to the selection of the prevailing candidates shall be final, pending an appeal, in the event an appeal is filed.
- (e) Issuance of a commercial cannabis business permit does not create a land use entitlement. The commercial cannabis business permit shall only be for a term of twelve (12) months and shall expire at the end of the twelve (12) month period unless it is renewed as provided herein. Furthermore, no permittee may begin operations, notwithstanding the issuance of a permit, unless all of the state and local laws and regulations, including but not limited to the requirements of this Chapter and of the permit, have been complied with, until a state license is available and obtained by the permitted operator as set forth in Section 5.48.060.
- (g) Notwithstanding anything in this Chapter to the contrary, the Chief of Police reserves the right to reject any or all applications if it determines it would be in the best interest of the City, taking into account any health, safety and welfare impacts on the community. Applicants shall have no right to a commercial cannabis business permit until a permit is actually issued, and then only for the duration of the permits term. Each applicant assumes the risk that, at any time prior to the issuance of a permit, the City Council may terminate or delay the program created under this Chapter.
- (h) If an application is denied, a new application may not be filed for one (1) year from the date of the denial.
- (i) Each person granted a commercial cannabis business permit shall be required to pay the permit fee established by resolution of the City Council, to cover the costs of administering the commercial cannabis business permit program created in this Chapter.

Section 5.48.120. Expiration of Commercial Cannabis Business Permits.

Each commercial cannabis business permit issued pursuant to this Chapter shall expire twelve (12) months after the date of its issuance. Commercial cannabis permits may be renewed as provided in Section 5.48.130.

Section 5.48.130. Renewal of Cannabis Business Permits.

- (a) An application for renewal of a commercial cannabis business permit shall be filed at least sixty (60) calendar days prior to the expiration date of the current permit.
- (b) The renewal application shall contain all the information required for new applications or as determined by the Chief of Police which may be modified from time to time in accordance to 5.48.410.
- (c) The applicant shall pay a fee in an amount to be set by the City Council to cover the costs of processing the renewal permit application, together with any costs incurred by the City to administer the program created under this Chapter.
- (d) An application for renewal of a commercial cannabis business permit shall be rejected if any of the following exists:
 - (1) The application is filed less than sixty (60) days before its expiration.
 - (2) The commercial cannabis business permit is suspended or revoked at the time of the application.
 - (3) The commercial cannabis business has not been in regular and continuous operation in the four (4) months prior to the renewal application.
 - (4) The commercial cannabis business has failed to conform to the requirements of this Chapter, or of any regulations adopted pursuant to this Chapter.
 - (5) The permittee fails or is unable to renew its State of California license.
 - (6) If the City or state has determined, based on substantial evidence, that the permittee or applicant is in violation of the requirements of this Chapter, of the City Ordinance, or of the state rules and regulations, and the City or state has determined that the violation is grounds for termination or revocation of the commercial cannabis business permit.
- (e) The Chief of Police or his/her designee(s) is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Chief of Police or his/her designee(s) is authorized to impose additional conditions to a renewal permit, if it is determined to be necessary

to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare. Appeals from the decision of the Chief of Police or his/her designee(s) shall be handled pursuant to Sections 5.48.160 through 5.48.180.

- (f) If a renewal application is rejected, a person may file a new application pursuant to this Chapter no sooner than one (1) year from the date of the rejection.

Section 5.48.140. Revocation of Permits.

Commercial cannabis business permits may be revoked for any violation of any law and/or any rule, regulation and/or standard adopted pursuant to Sections 5.48.130 or 5.48.120, or pursuant to any policy, procedure or regulation in this Chapter.

Section 5.48.150. Effect of State License Suspension, Revocation, or Termination.

Suspension of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a commercial cannabis business to operate within the City, until the State of California, or its respective department or division, reinstates or reissues the State license. Should the State of California, or any of its departments or divisions, revoke or terminate the license of a commercial cannabis business, such revocation or termination shall also revoke or terminate the ability of a commercial cannabis business to operate within the City of Morgan Hill. At the Police Chief's discretion, the cannabis business owner may re-apply for a local permit at such time as it can demonstrate that the grounds for revocation of the license by the state no longer exist, or that the underlying deficiency has otherwise been cured.

5.48.160. Appeals.

Unless specifically provided elsewhere to the contrary, whenever an appeal is provided for in this Chapter from a decision of the Chief of Police or his/her designee(s), the appeal shall be conducted as prescribed in this Chapter.

Section 5.48.170. Written Request for Appeal.

- (a) Within ten (10) calendar days after the date of a decision of the Chief of Police or his/her designee(s) to revoke, suspend or deny a permit, or to add conditions to a permit, an aggrieved party may appeal such action by filing a written appeal with the City Clerk setting forth the reasons why the decision was not proper.
- (b) At the time of filing the appellant shall pay the designated appeal fee, established by resolution of the City Council from time to time.

Section 5.48.180. Appeal Hearing Process.

- (a) Upon receipt of the written appeal, the City Clerk shall set the matter for a hearing before the City Manager. The City Manager shall hear the matter de novo and shall conduct the hearing pursuant to the procedures set forth by the City.
- (b) The appeal shall be held within a reasonable time after date of filing, but in no event later than fifteen (15) working days from that date. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.
- (c) At the hearing, the appellant may present any information they deem relevant to the decision appealed. The formal rules of evidence and procedure applicable in a court of law shall not apply to the hearing.
- (d) If the decision of the City Manager is to grant the appeal, then the applicant may move forward to the Planning Commission, and the land use approval process shall begin.
- (e) If the decision of the City Manager is to deny the appeal, then the applicant may file a second appeal with the City Clerk within ten (10) days of being notified of the denial. The second appeal shall be heard by the City Council.
- (f) The second appeal shall be held within a reasonable time after the date of filing, but in no event later than fifteen (15) working days from that date. The City shall notify the appellant of the time and location at least ten (10) days prior to the date of the hearing.
- (g) If the decision of the City Council is to grant the appeal, then the applicant may move forward to the Planning Commission, and the land use approval process shall begin.
- (h) If the decision of the City Council is to deny the appeal, then that decision shall be final.

Section 5.48.190. Change in location; updated registration form.

- (a) Any time the dispensing, -manufacturing, transportation, testing and distribution location specified in the regulatory permit is changed, the applicant shall re-register with the Chief of Police or his/her designee(s). The process and the fees for re-registration shall be the same as the process and fees set forth for registration in Sections 5.48.200 (c) and 5.48.270.
- (b) Within fifteen (15) calendar days of any other change in the information provided in the registration form or any change in status of compliance

with the provisions of this Chapter, including any change in the commercial cannabis business ownership or management members, the applicant shall file an updated registration form with the Chief of Police or his/her designee(s) for review along with a registration amendment fee, as set forth in Sections 5.48.200 (c) and 5.48.270.

Section 5.48.200. Transfer of Cannabis Business Permit.

- (a) The owner of a cannabis business permit shall not transfer ownership or control of the permit to another person or entity unless and until the transferee obtains an amendment to the permit from the Chief of Police or his/her designee stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Chief of Police or his/her designee in accordance with all provisions of this Chapter (as though the transferee were applying for an original cannabis business permit). The proposed transferee's application shall be accompanied by a transfer fee in an amount set by resolution of the City Council (or if not set, shall be the same amount as the application fee).
- (b) The Chief of Police or his/her designee shall conduct a hearing to determine whether the transferee passed the background check required for permittees and meets all other requirements of this Chapter.
- (c) Commercial cannabis business permits issued through the grant of a transfer by the Chief of Police or his/her designee shall be valid for a period of one year beginning on the day the Chief of Police or his/her designee approves the transfer of the permit. Before the transferee's permit expires, the transferee shall apply for a renewal permit in the manner required by this Chapter.
- (d) Changes in ownership of a permittee's business structure or a substantial change in the ownership of a permittee business entity (changes that result in a change of more than 51% of the original ownership), must be approved by the Chief of Police or his/her designee through the transfer process contained in this subsection (a). Failure to comply with this provision is grounds for permit revocation.
- (e) A permittee may change the form of business entity without applying to the Chief of Police or his/her designee for a transfer of permit, provided that either:
 - 1. The membership of the new business entity is substantially similar to original permit holder business entity (at least 51% of the membership is identical), or
 - 2. If the original permittee is an unincorporated association, mutual or public benefit corporation, agricultural or consumer cooperative

corporation and subsequently transitions to or forms a new business entity as allowed under the MAUCRSA and in compliance with Section 5.48.020, provided that the Board of Directors (or in the case of an unincorporated association, the individual(s) listed on the City permit application) of the original permittee entity are the same as the new business entity.

Although a transfer is not required in these two circumstances, the permit holder is required to notify the Chief of Police in writing of the change within ten (10) days of the change. Failure to comply with this provision is grounds for permit revocation.

- (e) No commercial cannabis business permit may be transferred when the Chief of Police or his/her designee has notified the permittee that the permit has been or may be suspended or revoked.
- (f) Any attempt to transfer a commercial cannabis business permit either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the permit.

Section 5.48.210. City Business License.

Prior to commencing operations, a commercial cannabis business shall obtain a City of Morgan Hill business license.

Section 5.48.220. Building Permits and Inspection.

Prior to commencing operations, a commercial cannabis business shall be subject to a mandatory building inspection and must obtain all required permits and approvals which would otherwise be required for any business of the same size and intensity operating in that zone. This includes but is not limited to obtaining any required building permit(s), the Morgan Hill Fire Department approvals, Health Department approvals and other zoning and land use permit(s) and approvals.

Section 5.48.230. Certification from the Development Services Director.

Prior to commencing operations, a commercial cannabis business must obtain a certification from the Development Services Director or his/her designee(s) certifying that the business ~~is located on a site that meets all of the requirements of Sections 5.48.250 and 5.48.310 of the City Ordinance~~ has received a Conditional Use Permit for their subject site in accordance with Section 18.92.090.

Section 5.48.240. Right to Occupy and to Use Property.

As a condition precedent to the City's issuance of a commercial cannabis business permit pursuant to this Chapter, any person intending to open and to operate a commercial cannabis business shall provide sufficient evidence of the legal right to occupy and to use the proposed location. In the event the proposed location will be leased from the property owner, the applicant shall be required to provide a signed and notarized statement from the owner of the property, acknowledging that the property owner has read this Chapter and consents to the operation of the commercial cannabis business on the owner's property.

Section 5.48.250. Location and Design of Cannabis Businesses.

Cannabis businesses permitted to engage in Retail, Non-Storefront Retail, Distribution, Manufacturing, and Testing Labs, for cannabis and cannabis products are subject to the following zoning and locational requirements:

- (a) Retail and Non-Storefront Retail must be zoned in the following: CN (Neighborhood Commercial), CG (General Commercial), CH (Highway Commercial), CS (Service Commercial) and must meet all of the requirements for development in these zones. The cannabis businesses must also meet all of the following distance requirements:
 - (1) It shall be no closer than six hundred (600) feet from any zoned parcel in the City designated by state law as a sensitive use, and pursuant to Section 5.48.250 (a) (3). The distance measured shall be the horizontal distance measured in a straight line from the property line of those parcels in Section 5.48.250 (a) (3) to the closest property line of the lot on which the cannabis business is located.
 - (2) It shall be no closer than two hundred fifty (250) feet of any residentially zoned parcel in the City, including any legal non-conforming residential uses as of the date the cannabis business permit is issued. The distance between the cannabis business and the residential parcel shall be measured from the outer boundaries of the residential parcel to the first structure on the property seeking the commercial cannabis permit.
 - (3) It shall be no closer than six hundred (600) feet from any parcel containing any of the following:
 - A. A school providing instruction in kindergarten or any grades 1 through 12, (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12);
 - B. A commercial daycare center licensed by the State, County or City or that is in existence at the time the license is issued, unless the State licensing authority or the City specifies a different radius.

C. A youth center that is in existence at the time the license is issued, unless the State licensing authority or the City specifies a different radius.

(b) Manufacturing, Distribution, and Testing Labs must be zoned in the following: CI (Commercial Industrial), IO (Office Industrial), IC (Campus Industrial), IL (Light Industrial), and IG (General Industrial) and must meet all of the requirements for development in these zones. The cannabis businesses must also meet all of the following distance requirements:

(1) It shall be no closer than six hundred (600) feet from any zoned parcel in the City designated by state law as a sensitive use, and pursuant to Section 5.48.250 (b) (3). The distance measured shall be the horizontal distance measured in a straight line from the property line of those parcels in Section 5.48.250 (b) (3) to the closest property line of the lot on which the cannabis business is located.

(2) It shall be no closer than two hundred fifty (250) feet of any residentially zoned parcel in the City, including any legal non-conforming residential uses as of the date the cannabis business permit is issued. The distance between the cannabis business and the residential parcel shall be measured from the outer boundaries of the residential parcel to the first structure on the property seeking the commercial cannabis permit.

(3) It shall be no closer than six hundred (600) feet from any parcel containing any of the following:

A. A school providing instruction in kindergarten or any grades 1 through 12, (whether public, private, or charter, including pre-school, transitional kindergarten, and K-12);

B. A commercial daycare center licensed by the State, County or City or that is in existence at the time the license is issued, unless the State licensing authority or the City specifies a different radius.

C. A youth center that is in existence at the time the license is issued, unless the State licensing authority or the City specifies a different radius.

(c) Each proposed cannabis business project shall:

(1) Conform with the City's general plan, any applicable specific plans, master plans, and design requirements.

(2) Comply with all applicable zoning and related development standards.

(3) Be constructed in a manner that minimizes odors to surrounding uses, and promotes quality design and construction, and consistency with the surrounding properties.

(4) Be adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and all items required for the development.

(5) Be served by highways adequate in width and improved as necessary to carry the kind and quantity of traffic such use will generate.

(6) Be provided with adequate electricity, sewerage, disposal, water, fire protection and storm drainage facilities for the intended purpose.

Section 5.48.260. Limitations on City's Liability.

To the fullest extent permitted by law, the City of Morgan Hill shall not assume any liability whatsoever with respect to having issued a commercial cannabis business permit pursuant to this Chapter or otherwise approving the operation of any commercial cannabis business. As a condition to the approval of any commercial cannabis business permit, the applicant shall be required to meet all of the following conditions before they can receive the commercial cannabis business permit:

- (a) Execute an agreement, in a form approved by the City attorney, agreeing to indemnify, defend (at applicant's sole cost and expense), and hold the City of Morgan Hill, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to, the City's issuance of the commercial cannabis business permit, the City's decision to approve the operation of the commercial cannabis business or activity, the process used by the City in making its decision, or the alleged violation of any federal, state or local laws by the commercial cannabis business or any of its officers, employees or agents.
- (b) Maintain insurance at coverage limits, and with conditions thereon determined necessary and appropriate from time to time by the City Manager.
- (c) Reimburse the City of Morgan Hill for all costs and expenses, including but not limited to legal fees and costs and court costs, which the City of Morgan Hill may be required to pay as a result of any legal challenge related to the City's approval of the applicant's commercial cannabis business permit, or related to the City's approval of a commercial cannabis activity. The City of Morgan Hill may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed hereunder.

Section 5.48.270. Records and Recordkeeping.

- (a) Each owner and operator of a commercial cannabis business shall maintain accurate books and records in an electronic format, detailing all of the revenues and expenses of the business, and all of its assets and liabilities. On no less than an annual basis (at or before the time of the renewal of a commercial cannabis business permit issued pursuant to this Chapter), or at any time upon reasonable request of the City, each commercial cannabis business shall file a sworn statement detailing the number of sales by the commercial cannabis business during the previous twelve-month period (or shorter period based upon the timing of the request), provided on a per-month basis. The statement shall also include gross sales for each month, and all applicable taxes and fees paid or due to be paid. On an annual basis, each owner and operator shall submit to the City a financial audit of the business's operations conducted by an independent certified public accountant. Each permittee shall be subject to a regulatory compliance review and financial audit as determined by the Chief of Police or his/her designee(s).
- (b) Each owner and operator of a commercial cannabis business shall maintain a current register of the names and the contact information (including the name, address, and telephone number) of anyone owning or holding an interest in the commercial cannabis business, and separately of all the officers, managers, employees, agents and volunteers currently employed or otherwise engaged by the commercial cannabis business. The register required by this paragraph shall be provided to the Chief of Police or his/her designee(s) upon a reasonable request.
- (c) Prior to state licensing, each commercial cannabis business shall maintain a record of all persons, patients, collectives and primary caregivers served by the commercial cannabis business, for a period of no less than four (4) years. Once a state license is obtained, the commercial cannabis business must maintain such records only to the extent permitted or required by MAUCRSA.
- (d) All commercial cannabis businesses shall maintain an inventory control and reporting system that accurately documents the present location, amounts, and descriptions of all cannabis and cannabis products for all stages of the growing and production or manufacturing, laboratory testing and distribution processes until purchase as set forth MAUCRSA.
- (e) Each commercial cannabis business shall allow the City of Morgan Hill officials to have access to the business's books, records, accounts, together with any other data or documents relevant to its permitted commercial cannabis activities, for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than twenty-four (24) hours after receipt of the City's request, unless otherwise stipulated by the City. The City may require the

materials to be submitted in an electronic format that is compatible with the City's software and hardware.

Section 5.48.280. Security Measures.

- (a) A permitted commercial cannabis business shall implement sufficient security measures to deter and prevent the unauthorized entrance into areas containing cannabis or cannabis products, and to deter and prevent the theft of cannabis or cannabis products at the commercial cannabis business. Except as may otherwise be determined by the Chief of Police or his/her designee(s), these security measures shall include, but shall not be limited to, all of the following:
 - (1) Alarm system (perimeter, fire, and panic buttons).
 - (2) Remote monitoring of alarm systems by licensed security professionals.
 - (3) Perimeter lighting systems (including motion sensors) for after-hours security.
 - (4) Perimeter security and lighting as approved by the Chief of Police and Development Services Director or his/her designee(s).
 - (5) Preventing individuals from remaining on the premises of the commercial cannabis business if they are not engaging in an activity directly related to the permitted operations of the commercial cannabis business.
 - (6) Establishing limited access areas accessible only to authorized commercial cannabis business personnel.
 - (7) Except for live growing plants which are being cultivated at a cultivation operation, all cannabis and cannabis products shall be stored in a secured and locked vault or vault equivalent. All safes and vaults shall be compliant with Underwriter Laboratories burglary-resistant and fire-resistant standards. All cannabis and cannabis products, including live plants that are being cultivated, shall be kept in a manner as to prevent diversion, theft, and loss.
 - (8) Installing 24-hour security surveillance cameras of at least HD-quality to monitor all entrances and exits to and from the premises, all interior spaces within the commercial cannabis business which are open and accessible to the public, all interior spaces where cannabis, cash or currency, is being stored for any period of time on

a regular basis and all interior spaces where diversion of cannabis could reasonably occur. All cameras shall record in color. All exterior cameras shall be in weather-proof enclosures, shall be located so as to minimize the possibility of vandalism, and shall have the capability to automatically switch to black and white in low light conditions. The commercial cannabis business shall be responsible for ensuring that the security surveillance camera's footage is remotely accessible by the Chief of Police or his/her designee(s), and that it is compatible with the City's software and hardware. In addition, remote and real-time, live access to the video footage from the cameras shall be provided to the Chief of Police or his/her designee(s). Video recordings shall be maintained for a minimum of ninety (90) days and shall be made available to the Chief of Police or his/her designee(s) upon request. – Video shall be of sufficient quality for effective prosecution of any crime found to have occurred on the site of the commercial cannabis business and shall be capable of enlargement via projection or other means. Internet Protocol address information shall be provided to the Morgan Hill Police Department by the commercial cannabis business, to facilitate remote monitoring of security cameras by the Department or its designee.

- (9) Sensors shall be installed to detect entry and exit from all secure areas and shall be monitored in real time by a security company licensed by the State of California Bureau of Security and Investigative Services.
- (10) Panic buttons shall be installed in all commercial cannabis businesses with direct notification to the Morgan Hill Police Department dispatch and shall be configured to immediately alert dispatch for the Morgan Hill Police Department.
- (11) Having a professionally installed, maintained, and monitored real-time alarm system by a security company licensed by the State of California Bureau of Security and Investigative Services.
- (12) Any bars installed on the windows or the doors of the commercial cannabis business shall be installed only on the interior of the building.
- (13) Security personnel shall be on-site 24 hours a day or alternative security as authorized by the Chief of Police or his/her designee(s), and must have a verified response security patrol when closed. Security personnel must be licensed by the State of California Bureau of Security and Investigative Services personnel and shall be subject to the prior review and approval of the Chief of Police or his/her designee(s), with such approval not to be unreasonably

withheld. Firearms may be carried by security personnel while they are on duty if authorized by the Chief of Police.

- (14) Each commercial cannabis business shall have the capability to remain secure during a power outage and shall ensure that all access doors are not solely controlled by an electronic access panel to ensure that locks are not released during a power outage.
- (15) Entrance areas are to be locked at all times and under the control of a designated responsible party that is either; (a) an employee of the commercial cannabis business; or (b) a licensed security professional.
- (16) Each commercial cannabis business shall have an accounting software system in place to provide point of sale data as well as audit trails or both product and cash, where applicable.
- (19) Each commercial cannabis business shall demonstrate to the Chief of Police or his/her designees, compliance with the state's track and trace system for cannabis and cannabis products, as soon as it is operational.
- (20) Each commercial cannabis business shall have a professionally installed video surveillance system, access control and intrusion alarm systems designed to protect the inventory, facility, and employees. Each business shall have network security protocols that are certified by Underwriters Laboratories.
- (21) Exterior vegetation shall be planted, altered and maintained in a fashion that precludes its use as a hiding place for persons on the premises.
- (22) Emergency access and emergency evacuation plans that are in compliance with state and local fire safety standards.
- (b) Each commercial cannabis business shall identify a designated security representative/liaison to the City of Morgan Hill, who shall be reasonably available to meet with the Chief of Police or his/her designee(s) regarding any security related measures or and operational issues. The designated security representative/liaison shall, on behalf of the commercial cannabis business, annually maintain a copy of the current security plan on the premises of the business, to present to the Chief of Police or his/her designee upon request that meets the following requirements:
 - i. Confirms that a designated Manager will be on duty during business hours and will be responsible for monitoring the behavior of employees.

- ii. Identifies all Managers of the commercial cannabis business and their contact phone numbers.
 - iii. Confirms that first aid supplies and operational fire extinguishers are located in the service areas and the Manager's office.
 - iv. Confirms that burglar, fire, and panic alarms are operational and monitored by a licensed security company 24 hours a day, seven days a week, and provides contact information for each licensed security company.
 - v. Identify a sufficient number of licensed, interior and exterior security personnel who will monitor individuals inside and outside the commercial cannabis business, the parking lot, and any adjacent property under the business' control.
 - vi. Confirm that the licensed security personnel shall regularly monitor the parking lot and any adjacent property to ensure that these areas are: (a) free of individuals loitering or causing a disturbance; (b) are cleared of employees and their vehicles one-half hour after closing.
- (c) As part of the application and permitting process each commercial cannabis business shall have a storage and transportation plan, which describes in detail the procedures for safely and securely storing and transporting all cannabis, cannabis products, any hazardous materials that may be used by the business, and any currency.
- (d) The commercial cannabis business shall cooperate with the City whenever the Chief of Police or his/her designee(s) makes a request, with or without prior notice, to inspect or audit the effectiveness of any security plan or of any other requirement of this Chapter.
- (e) A commercial cannabis business shall notify the Chief of Police or his/her designee(s) within twenty-four (24) hours after discovering any of the following:
 - (1) Significant discrepancies identified during inventory. The level of significance shall be determined by the regulations promulgated by the Chief of Police or his/her designee(s).
 - (2) Diversion, theft, loss, or any criminal activity involving the commercial cannabis business or any agent or employee of the commercial cannabis business.
 - (3) The loss or unauthorized alteration of records related to cannabis, customers or employees or agents of the commercial cannabis business.
 - (4) Any other breach of security.

- (f) Compliance with the foregoing requirements shall be verified by the Chief of Police or his/her designee prior to commencing business operations. The Chief of Police or his/her designee may supplement these security requirements once operations begin, subject to review by the Chief of Police if requested by the business owner.

Section 5.48.290. Restriction on Alcohol & Tobacco Sales.

- (a) No person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on or about the premises of the commercial cannabis business.
- (b) No person shall cause or permit the sale or tobacco products on or about the premises of the commercial cannabis business.
- (c) No person shall consume cannabis, cannabis products, tobacco or alcohol on the premises of any commercial cannabis business.

Section 5.48.300. Fees and Charges.

- (a) No person may commence or continue any commercial cannabis activity in the City, without timely paying in full all fees and charges required for the operation of a commercial cannabis activity. Fees and charges associated with the operation of a commercial cannabis activity shall be established by resolution of the City Council which may be amended from time to time.
- (g) All commercial cannabis businesses authorized to operate under this Chapter shall pay all sales, use, business and other applicable taxes, and all license, registration, and other fees required under federal, state and local law. Each commercial cannabis business shall cooperate with City with respect to any reasonable request to audit the commercial cannabis business' books and records for the purpose of verifying compliance with this section, including but not limited to a verification of the amount of taxes required to be paid during any period.
- (h) Prior to operating in the City and as a condition of issuance of a regulatory permit, the operator of each cannabis facility shall enter into an operational or community benefit agreement with the City setting forth the terms and conditions under which the cannabis facility will operate that are in addition to the requirements of this chapter, including, but not limited to, public outreach and education, community service, payment of fees and other charges as mutually agreed, and such other terms and conditions that will protect and promote the public health, safety and welfare.

Section 5.48.310. General Operating Requirements. (CHECK AGAINST LAND USE)

- (a) Commercial cannabis businesses may operate only during the hours specified in the commercial cannabis business permit issued by the City.

No person under the age of 21 shall operate, or be issued a permit for, a commercial cannabis business of any kind.

- (b) Restriction on Consumption. Cannabis shall not be consumed by any employee on the premises of any commercial cannabis business.
- (c) No cannabis or cannabis products or graphics depicting cannabis or cannabis products shall be visible from the exterior of any property issued a commercial cannabis business permit, or on any of the vehicles owned or used as part of the commercial cannabis business. No outdoor storage of cannabis or cannabis products is permitted at any time.
- (d) Reporting and Tracking of Product and of Gross Sales. Each commercial cannabis business shall have in place a point-of-sale or management inventory tracking system to track and report on all aspects of the commercial cannabis business including, but not limited to, such matters as cannabis tracking, inventory data, gross sales (by weight and by sale) and other information which may be deemed necessary by the City. The commercial cannabis business shall ensure that such information is compatible with the City's record-keeping systems. In addition, the system must have the capability to produce historical transactional data for review. Furthermore, any system selected must be approved and authorized by the Police Chief or his/her designee(s) prior to being used by the permittee.
- (e) All cannabis and cannabis products sold, distributed or manufactured shall be cultivated, manufactured, and transported by licensed facilities that maintain operations in full conformance with the State and local regulations.
- (f) Emergency Contact. Each commercial cannabis business shall provide the Chief of Police or his/her designee(s) with the name, telephone number (both land line and mobile, if available) of an on-site employee or owner to whom emergency notice can be provided at any hour of the day.
- (g) Signage and Notices.
 - (1) In addition to the requirements otherwise set forth in this section, business identification signage for a commercial cannabis business shall conform to the requirements of the City of Morgan Hill [ordinanceMunicipal Code](#), including, but not limited to, seeking the issuance of a City sign permit.
 - (2) No signs placed on the premises of a commercial cannabis business shall obstruct any entrance or exit to the building or any window.
 - (3) Each entrance to a commercial cannabis business shall be visibly posted with a clear and legible notice indicating that smoking,

ingesting, or otherwise consuming cannabis on the premises or in the areas adjacent to the commercial cannabis business is prohibited.

- (4) Business identification signage shall be limited to that needed for identification only and shall not contain any logos or information that identifies, advertises, or lists the services or the products offered. No commercial cannabis business shall advertise by having a person holding a sign and advertising the business to passersby, whether such person is on the premises of the commercial cannabis business or elsewhere including, but not limited to, the public right-of-way.
- (5) Signage shall not depict any image of cannabis or cannabis products. No banners, flags, billboards or other prohibited signs may be used at any time.
- (6) In accordance with state law and regulations or as stipulated in the City of Morgan Hill regulatory permit, holders of a commercial cannabis business permit shall agree that, as an express and ongoing condition of permit issuance and subsequent renewal, the holder of the permit shall be prohibited from advertising any commercial cannabis business located in the City of Morgan Hill utilizing a billboard (fixed or mobile), bus shelter, placard, aircraft, or other similar forms of advertising. This paragraph is not intended to place limitations on the ability of a commercial cannabis business to advertise in other legally authorized forms, including on the internet, in magazines, or in other similar ways.

(h) Minors.

- (1) Persons under the age of twenty-one (21) years shall not be allowed on the premises of a commercial cannabis business and shall not be allowed to serve as a driver for a mobile delivery service. It shall be unlawful and a violation of this Chapter for any person to employ any person at a commercial cannabis business who is not at least twenty-one (21) years of age.
- (2) Notwithstanding Section 5.48.310(h)(1), persons aged 18 to 20 years shall be allowed on the premises of a commercial cannabis business if they can produce a physician's recommendation. In that event, such persons can lawfully purchase cannabis for the sole purpose of addressing the medical need that is the subject of the physician's recommendation.
- (2) The entrance to the commercial cannabis business shall be clearly and legibly posted with a notice that no person under the age of

twenty-one (21) years of age is permitted to enter upon the premises of the commercial cannabis business.

- (i) **Odor Control.** Odor control devices and techniques shall be incorporated in all commercial cannabis businesses to ensure that odors from cannabis are not detectable off-site. Commercial cannabis businesses shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the commercial cannabis business that is distinctive to its operation is not detected outside of the facility, anywhere on adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the commercial cannabis business. As such, commercial cannabis businesses must install and maintain the following equipment, or any other equipment which the Chief of Police or his/her designee(s) determine is a more effective method or technology:
 - (1) An exhaust air filtration system with odor control that prevents internal odors from being emitted externally;
 - (2) An air system that creates negative air pressure between the commercial cannabis business's interior and exterior, so that the odors generated inside the commercial cannabis business are not detectable on the outside of the commercial cannabis business.
- (j) **Display of Permit and City Business License.** The original copy of the commercial cannabis business permit issued by the City pursuant to this Chapter and the City issued business license shall be posted inside the commercial cannabis business in a location readily-visible to the public.
- (k) **Background Check.** Pursuant to California Penal Code Sections 11105(b)(11) and 13300(b)(11), which authorizes City authorities to access state and local summary criminal history information for employment, licensing, or certification purposes; and authorizes access to federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation, every person listed as an owner, manager, supervisor, employee, contract employee or who otherwise works in a commercial cannabis business must submit fingerprints and other information deemed necessary by the Chief of Police or his/her designee(s) for a background check by the City of Morgan Hill Police Department. Pursuant to California Penal Sections 11105(b)(11) and 13300(b)(11), which requires that there be a requirement or exclusion from employment, licensing or certification based on specific criminal conduct on the part of the subject of the record. No person shall be issued a permit

to operate a commercial cannabis business or a related work permit unless they have first cleared the background check, as determined by the Chief of Police or his/her designee(s), as required by this section. A fee for the cost of the background investigation, which shall be the actual cost to the City of Morgan Hill to conduct the background investigation as it deems necessary and appropriate, shall be paid at the time the application for a commercial cannabis business permit is submitted.

- (l) Loitering. The owner and/or operator of a commercial cannabis business shall prohibit loitering by persons outside the facility both on the premises and within fifty (50) feet of the premises. The cannabis business shall notify the Morgan Hill Police Department if anyone continues to loiter around the building or premises after all reasonable action has been taken to remove the individual(s) and the action has failed to do so in a timely manner.
- (m) Permits and other Approvals. Prior to the establishment of any commercial cannabis business or the operation of any such business, the person intending to establish a commercial cannabis business must first obtain all applicable planning, zoning, building, and other applicable permits from the relevant governmental agency which may be applicable to the zoning district in which such commercial cannabis business intends to establish and to operate.
- (n) Each commercial cannabis operator shall establish minimum training standards for all employees. The Chief of Police shall have the discretion to require other training for the business operations should the City identify deficiencies or non-compliance issues with City or state requirements.

Section 5.48.320. Other General Operating Requirements.

The Chief of Police or his/her designee may develop other commercial cannabis business operational requirements or regulations as are determined to be necessary to protect the public health, safety and welfare.

Section 5.48.330. Operating Requirements for Store Front/Retail Facilities.

- (a) No more than the number of cannabis retailers adopted by resolution may operate within the City of Morgan Hill at any one time and shall be issued a permit by the City of Morgan Hill.
- (b) Retailers shall verify the age and all necessary documentation of each individual to ensure the customer is not under the age of eighteen (18) years. If the potential customer is 18 to 20 years old, retailer shall confirm the customer's possession of a valid doctor's recommendation and/or H&S 11362.71 identification card (Medical Marijuana Card). For adult-use purchases, retailers shall verify that all customers are 21 years of age or older for the purchase of cannabis or cannabis products.

- (c) Entrances into the retailer shall be locked at all times with entry strictly controlled. A "buzz-in" electronic/mechanical entry system shall be utilized to limit access to and entry to the retailer to separate it from the reception/lobby area. Individuals must show their government-issued identification, and, in the case of medical cannabis facilities, their physician's recommendation, or a cannabis card issued pursuant to Health and Safety Code Section 11362.71 in order to gain access into the retailer. The government-issued identification and, if applicable, doctor's recommendation or cannabis card must also be shown at the point of sale station at the time of purchase. Doctor recommendations are not to be obtained or provided at the retail location.
- (d) Uniformed licensed security personnel shall be employed to monitor site activity, control loitering and site access, and to serve as a visual deterrent to unlawful activities. Security personnel may be allowed to carry firearms if authorized by the Chief of Police.
- (e) Retailers may have only that quantity of cannabis and cannabis products to meet the daily demand readily available for sale on-site in the retail sales area of the retailer. Additional product may be stored in a secured, locked area to which customers, vendors, and visitors shall not have access.
- (f) All restroom facilities shall remain locked and under the control of management.
- (h) Retailers authorized to conduct retail activities shall only serve customers who are within the licensed premises, or at a delivery address that meets the requirements of this division.
 - (1) The sale and delivery of cannabis goods shall not occur through a pass-through window or a slide-out tray to the exterior of the premises.
 - (2) Retailers shall not operate as or with a drive-in or drive-through at which cannabis goods are sold to persons within or about a motor vehicle.
 - (3) No cannabis goods shall be sold and/or delivered by any means or method to any person within a motor vehicle.
 - (4) All cannabis goods sold by a retail business shall be contained in child-resistant packaging.
 - (5) Retailers shall record point-of-sale areas and areas where cannabis goods are displayed for sale on the video surveillance system. At each point-of-sale location, camera placement must allow for the recording of the facial features of any person purchasing or selling cannabis goods, or any person in the retail area, with sufficient clarity to determine identity.
 - (6) A retail licensee who is engaged in retail sale shall hire or contract for security personnel who are at least 21 years of age to provide security services for the licensed retail premises. All security personnel hired or contracted for by the licensee shall be licensed by the Bureau of

Security and Investigative Services and shall comply with Chapters 11.4 and 11.5 of Division 3 of the Business and Professions Code.

- (i) Access to Retailer Premises.
 - (1) Access to the premises of a retail licensee/permittee shall be limited to individuals who are at least 21 years of age.
 - (2) Notwithstanding Section 5.48.330(i)(1), individuals who are at least 18 years of age and in possession of a valid physician's recommendation shall be granted access to the premises of a retail licensee/permittee for the sole purpose of purchasing medicinal cannabis consistent with the physician's recommendation.
- (j) Authorized Sales. A retailer shall only sell adult-use cannabis and adult-use cannabis products to individuals who are at least 21 years of age. A retailer shall only sell medicinal cannabis or medicinal cannabis products to individuals who are at least 18 years of age, but not yet 21, if those individuals are in possession of a valid physician's recommendation. Medicinal cannabis sales to individuals 21 years of age and older are unrestricted.
- (k) Limited Access Areas. A retailer shall establish limited-access areas and permit only authorized individuals to enter the limited-access areas. Authorized individuals include individuals employed by the retailer as well as any outside vendors, contractors, or other individuals conducting business that requires access to the limited access area. All individuals granted access to the limited access area shall be at least 21 years of age, and if not employed by the retailer, shall be escorted at all times by an employee of the licensee/permittee. A retailer shall maintain a log of all individuals who are not employees who are granted access to the limited access area. These logs shall be made available to the Chief of Police or his/her designee upon request.
- (l) Operating hours of the Store Front Retailer License shall be limited to the hours of 9:00 a.m. through 9:00 p.m., seven days a week.
- (m) Store Front/Retail Security Requirements. All provisions incorporated within Section 5.48.280 of this Chapter (Security Measures), are directly applicable to and binding on all commercial cannabis businesses, including all Store Front/Retail businesses.

Section 5.48.340. Operating Requirements for Non-Store Front Retailer.

- (a) Non-Store Front Retailer (Delivery) License Owners and Operators are required to verify the age and the necessary documentation of each medical customer to ensure the customer is not under the age of eighteen (18) years, and to verify that the potential customer has a valid doctor's recommendation. Doctor recommendations are not to be obtained or provided at the retail location.

- (b) All Store Front Retailers, Non-Store Front Retailers (delivery) and Microbusinesses which conduct deliveries into or within the City of Morgan Hill shall be required to obtain a permit from the City of Morgan Hill in order to conduct retail sales regardless if they are located in the City or another local jurisdiction.
- (c) Operating hours of the Non-Store Front Retailer License shall be limited to the hours of 9:00 a.m. through 9:00 p.m., seven days a week.
- (d) The commercial Non-Store Front Retailer shall only sell cannabis or cannabis products to a natural person 21 years of age or older, or a natural person 18 years of age or older who possesses a physician's recommendation for cannabis medical use only.
- (e) The commercial cannabis Non-Store Front Retailer may only have on-site that quantity of cannabis and cannabis products reasonably anticipated to meet the weekly demand for which they may need to be readily available for sale.

Section 5.48.350. Non-Store Front Retailer Vehicle Requirements.

Prior to commencing operations, a cannabis Non-Store Front Retailer shall provide the following information to the City.

- (a) Proof of ownership of the vehicle or a valid lease for any and all vehicles that will be used to deliver cannabis or cannabis products.
- (b) The year, make, model, color, license plate number, and Vehicle Identification Number (VIN) for any and all vehicles that will be used to deliver cannabis goods.
- (c) Proof of insurance as required in Section 5.48.260 (b) for any and all vehicles being used to deliver cannabis goods.
- (d) The licensee shall provide the City with the information required by this section in writing for any new vehicle that will be used to deliver cannabis goods prior to using the vehicle to deliver cannabis goods.
- (e) The licensee shall provide the City with any changes to the information required by this section in writing within thirty (30) calendar days.

Section 5.48.360. Operating Requirements for Distributors.

- (a) A distributor shall not store non-cannabis goods or non-cannabis accessories that are to be sold to another party on any licensed premises. Additionally, a distributor shall not distribute non-cannabis goods or non-cannabis accessories

at a licensed premise. For the purposes of this section, non-cannabis goods are any goods that do not meet the definition of cannabis goods as defined in Title 16, Section 5000(c) of the California Code of Regulations.

- (b) After taking physical possession of a cannabis goods batch, the distributor shall contact a testing laboratory and arrange for a laboratory employee to come to the distributor's licensed premises to select a representative sample for laboratory testing.
- (c) A distributor shall ensure that all cannabis goods batches are stored separately and distinctly from other cannabis goods batches on the distributor's premises.
- (d) The distributor shall ensure that the batch size from which the sample is taken meets the requirements of state law, specifically the testing provisions within the California Code of Regulations.
- (e) A distributor or an employee of the distributor shall be physically present to observe the laboratory employee obtain the sample of cannabis goods for testing and shall ensure that the increments are taken from throughout the batch. The sampling shall be video-recorded, and the recording kept available to state and local authorities for a minimum of 180 days, pursuant to 'title 16, Section 5305 of the California Code of Regulations.
- (f) A distributor shall not transport cannabis or cannabis products to a licensed retail facility until and unless it has verified that the cannabis or cannabis products have been tested and certified by a testing lab as being in compliance with state health and safety requirements pursuant to Title 16, Sections 5705, 5710 and 5714 of the California Code of Regulations.

Section 5.48.370. Operating Requirements for Testing Labs.

- (a) Testing Labs shall be required to conduct all testing in a manner pursuant to Business and Professions Code Section 26100 and shall be subject to state and local law. Each Testing Lab shall be subject to additional regulations as determined from time to time as more regulations are developed under this Chapter and any subsequent State of California legislation regarding the same.
- (b) Testing Labs shall conduct all testing in a manner consistent with general requirements for the competence of testing and calibrations activities, including sampling using verified methods.
- (c) All cannabis testing laboratories performing testing shall obtain and maintain ISO/IEC 17025 accreditation as required by the Bureau of Cannabis Control.
- (d) Testing labs shall destroy any harvest batch whose testing sample indicates noncompliance with health and safety standards required by the bureau unless remedial measures can bring the cannabis or cannabis products into compliance with quality standards as specified by law and implemented by the bureau.

- (e) Each operator shall ensure that a testing laboratory employee takes the sample of cannabis or cannabis products from the distributor's premises for testing required by state law and that the testing laboratory employee transports the sample to the testing laboratory.
- (f) Except as provided by state law, a testing laboratory shall not acquire or receive cannabis or cannabis products except from a licensee in accordance with state law, and shall not distribute, sell, or dispense cannabis, or cannabis products, from the licensed premises from which the cannabis or cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.
- (g) A testing laboratory may receive and test samples of cannabis or cannabis products from a qualified patient or primary caregiver only if the qualified patient or primary caregiver presents the qualified patient's valid physician's recommendation for cannabis for medicinal purpose. A testing lab shall not certify samples from a qualified patient or primary caregiver for resale or transfer to another party or licensee. All tests performed by a testing laboratory for a qualified patient or primary caregiver shall be recorded with the name of the qualified patient or primary caregiver and the amount of the cannabis or cannabis products received.

Section 5.48.380. Operating Requirements for Cannabis Manufacturing: Edibles and Other Cannabis Products; Sale or Distribution of Edible and Other Cannabis Products.

- (a) Cannabis manufacturing shall only be permitted pursuant to Section 5.48.020 of this code or any subsequent created manufacturing state license as defined in MAUCRSA and may be permitted to operate only within those zone districts as defined in **Section 5.48.250** of the City of Morgan Hill Municipal Code.
- (b) Any compressed gases used in the manufacturing process shall not be stored on any property within the City of Morgan Hill in containers that exceeds the amount which is approved by the Morgan Hill Fire Department and authorized by the regulatory permit. Each site or parcel subject to a commercial cannabis business permit shall be limited to a total number of tanks as authorized by the Morgan Hill Fire Department on the property at any time.
- (c) Cannabis manufacturing facilities may use heat, screens, presses, steam distillation, ice water, ethanol and other methods without employing solvents or gases to create keef, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

- (d) If an extraction process uses a professional grade closed loop CO₂ gas extraction system every vessel must be certified by the manufacturer for its safe use as referenced in Section 5.48.380(f). The CO₂ must be of at least ninety-nine percent purity.
- (e) Closed loop systems for compressed gas extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.
- (f) Certification from an engineer licensed by the State of California, or by a certified industrial hygienist, must be provided to the Chief of Police for a professional grade closed loop system used by any commercial cannabis manufacturing manufacturer to certify that the system was commercially manufactured, is safe for its intended use, and was built to codes of recognized and generally accepted good engineering practices, including but not limited to:
 - (1) The American Society of Mechanical Engineers (ASME);
 - (2) American National Standards Institute (ANSI);
 - (3) Underwriters Laboratories (UL); or
 - (4) The American Society for Testing and Materials (ASTM)
- (g) The certification document must contain the signature and stamp of the professional engineer or industrial hygienist and serial number of the extraction unit being certified.
- (h) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the Fire Department and meet any required fire, safety, and building code requirements specified in the California Building Reference Codes.
- (i) Cannabis Manufacturing Facilities may use food grade glycerin, ethanol, and propylene glycol solvents to create or refine extracts. Ethanol should be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.
- (j) Cannabis Manufacturing Facilities creating cannabis extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace.

- (k) Any person using solvents or gases in a closed looped system to create cannabis extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.
- (l) Parts per million for one gram of finished extract cannot exceed state standards for any residual solvent or gas when quality assurance tested.

Section 5.48.390. Operating Requirements for Delivery Services.

Prior to commencing operations, a cannabis out of City delivery service shall comply with the following requirements:

- (1) Obtain from the City a permit authorizing the delivery of cannabis and cannabis products within the City limits. A copy of this permit shall be retained by all drivers.
- (2) The retail business operating the delivery service shall provide the Chief of Police with evidence of a valid state license for a commercial cannabis business on whose authorization the delivery service is performing the delivery function.
- (3) The retail business operating the delivery service shall furnish to the Chief of Police the year, make, model, license plate number, and numerical Vehicle Identification Number (VIN) for any and all vehicles that will be used to deliver cannabis goods.

Section 5.48.400. Permissible Delivery Locations and Customers.

Cannabis delivery businesses located outside of the City permitted to engage in delivery of cannabis and cannabis products inside the City of Morgan Hill are subject to the following requirements:

- (a) A cannabis business must be authorized by the City of Morgan Hill to deliver cannabis goods to a residential address within the city limits by the issuance of a delivery permit;
- (b) A licensed cannabis business shall not deliver cannabis goods to an address located on publicly owned land or any address on land or in a building leased by a public agency.
- (c) A licensed cannabis business shall comply with all requirements of state and local law pertaining to the cannabis permit and all subsequent policies, procedures and regulations which may be amended by the

Chief of Police or his/her designee from time to time in order to enforce this Chapter.

Section 5.48.410. Promulgation of Regulations, Standards and Other Legal Duties.

- (a) In addition to any regulations adopted by the City Council, the Chief of Police or his/her designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of commercial cannabis business permits, the ongoing operation of commercial cannabis businesses and the City's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this Chapter.
- (b) Regulations shall be published on the City's website.
- (c) Regulations promulgated by the Chief of Police or his/her designee shall become effective upon date of publication.— Commercial cannabis businesses shall be required to comply with all state and local laws and regulations, including but not limited to any rules, regulations or standards adopted by the Chief of Police or his/her designee.
- (d) Testing Labs, Distribution facilities, Delivery Services and Special Events shall be subject to state law and shall be subject to additional City regulations as determined from time to time as more regulations are developed under Section 5.48.020 of this Chapter and any subsequent State of California legislation regarding the same.

Section 5.48.420. Community Relations.

- (a) Each commercial cannabis business shall provide the name, telephone number, and email address of a community relations contact to whom notice of problems associated with the commercial cannabis business can be provided. Each commercial cannabis business shall also provide the above information to all businesses and residences located within one hundred (100) feet of the commercial cannabis business.
- (b) During the first year of operation pursuant to this Chapter, the owner, manager, and community relations representative from each commercial cannabis business holding a permit issued pursuant to this Chapter shall attend meetings with the Chief of Police or his/her designee(s), and other interested parties as deemed appropriate by the Chief of Police or his/her designee(s), to discuss costs, benefits, and other community issues arising as a result of implementation of this Chapter. After the first year of operation, the owner, manager, and community relations representative from each such commercial cannabis business shall meet with the Chief of

Police or his/her designee(s) when and as requested by the Chief of Police or his/her designee(s).

- (c) Commercial cannabis businesses to which a permit is issued pursuant to this Chapter shall develop a City approved public outreach and educational program for youth organizations and educational institutions that outlines the risks of youth addiction to cannabis, and that identifies resources available to youth related to drugs and drug addiction.

Section 5.48.430. Fees Deemed Debt to the City of Morgan Hill.

The amount of any fee, cost or charge imposed pursuant to this Chapter shall be deemed a debt to the City of Morgan Hill that is recoverable via an authorized administrative process as set forth in the City ordinance, or in any court of competent jurisdiction.

Section 5.48.440. Permit Holder Responsible for Violations.

The person to whom a permit is issued pursuant to this Chapter shall be responsible for all violations of the laws of the State of California or of the regulations and/or the ordinances of the City of Morgan Hill, whether committed by the permittee or any employee or agent of the permittee, which violations occur in or about the premises of the commercial cannabis business whether or not said violations occur within the permit holder's presence.

Section 5.48.450. Inspection and Enforcement.

- (a) The Chief of Police , or his/her designee(s) charged with enforcing the provisions of the City of Morgan Hill Municipal Code, or any provision thereof, may enter the location of a commercial cannabis business at any time, without notice, and inspect the location of any commercial cannabis business as well as any recordings and records required to be maintained pursuant to this Chapter or under applicable provisions of State law.
- (b) It is unlawful for any person having responsibility over the operation of a commercial cannabis business, to impede, obstruct, interfere with, or otherwise not to allow, the City to conduct an inspection, review or copy records, recordings or other documents required to be maintained by a commercial cannabis business under this Chapter or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a commercial cannabis business under this Chapter or under state or local law.
- (c) The Chief of Police or his/her designee(s) charged with enforcing the provisions of this Chapter may enter the location of a commercial cannabis business at any time during the hours of operation and without notice to

obtain samples of the cannabis to test for public safety purposes. Any samples obtained by the City of Morgan Hill shall be logged, recorded, and maintained in accordance with established procedures by the City of Morgan Hill's Chief of Police or these regulations.

Section 5.48.460. Compliance with State Regulations.

It is the stated intent of this Chapter to regulate commercial cannabis activity in the City of Morgan Hill in compliance with all provisions MAUCRSA and any subsequent state legislation.

Section 5.48.470. Violations declared a public nuisance.

Each and every violation of the provisions of this Chapter is hereby deemed unlawful and a public nuisance.

Section 5.48.480. Each violation a separate offense.

Each and every violation of this Chapter shall constitute a separate violation and shall be subject to all remedies and enforcement measures authorized by the City of Morgan Hill. Additionally, as a nuisance per se, any violation of this Chapter shall be subject to injunctive relief, any permit issued pursuant to this Chapter being deemed null and void, disgorgement and payment to the City for any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity. The City of Morgan Hill may also pursue any and all remedies and actions available and applicable under state and local laws for any violations committed by the commercial cannabis business or persons related to, or associated with, the commercial cannabis activity. Additionally, when there is determined to be an imminent threat to public health, safety or welfare, the Chief of Police, or his/her designee(s), may take immediate action to temporarily suspend a commercial cannabis business permit issued by the City, pending a hearing before the Chief of Police, or his/her designee(s).

Section 5.48.490. Criminal Penalties.

Each and every violation of the provisions of this Chapter may in the discretion of the District Attorney or City Attorney be prosecuted as a misdemeanor and upon conviction be subject to a fine not to exceed one thousand dollars (\$1,000) or imprisonment in the County jail for a period of not more six months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

Section 5.48.500. Remedies cumulative and not exclusive.

The remedies provided herein are not to be construed as exclusive remedies. The City is authorized to pursue any proceedings or remedies provided by law.

Regulatory Issues Cannabis License Types

CULTIVATION

Description:

Cannabis cultivation is generally divided into four basic categories: outdoor, indoor, mixed light (utilizing both natural and artificial light) and nursery. A combination of these cultivation techniques may occur at a site. Cultivation licenses allow for activities involving planting, growing, harvesting, drying, curing, grading and trimming. Depending on the cultivation method, the size, location, and setting of cannabis cultivation sites could vary. (See Figure A: State License Types and Allowable Growing Area/Quantity)

Figure A: State License Types and Allowable Growing Area/Quantity

State License Category	Allowed Growing Area/Quantity		
	Outdoor	Indoor	
	Natural Light	Artificial Light (A)	Mixed-Light (B) (Natural and
Specialty Cottage (1C)	Up to 25 Mature Plants	Up to 500 sf	Up to 2,500 sf
Specialty (1)	Up to 5,000 sf or 50 Mature Plants	Up to 5,000 sf	Up to 5,000 sf
Small (2)	5,001 - 10,000 sf	5,001 - 10,000 sf	5,001 - 10,000 sf
Medium (3)	10,001 sf – 1 acre	10,001 – 22,000 sf	10,001 - 22,000
Nursery* (4)	Up to 1 acre	Up to 1 acre	Up to 1 acre

Pros and Cons:

Controlling cultivation entails control of the supply of this lucrative product. A number of cities are planning large cultivation operations in anticipation of significant revenue. However, the State of California has to date licensed more than enough cultivation operations to meet current demand, without factoring in the pre-existing illicit operations. For this reason, a glut of cultivation capacity is anticipated. In addition, of all the license types, cultivation tends to generate the most public opposition. Odor, along with energy, water and pesticide use are the concerns most cited. Six years ago, when Colorado licensed their first commercial cannabis businesses, odor was the most common quality of life complaint for local jurisdictions. For this reason, many cities permit indoor cultivation to the extent that commercial cultivation is allowed at all. Key factors are whether sufficient water, electricity, odor control measures and security have been planned for.

Summary of Pros and Cons:

1. Revenue Potential
2. Odor
3. Theft/Criminal activity

4. Use of Water/Electricity
5. Pesticide use
6. Light pollution and light spill onto adjacent properties
7. Anticipated glut of cultivation capacity may limit revenue

Regulatory Considerations:

Since the legalization of commercial cannabis in Colorado and Washington, the cities of Denver and Seattle have created general nuisance odor ordinances that require cannabis businesses to submit an odor control plan. Jurisdictions in California are beginning to follow suit. The plan is used to identify the source of potential odors and the control technologies used to prevent such odors from leaving the licensed premises. The commercial cannabis industry has also made significant effort to increase energy and water efficiency.

Summary of Regulatory Tools

1. Require Odor Control Plans
2. Require Renewable Energy Plans
3. Require a Water Management Plan
4. Restrict visible artificial lighting
5. Require Security Plans
6. Establish distance requirements from sensitive uses, i.e. schools, daycare centers, churches, youth centers, residences, etc.
7. Limit cultivation to indoor only

Regulatory Framework Example:

1. Indoor – Artificial Light Only (warehouse operations)

- a. Allow in industrial zones
- b. Allow Up to 22,000 sq. ft. of canopy space
- c. Prohibit location within 600 ft of sensitive receptor (schools, day cares, youth centers, parks, residential)
- d. Prohibit location within ½ mile from another indoor cultivation operation
- e. Require Odor Control Plan
- f. Require Security Plan
- g. Require renewable energy plan that meets the South Coast Air Quality Management District (SCAQMD) requirements
- h. Require a Water Management Plan

2. Indoor Mixed-Light (greenhouse operations)

- a. Allow in limited agriculture zones
- b. Prohibit Artificial Lighting
- c. Up to 22,000 sq. ft. of canopy space
- d. Prohibit location within 600 ft of sensitive receptor (schools, day cares, youth centers, parks, residential)
- e. Require Odor Control Plan
- f. Require Security Plan
- g. Renewable energy plan that meets the South Coast Air Quality Management District (SCAQMD) requirements
- h. Require a Water Management Plan
- i. Require screened view of cultivation from public right-of-way

DISTRIBUTION

Description:

The Distribution model is a fundamental component of the cannabis supply chain. Under state law, distributors are the only licensed business type that can transport inventory between licensed cannabis businesses. In addition to transporting inventory between licenses, distribution companies will also be responsible for ensuring the examination of inventory at a testing laboratory and the collection of the State's Excise Taxes, before releasing the product to a retailer. Cultivators, manufacturers, and retailers also have the opportunity hold a distribution license as well, provided the distributor's licensed premises are "separate and distinct". This is to ensure that the various administrative privileges and inventory tracking requirements are strictly adhered to. Licensed Distributors will be required to establish comprehensive security measures to ensure the inventory is secured during transit and accounted for with manifest documentation. Distributors will be required to be licensed in a commercial or industrial building, requiring little to no signage or advertisement.

Pros and Cons:

Effective distribution of cannabis and cannabis goods is key to the survival of the regulated market, so distributors will have significant influence. Distribution licensees will be responsible for securing large quantities of inventory, while ensuring it is all properly tested and transported to licensed businesses. Distributors will also be required to collect taxes and will be expected to verify compliance with state packaging and labelling requirements. Inventory tracking and money handling are potential issues that will have to be addressed through regulatory oversight, due to the predominantly all-cash nature of the industry.

Summary of Pros and Cons:

1. Adequate security and control of inventory while being stored on-site
2. Adequate security and control of inventory while inventory is being transported
3. Cash handling procedures and availability to banking
4. Expertise in product movement required
5. Responsibility for checking packaging and labelling requirements
6. Responsibility for collecting state excise tax
7. Responsibility for collecting state cultivation tax

Regulatory Framework Example:

1. Allow in Industrial zones
2. Prohibit location within 600 ft of sensitive receptor (schools, day cares, youth centers, parks)
3. Require the entire distribution facility to be designated as a limited access facility, preventing visitor, contractors or non-employees from entering without an escort by a designated manager
4. Inspect and approve the safe, vault or secured room prior to issuance of license
5. Require that all vehicles used to transport inventory be equipped with GPS
6. Require that a computer-generated manifest occur prior to the transportation of inventory
7. Prohibit non-authorized employees within vehicles during deliveries to licensed businesses
8. Require that inventory should be locked and secured in an approved case, safe or cabinet, including when in transit
9. Require that all employees be subject to a criminal background check

MANUFACTURING

Description:

The Department of Public Health (DPH) defines Manufacturing as “all aspects of the extraction and/or infusion processes, including processing, preparing, holding, storing, packaging, or labeling of cannabis products”. Manufacturing also includes “any processing, preparing, holding, or storing of components and ingredients”. Manufacturing licenses are separated into two categories based upon the type of solvent used: Type 6 Manufacturing using non-volatile solvents, such as cold water, heat press and CO₂; and Type 7 Manufacturing using volatile solvents such as butane, propane and ethanol. Licensed cannabis manufacturing facilities are typically located in non-descript commercial buildings and require little to no signage or advertisement. As required by state law, manufacturers are expected to use professionally engineered, industrial hygienist-certified, closed-loop extraction equipment specifically designed to prevent any volatile solvents from being released into the atmosphere. When used by a trained extraction technician, the process is intended to be safe and environmentally responsible.

Infused products and edibles manufactured in these types of facilities are the fastest growing products in the cannabis industry. Currently, edible sales account for 47% of cannabis inventory sold, and that is expected to increase. For example, in Colorado, 63% of cannabis sales are derived from edible cannabis products.

Pros and Cons:

Manufacturing will likely be one of the most important licensed activities, since current use trends indicate that a growing number of users are not smoking cannabis, but rather consuming it in the form of edibles, oils, creams, tinctures, sprays and vaping. This means the demand for these manufactured products will be both high and sustained. Building and employee safety during extraction processes is a critical concern, as well as compliance with state requirements for the now legal form of butane extraction authorized as of 2016. Additionally, mechanisms preventing large quantities of unsecured inventory being removed from the licensed premises by employees will have to be devised.

Summary of Pros and Cons:

1. Manufacturing will be a key activity based on current use trends
2. Large quantities of volatile gases and industrial solvents are stored on-site
3. Diversion to the black market, often resulting from product theft by employees
4. Health and safety concerns: Products that are adulterated, or contaminated with mold, bacteria or pesticides, are harmful to consumers
5. Administrative holds and product recalls are resource intensive and time-consuming
6. Rigorous compliance with new laws critical to employee safety and continued ability to operate

Regulatory Considerations:

As required by state law, the use of professionally engineered, industrial hygienist inspected, and certified, closed-loop extraction equipment is intended to increase building and employee safety. It should be further required that all extraction activities take place in a room solely dedicated to the extraction process. If volatile gases are being used, the room must be constructed to meet National Fire Protection Association (NFPA) C1-D1 hazardous location classifications. In addition, all waste shall be disposed of in a manner so that it cannot be detected or used for any other purpose.

Regulatory Framework Example:

1. Allow in light Industrial and manufacturing zones
2. Prohibit location within 600 ft of sensitive receptor (schools, day cares, youth centers, parks)
3. Prohibit locations within 300 feet of residential properties
4. Require extraction room construction meet C1, D1 classification
5. Require installation of fire suppression systems and flammable gas detection devices
6. Require notification of any change to product line and use of extraction solvents
7. Require all extraction equipment be inspected by an industrial hygienist
8. Require all extraction technicians be trained and certified
9. Include required food handling safety training in Employee handbook
10. Require the establishment of clearly defined administrative hold and product recall procedures
11. Require that all employees be subject to a criminal background check
12. Require proper disposing of all waste per state law

MICROBUSINESS**Description:**

The Microbusiness is the newest and most complex license to be issued by the State. This type of license will be allowed to conduct cultivation of cannabis on an area of less than 10,000 square feet of canopy space and act as a licensed distributor, Level 1 manufacturer and retailer. The State will generally require microbusinesses to comply with standards applicable to cultivators, distributors, manufacturers and retailers, which means the City will have to take these activities into consideration when deciding on the appropriate zoning. The Microbusiness model was designed to create opportunities for small business owners to enter the cannabis market. Additionally, the model further helps social equity issues as they relate to economic and technical barriers. If efficiently run, the vertically integrated model of a microbusiness can be very profitable, as it reduces the overhead cost of operating multiple locations and paying various levels of taxes on the same product they own. The down side to the microbusiness model is that, if a business owner is unable to successfully manage all segments of the supply chain, they could ultimately become a compliance liability and a higher risk of failure, especially if they have no previous experience running a cannabis business in a regulated market.

Pros and Cons:

In this new era of regulation, many small cannabis operators fear they will be driven out of business by larger competitors. For those able to transition to a regulated market, the microbusiness is a license category that may be compatible with their business model and assure their survival. This license type can also ease the burden of local regulation, since it is a model that tends to favor both vertical integration and location of all means of production at a single site. Microbusinesses incorporate multiple commercial cannabis business activities. As such, they will have to comply with standards applicable to cultivators, distributors, manufacturers and retailers. Because of the various activities that take place under one roof, local licensing agencies will have to consider the appropriate zoning, buffering and setbacks for microbusinesses. Microbusinesses will experience the same concerns and potential issues as the other stand-alone licensees. One of the most concerning issues with microbusinesses is the control of the inventory as it flows throughout the internal supply chain. Other states have experienced inventory control problems at locations that have multiple licenses under one roof.

Summary of Pros and Cons:

1. Microbusiness licensees must conduct at least three of the four following commercial activities:
 - a. Cultivation (Less than 10,000 sq. ft.)
 - b. Manufacturing (Level 1, Type 6)
 - c. Distribution
 - d. Retail
2. Appealing business model to small operators
3. Effective regulation requires knowledge of requirements of multiple license types
4. Appropriate zoning may be more challenging with this license type
5. Licensee must comply with all the rules and regulations that apply to the activities they are conducting

Regulatory Considerations:

A microbusiness license should incorporate all the mitigation measures listed for the other licenses. Robust security and inventory tracking should be the priority when establishing regulatory ordinances, as well as the review and approval of business plans.

Regulatory Framework Example:

1. Allow in Mix-Use, Light Industrial, Commercial zones
2. Allow only Indoor – Artificial Light only operations
3. Allow up to 10,000 sq. ft. of canopy space for cultivation
4. Prohibit location within 600 ft of sensitive receptor (schools, day cares, youth centers, parks)
5. Require all inventory (including edibles and concentrates) to be locked and secured in a safe, vault or secured room when the business is closed.
6. Standard Operating Procedures should require that all employees receive ongoing point of sale and inventory tracking data entry training
7. Limit the amount of inventory on display to the equivalent of two days sales (increases inventory accountability and reduces volume of odor)
8. Require the business to assign one individual to the position of inventory manager
9. Require that all inventory and sales transactions be reconciled by end of business
10. Consider security by environmental design when reviewing and approving site plans
11. Require that all employees be subject to a criminal background check
12. Require the entire distribution facility to be designated a limited access facility, preventing visitor, contractors or non-employees from entering without an escort by a designated manager
13. Inspect and approve the safe, vault or secured room before issuance of license
14. Require that all vehicles used to transport inventory should be equipped with GPS
15. Require that a computer-generated manifest occur prior to the transportation of inventory
16. Prohibit non-authorized employees within vehicles during deliveries to licensed businesses
17. Require that inventory should be locked and secured in an approved case, safe or cabinet, including when in transit
18. Require Odor Control Plan
19. Require Security Plan
20. Renewable energy plan that meets the South Coast Air Quality Management District (SCAQMD) requirements
21. Require a Water Management Plan
22. Limit visible artificial lighting
23. Require extraction room construction meet C1, D1 classification
24. Require installation of fire suppression systems and flammable gas detection devices

25. Require notification of any change to product line and use of extraction solvents
26. Require all extraction equipment be inspected by an industrial hygienist
27. Require all extraction technicians be trained and certified
28. Include required food handling safety training in Employee handbook
29. Require the establishment of clearly defined administrative hold and product recall procedures
30. Require that all employees be subject to a criminal background check
31. Require proper disposing of all waste per state law

RETAIL

Description:

As defined by the Bureau of Cannabis control, a Cannabis Retailer is a person licensed to sell cannabis goods to customers as “a retailer, microbusiness, or nonprofit.” The retail component of the supply chain is by design the most visible segment of the commercial cannabis industry. As such, retail sales locations have been subject to the most scrutiny. Retail sales locations should be thoughtfully zoned, designed, and constructed in a manner that is suitable for the neighborhood to create the least amount of impact on the surrounding businesses and neighborhood.

In addition to being highly visible to the public, the retailer is at the end of the cannabis supply chain and thus where the inventory is under the most stringent control. The final product has been tested, packaged, labeled and accounted for down to the gram. Also, retailers tend to employ the fewest number of staff members and have the highest rate of employee retention among the license types such as cultivation or manufacturing. Under robust security measures and accessible to the fewest number of employees, there is generally very little theft from a retail sale establishment. In the six years that Colorado has been overseeing commercial cannabis activities, there have only been 8 reported violent crimes at retail sales locations.

Based on the current demand for retailer locations (dispensaries), retail locations can generate substantial revenues compared to other retail establishments within jurisdictions. For example, cannabis retailers currently generate on average \$933 per square foot, which exceeds other retail stores such as Whole Foods (\$903), Walgreens (\$720), Wal-Mart (\$446), The Gap (\$334), Kohl’s (\$228) and Dick’s Sporting Goods (\$184). A reason for this that most retail stores take up much more space than dispensaries, cannabis retailers stock a lot of product into a relatively small amount of space, and the average price point for marijuana is attractive to consumers.

Pros and Cons:

When Colorado and Washington licensed their first commercial cannabis retail outlets, very little thought was given to their location. Shortly thereafter local agencies started experiencing a high concentration of cannabis activity in certain neighborhoods. While it is difficult to develop the right formula, well defined buffers, minimum distance requirements, and preventing oversaturation by limiting the number of permits should be considered when designing an ordinance. A well-regulated retail business with an appropriate tax measure in place can potentially net revenue for a city in the low millions, depending on a number of factors, including regional competition. The all-cash nature of retail outlets poses public safety hazards to employees, as well as challenges for the city in capturing an accurate accounting of all sales as well as sales tax revenue, assuming the existence of a local tax measure. Heightened security

measures such as interior and exterior video surveillance and security guards may be advisable, since customers may also be at risk while entering and leaving the premises.

Summary of Pros and Cons:

1. Control volume of inventory on display at any given time
2. Point of sales and inventory control data must be entered by employees properly
3. Poorly trained employees create inventory tracking problems
4. Significant revenue potential if well-regulated and taxed at appropriate level
5. Combination of all-cash business and significant product on site pose public safety hazard for employees and customers alike
6. Non-Store Front Retail could generate revenue without having traditional store fronts

Regulatory Considerations:

Although inventory is accounted for down to the gram, robust inventory tracking requirements should be required and strictly enforced to mitigate employee theft. Robust inventory control measures should be considered in order to increase accountability and deter diversion.

Regulatory Framework Example:

1. Allow in Commercial zones
2. Prohibit location within 600 ft of sensitive receptor (schools, day cares, youth centers, parks)
3. Require all inventory (including edibles and concentrates) be locked and secured in a safe, vault or secured room when the business is closed
4. Require that the Standard Operating Procedures provide ongoing point of sale and inventory tracking data entry training to all employees
5. Limit the amount of inventory on display to the equivalent of two days sales (increases inventory accountability and reduces volume of odor)
6. Require the business to assign one individual to the position of inventory manager
7. Require that all inventory and sales transactions be reconciled by end of businesses
8. Consider security by environmental design when reviewing and approving site plans
9. Require that all employees be subject to a criminal background check

TESTING LABORATORIES

Description:

As defined by the Bureau of Cannabis Control, Cannabis Testing Laboratories will be required to perform testing on cannabis goods to measure: cannabinoids, foreign material, heavy metals, microbial impurities, mycotoxins, moisture content and water activity, residual pesticides, residual solvents and processing chemicals and terpenoids. Additionally, edible cannabis products that contain more than one serving per unit will be tested for homogeneity to endure consistent concentrations of tetrahydrocannabinol (THC) or cannabidiol (CBD). Upon completion of the test, the laboratory will generate a certificate of analysis that contains the results of the testing and whether the tested batch passed or failed.

Testing laboratories are required to develop and implement a quality assurance program that is sufficient to ensure the reliability and validity of the analytical data produced by the laboratory. Testing requirements will be phased in throughout 2018. Testing laboratories will be required to test cannabis

goods for both A-licenses and M-Licenses. Owners of a testing laboratory are prohibited from conducting other commercial cannabis activities.

Concerns/Potential Issues:

Testing labs pose the fewest public safety challenges because they have so little cannabis on the premises compared to other license types that they are far less likely to attract criminal activity, or to become a source of diversion. Testing lab operators are prohibited by law from operating or having an ownership interest in any other license category. However, because testing labs are critical to enforcing the state's health and safety standards, they must have both rigorous chain-of-custody protocols and testing equipment that can consistently comply with state standards.

Summary of Concerns and Issues:

1. Adequate security and control of inventory while being stored on-site
2. Adequate security and control of inventory while inventory is being transported
3. Cash handling procedures and availability to banking
4. Periodic compliance checks for adherence to state standards for testing equipment

Regulatory Considerations:

Testing Laboratories should incorporate all the mitigation measures listed for the other licenses. Robust security and inventory tracking should be the priority when establishing regulatory ordinances, as well as the review and approval of business plans.

Regulatory Framework Example:

1. Allow in Light Industrial and Manufacturing zones
2. Prohibit location within 600 ft of sensitive receptor (schools, day cares, youth centers, parks)
3. Require the entire testing laboratory facility be designated as a Limited-Access facility, preventing visitor, contractors or non-employees from entering without an escort by a designated manager
4. Inspect and approve the safe, vault or secured room prior to issuance of license
5. Require that cannabis goods be locked and secured in an approved locked and secured room vault or safe when being stored
6. Require that all employees be subject to a criminal background check

**RESOLUTION OPPOSING YOUTH ACCESS TO MARIJUANA THROUGH
RETAIL STOREFRONTS, CULTIVATION, MANUFACTURING, AND
TESTING OF COMMERCIAL CANNABIS**

WHEREAS, the Morgan Hill Unified School District is committed to serving a diverse community of students in an inclusive, safe, and secure environment; and

WHEREAS, the Board of Education is also committed to safeguarding the wellness of all students, having established policies by which staff work to ensure well-being of the students MHUSD serves; and

WHEREAS, the Morgan Hill City Council is currently considering local ordinances regarding the cultivation, manufacturing, distribution, testing, and retail sale of commercial cannabis per California state law; and

WHEREAS, in its clinical report entitled, *Counseling Parents and Teens About Marijuana Use in the Era of Legalization of Marijuana* (March 2017, the American Academy of Pediatrics) has documented numerous published findings indicating that cannabis use has harmful effects on adolescents and youth, citing a host of recent medical and scientific research studies to evidence these claims; and

WHEREAS, in this report, the American Academy of Pediatrics references longitudinal studies that link marijuana to negative effects on intellectual function and higher rates of mental health disorders such as addiction, depression, and psychosis; and

WHEREAS, in its publication entitled *Marijuana and Tobacco Use* (May 2017), the California Department of Public Health cites research showing that the highest rates of past month marijuana use among adolescents aged 12 to 17 were in states or jurisdictions that had legalized commercial marijuana and that nationally the perceived risk of harm associated with marijuana use by adolescents is decreasing while the daily use of marijuana is increasing among high school students; and

WHEREAS, marijuana is addictive, particularly for youth; and

WHEREAS, the frequency of marijuana use among youth has surpassed the use of tobacco in Morgan Hill; and

WHEREAS, marijuana use is harmful to the developing brain, affecting the parts of the brain that influence pleasure, memory, thinking, concentration, sensory and time perception, and coordinated movement; and

WHEREAS, frequent youth users of today's highly potent marijuana lose an average of eight IQ points; and

WHEREAS, students who are frequent marijuana users are 60 percent less likely to complete high school, 60 percent less likely to graduate college; and

WHEREAS, marijuana use is associated with additional health risks such as respiratory illnesses, asthma, and immune system suppression; and

WHEREAS, population studies reveal an association between youth marijuana use and increased risk of mental health disorders including anxiety, paranoia, psychosis and schizophrenia, and users are seven times more likely to attempt suicide than non-users; and

WHEREAS, marijuana use disorders have increased in all age groups over the past decade, and marijuana accounts for most youth drug treatment admissions across the nation and in Santa Clara County; and

WHEREAS, government data show that almost 40 percent of U.S. high school students have tried marijuana, about 20 percent are current users, and close to 10 percent first tried it before age 13; and

WHEREAS, in Colorado, where recreational marijuana is legal and commercialized, youth use of marijuana is 50% above the national average, and marijuana-related traffic deaths increased 92% from 2010 to 2014 while all traffic deaths increased only 8 percent during the same time period; and

WHEREAS, in Colorado and Washington where recreational marijuana is legal and commercialized, emergency room admissions for accidental poisoning due to marijuana ingestion by children under the age of 12 has increased by 25% over the last three years; and

WHEREAS, evidence that the commercialization of marijuana through commercial storefronts and cultivation would increase its availability and normalize its use, leading to increased negative health consequences, particularly among youth; and

WHEREAS, the Board of Education believes that the Morgan Hill community would benefit from ordinances that do not allow the retail sales of commercial cannabis and municipal codes to ensure that cannabis businesses or dispensaries are not located in the City of Morgan Hill; and

WHEREAS, Morgan Hill Unified School District is committed to actively supporting its students with wellness education and harm reduction counseling to address the harmful effects of cannabis on youth;

NOW, THEREFORE, BE IT RESOLVED that Morgan Hill Unified School District supports the decrease of access to marijuana and cannabis related products through commercial cultivation, manufacturing, testing, and retail storefronts in an effort to decrease marijuana use by adolescents and the negative consequences to their health and to public safety that would follow; and

BE IT FURTHER RESOLVED, that the Board of Education hereby respectfully requests that any cannabis retail storefront, commercial cultivation, manufacturing, and/or testing business be prohibited in the City of Morgan Hill. **PASSED AND ADOPTED** at the regular meeting of the Morgan Hill Unified School District Board of Education duly held on the 19th day of March 2019, by the following vote:

AYES: Escoto, Gittens, Horner, Orosco, Patterson, Sullivan, Sutter

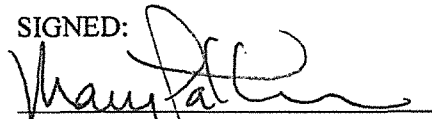
NOES:

ABSENT:

ABSTAIN:

DATED: March 19, 2019

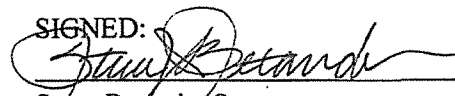
SIGNED:


 Mary Patterson, President
 Board of Education

I, Steve Betando, Secretary of the Board of Education, do hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Education of the MORGAN HILL UNIFIED SCHOOL DISTRICT at the regular meeting on March 19, 2019 which resolution is on file in the office of said Board.

DATED: March 19, 2019

SIGNED:


 Steve Betando, Secretary
 Board of Education



REDUCING THE RISKS OF DISTORTION IN CANNABIS RESEARCH

BY:

Dr. Keith Humphreys (PhD), Professor, Psychiatry and Behavioral Sciences - Stanford University
Dr. Wayne Denis Hall (PhD), Professor and Director of the Center for Youth Substance Abuse Research at the University of Queensland.

*Pls Distribute,
Ron Kie Kie L*

Humphreys Keith (Orcid ID: 0000-0003-0694-5761)

Reducing the risks of distortion in cannabis research

Keith Humphreys^{1,2,4} and Wayne D. Hall^{3,4}

1 Veterans Affairs Palo Alto Health Care System

2 Stanford University

3 The University of Queensland Centre for Youth Substance Abuse Research and

4. National Addiction Centre, Kings College London

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Key Words: medical cannabis, cannabis research, vested interests, distortion

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representative of the US National Organization for the Reform of Marijuana Laws (NORML) criticized the methods of the recent study [10] while citing a limited selection of studies and praising the positive findings of studies that used similar designs. The pushback against the study's findings suggests some lessons for cannabis researchers to consider.

The cannabis industry will behave like the tobacco and alcohol industries

In a number of countries, cannabis use has traditionally been associated with left wing grassroots activism, making it easy to assume that the cannabis industry is run by altruistic hippies disinterestedly proselytizing the virtues of cannabis and unconcerned about worldly wealth [12]. In the USA and Canada, the industry is in fact run by business executives with law degrees and MBAs who are adopting the business practices of the tobacco and alcohol industries that are now major investors in large cannabis companies [12]. Researchers should therefore not be surprised that the profit-maximizing cannabis industry highlights any "good news" on cannabis and seeks to discredit any evidence of harm. Researchers who take funds from the cannabis industry should therefore be aware that accepting cannabis industry funding may come with strings, and could also soon have the same adverse reputational effects among one's colleagues as taking tobacco and alcohol industry funding.

We believe that journals in our field should follow Addiction's practice in requiring researchers to disclose cannabis industry support in the same way as they do any support from the alcohol, tobacco, gambling, and pharmaceutical industries. Journals should also call out misbehavior by the emerging cannabis industry as they do that of other industries producing and selling addictive products.

Beware of evidential double standards in evaluating harms and benefits of cannabis use

Advocates for more lax, pro-corporate cannabis policies may use evidential double standards to portray the risks and benefits of cannabis use. Studies showing apparent harmful effects of cannabis use may be discounted for methodological reasons (e.g., confounding, lack of randomization) while studies with the same or worse methodological problems may be promoted because they provide more congenial results. The two studies of medical cannabis and opioid overdose illustrate this well, given that the second used the same methods as the first and had more data, yet was portrayed as a less reliable source of evidence.

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CANNABIS POLICY DISCUSSION

City of Morgan Hill

HdL[®] Cannabis



AGENDA

- Introductions
- Background
- Overview of Regulatory Ordinance
- Application Process
- Economic Development
- Estimated Timeline
- Council Direction
- Questions



BACKGROUND

Current Law

- Proposition 64 allows for the possession and recreational use of cannabis for those age 21 and older
- Local jurisdictions must allow for indoor cultivation up to six plants
- Cannabis must be consumed indoors and not in public places
- New regulations permit local delivery – without local control
- Local jurisdictions can regulate or prohibit other uses
 - sales, cultivation, manufacturing, and testing



BACKGROUND

Current Morgan Hill Status

- April 2012 – Amended MHMC 8.44 which strengthened secondhand smoke ordinance – which applies to cannabis
- January 2016 – Amended MHMC 9.16 to prohibit cultivation, manufacturing, delivery services, and dispensaries
- Only Proposition 64 permissible activities are allowed
- Indoor cultivation of six plants and local delivery



BACKGROUND

Voice of Morgan Hill Voters

- Voters in Morgan Hill supported Proposition 64 at 58%
- Voters passed Measure I (Cannabis Tax) at 79%
- Measure I taxes cannabis activities at the following rates:
 - Retail Sales – starting at 6% up to 10%
 - Cultivation – starting at \$10 per square foot up to \$15
 - Manufacturing – starting at 4% up to 10%
 - Testing – starting at 2% and up to 10%



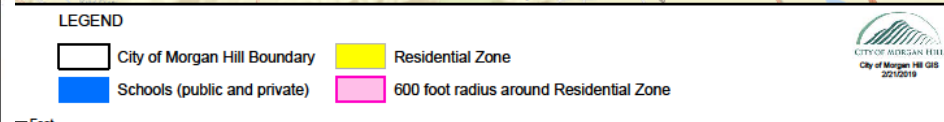
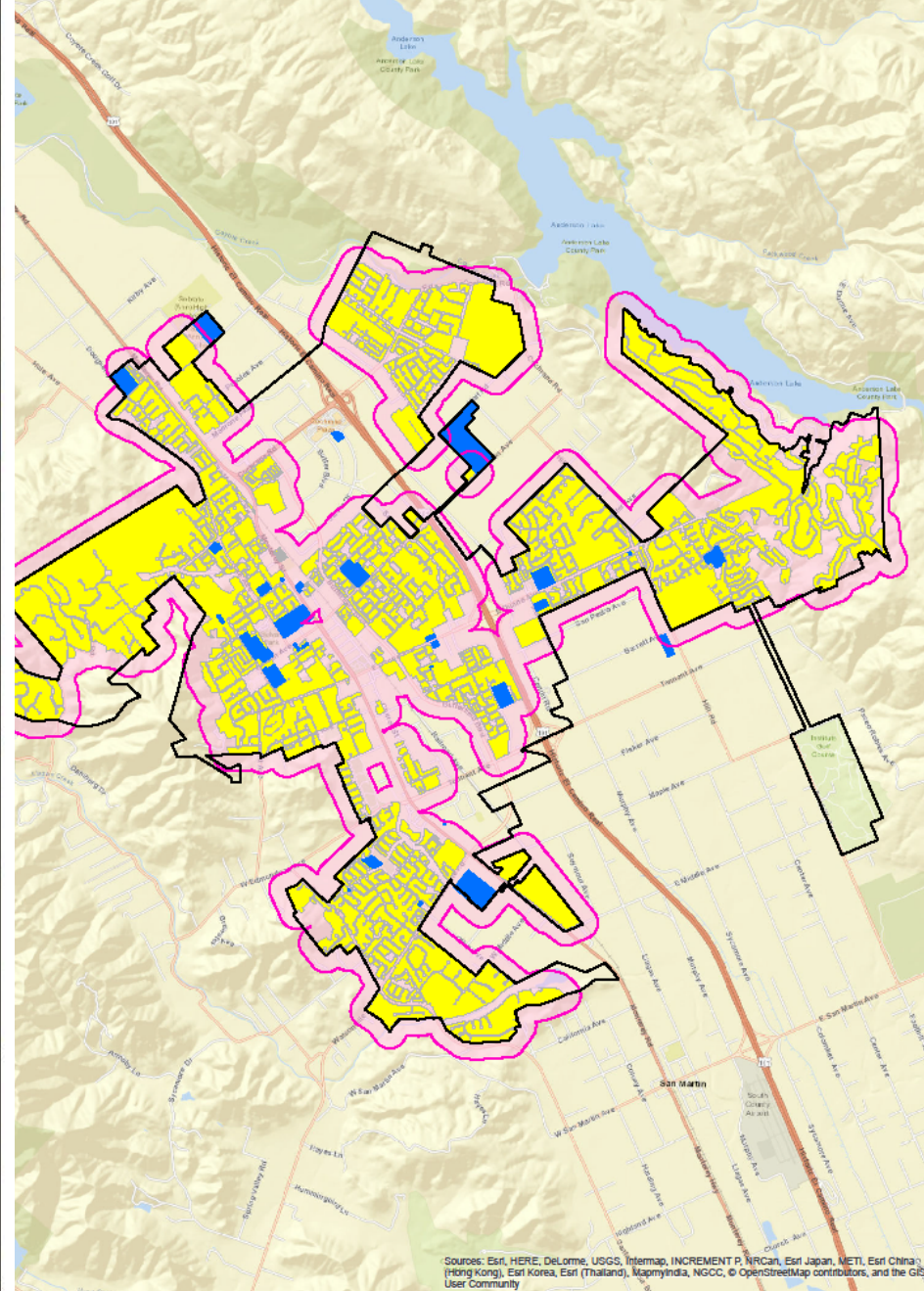
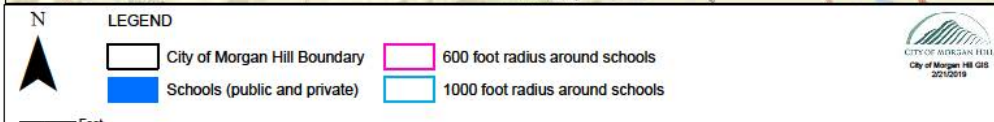
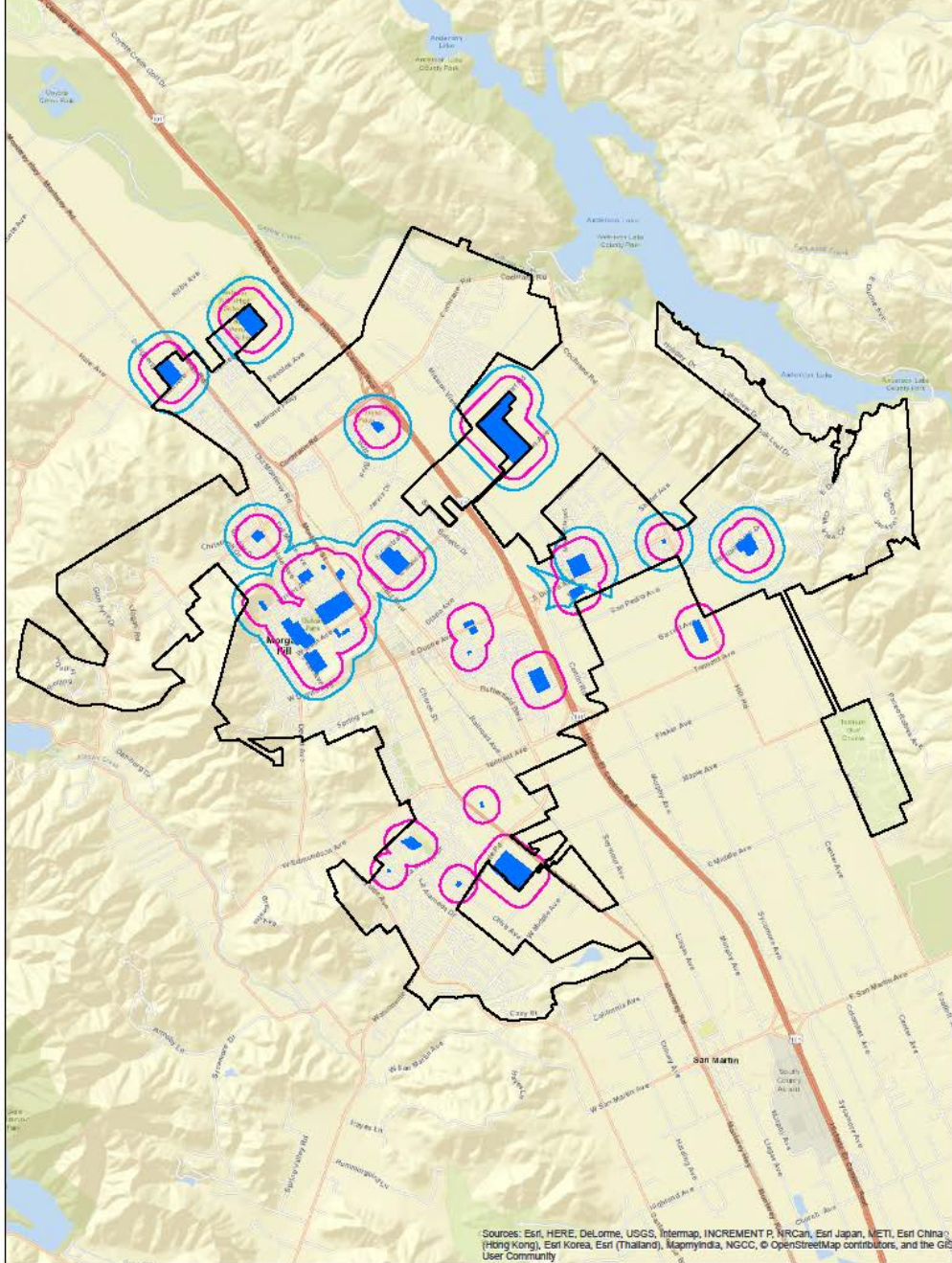
OVERVIEW OF LOCAL REGULATORY PROCESS

- Goal: Effective Local Control of Cannabis Businesses
- The City can prohibit or regulate any cannabis businesses licensed by the State.
- Examples:
 - Regulation of all permitted activities.
 - Prohibition of outdoor cultivation for commercial and personal use.
 - Prohibition of Type 5 (large) Permits or Microbusinesses
 - Prohibition or additional regulations of a variety of land uses such as distances from sensitive areas.

State Mandated Buffer Zone and Local Rules

- Cities can designate a greater buffer zone than 600 feet, but it should be codified in an ordinance. The state would defer to such rules.
- Per state law, distances must be measured from parcel to parcel, boundary line to boundary line – not structure to structure.





OVERVIEW: PROPOSED REGULATORY ORDINANCE

5.48-XXX: Authority and Purpose, and Intent

5.48.XXX: Definitions

5.48.XXX Cannabis Business Permits Required

5.48.XXX: Application Evaluation Process

5.48.XXX: Maximum Number of Permits and Types Authorized

5.48.XXX: Cannabis Owner and Employee Background Check

5.48.XXX: Fees and Charges

5.48.XXX: Location and Design-Zones and Sensitive Buffers



Cannabis Business Regulatory Program

Attachment: Previous Cannabis Presentation (2469 : Ordinance of the City of Morgan Hill

Highlights

- Program to be run by the Police Chief (or his/her designee)
- Program would provide for a business permit and background check:
 - Cannabis Business Permit
 - Cannabis Owner and Employee Background Check
- The Police Chief (or his/her designee) would implement the Cannabis Business Permit and background check processes



Cannabis Business Regulatory Program

Highlights (continued)

- All cannabis businesses shall be required to comply with all state and local laws and rules, regulations, and standards
- This would include any additional regulations imposed by the Police Chief (or his/her designee)



Cannabis Business Permit

A cannabis business permit issued by the City would be required.

No one may operate a cannabis business in the City without obtaining all three* of the following:

- 1) A valid local Cannabis Business Permit
- 2) A valid State License to operate such a business
- 3) A valid State of California Seller's Permit

** As required by state law.*



Application Evaluation Process

This process has three key components:

- 1) Departmental Evaluation
- 2) Public Hearing
- 3) Competitive Evaluation Process



Application Evaluation Process

Competitive Evaluation Process

- This would be conducted if the number of eligible applications for each cannabis activity type exceeds the maximum number allowed under the ordinance.
- Applicants would be scored and ranked by staff/third party which would provide recommendation to the City Council to issue Cannabis Business Permit to the highest ranked, eligible applicants that are deemed to be the best fit to conduct business in the City.



Fees and Charges

- Application, permit, and all other fees would be set by the City Council by Resolution
- Goal would be 100% cost recovery
- No cannabis business permittee could continue operations until/unless fees are timely paid
- Fees, costs or charges imposed under this ordinance shall be deemed a debt to the City of Morgan Hill, recoverable via an authorized administrative process



PERMIT FEES

Permit Fees – Total TBD

- Cost recovery to cover staff time for the City Manager's Office, Finance Department, City Attorney's Office, Police Department, Fire Department, Third-party Reviewer and inspections.
- Applicants pay separate fees by Phase.
- Provisions to allow nominal fee adjustments on a yearly basis to cover general increases.
- Ongoing monitoring and enforcement costs for cannabis businesses would be recovered via separate annual cannabis business permit on a cost-recovery basis would be set by the City Council at a future date.



Limitations on City's Liability

- The ordinance would expressly limit the City's liability, to the fullest extent permissible under the law, with respect to issuing Cannabis Business Permits pursuant to this Chapter, or otherwise authorizing a commercial business to engage in commercial cannabis activity
- Would include a finding by the City Council that the Ordinance is exempt from CEQA which needs to be done by July 1, 2019 under SB 94



REGULATORY ORDINANCE: Details

Regulated Business Environment

- Hours of operation
- Business location
- Signage/advertisement
- Physical security
- Smell, sight, noise
- Reporting requirements
- Employee badge requirements
- Unpermitted construction activity



REGULATORY ORDINANCE: Details

- Vendors and consultants
- Access control requirements
- Law enforcement access
- Record reporting/retention requirements (Track n Trace)
- Investigation and inspection protocols
- Good neighbor policy mitigation
- Suspension, fines, and revocation of the permit
- Criminal background check
- Regulation of deliveries

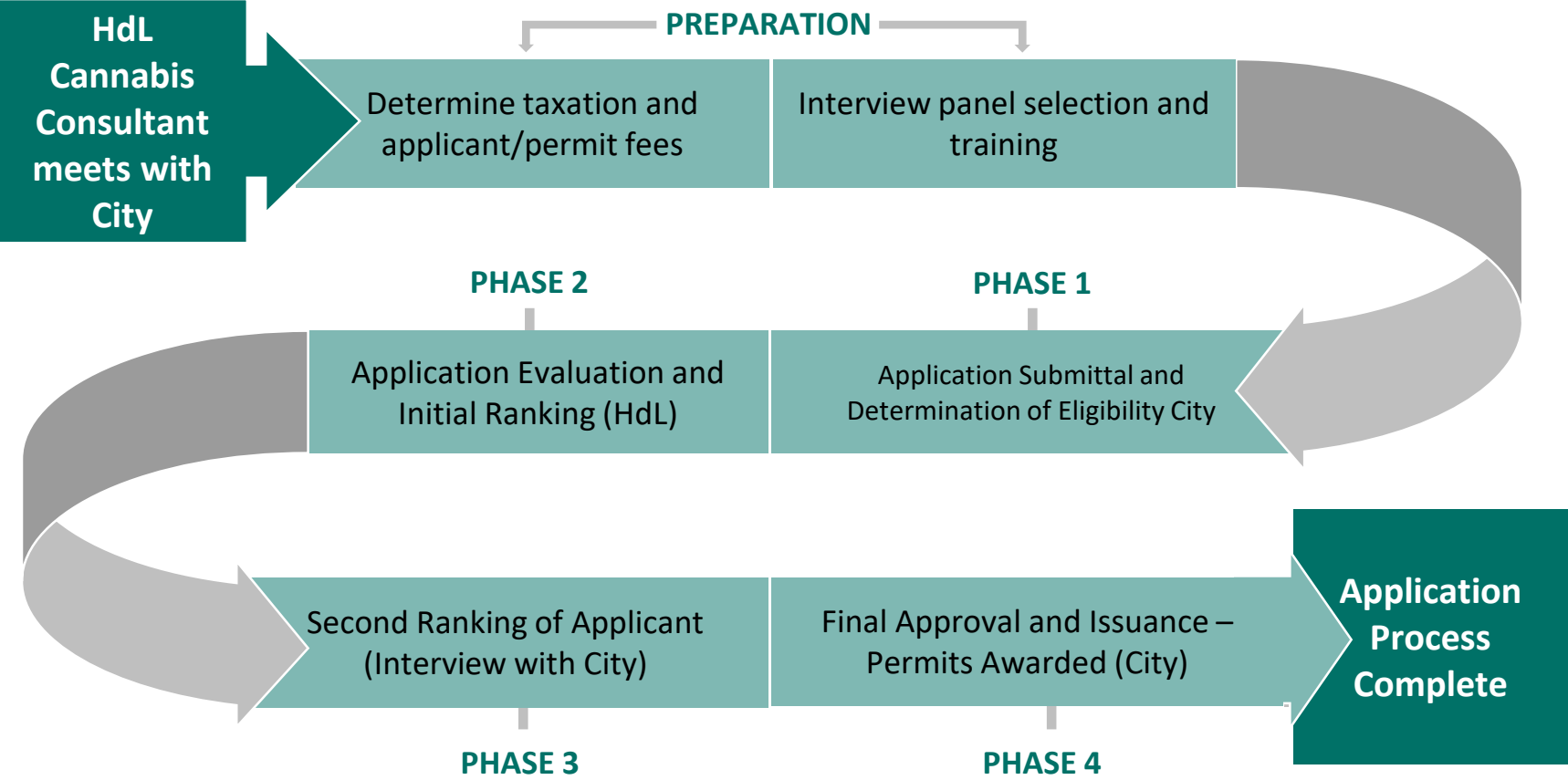


DELIVERY INFORMATION

- Taxation on delivery is covered through apportionment.
- Retailers and Non-Store Front Retailers can no longer be banned from delivering into a local agency.
- A delivery service can only carry up to \$5,000 in cannabis products and cash.
- The value of cannabis goods carried in the delivery vehicle for which a delivery order was not received may not exceed \$3,000.
- Delivery drivers would be required to obtain city permits.



CANNABIS PERMIT APPLICATION PROCESS





CANNABIS PERMIT APPLICATION PROCESS BY PHASE

1

Application Submittal & Determination of Eligibility

- Applicants submit required documents
- Applications will be reviewed for completeness
- Applicants with complete applications will move to Phase 2

2

Application Evaluation & Initial Ranking

- HdL reviews the applications and assigns an initial score
- Applicants who score 80% or higher move to Phase 3

3

Interviews & Second Ranking

- Qualified applicants interview with a Selection Committee comprised of City staff
- HdL facilitates the interviews
- Selection committee awards a second score
- Applicants continue to maintain a score of 80% or higher move to Phase 4

4

Public Meeting & City Manager/Police Chief Final Selection

- Highest ranked applicants participate in a public meeting
- Selection Committee conducts final review and evaluation
- Selection Committee makes recommendation to City Manager
- City Council makes final selection





LOCAL TAX REVENUE PROJECTIONS

Emerging market makes it difficult to assess with total accuracy

Annual Revenue Estimates:

- Very Conservative: \$675,000
- Moderate: \$1,080,000
- Aggressive: \$1,620,000
 - *Assumes 2 cultivation facilities with 10,000 sq. feet each of canopy space generating \$4 million gross receipts annually.*
 - *Assumes 2 manufacturers with an average of \$3 million in gross receipts.*
 - *Assumes 2 retailers with an average of \$2.5 million in gross receipts.*
 - *Assumes 2 testing labs with an average of \$2 million in gross receipts.*
 - *Assumes 2 distribution facilities with an average of \$2 million in gross receipts.*



CANNABIS RELATED JOBS

- 8-12 new jobs at each facility
- Wages *generally* range between \$16.50 - \$30.00 per hour

CANNABIS TOP PAYING POSITIONS



GROW MASTER
(master cultivator)

\$100,000 - \$120,000



EXTRACTION SPECIALIST
(master extractor)

\$90,000 - \$120,000

MARIJUANA
.COM



DISPENSARY MANAGER

\$80,000 - \$120,000



BANKING INFORMATION

- What are the current standards for the Cannabis banking industry?
- What is the process for cash business and how is it regulated?
- Do Cannabis facilities accept credit cards?



HOW LONG WILL THE PROCESS TAKE

Estimated Timeline	
February 27, 2019	City Council workshop to provide policy direction
March 1 – March 31, 2019	Regulatory Ordinance and Land Use Ordinance Development
April 1 – April 30, 2019	Design Application Process and Cost Recovery Fees
May 1 – July 1, 2019	Window to Accept Applications
July 8 – August 16, 2019	Application Reviews, Backgrounds and Applicant Interviews
August 28, 2019	Present Staff Report Recommendations to City Council
Sept 9, – October 4, 2019	Award Issuance of Regulatory Permit Pending CUP approval or Operational Agreement



DECISION POINTS/POLICY QUESTIONS

Staff is seeking Council policy direction on the various uses of cannabis – to include desired location and number of uses if allowed.

- Retail/Medicinal Storefront
- Retail/Medicinal Non-storefront
- Cultivation
- Manufacturing
- Distribution
- Testing
- Microbusiness



RETAIL STOREFRONT - DISPENSARY

Should the City adopt an ordinance to allow a retail storefront - dispensary of Cannabis in Morgan Hill? If yes:

- Where?
- How many?
- What size?
- Age Requirement?



RETAIL NON-STOREFRONT/DELIVERY

Should the City adopt an ordinance to allow a retail non-storefront/delivery of Cannabis in Morgan Hill? If yes:

- Where?
- How many?
- Age Requirement?



CULTIVATION

Should the City adopt an ordinance to allow the cultivation of Cannabis in Morgan Hill? If yes:

- Where?
- How many?
- What size?



MANUFACTURING

Should the City adopt an ordinance to allow the manufacturing of Cannabis in Morgan Hill? If yes:

- Where?
- How many?
- What size?
- What type?



DISTRIBUTION

Should the City adopt an ordinance to allow the distribution of Cannabis in Morgan Hill? If yes:

- Where?
- How many?
- What size?
- What type?



TESTING

Should the City adopt an ordinance to allow the testing of Cannabis in Morgan Hill? If yes:

- Where?
- How many?



MICROBUSINESS

Should the City adopt an ordinance to allow a Microbusiness for Cannabis in Morgan Hill? If yes:

- Where?
- How many?
- What size?



Cannabis Policy Workshop

City Council Discussion and Direction

EXHIBIT A**ORDINANCE NO. _____****AN ORDINANCE OF THE CITY OF MORGAN HILL,
CALIFORNIA ADDING CHAPTER 5.06 (CANNABIS
BUSINESS TAX) TO TITLE 5 OF THE MORGAN HILL
MUNICIPAL CODE****THE PEOPLE OF THE CITY OF MORGAN HILL DO ORDAIN AS FOLLOWS:**

SECTION 1. CODE AMENDMENT. Chapter 5.06 is added to Title 5 of the Morgan Hill Municipal Code to read as follows:

**CHAPTER 5.06
CANNABIS BUSINESS TAX****Sections:**

- 5.06.010 Title.
- 5.06.020 Authority and Purpose.
- 5.06.030 Intent.
- 5.06.040 Definitions.
- 5.06.050 Tax imposed.
- 5.06.060 Reporting and remittance of tax.
- 5.06.070 Payments and communications –timely remittance.
- 5.06.080 Payment – when taxes deemed delinquent.
- 5.06.090 Notice not required by City.
- 5.06.100 Penalties and interest.
- 5.06.110 Refunds and credits.
- 5.06.120 Refunds and procedures.
- 5.06.130 Personal cultivation not taxed.
- 5.06.140 Administration of the tax.
- 5.06.150 Appeal procedure.
- 5.06.160 Enforcement –action to collect.
- 5.06.170 Apportionment.
- 5.06.180 Constitutionality and legality.
- 5.06.190 Audit and examination of premises and records.
- 5.06.200 Other licenses, permits, taxes or charges.
- 5.06.210 Payment of tax does not authorize unlawful business.
- 5.06.220 Deficiency determinations.
- 5.06.230 Failure to report – nonpayment, fraud.
- 5.06.240 Tax assessment –notice requirements.
- 5.06.250 Tax assessment – hearing, application, and determination.
- 5.06.260 Relief from taxes-disaster relief.
- 5.06.270 Conviction for violation – taxes not waived.
- 5.06.280 Violation deemed misdemeanor.

- 5.06.290 Severability.
- 5.06.300 Remedies cumulative.
- 5.06.310 Amendment or repeal.

5.06.010 Title.

This ordinance shall be known as the Cannabis Business Tax Ordinance.

5.06.020 Authority and Purpose.

The purpose of this Ordinance is to adopt a tax, for revenue purposes, pursuant to Sections 37101 and 37100.5 of the California Government Code, upon Cannabis Businesses that engage in business in the City. The Cannabis Business Tax is levied based upon business gross receipts and square footage of plant canopy. It is not a sales and use tax, a tax upon income, or a tax upon real property.

The Cannabis Business Tax is a general tax enacted solely for general governmental purposes of the City and not for specific purposes. All of the proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and be available for any legal municipal purpose.

5.06.030 Intent.

The intent of this Ordinance is to levy a business tax on all Cannabis Businesses that operate in the City, regardless of whether such business would have been legal at the time this Ordinance was adopted or is legal or illegal in the future. Nothing in this Ordinance shall be interpreted to authorize or permit any business activity that would not otherwise be legal or permissible under laws applicable to the activity at the time the activity is undertaken.

This ordinance was adopted by a vote of the people. The voter approved ballot measure allowed for a gross receipts tax of “up to ten (10)%”. This ordinance sets the gross receipts tax at 6%. Based upon voter authorization the gross receipts tax may be increased by the City Council up to no more than 10% in the future. The voter approved ballot measure allowed for a canopy tax of “not to exceed \$15.00”. This ordinance sets the canopy tax at various levels starting at \$10.00 per square foot and less for other types of growing operations. The City Council could increase the canopy tax up to the level of \$15.00 per square foot in the future.

5.06.040 Definitions.

The following words and phrases shall have the meanings set forth below when used in this Chapter:

A. “Business” shall include all activities engaged in or caused to be engaged in within the City, including any commercial or industrial enterprise, trade, profession, occupation, vocation, calling, or livelihood, whether or not carried on for gain or profit, but shall not include the services rendered by an employee to his or her employer.

B. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” also means marijuana as defined by Section 11018 of the California Health and Safety Code and is not limited to medical cannabis.

C. “Cannabis product” means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product. “Cannabis product” also means marijuana products as defined by Section 11018.1 of the California Health and Safety Code and is not limited to medical cannabis products.

D. “Canopy” means all areas occupied by any portion of a cannabis plant whether contiguous or noncontiguous on any one site. When plants occupy multiple horizontal planes (as when plants are placed on shelving above other plants) each plane shall be counted as a separate canopy area.

E. “Cannabis business” means any business activity involving cannabis, including but not limited to cultivating, transporting, distributing, manufacturing, compounding, converting, processing, preparing, storing, packaging, delivering, testing, dispensing, retailing and wholesaling of cannabis, of cannabis products or of ancillary products and accessories, whether or not carried on for gain or profit.

F. “Cannabis business tax” or “business tax,” means the tax due pursuant to this Chapter for engaging in cannabis business in the City.

G. “Commercial cannabis cultivation” means cultivation in the course of conducting a cannabis business.

H. “City permit” means a permit issued by the City to a person to authorize that person to operate or engage in a cannabis business.

I. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis and includes, but is not limited to, the operation of a nursery.

J. “Employee” means each and every person engaged in the operation or conduct of any business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such business for a wage, salary, commission, barter or any other form of compensation.

K. “Engaged in business as a cannabis business” means the commencing, conducting, operating, managing or carrying on of a cannabis business, whether done as owner, or by means of an officer, agent, manager, employee, or otherwise, whether operating from a fixed location in the City or coming into the City from an outside location to engage in such activities. A person

shall be deemed engaged in business within the City if:

1. Such person or person's employee maintains a fixed place of business within the City for the benefit or partial benefit of such person;
2. Such person or person's employee owns or leases real property within the City for business purposes;
3. Such person or person's employee regularly maintains a stock of tangible personal property in the City for sale in the ordinary course of business;
4. Such person or person's employee regularly conducts solicitation of business within the City; or
5. Such person or person's employee performs work or renders services in the City.

The foregoing specified activities shall not be a limitation on the meaning of "engaged in business."

L. "Evidence of doing business" means evidence such as, without limitation, use of signs, circulars, cards or any other advertising media, including the use of internet or telephone solicitation, or representation to a government agency or to the public that such person is engaged in a cannabis business in the City.

M. "Calendar year" means January 1 through December 31 of the following calendar year.

N. "Gross Receipts," except as otherwise specifically provided, means, whether designated a sales price, royalty, rent, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from the definition of Gross Receipts:

1. Cash discounts where allowed and taken on sales;
2. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
3. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;

4. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

5. Cash value of sales, trades or transactions between departments or units of the same business;

6. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected they shall be included in the amount of gross receipts for the year when they are recovered;

7. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;

8. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the City's Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

9. Retail sales of t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis) or other personal tangible property which the Tax Administrator has excluded in writing by issuing an administrative ruling per Section 5.06.140 shall not be subject to the cannabis business tax under this chapter. However, any business activities not subject to this Chapter as a result of the administrative ruling shall be subject to the appropriate business tax provisions of Chapter 5.04 or any other Chapter or Title as determined by the Tax Administrator.

O. "Lighting" means a source of light that is primarily used for promoting the biological process of plant growth. Lighting does not include sources of light that primarily exist for the safety or convenience of staff or visitors to the facility, such as emergency lighting, walkway lighting, or light admitted via small skylights, windows or ventilation openings.

P. "Nursery" means a facility or part of a facility that is used only for producing clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis.

Q. "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit, whether organized as a nonprofit or for-profit entity, and includes the plural as well as the singular number.

- R. “Sale” means and includes any sale, exchange, or barter.
- S. “State” means the State of California.
- T. “State license,” “license,” or “registration” means a state license issued pursuant to California Business & Professions Code Sections 26050, *et seq.* or other applicable state law.
- U. “Tax Administrator” means the Finance Director of the City of Morgan Hill or his or her designee.
- V. “Testing Laboratory” means a cannabis business that (i) offers or performs tests of cannabis or cannabis products, (ii) offers no service other than such tests, (iii) sells no products, excepting only testing supplies and materials, (iv) is accredited by an accrediting body that is independent from all other persons involved in the cannabis industry in the state and (v) is registered with the State Department of Public Health.

5.06.050 Tax imposed.

- A. Beginning January 1, 2019, there is imposed upon each person who is engaged in business as a cannabis business a cannabis business tax. Such tax is payable regardless of whether the business has been issued a cannabis business license or permit to operate lawfully in the City or is operating unlawfully. The City’s acceptance of a cannabis business tax payment from a cannabis business operating illegally will not constitute the City’s approval or consent to such illegal operations.
- B. The initial rate of the cannabis business tax shall be as follows:
 - 1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
 - b. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
 - c. Two dollars (\$2.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
 - d. One dollar (\$1.00) annually per square foot of canopy space for any nursery.

For purposes of this subdivision (B), the square feet of canopy space for a business shall be rebuttably presumed to be the maximum square footage of canopy allowed by the business’s City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation

allowed by the state license type. Should a City permit be issued to a business which cultivates only for certain months of the year, the City shall prorate the tax as to sufficiently reflect the period in which cultivation is occurring at the business. In no case shall canopy square footage which is authorized by the City commercial cannabis permit but not utilized for cultivation be deducted for the purpose of determining the tax for cultivation, unless the Tax Administrator is informed in writing and authorizes such reduction for the purpose of relief from the tax prior to the period for which the space will not be used, that such space will not be used.

2. For every person who engages in the operation of a testing laboratory: two percent (2%) of gross receipts.
 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery) or microbusiness (retail sales): six percent (6%) of gross receipts.
 4. For every person who engages in a cannabis distribution business: four percent (4%) of gross receipts.
 5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail), or any other type of cannabis business not described in Section (B) (1), (2), (3) or (4): four percent (4%) of gross receipts.
- C. The City Council may, by resolution or ordinance, adjust the rate of the cannabis business tax. However, in no event may the City Council set any adjusted rate that exceeds the maximum rate calculated pursuant to Subdivision (D) of this Section for the date on which the adjusted rate will commence.
- D. The maximum rate shall be calculated as follows:
1. For every person who is engaged in commercial cannabis cultivation in the City:
 - a. Through January 1, 2021, the maximum rate shall be:
 - i. Fifteen dollars (\$15.00) annually per square foot of canopy space in a facility that uses exclusively artificial lighting.
 - ii. Ten dollars (\$10.00) annually per square foot of canopy space in a facility that uses a combination of natural and supplemental artificial lighting.
 - iii. Seven dollars (\$7.00) annually per square foot of canopy space in a facility that uses no artificial lighting.
 - iv. Two dollars (\$2.00) annually per square foot of canopy space for any nursery.

- b. On January 1, 2022 and on each January 1 thereafter, the maximum annual tax rate per square foot of each type of canopy space shall increase by the percentage change between January of the calendar year prior to such increase and January of the calendar year of the increase in the Consumer Price Index (“CPI”) for all urban consumers in the San Francisco-Oakland-Hayward area as published by the United States Government Bureau of Labor Statistics. However, no CPI adjustment resulting in a decrease of any tax imposed by this subsection shall be made.
- 2. For every person who engages in the operation of a testing laboratory, the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
- 3. For every person who engages in the retail sales of cannabis as a retailer (dispensary) or non-store front retailer (delivery business), or microbusiness (retail sales activity) the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
- 4. For every person who engages in a cannabis distribution business, the maximum tax rate shall not exceed ten percent (10%) of gross receipts.
- 5. For every person who engages in a cannabis manufacturing, processing, or microbusiness (non-retail activity) or any other type of cannabis business not described in Section (D) (1), (2), (3) or (4), the maximum tax rate shall not exceed ten percent (10%) of gross receipts.

5.06.060 Reporting and remittance of tax.

- A. The cannabis business tax imposed by this Chapter shall be paid, in arrears, on a quarterly basis. For commercial cannabis cultivation, the tax due for each calendar quarter shall be based on the square footage of the business’s canopy space during the quarter and the rate shall be twenty-five percent (25%) of the applicable annual rate. For all other cannabis businesses activities, the tax due for each calendar quarter shall be based on the gross receipts for the quarter.
- B. Each person owing cannabis business tax for a calendar quarter shall, no later than the last day of the month following the close of the calendar quarter, file with the Tax Administrator a statement of the tax owed for that calendar quarter and the basis for calculating that tax. The Tax Administrator may require that the statement be submitted on a form prescribed by the Tax Administrator. The tax for each calendar quarter shall be due and payable on that same date that the statement for the calendar quarter is due.
- C. Upon cessation of a cannabis business, tax statements and payments shall be immediately due for all calendar quarters up to the calendar quarter during which cessation occurred.

- D. The Tax Administrator may, at his or her discretion, establish shorter report and payment periods for any taxpayer as the Tax Administrator deems necessary to ensure collection of the tax. The Tax Administrator may also require that a deposit, to be applied against the taxes for a calendar quarter, be made by a taxpayer at the beginning of that calendar quarter. In no event shall the deposit required by the Tax Administrator exceed the tax amount he or she projects will be owed by the taxpayer for the calendar quarter. The Tax Administrator may require that a taxpayer make payments via a cashier's check, money order, wire transfer, or similar instrument.
- E. For purposes of this section, the square feet of canopy space for a business shall be rebuttably presumed to be no less than the maximum square footage of canopy allowed by the business's City permit for commercial cannabis cultivation, or, in the absence of a City permit, the square footage shall be the maximum square footage of canopy for commercial cannabis cultivation allowed by the state license type. In no case shall canopy square footage which is authorized by the permit or license but not utilized for cultivation be excluded from taxation unless the Tax Administrator is informed in writing, prior to the period for which the space will not be used, that such space will not be used.

5.06.070 Payments and communications – timely remittance.

Whenever any payment, statement, report, request or other communication is due, it must be received by the Tax Administrator on or before the final due date. A postmark will not be accepted as timely remittance. If the due date would fall on a Saturday, Sunday or a holiday observed by the City, the due date shall be the next regular business day on which the City is open to the public.

5.06.080 Payment - when taxes deemed delinquent.

Unless otherwise specifically provided under other provisions of this Chapter, the taxes required to be paid pursuant to this Chapter shall be deemed delinquent if not received by the Tax Administrator on or before the due date as specified in Sections 5.06.060 and 5.06.070.

5.06.090 Notice not required by the City.

The City may as a courtesy send a tax notice to the business. However, the Tax Administrator is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter. Failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

5.06.100 Penalties and interest.

A. Any person who fails or refuses to pay any cannabis business tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:

1. A penalty equal to ten percent (10%) of the amount of the tax, in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at the rate of one percent (1.0%) per month.

2. If the tax remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the amount of the tax, plus interest at the rate of one percent (1.0%) per month on the unpaid tax and on the unpaid penalties.

3. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the tax and penalty until the balance is paid in full.

B. Whenever a check or electronic payment is submitted in payment of a cannabis business tax and the payment is subsequently returned unpaid by the bank for any reason, the taxpayer will be liable for the tax amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

5.06.110 Refunds and credits.

A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in Section 5.06.120.

B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a business.

5.06.120 Refunds and procedures.

A. Whenever the amount of any cannabis business tax, penalty or interest has been overpaid, paid more than once, or has been erroneously collected or received by the City under this Chapter, it may be refunded to the claimant who paid the tax provided that a written claim for refund is filed with the Tax Administrator within one (1) year of the date the tax was originally due and payable.

B. The Tax Administrator, his or her designee or any other City officer charged with the administration of this Chapter shall have the right to examine and audit all the books and business records of the claimant in order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant refuses to allow such examination of claimant's books and business records after request by the Tax Administrator to do so.

C. In the event that the cannabis business tax was erroneously paid, and the error is attributable to the City, the City shall refund the amount of tax erroneously paid up to one (1) year from the date that the tax was paid.

5.06.130 Personal Cultivation Not Taxed.

The provisions of this Chapter shall not apply to personal cannabis cultivation as defined in the “Medicinal and Adult Use Cannabis Regulation and Safety Act”. This Chapter shall not apply to personal use of cannabis that is specifically exempted from City and state licensing requirements, that meets the definition of personal use or equivalent terminology under state law, and for which the individual receives no compensation whatsoever related to that personal use.

5.06.140 Administration of the tax.

A. It shall be the duty of the Tax Administrator to collect the taxes, penalties, fees, and perform the duties required by this Chapter.

B. For purposes of administration and enforcement of this Chapter generally, the Tax Administrator may from time to time promulgate such administrative interpretations, rules, and procedures consistent with the purpose, intent, and express terms of this Chapter as he or she deems necessary to implement or clarify such provisions or aid in enforcement.

C. The Tax Administrator may take such administrative actions as needed to administer the tax, including but not limited to:

1. Provide to all cannabis business taxpayers forms for the reporting of the tax;
2. Provide information to any taxpayer concerning the provisions of this Chapter;
3. Receive and record all taxes remitted to the City as provided in this Chapter;
4. Maintain records of taxpayer reports and taxes collected pursuant to this Chapter;
5. Assess penalties and interest to taxpayers pursuant to this Chapter;
6. Determine amounts owed and enforce collection pursuant to this Chapter.

5.06.150 Appeal procedure.

Any taxpayer aggrieved by any decision of the Tax Administrator with respect to the amount of tax, interest, penalties and fees, if any, due under this Chapter may appeal to the City’s Hearing Officer by filing a notice of appeal with the City Clerk within thirty (30) calendar days of the serving or mailing of the determination of tax due. The City Clerk, or his or her designee, shall fix a time and place for hearing such appeal, and the City Clerk, or his or her designee, shall give notice in writing to such operator at the last known place of address. The finding of the City’s Hearing Officer shall be final and conclusive and shall be served upon the appellant in the manner prescribed by this Chapter for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of the notice.

5.06.160 Enforcement - action to collect.

Any taxes, penalties and/or fees required to be paid under the provisions of this Chapter shall be deemed a debt owed to the City. Any person owing money to the City under the provisions of this Chapter shall be liable in an action brought in the name of the City for the recovery of such debt. The provisions of this Section shall not be deemed a limitation upon the right of the City to bring any other action including criminal, civil and equitable actions, based upon the failure to pay the tax, penalties and/or fees imposed by this Chapter or the failure to comply with any of the provisions of this Chapter.

5.06.170 Apportionment.

If a business subject to the tax is operating both within and outside the City, it is the intent of the City to apply the cannabis business tax so that the measure of the tax fairly reflects the proportion of the taxed activity actually carried on in the City. To the extent federal or state law requires that any tax due from any taxpayer be apportioned, the taxpayer may indicate said apportionment on his or her tax return. The Tax Administrator may promulgate administrative procedures for apportionment as he or she finds useful or necessary.

5.06.180 Constitutionality and legality.

This tax is intended to be applied in a manner consistent with the United States and California Constitutions and state law. None of the tax provided for by this Chapter shall be applied in a manner that causes an undue burden upon interstate commerce, a violation of the equal protection or due process clauses of the Constitutions of the United States or the State of California or a violation of any other provision of the California Constitution or state law. If a person believes that the tax, as applied to him or her, is impermissible under applicable law, he or she may request that the Tax Administrator release him or her from the obligation to pay the impermissible portion of the tax.

5.06.190 Audit and examination of premises and records.

A. For the purpose of ascertaining the amount of cannabis business tax owed or verifying any representations made by any taxpayer to the City in support of his or her tax calculation, the Tax Administrator shall have the power to inspect any location where commercial cannabis cultivation occurs and to audit and examine all books and records (including, but not limited to bookkeeping records, state and federal income tax returns, and other records relating to the gross receipts of the business) of persons engaged in cannabis businesses. In conducting such investigation, the Tax Administrator shall have the power to inspect any equipment, such as computers or point of sale machines, that may contain such records.

B. It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this Chapter to keep and preserve, for a period of at least three (3) years, all records as may be necessary to determine the amount of such tax as he or she may have been liable for the collection of and payment to the City, which records the Tax Administrator or his/her designee shall have the right to inspect at all reasonable times.

5.06.200 Other licenses, permits, taxes, fees or charges.

- A. Nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any City Cannabis License, permit or license required by, under or by virtue of any provision of any other Chapter of this code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other Chapter of this code to any licenses, license taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the licenses, license taxes, fees or charges, or schedule of license fees, provided for in other Chapter of this Code.
- B. Notwithstanding subdivision A of this Section a cannabis business shall not be required to pay the license fee required by Chapter 5.04 of Title 5 of this Code so long as all of business's activities within the City that would require payment of a license fee are activities subject to the cannabis business tax and the cannabis business tax exceeds the amount of the annual business tax for that particular cannabis business..
- C. The Tax Administrator may revoke or refuse to renew the license required by Chapter 5.04 of this Code for any business that is delinquent in the payment of any tax due pursuant to this Chapter or that fails to make a deposit required by the Tax Administrator pursuant to Section 5.06.060.

5.06.210 Payment of tax does not authorize unlawful business.

- A. The payment of a cannabis business tax required by this Chapter, and its acceptance by the City, shall not entitle any person to carry on any cannabis business unless the person has complied with all of the requirements of this Code and all other applicable state laws.
- B. No tax paid under the provisions of this Chapter shall be construed as authorizing the conduct or continuance of any illegal or unlawful business, or any business in violation of any local or state law.

5.06.220 Deficiency determinations.

If the Tax Administrator is not satisfied that any statement filed as required under the provisions of this Chapter is correct, or that the amount of tax is correctly computed, he or she may compute and determine the amount to be paid and make a deficiency determination upon the basis of the facts contained in the statement or upon the basis of any information in his or her possession or that may come into his or her possession within three (3) years of the date the tax was originally due and payable. One or more deficiency determinations of the amount of tax due for a period or periods may be made. When a person discontinues engaging in a business, a deficiency determination may be made at any time within three (3) years thereafter as to any liability arising from engaging in such business whether or not a deficiency determination is issued prior to the date the tax would otherwise be due. Whenever a deficiency determination is made, a notice shall

be given to the person concerned in the same manner as notices of assessment are given under Section 5.06.240.

5.06.230 Failure to report—nonpayment, fraud.

A. Under any of the following circumstances, the Tax Administrator may make and give notice of an assessment of the amount of tax owed by a person under this Chapter at any time:

1. If the person has not filed a complete statement required under the provisions of this Chapter;

2. If the person has not paid the tax due under the provisions of this Chapter;

3. If the person has not, after demand by the Tax Administrator, filed a corrected statement, or furnished to the Tax Administrator adequate substantiation of the information contained in a statement already filed, or paid any additional amount of tax due under the provisions of this Chapter; or

4. If the Tax Administrator determines that the nonpayment of any business tax due under this Chapter is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be added thereto in addition to penalties and interest otherwise stated in this Chapter and any other penalties allowed by law.

B. The notice of assessment shall separately set forth the amount of any tax known by the Tax Administrator to be due or estimated by the Tax Administrator, after consideration of all information within the Tax Administrator's knowledge concerning the business and activities of the person assessed, to be due under each applicable section of this Chapter, and shall include the amount of any penalties or interest accrued on each amount to the date of the notice of assessment.

5.06.240 Tax assessment - notice requirements.

The notice of assessment shall be served upon the person either by personal delivery, by overnight delivery by a nationally-recognized courier service, or by a deposit of the notice in the United States mail, postage prepaid thereon, addressed to the person at the address of the location of the business or to such other address as he or she shall register with the Tax Administrator for the purpose of receiving notices provided under this Chapter; or, should the person have no address registered with the Tax Administrator for such purpose, then to such person's last known address. For the purposes of this Section, a service by overnight delivery shall be deemed to have occurred one (1) calendar day following deposit with a courier and service by mail shall be deemed to have occurred three (3) days following deposit in the United States mail.

5.06.250 Tax assessment - hearing, application and determination.

Within thirty (30) calendar days after the date of service the person may apply in writing to the Tax Administrator for a hearing on the assessment. If application for a hearing before the City is not made within the time herein prescribed, the tax assessed by the Tax Administrator shall become final and conclusive. Within thirty (30) calendar days of the receipt of any such

application for hearing, the Tax Administrator shall cause the matter to be set for hearing before him or her no later than thirty (30) calendar days after the receipt of the application, unless a later date is agreed to by the Tax Administrator and the person requesting the hearing. Notice of such hearing shall be given by the Tax Administrator to the person requesting such hearing not later than five (5) calendar days prior to such hearing. At such hearing said applicant may appear and offer evidence why the assessment as made by the Tax Administrator should not be confirmed and fixed as the tax due. After such hearing the Tax Administrator shall determine and reassess the proper tax to be charged and shall give written notice to the person in the manner prescribed in Section 5.06.240 for giving notice of assessment.

5.06.260 Relief from taxes -disaster relief.

A. If a business is unable to comply with any tax requirement due to a disaster, the business may notify the Tax Administrator of this inability to comply and request relief from the tax requirement;

1. A request for relief must clearly indicate why relief is requested, the time period for which the relief is requested, and the reason relief is needed for the specific amount of time.

B. The cannabis business agrees to grant the tax collector or his/her designee access to the location where the cannabis business has been impacted due to a Federal or State declared disaster.

C. The Tax Administrator, in his/her sole discretion, may provide relief from the cannabis business tax requirement for businesses whose operations have been impacted by a disaster of such tax liability does not exceed five thousand (\$5,000) dollars. If such tax liability is five thousand one (\$5,001) dollars or more than such relief shall only be approved by the City's Hearing Officer;

D. Temporary relief from the cannabis tax may be granted for a reasonable amount of time as determined by the Tax Administrator or the City Council, as applicable in order to allow the cannabis business time to recover from the Federal or State declared disaster;

E. The Tax Administrator or City Council, as applicable may require that certain conditions be followed in order for a cannabis business to receive temporary relief from the cannabis business tax requirement;

F. For purposes of this section, "disaster" means fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether or not resulting from natural causes which results in a Federal or State declaration of disaster.

5.06.270 Conviction for violation - taxes not waived.

The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any state law requiring the payment of all taxes.

5.06.280 Violation deemed misdemeanor.

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor.

5.06.290 Severability.

If any provision of this Chapter, or its application to any person or circumstance, is determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

5.06.300 Remedies cumulative.

All remedies and penalties prescribed by this Chapter or which are available under any other provision of the Morgan Hill Municipal Code and any other provision of law or equity are cumulative. The use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions of this Chapter.

5.06.310 Amendment or repeal.

This Chapter may be repealed or amended by the City Council without a vote of the people to the extent allowed by law. However, as required by Article XIII C of the California Constitution, voter approval is required for any amendment that would increase the rate of any tax levied pursuant to this Chapter. The people of the City of Morgan Hill affirm that the following actions shall not constitute an increase of the rate of a tax:

- A. The restoration or adjustment of the rate of the tax to a rate that is no higher than that set by this Chapter, if the City Council has acted to reduce the rate of the tax or incrementally implement an increase authorized by this Chapter;
- B. An action that interprets or clarifies the methodology of the tax, or any definition applicable to the tax, so long as interpretation or clarification (even if contrary to some prior interpretation or clarification) is not inconsistent with the language of this Chapter;
- C. The collection of the tax imposed by this Chapter even if the City had, for some period of time, failed to collect the tax;

D. Should the ballot approval by the voters include an amount for tax listed as up to a certain percentage or amount, when this ordinance sets a lower percentage or amount, the City Council may increase the rate to the maximum amount or percentage contained in the ballot approved by the voter; or

E. An increase in the tax on an annual basis of not more than the San Francisco – San Jose Cost of Living increase for the prior calendar year, starting the first day of January in the first full year after this measure is enacted by the voters. .

SECTION 2. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

This Ordinance was approved and adopted by the People of the City of Morgan Hill at the City's November 6, 2018 statewide election.

Steve Tate, Mayor

ATTEST:

Irma Torrez, City Clerk

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Stockton Residents Charged with the Manufacture and Distribution of Pills Laced with Fentanyl and Other Controlled Substances
Date: Friday, November 1, 2019 10:16:31 AM
Attachments: [image004.png](#)

From: Ronald Kirkish <hykirkish@charter.net>
Sent: Tuesday, October 29, 2019 2:07 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>; David Swing <David.Swing@morganhill.ca.gov>
Cc: Bob Cooke <bcooke@ncric.ca.gov>; Mike Robinson <robinson.mike68@yahoo.com>; Scot Smithee <scot.smithee@ci.gilroy.ca.us>; daniel harney <djharn@yahoo.com>
Subject: Fwd: Stockton Residents Charged with the Manufacture and Distribution of Pills Laced with Fentanyl and Other Controlled Substances

Dear City Administrator ChristinaTurner and Chief David Swing,

Thought you might find this information of interest.....should Morgan Hill decide to legalize the sales, growing and distribution of marijuana products within its jurisdiction you can be sure that your elected's will be opening up the city to incidents like this and many other negative consequences.....like moths to a candle, organized criminal organizations are strongly attracted to those communities that permit the sales of marijuana.....to sell their whole smorgasbord of dangerous drugs and other criminal activities.

Is this what your elected's think their constituents want for the City of Morgan Hill? I think not.

Please consider distributing this information to your elected leaders for serious consideration.

B/r,

Ronald L. Kirkish

Begin forwarded message:

From: "Vassar, Sean (USACAE)" <Sean.Vassar@usdoj.gov>
Subject: Stockton Residents Charged with the Manufacture and Distribution of Pills Laced with Fentanyl and Other Controlled Substances
Date: October 29, 2019 at 1:43:22 PM PDT
To: Undisclosed recipients;

Greetings community partners,

Please see the following press release for information on a 27-count federal indictment filed against seven Stockton, CA., residents for alleged crimes that include the manufacture and distribution of pills laced with Fentanyl and other controlled substances.

According to court documents, the conspiracy involved the manufacture (using pill press machines) and distribution of counterfeit pharmaceutical tablets containing fentanyl, heroin, and U-47700, as well as purported Ecstasy/MDMA pills containing methamphetamine. Seized emails showed

purchases from China of pill press parts and dies (molds for stamping logos and markings onto counterfeit pills) as well as controlled substances and other chemicals.

Sincerely,

Sean

Sean W. Vassar | Community Outreach Specialist | Hate Crime Task Force Coordinator
United States Attorney's Office | Eastern District of California

Robert T. Matsui United States Courthouse | 501 "I" Street, Suite 10-100 | Sacramento, CA 95814
 t (916) 554-2907 | f (916) 554-2900



Department of Justice

Office of the United States Attorney
Eastern District of California
U.S. Attorney McGregor W. Scott

FOR IMMEDIATE RELEASE

Monday, October 28, 2019

www.justice.gov/edca

Docket #: 2:19-cr-091 MCE

CONTACT: LAUREN HORWOOD

PHONE: 916-554-2706

usacae.edcapress@usdoj.gov

Seven Charged with Crimes Related to the Manufacture and Distribution of Pills Laced with Fentanyl and Other Controlled Substances

SACRAMENTO, Calif. — A federal grand jury returned a 27-count superseding indictment last Thursday against two brothers and five others, adding charges, including firearms and money laundering to an indictment first filed in May that charged them with a conspiracy to manufacture counterfeit pills containing fentanyl and other controlled substances, U.S. Attorney McGregor W. Scott announced.

The superseding indictment charges Jamaine Barnes, 37, of Stockton, with engaging in a continuing criminal enterprise from at least Sept. 27, 2015 through May 16, 2019. Jamaine Barnes and his brother Jamar Barnes, 37; Kavieo Wiley, 23; Vincent Patterson, 26, Kadrena Watts, 39; and Chevele Richardson, 33, all of Stockton, are charged with conspiracy to manufacture, distribute, and possess with intent to distribute fentanyl, heroin, methamphetamine, and U-47700 (a synthetic opioid).

The superseding indictment charges Jamaine Barnes with distribution of fentanyl and four counts of money laundering; Jamaine Barnes and Wiley with possession with intent to distribute methamphetamine on a premises where children are present; Jamaine Barnes and Watts with manufacture of methamphetamine on a premises where children reside; Jamaine Barnes, Wiley, Patterson, and Richardson with possession of a firearm in furtherance of a drug trafficking crime; and Jamaine Barnes, Wiley, and Richardson with being a felon in possession of a firearm.

Two counts of using a cellphone to facilitate a drug trafficking offense were added against Lamont Thibodeaux, 40, of Houston, Texas, who is also charged with attempt to possess with intent to distribute a controlled substance. Thibodeaux has not been arrested.

According to court documents, the conspiracy involved the manufacture (using pill press

machines) and distribution of counterfeit pharmaceutical tablets containing fentanyl, heroin, and U-47700, as well as purported Ecstasy/MDMA pills containing methamphetamine. Seized emails showed purchases from China of pill press parts and dies (molds for stamping logos and markings onto counterfeit pills) as well as controlled substances and other chemicals.

Charges from the original indictment remain pending against Johnesha Thompson, 42, and Jeremy Barnett, 32, both of Stockton, who were charged with conspiracy to manufacture, distribute, and possess with intent to distribute fentanyl, heroin, methamphetamine, and U-47700. Barnett was also charged with distributing fentanyl. Tashawn Dickerson, 39, of Riverbank, has pleaded guilty to possession with intent to distribute methamphetamine and awaits sentencing.

This case is the product of an investigation by the Drug Enforcement Administration, California Highway Patrol, San Joaquin METRO Narcotics Task Force, and the Tri-County Drug Enforcement Team (TRIDENT) Task Force with assistance from Homeland Security Investigations, the U.S. Marshals Service, the U.S. Postal Inspection Service, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Stockton Police Department, the Sacramento County High Intensity Drug Trafficking Area (HIDTA) Task Force, and the San Joaquin County Sheriff's Office. Assistant U.S. Attorney David W. Spencer is prosecuting the case.

If convicted, the defendants face a variety of statutory penalties. Jamaine Barnes faces a minimum of 20 years and up to life in prison if convicted for engaging in a continuing criminal enterprise. The penalties for the other charges carry a range of minimum and maximum statutory penalties. Any sentence, however, would be determined at the discretion of the court after consideration of any applicable statutory factors and the Federal Sentencing Guidelines, which take into account a number of variables. The charges are only allegations; the defendants are presumed innocent until and unless proven guilty beyond a reasonable doubt.

This case was part of an Organized Crime Drug Enforcement Task Force (OCDETF). The OCDETF program was established in 1982 to conduct comprehensive, multilevel attacks on major drug trafficking and money laundering organizations. The principal mission of the OCDETF program is to identify, disrupt, and dismantle the most serious drug trafficking and money laundering organizations and those primarily responsible for the nation's drug supply.

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CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

PREPARED BY: David Swing, Police Chief

APPROVED BY: City Manager

REVENUE MEASURES POLLING RESULTS

RECOMMENDATION(S)

1. Accept report on polling results; and
2. Direct staff to continue with the Engage Morgan Hill process and provide any additional direction.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2019 Strategic Priorities

Financial Stewardship
 Infrastructure
 Traffic/Transportation

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

Background

The General Fund (GF) is the City's most visible fund, and one that Council has most discretion over. It accounts for key City services that residents depend upon for basic needs including police, fire, recreation, infrastructure maintenance, municipal governance, and administrative services (which support all of these services). Recreation is the only one of the services supported primarily by user fees, and all of the others depend on general tax revenues like property, sales, and transient occupancy taxes (TOT) to fund these services.

Even though the greater economy has fared well coming out of the great recession of 2008, cities across the state face unprecedented challenges in providing key services as costs of providing the services continue to outpace the revenues at the local level. Changing consumer patterns, such as the increase in online sales causing loss of sales tax and reductions in gas tax due to fuel efficient vehicles, are eroding the tax base systems which were setup, and appropriate, decades ago. Despite the over nine years of national economic recovery, CalPERS's investment returns have fell short of target, putting more pressure on employers to backfill the losses. Morgan Hill is impacted even more significantly within the Silicon Valley area, where costs to provide basic services have soared due to growth of the tech sector. While the cities to the north have grown rich with massive construction of new tech industry centers, Morgan Hill has not seen its

share in the growth in the tech sector and yet is significantly impacted by the traffic and housing issues caused by it. All of the above, coupled with the State's impacts on local control (abolishment of Redevelopment Agency, decades of increased requirements to provide basic services, and more recently SB330) and the backlog of deferred maintenance, are real fiscal sustainability concerns to be addressed.

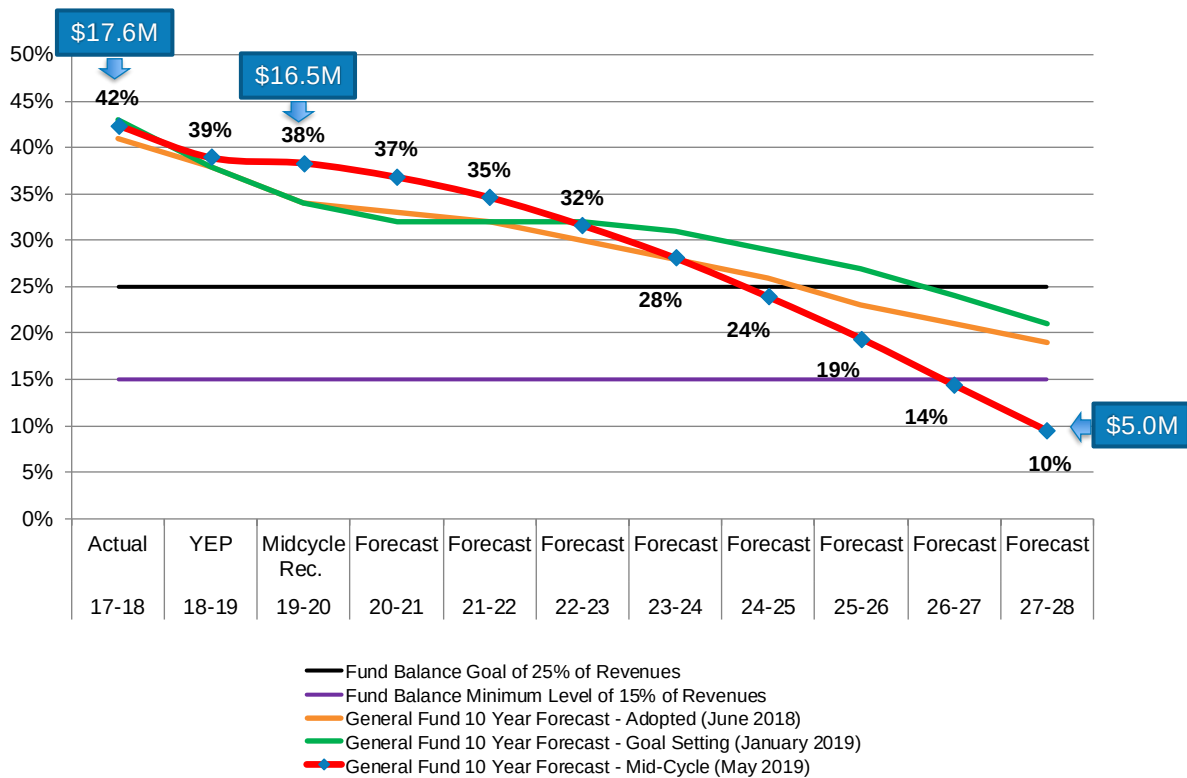
The City of Morgan Hill continues to be strategic with its limited resources. The City continues to tackle fiscal issues at the forefront by seeking strategic partnerships and grants, implementing pension cost sharing with employees, and utilizing economic development which assists with the tax base. More recently, the City was able to eliminate 5.5 FTEs through its mid-cycle budget update, continuing to have fewer FTEs per capita than 10 years ago. However, it's apparent these strategic actions alone are not enough and more needs to be done.

Staff has reported for multiple years that Morgan Hill community pays the lowest per capita in discretionary tax dollars than any other city in the County – when taking into account monies paid towards the Central Fire District. Prior Councils have considered revenue measures such as placing a Utility Users Tax (UUT) on the ballot in 2008 and polling for a sales tax increase in 2016. The UUT measure was supported by 35% of voters. The Council in 2016 followed the consultant's recommendation and chose not to place a tax on the ballot after initial polling was below the 50% threshold for a ¾ cent sales tax increase. In 2018, Council placed, and voters approved, two revenue related measures on the November 2018 ballot. First, increasing the ongoing transient occupancy tax charged to hotel guests from 10% to 11%, providing approximately \$270,000 annually, which is minimal when compared to the GF annual discretionary budget of \$30 million. Second, taxing cannabis (marijuana) businesses, if permitted, at annual rates not to exceed \$15.00 per canopy square foot for cultivation (adjustable for inflation) and up to 10% of gross receipts for all other cannabis businesses. The TOT increase has been implemented as of March 2019. Cannabis business tax, although voter approved, is pending further Council discussion and action.

The fiscal reality for Morgan Hill has grown even more dire in the intervening years when a previously committed car dealership chose not to expand to Morgan Hill, and development of two new hotels were referred to ballot, both of which would have contributed ongoing discretionary tax revenues. In addition, the costs of services continue to outpace revenues. Another fiscal challenge includes the State of California upending the City's voter-approved Residential Development Control System (RDCS) allowing for uncontrolled growth in Morgan Hill for the next five years which will place an increased strain on essential services to include public safety and roads.

Based on the mid-cycle budget update, the fund balance in the GF will drop below the recommended 25% to 24% within five years and below the 15% threshold by fiscal year 2026-27. However, what this forecast does not include the key identified funding gaps in infrastructure, services, and unfunded needs of the City, especially in the areas of public safety and infrastructure maintenance. See the following graph illustrating the drop in the City's GF reserve.

General Fund Reserve Forecast: Mid-Cycle Update (May 2019)

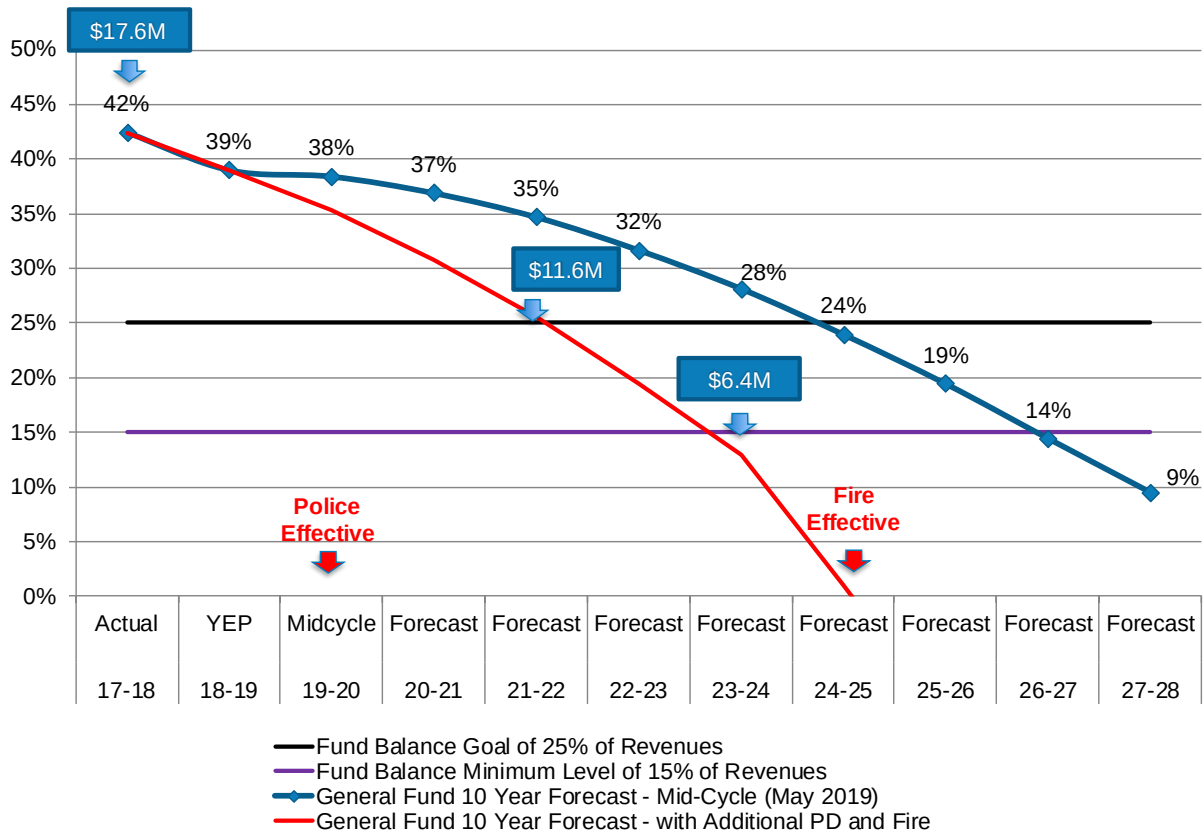


Current Needs of the City

The current needs of the City were discussed in prior workshops and at the mid-cycle budget update. At the mid-cycle update, \$7 million in annual unfunded needs were identified, which included \$1.3 million in Police Services, \$2.3 million in Fire Services, and \$3.4 million for City infrastructure. With the recent passage of California Senate Bill 330 (SB 330), in addition to a potential spike in the number of residents and subsequent service needs, the City will no longer be able to rely on the Residential Development Control System (RDCS) voluntary contributions. The City has utilized over \$1.1 million annually to fund ongoing City operations in the area of infrastructure maintenance. Alternative funding sources, likely the GF, will be further strained with these additional operational needs. At the same time, City public safety services will be challenged to keep up with the potential increased growth and outside impacts and our infrastructure maintenance impacted by degrading streets.

Unlike the GF forecast graph above, the forecast below illustrates the impacts to the GF balance by funding the public safety needs (\$3.6 million) and not the infrastructure needs (\$3.4 million). The fund balance will drop below the recommended 25% within the next biennial budget and below the 15% threshold within four years.

General Fund Reserve Forecast: Mid-Cycle Update (May 2019) with Public Safety Needs



Community Advisory Group

During the past six months, a concerned group of Morgan Hill residents have met to review the services offered by the City and the funding sources for providing these services. This group, known as the Engage Morgan Hill Community Advisory Group (CAG), is a diverse representation of business and community leaders with a common goal of finding and recommending solutions to our fiscal challenges and ensuring our residents receive first-class service to maintain our quality of life.

Polling

City staff decided to poll the community for a possible revenue measure in March 2020 due to other potential competing regional measures in November 2020. As shared with the CAG, polling would help to inform CAG's work and recommendations to the Council. Staff engaged the services of Godbe Research (GR) to conduct a statistically valid survey of likely voters to better understand the community's interest in increasing revenue for essential city services. At the request of staff, GR evaluated the potential support for the creation of a citywide Community Facilities District (CFD) and a quarter-cent (0.25) increase to the sales tax.

Communities that create a CFD choose to place a tax on each parcel based on selected criteria. The CFD that was tested by GR was an annual assessment of \$75 for existing property owners and \$500 for new property owners. GR also tested a lower rate of \$60

for existing and \$475 for new. The proposed CFD had different rates for commercial properties and vacant land. Support for the CFD polled initially at 38%, at 49% in an interim test and at 51% once informed. An interim sample is when a respondent is asked about their support after the favorable reasons for the tax are presented and an informed respondent has heard both ideas in support and in opposition. A CFD requires a super-majority or 2/3 support to pass. A CFD at the above prescribed assessments would initially generate \$1 million increasing to \$7 million annually in eight years.

Staff also asked GR to test the community's support for a quarter-cent (0.25) increase to the sales tax. A general tax, like sales tax, requires a simple majority, 50% of voters plus 1. A general tax election must be consolidated with a regularly scheduled general election of members of the governing body, which for Morgan Hill will be November 2020. Support for a sales tax polled markedly higher with an initial support of 58%, an interim support of 66% and an informed support of 53.9%. A quarter-cent increase to our sales tax is estimated to annually generate \$2.5 million based on our current annual sales tax receipts of \$10 million.

Topline data of the polling results is included as an attachment to this report (Attachment 1). Staff and consultant will further present this information in depth at the Council meeting.

Recommendation and Next Steps

After several discussions internally and with the community advisory group, staff recommends continuing with the Engage Morgan Hill process to educate and involve the community about the City's services, funding, and priorities, especially as we head into the next biennial budget development process in January 2020. Several of the CAG members are planning to be present and will be providing feedback to the Council during the public comment period of the report.

Additionally, the March 2020 ballot currently has the two hotels' development referendum for vote. Staff plans to engage and educate the community on this ballot.

COMMUNITY ENGAGEMENT: Inform, Involve, and Collaborate

This staff report and presentation continues to inform the community about the fiscal needs of the City. Additionally, the Engage Morgan Hill Community Advisory Group, as representatives of the community, is directly involved in the fiscal sustainability conversation through monthly meetings with City staff.

ALTERNATIVE ACTIONS:

1. Council could choose to place a special tax on the ballot for specific needs requiring a super-majority of voters (2/3) to support the tax in March 2020. This alternative is not recommended as the polling results do not illustrate the 2/3 support as required for either of the tested measures.
2. Council could choose to place a general tax on the ballot requiring a simple majority of voters (50% plus 1) to support the tax in March 2020. However, a general tax election must be consolidated with a regularly scheduled general election of members of the governing body, unless an emergency is declared by

unanimous vote (among those present) of the governing body. The declaration of a fiscal emergency allows for the placement of a general tax on the ballot of a non-general election, which requires only 50% plus 1 approval, instead of the 2/3 super-majority. This alternative is not recommended as Council would be required to make significant findings for the fiscal emergency declaration. Additionally, there is a general election scheduled in 2020 for Morgan Hill, eight months after March, in November 2020 and Council could elect to pursue the measure then.

FISCAL AND RESOURCE IMPACT:

The cost of the survey by GR was approximately \$30,550. Election and potential ballot measure related costs are included in the adopted biennial budget (GL#010.2420.42231).

Resource:

The anticipated staff work with a revenue measure is significant. Gratefully, the work of staff to educate the public is reduced by the Engage Morgan Hill Community Advisory Group who are committed to doing much of the heavy lifting around public education and advocacy. Waiting until November 2020 for a revenue measure will allow the group to develop and execute a communication and education strategy.

CEQA (California Environmental Quality Act):

Not a Project: The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment.

LINKS/ATTACHMENTS:

1. Morgan Hill Topline Report 10-15-19



CITY OF MORGAN HILL

2019 Revenue Measure Survey

Topline Report

n=557

22 minutes

March 2020 & November 2020 Likely Voters

October 15, 2019

www.godberesearch.com

Northern California and Corporate Offices
1575 Bayshore Highway, Suite 102
Burlingame, CA 94010

Nevada
59 Damonte Ranch Parkway, Suite B309
Reno, NV 89521

Pacific Northwest
601 108th Avenue NE, Suite 1900
Bellevue, WA 98004

METHODOLOGY

Sample Universe:

- 19,461 Likely November 2020 Voters
- 14,741 Likely March 2020 Voters

Sample Size:

- n=557 Likely November 2020 Voters
- n=442 Likely March 2020 Voters

Data Collection Methodology:

- n=62 Landline
- n=141 Cell
- n=300 Online from text invitation
- n=54 Online from email invitation

Margin of Error:

- Likely November 2020 Voters $\pm$ 4.09%
- Likely March 2020 Voters $\pm$ 4.59%

Interview Dates: October 2 to 13, 2019

MORGAN HILL CLIMATE

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
1. Would you say that things in Morgan Hill are generally headed in the right direction, or would you say that they are off on the wrong direction?	Right direction	46.8%	197		51.2%	285	
	Wrong direction	35.7%	151		33.2%	185	
	DK/NA	17.5%	74		15.6%	87	
2. How would you rate the overall job being done by Morgan Hill City government in providing services to the City's residents? Would you say the City is doing an excellent, good, only fair, or poor job?	Excellent job	8.4%	35		8.7%	48	
	Good job	51.1%	216		52.1%	290	
	Only fair job	25.1%	106		24.0%	134	
	Poor job	10.7%	45		10.1%	56	
	DK/NA	4.7%	20		5.1%	28	
	Total Excel + Good	59.5%			60.8%		
	Total Only fair + Poor	35.8%			34.2%		
	Ratio (Ex + Good)/(Fair + Poor)	1.7			1.8		
3. Do you have a favorable or unfavorable opinion of the job the City of Morgan Hill is doing to effectively manage and spend taxpayer dollars and public funds?	Very favorable	11.6%	49		11.0%	61	
	Somewhat favorable	44.2%	186		45.5%	253	
	Somewhat unfavorable	21.1%	89		18.9%	106	
	Very unfavorable	10.4%	44		10.3%	57	
	DK/NA	12.7%	54		14.3%	80	
	Total Favorable	55.8%			56.5%		
	Total Unfavorable	31.5%			29.2%		
	Ratio	1.8			1.9		

UNIFORMED BALLOT TESTS

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
4. To preserve essential city services, including: •9-1-1 emergency response times, •neighborhood police patrols, •fixing potholes, •fire prevention and protection services, shall Morgan Hill's measure, creating an essential services levy, with an annual rate of \$75 per existing residence and \$500 per newly purchased residence, with alternative rates for non-residential – see voter guide for tax rate information – providing \$1.6 million dollars annually, until repealed by voters, with annual inflation adjustments, independent citizen oversight, and no funds for Sacramento, be adopted?	Definitely Yes	12.8%	27		12.4%	34	
	Probably Yes	25.4%	54		26.4%	73	
	Probably No	22.3%	48		20.7%	57	
	Definitely No	30.5%	65		28.2%	78	
	DK/NA	8.9%	19		12.3%	34	
	Total Yes	38.2%			38.8%		
	Total No	52.9%			48.9%		
5. To preserve essential city services, including: •9-1-1 emergency response times, •neighborhood police patrols, •crime prevention and investigation, •fire prevention and protection services, and •fixing potholes and maintaining city streets, shall Morgan Hill's measure, enacting a one-quarter cent sales tax, providing \$2.5 million dollars annually, until repealed by voters, with independent citizen oversight, and no funds for Sacramento, be adopted?	Definitely Yes	22.0%	46		23.2%	65	
	Probably Yes	36.7%	77		34.8%	97	
	Probably No	12.8%	27		13.7%	38	
	Definitely No	23.9%	50		19.9%	56	
	DK/NA	4.6%	10		8.4%	24	
	Total Yes	58.7%			58.0%		
	Total No	36.7%			33.6%		

FEATURES OF THE MEASURE

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
6A. Preserve 9-1-1 emergency response times	Much More Likely	41.3%	174	71.7%	40.2%	224	72.1%
	Somewhat More Likely	30.5%	128		31.9%	178	
	No Effect	17.9%	75		18.8%	105	
	Somewhat Less Likely	3.3%	14		3.3%	18	
	Much Less Likely	5.1%	22		3.9%	22	
	DK/NA/[Not sure]	2.0%	9		1.9%	11	
6B. Preserve neighborhood police patrols	Much More Likely	34.9%	147	68.5%	37.4%	208	70.1%
	Somewhat More Likely	33.6%	142		32.7%	182	
	No Effect	19.3%	81		17.6%	98	
	Somewhat Less Likely	5.4%	23		5.9%	33	
	Much Less Likely	5.7%	24		5.2%	29	
	DK/NA/[Not sure]	1.1%	5		1.2%	7	
6C. Preserve crime prevention and investigation	Much More Likely	33.3%	141	66.5%	35.5%	198	69.2%
	Somewhat More Likely	33.1%	140		33.7%	188	
	No Effect	21.2%	89		19.8%	111	
	Somewhat Less Likely	4.5%	19		4.2%	23	
	Much Less Likely	6.0%	25		5.1%	29	
	DK/NA/[Not sure]	1.8%	8		1.6%	9	
6D. Preserve fire prevention and protection services	Much More Likely	36.8%	155	69.3%	37.0%	206	70.8%
	Somewhat More Likely	32.4%	137		33.7%	188	
	No Effect	21.0%	89		19.3%	108	
	Somewhat Less Likely	3.7%	16		4.1%	23	
	Much Less Likely	4.8%	20		4.5%	25	
	DK/NA/[Not sure]	1.2%	5		1.3%	7	
6E. Fix potholes and maintain city streets	Much More Likely	41.0%	173	73.6%	43.5%	242	75.8%
	Somewhat More Likely	32.7%	138		32.3%	180	
	No Effect	15.8%	67		15.7%	87	
	Somewhat Less Likely	3.3%	14		3.1%	17	
	Much Less Likely	6.1%	26		4.6%	26	
	DK/NA/[Not sure]	1.2%	5		0.9%	5	
6F. Maintain youth violence prevention and gang intervention programs	Much More Likely	33.5%	141	60.8%	33.7%	188	61.6%
	Somewhat More Likely	27.3%	115		27.9%	155	
	No Effect	23.0%	97		23.1%	129	
	Somewhat Less Likely	6.4%	27		6.5%	36	
	Much Less Likely	8.2%	35		7.6%	42	
	DK/NA/[Not sure]	1.5%	7		1.2%	7	
6G. Provide programs that help families and youth make healthy and responsible choices	Much More Likely	20.3%	86	42.6%	21.0%	117	46.5%
	Somewhat More Likely	22.3%	94		25.5%	142	
	No Effect	32.1%	135		29.4%	164	
	Somewhat Less Likely	9.2%	39		8.7%	48	
	Much Less Likely	12.6%	53		12.6%	70	
	DK/NA/[Not sure]	3.4%	14		2.9%	16	
6H. Provide programs to help keep kids off the streets	Much More Likely	27.8%	117	58.7%	28.6%	159	60.4%
	Somewhat More Likely	30.9%	130		31.8%	177	
	No Effect	25.4%	107		25.2%	141	
	Somewhat Less Likely	7.1%	30		6.7%	37	
	Much Less Likely	6.6%	28		6.0%	33	
	DK/NA/[Not sure]	2.2%	9		1.7%	9	
6I. Maintain youth violence and drug intervention programs	Much More Likely	30.0%	127	61.4%	30.9%	172	61.7%
	Somewhat More Likely	31.4%	133		30.8%	171	
	No Effect	22.8%	96		22.8%	127	
	Somewhat Less Likely	6.6%	28		6.3%	35	
	Much Less Likely	6.8%	29		7.4%	41	
	DK/NA/[Not sure]	2.3%	10		1.8%	10	
6J. Provide firefighter staffing at the 3rd fire station	Much More Likely	33.0%	139	66.8%	32.4%	180	65.2%
	Somewhat More Likely	33.8%	142		32.8%	182	
	No Effect	21.8%	92		23.6%	131	
	Somewhat Less Likely	3.6%	15		3.8%	21	
	Much Less Likely	5.1%	22		4.9%	27	
	DK/NA/[Not sure]	2.7%	11		2.6%	14	
6K. Enhance safety at our public schools	Much More Likely	40.6%	171	62.7%	42.1%	234	66.4%
	Somewhat More Likely	22.1%	93		24.3%	136	
	No Effect	24.7%	104		21.3%	119	
	Somewhat Less Likely	3.5%	15		3.9%	22	
	Much Less Likely	6.6%	28		6.5%	36	
	DK/NA/[Not sure]	2.5%	10		1.9%	11	

Attachment: Morgan Hill Topline Report 10-15-19 (2524 : Revenue Measure Polling Results)

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
6L. Maintain neighborhood parks	Much More Likely	20.9%	44	55.1%	20.8%	58	57.5%
	Somewhat More Likely	34.2%	73		36.7%	102	
	No Effect	29.1%	62		28.1%	78	
	Somewhat Less Likely	4.8%	10		4.5%	12	
	Much Less Likely	9.5%	20		8.8%	24	
	DK/NA/[Not sure]	1.4%	3		1.1%	3	
6M. Provide adequate parks and recreation facilities	Much More Likely	23.2%	49	56.5%	24.0%	66	58.2%
	Somewhat More Likely	33.4%	71		34.2%	95	
	No Effect	26.0%	55		25.2%	70	
	Somewhat Less Likely	7.9%	17		7.8%	22	
	Much Less Likely	7.2%	15		7.1%	20	
	DK/NA/[Not sure]	2.4%	5		1.8%	5	
6N. Maintain public facilities and buildings	Much More Likely	17.0%	36	47.4%	18.4%	51	51.5%
	Somewhat More Likely	30.3%	65		33.1%	92	
	No Effect	29.3%	62		27.9%	77	
	Somewhat Less Likely	10.7%	23		8.8%	24	
	Much Less Likely	10.6%	22		10.2%	28	
	DK/NA/[Not sure]	2.1%	4		1.6%	4	

FEATURES OF THE MEASURE – RANKED BY INTENSITY SCORE

	Likely March 2020 Voter			Likely November 2020 Voter		
	Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
6A. Preserve 9-1-1 emergency response times			1.02			1.03
6E. Fix potholes and maintain city streets			1.00			1.08
6D. Preserve fire prevention and protection services			0.94			0.96
6K. Enhance safety at our public schools			0.89			0.93
6J. Provide firefighter staffing at the 3rd fire station			0.88			0.86
6B. Preserve neighborhood police patrols			0.88			0.92
6C. Preserve crime prevention and investigation			0.85			0.92
6I. Maintain youth violence and drug intervention programs			0.73			0.73
6F. Maintain youth violence prevention and gang intervention programs			0.73			0.75
6H. Provide programs to help keep kids off the streets			0.68			0.72
6M. Provide adequate parks and recreation facilities			0.59			0.61
6L. Maintain neighborhood parks			0.53			0.57
6N. Maintain public facilities and buildings			0.33			0.41
6G. Provide programs that help families and youth make healthy and responsible choices			0.30			0.35

INFORMATIONAL STATEMENTS

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
7A. By law, all funds from this measure must stay in Morgan Hill to maintain local services. None of it can be taken by Sacramento	Much More Likely to Vote Yes	54.1%	228	72.5%	54.6%	304	72.4%
	Somewhat More Likely to Vote Yes	18.4%	78		17.8%	99	
	No Effect	25.5%	107		25.7%	143	
	DK/NA/[Not sure]	2.0%	9		1.9%	11	
7B. Maintaining the current level of police service, including neighborhood patrols and crime prevention programs, fire protection, and 9-1-1 emergency response services is necessary to keep Morgan Hill a safe place to live and raise a family	Much More Likely to Vote Yes	40.5%	171	69.5%	43.4%	242	71.4%
	Somewhat More Likely to Vote Yes	29.0%	122		28.0%	156	
	No Effect	29.0%	122		27.3%	152	
	DK/NA/[Not sure]	1.5%	6		1.3%	7	
7C. Maintaining the current level of police service, including neighborhood patrols and crime prevention programs, is vital to protecting Morgan Hill's quality of life	Much More Likely to Vote Yes	39.6%	167	69.2%	42.1%	235	70.6%
	Somewhat More Likely to Vote Yes	29.6%	125		28.5%	159	
	No Effect	28.9%	122		27.8%	155	
	DK/NA/[Not sure]	1.8%	8		1.6%	9	
7D. This measure requires independent citizen oversight, mandatory financial audits, and yearly reports to the community to ensure the funds are spent in a fiscally prudent manner	Much More Likely to Vote Yes	39.2%	165	62.2%	38.0%	212	63.4%
	Somewhat More Likely to Vote Yes	23.0%	97		25.5%	142	
	No Effect	34.1%	144		32.9%	183	
	DK/NA/[Not sure]	3.7%	16		3.7%	21	
7E. Morgan Hill has the lowest per capita tax rate in Santa Clara County, this measure will help pay for essential services similar to other cities	Much More Likely to Vote Yes	29.6%	125	52.5%	30.4%	170	54.8%
	Somewhat More Likely to Vote Yes	22.9%	97		24.3%	136	
	No Effect	39.7%	167		38.0%	212	
	DK/NA/[Not sure]	7.8%	33		7.2%	40	
7F. The measure will maintain rapid response to workplace violence and increased police presence at large public events in Morgan Hill	Much More Likely to Vote Yes	39.6%	167	68.2%	42.3%	236	71.1%
	Somewhat More Likely to Vote Yes	28.5%	120		28.7%	160	
	No Effect	29.3%	124		27.0%	150	
	DK/NA/[Not sure]	2.5%	11		1.9%	11	
7G. This measure will maintain police patrols and keep our neighborhoods safe	Much More Likely to Vote Yes	39.6%	167	67.8%	42.3%	235	70.3%
	Somewhat More Likely to Vote Yes	28.2%	119		28.1%	156	
	No Effect	29.4%	124		27.1%	151	
	DK/NA/[Not sure]	2.8%	12		2.6%	14	
7H. The measure will continue to prevent and reduce youth violence in Morgan Hill	Much More Likely to Vote Yes	32.8%	138	57.2%	34.7%	193	60.7%
	Somewhat More Likely to Vote Yes	24.3%	103		26.0%	145	
	No Effect	38.4%	162		35.9%	200	
	DK/NA/[Not sure]	4.4%	19		3.4%	19	
7I. The measure will maintain a stable source of funds to protect critical police and fire services	Much More Likely to Vote Yes	40.1%	169	70.9%	42.2%	235	73.1%
	Somewhat More Likely to Vote Yes	30.8%	130		31.0%	172	
	No Effect	25.8%	109		23.7%	132	
	DK/NA/[Not sure]	3.4%	14		3.2%	18	
7J. The City has a track record of being fiscally responsible, and would not ask voters for this funding unless it is critical to keeping seniors, adults, teens and children safe	Much More Likely to Vote Yes	31.4%	132	54.6%	32.5%	181	56.8%
	Somewhat More Likely to Vote Yes	23.2%	98		24.3%	135	
	No Effect	41.5%	175		39.5%	220	
	DK/NA/[Not sure]	3.9%	17		3.7%	21	
7K. The measure will fund youth after-school and summer programs designed to keep teens off the street and out of trouble	Much More Likely to Vote Yes	31.8%	134	57.2%	32.0%	178	58.9%
	Somewhat More Likely to Vote Yes	25.4%	107		26.9%	150	
	No Effect	39.6%	167		37.6%	209	
	DK/NA/[Not sure]	3.2%	13		3.4%	19	
7L. New State legislation threatens the residential growth control measure adopted by Morgan Hill voters, this measure will replace the developer contributions eliminated by the State legislation	Much More Likely to Vote Yes	28.2%	119	46.1%	30.1%	168	49.5%
	Somewhat More Likely to Vote Yes	17.8%	75		19.4%	108	
	No Effect	36.8%	155		34.2%	190	
	DK/NA/[Not sure]	17.1%	72		16.4%	91	
7M. The City's unfunded road maintenance backlog is \$20 million dollars, this measure will help provide needed road repairs	Much More Likely to Vote Yes	36.7%	155	63.9%	38.6%	215	66.1%
	Somewhat More Likely to Vote Yes	27.2%	115		27.5%	153	
	No Effect	32.2%	136		30.4%	169	
	DK/NA/[Not sure]	3.9%	17		3.5%	20	
7N. Morgan Hill has significant street and road repair and maintenance needs. It is fiscally responsible to maintain our streets, roads, and fix potholes now, so our roads don't deteriorate further and become more costly to fix in the future	Much More Likely to Vote Yes	41.1%	173	68.4%	42.7%	238	70.0%
	Somewhat More Likely to Vote Yes	27.4%	115		27.3%	152	
	No Effect	29.3%	123		28.2%	157	
	DK/NA/[Not sure]	2.3%	10		1.8%	10	
7O. Maintaining strong public safety services and providing well-maintained streets is vital to protecting Morgan Hill's quality of life	Much More Likely to Vote Yes	37.5%	158	64.6%	40.2%	224	67.5%
	Somewhat More Likely to Vote Yes	27.1%	114		27.4%	153	
	No Effect	33.1%	140		30.2%	168	
	DK/NA/[Not sure]	2.2%	9		2.3%	13	
7P. Well maintained city streets and roads, are important to maintaining Morgan Hill's quality of life	Much More Likely to Vote Yes	39.8%	168	65.8%	39.9%	222	68.5%
	Somewhat More Likely to Vote Yes	26.1%	110		28.6%	159	
	No Effect	31.8%	134		29.3%	163	
	DK/NA/[Not sure]	2.4%	10		2.2%	12	

Attachment: Morgan Hill Topline Report 10-15-19 (2524 : Revenue Measure Polling Results)

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
7Q. Well maintained city streets and roads, help protect property values	Much More Likely to Vote Yes	38.3%	161	64.6%	39.7%	221	65.4%
	Somewhat More Likely to Vote Yes	26.3%	111		25.8%	144	
	No Effect	32.8%	138		32.0%	178	
	DK/NA/[Not sure]	2.6%	11		2.6%	14	
7R. Businesses will pay their fair share, so homeowners don't shoulder the entire cost	Much More Likely to Vote Yes	46.6%	197	68.5%	49.1%	273	71.1%
	Somewhat More Likely to Vote Yes	21.9%	92		22.1%	123	
	No Effect	28.9%	122		25.4%	141	
	DK/NA/[Not sure]	2.6%	11		3.5%	19	
7S. The measure will maintain programs to help reduce homelessness	Much More Likely to Vote Yes	34.4%	145	59.2%	36.7%	204	61.3%
	Somewhat More Likely to Vote Yes	24.8%	105		24.7%	137	
	No Effect	35.9%	151		34.4%	192	
	DK/NA/[Not sure]	4.9%	21		4.2%	23	

INFORMATIONAL STATEMENTS – RANKED BY INTENSITY SCORE

	Likely March 2020 Voter			Likely November 2020 Voter		
	Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
7A. By law, all funds from this measure must stay in Morgan Hill to maintain local services. None of it can be taken by Sacramento			1.29			1.29
7R. Businesses will pay their fair share, so homeowners don't shoulder the entire cost			1.18			1.25
7I. The measure will maintain a stable source of funds to protect critical police and fire services			1.15			1.19
7N. Morgan Hill has significant street and road repair and maintenance needs. It is fiscally responsible to maintain our streets, roads, and fix potholes now, so our roads don't deteriorate further and become more costly to fix in the future			1.12			1.15
7B. Maintaining the current level of police service, including neighborhood patrols and crime prevention programs, fire protection, and 9-1-1 emergency response services is necessary to keep Morgan Hill a safe place to live and raise a family			1.12			1.16
7C. Maintaining the current level of police service, including neighborhood patrols and crime prevention programs, is vital to protecting Morgan Hill's quality of life			1.11			1.15
7F. The measure will maintain rapid response to workplace violence and increased police presence at large public events in Morgan Hill			1.11			1.16
7G. This measure will maintain police patrols and keep our neighborhoods safe			1.10			1.16
7P. Well maintained city streets and roads, are important to maintaining Morgan Hill's quality of life			1.08			1.11
7Q. Well maintained city streets and roads, help protect property values			1.06			1.08
7D. This measure requires independent citizen oversight, mandatory financial audits, and yearly reports to the community to ensure the funds are spent in a fiscally prudent manner			1.05			1.05
7M. The City's unfunded road maintenance backlog is \$20 million dollars, this measure will help provide needed road repairs			1.05			1.08
7O. Maintaining strong public safety services and providing well-maintained streets is vital to protecting Morgan Hill's quality of life			1.04			1.10
7S. The measure will maintain programs to help reduce homelessness			0.98			1.02
7H. The measure will continue to prevent and reduce youth violence in Morgan Hill			0.94			0.99
7K. The measure will fund youth after-school and summer programs designed to keep teens off the street and out of trouble			0.92			0.94
7L. New State legislation threatens the residential growth control measure adopted by Morgan Hill voters, this measure will replace the developer contributions eliminated by the State legislation			0.90			0.95
7J. The City has a track record of being fiscally responsible, and would not ask voters for this funding unless it is critical to keeping seniors, adults, teens and children safe			0.90			0.93
7E. Morgan Hill has the lowest per capita tax rate in Santa Clara County, this measure will help pay for essential services similar to other cities			0.89			0.92

INTERIM BALLOT TESTS

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
8. To preserve essential city services, including: •9-1-1 emergency response times, •neighborhood police patrols, •fixing potholes, •fire prevention and protection services, shall Morgan Hill's measure, creating an essential services levy, with an annual rate of \$75 per existing residence and \$500 per newly purchased residence, with alternative rates for non-residential – see voter guide for tax rate information – providing \$1.6 million dollars annually, until repealed by voters, with annual inflation adjustments, independent citizen oversight, and no funds for Sacramento, be adopted?	Definitely Yes	19.2%	41		18.8%	52	
	Probably Yes	29.9%	64		32.2%	89	
	Probably No	18.4%	39		18.8%	52	
	Definitely No	26.9%	57		24.7%	68	
	DK/NA	5.6%	12		5.6%	16	
	Total Yes	49.1%			51.0%		
	Total No	45.3%			43.4%		
9. To preserve essential city services, including: •9-1-1 emergency response times, •neighborhood police patrols, •crime prevention and investigation, •fire prevention and protection services, and •fixing potholes and maintaining city streets, shall Morgan Hill's measure, enacting a one-quarter cent sales tax, providing \$2.5 million dollars annually, until repealed by voters, with independent citizen oversight, and no funds for Sacramento, be adopted?	Definitely Yes	30.3%	63		31.1%	87	
	Probably Yes	34.9%	73		35.2%	99	
	Probably No	16.2%	34		16.5%	46	
	Definitely No	16.5%	35		15.6%	44	
	DK/NA	2.1%	4		1.6%	5	
	Total Yes	65.1%			66.3%		
	Total No	32.8%			32.1%		

CRITICAL STATEMENTS

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
10A. We already pay enough taxes! The City should live within its means and instead focus on what's really at stake for Morgan Hill maintaining the character of our neighborhoods and community in the face of excessive growth	Much More Likely to Vote No	38.6%	163	60.8%	38.7%	216	61.3%
	Somewhat More Likely to Vote No	22.2%	94		22.5%	126	
	No Effect	33.5%	141		33.2%	185	
	DK/NA/[Not sure]	5.7%	24		5.5%	31	
10B. There are no guarantees on how funds will be spent and we cannot trust local politicians to do what they say with our hard-earned tax dollars. The City has plenty of money, our tax dollars are just wasted	Much More Likely to Vote No	34.9%	147	56.2%	35.1%	195	58.0%
	Somewhat More Likely to Vote No	21.3%	90		23.0%	128	
	No Effect	36.5%	154		34.2%	190	
	DK/NA/[Not sure]	7.4%	31		7.8%	43	
10C. If the City had done a better job controlling growth, we would not need to increase the sales tax	Much More Likely to Vote No	35.1%	148	54.3%	35.8%	199	57.2%
	Somewhat More Likely to Vote No	19.2%	81		21.4%	119	
	No Effect	39.4%	166		37.1%	207	
	DK/NA/[Not sure]	6.4%	27		5.7%	32	
10D. City administrators and employees are already overpaid. Why should we pay more to support inflated salaries and benefits?	Much More Likely to Vote No	26.5%	112	47.2%	29.4%	164	51.2%
	Somewhat More Likely to Vote No	20.7%	87		21.8%	121	
	No Effect	43.5%	183		40.3%	224	
	DK/NA/[Not sure]	9.3%	39		8.6%	48	
10E. This tax will continue to make our City less competitive, less business friendly, and less consumer friendly	Much More Likely to Vote No	20.9%	88	38.3%	23.0%	128	41.6%
	Somewhat More Likely to Vote No	17.4%	73		18.5%	103	
	No Effect	51.7%	218		49.2%	274	
	DK/NA/[Not sure]	10.0%	42		9.2%	52	
10F. The City has a structural fiscal deficit in a booming economy, meaning our City leaders are spending more than they are taking in	Much More Likely to Vote No	31.9%	134	56.1%	31.9%	178	58.0%
	Somewhat More Likely to Vote No	24.2%	102		26.0%	145	
	No Effect	35.0%	147		33.3%	185	
	DK/NA/[Not sure]	8.9%	38		8.8%	49	
10G. This tax measure is a 'blank check' that lets politicians make promises now without delivering later	Much More Likely to Vote No	36.7%	155	57.1%	38.6%	215	61.1%
	Somewhat More Likely to Vote No	20.3%	86		22.4%	125	
	No Effect	35.6%	150		31.5%	176	
	DK/NA/[Not sure]	7.4%	31		7.4%	41	
10H. If new development paid its fair share, we would not need this measure	Much More Likely to Vote No	35.6%	150	61.7%	34.7%	193	62.1%
	Somewhat More Likely to Vote No	26.1%	110		27.5%	153	
	No Effect	31.4%	133		30.9%	172	
	DK/NA/[Not sure]	6.9%	29		6.9%	39	
10I. If this measure passes, the sales tax in Morgan Hill will be 9.25 percent, one of the highest in the county	Much More Likely to Vote No	41.8%	87	62.8%	40.9%	115	64.1%
	Somewhat More Likely to Vote No	21.0%	44		23.2%	65	
	No Effect	32.2%	67		31.2%	87	
	DK/NA/[Not sure]	4.9%	10		4.6%	13	
10J. Increasing sales tax will drive businesses and shoppers out of Morgan Hill and hurt the local economy	Much More Likely to Vote No	26.6%	56	42.2%	25.0%	70	44.3%
	Somewhat More Likely to Vote No	15.6%	33		19.3%	54	
	No Effect	50.5%	105		48.4%	135	
	DK/NA/[Not sure]	7.3%	15		7.3%	20	

CRITICAL STATEMENTS – RANKED BY INTENSITY SCORE

	Likely March 2020 Voter			Likely November 2020 Voter		
	Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
10I. If this measure passes, the sales tax in Morgan Hill will be 9.25 percent, one of the highest in the county			1.10			1.10
10A. We already pay enough taxes! The City should live within its means and instead focus on what's really at stake for Morgan Hill - maintaining the character of our neighborhoods and community in the face of excessive growth			1.05			1.06
10H. If new development paid its fair share, we would not need this measure			1.04			1.04
10G. This tax measure is a 'blank check' that lets politicians make promises now without delivering later			1.01			1.08
10B. There are no guarantees on how funds will be spent and we cannot trust local politicians to do what they say with our hard-earned tax dollars. The City has plenty of money, our tax dollars are just wasted			0.98			1.01
10F. The City has a structural fiscal deficit in a booming economy, meaning our City leaders are spending more than they are taking in			0.97			0.99
10C. If the City had done a better job controlling growth, we would not need to increase the sales tax			0.95			0.99
10D. City administrators and employees are already overpaid. Why should we pay more to support inflated salaries and benefits?			0.81			0.88
10J. Increasing sales tax will drive businesses and shoppers out of Morgan Hill and hurt the local economy			0.74			0.75
10E. This tax will continue to make our City less competitive, less business friendly, and less consumer friendly			0.66			0.71

Attachment: Morgan Hill Topline Report 10-15-19 (2524 : Revenue Measure Polling Results)

INFORMED BALLOT TESTS

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
11. To preserve essential city services, including: •9-1-1 emergency response times, •neighborhood police patrols, •fixing potholes, •fire prevention and protection services, shall Morgan Hill's measure, creating an essential services levy, with an annual rate of \$75 per existing residence and \$500 per newly purchased residence, with alternative rates for non-residential – see voter guide for tax rate information – providing \$1.6 million dollars annually, until repealed by voters, with annual inflation adjustments, independent citizen oversight, and no funds for Sacramento, be adopted?	Definitely Yes	13.6%	29		15.1%	42	
	Probably Yes	29.8%	63		30.7%	85	
	Probably No	21.6%	46		20.4%	56	
	Definitely No	29.5%	63		27.8%	77	
	DK/NA	5.5%	12		6.0%	17	
	Total Yes	43.4%			45.8%		
	Total No	51.1%			48.2%		
	Average Interim & Informed	46.2%			48.4%		
12. CFD Ballot Test - \$60 Existing, \$475 New	Definitely Yes	17.4%	37		18.5%	51	
	Probably Yes	29.6%	63		30.8%	85	
	Probably No	18.9%	40		18.8%	52	
	Definitely No	29.1%	62		26.7%	74	
	DK/NA	5.0%	11		5.3%	15	
	Total Yes	47.0%			49.3%		
	Total No	48.0%			45.5%		
13. CFD Ballot Test - 8 Years	Definitely Yes	22.6%	48		23.0%	64	
	Probably Yes	26.9%	57		29.7%	82	
	Probably No	16.2%	34		15.4%	43	
	Definitely No	27.8%	59		25.0%	69	
	DK/NA	6.5%	14		6.9%	19	
	Total Yes	49.5%			52.6%		
	Total No	44.0%			40.4%		
14. To preserve essential city services, including: •9-1-1 emergency response times, •neighborhood police patrols, •crime prevention and investigation, •fire prevention and protection services, and •fixing potholes and maintaining city streets, shall Morgan Hill's measure, enacting a one-quarter cent sales tax, providing \$2.5 million dollars annually, until repealed by voters, with independent citizen oversight, and no funds for Sacramento, be adopted?	Definitely Yes	23.1%	48		23.2%	65	
	Probably Yes	28.8%	60		30.8%	86	
	Probably No	20.9%	44		21.2%	59	
	Definitely No	22.0%	46		19.9%	56	
	DK/NA	5.2%	11		5.0%	14	
	Total Yes	51.9%			53.9%		
	Total No	42.9%			41.0%		
	Average Interim & Informed	58.5%			60.1%		
15. Sales Tax Ballot Test - 8 Years	Definitely Yes	26.3%	55		26.5%	74	
	Probably Yes	27.2%	57		30.0%	84	
	Probably No	19.2%	40		17.3%	48	
	Definitely No	20.9%	44		18.8%	53	
	DK/NA	6.4%	13		7.3%	21	
	Total Yes	53.5%			56.5%		
	Total No	40.1%			36.2%		

Attachment: Morgan Hill Topline Report 10-15-19 (2524 : Revenue Measure Polling Results)

DEMOGRAPHICS

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
A. Do any children under the age of 18 live in your household?	Yes	33.7%	142		36.9%	206	
	No	64.1%	270		61.2%	341	
	DK/NA	2.2%	9		1.9%	11	
B. Gender	Male	46.0%	194		46.6%	260	
	Female	53.4%	225		53.0%	295	
	Unknown	0.6%	2		0.4%	2	
C. Age	18-29	7.3%	31		11.6%	65	
	30-39	11.5%	49		13.7%	77	
	40-49	16.2%	68		17.8%	99	
	50-69	43.7%	184		40.0%	223	
	70+	21.1%	89		16.8%	94	
	Not coded	0.0%	0		0.0%	0	
D. Broad Ethnic Groupings	East and South Asian	8.3%	35		9.1%	51	
	European	59.9%	253		57.2%	318	
	Hispanic and Portuguese	19.9%	84		21.3%	119	
	Likely African-American	0.6%	2		0.5%	3	
	Other	3.2%	14		3.6%	20	
	Unknown	8.2%	35		8.3%	46	
E. Education	Less than HS Diploma - Likely	3.7%	16		3.8%	21	
	HS Diploma - Extremely Likely	9.5%	40		8.0%	45	
	HS Diploma - Likely	5.1%	22		4.6%	26	
	Some College - Likely	10.9%	46		13.0%	73	
	Some College -Extremely Likely	2.4%	10		1.8%	10	
	Bach Degree - Extremely Likely	17.3%	73		15.3%	85	
	Bach Degree - Likely	8.0%	34		7.9%	44	
	Grad Degree - Extremely Likely	9.5%	40		8.9%	50	
	Grad Degree - Likely	5.8%	25		5.4%	30	
	Missing	27.8%	117		31.2%	174	
F. Marital Status	Single or Unknown	42.5%	179		46.4%	258	
	Married	46.3%	195		42.2%	235	
	Non-Traditional	11.2%	47		11.4%	63	
G. Veteran	Yes	3.1%	13		3.2%	18	
	No	96.9%	409		96.8%	539	
H. Homeownership Status	Owner	67.6%	285		65.1%	363	
	Renter	20.5%	86		23.3%	130	
	Unknown	11.9%	50		11.5%	64	
I. Estimated Income Range	\$1,000-\$14,999	1.1%	5		0.9%	5	
	\$15,000-\$24,999	2.5%	11		2.0%	11	
	\$25,000-\$34,999	2.9%	12		2.5%	14	
	\$35,000-\$49,999	3.2%	14		2.7%	15	
	\$50,000-\$74,999	6.8%	29		6.7%	37	
	\$75,000-\$99,999	10.4%	44		11.3%	63	
	\$100,000-\$124,999	14.0%	59		13.1%	73	
	\$125,000-\$149,999	16.2%	68		18.0%	100	
	\$150,000-\$174,999	16.4%	69		15.8%	88	
	\$175,000-\$199,999	10.1%	43		9.5%	53	
	\$200,000-\$249,999	7.2%	31		6.9%	39	
	\$250,000 and up	8.4%	35		10.0%	56	
	Unknown	0.8%	3		0.6%	3	
J. Estimated Home Value Range	\$0K to \$19K	0.0%	0		0.0%	0	
	\$20K to \$49K	0.6%	3		0.5%	3	
	\$50K to \$99K	0.2%	1		0.2%	1	
	\$100K to \$149K	0.0%	0		0.0%	0	
	\$150K to \$174K	0.5%	2		0.4%	2	
	\$175K to \$199K	0.0%	0		0.0%	0	
	\$200K to \$249K	0.4%	2		0.3%	2	
	\$250K to \$299K	0.2%	1		0.1%	1	
	\$300K to \$399K	1.3%	6		1.0%	6	
	\$400K to \$499K	4.4%	19		3.3%	19	
	\$500K to \$749K	19.3%	81		18.7%	104	
	\$750K to \$999K	41.0%	173		42.6%	238	
	\$1000K to 1M and over	31.2%	131		32.1%	179	
	Unknown	0.9%	4		0.7%	4	

Attachment: Morgan Hill Topline Report 10-15-19 (2524 : Revenue Measure Polling Results)

		Likely March 2020 Voter			Likely November 2020 Voter		
		Column N %	Count	Σ or Mean	Column N %	Count	Σ or Mean
K. Individual Party	American Independent	3.1%	13		3.6%	20	
	Democratic	45.3%	191		42.8%	238	
	Green	0.1%	1		0.1%	1	
	Libertarian	0.9%	4		0.7%	4	
	Natural Law	0.0%	0		0.0%	0	
	Non-Partisan	21.3%	90		25.3%	141	
	Other	0.0%	0		0.0%	0	
	Peace and Freedom	0.1%	1		0.1%	1	
	Reform	0.0%	0		0.0%	0	
	Republican	29.2%	123		27.4%	153	
	Unknown	0.0%	0		0.0%	0	
	No data	0.0%	0		0.0%	0	
L. Household Party Tyoe	Dem	30.0%	126		28.0%	156	
	Dem&Ind	17.3%	73		18.3%	102	
	Dem&Rep	8.6%	36		7.8%	44	
	Dem&Rep&Ind	2.8%	12		2.9%	16	
	Ind	13.2%	56		15.7%	88	
	Rep	17.9%	76		16.5%	92	
	Rep&Ind	10.3%	43		10.8%	60	
	No data	0.0%	0		0.0%	0	
M. Household Gender Composition	Mixed Gender Household	67.9%	286		64.6%	360	
	Female Only Household	19.3%	81		21.4%	119	
	Male Only Household	12.2%	52		13.2%	74	
	Cannot Determine	0.6%	2		0.8%	4	
	No data	0.0%	0		0.0%	0	
N. Registration Date	2017 to present	45.9%	194		49.2%	274	
	2013-2016	19.6%	83		21.4%	119	
	2009-2012	8.5%	36		7.8%	43	
	2005-2008	5.1%	22		5.5%	31	
	2001-2004	6.5%	28		5.2%	29	
	1997-2000	4.4%	18		3.4%	19	
	1993-1996	2.9%	12		2.2%	12	
	1981-1992	4.3%	18		3.3%	19	
	1980 or before	2.8%	12		2.1%	12	
O. Voting Frequency	Not coded	0.0%	0		0.0%	0	
	0	0.4%	2		0.3%	2	
	1	2.5%	11		10.5%	59	
	2	3.5%	15		11.6%	65	
	3	10.4%	44		12.5%	69	
	4	15.8%	66		14.1%	79	
	5	13.1%	55		9.9%	55	
	6	13.0%	55		9.8%	55	
	7	14.3%	60		10.9%	60	
P. Voting History	8	27.0%	114		20.4%	114	
	see detailed crosstabs						
	1	23.0%	97		25.7%	143	
	2	52.9%	223		53.8%	299	
	3	17.5%	74		15.5%	86	
	4	6.3%	27		4.9%	27	
	5	0.3%	1		0.2%	1	
	No data	0.0%	0		0.0%	0	
	Military	0.5%	2		0.4%	2	
R. Permanent Absentee Voter	Permanent US	89.1%	376		86.5%	482	
	Unknown	10.4%	44		13.1%	73	
S. Likely March 2020 Voter	Yes	100.0%	422		75.7%	422	
	No	0.0%	0		24.3%	135	
T. Likely November 2020 Voter	Yes	100.0%	422		100.0%	557	
	No	0.0%	0		0.0%	0	

Attachment: Morgan Hill Topline Report 10-15-19 (2524 : Revenue Measure Polling Results)



CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

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

PROVIDE DIRECTION REGARDING RATE OF RETURN VERSUS LONG TERM AFFORDABILITY POLICY CHANGE TO THE BELOW MARKET RATE (BMR) OWNERSHIP PROGRAM - REQUEST OF MADRONE HOMEOWNER TO AMEND RESTRICTED RESALE CONTRACT BY REPLACING THE EXISTING RESALE FORMULA THAT USES AREA MEDIAN INCOME WITH CONSUMER PRICE INDEX

RECOMMENDATION(S)

1. Receive a report on the request made to consider changing the focus of the BMR program to be Rate of Return for owners versus long-term affordability by modifying the Madrone Restricted Resale Contract; replacing the existing resale formula that uses Area Median Income with Consumer Price Index; and
2. Maintain existing affordable housing ownership contract and not shift the focus of the affordable ownership program.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2019 Strategic Priorities

Housing

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATION:

Should the City Council alter the Morgan Hill Below Market Rate (BMR) home ownership program to change the focus to provide a Rate of Return on investment to participants vs. the historical long-term affordability and stability?

REPORT NARRATIVE:

BACKGROUND

Morgan Hill's primary housing mission is to continue the City's legacy to preserve affordability, and create safe, quality rental and ownership housing for residents at all income levels. Since 1977, the City has established a diverse and robust Affordable Housing Program which provides much needed first-time homebuyer opportunities to

low-income and moderate-income households. Over the years, the City has produced homebuyer opportunities as a percentage of all new homes scattered within all subdivisions and has also relied on private, nonprofit housing developers to create rental and ownership projects of greater concentration. All the units resulting from years of action, constitute the Morgan Hill Below Market Rate (BMR) program. The Program is now 40 years old, with both ownership and rental developments utilizing 30 plus variations of agreements or contracts. It is this contractual legacy that is enforced by the City and its administrator, Housekeys.

The City of Morgan Hill's affordable *ownership* program is referred to as the "BMR Program" in general; however, it's important to recognize that the "BMR Program" consists of variations within it, that have evolved over time due to the evolution of affordable housing best practices, State and Federal affordability requirement changes, development partner constraints and objectives, i.e. South County Housing and the Santa Clara County Housing Authority, as well as unique enforcement provisions required of a myriad of financing resources, ongoing and unpredictable market changes, and lessons learned about administering a program through litigation and loss. In addition, the City's housing activities continue to deal with the effects of the elimination of the Redevelopment Agency and the resulting loss of \$4 million in annual funding to support the City's affordable housing goals and ongoing monitoring efforts.

The Housing Element of the General Plan is Morgan Hill's comprehensive statement of its housing needs and goals. It identifies actions to meet the housing needs of the full spectrum of City residents at all income levels. The policies contained in this Housing Element are the local expression of statewide housing goals. Preservation of affordability has been a major tenant of Morgan Hill's Housing policy. The Housing Element creates structure for Morgan Hill's housing strategy and includes policies and actions that facilitate the goals to:

1. Build new housing to meet the full range of future community housing needs, including affordability and accessibility;
2. Preserve and rehabilitate existing housing in the community;
3. Build housing for groups with special needs; and
4. Ensure a range of all house types for all age groups, served by transit, recreational amenities, and health and personal services that allow residents to age in place.

Further, City Housing Policy is codified as Chapter 14 of the Morgan Hill Municipal Code.

HOMEOWNER REQUEST:

Madrone homeowners have requested the City change the resale formula contained in their 2009 resale agreement from Area Median Income (AMI) to Consumer Price Index (CPI) to calculate the resale price upon sale so that they are afforded access to more

equity. BMR homeowner agreements today utilize CPI when calculating the resale value. However, BMR sales today do not have the same structure of financing or down payment assistance, which was used to develop and sell the Madrone units, and new owners bring significant down payment and closing cost dollars to every transaction. Therefore, this is not an “apples to apples” comparison.

MADRONE PROJECT:

Madrone is an ownership project of 78 homes purchased during a depressed housing value market (2008-2013) developed by the now dissolved South County Housing (SCH) Corporation. During that development window, property values fell up to 40% in Morgan Hill, between 20-40% in Santa Clara County and even more in other parts of California. The Madrone project consists of a total of 78 units, 9 of which are traditional market rate units and 69 are a combination of low- and moderate-income deed restricted homes. As these Madrone units were being completed, the housing market collapsed due to the recession. As a result, market rate property values fell everywhere, and great numbers of homeowners throughout California, were impacted and left “upside down” (owing more on their mortgage than the home value or worth) in their homes. This loss of value caused Madrone market rate units to adjust to within dollars of the sales prices of the BMR homes. Because land and construction costs did not fall for affordable units, as they were already constructed, significant deferred down payment assistance was offered to make units affordable to qualified low income buyers. Most of the 69 BMR homes purchased had first mortgages that were under \$190,000.

The Madrone affordable homes that sold during the 2008-2013 timeframe, sold in the range of \$250,000 for a 1-bedroom to a high of \$495,000 for a 3-bedroom unit. These homes were sold with 45-year deed restrictions that are monitored and serviced by the City and Housekeys. The mechanism used to create a low first mortgage for the low-income buyers was to provide several financing layers of deferred down payment assistance from multiple agencies as illustrated in the example below. The existing affordability contract for the Madrone homes includes a resale calculation using the Area Median Income (AMI). It is worth noting, that nothing prohibits owners from prepaying or making interest payments on these deferred down payment assistance loans as a way to build equity, especially as incomes of owners increase. Madrone Homeowners are requesting that the contract be changed to use the Consumer Price Index (CPI) because it will allow them to sell the home for a greater sales price, thereby realizing more equity. Those modified sales prices, because not based on a lower sales price, will move most of the units at Madrone out of affordability range, above 120% of median.

The City did not design the project and/or its financing structure, nor is the City the only lender in the example described below. These units were delivered by South County Housing and not the City’s Inclusionary Program. The City has inherited the servicing of the units as part of its multifaceted BMR ownership program. Additionally, the City’s previous Redevelopment Agency was one of the many lenders that provided down payment assistance to the individual low- and moderate-income homeowners.

MADRONE HOMEOWNERS INQUIRY HISTORY:

In 2016, a concerned Madrone homeowner inquired about selling their BMR after having purchased it in 2009. They were advised that if they were to sell at that time they would not receive any equity as a result of their financing variables (example shown below), and in fact would owe approximately \$15,000 due to the accrued interest from the various layers of down payment assistance that they choose to receive, and the lack of increase in Area Median Income (AMI) in Santa Clara County in 2016. The homeowner did not sell at that time. This prompted a later request from the same homeowner, followed by others in the Madrone Project, that the City consider modifying their contract to allow a maximum resale price to be determined by the Consumer Price Index (CPI) as opposed to the Area Median Income (AMI). The justification and sentiment expressed by several homeowners was that:

1. BMR agreements today allow for the CPI calculation;
2. It is difficult for owners to move and find a non BMR home in today's expensive housing market; and
3. They expect a return on their affordable investment.

In the example described below, CPI would yield a greater return on their original 2009 purchase price, which was clearly subsidized by deferred payment financing. In 2016, AMI had only increased less than 2% from 2009 levels, and CPI had increased over 30%.

Based upon the initial request, in October of 2018 staff presented to Council the consideration of a *"10% minimum return on an individual's out of pocket down payment"* in the event that an owner was not able to recoup their individual out of pocket down payment from a sale. If there is a recession and home values decline, this would not be permitted. Council approved the policy, benefitting the homeowner whose initial out of pocket down payment was approximately \$18,350 (rounded). The new policy adopted by Council allows this household to receive an annual return \$1,835 or 10% per year for every year that they live in the home. In 2018, had the homeowner acted on this policy, the amount due to this household would be approximately \$34,865 after paying off all contractual agreements for the down payment assistance, the first mortgage and receiving a cash payment to make up the balance from the housing program. The homeowner chose not to act on this policy or sell their home in 2018.

Subsequently, in 2019, AMI, the baseline in the Madrone homeowners' agreements increased by nearly 25% since 2009 creating a significant increase in the current resale value per the existing contracts. Also, in 2017 and 2018, AMI increased at a higher rate than CPI. In this example described, the current AMI contract now, in 2019, yields the homeowner an estimated \$43,024 after paying off all contractual obligations for down payment assistance received from various agencies and the first mortgage. Thus, it would not make sense for a homeowner to choose to use the 10% CPI return policy because the combination of CPI return and cash payment to guaranty 10% is less than the existing AMI-based contract formula.

The Madrone Homeowner (s) are now requesting that the City amend the Madrone affordable contracts to replace AMI with *"CPI in the resale calculation"* to provide

greater net proceeds when the remaining Madrone homeowners sell their BMR homes. There are 69 Madrone BMR homes in the Program. It is important to make two items very clear:

- 1) The City never intended to modify any existing contracts with homeowners utilizing the 10% return on down payment policy. Rather, the City by policy would provide a gap payment from the housing fund, guarantying the minimum down payment return. The City cannot alter contracts after they have been executed without risking the City's ability to enforce those contracts in all sorts of situations including disallowed re-financing, bank foreclosure, and bankruptcy actions.
- 2) Allowing a greater return for a current homeowner by CPI contract formula would mean accelerating (increasing) the resale price to the next owner and in many cases, bring the townhome within the price range of fair market value making them less attractive to prospective buyers who would have to sign a new 45-year agreement.

Once again, it should be noted that the prior City Council approved 10% return on down payment policy, does not amend covenants or resale restrictions, rather, the City's Housing Fund will provide the minimum down payment investment return. The Housing team does not recommend that the City consider altering contracts, as enforceability of these contracts has been key to the preservation of affordable units.

Below an example that demonstrates how one of the homes was financed and what the existing AMI vs. CPI contract yields as an approximate return to the homeowner.

EXAMPLE CURRENT CONTRACT

In 2009, a homeowner purchased a 2-bedroom unit for \$372,725 and entered into an agreement with the following agencies for a total of \$185,468 (accruing \$5,608 annually) deferred down payment assistance.

Homeowners out of pocket down payment	\$18,350
First mortgage	\$180,000 Or \$1,021/mo. @ 5.49%
City Redevelopment Agency DPA	\$70,000 @ 3% per year
State BEGIN DPA	\$30,000 @ 3% per year
County of Santa Clara HOME funds DPA	\$40,000 @ 3%
State Cal Home DPA	\$27,800 @ 3% per year
State CalHFA ChDAP DPA	\$11,168 @ 3.25%
Housing Trust of Silicon Valley DPA	\$6,500 @ 3.25% (est.)
Total Down payment Assistance:	\$185,468 (accruing \$5,608 annually or 3.02%)

Description	AMI Method	CPI Method
Current BMR Sales Price	\$ 464,572	\$ 532,588
Estimated First Mortgage Payoff	(180,000)	(180,000)
Estimated Down Payment Assistance Payoff	(241,548)	(241,548)
<i>Estimated Return to Homeowner</i>	\$ 43,024	\$ 111,040

AMI METHOD

The AMI at time of purchase in 2009 was \$105,500. The AMI as of May 2019 was \$131,400, **an increase of 24.55%**. The AMI resale Price for this BMR today is \$464,572 (an increase of \$91,847, from the 2009 purchase price of \$372,725). The current AMI allows the homeowner to pay back the six agencies that the household entered into contract with for a total amount of \$241,548 in deferred down payment and interest, and to pay off their first mortgage in full. Additionally, the homeowner will receive a return of approximately \$43,024.

An additional benefit provided to this homeowner is that they are realizing a cost benefit based on the full \$372,725 being used to calculate the resale price. The City has essentially "inflated" what the buyer has gotten credit for by providing financing and including the other financing layers. For example, in a neighboring City, there is a project agreement that states: "The Increased Base Price of the Residence means the original principal amount of the First Lender's Loan to the Owner, not including any portion of the loan applicable to a premium on mortgage insurance and the original amount of the Owner's down payment, increased by the percentage increase in the Consumer Price Index for All Urban Consumers." If the City Council chose to use this formula, Morgan Hill would grant the homeowners their request, but base the purchase price on the owner's monetary contribution without giving credit for any down payment assistance, resulting in less return to the homeowner.

CPI METHOD

A change to the contract's restricted resale formula using CPI from the year of purchase would increase the value of the home by 42.9% and it would allow the homeowner to receive a greater return upon the sale of their home. Using the same example, the estimated amount due to the homeowner after all obligated debt is paid would be \$111,040.

The current limit on the sales price of a *newly constructed* 2-bedroom *moderate affordable* income unit at 120% of area median income is \$555,600. The estimated *market rate sale value* of a 2-bedroom unit at Madrone is \$599,341 or \$43,741 more than the moderate sale price.

STAFF RECOMMENDATION:

The City has never altered any BMR contractual agreements, and it is not recommended now. Also, this is not the only project in Morgan Hill which utilizes AMI in

the calculation of resale formula. Historically, agreements are intended to limit the sales prices to reflect affordability and preserve the housing asset within the affordable housing program to offer consistent affordable monthly payments and ownership stability. Affordable ownership is the only affordable housing asset that is blind to the increasing income of the owner, allowing an affordable unit to be an asset to individuals and families by securing their monthly housing costs.

Owners are not obligated to remain in their homes, but by participating in the program recognize that the home will be an opportunity for someone else to live affordably, should they choose to leave. The BMR program offers owners enhanced opportunities to save their earnings and live comfortably. Nothing precludes owners from prepayment of any of their deferred interest or down payment assistance to build equity. The City cannot control the market and or be responsible for guaranteeing a significant return on one's purchase. A change to the contract terms (changing from AMI to CPI) based on an attempt to increase value or equity for any one household would place Madrone units up for resale in a higher income category before they need to be, and out of the reach of many prospective affordable home buyers, or at a sale price beyond 120% AMI affordability levels.

WHAT IS THE INTENT OF THE PROGRAM?

Through the years, the Morgan Hill program has been modeled as an affordable living program that allows individuals/families to enjoy home ownership security at a much-reduced cost with lower consistent stable mortgages and property tax benefits. The program allows for a low, manageable, and stable mortgage payment, while being insulated from rental market uncertainty and average rents of \$3000 + in today's difficult market. Additionally, Morgan Hill neighborhoods are a highly desirable location to live in. BMRs are not meant to serve as the way a family achieves investment or asset building; however, on the positive side, the sale of the home described will result in equity earnings of approximately \$43,000 ,net of homeowner down payment of \$18,350, or approximately \$24,650 in profit based upon the resale formula in their current contract. The resale price to the owner is \$464,572. Beyond the resale price, the City will have additional costs of rehabbing the home to move-in condition to add to the unit prior to determining the final re-sale price of the unit for the next income-qualified family.

It is also important to note that while a homeowner may have entered a program in 2009 as a single low income person, it is always the hope that the household will flourish and prosper by way of being accountable for their own choices and actions, which is why the City does not annually income-qualify families living in ownership property. That said, it is quite common that households' incomes can increase for various reasons; job promotion, education, a one household income turns into two, someone may once have qualified as a low income household but later in life that may turn into a two person moderate or above moderate household. Owners are realizing a great benefit by remaining in a home in today's market with a significantly lower and stable mortgage payment, and without requalifying after they have entered the Program.

COMMUNITY ENGAGEMENT: Inform and Engage

Housing staff, HouseKeys, City Manager, and Council members have engaged in various conversations with Madrone Homeowner (s) regarding this subject.

ALTERNATIVE ACTIONS:

The City Council may choose to create new policy and/or direct staff to return with alternatives. It should be noted that many of the changes listed below, such as creating a housing fund payment program to compensate for a specific equity guaranty, would undoubtedly create a program change with 500 additional BMR homeowners citywide.

There are several ways that the City could consider altering the affordable housing ownership program to change the focus from Affordability to Rate of Return to participants, including:

1. Amend 69 individual affordable housing covenant and resale restriction contracts for Madrone Below Market Rate (BMR) homeowners to provide greater profit from accrued equity and in turn increase the resale value of the property for the next qualified first-time homebuyer; or
2. Provide direct cash payments from the housing fund to provide greater net proceeds/profits from the equity in the unit with resale of their BMR homes. If these payments are made, it should be considered whether these payments be scaled based upon new income and earnings potential; or
3. Consider that the intent of the Affordable Housing Program is to create an investment vehicle for residents, rather than to provide housing cost security and stability and re-structure future program guidelines to be consistent with those outcomes; or
4. Consider allowing all BMRs to sell at market and recover a portion of the equity.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The BMR Ordinance was adopted on June 15, 2016. On September 26, 2018, the City Council held a Housing workshop to discuss the Housing Ordinance and BMR guides, followed by an additional discussion of the BMR guides held on October 17, 2018.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with this report. Periodic reviews of the Program and responding to participant requests are activities included in the Housing Program's annual workplan.

CEQA (California Environmental Quality Act): Not a Project.

This report is to inform policy regarding the Below Market Rate Program. Under the CEQA guidelines, activities that qualify to be listed as "Not a Project" include general policy and procedure making.

LINKS/ATTACHMENTS:

1. Correspondence from Jeff Bernstein

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: BMR Issue at Madrone Plaza
Date: Friday, November 1, 2019 10:11:19 AM

From: Jeff Bernstein <jeffbernstein23@gmail.com>
Sent: Friday, November 1, 2019 5:43 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Cc: Rebecca Garcia <Rebecca.Garcia@morganhill.ca.gov>
Subject: Re: BMR Issue at Madrone Plaza

Thank you.

If possible, can the CPI language from the new contract (Article 8, Sections A and B, and Subsections i and ii) be included as well? Specifically, the language in sub-section ii regarding "Adjusted Base Price" is what I am asking the City to adopt for the 33 low income BMR homeowners at Madrone Plaza.

Thanks,
 Jeff

New (2015) CPI [Agreement](#):

8. Option to Purchase. Owner hereby grants to City an option to purchase the Property ("Option to Purchase") under conditions set forth in this Agreement. The Option to Purchase shall be exercisable upon the occurrence of any of the following: (i) Owner delivers a Request for Sale to City, (ii) a notice of default or notice of sale is recorded against the Property by any lienholder, (iii) a Prohibited Transfer occurs and continues in effect beyond the cure period specified in Section 10, (iv) Owner fails to occupy the Property as Owner's principal residence and such failure continues for a period of thirty (30) days following written notice of default from City, or (v) a default arises under any other provision of this Agreement and continues beyond any applicable cure period.

a. Assignment. City may assign the Option to Purchase to a governmental or nonprofit organization. City or its assignee may further assign the Option to Purchase to an individual private buyer who meets City's eligibility qualifications under the Program, is approved by City, and enters into a Property Restriction and Option to Purchase Agreement and other documents as required by City. In no event shall City become in any way liable to Owner, nor become obliged in any manner, by reason of the assignment of its right to purchase, nor shall City be in any way obligated or liable to Owner for any failure of City's assignee to consummate a purchase of the Property or to comply with the terms of any purchase and sale agreement.

b. Purchase Price. The purchase price for the Property ("Purchase Price") that shall apply for both the exercise of the Option to Purchase by City or its designee or assignee and for any sale of the Property to a third party,

shall be fixed at the lower of the Fair Market Value or the Adjusted Base Price, determined as follows:

i. **Fair Market Value.** The fair market value of the Property ("Fair Market Value") shall be determined as follows. City or its designee shall have an appraisal of the Property conducted by a neutral professional appraiser of its choice. Owner may also have an appraisal of the Property conducted by a neutral professional appraiser of Owner's choice. If agreement cannot be reached, the average of the two (2) appraisals shall be deemed to be the Fair Market Value of the Property.

ii. **Adjusted Base Price.** The "Adjusted Base Price" shall equal the the purchase price paid by Owner for the Property plus any prepayment fees paid by Owner at the time Owner purchased the Property (the "Base Price") which Base Price is equal to [price... Dollars (\$00)], plus an amount, if any, to compensate for any increases in the housing component of the **Consumer Price Index, San Francisco-Oakland-San Jose, California**, published periodically by the United States Department of Labor, Bureau of Labor Statistics ("Index"). For that purpose, the Index effective as of the date of this Agreement shall be compared with the latest Index available on the date the Property was last occupied in compliance with the Agreement. The percentage increase in the Index, if any, shall be computed, and the Base Price shall be adjusted by that percentage to calculate the Adjusted Base Price.

From: Jeff Bernstein <jeffbernstein23@gmail.com>
Sent: Wednesday, October 30, 2019 8:18 PM
To: Rebecca Garcia <Rebecca.Garcia@morganhill.ca.gov>
Cc: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Re: BMR Issue at Madrone Plaza

Also, will it be possible include this email and these two attachments?

The first attachment is Exhibit H from the contract I signed in 2009 when I bought my house. It shows the projected resale price based on five years of homeownership (2007-2012) using AMI.

The second attachment is the letter I received from HouseKeys on April 17th, 2018, notifying me that if I were to sell my home I would owe \$15,264, after owning my home for more than eight years.

Thanks,
 Jeff

From: Jeff Bernstein <jeffbernstein23@gmail.com>

Sent: Monday, October 28, 2019 7:15 AM

To: Rebecca Garcia <Rebecca.Garcia@morganhill.ca.gov>

Cc: julius@nyandaconsulting.com; Christina Turner <Christina.Turner@morganhill.ca.gov>; Leslie Little <Leslie.Little@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>

Subject: Re: BMR Issue at Madrone Plaza

Hi Rebecca,

Thank you for sending this over. I've written a response in this [document](#), as there are some charts that do not format well in an email.

I would like this information included in the agenda packet for the November 6th meeting, if possible. Also, I would like my previous email to Council (sent on 10/21) to be included in the agenda packet as well. Please let me know if I should re-send the email.

Thanks,
Jeff

On Thu, Oct 24, 2019 at 10:23 AM Rebecca Garcia <Rebecca.Garcia@morganhill.ca.gov> wrote:

Correction in Red, thanks!

From: Rebecca Garcia

Sent: Thursday, October 24, 2019 10:11 AM

To: Jeff Bernstein <jeffbernstein23@gmail.com>

Cc: julius@nyandaconsulting.com; Christina Turner <Christina.Turner@morganhill.ca.gov>; Leslie Little <Leslie.Little@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>

Subject: RE: BMR Issue at Madrone Plaza

Good Morning Mr. Bernstein,

As a reminder the final staff report will be available the Friday before the Council meeting online to the public, available at:

<http://morganhillca.igmp2.com/Citizens/Default.aspx>. As promised, below are the numbers that will be used to demonstrate AMI and CPI in the report. If you have any additional supplemental information you would like provided to City Council prior to the meeting please send it to Michelle.Bigelow@morganhill.ca.gov, our Deputy City Clerk. Thank you!

Rebecca

AMI EXAMPLE (CURRENT CONTRACT)

In 2009 a homeowner purchased a 2-bedroom for \$372,725.00 and entered into an agreement for a total of \$185,468 (accruing approximately \$5,622.84 annually) deferred down payment assistance.

Homeowners out of pocket down payment \$18,350.00 (took out the word assistance) since it was out of pocket

First mortgage \$180,000. Or \$1,020.89/mo @ 5.49%

City Redevelopment Agency DPA \$70,000 at 3% per year

State BEGIN DPA \$30,000.00 @ 3% per year

County of Santa Clara HOME funds DPA \$40,000.00 @ 3%

State Cal Home DPA \$27,800.00. @ 3% per year

State CalHFA ChDAP DPA \$11,168.00 @ 3.25%

Housing Trust of Silicon Valley DPA \$6,500.00 @ 3.25% (est)

Total Down payment Assistance received \$185,468 (accruing \$5,622.84 annually or 3.03%)

The AMI at their time of purchase in 2009 was \$105,500.

The AMI as of May 2019 was \$131,400, an increase of 24.55%.

The AMI resale Price for this BMR today is \$464,571.50 (an increase of \$91,571.50).

The current AMI allows the homeowner to pay back \$235,200.00 for deferred down payment and interest, and to pay off their first mortgage.

Homeowner will receive a return of approximately \$49,371.50.

\$464,571.50 is the current BMR sales price

• (\$180,000) deduct the estimated payoff on the first mortgage

• (235,196.40) deduct the estimated total payoffs on down payment assistance
--

= \$49,371.50 estimate due to the homeowner after all obligated debt is paid
--

CPI EXAMPLE (THIS IS THE REQUESTED CHANGE TO CONTRACT):

A change to the contract's restricted resale formula using CPI from the year of purchase would increase the value of the home by 42.9%.

Using the same example, the estimated amount due to the homeowner after all obligated debt is paid would be approximately \$117,392.01.

\$532,588.41 is the CPI-Based Resale Price
--

• (\$180,000) deduct the estimated payoff on the first mortgage

• (235,196.40) deduct the estimated total payoffs on down payment assistance
--

= \$117,392.01 estimate due to the homeowner after all obligated debt is paid

Rebecca Garcia
Housing Manager

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

P: 408.310.4637
Rebecca.Garcia@morganhill.ca.gov
morganhill.ca.gov | [facebook](https://www.facebook.com/morganhillca) | [twitter](https://twitter.com/morganhillca)

From: Jeff Bernstein <jeffbernstein23@gmail.com>
Sent: Monday, October 21, 2019 11:09 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Rebecca Garcia <Rebecca.Garcia@morganhill.ca.gov>; Julius Nyanda <julius@nyandaconsulting.com>
Subject: BMR Issue at Madrone Plaza

Mayor and Council,

First, thank you for putting this item on the November 6th City Council agenda. While I know some of my criticism (past and present) may seem harsh, it is my belief that the City of Morgan Hill has been moving in the right direction with its affordable housing program since it contracted with HouseKeys in 2015. My frustration/concern stems from the fact that when I began to look at relocating in 2016 I learned that I was underwater on my mortgage and would owe about \$15,000 if I chose to sell my BMR house. This did not make sense to me, as the housing market had mostly recovered from the recession at that point, and I had recalled expecting a 4% annual increase in resale value when I purchased my home in 2009. When I began to dig into the numbers and understand how the program was structured I became more concerned that I had gotten myself into a bad situation by choosing to participate in the BMR program. In the last 3.5 years I have met with many of you to discuss this issue, provide feedback, and brainstorm potential solutions. Although I wish there were a more streamlined approach to this, I am nonetheless glad I was able to participate in some capacity. I am hopeful that the November 6th City Council meeting provides some finality to this issue -- in my mind, the appropriate course of action is pretty clear; I say this knowing full well I have a perspective that is unencumbered by the political, economic, and social pressures you each must take into consideration with every decision you make. Below, I will attempt to explain why I believe modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income BMR homeowners at Madrone Plaza makes sense and is the best course of action for the City to take.

In an email I received from City Manager Christina Turner on September 4th,

2019 regarding the unique circumstances of the BMR units at Madrone Plaza, Ms. Turner states that: "This project bears no resemblance to any other project or group of deed restricted affordable units in the City." At the City Council Meeting on October 17th, 2018, (9:16 mark of this [video](#)) Councilman Spring asks the Housing Manager about why these homes are called "Below Market Rate" when they were priced at Fair Market Value. Ms Garcia responds by saying: "It is not something we would do today. Sometimes we're kind of untangling things that were done in the past...I also think that because the developer that created these homes was going out of business at that time...that influenced the way they set prices as well."

Here are 3 reasons I believe that, if given the opportunity to travel back in time and re-do Madrone Plaza, the City would do things differently:

- 1.
2. In 2015 the City changed the formula to CPI from AMI
3.
 - 1.
 2. Why would the City do this unless it believed CPI was
 3. the superior index to use?
 - 4.
- 1.
2. Ms. Gracia saying:
3. *It is not something we would do today. Sometimes we're kind of untangling things that were done in*
4. *the past...I also think that because the developer that created these homes was going out of business at that time...that influenced the way they set prices as well.*
5.
 - 1.
 2. If providing low-income buyers with large amounts of
 3. down payment assistance and allowing a developer to set prices of BMR homes at FMV are not actions the City would take with its BMR program again, it stands to reason that these actions should not have been taken in the first place.
 - 4.
- 1.
2. Ms. Turner saying:
3. *This project bears no resemblance to any other project or group of deed restricted affordable units*
4. *in the City.*
- 5.

- 1.
2. It is not in the best interest of the City's BMR program,
3. or its participants, for the program to operate so differently across developments. It is safe to assume the program at Madrone should NOT have been created to be so vastly different from other affordable units in the C
- 4.

By hiring HouseKeys in 2015, I believe the City put itself on a path toward creating a program that will have the desired impact on BMR program participants. However, please do not lose sight of the fact that there are people participating in the program today who currently feel like guinea pigs in an experiment gone wrong. We are currently getting the short end of the stick due to having participated in the program at the wrong time. Please restore the positive feelings we had about the BMR program when we decided to participate by providing us with the experience we were led to believe we would have.

I believe the most important responsibility of government is to protect its citizens (especially those citizens participating in a government assistance program like affordable housing). This is a situation in which the government failed to do so. By allowing a developer to create a project *bearing no resemblance to any other project or group of deed restricted affordable units in the City*, our leaders abdicated their responsibility to protect citizens. The result of this was several years of BMR homeowners being underwater on their mortgages with nowhere to go. People like me who wanted to relocate struggled to do so due to the negative equity we had in our BMR homes -- all this while our neighbors in non-BMR houses on the other side of the development watched their houses double in value.

Clearly, based on the statements from the City Manager and the Housing Manager, the situation at Madrone Plaza is unique. Here is a brief summary as to how:

- 1.
2. BMR homes were purchased
3. during a depressed market (2008-2012); which resulted in homes being priced at fair market value, instead of at a price below the current market rate
- 4.
- 5.
6. BMR buyers received large
7. amounts of down payment assistance; the interest on which accumulated at a rate faster than AMI increased; causing homeowners to be underwater on their mortgages for several years
- 8.
- 9.
10. BMR homes were purchased

11. through a program created by the builder, which created a program within a program that lacked consistency/coherence with the City's other BMR units
- 12.

Given that this is a unique situation, it stands to reason that it is deserving of a unique solution that will:

- 1.
2. Keep current BMR homes in
3. the program so they are affordable to new BMR buyers
4.
 - 1.
 2. This can be accomplished
 3. by pricing homes at the Moderate level (120% AMI); with interest rates falling, new program participants should have higher levels of affordability.
 - 4.
- 1.
2. Allow current BMR homeowners
3. to exit the program in a manner consistent with what they were told upon agreeing to participate in the program
4.
 - 1.
 2. This can be accomplished
 3. by modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income BMR homeowners at Madrone Plaza
 - 4.

I am not asking for a complete overhaul of the BMR program, I am requesting that the City's leaders continue to untangle the mess that was made several years ago by righting a wrong for the small group of BMR homeowners at Madrone Plaza who were negatively impacted by poor decision making. By modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income Madrone Plaza BMR homeowners, the City's leaders will be restoring trust to a community that has felt misled by the term "Government **Assistance** Program." Given that the City changed from an AMI to a CPI-based Restricted Resale Agreement for its BMR units in 2015, it clearly believes CPI to be the superior index in pricing BMR houses. I am asking for the opportunity to be included in that change so that we do not continue as an overlooked and disenfranchised minority in the City's otherwise successful affordable housing portfolio. Please vote in favor of modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income Madrone Plaza BMR homeowners.

Thank you,
Jeff

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Toll Free: 1-877-460-KEYS (5397)
 Office (By Appointment)
 358 Digital Drive
 Morgan Hill, CA 95037

April 17, 2018

Jeffery Michael Bernstien

RE: Below Market Rate Value – 18434 Ruby Lane, Morgan Hill, CA 95037

To Whom It May Concern,

In accordance with the terms and conditions of the Resale Restrictions and Option to Purchase Agreement (the "Agreement") recorded against your Home, referenced above, the BMR Program Administrator ("Administrator") for the City of Morgan Hill ("City") determined that the current

Maximum Resale Restricted Price for your Home is: \$400,282.00

The Resale Restricted Sales Price Calculation is only valid for 90 days from the date of this notice. If you desire to refinance your Home, you must complete your application for refinancing and advise the lender to call the City for approval of the refinancing prior to recordation of any related instruments against the title to the Home. Failure to do so constitutes a Default of your Resale Restrictions and Option To Purchase Agreement. Please call HouseKeys if you have questions.

Sincerely,

Christina Enriquez
 BMR Property Asset Manager

Attachment: Correspondence from Jeff Bernstein (2505 : BMR: Program : Rate of Return Versus Long Term Affordability Policy)

Mailing Address:

409 Tennant Station #495
 Morgan Hill, CA 95037

Main Line: 408-684-8712
 Main Fax: 408-684-8762

info@housekeys.org
 www.housekeys.org



Toll Free: 1-877-460-KEYS (5397)
 Office (By Appointment)
 358 Digital Drive
 Morgan Hill, CA 95037

NOTICE OF RESALE/REFINANCE PRICE

Calculation Worksheet

Area Median Income (AMI)	
Original Sales Price (12/29/209)	\$372,725
Median Income at time of Purchase (2009)	\$105,500
Median Income at time of request (2018)	\$113,500
Median Income Change %	0.073933649
Resale Value:	\$400,282

BMR Restricted Sale Price Calculation of:

\$400.282
The maximum indebtedness allowable against this Calculation is 95% of the Restricted Price is:
\$380,267.90
Current estimate of liens and encumbrances (need to confirm payoffs with escrow officer) is:
\$415,546
The maximum available Excess Sale Proceeds Amount (less any encumbrances, liens or repairs) is:
\$-15,264

Attachment: Correspondence from Jeff Bernstein (2505 : BMR: Program : Rate of Return Versus Long Term Affordability Policy)

Hi Rebecca,

My concern with presenting the information this way is that it only provides a current snapshot of the situation. In comparing the resale prices that AMI and CPI yield today, one sees a return of about \$50,000 compared to a return of more than twice that amount. While this is true, it does not tell the whole story of these two indexes. I think it will be helpful to include a year-by-year breakdown of the AMI and CPI numbers and how they would impact the resale value each year. Below is a chart I created to compare the AMI based price, CPI based price and the price based on the variables used in [Exhibit H](#) of the contract I signed.

Please note that the numbers in red represent a sales price that would result in the homeowner (me) owing money upon the sale of the home due to the interest on the down payment assistance (DAP) accruing at a rate faster than the appreciation of the house (AMI).

Year	CPI Based Resale Price	AMI Based Resale Price	Contract Projected Resale Price - Exhibit H (4% Annual Increase)
2009	\$372,725	\$372,725	\$372,725
2010	\$373,826	\$365,659	\$387,634
2011	\$384,428	\$366,012	\$402,543
2012	\$396,604	\$370,959	\$417,452
2013	\$407,558	\$372,725	\$432,361
2014	\$424,523	\$372,725	\$447,270
2015	\$447,882	\$375,551	\$462,179
2016	\$473,169	\$378,378	\$477,088
2017	\$496,222	\$400,282	\$491,997
2018	\$517,027	\$442,324	\$506,906
2019	\$527,904	\$464,228	\$521,815

I am particularly sensitive to only comparing the two data points as they stand currently because when I inquired (for the second time) about selling my house in April of 2018, I received this [letter](#) from HouseKeys, notifying me that if I were to sell my home, I would not only NOT receive anything, but I would OWE an additional \$15,264 just to walk away from the house. Given that that was my reality 18 months ago, I think it is important to take into consideration how quickly things can change and that, while there are no guarantees, a policy should provide BMR homeowners with a reasonable return in MOST circumstances, while keeping the home affordable for a new buyer. Below is a comparison of AMI and CPI since 2000. Please note that AMI has increased by 51% since 2000, while CPI has increased by 70%. Also note that nearly the entire increase in AMI can be contributed to the growth in 5 years (2002, 2003, 2017, 2018, 2019). Also note that from 2003 to 2016, AMI was virtually unchanged. Meanwhile, CPI has moved in a much more regular and consistent pattern.

Year	AMI	AMI Change %	CPI	CPI Change %
2000	\$87,000	--	203.8	--
2001	\$87,300	0.34%	220.2	8.05%
2002	\$96,000	9.97%	220.7	0.23%
2003	\$105,500	9.90%	222.2	0.68%
2004	\$105,500	0.00%	222.3	0.05%
2005	\$105,500	0.00%	225.8	1.57%
2006	\$105,500	0.00%	233	3.19%
2007	\$105,500	0.00%	238.43	2.33%
2008	\$105,500	0.00%	243.03	1.93%
2009	\$105,500	0.00%	243.65	0.26%
2010	\$103,500	-1.90%	244.37	0.30%
2011	\$103,600	0.10%	251.3	2.84%
2012	\$105,000	1.35%	259.26	3.17%
2013	\$105,500	0.48%	266.42	2.76%
2014	\$105,500	0.00%	277.51	4.16%
2015	\$106,300	0.76%	292.78	5.50%
2016	\$107,100	0.75%	309.31	5.65%
2017	\$113,300	5.79%	324.38	4.87%
2018	\$125,200	10.50%	337.98	4.19%
2019	\$131,400	4.95%	346.105	2.40%

Lastly, please note that if AMI goes through a stretch over the next 10 years similar to what it did from 2003 to 2014, the result will once again be a negative return on investment for the BMR homeowner who sells his house because the accrued interest on the DAP will once again outpace the minimal/zero-growth of AMI. Modifying the formula to use CPI will very likely prevent this situation from ever occurring due to CPI's steady and consistent growth.

A question worth considering is: "What should the experience of a BMR homeowner be when they exit the program?" Based on the example in the contract, I believe it is reasonable for a BMR homeowner to expect a 4% annual increase in value. Also, the [Meet the Jones's](#) example shows a 4.4% annual increase in value (88.2% over a 20-year period). It is troubling to me that some people have expressed concern over my request to see a return on my house commensurate with what is outlined in the contract as well as the Meet the Jones's example -- if 4% is not realistic, why use it in the examples? I understand that market conditions are always changing and that tying the return to an index like AMI or CPI means that returns cannot be accurately predicted, but I struggle to understand why a historically unpredictable index such as AMI would ever be used. While I am glad the City came to the same conclusion in 2015 and decided to use CPI moving forward, it is disappointing that those of us already participating in the BMR program were overlooked and not given the same benefit of using the superior index.

Another point to consider is that, while \$50,000 may seem like a decent return, a \$50,000 increase over a ten-year period represents a 13.4% return on investment ($\$50,000 / \$373,000$), for an annualized ROI of 1.34%. The CPI numbers are as follows: $\$117,000 / \$373,000 = 31.4\%$, for annualized ROI of 3.14%. Neither return is what I would consider “good” from an investment perspective, especially when you consider that someone who bought the same model I bought, but purchased it outside of the BMR program, would have been able to sell it for over \$700,000 in the spring of 2018. Given that I paid Fair Market Value for my house, for the sake of argument I will assume this hypothetical buyer would have paid \$373,000. If the buyer sold the house for \$700,000 after 9 years of homeownership, s/he would realize a \$327,000 increase in sales price for a ROI of 87.7%. While this return would have been nice, and I have previously made the argument that I should be able to sell at Fair Market Value because I bought at Fair Market Value, I am only asking to be allowed to sell using CPI-based formula that City adopted in 2015. The CPI-based sales price keeps pace with inflation and would provide a reasonable amount to use as a down payment on a non-BMR house.

If AMI continues to be used and I choose to sell my house as soon as possible I will recoup less than half the money I have invested in my house through ten years of mortgage (PITI) and HOA payments, and DAP accrual. My “investment” will return a net loss of \$450-\$500 a month for ten years with an AMI based sales price of \$465,000. This is not what I had in mind when I decided to buy a BMR house in the middle of a recession and sell it after median home prices had doubled. I have heard the argument that BMR homeowners should not view their homes as investments. While I understand the sentiment, I believe anything you put money into with the intention of eventually selling, should be considered an investment. I believe this is why the City has a BMR Homeownership program in addition to a BMR/Affordable Housing Rental program. If my only objective was to live somewhere affordable, I would have considered the BMR Rental program. I had the dream of homeownership and believed that buying a BMR home in a depressed real estate market would not only provide me with an affordable place to live, but it would allow me to build equity and move into a different house once I had a family. Currently, my wife and our two daughters are living in our two-bedroom house, and we do not have enough equity in the home to sell it for enough of a return that will allow us to move into a home in this area that will better meet our needs.

While I believe the City Council should vote to modify the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income Madrone Plaza BMR homeowners, another option worth considering would be to use the average of AMI and CPI to determine the resale price. Below is the cumulative average of AMI and CPI for each year since 2009, with 2009 as the base year.

2009	--
2010	0.79%
2011	3.05%
2012	4.67%
2013	6.75%
2014	9.88%

2015	13.08%
2016	18.41%
2017	25.76%
2018	29.44%
2019	33.73%

In the ten years since 2009, AMI has increased by 24.55%, while CPI has increased by 42.9%. Averaging the two yields a 33.73% increase. Using my house as an example, a house that sold in 2009 for \$373,000 would sell for \$464,571 based on the current AMI formula, \$532,588 based on the new CPI formula, and \$498,579 if averaging the two. Although this would not be my first choice, if the City does not pass the proposed CPI-based formula, my preference would be for the City to adopt this “hybrid” model instead of keeping the status quo. Please carefully consider all the options and look for a solution that works well in multiple situations -- not just one that appears to work under today’s conditions.

Thank you,
Jeff

Below is a brief comparison of CPI and AMI:

Given that the City adopted the CPI-based formula in 2015, clearly the belief is that CPI is the superior index to use in determining the Restricted Resale Price of BMR homes in Morgan Hill.

Positives with CPI:

1. Stronger real estate market correlation than AMI.
2. More predictable movements from year to year (lower standard deviation).
 - a. Since 2000, CPI has increased by 70%. During 12 of those years CPI increased between 2% and 6%. This level of consistency is much better for the program and its participants, as it allows for predictable growth.
3. Multiple data points throughout the year; there are new CPI numbers published every month or two, so it is less likely the City will be flooded with requests to sell at any given point throughout the year.
4. CPI allows for a return on investment commensurate with the example in the contract for most BMR homeowners (Exhibit H and Meet the Jones’s).

Problems with AMI

1. AMI is not as strongly correlated with the housing market as CPI
 - a. The City needs to take into account what BMR homeowners will do when they exit the program -- where do they live next? If they want to purchase a home in the area, they need to receive enough of a return when they sell so they can put money down on a house.
 - b. Due to AMI’s lack of correlation with the non-BMR housing market, it becomes counter-intuitive/productive for determining an ideal time for a current BMR homeowner to sell. When the non-BMR housing market is high, the BMR resale market should be high as well. Currently, this is not the case.

2. Inconsistent movement -- high standard deviation in movement from year to year
 - a. Since 2000, AMI has increased by 51%. Nearly the entire increase in AMI can be contributed to the growth in 5 years (2002, 2003, 2017, 2018, 2019). That level of volatility is NOT good for the program, current participants, or prospective participants.
3. One data point per year
 - a. Not equitable -- someone who issues an intent to sell one day could literally be selling their home for 10% (or more) less than someone who issues an intent to sell the next day
 - b. Could result in a large number of intent to sell requests at the same time; flooding the market with inventory; what would happen if there are more units for sale on the BMR market than the City is able to sell?
4. The reality of the return on investment using AMI is NOT commensurate with the example in the contract for most BMR homeowners (Exhibit H and Meet the Jones's)



CITY COUNCIL STAFF REPORT

MEETING DATE: November 6, 2019

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ADOPT UPDATED DEVELOPMENT USER FEE SCHEDULE

RECOMMENDATION(S)

1. Open/Close Public Hearing; and
2. Adopt resolution updating Development User Fee Schedule.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

2019 Strategic Priorities

Financial Stewardship
Infrastructure

POLICY CONSIDERATION:

Should the City update select Development User Fees to recover full costs of providing exchange-based development services?

REPORT NARRATIVE:

The California Government Code allows cities to recover all or a portion of the cost of providing exchange-based services through the application of fees. On November 1, 2017, the City Council adopted the current Development User Fee Schedule to help ensure full cost recovery for Development Services Department costs for processing, permitting, and inspection services provided to the community. The current Development User Fees Schedule was aided by a fee study conducted by NBS Government Finance Group (NBS).

The proposed adjustments to the current Development User Fees schedule include amending one existing fee, Conceptual Plan Review, and the establishment of new Geographic Information System and Technology fee. The proposed adjustments attached to this report detail the two fees, the full cost of providing the services related to those fees, the current fees and the recommended fees based on full cost recovery.

Conceptual Plan Review/SB 330 Preliminary Application Review

With the suspension of the Residential Development Control System (RDCS) for 5 years, beginning January 1, 2020 due to the new State Housing Law (SB 330), certain development user fees relating to RDCS such as application review, development agreement and monitoring will be suspended. The suspension is estimated to result in an annual loss of approximately \$423,000 in development user fees. In addition to the suspension of RDCS, SB 330 will require the City to expedite permitting processes. Within 30 days of submission of pre-application or 60 days for greater than 150 units,

the City is required to determine whether the application is deemed complete. This will result in the extensive increase in staff time performing required preliminary application review. The attached analysis shows it would take approximately 46 hours to perform a preliminary application review from the current model, which is not required, of approximately 18 hours. The increase in allocated staff time will result in a new cost recovery of \$10,987 per application. Together with the potential increase in volume of activity, this fee is projected to generate approximately \$330,000 per year. The annual revenue gap of approximately \$93,000 is estimated to be generated from existing RDCS applications and the projected increase in the volume of activity in other tasks.

GIS and Technology Fee

During the NBS fee study, the City did not have a full functioning GIS division, but rather the minimal GIS services were performed by an Engineering Aide in Utilities and Engineering Department, and those costs were not fully reflected in the current fee schedule. In addition, only the annual maintenance costs for TRAKiT, the automated permit management, project tracking, and code enforcement system are reflected in the current fee schedule, but not the initial purchase and implementation costs. The initial purchase and implementation cost of TRAKiT amounted to approximately \$350,000 in 2015. Appropriate annual amortization cost should be accounted for and captured in the fee schedule to plan for either a major upgrade to the current system or implementation of a totally new system in the future.

The analysis of cost estimates shows GIS and the automated permitting system or Technology are estimated at approximately \$187,000 annually. The analysis also shows estimated potential revenues at a recommended 5% fee of required permits for planning and building projects, the same methodology as the existing Long-Range Planning fee, would generate approximately \$183,000. Even at 5%, there is a potential funding gap of approximately \$4,000. The revenues and costs are estimates and can be higher or lower than projected. As we move forward, we will need to continue to closely monitor revenues and expenditures to ensure sufficient fees are collected to fully recover costs.

COMMUNITY ENGAGEMENT: Inform

Public notice was published in the local newspaper on October 25, 2019, informing the community of the Development User Fees adjustment and adoption of the new fee.

ALTERNATIVE ACTIONS:

City Council can choose to phase-in/tier the implementation of any fee increases. City Council can also choose not to act on the proposed updates to the Development User Fee Schedule at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council adopted the current Development User Fee Schedule on November 1, 2017.

FISCAL AND RESOURCE IMPACT:

The annual impact on the Development Services Fund (Fund 206) is anticipated to be an increase in revenue that will recoup more of the reasonable costs for providing a given service.

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. Updating Select Development User Fees v11062019
2. Resolution
3. Presentation - Update Development User Fee Schedule

SELECT DEVELOPMENT USER FEES UPDATE

Fee Description	Current Fee Amount	Proposed Fee Amount	Net Change
Conceptual Plan Review/SB330 Preliminary Application Review	\$ 4,395	\$ 10,987	\$ 6,592
GIS/Technology Fee (NEW)	n/a	5%	5%

CONCEPTUAL PLAN REVIEW / SB330 PRELIMINARY APPLICATION REVIEW

Fee Description	Account Number	Current Cost Recovery Analysis					Proposed New Cost Recovery Analysis			
		Current Average Labor Time	Hourly Rate	Current Cost Per Activity	Estimated Current Annual Volume of Activity	Estimated Current Annual Revenue	Estimated New Average Labor Time	Estimated New Cost Per Activity	Estimated New Annual Volume of Activity	Estimated New Annual Revenue
Conceptual Plan Review/SB330 Preliminary Application Review	206-38154	18.25		\$ 4,395	2	8,790	45.63	\$ 10,987	30	329,614
Planning staff time		14.25	249				35.63			
Engineering staff time		4.00	212				10.00			
TOTAL		18.25				\$ 8,790	45.63			\$ 329,614

Planning - Fees and Services Suspended Due to SB330

Fee Description	Account Number	Average Labor Time	Hourly Rate	Cost Per Activity	Estimated Annual Volume of Activity	Estimated Annual Revenue
RDCS Development Agreement	206-38115	27.00	\$ 249	\$ 6,723	6	\$ 40,338
RDCS Compliance Monitoring - Pre Dev. Agreement 0 - 3 Yrs.	206-38164	47.00	249	11,703	3	35,109
RDCS Compliance Monitoring - each year after 3 years	206-38165	10.00	249	2,490	-	-
RDCS Extension	206-38176	17.00		4,102	2	8,205
Planning staff time		13.50	249			
Engineering staff time		3.50	212			
Preliminary Measure S Review	206-38141	33.50		8,155	10	81,548
Planning staff time		28.50	249			
Engineering staff time		5.00	212			
Final Measure S Review (RDCS)	206-38142	123.00		30,104	8	240,833
Planning staff time		109.00	249			
Engineering staff time		14.00	212			
RDCS Appeal	206-38179	34.50		8,478	2	16,957
Planning staff time		31.50	249			
Engineering staff time		3.00	212			
TOTAL PROJECTED LOSS REVENUE		292.00				\$ 422,989

GEOGRAPHIC INFORMATION SYSTEM (GIS) AND TECHNOLOGY FEE REVENUE AND COST ESTIMATES

Estimated Annual GIS/Technology Fee Revenue	\$ 182,886 ¹
Estimated Annual Development Services Technology/Software Cost	
50% of Annual GIS Cost	\$ 129,684 ²
Annual Software Amortization Cost	56,836 ³
Estimated Total Annual Cost	\$ 186,520
Estimated net excess/(shortfall)	\$ (3,634)

Footnotes:

¹ Estimated GIS/Technology Fee Revenue	FY19 Actual	FY18 Actual	FY17 Actual	FY16 Actual	FY15 Actual	Average
Actual Long Range Planning Fee Revenue	\$ 543,140	\$ 507,407	\$ 595,008	\$ 529,701	\$ 568,032	\$ 548,658
5% of required permits for planning and building projects or 1/3 of long range planning fee (\$548,658 / 3 = \$182,886)						

² GIS	FY19 Actual	FY20 Budget	FY21 Budget	FY22 Budget	FY23 Budget	Average
Annual GIS Budget	\$ 290,026	\$ 256,952	\$ 241,691	\$ 249,936	\$ 258,233	\$ 259,368
50% of Annual GIS Cost (\$259,368 / 2 = \$129,684)						

³ Software Amortization	
Initial purchase & implementation cost for TRAKiT	\$ 348,925
Amount to be amortized over 10 years at 5% per year escalation	\$ 56,836

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADJUSTING THE SELECT DEVELOPMENT USER FEE SCHEDULE AND ESTABLISHING NEW DEVELOPMENT-RELATED FEE FOR CITY SERVICES

WHEREAS, the City Council, pursuant to Section 3.50.010 of the Morgan Hill Municipal Code (“Code”), requires the recovery of costs reasonably born from fees and charges levied in providing the regulation, products or services enumerated in Code Chapter 3.50 – Fee and Service Charge Revenue/Cost Comparison System; and

WHEREAS, pursuant to Section 3.50.030 of the Code, “costs reasonably borne” is defined to include all applicable direct costs, indirect costs, fixed asset recovery expenses, general overhead, departmental overhead, and debt service costs; and

WHEREAS, the City of Morgan Hill has conducted a fee analysis to calculate the costs reasonably borne to provide the specified development services (Planning, Building, and Engineering), which analysis has been available to the public for at least ten (10) days prior to the adoption of this Resolution; and

WHEREAS, prior to the adoption of this Resolution, a duly noticed public hearing was held at a regular meeting of the City Council, during which written and oral presentations and public comments were received; and

WHEREAS, the City Council has considered any and all verbal and/or written testimony and has reviewed and considered the information provided at the public hearing by City staff and the public, including the fee study.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL THAT:

SECTION 1. The City Council of the City of Morgan Hill (“City Council”) hereby finds, determines and declares that:

- A. The City Council has determined that City staff provides many types of special services ("Services") involving requests by City customers ("Applicants"); and
- B. The City currently imposes service fees ("Service Fees") and development-related fees (“Development Fees”) upon Applicants to recover the costs of staff time, copying costs, and other expenses related to providing these Services; and
- C. The City Council has conducted an extensive analysis of its Service and Development Fees, including the cost to the City for special services and development applications and the revenues produced by those paying Development and Service Fees; and
- D. Current Service Fees and Development Fees charged for the City's Services do

adequately recoup the City's costs of providing certain Services; and

- E. The City Council finds that providing these Services is of special benefit to Applicants both separate and apart from the general benefit to the public; and therefore, in the interests of fairness to the general public, the City desires to better recover the costs of providing these Services from Applicants who have sought the City's Services by amending its schedule of City-Wide Development User Fees; and
- F. The proposed Service Fees and Development Fees are initially based upon the information contained in a document and updated by City staff to reflect current costs of the City to provide the Services; and
- G. Based upon the analysis and the updated information, the City (i) identifies the purpose of the proposed fees, (ii) identifies the use to which the fees will be put, (iii) demonstrates a reasonable relationship between the fees' use and the types of projects on which the fees are imposed, and (iv) demonstrates a reasonable relationship between the amount of the fees and the cost of the City's Services attributable to the applications on which the fees are imposed; and
- H. Pursuant to state law, the City may impose service fees for certain services; and
- I. Pursuant to Government Code Section 66000, *et seq.*, the City is empowered to impose Development Fees covering up to 100 percent of the actual costs of providing Services to Applicants; and
- J. The City desires to adjust certain fees to reflect the actual costs incurred by the City in providing Services; and
- K. Section 3.50.010 of the Morgan Hill Municipal Code provides that the City may set fees to recoup costs reasonably borne by the City by means of adopting a resolution of the City Council, after compliance with the requirements of state law; and
- L. Government Code Section 66014 *et al.* allows local agencies to charge fees for various activities as long as those fees do not exceed the estimated reasonable costs of providing the service for which the fee is intended; and
- M. Pursuant to Government Code Sections 66014, 66017, and 66018 and the Morgan Hill Municipal Code, the specific fees to be charged for certain regulations, services and products must be adopted by resolution, following notice and public hearing; and
- N. Notice of public hearing has been given pursuant to Government Code Section 6062a, and written notice has been provided to interested parties who filed written requests for mailed notice of meetings on new or increased development-related fees or service charges; and
- O. The City Council conducted a duly noticed public hearing on November 6, 2019, at which time the public was invited to make oral and written presentations as part of the regularly scheduled meeting prior to the adoption of this Resolution; and

- P. At least ten (10) days prior to the public hearing referenced above, the City made available for public inspection information required under Government Code Section 66000, *et seq.*; and
- Q. The City published notice of the public hearing as described above in accordance with Government Code Sections 6062(a), 66014, 66016, 66017, and 66018 for the various Service Fees and Development Fees.

SECTION 2. Adoption of Fees and Charges. The City Council hereby adopts and approves the amendment to the Conceptual Review Plan fee to be retitled Conceptual Review Plan/SB 330 Preliminary Application Review and establishment of a new fee to be titled GIS and Technology Fee to be set at 5 percent of the fee for required planning, building, and engineering permits as set forth in attached **Exhibit "A"** and incorporated by this reference. Unless otherwise stated in the Fee Schedule, all Service Fees and Development Fees shall be paid to the City by the Applicant prior to the City's performance of the requested Services. The City Manager or her designee is hereby authorized and directed to amend the City-Wide Fee Schedule to reflect the adjustments as set forth in Exhibit A.

SECTION 3. Repeal of Conflicting Resolutions. The City Council finds and determines that it is reasonable to continue to annually adjust the fees set forth in the Schedule by the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco, Oakland and San Jose Area, and hereby instructs, authorizes and directs the City Manager or her designee to so annually adjust the applicable fees as set forth in Resolution 6503 adopted January 18, 2012.

SECTION 4. Environmental Exemption. The adoption of this Resolution establishing and increasing Service Fees and Development Fees is exempt from the California Environmental Quality Act ("CEQA," Public Resources Code Sections 21000 *et seq.*), because it approves and sets forth a procedure for determining fees for the purpose of meeting the operating expenses of City departments, as set forth in Public Resources Code Section 21080(b)(8)(A) and Section 15273(a)(1) of the California Environmental Quality Act Guidelines.

SECTION 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase, word, or portion of this Resolution is, for any reason, held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution and each section, subsection, subdivision, sentence, clause, phrase, word, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivision, sentences, clauses, phrases, words or portions thereof be declared invalid.

SECTION 6. To the extent that any portion of this Resolution may be inconsistent with any prior resolution adopted by the City Council, this Resolution will supersede such prior resolutions and prevail insofar as it relates to fees and charges to be levied pursuant to this Resolution.

SECTION 7. Any judicial action or proceeding to attack, review, set aside, or annul this Resolution or any provision thereof shall be filed with a court of competent jurisdiction within one hundred twenty (120) days of the effective date of this Resolution.

SECTION 8. Effective Date. This Resolution shall take effect upon its adoption; provided, however, that the Development Fees established hereunder shall first be imposed and collected sixty (60) days from the date of adoption of this Resolution.

NOW, THEREFORE, BE IT FURTHER RESOLVED that this Resolution shall be effective sixty (60) days after the adoption by the City Council.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 6th day of November 2019.

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

APPROVED:

ATTEST:

 RICH CONSTANTINE, Mayor

 IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. _____, adopted by the City Council at a regular meeting held on November 6, 2019.

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

DATE: _____

 IRMA TORREZ, City Clerk

Attachment: Resolution (2515 : Updating development user fee schedule)

EXHIBIT "A"

Updated Select Development User Fees

Fee Description	Amount
Conceptual Plan Review/SB330 Preliminary Application Review	\$ 10,987
GIS/Technology Fee (NEW)	5% [*]

*5% of the fee for required planning, building, and engineering permits.



Update Development User Fee Schedule



SB 330

- Suspends RDCS
- Expedite permitting processes
- 30 days or less or 60 days for >150 units
- RDCS applications generate about \$423,000 in development user fees annually



Conceptual Plan Review/ SB 330 Pre-Application Review

- Increase in staff time to review to about 46 hours
- Cost recovery \$10,987/application
- Projected to generate \$330,000



GIS and Technology Fee

- Not included in last study
- 50% of GIS division and initial TRAKiT costs
- Annual cost \$187,000
- Projected annual revenue at 5% = \$183,000





Recommendation

Adopt resolution updating the Development User Fee Schedule

Questions?



Item # 05

AGENDA DATE: 11/06/19
SUPPLEMENT # 1

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Cc: [Anthony Eulo](#); [Christina Turner](#)
Subject: FW: Nov 6th City Council meeting -- Consent Calendar Item #5 Item: Natural Gas Prohibition
Date: Tuesday, November 5, 2019 12:57:46 PM

Supplement

Michelle Bigelow, MMC, CPMC
Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: Pete Gang <pete@commonsensedesign.com>
Sent: Tuesday, November 5, 2019 12:52 PM
To: General <general@morganhill.ca.gov>
Cc: Irma Torrez <Irma.Torrez@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Nov 6th City Council meeting -- Consent Calendar Item #5 Item: Natural Gas Prohibition

Dear Mayor Constantine and distinguished council members,

I am writing with regards to Item #5 ("Prohibition of Natural Gas Infrastructure in New Buildings) on the Consent Calendar for the November 6th, 2019 City Council meeting.

I am a California-licensed general building contractor (#B-504602) and architect (#C-22,447) with over 30 years experience designing zero net energy (ZNE) and low-energy buildings, I would like to offer the following in strong support of a Prohibition of Natural Gas Infrastructure in New Buildings:

My Top Twelve Arguments Against Natural Gas

1. All of the current literature substantiates the fact that **all-electric new homes are less expensive to build than mixed-fuel homes.** The most significant cost savings result from the avoided costs of installing the underground gas piping (from the gas main to the gas meter) and the gas piping inside the home.

According to the [2019 Cost-effectiveness Study: Low Rise Residential New Construction, released by California Energy Codes and Standards](#), incremental cost savings for an all-electric new single-family home (compared to a mixed-fuel new home) are estimated to be \$6,171.

According to an April 2019 study funded by Southern California Edison, SMUD, and the LA Department of Water and Power titled [Residential Building Electrification in California](#), initial cost savings are estimated to be in the range of \$3,000 to \$10,000.

According to a September 2018 report prepared by TRC Solutions for the City of Palo Alto titled,

[“City of Palo Alto 2019 Title 24 Energy Reach Code Cost Effectiveness Analysis DRAFT,”](#) the **costs saved by not installing natural gas in residential new construction** — including plan review, street cut fee, connection charge to existing main, gas meter, gas piping within the residence, and the cost of appliances — total **\$6,314** (assuming iron piping).

2. [Applies in Sonoma County]: Even greater cost savings are available to fire survivors who choose to rebuild all-electric: the [Advanced Energy Rebuild program](#) (offered jointly by Sonoma Clean Power, PGE, and BAAQMD) offers financial incentives of up to \$17,500 per home.

3. Many builders conflate discussion of optional all-electric reach codes with discussion of mandatory changes in the upcoming 2019 CA Energy Codes (which take effect January 1, 2020). The 2019 Energy Codes will require installation of a PV system of sufficient size to provide for the electric needs of a mixed-fuel home (typically a ~2.5 kW system). Even though this added feature has been proven cost-effective over a 30-year timeframe, it is expected to add around \$10,000 to the cost of a new home (at approximately \$4 per watt).

4. Not only does all-electric construction result in **reduced initial costs, homeowners will see reduced ongoing utility costs** due to efficiencies of 300% or more that are typical of electric heat-pump technologies used for heating/cooling and water heating. In contrast, gas appliances have a theoretical maximum efficiency of only 100%.

5. Builders also mention that their customers don’t like cooking on electric stoves. They are thinking of the old radiant coil electric cooktops. Few of these customers are familiar with electric induction cooktops, which are the new standard. [Sacramento Municipal Utility District \(SMUD\)](#) reports that 91% of people who try cooking on an electric induction cooktop, prefer it over gas.

6. Replacing gas appliances with electric appliances results in healthier indoor environments. We are required to install carbon monoxide (CO) detectors in all new residential construction due to the hazards associated with combustion byproducts. Electric appliances do not carry similar hazards.

7. The California Energy Commission acknowledges that we are moving inexorably toward all-electric buildings and away from using natural gas.

8. PGE acknowledges that we are moving inexorably toward all-electric buildings and away from using natural gas. In a letter dated August 21, 2019 to Windsor Town Manager Ken McNab, PGE Vice President Robert S. Kenney states, ***“PG&E welcomes the opportunity to avoid investments in new gas assets that might later prove underutilized as local governments and the state work together to realize long-term decarbonization objectives. With all this in mind, PG&E supports local government policies that promote all-electric new construction when cost effective.”***

9. When builders attempt to compare the greenhouse gas emissions of gas appliances with those of electric appliances, they typically limit their discussion to CO₂ emissions and neglect to mention emissions of CH₄, or methane, which comprises ~85% of natural gas. We now understand that **methane is a relatively short-lived greenhouse gas with over 100 times the heat-trapping potential of CO₂ on an annual basis.** Fugitive emissions of methane occur at all points in the production, distribution, and storage of natural gas and are currently conservatively estimated to be around 3% of production.

10. 90% of the natural gas used in California is imported from out of state and obtained through **hydraulic fracturing, or fracking.** It is now widely understood that fracking is associated with a long list of catastrophic consequences, including aquifer depletion, aquifer contamination, destruction of landscapes, air pollution, and widespread physical and mental health consequences.

11. Builders sometimes suggest that instead of working to reduce or eliminate the use of natural gas in buildings we should work on reducing emissions from the transportation sector. It’s not an

“either-or.” We need to do **all of the above**.

12. Builders sometimes bemoan the fact that these proposed changes are happening so fast. The reason that we are calling it a climate emergency is because **it is an emergency**. One responds to an emergency with appropriate alacrity.

Thank you for your vision and your courage.

Toward a livable planet for all future generations,

Pete Gang, Architect

707-338-7111

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Item # 05

AGENDA DATE: 11/06/19
SUPPLEMENT # 2

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: STRONG SUPPORT for gas prohibition ordinance
Date: Tuesday, November 5, 2019 5:55:05 PM
Attachments: [Outlook-cid_1CD550.png](#)

Please supplement.

From: IdaRose Sylvester <idarose@menlospark.org>
Sent: Tuesday, November 5, 2019 12:07 PM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>
Cc: Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>
Subject: STRONG SUPPORT for gas prohibition ordinance

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

Thank you for your climate change leadership you took when prohibiting gas in new construction on October 23. I spoke at that meeting, and was impressed by the strong support for Morgan Hill's sustainability, and the warm welcome from Council and residents. I hope to see the item pass on the consent calendar on Wednesday.

We know the public has recently expressed concern over a number of issues. Most of these issues are based on misinformation, and are easy to overcome with public information campaigns. For example, some people think this is for ALL buildings, not just new construction. And some people don't know about SVCE providing nearly 100% carbon-free energy to nearly the entire city.

One topic that needs more addressing is the issue of resiliency. People may think they need gas for backup during public shut offs, and that gas was a saving grace during the last outage.

However all new gas appliances in the state of CA require electric starters, and will not run without electricity. And gas is just as, if not more vulnerable, in emergencies, and is far less resilient than electricity. Gas explosions are very common post earthquake, and ruptured lines take months to repair. And in Sonoma County, PG&E recently shut off both electricity and gas due to the fire threat, rendering the gas appliances useless. In fact, electricity was restored

first, and as of yesterday, gas was still off. The most resilient solution is ALL-ELECTRIC + solar + storage (like your EV batteries!). This is the least vulnerable solution in emergencies, power shutoffs or rolling blackouts. Public outreach and a future program for encouraging and supporting storage would be great steps to take.

Thank you for your climate leadership.

IdaRose Sylvester

IdaRose Sylvester | Fossil Free Buildings Campaign Manager Silicon Valley

MENLO SPARK

idarose@menlospark.org | 408-504-9860

Visit us: www.fossilfreebuildings.org and www.menlospark.org

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Follow us on [Twitter](#)



Climate Neutral for a Healthy, Prosperous Future

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: For our Children & Grandchildren, Support for Morgan Hill's ReachCodes
Date: Tuesday, November 5, 2019 5:58:45 PM
Attachments: [191104 M-Hill R-Codes PGH.pdf](#)

Please supplement – Item 5.

From: Sven Thesen <sventhesen@gmail.com>
Sent: Tuesday, November 5, 2019 3:02 PM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>; Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: For our Children & Grandchildren, Support for Morgan Hill's ReachCodes

Per the attached letter and as follows:

RE: For our Children & Grandchildren, Support for Morgan Hill's Reach Codes

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

As the founders and inhabitants of Project Green Home, (PGH) we are writing to support and thank you for your leadership in Morgan Hill's reach code banning natural gas in new building construction.

For the past 8 years, we have lived the "all-electric life" in PGH with an induction stove, heat pump water/ space heater, electric dryer, photovoltaic panels electric vehicle and more. In comparing PGH to an equivalent natural gas/ electric (dual fueled) home, it is our evaluation that the all-electric life is:

- 1) Safer for us and our children (both for indoor air quality and in reducing the potential for burns);
- 2) Less expensive than the dual-fueled home (both first and ongoing costs);
- 3) More resilient during blackouts and earthquakes
- 4) More convenient and pleasant to use; and
- 5) Has a much lower carbon and energy footprint than the equivalent dual-fueled home.

In summary, it has been a quadruple win for us plus a big win for the environment.

Should you or your city staff want to tour PGH and experience first-hand the comforts, convenience and benefits of an all-electric home, please contact Sven at SvenThesen@gmail.com.

Given the above benefits, and that we are passing the burden of the climate crisis to our children and grandchildren, we urge you to proceed with the second reading of your ordinance.

Cordially,

Sven Thesen

Dr. Kathleen Kramer, MD

Founders, Project Green Home

--

Sven Thesen, 415-225-7645

EV Consultant & Founder, ProjectGreenHome.org and BeniSolSolar.com; Wonder Junkie

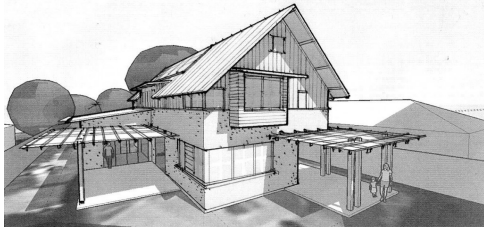
Electric Cars are Cheaper than Cell Phones! See:

<http://www.projectgreenhome.org/articles.html>

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PROJECT GREEN HOME

the beyond platinum LEED, zero-net energy, passive house



314 Stanford Ave
Palo Alto, CA 94306
ProjectGreenHome.org
4 November 2019

RE: For our Children & Grandchildren, Support for Morgan Hill's Reach Codes

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Given the above benefits, and that we are passing the burden of the climate crisis to our children and grandchildren, we urge you to proceed with the second reading of your ordinance.

Cordially,

Sven Thesen

Founders, Project Green Home

Dr. Kathleen Kramer, MD

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Support for Building Electrification
Date: Tuesday, November 5, 2019 6:17:36 PM
Attachments: [Mithun_LetterofSupport_AllElectricReachCodes_MorganHill.pdf](#)
[ATT00001.htm](#)

Please supplement – Item 5.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Tuesday, November 5, 2019 1:41 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Support for Building Electrification

FYI

Sent from my iPhone

Begin forwarded message:

From: Hilary Noll <hilaryn@Mithun.com>
Date: November 5, 2019 at 1:33:54 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>
Cc: Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>
Subject: Support for Building Electrification

Dear Councilmembers of Morgan Hill:

Mithun, a local Bay Area integrated architectural design firm, supports efforts by your jurisdiction to adopt 'reach codes' that will reduce carbon emissions from the building sector by requiring new buildings to be all-electric. In our professional experience, it's proven that all-electric buildings are affordable, reliable, and a good solution for our clients.

Mithun currently has six all-electric multifamily developments under design or construction in the Bay Area. Our team has been conducting an R&D initiative to analyze and compile the strategies and lessons learned – from the technical, financial, regulatory and operational considerations for eliminating natural gas from this construction type. We will be sharing those findings at the NZ19 and Getting to Zero conferences in the coming weeks.

The first-cost analysis across all of these projects has concluded that it is either cost-neutral or cost-saving (of up to about \$247,000, or \$2,352/dwelling unit) to build all-electric and eliminate natural gas. I'm happy to share with you one particular project's detailed cost breakdown, below for your use. All numbers are construction cost estimates or bids from our GC and subs between Q2 and Q3 this year, in the

San Francisco market.

Additional benefits of significant consideration to us, our owner/developer clients, engineers and contractors include:

- *Elimination of new underground gas lines in new development areas.*
- *Reduced risk of compounded disasters; fire and explosions*
- *Reduction of minimum energy use standards in some codes and for some green building rating systems.*
- *Elimination of gas connection and associated time and cost of gas meter design, approval, scheduling and construction.*
- *One less bill to pay*
- *Projected operational cost savings on lower utility bills, based upon energy models.*
- *“Net Zero Ready” and “Fossil-Fuel-Free Ready” as California’s electric grid gets cleaner.*
- *Battery-Ready for time-of-use and future smart grid technologies.*
- *Buildings which are situated to benefit from future PV, battery and other innovative smart-grid technology developments.*
- *Reduced risk of having to eliminate the gas systems in the future, as gas becomes a stranded asset, and as codes and technologies move toward low carbon options.*

Mithun operates under the mission of ‘design for positive change’ and we are proud to support measures for increased energy efficiency, building decarbonization and collective community resilience.

We welcome any feedback or questions regarding our project findings.

Regards,

Hilary Noll

Senior Associate, Sustainability Integration Leader
AIA, LEED AP BD+C, Fitwel Ambassador
(415) 489 4860

Anne Torney

Partner
AIA, LEED AP
(415) 489-4851

Enclosure: Sample Project Cost Comparison Data

mithun.com

Seattle | San Francisco | Los Angeles

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November 5, 2019

MITHUN

Re: Information in support of Building Decarbonization Reach
Codes and All Electric Multifamily Housing

Dear Councilmembers of Morgan Hill:

Mithun, an integrated architectural design firm, supports efforts by your jurisdiction to adopt 'reach codes' that will reduce carbon emissions from the building sector by requiring new buildings to be all-electric. In our professional experience, it's proven that all-electric buildings are affordable, reliable, and a good solution for our clients.

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- *Elimination of gas connection and associated time and cost of gas meter design, approval, scheduling and construction.*
- *One less bill to pay*
- *Projected operational cost savings on lower utility bills, based upon energy models.*

Seattle

Pier 56
1201 Alaskan Way #200
Seattle, WA 98101

San Francisco

660 Market Street #300
San Francisco, CA 94104

Los Angeles

Mithun | Hodgetts + Fung
5837 Adams Boulevard
Culver City, CA 90232

mithun.com —

- *“Net Zero Ready” and “Fossil-Fuel-Free Ready” as California’s electric grid gets cleaner.*
- *Battery-Ready for time-of-use and future smart grid technologies.*
- *Buildings which are situated to benefit from future PV, battery and other innovative smart-grid technology developments.*
- *Reduced risk of having to eliminate the gas systems in the future, as gas becomes a stranded asset, and as codes and technologies move toward low carbon options.*

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We welcome any feedback or questions regarding our project findings.

Regards,

Hilary Noll

Senior Associate, Sustainability Integration Leader
AIA, LEED AP BD+C, Fitwel Ambassador
(415) 489 4860

Anne Torney

Partner
AIA, LEED AP
(415) 489-4851

Enclosure: Sample Project Cost Comparison Data

The information provided [or contained herein] has been collected, assembled, and maintained for the internal use of Mithun. Mithun is provided this information for informational purposes only. Mithun has not verified and makes no representations regarding the accuracy of the information provided or the data contained therein. Any reliance on or use of the information provided, or any conclusions or decisions drawn therefrom, shall be at users own risk and without any liability or legal exposure to Mithun.

Furthermore, recipient hereby releases and shall, to the fullest extent permitted by law, defend, indemnify and hold Mithun harmless from any and all claims, damages, losses and expenses (“Claims”) including attorney’s fees arising out, or resulting from the use of such information, including, but not limited to, Claims involving the completeness or accuracy of any data or information contained therein.

Sample Project Cost Comparison Data							
Multifamily Type IIIA / Type IA Building: 105 units							
			Natural Gas				
DHW	Colmac HPHW	\$ 106,820	Boiler RayPack	\$ 30,580			
	Tanks	\$ 29,131	Tanks	\$ 14,900			
	Add Labor/HR	\$ 14,104			DHW Equipment Comparison:		
					Electric DWH	\$150,055	
					Gas DHW	\$ 45,480	\$ 104,575
Solar HW	None	\$ -	40% Fraction	\$ 219,000			
ReCirc	same	\$ -	same	\$ -			
Bldg	NA	\$ -	Gas Trench, backfill, pipe, stubout inside	\$ 25,000			
	NA	\$ -	flexextend joints	\$ 10,000			
	NA	\$ -	Gas Meter Room	\$ 28,550			
	NA	\$ -	Gas piping to Boiler Room	\$ 11,904			
	NA	\$ -	Insulated copper pipe to Solar Thermal to Tanks	\$ 25,000			
	NA	\$ -	Gas to Laundry	\$ 9,933	Assoc. Bldg Costs (beyond DHW Equip)		
	NA	\$ -	Gas Ventilation	\$ 8,000	Electric DWH		\$ -
					Gas DHW		\$ 133,387
Utility Connection	No Gas Connection	\$ -	Gas Connection	\$ 15,000			
					Electric Building Savings:		
TOTAL		\$ 150,055		\$ 397,867	Includes SHW \$ 247,812		
Solar PV	Array 123,000kW	\$ 443,566	assume half	\$ 221,830			
Battery	Backup Wall Packs	\$ 100,000					
					Electric Building Savings		
TOTAL w PV		\$ 593,621		\$ 619,697	Includes Solar PV + Battery \$ 26,076		

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Thank you for your leadership
Date: Tuesday, November 5, 2019 6:21:24 PM
Attachments: [image001.png](#)

Please supplement. Item 5.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Tuesday, November 5, 2019 12:27 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Thank you for your leadership

FYI

Sent from my iPhone

Begin forwarded message:

From: Sharon Refvem <srefvem@hpsarch.com>
Date: November 5, 2019 at 12:23:25 PM PST
To: Larry Carr <Larry.Carr@morganhill.ca.gov>, Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Subject: Thank you for your leadership

Dear Morgan Hill City Council Members,

My name is Sharon Refvem. I am the current President of AIA Silicon Valley and contacting you to thank you for your leadership and support for an all-electric Reach Code.

There are numerous benefits to an all-electric code for new construction relative to carbon reduction, health, safety, cost, and resilience. In addition, the adoption of an all-electric code recognizes the eventual obsolescence of the gas infrastructure and its subsequent status as a stranded asset.

You have demonstrated leadership and are amongst the growing number of communities in the Bay Area and beyond that are approving all-electric Reach Codes. As we've seen recently across the state, the effects of climate change are already upon us. This is an important opportunity to take counter action, make a real difference, and lead others to do the same.

[Thank you for your foresight.](#)

Sincerely,

Sharon Refvem, FAIA, LEED Fellow

Sharon Refvem, FAIA, LEED Fellow

AlA Silicon Valley, 2019 President

Senior Associate / Director, Sustainability Resource Group

HAWLEY PETERSON SNYDER

Architecture · Interiors · Planning

1237 E. Arques Avenue, Suite B
Sunnyvale, CA 94085

T: 650.968.2944

F: 650.968.1357

srefvem@hpsarch.com

www.hpsarch.com



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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Gas Prohibition Ordinance
Date: Tuesday, November 5, 2019 6:23:45 PM

Please supplement – item 5.

From: Zoe Wong-VanHaren <zw24516@pausd.us>
Sent: Tuesday, November 5, 2019 11:12 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>
Cc: Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Gas Prohibition Ordinance

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

My name is Zoë, I am a 17-year old student at Palo Alto High School.

I would like to thank you for your climate change leadership you took when prohibiting gas in new construction on November 6. We hope to see the item pass on the consent calendar on Wednesday.

We know the public has expressed concern over the new gas prohibition ordinance you are interested in passing. I would just like to remind you that the future of the youth is currently in your hands. Climate change is an incredibly pressing matter, and this decision – which will only affect newly constructed buildings – is a HUGE step in the right direction. Morgan Hill, along with other cities in the Bay Area, should be focused on deterring the Climate Crisis and providing a better future for the next generation.

Keep young people in mind. It is never too early to take action, in fact, it's becoming too late!

Sincerely,
Zoë Wong-VanHaren

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Wednesday's consent calendar
Date: Tuesday, November 5, 2019 6:25:36 PM

Please supplement. Item 5.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Tuesday, November 5, 2019 10:28 AM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Wednesday's consent calendar

FYI

Sent from my iPhone

Begin forwarded message:

From: Lauren Weston <lauren.weston@acterra.org>
Date: November 5, 2019 at 10:01:26 AM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Irma Torrez <Irma.Torrez@morganhill.ca.gov>, Christina Turner <Christina.Turner@morganhill.ca.gov>, Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>
Subject: Wednesday's consent calendar

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

Thank you for your climate change leadership you took when prohibiting gas in new construction on November 6. We hope to see the item pass on the consent calendar on Wednesday.

We know the public has expressed concern over Resiliency; that we need gas for public shut offs and if we didn't have gas recently, we would have been in deep trouble. The truth about this is In fire threatened areas of Sonoma County, both electricity and gas were turned off. Electricity came back but gas has been left off, at least as of Monday. Gas in this case is the less resilient solution. A good remedy for this concern is Public outreach and a future program for encouraging and supporting storage would be great. Thank you so much for your consideration and leadership.

With Gratitude, and as One Acterra
Lauren Weston
Executive Director, Acterra

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Thank you for prohibiting gas in new construction
Date: Tuesday, November 5, 2019 6:26:19 PM

Please supplement – Item 5.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Tuesday, November 5, 2019 10:27 AM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Thank you for prohibiting gas in new construction

FYI

Sent from my iPhone

Begin forwarded message:

From: Gladwyn D'Souza <goodsouza@mac.com>
Date: November 5, 2019 at 10:12:34 AM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>
Cc: Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>, Christina Turner <Christina.Turner@morganhill.ca.gov>, Irma Torrez <Irma.Torrez@morganhill.ca.gov>
Subject: Thank you for prohibiting gas in new construction

11/5/19

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

Thank you for the climate change leadership you will take when prohibiting gas in new construction on November 6. We hope to see the item pass on the consent calendar on Wednesday.

We know the public has expressed concern over resiliency during the PSPS. The truth about this is that modern appliance with electric starters will not be able to run. In addition, KCBS radio reported on Sunday that despite electricity to large parts of the Kincaid fire region being turned on, thousands of homes were without gas because PG&E had to go door to door to light the pilots. The most resilient solution is ALL-ELECTRIC + solar which is required after 2020 + storage (like your EV!)

P.S. Thank you for the public EV charger at city hall, I used it about a month ago for a couple of hours!

Sincerely

Gladwyn d'Souza

Co-Chair, Conservation Committee, Loma Prieta Chapter, Sierra Club.

<https://www.sierraclub.org/loma-prieta/conservation>

650-804-8225

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Decision to ban natural gas on all new MH construction
Date: Tuesday, November 5, 2019 6:35:50 PM

Please supplement. Item 5

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Sunday, November 3, 2019 12:32 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Decision to ban natural gas on all new MH construction

Sent from my iPhone

Begin forwarded message:

From: "markvanwyk@charter.net" <markvanwyk@charter.net>
Date: November 3, 2019 at 11:29:28 AM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>
Subject: Decision to ban natural gas on all new MH construction

Mayor and Councilmembers:

I read the following in the Morgan Hill Times:

"...Last week, the Morgan Hill City Council voted 4-1, with Mayor Rich Constantine opposed, to adopt an ordinance that will require all new housing developments that apply for building permits after March 2020 to be entirely electrically powered and heated, with no natural gas hookups..."

Without getting into specifics, I believe this to be a horrible decision; based on faulty science and facts; that will serve only to WORSEN the problems that purportedly the council is thinking it is solving.

And, this decision will add a huge financial hardship on many, many thousands of new Morgan Hill residents, many of whom will be living in low-income/affordable housing.

I have posted this article on www.nextdoor.com.

I urge all council members to read the comments from Morgan Hill citizens that your decision has generated.

As a relatively new resident of Morgan Hill, I do not fully understand the workings of our city government. But, I have been informed, by a fellow resident, that an

"...Initiative process can put it to a city wide vote to overturn this ordinance."

I for one will do everything in my power to overturn this ordinance. It does NOTHING to stop climate change, and in fact could result in INCREASING greenhouse gas emissions.

I urge you all to reconsider.

--Mark van Wyk

106 Pine Lane

Morgan Hill, CA 95037

408 430-6177

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Support for Prohibition of (Fossil Fuel) Natural Gas Infrastructure in New Buildings in Morgan Hill
Date: Wednesday, November 6, 2019 9:14:45 AM
Attachments: [image001.png](#)

Please supplement.

From: Diane Bailey <diane@menlospark.org>
Sent: Wednesday, November 6, 2019 8:55 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>
Subject: Support for Prohibition of (Fossil Fuel) Natural Gas Infrastructure in New Buildings in Morgan Hill

Dear Mayor Constantine and City Council Members,

Thank you for your leadership on climate action, with the proposed Prohibition of (Fossil Fuel) Natural Gas Infrastructure in New Buildings under consideration at City Council this evening. We are very supportive of this policy and hope you will move to adopt the ordinance to improve community health and resilience.

Adopting this Prohibition on Gas is the single biggest climate action that Morgan Hill can take this year. With a failure of national leadership on climate, it is more important now than ever that cities act swiftly to address the climate crisis. We have already begun to experience record heat waves more frequently; and climate change has also led to a five-fold increase in wildfires in California. Last year, the Intergovernmental Panel on Climate Change (IPCC, <https://www.ipcc.ch/sr15/>) released a seminal report finding that ***we must dramatically reduce Greenhouse Gas (GHG) emissions by 2030 through rapid, far-reaching, and unprecedented measures.*** Morgan Hill's proposed prohibition on (fossil) gas infrastructure in new construction is a major step towards rising to this challenge to lead locally on climate.

The Prohibition on gas is a highly visible and practical step forward to address the climate crisis, by breaking the cycle of fossil fuel dependency in buildings. **Each new electric home saves up to 4 tons of carbon per year.** The policy also benefits Morgan Hill by:

1. Saving money – **All-electric homes save at least \$6,000 in construction costs; and**
2. **Improving health and safety** by avoiding indoor pollution and highly flammable combustion sources inside our homes & buildings.

We are grateful for the significant leadership and thoughtful approach of city staff, who have dedicated substantial time developing and fine-tuning the policy prohibiting new gas use. I hope you will **approve this important policy moving new buildings off of fossil fuels tonight!** Let's work together towards a fossil free and climate-stable future.

Sincerely,
Diane Bailey

Diane Bailey | Executive Director

MENLO SPARK

diane@menlospark.org | 650-281-7073

Visit us: www.MenloSpark.org www.FossilFreeBuildings.org

Find us on [Facebook](#)

Follow us on [Twitter](#)



Climate Neutral for a Healthy, Prosperous Menlo Park

EV, PV & Fossil Free: *Guides for Electric Cars, solar & Fossil Free Homes at:* <http://menlospark.org/what-we-do/>

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Cheering you on tonight as you vote to prohibit dirty gas in new construction!
Date: Wednesday, November 6, 2019 9:15:42 AM
Attachments: [Natural Gas Fact Sheet v2.pdf](#)

Please supplement.

From: Linda Hutchins-Knowles <lindahk@mothersoutfront.org>
Sent: Wednesday, November 6, 2019 8:50 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>
Cc: Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Cheering you on tonight as you vote to prohibit dirty gas in new construction!

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

On behalf of our over two dozen Mothers Out Front supporters in Morgan Hill, we wish to thank you for the climate change leadership you displayed last month by prohibiting gas in new construction. We hope to see the item pass on the consent calendar tonight. By taking this step, you are joining a growing number of cities, including San Jose, who are taking this proactive action to protect the health, safety and future of their residents.

We know some members of the public have expressed concern that the ordinance would end gas service to their home. However, as you know, the ordinance clearly applies to new buildings only. You may wish to launch an outreach campaign educating consumers that the ordinance applies to new buildings only, and also mention that social equity issues, such as safety, lower building costs, and lower utility costs, are some of the reasons you passed this ordinance.

The attached fact sheet has a lot of well-researched data demonstrating the multiple benefits of using electricity, rather than dirty “natural” gas, to power our buildings. In addition, “natural” gas is a significant contributor to global heating, since its primary component, methane, is 84 times more potent a greenhouse gas pollutant than carbon.

For the health and safety of current residents, and to preserve a livable climate for our children, please follow through tonight on your promise to ban dirty gas in new construction. We stand ready to cheer you on.

***With appreciation,
Linda Hutchins-Knowles for Mothers Out Front South Bay***

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Linda Hutchins-Knowles
California Senior Organizer
Mothers Out Front
Pronouns: She/her/hers
www.mothersoutfront.org
www.facebook.com/mothersoutfront

Natural Gas Facts

Information compiled by Suzanne Emerson, suzanne@emersonenvironmental.com

Health

Burning of gas in household appliances produces harmful indoor air pollution, including carbon monoxide, nitrogen dioxide, formaldehyde, and ultrafine particles.¹

Young children, people with asthma, and people with heart or lung disease are especially vulnerable to the toxic effects of combustion pollutants.²

Using a gas stove can easily cause indoor air **pollution levels that would be illegal outdoors**.³ In many homes, the range hood is not used routinely; even when used, many range hoods do a poor job of removing emitted pollutants.⁴

Pollution from gas stoves doubles the odds of a woman experiencing symptoms of lung disease and nearly triples the odds she will need to take asthma medication.⁵

Safety

Natural gas use in homes is responsible for **almost half of residential house fires**, each year directly causing an average of 31 deaths and 194 injuries nation-wide.⁶

Gas line ruptures caused half of the fires after the 1994 Northridge earthquake.⁷

Safety issues arise when natural gas is transported across the United States through aging pipeline infrastructure. On average since 2010, the natural gas system has annually caused 236 safety incidents, 14 fatalities, 66 injuries, and \$198 million in damages.⁸

¹ California Air Resources Board, [Combustion Pollutants](#) (retrieved 24 Oct 2019).

² California Air Resources Board, *supra*.

³ Gillis, J. & Nilles, B., "[Your Gas Stove is Bad for You and the Planet](#)", *The New York Times* (1 May 2019); Singer et al. "[Pollutant Concentrations and Emission Rates from Natural Gas Cooking Burners Without and With Range Hood Exhaust in Nine California Homes](#)," *Building and Environment* v. 122 (Sept 2017).

⁴ Singer, Brett, Lawrence Berkeley National Laboratory, "[Kitchen Ventilation Solutions to Indoor Air Pollution Hazards from Cooking](#)" (10 Oct 2013).

⁵ Jarvis et al. "[Association of respiratory symptoms and lung function in young adults with use of domestic gas appliances](#)" *Lancet* (17 Feb 1996).

⁶ Hall, John R., Jr., National Fire Protection Association, "[Fires Starting with Flammable Gas or Flammable or Combustible Liquid](#)" at ix, Table 2-A.1 at 25 (Feb 2014).

⁷ California Seismic Safety Commission, "[Improving Natural Gas Safety in Earthquakes](#)" (SSC-02-03) Table 2 at 15 (July 2002)

⁸ San Francisco Department of the Environment, "[Methane Math: How Cities Can Rethink Emissions from Natural Gas](#)" (Nov 2017).

Costs

The #1 use of payday loans is paying utility bills. Using electric appliances instead of natural gas can lower home utility bills by up to \$800 annually.⁹

The average newly-built single-family house in our climate zone would save over \$5,000 over the lifetime of the equipment by going all-electric instead of utilizing natural gas.¹⁰

Initial average all-electric construction costs vary from an increase of \$4,000 if installing high-end equipment to a savings of \$30,000 if installing lower-cost equipment.¹¹

In California, developers save an average of \$3,300/unit in multi-family construction costs by avoiding natural gas use.¹²

Because it doesn't need a flue installed, the cost of purchasing and installing a heat pump for space heating and cooling is about \$270 less than the cost for a furnace and air conditioning.¹³ Because it doesn't need a flue installed, the cost of purchasing and installing a heat pump water heater is about the same as the cost of a gas tankless water heater.¹⁴ These price comparisons do not include the large cost savings from not tying in to the natural gas line.

⁹ Levy, R. & Sledge, J., Center for Financial Services Innovation, "[A Complex Portrait: An Examination of Small-Dollar Credit Consumers](#)" at 4, 12 (2012); Hopkins et al., Synapse Energy Economics, "[Decarbonization of Heating Energy Use in California Buildings](#)" at 2, 39 (Oct 2018).

¹⁰ Frontier Energy & Bruceri, M., [2019 Cost-effectiveness Study: Low-Rise Residential New Construction](#) at 42 and Tables 51 & 53, pgs 84 & 86 (1 Aug 2019); see also TRC Energy Services, "[City of Palo Alto 2019 Title 24 Reach Code Cost Effectiveness Analysis](#)" (Draft 13 Sept 2018) at 22 (average life cycled cost savings of \$4,851 to \$8,772 for all-electric single-family new construction).

¹¹ Frontier Energy & Bruceri, *supra*, Table 6 at 16.

¹² Frontier Energy & Bruceri, *supra*, Table 6 at 16.

¹³ TRC, *supra*, at 30.

¹⁴ Frontier Energy & Bruceri, *supra*, Table 6 at 16.

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Please vote for the REACH Code today
Date: Wednesday, November 6, 2019 8:15:27 AM

Please supplement. Item 5.

From: Bruce Naegel <bnaegel@sustainablesv.org>
Sent: Wednesday, November 6, 2019 5:51 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>
Subject: Please vote for the REACH Code today

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

Thank you for your climate change leadership you took when prohibiting gas in new construction on October 23. I hope to see the item pass on the consent calendar on Wednesday.

Your action on climate change is very important to future generations. They are wondering if they will be able to live on this planet as they get older? The planet will still be here, but perhaps the human race will be extinct. This is the fear seen by the two children of Mountain View's vice-mayor and many others. You can do your part in today's vote for the REACH code to help move to a habitable earth for those who will follow in our footsteps.

Thanks for listening.

*Bruce Naegel
Board Member, Carbon Free Silicon Valley
Metrics and Research Director,
Sustainable Silicon Valley*

Bruce Naegel
Director, Metrics and Research
Sustainable Silicon Valley 

650 996 5793 Mobile

bnaegel@sustainablesv.org

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Support for Gas Ban
Date: Wednesday, November 6, 2019 10:55:37 AM

Please supplement.

From: suzanne@emersonenvironmental.com <suzanne@emersonenvironmental.com>
Sent: Wednesday, November 6, 2019 9:40 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>
Subject: Support for Gas Ban

Dear City Council Members,

You Rock!

Thank you for the climate change leadership you took when prohibiting gas in new construction. You are an inspiration to other communities who see that a municipality doesn't need to be huge to take this action. I hope to see the item pass on the consent calendar on Wednesday.

I know the public has expressed concern over resiliency during blackouts – my own home was out of power for 2 days. But natural gas appliances aren't the answer. It is possible that a new natural gas stove would work if it has manual twist-type dials, and could then be lit with a lighter. But if it has electronic controls, it won't turn on. A new gas water heater won't turn on – they now have electric ignition controls instead of standing pilot flames, so the power outage would render them inoperable. A gas furnace won't work either – they need electricity for the fan to blow air over the burner. So although I realize resiliency is a big issue, gas appliance aren't the solution.

Thank you for all you do!

Suzanne Henderson Emerson

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Thank you for prohibiting gas in new construction
Date: Wednesday, November 6, 2019 12:02:08 PM

Please supplement.

From: Bret Andersen <bretande@pacbell.net>
Sent: Wednesday, November 6, 2019 12:01 PM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>; Anthony Eulo <Anthony.Eulo@morganhill.ca.gov>
Subject: Thank you for prohibiting gas in new construction

Dear Mayor and Councilmembers,

Thank you for your climate change leadership on November 6. We hope to see the item pass on the consent calendar on Wednesday.

I'm a member of Carbon Free Palo Alto with a strong interest in helping cities spur the development of our local market for carbon free building solutions. It is gratifying to see cities working together to make lower cost, high performance, low carbon buildings standard practice in our area.

I recommend that you overemphasize the fact that the prohibitions of gas use applies to new buildings only because it saves money AND delivers better buildings for all. We see continued confusion on this point in Palo Alto and other communities.

For example, regarding resiliency, the distinction is key. New homes with gas come with an on demand or high efficiency gas water heater (requires electricity to run), gas heat (requires electricity) and a gas stove. In a power outage, there is no space heating and no hot/warm water without a tank. The stove will work without electricity but gas cooking indoors without a working exhaust hood is ill-advised so cooking outside on a propane grill is a better idea. In the all-electric home (includes solar panels) at a minimum they have a tank of hot water and can use propane to cook. If they have a battery they can use the solar panels to practically power the home around the clock. If they add Electric Vehicle to home power connectivity (available in 2020) they'll be able to power their home for days or months with the solar panels.

Please persevere along the process of passing an all-electric new building mandates. The announcement that we can now profitably sunset gas use will add a huge boost to public awareness of the benefits of all electric building. Importantly, it will spur suppliers to invest in

the training, stock and standard practices needed to grow the business and make electric solutions cost effective for existing buildings too.

Sincerely,

Bret Andersen, Carbon Free Palo Alto

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Ordinance 2306
Date: Wednesday, November 6, 2019 12:52:29 PM

Please supplement.

From: D W <grumpywecv@verizon.net>
Sent: Wednesday, November 6, 2019 12:42 PM
To: Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>
Cc: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>
Subject: Ordinance 2306

Please do not adopt ordinance 2306 amendment 15.63 to title 15 municipal code, which prohibits gas infrastructure in new buildings.

Additional unbiased staff review should be considered following the recent electrical blackouts and the present state of electrical generation.

This radical amendment may do more harm to the environment in the future than it attempts to correct.

David and Peggy Wendt
Morgan Hill, Ca.

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From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: Item 5 FW: Request: Remove from 11/06/19 City Council Meeting Calendar -- Consent of Ordinance 2306
Date: Wednesday, November 6, 2019 1:58:55 PM

Supplement

Michelle Bigelow, MMC, CPMC
Council Services and Records Manager/Deputy City Clerk

City of Morgan Hill
City Clerk's Office
17575 Peak Avenue, Morgan Hill, CA 95037

D: 408.310.4678 **O:** 408.779.7259
michelle.bigelow@morganhill.ca.gov
morganhill.ca.gov | [facebook](#) | [twitter](#)

From: markvanwyk@charter.net <markvanwyk@charter.net>
Sent: Tuesday, November 5, 2019 4:31 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Irma Torrez <Irma.Torrez@morganhill.ca.gov>; General <general@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Cynthia Hasson <Cynthia.Hasson@morganhill.ca.gov>; Shadia Hrichi <Shadia.Hrichi@morganhill.ca.gov>; Raksha Poria <raksha.poria@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>; Hilary Holeman <Hilary.Holeman@morganhill.ca.gov>; Harjot Sangha <Harjot.Sangha@morganhill.ca.gov>
Subject: Request: Remove from 11/06/19 City Council Meeting Calendar -- Consent of Ordinance 2306

To: Morgan Hill Mayor, Council Members, City Clerk and Staff, City Manager and Staff

Subject: Remove from Nov. 6, 2019 Calendar -- Consent of Ordinance 2306 -- ADOPT ORDINANCE ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL CODE PROHIBITING NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE MARCH 1, 2020

As a citizen of this city, I have been informed that I have the right to request the removal of the above consent of ordinance 2306.

I hereby request that the adoption of this ordinance be delayed until adequate public discussion has occurred.

In my opinion, and in the opinion of a large percentage of fellow Morgan Hill citizens, this ordinance is wrong-headed, will actually cause more greenhouse gasses than reduce the amount of

greenhouse gasses, and it will place a tremendous financial burden on those who can afford it the least -- low income citizens.

This decision must be given adequate public discussion.

If you will read on www.nextdoor.com the comments being received from the Morgan Hill public, and if you will read on the Morgan Hill Crime Watch group on Facebook the Morgan Hill Crime Watch the comments received by the Morgan Hill public, you will see why a further discussion is necessary.

Mark van Wyk
106 Pine Lane (Woodlands Estates)
Morgan Hill, CA 95037
408 430-6177

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Item # 05
AGENDA DATE: 11/06/19
SUPPLEMENT # 3

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Electric homes
Date: Wednesday, November 6, 2019 3:57:17 PM

Please supplement.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Wednesday, November 6, 2019 3:02 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Electric homes

FYI

Sent from my iPhone

Begin forwarded message:

From: Ken Fels <kenfels7@gmail.com>
Date: November 5, 2019 at 5:59:25 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Electric homes

Mr Spring,

Thank you for your service to our city & residents.

I read of the ordinance requiring new homes to be all electric, and couldn't believe your decision. As you must know, this will have a very negative financial burden on new home purchasers, as well as having very little if any impact on the quality of our air. Please rethink your decision, and vote for helping your constituents rather than hurting them.

Thank you,

Ken Fels

Sent from my iPhone

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From: Eastwood, Rob
To: [Jennifer Carman](#); [Rich Constantine](#); [Michelle Bigelow](#); [Irma Torrez](#)
Cc: [Palacherla, Neelima](#); [Onciano, Jacqueline](#)
Subject: Request for Continuance - Item #9 on City Council Agenda
Date: Wednesday, November 20, 2019 9:01:39 PM
Attachments: [November 20 2019 Morgan Hill City Council Me.pdf](#)

Please find attached correspondence from the County and LAFCO asking for a continuance for Item #9 (Water Connection – Metta Tam) on tonight's agenda.

-Rob

Rob Eastwood, AICP
Planning Manager, Department of Planning and Development
County of Santa Clara
(408) 299-5792
rob.eastwood@pln.sccgov.org

Please visit our website at www.sccplanning.org

To look up unincorporated property zoning information: <http://sccpropertyinfo.org/>

Questions on Plan Check Status?, please e-mail: PLN-PermitCenter@pln.sccgov.org

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SANTA
CLARA
LAFCO

November 20, 2019

City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

**Subject: November 20, 2019 Morgan Hill City Council Meeting, Agenda Item #9 –
Water Service Connection to Metta Tam Tu Buddhist Temple, Fisher Avenue.**

Dear Mayor Constantine and Members of the Morgan Hill City Council -

On behalf of the County of Santa Clara Department of Planning and Development and Santa Clara County Local Agency Formation Commission (LAFCO), we are requesting that Item #9 on the November 20, 2019 City of Morgan Hill City Council Agenda, regarding extension of a water service connection to the Metta Tam Tu Buddhist Temple on Fisher Avenue, be continued for a minimum of 30 days to allow the County and LAFCO the ability to review the proposal and provide feedback to the City.

Neither the LAFCO nor the County administration received formal notice of this proposed City Council action.

Based on an initial review of the proposal, it appears that the proposed water connection would necessitate a modification to the Use Permit the County has approved for the temple, which should occur prior to Morgan Hill's consideration of the water service connection. The County Administration would thus appreciate consult with the applicants (Metta Tam) and the State Water Board regarding the proposal before it is considered by the City.

Thank you for your consideration in this matter.

Sincerely,

DocuSigned by:

Jacqueline Onciano

58D620AC52194DC...

Jacqueline R. Onciano

Director, Department of Planning and Development

DocuSigned by:

Neelima Palacherla

1EEFC8BF3D724BB...

Neelima Palacherla

Executive Officer

LAFCO of Santa Clara County

Cc:

Board of Supervisors

LAFCO

Sylvia Gallegos, Deputy County Executive

Eric Lacy, State Water Resources Control Board

Mr. Do Tran, Metta Tam Tu



City Council Meeting
November 6, 2019
Agenda Item#: 10

Cannabis Policy



Background



- 2016 – November, California Prop. 64
- 2017 - Various Council workshops and reports on Cannabis
- 2018 – July, Council approved ballot measure regarding cannabis taxation - approved in November
- 2019 – February, Council directed staff to seek Planning Commission (PC) recommendations. July/August, PC held community workshop/ meetings to discuss land use standards

Policy Considerations



1. What type of cannabis businesses, if any, should be allowed in Morgan Hill and what buffer zones are appropriate?
2. How many of each use should be allowed?
3. What requirements should be included in the licensing ordinance?

Planning Commission Recommendation



- Allow Storefront and Non-Storefront Retail cannabis uses in districts that allow retail uses
- Allow Manufacturing, Distribution, and Testing Facilities or Laboratories in the districts that allow those types of uses
- Require that cannabis uses meet all development standards required by the zoning district and requires a Conditional Use Permit for each cannabis use
- Require retail uses maintain a 600-foot separation from sensitive uses in accordance with state law
- Limit signage

Planning Commission

Recommendations (Cont'd)



Extra findings for Conditional Use Permit

1. That the location and site characteristics of the proposed cannabis business are consistent with all applicable state laws, Chapter 5.48 of the Morgan Hill Municipal Code, and all other City standards or guidelines.
2. That all provisions have been made to ensure that the operation of the cannabis business will not create excessive demands for police service or other public services, and that the cannabis business will benefit the City.

Number of Retail Outlets



- City Council also requested that the Planning Commission provide a recommendation on the number of retail outlets that would be appropriate for the City.
- After discussion, the Planning Commission recommended 4 retail outlets for consideration.

Other Cities

Jurisdiction	Jan 2018 Position	Current Position	Notes
Campbell	Voter enacted moratorium	Not allowed	
County	Not allowed	Not allowed	
Gilroy	Not allowed	Not allowed	
Hollister	Not allowed (Allowed after Mar. 2018)	Allowed	2 Dispensaries only, no limit on others
Los Gatos	Not allowed	Not allowed	
Milpitas	Not allowed	Not allowed	<i>Reviewed by Council, but Community voiced against, therefore not allowed.</i>
Mt. View	Moratorium but planned regulations by October 2018	Changed from allowing retail sales to ban	<i>Retail sales were initially allowed; however, the Council voted to change course and not allow retail sales.</i>
Palo Alto	Not allowed	Not allowed	
Salinas	Allowed	Allowed	Maximum Permits: Cultivation 5, Delivery 3, Dispensary 3, Distribution 5, and Manufacturing 5
San Jose	Regulations for all uses	Regulations for all uses	
Santa Clara	Ban in place and studying the issue.	Studying and returning to Council	Returning to Council for direction on retail sales in December 2019.
Sunnyvale	Not allowed	Not allowed	

Fiscal Impacts

- Regulatory Fees
 - Cost recovery.
 - Separate from tax revenue.
 - To administer the initial and annual permitting and compliance, including resources from police, fire, code compliance, legal, and finance.

Fiscal Impacts (Cont'd)



- **Revenues:**

- Estimation for ballot measure: between \$340,000 to \$750,000 annually, based on two of each commercial cannabis use types.
- Current HdL estimates per year:
 - Dispensary: \$632,000/ 2 locations
 - Manufacturing: \$400,000/ 2 locations.

- **Expenditures:**

- Public safety staffing and resources, including additional police and fire personnel.
- Drug and substance abuse prevention.
- Youth intervention programs.
- Community education and outreach.

Potential Next Steps



- **Allow commercial cannabis:**
 - Introduce zoning ordinance or continue to next meeting with feedback; and
 - Based on Council input tonight, staff would return with an ordinance on licensing, an ordinance repealing the current prohibition on commercial cannabis, and a resolution establishing tax rates.
- **Continue prohibiting commercial cannabis:**
 - Staff would return with a regulatory ordinance to address regulating only the delivery services within City limits, which is currently allowed under State law, as well as a resolution establishing delivery tax rates.

Questions

Item # 10

AGENDA DATE: 11/06/19
SUPPLEMENT # 1

From: Mike Robinson <robinson.mike68@yahoo.com>

Sent: Saturday, November 2, 2019 12:16 PM

To: Christina Turner <Christina.Turner@morganhill.ca.gov>; David Swing
<David.Swing@morganhill.ca.gov>

Cc: Ronald Kirkish <hykirkish@charter.net>; Bob Cooke <bcooke@ncric.ca.gov>; Scot Smithee
<scot.smithee@ci.gilroy.ca.us>

Subject: Marijuana's impact on MHSD Schools

City Administrator Turner and Chief Swing,

My name is Mike Robinson. I am a retired Special Agent of the Drug Enforcement Administration (DEA). I have over 21 years experience as a DEA Special Agent. Currently, I provide no-cost Drug and "Vaping" Awareness Presentations to both public and private schools, churches, PTAs and families. I am seeing first hand the grave harm that relaxed marijuana laws have already had on our teens.

Morgan Hill Schools are currently struggling with a "Vaping" epidemic (Electronic Cigarettes). According to the National Institute of Health 1 in 4 High School students are currently "Vaping." Teens "vape" drugs to include nicotine and Tetrahydrocannabinol (THC - the psychoactive chemical in marijuana). Vaping is perceived as safe by teens and socially accepted. Teens are now struggling with addiction to nicotine and THC through the use of the "Vapes." The students that are "Vaping" are falling behind in school. The schools are spending precious time and resources on combating the the "Vaping" epidemic. This takes time and resources away from other students.

By allowing a Marijuana dispensary within the City of Morgan Hill, you will further legitimize the image of Marijuana to the students. This will greatly compound the drug and "vaping" problems already existing in our schools. Research has shown that increased availability of substances results in increased teen use. If you allow a Marijuana dispensary within Morgan Hill you are expecting sales. Sales to adults presumably. Arguably, these adults will be parents. They may also be older siblings. That would mean the marijuana purchased in Morgan Hill is now more accessible to the teens and will be entering our schools. Often, the marijuana on school campuses are brought in by students whose parents/relatives have marijuana within their homes.

According to a study by Hongying Dai, U.S. Teens' marijuana use has jumped 10-fold since the 1990s. As society relaxes its rules around marijuana, U.S. teens are responding by using marijuana in much bigger numbers than generation ago the research showed. The study also showed the percentage of high school seniors who perceived regular use of marijuana as harmful dropped from 78.6% in 1991 to 29% in 2017. - University of Nebraska's College of Public Health in Omaha.

Of the 902 youth who received outpatient or residential substance use treatment in FY 2012/13 in Santa Clara County, 742, or 75% reported marijuana as their primary problem - Santa Clara County, California, Department of Drugs and Alcohol Services.

The Academy's Marijuana and Teens (2013) report also stated youth use can lead to depression, anxiety, anger, moodiness and psychosis - American Academy of Child and Adolescent Psychiatry. (2013).

As we know, THC is the psychoactive chemical in Marijuana that produces the "high." Naturally grown marijuana contains 3-6% THC. THC can now be extracted from Marijuana. I have received THC "Vape oils" seized from teens on school campuses that have a THC content levels that exceed 90%! The marijuana available to our teens is not the same marijuana as a generation ago. The increased levels of THC when ingested in a teen's developing brain leads to greater addiction rates, depression later in life and increased risk of psychosis. We are only seeing the beginning of the effects of this new high level THC on our society.

Any "perceived" tax revenue from a dispensary will come up short. I personally went into a "Vape" store and asked for "THC Vape Oil." I was told that the THC isn't sold in the front of the store because of a 30% sales tax. It was explained to me that it was sold out of the back!

Please remember, laws are not created to stop crime. Laws define our community on what we accept as a community. Please do not accept more drug use with our student community by allowing a Marijuana Dispensary within Morgan Hill.

Respectfully,

Mike Robinson
Morgan Hill Resident

Item # 10

AGENDA DATE: 11/06/19
SUPPLEMENT # 2

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#); [Donald Larkin](#); [David Swing](#); [Jennifer Carman](#)
Subject: FW: 11/6 Meeting - Item 10
Date: Tuesday, November 5, 2019 5:42:58 PM
Attachments: [Bibliography_Marijuana.pdf](#)
[ATT00001.htm](#)

Please supplement for cannabis item.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Tuesday, November 5, 2019 4:39 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: 11/6 Meeting - Item 10

FYI

Sent from my iPhone

Begin forwarded message:

From: Fawn Myers <myersf@mhusd.org>
Date: November 5, 2019 at 3:57:10 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: 11/6 Meeting - Item 10

Dear Council Member Spring,

Dear Mayor,

As you consider item 10 on this week's 11/6 city council meeting agenda, please take time to review the Morgan Hill Unified School District's board adopted resolution opposing youth access to marijuana through retail storefronts, cultivation, manufacturing. I ask that you also take time to review the attached bibliography which is a list of the sources that the Board of Education and staff reviewed.

As a long-time resident and educator working with youth in Morgan Hill, I ask that you oppose bringing retail storefronts for cannabis products to our community. Residents who would like to legally purchase cannabis may already do so. Studies from other communities demonstrate that increasing the local supply of cannabis and cannabis-related products increases consumption and usage among that community's youth. Please value our youth and vote no to bringing in retail cannabis.

Warm Regards,

Fawn

Fawn Myers
Assistant Superintendent of Human Resources
Morgan Hill Unified School District
15600 Concord Circle
Morgan Hill, CA 95037
408-201-6015 or ext. 51015
MyersF@mhusd.org

Input - Intellection - Learner - Context - Relator

“The key to human development is building on who you already are.” – Tom Rath

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Bibliography of Sources

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Marijuana Businesses in Morgan Hill
Date: Tuesday, November 5, 2019 5:55:48 PM

Please supplement.

From: Tanaya Rose <booklovr13@gmail.com>
Sent: Tuesday, November 5, 2019 5:55 PM
To: Larry Carr <Larry.Carr@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; City Manager <CityManager@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Subject: Marijuana Businesses in Morgan Hill

I implore the City Council to vote against brining Marijuana/Cannabis businesses or dispensaries to Morgan Hill. These businesses increase crime, increase drug use of minors, and increase blight. Additional tax dollars at the expense of public health is not a worthwhile bargain.

Every morning my 14 year old son sees a large billboard advertising easy marijuana delivery service on his bus route to Sobrato High School. Today's youth are inundated with advertising targeted to minors advertising vaping and marijuana products, which we know are extraordinarily detrimental to young minds and health. Across the country, cannabis vaping products have been tied to dangerous respiratory illnesses. These products are not safe.

Bringing these businesses into our city sends the wrong message to our youth, our students, and the families who live here. Tax dollars and profits should never be more important than the mental and physical health and well-being of our residents and children. Voting yes sends this terrible message.

Please keep Morgan Hill free of the marijuana industry. Nothing good will come from opening this door.

Tanaya Rose
16 year resident

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [David Swing](#); [Jennifer Carman](#); [Harjot Sangha](#)
Subject: FW: Memo to Morgan Hill Electeds
Date: Tuesday, November 5, 2019 6:19:21 PM

Please supplement – item 10.

From: Ronald Kirkish <hykirkish@charter.net>
Sent: Tuesday, November 5, 2019 1:27 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>; David Swing <David.Swing@morganhill.ca.gov>
Cc: Mike Robinson <robinson.mike68@yahoo.com>; Bob Cooke <bcooke@ncric.ca.gov>; Scot Smithee <scot.smithee@ci.gilroy.ca.us>; Mayor Roland Velasco <roland.velasco@ci.gilroy.ca.us>
Subject: Memo to Morgan Hill Electeds

Dear Elected Leaders & Decision Makers, City Administrator Christina Turner and Chief of Police Swing, for the City of Morgan Hill, CA.

When San Jose legalized marijuana, drug gangs from Oakland, Salinas, among other cities, immediately sent their drug pushers to San Jose to push their blackmarket marijuana, heroin, meth, cocaine, fentanyl, ecstasy, LSD and other illegal substances and like a moth to the flame of a candle, a flood of homeless drug addicts quickly followed as did their crimes and squalled homeless encampments which has inundated San Jose and other nearby localities.

When San Jose legalized marijuana, their Drug Task Force [police unit] quickly became overwhelmed; and it remains so today.

Drug pushers from different gangs now proliferate San Jose; Sureño's, Norteño's, Mexican Mafia, MS13.....and let's not forget the Hell's Angeles and Vietnamese gangs for the purpose of selling their illegal contraband (drugs) into every nook and cranny of San Jose.

San Jose isn't alone as this is exactly what happened in Santa Cruz, San Francisco, Oakland, Berkeley and other nearby cities.

Do any of you elected decision makers for the beautiful and peaceful City of Morgan Hill actually believe that this what their residents really want for their community? I don't think so.

B/r,

Ronald L. Kirkish

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Cannabis
Date: Wednesday, November 6, 2019 9:17:25 AM

Please supplement.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Wednesday, November 6, 2019 8:34 AM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Cannabis

Sent from my iPhone

Begin forwarded message:

From: Tereza Sanchez <princezz15@me.com>
Date: November 5, 2019 at 8:30:44 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Cannabis

Hi! I'm a parent for the live oak school high school. I just received the cannabis email , I missed the meeting. But if something can still be done. I don't agree with this at all , I'm against any drugs..

Thank you!

Teresa Sanchez

Sent from my iPhone

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Reject Cannabis in Morgan Hill
Date: Wednesday, November 6, 2019 1:49:33 PM
Importance: High

From: Christina Turner <Christina.Turner@morganhill.ca.gov>
Sent: Wednesday, November 6, 2019 8:13 AM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Angie Gonzalez <Angie.Gonzalez@MorganHill.ca.gov>
Cc: Harjot Sangha <Harjot.Sangha@morganhill.ca.gov>; David Swing <David.Swing@morganhill.ca.gov>; Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>; Leslie Little <Leslie.Little@morganhill.ca.gov>
Subject: FW: Reject Cannabis in Morgan Hill
Importance: High

Please supplement.

From: Steve Chappell <steve@apgi.com>
Sent: Wednesday, November 6, 2019 6:57 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>
Cc: Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Cynthia Hasson <Cynthia.Hasson@morganhill.ca.gov>
Subject: Reject Cannabis in Morgan Hill
Importance: High

November 6, 2019

Attention City Staff and City Council-

Per tonights agenda, 6 November 2019 of the Morgan Hill City Council Regular meeting:

Please consider my formal request and communication to you that I reject any Cannabis Industry, Commercial/Recreational or Medical commerce from entering the City of Morgan Hill.

I support Morgan Hill Unified School District (attached) and their guidance that; growing influx with abuse problems in children and their homes, and for the sake of those children future, I reject we allow this type of commerce in our City of Morgan Hill as a strong prevention measure, along with continued education to our children about this topic.

We must look beyond current hype and realize that we are the Custodians and Gaurdians of our Morgan Hill children's future. What example do we set allowing further distribution of substance and abusive drugs into our community when an existing problem is already there, and growing? Is it really worth measly fees and attached taxation to risk a Childs future?

Adding this business activity in our City fixes nothing. It only increases the availability of an already out of control issue. Please consider this (our Children of Morgan Hill's future FIRST) as a critical component in your

decision path regarding this matter. Put aside your beliefs and think of them FIRST.

Please Reject the Cannabis Industry from doing commerce in our town.

Kind regards,

Steve Chappell, Morgan Hill Resident



Good Afternoon Morgan Hill Unified Families,

The District would like to make you aware of an opportunity to express yourself at the Morgan Hill City Council Meeting tomorrow night. Whether you agree or disagree with the Governing Board's Resolution (attached) and the District's efforts to prevent the cannabis industry from setting up businesses in Morgan Hill, we encourage you to attend this meeting before the City Council acts on the Planning Commission and City Staff recommendation to allow the cannabis industry in our city. If they act on the recommendation, it is final. The public will NOT get a chance to vote on this.

The 7:00 p.m. City Council meeting is tomorrow night, November 5 at [17555 Peak Avenue](#), Morgan Hill, CA 95037.

Although we have sent the City Manager, City staff and Planning Commission information pointing to the increased drug use among our youth and the detrimental effects of cannabis, the City of Morgan Hill is now on the verge of opening the door to retail, commercial, and/or manufacturing of cannabis and the City Staff is recommending only a barrier of 600 feet from schools. Cannabis is proven to create abnormal brain development when used by adolescents. It is also tied to schizophrenia and other mental illnesses. Even though such industry is targeting adults who are 21 years and older, supply proximity is proven to increase the youth access.

Attached you will also see a bibliography of reports and studies which were also sent to the City Staff and the agenda item itself (Item 10). The back up information for the item is linked on pages 126 and to 246 of this [Agenda Packet](#).

To contact the City Council members with your views, visit the City's website [here](#).

Thank you.

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: For consideration re: marijuana vote tonight
Date: Wednesday, November 6, 2019 10:53:03 AM

Please supplement.

From: Brenda colaprete <uscolaprete@gmail.com>
Sent: Wednesday, November 6, 2019 10:47 AM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Maureen Tobin <Maureen.Tobin@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Donald Larkin <Donald.Larkin@morganhill.ca.gov>; Cynthia Hasson <Cynthia.Hasson@morganhill.ca.gov>
Subject: For consideration re: marijuana vote tonight

Hello,

I understand the revenue that the taxation could bring to our city. And a lot of attention is given to the idea that marijuana use is less dangerous than other substances, including alcohol. I ask you to consider this one argument that I'm not sure gets enough attention- existing mental health conditions.

Put aside the argument "kids will have more access if we bring this to Morgan Hill", that goes without saying and they access it now if they want to anyway. I want to specifically point out that our MH kids with existing psychological disorders, or a genetic predisposition, having easier access to marijuana, are at increased risk of advancing or activating mental illness. No one talks about the subset of the population where marijuana is not a safe and harmless substance, it can and will produce psychotic episodes in some people. I've seen this with my own eyes, I've watched a friend as a teenager jump out of a 3 story window after smoking "safe" marijuana. (he was autistic and bipolar)

As a parent of a child with severe mental health struggles, the idea of marijuana being more easily accessible and "advertised" as safe, is terrifying. I've done a lot of research into the effects that cannabis can have on people with co-morbid psychiatric disorders, and while those people as adults are responsible for not exposing themselves to substances that can aggravate their condition, there are many kids and teens that do not have this kind of knowledge or even the understanding at what harm can come from doing what all the other kids are doing. Kids on the autism spectrum, ADD/ADHD, OCD/SPD, Bipolar/Manic Depressive.....those kids need our protection as well as the general population that we don't want introduced to gateway drugs for as long as we possibly can as parents. The reactions with other medications that they may be on as well, SSRI's for example, is not yet shown to be a safe combination.

Some references:

"Marijuana use has been linked to schizophrenia. In a study of 50,000 Swedish military draftees, the use of marijuana during adolescence was associated with a 30% increase in risk of developing schizophrenia. The study also showed a higher risk of schizophrenia with more frequent marijuana use. The researchers of this study found these results were independent of personality traits and the use of other drugs. From these studies, it is clear that marijuana use is related to subsequent depression and schizophrenia. It is still not clear, however, whether marijuana triggers the onset of illness in individuals predisposed to such conditions or whether it actually causes the illnesses. Some researchers believe that psychosocial factors that result from marijuana use—such as educational failure and unemployment—may contribute to depression. Other researchers think that marijuana may have a lasting chemical effect on the central nervous system and its functions involving memory, emotion, cognition, and movement." *Sources: British Medical Journal, November 2002 and American Journal of Psychiatry December 2001*

According to the federal Agency for Healthcare Research and Quality, in 2006, emergency rooms saw 30,000 cases of people who had diagnoses of psychosis and marijuana-use disorder — the medical term for abuse or dependence on the drug. By 2014, that number had tripled to 90,000.

As a rule of thumb, adolescents who use cannabis more than weekly probably increase their risk of experiencing psychotic symptoms and developing psychosis if they are vulnerable—if they have a family member with a psychosis or other mental disorder, or have already had unusual psychological experiences after using cannabis. This vulnerability may prove to be genetically mediated.

The Mental Health Risks of Adolescent Cannabis Use

Wayne Hall

Thank you for your time.

Brenda Colaprete

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Dear Elected Leaders & Decision Makers, City Administrator Christina Turner and Chief of Police Swing, for the City of Morgan Hill, CA.

When San Jose legalized marijuana, drug gangs from Oakland, Salinas, among other cities, immediately sent their drug pushers to San Jose to push their blackmarket marijuana, heroin, meth, cocaine, fentanyl, ecstasy, LSD and other illegal substances and like a moth to the flame of a candle, a flood of homeless drug addicts quickly followed as did their crimes and squalled homeless encampments which has inundated San Jose and other nearby localities.

When San Jose legalized marijuana, their Drug Task Force [police unit] quickly became overwhelmed; and it remains so today.

Drug pushers from different gangs now proliferate San Jose; Sureño's, Norteño's, Mexican Mafia, MS13.....and let's not forget the Hell's Angeles and Vietnamese gangs for the purpose of selling their illegal contraband (drugs) into every nook and cranny of San Jose.

San Jose isn't alone as this is exactly what happened in Santa Cruz, San Francisco, Oakland, Berkeley and other nearby cities.

Do any of you elected decision makers for the beautiful and peaceful City of Morgan Hill actually believe that this is what the residents really want for their community? I don't think so.

B/r,

Ronald L. Kirkish



Northern California Regional
Intelligence Center

Ron Kirkish
Drug Prevention Officer

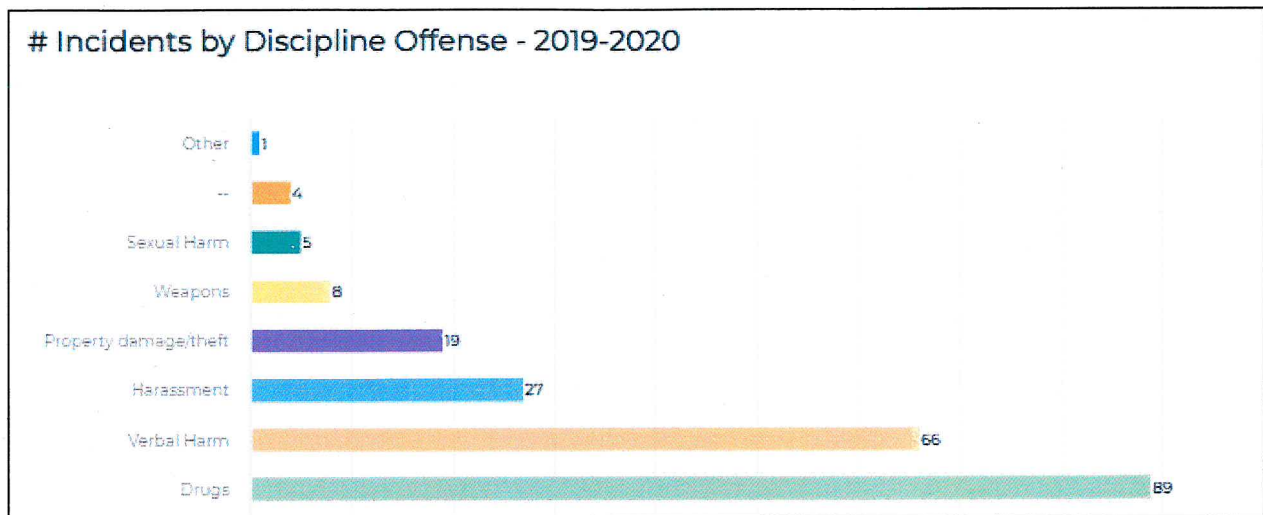
Cell: (415) 730-5861
Email: rkirkish@ncric.org

Office:
Fax: (415) 436-8180
24 Hr: (866) 367-8847
www.ncric.org

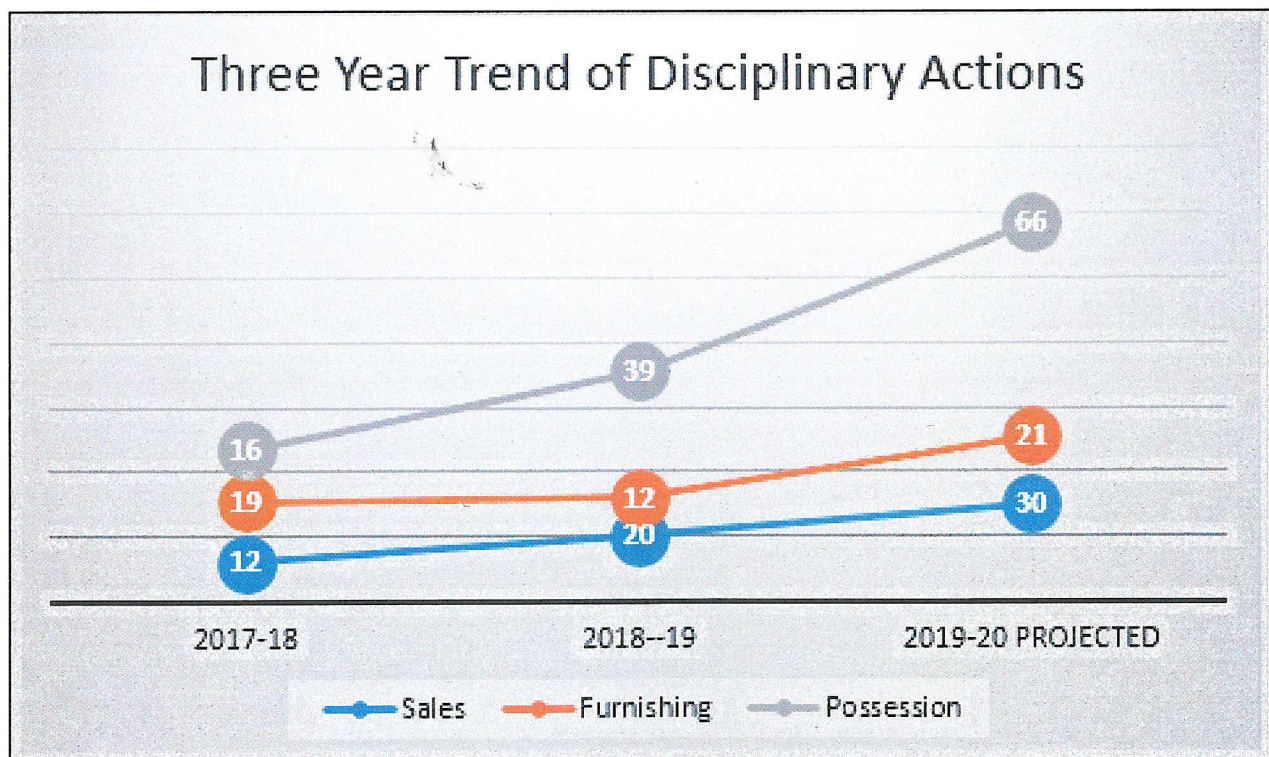
P.O. Box 36102
San Francisco, CA 94102

RETIRO

Year to date statistics: Drug related offenses are a leading cause of campus related disruptions.



Three Year Trend Data: Most drug related offenses result in severe disciplinary actions including suspensions and expulsion. We are currently less than half way through the year and the year-to-date drug related incident numbers (above) exceed last year's totals (middle column below). Sales are sharply rising and are primarily related to vape related cannabis products "not intended for children." **This is an epidemic problem that is hurting killing students and disrupting our schools for all students.**



From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: COLORADO'S LEGALIZATION OF MARIJUANA AND THE IMPACT ON PUBLIC SAFETY: A Practical Guide for Law Enforcement
Date: Wednesday, November 6, 2019 5:14:37 PM

Please supplement.

From: Steve Betando <betandos@mhusd.org>
Sent: Wednesday, November 6, 2019 5:08 PM
To: Rene Spring <Rene.Spring@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>
Subject: COLORADO'S LEGALIZATION OF MARIJUANA AND THE IMPACT ON PUBLIC SAFETY: A Practical Guide for Law Enforcement

Honorable Mayor and Councilmembers,

A Law Enforcement Analysis for consideration is linked here: https://www.nccpsafety.org/assets/files/library/Legalized_Marijuana_Practical_Guide_for_Law_Enforcement.pdf

Thank you.

Steve Betando
Superintendent
Morgan Hill Unified School District

You cannot hope to build a better world without improving the individuals. To that end each of us must work for (our) own improvement, and at the same time share a general responsibility for all humanity, our particular duty being to aid those to whom we think we can be most useful.

- Marie Curie

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Availability of Medical and Recreational Marijuana Stores and Neighborhood Characteristics in Colorado
Date: Wednesday, November 6, 2019 5:15:04 PM

Please supplement.

From: Steve Betando <betandos@mhusd.org>
Sent: Wednesday, November 6, 2019 5:04 PM
To: Rene Spring <Rene.Spring@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Availability of Medical and Recreational Marijuana Stores and Neighborhood Characteristics in Colorado

Dear Honorable Mayor and Councilmembers, **please note the highlighted statements** in this study.

Thank you,
Steve Betando

Availability of Medical and Recreational Marijuana Stores and Neighborhood Characteristics in Colorado

[Yuyan Shi](#), ¹, * [Kristin Meseck](#), ² and [Marta M. Jankowska](#) ²

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Abstract

Objective. To examine the availability of marijuana stores in Colorado and associations with neighborhood characteristics. *Methods.* The addresses for 650 medical and recreational marijuana stores were geocoded and linked to the characteristics of 1249 census tracts in Colorado. Accounting for spatial autocorrelations, autologistic regressions were used to quantify the associations of census tract socioeconomic characteristics with the availability of marijuana stores. *Results.* Regardless of store types, marijuana stores were more likely to locate in neighborhoods that had a lower proportion of young people, had a higher proportion of racial and ethnic minority population, had a lower household income, had a higher crime rate, or had a greater density of on-premise alcohol outlets. The availability of medical and recreational marijuana stores was differentially correlated with household income and racial and ethnic composition. *Conclusions.* Neighborhood disparities existed in the availability of marijuana stores, and associations between availability of stores and neighborhood characteristics varied by store types. This study highlighted the need for regulatory measures to prevent marijuana related outcomes in high risk neighborhoods.

[Go to:](#)

1. Introduction

In the USA, the prevalence of marijuana use is high among both adolescents and adults. In 2013, an estimated 19.8 million people older than 12 years were past-month marijuana users, accounting for 7.5% of the population in the age group [1]. Despite a declining trend observed in cigarette smoking and alcohol drinking in the past few years, marijuana use has remained stable [2].

Marijuana use, as other substance use behaviors, is influenced by neighborhood physical, economic, and social environmental factors. Since 1996, 23 states and Washington DC have adopted policies to legalize marijuana for medical use. Recently, recreational marijuana use was also legalized in 4 states and Washington DC. These legal and policy changes have dramatically changed the neighborhood environments for marijuana use. One of the most notable changes is the emergence of marijuana stores, which provide legal access to marijuana and potentially modify social norms related to marijuana use within the neighborhood. Initial evidence has suggested the associations between the availability of medical marijuana stores and higher rates of marijuana use and abuse in California cities [3, 4].

The prevalence of marijuana use and abuse is not homogeneous. Demographically and socioeconomically vulnerable populations are at higher risks of using or abusing marijuana. For example, people who are younger, racial and ethnic minorities, having low income, less educated, and living in urban and disordered areas had higher proportions of marijuana use and marijuana use disorders [5, 6]. If demographically and socioeconomically vulnerable neighborhoods had a greater availability of marijuana stores, the disparity in marijuana store distributions may lead to differential exposures to marijuana and exacerbate marijuana use and related outcomes in demographically or socioeconomically vulnerable populations.

The availability of marijuana stores around schools is also of public health concern. As suggested by literature on tobacco and alcohol [7–10], close proximity of marijuana stores to schools may increase the risks of marijuana use among adolescents who are at a particularly high risk of developing marijuana use disorders and other negative health consequences [11]. Currently, Colorado has zoning regulations that keep marijuana stores 1,000 feet from schools. However, stores may still locate within walking distance beyond the 1,000-feet limit. It remains unknown to what extent stores locate within walkable distance that adolescents can

easily reach. If some schools have stores available within walking distance while other schools do not, the differential exposures to marijuana may lead to disparities in marijuana use prevalence among adolescents.

The associations between the availability of medical marijuana stores and neighborhood characteristics have been evaluated in major cities in California and Colorado. Evidence from California suggested that medical marijuana stores were more likely to be located in areas with higher proportion of Hispanic residents and higher density of alcohol outlets and higher rates of poverty and primarily zoned as commercial [4, 12, 13]. Although the availability of medical marijuana stores in Denver, Colorado, did not differ by neighborhood minority composition or poverty status, it was associated with higher crime rates [14]. There have not been any studies focused on the distribution of recreational marijuana stores partly because recreational marijuana was not legalized until 2014. Theoretically, medical marijuana and recreational marijuana stores target different segments of the marijuana user population, and two types of stores could be differentially available in various neighborhoods.

Colorado was among the first few states to implement medical marijuana policies and the first state to implement recreational marijuana policies in the USA. Colorado State and local jurisdictions have implemented various policies to regulate the distribution of marijuana stores, but little is known about whether marijuana stores are disproportionately located in the entire state of Colorado as a result and to what extent different types of marijuana stores are available in different neighborhoods. This study provided the first statewide evaluation on the availability of both medical marijuana stores and recreational marijuana stores and their associations with neighborhood characteristics on demographics, socioeconomic status, crime, and alcohol outlets in Colorado. It also assessed marijuana store locations by distance to schools. Medical marijuana stores and recreational marijuana stores were evaluated separately. This study was expected to illuminate policy implications to public health policy makers and urban planners regarding zoning, density control, and licensing regulations on marijuana stores and prevention program targeted towards neighborhoods at high risks of clustering marijuana users.

[Go to:](#)

2. Method

A cross-sectional ecological study was conducted to examine the relationships between the availability of marijuana stores and neighborhood characteristics. Neighborhood was defined as census tract in this study, and all census tracts in Colorado were used in the analysis ($N = 1,249$). Census tracts in the USA are small statistical subdivisions that typically coincide within the boundaries of administrative areas such as cities or towns. The population size of a census tract generally ranges between 1200 and 8000 and population characteristics and socioeconomic status within a census tract are relatively homogeneous [15]. The study was conducted in 2015.

2.1. Availability of Marijuana Stores

The outcome variables included binary indicators to represent whether or not a census tract had any marijuana stores. Measures were separately created for the availability of (1) any type of marijuana store, (2) medical marijuana store, and (3) recreational marijuana store. We obtained directories of licensed marijuana stores from the Enforcement Division, Colorado Department of Revenue, which provided detailed physical addresses for all medical and

recreational marijuana stores as of August, 2015. A total of 650 licensed marijuana stores were identified and their point locations were geocoded and mapped using ArcMap 10.2. Among the 650 stores, 270 were only registered as medical marijuana stores and 139 were only registered as recreational marijuana stores with 241 stores registered as both medical and recreational marijuana stores.

2.2. Neighborhood Characteristics

Data for census tract characteristics were obtained from multiple sources. The following variables were derived from US Census, American Community Survey, and Public Elementary and Secondary School Universe Survey: (1) population size, (2) land area, (3) proportion of population under age of 21 (people who have no legal access to marijuana stores in Colorado), (4) proportion of racial and ethnic minority population (race and ethnicity other than Non-Hispanic White), (5) median household annual income, (6) unemployment rate, and (7) density of primary and secondary schools per square mile.

We used the crime risk index developed by ESRI based on FBI Uniform Crime Report databases. The index represented standardized number of crime cases in murder, rape, robbery, assault, burglary, theft, and motor vehicle theft categories, with continuous values ranging between 6 and 739 for Colorado census tracts. Detailed methodology for the development of the crime risk index can be found elsewhere [16]. For easy interpretation, continuous crime risk index was converted into three tertiles to represent low, medium, and high crime rate in the neighborhoods.

Directories of licensed alcohol retail outlets were obtained from the Enforcement Division, Colorado Department of Revenue, in 2015. Two continuous variables were created, respectively, to represent the density of on-premise alcohol outlets and off-premise alcohol outlets per square mile.

2.3. Analysis

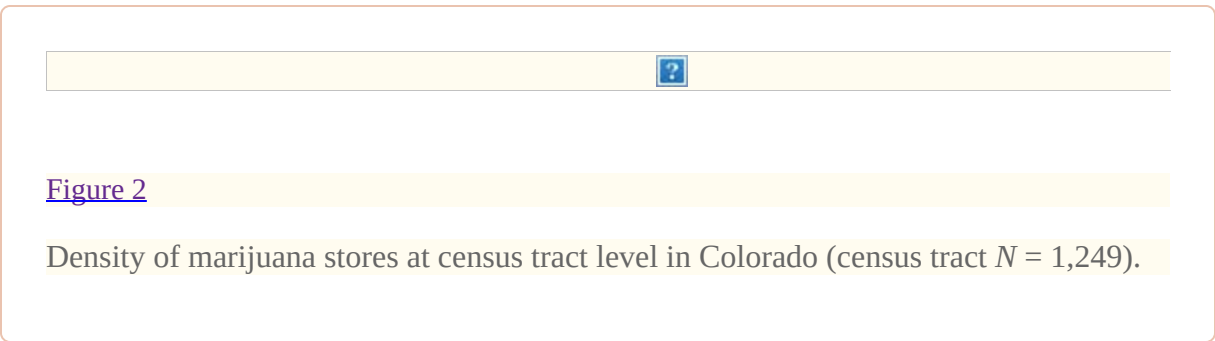
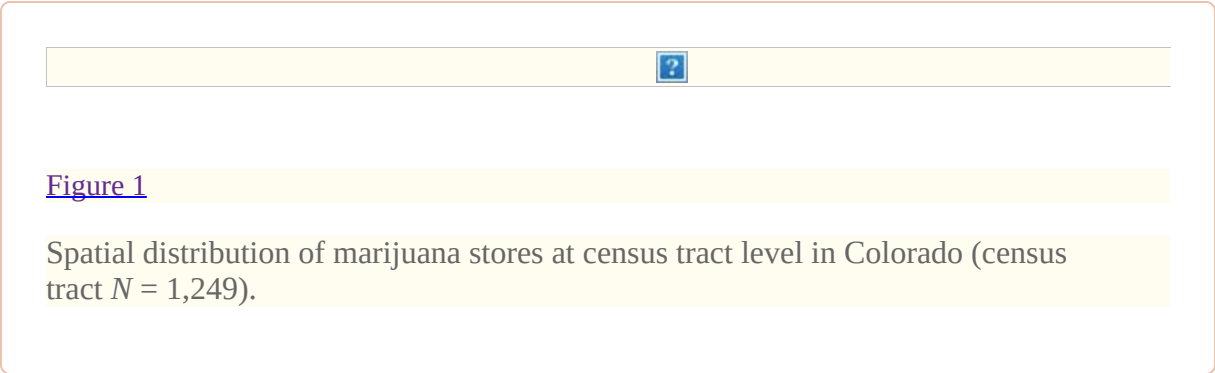
The cross-sectional examination of correlations was conducted at the census tract level. We compared census tract characteristics by the availability of marijuana stores and conducted *t*-test to test between-group differences. We plotted the counts of marijuana stores by store types. We created buffers around schools (0–1000 feet, 1000 feet–1 mile, and above 1 mile) to examine the distribution of marijuana stores within each buffer. Because census tracts are “autocorrelated” in the sense that nearby units share more similarities relative to distant ones, we used Global Moran's *I* statistics to detect spatial autocorrelation between census tracts. We found some spatial autocorrelation between the census tracts in terms of the availability of marijuana stores (Moran's $I = 0.099$, $p < 0.001$). We therefore assessed the associations between the availability of marijuana stores and neighborhood characteristics by multivariate autologistic regressions to account for spatial autocorrelation [17]. The outcome variables for the availability of any type of marijuana stores, medical marijuana stores, and recreational marijuana stores were evaluated, respectively. The autologistic analyses were estimated using R packages [18]. *p* values smaller than 0.05 were considered statistically significant.

[Go to:](#)

3. Results

3.1. Descriptive Statistics

[Figure 1](#) illustrated the geographic distribution of marijuana stores in Colorado regardless of store types. [Figure 2](#) plotted the statistical distribution of the count of marijuana stores. Out of 1,249 census tracts, 289 or 23.14% had at least one marijuana store available regardless of store types; 242 census tracts had at least one medical marijuana store; and 193 census tracts had at least one recreational marijuana store. Within census tracts that have at least one store, the average numbers of stores of any type, medical marijuana stores, and recreational marijuana stores were 2.25, 2.11, and 1.99, respectively.



[Table 1](#) reported summary statistics for census tract characteristics by the availability of marijuana stores. On average, the population size was 4030 with 28.11% population 21 years of age or younger. Racial and ethnic minorities accounted for 29.74% of the total population. The median household income was \$61,943.81, and the unemployment rate was 6.69%. In terms of crime, the standardized crime index was 100.84 on average for all census tracts. The density for schools and on-premise and off-premise alcohol outlets were 1.20, 4.47, and 1.82 per square mile, respectively.

Table 1						
Neighborhood characteristics by type of marijuana stores in Colorado (census tract $N = 1,249$).						
Census tract characteristics	All census tracts	Census tracts without any marijuana	Census tracts with marijuana stores			Test for difference between tracts with and without
			Any type	Medical	Recreational	

		stores	of marijuana stores	marijuana stores	marijuana stores	any type of marijuana stores (<i>p</i> value)
Number of census tracts, <i>N</i> (%)	1,249 (100)	960 (76.86)	289 (23.14)	242 (19.38)	193 (15.45)	
Population size, thousand	4.03	3.99	4.19	4.18	4.11	0.10
Land area, hundred square miles	0.83	0.82	0.87	0.64	1.08	0.81
Proportion of population age <21	0.28	0.28	0.25	0.25	0.25	<0.001***
Proportion of racial and ethnic minority (not Non- Hispanic White)	0.30	0.28	0.35	0.34	0.36	<0.001***
Median household income, tens of thousands \$	6.19	6.49	5.18	5.18	5.31	<0.001***
Unemployment rate	0.067	0.065	0.073	0.072	0.069	0.0026**

Schools, density/sq mile	1.20	1.12	1.49	1.61	1.57	0.0011 **
Crime index	100.84	92.57	128.33	130.71	128.20	<0.001 ***
Alcohol on- premise outlets, density/sq mile	4.47	2.76	10.16	11.32	12.57	<0.001 ***
Alcohol off- premise outlets, density/sq mile	1.82	1.46	3.04	3.20	2.92	<0.001 ***

[Open in a separate window](#)

*** $p < 0.001$ and ** $p < 0.1$.

All neighborhood characteristics but population size and land area differed significantly between census tracts with and without any type of marijuana stores ([Table 1](#)). Specifically, the census tracts with any type of marijuana stores had a lower percentage of young population, larger proportion of racial and ethnic minorities, lower medium household income, larger unemployment rate, and higher crime rate. The school and alcohol outlets densities were also higher in census tracts with any type of marijuana stores compared to census tracts without any stores.

[Table 2](#) reported the availability of marijuana stores around primary and secondary schools in Colorado. Within 1000-foot radius, 1.72% schools had at least one marijuana store regardless of type; within 1000 feet–1 mile, 32.73% schools had at least one marijuana store regardless of type. The distance to the nearest marijuana stores for the remaining 65.55% schools was greater than 1 mile. A slightly greater proportion of medical marijuana stores were located within 1-mile buffer of schools (28.66%) relative to recreational marijuana stores (24.56%).

Table 2

Availability of marijuana stores within various buffers around schools in Colorado (schools $N = 2,215$).

Radius of buffers around schools	Number of schools with any type of marijuana stores in the buffer <i>N</i> (%)	Number of schools with medical marijuana stores in the buffer <i>N</i> (%)	Number of schools with recreational marijuana stores in the buffer <i>N</i> (%)
0–1000 feet	38 (1.72)	30 (1.35)	25 (1.13)
1000 feet–1 mile	725 (32.73)	605 (27.31)	519 (23.43)
Above 1 mile	1452 (65.55)	1580 (71.33)	1671 (75.44)

3.2. Regression Analysis

The results from autologistic regression models were reported in [Table 3](#). Regardless of store types, marijuana stores were more likely to locate in census tracts that had a larger population size ($p < 0.001$), larger land area ($p = 0.006$), lower proportion of population under age of 21 ($p = 0.010$), larger proportion of racial and ethnic minorities ($p = 0.039$), and lower household income ($p = 0.044$). Census tracts with medium and high crime indices were 2.84 ($p < 0.001$) and 3.48 ($p < 0.001$) times as likely to have marijuana stores as census tracts with low crime index. Unemployment rate and density of schools were found to be unrelated to the availability of marijuana stores.

Table 3

Autologistic regression: availability of marijuana stores in Colorado and neighborhood characteristics.

Availability of marijuana stores			
Odds ratio (standard error)			
	Any type of marijuana stores	Medical marijuana stores	Recreational marijuana stores
Population size, thousand	1.19 (0.051) ***	1.19 (0.056) ***	1.13 (0.055) **

Land area, hundred square miles	1.06 (0.022) **	1.02 (0.029)	1.09 (0.026) ***
Proportion of population age <21	0.014 (0.024) **	0.017 (0.032) *	0.0056 (0.013) *
Proportion of racial and ethnic minority	3.12 (1.72) *	1.63 (0.97)	17.50 (12.57) ***
Median household income, tens of thousands \$	0.91 (0.040) *	0.89 (0.041) *	1.02 (0.049)
Unemployment rate	0.74 (1.55)	0.61 (1.36)	0.039 (0.10)
Schools, density/sq mile	0.94 (0.040)	0.99 (0.042)	0.97 (0.048)
Crime index			
Low (reference)	1	1	1
Medium	2.84 (0.63) ***	2.75 (0.67) ***	3.47 (0.96) ***
High	3.48 (0.84) ***	3.34 (0.88) ***	3.47 (1.07) ***
Alcohol on-premise outlets, density/sq mile	1.02 (0.013) *	1.02 (0.013) *	1.04 (0.015) **
Alcohol off-premise outlets, density/sq mile	1.06 (0.036)	1.06 (0.036)	0.95 (0.033)

[Open in a separate window](#)

*** $p < 0.001$, ** $p < 0.1$, and * $p < 0.05$.

We observed heterogeneities in the correlations between census tract characteristics and the availability of marijuana stores by store types. For example, the census tracts that had a high proportion of racial and ethnicity minorities were more likely to have recreational marijuana store available ($p < 0.001$) but not more likely to have medical marijuana stores. A lower household income was associated with a greater likelihood of having medical marijuana stores ($p = 0.022$), but its relationship with the availability of recreational marijuana stores was not significant.

[Go to:](#)

4. Discussion

Based on the statewide analysis of marijuana stores in Colorado, this study found that the availability of marijuana stores was associated with certain neighborhood characteristics. Consistent with the observations in Denver, Colorado, marijuana stores throughout the Colorado State were more likely to locate in neighborhoods with high crime rates [14]. Our findings also supported the evidence from California major cities which demonstrated greater availability of medical marijuana stores in neighborhoods that had higher proportion of minority, higher level of poverty, and higher density of alcohol outlets [4, 12, 13].

No empirical studies have explored the mechanisms behind the observed correlations between the availability of marijuana stores and neighborhood characteristics. The disproportionately high concentration of marijuana stores in areas with high crime rates and alcohol outlet density could be a result of retail concentrations, which provide land and staffing for commercial use but also increase chances for crime cases [14]. The clustering of marijuana stores in areas with lower income households and higher proportion of minorities might be explained by the high prevalence of marijuana use and favorable social norms associated with marijuana use in the population. Such neighborhoods could provide a potentially large pool of clients as well as a supportive environment for the store establishments. Future research is much needed to uncover the causal relationships of these associations.

The availability of marijuana stores may have impacts on the disparities in marijuana use and related health consequences. People who are at a higher risk of marijuana use, such as younger age groups, may reduce use due to a smaller exposure to marijuana stores in neighborhoods that have a high proportion of young population. In contrast, marijuana use may be increased in racial and ethnic minority population and population with low income and high crime rates because the neighborhoods clustered with these types of vulnerable population had a greater availability of marijuana stores. Some literature has shown that alcohol may be a gateway substance to the use of marijuana; therefore the higher likelihood of marijuana stores locating in neighborhoods with higher densities of alcohol outlets could have implications for uptake of marijuana [19]. Because of the concern about the negative impacts of marijuana stores, Denver recently proposed extending the moratorium on new recreational marijuana stores and banning new licenses for medical marijuana stores [20]. Empirical research that evaluates the consequences of marijuana store availability at neighborhood level is warranted to inform public health and urban planning policy makers.

This study revealed differential availabilities of marijuana stores by store types. The availability of medical marijuana stores and recreational marijuana stores demonstrated different associations with racial and ethnic composition and household income. The different distribution of medical and recreational marijuana stores in the neighborhoods highlighted the need for public health policy makers and urban planners to consider store type upon

developing regulations on stores.

The availability of marijuana stores around primary and secondary schools is of particular concern. Although very few marijuana stores violated the 1000-feet zone regulation, around a third of schools in Colorado had at least one marijuana store available within walkable distance (1 mile) to school boundaries. Even though students under age of 21 are not legally allowed to purchase marijuana, they may still gain access if age restriction in marijuana stores is not strictly enforced. In addition, the advertisements for marijuana in the neighborhoods may modify the social norms related to marijuana among adolescents and young adults.

Several limitations of this study are noteworthy. First, this study was a cross-sectional analysis that may be subject to selection bias and unobserved heterogeneities. The associations should not be interpreted as causal inferences. Second, although the census tract is often used as a proxy for neighborhood, its characteristics may not represent the real neighborhood in which marijuana stores are located and individuals are living and working, particularly in large rural census tracts. Third, the reported associations did not account for spatial correlations between two types of marijuana stores. Fourth, the binary outcome of presence or absence of marijuana stores likely obscures some of the clustering effects of multiple stores found in urban areas. Last, the study findings may not be generalized to states other than Colorado.

[Go to:](#)

5. Conclusion

This study suggested that a few unfavorable neighborhood measures were associated with a greater availability of marijuana stores, and different types of marijuana stores were differentially available in the neighborhoods. The findings underscored the need for regulatory measures to reduce the disparities in marijuana store locations with particular attention to the differences between store types. Considering that differential access to marijuana may influence individuals' marijuana use decisions and purchase behaviors, prevention programs that target high risk neighborhoods are also recommended.

[Go to:](#)

Acknowledgments

This study was funded by the Academic Senate Grant from University of California, San Diego, Health Sciences (Award #RO198H-SHI) and the Department Pilot Grant from Department of Family Medicine and Public Health at University of California, San Diego.

[Go to:](#)

Competing Interests

The authors declare that they have no conflict of interests.

[Go to:](#)

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Steve Betando

Superintendent

Morgan Hill Unified School District

You cannot hope to build a better world without improving the individuals. To that end each of us must work for (our) own improvement, and at the same time share a general responsibility for all humanity, our particular duty being to aid those to whom we think we can be most useful.

- Marie Curie

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Concerns with Cannabis Considerations
Date: Wednesday, November 6, 2019 5:20:35 PM
Attachments: [Vaping Cannabis Issues in MHUSD.pdf](#)

Please supplement.

From: Steve Betando <betandos@mhusd.org>
Sent: Wednesday, November 6, 2019 5:18 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Concerns with Cannabis Considerations

Hi Christina,

I see you were not copied on this message.

Steve Betando
Superintendent
Morgan Hill Unified School District

You cannot hope to build a better world without improving the individuals. To that end each of us must work for (our) own improvement, and at the same time share a general responsibility for all humanity, our particular duty being to aid those to whom we think we can be most useful.

- Marie Curie

----- Forwarded message -----

From: **Tanya Calabretta** <calabrettat@mhusd.org>
Date: Wed, Nov 6, 2019 at 4:56 PM
Subject: Concerns with Cannabis Considerations
To: <rich.constantine@morganhill.ca.gov>, <larry.carr@morganhill.ca.gov>, <yvonne.martinezbeltran@morganhill.ca.gov>, <rene.spring@morganhill.ca.gov>, <john.mckay@morganhill.ca.gov>
Cc: Steve Betando <betandos@mhusd.org>, Pilar Vazquez-Vialva <vazquez-vialvap@mhusd.org>, Fawn Myers <myersf@mhusd.org>, Kirsten Perez <perezk@mhusd.org>, Courtney Macko <mackoc@mhusd.org>

Good Evening,

Myself and Ms. Courtney Macko are unable to attend this evening's council meeting, however, thought it pertinent to share our concerns and information around the vote to allow cannabis operations in Morgan Hill. Please see the attached letter written by both of us as the principals of Ann Sobrato High School and Live Oak High School.

Thank you for your time and dedication to our community,

Tanya Calabretta & Courtney Macko

Principals @

Live Oak High School & Ann Sobrato High School

(408) 201-6100 & (408) 201-6200

calabrettat@mhusd.org and mackoc@mhusd.org

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Ann Sobrato HS

401 Burnett Ave.
Morgan Hill, CA 95037
(408) 201-6200

Live Oak HS

1505 E. Main Ave.
Morgan Hill, CA 95037
(408) 201-6100

November 6th, 2019

Morgan Hill City Council:

The schools and staff of MHUSD have an obligation and moral imperative to ensure safe and drug-free environments for our students. We recognize that this has been an ongoing battle in the schools, community, state and world for as long as substance abuse had been around. However, with the creation and marketing of vaping devices containing nicotine and THC wax, the impact has increased exponentially. Our students are already exposed to and using these devices at an alarming rate and bringing the Cannabis industry to Morgan Hill will only prove to increase the problems.

Since the legalization of marijuana, our youth have an increased perception that possession, purchase and use of nicotine and cannabis is "normal", acceptable and legal for their age group. On a daily basis, students are using and being caught with a variety of these products and devices. Upon searching and investigating these incidents, we are commonly informed of various ways they can obtain the substances and devices. There have been claims made by students and families that there are current drug/liquor/gas station stores that are selling without age identification. There are also reports of students (current and past) selling to anyone and everyone. Most alarming is when students tell us that they purchase from random people on the streets of Morgan Hill. Vaping devices are readily available to any person who is seeking them (regardless of age and socio-economic standings).

Through our monitoring and implementation of consequences for these violations, we are seeing that there isn't a trend in type of student or certain subpopulation that this affects. Students of all genders, races, ethnicities, grade levels, GPAs, and socio-economic status are exposed to and using these substances. This has become a "norm" for this generation of students and we are extremely concerned about the health and safety risks/factors that this industry imposes on our youth.

The following are ways in which this industry and those that partake are impacting the schools:

- Poor health conditions for students
- Increased need for counseling/therapy/rehab as student anxiety is on the rise
- Increased need for law enforcement interactions and citations for youth
- Professional development time and engagement needing to be focused on this issue, which means additional time needed to tackle the job we are here for, education
- Students not being able to access certain facilities on campus due to other students occupying them with these devices
- Plumbing problems (including sewage flooding) due to students flushing paraphernalia and more down the toilet
- Unnecessary fire department calls for alarms being set off due to smoking
- Increased suspensions/expulsions - leading to fewer students accessing the education they deserve
- Behavior issues and heightened reactions due to being under the influence
- Poor academic behavior due to addiction



Ann Sobrato HS

401 Burnett Ave.
Morgan Hill, CA 95037
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Morgan Hill, CA 95037
(408) 201-6100

- Degradation and safety of our students, staff and campuses
- Increase of student physical altercations over substances and devices
- Increase in the “snitch” mentality, leading to difficulty in enforcing school rules and policies.
- Misappropriation of administrative and staff resources - spending time on this, where it could be better spent elsewhere (in the classroom)

Things we are doing on our end to help:

- Training staff and families on these substances/devices and how to help
- Exploring drug awareness and support initiatives
- Increased monitoring of student restrooms and personnel
- Restorative Justice
- Consistent and progressive consequences
- Increased counseling services available
- Increased SRO presence
- Use of resources to educate students on dangers and the law
- Changes in school safety policies in regards to proactive strategies for ensuring substances/devices aren't brought into events

This epidemic is nationwide and not something that one individual, school, district or community can solve. However, we are doing a disservice to the youth of Morgan Hill and the education system of which they are supposed to benefit, in considering the introduction of this industry to Morgan Hill. A decision by the Council to move forward with the cannabis industry will send a message loud and clear, that the city values revenue more than it values the health, safety and education of its youth and education system. Please hear us, acknowledge us and take action to partner with us in solving the vape/wax issues with our youth, rather than fuel the fire. Thank you for the opportunity to share our experiences. If you have any additional questions regarding how this decision would affect our schools, please do not hesitate to reach out to both of us.

Sincerely,

A handwritten signature in cursive script that reads "Courtney Macko".

Courtney Macko
Principal
Ann Sobrato High School

A handwritten signature in cursive script that reads "Tanya Calabretta".

Tanya Calabretta
Principal
Live Oak High School

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Rearding Pot Sales "Near Schools/In Morgan Hill" and Tonights Agenda
Date: Thursday, November 7, 2019 8:46:00 PM

Supplement

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Thursday, November 7, 2019 12:55 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Rearding Pot Sales "Near Schools/In Morgan Hill" and Tonights Agenda

FYI

Sent from my iPhone

Begin forwarded message:

From: Macy Crane <calbear.mm@gmail.com>
Date: November 7, 2019 at 12:30:00 PM PST
To: Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>
Subject: Re: Rearding Pot Sales "Near Schools/In Morgan Hill" and Tonights Agenda

Spell check is not my friend sometimes....."Regarding" not Rearding :-/.....

But at least I got your attention

Macy

On Thu, Nov 7, 2019 at 12:26 PM Macy Crane <calbear.mm@gmail.com> wrote:

My name is Macy Crane. I live at 17414 Blue Jay Ct, Morgan Hill. My children attend Nordstrom Elementary. I am the sitting Treasurer for the Nordstrom Home and School Club and the Manger of the 2010 Boys Black Soccer Team (Community Volunteer). I cannot be at the meeting this evening , as I have to care for my young children.

The idea of selling recreational pot in Morgan Hill is repugnant. But the idea of selling it 600 feet or yards (whatever) of our schools is beyond unreasonable. Looking at MHUSD current ranking within the state of California, not to mention the United States, it seems that throwing one more obstacle in the way of student success is irresponsible. I do not want legalized recreational pot in Morgan Hill; I

really do not want it near our schools. How far can a kid walk in 30 minutes? About that far is a reasonable distance from schools.

Thank you for your attention on this matter.

Macy Crane

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**City Council Meeting
November 6, 2019
Agenda Item#: 11
Revenue Measure Polling Results**



Agenda



- Why are we here?
- Recent History of Revenue Opportunities
- Current Needs
- Revenue Options Timing
- Godbe Research
- Engage Morgan Hill Community Advisory Group
- Discussion/Next Steps

Why are we here?



Risks to General Fund

- Strong recovery and growth from 2008 recession
- Redevelopment agency (RDA) dissolution
- Changing consumer patterns
- CALPERS returns are short of target
- Housing to jobs imbalance
- SB330 to potentially exacerbate above

Morgan Hill Revenue History



- Lowest tax revenue per capita in County
- Attempted Utility Users Tax in 2008
- Polled community in 2016 for potential sales tax
- Polled community in 2018 for 1% TOT and cannabis tax
- Future car dealer cancelled expansion to MH
- Two hotels will be decided by voters

Current Needs



- \$3.6 million public safety
- Up to \$3.4 million infrastructure
- Population spike would increase fiscal need
- RDCS Funds used for Ops./Maintenance ~ \$1.1M, need alternative funding source
- Housing does not cover the costs for services
- Engage Morgan Hill Community Advisory Group studying and committed to finding a solution

Revenue Options Studied



- Community Facilities District (CFD)
- Sales Tax Increase: quarter-cent

Community Facilities District



- City-wide fixed rate property tax assessment
- Varied rate structure
 - o Commercial/Residential, Existing/New
- Would generate \$1 million - \$7 million within 8 years
- Requires 2/3 support to enact – 51% support
 - o Results of polling will be explained

Sales Tax Increase



- Quarter-cent increase – most allowed by statute
- Would generate \$2.5 million annually
- Volatile to discretionary spending patterns
- Super majority March 2020
- Simple majority March 2020 with declared fiscal emergency
- Simple majority Nov 2020

Godbe Research





GODBE RESEARCH
Gain Insight



City of Morgan Hill: 2019 Revenue Measure Survey

November 6, 2019

Overview and Research Objectives

The City of Morgan Hill commissioned Godbe Research to conduct a survey of local voters with the following research objectives:

- Ascertain voters' perceptions of future direction of the City, gauge satisfaction with the City's provision of services and management of public funds, and;
- Assess potential voter support for CFD parcel tax and sales tax measures to preserve essential city services with funding that cannot be taken by the State;
- Prioritize projects and programs to be funded with the proceeds;
- Test the influence of informational and critical statements on potential voter support;
- Identify the rate and duration at which voters will support the measure; and
- Identify demographic and/or voter behavioral characteristics to validate the representativeness of the sample.

- Data Collection Landline (62), cell phone (141), text to online (300), and email to online (54) interviewing
- Universe 19,461 likely November 2020 voters in the City of Morgan Hill, with a subsample of those likely to vote in the March 2020 election (14,741)
- Fielding Dates October 2 through October 13, 2019
- Interview Length 22 minutes
- Sample Size 557 Likely November 2020 voters
442 Likely March 2020 voters
- Margin of Error $\pm 4.09\%$ Likely November 2020 voters
 $\pm 4.59\%$ Likely March 2020 voters



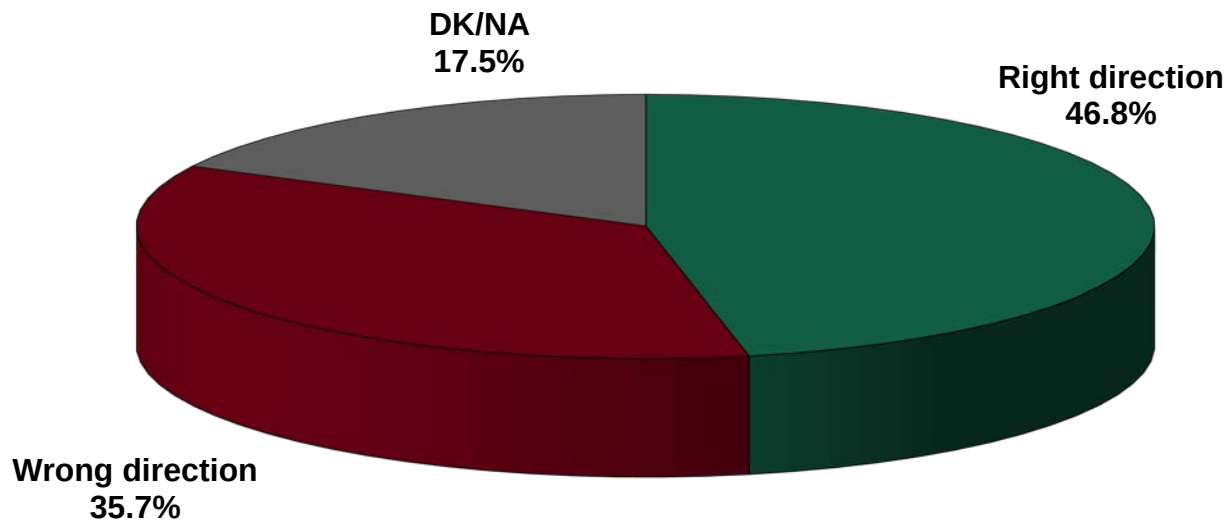
GODBE RESEARCH
Gain Insight



Key Findings

Q1. Opinion on the Future Direction of the City

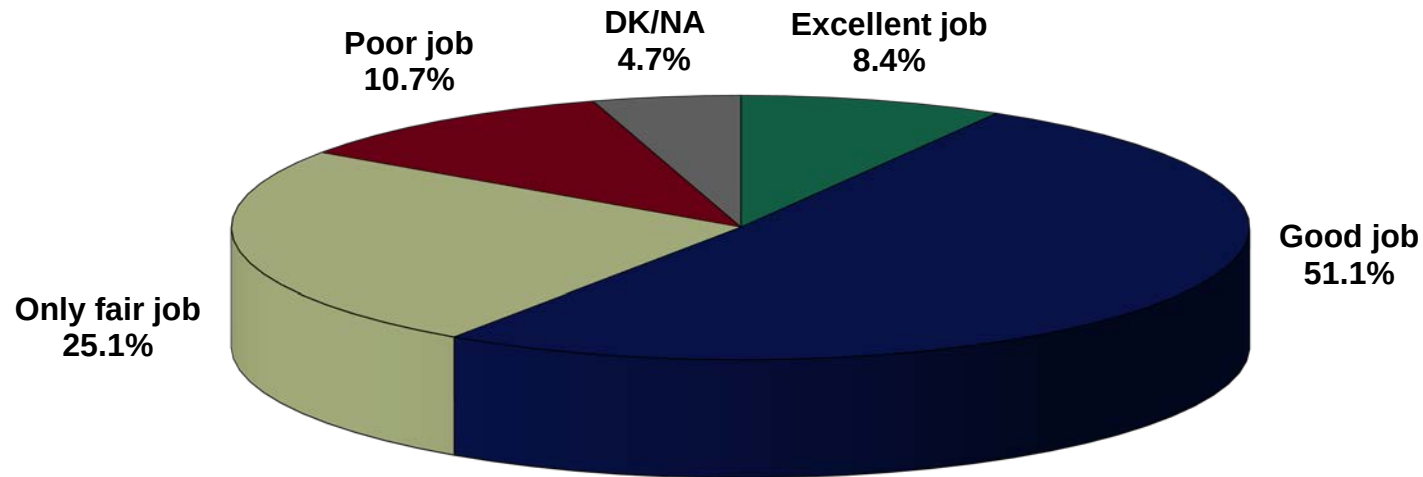
March 2020 (n=442)



	<u>March 2020</u>	<u>Nov 2020</u>	<u>Adults 18+ 2013</u>
Right direction	46.8%	51.2%	81.1%
Wrong direction	35.7%	33.2%	12.1%
DK/NA	17.5%	15.6%	6.7%

Q2. Rating of the Job the City is Doing to Provide Community Services

March 2020 (n=442)

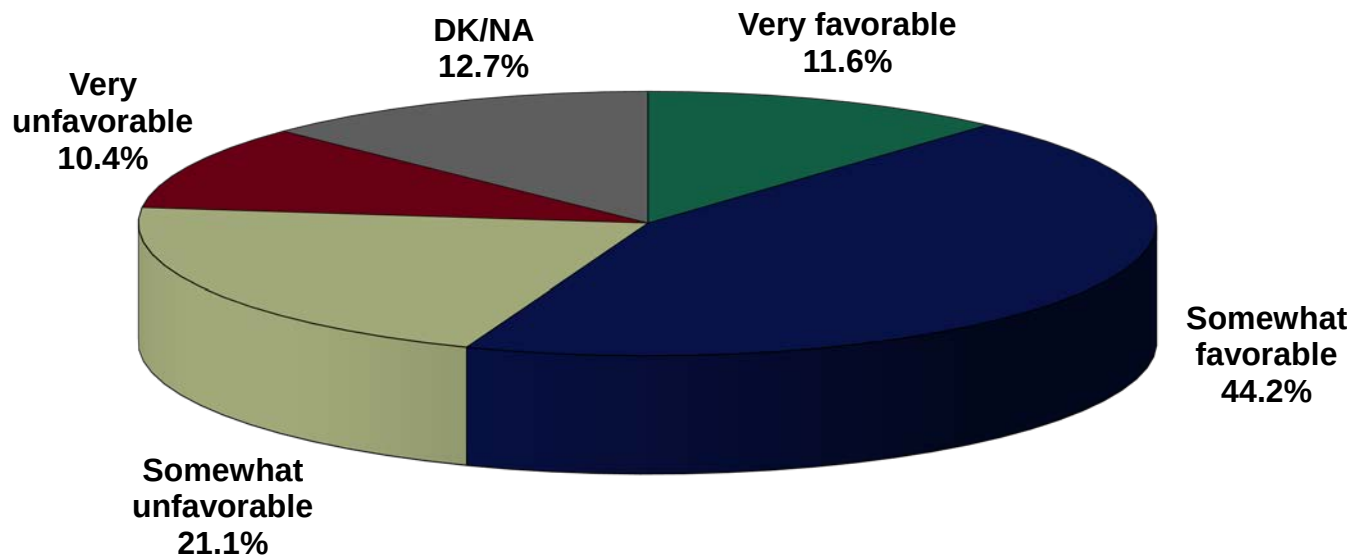


Adults 18+

	<u>March 2020</u>	<u>Nov 2020</u>	<u>2013</u>
Total Excel + Good	59.5%	60.8%	66.2%
Total Only fair + Poor	35.8%	34.2%	28.7%
Ratio	1.7	1.8	2.3

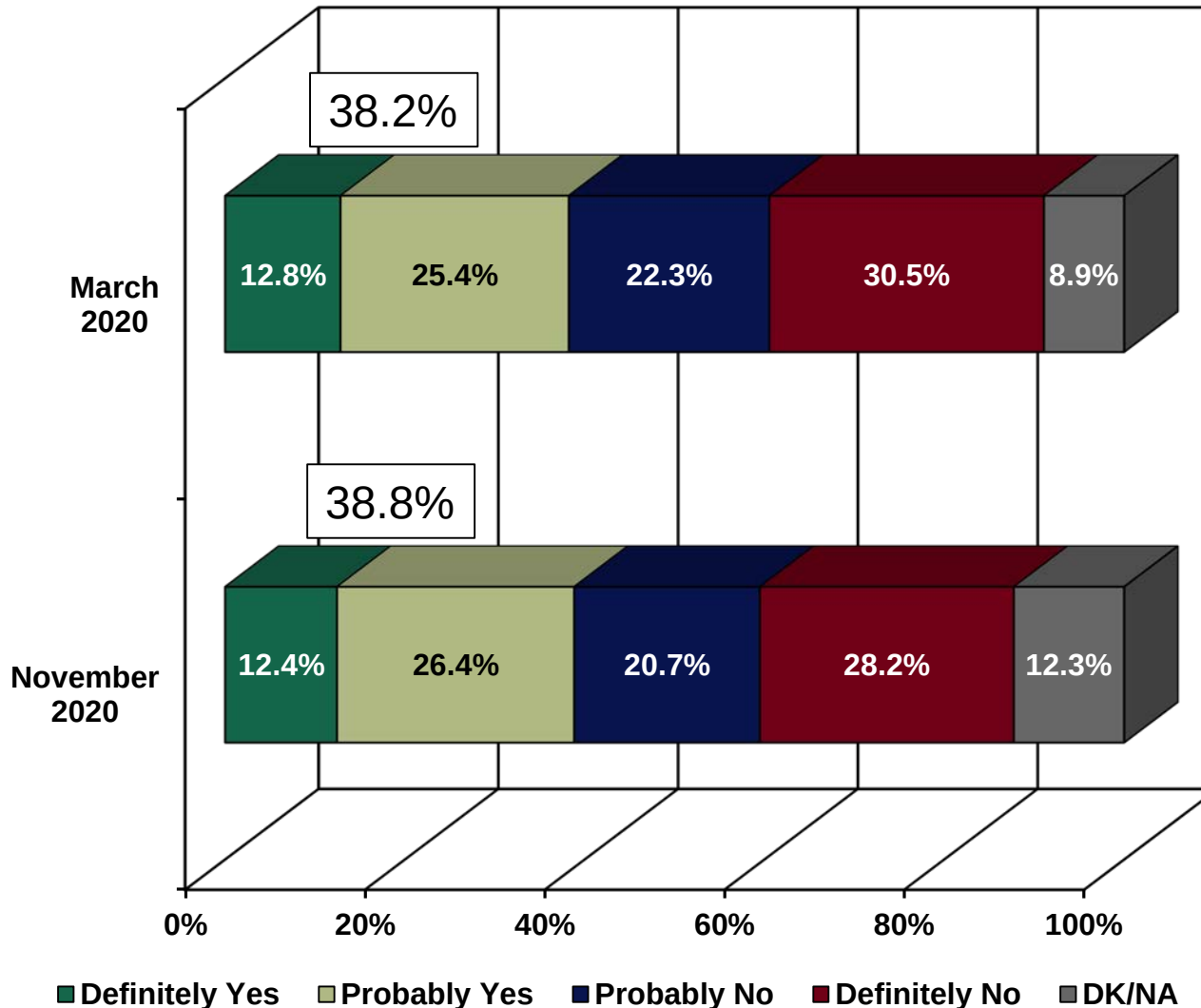
Q3. Opinion on Whether the City Effectively Manages Public Funds

March 2020 (n=442)



	<u>March 2020</u>	<u>Nov 2020</u>
Total Favorable	55.8%	56.5%
Total Unfavorable	31.5%	29.2%
Ratio	1.8	1.9

Q4. Uninformed Support for \$75 Existing/ \$500 New Purchase Parcel Tax Sample A

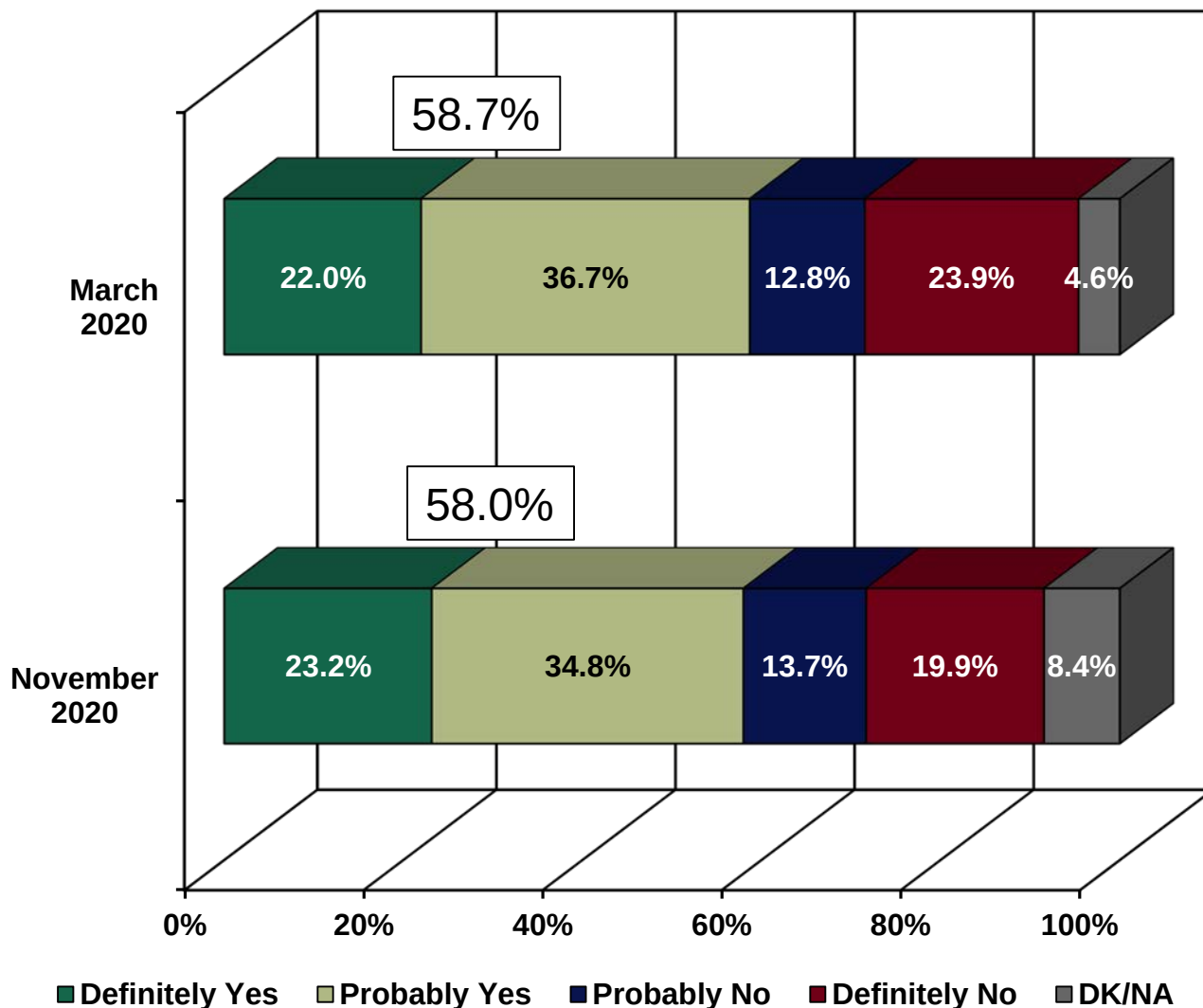


To preserve essential city services, including:

- 9-1-1 emergency response times,
- neighborhood police patrols,
- fixing potholes,
- fire prevention and protection services,

shall Morgan Hill's measure, creating an essential services levy, with an annual rate of \$75 per existing residence and \$500 per newly purchased residence, with alternative rates for non-residential – see voter guide for tax rate information – providing \$1.6 million dollars annually, until repealed by voters, with annual inflation adjustments, independent citizen oversight, and no funds for Sacramento, be adopted?

Q5. Uninformed Support for ¼ Cent Sales Tax Sample B



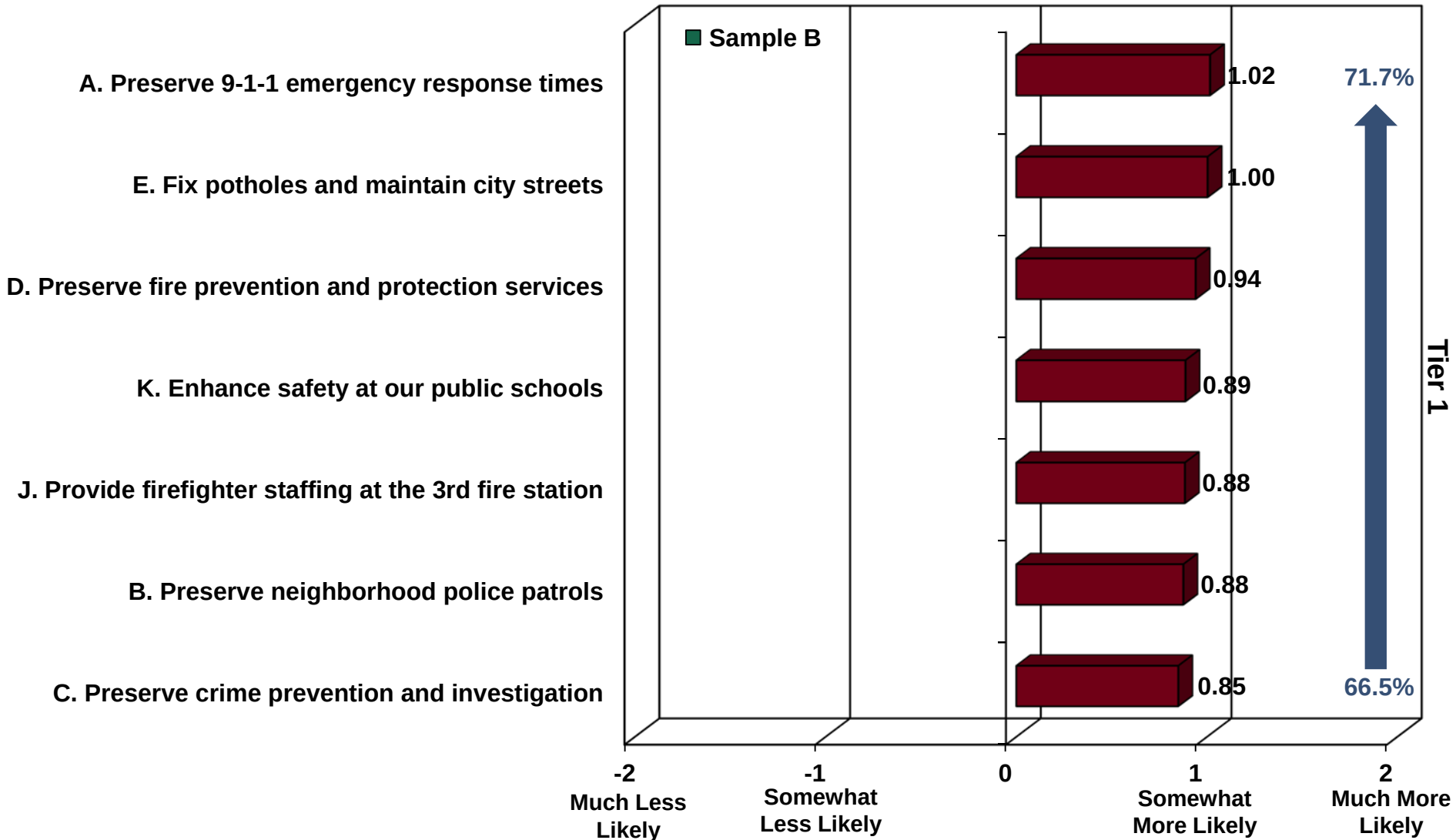
To preserve essential city services, including:

- 9-1-1 emergency response times,
- neighborhood police patrols,
- crime prevention and investigation,
- fire prevention and protection services, and
- fixing potholes and maintaining city streets,

shall Morgan Hill's measure, enacting a one-quarter cent sales tax, providing \$2.5 million dollars annually, until repealed by voters, with independent citizen oversight, and no funds for Sacramento, be adopted?

Q6. Features of the Measure I

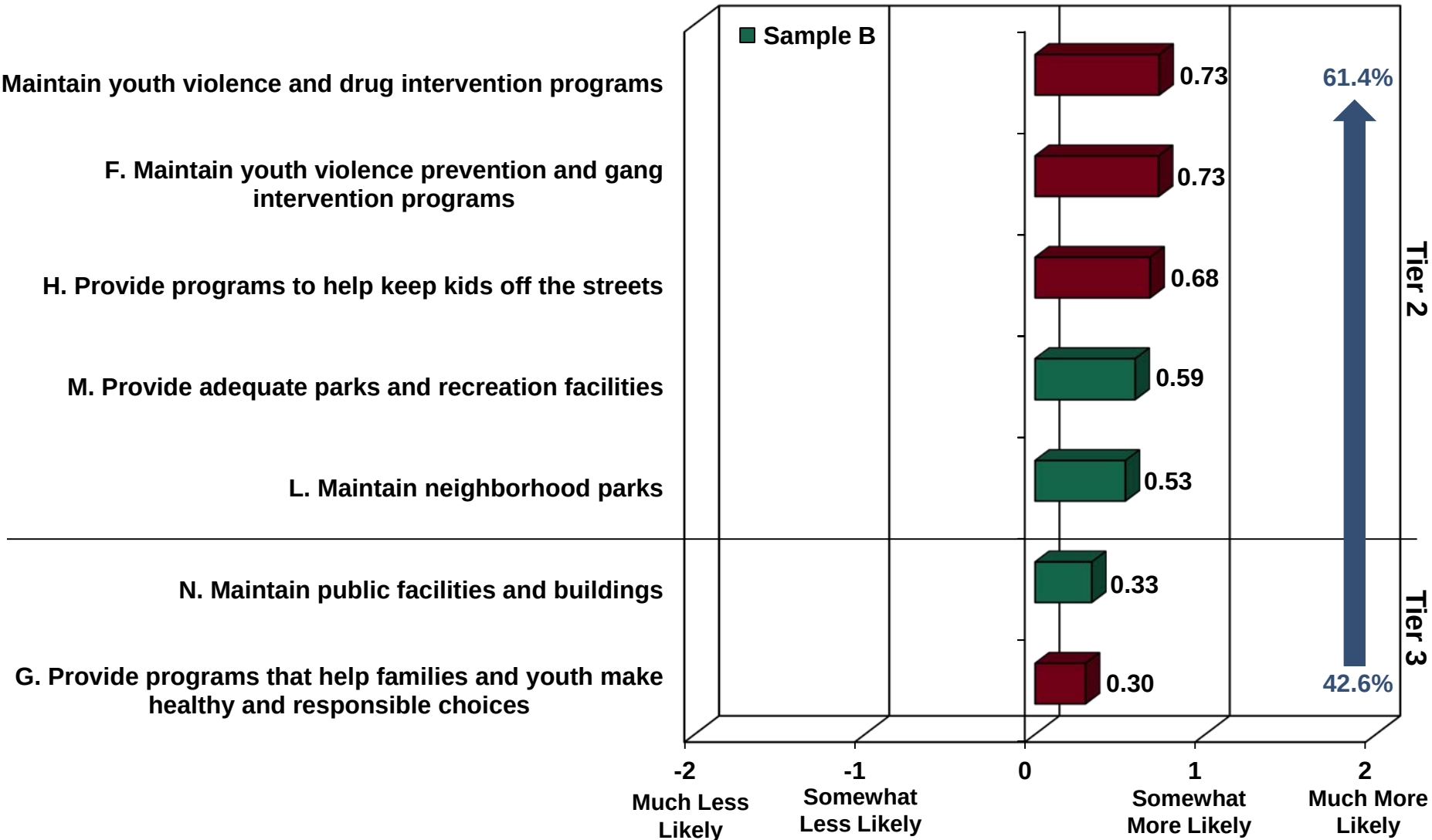
March 2020 (n=442)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Much More Likely" = +2, "Somewhat More Likely" = +1, "No Effect" = 0, "Somewhat Less Likely" = -1, and "Much Less Likely" = -2.

Q6. Features of the Measure II

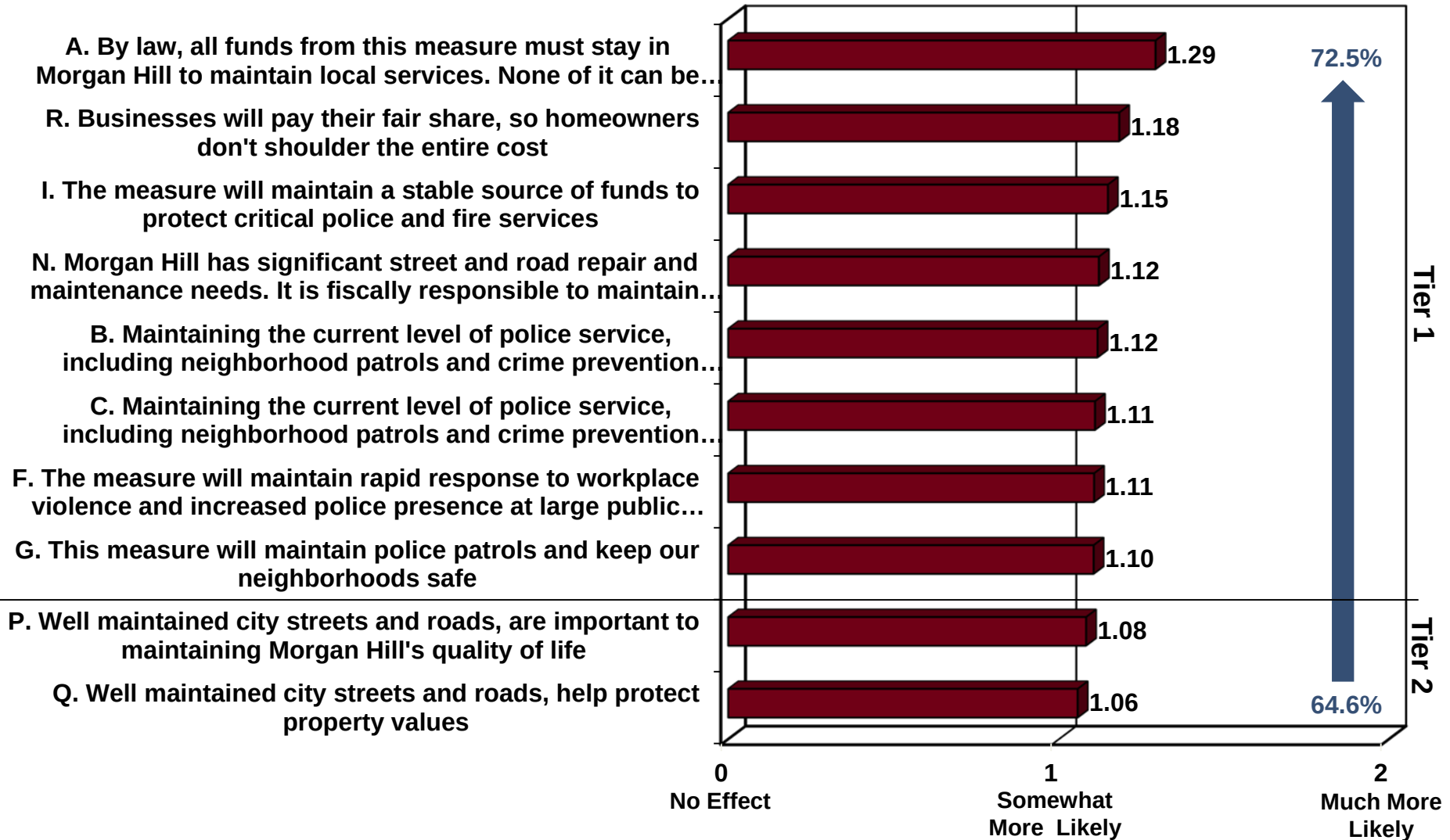
March 2020 (n=442)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Much More Likely" = +2, "Somewhat More Likely" = +1, "No Effect" = 0, "Somewhat Less Likely" = -1, and "Much Less Likely" = -2.

Q7. Informational Statements I

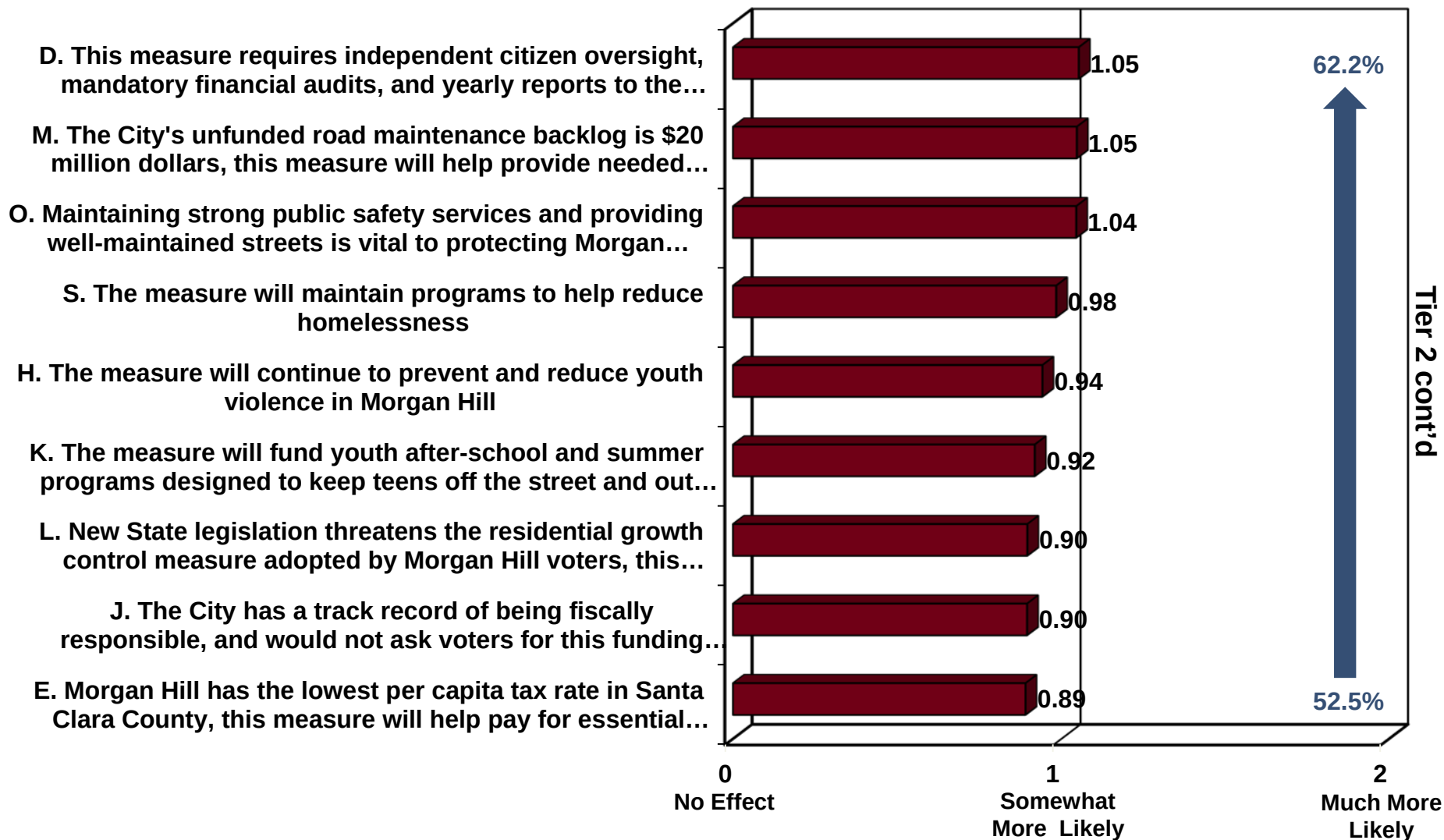
March 2020 (n=442)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Much More Likely" = +2, "Somewhat More Likely" = +1, and "No Effect" = 0.

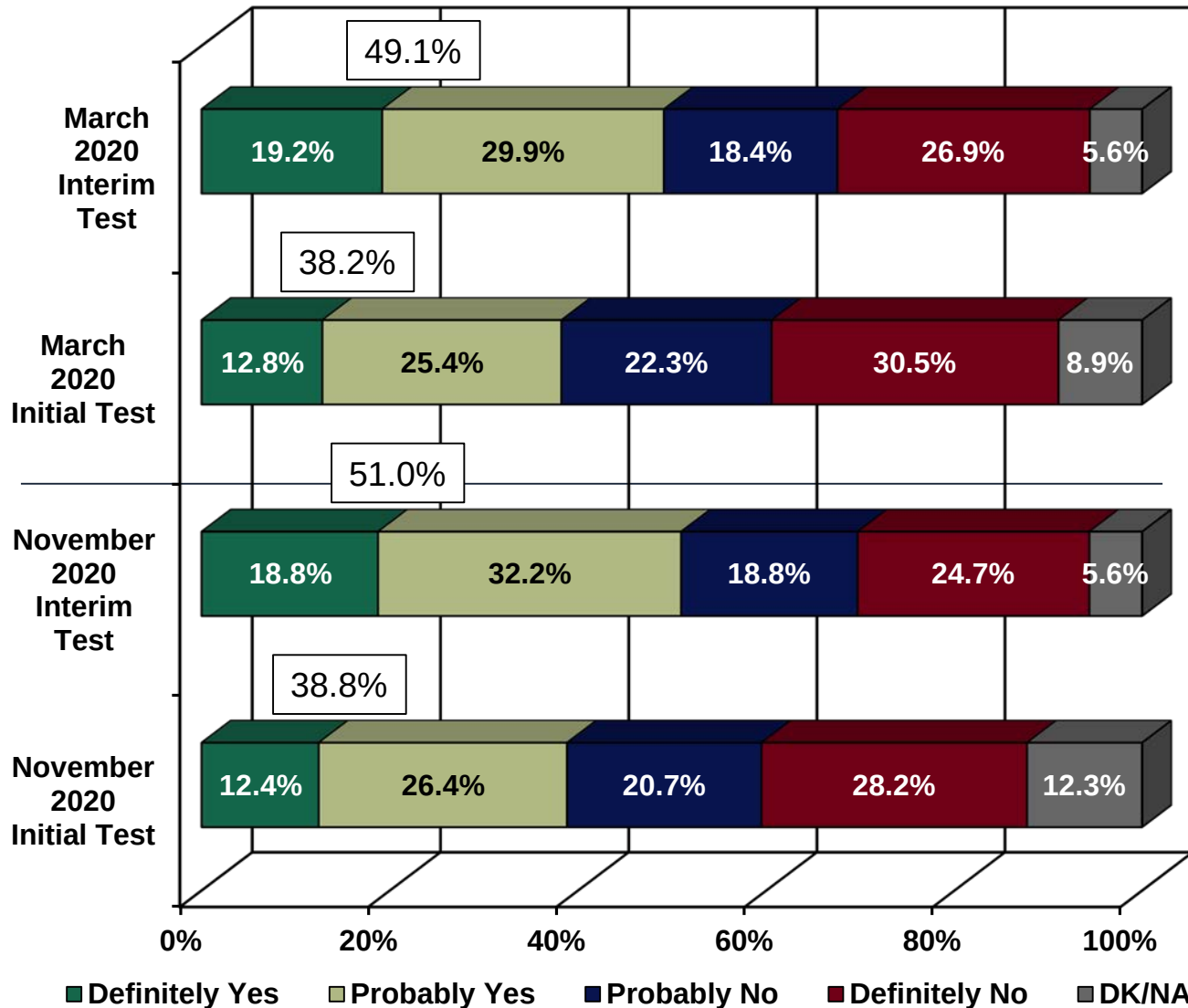
Q7. Informational Statements II

March 2020 (n=442)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Much More Likely" = +2, "Somewhat More Likely" = +1, and "No Effect" = 0.

Q8. Interim Support for \$75 Existing/ \$500 New Purchase Parcel Tax Sample A

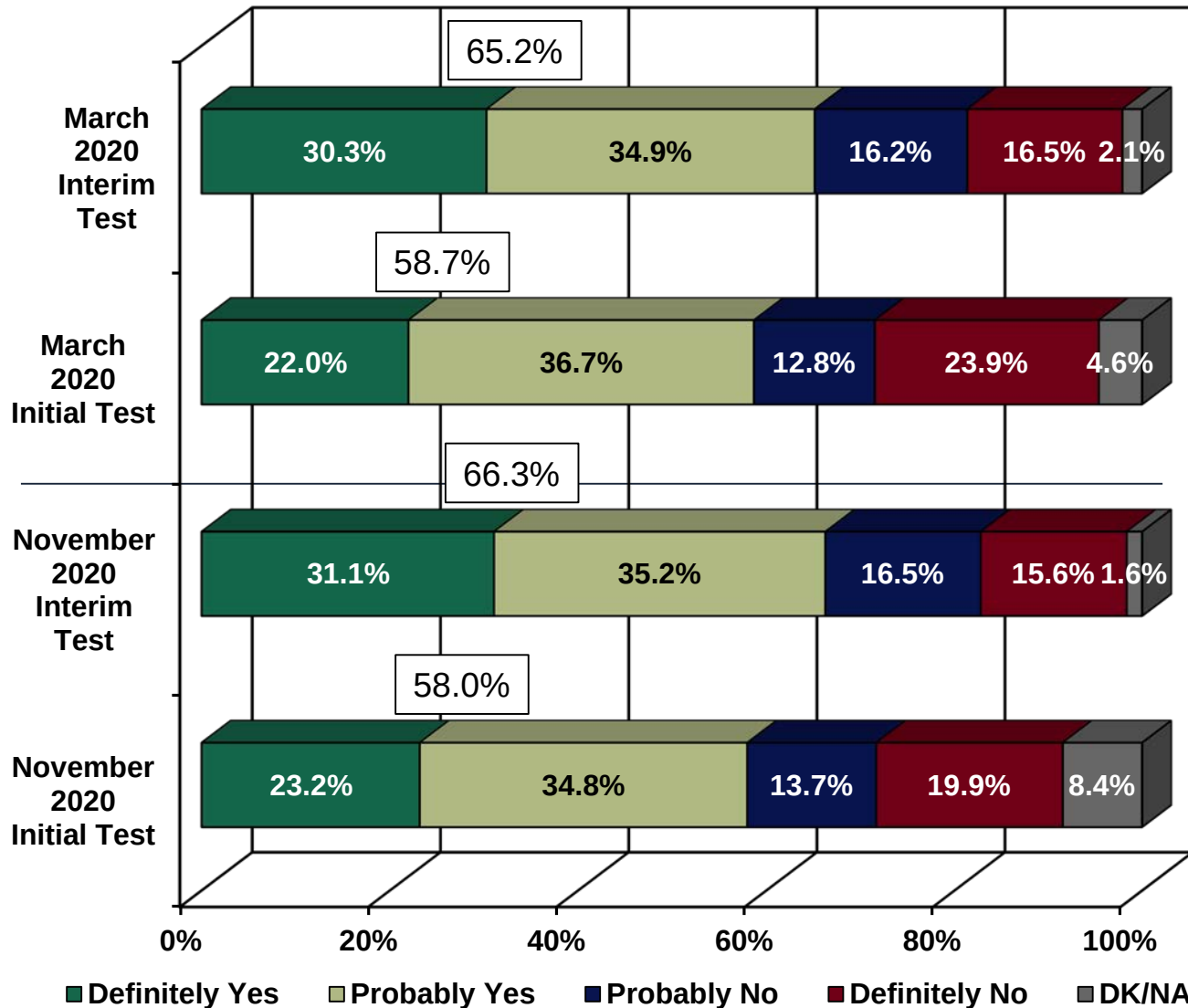


To preserve essential city services, including:

- 9-1-1 emergency response times,
- neighborhood police patrols,
- fixing potholes,
- fire prevention and protection services,

shall Morgan Hill's measure, creating an essential services levy, with an annual rate of \$75 per existing residence and \$500 per newly purchased residence, with alternative rates for non-residential – see voter guide for tax rate information – providing \$1.6 million dollars annually, until repealed by voters, with annual inflation adjustments, independent citizen oversight, and no funds for Sacramento, be adopted?

Q9. Interim Support for ¼ Cent Sales Tax Sample B



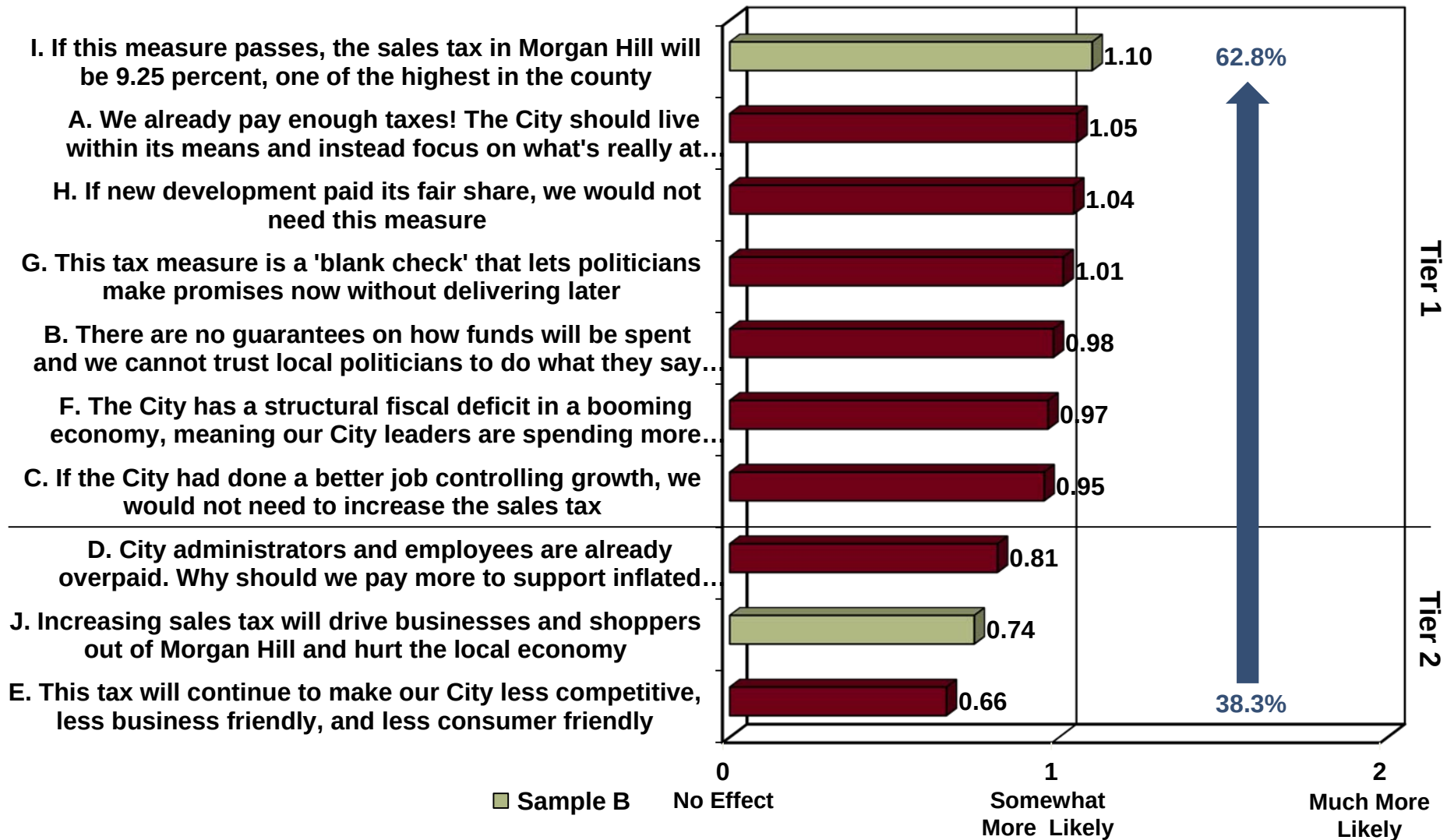
To preserve essential city services, including:

- 9-1-1 emergency response times,
- neighborhood police patrols,
- crime prevention and investigation,
- fire prevention and protection services, and
- fixing potholes and maintaining city streets,

shall Morgan Hill's measure, enacting a one-quarter cent sales tax, providing \$2.5 million dollars annually, until repealed by voters, with independent citizen oversight, and no funds for Sacramento, be adopted?

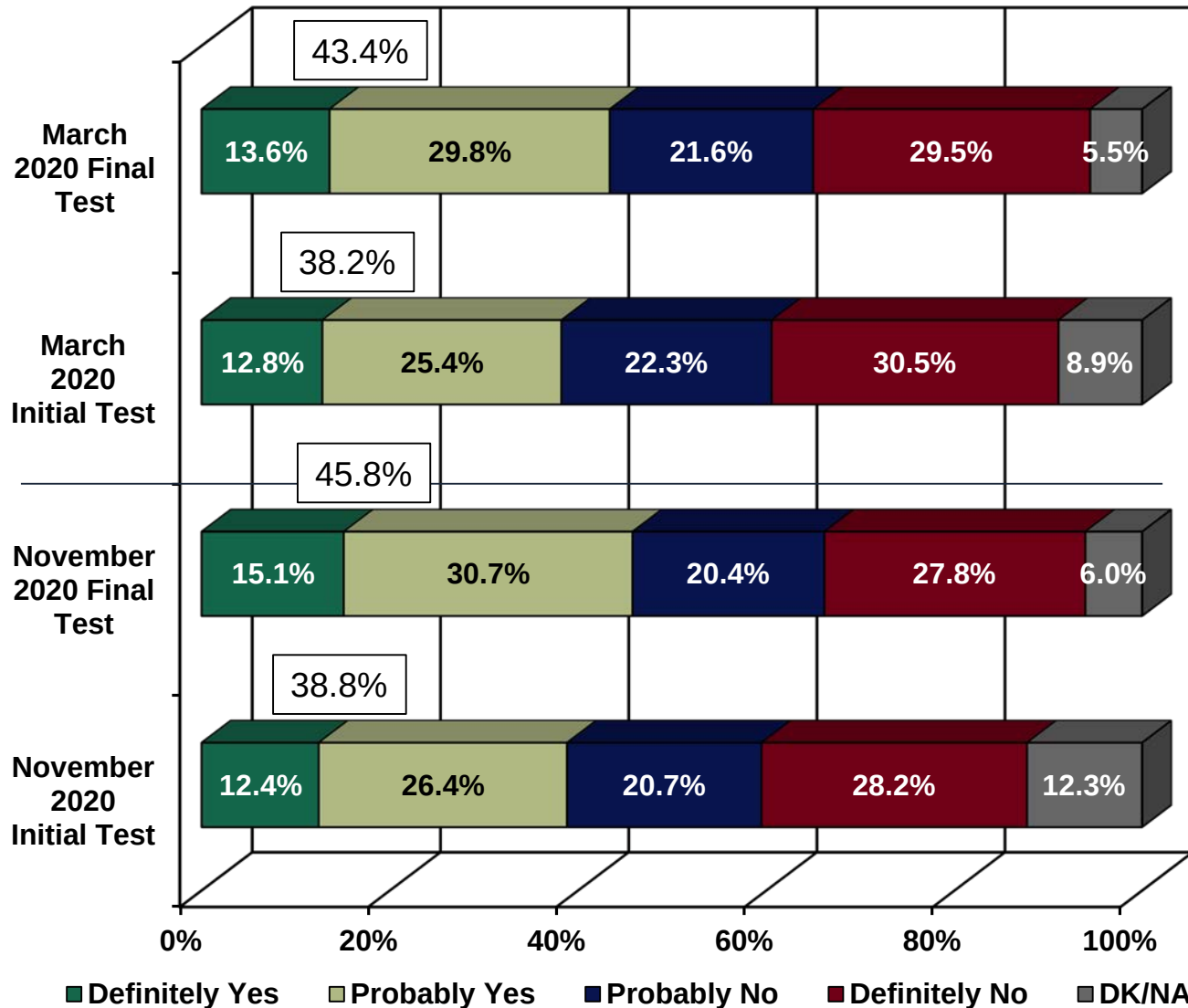
Q10. Critical Statements

March 2020 (n=442)



Note: The above rating questions have been abbreviated for charting purposes, and responses were recoded to calculate mean scores: "Much More Likely" = +2, "Somewhat More Likely" = +1, and "No Effect" = 0.

Q11. Informed Support for \$75 Existing/ \$500 New Purchase Parcel Tax Sample A

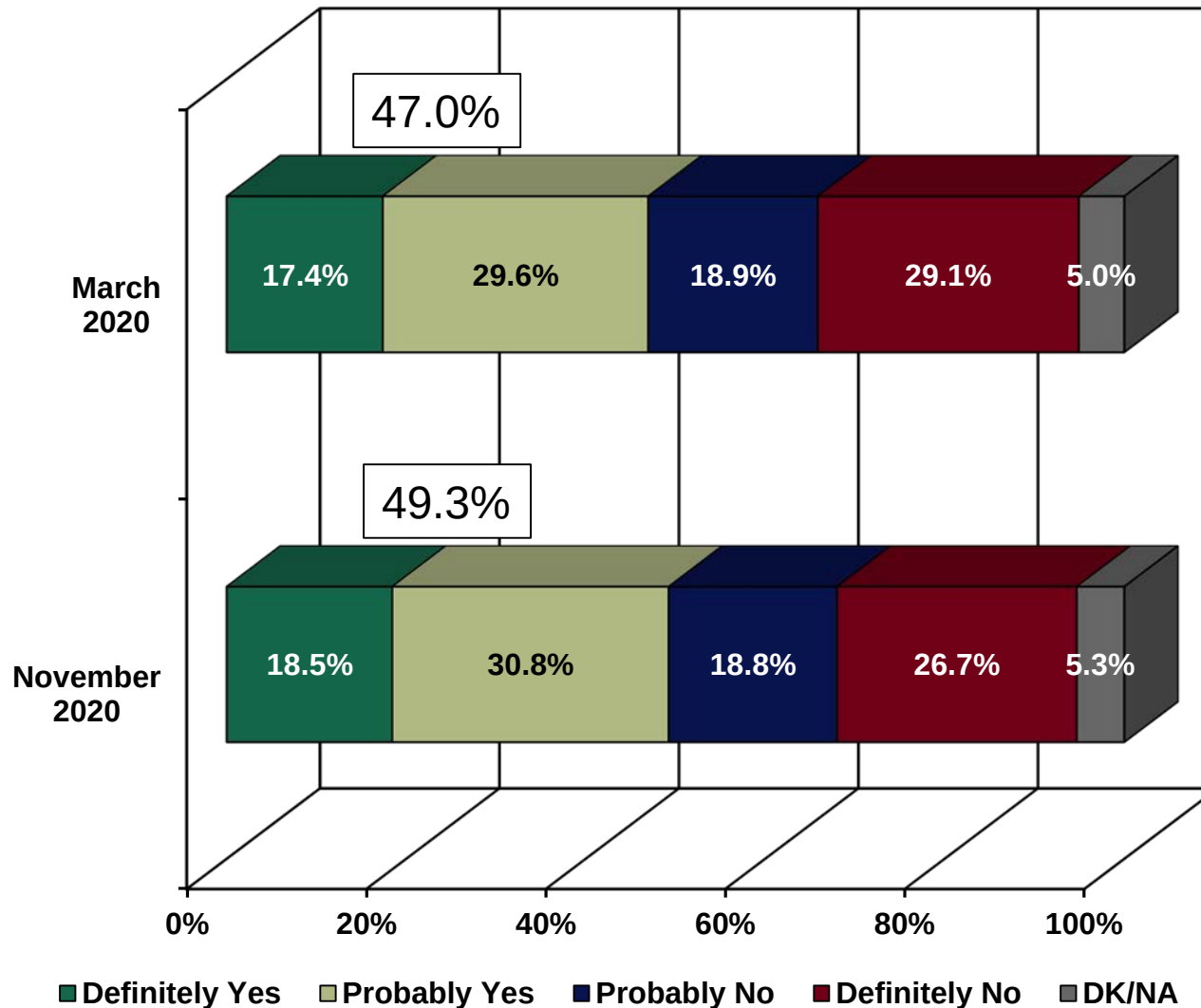


To preserve essential city services, including:

- 9-1-1 emergency response times,
- neighborhood police patrols,
- fixing potholes,
- fire prevention and protection services,

shall Morgan Hill's measure, creating an essential services levy, with an annual rate of \$75 per existing residence and \$500 per newly purchased residence, with alternative rates for non-residential – see voter guide for tax rate information – providing \$1.6 million dollars annually, until repealed by voters, with annual inflation adjustments, independent citizen oversight, and no funds for Sacramento, be adopted?

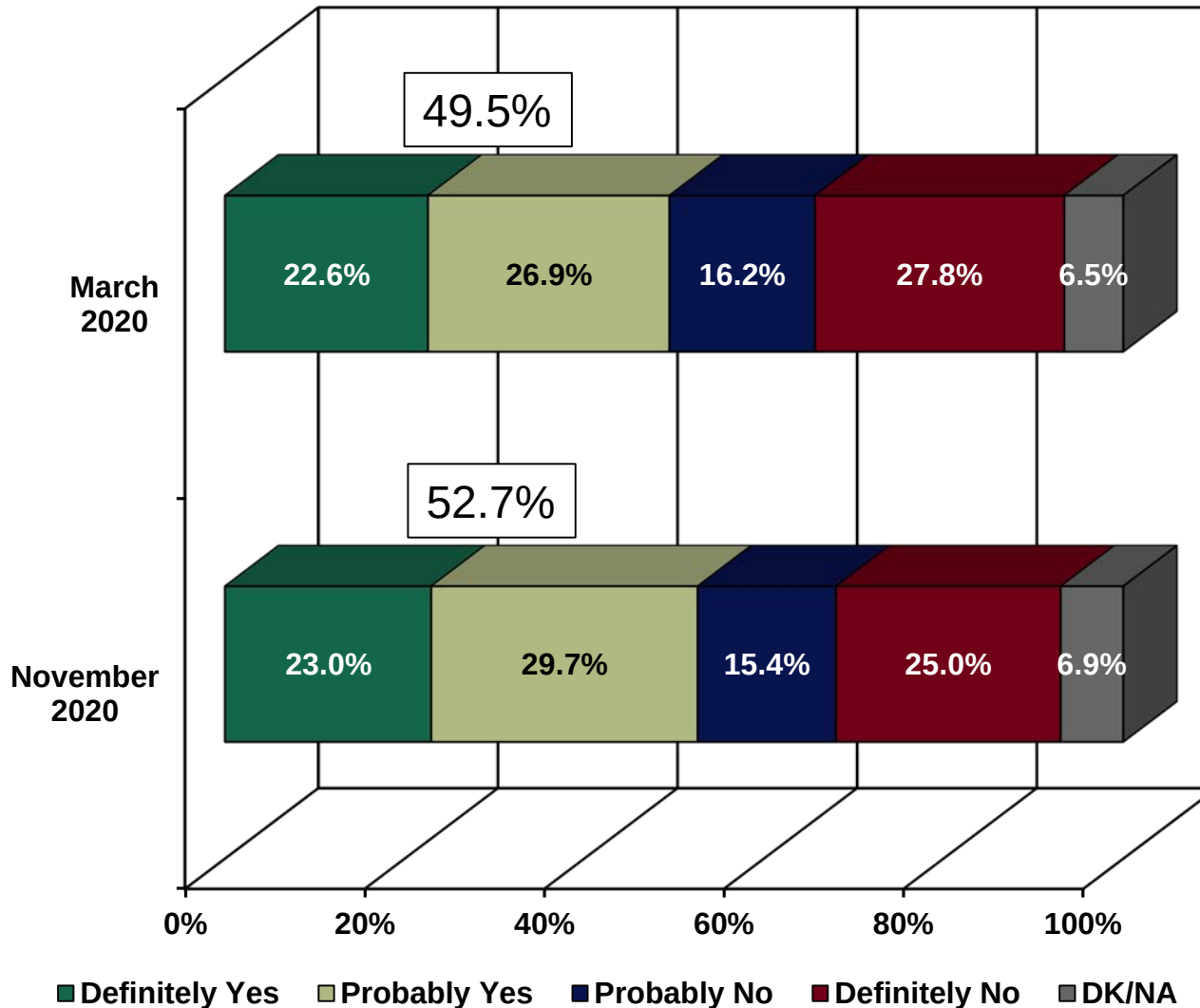
Q12. Support for Alternative \$60 Existing/ \$475 New Purchase Parcel Tax Sample A



Instead of levying \$75 per parcel for existing property owners and \$500 per parcel for newly purchased properties, what if the measure that would preserve essential city services, including: 9-1-1 emergency response times; neighborhood police patrols; fixing potholes; fire prevention and protection services, would levy \$60 per parcel for existing property owners and \$475 per parcel for newly purchased properties?

If the election were held today, would you definitely vote yes, probably vote yes, probably vote no, or definitely vote no on this measure?

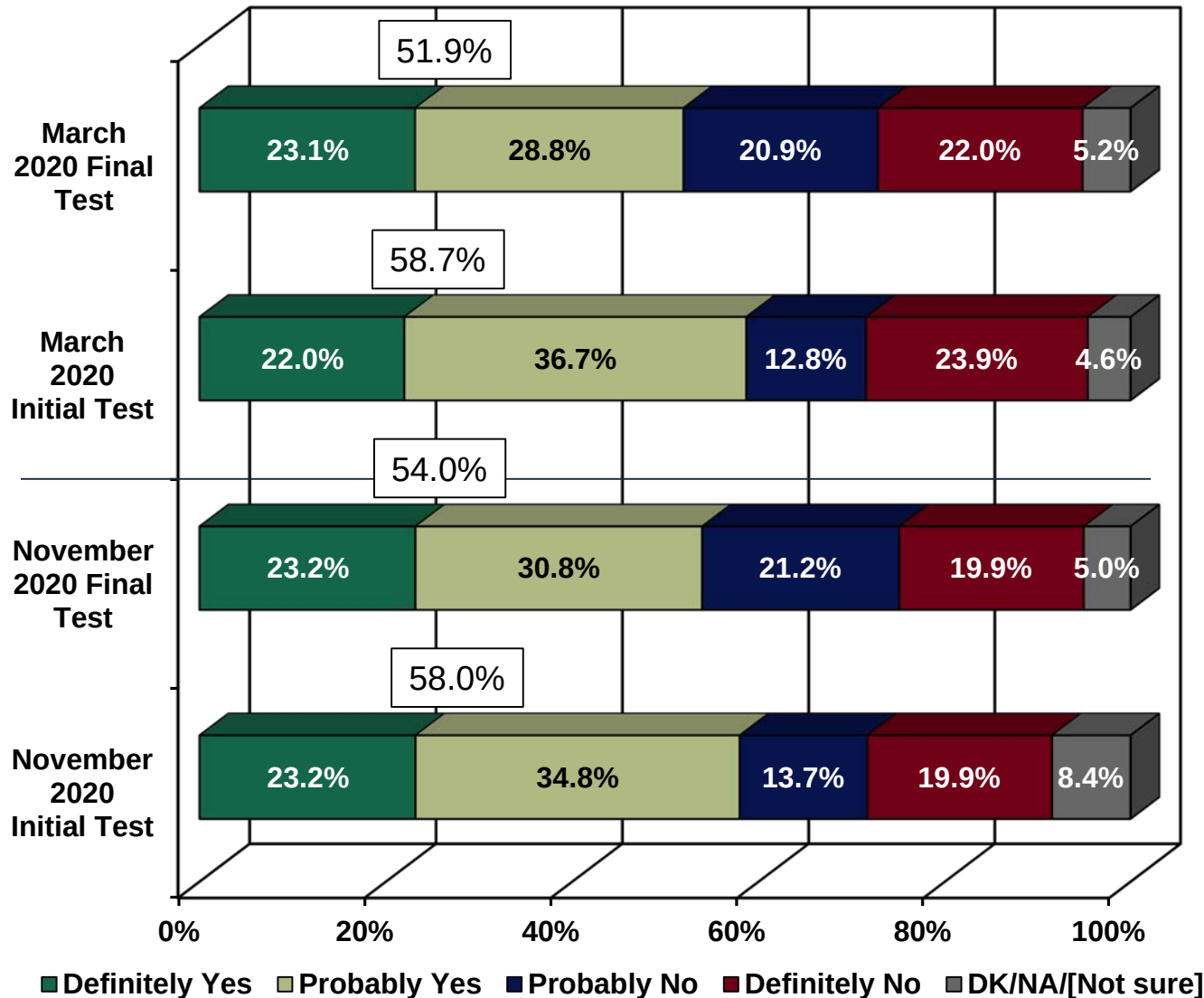
Q13. Support for Alternative 8 Year Duration for Parcel Tax Sample A



Instead of lasting until repealed by voters, what if the measure that would preserve essential city services, including: 9-1-1 emergency response times; neighborhood police patrols; fixing potholes; fire prevention and protection services, would last for 8 years.

If the election were held today, would you definitely vote yes, probably vote yes, probably vote no, or definitely vote no on this measure?

Q14. Informed Support for ¼ Cent Sales Tax Sample B



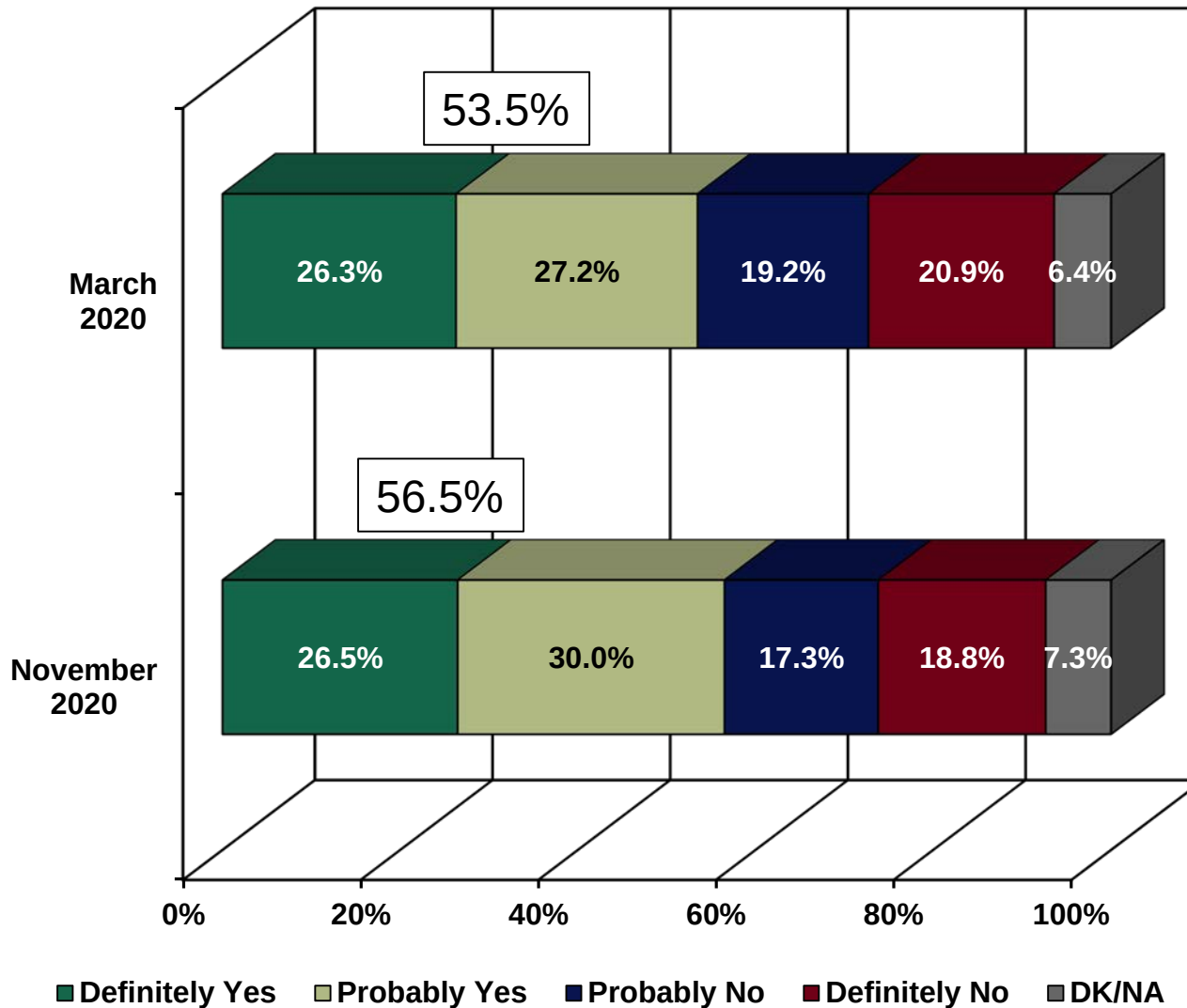
To preserve essential city services, including:

- 9-1-1 emergency response times,
- neighborhood police patrols,
- crime prevention and investigation,
- fire prevention and protection services, and
- fixing potholes and maintaining city streets,

shall Morgan Hill's measure, enacting a one-quarter cent sales tax, providing \$2.5 million dollars annually, until repealed by voters, with independent citizen oversight, and no funds for Sacramento, be adopted?

Q15. Support for Alternative 8 Year Duration for Sales Tax

Sample B



Instead of lasting until repealed by voters, what if the measure that would preserve essential services, including: 9-1-1 emergency response times, neighborhood police patrols, crime prevention and investigation, fire prevention and protection services, and fixing potholes and maintaining city streets would last for 8 years.

If the election were held today, would you definitely vote yes, probably vote yes, probably vote no, or definitely vote no on this measure?

- The survey revealed a base of voter support for a ¼ cent sales tax measure, but much more limited support for the CFD parcel tax.
 - Support for a hypothetical general-purpose sales tax measure in the November 2020 election was 58.0% on the uninformed test, 66.3% on the interim test and 54.0% on the informed test. And, the average of the interim and informed test was 60.2%.
 - Support for a hypothetical CFD parcel tax measure in the March 2020 election was 38.2% on the uninformed test, 49.1% on the interim test and 43.4% on the informed test.
- Top tier features (listed below) suggest that some of the items in the ballot question could be revised to increase support.
 - Preserve 9-1-1 emergency response times.
 - Fix potholes and maintain city streets.
 - Preserve fire prevention and protection services.
 - Enhance safety at our public schools.
 - Provide firefighter staffing at the 3rd fire station.
 - Preserve neighborhood police patrols.
 - Preserve crime prevention and investigation.

- Top tier informational statements were:
 - By law, all funds from this measure must stay in Morgan Hill to maintain local services. None of it can be taken by Sacramento.
 - Businesses will pay their fair share, so homeowners don't shoulder the entire cost.
 - The measure will maintain a stable source of funds to protect critical police and fire services.
 - Morgan Hill has significant street and road repair and maintenance needs. It is fiscally responsible to maintain our streets, roads, and fix potholes now, so our roads don't deteriorate further and become more costly to fix in the future.
 - Maintaining the current level of police service, including neighborhood patrols and crime prevention programs, fire protection, and 9-1-1 emergency response services is necessary to keep Morgan Hill a safe place to live and raise a family.
 - Maintaining the current level of police service, including neighborhood patrols and crime prevention programs, is vital to protecting Morgan Hill's quality of life.
 - The measure will maintain rapid response to workplace violence and increased police presence at large public events in Morgan Hill.
 - This measure will maintain police patrols and keep our neighborhoods safe.
- Given the survey findings, Godbe Research recommends that the City of Morgan Hill consider moving forward with a general-purpose sales tax measure for the November 2020 election.



GODBE RESEARCH
Gain Insight



www.godberesearch.com

California and Corporate Offices
1575 Old Bayshore Highway, Suite 102
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Reno, NV 89521

Pacific Northwest Office
601 108th Avenue NE, Suite 1900
Bellevue, WA 98004

Staff Recommendations

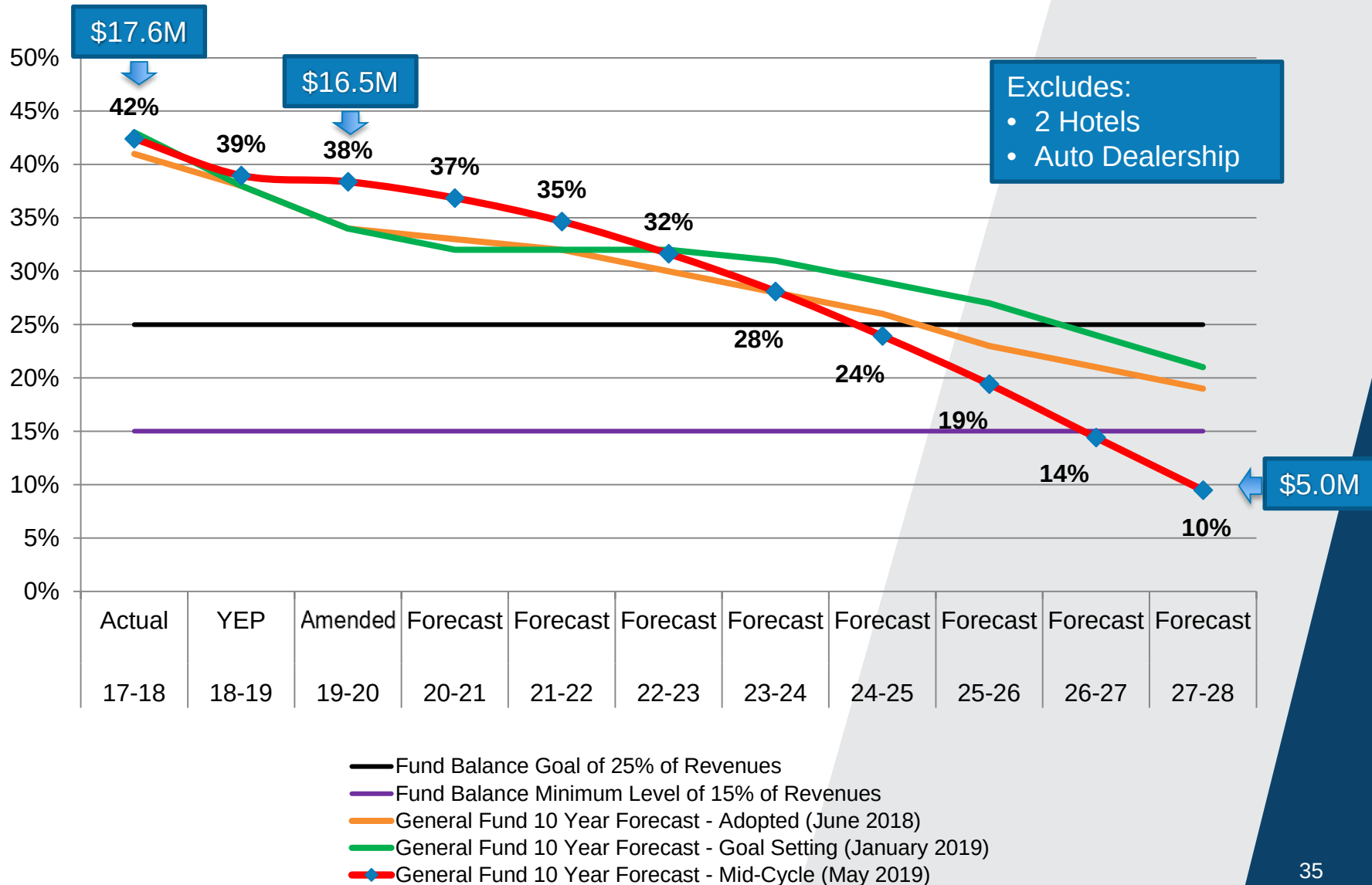


1. Accept report on polling results; and
2. Direct staff to continue with the Engage Morgan Hill process and provide any additional direction.

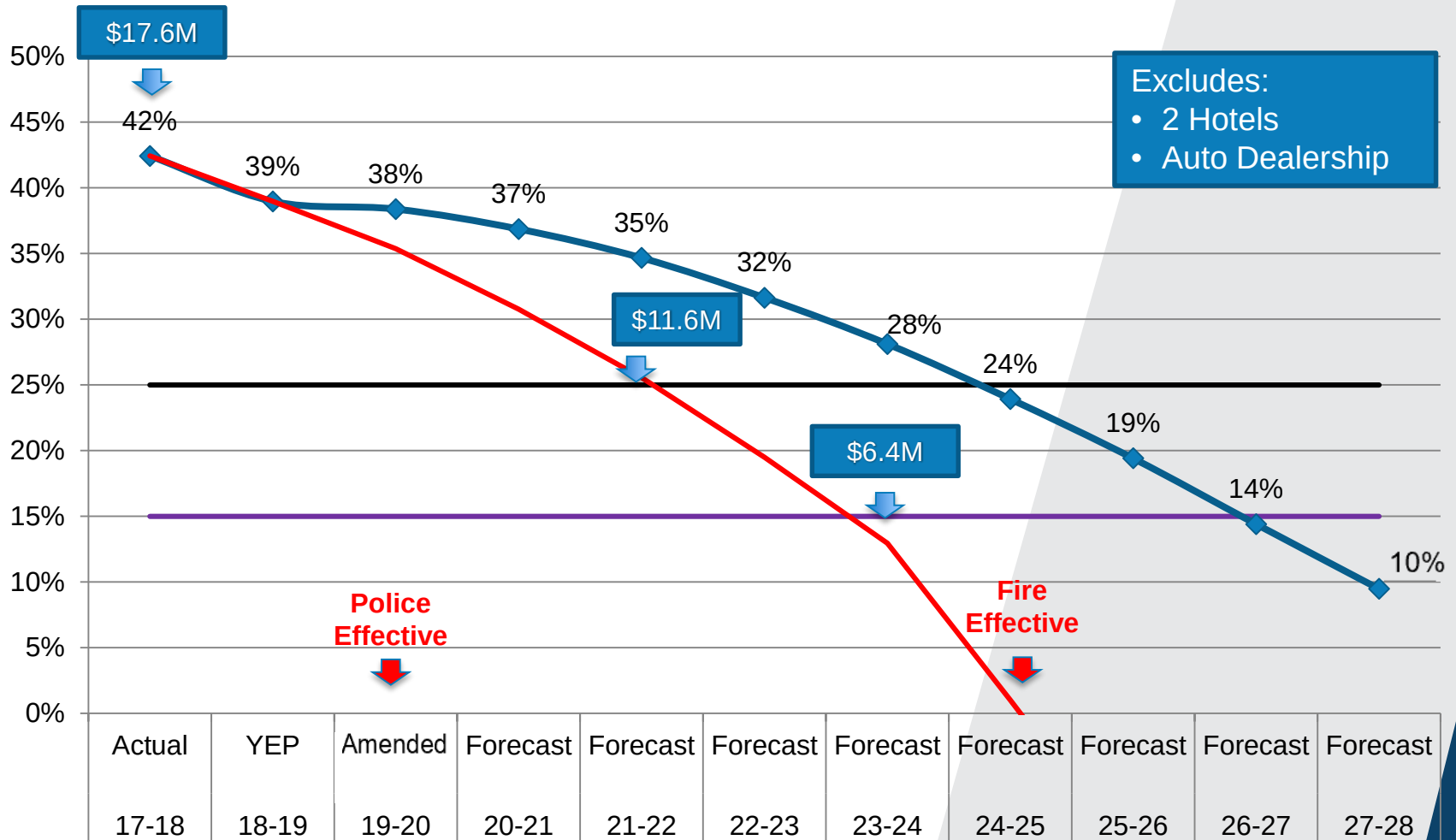
Questions, Discussion and Next Steps



General Fund Balance: Mid-Cycle



General Fund Balance (With Public Safety Master Plan)



- Fund Balance Goal of 25% of Revenues
- Fund Balance Minimum Level of 15% of Revenues
- ◆ General Fund 10 Year Forecast - Mid-Cycle (May 2019)
- General Fund 10 Year Forecast - with Additional PD and Fire

HOUSING

Below Market Rate (BMR) Home Ownership Program November 6, 2019

Item #12



Recommendations

1. Receive report.
2. Maintain existing affordable housing ownership contract and not shift the focus of the affordable ownership program.

Key Considerations



- City cannot alter contracts without damaging enforceability.
- Rate of Return vs. Long Term Stability Discussion - Equity earning asset for the buyer or long-term affordability opportunity.
- The decision made for Madrone will impact all owners in the Housing Program if it is an equity earning asset decision.
- With no contract changes, housing funds used to provide equity return to owners.
- 2018 - 10% annual return on down payment City Council Policy.

Rate of Return on Investment vs. Long Term Affordability



- The City's affordable housing mission is to preserve affordability, improve, and create safe, quality, rental and ownership housing for residents at all income levels.
- The Program is now 40 years old, with both ownership and rental developments governed by 30 plus variations of agreements or contracts.



The Madrone Homeowner Request



- To change the resale formula contained in their contractual resale restrictions to utilize Area Median Income (AMI), instead of Consumer Price Index (CPI).
- New BMR homeowner agreements today use CPI when calculating the resale value. However, BMR sales today do not have the same structure of financing used to develop and sell the Madrone units. Madrone is not the only development with resale restrictions containing AMI.
- Because all contracts are unique and sale circumstances are not equal, this is not an apples to apples comparison. Ex. Existing contracts carry different durations 25, 35 and 45 years.

CPI & AMI

- CPI would yield a greater return on a 2009 purchase price which was subsidized by deferred payment financing.
- From 2009 to 2016, AMI increased less than 2%.
- CPI increased over 30% over the same period. However, in 2019, AMI increased significantly; 25%

Madrone Project



- Ownership project created by South County Housing (SCH) developer:
 - 45-year deed restricted homes
 - 78 homes purchased (2008-2012)
 - 9 units are market rate units, and 69 are a combination of low- and moderate-income units
- Completed/sold as the housing market was impacted by the recession. Citywide, Morgan Hill housing values fell 40%
- Madrone Townhomes, like all multi and single-family homes citywide, lost significant value and sales prices fell.

Madrone Project (Cont'd)

- Land and construction costs did not fall commensurately for units constructed. Area Median Income was also low. To sell the units at low and moderate income, significant deferred down payment assistance was offered, reducing monthly mortgage payments.
- Most of the 69 homes purchased had first mortgages that were under \$190,000.

Madrone Project (Cont'd)



- Homes sold in the range of \$250,000 for a 1-bedroom to a high of \$495,000 for a 3-bedroom unit, but with reduced first mortgages.
- Owners are not prohibited from prepaying or making interest payments on deferred down payment assistance loans.
- The City did not design the project and/or its financing structure. City did not sell units to owners. City did provide some down payment assistance.

Homeowner Original Request



- In 2016, a homeowner inquired about selling their BMR.
- Due to the lack of increase in AMI, coupled with their down payment commitment and deferred accrued interest, they would not receive any equity and would owe \$15,000 at the time of sale.
- The homeowner did not sell at that time.

Council Action in 2018



- At the request of the Madrone homeowners, in October of 2018 Council considered and approved an annual 10% minimum return on an individual's out of pocket down payment.
- Example: Out of pocket down payment was \$18,350, annual return of \$1,835 or 10% per year for every year that that they lived in the home; 9 years. Estimated due to this household in 2018: \$34,865 after paying off their first mortgage and deferred interest down payment assistance.
- The homeowner did not sell their home at that time.

Current Status AMI vs. CPI



- By 2019, AMI increased by nearly 25%, creating a significant increase in the resale value per the existing contracts.

Description	AMI Method (Existing Contract)	CPI Method
Estimated Current BMR Sales Price	\$ 464,572	\$ 532,588
Estimated First Mortgage Payoff	(180,000)	(180,000)
Estimated Down Payment Assistance Payoff	(241,548)	(241,548)
Estimated Return to Homeowner	\$ 43,024	\$ 111,040

Current Status AMI vs. CPI



- In the previous example, the current AMI contract yields the homeowner an estimated \$43,024 or over 130% return after paying off all contractual obligations.
- Homeowner is now requesting consideration of replacing AMI with CPI formula in contract, yielding \$111,040 to homeowner or over 500% return on Down Payment.

Staff Recommendation



- Maintain existing affordable housing ownership contract and not shift the focus of the affordable ownership program.
 - The City cannot control the market and/or be responsible for guaranteeing a return.
 - Program offers owners opportunities to save their earnings and live comfortably. Nothing precludes owners from prepayment of their deferred interest/down payment assistance.
 - A change to the contract terms based on an attempt to increase value or equity for any one household would place Madrone units up for resale in a higher income category before they need to be.

Questions?



Homeowners out of pocket down payment \$18,350



First mortgage \$180,000. Or \$1,021/mo. @ 5.49%

City Redevelopment Agency DPA \$70,000 at 3% per year

State BEGIN DPA \$30,000 @ 3% per year

County of Santa Clara HOME funds DPA \$40,000 @ 3%

State Cal Home DPA \$27,800 @ 3% per year

State CalHFA ChDAP DPA \$11,168 @ 3.25%

Housing Trust of Silicon Valley DPA \$6,500 @ 3.25% (est.)

**Total Down payment/Closing Cost Assistance: \$185,468
(accruing \$5,608 annually or 3.03%)**

AMI Example: Current Contract



- In 2009 a homeowner purchased a 2-bedroom unit for \$372,725
- Receiving a total of \$185,468 (accruing \$5,608 annually) deferred down payment assistance; with 1st mortgage of \$180,000.
- The AMI at time of purchase in 2009 was \$105,500.
- The AMI as of May 2019 was \$131,400, an increase of 24.55%.
- The AMI resale Price for this BMR today is \$464,572 (an increase of \$91,847 from Purchase Price).

AMI Example: Current Contract (Cont'd)



The current AMI allows the homeowner to pay back deferred down payment and interest and pay off their first mortgage in full. Additionally, the homeowner will receive a return of approximately \$43,024 (including original \$18,350) or net equity of \$24,674. This is \$6,324 more than the 10% minimum return on down payment option.

AMI Example: Current Contract



- Owner realizes a cost benefit based on the full \$372,725 being used to calculate the resale price.
- The City has essentially allowed the buyer credit for all deferred down payment resale calculation formula.

CPI Example: Current Contract



- \$532,588 is the CPI-Based Resale Price
- The current sales price of a newly constructed 2-bedroom moderate affordable income unit at 120% of area median income is \$555,600.
- The estimated market rate sale value of a 2-bedroom unit at Madrone is \$599,341 or \$43,741 more than the moderate sale price.
- Commissions and rehab of the home for a new first-time buyer will add \$40,000 to the sale price.

What is the Intent of the BMR Program?



- An affordable living program, home ownership security at a much-reduced cost with lower consistent stable mortgages and property tax benefits.
- Insulated from rental market uncertainty and average rents of \$3000 + in today's difficult market
- Highly desirable location to live in
- Not meant to serve as the way a family achieves investment or asset building; however, on the positive side, the sale of the home described will result in equity earnings of approximately \$43,000

What is the Intent of the BMR Program?



- The City will have to add on the costs of rehabbing the home to move-in condition to arrive at the final re-sale price of the unit for the next income qualified family, \$510,000.
- Owners are realizing a great benefit by remaining in a home in today's market with a significantly lower and stable mortgage payment, and without requalifying after they have entered the Program.

The City Could Consider Altering the Program



- No contracts would be altered.
- Provide direct cash payments from the housing fund to provide greater net proceeds/profits. A payment policy would have to be developed to address all potential ownership situations, divorce, bankruptcy, short term vs. long term ownership and foreclosure.
- If investment payments are made, should these payments be scaled based upon new income and earnings potential?

The City Could Consider Altering the Program



- Consider that the intent of the Affordable Housing Program is it to create an investment vehicle for residents, rather than to provide housing cost security and stability and re-structure future program guidelines to be consistent with those outcomes?
- Consider the other historical affordability formulas that should be re-evaluated; specifically all those which utilize AMI?

Santa Clara County AMI (1-person household)

- Extremely Low Income (30% median)
\$30,750
- Very Low Income (50% median)
\$51,250
- **Lower Income (80% median)
\$72,750**
- Median Income (100% median)
\$92,000
- Moderate Income (120% median)
\$110,400
- Above Moderate (Anything above
120% median)



Table I: 2019 HCD Income Table

# of Persons	1	2	3	4	5	6	7	8
Extremely Low 0-30%	30,750	35,150	39,550	43,900	47,450	50,950	54,450	57,950
Very Low 31-50%	51,250	58,550	65,850	73,150	79,050	84,900	90,750	96,600
Lower 51-80%	72,750	83,150	93,550	103,900	112,250	120,550	128,850	137,150
Median 100%	92,000	105,100	118,250	131,400	141,900	152,400	162,950	173,450
Moderate 81-120%	110,400	126,150	141,950	157,700	170,300	182,950	195,550	208,150

Table I: Sale Price Ranges

# of Persons	1	2	3	4	5	6	7	8
Extremely Low 0-30%	\$277,830	\$321,570	\$365,310	\$413,100	\$450,360	\$486,810	\$524,880	\$562,950
Very Low 31-50%	To	To	To	To	To	To	To	To
Lower 51-80%	\$343,000	\$397,000	\$451,000	\$510,000	\$556,000	\$601,000	\$648,000	\$695,000
Median 100%								
Moderate 81-120%	\$377,300 to \$411,600	\$436,700 to \$476,400	\$496,100 to \$541,200	\$561,000 to \$612,200	\$611,600 to \$667,200	\$661,100 to \$721,200	\$712,800 to \$777,600	\$765,500 to \$834,000

Item # 12

AGENDA DATE: 11/06/19

SUPPLEMENT # 1

From: Jeff Bernstein <jeffbernstein23@gmail.com>

Sent: Monday, November 4, 2019 10:27 AM

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Rebecca Garcia <Rebecca.Garcia@morganhill.ca.gov>; Julius Nyanda <julius@nyandaconsulting.com>

Subject: Re: BMR Issue at Madrone Plaza

I received this listing in an email from HouseKeys over the weekend. The house has very similar specs to my own. [Zillow](#) shows this house was built in 2009 and sold for \$260,000 in 2011. While I understand Gilroy is its own municipality, with its own agreements within its BMR program, HouseKey is the program administrator. I wonder how they have structured their BMR program to allow a 2 bed/2.5 bath home that sold for \$260,000 in 2011 to sell for \$525,000 in 2019 -- this represents a price increase of over 100% in 8 years. There also appears to be \$85,000 worth of down payment assistance, and the home is affordable for buyers who make up to 120% of AMI.

<image001.jpg>

On Mon, Nov 4, 2019 at 8:18 AM Jeff Bernstein <jeffbernstein23@gmail.com> wrote:
Mayor, Council, and Staff,

After reading over the BMR issue on the agenda packet I am disappointed with how staff chose to address and inform Council about this issue. Rather than going point by point (which is what I started to do) to address the various concerns, I want to point out a few things that have given me pause.

First, there is an implication that Council must choose to define the intent of the program as either affordability or rate of return -- it should be both. I want to make it very clear that I am not proposing that Council overhauls the BMR program. I am proposing that Council corrects a mistake that caused BMR Homeowners at Madrone Plaza to be underwater on their mortgages for several years, by changing the formula to allow the 33 low income buyers at Madrone Plaza to sell their homes and see a return commensurate with what was communicated to them upon agreeing to purchase a BMR house.

If you have not already done so, please watch the [video](#) from 10/17/18. That night, as the proposed "10% Minimum Return on Downpayment" policy was being discussed, Council members shared their beliefs about the BMR homeownership program. When I view the video there seems to be a consensus that one of the program's aims is to allow homeowners to benefit from owning a home, building equity, and then exiting the program with enough of a return from the resale to be a competitive buyer in the non-BMR real estate market. Councilman Constantine talks about the American Dream of homeownership and the expectation homeowners have to profit from the sale of their home. Councilman Carr talks shares that he always thought BMR homes are to get someone started. "If they get started and find they owe more, we really haven't helped anyone out."

Next, while my specific resale situation has improved recently due to the increase in AMI in 2018 and 2019, please do not just look at the snapshot today and think that it's good enough. While walking away with \$43,000 is certainly better than owing \$15,000, this does not mean change is not necessary. I firmly believe that AMI never should have been used as the basis for determining the resale value of BMR homes at Madrone Plaza. Since 2000, AMI has only increased by 51% (from \$87,000 to \$131,400). CPI has increased by 70% during this time (from 203.8 to 346.1). Exhibit H in the contract shows a non-compounding annual increase of 4%, which would equal 80% over that same time period. It is disingenuous and misleading to use a figure such as 4% in the example if that number is not realistic. Something is seriously wrong if BMR homeowners are told they should not be allowed to sell with the expectation of a 4% annual increase because it would price the BMR units too high for the new prospective buyer. *This point has NOTHING to do with market conditions -- this is highlighting the glaring oversight that was made to include a figure in the contract that would allegedly price BMR units too high. Running a simple calculation out several years should have caused the decision-makers to re-think this.*

I am confused about how BMR units are priced based on income levels and interest rates. When I bought my house in 2009, the 30-year fixed rate loan on my mortgage had a 5.5% interest rate. Today, rates are around 3.5%. My \$180,000 first mortgage with a 5.5% interest rate made my monthly mortgage (P & I) payment \$1,022. A \$180,000 mortgage with a 3.5% interest rate would make monthly (P & I) payments \$808 -- that's a difference of \$214 per month. What impact will that have on the price the home can be sold at, given that a new buyer will be able to pay more for the home given the lower interest rates? What are the maximum 80%, 100% and 120% AMI affordability levels? Given the 2019 AMI level is \$131,400, and 120% of that is \$157,680, and interest rates are about 2% lower than when I bought, I think many homes at Madrone would still qualify as BMRs if the current BMR homeowners are allowed to sell using CPI.

Lastly, what upset me the most about the agenda packet was that no historical data was included, outside of what I have provided. Council is being told to not change the resale formula because the AMI numbers today aren't so bad. Please look at the last 20 years of data and make a decision that will not need to be amended if/when AMI numbers go through a period similar to what they did from 2003-2014 where there was ZERO growth.

This chart shows the resale value of MY home. Numbers in red mean I would owe money when I sell my house due to the accruing interest on the down payment assistance.

Year	CPI Based Resale Price	AMI Based Resale Price	Contract Projected Resale Price - Exhibit H (4% Annual Increase)
2009	\$372,725	\$372,725	\$372,725
2010	\$373,826	\$365,659	\$387,634
2011	\$384,428	\$366,012	\$402,543
2012	\$396,604	\$370,959	\$417,452
2013	\$407,558	\$372,725	\$432,361
2014	\$424,523	\$372,725	\$447,270
2015	\$447,882	\$375,551	\$462,179
2016	\$473,169	\$378,378	\$477,088

2017	\$496,222	\$400,282	\$491,997
2018	\$517,027	\$442,324	\$506,906
2019	\$527,904	\$464,228	\$521,815

If 2003 were the year I purchased my BMR home and all other variables remained unchanged, this is what the chart would look like:

Year	CPI Based Resale Price	AMI Based Resale Price	Contract Projected Resale Price - Exhibit H (4% Annual Increase)
2003	\$373,000	\$373,000	\$373,000
2004	\$373,000	\$373,168	\$387,920
2005	\$373,000	\$379,043	\$402,840
2006	\$373,000	\$391,130	\$417,760
2007	\$373,000	\$400,245	\$432,680
2008	\$373,000	\$407,967	\$447,600
2009	\$373,000	\$409,007	\$462,520
2010	\$365,929	\$410,216	\$477,440
2011	\$366,282	\$421,849	\$492,360
2012	\$371,232	\$435,211	\$507,280
2013	\$373,000	\$447,231	\$522,200
2014	\$373,000	\$465,847	\$537,120
2015	\$375,828	\$491,480	\$552,040
2016	\$378,657	\$519,229	\$566,960
2017	\$400,577	\$544,526	\$581,880
2018	\$442,650	\$567,356	\$596,800
2019	\$464,561	\$580,973	\$611,720

Please note that from 2003 - 2019, neither CPI nor AMI return at a level consistent with the 4% figure used in the example in the contract. Also note, this person would be underwater EVERY year except 2019, at which point they would walk away with about \$10,000; not a great return for 17 years of homeownership. Here's the point: the last 20 years of data show that AMI is an index that moves in an inconsistent and largely unpredictable manner. Furthermore, the periods in which AMI increases, it does so in clumps (2002-2003, and 2017-2019). Also, given that AMI data is only published once each year, it allows for two owners of identical BMR homes to submit Requests to Sell one day apart, with one owner requesting the day before new AMI numbers are released, and the other requesting to sell the day when new AMI numbers have been released. Their resale values would differ by more than 10%, as was the case in 2018.

Please look at all the facts and make a decision that will allow BMR homeowners to sell their homes with a decent return AND allow keep the home affordable to a new BMR buyer.

Thank you,
Jeff

On Mon, Oct 21, 2019 at 11:08 AM Jeff Bernstein <jeffbernstein23@gmail.com> wrote:
Mayor and Council,

First, thank you for putting this item on the November 6th City Council agenda. While I know some of my criticism (past and present) may seem harsh, it is my belief that the City of Morgan Hill has been moving in the right direction with its affordable housing program since it contracted with HouseKeys in 2015. My frustration/concern stems from the fact that when I began to look at relocating in 2016 I learned that I was underwater on my mortgage and would owe about \$15,000 if I chose to sell my BMR house. This did not make sense to me, as the housing market had mostly recovered from the recession at that point, and I had recalled expecting a 4% annual increase in resale value when I purchased my home in 2009. When I began to dig into the numbers and understand how the program was structured I became more concerned that I had gotten myself into a bad situation by choosing to participate in the BMR program. In the last 3.5 years I have met with many of you to discuss this issue, provide feedback, and brainstorm potential solutions. Although I wish there were a more streamlined approach to this, I am nonetheless glad I was able to participate in some capacity. I am hopeful that the November 6th City Council meeting provides some finality to this issue -- in my mind, the appropriate course of action is pretty clear; I say this knowing full well I have a perspective that is unencumbered by the political, economic, and social pressures you each must take into consideration with every decision you make. Below, I will attempt to explain why I believe modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income BMR homeowners at Madrone Plaza makes sense and is the best course of action for the City to take.

In an email I received from City Manager Christina Turner on September 4th, 2019 regarding the unique circumstances of the BMR units at Madrone Plaza, Ms. Turner states that: "This project bears no resemblance to any other project or group of deed restricted affordable units in the City." At the City Council Meeting on October 17th, 2018, (9:16 mark of this [video](#)) Councilman Spring asks the Housing Manager about why these homes are called "Below Market Rate" when they were priced at Fair Market Value. Ms Garcia responds by saying: "It is not something we would do today. Sometimes we're kind of untangling things that were done in the past...I also think that because the developer that created these homes was going out of business at that time...that influenced the way they set prices as well."

Here are 3 reasons I believe that, if given the opportunity to travel back in time and re-do Madrone Plaza, the City would do things differently:

1. In 2015 the City changed the formula to CPI from AMI
 - a. Why would the City do this unless it believed CPI was the superior index to use?
1. Ms. Gracia saying: *It is not something we would do today. Sometimes we're kind of untangling things that were done in the past...I also think that because the developer that created these homes was going out of business at that time...that influenced the way they set prices as well.*

- a. If providing low-income buyers with large amounts of down payment assistance and allowing a developer to set prices of BMR homes at FMV are not actions the City would take with its BMR program again, it stands to reason that these actions should not have been taken in the first place.
1. Ms. Turner saying: *This project bears no resemblance to any other project or group of deed restricted affordable units in the City.*
 - a. It is not in the best interest of the City's BMR program, or its participants, for the program to operate so differently across developments. It is safe to assume the program at Madrone should NOT have been created to be so vastly different from other affordable units in the C

By hiring HouseKeys in 2015, I believe the City put itself on a path toward creating a program that will have the desired impact on BMR program participants. However, please do not lose sight of the fact that there are people participating in the program today who currently feel like guinea pigs in an experiment gone wrong. We are currently getting the short end of the stick due to having participated in the program at the wrong time. Please restore the positive feelings we had about the BMR program when we decided to participate by providing us with the experience we were led to believe we would have.

I believe the most important responsibility of government is to protect its citizens (especially those citizens participating in a government assistance program like affordable housing). This is a situation in which the government failed to do so. By allowing a developer to create a project *bearing no resemblance to any other project or group of deed restricted affordable units in the City*, our leaders abdicated their responsibility to protect citizens. The result of this was several years of BMR homeowners being underwater on their mortgages with nowhere to go. People like me who wanted to relocate struggled to do so due to the negative equity we had in our BMR homes -- all this while our neighbors in non-BMR houses on the other side of the development watched their houses double in value.

Clearly, based on the statements from the City Manager and the Housing Manager, the situation at Madrone Plaza is unique. Here is a brief summary as to how:

1. BMR homes were purchased during a depressed market (2008-2012); which resulted in homes being priced at fair market value, instead of at a price below the current market rate
2. BMR buyers received large amounts of down payment assistance; the interest on which accumulated at a rate faster than AMI increased; causing homeowners to be underwater on their mortgages for several years
3. BMR homes were purchased through a program created by the builder, which created a program within a program that lacked consistency/coherence with the City's other BMR units

Given that this is a unique situation, it stands to reason that it is deserving of a unique solution that will:

1. Keep current BMR homes in the program so they are affordable to new BMR buyers
 - a. This can be accomplished by pricing homes at the Moderate level (120% AMI); with interest rates falling, new program participants should have higher levels of affordability.
1. Allow current BMR homeowners to exit the program in a manner consistent with what they were told upon agreeing to participate in the program

- a. This can be accomplished by modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income BMR homeowners at Madrone Plaza

I am not asking for a complete overhaul of the BMR program, I am requesting that the City's leaders continue to untangle the mess that was made several years ago by righting a wrong for the small group of BMR homeowners at Madrone Plaza who were negatively impacted by poor decision making. By modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income Madrone Plaza BMR homeowners, the City's leaders will be restoring trust to a community that has felt misled by the term "Government **Assistance** Program." Given that the City changed from an AMI to a CPI-based Restricted Resale Agreement for its BMR units in 2015, it clearly believes CPI to be the superior index in pricing BMR houses. I am asking for the opportunity to be included in that change so that we do not continue as an overlooked and disenfranchised minority in the City's otherwise successful affordable housing portfolio. Please vote in favor of modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income Madrone Plaza BMR homeowners.

Thank you,
Jeff

Item # 12

AGENDA DATE: 11/06/19
SUPPLEMENT # 2

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#); [Rebecca Garcia](#); [Leslie Little](#)
Subject: FW: BMR Issue at Madrone Plaza
Date: Tuesday, November 5, 2019 5:39:08 PM

Another email to supplement from Mr. Bernstein.

From: Jeff Bernstein <jeffbernstein23@gmail.com>
Sent: Tuesday, November 5, 2019 4:48 PM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Rebecca Garcia <Rebecca.Garcia@morganhill.ca.gov>; Julius Nyanda <julius@nyandaconsulting.com>
Subject: Re: BMR Issue at Madrone Plaza

Sorry, I realize I should have added more context when I sent this.

Because AMI is a number used for all of Santa Clara County, and Gilroy is in Santa Clara County, I shared this with you to show that pricing a house that is very similar to my house at \$525,000 does not price it out of a City's BMR program in Santa Clara. The HouseKeys website lists the same house for \$539,871 -- see attachment. **I would be happy to be able to sell my home at either of these prices**, and because affordability (not necessarily resale price) is determined based on AMI, this means a home can be priced around \$540,000 and still be considered a "Below Market Rate" house.

Thank you,
Jeff

On Mon, Nov 4, 2019 at 10:27 AM Jeff Bernstein <jeffbernstein23@gmail.com> wrote:

I received this listing in an email from HouseKeys over the weekend. The house has very similar specs to my own. [Zillow](#) shows this house was built in 2009 and sold for \$260,000 in 2011. While I understand Gilroy is its own municipality, with its own agreements within its BMR program, HouseKey is the program administrator. I wonder how they have structured their BMR program to allow a 2 bed/2.5 bath home that sold for \$260,000 in 2011 to sell for \$525,000 in 2019 -- this represents a price increase of over 100% in 8 years. There also appears to be \$85,000 worth of down payment assistance, and the home is affordable for buyers who make up to 120% of AMI.

Available for Eligible BMR Program Buyers

Open House set for Saturday, November 2nd from 12 PM - 3 PM

Location: 271 Lewis Street

Open House set for Sunday, November 3rd from 12 PM - 3 PM

Location: 271 Lewis Street

- Details -

271 Lewis Street

2 bedroom / 2.5 bath

Purchase Price \$525,000

Begin assistance up to \$85,000

Moderate Range up to 120% AMI

Opportunity Drawings available at www.myhousekeys.com

Go to www.housekeys.org to register for Orientation by City and Date

Gilroy 2019 Dates

November 18th & December 17th

On Mon, Nov 4, 2019 at 8:18 AM Jeff Bernstein <jeffbernstein23@gmail.com> wrote:

Mayor, Council, and Staff,

After reading over the BMR issue on the agenda packet I am disappointed with how staff chose to address and inform Council about this issue. Rather than going point by point (which is what I started to do) to address the various concerns, I want to point out a few things that have given me pause.

First, there is an implication that Council must choose to define the intent of the program as either affordability or rate of return -- it should be both. I want to make it very clear that I am not proposing that Council overhauls the BMR program. I am proposing that Council corrects a mistake that caused BMR Homeowners at Madrone Plaza to be underwater on their mortgages for several years, by changing the formula to allow the 33 low income buyers at Madrone Plaza to sell their homes and see a return commensurate with what was communicated to them upon agreeing to purchase a BMR house.

If you have not already done so, please watch the [video](#) from 10/17/18. That night, as the proposed "10% Minimum Return on Downpayment" policy was being discussed, Council members shared their beliefs about the BMR homeownership program. When I view the video there seems to be a consensus that one of the program's aims is to allow homeowners to benefit from owning a home, building equity, and then exiting the program with enough of a return from

the resale to be a competitive buyer in the non-BMR real estate market. Councilman Constantine talks about the American Dream of homeownership and the expectation homeowners have to profit from the sale of their home. Councilman Carr talks shares that he always thought BMR homes are to get someone started. "If they get started and find they owe more, we really haven't helped anyone out."

Next, while my specific resale situation has improved recently due to the increase in AMI in 2018 and 2019, please do not just look at the snapshot today and think that it's good enough. While walking away with \$43,000 is certainly better than owing \$15,000, this does not mean change is not necessary. I firmly believe that AMI never should have been used as the basis for determining the resale value of BMR homes at Madrone Plaza. Since 2000, AMI has only increased by 51% (from \$87,000 to \$131,400). CPI has increased by 70% during this time (from 203.8 to 346.1). Exhibit H in the contract shows a non-compounding annual increase of 4%, which would equal 80% over that same time period. It is disingenuous and misleading to use a figure such as 4% in the example if that number is not realistic. Something is seriously wrong if BMR homeowners are told they should not be allowed to sell with the expectation of a 4% annual increase because it would price the BMR units too high for the new prospective buyer. *This point has NOTHING to do with market conditions -- this is highlighting the glaring oversight that was made to include a figure in the contract that would **allegedly** price BMR units too high. Running a simple calculation out several years should have caused the decision-makers to re-think this.*

I am confused about how BMR units are priced based on income levels and interest rates. When I bought my house in 2009, the 30-year fixed rate loan on my mortgage had a 5.5% interest rate. Today, rates are around 3.5%. My \$180,000 first mortgage with a 5.5% interest rate made my monthly mortgage (P & I) payment \$1,022. A \$180,000 mortgage with a 3.5% interest rate would make monthly (P & I) payments \$808 -- that's a difference of \$214 per month. What impact will that have on the price the home can be sold at, given that a new buyer will be able to pay more for the home given the lower interest rates? What are the maximum 80%, 100% and 120% AMI affordability levels? Given the 2019 AMI level is \$131,400, and 120% of that is \$157,680, and interest rates are about 2% lower than when I bought, I think many homes at Madrone would still qualify as BMRs if the current BMR homeowners are allowed to sell using CPI.

Lastly, what upset me the most about the agenda packet was that no historical data was included, outside of what I have provided. Council is being told to not change the resale formula because the AMI numbers today aren't so bad. Please look at the last 20 years of data and make a decision that will not need to be amended if/when AMI numbers go through a period similar to what they did from 2003-2014 where there was ZERO growth.

This chart shows the resale value of MY home. Numbers in red mean I would owe money when I sell my house due to the accruing interest on the down payment assistance.

Year	CPI Based Resale Price	AMI Based Resale Price	Contract Projected Resale Price - Exhibit H (4% Annual Increase)

2009	\$372,725	\$372,725	\$372,725
2010	\$373,826	\$365,659	\$387,634
2011	\$384,428	\$366,012	\$402,543
2012	\$396,604	\$370,959	\$417,452
2013	\$407,558	\$372,725	\$432,361
2014	\$424,523	\$372,725	\$447,270
2015	\$447,882	\$375,551	\$462,179
2016	\$473,169	\$378,378	\$477,088
2017	\$496,222	\$400,282	\$491,997
2018	\$517,027	\$442,324	\$506,906
2019	\$527,904	\$464,228	\$521,815

If 2003 were the year I purchased my BMR home and all other variables remained unchanged, this is what the chart would look like:

Year	CPI Based Resale Price	AMI Based Resale Price	Contract Projected Resale Price - Exhibit H (4% Annual Increase)
2003	\$373,000	\$373,000	\$373,000
2004	\$373,000	\$373,168	\$387,920
2005	\$373,000	\$379,043	\$402,840
2006	\$373,000	\$391,130	\$417,760
2007	\$373,000	\$400,245	\$432,680
2008	\$373,000	\$407,967	\$447,600
2009	\$373,000	\$409,007	\$462,520
2010	\$365,929	\$410,216	\$477,440
2011	\$366,282	\$421,849	\$492,360
2012	\$371,232	\$435,211	\$507,280
2013	\$373,000	\$447,231	\$522,200
2014	\$373,000	\$465,847	\$537,120
2015	\$375,828	\$491,480	\$552,040
2016	\$378,657	\$519,229	\$566,960
2017	\$400,577	\$544,526	\$581,880
2018	\$442,650	\$567,356	\$596,800
2019	\$464,561	\$580,973	\$611,720

Please note that from 2003 - 2019, neither CPI nor AMI return at a level consistent with the 4% figure used in the example in the contract. Also note, this person would be underwater EVERY year except 2019, at which point they would walk away with about \$10,000; not a great return for 17 years of homeownership. Here's the point: the last 20 years of data show that AMI is an index that moves in an inconsistent and largely unpredictable manner. Furthermore, the periods in which AMI increases, it does so in clumps (2002-2003, and 2017-2019). Also, given that AMI data is only published once each year, it allows for two owners of identical BMR homes to submit Requests to Sell one day apart, with one owner requesting the day before new AMI numbers are

released, and the other requesting to sell the day when new AMI numbers have been released. Their resale values would differ by more than 10%, as was the case in 2018.

Please look at all the facts and make a decision that will allow BMR homeowners to sell their homes with a decent return AND allow keep the home affordable to a new BMR buyer.

Thank you,
Jeff

On Mon, Oct 21, 2019 at 11:08 AM Jeff Bernstein <jeffbernstein23@gmail.com> wrote:

Mayor and Council,

First, thank you for putting this item on the November 6th City Council agenda. While I know some of my criticism (past and present) may seem harsh, it is my belief that the City of Morgan Hill has been moving in the right direction with its affordable housing program since it contracted with HouseKeys in 2015. My frustration/concern stems from the fact that when I began to look at relocating in 2016 I learned that I was underwater on my mortgage and would owe about \$15,000 if I chose to sell my BMR house. This did not make sense to me, as the housing market had mostly recovered from the recession at that point, and I had recalled expecting a 4% annual increase in resale value when I purchased my home in 2009. When I began to dig into the numbers and understand how the program was structured I became more concerned that I had gotten myself into a bad situation by choosing to participate in the BMR program. In the last 3.5 years I have met with many of you to discuss this issue, provide feedback, and brainstorm potential solutions. Although I wish there were a more streamlined approach to this, I am nonetheless glad I was able to participate in some capacity. I am hopeful that the November 6th City Council meeting provides some finality to this issue -- in my mind, the appropriate course of action is pretty clear; I say this knowing full well I have a perspective that is unencumbered by the political, economic, and social pressures you each must take into consideration with every decision you make. Below, I will attempt to explain why I believe modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income BMR homeowners at Madrone Plaza makes sense and is the best course of action for the City to take.

In an email I received from City Manager Christina Turner on September 4th, 2019 regarding the unique circumstances of the BMR units at Madrone Plaza, Ms. Turner states that: "This project bears no resemblance to any other project or group of deed restricted affordable units in the City." At the City Council Meeting on October 17th, 2018, (9:16 mark of this [video](#)) Councilman Spring asks the Housing Manager about why these homes are called "Below Market

Rate” when they were priced at Fair Market Value. Ms Garcia responds by saying: “It is not something we would do today. Sometimes we’re kind of untangling things that were done in the past...I also think that because the developer that created these homes was going out of business at that time...that influenced the way they set prices as well.”

Here are 3 reasons I believe that, if given the opportunity to travel back in time and re-do Madrone Plaza, the City would do things differently:

1. In 2015 the City changed the formula to CPI from AMI
 - a. Why would the City do this unless it believed CPI was the superior index to use?
2. Ms. Gracia saying: *It is not something we would do today. Sometimes we’re kind of untangling things that were done in the past...I also think that because the developer that created these homes was going out of business at that time...that influenced the way they set prices as well.*
 0. If providing low-income buyers with large amounts of down payment assistance and allowing a developer to set prices of BMR homes at FMV are not actions the City would take with its BMR program again, it stands to reason that these actions should not have been taken in the first place.
3. Ms. Turner saying: *This project bears no resemblance to any other project or group of deed restricted affordable units in the City.*
 0. It is not in the best interest of the City’s BMR program, or its participants, for the program to operate so differently across developments. It is safe to assume the program at Madrone should NOT have been created to be so vastly different from other affordable units in the C

By hiring HouseKeys in 2015, I believe the City put itself on a path toward creating a program that will have the desired impact on BMR program participants. However, please do not lose sight of the fact that there are people participating in the program today who currently feel like guinea pigs in an experiment gone wrong. We are currently getting the short end of the stick due to having participated in the program at the wrong time. Please restore the positive feelings we had about the BMR program when we decided to participate by providing us with the experience we were led to believe we would have.

I believe the most important responsibility of government is to protect its citizens (especially those citizens participating in a government assistance program like affordable housing). This is a situation in which the government failed to do so. By allowing a developer to create a project *bearing no resemblance to any other project or group of deed restricted affordable units in the City*, our leaders abdicated their responsibility to protect citizens. The result of this was several years of BMR homeowners being underwater on their mortgages with nowhere to go. People like me who wanted to relocate

struggled to do so due to the negative equity we had in our BMR homes -- all this while our neighbors in non-BMR houses on the other side of the development watched their houses double in value.

Clearly, based on the statements from the City Manager and the Housing Manager, the situation at Madrone Plaza is unique. Here is a brief summary as to how:

1. BMR homes were purchased during a depressed market (2008-2012); which resulted in homes being priced at fair market value, instead of at a price below the current market rate
2. BMR buyers received large amounts of down payment assistance; the interest on which accumulated at a rate faster than AMI increased; causing homeowners to be underwater on their mortgages for several years
3. BMR homes were purchased through a program created by the builder, which created a program within a program that lacked consistency/coherence with the City's other BMR units

Given that this is a unique situation, it stands to reason that it is deserving of a unique solution that will:

1. Keep current BMR homes in the program so they are affordable to new BMR buyers
 - a. This can be accomplished by pricing homes at the Moderate level (120% AMI); with interest rates falling, new program participants should have higher levels of affordability.
2. Allow current BMR homeowners to exit the program in a manner consistent with what they were told upon agreeing to participate in the program
 0. This can be accomplished by modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income BMR homeowners at Madrone Plaza

I am not asking for a complete overhaul of the BMR program, I am requesting that the City's leaders continue to untangle the mess that was made several years ago by righting a wrong for the small group of BMR homeowners at Madrone Plaza who were negatively impacted by poor decision making. By modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income Madrone Plaza BMR homeowners, the City's leaders will be restoring trust to a community that has felt misled by the term "Government **Assistance** Program." Given that the City changed from an AMI to a CPI-based Restricted Resale Agreement for its BMR units in 2015, it clearly believes CPI to be the superior index in pricing BMR houses. I am asking for the opportunity to be included in that change so that we do not continue as an overlooked and disenfranchised minority in the City's otherwise successful affordable housing portfolio. Please vote in favor of modifying the Restricted Resale Agreement to use CPI instead of AMI for the 33-low income Madrone Plaza BMR homeowners.

Thank you,
Jeff

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Gilroy Program

Three Units Available NOW at Alexander Place !

\$200 HOA Monthly Dues for all townhomes and HO6 home insurance required

For households earning up to Moderate Income

Please do not disturb the homeowners

271 Lewis St. / 2 bed, 2.5 bath / City Down payment assistance up to \$85,000 / Price \$539,871

241 Lewis St / 3bd, 2.5 bath / \$611,000 / City Down payment assistance TBD / DEADLINE TO ENTER LOTTERY 10/15/2016 BY 5:00PM

7620 Gennaro Way / 2bd, 2.5 bath / \$564,750 / City Down payment assistance TBD / DEADLINE TO ENTER LOTTERY 10/15/2016 BY 5:00PM

Open Houses set for **Friday, October 11th from 4 PM - 6 PM**

Location: **7620 Gennaro Way**

Location: **241 Lewis Street**

Open Houses set for **Saturday, October 12th from 12 PM - 3 PM**

Location: **7620 Gennaro Way**

Location: **241 Lewis Street**

Open House set for **Sunday, October 13th from 12 AM - 3 PM**

Location: **7620 Gennaro Way**

Location: **241 Lewis Street**

To apply go to www.myhousekeys.com

See Ownership Opportunity Box Below

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: Replacement of AMI with CPI
Date: Wednesday, November 6, 2019 9:17:05 AM

Please supplement.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Wednesday, November 6, 2019 8:35 AM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: Replacement of AMI with CPI

FYI

Sent from my iPhone

Begin forwarded message:

From: Joe Chavez <j_flyers_47@yahoo.com>
Date: November 5, 2019 at 7:43:19 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>
Subject: Replacement of AMI with CPI

Council Members,

I am unable to attend the November 6th City Council meeting in person as I am on paternity leave caring for my newborn daughter. Please vote in favor of replacing AMI with CPI in the Restricted Resale Agreement so that BMR Homeowners at Madrone Plaza receive equitable compensation upon the resale of our homes.

Sincerely,
Joseph Chavez

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From: Jeff Bernstein <jeffbernstein23@gmail.com>

Date: November 5, 2019 at 8:40:52 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>

Subject: Questions for Staff Regarding BMR Housing Recommendation

Mayor and Council,

When Staff presents their report and recommendations tomorrow, please ask the following questions:

1. Why was AMI chosen as the index to use to determine the resale price of BMR homes prior to 2015?
2. Why was CPI chosen as the index to use to determine the resale price of BMR homes after to 2015?
3. What is the intent of the BMR Homeownership program? How is the intent different from the BMR Rental program?
4. What is the current maximum level of affordability for a moderately (120% AMI) priced BMR house with 2 bedrooms and 2.5 bathrooms? What is the calculation that is used to determine this?
5. Is it possible to make a change that will only impact the BMR homeowners at Madrone Plaza who purchased their homes at Fair Market Value from 2008-2013?
6. One of Staff's Alternative Action recommendations is to: "Consider allowing all BMRs to sell at market and recover a portion of the equity." What exactly does this mean and how would this work?
7. Why was the Madrone Plaza builder (South County Housing) allowed so much freedom to price BMR homes in a way that was so vastly different from the City's other BMR units?
8. Since 2009, how many years has the homeowner from the example in the the agenda packet been under water on his mortgage using AMI? How many years would that homeowner have been underwater if CPI were to have been used instead of AMI?
9. What characteristics make AMI a better index than CPI to use to determine BMR resale prices? What characteristics make CPI a better index than AMI?
10. If, in 2009, we knew how the next 10 years would play out, should Madrone Plaza BMR units have been priced using AMI or CPI? Why?

Thanks,
Jeff

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Harjot Sangha](#)
Subject: FW: BMR Resale Concerns
Date: Wednesday, November 6, 2019 5:15:45 PM

Please supplement.

From: Rene Spring <Rene.Spring@morganhill.ca.gov>
Sent: Wednesday, November 6, 2019 4:46 PM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>
Subject: Fwd: BMR Resale Concerns

FYI

Sent from my iPhone

Begin forwarded message:

From: K P <kaleybug@hotmail.com>
Date: November 6, 2019 at 4:31:54 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Larry Carr <Larry.Carr@morganhill.ca.gov>
Subject: BMR Resale Concerns

Hello,

I am a BMR homeowner at Madrone Plaza. I am unable to attend the Council Meeting at 7:00 pm on 11/6/19. I am writing to you today to urge you to vote in favor of replacing AMI with CPI in the Restricted Resale Agreement so that BMR homeowners at Madrone Plaza receive equitable compensation upon the resale of our homes.

Sincerely,

Mikhaele Polaschek
18417 Ruby Lane

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.



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, November 6, 2019 7:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Bigelow

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Martinez Beltran

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)

PUBLIC COMMENT 01

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. REPORT REGARDING UPCOMING 2020 COMMISSION VACANCIES - PER MADDY ACT

Recommendation:

Receive report.

2. APPROVE APPROPRIATION FOR FIRE DEPARTMENT REPLACEMENT VEHICLE

Recommendation:

1. Accept insurance settlement for approximately \$66,948;
2. Adopt resolution amending the adopted Fiscal Year 2019-20 Budget appropriating \$76,100 from the Equipment Replacement Fund (790) for the purchase of a replacement 2020 Ford F250 Truck for the Fire Department; and
3. Declare the collision-damaged 2013 F150 to be salvage for disposal in accordance with the City Municipal Code.

3. APPROVE CALIFORNIA CLIMATE INVESTMENTS - DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S (CAL FIRE) FIRE PREVENTION GRANT APPLICATION RESOLUTION

Recommendation:

Adopt resolution authorizing an application for the California Climate Investments-Department of Forestry and Fire Protection's (CAL FIRE) Fire Prevention Grant Program funded with Cap-and-Trade auction proceeds appropriated by the California Legislature.

4. AWARD CENTENNIAL RECREATION CENTER GENERATOR PROJECT

Recommendation:

1. Adopt resolution amending the Fiscal Year 2019-20 Budget to appropriate an additional \$98,800 from the Recreation Center Impact Fund (360), for the Centennial Recreation Generator Project (CIP#229018);
2. Approve the Centennial Recreation Center Generator plans and specifications;
3. Award contract to PC Inc. for the Centennial Recreation Center Generator Project in the amount of \$243,000;
4. Authorize expenditure of construction contingency funds not to exceed \$24,300; and
5. Authorize the City Manager to execute and administer the construction contract with PC Inc. pending review and approval by the City Attorney.

5. ADOPT ORDINANCE ADDING CHAPTER 15.63 (PROHIBITION OF NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS) TO TITLE 15 (BUILDINGS AND CONSTRUCTION) TO THE MORGAN HILL MUNICIPAL CODE PROHIBITING NATURAL GAS INFRASTRUCTURE IN NEW BUILDINGS EFFECTIVE MARCH 1, 2020

Recommendation:

Waive the reading, adopt Ordinance No. 2306, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

6. ADOPT ORDINANCE AMENDING CHAPTERS 15.08 (BUILDING CODE), 15.12 (ELECTRICAL CODE), 15.16 (MECHANICAL CODE), 15.20 (PLUMBING CODE), 15.24 (HOUSING CODE), 15.25 (PROPERTY MANAGEMENT) AND 15.44 (FIRE CODE) TO ADOPT BY REFERENCE THE 2019 CALIFORNIA STATE BUILDING STANDARDS CODES KNOWN AND DESIGNATED AS CALIFORNIA CODE OF REGULATIONS, TITLE 24 AND TO AMEND, DELETE, AND ADD CERTAIN OTHER BUILDING AND CONSTRUCTION STANDARDS AND TO MAKE MINOR CHANGES TO SECTIONS IN CHAPTERS 15.40 (BUILDING SECURITY) AND 15.64 (WOOD-BURNING APPLIANCES) OF TITLE 15 (BUILDING AND CONSTRUCTION) OF THE MORGAN HILL MUNICIPAL CODE

Recommendation:

Waive the reading, adopt Ordinance No. 2307, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

7. APPROVE THE OCTOBER 2, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

8. APPROVE THE OCTOBER 9, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

9. APPROVE THE OCTOBER 23, 2019 MEETING MINUTES

Recommendation:

Approve Minutes.

OTHER BUSINESS

10. INTRODUCE ZONING ORDINANCE AMENDMENT TO CONDITIONALLY PERMIT CANNABIS USES IN NON-RESIDENTIAL ZONES AND PROVIDE DIRECTION REGARDING CANNABIS LICENSING REGULATIONS ORDINANCE

Recommendation:

1. Receive report on Planning Commission recommendation regarding number of retail cannabis licenses and land use recommendations;
2. Open and close the public hearing;
3. Proceed with allowing commercial cannabis in City limits by:
 - a. Waiving the first and second reading of the zoning ordinance amendment;
 - b. Introducing the zoning ordinance amendment;
 - c. Providing direction regarding cannabis licensing regulations ordinance;

OR

4. Continue maintaining Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis.

Estimated Time: 90 Minutes

11. REVENUE MEASURES POLLING RESULTS

Recommendation:

1. Accept report on polling results; and
2. Direct staff to continue with the Engage Morgan Hill process and provide any additional direction.

Estimated Time: 45 Minutes

12. PROVIDE DIRECTION REGARDING RATE OF RETURN VERSUS LONG TERM AFFORDABILITY POLICY CHANGE TO THE BELOW MARKET RATE (BMR) OWNERSHIP PROGRAM - REQUEST OF MADRONE HOMEOWNER TO AMEND RESTRICTED RESALE CONTRACT BY REPLACING THE EXISTING RESALE FORMULA THAT USES AREA MEDIAN INCOME WITH CONSUMER PRICE INDEX

Recommendation:

1. Receive a report on the request made to consider changing the focus of the BMR program to be Rate of Return for owners versus long-term affordability by modifying the Madrone Restricted Resale Contract; replacing the existing resale formula that uses Area Median Income with Consumer Price Index; and
2. Maintain existing affordable housing ownership contract and not shift the focus of the affordable ownership program.

Estimated Time: 30 Minutes

PUBLIC HEARING

13. ADOPT UPDATED DEVELOPMENT USER FEE SCHEDULE

Recommendation:

1. Open/Close Public Hearing; and
2. Adopt resolution updating Development User Fee Schedule.

Estimated Time: 15 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

