



Special - Regular Meeting Agenda

City Council

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

Wednesday, December 4, 2019 6:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 6:00 pm for the purpose of conducting a Joint Morgan Hill City Council and the South Santa Clara County Fire District Board of Commissioners meeting to receive a presentation on the Fire Services Hazard-Risk Assessment and Standards of Coverage Study

TELECONFERENCE

Mayor Constantine will be participating in the meeting via teleconference as follows:

Hyatt Place Washington DC
400 E St SW
Washington DC 20024

Public comment from the teleconference location shall be allowed.

CALL TO ORDER

Mayor Pro Tem Spring

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow
Board Clerk Kim Camarena

ROLL CALL:

Mayor Constantine, Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member John McKay, Council Member Larry Carr

Commissioner Lewis, Commissioner Acker, Commissioner Ludewig, Commissioner Monaco,
Commissioner Scatena, Commissioner Velasco

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow
Board Clerk Kim Camarena

SPECIAL MEETING

6:00 P.M.

1. FIRE SERVICES HAZARD-RISK ASSESSMENT AND STANDARDS OF COVERAGE STUDY PRESENTATION

Recommendation:

Receive presentation.

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2019

Recommendation:

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019.

3. ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2018-19

Recommendation:

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

4. APPROVE SECOND AMENDMENT TO DESIGN SERVICES AGREEMENT WITH HYDROSCIENCE ENGINEERS FOR THE NEW SEWER TRUNK PROJECT

Recommendation:

1. Approve Second Amendment to Service Agreement for Design Professionals with HydroScience Engineers, Inc. to provide additional services for the New Sewer Trunk Line to Gilroy project for an additional \$531,050, for a total not to exceed amount of \$1,704,710; and
2. Authorize the City Manager to execute and administer the amended services agreement.

5. ADOPT RESOLUTION INITIATING 2020 HAZARDOUS VEGETATION PROGRAM

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 5, 2020.

6. ACCEPT THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

Recommendation:

Accept the report.

7. APPROVE DESIGN SERVICES AGREEMENT WITH SCHAAF & WHEELER FOR INFLOW AND INFILTRATION PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer the design services agreement with SchAAF and Wheeler, in the not to exceed amount of \$145,555, for the design of the Sewer Inflow and Infiltration Project.

8. APPROVE AGREEMENT FOR WATER LABORATORY TESTING AND ANALYSIS SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer a three-year service agreement for a not to exceed amount of \$200,000 with Alpha Analytical Laboratories, Inc., for water laboratory testing and analysis services.

9. APPROVAL OF FINAL MAP FOR SAN SEBASTIAN PHASE 2C - TRACT NO. 10478

Recommendation:

1. Approve the Final Map;
2. Approve and Authorize the City Manager to execute and administer a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
3. Authorize the recordation of the Final Map and the Stormwater BMP Operation and Maintenance Agreement.

10. AWARD DOWNTOWN CROSSWALK SAFETY IMPROVEMENTS PROJECT

Recommendation:

1. Approve the Downtown Crosswalk Safety Improvements Project plans and specifications;
2. Award contract to Golden Bay Construction, Inc. for the Downtown Crosswalk Safety Improvements Project in the amount of \$123,309;
3. Authorize expenditure of construction contingency funds not to exceed \$12,331; and
4. Authorize the City Manager to execute and administer the construction contract with Golden Bay Construction, Inc., pending review and approval by the City Attorney.

11. REJECT PROPOSALS FOR LANDSCAPE MAINTENANCE GROUP 5

Recommendation:

Reject proposals for Landscape Maintenance Group 5 per Municipal Code Section 3.04.170, and direct staff to maintain the Group 5 Landscape Assessment Districts with in-house maintenance staff.

12. REJECT BIDS FOR CENTENNIAL RECREATION CENTER GENERATOR PROJECT

Recommendation:

1. Reject bids for the Centennial Recreation Center Generator Project and direct staff to re-bid the project with design changes; and
2. Authorize the City Manager to negotiate and execute modifications to the previously approved California Office of Emergency Services' 404 Hazard Mitigation Grant Program agreement.

13. ANDERSON DAM PROJECT ADVOCACY

Recommendation:

Informational Only.

OTHER BUSINESS

14. INTRODUCE ORDINANCE PROHIBITING SALE OF FLAVORED TOBACCO AND VAPING (E-CIGARETTE) PRODUCTS

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance prohibiting the sale of flavored tobacco and e-cigarette products.

Estimated Time: 60 Minutes

15. PROVIDE DIRECTION REGARDING NON-STOREFRONT (DELIVERY ONLY) CANNABIS RETAIL ORDINANCE

Recommendation:

1. Direct staff to return with an ordinance which allows non-storefront, delivery only, cannabis retail within the City limits.
OR
2. Continue to maintain Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis, unless otherwise allowed by state law.

Estimated Time: 10 Minutes

16. DISCUSS FIRE SERVICES HAZARD-RISK ASSESSMENT AND STANDARDS OF COVERAGE ASSESSMENT PREPARED AND PRESENTED BY CITYGATE ASSOCIATES, LLC

Recommendation:

1. Receive report; and
2. Provide direction to staff on next steps.

Estimated Time: 30 Minutes

17. ACCEPT SEPTEMBER 2019 FINANCIAL AND INVESTMENT AND CITY MANAGER AUTHORITY REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

18. SELECT CITY COUNCIL MAYOR PRO TEMPORE AND REVIEW CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Recommendation:

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01;
3. Review and approve the City Council Appointments to Outside Agencies; and
4. Direct the City Clerk to notify the appropriate agencies of the updated assignments and update the Form 806 as necessary.

Estimated Time: 10 Minutes

PUBLIC HEARING

19. APPROVE AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR DUNNE-YOUNG TO INCORPORATE 26 BUILDING ALLOTMENTS FOR FISCAL YEAR 2020-21 AWARDED FROM THE 2018 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AND TRANSFERRED FROM THE MONTEREY-LUCKY SHING (MANZANITA PARK) PROJECT FOR THE 46-UNIT EAST DUNNE-YOUNG PROJECT (ALSO KNOWN AS ANDALUSIA) LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE BEHIND THE KINDERCARE LEARNING CENTER LOCATED AT 605 E. DUNNE AVENUE

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of ordinance approving amendment to a Development Agreement (DA 2018-0002) and a transfer of allotments from the Monterey-Lucky-Shing project; and
3. Introduce ordinance amending the Development Agreement.

Estimated Time: 30 Minutes

20. ADOPT ORDINANCE AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

Recommendation:

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

Estimated Time: 30 Minutes

21. ADOPT ZONING ORDINANCE AMENDING CHAPTER 18.84: ACCESSORY DWELLING UNITS AND UPDATING DEFINITIONS IN CHAPTER 18.124 OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881, AND SENATE BILL 13

Recommendation:

1. Open/close the public hearing;
2. Waive first reading of the Zoning Amendment Ordinance; and
3. Introduce the Zoning Amendment Ordinance.

Estimated Time: 30 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

In compliance with the Americans with Disabilities Act, if you are a disabled person and you need a disability-related modification or accommodation to participate in this meeting, please contact the City Clerk's Office at (408)779-7259, (408)779-3117 (fax) or by email cityclerk@morganhill.ca.gov. Requests must be made as early as possible and at least two-full business days before the start of the meeting.

SUSTAINABLE MORGAN HILL



VISION

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

Choose Morgan Hill

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

City Council Ongoing Priorities

- Enhancing Public Safety
- Protecting the Environment
- Maintaining Fiscal Responsibility
- Supporting our Youth, Seniors, and Entire Community
- Fostering a Positive Organizational Culture
- Preserving and Cultivating Public Trust
- Preserving our Community History
- Enhancing Diversity and Inclusiveness
- Advancing Regional Initiatives

2019-2020 Strategic Priorities

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





CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Jake Hess, Fire Chief

APPROVED BY: City Manager

FIRE SERVICES HAZARD-RISK ASSESSMENT AND STANDARDS OF COVERAGE STUDY PRESENTATION

RECOMMENDATION(S)

Receive presentation.

LINKS/ATTACHMENTS:

1. Vol 1 of 2: Standards of Coverage Assessment- Technical Report (web link)
2. Vol 2 of 2: Standards of Coverage Assessment- Map Atlas (web link)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2019

RECOMMENDATION(S)

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The Fiscal Year 2018-19 Comprehensive Annual Financial Report (CAFR) is presented for your review. Each year the City engages an independent firm to audit the books and accounts of the City's general ledger. Included in this audit are the review and verification of all finance processes. An annual audit is required by state law and by bond covenants.

The CAFR presents the operations and financial activity of all the City's various funds, including the General Fund. It includes an unmodified audit opinion from Maze & Associates, the City's external auditors, stating that the financial statements present fairly the results of operations for the year ended June 30, 2019, in conformance with Generally Accepted Accounting Principles (GAAP). An auditor gives an Unmodified Opinion (or clean opinion) when he or she does not have any significant reservation in respect of matters contained in the Financial Statements.

A summary of significant highlights follows:

General Fund: The fund balance increased by \$4.0 million compared to prior year. The increase is attributable to fair market value adjustment for the investments of approximately \$2.2 million, conservative spending, and a sustained economic expansion which led to higher tax revenues.

Development Services Fund: The fund balance amounted to \$1.3 million, all of which is restricted, a decrease of \$0.7 million from prior year. The amount was better than the budgeted deficit of approximately \$1.4 million partially attributable to conservative spending. The fund is forecasted to continue to be structurally imbalanced, requiring

significant use of reserves in subsequent years. Barring any unforeseen circumstances, the remaining fund reserves, should support the fund's operating deficits in the next few years.

Enterprise Funds: Unrestricted net position at June 30, 2019, amounted to \$8.9 million for Sewer Operations and \$3.4 million for Water Operations. Water Operations' unrestricted net position increased by \$2.4 million compared to prior year. The operating revenues saw an increase of \$1.5 million primarily due to the water rate adjustments approved by City Council in January 2016 as discussed in the management's discussion and analysis. Sewer Operations' unrestricted net position increased by \$2.1 million from prior fiscal year with operating revenues increasing by \$1.2 million primarily due to increased usage and rate adjustments. The Sewer Impact Fund had \$18.1 million in net position restricted for capital improvements and expansion, an increase of \$2.6 million from prior year mainly due to higher collection of impact fees while the Water Impact Fund had \$4.8 million for the same purpose, an increase of \$0.8 million from prior year.

COMMUNITY ENGAGEMENT: Inform

Finance staff presents these audited reports in an effort to keep the City Council, community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is an audited report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The audited comprehensive financial report is presented to Council each year for the prior fiscal year ending June 30.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact for the recommended action.

CEQA (California Environmental Quality Act):

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

LINKS/ATTACHMENTS:

1. 2018-19 Comprehensive Annual Financial Report (web link)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2018-19

RECOMMENDATION(S)

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

Government Code Section 66000 et seq. requires that any city imposing development impact fees must report certain information each year. In accordance with this requirement, staff is presenting the Annual Development Impact Fee Report, Attachment No. 1, for the fiscal year ending June 30, 2019. The report includes a fee description, a schedule of impact fees for the reporting period as approved by City Council, and a report of the 2018-19 revenues and expenditures for each impact fee, along with the balance available for current and future projects. A description of the project that resources were used for is also included for each impact fee.

Section 66001(d) requires that for the fifth fiscal year following the collection of development fees, and every five years thereafter, the local agency shall make findings with respect to any portion of the fee collected remaining unexpended, whether committed or uncommitted. Staff identified \$4,091,852 from the Storm Drain Impact Fee (Fund 303); and \$3,414,789 from the Fire Impact Fee (Fund 313) in unexpended fees that were collected over five years ago. These unexpended fees have been or will be appropriated into existing and future capital improvement projects:

- 1) Storm Drain Impact Fee to fund drainage improvements identified in the City's Storm Drainage System Master Plan that feed into the Upper Llagas Creek Flood Protection Project and the West Little Llagas Creek watershed. A total of \$5,675,000 from Storm Drain Impact Fees has been allocated to this project (417099) in the adopted Fiscal Year 2018/19-2023/24 Capital Improvement Program (CIP).

- 2) Fire Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. A total of \$4,297,000 from Fire Impact Fees has been allocated to this project (231018) in the adopted Fiscal Year 2018/19-2023/24 Capital Improvement Program (CIP).

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares this annual report in an effort to keep City Officials, Council, Community, and stakeholders informed on the financial status of each impact fee, which assists each one of the interested parties in making sound financial decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is an annual report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The annual impact fee report is presented to Council each year for the prior fiscal year ending June 30.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Impact Fee Report FY 2018-19
2. Resolution

**City of Morgan Hill
AB 1600 Development Impact Fee Report
Fiscal Year 2018-19**

Impact Fee Fund Descriptions

Park Impact – This fund receives revenues from developers of properties and the fund may only be used for the design, development, maintenance, and construction of new parks within the City.

Storm Drain – This fund receives revenues from developers of properties to cover the costs of design and construction of new storm drain that benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Traffic Impact – This fund receives revenues from developers when their projects have an adverse impact on traffic flows, etc. The funds collected may be expended on new streets, traffic signals and improvements of existing streets where they are impacted by new development.

Police Impact – Revenues are collected to finance the expansion of police facilities necessary to benefit, and to provide police services to new customers residing within the City of Morgan Hill as a result of growth in population.

Fire Impact – Revenues are collected to finance the expansion of fire facilities necessary to benefit, and to provide fire services to new customers residing within the City of Morgan Hill as a result of growth in population.

Community/Recreation Center Impact – Revenues are collected to finance the expansion of existing and construction of new recreation and community center facilities demanded by new development.

Public Facilities – Revenues are collected to finance the expansion of public facilities necessary to benefit new customers residing within the City of Morgan Hill as a result of growth in population.

Library Impact – Revenues are collected to finance the provision of future library space and materials necessary to benefit, and necessary to provide library services to, new residents residing in the City of Morgan Hill as a result of population growth.

Sewer Impact – Revenues are collected to finance the expansion of wastewater facilities necessary to benefit, and necessary to provide wastewater services to new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

Water Impact – Revenues are collected to finance the expansion of water facilities necessary to benefit, and necessary to provide water services to, new customers residing in the service area within the City of Morgan Hill as a result of growth in population.

City of Morgan Hill
Impact Fee Schedule Summary
Fiscal Year 2018-19

Description of Fee	Unit of Measure	Amount
Water Impact Fee	Single Family Dwelling Unit	3,902.00
	Multi Family Dwelling Unit	3,520.00
	Commercial/Industrial/Office per acre	11,076.00
Sewer Impact Fee	Single Family Dwelling Unit	15,269.00
	Multi Family Dwelling Unit	12,923.00
	Commercial/Industrial/Office per GPD	50.28
Storm Drain Impact Fee	Single Family Dwelling Unit	4,142.00
	Multi Family Dwelling Unit	2,154.00
	Commercial/Office per acre	45,106.00
	Industrial per acre	32,840.00
	Auto Dealership per acre	56,384.00
	Hotel per room	1,372.00
Park Impact Fee	Single Family Dwelling Unit-Sub	5,790.00
	Single Family Dwelling Unit-No Sub	4,210.00
	Multi Family Dwelling Unit-Sub	5,578.00
	Multi Family Dwelling Unit-No Sub	4,060.00
Traffic Impact Fee	Single Family Dwelling Unit	2,005.00
	Multi Family Dwelling Unit	1,244.00
	Commercial/Industrial/Office per PHT	2,005.00
Library Impact Fee	Single Family Dwelling Unit	2,126.00
	Multi Family Dwelling Unit	2,048.00
Police Impact Fee	Single Family Dwelling Unit	826.00
	Multi Family Dwelling Unit	798.00
	Commercial per acre	1,793.00
	Office per acre	2,145.00
	Industrial per acre	2,512.00
	Auto Dealership per acre	715.00
	Hotel per room	21.00
Fire Impact Fee	Single Family Dwelling Unit	127.00
	Multi Family Dwelling Unit	121.00
	Commercial/ Industrial per acre	1,668.00
	Office per acre	2,022.00
	Auto Dealership per acre	546.00
	Hotel per room	5.00
Public Facilities	Single Family Dwelling Unit	551.00
	Multi Family Dwelling Unit	530.00
	Commercial per acre	1,214.00
	Office per acre	1,443.00
	Industrial per acre	1,700.00
	Auto Dealership per acre	487.00
	Hotel per room	14.00

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 301 - PARKS IMPACT FEE	Project Number	FY 18-19 AB 1600		
<u>Revenue</u>				
Interest		\$ 75,745		
Development Impact Fees		1,987,402		
Project Reimbursement/Others		77,075		
Total Revenue		<u>\$ 2,140,222</u>		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Parks Land	110097	\$ 3,335	100.00%	3,335
Downtown Parks	135013	17,779	0.46%	3,904,810
Inclusive Playground	137015	216,500	100.00%	216,500
Galvan Park New Handball Court	141A16	1,442	0.27%	535,866
Community Garden	142017	135,729	100.00%	135,729
Tree Planting/Urban Forest Mgmt	143017	106,020	100.00%	106,020
Butterfield Blvd Connector Path Project	148017	111,429	100.00%	111,429
W. Little Llagas Creek Trail Phase	117001	14,512	100.00%	14,512
Park Enhancements-Shade Additions & Park Res	149018	5,980	100.00%	5,980
Sports Facility Development	148018	56,693	100.00%	56,693
General Plan Update		7,704	7.00%	110,000
RCSD Services		75,000	100.00%	75,000
Banking and Merchant Service Fees		5,225	100.00%	5,225
Taxes		13,308	100.00%	13,308
Impact Fee Study		1,806	11.11%	16,254
Administration		39,000	2.29%	1,706,109
Total Expenditures		<u>\$ 811,462</u>		
Revenue Less Expenditures		<u>\$ 1,328,760</u>		
Balance as of July 1, 2018		<u>2,787,306</u>		
Balance as of June 30, 2019		<u><u>\$ 4,116,066</u></u>		

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 303 - STORM DRAIN IMPACT FEE	Project Number	FY 18-19 AB 1600		
Revenue				
Interest		\$ 196,589		
Development Impact Fees		1,616,668		
Total Revenue		\$ 1,813,257		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Storm Master Plan Update	423012	\$ 5,021	100.00%	5,021
Llagas Flood Control	417099	80,887	100.00%	80,887
Impact Fee Study		1,806	11.11%	16,254
General Plan Update		7,704	7.00%	110,000
Banking and Merchant Service Fees		68	100.00%	68
Administration		6,624	0.39%	1,706,109
Total Expenditures		\$ 102,110		
Revenue Less Expenditures		\$ 1,711,147		
Balance as of July 1, 2018		10,405,902		
Balance as of June 30, 2019		\$12,117,049		

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 309 - TRAFFIC IMPACT FEE	Project Number	FY 18-19 AB 1600		
REVENUE				
Interest		\$ 26,360		
Traffic Impact Fees		724,473		
TOTAL REVENUE		\$ 750,833		
Revenue Expended For			% from this Fund	Total Project Expenditures
Hale Avenue Extension	546007	\$ 5,257,459	100.00%	5,257,459
General Plan Update		31,896	29.00%	110,000
Impact Fee Study		1,806	11.11%	16,254
Banking and Merchant Service Fees		2,004	100.00%	2,004
Administration		11,460	0.67%	1,706,109
Total Expenditures		\$ 5,304,625		
Revenue Less Expenditures		\$ (4,553,792)		
Balance as of July 1, 2018		3,437,981		
Balance as of June 30, 2019		\$ (1,115,811)		

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 311 - POLICE IMPACT FEE		FY 18-19 AB 1600	
<u>REVENUE</u>			
Interest	\$	2,134	
Police Impact Fees		297,080	
TOTAL REVENUE	\$	299,214	
		% from this Fund	Total Project Expenditures
<u>Revenue Expended For</u>			
Police Facility Bond Debt service	\$	197,692	51.78% 381,779
Impact Fee Study		1,806	11.11% 16,254
Banking and Merchant Service Fees		813	100.00% 813
Administration		2,868	0.17% 1,706,109
Total Expenditures	\$	203,179	
Revenue Less Expenditures	\$	96,035	
Balance as of July 1, 2018		(736,932)	
Balance as of June 30, 2019	\$	(640,897)	

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 313 - FIRE IMPACT FEE	Project #	FY 18-19 AB 1600		
<u>REVENUE</u>				
Interest		\$ 78,716		
Fire Impact Fees		48,663		
TOTAL REVENUE		\$ 127,379		
<u>Revenue Expended For</u>			% from this Fund	Total Project Expenditures
Outfitting Reserve Engine		\$ 156,155	100.00%	156,155
Impact Fee Study		1,806	11.11%	16,254
Banking and Merchant Service Fees		125	100.00%	125
Administration		3,048	0.18%	1,706,109
Total Expenditures		\$ 161,134		
Revenue Less Expenditures		\$ (33,755)		
Balance as of July 1, 2018		3,906,953		
Balance as of June 30, 2019		\$ 3,873,198		

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 347 - PUBLIC FACILITIES IMPACT FEE	Project Number	FY 18-19 AB 1600		
REVENUE				
Interest/Other		\$ 12,868		
Public Facilities Impact Fees		199,674		
Project Reimbursement/Others		13,202		
TOTAL REVENUE		\$ 225,744		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Corporation Yard Long Term Plan Study		\$ 52,743	100.00%	52,743
Impact Fee Study		1,806	11.11%	16,254
Banking and Merchant Service Fees		543	100.00%	543
Administration		2,100	0.12%	1,706,109
Total Expenditures		\$ 57,192		
Revenue Less Expenditures		\$ 168,552		
Balance as of July 1, 2018		520,300		
Balance as of June 30, 2019		\$ 688,852		

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 348 - LIBRARY IMPACT FEE	Project Number	FY 18-19 AB 1600		
REVENUE				
Interest		\$ 52,020		
Library Impact Fees		751,923		
Library Lease		174,142		
TOTAL REVENUE		\$ 978,085		
Revenue Expended For			% from this Fund	Total Project Expenditures
Library Expansion	251015	\$ 139,631	100.00%	139,631
Civic Center Debt Service		213,528	73.88%	289,029
Impact Fee Study		1,806	11.11%	16,254
Banking and Merchant Service Fees		2,092	100.00%	2,092
Administration		5,136	0.30%	1,706,109
Total Expenditures		\$ 362,193		
Revenue Less Expenditures		\$ 615,892		
Balance as of July 1, 2018		2,371,544		
Balance as of June 30, 2019		\$ 2,987,436		

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 360 - COMMUNITY/REC CENTERS IMPACT FEE	Project Number	FY 18-19 AB 1600		
REVENUE				
Interest/Others		\$ 33,943		
Com/Rec Centers Impact Fees		1,091,702		
TOTAL REVENUE		\$ 1,125,645		
			% from this Fund	Total Project Expenditures
Revenue Expended For				
Centennial Recreation Center Expansion	138016	\$ 82,005	100.00%	82,005
CRC Backup Generator	299018	29,149	100.00%	29,149
Villa Mira Monte Enhancements	144017	1,577	100.00%	1,577
Banking and Merchant Service Fees		3,881	100.00%	3,881
Administration		468	0.03%	1,706,109
Total Expenditures		\$ 117,080		
Revenue Less Expenditures		\$ 1,008,565		
Balance as of July 1, 2018		1,113,663		
Balance as of June 30, 2019		\$ 2,122,228		

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 641 - SEWER IMPACT FEE	Project Number	FY 18-19 AB 1600		
REVENUE				
Interest		\$ 344,622		
Sewer Impact Fees		4,876,919		
TOTAL REVENUE		\$ 5,221,541		
Revenue Expended For			% from this Fund	Total Project Expenditures
Sewer Plant Improvements	303a11	\$ 2,216,159	100.00%	2,216,159
Sewer Main Upgrades	302t17	78,301	86.33%	90,698
Trunk Line - Phase I & II	308a08	56,542	12.32%	458,767
Trunk Line -Cohansey to Renz	308f17	11,135	100.00%	11,135
General Plan Update		7,704	7.00%	110,000
Debt Service		232,692	11.99%	1,940,625
Impact Fee Study		1,806	11.11%	16,254
Banking and Merchant Service Fees		14,903	100.00%	14,903
Administration		55,887	3.28%	1,706,109
Total Expenditures		\$ 2,675,129		
Revenue Less Expenditures		\$ 2,546,412		
Balance as of July 1, 2018		15,556,702		
Balance as of June 30, 2019		\$ 18,103,114		

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

City of Morgan Hill
Impact Fees Revenue and Expenditures
For Fiscal Year 2018-19

FUND 651 - WATER IMPACT FEE	Project Number	FY 18-19 AB 1600		
REVENUE				
Interest		\$ 58,148		
Water Impact Fees		1,451,349		
TOTAL REVENUE		\$ 1,509,497		
Revenue Expended For			% from this Fund	Total Project Expenditures
Main Ave Well #3	601u15	\$ 1,329,965	1063.334%	125,075
Water Supply Well Buildings	601v15	26,778	100.000%	26,778
E. Dunne Reservoir	602d15	5,475	100.000%	5,475
Oak Canyon Booster Station	607d14	1,293	0.622%	207,809
General Plan Update		7,704	7.004%	110,000
Debt Service		655,539	40.938%	1,601,313
Impact Fee Study		1,806	11.11%	16,254
Banking and Merchant Service Fees		3,830	100.000%	3,830
Administration		17,368	1.018%	1,706,109
Total Expenditures		\$ 2,049,758		
Revenue Less Expenditures		\$ (540,261)		
Balance as of July 1, 2018		2,680,718		
Balance as of June 30, 2019		\$ 2,140,457		

Attachment: Impact Fee Report FY 2018-19 (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL MAKING FINDINGS FOR UNEXPENDED DEVELOPMENT IMPACT FEES IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 66001 AND ACCEPTING THE ANNUAL DEVELOPMENT IMPACT FEE REPORT

WHEREAS, the Mitigation Fee Act, Government Code Section 66000 et seq., authorizes the City of Morgan Hill ("City") to impose, collect, and expend mitigation fees to offset the impacts of development within the City; and;

WHEREAS, among the procedural requirements mandated by the Mitigation Fee Act is a requirement that beginning with the fifth fiscal year following deposit of development fees into a designated account, and each fifth fiscal year thereafter, the City make specified findings regarding any portion of the fees that remain unexpended; and

WHEREAS, a portion of the fees currently deposited in the City's Storm Drain Impact Fee Fund and Fire Impact Fee Fund were collected over five (5) years ago, and therefore the City wishes to make the findings required by Government Code Section 66001(d); and

WHEREAS, the City also wishes to review and accept reports required by the Mitigation Fee Act under the annual information disclosure requirements of Government Code Section 66006(b), including but not limited to the amount of the fee, the beginning and ending balance of the fee account or fund, and the interest earned thereon.

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

1. The City Council has considered the full record before it, which may include, but is not limited to, the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council finds that the Storm Drain Impact Fee Fund currently contains Four Million Ninety One Thousand Eight Hundred Fifty Two Dollars (\$4,091,852), and Fire Impact Fee Fund currently contains Three Million Four Hundred Fourteen Thousand Seven Hundred Eighty Nine Dollars (\$3,414,789) in unexpended fees that were collected over five (5) years ago.
3. In accordance with Government Code section 66001(d)(1), the City Council finds as follows:
 - a. The Unexpended Fees will be used to provide for the following projects:

- (A) Storm Drain Impact Fee to fund Llagas Flood Control Project to address storm water conveyance that drains into the Upper Llagas Creek Flood Protection Project (ULCFPP) and the West Little Llagas watershed. The project would provide flood protection and mitigate the increased risk of flooding when the ULCFPP is completed;
- (B) Fire Impact Fee to fund construction of the Fire Station on Butterfield Boulevard. The project will address the need for a new fire station as the community grows.

- b. There exists a reasonable relationship between the Unexpended Fees and the purpose for which they were charged as described above.
- c. The current estimated costs that have been appropriated or will be appropriated for the Llagas Flood Control Project are approximately Five Million Six Hundred Seventy Five Thousand Dollars (\$5,675,000); and costs for the Fire Station on Butterfield Boulevard are approximately Four Million Two Hundred Ninety Seven Thousand Dollars (\$4,297,000). The City's funding sources will include the Unexpended Fees described above and future impact fees to be collected for these projects.
- d. The Unexpended Fees have been deposited in the respective Impact Fee Funds, which are the appropriate funds to finance the projects described above.

- 4. 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 4th day of December 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 December 4, 2019.

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

DATE: _____

Irma Torrez, CITY CLERK

Attachment: Resolution (2558 : AB 1600 Development Impact Fee Report For FY 2018-19)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

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

APPROVE SECOND AMENDMENT TO DESIGN SERVICES AGREEMENT WITH HYDROSCIENCE ENGINEERS FOR THE NEW SEWER TRUNK PROJECT

RECOMMENDATION(S)

1. Approve Second Amendment to Service Agreement for Design Professionals with HydroScience Engineers, Inc. to provide additional services for the New Sewer Trunk Line to Gilroy project for an additional \$531,050, for a total not to exceed amount of \$1,704,710; and
2. Authorize the City Manager to execute and administer the amended services agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

HydroScience Engineers, Inc. were awarded a professional design services agreement on May 4, 2016 for \$651,760 to prepare plans & specifications to design a portion of the new sewer trunk line (Attachment 1) from Highland Avenue to Cohansey Avenue. Then, on April 19, 2017, City Council approved a First Amendment to provide design services to extend the design to Renz Lane for an additional \$521,900, thereby completing the entire design between Morgan Hill and Gilroy.

The project has reached a 60% completion level, with the Gilroy City Council approving the sewer trunk alignment within their City limits in spring 2019. This effort put the design process on hold in order to establish the preferred alignment of the sewer trunk line through the City of Gilroy.

In order to complete the design from this point forward, HydroScience will require additional funding in order to restart the project and provide additional contract services and inter-agency coordination. Additional services include; updating the topographic survey, additional utility research, identifying utility conflicts (potholing), well destructions, trenchless engineering support, and siphon redundancy. In addition to

these services, costs have also increased since the beginning of the project for engineering, environmental and utility locating services. These cost increases have been incorporated into this second amendment.

Thus, the proposed second contract amendment with HydroScience represents the overall effort to complete the sewer trunk line design from this point forward for a cost not to exceed \$531,050 (Attachment 2). Construction support services are not included in this contract, as the actual timing to construct the project has not been established. The total not-to-exceed contract amount would become \$1,704,710 (\$651,760 original + \$521,900 first amendment + \$531,050 second amendment) for services rendered from May 2016 through December 2020.

HydroScience is expected to complete the final design by December 31, 2020. Construction costs are estimated between \$25M-\$30M. Construction could commence as early as April 2021 if funding is secured.

COMMUNITY ENGAGEMENT: Inform

Staff is coordinating with the City of Gilroy and the County of Santa Clara to provide regular project status updates through email, the City's website, and social media during the design process. All impacted property owners and businesses will be contacted and consulted prior to construction, which includes residents of San Martin.

ALTERNATIVE ACTIONS:

Council could decide to not amend the HydroScience Engineer's contract. However, this would prevent the completion of the plans and specifications and delay the overall project delivery.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On May 4, 2016, City Council approved a design agreement with HydroScience Engineers, Inc. for \$651,760 for the preparation of design plans and specifications for the sewer trunk segment between Highland and Cohansey.

On April 19, 2017, City Council awarded a first amendment with HydroScience Engineers, Inc. to provide design services for the sewer trunk segment between Cohansey and Renz for \$521,900.

FISCAL AND RESOURCE IMPACT:

The sewer trunk project amendment of \$531,050 is sufficiently funded in the FY 2018-19 Capital Improvement Program (CIP) budget under CIP Project 308A08, New Trunk Line, utilizing Sewer Impact Fund (Fund 641). The cost of the original design services agreement (\$651,760) plus the First Amendment (\$521,900) was \$1,173,660.

With City Council's approval of the Second Amendment, the total not to exceed contract amount would become \$1,704,710 (\$651,760 original + \$521,900 first amendment + \$531,050 second amendment).

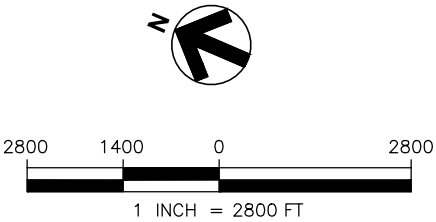
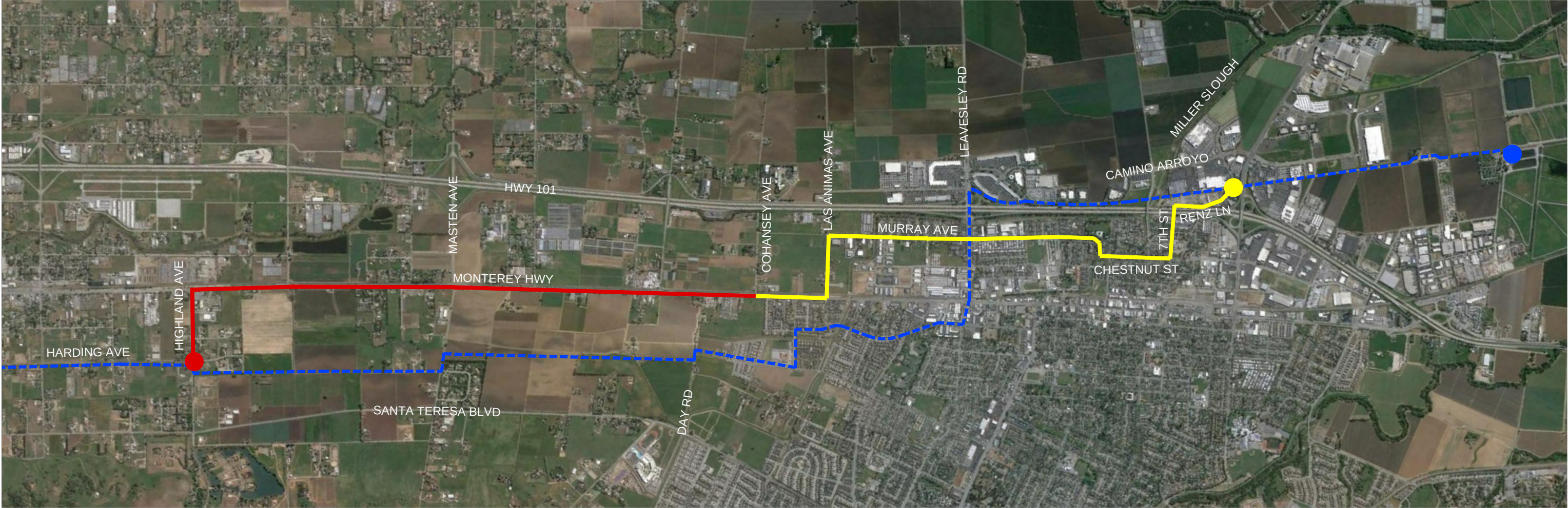
CEQA (California Environmental Quality Act):

Not a Project.

This professional services agreement is not a project, as defined in Section 15378 of the State CEQA Guidelines. However, the Sewer Trunk Line project itself is a project and requires CEQA review; thus David J. Powers is preparing an Initial Study to identify and mitigate all environmental impacts from the project.

LINKS/ATTACHMENTS:

1. Project Location Map
2. Second Amendment-HydroScience



- LEGEND:
- EXISTING JOINT SEWER TRUNK
 - SOUTH COUNTY REGIONAL WASTEWATER AUTHORITY WASTEWATER TREATMENT PLANT
 - TRUNK SEWER SOUTH OF HIGHLAND PHASE 1
 - TRUNK SEWER SOUTH OF HIGHLAND PHASE 2
 - TIE-IN TO HARDING AVE RELIEF SEWER TRUNK
 - TIE-IN TO CITY OF GILROY RELIEF SEWER TRUNK

FIGUR
CITY OF MORGAN H
TRUNK SEWER SOUTH OF HIGHLAND

SECOND AMENDMENT TO AGREEMENT HYDROSCIENCE ENGINEERS, INC.

This SECOND AMENDMENT TO AGREEMENT is entered into and becomes effective on _____ (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and HYDROSCIENCE ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This Second Amendment to Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, ____, 20__.
2. The CITY and CONSULTANT entered into that "SERVICE AGREEMENT FOR DESIGN PROFESSIONALS" made as of May 6, 2016, for consultant services for a maximum compensation of Six-Hundred Fifty-One Thousand and Seven Hundred-Sixty Dollars (\$651,760) ("SERVICE AGREEMENT FOR DESIGN PROFESSIONALS").
3. The CITY and CONSULTANT entered into a "First Amendment to Agreement" made as of May 5, 2017, under which the maximum compensation under the SERVICE AGREEMENT FOR DESIGN PROFESSIONALS, as amended, was increased to One Million One Hundred Seventy-Three Thousand Six Hundred Sixty Dollars (\$1,173,660). The SERVICE AGREEMENT FOR DESIGN PROFESSIONALS and the First Amendment thereto are attached as Exhibit "1" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from May 6, 2016 until December 31, 2020. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"The services to be performed by CONSULTANT shall consist of the additional services, as set forth in Exhibit "2" dated November 6, 2019 and incorporated herein by reference."

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed ONE MILLION SEVEN HUNDRED FOUR THOUSAND SEVEN HUNDRED TEN AND NO/100 DOLLARS (\$1,704,710.) shall be billed effective the date of this Amendment, the rate and basis set forth

in Exhibit B dated April 20, 2016, Exhibit B dated April 5, 2017, and Exhibit A dated November 6, 2019 under Exhibit "2". If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council."

D. Paragraph 5 shall be amended and replaced in its entirety by the following:

"5. **Termination**. CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY."

E. Paragraph 6 is amended and replaced in its entirety to read as follows:

"6. **Performance of Work**. CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance", as updated by the revised Exhibit C in the First Amendment and Exhibit 2 dated November 6, 2019, 2019, attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk."

F. Paragraph 7.2.2 shall be amended and replaced in its entirety by the following:

"7.2.2. **Workers Compensation**

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers."

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

"9. Compliance with Law.

9.1 CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

9.2 Compliance with Wage and Hour Laws: Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage

and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section."

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

"20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault."

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

Michelle Bigelow, Deputy City Clerk

Date: _____

Christina J. Turner, City Manager

Date: _____

APPROVED AS TO FORM:

HYDROSCIENCE ENGINEERS, INC.

Donald A. Larkin, City Attorney

Date: _____

By: _____

Title: _____

William J. Stenter
 Print Name and Title of Signer.

If Corporate: Chairman, President or
 Vice President

Date: _____

By: _____

Title: _____

Hildegard M. Harris
 Print Name and Title of Signer.

If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: _____

EXHIBIT 1

126-04-16-031

**FIRST AMENDMENT TO AGREEMENT
HYDROSCIENCE ENGINEERS, INC.**

This FIRST AMENDMENT TO AGREEMENT is entered into and becomes effective on 5/5/17 (Effective Date), by THE CITY OF MORGAN HILL, a municipal corporation, ("CITY") and, HYDROSCIENCE ENGINEERS, INC., a California Corporation ("CONSULTANT").

RECITALS

The following recitals are a substantive part of this Agreement:

1. This First Amendment to Agreement is entered into based upon City of Morgan Hill City Council approval on April 19, 2017.
2. The CITY and CONSULTANT entered into that "Consultant Agreement" Service Agreement for Design Professionals made as of May 4, 2016, for consultant services for a maximum compensation of (\$651,760) Six Hundred Fifty-One Thousand Seven Hundred Sixty dollars ("CONSULTANT AGREEMENT"). The CONSULTANT AGREEMENT is attached as Exhibit "A" to this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

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

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

"2. **Term of Agreement.** This Agreement shall be effective and cover services rendered from May 4, 2016, until December 31, 2019. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both parties to this Agreement."

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

"The services to be performed by CONSULTANT shall consist of the following additional services set forth in Exhibit "B": Design services shall include preparing construction level plans and specifications for extending the Sewer trunk Line Phase II Project, between Cohansey Avenue and Renz Lane.

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

"4.1. **Amount.** Compensation under this Agreement shall not exceed the original agreement amount of \$651,760 plus the First Amendment amount of \$521,900, for a total not to exceed contract amount of One Million One Hundred Seventy-Three Thousand Six Hundred Sixty Dollars (\$1,173,660).

2. **Conflicts.** In the event of a conflict between the terms and provisions of this First Amendment to Agreement and the terms and provisions of the CONSULTANT AGREEMENT, the terms of this First Amendment to Agreement shall govern and control.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; **AND**
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

Deputy City Clerk [Signature]
 Date: 5/8/17

APPROVED AS TO FORM:

[Signature]
 City Attorney
 Date: 5/2/2017

CITY OF MORGAN HILL

[Signature]
 City Manager
 Date: 5/5/15

HYDROSCIENCE ENGINEERS, INC.

[Signature]
 By: CINDY PREUSS
 Title: VICE-PRESIDENT
 Print Name and Title of Signer.
 If Corporate: Chairman, President or
 Vice President

Date: 4-24-17
[Signature]
 By: HILDEBRAND M. HARRIS
 Title: TREASURER
 Print Name and Title of Signer.
 If Corporate: Secretary, Assistant
 Secretary, Chief Financial Officer or
 Assistant Treasurer

Date: 4-24-17

EXHIBIT A

126-04-16-031

**SERVICE AGREEMENT FOR DESIGN PROFESSIONALS
HYDROSCIENCE ENGINEERS, INC.**

THIS AGREEMENT is entered into and becomes effective on 5/6/16 (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and HydroScience Engineers, Inc. a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to action of the Morgan Hill City Council taken on May, 4, 2016.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2018 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by CONSULTANT shall be to design a 30" sewer trunk line from Highland Avenue to Las Animas Avenue as further described in Exhibit A.
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$651,760.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed Six-Hundred-Fifty-One-Thousand-and-Seven-Hundred-Sixty dollars and shall be billed based on the rate and basis set forth in Exhibit B. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed during the extended term period exceed an additional five percent (5%) above the compensation allowed to be paid to CONSULTANT during the initial term of this Agreement.
 - 4.2. **Billing.** CONSULTANT shall provide CITY with a monthly invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to

CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

- 7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.3. **Workers' Compensation Insurance and Employer's Liability.** CONSULTANT shall maintain Workers Compensation coverage, as required by law, in the minimum

amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

- 7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5.3. If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.2. **Endorsements.** CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. **General Liability.**

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

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. **Workers Compensation.**

The insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

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

- 7.4. **Certificates.** CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.** CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.

11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.

12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

HydroScience Engineers, Inc.
4055 Evergreen Village Square, Suite 250
San Jose, CA 95135

Address of CITY is as follows:

Mr. Karl Bjarke	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

14. **Licenses, Permits and Fees.** CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. **Maintenance of Records.**

15.1. **Maintenance.** CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3 year period, then CONSULTANT shall retain said records until such action is resolved.

15.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

- 15.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
16. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
17. Time of Essence. Time is of the essence in the performance of this Agreement.
18. No Assignment. Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.
19. Attorney Fees. In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.
20. Defense and Indemnification.
- 20.1. Defense and Indemnification for Design Professional Services. Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM").
- 20.2. Defense and Indemnification for Non-Design Professional Services. For all services performed under this agreement not covered by Section 20.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 20.3. Exceptions. CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.

- 20.4. Not limited by insurance. The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 20.5. Right to Offset. CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (20) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 20.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.
21. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.
22. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.
23. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.
24. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
25. Binding Agreement. Notwithstanding the provisions of Section 18 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

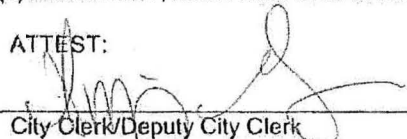
26. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:


City Clerk/Deputy City Clerk

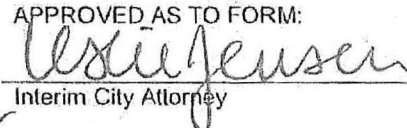
Michelle Wilson

Print Name

Date:

5/6/16

APPROVED AS TO FORM:


Interim City Attorney

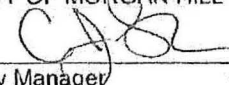
Gary M. Baum

Print Name

Date:

05/05/16

CITY OF MORGAN HILL


Acting City Manager

Steve Rymer

Print Name

Date:

5/6/16

HYDROSCIENCE ENGINEERS, INC.

By:

Title:

Curtis Lam, President

Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date:

02/16/16

By:

Title:

HILLEGARD M. HARRIS, CFO

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date:

2/16/2016

EXHIBIT A

Scope of Services – Phase 1

HydroScience proposes the following scope of work. In preparing the level of effort, we have made the following assumptions:

1. As shown in Figure 1, the alignment for City's new 30-inch sewer trunk project is from Highland Avenue and Harding Avenue (constructed as part of the City's Harding Avenue Sewer Trunk Line project) until the connection to the City of Gilroy's new 36-inch sewer trunk near Renz Road. The new 30-inch new sewer trunk pipeline is approximately 37,000 lineal feet (LF) total.
2. This project will be constructed in two phases as described below:
 - a. Phase 1– Design, bid, and construction of approximately 21,000 LF from Harding Ave/Highland Ave to Monterey Hwy/Las Animas Ave.
 - This phase includes predesign of the entire alignment (from Highland Ave and Harding Ave through connection to the City of Gilroy's sewer trunk near Renz Road). The predesign tasks are described in Task 2 below.
 - We anticipate that this pipeline segment will require minimal permit approvals.
 - b. Phase 2– Design, bid, and construction of approximately 16,000 LF from Monterey Hwy/Las Animas Ave to tie-in connection point with the City of Gilroy's 36-inch sewer near Renz Road.
 - Alignment includes sewer pipeline installations within private property.
 - Alignment also includes the following crossings:
 - Under the UPRR tracks near Las Animas Ave and Monterey Hwy
 - Under Hwy 101 at Las Animas Ave.
 - Under Leavesley Rd. near Hwy 101 off-ramp (on fringe of State right-of-way)
 - Under Miller Slough near E. 6th Street
 - We anticipate that this pipeline segment will require additional permit approvals and coordination.
3. The topographic survey and geotechnical investigation work will proceed following the City's selection of the preferred alignment for each pipe reach (for entire alignment included in Phases 1 and 2).
4. Based on our current project work with the City, we anticipate the City may want aerial topographic mapping for the new sewer trunk. The base fee estimate for topographic survey work does not include cost for aerial mapping. Since aerial mapping topography is highly recommended for Phase 2's pipe segments, we have included this as an optional cost to be performed if directed by the City.
5. Construction work will be within publicly owned sanitary sewer easements and/or right of ways (ROW). For Phase 2 segments, some of these easements are within private property. Although not included in our previous base fee, we highly recommend performing title searches and incorporating title report information into the topographic survey. Therefore, we have added the cost for title reports as an optional cost to be performed if directed by the City.
6. Our fee estimate includes effort to contact known utilities in the project area to obtain their mapping for design purposes. The mapping will be used as reference/supplemental information to the topographic survey's existing utility information developed in Task 2.
7. It is assumed that environmental permitting efforts and community relations support, if needed, will be performed by the City and/or others.

EXHIBIT A

8. Phase 2 will require permits from UPRR and Caltrans to cross under the railroad tracks and at/near Hwy 101, respectively. Phase 2 will also require additional coordination with UPRR, Caltrans, and Santa Clara Valley Water District (SCVWD) during the Phase 2 design. Phase 2 will also require coordination with private property owners (e.g., Gilroy Outlets, Costco, etc.).

Figure 1 – Proposed Phase 1 and 2 - Alignment of 30-inch Relief Trunk from Harding Ave/Highland Ave to Renz Road



EXHIBIT A

TASK 1 – PRELIMINARY DESIGN

HydroScience will begin the Phase 1 project with a kickoff meeting to establish a collaborative approach and will be the first step to ensure good coordination and communication throughout the project. The goals for this meeting include establishing an understanding of the project's objectives, the City's expectations, project schedule, and the various roles and responsibilities for the entire project team. This meeting is also a good opportunity to identify concerns and potential pitfalls. This process is extremely helpful in getting the design team members in tune with the City's real needs and objectives, and in recognizing the critical decisions and hurdles that may have to be addressed during the project. HydroScience will prepare agenda, handouts, and minutes to document this meeting.

Since Akel Engineering is currently updating the proposed sewer trunk's hydraulic parameters, our scope includes one meeting with Akel Engineering and the City to review Akel's latest evaluation results. The goals for this meeting include verifying the sewer trunk's pipe diameter for each segment and pipe reach, preliminary pipe invert elevations and rim elevations, and other recommendations based on the City's latest sewer master plan.

Technical Memorandum and Preliminary Design Workshop

The technical memorandum (TM) will evaluate all pipeline segments to be installed during Phases 1 and 2. HydroScience will make recommendations for a preferred design approach, which will be presented in the Preliminary Design Workshop, and the decisions reached in this workshop will serve as the basis for the subsequent design efforts in Phases 1 and 2. The preferred approach will be based on a set of criteria including cost, construction schedule, and ease of maintenance.

The TM that will summarize our preliminary design findings based on existing utility information and other information provided by the City. For segments in Phase 1, we will evaluate the City's three proposed routes shown in the RFP between the limits of Harding Ave/Highland Ave and Day Road. Out of this assessment, up to two of the three routes will be discussed and included in the TM, as well as a discussion on the proposed route from Day Road to Monterey/Las Animas. For segments in Phase 2, we will evaluate up to two possible alignments only if the proposed routing shown on Figure 1 is prohibitive. For each segment's preferred alignment, we will evaluate up to two construction methods (trenchless versus open-cut) for each segment.

For each segment's preferred alignment, the TM shall include the following:

- Exhibit of the preferred pipeline alignment (no preliminary drawings will be developed)
- Design criteria and high-level project description (for CEQA's initial studies)
- Recommendations for the preferred method of construction: 1) Open-cut or 2) Trenchless (pending confirmation of existing utility locations as part of Task 2).
- Preliminary construction estimate
- Preliminary design and construction schedule
- Identification of easements/ROW that may need construction easements, title reports, and/or Plat and Legal Descriptions for the City to obtain utility easements.
- Identification of permits required and approach to expediting any approvals from UPRR, Caltrans, and SCVWD.

EXHIBIT A

To facilitate design of the preferred alignment, HydroScience proposes a design review workshop with the City to review the TM findings. The pipeline alignment alternatives along with the preferred alignments will be discussed at this workshop. It is anticipated that the alignment and construction method for each segment will be validated by the end of this workshop. Following the workshop, the topographic survey and geotechnical investigation work will proceed on the selected alignment of the sewer pipe to be installed in both Phases 1 and 2.

Deliverables

TM - Four hard copies and electronic PDF file

Preliminary Design Review Workshop meeting agenda, minutes, and decision logs - Electronic PDF

Meetings

Kickoff meeting

Preliminary Design review workshop

TASK 2 – PREPARE PLANS, SPECIFICATIONS AND ESTIMATES

A. Perform Topographic Survey

HydroScience's subconsultant, HMM Engineering, will provide record right-of-way and title reports; record utility research; field topographic survey; and aerial topographic mapping. Our base fee is based on performing topographic survey work associated with the alignment shown in Figure 1. These limits may be adjusted to match the preferred alignment if different from what is shown in Figure 1 following completion of Task 1.

Record Right-of-Way. Using current Assessor's maps, title report information, and recorded maps and documents from the County of Santa Clara, HMM will prepare a record boundary in AutoCAD format.

Field Topographic Survey. HMM will perform field topographic surveying to obtain location, rim, invert, pipe size, and direction of flow of accessible sanitary sewer manholes, storm drain manholes, and storm drain inlets; location of all USA marked utilities and vaults from curb to curb; location, rim, top of nut, and length of extension of water valves; and location of street monuments. HMM will prepare a topographic exhibit at a scale of 1 inch = 40 feet in AutoCAD format. The exhibit will be a composite of the record right-of-way, record utility research, and field topographic survey.

Aerial Topographic Mapping.

HMM will establish thirty field pre-marks and field control for an aerial flight to obtain topographic information within the streets. HMM will also engage a photogrammetric subconsultant to perform air flight services and compile a topographic map showing photo-visible surface features, structures within a 100 feet wide strip, one-foot contours, spot elevations, and breaklines at a scale of 1 inch = 40 feet.

Title Reports

HMM will obtain current preliminary title report for the following areas (private properties):

- Southeast corner of Las Animas Ave and Highway 101
- Gilroy Outlets parking lot (south of Leavesley Road)
- Vacant lot between Arroyo Circle And E. 6th Street (south of Kaiser Permanente Medical Offices)
- Costco parking lot (west side)

EXHIBIT A

- Lowe's parking lot (west side)
- Vacant lot south of Lowe's/Renz Road (west of Chili's parking lot)

Plat and Legal Description - OPTIONAL

HMH may prepare plat and legal description if requested by the City. Depending on the alignment selected during the Task 1 preliminary design evaluations, the City may need to obtain utility easements, which will require plat and legal descriptions. Since the number of plat-and-legal descriptions will not be known until after the alignment is selected, our revised costs includes optional costs for up to 10 plat-and-legal descriptions.

Deliverables

Final topographic exhibit at a scale of 1 inch = 40 feet in AutoCad format; electronic data becomes property of the City.

B. Coordinate with Utility Companies Including PG&E; Perform Potholing

HydroScience will perform utility investigations to identify buried utilities in the project area. We will first contact known utility providers in the project area, prepare any applications to request maps showing the locations of their utilities, and meet with the utility companies if needed. Equipped with the mapping information, Underground Services Alert (USA) markings, visible trenches, vaults, valves and other surface evidence, we will update the topographic survey information as needed.

Potholing. It is expected that some potholing will be required, particularly to confirm the tie-in locations and key utility crossings to more precisely locate critical and/or conflicting utilities within the proposed sewer trunk alignment. We assumed up to 20 potholes (1' x 1') up to five feet in depth may be needed. These locations will be selected based on the potential conflict with existing underground utilities. We will procure services of a subconsultant to perform this work.

During design, if an existing utility relocation is needed along the City's selected sewer trunk alignment, HydroScience shall coordinate with the applicable utility company, prepare the application, and meet with them on site if necessary. Any application fees and costs associated with the utility relocation will be paid by the City. Our fee is based on one anticipated utility relocation.

Deliverables

Any applications for utility relocation.

C. Geotechnical Investigation

Geo-Logic Associates will perform up to 39 exploratory borings using a truck-mounted drilling rig to characterize the native soils in the project areas. The proposed boring locations and depths are shown in the table below.

EXHIBIT A

Geotechnical Investigation's Proposed Number of Borings

Project Segment	Proposed Number and Depth Of Borings (<i>below ground surface</i>)
Highland Avenue	2 borings up to 20 feet each
Monterey Hwy to Las Animas Ave	17 borings up to 20 feet each
UPRR Crossing at Las Animas Ave	2 borings up to 50 feet each
Las Animas Ave	1 borings up to 20 feet each
Las Animas Ave/Highway 101 Crossing	2 borings up to 60 feet each
San Ysidro Ave, Gilroy Outlets parking lot, and Arroyo Circle	9 borings up to 30 feet each
Leavesley Crossing (at San Ysidro Ave)	2 borings up to 50 feet each
Miller Slough Crossing	2 borings up to 60 feet each
Costco and Lowe's parking lots	2 borings up to 30 feet each
Total of 39 Borings	

The deepest borings are near access pit locations for crossing under UPRR, Hwy 101, and Miller Slough. No borings are planned within Caltrans right-of-way. Geo-Logic will field mark and notify USA of proposed test boring locations prior to drilling.

Borings located in County ROW will be backfilled with soil cuttings (preferred by the County based on Geo-Logic's recent experience) and excess soil cuttings will be spread in unpaved shoulder areas. Borings located in the City of Gilroy and SCVWD right-of-way and in private properties will be backfilled with cement grout. In existing pavement areas, the borings will be capped at the top with cold-patch asphalt. Excess soil cuttings from borings in City of Gilroy, SCVWD, and private properties will be placed in 55-gallon drums and the drums moved to a temporary storage area. Samples will be collected from soil cuttings for CM 17 metals, hydrocarbons, VOC (8250B), and pesticides. Our fee also includes cost for disposal of the drums assuming the soil cuttings are non-hazardous. Additional testing may be necessary if excess levels of hazardous materials are indicated in the initial testing. In existing pavement areas, all borings will be capped at the top with cold-patch asphalt.

As an optional task for landfill soil disposal preliminary screening, Geo-Logic may also perform laboratory testing on 10 selected samples from the project's test borings. This preliminary screening will provide basic information for off-site disposal, and the soil properties needed for the design specifications. Tests to be performed include CAM 17 metals, total petroleum hydrocarbons (gasoline, diesel and motor oil), VOCs, semi-VOCs, pesticides, and PCBs. During the Harding Avenue Sewer Trunk construction project, the City encountered challenges with landfill disposal of the excess excavated soils. This optional task will provide soil classification information needed to evaluate potential off-site disposal options during construction. The actual type and number of tests will depend on the materials encountered in our borings.

Geo-Logic will obtain encroachment permit and a boring permit from SCVWD. Geo-Logic will provide complete application information for the City to obtain encroachment permits from Santa Clara County

EXHIBIT A

and City of Gilroy for the geotechnical field work. By having the City submit the applications, the permit fees are usually waived. Any other associated permit fees will be paid by the City.

A geotechnical engineering report in PDF electronic format will be prepared. The report will present the field data, the results of laboratory analyses, and geotechnical recommendations for various construction methods for the new pipeline.

Deliverables

Information on the subsurface exploration program and traffic control plans for encroachment permits needed for geotechnical field work.

Geotechnical Report - Four hard copies and electronic PDF.

D. Phase 1 Final Design

This scope of work is based on preparation of signed and stamped plans and specifications for the Phase 1 new sewer trunk construction contract (from Highland Avenue to Las Animas Avenue).

Progress Review Meetings with City and Stakeholders

The contract documents will refer to standard details and specifications for the Cities of Morgan Hill and Gilroy, Santa Clara County, Caltrans, and SCVWD as applicable. Special provisions will be added to the City of Morgan Hill documents as needed to meet the specific needs of each segment. We propose progress review meetings prior to submittal of the 30% and 60% designs for the City and project stakeholders to attend. HydroScience will present preliminary geotechnical and survey findings and recommendations and an overview of the current design approach for each segment. These meetings provide the City and stakeholders the opportunity to ask questions and make suggestions to the design prior to completing the design submittals.

Quality Assurance

The 30%, 60%, and 100% design submittals will be reviewed for QA/QC by a senior member of HydroScience's staff who is not directly involved with the project design prior to delivering those submittals to the City.

Design Submittals

Contract documents will be delivered to the City at the 30%, 60%, and 100% design completion levels for City review and comment. The 30% review submittal will include plan and profile drawings and list of technical specifications. The plan and profile drawings will include information needed to verify the selected alignment and make adjustments based on surveying and geotechnical findings. The 60% review submittal will include plan and profile drawings, standard details, and technical specifications. The 100% design and Bid Set submittals will include complete plan set, technical specifications, and City-provided front end documents that have been modified to meet the project needs.

Additionally, the design submittals will include updated design and construction schedules, the engineer's opinion of probable costs, and responses to comments from the 30% and 60% design submittals. Our schedule assumes the City will have two weeks to comment on the 30% and 60% submittal and one week

EXHIBIT A

for the 100% submittal. City comments on the 30% and 60% design submittals will be incorporated into the 60% and 100% design submittal, respectively. The 100% design submittal will also further develop the detailed design to a level suitable for any permit application submittals and bid advertisement, pending City review.

HydroScience will submit final design drawings and specifications, which will reflect any comments and modifications from the 100% review, as appropriate. HydroScience will prepare the bid schedule and delineate the anticipated construction time period. In addition, HydroScience will provide the final Engineer's opinion of probable cost, tabulation of quantities of all work items and materials, and recommendation for allowed construction time period.

Design Submittal Review Meetings

After the 30% and 60% submittals, the project manager and project engineer will meet with City staff to review the City's comments during a design review meeting.

We propose a 100% design review workshop to be held within the City's one week review period to facilitate review of the design and capture edits/comments. HydroScience will document the design review workshop via email. Changes in the design are not anticipated at this point. Review is mainly to capture minor edits or changes in the notes. Significant design changes such as realignment of the pipeline and/or additional design details may result in delays in the schedule and additional fee.

Deliverables

Meeting agendas, minutes, and decision logs

Four (4) half-size hardcopies and PDF of 30%, 60%, and 100% Bid Set design submittals (drawings, specifications, schedule, and estimate). One (1) full-size stamped and signed set of mylars of the 100% AutoCAD and Word files for final bidding documents.

Meetings

Two (2) progress meetings with City and stakeholders (up to 4 hours each meeting)

Design review meetings at 30%, 60%, and 100% submittal milestones (up to 4 hours each meeting).

Assumptions

For Phase 1, approximately 26 drawing sheets to be provided, including 18 plan and profile sheets at 1:40 scale plus 4 front-end sheets, and 4 detail sheets.

E. Permitting/Environmental Documentation Assistance

The various permits that may be required are itemized below:

- Phase 1 Construction:
 - Santa Clara County Encroachment Permit

HydroScience will assist the City with preparing encroachment permit applications. We will compile the required information for each permit and submit applications on the City's behalf. Any permit applications will be paid by the City.

EXHIBIT A

Since City staff or its consultant will perform the CEQA required environmental studies and reporting, HydroScience will provide the City and/or its consultant the required project and design descriptions to complete the environmental documentations. Any required mitigated measures will be incorporated into the sewer trunk's design plans and specifications.

TASK 3 – BIDDING SUPPORT

HydroScience will provide assistance to the City during the contract bid period. Services include attendance at the project pre-bid meeting; responding to prospective bidders' questions (20 each); preparation of addenda (including sketches or revisions to plans) as needed to clarify the design (2 each); and a review and evaluation of the submitted bids up to the subtask budget.

Deliverables

*Meeting minutes, question responses, addenda if required, and bid review comments.
Conformed plans and specifications (PDF, Word, and AutoCAD)*

TASK 4 – CONSTRUCTION SUPPORT

The City will provide the construction management, special inspections services, and the daily inspection. HydroScience will provide engineering services during construction. Our fee for construction support services shall include:

- Attendance at the pre-construction meetings (up to 4 hours per meeting)
- Attendance at construction meetings and/or field visits (up to 8 total; up to 4 hours per meeting/field visit)
- Review of contractor submittals and resubmittals and response to request for information (up to 20 total)
- Minor adjustments to the design plans and specifications (5 each) to address unforeseen conditions or City requests.
- Review change orders (up to 5 total)
- Preparation of record drawings based on the contractor's markups.

The HydroScience team will review technical submittals (including product substitution requests) from the contractor in sufficient detail to determine whether or not the submitted item conforms to the intent of the plans and specifications. HydroScience will respond to RFIs and RFCs throughout construction as directed by the City. HydroScience will attend construction meetings and/or site visits to address conflicts or other design issues.

Once the project construction is complete, HydroScience will prepare record drawings to reflect the as-built project condition. Red-line drawings from the contractor and/or City Inspector will be used as the basis for preparing the as-built drawings.

EXHIBIT A

Deliverables

Responses for submittals, RFIs/RFCs, product substitution requests, and change order requests (quantities specified above).

One (1) full-size record drawings (on mylar) plus PDF and AutoCAD format.

ANTICIPATED INVOLVEMENT OF CITY STAFF

The City shall provide record drawings of recent street improvements and of any City owned underground utilities along the project alignments. The City shall provide HydroScience with the most current front end documents, standard provisions, and special provisions for incorporation into the design submittals. The City shall provide the necessary hydraulic modeling information; perform CEQA for this project; obtain any necessary additional easements, provide inspection services; review all design submittals in a timely manner; and make available City personnel to address issues that may arise during the design phase.

EXHIBIT B - Consultant Fee

HydroScience
Environmental Science & Engineering

City of Morgan Hill																	
PHASE 1 - Sewer Trunk Line South of Highland Avenue to Las Animas Avenue																	
Consultant Fee																	
revised April 20, 2016																	
Task Item	Description	Hourly Rate	Prin	Prin	E-VI	E-IX	E-IV	E-VI	E-VIII	Hours	Fee	Regio and OHCs	0001 - Surveying	Geo Logic - Geotechnical	Reg Hydrology	Direct Charges Markup @ 10%	Total Fee
			\$225	\$225	\$175	\$210	\$115	\$175	\$200								
1	Preliminary Design	32	64	32	12	134	16	1.5	325.5	\$57,000	\$150	\$0	\$0	\$0	\$20	\$300	\$57,470
	Project Initiation and Kick-off Meeting	8	20	16	0	6	0	0	52	\$10,100	\$0	\$0	\$0	\$0	\$0	\$100	\$10,200
	Meeting With Akai Engineering	4	4	4	0	4	0	0	16	\$3,000	\$100	\$0	\$0	\$0	\$0	\$10	\$3,110
	Technical Memorandum and Preliminary Design Workshop (Segments 1 and 2)	20	40	60	12	124	16	1.5	373.5	\$43,900	\$50	\$0	\$0	\$0	\$10	\$200	\$44,160
2	Final Design	45	207	379	44	765	40	0	1473	\$225,800	\$1,180	\$103,500	\$117,125	\$30,000	\$25,185	\$500	\$277,490
	A Topographic Survey (including aerial orthographic images and title search)	12	20	20	0	0	0	0	52	\$8,500	\$0	\$103,500	\$0	\$0	\$10,350	\$113,850	\$122,350
	B Utility Coordination and Pinpointing (up to 20 Potholes)	12	32	75	0	0	0	0	115	\$16,500	\$0	\$0	\$0	\$30,000	\$3,000	\$33,000	\$49,500
	C Geotechnical Investigation (30 borings total)	4	12	0	0	0	0	0	16	\$3,000	\$0	\$0	\$117,125	\$0	\$11,715	\$128,840	\$131,840
	D Final Design (2 bid packages)	38	159	203	44	648	0	0	1172	\$177,600	\$1,000	\$0	\$0	\$0	\$100	\$500	\$179,200
	E Permitting/Environmental Documentation Assistance	5	20	32	0	22	40	0	115	\$20,800	\$180	\$0	\$0	\$0	\$20	\$200	\$21,000
3	Bidding Support	2	13	24	1	25	0	0	43	\$10,750	\$80	\$0	\$0	\$0	\$20	\$140	\$11,000
	Pre-bid Meeting/Site Tour	2	6	6	0	0	0	0	34	\$2,850	\$40	\$0	\$0	\$0	\$10	\$140	\$3,040
	Respond to bidder's questions (up to 40 questions total)	4	12	0	17	0	0	0	33	\$5,000	\$0	\$0	\$0	\$0	\$0	\$0	\$5,000
	Attendees including contract revisions & sketches (up to 4 total)	3	6	1	8	0	0	0	16	\$2,900	\$50	\$0	\$0	\$0	\$10	\$50	\$3,000
4	Construction Support (Segments 1 and 2)	6	90	112	3	135	4	0	352	\$53,500	\$1,000	\$0	\$0	\$0	\$130	\$330	\$55,000
	Preconstruction Support and Project Monitoring	2	40	24	0	2	0	0	68	\$13,900	\$60	\$0	\$0	\$0	\$10	\$30	\$14,000
	Meetings (up to 10 total, with notes and site visit)	4	12	25	12	2	0	0	55	\$9,700	\$0	\$0	\$0	\$0	\$0	\$300	\$10,000
	Prepare Submittal List	1	2	4	0	0	0	0	7	\$1,000	\$0	\$0	\$0	\$0	\$0	\$0	\$1,000
	Review Contractor Submittals/Substitution Request/RFPs (up to 30 total)	20	23	1	39	0	0	0	82	\$13,000	\$0	\$0	\$0	\$0	\$0	\$0	\$13,000
	Adjustments to design plans & specs (up to 10 total)	2	10	25	2	50	2	0	92	\$13,800	\$180	\$0	\$0	\$0	\$20	\$200	\$14,000
	Review Change Order Requests (up to 10 total)	6	7	12	0	0	0	0	25	\$4,000	\$0	\$0	\$0	\$0	\$0	\$0	\$4,000
	Prepare Record Drawings	1	6	15	0	0	0	0	23	\$3,100	\$800	\$0	\$0	\$0	\$100	\$900	\$4,000
TOTAL (BASE FEE)		85	374	597	60	1059	50	1.5	2241	\$353,050	\$2,460	\$103,500	\$117,125	\$30,000	\$25,355	\$1,270	\$532,760
Optional Scope Items:																	
2	A1: OPTIONAL - Plat and Legal Descriptions (new easement/ROW), up to 10 each	2	0	2	0	0	0	0	4	\$1,000	\$0	\$0	\$0	\$0	\$0	\$0	\$5,000
2	B1: OPTIONAL - Additional Potholes (20 each)	1	2	2	0	0	0	0	5	\$1,000	\$0	\$0	\$0	\$0	\$0	\$0	\$10,000
2	C1: OPTIONAL - Landfill Soil Screening (analytical tests on 10 samples)	1	0	1	0	0	0	0	2	\$300	\$0	\$0	\$0	\$0	\$0	\$0	\$4,000
TOTAL (BASE FEE + OPTIONAL SCOPE)		85	375	602	60	1064	50	1.5	2252	\$355,350	\$2,460	\$103,500	\$120,475	\$30,175	\$26,655	\$1,270	\$551,760

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

City of Memphis, Tennessee
 Revised April 20, 2010

Exhibit C - Schedule

Item	Task	Duration	Start Date	Finish Date	Predecessor	Successor	Notes
1	Project Initiation	5 days	04/20/10	04/24/10			
2	Task 1 - Preliminary Design	30 days	04/24/10	05/24/10	1		
3	Task 2 - Preliminary Design	30 days	04/24/10	05/24/10	1		
4	Task 3 - Preliminary Design	30 days	04/24/10	05/24/10	1		
5	Task 4 - Preliminary Design	30 days	04/24/10	05/24/10	1		
6	Task 5 - Preliminary Design	30 days	04/24/10	05/24/10	1		
7	Task 6 - Preliminary Design	30 days	04/24/10	05/24/10	1		
8	Task 7 - Preliminary Design	30 days	04/24/10	05/24/10	1		
9	Task 8 - Preliminary Design	30 days	04/24/10	05/24/10	1		
10	Task 9 - Preliminary Design	30 days	04/24/10	05/24/10	1		
11	Task 10 - Preliminary Design	30 days	04/24/10	05/24/10	1		
12	Task 11 - Preliminary Design	30 days	04/24/10	05/24/10	1		
13	Task 12 - Preliminary Design	30 days	04/24/10	05/24/10	1		
14	Task 13 - Preliminary Design	30 days	04/24/10	05/24/10	1		
15	Task 14 - Preliminary Design	30 days	04/24/10	05/24/10	1		
16	Task 15 - Preliminary Design	30 days	04/24/10	05/24/10	1		
17	Task 16 - Preliminary Design	30 days	04/24/10	05/24/10	1		
18	Task 17 - Preliminary Design	30 days	04/24/10	05/24/10	1		
19	Task 18 - Preliminary Design	30 days	04/24/10	05/24/10	1		
20	Task 19 - Preliminary Design	30 days	04/24/10	05/24/10	1		
21	Task 20 - Preliminary Design	30 days	04/24/10	05/24/10	1		
22	Task 21 - Preliminary Design	30 days	04/24/10	05/24/10	1		
23	Task 22 - Preliminary Design	30 days	04/24/10	05/24/10	1		
24	Task 23 - Preliminary Design	30 days	04/24/10	05/24/10	1		
25	Task 24 - Preliminary Design	30 days	04/24/10	05/24/10	1		
26	Task 25 - Preliminary Design	30 days	04/24/10	05/24/10	1		
27	Task 26 - Preliminary Design	30 days	04/24/10	05/24/10	1		
28	Task 27 - Preliminary Design	30 days	04/24/10	05/24/10	1		
29	Task 28 - Preliminary Design	30 days	04/24/10	05/24/10	1		
30	Task 29 - Preliminary Design	30 days	04/24/10	05/24/10	1		
31	Task 30 - Preliminary Design	30 days	04/24/10	05/24/10	1		
32	Task 31 - Preliminary Design	30 days	04/24/10	05/24/10	1		
33	Task 32 - Preliminary Design	30 days	04/24/10	05/24/10	1		
34	Task 33 - Preliminary Design	30 days	04/24/10	05/24/10	1		
35	Task 34 - Preliminary Design	30 days	04/24/10	05/24/10	1		
36	Task 35 - Preliminary Design	30 days	04/24/10	05/24/10	1		
37	Task 36 - Preliminary Design	30 days	04/24/10	05/24/10	1		
38	Task 37 - Preliminary Design	30 days	04/24/10	05/24/10	1		
39	Task 38 - Preliminary Design	30 days	04/24/10	05/24/10	1		
40	Task 39 - Preliminary Design	30 days	04/24/10	05/24/10	1		
41	Task 40 - Preliminary Design	30 days	04/24/10	05/24/10	1		
42	Task 41 - Preliminary Design	30 days	04/24/10	05/24/10	1		
43	Task 42 - Preliminary Design	30 days	04/24/10	05/24/10	1		
44	Task 43 - Preliminary Design	30 days	04/24/10	05/24/10	1		
45	Task 44 - Preliminary Design	30 days	04/24/10	05/24/10	1		
46	Task 45 - Preliminary Design	30 days	04/24/10	05/24/10	1		
47	Task 46 - Preliminary Design	30 days	04/24/10	05/24/10	1		
48	Task 47 - Preliminary Design	30 days	04/24/10	05/24/10	1		
49	Task 48 - Preliminary Design	30 days	04/24/10	05/24/10	1		
50	Task 49 - Preliminary Design	30 days	04/24/10	05/24/10	1		
51	Task 50 - Preliminary Design	30 days	04/24/10	05/24/10	1		
52	Task 51 - Preliminary Design	30 days	04/24/10	05/24/10	1		
53	Task 52 - Preliminary Design	30 days	04/24/10	05/24/10	1		
54							

EXHIBIT B



Date: April 5, 2017
 Client: City of Morgan Hill
 Contact: David Gittleson, P.E.
 Project: Sewer Trunk Line South of Highland Avenue

HydroScience Engineers, Inc.
 10569 Old Placerville Road
 Sacramento, CA 95827
 T: 916.364.1490
 F: 916.364.1491

CONTRACT AMENDMENT REQUEST FOR ADDITIONAL ENGINEERING SERVICES

Original Professional Services Agreement Date: May 4, 2016

Amendment Request No.: 1

Amendment Subject: Additional engineering services for flow meter design, bidding support, and construction support as part of Phase 1 design services; storm water pollution prevention plan (SWPPP) development services for Phase 1 and Phase 2; Phase 1 engineering services for change in pipe size from 30" to 36" diameter and additional design investigation efforts; additional survey, geotechnical investigation, and engineering services required to complete preliminary design of Phase 2 alignment as part of preliminary design services; engineering services for Phase 2 final design, bidding support and construction support.

Amendment Description: The Sewer Trunk South of Highland Avenue to Renz Ln (Project) was broken into two (2) design and construction phases: Phase 1 (from Highland Ave to Cohansey Ave) and Phase 2 (from Cohansey Ave to Renz Ln). HydroScience's original contract includes the following services:

Phase 1	Preliminary design, final design, bidding & construction support
Phase 2	Preliminary design & alignment alternatives

The City desires to accelerate the entire project at this time by advancing Phase 2 final design, bidding, and construction services.

Stakeholder coordination with the City of Gilroy to determine a Phase 2 alignment through Gilroy has required more effort and iterations of alignment alternatives than allotted in the original scope. Phase 2 has been narrowed down to two alignment alternatives, pending stakeholder approval, that will allow preliminary design to be completed and final design of Phase 2 to commence. This amendment requests scope be added for the additional preliminary design effort expended to date and anticipated effort to complete the task.

The Project's survey, potholing, and geotechnical investigations were split into two phases, increasing the total costs for those services due to dual mobilizations. Additional survey, potholing, and geotechnical effort is required to address a longer and more complex Phase 2 alignment than was assumed in the original Project scope. The currently proposed Phase 2 alignments include additional trenchless crossings and require utility easements within private property.

The proposed trunk sewer was originally assumed to be 30-inches in diameter. Following the 30% design submittal, the pipe diameter was increased to 36-inches to provide additional capacity within the system. Alignment and profile constraints will be reevaluated and refined to accommodate the increased diameter and reflected in Phase 1 and Phase 2 final design.

The South County Regional Wastewater Authority (SCRWA) Inter-City Boundary Agreement Line is located along Highland Avenue. Based on discussions with the City, the existing sewer trunk has a

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Attachment: Second Amendment-HydroScience (2477 : HydroScience Second Amendment)

flow meter located near the intersection of Harding Avenue and Highland Avenue. City's new flow meter will measure Morgan Hill's additional sewer flows delivered to the SCRWA treatment facility via the new sewer trunk.

Develop a SWPPP for Phase 1 and Phase 2 to be compliant with current construction storm water discharge regulations. HydroScience will provide engineering support services to assist the City in the preparation and submittal of Permit Registration Documents (PRD) for Phase 1 and Phase 2 construction. A certified Qualified SWPPP Designer (QSD) will prepare documents necessary for the electronic submittals of the PRDs.

Scope of Services: Based on discussions with City personnel, this additional work consists of the following key scope elements:

Task I – Flow Meter

- **Item 1.1 – Flow Meter Preliminary Design.**
 - During the preliminary design phase, verify and coordinate flow meter equipment and operating requirements with SCRWA.
 - Summarize flow meter design requirements in preliminary design's technical memorandum.
 - HydroScience's electrical engineer will conduct one site visit to verify near-by power sources for the new flow meter. Existing aboveground power poles are located along Harding Avenue and also Highland Avenue.
- **Item 2D.1 – Flow Meter Final Design and PG&E Application**
 - During the final design phase, HydroScience will work with PG&E to apply for the proper power service to the new flow meter. The proposed budget is based on power service from a nearby power pole, PG&E providing the required transformer, and the City paying for any PG&E application fees.
 - Design the flow meter within a buried vault based on the City of Morgan Hill and SCRWA operation requirements. Design will include routing of power conduit from PG&E designated power pole source to the flow meter vault.
 - Design includes instrumentation and controls to allow radio control/communication between the flow meter and the SCRWA facility in Gilroy. The proposed budget does not include a radio study. Instead, the budget is based on a clear line-of-site between the flow meter controls and SCRWA facility (i.e., no major mountains, hills, or large trees that may impact radio signals).
 - Design includes providing plans, specifications, and cost estimates for the new flow meter equipment, vault, power, and instrumentation and controls. Proposed budget includes coordination between the civil and electrical designs.
 - Final design budget is based on developing one drawing sheet for electrical site plan and flow meter and vault details. The budget does not include providing profile drawings for the electrical conduit between the power source and flow meter vault.
- **Items 3.1 and 4.1 – Flow Meter Bidding Support and Construction Support**
 - Provide bidding support and construction support services for the flow meter work. Construction support budget is based on submittal reviews of flow meter equipment and instrumentation/controls.

Deliverables:

- Inclusion of flow meter in the design submittals and specification package prepared for Phase 1.

Task II – Storm Water Permit Compliance

- **Items 2.E1 and 2.E2 – Assist the City in the preparation and submittal of Permit Registration Documents for Phase 1 and Phase 2.**
 - HydroScience will assist the City in the preparation and submittal of Permit Registration Documents (PRDs) in compliance with the Construction Activities Storm Water General Permit. Based on the criteria established by the State Water Resources Control Board, Phase 1 and Phase 2 Sanitary Sewer Construction Projects are considered Linear Utility Projects (LUP), and therefore, the Project is required to comply with the General Permit. The PRDs must be electronically submitted by the City (prior to commencement of construction activities) in the Storm Water Multi-Application Report Tracking System (SMARTS) and include the following:
 - Notice of Intent (NOI)
 - Risk Assessment
 - Post-Construction Calculation
 - Site Map
 - Stormwater Pollution Prevention Plan (SWPPP)
 - Signed Certification by the Legally Responsible Person (LRP)
 - First Annual Fee
 - The SWPPP is a document that outlines how a construction project will minimize stormwater pollution. The SWPPP document will be prepared by a HydroScience Qualified SWPPP Developer (QSD) and will describe the measures that will be put in place by the contractor to prevent stormwater pollution. This document will need to be maintained onsite at all times and updated as needed throughout the duration of construction.
 - The SWPPP will include both procedural and engineered control devices as Best Management Practices (BMPs) for minimizing erosion, sediment flow, and prevention of non-stormwater discharges. The SWPPP will also include site inspection, BMP maintenance, and laboratory sampling and analysis.
 - As a first order of work, HydroScience will perform a risk assessment of the construction project to best outline the complexity of the SWPPP and the extent of the inspection, monitoring, and reporting requirements.

Assumptions:

- All permit fees and costs will be the responsibility of the City.
- LUP Type 1 assumed for both Phase 1 and Phase 2 based on risk level.

Deliverables:

- Permit Registration Documents (pdf version) for electronic submission via the SMARTS system, and electronic copies of said documents.

Task III – Phase 1 Additional Design

- **Item 1.1 – Preliminary design investigation for temporary interconnect (February 2017)**
 - At the direction of City staff, investigate feasibility of a temporary interconnect of the proposed relief sewer to the existing trunk sewer in the vicinity of Day Rd, not included in original project scope. Research existing trunk profile and possible connection points. Evaluate available slope for relief trunk interconnect and identify potential alternate locations. Interconnect would alleviate wet weather surcharge conditions at the intersection of Harding Ave and Highland upon construction of Phase 1, prior to construction of Phase 2. Provide email summary of finding to City staff.
- **Item 2D.1 – Evaluation and redesign of relief trunk to accommodate 36" diameter pipe**
 - Following 30% design submittal, City staff decided to upsize the proposed sewer trunk from 30-inches in diameter to 36-inches in diameter. Due to tight horizontal and vertical constraints, verify through additional engineering evaluations that minimum slope, cover, and clearance requirements can be met with the larger pipe diameter. Reexamine all existing utility crossings and assess any impact to the completed 30% design due to the increase in pipe diameter. Modify alignment as required to meet minimum clearance requirements.

Deliverables:

- Email summary of interconnect feasibility evaluation findings.
- Incorporation of alignment redesign to address diameter increase in 60% design submittal drawings.

Task IV – Phase 2 Design

- **Item 1.1 – Preliminary Design for Phase 2 (partially completed)**
 - Following coordination meeting with the City of Gilroy (August 1, 2016), develop and evaluate six (6) alternative alignments in addition to those evaluated in the Draft Preliminary Design Memorandum. Evaluation of each additional alignment includes site visit; solicitation for and review of existing utility mapping and City of Gilroy record drawings not included in the original alternatives evaluation; hydraulic calculations to determine feasibility; evaluation of construction methods and constraints; and development of preliminary construction costs. Conduct two (2) conference calls (August 9 & 11, 2016) with City staff to discuss evaluation of additional alternatives and select preferred alternatives. Prepare figures of revised alignments for City of Morgan Hill to discuss with City of Gilroy.
 - Attend additional coordination meeting with the City of Gilroy (February 2017) to discuss revised preferred alternative alignment. Prepare meeting materials, including agenda, figures, and minutes. Perform site visit following meeting.
 - Following February 2017 coordination meeting with the City of Gilroy, develop and evaluate two (2) additional alternative alignments for 7th Street and Old Gilroy Street. Evaluation of each additional alignment includes solicitation for and review of existing utility mapping and City of Gilroy record drawings, and were not included in the previous two alternative evaluation efforts; hydraulic calculations to confirm feasibility;

evaluation of construction methods and constraints; and development of preliminary construction costs.

- Attend one final stakeholder meeting with City of Gilroy to confirm final alignment.
- Upon selection of a Phase 2 alignment, update Preliminary Design Memorandum with additional alternative alignment analysis performed and selection criteria used to determine the new preferred Phase 2 alignment.

Deliverables:

- Prepare figures of revised alignments for City of Morgan Hill to discuss with the City of Gilroy.
- Meeting materials, agenda, figures, and minutes for February 2017 meeting with the City of Gilroy to discuss preferred alternative alignments.
- Updated Preliminary Design Memorandum.
- **Item 1.2 – Additional Directed Design Work**
 - As needed and as requested by the City, additional design analyses and evaluations performed to satisfy City and/or stakeholder requests.
- **Item 2A.1 – Phase 2 Topographic Survey**
 - HydroScience's subconsultant, HMM Engineering, will provide record right-of-way and title reports; record utility research; field topographic survey; and aerial topographic mapping per the terms of the scope of the original contract dated May 4, 2016 with the following modifications:
 - The base fee is based on performing topographic survey work associated with the alignment shown in Figure 1. These limits may be adjusted to match the preferred alignment if different from what is shown in Figure 1 following completion of Item 1.1 as described above.
 - HMM will obtain current preliminary title report for the following areas (private properties) in lieu of those listed in the original scope:
 - Apartment Building located at 611 East 7th Street
 - PG&E Property at 731 Renz Ln
 - Vacant lot west of Chili's parking lot on Renz Rd
- **Plat and Legal Description - OPTIONAL**
 - HMM may prepare plat and legal description if requested by the City. Depending on the alignment selected during the Item 1.1 preliminary design evaluations, the City may need to obtain utility easements, which will require plat and legal descriptions. Since the number of plat-and-legal descriptions will not be known until after the alignment is selected, our revised costs includes optional costs for up to 10 plat-and-legal descriptions.

Deliverables

- Final topographic exhibit at a scale of 1 inch = 40 feet in AutoCad format; electronic data becomes property of the City.

Assumptions:

- All permit fees and costs will be the responsibility of the City.
- **Item 2B.1 – Phase 2 Geotechnical Investigation**
 - Geo-Logic Associates were required to perform subsurface exploration by means of 20 exploratory borings using a truck-mounted drilling rig. Based upon the alignment provided as Figure 1, a total of 23 borings will now be required, averaging about 1,000 feet between borings plus two borings at each of the five identified trenchless crossing locations. The proposed boring locations and depths are tabulated below.

Project Segment	Proposed Number and Depth of Borings
Monterey Road, S of Cohansey Avenue	1 boring up to 20 feet
Las Animas Avenue/UPRR crossing	2 borings up to 50 feet
Las Animas	1 boring up to 20 feet
Murray Avenue	6 borings up to 20 feet
Murray Avenue/Miller Slough crossing	2 borings up to 60 feet each
Murray Avenue/Leavesley Road crossing	2 borings up to 50 feet each
Chestnut Street	2 borings up to 20 feet each
Chestnut Street/Miller Slough crossing	2 borings up to 50 feet each
7 th Street	1 boring up to 20 feet each
7th Street/Highway 101 crossing	2 borings up to 60 feet each
Renz Lane	2 borings up to 20 feet each
	Total of 23 borings

- In the borings, soil sampling and penetration testing will be performed at about 5 foot intervals except for the ten borings at the five crossings which will have continuous sampling within a 10-foot deep tunnel zone.
- Borings located in County right-of-way will be backfilled with soil cuttings (preferred by the County based on our recent experience) and excess soil cuttings will be spread in unpaved shoulder areas. Borings located in City of Gilroy and SCVWD right-of-way will be backfilled with cement grout. In existing pavement areas, the borings will be capped at the top with cold-patch asphalt.
- Excess soil cuttings from borings in City of Gilroy and SCVWD right-of-way will be placed in 55-gallon drums and the drums will be moved to a temporary storage area. Samples will be collected from the soil cuttings for testing of CAM 17 metals, total hydrocarbons, VOC (8260B), and pesticides. Additional testing may be necessary if excess levels of hazardous materials are indicated in the initial testing. Fee includes cost for disposal of the drums assuming the soil cuttings are non-hazardous. Additional testing and disposal of the drums other than as non-hazardous materials will require additional fees. Fee includes up to 40 drums.
- Install an open pipe piezometer in one of the borings at each crossing. The piezometers will have 2-inch diameter pipe. Measure the groundwater level in the five piezometers. Four measurements within the 12-month period after completion of the piezometers are assumed. Cost for destruction of the piezometers is not included.

- Geo-Logic will obtain encroachment permit and a boring permit from SCVWD. Geo-Logic will provide complete application information for the City to obtain encroachment permits from Santa Clara County and City of Gilroy for the geotechnical field work. By having the City submit the applications, the permit fees are usually waived. Any other associated permit fees will be paid by the City.
- A geotechnical engineering report in PDF electronic format will be prepared. The report will present the field data, the results of laboratory analyses, and geotechnical recommendations for various construction methods for the new pipeline.

Deliverables

- Information on the subsurface exploration program and traffic control plans for encroachment permits needed for geotechnical field work.
- Geotechnical Report – Four hard copies and electronic PDF.
- **Item 2B.2 –Geotechnical Trenchless Construction Expert Consultation**
 - Due to the complexity of the trenchless crossings and increase in size of the pipe, HydroScience recommended to the City that the services of a geotechnical trenchless construction expert be added to the geotechnical investigation in order to provide Geo-Logic with site specific guidance with regard to soils investigations for the construction methods proposed. DCM Consulting will provide the following services to support the geotechnical investigation of Geo-Logic and preliminary design of Phase 2.
 - Complete an alignment reconnaissance at the five trenchless crossings identified to assess the site conditions and surface constraints as related to trenchless constructability elements. Provide recommendations to Geo-Logic for execution of borings in the vicinity of the trenchless crossings.
 - Review available historic data and data contained in the Phase 2 geotechnical investigation report pertinent to the trenchless crossings.
 - Provide a geotechnical and trenchless engineering Technical Memorandum for the five identified trenchless crossings summarizing design groundwater elevations; Tunnelman's Ground Classification; the feasibility of microtunneling; possible alternatives to microtunneling; appropriate shaft construction methods; shaft dewatering criteria; tunnel portal ground improvement criteria; anticipated jacking forces as a function of pipe O.D., casing O.D., soil types and installation lengths; anticipated systemic settlement as a function of tunnel overcut, cover depths and soil types; potential for obstructions; and preliminary estimated microtunneling cost.
 - In order to support DCM Consulting efforts, HydroScience will research the existence of reference borings (i.e. existing data), historic aerial photography and available site information in close proximity to the five identified trenchless crossings from sources such as Caltrans, historic societies and public and private developments as made available from the City and/or County public works and building departments. All available information will be collected and made available to DCM Consulting.

Deliverables

- Email containing subsurface investigation recommendations based on site visit.

- Geotechnical and trenchless engineering Technical Memorandum in electronic format (pdf)
- **Item 2C.1 – Phase 2 Utility Coordination and Potholing**
 - 20 Potholes are part of the original scope for the Phase 2 sewer segment. The current proposed Phase 2 alignment traverses residential areas, increasing the number of anticipated existing gravity utilities. Consequently, we recommend ten (10) additional potholes be added to the preliminary investigation associated with Phase 2.
 - Additional cost for two (2) separate mobilizations to accommodate the two design package schedules.

Deliverables

- Pothole results (30 ea) in ledger and/or included on plan & profile drawings

Assumptions

- Caltrans may require additional potholing to locate high priority existing utilities (e.g., gas pipes) located near new work in their ROW. Additional potholes may also be needed if new work is longitudinally in ROW. Additional potholing as a result of Caltrans-directed potholing is not included in this scope of services at this time.
- **Item 2D.1 – Phase 2 Final Design**
 - This scope of work is based on preparation of signed and stamped plans and specifications for the Phase 2 new sewer trunk construction contract (from Cohansey Avenue to Renz Lane).
 - Progress Review Meetings with City and Stakeholders
 - The contract documents will refer to standard details and specifications for the Cities of Morgan Hill and Gilroy, Santa Clara County, Caltrans, the city of Gilroy, and SCVWD as applicable. Special provisions will be added to the City of Morgan Hill documents as needed to meet the specific needs of the Project. We propose progress review meetings prior to submittal of the 30% and 60% designs for the City and project stakeholders to attend. HydroScience will present preliminary geotechnical and survey findings and recommendations and an overview of the current design approach. These meetings provide the City and stakeholders the opportunity to ask questions and make suggestions to the design prior to completing the design submittals.
 - Quality Assurance
 - The 30%, 60%, and 100% design submittals will be reviewed for QA/QC by a senior member of HydroScience's staff who is not directly involved with the project design prior to delivering those submittals to the City.
 - Design Submittals
 - Contract documents will be delivered to the City at the 30%, 60%, and 100% design completion levels for City review and comment. The 30% review submittal will include plan and profile drawings and list of technical specifications. The plan and profile drawings will include information needed to verify the selected alignment and make adjustments based on surveying

and geotechnical findings. The 60% review submittal will include plan and profile drawings, standard details, and technical specifications. The 100% design and Bid Set submittals will include complete plan set, technical specifications, and City-provided front end documents that have been modified to meet the project needs.

- Additionally, the design submittals will include updated design and construction schedules, the engineer's opinion of probable costs, and responses to comments from the 30% and 60% design submittals. Our schedule assumes the City will have two weeks to comment on the 30% and 60% submittal and one week for the 100% submittal. City comments on the 30% and 60% design submittals will be incorporated into the 60% and 100% design submittal, respectively. The 100% design submittal will also further develop the detailed design to a level suitable for any permit application submittals and bid advertisement, pending City review.
- HydroScience will submit final design drawings and specifications, which will reflect any comments and modifications from the 100% review, as appropriate. HydroScience will prepare the bid schedule and delineate the anticipated construction time period. In addition, HydroScience will provide the final Engineer's opinion of probable cost, tabulation of quantities of all work items and materials, and recommendation for allowed construction time period.

- Design Submittal Review Meetings

- After the 30% and 60% submittals, the project manager and project engineer will meet with City staff to review the City's comments during a design review meeting.
- We propose a 100% design review workshop to be held within the City's one week review period to facilitate review of the design and capture edits/comments. HydroScience will document the design review workshop via email. Changes in the design are not anticipated at this point. Review is mainly to capture minor edits or changes in the notes. Significant design changes such as realignment of the pipeline and/or additional design details may result in delays in the schedule and additional fee.

- **OPTIONAL - Geotechnical Trenchless Construction Expert Consultation**

- Due to the complexity of the trenchless crossings, DCM Consulting may provide, as needed by the design team, trenchless design constructability consultations to HydroScience. Services may include one or more of the following:
 - Assistance with required jacking and receiving shaft sizes and topside equipment area requirements.
 - Determination of specific dewatering requirements and/or ground improvement requirements for tunnel portal stabilization at jacking and receiving shafts.
 - Recommendations for geotechnical instrumentation (e.g. surface and subsurface settlement monitoring and vibration monitoring).
 - Assistance with specification review including microtunneling, shaft construction, dewatering, ground improvement, contact grouting, and geotechnical instrumentation specifications.
 - Final trenchless constructability review.

- Assistance with permit acquisition (e.g., responding to Caltrans encroachment permit questions).
- Project design meeting(s) at HydroScience, Concord.

Deliverables

- Meeting agendas, minutes, and decision logs
- Four (4) half-size hardcopies and PDF of 30%, 60%, and 100% Bid Set design submittals (drawings, specifications, schedule, and estimate). One (1) full-size stamped and signed set of mylars of the 100%. AutoCAD and Word files for final bidding documents.

Meetings

- One additional progress meeting held February 2017 with City of Morgan Hill and City of Gilroy staff to discuss Phase 2 alignment alternatives.
- Two (2) conference calls with City staff (August 2016) to discuss Phase 2 alignment alternative evaluations (2 hours each meeting).
- Two (2) progress meetings with City and stakeholders (up to 4 hours each meeting) to facilitate final design.
- Design review meetings at 30%, 60%, and 100% submittal milestones (up to 4 hours each meeting).

Assumptions

- For Phase 2, approximately 30 drawing sheets to be provided, including 17 plan and profile sheets at 1:40 scale plus 4 front-end sheets, and 8 detail sheets.

Fee Adjustment: The increase in cost for these services is \$521,900. A detailed breakdown of costs are provided in Attachment A.

Tasks	Fee
Contract Amendment No. 1 – Flow Meter, SWPPP, Additional Phase 1 Design, Phase 2 Design	\$521,900
Phase 1 Original Contract	\$651,760
Total Adjusted Budget (Original Contract + CA #1)	\$1,173,660

Additional services will be billed on a time-and-materials basis, not to exceed the total fee without prior approval by the City.

Schedule Adjustment: The modified scope will have a slight impact on the Phase 1 project schedule in order to alter the 30% design documents for an increased size trunk sewer (add two weeks to preliminary design plans), although the remaining durations under all tasks yet to be undertaken are unchanged. Phase 2 schedule will be prepared following NTP with selected alignment.

Sincerely,
HydroScience Engineers, Inc.



By: Cindy Preuss, P.E., Project Manager

Enclosure: Attachment A – Fee Proposal for Amendment No. 1 Services

Amendment Authorization Request:

This will confirm your authorization for HydroScience to undertake the added (or changed) engineering services described above pursuant to our original Contract Agreement.

Please confirm your authorization by signing in the space provided and emailing a copy back to us as soon as practical in order they we may proceed with these additional engineering services.

Approved: _____
(signature) Date

By: _____
City Representative, City of Morgan Hill

EXHIBIT B - Consultant Fee

City of Morgan Hill																						April 5, 2017	
Sewer Trunk Line South of Highland Avenue																							
Contract Amendment No. 1 - Flow Meter, SWPPP, Additional Design																							
Task	Item	Description	Mary Hoang - PIC and Stakeholder Coord	Cindy Preuss - PM	Sandra Dudley - PE	Eric Peral - QA/QC Reviewer	Hoda Alnassab - Design Support	Angela Singer - Permitting	Nike Marandi - Flow Meter/I&C	Nichol Bowersox - QSD/QSP	Courtney Rubin - QSP	Administrative Assistant	Hours	Fee	Repro and ODCs	HMH - Surveying	Geo-Logic - Geotechnical	Potholing	Direct Charges Markup @ 10%	Travel	Expense Subtotal	Total Fee	
Labor Classification			Prin	Prin	E-VI	E-IX	E-I	E-VI	E-VIII	E-VIII	E-III	ADMIN											
Hourly Rate			\$225	\$225	\$180	\$210	\$125	\$180	\$200	\$200	\$150	\$70											
I		Flowmeter	0	6	0	0	0	0	92	0	0	0	98	\$19,800	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$19,800	
	1.1	Flow Meter Preliminary Design		2					10				12	\$2,500					\$0		\$0	\$2,500	
	2D.1	Flow Meter Final Design and PG&E Application		3					64				67	\$13,500					\$0		\$0	\$13,500	
	3.1	Flow Meter Bidding Support							8				8	\$1,600					\$0		\$0	\$1,600	
	4.1	Flow Meter Construction Support		1					10				11	\$2,200					\$0		\$0	\$2,200	
II		Stormwater Permit Compliance	0	2	0	0	36	0	0	16	44	10	108	\$15,400	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,400	
	2E.1	Phase 1 Permit Registration Document Preparation		1			12			9	20	4	46	\$6,800					\$0		\$0	\$6,800	
	2E.2	Phase 2 Permit Registration Documents Preparation		1			24			7	24	6	62	\$8,600					\$0		\$0	\$8,600	
III		Phase 1 - Additional Design	0	4	16	0	16	0	0	0	0	0	36	\$5,700	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,700	
	1.1	Preliminary Design Investigation for Interconnect		4	8								12	\$2,300					\$0		\$0	\$2,300	
	2D.2	Evaluation and Redesign for 36" pipe			8		16						24	\$3,400					\$0		\$0	\$3,400	
IV		Phase 2 Design	52	346	565	72	893	6	0	0	0	87	2021	\$325,100	\$2,240	\$10,500	\$65,857	\$37,500	\$11,610	\$1,830	\$129,700	\$454,800	
	1.1	Preliminary Design	2	48	70	6	55	2				25	208	\$34,100	\$50				\$5	\$420	\$500	\$34,600	
	1.2	Additional Directed Design Work	2	34	40		40						116	\$20,300	\$50				\$5	\$210	\$300	\$20,600	
	2A.1	Topographic Survey		4	8		16						28	\$4,300		\$10,500			\$1,050		\$11,600	\$15,900	
	2B.1	Geotechnical Investigation		2	6				8				8	\$1,500			\$59,857		\$5,986	\$60	\$65,900	\$67,400	
	2B.2	Geotechnical Trenchless Construction Expert Services (for Geotech Investigation)			2		2					32	36	\$2,900			\$6,000		\$600		\$6,600	\$9,500	
	2C.1	Utility Coordination & Potholing (30 potholes)		4	4		8					6	22	\$3,000				\$37,500	\$3,750		\$41,300	\$44,300	
	2D.1	Final Design	38	140	275	44	610						1107	\$175,000	\$1,000				\$100	\$500	\$1,600	\$176,600	
	3.1	Bidding Support	2	14	40	2	22						80	\$14,000	\$100				\$10	\$140	\$300	\$14,300	
	4.1	Construction Support	8	100	120	20	140	4				24	416	\$70,000	\$1,040				\$104	\$500	\$1,600	\$71,600	
TOTAL (BASE FEE)			52	358	581	72	945	6	92	16	44	97	2263	\$366,000	\$2,240	\$10,500	\$65,857	\$37,500	\$11,610	\$1,830	\$129,700	\$495,700	
Optional Scope Items																							
IV	2A.1	OPTIONAL - Plat and Legal Descriptions (new easement/ROW), up to 5 each			2		2						4	\$1,000			\$7,500		\$750		\$8,300	\$9,300	
IV	2B.1	OPTIONAL - Analytical tests of 5 soil samples			1		1						2	\$300			\$3,565		\$357		\$3,900	\$4,200	
IV	2D.1	OPTIONAL - Geotechnical Trenchless Construction Expert Services (for Final Design, up to 45 hours)		4	8								12	\$2,300			\$9,450		\$945		\$10,400	\$12,700	
TOTAL (BASE FEE + OPTIONAL SCOPE)			52	362	592	72	948	6	92	16	44	97	2281	\$369,600	\$2,240	\$10,500	\$86,372	\$37,500	\$13,661	\$1,830	\$152,300	\$521,900	

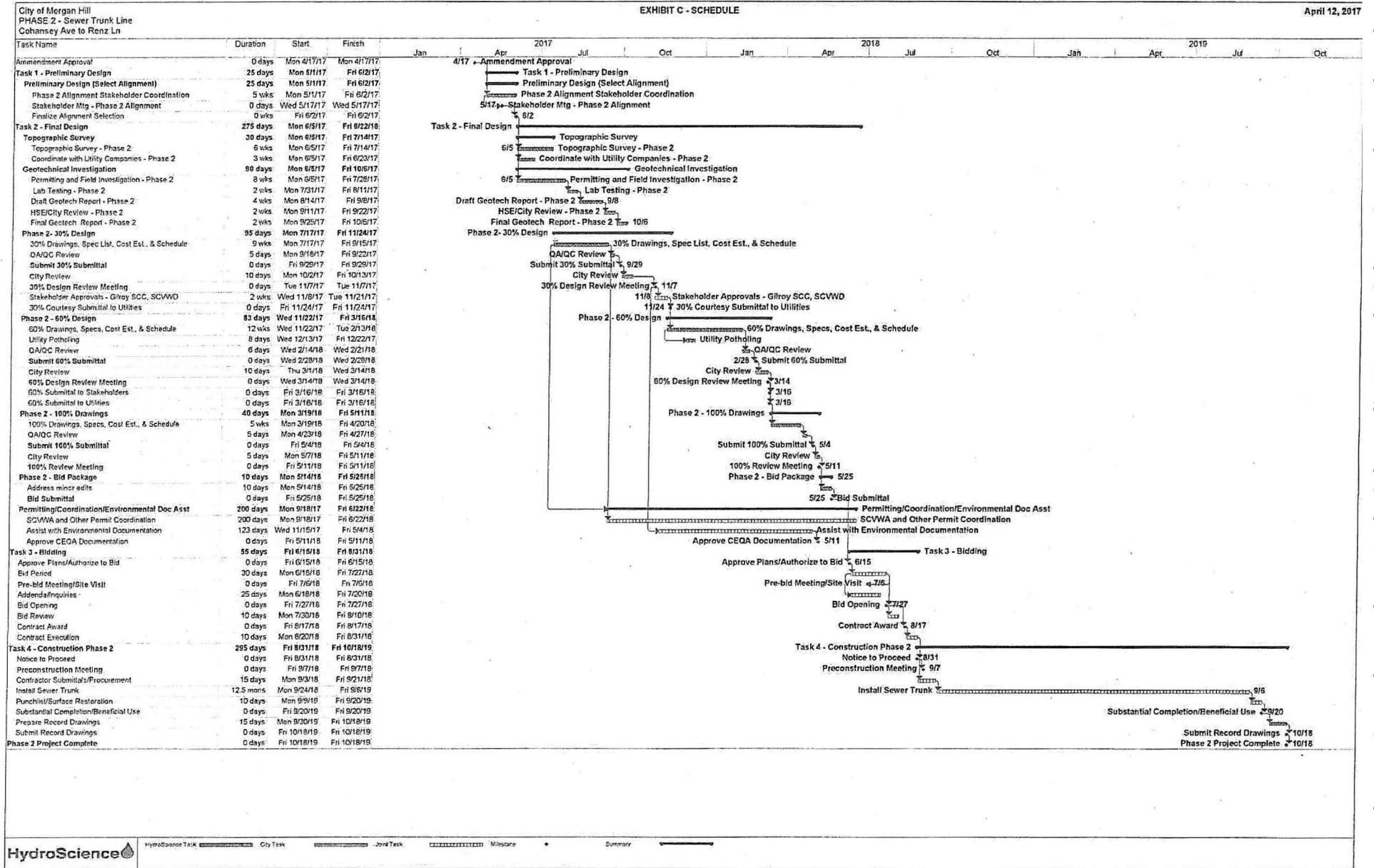


EXHIBIT "2"



Date: November 6, 2019
 Client: City of Morgan Hill
 Contact: David Gittleston, P.E.
 Project: Joint Sewer Relief Trunk from Renz to Highland

HydroScience Engineers, Inc.
 10569 Old Placerville Road
 Sacramento, CA 95827
 T: 916.364.1490
 F: 916.364.1491

CONTRACT AMENDMENT REQUEST FOR ADDITIONAL ENGINEERING SERVICES

Original Professional Services Agreement Date: May 4, 2016

Amendment Request No.: 2

Amendment Subject: Project restart and extended project design and coordination

Amendment Description: The agreement for Phase 1 of the Sewer Trunk Line South of Highland Avenue Project (Project) was executed on May 4, 2016. Subsequently, the project scope was amended in Amendment No. 1 to include detailed design of Phase 2 of the Project, as well as other related tasks.

Both phases of the project were put on hold during 2018 to obtain approval from the City of Gilroy City Council on the proposed pipeline alignment within the Gilroy City limits. Putting the project on hold was necessary to allow for a preferred pipeline alignment to be selected, minimize further iterations and rework to analyze multiple optional pipeline alignments, and confirm that the parties were comfortable moving forward with a basis of design. When the project was halted, the design plans of Phases 1 and 2 had been developed approximately to a 60% level of completion, outside of trenchless crossings and constrained areas compelling possible movement of other existing utilities.

On April 29, 2019, the Gilroy City Council supported proceeding with the recommended alignment. This contract amendment summarizes the proposed scope and tasks to update the scope for the original agreement and Amendment No. 1. The following serves to represent the overall effort to complete the design portion of the project, based on the updated scope of work, a \$30M construction estimate, and updated billing rates and project schedule.

Scope of Services: The following scope of services is intended to detail the tasks to complete the project design from this point forward. The initial text of each task represent whether the tasks of that scope of services are complete new tasks, updates of previously authorized tasks, or are in the existing scope. In total, Amendment No. 2 represents the overall scope and fee required to complete the project design, superseding the previous agreement and Amendment No. 1 in their entirety. Bid services and engineering services during construction are not included at the direction of the City due to the unknown construction schedule; the City will issue an amendment for those services at the time they may be required.

Attachment: Second Amendment-HydroScience (2477 : HydroScience Second Amendment)

Task A – Project Management:

Previously, there was not a separate project management task. This work was embedded in other project tasks. HydroScience has separated project management into its own task for the purpose of scoping this amendment.

Task A includes project coordination and management, meetings including the kickoff meeting and milestone meetings, and QA/QC. Each item is further discussed below.

Project Management: HydroScience shall provide Project Management of all design activities. HydroScience shall monitor labor utilization, project schedule, and project budget on a regular basis, and maintain action item and decision item logs throughout the design phase of the project. Invoices will be submitted to the client monthly that document the work performed during the invoice period. HydroScience's Project Manager will be responsible for the performance of the engineering team, managing the team's and the subconsultant's efforts for the duration of the extended project schedule.

HydroScience will also review and update the decision tracking log.

Meetings and Public Outreach: HydroScience shall attend a second kickoff meeting with the City to confirm critical path items and updated scope items. All key staff representing major engineering disciplines shall attend. Kickoff meeting agenda will include: review scope of work and schedule, responsibilities of each party, project costs and funding mechanisms, current design status, and Project goals, objectives, and critical success factors.

Up to five additional meetings and/or conference calls will be held with the City and external stakeholders to review the project status and receive comments on the 60% and 90% PS&Es. One will be held at each submittal level (60% and 90%) to review PS&E comments, and the remaining three meetings will be held at a milestone to be determined by the Project Manager.

Additionally, it is expected that HydroScience will make one presentation each to the City of Morgan Hill and Gilroy City Councils. City staff will coordinate the scheduling and staff reports for these presentations. HydroScience will assist with PowerPoint slides, and be available to respond to questions as appropriate.

HydroScience will also be available to represent the engineering team at up to two community workshops. It is expected that no new marketing material will be required to be prepared by HydroScience for either community workshop, and the City will organize and lead the workshop with support from HydroScience.

All meetings will have meeting agenda and minutes prepared by HydroScience.

Stakeholder Coordination: HydroScience will review available information and provide outreach to stakeholders (City of Morgan Hill, City of Gilroy) as well as Caltrans, the County, the E. 7th St. apartment owner, and utility agencies to coordinate project implementation.

QA/QC: HydroScience shall perform in-progress quality management reviews to verify that the project objectives are realized prior to submittal of the 60%, 90% and Bid Set PS&E. Each design submittal will be reviewed for QA/QC by a HydroScience senior manager who is not directly involved with the project design prior to delivering those submittals to the City.

Deliverables:

- Monthly progress reporting to accompany invoice (pdf)
- Meeting agendas and minutes (6 total)
- Council presentations (2 total, PowerPoint)
- QA/QC review comments, if requested (pdf)
- Action item and decision item logs, if/as requested (pdf)

Assumptions:

- The City will provide one consolidated set of submittal review comments at the 60% and 90% submittal levels.
- The City will assist with coordinating stakeholder comments where contradictory to City's design direction.
- No major design changes will be requested beyond the 60% submittal level.

Task B – Final Design:

This scope of work updates Task 2 from the original agreement and Task IV from Amendment No. 1. Preliminary design and portions of other items from this task are completed. The remaining scope to be completed in this amendment are further detailed below.

Additional Topographic Survey: The original topographic survey for this project was completed in 2016. Since that time, new development has occurred along the project alignment, including at Harvest Park II which is a new subdivision near the intersection of Monterey Rd and Cohanesy Ave. This subdivision includes offsite improvements that will impact the project. Hence, this task item is needed to conduct a new field survey of said improvements along the proposed alignment.

Title Reports, Plat and Legal Descriptions: Plat and legal descriptions was originally an optional service, but is now modified and included as a base service for pairing with preliminary title reports. Three permanent easements are required to construct the project based on the current, in-progress 60% design alignment. These easements are located on 611 East 7th Street (apartment building; private owner), 731 Renz Lane (PG&E property), and a vacant lot west of the Chili's parking lot on Renz Road (PG&E property). The Caltrans easements at the Leavesley and Hwy 101 crossings will be secured through the Caltrans pipeline crossing permit; all other easements will require preliminary title and survey documentation.

HMH will obtain a preliminary title report and prepare a plat and legal description for each of the three needed easements. All plats and legal descriptions will be stamped by a registered land surveyor in the State of California. As an optional task, HMH will obtain up to two additional easements in case preliminary title reports reveal more than one private owner owning land within the proposed pipeline corridor, or in case the alignment shifts outside the public right of way in lieu of existing utility relocation(s) to allow construction of the pipeline within the right of way.

Utility Outreach: HydroScience will send a new round of utility map requests to utility agencies to confirm that HydroScience has the most current mapping of utilities along the project alignment. Information received will be compared with previous mapping transmittals and current basemap information. Basemap will be updated in AutoCAD based on the information received. At the 90% PS&E submittal level, plan and profiles will be sent to the utility agencies for a last appeal to alert us to any missing or misrepresented facilities against their mapping, record drawings, or agency knowledge. This last step may also prompt alerts of new or planned utility construction projects that otherwise hadn't been furnished to us during design development.

Utility Locating: Potholing is expected to be required to locate fiber-optic lines near the Las Animas railroad crossing, within the Caltrans right-of-way, and as required along the project alignment to determine the location of existing utilities. Utility locating will also be needed at key tie-in locations, utility crossings, and to more accurately locate critical or conflicting utilities along the proposed sewer alignment.

It is expected that up to 60 discrete locations may require utility locating within these areas (assumed to consist of 27 potholes and 33 electronic). The budget shown includes a \$25K contingency should any issues arise during or associated with utility locating, and is allocated toward combination of potholing, GPR and electronic utility location. Which locating method is best suited will be assessed based on quantity needed, existing utility materials and depths, location relative to traffic and access, and permitting requirements associated with each utility.

As additional information from the utility locating is obtained, a licensed land surveyor will collect the field-marked locations and build into the project basemap, and HydroScience will update the PS&E accordingly. The locating services include traffic control, permitting coordination with the UPRR, Caltrans, and the County, and backfilling and hot-patching of potholes. It should be noted that UPRR permits can take as much as three months to process.

In addition to the utility locating noted above, the utility locating budget also includes:

- one 19-foot deep pothole to confirm the tie-in elevation on Renz Lane, and
- three CCTV inspections to verify existing sewer details: 310 feet on Renz Lane, 100 feet on Chestnut St near the pedestrian bridge, and 600 feet near the intersection of Highland & Monterey.

Geotechnical Investigation, Well Monitoring and Design Support: HydroScience will review the geotechnical investigation report prepared as part of the base work and Amendment No.

1. This investigation included borings located along the project alignment plus borings at each of the five trenchless crossing locations. Preliminary screening was also performed on samples throughout the alignment and found to be non-hazardous.

Piezometers installed in the monitoring wells installed by GeoLogic will also be monitored during July – December 2019 to monitor groundwater levels at each of the five trenchless crossing locations. Information about groundwater levels is important for selecting the most appropriate trenchless construction method and informing construction activities.

HydroScience will coordinate with GeoLogic, the author of the geotechnical report, and DCM Consulting, the author of the TM appending the report, during the design phase to address any geotechnical related questions. GeoLogic will also review project plans and specifications and provide geotechnical comments, as necessary. Alignment shifts will also require geotechnical consideration in case the substrate is anticipated to vary from previous characterization of adjacent substrate (where original borings were taken).

Geotechnical Well Destruction: As an optional task, GeoLogic will properly destruct each of the five geotechnical monitoring wells. The work associated with this optional task includes:

- Applying for and obtaining a total of five separate well destruction permits from the Santa Clara Valley Water District (SCVWD). All SCVWD permit fees will be paid by Geologic.
- Applying for and obtaining an encroachment permit from City of Gilroy for the field work (traffic control will be included). We have assumed that the City of Gilroy will waive all permit fees.

- Coordinating field work with HydroScience, City of Gilroy, driller, and traffic control subs.
- Destructing the wells per SCVWD guidelines. Traffic control will be provided during field work.
- Submitting well destruction reports to the SCVWD.

Trenchless Geotechnical Engineering Support. This was originally an optional service, but the remainder of this task is now a base service. Due to the complexity of the trenchless crossings, DCM Consulting will provide trenchless design constructability consultation to HydroScience in the context of the geotechnical setting associated with each crossing location. Services to be provided by DCM will be performed as directed by HydroScience, and are expected to include the following:

- Assistance with required jacking and receiving shaft sizes and topside equipment area requirements.
- Determination of specific dewatering requirements and/or ground improvement requirements for tunnel portal stabilization at jacking and receiving shafts.
- Recommendations for geotechnical instrumentation (e.g. surface and subsurface settlement monitoring and vibration monitoring).
- Review of microtunneling, shaft construction, dewatering, ground improvement, contact grouting, and geotechnical instrumentation specifications.
- Final trenchless constructability review.
- Assistance with response to questions from Caltrans.
- Meetings with HydroScience as appropriate.

Deliverables:

- Preliminary title reports, plats and legals (3 total, hard copy)
- Utility outreach letters, if requested (pdf)
- Utility locating results (ledger format, pdf and electronic format, AutoCad)
- Groundwater level measurements (to DCM Consulting)
- Optional tasks:
 - Up to two additional preliminary title reports, and plat and legal descriptions
 - Well destruction reports (to SCVWD)

Assumptions:

- Caltrans may require additional potholing to locate high priority existing utilities (e.g., gas pipes) located near new work in their ROW (whether crossing or parallel). Additional potholes may also be needed for critical PG&E facilities based on their developing new requirements. Additional potholing as a result of these potential directed agency requirements is not yet known and therefore not included in this scope of services.
- Further analytical testing/screening of soils is not included in this scope. The testing already done for this project as part of the previous geotechnical investigation serves to provide general information to the contractors. Summary results are provided in the geotechnical report, and full testing reports will be provided to the City for their or the contractor's reference. The testing performed does not replace actual analytical testing required for the contractors to dispose their soils during construction; the receiving party of the soils will dictate the type and frequency of testing before accepting the soils.
- All permit fees and costs will be the responsibility of the City.

Task C – Detailed Design PS&E:

This design includes the remainder of the 60% PS&E, changes the 100% PS&E to a 90% level PS&E, and updates the Bid Set PS&E scope to reflect the currently recommended project alternative. This effort includes:

- Detailed design will include the design of the sewer trunk pipeline from Highland Avenue to Renz, as detailed in the recommended project alternative.
- Design of the trenchless pipeline crossings and incorporation of geotechnical information as required to select the appropriate construction methods and requirements.
- Supplemental coordination with utilities on the use or relocation of sewer or water facilities to accommodate new trunk sewer at three possible locations (Las Animas, Chestnut, Renz).
- Siphon redundancy TM.
- Design of a new flow meter, as further detailed below.

Contract documents will be delivered to the City at the 60% and 90% design completion levels for City review and comment. The 60% PS&E will include the plan and profile drawings, standard details, technical specifications, and the engineers opinion of probable costs for the recommended project alignment. The contract documents will refer to standard details and specifications for the Cities of Morgan Hill and Gilroy, Santa Clara County, Caltrans, and SCVWD as applicable. HydroScience will also prepare a calculation of estimated construction working days and calculate appropriate daily liquidated damages and include those values in the 60% specifications. The front end specifications and special provisions will be based on the City of Morgan Hill standard and updated as needed to meet the specific needs of the Project.

It is expected that the City will route and coordinate review and comment of the 60% PS&E by external stakeholders, including:

- San Martin
- Santa Clara County
- Caltrans
- City of Gilroy
- PG&E
- SCVWD
- Owner of Apartment Complex at 611 East 7th Street

It is expected that up to two additional conference calls or in person meetings may be required to receive 60% comments on the PS&E from external stakeholders. Those meetings have been incorporated into the Project Management task.

Comments on the 60% PS&E will be incorporated into the 90% PS&E. Where comments from stakeholders conflict, City is to provide direction to HydroScience as to how to address conflicting comments. It is not expected that any significant design changes, additional design details, or other substantive changes will occur after receiving the 60% Submittal review comments.

The 90% PS&E will include complete plans, specifications, and the engineer's opinion of probable costs. All work will be developed to a level of detail that would result in the PS&E being suitable for advertisement, permit applications, and construction without being stamped. We propose a 90%

design review workshop to be held within the City's one week review period to facilitate review of the design and capture edits/comments.

The Bid Set PS&E will incorporate any comments from the 90% design review workshop and comments provide by the City of Morgan Hill. It is expected that only minor changes will be required after the 90% Submittal. The Bid Set PS&E will be stamped by a civil engineer registered in the state of California.

At the request of the City, a \$50,000 allocation for supplemental design services is also included in this scope task in order to address out-of-scope items should they arise during final design.

Siphon Redundancy TM: At the request of the City, HydroScience will also prepare a TM on siphon redundancy as a new scope item. An analysis will be performed for the locations where siphons cannot be avoided without pressurizing the pipeline to promote flow (targets trenchless crossings compelling deeper installations than the grade allows). Elements to be reviewed will consider risk, constructability, cost, operations and maintenance for one siphon versus two in these areas.

Flow Meter: A new flow meter will be incorporated into the PS&E to coordinate operating requirements with SCRWA, as originally presented in Amendment No. 1. This scope covers most of Item 2D.1 from Amendment No. 1, which includes the final design and PG&E application for the proposed flow meter.

- HydroScience will submit the proposed flow meter with current junction structure concept design to SCRWA to verify acceptance of flow meter equipment and operating requirements.
- HydroScience will work with PG&E to apply for a new power drop to the new flow meter. It is assumed that power can be provided from overhead electrical lines along Harding Avenue or Highland Avenue. It is assumed that the City of Morgan Hill will pay any PG&E fees.
- The flow meter will be located in a below grade, traffic rated vault containing the flow meter equipment, plumbing, electrical, and instrumentation and controls.
- One drawing sheet for electrical site plan and flow meter and vault details is assumed. The budget does not include providing profile drawings for the electrical conduit between the power source and flow meter vault.
- Design includes instrumentation and controls to allow radio control/communication between the flow meter and the SCRWA WWTP in Gilroy, CA. It is assumed that there is line-of-sight between the flow meter vault location and the SCRWA antenna, and no separate radio study is required.

The design of the flow meter will be incorporated into the PS&E for the overall project. No separate submittal will be provided for the flow meter.

Deliverables:

- 60%, 90% and Bid Set PS&E (Four (4) half-size hardcopies and PDF of 60%, 90% and Bid Set design submittals (drawings, specifications, schedule, and estimate). One (1) full-size stamped and signed set of mylars, word files and AutoCAD of the Bid Set documents.
- Siphon Redundancy TM (pdf)
- Inclusion of flow meter in the PS&E design submittals
- Up to three (3) applications for utility relocations (electronic, pdf)

Assumptions:

- Approximately 56 drawing sheets to be provided, including 33 plan and profile sheets at 1:40 scale plus 5 front-end sheets, 8 detail sheets, and 10 striping plans at 1:80 scale.
- Estimate of probable construction costs was last estimated at \$30M. Bidding climate and economy may significantly impact the estimate beyond the control of the City and HydroScience.
- Supplemental design allocation amount provided herein may be used at the discretion and advance authorization of the City only.

Task D – Permitting

This task was partially completed but requires additional work to ensure that all permitting work reflects the recommended project alternative.

Environmental Documentation Support: HydroScience will continue to coordinate with the City's environmental consultant to update information on scope of work, alignment, equipment and other contributors during construction affecting biological or air quality impacts, and the location and depth of required excavations.

HydroScience will respond to public comments assigned to HydroScience that are related to the design efforts of HydroScience.

HydroScience has allocated a total of 50 hours to provide support to coordinate with the environmental consultant and respond to comments on the environmental documentation.

Stakeholder permits: This is a new task that has been expanded from the task presented in the original agreement or Amendment No. 1.

Implementation of the recommended project alternative requires obtaining permits from multiple external agencies, including:

- Caltrans: Utility Encroachment Permit @ Highway 101
- PG&E: Coordination with facility on site work/access for construction encroachment (Third Party Request to Use PG&E Real Property and License Agreement for Invasive Investigation Activities)
- Santa Clara Valley Water District : Crossing of both Miller Slough and Chestnut Creek
- UPRR: Permit to cross railway at Las Animas
- City of Gilroy: Encroachment permit and crossing of Chestnut Creek
- County – construction encroachment; paving requirements

HydroScience will assist the City with preparing encroachment permit applications. HydroScience will compile information required for each permit and submit permit applications to the stakeholders on the City's behalf. All permit application fees will be paid by the City.

Stormwater Permit Compliance: HydroScience shall assist the City in the preparation and submittal of Permit Registration Documents in order to comply with the Construction Activities Storm Water General Permit. HydroScience will receive access permission from the City to be able to electronically submit PRDs on the City's behalf into the Storm Water Multi-Application Report Tracking System (SMARTS). The information submitted to SMARTS will include the following:

- Notice of Intent (NOI)
- Risk assessment

- Post-construction calculation
- Site map
- Stormwater Pollution Prevention Plan (SWPPP)
- Signed certification by the Legally Responsible Person (LRP)
- First annual fee (to be paid by City of Morgan Hill)

HydroScience will prepare a SWPPP to outline how this construction project will minimize stormwater pollution and describe the measures that will be put in place by the contractor to prevent stormwater pollution. This document will need to be maintained onsite at all times and updated as needed throughout the duration of construction. The SWPPP will include both procedural and engineered control devices as Best Management Practices (BMPs) for minimizing erosion, sediment flow, and prevention of non-stormwater discharges. The SWPPP will also include requirements for site inspection, BMP maintenance, and laboratory sampling and analysis.

Deliverables:

- Permit Registration Documents (pdf version) for electronic submission via the SMARTS system, and electronic copies of said documents.
- Permits/approvals (pdf)

Assumptions:

- All permit fees and costs will be the responsibility of the City.
- LUP Type 1 assumed for both Phase 1 and Phase 2 based on risk level.
- Inspection services for SWPPP implementation during construction are not included in this scope of services.

Proposed Fee: The fee to complete the Amendment No. 2 scope of work is presented in Exhibit A. The breakdown of labor hours by task and subtask is a guide only; the total fee governs. The fee associated with Amendment No. 2 was compared to the budget remaining from authorization of the original agreement and Amendment No. 1 in the table below to determine the overall required budget for Amendment No. 2.

Billing rates have been adjusted to the year when services are to be performed (assumed to be during 2019 and 2020) for all staff classifications. Professional services will be billed on a time-and-materials basis, not to exceed the total fee without prior approval by the City.

Tasks	Fee
Phase 1 Original Contract	\$651,760
Contract Amendment No. 1	\$521,900
Total Contract Budget (Original Contract + CA #1)	\$1,173,660
Cost-to-Complete Budget Request (Base + Optional Services)	\$769,900
Less Budget Remaining* (Original Contract + CA #1)	\$238,850
Budget Augmentation Request (Cost-to-Complete minus Budget Remaining)	\$531,050

*Through August 2019.

Project Schedule: The updated project schedule assumes Council approval of this amendment on November 20, 2019.

HydroScience appreciates the opportunity to continue providing design services to you on this project. Should you have any questions regarding this proposal, please contact me at (925) 332-5221 X201, or cpreuss@hydroscience.com.

Sincerely,
HYDROSCIENCE ENGINEERS, INC.



Cindy Preuss, P.E.
 Principal, Project Manager

Attachments:

Exhibit A – Consultant Fee

Exhibit B – Project Schedule

Amendment Authorization Request:

This will confirm your authorization for HydroScience to undertake the added (or changed) engineering services described above pursuant to our original Contract Agreement. Please confirm your authorization by signing in the space provided and emailing a copy back to us as soon as practical in order they we may proceed with these additional engineering services.

Approved:

 Authorized Signature

 Date

By:

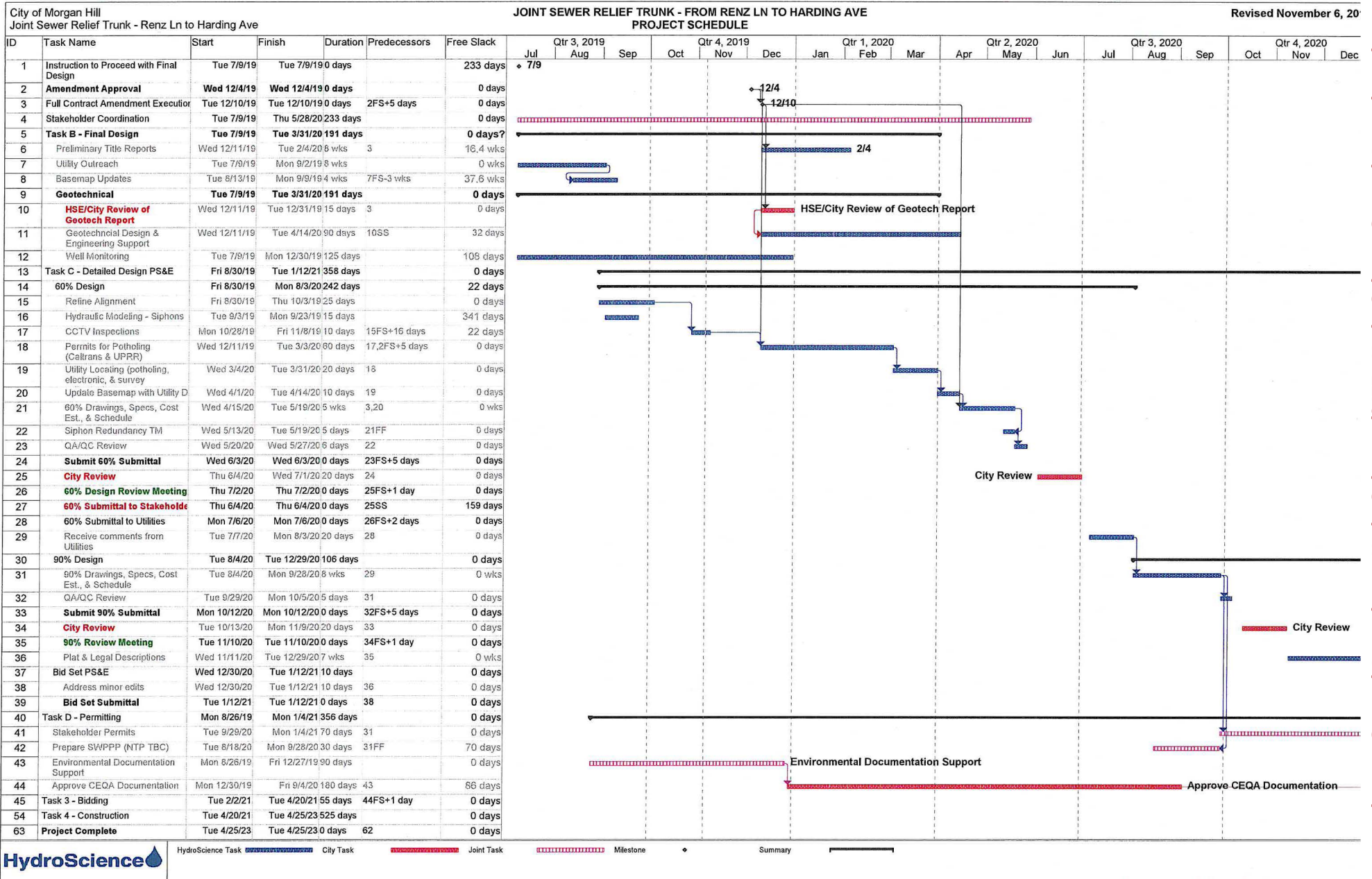
 Printed Name, City of Morgan Hill

EXHIBIT A - Consultant Fee

City of Morgan Hill
 Joint Sewer Relief Trunk Between Highland and Renz
 Contract Amendment No. 2 - DESIGN Cost to Complete and Project Reinitiation 2019

November 6, 2019

Task	Item	Description	Mary Hoang PIC and Stakeholder Coord	Cindy Preuss Project Manager	Robert Le Project Engineer	Eric Petrel QA/QC	Kyle Fooks Design Support	CAD Support	Mike Marandi Flow Meter/I&C	Dillon Morra QSD/QSP	Inspector - QSP	Administrative Assistant	Hours	Fee	Repro. and ODCs	HMH Surveying	Geo-Logic and DCM Geotechnical	Utility Locating & CCTV	Direct Charges Markup @ 10%	Travel	Expense Subtotal	Total Fee
		Labor Classification	Prin	Prin	E-VI	E-IX	E-I	CAD	E-VIII	E-VIII	E-III	Admin										
		Hourly Rate	\$245	\$245	\$180	\$235	\$165	\$100	\$225	\$195	\$175	\$85										
A		Project Reinitiation & Management	60	104	112	30	16	12	8	0	0	14	356	\$74,300	\$400	\$0	\$0	\$0	\$40	\$1,275	\$1,700	\$76,000
		Project Reinitiation and Monthly Progress Reporting; Project Management	4	64	36		16	12					132	\$27,000					\$0		\$0	\$27,000
		Meetings (up to 6 each)	12	24	48				8			6	98	\$19,800	\$300				\$30	\$1,000	\$1,300	\$21,100
		Council Presentations (near Final Design, 1 ea MH, Gilroy)		12								4	16	\$3,300	\$50				\$5	\$50	\$100	\$3,400
		Community Workshops (2 total)	4	4	8							4	20	\$3,700	\$50				\$5	\$75	\$100	\$3,800
		Stakeholder Coordination	40		20								60	\$13,400					\$0	\$75	\$100	\$13,500
		QA/QC (60%, 90%, Bid Set)				30							30	\$7,100					\$0	\$75	\$100	\$7,200
B		Final Design - Subconsultant and Utility Locating Services	0	20	64	0	56	40	0	0	0	0	180	\$29,700	\$2,000	\$12,250	\$27,165	\$164,708	\$20,612	\$0	\$226,700	\$256,400
		Additional Topo Survey - Monterey & Cohansey Intersection		1	6		4						11	\$2,000		\$4,000			\$400		\$4,400	\$6,400
		Title Reports, Plat and Legal Descriptions (3 ea)		1	6		4						11	\$2,000		\$8,250			\$825		\$9,100	\$11,100
		Utility Outreach and Locating		8	24		40	40					112	\$16,900	\$2,000			\$164,708	\$16,671		\$183,400	\$200,300
		Geotechnical Investigation, Well Monitoring, and Design Support		2	16		8						26	\$4,700			\$17,040		\$1,704		\$18,700	\$23,400
		Trenchless Geotechnical Engineering Support		8	12								20	\$4,100			\$10,125		\$1,013		\$11,100	\$15,200
C		Detailed Design PS&E	16	316	516	12	420	472	40	0	0	0	1792	\$352,500	\$2,000	\$0	\$0	\$0	\$200	\$1,000	\$3,200	\$355,700
		Final Design PS&E	16	300	460		360	416					1552	\$261,200	\$2,000				\$200	\$1,000	\$3,200	\$264,400
		Utility Relocation Coordination (up to 3 locations)		12	24	6	60	40					142	\$22,600					\$0		\$0	\$22,600
		Siphon TM		2	16	4							22	\$4,300					\$0		\$0	\$4,300
		Flow Meter Final Design and PG&E Application		2	16	2		16	40				76	\$14,400					\$0		\$0	\$14,400
		Supplemental Design Allocation											0	\$50,000					\$0		\$0	\$50,000
D		Permitting	60	17	32	0	68	40	0	16	44	10	287	\$51,600	\$360	\$0	\$0	\$0	\$36	\$0	\$400	\$52,000
		CEQA/Environmental Documentation Support	20	10			20						50	\$10,700	\$180				\$18		\$200	\$10,900
		Stakeholder Permits	40	5	32		40						117	\$23,400	\$180				\$18		\$200	\$23,600
		Stormwater Permit Compliance		2			8	40		16	44	10	120	\$17,500					\$0		\$0	\$17,500
TOTAL (BASE FEE)			136	457	724	42	560	564	48	16	44	24	2615	\$508,100	\$4,760	\$12,250	\$27,165	\$164,708	\$20,888	\$2,275	\$232,000	\$740,100
Optional Scope Items																						
	B.1	OPTIONAL - Title Reports, Plat & Legal Descriptions (up to 2 ea)		1	4		4						9	\$1,600		\$2,750			\$275		\$3,000	\$4,600
	B.2	OPTIONAL - Geotechnical Monitoring Well Destruction		1									1	\$200			\$22,704		\$2,270		\$25,000	\$25,200
TOTAL (OPTIONAL SCOPE ITEMS)			0	2	4	0	4	0	0	0	0	0	10	\$1,800	\$0	\$2,750	\$22,704	\$0	\$2,545	\$0	\$28,000	\$29,800
TOTAL (BASE FEE + OPTIONAL SCOPE)			136	459	728	42	564	564	48	16	44	24	2625	\$509,900	\$4,760	\$15,000	\$49,869	\$164,708	\$23,434	\$2,275	\$260,000	\$769,900





CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Anthony Eulo, Program Administrator
APPROVED BY: City Manager

ADOPT RESOLUTION INITIATING 2020 HAZARDOUS VEGETATION PROGRAM

RECOMMENDATION(S)

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 5, 2020.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility

REPORT NARRATIVE:

Under Government Code section 39561, cities may adopt a resolution declaring weeds and dry brush to be a public nuisance and order their abatement.

Weed and brush abatement services constitute the City's hazardous vegetation program and are key to reducing fire risk and protecting public safety. The City of Morgan Hill has contracted with Santa Clara County for weed and brush abatement services since 1996. In the last several years, City and County staff have successfully worked together to streamline program administration and improve communications with Morgan Hill property owners. The County's Consumer and Environmental Protection Agency - Weed Abatement Program manages the program.

As in prior years, staff has combined the initial resolution (attached) for both the weed and brush abatement programs. Staff proposes that the abatement program commencement hearing take place on February 5, 2020. Once the resolution is adopted, County staff will notify the affected property owners of the February 5th public hearing and of their obligations to abate hazardous vegetation before the deadline. In response to the City's past request for more notification to the property owners, the County will also be mailing a courtesy notice out to affected property owners in the early Spring to further remind them of their obligations.

The City's Fire Department and the County's Weed Abatement Division are continuing to integrate their efforts and communication methods to enhance customer service. The improvements instituted have eliminated customer complaints about receiving conflicting information from the two programs.

COMMUNITY ENGAGEMENT: Empower

The hazardous vegetation abatement program relies on a full range of community engagement approaches. Much of it begins when the County Program or City Fire Department informs a property owner that a hazardous situation has been observed on their property. The owner is given several months during which he or she may consult and work together with program staff to understand the situation and the needed remedies. Ultimately, each property owner is invited and empowered to remedy the situation themselves in order to minimize their program charges while maintaining public safety. In addition, many of the properties on the original list get onto the list as a result of a complaint from a community member about a hazardous situation.

ALTERNATIVE ACTIONS:

The Council could choose to not act or delay action on this resolution. Not declaring weeds and brush to be a nuisance would potentially compromise community fire safety. Delaying action would ultimately provide the affected property owners with less notice and time to plan for abating their hazardous vegetation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While this will be the first Council action addressing hazardous vegetation for the 2020 fire season, the recommended approach is consistent with the actions taken by the Council for over a decade.

FISCAL AND RESOURCE IMPACT:

The Hazardous Vegetation Program is designed to be user fee supported. The per-lot assessment includes costs for doing the weed and brush control work plus overhead county costs to administer the program. Based on the City's agreement with the County, the City may need to ultimately contribute to the program's costs if user fee revenues do not completely cover all of the County's costs. Administering this program is an activity anticipated in the Community Services and Fire Departments' work programs and budgets. Fees imposed by the County Program do not cover the cost of the City staff time associated in providing oversight and those resources are funded through the General Fund.

CEQA (California Environmental Quality Act):

Categorical Exemption

These activities are categorically exempt from environmental review under the California Environmental Quality Act pursuant to California Code of Regulations, Title 21, Section 15304(i) (Minor Alterations to Land – Fuel Management Activities).

LINKS/ATTACHMENTS:

1. Initial Resolution

RESOLUTION NO. 19-XXX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL DECLARING CERTAIN HAZARDOUS VEGETATION GROWING IN THE CITY OF MORGAN HILL TO BE A PUBLIC NUISANCE, DESCRIBING PROPERTIES WHERE SUCH NUISANCE EXISTS; ORDERING ABATEMENT AND SETTING A PUBLIC HEARING THEREON**

WHEREAS, the City Council finds that certain weeds and brush are growing in the City of Morgan Hill upon the various streets, alleys, sidewalks, and upon private property, which said weeds and brush bear seeds of a wingy or downy nature, or may attain such growth as to become, when dry, a fire menace, or which are otherwise noxious and dangerous; and

WHEREAS, the City Council further finds and declares that said weeds and brush constitute a public nuisance.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morgan Hill authorizes as follows:

1. That the weeds, as described in the above recital, constitute and will continue to constitute a public nuisance, and it is ordered that this public nuisance be abated in the manner provided in Title 8, Chapter 8.20 of the Morgan Hill Municipal Code.
2. That the nuisance exists upon all streets, alleys, sidewalks, and private property within said City as shown, described and delineated on the several maps of the property in the City, which are recorded in the Office of the County Recorder of the County of Santa Clara, reference in each instance for the description of any particular street, alley, or private property being hereby made to the several maps mentioned, and in the event of there being several subdivision maps on which lots are shown, reference is hereby made to the latest subdivision map.
3. That it is ordered that Wednesday, the 5th day of February 2020, at 7:00 p.m., in the Council Chambers of the City Council of the City of Morgan Hill is hereby fixed as the time and place when objections to the proposed destruction of removal of weeds shall be heard and be given due consideration.
4. That the City Clerk of the City of Morgan Hill is hereby ordered and directed to cause notice of the adoption of this Resolution and notice of hearing to be given to property owners pursuant to Section 39562.1 of the Government Code.

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 4th day of December 2019 by the following vote:

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.19-XXX, adopted by the City Council at the meeting held on December 4, 2019.

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

DATE: _____

IRMA TORREZ, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Dat Nguyen, Finance Director

APPROVED BY: City Manager

ACCEPT THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

RECOMMENDATION(S)

Accept the report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

The Local Agency Special Tax and Bond Accountability Act ("The Act") requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of proceeds.

The Act was enacted by Senate Bill 165 and codified in the California Government Code Sections 53410 through 53412. The City's Community Facilities District (CFD) No. 2014-1 (Fisher Creek) falls within these reporting requirements and the attached annual report is intended to comply with the regulation.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the required reporting information for the CFD.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the SB 165 Report for CFD No. 2014-1 (Fisher Creek) annually.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):
Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. FY18-19 SB165

SENATE BILL 165

Senate Bill 165, filed with the Secretary of State on September 19, 2000, enacted the Local Agency Special Tax and Bond Accountability Act. This Act requires that any local special tax or local bond measure subject to voter approval contain a statement indicating the specific purposes of the special tax, require that the proceeds of the special tax be applied to those purposes, require the creation of an account into which the proceeds shall be deposited, and require an annual report containing specified information concerning the use of the proceeds. The Act only applies to any local special tax measure or local bond measure adopted on or after January 1, 2001 in accordance with Section 50075.1 or Section 53410 of the California Government Code.

Some of the requirements of the Act are handled at the formation of the Special Tax District and others are handled through annual reports. This Section of this report intends to comply with Section 50075.3 or Section 53411 of the California Government Code that states:

“The chief fiscal officer of the issuing local agency shall file a report with its governing body no later than January 1, 2002, and at least once a year thereafter. The annual report shall contain all of the following:

- (a) The amount of funds collected and expended.
- (b) The status of any project required or authorized to be funded as identified in subdivision (a) of Section 50075.1 or Section 53410.”

The requirements of the Act apply to the Funds for the following District:

City of Morgan Hill
Community Facilities District No. 2014-1 (Fisher Creek)
Formed September 17, 2014

Purpose of Special Tax

The District was formed to fund all or a portion of the costs of the maintenance and monitoring required by the San Francisco Bay Regional Water Quality Control Board for the realignment of Fisher Creek. The special tax funds the cost of maintenance, monitoring and reporting of the Fisher Creek Realignment project; pay for administrative expenses; pay for any amounts required to establish or replenish capital improvement funds, repair and contingency funds or reserve funds; and pay for reasonable anticipated delinquent special taxes.

Collections & Expenditures

Fund	7/1/2018 Balance	Total Amount Collected ⁽¹⁾	6/30/2019 Balance	Amount Expended	Service Status
Special Tax Fund	\$82,203.00	\$55,083.00	\$112,386.00	\$24,900.00	Ongoing

(1) Figure represents the total amount levied for Fiscal Year 2018/19, including interest earned, less County Collection Fees of 1.0% of the total levy amount and delinquencies.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

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

APPROVE DESIGN SERVICES AGREEMENT WITH SCHAAF & WHEELER FOR INFLOW AND INFILTRATION PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer the design services agreement with Schaaf and Wheeler, in the not to exceed amount of \$145,555, for the design of the Sewer Inflow and Infiltration Project.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Sewer System Master Plan

REPORT NARRATIVE:

On October 17, 2017, the City Council approved the City's current Sewer System Master Plan. Within the current master plan there is approximately \$52 million in identified improvements which need to be made to the City's existing sewer system. A portion of these improvements are associated with the elimination of inflow and infiltration (I&I) into the City's sewer system.

Through a Request for Qualification process, Schaaf and Wheeler (S&W) was selected to handle the condition assessment of the existing sewer system. On January 17, 2018, the City Council approved a professional design agreement with S&W for this work.

S&W recently completed the condition assessment of the City's sewer system. This review of video data for several miles of sewer line and as-built plans has identified the location and needs for significant repair work within the City's sewer system. Staff is now looking to take the necessary steps to complete the design plans and specifications for this work, which will involve repairing high I&I locations within the City's sewer system. Staff is requesting the approval for an agreement with S&W to develop the design plans and specifications for bidding and construction based on their familiarity with the condition assessment, which will result in time and cost savings through the design process. Staff is recommending S&W to complete the design plans and specifications for this work as completing a request for proposals would not yield a substantially better product at the current cost proposal.

While the design portion of this project is fully funded, the construction size and scope of the project is being developed. Staff recommends completing the design and bid documents for the I&I project and will request a budget appropriation at a later date.

COMMUNITY ENGAGEMENT: Inform

As the project size and scope is being developed, staff will provide letters and door notifications prior to any construction activities. Once construction is ready, staff will also provide updated construction information weekly through Nextdoor and on the City's website.

ALTERNATIVE ACTIONS:

The City Council may elect to not approve this agreement and direct City staff to issue a request for proposals for the design work.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

January 17, 2018 - City Council Approved Professional Design Agreements for Water and Wastewater Utility Planning & Engineering Service.

FISCAL AND RESOURCE IMPACT:

Sufficient Funds are available for the design work within the adopted FY2018-19 through 2023-24 Capital Improvement Program's Trouble Spot Evaluation and Repair Project (No. 302N15), funded by the Sewer CIP Fund (643).

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance or minor alteration of existing City facilities involving negligible or no expansion of use of those facilities.

LINKS/ATTACHMENTS:

1. Service Agreement for Design Professional S&W

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS SCHAAF & WHEELER

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Schaaf & Wheeler a California corporation ("CONSULTANT") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.

2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2020 at which time CONSULTANT'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.

3. **Scope of Service.** The services to be performed by CONSULTANT shall be the design services for the City's Sewer Inflow and Infiltration Project as further described in **Exhibit A**.

4. **Compensation.** CONSULTANT shall be compensated as follows:

4.1. **Amount.** \$145,555.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One-Hundred-Forty-Five-Thousand-and-Five-Hundred-Fifty-Five dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed the City Manager's authority pursuant to Chapter 3.04 of the Morgan Hill Municipal Code, unless otherwise authorized by City Council.

4.2. **Billing.** CONSULTANT shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by CONSULTANT on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 13 Notices. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.

5. **Termination.** CITY or CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination, CONSULTANT shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require CONSULTANT to complete certain work product or documents and CONSULTANT shall deliver to CITY all documents in its possession without additional compensation to CONSULTANT. The CITY Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

6. **Performance of Work.** CONSULTANT represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by CONSULTANT in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the CONSULTANT'S profession. By delivery of completed work, CONSULTANT certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. CONSULTANT shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If CONSULTANT desires to leave or store any of CONSULTANT's equipment at a CITY site while CONSULTANT is performing work or service pursuant to this Agreement, CONSULTANT will first obtain the consent of CITY's City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at CONSULTANT's sole risk.

7. **Insurance Requirements.** CONSULTANT shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of CONSULTANT, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein. CONSULTANT further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to CONSULTANT, at any time as deemed necessary to protect the interests of the CITY.

7.1. **Insurance Types and Amounts.**

7.1.1. **Commercial General Liability (CGL).** CONSULTANT shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.2. **Automobile Liability.** CONSULTANT shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if CONSULTANT does not own automobiles, then CONSULTANT shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of:

(i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.3. Workers' Compensation Insurance and Employer's Liability.

CONSULTANT shall maintain Workers' Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If CONSULTANT is self-insured, CONSULTANT shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

7.1.4. Pollution (Environmental) Liability. If the performance of CONSULTANT'S work or service under this Agreement involves hazardous materials; contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, CONSULTANT shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

7.1.5.2. If the performance of CONSULTANT's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), CONSULTANT shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in

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the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of CONSULTANT's work or service under this Agreement involves contact with minors, CONSULTANT shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 7.2. Endorsements. CONSULTANT shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

7.2.1. General Liability and pollution liability (when pollution liability applies).

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

7.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

7.2.1.3. insurance shall be primary non-contributing.

7.2.2. Workers Compensation.

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

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

- 7.4. Certificates. CONSULTANT shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the CONSULTANT's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed

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electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

8. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

9. **Compliance with Law.**

9.1. CONSULTANT and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. CONSULTANT and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.

9.2. **Compliance with Wage and Hour Laws:** Consultant, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a "final judgment, decision, or order" refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against CONSULTANT and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONSULTANT AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONSULTANT OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONSULTANT FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that CONSULTANT or an subcontractor it

employs to perform work under this Agreement has violated any applicable wage and hour law, or CONSULTANT learns of such a judgment, decision, or order that was not previously disclosed, CONSULTANT shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. CONSULTANT and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. The City reserves the right to require CONSULTANT to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where CONSULTANT or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, the City reserves the right to withhold payment to CONSULTANT until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

10. **Independent Contractor.** CONSULTANT is an independent contractor and not an agent or employee of CITY.
11. **Confidentiality.** All data, documents, or other information received by CONSULTANT from CITY or prepared in connection with CONSULTANT'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by CONSULTANT without prior written consent by CITY.
12. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.
13. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of CONSULTANT is as follows:

Schaaf & Wheeler
1171 Homestead Road
Suite 255
Santa Clara, CA 95050

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Address of CITY is as follows:

Attn: Yat Cho
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

with a copy to:
City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

14. Licenses, Permits and Fees. CONSULTANT shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

15. CONSULTANT'S Proposal. If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

16. Maintenance of Records.

16.1. Maintenance. CONSULTANT shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. CONSULTANT shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then CONSULTANT shall retain said records until such action is resolved.

16.2. Access to and Audit of Records. The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONSULTANT and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

16.3. Ownership of Work Product. All documents or other information developed or received by CONSULTANT for work performed under this Agreement shall be the property of CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

17. Familiarity with Work. By executing this Agreement, CONSULTANT represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should CONSULTANT discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.

18. Time of Essence. Time is of the essence in the performance of this Agreement.

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19. **No Assignment.** Neither this Agreement nor any portion shall be assigned by CONSULTANT, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

20. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

21. **Defense and Indemnification.**

- 21.1. **Defense and Indemnification for Design Professional Services.** Consistent with California Civil Code Section 2782.8, for design professional services to be performed under this agreement by a design professional, as that term is defined under said Section 2782.8, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors in performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement ("CLAIM") to the extent of CONSULTANT'S proportionate percentage of fault.
- 21.2. **Defense and Indemnification for Non-Design Professional Services.** For all services performed under this agreement not covered by Section 21.1 above, CONSULTANT shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by CONSULTANT, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").
- 21.3. **Exceptions.** CONSULTANT is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence, active negligence or willful misconduct of the CITY.
- 21.4. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by CONSULTANT.
- 21.5. **Right to Offset.** CITY shall have the right to offset against any compensation due CONSULTANT under this Agreement any amount due CITY from CONSULTANT

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as a result of CONSULTANT's failure to pay CITY promptly any indemnification arising under this Section (21) and any amount due CITY from CONSULTANT arising from CONSULTANT's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 21.6. Interpretation. This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the CONSULTANT to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

22. Entire Agreement; Modification; Conflicting Provisions. This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and CONSULTANT. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

23. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

24. Interpretation. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

25. Preservation of Agreement. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

26. Binding Agreement. Notwithstanding the provisions of Section 19 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of CONSULTANT in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

27. ☐ Data Sharing. This Agreement requires access by CONSULTANT to CITY's Geographic Information System (GIS) DATA for CONSULTANT to perform the work. CITY agrees to provide the GIS DATA to CONSULTANT solely for the purpose of performance of contracted work with the CITY upon the terms and conditions specified in Exhibit D, incorporated herein by this reference.

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28. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

(1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
(2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow

Christina J. Turner

Print Name

Print Name

Date:

Date:

APPROVED AS TO FORM:

Schaaf & Wheeler

City Attorney

By:

Donald A. Larkin

Print Name

Date:

Charles D. Anderson, President
Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: 10/18/19

By:

LEIF M. CORNEN, TREASURER

Print Name and Title of Signer.

If Corporate: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer

Date: 10/18/19

**EXHIBIT A
SCOPE OF SERVICES**

See Attached

11.
Updated July 2019

EXHIBIT A

Scope of Work
with Schaaf & Wheeler for
City of Morgan Hill Sewer Improvement
Design and Construction Support Services

Schaaf & Wheeler previously evaluated priority sewer pipe segments that are within close proximity to surface water and developed recommended improvements. Schaaf & Wheeler will provide the following scope of services on a time and materials basis for a total not to exceed amount of \$145,555. The attached table details the estimated fee for each specific task; some tasks may require more effort than estimated, some less.

This scope of services assumes that design documents will be prepared for the pipe segments and manholes described in the Sewer Infrastructure Evaluation Memorandum, July 31, 2019. Additional pipe segments to be included in the design are described in Task 2 below.

Task 1: Project Management and Coordination

Schaaf & Wheeler will attend a kick-off meeting with City staff to review the scope of work and confirm project schedules. Schaaf & Wheeler will provide project management and internal design reviews for the duration of the project, including attendance at three (2) design review meetings, and routine coordination with the City.

Task 2: Additional Data Review and Memorandum Update

Schaaf & Wheeler will review additional CCTV data provided by the City for nine (9) pipe segments where the data was previously unavailable or incomplete. The pipe segments will be assessed and the recommended improvements and summary memorandum will be updated.

Schaaf & Wheeler will also review, assess, perform site visits, and provide recommendations for improvements for the following additional locations:

- Location #1: Crest Avenue from Colleen Ct to 17689 Crest Ave.
- Location #2: Pipe within easement between El Toro Ct. and Lindo Ln.
- Location #5: La Mar Drive from Via De Ninos to La Via Azul
- 25 1st Street: Pipe within alley between 15 and 25 1st Street

Preliminary figures and email correspondence will be provided to the City to confirm the improvements prior to proceeding with detailed design. This scope of services assumes that the City will provide CCTV inspection of the pipes and that topographic surveying will not be required to prepare the design documents. This scope does not include potholing or exploratory excavations to locate existing laterals and utilities. Design for the recommended improvements will be included within the following tasks.

Task 3: Flow Rate and Pipe Size Evaluation

Schaaf & Wheeler will review the existing pipe sizes and estimated slopes and will compare the calculated pipe capacities to the peak flow rates identified in the sewer master plan. Schaaf & Wheeler will identify pipes that need to be upsized and will coordinate with the City to identify the desired improvements. This scope assumes that the pipe sizing requirements will not have a significant impact on the overall design scope for the improvements.

Task 4: Site Visits, Utility Investigations, and Documentation

Schaaf & Wheeler will identify critical locations where additional site information is necessary to develop construction documents. These sites may include lateral connection locations, locations where open trench or spot repairs are necessary, etc.

Schaaf & Wheeler will request utility maps from utility companies in locations where excavations will be performed. Schaaf & Wheeler will visit the sites and document existing visible utilities.

Task 5: 65% Design

Following the City's review and any subsequent revisions of the assessment summary memorandum, Schaaf & Wheeler will initiate the detailed design efforts for the recommended improvements. Detailed design tasks will include project basemapping, plan and profiles of sewer lines, construction details, technical specifications, construction cost estimate, and a construction schedule. This scope assumes the following:

- Design documents will include improvements recommended in the assessment memorandum. All sites will be prepared under one set of construction documents.
- The detail and accuracy of the existing City's sewer basemaps should be sufficient to develop construction documents.
- Topographic surveying and basemapping will not be required.
- Geotechnical investigations and recommendations will not be required.

Schaaf & Wheeler will attend a design review meeting with the City to present and review the 65% design documents.

Task 6: 95% Design

After receiving and reviewing comments from the City, Schaaf & Wheeler will prepare the 95% construction documents. Construction documents will include detailed plans, technical specifications, and engineer's estimates.

Schaaf & Wheeler will attend a design review meeting with the City to present and review the 95% design documents.

Task 7: Final Design

After receiving and reviewing comments from the City Schaaf & Wheeler will prepare the final construction documents. Construction documents will include bid-ready plans, technical specifications, and engineer's estimates.

Task 8: Bid Support Services

Schaaf & Wheeler will provide bid support services which may include attendance at the pre-bid meeting, responding to questions from bidders, prepare addenda, and evaluation of bids.

Task 9: Construction Support

Schaaf & Wheeler will be available to assist the City as desired throughout the construction process. Construction support assistance may include:

- Review and approve shop drawings and submittals;
- Review contractor's request for information (RFIs) and furnish additional drawings and/or specifications for supplementing, clarifying, and/or correcting purposes;
- Provide one set of reproducible record drawings that reflect the changes to the work during construction based upon Contractor markups, drawings and other data furnished by the Contractor, City, and Consultants. The record drawings will also be provided in AutoCAD format.
- Construction meetings and site visit attendance is not included within this scope of service; however, it can be provided for an additional fee upon request.

Assumptions:

This scope and fee is based on the following assumptions:

1. Topographic surveying, geotechnical investigations, and utility potholing will not be required.
2. City will provide CCTV data for all pipe segments.
3. City will coordinate and provide access to all easements, where necessary.

**EXHIBIT B
SCHEDULE OF COMPENSATION RATES**

See Attached

12
Updated July 2019

EXHIBIT B

Fee Estimate

City of Morgan Hill Sewer Improvement - Design and Construction Support Services Schaaf & Wheeler Fee Proposal - November 13, 2019		Project Manager	Assistant Engineer	Schaaf & Wheeler Subtotal	Reimbursables	Total
Hourly Rate		\$240	\$175			
Task 1	Project Management and Coordination	33	9	\$ 9,495	\$ -	\$ 9,495
A	Project Management and Coordination	24		\$ 5,760		\$ 5,760
B	Meeting Attendance	9	9	\$ 3,735		\$ 3,735
Task 2	Additional Data Review and Memorandum Update	24	56	\$ 15,560	\$ -	\$ 15,560
A	CCTV Data Review	4	12	\$ 3,060		\$ 3,060
B	Assessment and Memorandum Update	4	12	\$ 3,060		\$ 3,060
C	Assessment, site visits, & coordination for 4 additional locations	16	32	\$ 9,440		\$ 9,440
Task 3	Flow Rate and Pipe Size Evaluation	4	12	\$ 3,060	\$ -	\$ 3,060
A	Flow Rate and Pipe Size Evaluation	4	12	\$ 3,060		\$ 3,060
Task 4	Site Visits, Utility Investigation, and Documentation	14	56	\$ 13,160	\$ -	\$ 13,160
A	Site Visits	8	32	\$ 7,520		\$ 7,520
B	Utility Investigation and Documentation	6	24	\$ 5,640		\$ 5,640
Task 5	65% Design	42	156	\$ 37,380	\$ 200	\$ 37,580
A	65% Plans	32	124	\$ 29,380	\$ 200	\$ 29,580
B	65% Specifications	8	24	\$ 6,120		\$ 6,120
C	65% Estimate	2	8	\$ 1,880		\$ 1,880
Task 6	95% Design	34	126	\$ 30,210	\$ 200	\$ 30,410
A	95% Plans	24	100	\$ 23,260	\$ 200	\$ 23,460
B	95% Specifications	8	20	\$ 5,420		\$ 5,420
C	95% Estimate	2	6	\$ 1,530		\$ 1,530
Task 7	Final Design	24	84	\$ 20,460	\$ 200	\$ 20,660
A	Final Plans	16	64	\$ 15,040	\$ 200	\$ 15,240
B	Final Specifications	6	16	\$ 4,240		\$ 4,240
C	Final Estimate	2	4	\$ 1,180		\$ 1,180
Task 8	Bid Support Services	2	6	\$ 1,530	\$ -	\$ 1,530
A	Bid Support Services	2	6	\$ 1,530		\$ 1,530
Task 9	Construction Support Services	20	52	\$ 13,900	\$ 200	\$ 14,100
A	Submittal Review	8	32	\$ 7,520		\$ 7,520
B	RFIs	8	4	\$ 2,620		\$ 2,620
C	Record Drawings	4	16	\$ 3,760	\$ 200	\$ 3,960
	TOTAL	197	557	\$ 144,755	\$ 800	\$ 145,555

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

November 13, 2019

EXHIBIT C
SCHEDULE OF PERFORMANCE

13
Updated July 2019

EXHIBIT C

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November 14, 2019

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

Schaaf & Wheeler
CONSULTING CIVIL ENGINEERS

EXHIBIT D
Third Party Data Use Agreement

1. CONSULTANT agrees that it shall not use any information provided by CITY for any purpose other than for PROJECT without the prior express written consent of CITY. CONSULTANT also hereby acknowledges that the data delivered by CITY is for use by CONSULTANT only, and is not to be released to any other party by any means whatsoever, including the Internet, without prior written consent of CITY. CONSULTANT shall provide written notice to CITY of any subcontractor with whom Geographic Information System data (GIS DATA) is shared for purposes of completing the PROJECT.
2. All data and files are intended for the use within the ordinary course of users' business and may not be sold, placed on the internet or otherwise provided to other parties. All data shall comply with all statutes such as California State Law, Government Code section 6254.21 which prohibits any state or local agency from posting the home address or telephone number of any "elected or appointed official," residing spouse, or child on the internet, and Revenue and Taxation Code sections 408, 408.1, 408.3, and 409 permitting the County Assessor to collect fees for certain information.
3. CITY, as rightful owners, shall retain all rights, title, interest, and copyright of the data. Any products using the GIS DATA must give credit to CITY as the source of the information. Any and all derivative products of the GIS DATA are owned by CITY and may not be used for any purpose other than the PROJECT without prior written permission of CITY. All derivative products and resulting data shall be provided to CITY Project Manager and CITY GIS Manager at the completion of the PROJECT.
4. CONSULTANT and CITY understand and agree that the information provided pursuant to this Agreement is the product of professional services paid for by CITY and shall remain property of CITY. CONSULTANT may retain copies, including copies stored on magnetic media, only for information and reference, in connection with CONSULTANT'S use for PROJECT.
5. All of the above terms and conditions apply to any subcontractor retained by CONSULTANT.
6. In the event of a conflict between the terms and provisions of this Third Party Data Use Agreement and the terms and provisions of the SERVICE AGREEMENT, the terms of the SERVICE AGREEMENT shall govern and control.

CITY's GIS Manager is aware of the GIS DATA sharing, and consents to the sharing of the GIS DATA with CONSULTANT for the PROJECT as specified herein.

Pam van der Leeden, City GIS Manager

Date



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Inga Alonzo, Management Analyst
APPROVED BY: City Manager

APPROVE AGREEMENT FOR WATER LABORATORY TESTING AND ANALYSIS SERVICES

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a three-year service agreement for a not to exceed amount of \$200,000 with Alpha Analytical Laboratories, Inc., for water laboratory testing and analysis services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

Water System Master Plan

REPORT NARRATIVE:

The Utilities Division systematically tests Morgan Hill's drinking water to ensure that water quality meets or exceeds all public health standards set by the U.S. Environmental Protection Agency (USEPA) and the California Department of Public Health. Test results are reported to the State and to the public (City water customers receive the annual Water Quality Consumer Confidence Report). The EPA and State establish the regulations for the type and frequency of testing as well as quality control procedures. Drinking water sampling and analysis is carried out pursuant to the provisions of the California Health and Safety Code, Division 101, Part 12, Chapter 4, Section 100825. Additionally, rigorous water quality sample analysis is needed to support the City's Stormwater Management program. Various stormwater samples and samples from surface waterbodies are collected to meet Non-Point Source National Pollution Discharge Elimination Program (NPDES) permit requirements.

To meet these requirements the City uses certified commercial laboratory services to perform the analysis of our water samples. A Request for Proposals (RFP) was issued in October 2019 for a vendor for a new three-year contract to provide analytical services beginning January 1, 2020. The RFP was posted to the City and Public Purchase websites and was advertised in the San Jose Mercury and the Morgan Hill Times. Submittals were received by Alpha Analytical Laboratories, Inc. and McCampbell Analytical, Inc. The two proposals were reviewed by four staff members to ascertain which one best met the needs of the City based on a weighted overall average score which included:

1. Licenses, Certificates, and Operations. Lab must maintain a certified environmental testing laboratory with a State-issued California Laboratory Certification Number for drinking water analysis (Weight: 20%)
2. Qualifications and Experience. Lab must have a full understanding of the overall City's needs and be able to effectively provide the services as described in the RFP. (Weight: 20%)
3. References from three like size companies or agencies where similar or related work has been performed. (Weight: 20%)
4. Overall Cost including pricing for services and fees. (Weight: 40%)

CRITERIA SCORES	WEIGHT	ALPHA ANALYTICAL WEIGHTED SCORE	MCCAMPBELL ANALYTICAL WEIGHTED SCORE
1. Licenses, Certificates, and Operations	0.20	1.00	1.00
2. Qualifications and Experience	0.20	1.00	1.00
3. References	0.20	1.00	1.00
4. Cost Schedule	0.40	1.87	1.33
Total Score	1.00	4.87	4.33

Both laboratories are fully licensed, have excellent references, and are highly qualified to do the work. Thus, the decision to award comes down to the laboratory with the lowest pricing, Alpha Analytical.

Cost Schedule Proposal*	Weekly	Monthly	Quarterly	Semi-Annual	Annual	Annual Total
Company						
Alpha Analytical	\$11,700	\$504	\$18,240	\$10,650	\$12,345	\$53,439
McC Campbell Analytical	\$18,252	\$792	\$23,128	\$13,770	\$13,164	\$69,106

*Proposed Cost Schedule does not include extra samples that may need to be performed during term of the agreement or stormwater samples which will be performed on an as needed basis with an amount not to exceed \$35,000.

COMMUNITY ENGAGEMENT: Not Applicable

Sampling and analysis are required functions for the City Water Utility and Storm Water functions, which are services expected to be provided by the City. No specific community engagement was conducted in association with this item.

ALTERNATIVE ACTIONS:

City Council could decide to not approve the agreement and direct staff to re-bid the service. Staff does not recommend this alternative as Alpha Analytical has provided quality service and it is not believed cost savings will be achieved by rebidding.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 17, 2015, the City Council authorized the City Manager to enter into a two-year agreement with Alpha Analytical for lab testing and analysis services in the amount of \$88,530. On March 15, 2017 Council authorized a First Amendment to the agreement which added stormwater services, sewer overflow services, extended the agreement by one and a half years, and increased the not to exceed amount to \$208,955.

FISCAL AND RESOURCE IMPACT:

Funds for these services are included in the annual operating budget and costs are allocated on an as-used basis across Water Operations (Fund 650) not to exceed \$165,000 (\$160,000 regular sampling and \$5,000 additional as needed samples) and the Stormwater Program (Fund 232) not to exceed \$35,000.

CEQA (California Environmental Quality Act):

Not a project.

Continuing administrative activities are not considered projects for environmental review under CEQA.

LINKS/ATTACHMENTS:

1. Alpha Analytical Agreement

SERVICE AGREEMENT
Alpha Analytical Laboratories, Inc.

THIS AGREEMENT is entered into and becomes effective on _____ (Effective Date), by and between the CITY OF MORGAN HILL, a municipal corporation, ("CITY"), and Alpha Analytical Laboratories, Inc. a California corporation ("SERVICE PROVIDER") hereinafter referred to collectively as "Parties." In consideration of the promises and the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **City Authority.** This Agreement is entered into pursuant to the action of the Morgan Hill City Council taken on _____, _____, 20____.
2. **Term of Agreement.** This Agreement shall cover services rendered from the Effective Date of this Agreement until December 31, 2022 at which time SERVICE PROVIDER'S services shall be completed. The City Manager is authorized to extend the term of this Agreement for a maximum period of one year. Any such extension shall be in writing and signed by both Parties to this Agreement.
3. **Scope of Service.** The services to be performed by SERVICE PROVIDER shall be Water Laboratory Testing and Analysis Services as further described in **Exhibit A**.
4. **Compensation.** SERVICE PROVIDER shall be compensated as follows:
 - 4.1. **Amount.** \$200,000.00. Total compensation to SERVICE PROVIDER under this Agreement during its initial term set forth in Section 2 above shall not exceed Two Hundred Thousand dollars and shall be billed based on the rate and basis set forth in **Exhibit B**. If the City Manager extends the term of this Agreement for up to one year pursuant to the provisions of Section 2 above, the City Manager shall have the authority to increase the maximum compensation allowed to be paid to CONSULTANT during that extended term period, so long as City Council has appropriated sufficient funds therefor, the Parties mutually agree to such amount in a writing signed by both Parties to this Agreement and provided further that in no event shall such maximum compensation allowed for the extended term exceed 105% of the maximum compensation allowed to be paid to CONSULTANT for one year of service during the initial term of this Agreement.
 - 4.2. **Billing.** SERVICE PROVIDER shall provide CITY with an invoice containing the dated, detailed, and itemized descriptions of all services performed and expenses incurred (if such expenses are reimbursable pursuant to Exhibit B) by SERVICE PROVIDER on a monthly basis unless otherwise specified in Exhibit B. All invoices shall be sent to the CITY addressed to the department head or project manager identified below in Section 14 Notices. Payment will be made to SERVICE PROVIDER within thirty (30) days of receipt of invoice by CITY. Any rate charged shall be prorated where services are interrupted or not provided for any rate period (for example, any monthly rate charge should be prorated when services were interrupted or provided for only part of the month). For services billed on an hourly rate, the minimum unit of billed time shall not exceed one tenth of one hour. CITY shall pay for services and expenses (if so provided in Exhibit B) up to the limit of compensation set forth above, that in the CITY's judgment were necessary and reasonable. Services for work performed and expenses incurred in excess of the total compensation set forth in paragraph 4.1 above shall be at no cost to CITY.
5. **Termination.** CITY or SERVICE PROVIDER shall have the right to terminate this Agreement, without cause, by giving thirty (30) days' written notice or less under urgent circumstances. Upon such termination,

SERVICE PROVIDER shall submit to CITY an itemized statement of services performed for which compensation has not been paid. CITY may require SERVICE PROVIDER to complete certain work product or documents and SERVICE PROVIDER shall deliver to CITY all documents in its possession without additional compensation to SERVICE PROVIDER. The CITY Manager of CITY is authorized to terminate this AGREEMENT, in whole or in part, on behalf of CITY.

6. **Performance of Work.** SERVICE PROVIDER represents that it is qualified by virtue of experience, training, education, and expertise to accomplish these services. Services shall be performed by SERVICE PROVIDER in accordance with professional practices in a manner consistent with a level of care, competence and skill exercised by qualified members of the SERVICE PROVIDER'S profession. By delivery of completed work, SERVICE PROVIDER certifies that the work conforms to the requirements of this Agreement and all applicable federal, state and local laws. SERVICE PROVIDER shall perform all work and services under this Agreement in conformance with the time schedule set forth on Exhibit C, "Schedule of Performance," attached hereto and incorporated herein by this reference. CITY's City Manager is authorized on behalf of CITY to modify the timeframes set forth on the Schedule of Performance within the term of this Agreement. If SERVICE PROVIDER desires to leave or store any of SERVICE PROVIDER's equipment at a CITY site while SERVICE PROVIDER is performing work or service pursuant to this Agreement, SERVICE PROVIDER will first obtain the consent of CITY's City Manager, or his/her delegate, to do so, and any such storage shall occur only in the manner and location allowed by such CITY official and entirely at SERVICE PROVIDER's sole risk.

7. **Hazardous Materials.** Without limiting any other requirement or obligation of SERVICE PROVIDER under this Agreement, if SERVICE PROVIDER needs to use any material or chemical considered to be a hazardous material under any federal, state or local law, regulation or policy, SERVICE PROVIDER agrees to fully and timely abide by and comply with all laws, regulations and policies pertaining to the use, transport, removal, handling, disposal or other activity related to any and all such materials or chemicals. Prior to commencement of work or services under this Agreement, SERVICE PROVIDER shall provide CITY with a complete list of the hazardous materials SERVICE PROVIDER reasonably anticipates it may need to use to provide the services of SERVICE PROVIDER under this Agreement, together with the reasonably anticipated quantities thereof, if requested by CITY.

8. **Insurance Requirements.** SERVICE PROVIDER shall procure and provide proof of the insurance coverage required by this section in the form of certificates and endorsements. The required insurance must cover the activities of SERVICE PROVIDER, including its subcontractors, employees and agents, relating to or arising from the performance of any work or service under this Agreement, and must remain in full force and effect at all times during the period covered by this Agreement. **The coverages may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or "umbrella" policies, provided each such policy complies with the requirements set forth herein.** SERVICE PROVIDER further understands that the CITY reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to SERVICE PROVIDER, at any time as deemed necessary to protect the interests of the CITY.

8.1. **Insurance Types and Amounts.**

8.1.1. **Commercial General Liability (CGL).** SERVICE PROVIDER shall maintain CGL against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.1.2. Automobile Liability. SERVICE PROVIDER shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if SERVICE PROVIDER does not own automobiles, then SERVICE PROVIDER shall maintain Hired/Non-owned Automobile Liability) against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) one million dollars (\$1,000,000.00) combined single limit for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.3. Workers' Compensation Insurance and Employer's Liability. SERVICE PROVIDER shall maintain Workers Compensation coverage, as required by law, in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. If SERVICE PROVIDER is self-insured, SERVICE PROVIDER shall provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.
- 8.1.4. Pollution (Environmental) Liability. If the performance of SERVICE PROVIDER's work or service under this Agreement involves hazardous materials, contaminated soil disposal, and/or a risk of accidental release of fuel oil, chemicals or other toxic gases or hazardous materials, SERVICE PROVIDER shall procure and maintain Pollution Liability covering the contractor's liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 8.1.5. Professional Liability.
- 8.1.5.1. If the performance of SERVICE PROVIDER's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), SERVICE PROVIDER shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if SERVICE PROVIDER maintains a claims-made policy, SERVICE PROVIDER shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.
- 8.1.5.2. If the performance of SERVICE PROVIDER's work or service under this Agreement relates to Information Technology or related services (examples include, but are not limited to computer programmers, software designers, hardware engineers, or other systems consultants), SERVICE PROVIDER shall procure and maintain a

claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.1.6. Sexual Abuse/Molestation Liability (SML): If the performance of SERVICE PROVIDER's work or service under this Agreement involves contact with minors, SERVICE PROVIDER shall procure and maintain Sexual Abuse and Molestation insurance in the minimum amount of: (i) two hundred thousand dollars (\$200,000.00) each claim, or (ii) the maximum amount of such insurance available to SERVICE PROVIDER under SERVICE PROVIDER's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

- 8.2. **Endorsements**. SERVICE PROVIDER shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- 8.2.1. General Liability and pollution liability (when pollution liability applies).

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

8.2.1.2. the insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers; and,

8.2.1.3. insurance shall be primary non-contributing.

- 8.2.2. Workers Compensation.

If the performance of CONSULTANT'S work or service under this Agreement involves access to or activity on any property or premises owned or occupied by the CITY, including, but not limited to, CONSULTANT'S presence during site visits and meetings, then insurer waives the right of subrogation against the City of Morgan Hill and the CITY's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.

- 8.3. **Qualification of Insurers**. All insurance required pursuant to this Agreement must be issued by a company licensed and admitted, or otherwise legally authorized to carry out insurance business in the State of California, and each insurer must have a current A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better.
- 8.4. **Certificates**. SERVICE PROVIDER shall furnish CITY of Morgan Hill with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to the SERVICE PROVIDER's agreement with the CITY shall be canceled or materially changed except after thirty (30) days' notice by the insurer to CITY. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein

Certificate Holder address:

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

9. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

10. **Compliance with Law.**

- 10.1. SERVICE PROVIDER and its officers, employees, agents, and subcontractors shall comply with all applicable laws, ordinances, administrative regulations, and permitting requirements in carrying out their obligations under this Agreement. SERVICE PROVIDER and its officers, employees, agents, and subcontractors covenant there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, sexual orientation, national origin, mental disability, physical disability, medical condition, or ancestry, in any activity pursuant to this Agreement.
- 10.2. Compliance with Wage and Hour Laws: SERVICE PROVIDER, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against SERVICE PROVIDER and/or its subcontractors: BY SIGNING THIS AGREEMENT, SERVICE PROVIDER AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT SERVICE PROVIDER OR ITS SUBCONTRACTOR(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. SERVICE PROVIDER FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision or order finding that SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or SERVICE PROVIDER learns of such a judgment, decision, or order that was not previously disclosed, SERVICE PROVIDER shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision or order becomes final or of learning of the final judgment, decision or order. SERVICE PROVIDER and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence

of compliance with the final judgment, decision or order within five (5) days of satisfying the final judgment, decision or order. CITY reserves the right to require SERVICE PROVIDER to enter into an agreement with CITY regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where SERVICE PROVIDER or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision or order of a court or government agency, CITY reserves the right to withhold payment to SERVICE PROVIDER until such judgment, decision or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

11. **Independent Contractor.** SERVICE PROVIDER is an independent contractor and not an agent or employee of CITY.

12. **Confidentiality.** All data, documents, or other information received by SERVICE PROVIDER from CITY or prepared in connection with SERVICE PROVIDER'S services under this Agreement are deemed confidential and shall not be disclosed to any third party by SERVICE PROVIDER without prior written consent by CITY.

13. **Conflict of Interest and Reporting.** SERVICE PROVIDER shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

14. **Notices.** All notices shall be personally delivered or mailed, via first class mail to the below listed address. These addresses shall be used for delivery of service of process. Notices shall be effective five (5) days after date of mailing, or upon date of personal delivery.

Address of SERVICE PROVIDER is as follows:

Alpha Analytical Laboratories, Inc.
262 Rickenbacker Circle
Livermore, CA 94551

Address of CITY is as follows:

Engineering & Utilities Dept.	with a copy to:
City of Morgan Hill	City Clerk
17575 Peak Avenue	City of Morgan Hill
Morgan Hill, CA 95037	17575 Peak Avenue
	Morgan Hill, CA 95037

15. **Licenses, Permits and Fees.** SERVICE PROVIDER shall obtain a City of Morgan Hill Business License, all permits and licenses to the extent required by ordinances, codes and regulations of the federal, state and local government.

16. **CONSULTANT'S Proposal.** If applicable, this Agreement shall include CONSULTANT'S proposal or bid which is incorporated herein. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.

17. **Maintenance of Records.**

17.1. **Maintenance.** SERVICE PROVIDER shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and CITY rules and ordinances related to services provided under this Agreement. SERVICE PROVIDER shall maintain records for a period of at least 3 years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the 3-year period, then SERVICE PROVIDER shall retain said records until such action is resolved.

17.2. **Access to and Audit of Records.** The CITY shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the SERVICE PROVIDER and its subcontractors related to services under this Agreement. Pursuant to Government Code Section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the Parties to this Agreement may be subject, at the request of the CITY or as part of any audit of the CITY, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

17.3. **Ownership of Work Product.** All documents or other information developed or received by SERVICE PROVIDER for work performed under this Agreement shall be the property of CITY. SERVICE PROVIDER shall provide CITY with copies of these items upon demand or upon termination of this Agreement.

18. **Familiarity with Work.** By executing this Agreement, SERVICE PROVIDER represents that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the difficulties and restrictions of the work under this Agreement. Should SERVICE PROVIDER discover any conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY and shall not proceed, except at SERVICE PROVIDER'S risk, until written instructions are received from CITY.

19. **Time of Essence.** Time is of the essence in the performance of this Agreement.

20. **No Assignment.** Neither this Agreement nor any portion shall be assigned by SERVICE PROVIDER, without prior written consent of CITY. Any attempted assignment not first approved by CITY shall be void and, at CITY's option, shall terminate this Agreement effective as of the date of such attempted assignment.

21. **Attorney Fees.** In any legal action, dispute or arbitration arising out of or relating to this Agreement, the prevailing party shall be entitled to an award of its reasonable attorney fees, costs and expenses incurred.

22. **Defense and Indemnification.**

22.1. **Defense and Indemnification.** SERVICE PROVIDER shall, to the fullest extent permitted by law, indemnify, defend and hold harmless CITY, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers ("INDEMNITEES") from and against any and all claims, liabilities, expenses, liens, or damages of any nature, including liability for bodily injury, property damage or personal injury, and including reasonable attorneys' fees and expenses, that arise out of, pertain to, or relate to the performance of this Agreement or the failure to comply with any obligations contained in this Agreement by SERVICE PROVIDER, and/or its agents, officers, employees, subcontractors, or independent contractors ("CLAIM").

22.2. **Exceptions.** SERVICE PROVIDER is not required to indemnify INDEMNITEES against liability for bodily injury, property damage or personal injury, or any other loss, damage or expense arising from the sole negligence or willful misconduct of the CITY.

22.3. **Not limited by insurance.** The indemnity, defense and hold harmless provisions of this Agreement apply to all CLAIMs alleged against an INDEMNITEE, regardless of whether any insurance policies are applicable. Policy limits do not act as a limitation upon the amount of indemnification or defense to be provided by SERVICE PROVIDER.

22.4. **Right to Offset.** CITY shall have the right to offset against any compensation due SERVICE PROVIDER under this Agreement any amount due CITY from SERVICE PROVIDER as a result of SERVICE PROVIDER's failure to pay CITY promptly any indemnification arising under this Section (22) and any amount due CITY from SERVICE PROVIDER arising from SERVICE PROVIDER's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

22.5. **Interpretation.** This Section shall constitute an agreement or contract of indemnity, incorporating the interpretations under California Civil Code Section 2778. It is expressly understood and agreed that the obligation of the SERVICE PROVIDER to indemnify the INDEMNITEE shall be as broad and inclusive as permitted by the laws of the State of California and shall survive termination of this Agreement.

23. **Entire Agreement; Modification; Conflicting Provisions.** This Agreement constitutes the entire Agreement between the Parties and supersedes any previous agreements, oral or written. This Agreement may be modified or provisions waived only by a subsequent mutual written agreement executed by CITY and SERVICE PROVIDER. If the provisions contained in the main body of this Agreement conflict with any provision contained in an exhibit to this Agreement, the provisions of the main body of this Agreement shall govern and control over any provision contained in an exhibit to this Agreement.

24. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of California. This Agreement was entered into and is to be performed in the County of Santa Clara. Any action or dispute arising out of this Agreement shall only be brought in Santa Clara County.

25. **Interpretation.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties including, but not limited to, California Civil Code § 1654, the provisions of which are hereby waived. This Agreement shall be construed and interpreted in a neutral manner.

26. **Preservation of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.

27. **Binding Agreement.** Notwithstanding the provisions of Section 20 above, this Agreement shall bind any and all successors in interest, legal representatives and/or other permitted assignees or transferees of SERVICE PROVIDER in the same manner as if those successors in interest, legal representatives or other permitted assignees or transferees had entered into this Agreement originally.

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[Signatures on Next Page]

28. **Authority to Execute.** Those individuals who are signing this Agreement on behalf of entities represent and warrant that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

IN WITNESS THEREOF, these Parties have executed this Agreement on the day and year shown below.

AS SET FORTH IN CA. CORP. CODE § 313, TWO SIGNATURES ARE REQUIRED FOR CALIFORNIA CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
 (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.

ATTEST:

CITY OF MORGAN HILL

City Clerk/Deputy City Clerk

City Manager

Michelle Bigelow
 Print Name

Christina J. Turner
 Print Name

Date: _____

Date: _____

APPROVED AS TO FORM:

Alpha Analytical Laboratories, Inc.

City Attorney

X By: ROBBIE C PHILLIPS
PRESIDENT

Donald A. Larkin
 Print Name

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

Date: _____

Date: 11/14/2019

X By: DAVID S PINGATORE
ASSISTANT SECRETARY

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

Date: 11/14/19

EXHIBIT A SCOPE OF SERVICES

The contractor shall provide laboratory testing and analysis services on drinking water samples provided by the City of Morgan Hill. The services shall include transportation to pick up collected water samples weekly from the City's Corporation Yard at 100 Edes Court in Morgan Hill. The contractor's services shall also include any and all labor, materials, equipment, transportation, facilities and services for the sample collection analysis, and report submittal.

All water sampling analysis shall be done using current EPA methods for drinking water approved by the State Water Resources Control Board and in accordance with Article 17. The contractor shall provide electronic reporting of analysis results via email. The results shall include the laboratory letterhead cover sheet signed by an official of the laboratory and a copy of the original chain of custody. In addition, the contractor shall submit a monthly electronic spreadsheet for all the previous month's analysis results including subcontracted lab results by the 10th of the month.

The City also requires proactive assistance from the laboratory in assuring that the quality of the City's water is maintained. Therefore, the contractor, when requested by the City, shall actively help the City interpret and follow any new regulations, communicate immediately with the City any time a sample exceeds State MCL, and meet periodically with City staff to resolve problems and provide advisement.

The laboratory will be required to provide for extra samples, as needed, to be taken at the same unit price per method as quoted in the laboratory's proposal. From time to time, the City also requires testing and analysis of Stormwater samples taken from local creeks. This would be a time and materials task and defined by task order to the laboratory.

The laboratory is to have staff available during normal business hours of the Utilities Division of 6:30 a.m. to 4:00 p.m. (Monday -Thursday) and 6:30 a.m. to 3:00 p.m. (Friday) and to ensure that there is a person available on-call 24 hours per day, 7 days per week.

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

WEEKLY TESTS					
Matrix	Qty	Analysis	Price/Sample (24 hour)	Price/Sample (5 day)	Price/Sample (Standard*)
Liquid	12	Routine Total Coliform P/A	14.00	14.00	14.00
Liquid	3	Total Coliform MPN (Special)	19.00	19.00	19.00

MONTHLY TESTS					
Matrix	Qty	Analysis	Price/Sample (24 hour)	Price/Sample (5 day)	Price/Sample (Standard*)
Liquid	3	Source Total Coliform P/A (Special)	14.00	14.00	14.00

QUARTERLY TESTS					
Matrix	Qty	Analysis	Price/Sample (Standard*)		
Liquid	4	TTHM - Stage 2 (Dist. System)	50.00		
Liquid	4	HAA5 (Dist system)	85.00		
Liquid	3	Nitrates	20.00		
Liquid	3	Title 22: Regulated Inorganic Chemicals	170.00		
Liquid	3	Title 22: Regulated Volatile Organic Chemicals	85.00		
Liquid	3	Title 22: Regulated Synthetic Organic Chemicals	1,065.00		

SEMI ANNUAL TESTS					
Matrix	Qty	Analysis	Price/Sample (Standard*)		
Liquid	5	Title 22: Regulated Synthetic Organic Chemicals	1,065.00		

ANNUAL TESTS					
Matrix	Qty	Analysis	Price/Sample (Standard*)		
Liquid	5	Title 22: General Mineral-General Physical	150.00		
Liquid	5	Title 22: Inorganic Chemical	170.00		
Liquid	5	Title 22: Regulated Volatile Organic Chemicals	85.00		
Liquid	5	Title 22: Regulated Synthetic Organic Chemicals	1,065.00		
Liquid	16	Nitrates	20.00		
Liquid	30	Lead and Copper Rule	36.00		
Liquid	3	Title 22: Radiological	165.00		
Liquid	25	Total Coliform (Special)	14.00		
Liquid	25	WQ Investigation (Color, Odor, Turbidity, pH, TDS, EC, Sulfate, Fe, Mn, Cu)	110.00		

Extra samples as needed per pricing in this schedule.

Stormwater sample analysis is a time and materials task not to exceed \$35,000.

* Standard = 10 Calendar days

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Per Exhibit B, laboratory shall provide testing and analysis services weekly, monthly, quarterly and annually with weekly pick up of samples for analysis. The contractor shall submit a monthly electronic spreadsheet for all the previous month's analysis results including subcontracted lab results by the 10th of the month.



APPROVED

HANA-01

DFRANSEN

DATE (MM/DD/YYYY)

11/14/2019

C By Shadia Hrichi at 10:15 am, Nov 18, 2019 E

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Team Insurance & Financial Services, Inc. PO Box 1472 Ukiah, CA 95482	CONTACT NAME: Danielle Fransen	
	PHONE (A/C, No, Ext): (707) 462-5901	FAX (A/C, No): (707) 462-3763
	E-MAIL ADDRESS: danielle@teamins.net	
INSURED Alpha Analytical Laboratories, Inc. 208 Mason St. Ukiah, CA 95482	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Arch Specialty Insurance	NAIC #: 21199
	INSURER B: Nationwide Mutual Insurance Company	
	INSURER C: Employers Comp Ins Co	11512
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR	X	X	12EMP7204107	4/6/2019	4/6/2020	EACH OCCURRENCE \$ 3,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 3,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 OTHER: \$
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			ACPBA7810172096	11/1/2019	11/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ OTHER: \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE			12EMX2225200	6/24/2019	4/6/2020	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 DED \$ RETENTION \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☒ Y ☐ N If yes, describe under DESCRIPTION OF OPERATIONS below		X	EIG261089201	5/1/2019	5/1/2020	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liab			12EMP7204107	4/6/2019	4/6/2020	Ea. Occ./Aggregate \$ 3,000,000
A	Pollution Liability			12EMP7204107	4/6/2019	4/6/2020	Ea. Occ./Aggregate \$ 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees and volunteers are named as additional insured on the general liability.

Waiver of subrogation and Primary wording applies.

30 Day Notice for Cancellation

CERTIFICATE HOLDER

CANCELLATION

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

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED/ PRIMARY COVERAGE
INCLUDING COMPLETED OPERATIONS (COVERAGES A, B, D & F)**

This endorsement modifies insurance provided under the **Environmental Multiline Policy**

It is agreed that Section III - WHO IS AN INSURED is amended to include the following:

Under Coverages A,B,D and F the person or organization shown in the schedule below shall be an Additional Insured, but only to the extent liability arises out of YOUR WORK for that Additional Insured and not due to any actual or alleged independent liability of said Additional Insured.

This Endorsement does not apply to BODILY INJURY or PROPERTY DAMAGE arising out of the sole negligence or willful conduct of, or for defects in design furnished by the Additional Insured.

With respect to the coverage afforded to the Additional Insured, this insurance is primary and non-contributory, and our obligations are not affected by any other insurance carried by such Additional Insured whether primary, excess, contingent or on any other basis.

This Endorsement does not increase the Company's limits of liability as specified in the Declarations of this policy.

Additional Insured:

ANY PERSON OR ORGANIZATION FOR WHOM YOU PERFORM WORK UNDER A WRITTEN CONTRACT THAT REQUIRES YOU TO OBTAIN THIS AGREEMENT FROM US. THE WRITTEN CONTRACT MUST BE EFFECTIVE PRIOR TO THE DATE OF THE LOSS OCCURRENCE.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number:13

Policy Number: 12 EMP 7204107

Named Insured: ALPHA ANALYTICAL LABORATORIES, INC.

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: 4/6/2019

00 EMP0101 00 01 14

1 of 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF SUBROGATION- SPECIFIC PERSON OR ORGANIZATION
ENDORSEMENT**

This endorsement modifies insurance provided under the **Environmental Multiline Policy**

In consideration of the premium charged, it is hereby agreed that SECTION V, Conditions, paragraph 13. Subrogation is amended to include the following:

We agree to waive this right of subrogation against the person or organization shown in the Schedule below to the extent that you had, prior to an OCCURRENCE or CLAIM, a written agreement to waive such rights.

Schedule

Name of Person or Organization: ANY PERSON OR ORGANIZATION FOR WHOM YOU PERFORM WORK UNDER A WRITTEN CONTRACT THAT REQUIRES YOU TO OBTAIN THIS AGREEMENT FROM US. THE WRITTEN CONTRACT MUST BE EFFECTIVE PRIOR TO THE DATE OF THE LOSS OCCURRENCE.

All other terms and conditions of this Policy remain unchanged.

Endorsement Number:12

Policy Number: 12 EMP 72041 07

Named Insured: ALPHA ANALYTICAL LABORATORIES, INC.

This endorsement is effective on the inception date of this Policy unless otherwise stated herein:

Endorsement Effective Date: 4/6/2019

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 04 03 06
(Ed. 4-84)

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT-CALIFORNIA

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

You must maintain payroll records accurately segregating the remuneration of your employees while engaged in the work described in the Schedule.

The additional premium for this endorsement shall be 2 % of the California workers' compensation premium otherwise due on such remuneration.

Schedule

Person or Organization

Job Description

With respect to all employees subject to the workers' compensation laws of the state of California, any person or organization for whom the Named Insured has agreed by written contract to furnish this waiver.

This policy is subject to a minimum charge of \$250 for the issuance of waivers of subrogation

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective 05/01/2019 at 12:01 AM standard time, forms a part of

Policy No. EIG 2610892 01

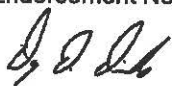
Of the EMPLOYERS PREFERRED INS. CO.

Carrier Code 00920

Issued to ALPHA ANALYTICAL LABORATORIES,

Endorsement No.

Premium

Countersigned at _____ on _____ By:  _____

Authorized Representative

WC 04 03 06

(Ed. 4-84)

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CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

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

APPROVAL OF FINAL MAP FOR SAN SEBASTIAN PHASE 2C - TRACT NO. 10478

RECOMMENDATION(S)

1. Approve the Final Map;
2. Approve and Authorize the City Manager to execute and administer a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
3. Authorize the recordation of the Final Map and the Stormwater BMP Operation and Maintenance Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment

2019 Strategic Priorities

Infrastructure

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

San Sebastian Phase 2C–Tract No. 10478 is a 25-lot subdivision located at the northwest intersection of Peet Road and Half Road (Attachment 1). The developer, Toll CA XX, LP, has completed all the conditions specified by the Planning Commission in the approval of the Tentative Map on February 12, 2013.

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

The developer has furnished the City with the necessary documents to complete the processing of the Final Map (Attachment 2) and has made provisions with a Title Company for the recordation of the Final Map. The Final Map conforms to the requirements of the Subdivision Map Act, and conditions of approval have been met. Staff recommends that City Council approve the Final Map and authorize the City Manager to sign a Stormwater BMP Operation and Maintenance Agreement (Attachment 3) pending review and approval by the City Attorney.

On June 6, 2018, City Council approved the Final Map and Subdivision Improvement Agreement for the Phase 2A of San Sebastian – Tract No. 10451 in which the surety bonds and insurance covered all public improvements necessary for all of Phase 2A,

2B, and 2C of the San Sebastian project. Therefore, no additional subdivision improvement agreement will be needed with the processing of this Final Map.

COMMUNITY ENGAGEMENT: Involve

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

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On July 18, 2018 the City Council approved San Sebastian Phase 2B – Tract 10457 Final Map.

FISCAL AND RESOURCE IMPACT:

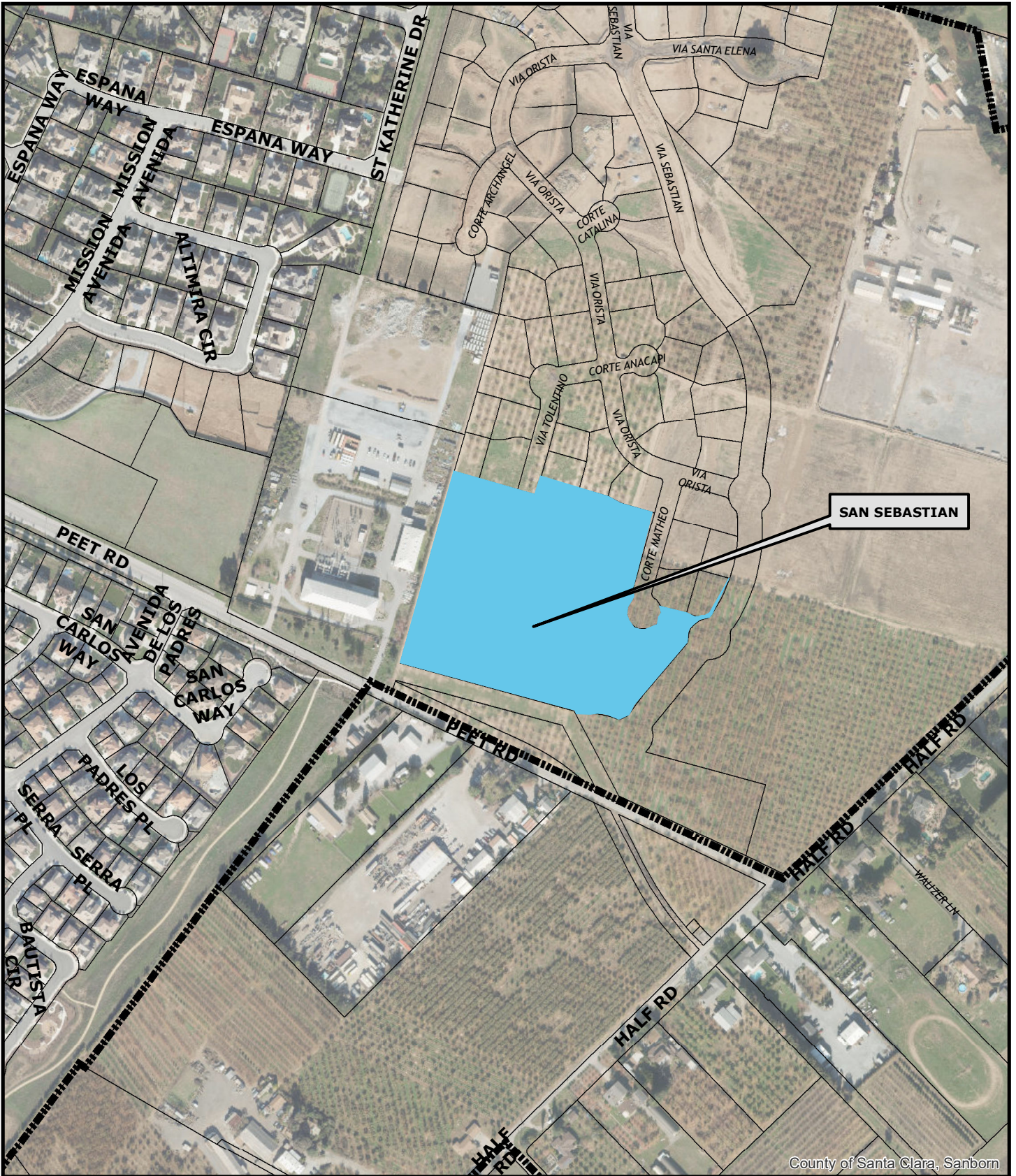
Development review costs for this project are paid for from development processing fees.

CEQA (California Environmental Quality Act):

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

LINKS/ATTACHMENTS:

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



Attachment: Site Map (2559 : FINAL MAP APPROVAL OF SAN SEBASTIAN PHASE 2C - TRACT NO. 10478)



**Development Services Department
Land Development Engineering Division**

Document Path: G:\R-14\PROJ\GIS\StaffReport_SiteMaps\SanSebastian_2C.mxd

**SITE MAP
SAN SEBASTIAN PHASE 2C**



OWNERS' STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY SHOWN ON THE SUBDIVISION WITHIN THE DISTINCTIVE SYMBOL LINE OF THIS MAP ENTITLED "TRACT 10478, SAN SEBASTIAN PHASE 2C", CONSISTING OF SIX (6) SHEETS, THIS STATEMENT BEING ON SHEET ONE (1) THEREOF; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE HAVE CAUSED SAID MAP TO BE PREPARED FOR RECORD, AND DO CONSENT TO THE MAKING AND FILING OF SAID MAP.

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

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

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

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

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

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

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

WE HEREBY RESERVE FOR THE BENEFIT OF THE OWNERS OF LOTS CREATED BY THIS MAP AND THE PRESENT AND SUCCESSOR MEMBERS OF THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS, "PARCEL D" DELINEATED AND DESIGNATED AS "TEMPORARY STORM WATER BASIN" FOR THE PURPOSE OF STORM WATER MANAGEMENT AND ALL OTHER APPURTENANCES THERETO. SAID PARCEL WILL BE RETAINED AND MAINTAINED BY THE OWNER UNTIL SUCH TIME THAT ALTERNATIVE STORMWATER FACILITIES ARE CONSTRUCTED. AT THAT TIME "PARCEL D" MAY BE SUBDIVIDED FURTHER INTO BUILDABLE LOTS, SUBJECT TO THE PROVISIONS OF THE 'RESIDENTIAL DEVELOPMENT CONTROL SYSTEM' (R.D.C.S.) OF THE CITY OF MORGAN HILL.

WE HEREBY RESERVE FOR THE BENEFIT OF OWNERS OF LOTS CREATED BY THIS MAP AND THE PRESENT AND SUCCESSOR MEMBERS OF THE HOME OWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS, "PARCEL E" AND "PARCEL F" DELINEATED AND DESIGNATED AS "OPEN SPACE" FOR THE PURPOSE OF LANDSCAPING, RECREATIONAL AMENITIES, STORM WATER MANAGEMENT AND ALL OTHER APPURTENANCES THERETO. SAID PARCELS SHALL BE CONVEYED TO, AND MAINTAINED BY, THE HOMEOWNERS ASSOCIATION CREATED FOR THE "SAN SEBASTIAN" SUBDIVISIONS, AS STATED IN THE COVENANTS, CONDITIONS AND RESTRICTIONS. NO FURTHER SUBDIVISIONS AND OR RESIDENTIAL DEVELOPMENT OF SAID PARCELS SHALL BE ALLOWED.

WE HEREBY STATE THAT "PARCEL G", "PARCEL H" AND "PARCEL I" MAY BE SUBDIVIDED FURTHER INTO BUILDABLE LOTS, SUBJECT TO THE PROVISIONS OF THE 'RESIDENTIAL DEVELOPMENT CONTROL SYSTEM' (R.D.C.S.) OF THE CITY OF MORGAN HILL.

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

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

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

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

BY: R. M. Nelson
NAME RICHARD M. NELSON
ITS: DIVISION PRESIDENT

OWNER ACKNOWLEDGMENT

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

STATE OF CALIFORNIA
COUNTY OF Alameda }ss.

ON August 19, 2019, BEFORE ME, Rosana Haydee Marting Sedano,

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

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

WITNESS MY HAND.

NOTARY'S SIGNATURE: [Signature]
NAME OF NOTARY (PLEASE PRINT): Rosana Haydee Marting Sedano
PRINCIPAL COUNTY OF BUSINESS: Alameda
MY COMMISSION NUMBER: 2241260
MY COMMISSION EXPIRES: May 5, 2022

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION, AT THE REQUEST OF TOLL CA XX, L.P., A CALIFORNIA LIMITED PARTNERSHIP. IT IS BASED UPON A FIELD SURVEY PERFORMED BY ME OR UNDER MY DIRECTION COMPLETED FEBRUARY 06, 2019, IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE, AND IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP, THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS ON OR BEFORE AUGUST 2021, AND THAT SAID MONUMENTS ARE OR WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

Bryan Pierce 08/14/2019
BRYAN PIERCE, PLS 8859 DATE

**CITY SURVEYOR'S STATEMENT**

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

DATE: _____



JOHN K. KING
ACTING CITY SURVEYOR – HANNA & BRUNETT
P.L.S. NO. 6809

NOTES:

- 1.) THE DISTINCTIVE SYMBOL LINE INDICATES THE BOUNDARIES OF THE LAND SUBDIVIDED BY THIS FINAL MAP.
- 2.) THE AREA WITHIN THE DISTINCTIVE SYMBOL LINE IS 17.08 ACRES, MORE OR LESS.
- 3.) THE PROPERTY OWNER IS PROVIDING CONSTRUCTIVE NOTICE HEREON THAT EACH LOT IS SUBJECT TO THE REQUIREMENTS OF A DEVELOPMENT AGREEMENT, AND THAT COMMITMENTS UNDER THE AGREEMENT, WHICH THE CITY HAS PERMITTED THE PROPERTY OWNER TO DELAY, MUST BE FULFILLED BY THE SUBSEQUENT PROPERTY OWNER(S).
- 4.) A GEOTECHNICAL INVESTIGATION REPORT WAS PREPARED BY ENGEQ, INC. JOB NO. 9301.000.000 AND IS ON FILE WITH THE CITY OF MORGAN HILL

CITY ENGINEER'S STATEMENT

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

DATE: _____



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

STATEMENT OF THE PLANNING COMMISSION

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

DATE: _____

JENNIFER CARMAN
SECRETARY
CITY OF MORGAN HILL, CALIFORNIA

STATEMENT OF THE CITY CLERK

I HEREBY STATE THAT THIS FINAL MAP, CONSISTING OF SIX (6) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AT A MEETING OF SAID COUNCIL HELD ON THE _____ DAY OF _____, 2019; AND THAT SAID COUNCIL DID ACCEPT, SUBJECT TO THEIR IMPROVEMENT IN ACCORDANCE WITH CITY STANDARDS, ON BEHALF OF THE PUBLIC, THE DEDICATION OF THE "PUBLIC SERVICE EASEMENT" (PSE), THE "EMERGENCY VEHICLE ACCESS EASEMENT" (EVAE), AND THE "PUBLIC ACCESS EASEMENT" (PAE), FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE DEDICATION, AS SHOWN ON THIS MAP.

I ALSO HEREBY CERTIFY THAT, PURSUANT TO SECTION 66499.20.2 OF THE SUBDIVISION MAP ACT, THE FILING OF THIS MAP SHALL CONSTITUTE ABANDONMENT OF ALL OF THE "20 FOOT INGRESS AND EGRESS EASEMENT AND EMERGENCY VEHICLE ACCESS EASEMENT" SHOWN WITHIN "PARCEL 1" ON THE MAP ENTITLED "PARCEL MAP, SAN SEBASTIAN" FILED MAY 23, 2014 IN BOOK 872 OF MAPS, PAGES 16 THROUGH 23, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.

DATE: _____

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

RECORDER'S STATEMENT

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

REGINA ALCOMENDRAS, RECORDER
SANTA CLARA COUNTY, CALIFORNIA

BY _____
DEPUTY

TRACT 10478 SAN SEBASTIAN PHASE 2C

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL C" AS SHOWN ON THE MAP ENTITLED "AMENDED MAP, TRACT 10330, SAN SEBASTIAN PHASE 1B" FILED DECEMBER 8TH, 2017, IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND "PARCEL D" AS SHOWN ON THE MAP ENTITLED "TRACT 10457, SAN SEBASTIAN PHASE 2B" FILED AUGUST 9, 2018, IN BOOK 916 OF MAPS, PAGES 51 THROUGH 56, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2019

JOB #092030

SHEET 1 OF 6 SHEETS

EASEMENT NOTES:

1. THE PROPERTY MAY BE SUBJECT TO THE TERMS OF THE EASEMENT AGREEMENT AND QUITCLAIM OF ORIGINAL EASEMENTS RECORDED MAY 16, 2014 AS DOCUMENT NO. 22597658, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, THE WATERLINE EASEMENT DESCRIBED THEREIN IS NOT A PART OF THIS SUBDIVISION AND IS THEREFORE NOT SHOWN.
2. THE EASEMENTS DESCRIBED IN THE EASEMENT AGREEMENT (WATER LINES) RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382280, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED AND ARE THEREFORE NOT SHOWN.
3. THE EASEMENTS DESCRIBED IN THE AMENDED AND RESTATED EASEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941927, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED AND ARE THEREFORE NOT SHOWN.
4. THE EASEMENTS DESCRIBED IN THE EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED JULY 27, 2016 AS DOCUMENT NO. 23382281, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED AND ARE THEREFORE NOT SHOWN.
5. THE EASEMENTS DESCRIBED IN THE FIRST AMENDMENT TO EASEMENT AND INFRASTRUCTURE IMPROVEMENT AGREEMENT RECORDED MAY 25, 2018 AS DOCUMENT NO. 23941928, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA, CANNOT BE PLOTTED AND ARE THEREFORE NOT SHOWN.

BASIS OF BEARINGS:

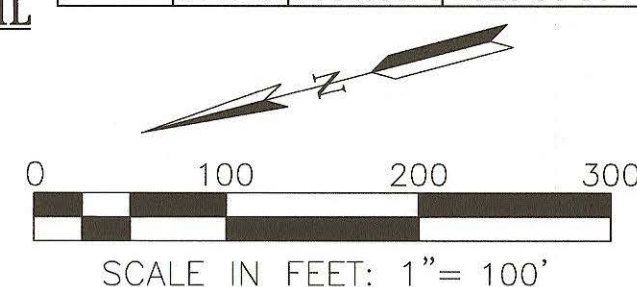
THE BEARING OF N65°05'34"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF PEET ROAD AS SHOWN ON THAT CERTAIN MAP ENTITLED "AMENDED MAP, TRACT 10330" FILED DECEMBER 8, 2017 IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

LINE	BEARING	DIST	
L1	N57°34'13"E	80.00'	(R1)
L2	N57°34'13"E	40.00'	(R1)
L3	N57°34'13"E	40.00'	(R1)
L4	N65°05'34"W	73.56'	(R2)
L5	N15°10'13"E	47.69'	(872-M-16)
L6	N15°10'13"E	2.68'	(R2)
L7	N15°10'13"E	52.49'	(C)(872-M-16)
L8	N74°49'47"W	30.00'	(R2)
L9	N74°49'47"W	30.00'	(R2)
L10	N15°10'13"E	57.35'	(R2)
L11	N61°58'49"W	44.97'	(R2)
L12	N68°56'11"E	54.00'	(R2)
L13	N83°53'33"E	26.90'	(R2)
L14	N56°58'50"E	18.12'	(R2)

LEGEND

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

CURVE	LENGTH	RADIUS	DELTA	
C1	78.18'	460.00'	009°44'18"	(R1)
C2	18.46'	22.00'	048°04'43"	(R1)
C3	106.53'	68.00'	089°45'32"	(R1)
C4	18.46'	22.00'	048°04'43"	(R1)
C5	22.00'	1160.00'	001°05'12"	(R1)
C6	16.57'	22.00'	043°08'53"	(R1)
C7	113.13'	68.00'	095°19'31"	(R1)
C8	17.84'	22.00'	046°27'28"	(R1)
C9	49.71'	460.00'	006°11'32"	(R1)
C10	18.53'	22.00'	048°14'48"	(R1)
C11	75.24'	68.00'	063°23'46"	(R1)
C12	47.28'	180.00'	015°03'02"	(R2)
C13	11.94'	17.00'	040°15'08"	(R2)
C14	227.55'	54.00'	241°26'08"	(R2)
C15	86.03'	150.00'	032°51'34"	(R2)
C16	27.01'	1240.00'	001°14'53"	(R2)
C17	17.26'	22.00'	044°57'29"	(R2)
C18	115.56'	68.00'	097°22'17"	(R2)
C19	13.78'	17.00'	046°26'01"	(R2)
C20	40.83'	68.00'	034°24'06"	(R2)
C21	41.89'	68.00'	035°17'40"	(R2)
C22	32.85'	68.00'	027°40'31"	(R2)
C23	260.43'	500.00'	029°50'36"	(R1)



TRACT 10478 SAN SEBASTIAN PHASE 2C

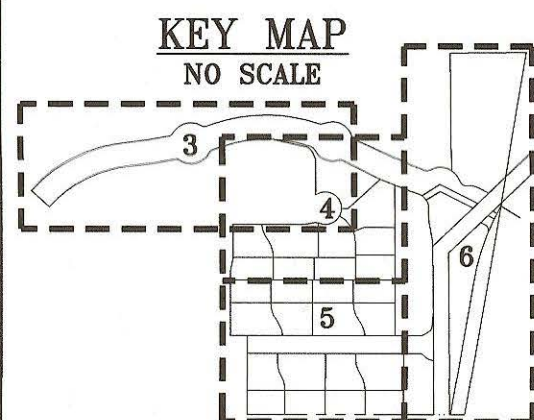
CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL C" AS SHOWN ON THE MAP ENTITLED "AMENDED MAP, TRACT 10330, SAN SEBASTIAN PHASE 1B" FILED DECEMBER 8TH, 2017, IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND "PARCEL D" AS SHOWN ON THE MAP ENTITLED "TRACT 10457, SAN SEBASTIAN PHASE 2B" FILED AUGUST 9, 2018, IN BOOK 916 OF MAPS, PAGES 51 THROUGH 56, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2019

JOB #092030

SHEET 2 OF 6 SHEETS

**NOTES:**

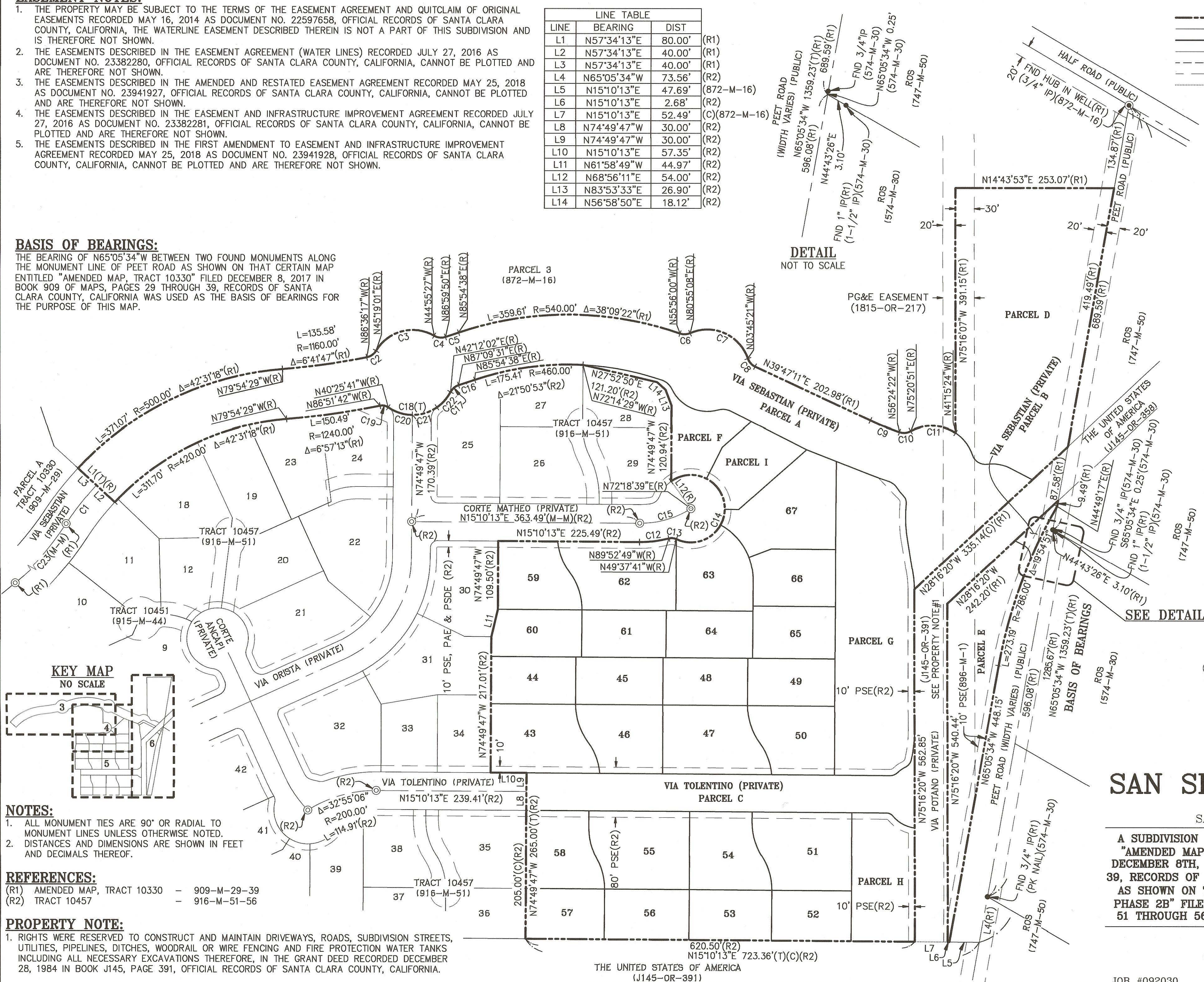
1. ALL MONUMENT TIES ARE 90° OR RADIAL TO MONUMENT LINES UNLESS OTHERWISE NOTED.
2. DISTANCES AND DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.

REFERENCES:

- (R1) AMENDED MAP, TRACT 10330 - 909-M-29-39
(R2) TRACT 10457 - 916-M-51-56

PROPERTY NOTE:

1. RIGHTS WERE RESERVED TO CONSTRUCT AND MAINTAIN DRIVEWAYS, ROADS, SUBDIVISION STREETS, UTILITIES, PIPELINES, DITCHES, WOODRAIL OR WIRE FENCING AND FIRE PROTECTION WATER TANKS INCLUDING ALL NECESSARY EXCAVATIONS THEREOF, IN THE GRANT DEED RECORDED DECEMBER 28, 1984 IN BOOK J145, PAGE 391, OFFICIAL RECORDS OF SANTA CLARA COUNTY, CALIFORNIA.



BASIS OF BEARINGS:

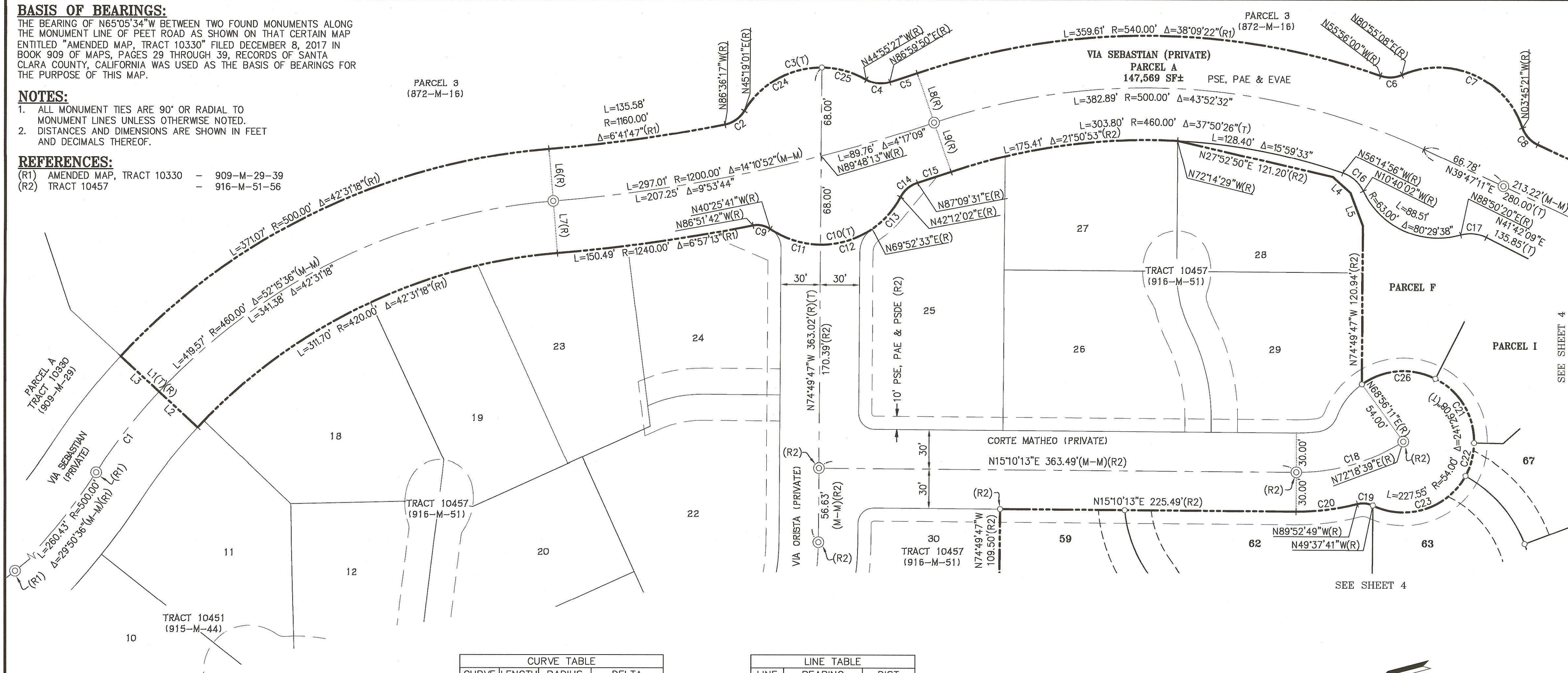
THE BEARING OF N65°05'34"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF PEET ROAD AS SHOWN ON THAT CERTAIN MAP ENTITLED "AMENDED MAP, TRACT 10330" FILED DECEMBER 8, 2017 IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

NOTES:

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

REFERENCES:

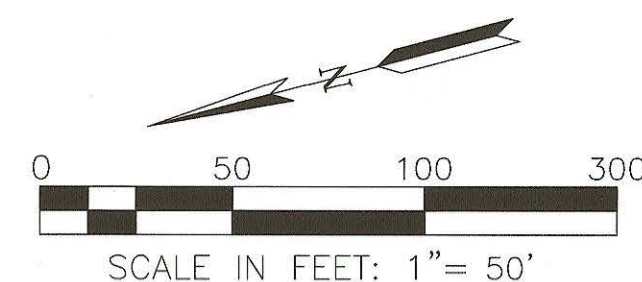
- (R1) AMENDED MAP, TRACT 10330 - 909-M-29-39
(R2) TRACT 10457 - 916-M-51-56

**LEGEND**

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

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	78.18'	460.00'	009°44'18" (R1)
C2	18.46'	22.00'	048°04'43" (R1)
C3	106.53'	68.00'	089°45'32" (R1)
C4	18.46'	22.00'	048°04'43" (R1)
C5	22.00'	1160.00'	001°05'12" (R1)
C6	16.57'	22.00'	043°08'53" (R1)
C7	113.13'	68.00'	095°19'31" (R1)
C8	17.84'	22.00'	046°27'28" (R1)
C9	13.78'	17.00'	046°26'01" (R1)
C10	115.56'	68.00'	097°22'17" (R1)
C11	40.83'	68.00'	034°24'06" (R2)
C12	41.89'	68.00'	035°17'40" (R2)
C13	32.85'	68.00'	027°40'31" (R2)
C14	17.26'	22.00'	044°57'29" (R1)
C15	27.01'	1240.00'	001°14'53" (R1)
C16	21.48'	27.00'	045°34'53" (R1)
C17	20.20'	27.00'	042°51'49" (R1)
C18	86.03'	150.00'	032°51'34" (R2)
C19	11.94'	17.00'	040°15'08" (R2)
C20	47.28'	180.00'	015°03'02" (R2)
C21	60.47'	54.00'	064°09'53" (R2)
C22	26.30'	54.00'	027°54'11" (R2)
C23	81.69'	54.00'	086°40'34" (R2)
C24	71.04'	68.00'	059°51'12" (R2)
C25	35.49'	68.00'	029°54'20" (R2)
C26	50.09'	54.00'	062°41'30" (R2)

LINE TABLE		
LINE	BEARING	DIST
L1	N57°34'13"E	80.00' (R1)
L2	N57°34'13"E	40.00' (R1)
L3	N57°34'13"E	40.00' (R1)
L4	N56°58'50"E	18.12' (R2)
L5	N83°53'33"E	26.90' (R2)
L6	N79°54'29"W	40.00'
L7	N79°54'29"W	40.00'
L8	N85°54'38"E	40.00'
L9	N85°54'38"E	40.00'



TRACT 10478 SAN SEBASTIAN PHASE 2C

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL C" AS SHOWN ON THE MAP ENTITLED "AMENDED MAP, TRACT 10330, SAN SEBASTIAN PHASE 1B" FILED DECEMBER 8TH, 2017, IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND "PARCEL D" AS SHOWN ON THE MAP ENTITLED "TRACT 10457, SAN SEBASTIAN PHASE 2B" FILED AUGUST 9, 2018, IN BOOK 916 OF MAPS, PAGES 51 THROUGH 56, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

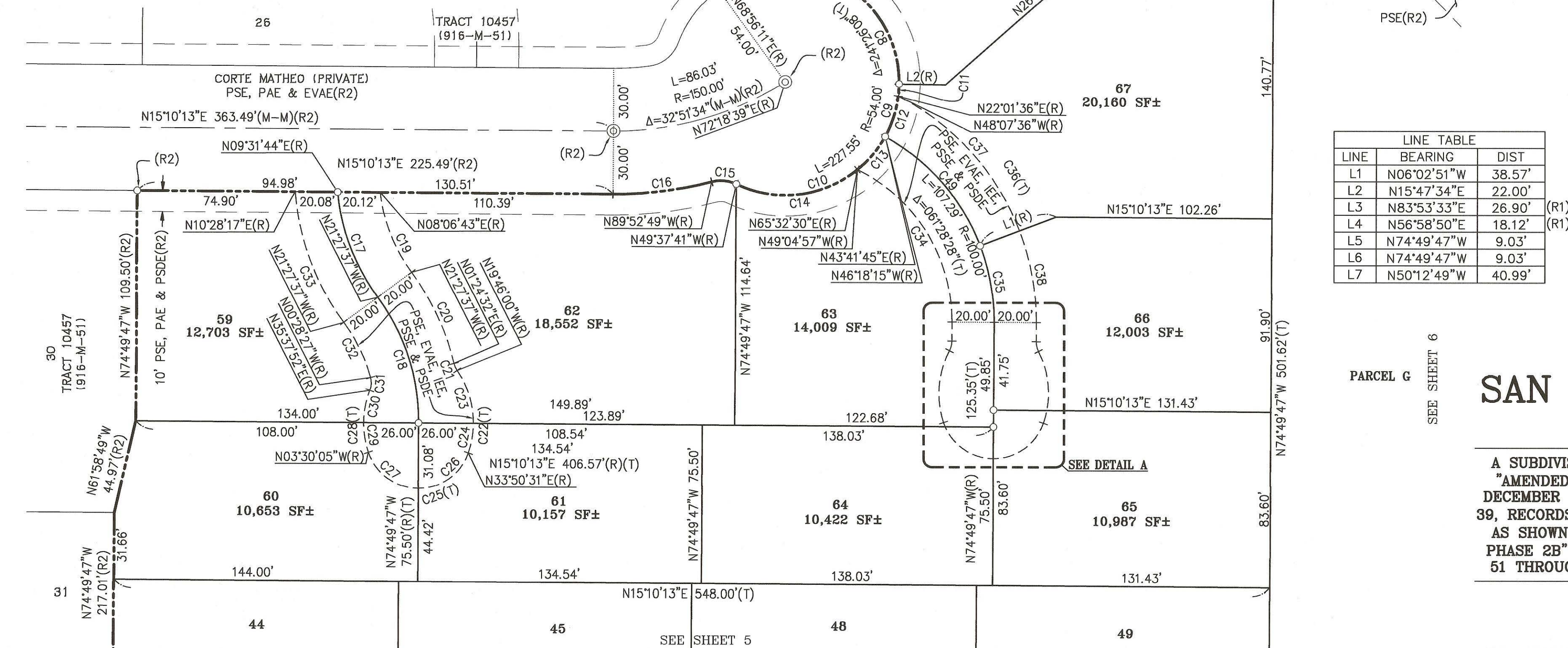
Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2019

JOB #092030

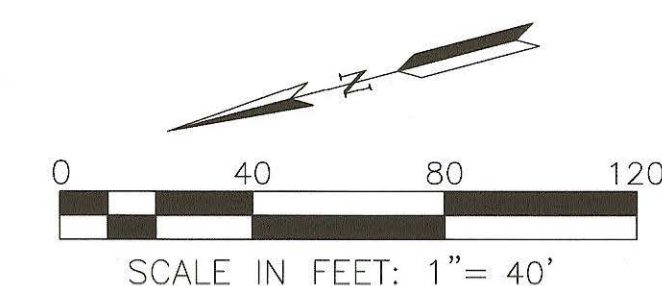
SHEET 3 OF 6 SHEETS

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C1	16.57'	22.00'	043°08'53"
C2	17.84'	22.00'	046°27'28"
C3	71.76'	500.00'	008°13'24"
C4	33.32'	540.00'	003°32'08"
C5	20.20'	27.00'	042°51'49"
C6	88.51'	63.00'	080°29'38"
C7	21.48'	27.00'	045°34'53"
C8	60.47'	54.00'	064°09'53"
C9	26.30'	54.00'	027°54'11"
C10	81.69'	54.00'	086°40'34"
C11	5.88'	54.00'	006°14'02"
C12	20.42'	54.00'	021°40'09"
C13	20.59'	54.00'	021°50'45"
C14	61.10'	54.00'	064°49'49"
C15	11.94'	17.00'	040°15'08"
C16	47.28'	180.00'	015°03'02"
C17	54.09'	100.00'	030°59'20"
C18	63.93'	100.00'	036°37'50"
C19	41.29'	80.00'	029°34'20"
C20	47.90'	120.00'	022°52'09"
C21	3.70'	10.00'	021°10'32"
C22	41.17'	44.00'	053°36'31"
C23	26.83'	44.00'	034°56'13"
C24	14.34'	44.00'	018°40'18"
C25	62.25'	25.00'	142°39'24"
C26	31.12'	25.00'	071°19'42"
C27	31.12'	25.00'	071°19'42"
C28	30.05'	44.00'	039°07'57"
C29	14.34'	44.00'	018°40'18"
C30	15.71'	44.00'	020°27'39"
C31	6.30'	10.00'	036°06'19"
C32	29.30'	80.00'	020°59'10"
C33	66.88'	120.00'	031°55'54"
C34	89.71'	80.00'	064°15'10"
C35	37.03'	100.00'	021°13'04"

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C36	132.57'	120.00'	063°17'49"
C37	88.13'	120.00'	042°04'45"
C38	44.44'	120.00'	021°13'04"
C39	4.76'	10.00'	027°15'58"
C40	35.28'	44.00'	045°56'16"
C41	28.97'	44.00'	037°43'08"
C42	6.31'	44.00'	008°13'08"
C43	62.25'	25.00'	142°39'24"
C44	31.12'	25.00'	071°19'42"
C45	28.98'	25.00'	066°25'19"
C46	2.14'	25.00'	004°54'23"
C47	35.28'	44.00'	045°56'16"
C48	4.76'	10.00'	027°15'58"
C49	70.26'	100.00'	040°15'24"
C50	59.09'	54.00'	062°41'30"



LINE TABLE		
LINE	BEARING	DIST
L1	N06°02'51"W	38.57'
L2	N15°47'34"E	22.00'
L3	N83°53'33"E	26.90'
L4	N56°58'50"E	18.12'
L5	N74°49'47"W	9.03'
L6	N74°49'47"W	9.03'
L7	N50°12'49"W	40.99'



TRACT 10478 SAN SEBASTIAN PHASE 2C

CITY OF MORGAN HILL
SANTA CLARA COUNTY, CALIFORNIA

A SUBDIVISION OF "PARCEL C" AS SHOWN ON THE MAP ENTITLED "AMENDED MAP, TRACT 10330, SAN SEBASTIAN PHASE 1B" FILED DECEMBER 8TH, 2017, IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND "PARCEL D" AS SHOWN ON THE MAP ENTITLED "TRACT 10457, SAN SEBASTIAN PHASE 2B" FILED AUGUST 9, 2018, IN BOOK 916 OF MAPS, PAGES 51 THROUGH 56, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

Prepared By:
RUGGERI-JENSEN-AZAR
8055 Camino Arroyo, Gilroy, CA 95020
AUGUST 2019

JOB #092030

SHEET 4 OF 6 SHEETS

LEGEND

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

BASIS OF BEARINGS:

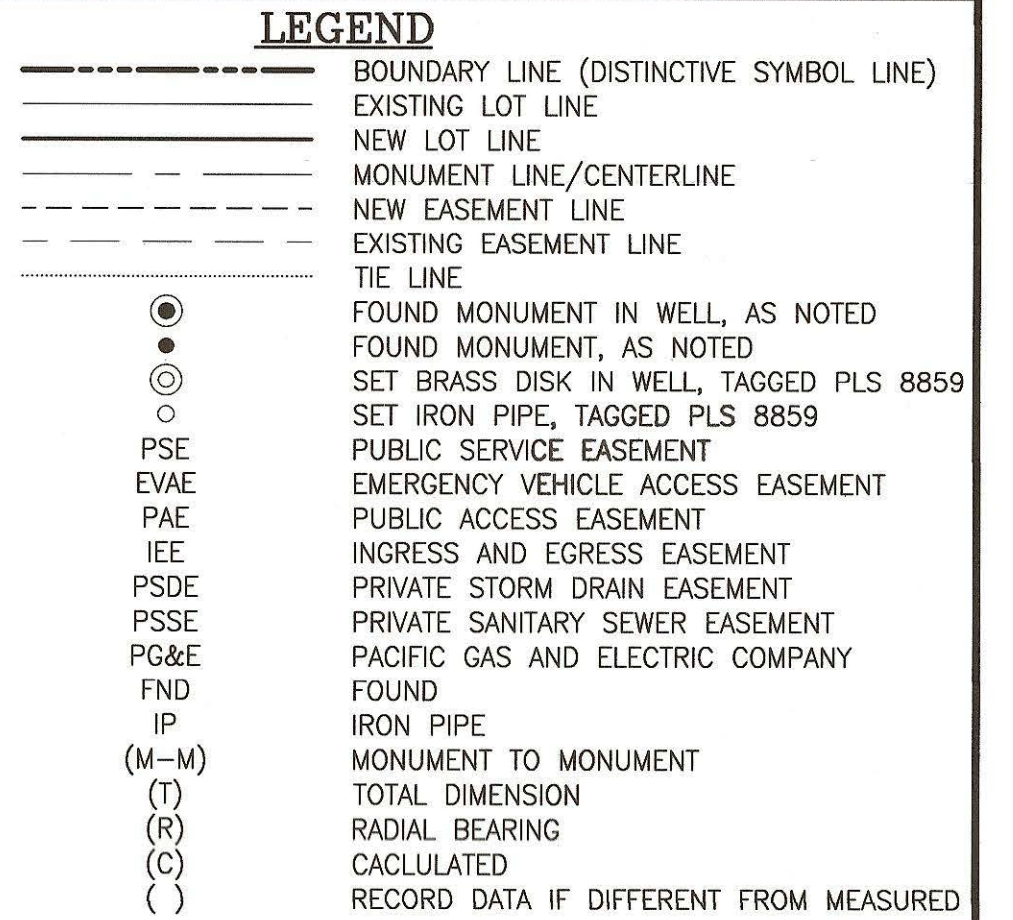
THE BEARING OF N65°05'34"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF PEET ROAD AS SHOWN ON THAT CERTAIN MAP ENTITLED "AMENDED MAP, TRACT 10330" FILED DECEMBER 8, 2017 IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

REFERENCES:

(R1) AMENDED MAP, TRACT 10330 - 909-M-29-39
(R2) TRACT 10457 - 916-M-51-56

NOTES:

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



THE BEARING OF N65°05'34"W BETWEEN TWO FOUND MONUMENTS ALONG THE MONUMENT LINE OF PEET ROAD AS SHOWN ON THAT CERTAIN MAP ENTITLED "AMENDED MAP, TRACT 10330" FILED DECEMBER 8, 2017 IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA WAS USED AS THE BASIS OF BEARINGS FOR THE PURPOSE OF THIS MAP.

(R1) AMENDED MAP, TRACT 10330 - 909-M-29-39
(R2) TRACT 10457 - 916-M-51-56

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

0 40 80 120

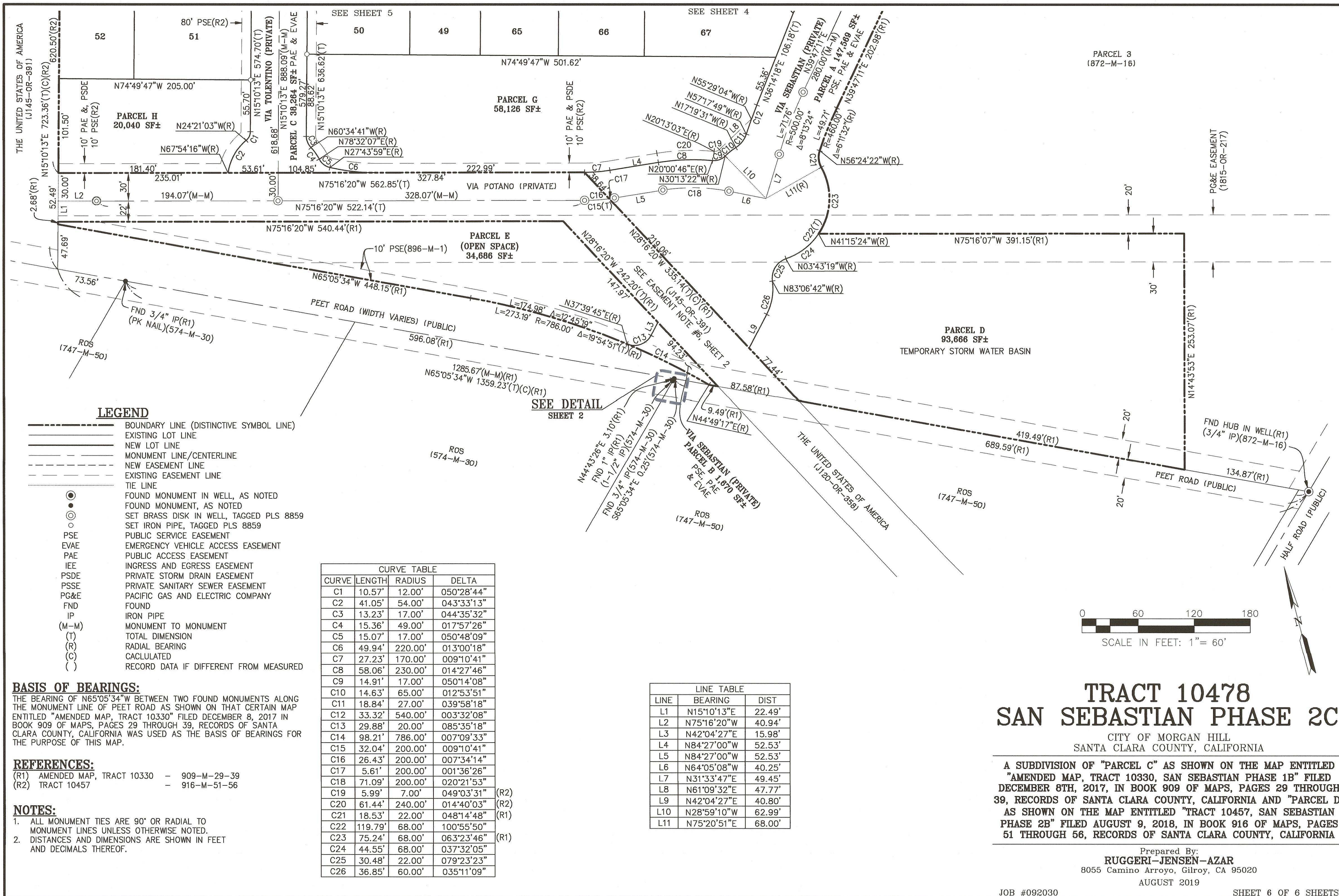
SCALE IN FEET: 1" = 40'

CURVE TABLE			
CURVE	LENGTH	RADIUS	DELTA
C46	68.82'	120.00'	032°51'36"
C47	24.04'	80.00'	017°12'56"
C48	6.30'	10.00'	036°06'19"
C49	30.21'	44.00'	039°20'26"
C50	15.71'	44.00'	020°27'39"
C51	14.50'	44.00'	018°52'47"
C52	62.25'	25.00'	142°39'24"
C53	31.01'	25.00'	071°04'10"
C54	31.24'	25.00'	071°35'14"
C55	40.94'	44.00'	053°18'37"
C56	14.31'	44.00'	018°38'02"
C57	26.63'	44.00'	034°40'35"
C58	3.70'	10.00'	021°10'34"
C59	40.19'	120.00'	019°11'22"
C60	45.88'	80.00'	032°51'36"

THE UNITED STATES OF AMERICA
(J145-OR-391)

A SUBDIVISION OF "PARCEL C" AS SHOWN ON THE MAP ENTITLED "AMENDED MAP, TRACT 10330, SAN SEBASTIAN PHASE 1B" FILED DECEMBER 8TH, 2017, IN BOOK 909 OF MAPS, PAGES 29 THROUGH 39, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA AND "PARCEL D" AS SHOWN ON THE MAP ENTITLED "TRACT 10457, SAN SEBASTIAN PHASE 2B" FILED AUGUST 9, 2018, IN BOOK 916 OF MAPS, PAGES 51 THROUGH 56, RECORDS OF SANTA CLARA COUNTY, CALIFORNIA

SHEET 5 OF 6 SHEETS



RECORDING REQUESTED BY:

CITY OF MORGAN HILL

WHEN RECORDED MAIL DOCUMENT TO:

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

RECORD AT NO FEE PER
GOVERNMENT CODE SECTIONS 6103
& 27383

SPACE ABOVE THIS LINE FOR RECORDER'S
USE

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

THIS STORMWATER BEST MANAGEMENT PRACTICES OPERATION, AND MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into this _____ day of _____, 2019, by **TOLL CA XX, LP, a Californian limited liability**, (hereinafter referred to as "COVENANTOR") and the City of Morgan Hill ("CITY"). CITY and COVENANTOR may be referred to individually as a "Party" or collectively as the "Parties" throughout this AGREEMENT.

RECITALS:

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

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

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

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

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

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

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

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

Executed the day and year first above written.

COVENANTOR:

By: _____

Name: _____

Title: _____

CITY OF MORGAN HILL:

By: _____

Name: **CHRISTINA J. TURNER**

Title: **CITY MANAGER, CITY OF MORGAN HILL**

APPROVED AS TO FORM:

By: _____

Name: **DONALD A. LARKIN**

Title: **CITY ATTORNEY, CITY OF MORGAN HILL**

EXHIBIT "A"

(Description to be inserted)

Attachment: Stormwater BMP Operation and Maintenance Agreement (2559 : FINAL MAP APPROVAL OF SAN SEBASTIAN PHASE 2C - TRACT

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Lynette Kong, Associate Engineer
APPROVED BY: City Manager

AWARD DOWNTOWN CROSSWALK SAFETY IMPROVEMENTS PROJECT

RECOMMENDATION(S)

1. Approve the Downtown Crosswalk Safety Improvements Project plans and specifications;
2. Award contract to Golden Bay Construction, Inc. for the Downtown Crosswalk Safety Improvements Project in the amount of \$123,309;
3. Authorize expenditure of construction contingency funds not to exceed \$12,331; and
4. Authorize the City Manager to execute and administer the construction contract with Golden Bay Construction, Inc., pending review and approval by the City Attorney.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Fiscal Responsibility

2019 Strategic Priorities

Infrastructure
Traffic/Transportation

GUIDING DOCUMENTS

Downtown Specific Plan
Public Safety Master Plan
Vision Zero

REPORT NARRATIVE:

The Downtown Crosswalk Safety Improvements Project involves the installation of pedestrian-activated in-roadway warning lights (IRWL) for the crosswalks at the intersections First Street and Fifth Street on Monterey Road. The IRWL system is operated by wireless push buttons that activate flashing lights embedded in the pavement. The intent of the flashing light is to help alert motorists to the fact that a pedestrian is crossing the street. The IRWL system is the same system that was installed at the Third Street intersection in 2017. Currently, the existing crosswalks at First Street and Fifth Street are striped and have distinctive decorative pavers where pedestrians have the option to use bright orange flags when they cross Monterey Road. Once the new IRWL system is installed, the bright orange flags will be removed from these intersections.

The scope of work includes installing the IRWL system at the intersections of First Street and Fifth Street crossing Monterey Road. The work shall include the installation of the following equipment at each of the crosswalks on Monterey Road at the above referenced intersections: wireless controllers, light modules, lights, and push button

assemblies. The IRWL system is wireless and solar-powered, there will be no major trenching in the crosswalk and pavement – the push buttons and controllers will be mounted to existing streetlight poles and there are minor cuts in the roadway for the installation of the recessed flashing lights.

The plans and specifications are in one file and available for review on the City's web page under the Government tab and Community Projects page found [here](#).

The bid opening was held on November 5, 2019 and the three bids received are listed below:

Golden Bay Construction, Inc.	\$123,309
DV Electric Co.	\$134,720
Columbia Electric	\$169,000

The low bidder, Golden Bay Construction, Inc. is an experienced public works contractor that has completed many projects for the City, including the Crosswalks and Rapid Flashing Beacons Project, which was completed in July 2015 and involved the installation of high-visibility crosswalks and rapid flashing beacons at the intersections of West Main Avenue and Del Monte Avenue, West Dunne Avenue and Del Monte Avenue, and Monterey Road and Central Avenue. Golden Bay Construction's bid amount of \$123,309 was 1.35% lower than the engineer's estimate of \$125,000. Staff recommends moving forward with this project to enhance pedestrian safety within the Downtown and award the contract to Golden Bay Construction for \$123,309. Staff anticipates construction to commence in January 2020 and be completed by February 2020.

COMMUNITY ENGAGEMENT: Inform

The project sites are in the Downtown; the contractor will provide written notifications to affected residents and businesses in advance of construction activities. Staff will develop a communication plan specifically for the project, which will include providing updated construction information weekly through Nextdoor, City social media accounts, and on the City's website. Additionally, City staff will send a City-wide email focused specifically on the project.

ALTERNATIVE ACTIONS:

The award of this contract will improve overall pedestrian safety as identified in the approved Capital Improvement Program and a top priority for the City. No alternative actions are presented at this time. Should the Council not elect to move forward with this project, funds would not be expended and could be used on a future Downtown safety project. Future projects would not occur until the summer of 2020.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018, the City Council adopted the current Capital Improvement Program for fiscal years 2018-19 through 2023-24.

FISCAL AND RESOURCE IMPACT:

If approved, the total authorization for this project would be \$135,640, which includes a 10% contingency of \$12,331. The project costs are sufficiently budgeted in the Capital Improvement Program (CIP) under CIP Project 525018, Downtown Safety Improvements, with \$175,000 from the Public Facilities (Non AB1600) Fund (346).

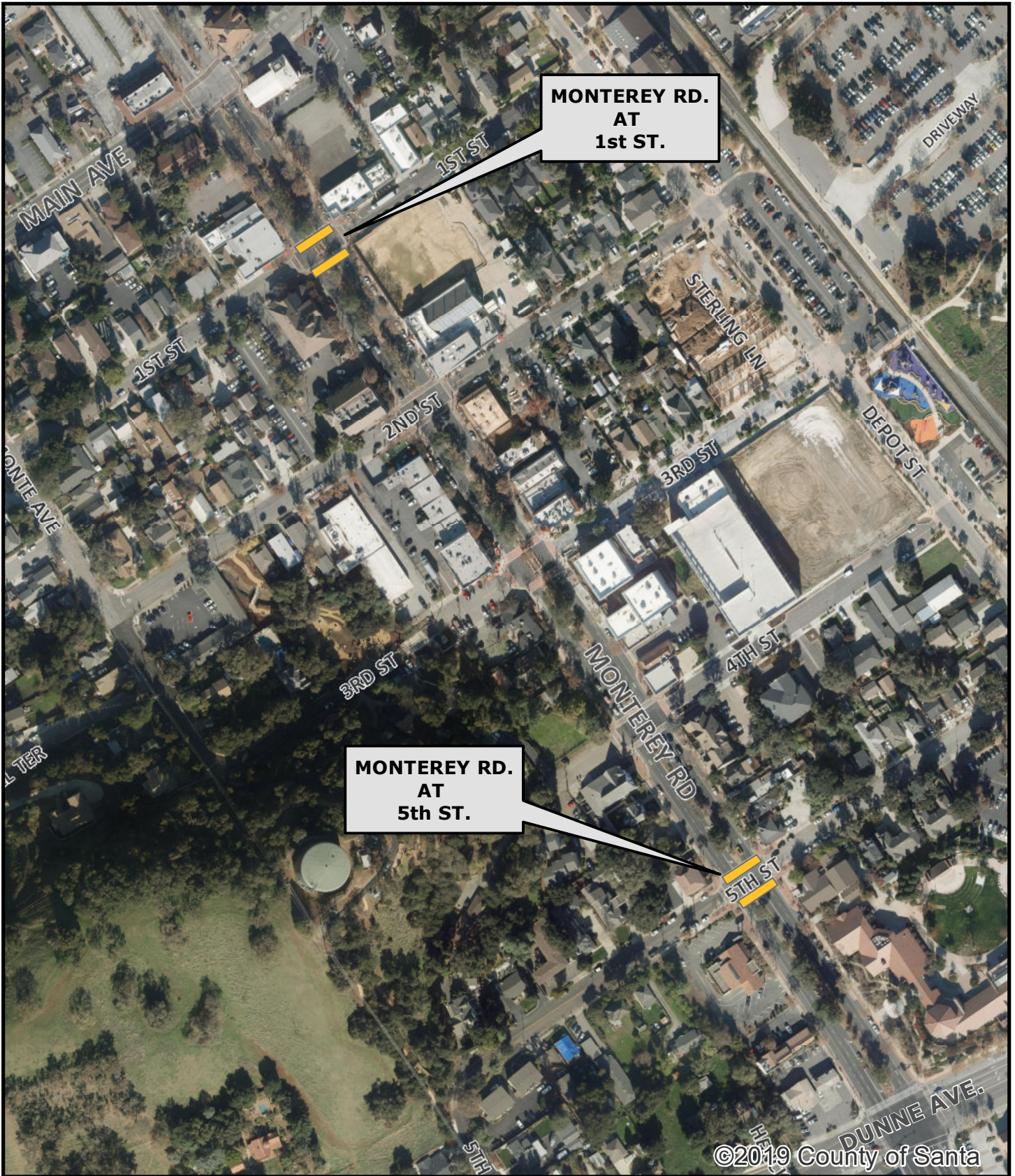
CEQA (California Environmental Quality Act):

Categorical Exemption.

The activities described in this Staff Report are categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA Guidelines (Existing Facilities), as the subject work involves the repair, maintenance, or minor alteration of existing City facilities involving negligible or no expansion or use of those facilities.

LINKS/ATTACHMENTS:

1. Project Location Map



Attachment: Project Location Map (2552 : Award Downtown Crosswalk Safety Improvements Project)

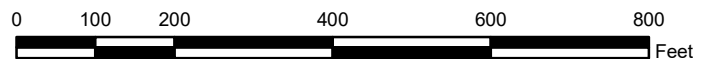


CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP Engineering Division**

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

**SITE MAP
DOWNTOWN CROSSWALK
SAFETY IMPROVEMENTS**





CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

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

REJECT PROPOSALS FOR LANDSCAPE MAINTENANCE GROUP 5

RECOMMENDATION(S)

Reject proposals for Landscape Maintenance Group 5 per Municipal Code Section 3.04.170, and direct staff to maintain the Group 5 Landscape Assessment Districts with in-house maintenance staff.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider rejecting all proposals received in response to the Landscape Maintenance Group 5 Request for Proposals (RFP). The City of Morgan Hill Municipal Code Section 3.04.170 allows for the rejection of bids when doing so is deemed to be in the best interests of the City.

The City has contracted with professional landscape contractors for various landscape maintenance services for many years. The work has been divided into six separate groups as a way to diversify the City's bidding opportunities. Group 5 includes the following subareas of the Lighting and Landscaping Assessment District: Sunnyside/Stone Gate, Mill Creek, Hamilton Square, Oak Creek, Rose Haven and Jackson Meadows 6A/6B. Group 5 is currently maintained by Mike Davis Landscape Services at an annual cost of approximately \$34,000. The current contract for Group 5 expires on December 31, 2019.

In soliciting proposals for this project, the City advertised in the Morgan Hill Times newspaper on August 23, 2019 and posted bid documents on Public Purchase, Online Plan Service, and the City of Morgan Hill website. Northern California Builders Exchanges received notification of this bid via Public Purchase.

On August 27, 2019, the Request for Proposals (RFP) was released to contract for two years of landscape maintenance service from January 1, 2020 to December 31, 2021. On September 30, 2019, three proposals were received. In reviewing the proposals, it was determined it would not be time or cost effective to rate and rank them because the lowest responsible respondent's bid was \$67,808 for the base level of service. This

amount was almost twice the total of the current Group 5 contract and exceeded the budgeted amount available for contract services for these areas.

The proposal from Mike Davis Landscape Services was not accepted due to dissatisfaction with the current level of service for Group 5. Below is a summary of the proposals received from New Image Landscape Company and Brightview Landscape Services. Since the City is exploring additional methods of alternative weed control approaches and may limit herbicide application in the future, bidders were asked to provide a base bid and two bid alternates to reduce or eliminate the use of herbicides.

	Base Bid	Bid Alternate 1 (Reduce Herbicides)	Bid Alternate 2 (Eliminate Herbicides)
New Image Landscape Company	\$67,808	\$73,736	\$78,208
Brightview Landscape Services	\$79,945	\$84,812	\$89,692

City staff anticipated an increase in costs, but not of this magnitude. The City does not have the ability to raise assessments within some of the subareas of the Landscape Assessment District without an affirmative vote of the property owners and raising the assessments prior to the start of the new contract term is not feasible.

City staff have reviewed multiple scenarios over the past month to find a sustainable path forward for maintenance within Group 5. In all scenarios, requesting a vote for each subarea will be needed to fund the long-term maintenance costs at existing levels and, in some cases, increases will be required even for reduced service levels. City staff are already working with residents on votes for two of the subareas (Mill Creek and Jackson 6).

Options:

Alternative #1: Award a contract with the lowest responsible respondent. This option would not be feasible within the current subareas budget and would result in negative fund balances. A negative fund balance would likely result in the requirement of a larger increased assessment in the future and the potential need for General Fund support.

Alternative #2: Issue a new RFP for reduced service levels at each subarea location. This will result in a significant reduction in the quality of the maintenance services provided.

Alternative #3: Develop an interim means of service and utilize the next six months to outreach and coordinate potential increases to the assessments for each subarea. This will require significant attention, focus, and staff resources to accomplish. The staff resources necessary to complete this outreach will significantly reduce the Maintenance Division's ability to focus on other areas and priorities for the Division.

City Staff is proposing that Alternative #3 be implemented. This recommendation will provide the best service to City residents within the impacted subareas of the Landscape Assessment District. City staff will utilize part-time temporary teammates for the next six to eight months to provide service to the areas at a reasonable cost while the City explores raising the funding levels with residents of the subareas. If residents of the subareas are not willing to increase assessments, service levels will be reduced.

COMMUNITY ENGAGEMENT: Not Applicable

Since landscape maintenance is a regular expected maintenance City service, no efforts were made to inform the community about this Request for Proposals for Group 5 Landscape Maintenance. Staff will continue to post landscape maintenance updates on the City's website, Next Door Morgan Hill, Facebook, and Twitter to inform residents of any landscape maintenance work done that will affect right of way or pedestrian access to facilities. Engagement also occurs informally through resident discussion with Community Services Department team members.

ALTERNATIVE ACTIONS:

As discussed above, an alternative action would be to award the contract to the lowest responsible respondent. This option would not be feasible within the current subareas budget and would result in negative fund balances. A second alternative action would be to issue a new RFP for reduced service levels at each subarea location. This will result in a significant reduction in the quality of the maintenance services provided.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City has contracted out for landscape maintenance services for over a decade. The agreement for Group 5 was last awarded in December 2016 by the City Council.

FISCAL AND RESOURCE IMPACT:

City staff will utilize part-time temporary teammates for the next six to eight months to provide service to the areas at a reasonable cost while the City explores raising the funding levels with the residents of the subareas. The funds for the Group 5 Landscape Maintenance contract will be used to pay the part-time temporary teammates. While there is no fiscal impact to the General Fund anticipated, there will be a reduced capacity for staff to address other maintenance issues as a result of staff directly overseeing maintenance in the Group 5 areas.

CEQA (California Environmental Quality Act):

Categorical Exemption.

Maintaining existing landscapes is categorically exempt under CEQA, specifically pursuant to Section 15301 of the CEQA guidelines (Existing Facilities), as the subject work involves negligible or no expansion of use of those facilities.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

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

REJECT BIDS FOR CENTENNIAL RECREATION CENTER GENERATOR PROJECT

RECOMMENDATION(S)

1. Reject bids for the Centennial Recreation Center Generator Project and direct staff to re-bid the project with design changes; and
2. Authorize the City Manager to negotiate and execute modifications to the previously approved California Office of Emergency Services' 404 Hazard Mitigation Grant Program agreement.

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 Office of Emergency Services' (Cal OES) Hazard Mitigation Program to purchase and install a backup generator at the Centennial Recreation Center. Staff worked with Weston Miles Architects to prepare the design for the Centennial Recreation Center Generator Project. The project plans and specifications were completed in August 2019 and the project was advertised for bid 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. However, staff is recommending the rejection of the bids due to design changes after the bid opening. Staff is currently reviewing the use of battery backup in lieu of a diesel generator. While the battery backup concept is in its infancy stages, battery backup power may yield a final product with less overall future maintenance costs and the technology is advancing rapidly.

Staff now believe moving forward with the generator at this time would result in the installation of "old technology" and be far less desirable from an operational cost perspective. Staff has also discussed with Cal OES regarding the generator grant dollars being transferred to the battery backup alternative.

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

COMMUNITY ENGAGEMENT: Inform

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

ALTERNATIVE ACTIONS:

City Council may elect to award the project to PC Inc. and direct staff to begin construction for the project. Staff does not recommend this alternative action as the battery option may yield a better overall project with less future maintenance. If this alternative action is selected, staff will appropriate additional funding for the project in a future City Council meeting.

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:

There is no direct fiscal impact associated with rejecting the bids. There will be costs associated with altering the current design and constructing a battery system. Staff has heard from the State of California that hazard mitigation grant funds will be transferrable to a battery project. Council has previously appropriated \$235,000 (\$140,250 Grant and \$94,750 of City funds), for this project from the Community/Recreation Centers Impact Fund (360). Additionally, State funding related to the recently announced Public Safety Power Resiliency Allocation, as well as rebates for the battery technology may be available to the City to reduce or eliminate capital costs. City staff are currently working on firming up these funding options and will provide more detail at a future Council meeting.

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



Attachment: Vicinity Map (2549 : Reject Bids for Centennial Recreation Center Generator Project)



CITY OF MORGAN HILL

**Engineering and Utilities Department
CIP Engineering Division**

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CENTENNIAL RECREATION

CENTER GENERATOR PROJECT





CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

ANDERSON DAM PROJECT ADVOCACY

RECOMMENDATION(S)

Informational Only.

U.S. Congresswoman Zoe Lofgren invited Mayor Rich Constantine to join her for an interagency meeting with Valley Water and other legislators to discuss the Anderson Dam project on Wednesday, December 4th at 10 am EST at the 1310 Longworth House Office Building, in Washington, DC. The purpose of the meeting is to help expedite the timing of the project and inform others of the vital nature of this project. The Mayor's travel expenses will be paid by Valley Water.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Scott Nelson, Economic Development Fellow
APPROVED BY: City Manager

INTRODUCE ORDINANCE PROHIBITING SALE OF FLAVORED TOBACCO AND VAPING (E-CIGARETTE) PRODUCTS

RECOMMENDATION(S)

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance prohibiting the sale of flavored tobacco and e-cigarette products.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment
Supporting Our Youth
Seniors
and Entire Community

2019 Strategic Priorities

Community Engagement and Messaging

GUIDING DOCUMENTS

General Plan/Housing Element

POLICY CONSIDERATIONS:

1. Should the City of Morgan Hill adopt an ordinance prohibiting the sale of flavored tobacco?
2. Should the City of Morgan Hill adopt an ordinance prohibiting the sale of electronic cigarette and vaping products?
3. Should these ordinances mirror the Santa Clara County Tobacco Retail License ordinance? If so, should the City of Morgan Hill enter into an agreement allowing the county to conduct the administrative licensing and monitoring for tobacco retail licenses?

OR

Should the City of Morgan Hill amend the existing Tobacco Retailer's license chapter in the Municipal Code?

REPORT NARRATIVE:

Background:

The Surgeon General has declared e-cigarette use among youth an epidemic. (Attachment 1). While youth use of combustible cigarettes has decreased dramatically, e-cigarette use, or "vaping" among middle and high school students nationally increased by 78% between 2017 and 2018, with over 3.6 million youth currently using e-cigarettes in 2018. The proportion of current e-cigarette users in high school who reported use on

20 days or more in the past 30-day period increased from 20% in 2017 to 27.7% in 2018. In 2019, the national prevalence of e-cigarette use during the previous 30 days was more than 1 in 4 students in the 12th grade, more than 1 in 5 in the 10th grade, and more than 1 in 11 in the 8th grade. Use of e-cigarettes among undergraduate college students increased from 4.9% to 10.2% between 2017 and 2018.

Nearly 1 in 3 Santa Clara County teens, 31.6%, report that they have used an e-cigarette at least once. E-cigarettes were the most popular tobacco product, with approximately one out of seven high school students (13.2%) currently using them, in Santa Clara County. Susceptibility of future e-cigarette use among Santa Clara County teens is high: 2 in 5 students (40.1%) who had never used a tobacco product said they would use one if offered by a best friend and more than 1 in 4 high school students (28.0%) had been offered a tobacco product in the past month.

E-cigarette companies' market to youth. In 2014, 18 million (7 out of 10) middle and high school students were exposed to e-cigarette ads. E-cigarettes are also marketed in a variety of flavors, more than 15,000, that appeal to youth, including gummy bear, birthday cake, cotton candy, unicorn poop, and fruit punch. Most current tobacco users in Santa Clara County reported using a flavored tobacco product (82.3%), with use of flavored e-cigarettes among county teens at 82.6%. Flavored tobacco product use was high across all genders, races/ethnicities, and grades. In 2014, 73% of high school students and 56% of middle school students who use tobacco products reported using a flavored tobacco product.

Youth report purchasing e-cigarettes in stores, online, and obtaining products from friends. More than 2 in 5 teens in Santa Clara County (45.4%), reported purchasing their own e-cigarettes, with over a quarter of this group saying they buy them directly from a local store. Among those who purchased e-cigarettes in a local store, 62.5% purchased them at a vape shop. In 2019, the number of violations for sales to minors at tobacco retailers in the unincorporated area of Santa Clara County increased to 12 violations (out of 44 undercover enforcement checks), up from only 1 violation (out of 34 undercover enforcement checks) in 2018.

According to the California Department of Public Health Tobacco Control Program, their data shows that tobacco and vape shops have the lowest compliance with the state law prohibiting tobacco sales to people under the age of 21. One out of three (34.9%) tobacco and vape shops sold to underage persons in 2018, compared with 12% for supermarkets and 25% for convenience stores.

Current California law requires internet sales of tobacco to comply with age verification procedures, such as verifying a person's name, date of birth, mailing address, and shipping address against existing databases. A new law (SB 39), effective January 1, 2020 will also require a signature by a person over the age of 21 to accept delivery of tobacco products.

According to the Surgeon General, "most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products. Nicotine exposure during

adolescence can harm the developing brain – which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.” E-cigarette use can also play a role in adolescent social maladjustment, including poor learning and academic performance, increased aggressive and impulsive behavior, poor sleep quality, attention deficits, impaired memory, cognition, and increased depression and suicidal ideation. Daily e-cigarette use is associated with increased risk of irreversible cardiovascular and lung disease through the inhalation of harmful chemicals. Secondhand emissions from e-cigarettes are also dangerous because they contain nicotine; ultrafine particles; flavorings such as diacetyl, a chemical linked to serious lung disease; volatile organic compounds such as benzene, which is found in car exhaust; and heavy metals, such as nickel, tin, and lead.

In addition to these negative long-term health effects, e-cigarette use is now associated with a wave of dangerous, life-threatening illnesses. As of October 15, 2019, 1,479 cases of lung injury, including 33 deaths, associated with the use of e-cigarette or vaping products in 49 states and 1 U.S. territory have been reported to the Center for Disease Control (CDC). Thirty-three deaths have been confirmed in 24 states. The California Department of Public Health issued a health advisory urging everyone to refrain from vaping due to public health risks posed by vaping any product, including the use of electronic cigarettes (e-cigarettes), as vaping has recently been linked to severe breathing problems, lung damage, and even death. Since the CDC’s August 30, 2019 Health Advisory, there have been two reported cases of lung injury associated with e-cigarette use in Santa Clara County. One of these cases was in an adolescent, and both individuals required hospitalization.

Flavored tobacco products have been shown to be “starter” products for youth who begin to use tobacco. These products help establish tobacco habits that can lead to long-term addiction. Nearly 81% of youth ages 12-17 who had ever used a tobacco product reported that the first product they used was flavored. Youth, communities of color, low-income populations, and members of LGBTQ+ communities are significantly more likely to use flavored tobacco products and disproportionately bear the burden of tobacco-related harm.

Another public health concern is the marketing and use of menthol cigarettes in adult minority populations. In California, 70% of African American, 42% Native American, 33% Hispanic/Latino, and 30% Asian adult cigarette smokers smoke menthol cigarettes compared to only 18% of white adult cigarette smokers. Menthol cigarette marketing and packaging target communities of color as well as lower income and urban communities.

The onset of tobacco use generally occurs before age 18; therefore, prevention of tobacco use, including e-cigarette use, initiation among children and adolescents is a

powerful strategy for preventing much of the illness and mortality associated with tobacco use. Implementation of strategies to reduce the use of e-cigarettes would have a significant impact on reducing and preventing tobacco use among minors in the City of Morgan Hill.

Proposed Ordinance (Attachment 2):

Staff recommends adoption of the proposed ordinance prohibiting the sale of flavored tobacco and e-cigarette products. The proposed ordinance would ban the sale of all flavored tobacco products in the City. Flavored tobacco products are defined in the ordinance using the phrase, “imparts a Characterizing Flavor.” A “Characterizing Flavor” is defined as a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product. This includes, but is not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice. No exemption is recommended for menthol cigarettes. The ban on flavored tobacco products would apply to all businesses selling tobacco products, regardless of location in the City. As proposed, the ordinance would not apply to cigars or pipe tobacco.

The proposed ordinance would also prohibit electronic smoking devices and electronic smoking device paraphernalia. Electronic smoking device is defined to include any device that can be used to deliver an inhaled dose of nicotine, or other substances. Electronic smoking device paraphernalia is defined to include any item specifically designed for the preparation, charging, or use of electronic smoking devices.

Several other jurisdictions in Santa Clara County have enacted ordinances banning the use of flavored tobacco and electronic cigarette products. Refer to Tobacco Regulations in Santa Clara County (Attachment 3). A table illustrating tobacco compliance rate for tobacco sales to minors from 2010 to 2019, within the County is included as Attachment 4.

Santa Clara County Tobacco License Administration and Monitoring:

On November 5, 2019, the Santa Clara County Board of Supervisor approved a total ban of flavored tobacco and e-cigarette products at all retail establishments with no exemptions. Should the City of Morgan Hill choose to adopt an ordinance that mirrors the county ordinance, they will provide administrative oversight and monitor the tobacco licensing in the City of Morgan Hill. The City of Palo Alto and the Town of Los Gatos recently passed mirror ordinances and agreements to have the county administer and monitor their tobacco license programs.

As proposed, the recommended ordinance would not qualify for County enforcement. While enforcement by the County would remove some administrative burdens, the Police Department is already committed to active enforcement of the City’s tobacco regulations through grant funding, and the City Attorney’s Office is prepared to prosecute violations of any new local regulations.

Effective Date:

Proposed Ordinance: Adopting a three to six-month effective date for enforcement has been approved by many municipalities. Allowing this period between adopting the ordinance and when the ordinance would become effective may allow for 1) education to be provided to current business establishments that sell flavored tobacco and e-cigarette products, 2) allow existing businesses to adapt and change their business model, and 3) allow existing businesses to dispose of their current inventory of products.

The Santa Clara County Ordinance: County ordinance would provide an effective date of June 30, 2020 for all existing tobacco retailers. Any new tobacco retailer whose license is issued after December 31, 2019 would not be allowed to sell flavored tobacco or vaping products, even prior to June 30, 2020.

OTHER RELATIVE INFORMATION/MATERIAL INCLUDED:

- “California Tobacco Facts and Figures 2019” published by the California Department of Public Health, California Tobacco Control Program (Attachment 5).
- “Tobacco Use among High School Students in Santa Clara County: Findings from the 2017-2018 California Student Tobacco Survey” conducted by the Regents of the University of California, San Diego and published in collaboration with the Santa Clara County Public Health’s Tobacco-Free Communities Program (Attachment 6).
- “Answering Tough Questions on Flavored Tobacco Products” The Center for Tobacco Policy and Organizing/American Lung Association in California, May 2019 (Attachment 7).

COMMUNITY ENGAGEMENT:

Staff has individually contacted the retail stores in Morgan Hill that generate either all or most of their income from the sale of flavored tobacco and/or e-cigarette products. The business owners unanimously opposed any ordinance prohibiting the sale of flavored tobacco or e-cigarettes. In the alternative, they suggested limiting sales of flavored tobacco and e-cigarettes to adult only stores.

Several community groups were contacted regarding this ordinance. Staff met with the Chamber of Commerce, Morgan Hill Unified School District, Santa Clara County Department of Public Health, American Cancer Society, and the American Lung Association.

ALTERNATIVE ACTIONS:

The City Council could choose to only prohibit flavored tobacco products or only prohibit e-cigarettes and related products.

The City Council could choose to adopt the County’s model ordinance and transfer enforcement to the County. This would require additional steps, including entering into an MOU with the county, which would be completed after introduction of the ordinance.

PRIOR CITY COUNCIL ACTIONS:

On October 2nd, 2019, City Attorney Donald Larkin provided a presentation to the City Council regarding regulation of flavored tobacco products. The City Council provided direction to prepare an ordinance regulating flavored tobacco products, including vape products, and to engage in appropriate outreach efforts regarding the proposed regulation.

FISCAL IMPACT:

Sales tax information is only available by business and is not broken-down by products sold. Therefore, it is not possible to determine the total amount of sales tax dollars received by the City from the sale of tobacco and related products. Information is available for businesses that primarily sell tobacco and related products. During the previous fiscal year, the City received approximately \$22,500 in total sales tax revenue from the five retail stores in Morgan Hill that generate all or the majority of their income from flavored tobacco and/or e-cigarette products.

CEQA (California Environmental Quality Act):

The adoption of either ordinance will not 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. Surgeon Generals Advisory On e-cigarette Use Among Youth 2018
2. Tobacco Retailer's License Ordinance
3. Tobacco Regulations in Santa Clara County
4. Illegal Tobacco Sales 2010-2019
5. CA Tobacco Facts and Figures 2019 (web link)
6. California Student Tobacco Survey 2017-18 (web link)
7. Answering Tough Questions on Flavored Tobacco Products May 2019
8. Correspondence from the American Cancer Society

Surgeon General's Advisory on E-cigarette Use Among Youth

*I, Surgeon General of the United States Public Health Service, VADM Jerome Adams, am emphasizing the importance of protecting our children from a lifetime of nicotine addiction and associated health risks by immediately addressing the epidemic of youth e-cigarette use. The recent surge in e-cigarette use among youth, which has been fueled by new types of e-cigarettes that have recently entered the market, is a cause for great concern. **We must take action now to protect the health of our nation's young people.***

KNOW THE RISKS. TAKE ACTION. PROTECT OUR KIDS.

The E-cigarette Epidemic Among Youth

Considerable progress has been made in reducing cigarette smoking among our nation's youth.¹ However, the tobacco product landscape continues to evolve to include a variety of tobacco products, including smoked, smokeless, and electronic products, such as e-cigarettes.² E-cigarettes are designed to deliver nicotine, flavorings, and other additives to the user via an inhaled aerosol.²

E-cigarettes entered the U.S. marketplace around 2007, and since 2014, they have been the most commonly used tobacco product among U.S. youth.² E-cigarette use among U.S. middle and high school students increased 900% during 2011-2015, before declining for the first time during 2015-2017.³ However, current e-cigarette use increased 78% among high school students during the past year, from 11.7% in 2017 to 20.8% in 2018.⁴ In 2018, more than 3.6 million U.S. youth, including 1 in 5 high school students and 1 in 20 middle school students, currently use e-cigarettes.⁴

E-cigarette aerosol is not harmless.² Most e-cigarettes contain nicotine – the addictive drug in regular cigarettes, cigars, and other tobacco products.² Nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25.² Nicotine exposure during adolescence can impact learning, memory, and attention.^{1,2} Using nicotine in adolescence can also increase risk for future addiction to other drugs.^{1,2} In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs.²

Many e-cigarettes also come in kid-friendly flavors. In addition to making e-cigarettes more appealing to young people,⁵ some of the chemicals used to make certain flavors may also have health risks.² E-cigarettes can also be used to deliver other drugs, including marijuana.² In 2016, one-third of U.S. middle and high school students who ever used e-cigarettes had used marijuana in e-cigarettes.⁶

For adults, e-cigarettes may have the potential to reduce risk for current smokers if they completely transition from cigarettes to e-cigarettes; however, a majority of adults who use e-cigarettes also smoke cigarettes.⁷ For youth, the use of multiple tobacco products puts youth at even greater risk for addiction and tobacco-related harms.^{1,2} Moreover, a 2018 National Academy of Sciences, Engineering, and Medicine report concluded that there was moderate evidence that e-cigarette use increases the frequency and intensity of cigarette smoking in the future.⁷ But any e-cigarette use among young people is unsafe, even if they do not progress to future cigarette smoking.²

E-cigarettes Come in Many Shapes and Sizes

E-cigarettes are a rapidly changing product class, and are known by many different names, including “e-cigs,” “e-hookahs,” “mods,” and “vape pens.”² Recently, a new type of e-cigarette has become increasingly popular among our nation's youth due to its minimal exhaled aerosol, reduced odor, and small size, making it easy to conceal.⁸ Many of these new e-cigarettes look like a USB flash drive, among other shapes. One of the most commonly sold

USB flash drive shaped e-cigarettes is JUUL, which experienced a 600% surge in sales during 2016-2017, giving it the greatest market share of any e-cigarette in the U.S. by the end of 2017.⁹ Other companies are now also starting to sell e-cigarettes that look like USB flash drives.

All JUUL e-cigarettes have a high level of nicotine. A typical JUUL cartridge, or “pod,” contains about as much nicotine as a pack of 20 regular cigarettes.¹⁰ These products also use nicotine salts, which allow particularly high levels of nicotine to be inhaled more easily and with less irritation than the free-base nicotine that has traditionally been used in tobacco products, including e-cigarettes. This is of particular concern for young people, because it could make it easier for them to initiate the use of nicotine through these products and also could make it easier to progress to regular e-cigarette use and nicotine dependence. However, despite these risks, approximately two-thirds of JUUL users aged 15-24 do not know that JUUL always contains nicotine.¹¹

You Can Take Action

We must take aggressive steps to protect our children from these highly potent products that risk exposing a new generation of young people to nicotine.^{2,7} The bad news is that e-cigarette use has become an epidemic among our nation’s young people. However, the good news is that we know what works to effectively protect our kids from all forms of tobacco product use, including e-cigarettes.^{1,2,12} We must now apply these strategies to e-cigarettes, including USB flash drive shaped products such as JUUL. To achieve success, we must work together, aligning and coordinating efforts across both old and new partners at the national, state, and local levels. Everyone can play an important role in protecting our nation’s young people from the risks of e-cigarettes.

Information for Parents

- **You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Set a good example by being tobacco-free. If you use tobacco products, it’s never too late to quit. Talk to a healthcare professional about quitting all forms of tobacco product use. For free help, visit smokefree.gov or call 1-800-QUIT-NOW.
- Adopt tobacco-free rules, including e-cigarettes, in your home and vehicle.
- Talk to your child or teen about why e-cigarettes are harmful for them. It’s never too late.
- Get the Surgeon General’s tip sheet for parents, [Talk With Your Teen About E-cigarettes](https://e-cigarettes.surgeongeneral.gov/), at <https://e-cigarettes.surgeongeneral.gov/>. Start the conversation early with children about why e-cigarettes, including JUUL, are harmful for them.
- Let your child know that you want them to stay away from all tobacco products, including e-cigarettes, because they are not safe for them. Seek help and get involved.
 - Set up an appointment with your child’s health care provider so that they can hear from a medical professional about the health risks of tobacco products, including e-cigarettes.
 - Speak with your child’s teacher and school administrator about enforcement of tobacco-free school policies and tobacco prevention curriculum.
 - Encourage your child to learn the facts and get tips for quitting tobacco products at Teen.smokefree.gov.

Information for Teachers

- **You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use, including JUUL, for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Develop, implement, and enforce tobacco-free school policies and prevention programs that are free from tobacco industry influence, and that address all types of tobacco products, including e-cigarettes.

- Engage your students in discussions about the dangers of e-cigarette use. To help you, the Food and Drug Administration (FDA), and Scholastic, developed free resources for teachers. These materials can be found at www.scholastic.com/youthvapingrisks.

Information for Health Professionals

- You have an important role to play in addressing this public health epidemic.**
- Learn about the different shapes and types of e-cigarettes and the risks of all forms of e-cigarette use, including JUUL, for young people at <https://e-cigarettes.surgeongeneral.gov/>.
- Ask about e-cigarettes, including small, discreet devices such as JUUL, when screening patients for the use of any tobacco products.
- Educate patients about the risks of all forms of tobacco product use, including e-cigarettes, for young people.
- Encourage patients to quit. For free help, patients can visit smokefree.gov or call 1-800-QUIT-NOW.

Information for States, Communities, Tribes, and Territories

- You have an important role to play in addressing this public health epidemic.**
- Implement evidence-based population-level strategies to reduce e-cigarette use among young people, such as including e-cigarettes in smoke-free indoor air policies, restricting young peoples' access to e-cigarettes in retail settings, licensing retailers, implementing price policies, and developing educational initiatives targeting young people.
- Implement strategies to curb e-cigarette advertising and marketing that are appealing to young people.
- Implement strategies to reduce access to flavored tobacco products by young people.

KNOW THE RISKS. TAKE ACTION. PROTECT OUR KIDS.

References

- Office of the Surgeon General. *The Health Consequences of Smoking-50 Years of Progress: A Report of the Surgeon General*. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention (US), National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2014. <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.
- Office of the Surgeon General. *E-cigarette Use among Youth and Young Adults: A Report of the Surgeon General*. Washington, DC: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; 2016. https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf.
- Wang TW, Gentzke A, Sharapova S, et al. Tobacco Use Among Middle and High School Students - United States, 2011-2017. *MMWR Morbidity and Mortality Weekly Report*. 2018;67(22):629-633.
- Cullen KA, Ambrose BK, Gentzke AS, Apelberg BJ, Jamal A, King BA. Notes from the Field: Increase in use of electronic cigarettes and any tobacco product among middle and high school students – United States, 2011-2018. *MMWR Morbidity & Mortality Weekly Report* 2018; 67(45):1276-1277.
- Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *Jama*. 2015;314(17):1871-1873.
- Trivers KF, Phillips E, Gentzke AS, Tynan MA, Neff LJ. Prevalence of Cannabis Use in Electronic Cigarettes Among US Youth. *JAMA pediatrics*. 2018;172(11):1097-1099.
- National Academies of Sciences, Engineering, and Medicine. 2018. Public Health Consequences of E-Cigarettes. Washington, DC: The National Academies Press. <https://doi.org/10.17226/24952>.
- Ramamurthi D, Chau C, Jackler RK. JUUL and other stealth vaporisers: hiding the habit from parents and teachers. *Tob Control*. 2018. Epub ahead of print. doi: 10.1136/tobaccocontrol-2018-054455.
- King BA, Gammon DG, Marynak KL, Rogers T. Electronic Cigarette Sales in the United States, 2013-2017. *Jama*. 2018;320(13):1379-1380.

10. Willett JG, Bennett M, Hair EC, et al. Recognition, use and perceptions of JUUL among youth and young adults. *Tob Control*. 2018. Epub ahead of print. doi: 10.1136/tobaccocontrol-2018-054273.
11. Truth Initiative. JUUL e-cigarettes gain popularity among youth, but awareness of nicotine presence remains low. <https://truthinitiative.org/news/juul-e-cigarettes-gain-popularity-among-youth>.
12. US Department of Health and Human Services. *Preventing tobacco use among youth and young adults*. Atlanta, GA: US Department of Health and Human Services, CDC;2012. https://www.cdc.gov/tobacco/data_statistics/sgr/2012/index.htm.

ORDINANCE NO. , NEW SERIES

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL AMENDING CHAPTER 5.64
("TOBACCO RETAILER'S LICENSE") OF TITLE 5
("BUSINESS LICENSES GENERALLY") OF THE
MUNICIPAL CODE OF THE CITY OF MORGAN HILL
REGULATING TOBACCO RETAILER'S LICENSE**

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

SECTION 1: Chapter 5.64 (Tobacco Retailer's License) is hereby amended to read as follows:

5.64.010 - Purpose.

This chapter is intended to set forth a local license process for tobacco retailers to ensure that retailers comply with tobacco control laws and city business standards to protect the public health, safety and welfare, and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to minors. This chapter is not intended to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

(Ord. No. 2199 N.S., § 1, 5-18-2016)

5.64.020 - Definitions.

- A. The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:
1. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.
 2. "City" means the City of Morgan Hill and each of its officers and employees designated to enforce or administer the provisions of this chapter.
 3. "Licensee" means a tobacco retailer or their authorized representative and/or employee with a valid tobacco retailer's license.
 4. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

5. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.
6. "Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.
7. "Smoking" means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, [electronic cigarette](#), or cigarette of any kind) and means the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, [electronic cigarette](#), or cigarette of any kind).
8. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.
9. "Tobacco product" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.
10. "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia, and "tobacco retailing" shall mean the doing of any of these activities. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

11. "Electronic cigarette" product means any of the following products:

(1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

(2) Any component, part, or accessory of such a device or delivery system that is used during its operation.

(3) Any flavored or unflavored liquid or substance containing nicotine, whether sold separately or sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.

(4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.

(5) Electronic cigarette products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately. Electronic cigarette products shall not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use. See 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.

12) “Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor.

13) “Characterizing flavor” means a distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma or both, as described in this definition, that constitutes a characterizing flavor.

14) “Pipe tobacco” means a loose-leaf tobacco product burned in a traditional smoking pipe with a bowl.

15) “Cigar” means any roll of tobacco, other than a cigarette, wrapped entirely or in part in tobacco or any substance containing tobacco and typically containing at least one-half ounce of aged fermented tobacco.

- B. Any reference in this chapter to a specific state or federal statute or municipal code provision shall be construed to mean that state or federal statute or municipal code provision as may be amended from time to time.

5.64.030 - Tobacco retailer's license required.

It shall be unlawful for any person to act as a tobacco retailer in the city without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity is to occur. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

5.64.040 - Operating regulations and prohibitions.

Every person engaged in tobacco retailing activities shall comply with each and every provision set forth below:

- A. Location. Tobacco retailing activities shall be conducted at a fixed location and within the enclosed area of the tenant space completely accessible to the general public during the hours of business operation.
- B. Display of license. Each tobacco retailer's license shall be prominently displayed in a publicly visible location at the licensed location.
- C. Minimum age for persons selling tobacco. No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.
- D. Minimum age for the purchase of tobacco. No person engaged in tobacco retailing shall sell or transfer tobacco product or tobacco paraphernalia to a person whose legal age is under minimum age established by state law for the purchase or possession of tobacco products.
- E. Positive identification required. Persons engaged in tobacco retailing may not sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess a tobacco product or tobacco paraphernalia.
- F. Compliance with the City of Morgan Hill's Smoking Pollution Control Regulations. Persons engaged in tobacco retailing shall ensure that the tobacco retailing activities comport with Morgan Hill Municipal Code Chapter 8.44, Title 8, titled "Smoking Pollution Control".
- G. Self-service displays prohibited. Tobacco retailing by means of a self-service display is prohibited.
- H. License nontransferable. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever the proprietor(s) of a tobacco retailing location change.
- I. Lawful business operation. In the course of tobacco retailing or in the operation of the business or maintenance of the premises for which a tobacco retailer's license is issued, it shall be a violation of this chapter for any tobacco retailer or any tobacco retailer's agent or employee to violate any federal, state, or local law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.

J. Sale of flavored tobacco products prohibited.

1. It shall be a violation of this section for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.

2. There shall be a rebuttable presumption that a tobacco retailer in possession of four or more flavored tobacco products, including but not limited to individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale.

3. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer:

a. makes or disseminates a public statement or claim to the effect that the tobacco product imparts a characterizing flavor;

b. uses text and/or images on the tobacco product's labeling or packaging that explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor;

c. uses text or images on the tobacco product's labeling or packaging that uses descriptive terms such as "sweet" or "spicy" that refer to or imply a characterizing flavor; or

d. has taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

4. No licensed tobacco retailer that is issued a new permit after January 1, 2020 shall sell, offer for sale, or possess with intent to sell any flavored tobacco products. No licensed tobacco retailer shall sell, offer for sale, or possess with intent to sell any flavored tobacco products after June 30, 2020.

5. This section is not intended to prohibit the sale of products that meet the definition of "cigar" or "pipe tobacco".

K. Sale of electronic cigarette products prohibited.

1. It shall be a violation of this section for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any electronic cigarette product.

2. No licensed tobacco retailer that is issued a new permit after January 1, 2020 shall sell, offer for sale, or possess with intent to sell any electronic cigarette product. No licensed tobacco retailer shall sell, offer for sale, or possess with intent to sell electronic cigarette product after June 30, 2020.

5.64.050 - Application procedure; unlawfully providing false information.

- A. It shall be unlawful for any person to supply inaccurate or false information on a tobacco retailer's license application.
- B. All applications shall be submitted on a form supplied by the City of Morgan Hill Finance Department, shall be accompanied by payment in full of the license fee, and shall contain the following information:
 - 1. The name, address, and telephone number of each proprietor of the business seeking a license;
 - 2. The business name, address, and telephone number of the single fixed location for which a license is sought;
 - 3. A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above;
 - 4. Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization;
 - 5. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years;
 - 6. Such other information as the city deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section;
 - 7. Any person applying for a tobacco retailer's license pursuant to this chapter agrees to fully indemnify, defend and hold harmless the city, its officers, employees and agents for all claims, losses, or liabilities that arise out of the issuance or use of the tobacco products or tobacco paraphernalia; and
 - 8. The application shall be signed by each proprietor or an authorized agent thereof.
- C. A licensed tobacco retailer shall inform the city in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of a change.
- D. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

5.64.060 - Issuance of license.

Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this chapter, the city shall issue a tobacco retailer's license, except as otherwise provided in this chapter. A tobacco retailer's license shall not be issued if substantial evidence demonstrates to city that one or more of the following exists:

- A. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;
- B. The application seeks authorization for tobacco retailing at a location for which a tobacco retailer license has been denied pursuant to this chapter. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the city with documentation demonstrating, by clear and convincing evidence, that the applicant has acquired or is acquiring the location or business in an arm's length transaction, and is not associated with the previous applicant in any way;
- C. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued; or
- D. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter, that is unlawful pursuant to the Morgan Hill Municipal Code, or that is unlawful pursuant to any other law.

5.64.070 - License renewal and expiration.

- A. Each tobacco retailer's license issued pursuant to this chapter shall expire on June 30 of each year, subject to suspension or revocation as provided in this chapter.
- B. Renewal of license. Each tobacco retailer shall renew their tobacco retailer's license and submit the license fee prior to July 1 of each year. A tobacco retailer's license is invalid if the term of the license has expired and the license was not timely renewed and the appropriate fee was not paid.
- C. Expiration of license. A tobacco retailer's license not timely renewed shall expire on June 30 of each year. To renew a license not timely renewed pursuant to subparagraph (A), the proprietor must:
 - 1. Submit the license fee and application renewal form; and,
 - 2. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed.

5.64.080 - Fee for license.

- A. Each tobacco retailer who applies for or holds a tobacco retailer's license shall pay all associated fees in the amounts established by the city council. Fees are nonrefundable except as may be required by law.
- B. The fee to issue or renew a tobacco retailer's license shall be established from time to time by the city council.
- C. No tobacco retailer's licensee shall be issued or renewed prior to the full payment of any applicable fees.
- D. Licenses renewed after July 31 of each year shall be assessed a ten percent penalty and licenses renewed after August 31 of each year shall be assessed an additional fifteen percent penalty.

5.64.090 - License conveys a limited, conditional privilege.

- A. Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the city identified on the face of the license.
- B. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including but not limited to, any provision of this code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. For example, obtaining a tobacco retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.

5.64.100 - Compliance monitoring.

- A. The Morgan Hill Police Department and Finance Department shall have primary responsibility for monitoring compliance with this chapter. Any peace officer may enforce the penal provisions of this chapter. The city may designate any number of additional persons to monitor compliance with this chapter.
- B. Inspections may be conducted so as to allow the city to determine, at a minimum, if a tobacco retailer is conducting business in a manner that complies with laws regulating youth access to tobacco products and paraphernalia.
- C. The city shall not enforce any law establishing a minimum age for tobacco purchasers or possession against a purchaser of tobacco that otherwise might be in violation of such law because of the person's age if the potential violation occurs when:
 - 1. The purchaser (hereinafter referred to as "youth decoy") is participating in a compliance check supervised by a peace officer or a code enforcement official of the city;
 - 2. The youth decoy is acting as an agent of a person designated by the city to monitor compliance with this chapter; or
 - 3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Santa Clara County Department of Health or the California Department of Health Services.

5.64.110 - Tobacco retailing without a license.

- A. In addition to any other penalty authorized by law, if a court or hearing officer of competent jurisdiction determines that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailing license as follows:
 - 1. After a second violation of retailing without a license at a location within any sixty-month period, no tobacco retailer license shall be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until one calendar year has passed from the date of the second violation;
 - 2. After a third or subsequent violation of this section at a location within any sixty-month period, no new license may issue for the person or the location (unless ownership of the

business at the location has been transferred in an arm's length transaction), until five calendar years have passed from the date of the most recent violation.

- B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
 - 1. The location has been fully transferred to a new proprietor(s); and
 - 2. The new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired or is acquiring the location in an arm's length transaction and are not associated with the prior proprietor(s) in any way.

5.64.120 - False and misleading advertising prohibited.

It shall be unlawful for a tobacco retailer without a valid tobacco retailer license or whose license has been revoked to:

- A. Keep tobacco products and tobacco paraphernalia within public view.
- B. Display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

5.64.130 - Penalties and enforcement.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Whenever evidence of a violation of this chapter is obtained, in any part, through the participation of a person under the age of eighteen years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- C. It is unlawful for any person to violate Section 5.64.040(D).
- D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- E. Violations of this chapter are hereby declared to be public nuisances pursuant to Morgan Hill Municipal Code. Any nuisance may be abated as provided in Chapter 1.18 of the Morgan Hill Municipal Code.

5.64.140 - Suspension or revocation of a tobacco retailer's license, or forfeiture of seized tobacco and tobacco paraphernalia.

- A. In addition to any other penalty authorized by law, the city may suspend or revoke a tobacco retailer's license on the grounds set forth in this section after the licensee has been afforded notice and an opportunity to be heard, consistent with the hearing procedures set forth in Morgan Hill Municipal Code Sections 1.19.060 through 1.19.100, inclusive. If, after the passage of fifteen (15) calendar days from the mailing or personal delivery of the notice,

the licensee has not requested a hearing, the suspension, revocation, or forfeiture shall become final. Any suspended or revoked tobacco retailer's license shall be surrendered to the city and all operations covered by such license shall cease once the suspension or revocation becomes final.

1. A tobacco retailer's license may be suspended or revoked on one or more of the following grounds:
 - a. A tobacco retailer's license was issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information;
 - b. One or more of the bases for denial of a license pursuant to this chapter existed at the time application was made or at any time before the license issued; and/or
 - c. A court or hearing officer of competent jurisdiction has determined that a licensee has violated a provision of this chapter.
- B. For violations of Section 5.64.040(D), the city shall have the additional authority:
 1. Upon a finding by the city of a first violation of Section 5.64.040(D) at a location within a sixty-month period, the license shall be subject to suspension for thirty days.
 2. Upon a finding by the city of a second violation of Section 5.64.040(D) at a location within a sixty-month period, the license shall be subject to suspension for ninety days.
 3. Upon a finding by the city of a third violation of Section 5.64.040(D) at a location within a sixty (60) month period, the license shall be subject to suspension for one (1) year.
 4. Upon a finding by the city of a fourth violation of Section 5.64.040(D) at a location within a sixty-month period, the license shall be subject to revocation.
- C. Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this chapter are subject to seizure by the city or any peace officer and shall be forfeited after the person, the person's agents or employees, or any other owner of the tobacco products and tobacco paraphernalia seized is given reasonable notice and an opportunity, consistent with the hearing procedures set forth in Morgan Hill Municipal Code Sections 1.19.060 through 1.19.100, inclusive, to demonstrate that the tobacco products and tobacco paraphernalia were not offered for sale or exchange in violation of this chapter. The decision by the city is final and is subject to judicial review pursuant to Morgan Hill Municipal Code Section 1.19.125. Forfeited tobacco products and tobacco paraphernalia may be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure Section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

5.64.150 - Appeal.

- A. Pursuant to the provisions of Chapter 1.20 of the Morgan Hill Municipal Code, the licensee can appeal a decision of the city to suspend and/or revoke a tobacco retailer's license. Compliance with the procedures set forth in Section 5.64.140 shall be deemed to fulfill the procedural requirement of Section 1.20.020.

5.64.160 - New license after revocation.

- A. After first revocation at a location within any sixty-month period, no new license may be issued for the location until one calendar year has passed from the date of revocation.
- B. After second or more revocations at a location within any sixty-month period, no new license may be issued for the location until five calendar years days have passed from the date of the most recent revocation.

5.64.170 - Nondiscrimination.

No person shall discharge, refuse to hire, or in any manner discriminate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

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 _____, 2020. 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 _____, 2019, and adopted at a meeting held on the _____ day of _____, 2019, 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

Attachment: Tobacco Retailer's License Ordinance (2554 : Flavored Tobacco / Vaping Ordinance)

Jurisdiction	Smoke-free multi-unit housing (units)	Smoke-free multi-unit housing common areas ¹	Flavored tobacco restrictions	E-Cigarette restrictions?	Limit tobacco sales near schools	Limit retailer density or proximity	Prohibit tobacco sales in pharmacies
County of Santa Clara	Yes	Yes	Yes ²	Yes	Yes (1,000 foot limit)	Yes (500 foot limit from existing tobacco retailers)	Yes
Campbell							
Cupertino							
Gilroy					Yes (1,000 foot limit)		
Los Altos							
Los Altos Hills							
Los Gatos			Yes ³	Yes	Yes (1,000 foot limit)	Yes (500 foot limit from existing tobacco retailers)	Yes
Milpitas							
Monte Sereno							
Morgan Hill					Yes (1,000 foot limit)	Only if sold in a liquor store (1,000 foot limit)	
Mountain View							
Palo Alto	Yes	Yes	Yes ⁴	Yes	Yes (1,000 foot limit)	Yes (500 foot limit from existing tobacco retailers)	Yes
San Jose		Yes					
Santa Clara	Yes	Yes					
Saratoga	Partial ⁵	Yes	Yes (exempts menthol cigarettes)		Yes (1,000 foot limit from schools and City parks)	Yes (500 foot limit from existing tobacco retailers)	Yes
Sunnyvale	Yes	Yes					

¹ All local policies allow landlords and HOAs to designate smoking areas outdoors that meet certain criteria.

² The county previously exempted retailers that primarily sell tobacco products. This was repealed at the 11/5/2019 Board of Supervisors meeting and is effective 6/30/2020.

³ Los Gatos recently adopted an ordinance that mirrors Santa Clara Counties. See note 2 for more detail.

⁴ Palo Alto recently adopted an ordinance that mirrors Santa Clara Counties See note 2 for more detail.

⁵ Saratoga prohibits smoking only in multifamily apartment complexes of four or more units which were constructed or converted to rental use after September 16, 2016.

Santa Clara County – Tobacco Compliance Rates for Tobacco Sales to Minors 2010-2019

Jurisdiction	# licensed tobacco retailers ⁱ	% of stores that sold tobacco to an undercover youth during a compliance check ([# of stores that sold to youth/# of stores checked])									
		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Campbell*	41	62.5% (5/8)	5.6% (1/18)	29.1% (7/24)	0% (0/23)	0% (0/33)	NDC	7.7% (2/26)	38.5% (5/13)	11% (1/9)	NDC
Cupertino	26	0% (0/4)	11.1% (2/18)	0% (0/17)	6.6% (1/15)	0% (0/26)	6.7% (1/15)	NDC	18.5% (5/27)	7.7% (4/52)	24% (11/46)
Gilroy*	54	21.9% (7/32)	NDC	NDC	6.8% (3/44)	10% (2/20)	NDC	NDC	NDC	NDC	NDC
Los Altos	15	3.0% (3/10)	0% (0/13)	0% (0/14)	0% (0/13)	9.0% (1/11)	NDC	13.3% (2/15)	13.3% (2/15)	7.7% (1/13)	NDC
Los Gatos*	27	27.3% (3/11)	0% (0/10)	14.2% (3/21)	0% (0/22)	0% (0/24)	0% (0/9)	NDC	0% (0/14)	14% (1/7)	NDC
Milpitas	56	NDC ⁱⁱ	3.1% (1/32)	0% (0/37)	0% (0/24)	0% (0/19)	NDC	NDC	NDC	0% (0/7)	(0/42)
Morgan Hill*	35	NDC	NDC	13% (3/23)	15% (3/20)	0% (0/20)	0% (0/10)	NDC	0% (0/3)	25% (1/4)	50% (3/6)
Mountain View	57	5.1% (3/59)	0% (0/75)	4% (2/50)	1.3% (1/73)	6.7% (4/59)	NDC	NDC	18.8% (3/16)	NDC	9.1% (2/22)
Palo Alto*	29	46.2%(6/13)	13.5% (5/37)	0% (0/37)	5.5% (2/36)	15.3% (4/26)	NDC	NDC	NDC	NDC	NDC
San Jose*	699	NDC	NDC	6.0% (3/50)	15.5% (9/58)	0% (0/18)	NDC	NDC	NDC	NDC	NDC
Santa Clara	102	N/D	14.28% (9/63)	23.4% (15/64)	11.5% (8/69)	7.9% (5/63)	NDC	75% (3/4)	0% (0/10)	50% (2/4)	6.3% (2/32)
Saratoga*	7	0% (0/1)	0% (0/6)	0% (0/5)	0% (0/5)	0% (0/8)	0% (0/6)	NDC	20% (1/5)	11% (1/9)	14.3% (1/7)
SC County*	17	NDC	0% (0/8)	0% (0/6)	4.7% (1/21)	0% (0/13)	0% (0/9)	NDC	23.6% (4/17)	3% (1/34)	27.8% (10/36)
Sunnyvale	86	6.3% (3/48)	8.9% (7/79)	7.4% (5/67)	5.4% (4/74)	7.5% (4/53)	NDC	NDC	8.3% (2/24)	5% (1/20)	2.6% (1/38)
Illegal Tobacco Sales Rates	1251	16.1% (30/186)	6.9% (25/359)	9.4% (38/403)	6.4% (32/497)	5.0% (20/393)	2.0% (1/49)	16.7% (7/45)	16.4% (22/134)	8.2% 13/159	13% 30/229

ⁱ California Board of Equalization, July 2016

ⁱⁱ No Data Collected

* = Jurisdictions has a local Tobacco Retail Licensing Ordinance

Updated 8/6/2019 – Compiled by SCC Tobacco-Free Communities Program

Answering Tough Questions on Flavored Tobacco Products



@ 2019 California Department of Public Health

May 2019

As California communities take the lead on restricting the sale of flavored tobacco products, they are facing significant skepticism and opposition. The tobacco industry, along with the retail industry groups they frequently fund, is actively engaged in local-level opposition to policies, especially when the policies seek to restrict menthol products along with other flavors. Below are some common questions and beliefs, which have arisen during local flavored tobacco campaigns. The suggested answers are meant to help effectively address opponents' arguments against prohibiting the sale of flavored tobacco products. Coupling these responses with personal stories from community members is the most effective way to counter these arguments. The Center has additional resources on prohibiting flavored tobacco product sales and tobacco retailers licensing ordinances available at www.Center4TobaccoPolicy.org.

Prohibiting the sale of flavored tobacco products is not effective and will not keep tobacco out of the hands of minors.

- More than 80% of youth who have used a tobacco product started with a flavored tobacco product. 82% of teens report flavors as being the reason they use electronic cigarettes.¹
- Flavors, including menthol, reduce or mask the natural harshness and taste of tobacco, making it easier for youth to initiate and sustain tobacco use.²
- Menthol users in the U.S. that are below 18 years of age have already indicated that 66% of them would stop using these products if a ban was placed.³
- In 2013, New York City adopted a ban on the sale of flavored tobacco products that showed positive results. After the policy went into effect, a study found that teens in the city had lower odds of trying a flavored tobacco product and of using any type of tobacco product.⁴

Flavors are not just for kids; adults also like flavors in electronic cigarettes and it helps adults quit smoking cigarettes.

- E-cigarettes are not approved by the Federal Food and Drug Administration as a smoking cessation device and not a single company that manufactures e-cigarettes has applied to be an approved and effective smoking cessation treatment.⁴
- The 2016 Surgeon General Report on e-cigarettes concluded that flavors are among the most commonly cited reasons for using e-cigarettes among youth and young adults.⁴
- While flavors can appeal to people of all ages, children and adolescents have a higher preference for sweet flavors and use flavored e-cigarettes more than adults.⁵
- Studies show that candy, fruit, and menthol flavored e-cigarettes appeal to adolescents more than tobacco flavored or alcohol flavored e-cigarettes.⁶

- 80% of youth in middle and high school who have used flavored tobacco products ended up using tobacco later in life.⁷
- Allowing harmful flavored tobacco products, which are proven to encourage initiation of youth tobacco use, to stay on the market in the hope that adults will use them to quit smoking cigarettes is not a defensible public health strategy.
- Adult e-cigarette users will still have access to non-flavored e-liquids, and those wishing to quit have a range of FDA-approved cessation therapies to choose.⁷

There are already laws in place that prevent youth from having access to tobacco products, such as the statewide law that increased the minimum sale age to 21 and local laws that prohibited tobacco sales near schools. We do not need to ban more products; we just need to do a better job enforcing existing laws.

- Our existing laws are effective; however, public health threats are far-reaching and entrenched, as tobacco prevention requires using multiple approaches to save lives.⁸
- While raising the age to purchase tobacco is expected to significantly reduce youth access to tobacco, the reality is that enforcement varies and can be particularly difficult in the low-income urban and rural areas where youth tobacco use is highest.⁸
- Enforcement is difficult to measure. It is widely reported that youth purchase surveys underestimate youth access because retailers will sell to youth they personally know, which shows that the minimum sales age is not enough enforcement.⁸
- Data from the county-level tobacco youth purchase surveys shows that illegal tobacco sales to minors still occurs at high rates.⁸
- The restriction of sales in menthol and flavored tobacco in conjunction with other tobacco control policies is the best approach to save lives.

Many of these convenience stores only sell snacks to the youth; the adults are mostly the ones buying tobacco products.

- The best way for local communities to reduce underage purchases of flavored and e-cigarette products is to specifically include these products in retail licensing ordinances.

- 152 cities and counties throughout the state have taken steps to regulate these products through local tobacco retail law. These jurisdictions have seen reductions in youth purchase rates as high as 58%.¹²
- For example, many African American and low-income neighborhoods tend to have more tobacco retailers. A 2010 research study even found that there were more tobacco stores near schools, attracting youth to experiment with tobacco.⁸
- The 2015 rate of illegal sales to minors across the state was 14.8% at tobacco-only stores. Convenience stores that sell gasoline sold to minors 8.8% of the time and convenience stores without gasoline sold tobacco to minors nearly 10% of the time. These are numbers we can change.⁸
- The best way for local communities to reduce underage purchases of flavored tobacco products is to specifically include these products in their local retail licensing ordinances.

Youth are more likely to access tobacco products through a “social source” or the internet instead of at local stores.

- The tobacco industry has a history of shifting the attention from retailers profiting off sales to youth by framing the issue of youth access as a “social” problem of youth sharing tobacco products, careless parents, and unconcerned bystanders buying cigarettes for minors.⁹
- Many of these tobacco products are now being promoted on social media and shared among friends, increasing the use of these e-cigarettes.⁹
- By restricting the sale of flavored tobacco products, this makes these products less enticing to youth and fewer youth will be interested in purchasing these products. Illegal sales to minors are not the only source minors use to obtain tobacco, but are still the highest—this is a public health issue, and tobacco retailers can be a part of the solution.

Flavored tobacco users will simply order products online or visit neighboring communities that have not prohibited the sale of flavored tobacco.

- Online sales are only a part of the issue, and we have to start by fixing these issues in our own backyard.
- Although many users have accessibility to making

e-cigarette purchases online, the 2018 National Youth Tobacco Survey states that, 14.8% of middle and high school e-cigarette users under 18 report obtaining e-cigarettes from a vape shop in the past month and 8.4% from a gas station or convenience store.¹⁰

Clerks should not be punished if they sell to minors.

- Storeowners claim that mistakes are made because clerks are busy and cannot check everyone's ID. This is an argument that would be unacceptable for illegal alcohol or gun sales and should be just as unacceptable for illegal tobacco sales.¹⁰
- The fact is that storeowners, not clerks, are responsible for what happens in their stores. Everybody is accountable for selling to underage patrons and storeowners must train clerks to ask for ID and must enforce minimum age requirements, even during busy times. By limiting product access, it limits the opportunity for youth to attain these products.¹⁰
- Clerks must have the proper training to ensure they do not sell to minors.

Tobacco products, especially flavored tobacco products, are a key source of income for many convenience stores who risk going out of business if they lose this revenue.

- According to the National Association of Convenience Stores, sale from tobacco accounted for the highest percentage of sales, but the products only accounted for a small percentage of actual profits compared to other products.¹¹
- Foodservice accounted for 33.9% of gross profits, which show that these retailers do not have rely entirely on tobacco.¹¹
- While tobacco products were 34.1% of instore sales, they only account for 17.1% of gross profit.¹¹
- Many of these purchases made in-store are for food and drinks, and more than 65% of the food bought is consumed right after purchase.¹¹
- Tobacco retailers and communities should work together to build partnerships that support healthy retail environments from relying on harmful tobacco products as well as properly enforcing the minimum age for acquiring tobacco products.¹¹

Banning flavors is really a federal or state issue and should be left up to the FDA or the State Legislature.

- The federal government cannot regulate the manufacturing of tobacco products, but the states and local governments can govern tobacco retail practices.
- Local elected officials can and should take action to reduce sales of these deadly products.
- In 2009, the FDA banned flavored cigarettes, excluding menthol, which still left a large number of flavored products on the market, such as cigarillos and e-cigarettes. Now, nine years later, the FDA announced intentions to take further steps in reducing the death and disease caused by flavored tobacco use in our nation. Many cities and counties in California have already taken initiative in adopting flavor bans due to a strong need and other places should follow to ensure safety for minors and others.¹²
- It took the legislature 20 years and dozens of attempts before it was able to move any significant tobacco control legislation prior to 2016. We cannot wait, as more youth get addicted to tobacco, for the legislature to act.¹²

People have the right to use these products regardless of their health impacts, and it should not be up to the government to tell people what to do. If someone wants to kill themselves by using these products, that is their right.

- According to the 2014 Surgeon General Report, over 90% of smokers started smoking before the age of 21.⁴ We are not talking about adults; we are talking about youth who may not fully recognize the consequences of their actions.
- The industry uses deceptive marketing to lure new users, especially youth, to use these products.

It should be left up to parents, not stores and storeowners, to ensure that kids are not accessing these products. Where are parents in all of this?

- In 2016, the tobacco industry spent \$9.5 billion dollars marketing their products.¹³ Parents are doing the best they can, but they cannot single handedly push back against a billion dollar industry that seeks to hook their kids.

If the sale of flavored tobacco products is prohibited, local black markets will emerge to fulfill demand via illegal sales of flavored tobacco.

- There is no evidence of black markets forming in communities that have adopted these policies.
- The argument that black markets will form is one that is consistently used against tobacco control policies, but is often very overstated. History shows us that this just doesn't pan out.¹⁴
- Evidence shows that smuggling and other tax evasion only reduces the total amount of net new additional revenues the state receives from cigarette tax increases—they do not come close to eliminating revenue gains or making tax increases unproductive.¹⁴
- The National Research Council and Institute of Medicine's (NRC-IOM) 2015 report found that the vast majority of states with lower actual or proposed cigarette tax rates have little to worry with smuggling infrastructures or tax evasions patterns.¹⁴

African American tobacco users overwhelmingly prefer menthol. Prohibiting these products unfairly singles out African American tobacco users.

- The tobacco industry has been using menthol to target the African American community for decades. They sponsor events, lower tobacco prices, and increase point of sale advertising in communities with larger African American populations.¹⁵
- Many African American smokers are addicted to menthol products, which have been associated with increased health risks and a greater difficulty quitting.¹⁵
- Support for prohibition of menthol products is strongest among the populations who used menthol the most.¹⁶
- Tobacco companies have also used these tactics to target other communities such as the Lesbian, Gay, Bisexual, Transgender and Queer Hispanic/Latino, and Asian Pacific Islander communities.¹⁶

Citations

1. Ambrose, B.K., et al., *Flavored tobacco product use among US youth aged 12-17 years, 2013-2014*. Journal of the American Medical Association, 2015. **314**(17): p. 1871-1873.
2. Farley, S.M. and M. Johns, *New York City flavored tobacco product sales ban evaluation*. Tobacco control, 2016: p. tobaccocontrol-2015-052418.
3. King, B.A., S.R. Dube, and M.A. Tynan, *Flavored cigar smoking among US adults: findings from the 2009-2010 National Adult Tobacco Survey*. Nicotine & Tobacco Research, 2012. **15**(2): p. 608-614.
4. Youth, E.-C.U.A., U.D.o. Health, and H. Services, *A Report of the Surgeon General—Executive Summary*. Atlanta, GA: US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
5. Hoffman, A.C., et al., *Flavour preferences in youth versus adults: a review*. Tobacco Control, 2016. **25**(Suppl 2): p. ii32-ii39.
6. Villanti, A.C., et al., *Flavored tobacco product use among US young adults*. American Journal of Preventive Medicine, 2013. **44**(4): p. 388-391.
7. Delnevo, C.D. and M. Hrywna, "A whole'nother smoke" or a cigarette in disguise: how RJ Reynolds reframed the image of little cigars. American Journal of Public Health, 2007. **97**(8): p. 1368-1375.
8. California Department of Public Health. <https://www.cdph.ca.gov/Programs/CCDPHP/DCDC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2018YATPSChartsADA.pdf>
9. Jidong Huang, Zongshuan Duan, Julian Kwok, Steven Binns, Lisa E Vera, Yoonsang Kim, Glen Szczypka, Sherry L Emery, "Vaping versus JUULing: how the extraordinary growth and marketing of JUUL transformed the US retail e-cigarette market". Tobacco Control, 2018.
10. FDA, "Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance," March 13, 2019
11. Inside the Store. www.convenience.org/Research/FactSheets/Inside-theStore.
12. American Lung Association, the Center. Matrix of Local Ordinances Restricting Flavored Tobacco 2018. <https://center4tobaccopolicy.org/wp-content/uploads/2018/11/Matrix-of-Local-Ordinances-Restricting-Flavored-Tobacco-2018-11-14.pdf>
13. Federal Trade Commission. [Federal Trade Commission Cigarette Report for 2016 Cdc-pdf\[PDF-589 KB\]External. Washington: Federal Trade Commission. 2018](https://www.ftc.gov/pressroom/2018/06/federal-trade-commission-cigarette-report-for-2016)
14. Tobacco Free Kids, "Responses to Tobacco Company Arguments Against State Cigarette Tax Increases" 2018.
15. Yeger VB, Malone RE. African American leadership groups: smoking with the enemy. Tobacco Control 2002;11:336-345.
16. American Lung Association, the Center. Countering Arguments in Opposition to Flavored Tobacco Restrictions 2017. <https://center4tobaccopolicy.org/wp-content/uploads/2017/08/Countering-Arguments-in-Opposition-to-Flavored-Tobacco-Restrictions-2017-08.pdf>

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Dec 4 Flavored Tobacco Discussion
Date: Wednesday, November 27, 2019 2:53:58 PM
Attachments: [ComprehensiveTRL_ModelOrdinance_FINAL_20190213_1 \(1\).docx](#)
[Morgan Hill_tobacco discussion Dec 4.pdf](#)

From: Jen Grand-Lejano <jen.grandlejano@cancer.org>
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Cc: Irma Torrez <Irma.Torrez@morganhill.ca.gov>, Scott Nelson <scott.nelson@morganhill.ca.gov>
Subject: Dec 4 Flavored Tobacco Discussion

Dear Honorable Rich Constantine and Morgan Hill City Councilmembers,

Thank you for continuing to explore policy options to address the increasingly urgent problem of the teen nicotine epidemic we're seeing through in our local communities. Many communities have sought to begin the discussion by looking at a ban on sales of e-cigarettes pending FDA review. An e-cigarette moratorium is insufficient in addressing the challenge of youth tobacco use. The only way to protect the youth of Morgan Hill is to prohibit the sale of *all* flavors in all tobacco products, throughout the city.

Flavors are driving the epidemic of teenage e-cigarette use. The long-term health consequences of e-cigarettes are just emerging, but the consequences of combustible tobacco have long been known. If the sale of e-cigarettes is prohibited, while other flavored tobacco products like menthol cigarettes remain in place, youth will continue to be lured to this deadly addiction. Policies that could push young people toward combustible cigarettes should be avoided.

We urge you to adopt a strong comprehensive tobacco retailer licensing (TRL) policy to end the sale of all flavored tobacco products, including flavored e-cigarettes and menthol cigarettes, establish a minimum price and pack size for tobacco products with no discounting, end the sale of all tobacco products in pharmacies, and allow no new tobacco retailers to locate near youth areas. Together, these provisions go far to protect the lives of our young people from the predatory marketing of the tobacco industry.

I've provided our recommendations for model policies that have worked well in other communities, as well as model Tobacco Retailer License ordinance from ChangeLab Solutions, a legal TA organization that specializes in tobacco control policy. I'm happy to work with you and staff to find what options might work best to meet the needs of Morgan Hill.

Thank you,
Jen

[Jen Grand-Lejano](#)

Northern California Government Relations Director
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American Cancer Society Cancer Action Network, Inc.
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fightcancer.org | 1.800.227.2345



November 27, 2019

The Honorable Rich Constantine
Morgan Hill City Council
17555 Peak Ave.
Morgan Hill, CA 95037

Dear Mayor Constantine and Members of the Morgan Hill City Council:

The American Cancer Society Cancer Action Network's mission is to end suffering and death from cancer, and we are committed to advancing that mission in Morgan Hill. To that end, we are deeply concerned about the availability of flavored tobacco products, which is contributing to the growing epidemic that is plaguing our communities here in Northern California and nationwide. An e-cigarette moratorium is insufficient in addressing the challenge of youth tobacco use. The only way to protect the youth of Morgan Hill is to prohibit the sale of *all* flavors in all tobacco products, throughout the city.

Flavors are driving the epidemic of teenage e-cigarette use. The long-term health consequences of e-cigarettes are just emerging, but the consequences of combustible tobacco have long been known. If the sale of e-cigarettes is prohibited, while other flavored tobacco products like menthol cigarettes remain in place, youth will continue to be lured to this deadly addiction. Policies that could push young people toward combustible cigarettes should be avoided.

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It is imperative to include menthol cigarettes and other flavored combustible tobacco as well as flavored e-cigarettes in a policy that aims to address the epidemic of youth tobacco use. Four out of five youth who have ever used a tobacco product started with a flavored tobacco product, and when asked why, say because they come in flavors they like. A recent study concluded that youth who use e-cigarettes are more than four times more likely to try cigarettes and nearly 3 times as likely to smoke cigarettes than those youth who never tried e-cigarettes.

Young people who smoke menthol cigarettes are disproportionately African American, Asian American, LGBT and from low-income communities already significantly impacted by tobacco-related disease. A 2014 study revealed internal industry studies that confirmed "menthol and candy-like flavors (e.g., vanilla and cherry)" increased the appeal of little cigars and cigarillos to new smokers "by masking the heavy cigar taste, reducing throat irritation and making cigar smoke easier to inhale. Prohibiting the sale of all flavored tobacco products, including menthol cigarettes, removes much of the allure of these products and is a key component of a comprehensive strategy to effectively help reduce tobacco initiation, and subsequent addiction.

Increasing the price and pack size of tobacco products reduces availability of these products to young people who are price sensitive, therefore making a minimum price for tobacco products adds a strong provision in any comprehensive tobacco retailer licensing policy. When tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use. We urge you to adopt a minimum price and pack size for tobacco products as part of your local policy.

We've learned from experience that exempting adult-only stores is problematic and weakens what could be a strong policy. All places where tobacco can be purchased, including adult-only tobacco shops, should be required to have a TRL. Research shows that smoke shops have higher rates of sales to minors, and should not be exempted from a TRL.

Tobacco-free pharmacies is a natural and necessary next step. Tobacco products, which are still the leading cause of preventable death in California, should not be sold in pharmacies where residents seek health promoting products. We urge you to join the 31 other jurisdictions across the state that have chosen to end the sale of all tobacco products in their pharmacies.

By not allowing any new retailers to locate near youth areas, youth exposure to tobacco product marketing decreases. Research shows that when tobacco retailers are located near schools, youth experimentation with tobacco products goes up. The tobacco industry pours millions of dollars a day into in-store marketing because they know it works.

ACS CAN urges this City Council to make the health of Morgan Hill youth a priority and join our neighbors in the 50 communities throughout California who have adopted strong policies to end the sale of flavored tobacco products. We ask that you end the sale of all flavored tobacco products citywide, including menthol cigarettes, flavored e-cigarettes, and other flavored tobacco products. We ask that you do this by requiring that all tobacco retailers obtain a tobacco retailer license that also includes a price floor and minimum pack size for tobacco products with no discounting, ends the sale of all tobacco products in pharmacies, and limits tobacco sales and marketing near youth areas.

Sincerely,



Jen Grand-Lejano
Government Relations Director, Northern California
American Cancer Society Cancer Action Network



ChangeLab Solutions

Law & policy innovation for the common good.

Comprehensive Tobacco Retailer Licensing Ordinance A Model California Ordinance Regulating the Tobacco Retail Environment WITH ANNOTATIONS

Updated February 2019
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Developed by ChangeLab Solutions

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Introduction and Report

ChangeLab Solutions developed this *Comprehensive Tobacco Retailer Licensing Ordinance* (“Model Ordinance” or “Ordinance”) to assist California cities and counties interested in establishing or strengthening a local tobacco retailer licensing (“TRL”) program and further regulating the tobacco retail environment. Communities have adopted TRL laws to ensure compliance with local business standards, reduce youth access to tobacco products, limit the negative public health and equity effects associated with tobacco use, and enforce local, state, and federal tobacco control laws.

This Model Ordinance (revised February 2019) takes a comprehensive approach to regulating the sale of tobacco products and the tobacco retail environment. This revised Model Ordinance builds on core provisions such as requiring a local tobacco retailer license by incorporating many of the innovative policies previously maintained as separate “Plug-in” policy options. It also reflects recent changes to state and federal tobacco control laws such as Tobacco 21 and the federal Food and Drug Administration’s (“FDA”) Deeming Rule that expanded the FDA’s regulatory authority to all tobacco products. The Model Ordinance offers cities and counties a variety of options to tailor this policy to meet the needs of their communities.¹ Section II contains additional information about revisions to this Model Ordinance.

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

This Introduction and Report section summarizes our nonpartisan analysis and study of the public health problem surrounding tobacco use. It also provides a rationale for regulations on the sale of tobacco products as one possible policy intervention. It is intended for broad distribution to the public for the purpose of education and dissemination of information. Our presentation of this Model Ordinance, including this Introduction and Report, is based on our independent and objective analysis of the relevant law, evidence, and available data, and should enable readers to draw their own opinions and conclusions about the merits of this Model Ordinance. Readers should consider all the evidence and decide for themselves which approach is appropriate for their local jurisdiction.

I. Tobacco and Public Health

Tobacco use remains a significant public health problem and impediment to health equity in California and the United States. Each year, tobacco-related diseases cause the deaths of approximately 40,000 Californians¹ and nearly half a million individuals in the United States, making

¹ This Model Ordinance uses “community” as shorthand for a group of people who will be impacted, either directly or indirectly, by a proposed changemaking strategy. People in a community (1) are in a particular geographic area, like a neighborhood or jurisdiction, and/or (2) share a common identity or characteristic.



tobacco use the nation's leading cause of preventable death.² For decades, governments at the federal, state, and local levels have advanced various policies intended to address this significant public health crisis.

Under the 2009 federal Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act"), the FDA regulates the manufacture, marketing, and distribution of tobacco products.³ States and local governments have developed educational programs and media campaigns on the risks of tobacco use, offered resources to help tobacco users quit, increased excise taxes on cigarettes and other tobacco products, and adopted restrictions on the sale and use of tobacco products. Although these policies have reduced the use of tobacco products, recent estimates suggest that 441,000 Californians under 18 today will die from tobacco-related diseases.¹

a. Tobacco-Related Disparities and Health Inequities

California has made tremendous progress in reducing smoking rates and associated harms.⁴ But these gains have not been uniformly distributed across the population. Many underserved communitiesⁱⁱ continue to disproportionately bear the burden of tobacco-related harm,⁵ exacerbated by decades of pernicious targeting by the tobacco industry.⁶

People of Color: Tobacco use rates are significantly greater among many racial and ethnic populations. For example, a 2014–2015 California survey found that 29.5% of all Native American and Alaska Native adults and nearly half (46.5%) of low-income Native American and Alaska Native adults reported smoking.⁷ Almost 18% of all Black and African American adults in California smoke, including nearly 1 in 4 (24.4%) low-income Black or African American adults.⁷ Despite decreases in overall smoking prevalence, smoking prevalence among California's Native American, Alaska Native, and Black populations *increased* between the 2009 and 2014–2015 California Health Information Survey.⁸ Tobacco use also differs significantly among other racial and ethnic populations—13.4% of Whites, 11.1% of Hispanics, and 8.9% of Asian, Native Hawaiian, or Pacific Islanders reported smoking in 2014–2015, and within specific subpopulations, 27.8% of Vietnamese males and nearly 1 in 4 (24.3%) Korean males reported smoking, for example.⁷

Low-Income Populations: Smoking rates among low-income populations are also higher. Nearly 17% of California adults with incomes below the federal poverty level ("FPL") smoke compared with 14.4% of adults with incomes between 100% and 184% FPL, 14% for those with incomes between 185% and 299% FPL, and 9.5% for those with incomes of 300% FPL or higher.⁷ Low-

ⁱⁱ This Model Ordinance uses the term "underserved communities" to refer to those communities that are more likely to experience greater health inequities, political marginalization, and disinvestment. Examples of underserved communities include people of color, low-income communities, LGBTQ+ communities, persons with mental health needs, and rural communities. For more information about the drivers of these inequities, see the California Health in All Policies Task Force's Equity in Government Practices Action Plan, *available at* http://sgc.ca.gov/programs/hiap/docs/20180201-HiAP_Equity_in_Government_Practices_Action_Plan_2018-2020.pdf.

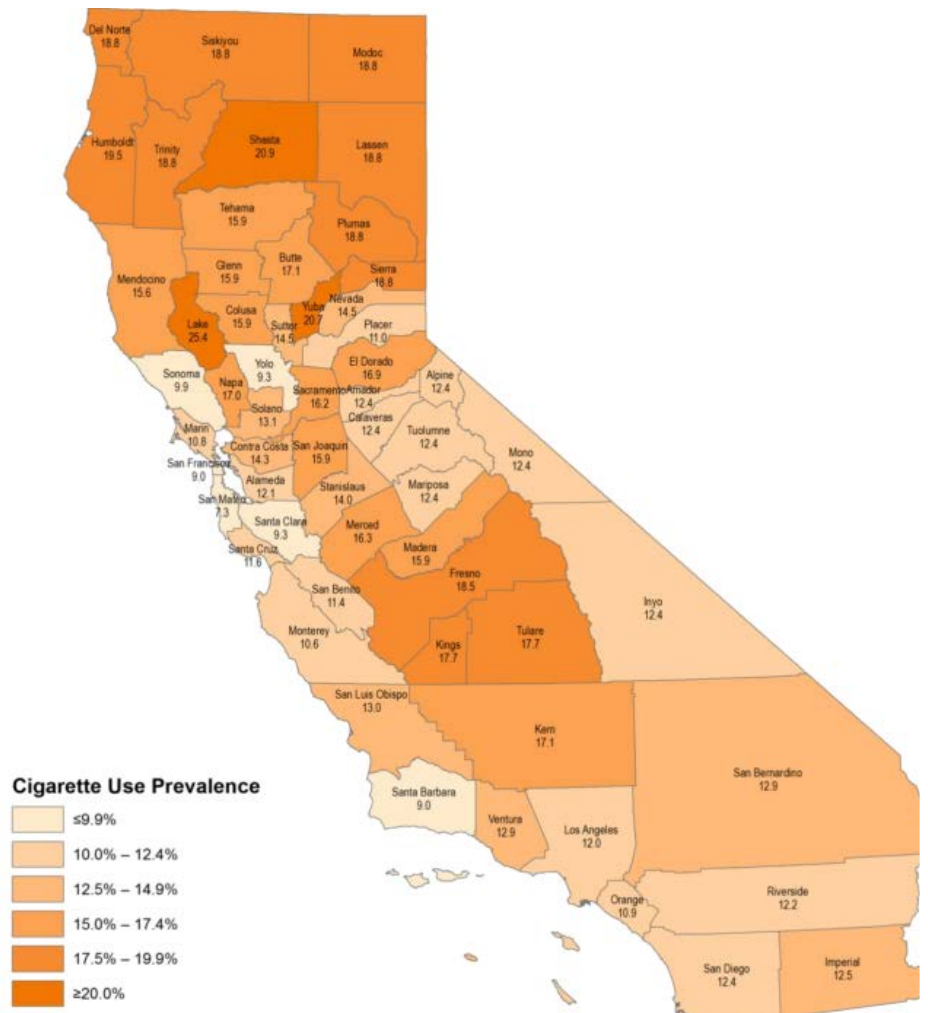
income communities are also targeted with cheaper cigarettes and flavored little cigars, and they experience the highest density of tobacco retailers.⁹

LGBTQ+ Populations: In 2013–2014, nearly a quarter (24%) of California’s lesbian, gay, and bisexual population used any tobacco product (eg, cigarettes, electronic smoking devices, other tobacco products) and 19.1% reported smoking cigarettes. In contrast, in 2013–2014, the general population reported significantly lower rates of any tobacco use (17.4%) and cigarette smoking (12.4%).⁹

Rural Populations: Rural counties in California have some of the highest smoking rates.⁹ Rural communities also report a lower proportion of smokers who try to quit within the last year than the general population and have a lower proportion of residents protected by a strong TRL law.⁹

Populations with Mental Health Needs: Persons with mental health needs have the second highest smoking and tobacco use rates in California at 27.1% and 24.2% respectively.⁹ Moreover, fewer smokers with mental health needs have tried to quit smoking within the last year.⁹

Because the harms associated with tobacco use fall disproportionately on these underserved populations, they may also experience greater benefits from policy interventions that reduce tobacco consumption. For more information on tobacco-related health inequities, visit A Story of Inequity at <http://tobaccofreeca.com/story-of-inequity/>.



California Adult Smoking Prevalence, 2011–2012

(Source: California Health Interview Survey, 2011–2012)

b. State and Federal Laws Regulating the Tobacco Retail Environment

The California Cigarette and Tobacco Products Licensing Act of 2003 (“CTPLA”) established a statewide licensing program that required tobacco retailers, among others, to obtain a license from the State of California.¹⁰ The CTPLA focuses on decreasing tobacco product tax evasion¹¹—not protecting public health—and provides no funding to support enforcement activities by local governments. Importantly, the CTPLA and other state laws do not preempt or supersede local tobacco control laws (except local tobacco taxes),¹² meaning that local jurisdictions can enact TRL and other laws that focus on protecting public health by, for example, providing for the suspension or revocation of a tobacco retailer license for illegal sales to underage individuals.¹³

Other state and federal laws also regulate various aspects related to the retail sale of tobacco products. California Penal Code 308, for example, prohibits the selling, giving, or furnishing of tobacco products and tobacco paraphernalia to most individuals under the age of 21.¹⁴ The Stop Tobacco Access to Kids Enforcement Act (“STAKE Act”) also prohibits tobacco sales to most individuals under the age of 21, restricts tobacco self-service displays and vending machine sales, and requires retailers to post signs at the point of sale about illegal underage tobacco sales.¹⁵ At the federal level, cigarettes must be sold in packages of at least 20,¹⁶ and the FDA requires retailers to check the identification of anyone purchasing tobacco products under the age of 27.¹⁷ Nevertheless, significant regulatory gaps remain and youth continue to access cigarettes and other tobacco products.⁷ Local governments may choose to take action to address these gaps by enacting tobacco control policies to further protect public health and advance health equity.

c. Local Policies Regulating the Tobacco Retail Environment

Nearly 200 California cities and counties have adopted TRL ordinances.¹⁸ More than 100 of these ordinances meet criteria set by the American Lung Association in California’s Center for Tobacco Policy and Organizing (“The Center”) for TRL best practices:

- (1) All tobacco retailers are required to obtain a license and renew it annually.
- (2) The license fee is sufficient to fund the effective administration and enforcement of the licensing program, including compliance checks.
- (3) A violation of any local, state, or federal tobacco control law constitutes a violation of the local license.
- (4) Penalties for violations include fines and license suspension and revocation.¹⁹

Cities and counties have also taken action to further regulate the tobacco retail environment by, for example, prohibiting retailers from locating near schools, reducing the density of tobacco retailers, prohibiting tobacco sales in pharmacies, requiring a minimum package size for little cigars and cigars, and restricting the sale of flavored tobacco products, including menthol.²⁰ Most of these communities enforce these policies through their local TRL ordinance,²⁰ underscoring the critical foundation that TRL laws provide for further regulation of the tobacco retail environment.



Evidence suggests that these policies are effective and may reduce tobacco-related health inequities by countering the tobacco industry's predatory targeting of underserved communities. For example, communities with strong enforcement provisions in their TRL ordinances have significantly lower rates of illegal tobacco sales to youth.²¹ And one study found that the odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth access laws.²² The following sections address the rationale and evidence base for specific policies in greater detail.

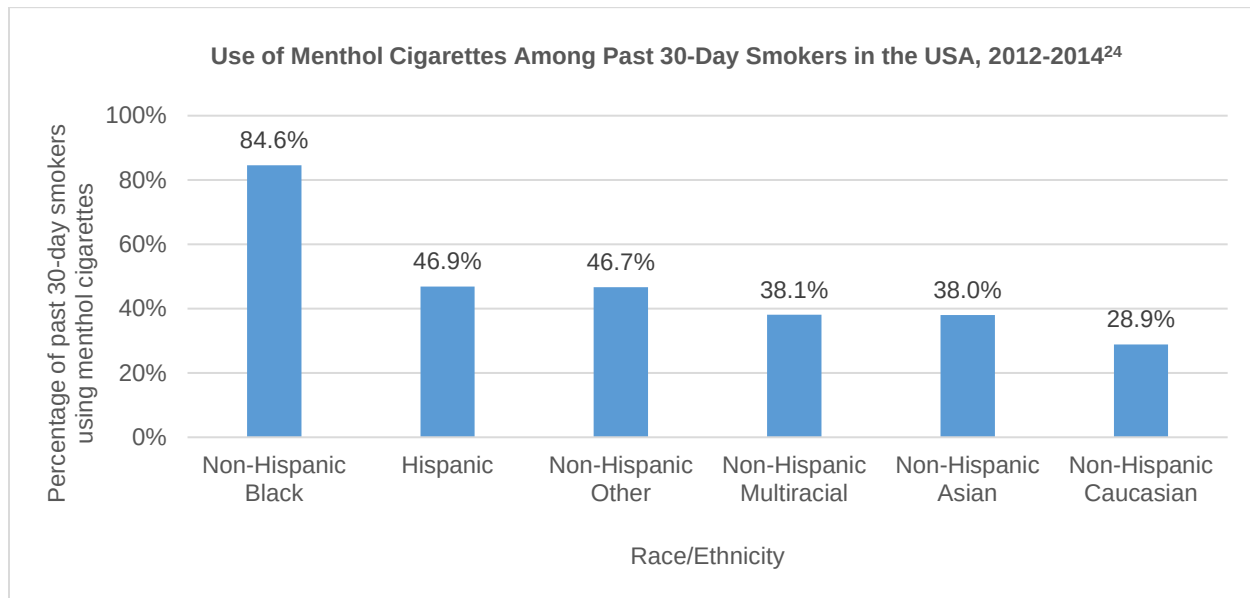
d. Menthol Cigarettes and Other Flavored Tobacco Products

The 2009 Tobacco Control Act banned flavored cigarettes.²³ However, the law exempts menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco and electronic smoking devices. Moreover, California doesn't have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.

Flavored tobacco products are considered "starter" products that help establish long-term tobacco use, and they are particularly appealing to youth and young adults.²² These products also pose significant barriers to achieving health equity. Thanks to tobacco companies' marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ+ communities are significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the burden of tobacco-related harm.⁹

Menthol cigarettes are of particular concern because despite decreases in overall cigarette use, the proportion of cigarette smokers who use menthol cigarettes continues to rise.²⁴ Tobacco companies add menthol to their products because the crisp, minty flavor masks the natural harshness and taste of tobacco, making the products milder and therefore easier to use and more appealing to youth and new users.^{25,26} Smoking menthol cigarettes is also associated with being more likely to use cigars²⁴ and reduced likelihood of successfully quitting smoking.²⁶⁻²⁸

Moreover, menthol cigarettes present significant equity concerns. The tobacco industry has a well-documented history of developing and marketing menthol tobacco products to underserved communities, including communities of color and youth.⁶ Comprehensive scientific reviews by the FDA Tobacco Products Scientific Advisory Committee (TPSAC) found that the marketing of menthol cigarettes likely increases the prevalence of smoking among the entire U.S. population, especially among youth, African Americans, and possibly Hispanic and Latino populations.^{26,27} These groups, as well as members of LGBTQ+ communities and young adults with mental health conditions, bear the greatest burden of menthol cigarette use.^{24,29,30}



Tobacco companies have also developed other flavored tobacco products that have the same youth-friendly characteristics as banned flavored cigarettes. For example, many of the cigar brands that are popular among teens are available in flavors such as apple, chocolate, grape, and peach.²² Smokeless tobacco products, including chewing tobacco, snuff, and snus, also come in flavors such as mint, wintergreen, berry, cherry, and apple.³¹ Hookah tobacco (shisha) is available in an array of fruit, herbal, and alcoholic beverage flavors, and there is a strong—and false—perception among young people that smoking hookah is safer than smoking cigarettes.³² Nicotine solutions, which are also known as e-liquids and are used with e-cigarettes, are sold in dozens of flavors that are attractive to youth, such as cotton candy and bubble gum.³³ In fact, among middle and high school e-cigarette users, the availability of flavors was the second most common reason for using the product (31%).³⁴ Like menthol, these flavorings help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products.²⁵

Consumption of flavored tobacco products has grown in recent years. Between 1995 and 2008, sales of little cigars increased by 316%.³⁵ Between 2008 and 2015, sales of flavored cigars increased by nearly 50% and in 2015, made up more than half of all cigar sales.³⁶ A 2013–2014 survey found that “80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product.”^{37,38} In 2014, nearly two-thirds of U.S. middle school and high school cigar smokers reported using flavored cigars, and more than 1.5 million students reported using a flavored e-cigarette within the past 30 days.³⁹ Moreover, a 2013–2014 survey found higher rates of flavored cigar use among underserved populations, including “cigar smokers with lower income, with less education and those who were lesbian, gay or bisexual.”⁴⁰

Young people, people of color, low-income populations, and LGBTQ+ communities are much more likely to use menthol-, candy-, and fruit-flavored tobacco products. These products are considered “starter” products that help establish long-term tobacco use. Menthol cigarettes in particular pose a

significant barrier to achieving health equity given the disproportionate use and related burden among underserved communities. Policy interventions designed to regulate products that get people hooked on tobacco, such as restrictions on the sale of flavored tobacco products, can directly address the public health and equity consequences associated with tobacco use.

e. Tobacco Product Pricing

The link between the price of tobacco products and consumption is well established, especially among youth.^{2,22,41-46} When tobacco products cost more, fewer people use tobacco because fewer start and more quit.^{2,41-44,46} In fact, it is estimated that a 20% price increase on a pack of cigarettes reduces demand by 10.4%, decreases the prevalence of adult tobacco use by 3.6%, and decreases initiation of tobacco use among young people by 8.6%.⁴² There is also sufficient evidence that increases in the price of non-cigarette tobacco products reduces consumption for those products and that unequal price increases across products can lead to substitution from one product to another.⁴⁷⁻⁴⁹

Excise taxes are one of the most common methods to increase the price of tobacco products and raise revenue while also realizing the public health benefits associated with such increases such as decreased consumption.⁴⁶ The federal government, all 50 states, and Washington, D.C., currently impose excise taxes on cigarettes.⁵⁰ Many jurisdictions also tax other tobacco products.⁵¹ However, California state law preempts (ie, prohibits) cities and counties from imposing additional taxes on tobacco products.⁵²

The tobacco industry also spends millions of dollars each year to heavily promote and strategically price their products, often to counteract cigarette and other tobacco product tax increases.⁵³ Indeed, in 2016, despite a decrease in the number of cigarettes sold from 2015 by 3.7 billion units, the amount the tobacco industry spent on cigarette advertising and promotion increased from \$8.3 billion to over \$8.7 billion.⁵⁴ Of that amount, the industry spent \$380 million on coupons for consumers and another almost \$7.9 billion on price discounts and promotional allowances for retailers and wholesalers.⁵⁴ This includes off-invoice discounts, “buy downs,”ⁱⁱⁱ “master type” programs,^{iv} voluntary price reductions, volume rebates, value-added services, and incentive payments.⁵⁴ And their efforts result in price-discounted sales accounting for a substantial proportion of all tobacco sales.⁵⁵

Evidence suggests that tobacco companies deliberately target youth and underserved communities with price discounts and coupons,^{44,56-58} undermining the effects of tax increases on youth smoking initiation, especially among youth aged 14 to 17 years.^{57,59} Tobacco industry price reduction strategies also appeal to adult tobacco users, with nearly 20% of adult cigarette smokers using

ⁱⁱⁱ A “buy down” is a reimbursement program that allows retailers to provide customers an immediate price reduction on certain brands for a specific period of time, eg, 50 cents off each pack of Marlboro cigarettes sold from the store’s inventory for 30 days. The consumer gets an instant price reduction and, at the end of the incentive period, the manufacturer reimburses the retailer for the price reductions on the cigarettes sold at the reimbursed price.

^{iv} A “master type” program is a promotional program sponsored by the manufacturer and administered through a cigarette wholesaler. The wholesaler agrees to pay the retailer a rebate and is later reimbursed by the manufacturer. The wholesaler may also be paid a fee to administer the program. The payments are not deducted from the manufacturer’s list price shown on the invoice from the manufacturer but are paid or credited separately after the sale to the retailer.



coupons and other price discounts to purchase cigarettes.⁶⁰ Other studies have found that more than half of U.S. adult cigarette smokers use price minimization strategies.⁶¹

Non-tax policy interventions can counter these industry price-discounting strategies and have the potential to produce significant public health and equity benefits. For example, one study estimated the number of smokers would decrease by more than 13% if price discounts were prohibited across the country.⁵⁹ Another study modeling the potential effects of a nationwide minimum price for cigarettes found that “a \$10 minimum price could reduce sales by over 5 billion packs per year and induce cessation by over 10 million smokers.”⁶² Examples of non-tax policy interventions to address tobacco product pricing include

- (1) prohibiting the redemption of tobacco product discounts, coupons, and promotions;
- (2) establishing a minimum package size for little cigars and cigars; and
- (3) establishing minimum prices (ie, price floors) for tobacco products such as cigarettes, little cigars, and cigars.

i. Prohibit the Redemption of Tobacco Product Discounts, Coupons, and Promotions

Prohibiting the redemption of tobacco product discounts, coupons, and promotions presents one strategy for addressing tobacco product pricing. For example, this policy could prohibit retailers from accepting coupons allowing the purchase of tobacco products below a base price, selling tobacco products via any type of discount or promotion that drops the price below a base price, and giving away anything for free or at a discount with the purchase of any tobacco product. The purpose of this policy option is to prohibit price discrimination^v and increase the cost of low-cost tobacco products. A uniform pricing policy (ie, a prohibition on price discrimination) diminishes the tobacco industry’s ability to capture more price-sensitive consumers, including youth and lower-income individuals. This approach is most likely to impact the behavior of populations particularly affected by price increases and may not have as significant an impact on higher-income individuals who may not rely on coupons or discounts.

The California state law prohibiting those engaged in the sale or distribution of cigarettes or smokeless tobacco from distributing coupons to obtain those products for free or a nominal cost applies only to certain locations, includes several exemptions, and does not address other tobacco products like cigars and electronic smoking devices.⁶³ Given these limitations and the state law’s focus on coupon *distribution*, more recent policies have taken a different approach.

Local governments in Oakland, California; Providence, Rhode Island; New York City, New York; and Chicago, Illinois have laws that prohibit coupon redemption and tobacco discounts.⁶⁴⁻⁶⁷ Focusing on the redemption of coupons rather than their distribution provides a more comprehensive approach to eliminating tobacco industry price discounting schemes and may help communities avoid legal

^v Price discrimination is a method by which manufacturers and retailers draw in more consumers by selling the same product at different prices to different consumers. Price discrimination allows retailers to capture sales from consumers at a regular price without losing sales from more price-sensitive consumers.

challenges. These laws, however, reference a base price (defined in this Model Ordinance as “Full Retail Price”) that, without a minimum price provision in place, could still be manipulated. Nonetheless, these laws present a valuable policy option for increasing the cost of tobacco products, and multiple federal courts have upheld the authority for local governments to enact such policies.^{68,69}

ii. Establish a Minimum Package Size for Little Cigars and Cigars

Federal law requires that cigarettes be sold in packages containing at least 20 cigarettes,⁷⁰ but there are no minimum package size requirements for other tobacco products. This is especially concerning given the rising popularity of little cigars and cigars. From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%.³⁵ Additionally, while federal law prohibits the sale of most flavored cigarettes and individual cigarettes, these types of sales are not prohibited for other tobacco products. Thus, many retailers currently sell flavored cigars, little cigars, and cigarillos individually, making them more affordable to youth.⁷¹

Requiring little cigars and cigars to be sold in packs of a certain size raises the *overall* cost to purchase these products, even if the price *per* little cigar or cigar does not change. Increasing the amount of tobacco products purchased in a single transaction may seem counterintuitive, but raising the cost barrier is expected to improve public health and protect price-sensitive youth.^{22,45} However, minimum package size requirements are most effective when paired with minimum price policies.

iii. Establish Minimum Price Floors for Tobacco Products

Neither California state nor federal law establishes a minimum price for tobacco products, resulting in 84% of assessed licensed tobacco retailers across California in 2013 selling cigarettes for less than \$5 and 74% of stores selling a Swisher Sweet cigarillo for less than \$1.⁷² The same study found that “the cheapest [cigarette] pack price was significantly lower in [communities] with higher proportions of African American and Hispanic residents, in neighborhoods with higher proportions of school-age youth and young adults, and in neighborhoods with lower median household income.”⁷² Establishing a minimum price floor is one way to address these disparities.

At least 25 states (including DC) have enacted minimum markup and related laws, but these laws have historically focused on prohibiting unfair competition rather than protecting public health and typically require a minimum percentage markup to be added to the wholesale and/or retail price.⁴³ These minimum markup laws remain vulnerable to price manipulation by the tobacco industry⁷³ and may be more difficult for local jurisdictions to enforce.

Local jurisdictions can take a different approach by establishing a minimum price floor for the sale of certain tobacco products (eg, cigarettes, little cigars, and cigars). For example, a local jurisdiction can specify that cigarettes and little cigars must not be sold for less than \$7. Minimum price floors have become increasingly popular, and New York City recently became the first jurisdiction to enact price floors for many non-cigarette tobacco products such as smokeless tobacco, snus, loose tobacco, and

tobacco-containing hookah shisha.⁶⁵ A number of local California jurisdictions have enacted similar policies, setting a floor price for cigarettes,^{74,75} little cigars, and cigars,⁷⁴⁻⁷⁶ with at least one also establishing minimum prices for other tobacco products.⁷⁵ Because these types of policies are relatively new, only limited research is available on their effects. However, preliminary evidence suggests that establishing a minimum price for tobacco products is a promising strategy to reduce tobacco use and tobacco-related health disparities.⁷⁷⁻⁷⁹

f. Tobacco Retailer Location and Density

In 2012, there were approximately 36,700 licensed tobacco retailers in California.⁸⁰ Where tobacco retailers are located, the total number of tobacco retailers and the concentration of tobacco retailers in particular communities affect the availability of tobacco products and exposure to tobacco advertising and marketing, all of which affect tobacco use rates. A greater availability of tobacco products is associated with both youth and adult smoking,^{81,82} even when other neighborhood factors are taken into consideration.⁸³ Tobacco retailer location and density also heavily contribute to social inequities as retailers are more prevalent in lower-income areas^{84,85} and communities in which a greater percentage of residents identify as African American^{84,85} or Hispanic,⁸⁴ which perpetuates disparities in tobacco use and associated negative health effects. Reducing the availability of tobacco products by regulating the location and density of tobacco retailers is expected to improve public health and health equity.

Local governments set density and location restrictions for a variety of buildings and uses based on their community plans and development goals. Land use tools such as zoning ordinances and conditional use permits are common for such restrictions. With respect to tobacco retailers, communities are increasingly using TRL to achieve similar results while providing for more robust enforcement of both the density and location restrictions as well as other tobacco control laws. ChangeLab Solutions' resource *Licensing & Zoning: Tools for Public Health* includes additional information on the differences between licensing and zoning, including the benefits and drawbacks to each approach.

Communities can take a variety of approaches to regulate where tobacco retailers may locate and can limit the number of available tobacco retailer licenses. The right approach for a particular community will depend on the existing landscape of tobacco retailer locations, population demographics, a community's current land use practices, and other policy adoption, implementation, and enforcement considerations. The following sections provide examples of potential strategies for regulating the location and density of tobacco retailers, as well as the evidence base for each strategy.

i. Restrict Tobacco Retailers Near Residential and Youth Areas

Research shows that children are more likely to experiment with, and use, tobacco products when tobacco retailers are located near homes.^{86,87} Studies have also found positive associations between student smoking and the number and density of tobacco retailers near schools.^{88,89} Tobacco retailers



near schools with high smoking rates have also been shown to have lower cigarette prices and more in-store promotions.⁹⁰

Adult smoking rates are also positively associated with higher tobacco retailer density near their home,⁹¹ and individuals with mental health needs may also be particularly vulnerable.⁹² Living near tobacco retailers also appears to negatively affect the ability for smokers to quit smoking.⁹³ Given this evidence, restricting tobacco sales within residential zones and within certain distances from areas where youth often gather such as schools, playgrounds, libraries, and child care centers may help reduce both youth and adult smoking rates. Various studies that have mapped the location of tobacco retailers have shown that communities can eliminate a substantial amount of tobacco product access and exposure by creating, for example, a 1,000-foot buffer zone around schools.⁹⁴

ii. Regulate the Proximity of Tobacco Retailers to Other Tobacco Retailers and Cannabis Retailers

In addition to its effects on youth tobacco use, excessive tobacco retailer density may exacerbate disparities in tobacco use and tobacco-related harm. Evidence consistently demonstrates that high tobacco retailer density in lower-income neighborhoods is associated with greater access to tobacco.^{83,95,96} More recent research has also linked high tobacco retailer density to lower life expectancy, underscoring the importance of policies that reduce tobacco retailer density to advancing more equitable public health outcomes.⁹⁶ Research has also found social inequities in the location and density of alcohol outlets and medical cannabis dispensaries, with these outlets and dispensaries disproportionately located in underserved communities.⁹⁷

Market conditions resulting from the concentration of tobacco retailers in a particular geographic area may also impact community health. For example, competition among retailers can lead to special promotions such as sales or discounts that drive additional demand and increase smoking by youth, who are particularly sensitive to the cost of tobacco products.^{44,45,98}

Regulating how closely tobacco retailers may locate near other tobacco retailers and cannabis retailers is one strategy for addressing the overconcentration of these businesses in particular communities. For example, a community can prohibit new tobacco retailers from operating within 500 feet of an existing tobacco retailer, which would limit increases in density and potentially even reduce density through attrition as existing retailers close or relocate.

iii. Limit the Number of Tobacco Retailer Licenses Available

Communities looking to address tobacco retailer density may also consider limiting the number of available tobacco retailer licenses. This approach is common in the alcohol context, where it is scientifically accepted that limiting alcohol outlet density will lead to less underage drinking, excessive drinking, and alcohol-related harm.⁹⁹ California state law limits the number of retailers in a city or county that may sell alcohol for consumption off premises to one license per 2,500



inhabitants.¹⁰⁰ State law does not include any similar restrictions for tobacco retailers, but cities and counties can adopt local laws limiting the number of available tobacco retailer licenses.

Importantly, with tobacco retailer density often being highest in underserved communities,^{84,101-103} a single limit on the number of licenses using the overall population size or even capping the total number of licenses to be issued will not necessarily prevent stores from clustering in certain areas. Instead, a combination of strategies or more localized limitations are necessary.

For example, San Francisco's density reduction ordinance, which went into effect in 2015, combines multiple strategies to address excessive tobacco retailer density in many underserved communities. It establishes a cap on the total number of tobacco retailer licenses (45) for *each district* within the city. Significant disparities in the number of licensed tobacco retailers in each district existed when the city adopted the policy, ranging from 37 licensed retailers in a district with a median household income of over \$94,000 to 180 licensed retailers in a district whose median income was just below \$37,500. Given these preexisting disparities, the added geographical element to San Francisco's density reduction policy has and is expected to continue to reduce tobacco retailer density most significantly in those districts disproportionately affected by an overconcentration of tobacco retailers.¹⁰⁴

g. Types of Retailers and Delivery

Restricting the types of businesses eligible for tobacco retailer licenses and requiring on-site sales of tobacco products are additional approaches to reduce the availability and accessibility of tobacco products.

i. Prohibit Tobacco Sales in Pharmacies and Other Health Facilities

In 2015, 14.3% of tobacco retailers in the country had a pharmacy counter.¹⁰⁵ This was despite CVS, one of the largest pharmacy chains in the country, voluntarily stopping selling tobacco products and more than half of state attorneys general encouraging five of the nation's largest retail pharmacies to cease selling tobacco products in their stores.¹⁰⁶

Sales of harmful tobacco products in pharmacies and other health-promoting organizations like hospitals and behavioral health facilities present an inherent conflict of interest and send mixed messages about the health risks posed by tobacco. Notably, research has also found that cigarettes are significantly cheaper in pharmacies despite other common consumer goods such as bottled water costing more in pharmacies than in other stores.¹⁰⁷ Thus, prohibiting tobacco sales in pharmacies and other health-promoting organizations not only decreases the availability of tobacco products, but also removes a source of discounted cigarettes.

Communities that have adopted policies prohibiting tobacco sales in pharmacies have seen up to three times greater reduction in tobacco retailer density compared with communities that have not adopted such policies.¹⁰⁸ Additional evidence from the nationwide CVS policy change also showed



that cigarette purchases declined and that smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely.¹⁰⁹

ii. Prohibit Mobile Tobacco Product Sales and Delivery

The California Department of Tax and Fee Administration has interpreted state law, the CTPLA, as prohibiting the licensure of mobile tobacco vendors.¹⁰ Prohibiting mobile sales ensures that enforcement agencies can conduct regular compliance checks at a tobacco retailer's permanent place of business. If a retailer sells tobacco products from a vehicle or on foot, it is difficult to conduct decoy operations or other inspections, since the retailer doesn't remain in the same location on a consistent basis.

The STAKE Act places restrictions on mail order and internet sales of tobacco products, including electronic smoking devices, but exempts the U.S. Postal Service and other common carriers from penalties when they deliver a package without any reason for knowing the package's content.¹¹⁰ The federal Prevent All Cigarette Trafficking Act of 2009 ("PACT Act") also places restrictions on mail order and internet sales of cigarettes and smokeless tobacco but exempts other tobacco products, does not clearly address delivery carriers, and limits state and local authority to fill in the gaps.¹¹¹ Additionally, while the Tobacco Control Act directed the FDA to issue regulations on mail order/internet sales of tobacco products,¹¹² given the PACT Act's passage, the FDA has not yet issued those regulations.¹¹³ Finally, portions of the PACT Act and other states' efforts to regulate internet tobacco sales have faced legal challenges, leaving much uncertainty about how to proceed at all levels of policymaking and enforcement on this issue.

Still, mail order and internet sales and delivery of tobacco products, especially electronic smoking devices, remain problematic.^{114,115} Local governments can take some limited steps by prohibiting retailers within their jurisdiction from selling products except at the licensed place of business (ie, strictly requiring on-site sales of tobacco products).

II. Comprehensive Tobacco Retailer Licensing Model Ordinance

This version of the Model Ordinance (revised in February 2019) includes five major revisions:

- (1) **Incorporates "plug-in" policies:** The prior version of the Model Ordinance included only core provisions related to TRL, such as requiring an annual license to sell tobacco products; establishing a license fee sufficient to cover implementation and enforcement costs; specifying that it is a violation of a license to violate any local, state, or federal tobacco control law; and establishing meaningful penalties for violations including license suspension or revocation. As more communities throughout California have adopted TRL, it has become evident that a more comprehensive approach to regulating the tobacco retail environment is necessary to further reduce tobacco-related harm and inequities. This version of the Model Ordinance reflects this by incorporating certain "plug-in" policies with well-established evidence bases. This includes prohibiting the sale of menthol cigarettes and other flavored

tobacco products, requiring minimum package sizes and prices for certain tobacco products, prohibiting tobacco retailers from locating near youth-populated areas or in pharmacies, and regulating the density of tobacco retailers.

- (2) **Updated the definition of *Tobacco Product*:** This version of the Model Ordinance includes an updated definition of *Tobacco Product*. The revised tobacco product definition (1) incorporates the previously separate definition of electronic smoking device; (2) specifies that components, parts, and accessories qualify as tobacco products if they are intended or reasonably expected to be used with a Tobacco Product; and (3) clarifies the exemption for products approved by the FDA for medical use.
- (3) **Alignment with new state and federal laws:** In 2016, the state of California enacted several new tobacco control laws, including raising the minimum legal sales age for tobacco products to 21. Also in 2016, the FDA exercised its authority under the Tobacco Control Act to regulate all tobacco products, including electronic smoking devices. This version of the Model Ordinance makes various technical amendments to conform to these changes in the state and federal tobacco control regulatory landscape.
- (4) **Require on-site sales:** Both California state law and previous versions of this Model Ordinance prohibit mobile tobacco vending. Nevertheless, the online sale and delivery of tobacco products to underage youth continues to present challenges for jurisdictions seeking to enforce youth access laws. This version of the Model Ordinance takes an additional step to address this issue by limiting the sale and delivery of tobacco products and tobacco paraphernalia within a jurisdiction to locations with a valid tobacco retailer license. It also prohibits a tobacco retailer from knowingly or recklessly selling tobacco products or tobacco paraphernalia to any person who intends to deliver those products to a consumer at a non-licensed location, such as a courier service delivering a tobacco product to a consumer's residence.
- (5) **Youth purchase, use, and possession penalties:** This version of the Model Ordinance clarifies that it does *not* penalize underage youth who purchase, use, or possess tobacco products or tobacco paraphernalia. Rather, the Model Ordinance penalizes only tobacco retailers who sell tobacco products or tobacco paraphernalia to individuals under 21 years old. A comment on pages 43 and 44 provides additional information on why penalizing the purchase, use, and possession of tobacco products by underage youth is not an evidence-based strategy and how such penalties may contribute to health inequities.

III. Additional Considerations

Policies that regulate the sale of tobacco products can raise tensions between the government's duty to protect individual liberty and its duty to promote and protect public health and well-being. Government efforts to regulate any product or industry are often met with resistance and assertions that the market should be allowed to operate free of government intrusion. This stems from the



theory that free markets are most effective and government intervention creates inefficiencies. Some question whether it is appropriate for government to discourage the use of a legal product by devising a regulatory scheme with the specific intent of decreasing sales. But the government does this in many industries. For example, liquor taxes discourage alcohol consumption, grocery bag fees discourage the purchase of disposable plastic bags, and public transit subsidies encourage transit use.

The issue then may be one of degree. The extent to which government seeks to curb tobacco sales may seem excessive compared with other goods and services, but tobacco is unique: There are significant public health risks caused directly by tobacco use. Indeed, tobacco is the only legal consumer product that is deadly when used as intended.^{2,116,117} Moreover, while tobacco industry representatives and retailer associations have argued that there are already laws that prohibit the sale of tobacco products to youth, young people continue to buy and use tobacco products. Overall youth tobacco use did not change significantly between 2011 and 2016. In a 2016 survey, more than 1 in 5 (20.2%) high school students reporting current tobacco use.¹¹⁸ And a jurisdiction's demographics may dictate which policies are most effective at reducing youth tobacco use. For example, while electronic smoking devices are the most common form of tobacco use by non-Hispanic white and Hispanic high school students, non-Hispanic black high school students most commonly use cigars.¹¹⁸

Retailer associations have also asserted that laws restricting tobacco product sales will result in lost revenues for local businesses. Local policymakers have discretion to assess whether the public health risks presented by tobacco products are significant enough that the sale of these products should be regulated, even if such a regulation results in reduced tobacco sales for local retailers. Local governments can also use a variety of strategies such as robust engagement, outreach, and education with retailers to understand their concerns, explain the rationale for specific policies, and inform the retailers about any applicable laws. Local governments may also consider programs that help retailers reduce their reliance on revenue from tobacco product sales. For example, Healthy Retail SF, a program of the City and County of San Francisco, helps retailers sell healthier products.¹¹⁹ ChangeLab Solutions also offers [resources](#) on creating healthier retail environments.

In addition to these more general considerations, specific policies such as increasing the cost of tobacco products and regulating the location and density of tobacco retailers raise additional considerations. Strategies that increase the cost of tobacco products may be considered regressive, meaning that low- to moderate-income individuals pay a higher percentage of their income toward the increased prices than high-income individuals. This can impose a significant financial burden on low-income smokers. And to the extent that low-income smokers continue to smoke, higher tobacco prices decrease their purchasing power for other goods and services (eg, daily needs).

However, any conversation about equity or regressivity should frame the issue in the broader equity context of tobacco use—that is, the tobacco industry has consistently targeted its products disproportionately to underserved communities and youth through predatory marketing. This contributes to the impacts of chronic disease associated with tobacco use being experienced



regressively, or disproportionately, by underserved communities. Increasing the price of tobacco products has been shown to have significant effects on consumption, providing disproportionate health *benefits* to low-income communities. Emerging evidence suggests policies that increase the cost of tobacco products such as establishing minimum prices may *decrease* tobacco-related health inequities.^{77,79}

A criticism of minimum pricing is that it does not necessarily achieve the benefits of a tobacco excise tax. Unlike a tax on an entire class of products (e.g., cigarettes), an established minimum price arguably affects only low-cost brands. Cigarette brands that are more expensive may not be directly affected by the minimum price. Local governments concerned about this outcome can pair a minimum floor price law that affects low-cost brands with a minimum mark-up requirement that affects all brands. An effective minimum pricing policy may also mean that tobacco retailers and manufacturers make more money from tobacco sales. This may sound counterintuitive to policymakers, but it nevertheless may simply be a side effect of increasing tobacco prices through minimum pricing. Moreover, tobacco retailers and manufacturers may be less likely to oppose minimum pricing policies if the policy will increase their revenues.

Evidence suggests increasing prices for tobacco products can encourage an illicit market for these products.^{120,121} An illicit market of cheap tobacco products negates, at least to some degree, the beneficial public health impact of increased prices. Ultimately, this is a balancing act. Local governments are responsible for weighing the public health benefits of higher tobacco prices against the unintended consequences of a potential illicit market for tobacco products. Local governments may address illicit market issues by tailoring pricing policies to raise prices enough to reduce consumption but at levels insufficient to incentivize the creation of an illicit market. They can also address illicit market issues with appropriate, equitable enforcement, though this requires adequate resources.

Additional considerations are also relevant to policies regulating the location and density of tobacco retailers, particularly with respect to avoiding unintended consequences. Jurisdictions pursuing location and density restrictions should carefully consider pre-existing inequities in the location and distribution of tobacco retailers. A policy establishing a single cap on the number of available tobacco retailer licenses may be less likely to reduce an overconcentration of retailers in underserved communities compared with policies that incorporate more granular geographic restrictions. Instituting a minimum distance requirement between tobacco retailers may also inadvertently increase tobacco retailer density in other parts of a community. Finally, jurisdictions may consider which retailers will be most affected by any location and density restrictions and take steps to mitigate any negative effects on those retailers. For example, many tobacco retailers are owned and/or operated by members of underserved communities, and policies affecting the tobacco retail environment may affect economic inequities. Given these considerations, jurisdictions should evaluate which combination of location and density restrictions are best suited to address their communities' unique characteristics and how best to balance the strongest public health protections with any secondary effects.



This Introduction and Report does not include a comprehensive summary or analysis of relevant legal authorities. This information is available in ChangeLab Solutions' stand-alone model ordinances and associated resources. If you have questions related to legal authority, please contact ChangeLab Solutions via our website at www.changelabsolutions.org/tobaccoquestions.

IV. Conclusion

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

Optional Plug-in Provisions

ChangeLab Solutions has developed a number of supplementary plug-in provisions to accompany the Model Ordinance, any of which can be incorporated into a new ordinance or added to an existing tobacco retailer licensing law. Each plug-in addresses a different concern and provides a policy option. For example, plug-ins can be used to prohibit certain types of retailers from selling tobacco and to restrict the sales of certain products.

Currently, ChangeLab Solutions has a number of plug-in provisions that (1) prohibit tobacco sales at restaurants and bars, (2) prohibit tobacco sales at businesses that allow smoking, (3) prohibit tobacco retailers from selling drug paraphernalia, and (4) provide additional enforcement options for licensing laws. Other plug-in policies previously maintained in a separate document such as tobacco-free pharmacies, limiting the location and density of tobacco retailers, and establishing minimum package size and prices for certain tobacco products have been integrated into this Model Ordinance.

Although the plug-in provisions are intended to be incorporated into the Model Ordinance, some of them can be enacted independently, with revisions. Adopting a plug-in provision both as part of a licensing ordinance *and* as a separate ordinance may provide additional enforcement options. Please consult your local government attorney and/or ChangeLab Solutions if you want to incorporate any of the plug-in provisions into your existing licensing ordinance and/or adopt the provisions as a separate ordinance.

The provisions regarding "No Tobacco Product Sampling" have been removed from this version of the Model Ordinance because state and federal law now prohibit almost all free tobacco product sampling. The plug-in provisions limiting tobacco sales to off-sale alcohol retailers and prohibiting significant tobacco retailers have also been removed, but are available upon request. Please contact ChangeLab Solutions if you have questions regarding these plug-in policies.



Questions?

If you have questions about the Model Ordinance, please contact ChangeLab Solutions via our website at www.changelabsolutions.org/tobaccoquestions.



**AN ORDINANCE OF THE [CITY / COUNTY] OF [*Insert Jurisdiction Name*]
REGULATING TOBACCO PRODUCT SALES, REQUIRING THE LICENSURE OF
TOBACCO RETAILERS, AND AMENDING THE [*Insert Jurisdiction Name*]
MUNICIPAL CODE**

The [City Council of the City / Board of Supervisors of the County] of [*Insert Jurisdiction Name*] does ordain as follows:

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

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

COMMENT: The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. An ordinance based on this Model Ordinance should include findings of fact—data, statistics, relevant epidemiological information, for instance—that support the purposes of this ordinance, as well as any legal precedent that directly supports the ordinance. In addition to serving an educational purpose and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts will generally defer to legislative determinations of factual issues, which often influence legal conclusions. A list of findings supporting this Model Ordinance appears in “Appendix A: Findings” on page 50. Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

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

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

- (a) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this [article / chapter] is not an Arm’s Length Transaction.
- (b) “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

- (c) “Cannabis Product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

COMMENT: California state law prohibits the sale of Tobacco Products or alcoholic beverages at premises licensed to engage in Commercial Cannabis Activity (eg, Cannabis retailers, cultivators, manufacturers, and distributors). Although this Model Ordinance does not directly regulate Cannabis, it does include several Cannabis-related limitations on Tobacco Retailers. For example, this Model Ordinance prohibits new Tobacco Retailers from opening within a specified distance from businesses engaged in the retail Sale of Cannabis and Cannabis Products.

- (d) “Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.
- (e) “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its Packaging and Labeling, is likely to be offered to, or purchased by, Consumers as a Cigarette described herein.
- (f) “Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- (g) “Commercial Cannabis Activity” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- COMMENT:** This term refers to conduct that requires a California state commercial Cannabis license, including “the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in [Cal. Bus. & Prof. Code Division 10].”
- (h) “Consumer” means a Person who purchases a Tobacco Product for consumption and not for Sale to another.
- (i) “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to

obtain an article, product, service, or accommodation without charge or at a discounted price.

- (j) “Department” means [*Insert Department Name*] and any agency or Person designated by the Department to enforce or administer the provisions of this [article / chapter].

COMMENT: This term is used in the Model Ordinance to refer to the city or county agency charged with issuing licenses and enforcing the Ordinance. The primary enforcing agency may designate additional agencies to assist in administering and/or enforcing the Ordinance.

- (k) “Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

COMMENT: This definition of Flavored Tobacco Product includes Cigarettes. Although federal law prohibits the manufacture of flavored Cigarettes, it contains an exemption for menthol Cigarettes. Moreover, neither federal nor California state law regulates the sale of flavored non-Cigarette Tobacco Products such as Little Cigars, smokeless tobacco, and e-cigarettes. This Model Ordinance is more restrictive than federal and state law because it prohibits the sale of all Flavored Tobacco Products, including menthol Cigarettes and flavored non-Cigarette Tobacco Products.

- (l) “Full Retail Price” means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.
- (m) “Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- (n) “Little Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. “Little Cigar” includes, but is not limited to, Tobacco Products known or labeled as small cigar, little cigar, or cigarillo.
- (o) “Manufacturer” means any Person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.
- (p) “Package” or “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is Sold or offered for Sale to a Consumer.

- (q) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

COMMENT: The Municipal Code likely contains a definition of “person” and, if so, the definition provided here can be omitted.

- (r) “Proprietor” means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

COMMENT: This term is defined to help prevent sham ownership changes made to evade the license penalty provisions.

- (s) “Sale” or “Sell” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.
- (t) “Self-Service Display” means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.
- (u) “Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- (v) “Tobacco Product” means:
- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
 - (2) any electronic device that delivers nicotine or other substances to the Person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
 - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include drugs, devices, or combination



products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

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

- (w) “Tobacco Retailer” means any Person who Sells, offers for Sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered for exchange.
- (x) “Youth-Populated Area” means a parcel [in the [City / County]] that is occupied by:
- (1) a private or public kindergarten, elementary, middle, junior high, or high school;
 - (2) [a library open to the public;]
 - (3) [a playground open to the public;]
 - (4) [a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;]
 - (5) [a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. “Recreation facility” includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;]
 - (6) [an arcade open to the public;]
 - (7) [a park open to the public or to all the residents of a private community;]
 - (8) [a licensed child-care facility or preschool [other than a small-family day care facility [or a large-family day care facility] as defined in California Health & Safety Code § 1596.78];]
 - (9) [_____].

COMMENT: This term is used to prevent Tobacco Retailers from locating near areas frequented by youth and young adults. Research shows that youth are more likely to experiment with Tobacco Products when Tobacco Retailers are located near schools and other areas where youth frequently gather. Restricting Tobacco Product Sales within a certain distance of these “Youth-Populated Areas” may help reduce youth tobacco use.

Small-family day care facilities are allowed on residentially zoned property and are limited to 8 or fewer children under age 10. Large-family day care facilities with up to 14 children under age 10 are also allowed on residentially zoned property. Depending on the number and location of these facilities, some communities might consider excluding them from the limitations where Tobacco Retailers may locate.

Sec. [____ (*2)]. GENERAL REQUIREMENTS AND PROHIBITIONS.

- (a) **TOBACCO RETAILER’S LICENSE REQUIRED.** It shall be unlawful for any Person to act as a Tobacco Retailer in the [City / County] without first obtaining and maintaining a valid Tobacco Retailer’s license pursuant to this [article / chapter] for each location at which Tobacco Retailing is to occur. Tobacco Retailing without a valid Tobacco Retailer’s license is a nuisance as a matter of law.

COMMENT: This is the primary operative section of the Model Ordinance. It requires a license for each retail location. So, for example, a supermarket chain would need a Tobacco Retailer license for each store. Note that this Ordinance uses the term “license,” but a city or county could choose to label the requirement a “permit,” as the two terms are generally interchangeable. The term used should be consistent with other provisions of the city or county code to which this Ordinance is added.

- (b) **LAWFUL BUSINESS OPERATION.** In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article / chapter] for a licensee, or any of the licensee’s agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

COMMENT: This provision makes licensing an effective tool for comprehensively enforcing tobacco control laws. A city or county can use the license suspension provisions to encourage compliance with all tobacco-related laws. This provision also gives a city or county additional enforcement options. The local jurisdiction may enforce the underlying tobacco law—such as the prohibition on selling tobacco to youth (Penal Code section 308 or the STAKE Act). It may also discourage illegal behavior by suspending or revoking a license. Losing the right to sell Tobacco Products for a period of time will likely be a bigger financial deterrent than an occasional fine imposed under other laws.

- (c) **DISPLAY OF LICENSE.** Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (d) **POSITIVE IDENTIFICATION REQUIRED.** No Person engaged in Tobacco Retailing shall Sell a Tobacco Product or Tobacco Paraphernalia to another Person who is under the age of [twenty-seven (27)] years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age for Sale of Tobacco Products as established by state law.

COMMENT: This provision deliberately omits stating a specific age, such as 21, so the Ordinance will not need to be amended if state law changes the minimum legal sales age for Tobacco Products and/or Tobacco Paraphernalia.

- (e) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco Retailing by means of a Self-Service Display is prohibited.

COMMENT: This provision goes beyond state law because it does not provide an exception for tobacco stores that restrict access to minors. As a result, this provision would prohibit Self-Service Displays of Tobacco Products by all Tobacco Retailers.

- (f) **ON-SITE SALES.** All Sales of Tobacco Products and Tobacco Paraphernalia to Consumers shall be conducted in-person at the licensed location. It shall be a violation of this [article / chapter] for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to Deliver Tobacco Products or Tobacco Paraphernalia or to knowingly or recklessly Sell Tobacco Products or Tobacco Paraphernalia to any Person that intends to Deliver the Tobacco Product or Tobacco Paraphernalia to a Consumer in the [City / County]. For purposes of this subsection, "Deliver" means the commercial transfer of Tobacco Products or Tobacco Paraphernalia to a Consumer at a location not licensed pursuant to this [article / chapter].

COMMENT: Prohibiting the delivery of Tobacco Products to Consumers aids in enforcement by ensuring that communities can conduct regular inspections at a Tobacco Retailer's licensed place of business. This subsection requires that all Sales of Tobacco Products and Tobacco Paraphernalia to Consumers occur at a business location licensed to engage in Tobacco Retailing under this Ordinance.

This subsection also makes it a violation of a Tobacco Retailer's license to *knowingly* or *recklessly* Sell a Tobacco Product or Tobacco Paraphernalia to a Person who intends to deliver the Tobacco Product or Tobacco Paraphernalia to a Consumer at a location not licensed to engage in Tobacco Retailing. The "knowingly or recklessly" requirement prevents a Tobacco Retailer from being penalized unless the retailer actually knew or reasonably should have known that the Person purchasing the Tobacco Product or Tobacco

Paraphernalia intended to deliver it to a Consumer at a non-licensed location.

Importantly, this subsection does *not* penalize a Tobacco Retailer for selling a Tobacco Product or Tobacco Paraphernalia to a Person who intends to transfer such products for non-commercial purposes, such as an individual purchasing these products for a family member or friend.

(g) **FALSE AND MISLEADING ADVERTISING PROHIBITED.** A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:

- (1) shall keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute Tobacco Retailing without a license under Section [____(*14)]; and
- (2) shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the Sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable Consumer to believe that such products can be obtained at that location.

COMMENT: This subsection provides that a retailer who cannot legally Sell Tobacco Products or Tobacco Paraphernalia may not display or advertise such products. To do so would be misleading to Consumers (see California Business & Professions Code Section 17500) and could invite illegal Sales. The First Amendment does not protect false commercial speech.

(h) [(The City or County may wish to add other desired requirements that, if violated, will constitute a violation of the license.)]

Sec. [____ (*3)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

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

COMMENT: Some communities have taken other, less comprehensive approaches to restricting the Sale of Flavored Tobacco Products, such as "buffer zones" and limiting the Sale of these products to adult-only tobacco stores. These approaches are important interventions, but they're not comprehensive prohibitions on Flavored Tobacco Product Sales. Communities should weigh the benefits and drawbacks of each approach.

"Buffer zones" prohibit the Sale of Flavored Tobacco Products within a specific distance of

Youth-Populated Areas, such as schools. An adult-only tobacco store approach limits the Sale of Flavored Tobacco Products to stores that primarily Sell Tobacco Products, derive a specified percentage of their annual revenue from Tobacco Products and Tobacco Paraphernalia, and prohibit Persons under the age of 18 from entering without a parent or legal guardian. Some jurisdictions also impose additional requirements on these stores, such as prohibiting them from selling alcohol or food for consumption on the premises.

These approaches may not provide the same public health benefits as a comprehensive, communitywide restriction on the Sale of Flavored Tobacco Products, and they are more complicated to implement and enforce. For example, buffer zones require the creation and maintenance of mapping surveys to determine the location of Tobacco Retailers, Youth-Populated Areas, and the distances between them. Buffer zones may also require more extensive education efforts and the development of tools and resources for Tobacco Retailers to determine whether their store is within a buffer zone. Similarly, restricting Flavored Tobacco Product Sales to adult-only tobacco stores requires tracking Tobacco Retailers' annual sales receipts to ensure they meet the specified requirements.

Despite these considerations, buffer zones and adult-only tobacco stores remain viable policy options for communities that wish to pursue less comprehensive restrictions on the Sale of Flavored Tobacco Products. If your community is interested in adopting one or more of these approaches, please contact ChangeLab Solutions for assistance.

- (b) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including, but not limited to, individual Flavored Tobacco Products, Packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to Sell or offer for Sale.
- (c) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:
 - (1) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
 - (2) used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
 - (3) taken action directed to Consumers that would be reasonably expected to cause Consumers to believe the Tobacco Product imparts a Characterizing Flavor.

COMMENT: This Model Ordinance penalizes only Tobacco Retailers who Sell or offer to Sell Flavored Tobacco Products, *not* individuals who purchase, attempt to purchase, possess, or use Flavored Tobacco Products.



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

Sec. [____ (*4)]. TOBACCO PRODUCT PRICING AND PACKAGING.

- (a) **PACKAGING AND LABELING.** No Tobacco Retailer shall Sell any Tobacco Product to any Consumer unless such product: (1) is sold in the original Manufacturer’s Packaging intended for Sale to Consumers; and (2) conforms to all applicable federal Labeling requirements.
- (b) **DISPLAY OF PRICE.** The price of each Tobacco Product offered for Sale shall be clearly and conspicuously displayed to indicate the price of the product.
- (c) **PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS.** No Tobacco Retailer shall:
 - (1) honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than the Full Retail Price;
 - (2) Sell any Tobacco Product to a Consumer through a multiple-Package discount or otherwise provide any such product to a Consumer for less than the Full Retail Price in consideration for the purchase of any Tobacco Product or any other item; or
 - (3) provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.

COMMENT: This subsection prohibits the following types of discounts:

- (1) Redemption of any Coupons, whether the Consumer obtains the Coupon in the store or elsewhere (eg, magazine, online printout, mailer, or phone app);
- (2) Discounts to reward Consumers for buying more than one Tobacco Product (eg, “Buy two packs of cigarettes, get one free,” “buy five Cigars, get a pack of Cigarettes for half price”); and
- (3) Discounts for other items (eg, “Buy a pack of Cigarettes and get a free lighter”).

(d) **MINIMUM PACKAGE SIZE FOR LITTLE CIGARS AND CIGARS.** No Tobacco Retailer shall Sell to a Consumer:

- (1) any Little Cigar unless it is sold in a Package of at least [twenty] Little Cigars;
or
- (2) any Cigar unless it is sold in a Package of at least at least [six] Cigars [;
provided, however, that this subsection shall not apply to a Cigar that has a price
of at least [\$X.00] per Cigar, including all applicable taxes and fees].

COMMENT: This subsection requires a minimum pack size for Little Cigars and Cigars. Requiring Little Cigars and Cigars to be sold in packs of a certain size raises the cost barrier to purchase these products. The purpose of this subsection is not to directly raise the price of Little Cigars and Cigars; rather, the purpose is to raise the cost of any single transaction. Section *4(e) directly establishes a price floor for these products.

The minimum Package size of twenty (20) Little Cigars is consistent with the minimum Package size for Cigarettes established by federal law. An option is provided to set a different minimum Package size for Little Cigars; however, because Little Cigars and Cigarettes are very similar, establishing different minimum Package sizes may simply encourage the substitution of one product for the other.

Subsection (2) provides an option to exempt Cigars that meet a certain price threshold. Because the policy goal of a minimum Package size requirement is to raise the cost barrier for any single transaction, the requirement may not be necessary for products that are already expensive enough to deter Sales to youth. For example, a single Cigar that costs \$10 may not need to be sold in a pack of six to deter youth Sales.

(e) **MINIMUM PRICES FOR CIGARETTES, LITTLE CIGARS, AND CIGARS.** No Tobacco Retailer shall Sell to a Consumer:

- (1) Cigarettes at a price that is less than [\$X.00] per Package of 20 Cigarettes, including all applicable taxes and fees;
- (2) Little Cigars at a price that is less than [\$X.00] per Package of Little Cigars, including all applicable taxes and fees; or
- (3) Cigars at a price that is less [\$X.00] per Cigar, including all applicable taxes and fees.

COMMENT: This section directly sets a price floor for the Sale of Cigarettes, Little Cigars, and Cigars. For Cigarettes and Little Cigars, the price floor is set as a minimum price required (eg, \$7) for a *Package* of Cigarettes or Little Cigars. The price floor is set differently for Cigars (*per Cigar* vs. *per Package*) because the number of Cigars in a Package varies greatly.

An option is provided to set different price floors for Cigarettes and Little Cigars; however, because these products are very similar, different price floors may simply encourage purchase of the cheaper alternative. Importantly, subsection (2) is intended to be adopted alongside Section *4(d)(1), which establishes a minimum Package size for Little Cigars. Local jurisdictions interested in adopting a minimum price for Little Cigars without a corresponding minimum Package size should contact ChangeLab Solutions for assistance.

Setting a minimum price for other types of Tobacco Products such as smokeless tobacco, pipe tobacco, and electronic smoking devices requires more careful deliberation due to the manner in which these other products are packaged and sold. Local jurisdictions interested in additional minimum pricing options should contact ChangeLab Solutions for assistance.

- (4) The minimum prices established in this section shall be adjusted annually (percent change in the annual average, not seasonally adjusted) by the Department in proportion with the Consumer Price Index: all urban consumers for all items for the [*Insert Statistical Area*] statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.

COMMENT: This subsection specifies that the minimum price for Cigarettes, Little Cigars, and Cigars established by subsections (1) through (3) will be adjusted annually in proportion with the Consumer Price Index. This annual adjustment occurs automatically without further action by the city council or board of supervisors and ensures that the effectiveness of the minimum prices do not diminish over time due to inflation.

The federal Bureau of Labor Statistics releases CPI data specific to particular regions or metropolitan areas, referred to as “statistical areas.” For California, these statistical areas include: (1) Los Angeles–Long Beach–Anaheim, (2) Pacific Division (includes all Pacific states), (3) Riverside–San Bernardino–Ontario, (4) San Diego–Carlsbad, and (5) San Francisco–Oakland–Hayward. Local jurisdictions should choose the nearest statistical area and insert it into the subsection above. More information on regional resources for the Consumer Price Index are available at <https://www.bls.gov/cpi/regional-resources.htm>. If your community has questions about selecting the appropriate statistical area, please contact ChangeLab Solutions for assistance.

Sec. [____ (*5)]. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

- (a) **MOBILE VENDING.** No license may issue to authorize Tobacco Retailing at other than a fixed location, including, but not limited to, Tobacco Retailing by Persons on foot or from vehicles.

COMMENT: Prohibiting mobile vending aids in enforcement by ensuring that communities can conduct regular inspections at the Tobacco Retailer’s permanent place of business.

- (b) **LICENSED CANNABIS BUSINESSES.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing at a location licensed for Commercial Cannabis Activity by the State of California in accordance with the Business and Professions Code Division 10. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article / chapter] for a licensee, or any of the licensee's agents or employees, to engage in Commercial Cannabis Activity.

COMMENT: California state law prohibits the Sale of Tobacco Products at any location licensed to engage in Commercial Cannabis Activity (see California Business and Professions Code Section 26054(a)). This subsection incorporates this restriction by prohibiting the issuance or renewal of a Tobacco Retailer license for a location licensed to engage in Commercial Cannabis Activity.

- (c) **PHARMACIES.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing in a Pharmacy. For the purposes of this subsection, "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for Sale, regardless of whether the retail establishment Sells other retail goods in addition to prescription pharmaceuticals.

COMMENT: The Sale of Tobacco Products at stores containing pharmacies may convey a mixed message to Consumers, who rely on these businesses for health-related services. Because stores containing pharmacies provide health-related information to the public, communities may be concerned that the Sale of Tobacco Products at these stores conveys a tacit approval of these products. Further, stores containing pharmacies often stock Tobacco Products near cessation aids, compromising the efforts of people who are trying to quit. This subsection addresses these concerns by prohibiting businesses that contain pharmacies from obtaining or renewing a Tobacco Retailer License. Existing pharmacies that lawfully Sell Tobacco Products at the time this Ordinance is adopted may apply for a one-time, non-renewable Tobacco Retailer license for the location (see Section *5(h)).

- (d) **PROXIMITY TO YOUTH-SENSITIVE AREAS.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [one thousand (1,000)] feet of a Youth-Populated Area as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Populated Area is located to the nearest point of the property line of the parcel on which the applicant's business is located.

COMMENT: This subsection limits the proximity of Tobacco Retailers to areas frequented by youth. Research shows that children are more likely to experiment with Tobacco

Products when Tobacco Retailers are located near schools. Restricting Tobacco Product Sales within a certain distance of schools, playgrounds, libraries, and similar venues may help reduce youth initiation.

This subsection applies to both new and existing Tobacco Retailers. Existing Tobacco Retailers located within the specified distance of an existing Youth-Populated Area or that become ineligible to renew a license due to the creation of a new Youth-Populated Area may apply for a one-time, non-renewable license for the location (see Section *5(h)).

- (e) **PROXIMITY TO OTHER TOBACCO RETAILERS.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [five hundred (500)] feet of a Tobacco Retailer location already licensed pursuant to this [article / chapter] as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.

COMMENT: A high density of Tobacco Retailers has been associated with increased smoking rates, particularly among youth, and studies show that the number of Tobacco Retailers in underserved areas is disproportionately high. This subsection limits the proximity of new Tobacco Retailers to existing Tobacco Retailers. Under Section *5(i), existing Tobacco Retailers are "grandfathered" regardless of their distance from other Tobacco Retailers. However, a Tobacco Retailer will lose their grandfathered status if they fail to meet the conditions enumerated in Section *5(i).

The distance between Tobacco Retailers should be determined based on the needs of your community and the location of existing Tobacco Retailers. For example, a community that wants no more than one Tobacco Retailer per city block could examine whether a 500-foot buffer zone between retailers would sufficiently control the density of retailers. The density of existing Tobacco Retailers may vary significantly throughout a city or county. This provision could be further tailored to your community's needs by restricting Tobacco Retailer density in specified areas or neighborhoods.

- (f) **PROXIMITY TO CANNABIS RETAILERS.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [five hundred (500)] feet of a Cannabis Retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing Cannabis Retailer is located. For the purposes of this subsection, "Cannabis Retailer" means any retail establishment in which Cannabis or Cannabis Products are Sold or offered for Sale to Persons that do not hold a license to engage in Commercial Cannabis Activity issued by the State of California in accordance with the Business and Professions Code.

COMMENT: This subsection requires that Tobacco Retailers be located a specified minimum distance from existing businesses that Sell Cannabis or Cannabis Products to Consumers (“Cannabis Retailers”). Under Section *5(i), existing Tobacco Retailers are “grandfathered” regardless of their distance from a Cannabis Retailer. However, a Tobacco Retailer will lose their grandfathered status if they fail to meet the conditions enumerated in Section *5(i).

(g) **POPULATION AND DENSITY.** The issuing of Tobacco Retailer licenses is limited as follows:

- (1) The total number of Tobacco Retailer licenses within the [City / County] shall be limited to one for each [2,500], or fraction thereof, inhabitants of the [City / County].

COMMENT: Statewide, there is approximately one Tobacco Retailer for every 1,000 people. This provision provides a default of one Tobacco Retailer for every 2,500 people to reduce retailer density below the current statewide average. Setting the benchmark at 2,500 also makes the number of Tobacco Retailers in a community consistent with the number of off-sale alcohol retailers. A community will need to compare its population with the current number of Tobacco Retailers to determine whether the suggested benchmark will result in a reduction in retailers.

- (2) For the purposes of this subsection, the total population of the [City / County] shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.

COMMENT: This subsection is similar to California Business and Professions Code Section 23817.9, which dictates how the population will be measured to assist in determining the number of off-sale beer and wine retailers in a community.

- (3) No new license may be issued to authorize Tobacco Retailing if the number of Tobacco Retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).
- (h) A Tobacco Retailer operating lawfully on the date this ordinance is adopted that is ineligible to receive or renew a Tobacco Retailer’s license for a location pursuant to subsections (c) or (d) above, and any Tobacco Retailer operating lawfully that becomes ineligible to receive or renew a Tobacco Retailer’s license due to the creation of a new Youth-Populated Area, may apply for and receive a one-time, non-renewable license for the location pursuant to the standard licensing application procedure.

COMMENT: This subsection addresses the status of existing Tobacco Retailers that contain a pharmacy or are located too close to a Youth-Populated Area. A Tobacco Retailer lawfully operating on the date this ordinance is adopted that becomes ineligible to renew their Tobacco Retailer license because the store contains a pharmacy or is located too close to a Youth-Populated Area may receive a one-time, non-renewable Tobacco Retailer license.

- (i) Notwithstanding subsections (e) through (g), a Tobacco Retailer operating lawfully on the date this ordinance is adopted that would otherwise be eligible for a Tobacco Retailer license for the location for which a license is sought may receive or renew a license for that location so long as all of the following conditions are met:
- (1) The license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
 - (2) The Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days;
 - (3) The Tobacco Retailer does not substantially change the business premises or business operation. A substantial change to the business operation includes, but is not limited to, the transferring of a location:
 - i. to a new Proprietor(s) in an Arm's Length Transaction; or
 - ii. for which a significant purpose is avoiding the effect of violations of this [article / chapter]; and
 - (4) The Tobacco Retailer retains the right to operate under all other applicable laws.
 - (5) If the [City / County] determines that a Tobacco Retailer has substantially changed their business premises or operation and the Tobacco Retailer disputes this determination, the Tobacco Retailer bears the burden of proving by a preponderance of evidence that such change(s) do not constitute a substantial change.

COMMENT: A Tobacco Retailer lawfully operating on the date this ordinance is adopted and who meets the conditions enumerated in this subsection may continue to renew their Tobacco Retailer license regardless of their proximity to other Tobacco Retailers, proximity to Cannabis Retailers, or the total number of Tobacco Retailers licensed in the jurisdiction.

A Tobacco Retailer will lose this "grandfathered" status if they, for example, close their business or suspend Tobacco Retailing for more than sixty (60) consecutive days. They will also lose their grandfathering status if they substantially change the business premises or operations. For these purposes, a substantial change to the business operation includes the transfer of the business in an Arms-Length Transaction. However, so long as the transfer is not intended to avoid the effects of violations of this Ordinance, a Tobacco Retailer will not



lose their grandfathered status for transferring the business to a relative or related companies or partners.

- (j) [(The City or County may wish to add other desired limits.)]

COMMENT: Please see the optional Plug-in provisions available from ChangeLab Solutions for further limits on eligibility for a Tobacco Retailer license.

Sec. [____ (*6)]. APPLICATION PROCEDURE.

- (a) Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct retail tobacco Sales and shall be signed by each Proprietor or an authorized agent thereof.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the [City / County] that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this [article / chapter], contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section [____ (*13)(c)] of this [article / chapter]. Nothing in this [article / chapter] shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

- (1) The name, address, and telephone number of each Proprietor of the business seeking a license.
- (2) The business name, address, and telephone number of the single fixed location for which a license is sought.
- (3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this [article / chapter]. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
- (4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state license for the Sale of Tobacco Products, if the Tobacco Retailer Sells products that require such license.

- (5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this [article / chapter] and, if so, the dates and locations of all such violations within the previous five years.

COMMENT: This is an important provision because it requires a Tobacco Retailer to disclose past violations, which will make it easier for administrative and enforcement staff to determine if the application requires closer scrutiny. If the retailer does not disclose past violations and a license is issued, the license can be revoked as soon as the past violations are discovered pursuant to Section *11(c) below.

- (6) Such other information as the Department deems necessary for the administration or enforcement of this [article / chapter] as specified on the application form required by this section.

COMMENT: This requirement authorizes administrative and enforcement staff to establish application forms that require various types of information to aid effective operation and enforcement of the ordinance. For example, it may be useful to include in the application a statement, perhaps made under penalty of perjury, that the applicant has familiarized himself or herself with the legal requirements applicable to Tobacco Retailing. It would, of course, be helpful to provide written information about those requirements to those who apply for a license.

- (b) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within [ten (10)] business days of a change.
- (c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law.

Sec. [____ (*7)]. ISSUANCE OF LICENSE. Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this [article / chapter], the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this [article / chapter];
- (b) The application seeks authorization for Tobacco Retailing at a location for which this [article / chapter] prohibits a license to be issued;
- (c) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this [article / chapter] prohibits a license to be issued; and/or

- (d) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this [article / chapter (eg, mobile vending)], that is unlawful pursuant to this Code [including without limitation the [eg, zoning ordinance, building code, and business license tax ordinance]], or that is unlawful pursuant to any other law.

COMMENT: This section makes issuance of licenses a mandatory, ministerial duty of staff unless substantial evidence can be shown supporting one of the four justifications for denial of the license. “Substantial evidence” referred to in this section is oral or written evidence within the city’s or county’s records that is sufficiently reliable and persuasive that a court will accept it. The usual test is that it must be the kind of evidence upon which responsible people rely in making important business, personal, and other decisions. The technical rules of evidence used for court proceedings do not apply.

Providing evidence of the bases for denial under subsections (b) and (c) should be simple and can take the form of a memo from Department staff or from staff members who maintain the records of suspensions and revocations. Proving that an application contains false information will be more difficult and require greater attention to the quality of evidence (ie, its persuasiveness and reliability). If oral evidence is to be relied upon, such as citizen complaints, it should be reduced to writing, as by a staff memo to the file.

Although a license technically should not be issued if prohibited elsewhere in the city or county code, it is valuable to make note of the other ordinances staff should consider under subsection (d). For example, if the code contains a zoning or conditional use permit ordinance affecting Tobacco Retailers, the licensing ordinance should refer to it directly to assist staff in implementing the ordinance. It is also helpful to cite building codes (to ensure the structure has been permitted) and any business license tax (to ensure that these taxes are also paid).

Sec. [____ (*8)]. LICENSE RENEWAL AND EXPIRATION.

- (a) **RENEWAL OF LICENSE.** A Tobacco Retailer’s license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is [one year]. Each Tobacco Retailer shall apply for the renewal of their Tobacco Retailer’s license and submit the license fee no later than [thirty (30)] days prior to expiration of the term.

COMMENT: The payment term of licenses is a matter for local policy. If this Ordinance is adopted as an amendment to a local business license ordinance, many administrative details, such as the term of licenses, may be covered by the existing license ordinance.

- (b) **EXPIRATION OF LICENSE.** A Tobacco Retailer’s license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

- (1) submit the license fee and application renewal form; and

- (2) submit a signed affidavit affirming that the Proprietor:
- (i) has not sold and will not Sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed; or
 - (ii) has waited the period of time required by Section [____(*14)(a)] of this [article / chapter] for Tobacco Retailing without a valid license before seeking renewal of the license.

Sec. [____ (*9)]. LICENSES NONTRANSFERABLE.

- (a) A Tobacco Retailer's license may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

COMMENT: This subsection requires a new Tobacco Retailer license for any change in ownership. For example, if a Proprietor to whom a license has been issued changes business locations, that Proprietor must apply for a new license prior to acting as a Tobacco Retailer at the new location. Or, if the business is sold or otherwise transferred to a new owner, the new owner must apply for a license for that location before acting as a Tobacco Retailer.

- (b) Notwithstanding any other provision of this [article / chapter], prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
- (1) the location has been transferred to new Proprietor(s) in an Arm's Length Transaction; and
 - (2) the new Proprietor(s) provide the [City / County] with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm's Length Transaction.

COMMENT: This subsection prevents sham transfers of ownership from defeating the effect of past violations. For example, if a Tobacco Retailer found in violation of the licensing law subsequently transfers ownership to a family member, and if the family member also violates the Ordinance, it would be counted as the second violation, not the first.

Sec. [____ (*10)]. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this [article / chapter] shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the [City / County] identified on the face



of the permit. Nothing in this [article / chapter] shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including, but not limited to:

- (a) any provision of this code [including without limitation the [eg, zoning ordinance, building codes, and business license tax ordinance]]; and/or
- (b) any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. Obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

COMMENT: This section makes clear that granting a Tobacco Retailer license does not affect a Tobacco Retailer's status under other local, state, or federal law. For example, obtaining a local license does not transform a business into a "retail or wholesale tobacco shop" in which smoking is allowed pursuant to California Labor Code Section 6404.5. The reference to zoning, building, and business tax licensing ordinances is intended to allow each community to enforce all of its local regulations and to not allow a Tobacco Retailer to claim that they reasonably believed that a Tobacco Retailer's license was all that was needed to do business in a given location. Tailor the list as appropriate.

Sec. [____ (*11)]. FEE FOR LICENSE.

The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of the [City Council / Board of Supervisors]. The fee shall be calculated so as to recover the cost of administration and enforcement of this [article / chapter], including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this [article / chapter]. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

COMMENT: It is lawful to impose a fee on applicants in an amount sufficient to offset the cost of the entire Tobacco Retailer enforcement program of the locality. *Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997); *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982 (2012).

The license fee can incorporate the cost of enforcing all tobacco laws related to Tobacco Retailing because a violation of any tobacco-related law is a basis for suspension of a license. For example, if the enforcing agency is the police department, a new police officer could be hired for Tobacco Retailer enforcement activities and a percentage of the cost of the hire could be included in the fee so long as the same percentage of the officer's efforts are used to monitor and enforce license-related tobacco laws.

One approach to setting the fee is to estimate the cost of administration and enforcement of the licensing program. For example, estimate the number of stores in the city or county and how much

time it will take a government employee to review applications and issue licenses. The fraction of that employee's time can then be used to calculate the annual cost of license administration, based on the cost of that employee's salary, benefits, and his or her share of administrative overhead, such as rent, insurance, legal advice, etc. As for enforcement costs, calculate, for example, how many yearly inspections are necessary (ideally one to four per retailer) and how much staff time each inspection demands.

It is important to document these calculations for two reasons: to provide support for the fee amount and to refute a legal challenge claiming the fee exceeds the cost of administration and enforcement. Budgeting for a Local Tobacco Retailer License Fee in California, available at www.changelabsolutions.org/publications/trl-fee-calculator-checklist, is a checklist designed to help jurisdictions think through all the costs of implementing and enforcing a Tobacco Retailer licensing ordinance. ChangeLab Solutions has also developed an online Tobacco Retailer license fee calculator, available at www.changelabsolutions.org/tobacco-control/trl-fee-calculator. Additional guidance on calculating a fee can also be found in the Griffith case cited above.

Note that the city or county can avoid having to calculate staff time by mandating that a set amount of time, eg, 15 hours a week, shall be spent on license enforcement activity (including enforcing the tobacco laws that give rise to a license violation). New staff could be hired to meet this mandate and the cost could be incorporated into the license fee.

Sec. [____ (*12)]. COMPLIANCE MONITORING.

- (a) Compliance with this [article / chapter] shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this [article / chapter]. The [City / County] may designate additional Persons to monitor compliance with this [article / chapter].

COMMENT: It is important to designate who will monitor Tobacco Retailers' compliance with this Ordinance. Explicitly naming the Department responsible for inspections helps ensure that the Ordinance will be enforced. Historically, many communities have focused their inspections on youth access laws intended to reduce the Sale of Tobacco Products to youth. Communities can also conduct inspections to determine compliance with a range of laws relating to the point-of-sale. For example, a community that has adopted this Model Ordinance could inspect Tobacco Retailers for compliance with restrictions on the Sale of Flavored Tobacco Products, minimum Package size and price requirements, and restrictions on the off-site Sale of Tobacco Products and Tobacco Paraphernalia (ie, Sales at a location that does not have a valid Tobacco Retailer license issued pursuant to this Ordinance).

- (b) The Department shall [(*see note on counties below)] inspect each Tobacco Retailer at least [three (3)] times per twelve (12) month period. Nothing in this paragraph shall create a right of action in any licensee or other Person against the [City / County] or its agents.

COMMENT: Providing a minimum number of inspections helps ensure some level of enforcement. One to four inspections per year may be appropriate depending on the number of Tobacco Retailers in a community and the level of funding established through the license fee. Communities with a large number of retailers may wish to inspect a subset of retailers that are selected either randomly or based on past violations and complaints.

*Note that counties likely may not directly mandate that the county sheriff conduct inspections. However, a county can provide dedicated funding to the sheriff that can be used only to conduct inspections. If this is desired, replace the first sentence in subsection (b) with:

“The Department shall be funded to inspect each Tobacco Retailer at least [three (3)] times per twelve (12) month period.”

Alternatively, the county could contract for enforcement and inspections. Cities, on the other hand, can directly mandate that a certain city law enforcement agency conduct inspections.

- (c) The [City Council / Board of Supervisors] of the [City / County] of [_____] does not intend and nothing in this [article / chapter] shall be interpreted to penalize the purchase, use, possession, or attempted purchase, use, or possession of Tobacco Products or Tobacco Paraphernalia by Persons under twenty-one years of age; provided, however, that Persons under twenty-one years of age remain subject to generally applicable laws regulating such conduct without respect to the Person’s age.

COMMENT ON YOUTH PENALTIES AND DECOYS: This provision clarifies that this Model Ordinance does not penalize youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia. Rather, the Model Ordinance penalizes only Tobacco Retailers who sell Tobacco Products or Tobacco Paraphernalia to individuals under 21 years old. Individuals under the age of 21 must, however, continue to abide by all generally applicable laws, such as local smokefree ordinances, that apply to everyone regardless of age.

Any jurisdiction that currently penalizes underage youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia should repeal such penalties. ChangeLab Solutions and other leading tobacco control organizations strongly recommend against the adoption or enforcement of laws penalizing youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia (commonly referred to as “Youth PUP Laws”). Evidence demonstrates that well-enforced laws targeting Tobacco Retailers provide greater public health benefits than Youth PUP Laws. Moreover, studies show that Youth PUP Laws only minimally affect tobacco use, and prioritizing enforcement of other tobacco control laws can more effectively reduce youth access to Tobacco Products. Finally, Youth PUP Laws raise significant equity concerns because their enforcement often disproportionately affects youth of color.

Previous versions of this Model Ordinance included a section granting immunity to youth that



participated in youth decoy (“sting”) operations. In 2016, California increased the minimum legal sales age for Tobacco Products and Tobacco Paraphernalia to 21 and repealed the state law that penalized youth who purchase or possess such products. In other words, current California state law penalizes only individuals or businesses that sell, give, or furnish Tobacco Products or Tobacco Paraphernalia to youth, not the youth who receive or possess such products.

Because there are no state law restrictions or penalties for youth who purchase or possess Tobacco Products or Tobacco Paraphernalia, local jurisdictions generally do not need to provide immunity to youth participating in enforcement operations. However, an exception applies to communities that have adopted local laws prohibiting youth from purchasing or possessing Tobacco Products or Tobacco Paraphernalia. Local communities with laws penalizing youth for purchasing or possessing Tobacco Products or Tobacco Paraphernalia should continue to include provisions granting immunity to youth who participate in enforcement operations. **Alternatively, the local community could align with evidence-based best practices by repealing youth purchase and possession penalties.**

Please contact ChangeLab Solutions for assistance if your community has questions about Youth PUP Laws, including questions about how to repeal existing Youth PUP laws, or questions about granting immunity to youth who participate in enforcement operations

Sec. [____ (*13)]. SUSPENSION OR REVOCATION OF LICENSE.

- (a) SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a Tobacco Retailer’s license shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee’s agents or employees, has violated any of the requirements, conditions, or prohibitions of this [article / chapter] or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law designated in Section [____(*2)] above.

COMMENT: The entire procedure for suspension of a license is not set forth in this Model Ordinance. The administrative procedure, civil proceeding, or combination of both should be tailored to the needs of your community and must comply with the basic requirements of due process (notice to retailer and an opportunity to be heard). ChangeLab Solutions can assist in creating a procedure for suspension of licenses that is appropriate for your community.

A plea of “no contest” or “nolo contendere” is usually used by a defendant to prevent having a “guilty” plea used against them in a subsequent civil suit. This provision puts a Tobacco Retailer on notice that even a “no contest” plea can still be used to establish a licensing violation and will result in the suspension of the retailer’s Tobacco Retailer license. Precedent exists in California state law for considering a “no contest” plea in relation to a license (see, eg, California Business and Professions Code Section 5063 regarding CPA

licenses). Note that a “no contest” plea can be used only to suspend a license, not to impose any other enforcement provisions provided in this Ordinance. If imposing additional enforcement provisions is desired (eg, imposing a civil fine), the city or county will need to prove that the underlying violation occurred and not rely on the “no contest” plea as conclusive evidence of a violation.

- (1) Upon a finding by the Department of a first violation of this [article / chapter] at a location within any [five-year (5)] period, the license shall be suspended for [thirty (30)] days.
- (2) Upon a finding by the Department of a second violation of this [article / chapter] at a location within any [five-year (5)] period, the license shall be suspended for [ninety (90)] days.
- (3) Upon a finding by the Department of a third violation of this [article / chapter] at a location within any [five-year (5)] period, the license shall be suspended for [one (1)] year.
- (4) Upon a finding by the Department of four or more violations of this [article / chapter] at a location within any [five-year (5)] period, the license shall be revoked.

COMMENT: This is the primary provision designating the length of time a Tobacco Retailer is ineligible to Sell Tobacco Products once the retailer's license is suspended pursuant to subsection (a). Stronger or more lenient penalties may be provided as a matter of local policy. For example, some local ordinances permit first-time offenders to “settle” their way out of a first suspension by instead paying a fine (\$1,000, for example). ChangeLab Solutions has prepared an optional Plug-in provision, which, if incorporated into the Model Ordinance, would establish guidelines for this policy alternative.

By providing mandatory penalties, this Model Ordinance does not provide any discretion to enforcement staff. This lack of discretion makes for a simple ordinance and standardized, even-handed enforcement. If discretion with respect to penalties is desired, the Ordinance must state the standard by which that discretion is to be exercised (eg, financial hardship, history of compliance, etc.). Note, too, that these penalty provisions do not prevent the use of other legal tools, such as criminal prosecution under Penal Code section 308, enforcement of the Stop Tobacco Access to Kids Enforcement Act (“STAKE Act,” California Business and Professions Code sections 22950-22962), or the several judicial remedies discussed below.

- (b) **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable to [the name of appellate agency, panel, or person (eg, police permit board, Board of Supervisors, city manager, or director of the health department)] and any appeal must be filed in writing with [the name of the

agency, panel, or person to receive the notice (eg, City Clerk or Clerk of the Board of Supervisors)] within ten days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to [the name of appellate agency, panel, or person] is not available for a revocation made pursuant to subsection (c) below.

COMMENT: Some right to appeal should be provided to ensure due process and to permit the city or county to correct any errors that may occur in the administrative process. How many levels of appeal to permit, which officer or body should hear the appeal, which officer should receive the notice of appeal, the time limits to set, etc. are local policy questions.

- (c) **REVOCATION OF LICENSE WRONGLY ISSUED.** A Tobacco Retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section [____(*7)] existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the [City / County]. Such a revocation shall be without prejudice to the filing of a new license application.

Sec. [____ (*14)]. TOBACCO RETAILING WITHOUT A VALID LICENSE.

- (a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:
- (1) After a first violation of this section at a location within any [five-year (5)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [thirty (30)] days have passed from the date of the violation.
 - (2) After a second violation of this section at a location within any [five-year (5)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [ninety (90)] days have passed from the date of the violation.
 - (3) After of a third or subsequent violation of this section at a location within any [five-year (5)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [five (5)] years have passed from the date of the violation.

COMMENT: This provision prohibits a Person who Sells Tobacco Products or Tobacco Paraphernalia without a valid license from obtaining a license for a set amount of time. It does not apply to a wholly new business at the same site. This ineligibility period is in addition to any other penalty the city or county might pursue.

If a Tobacco Retailing location is sold in an Arm's Length Transaction, then the violations will not count against the location under the new owner's license pursuant to Section *7(b).

- (b) Tobacco Products and Tobacco Paraphernalia offered for Sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for Sale or exchange in violation of this [article / chapter]. The decision by the Department may be appealed pursuant to the procedures set forth in Section [____(*13)(b)]. Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

COMMENT: Seizing and destroying illegally offered products requires additional procedures beyond the normal hearing for license suspension. This is, in part, because the licensee may not be the true owner of the seized products (eg, a store owner could sell cigarettes on a consignment basis and share a portion of the sales price with the actual owner of the products). Such owners must be provided due process before destroying their property. We recommend an independent administrative hearing on the forfeiture of any seized products.

- (c) For the purposes of the civil remedies provided in this [article / chapter]:
- (1) Each day on which a Tobacco Product or Tobacco Paraphernalia is offered for Sale in violation of this [article / chapter] shall constitute a separate violation of this [article / chapter]; and
 - (2) Each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for Sale in violation of this [article / chapter] shall constitute a separate violation of this [article / chapter].

Sec. [____ (*15)]. ADDITIONAL REMEDIES.

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

COMMENT: The following subsections are designed to offer a variety of options to the jurisdiction and the enforcing agency. Jurisdictions may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency will have the discretion to choose which enforcement tools to use in all cases or from case to case. For example, an agency may want to use these alternative enforcement options to address violations that do not directly involve Sales to youth, such as self-service displays or failure to post STAKE Act signs. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

- (b) Whenever evidence of a violation of this [article / chapter] is obtained in any part through the participation of a Person under the age of twenty-one (21) years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this [article / chapter] and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

COMMENT: This provision is designed to eliminate any legal right a defendant might otherwise have to compel a youth decoy to testify or be deposed. If criminal remedies are pursued, constitutional rights of criminal defendants to confront witnesses against them may require a youth decoy to testify.

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

COMMENT: This provision provides civil fines for violating the licensing ordinance. It requires that the city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed \$1,000 per violation. California Government Code Section 36901.

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

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



- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this [article / chapter] shall also constitute a violation of this [article / chapter].

COMMENT: This is standard language that is typically included in a city or county code and may be omitted if duplicative of existing code provisions.

- (f) Violations of this [article / chapter] are hereby declared to be public nuisances.

COMMENT: By expressly stating that violations are public nuisances, this provision allows enforcement of the ordinance via the administrative nuisance abatement procedures commonly found in municipal codes. Such a declaration also facilitates injunctive relief, where a court orders that a defendant do certain things or refrain from doing certain things, such as selling Tobacco Products to youth.

- (g) In addition to other remedies provided by this [article / chapter] or by other law, any violation of this [article / chapter] may be remedied by a civil action brought by the [City Attorney / County Counsel], including, for example, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

COMMENT: It is common to provide that local government lawyers may go to court to seek injunctions and other penalties in addition to fines. The express provision for injunctive relief lowers the showing required to obtain a preliminary or permanent injunction as described in *IT Corp. v. County of Imperial*, 35 Cal. 3d 63 (1983).

Jurisdictions should carefully consider the appropriate nuisance abatement procedure. A nuisance abatement ordinance adopted pursuant to California Government Code Section 38773.5 may provide for treble damages for the second or subsequent nuisance abatement judgment within a two-year period (see California Government Code Section 38773.7 authorizing treble damages). However, treble damages are not available under the alternative nuisance abatement procedures authorized by California Government Code Section 38773.1 and California Health and Safety Code Section 17980.

Sec. [____ (*16)]. OTHER LAWS.

This [article / chapter] does not intend and shall not be interpreted to regulate any conduct where the regulation of such conduct has been preempted by the United States or the State of California.

SECTION III. CONSTRUCTION & SEVERABILITY. It is the intent of the [City Council / Board of Supervisors] of the [City / County] of [_____] to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed



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

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

SECTION IV. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after [30 days after date of enactment]; provided, however, that Section [____(*3)] shall not take effect until [6 months after date of enactment].

COMMENT: This section specifies the effective date of the Ordinance, and it should be tailored to give the city or county sufficient time to conduct implementation activities such as processing applications, issuing licenses, and educating Tobacco Retailers and the general public about the requirements and restrictions established by this Ordinance. General law cities and counties in California must provide a minimum of 30 days between an ordinance’s adoption and its effective date.

While this section specifies that most provisions go into effect 30 days after final adoption of the ordinance, it provides a six (6) month delay between when a jurisdiction adopts the Ordinance and when the prohibition on the Sale of menthol Cigarettes and other Flavored Tobacco Products goes into effect. This delay provides Tobacco Retailers with a six month period to Sell their remaining inventory of these products, as well as provides additional time for the local government to plan for implementation and enforcement.



Appendix A: Findings.

The [City Council of the City / Board of Supervisors of the County] of [*Insert Jurisdiction Name*] hereby finds and declares as follows:

WHEREAS, the [City Council / Board of Supervisors] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [City Council / Board of Supervisors], to protect the health, safety, and welfare of our residents;

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;²

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills roughly 6 million people and causes over half a trillion dollars in economic damage each year;¹²²

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;²

WHEREAS, tobacco use is the number one cause of preventable death in California¹²³ and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;
- More than 25% of all adult cancer deaths in California are attributable to smoking;¹²⁴
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;¹²⁵
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;²

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20%), Asian (15.6%), Hispanic (15.0%), and American Indian/Alaska Native (36.2%) males all report a higher smoking prevalence than White, Non-Hispanic males (14.8%);¹²⁶
- More than half (53.8%) of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;¹²⁶
- From 2002 to 2012, smoking prevalence increased among African American youth;¹²⁶
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;¹²⁶
- Those who identify as bisexual, compared with heterosexual, gay/lesbian/homosexual, not sexual, celibate, or other, smoke at rates disproportional to their population in California;¹²⁶
- Those who reported experiencing psychological distress over the past year smoke at rates disproportional to their population in California;¹²⁶
- [insert local data if available]



WHEREAS, despite the state’s efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;¹²⁶
- In California, from 2013 to 2015, approximately 15% of 9th and 11th grade students report using electronic smoking devices;¹²⁶
- Unless smoking rates decline, an estimated 5% of all California youth who are alive today will die prematurely from smoking-related diseases;^{125,127}
- In 2017, 22.8% of high school students in California had tried cigarette smoking;^{128,129}
- **[insert local data if available]**

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,⁶ as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;⁵⁸
- Tobacco industry documents state that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one”;¹³⁰
- The tobacco industry spends an estimated \$620 million annually to market tobacco products to California residents;¹²⁵

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 9.3% of high school students in California reported buying their own electronic cigarette from a store;^{128,129}
- 7.6% of California tobacco retailers unlawfully sold tobacco products to minors in 2015;¹²⁶
- **[insert local data if available]**

WHEREAS, requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the [City Council / Board of Supervisors] to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws, as evidenced by the following:

- Cigarettes are the number one product sold in U.S. convenience stores, and in 2012, they generated an average of \$622,248 in sales per store;¹³¹
- A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth tobacco sales laws;^{22,132}
- Studies found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations;^{133,134}
- A review of 33 California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 32 of these communities after the ordinances were enacted, with an average decrease of 28% in the youth sales rate;²¹

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,²³ largely because



these flavored products are marketed to youth and young adults,^{22,28,135} and younger smokers were more likely than older smokers to have tried these products;²²

WHEREAS, neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices;

WHEREAS, in 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;¹³⁶

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco^{22,137,138} and that these products help establish tobacco habits that can lead to long-term addiction;^{22,139}

WHEREAS, between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);²⁴

WHEREAS, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;^{6,22,140,141}

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;¹⁴²

WHEREAS, scientific reviews by the FDA and the Tobacco Products Scientific Advisory Committee (“TPSAC”) found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, but especially among youth, African Americans,²⁶ and possibly Hispanic and Latino individuals;²⁷ and that menthol cigarettes are associated with increased initiation and progression to regular cigarette smoking, increased dependence on cigarettes, and reduced success in smoking cessation, especially among African American menthol smokers;²⁶

WHEREAS, as a result of the FDA ban on all flavored cigarette products (except menthol), tobacco use by youth decreased by 6% and the likelihood of a youth becoming a cigarette smoker post flavor ban fell by 17%;¹⁴³

WHEREAS, an evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, found that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco;¹⁴⁴

WHEREAS, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens;¹⁴⁵⁻¹⁵²

WHEREAS, unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and in some cases actually increased among youth;^{22,153-157}

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are



made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use;^{2,41-44,46-49}

WHEREAS, research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;¹⁵⁸

WHEREAS, a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;⁴²

WHEREAS, unequal price increases across different types of tobacco products lead to substitution from one product to another;^{47,49}

WHEREAS, youth are particularly responsive to changes in tobacco prices,^{22,45} and evidence suggests that tobacco companies deliberately target youth with price reductions;^{44,56-58,159}

WHEREAS, evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,¹⁰⁷ Newport menthol cigarettes cost less in areas with higher proportions of African Americans,¹⁰⁷ and underserved communities are targeted with price discounts and coupons;^{160,161}

WHEREAS, tobacco companies spend considerably to decrease the price of their products in order to counter state and local tobacco control efforts, appeal to price-sensitive consumers, and increase demand for tobacco products. For example, tobacco companies spent the majority of their marketing budgets on price discounts, accounting for nearly \$8 billion of \$8.7 billion advertising and promotional expenditures in 2016;^{43,44,54}

WHEREAS, the tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, individuals who use price minimization strategies save an average \$1.04 per pack (or 18.6% off the total);⁶¹

WHEREAS, price-discounted sales account for a substantial proportion of overall tobacco product sales;⁵⁵

WHEREAS, although federal and state law ban the sale of individual cigarettes,^{70,162} neither federal nor California state laws restrict the sale of individual little cigars and cigars;

WHEREAS, many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.⁷¹ For example:

- 87.4% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than \$1.00;¹³⁶
- From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%;³⁵

WHEREAS, a 10% increase in cigar prices has been associated with decreased cigar sales¹⁶³ and may significantly reduce cigar use among youth;¹⁶⁴

WHEREAS, neither federal nor California state laws set a minimum price for tobacco products;

WHEREAS, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;⁷³

WHEREAS, studies have estimated that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13%;⁵⁹ the impact of a \$10 federal minimum floor price for cigarettes could reduce the number of packs sold in the United States by 5.7 billion per year and prompt 10 million smokers to quit; and that state-level minimum floor price laws designed to raise the average price of cigarette packs by \$2.00 could decrease cigarette consumption by 15.9% and reduce income-based smoking disparities more than a comparable excise tax increase;⁷⁷

WHEREAS, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke;^{165,166}

WHEREAS, pharmacies sell cigarettes cheaper than other stores;¹⁰⁷

WHEREAS, tobacco-free pharmacy sales policies decrease the availability of tobacco products by reducing tobacco retailer density by up to three times compared with communities that do not have such policies,¹⁰⁸ and immediately after the nationwide CVS policy change to not sell tobacco products, cigarette purchases declined and smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely;¹⁰⁹

WHEREAS, the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day;⁸¹

WHEREAS, the density of tobacco retailers near schools has been associated with increased youth smoking rates;⁸⁹

WHEREAS, adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller⁹³ and density is higher;¹⁶⁷

WHEREAS, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;^{84,85,102,168}

WHEREAS, disparities in tobacco retailer location and density differ between rural and urban settings, with higher density in urban locations¹⁶⁹ and variations for Hispanics in rural communities¹⁷⁰ as well as intra-urban differences by income;¹⁷⁰

WHEREAS, policies to reduce tobacco retailer density have been shown to be effective^{103,171,172} and may reduce or eliminate inequities in the location and distribution of tobacco retailers;

WHEREAS, six out of 10 tobacco retailers in California sold cigar products using cannabis-related flavor descriptors and these retailers were more prevalent in school neighborhoods with lower median income;¹⁷³

WHEREAS, both youth and adult tobacco users are more likely to also use cannabis;¹⁷⁴

WHEREAS, strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products;^{22,175}

WHEREAS, strong policy enforcement and monitoring of retailer compliance with tobacco control policies (eg, requiring identification checks) is necessary to achieve reductions in youth tobacco sales;¹⁷⁶

WHEREAS, the National Academy of Medicine recommends imposing penalties on business owners to provide sufficient incentives to comply with the law, and business owners with an



economic incentive to avoid violations are more likely to establish company-wide policies and incorporate instruction on tobacco laws into employee training;¹⁷⁷

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3);

WHEREAS, California courts have affirmed the power of the [City Council / Board of Supervisors] to regulate business activity to discourage violations of law. See, eg, *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010);

WHEREAS, over 130 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco;¹⁹

WHEREAS, the [City Council / Board of Supervisors] has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, the [City Council / Board of Supervisors] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [*Insert Jurisdiction Name*] in order to protect the health, safety, and welfare of our residents;

NOW THEREFORE, it is the intent of the [City Council / Board of Supervisors], in enacting this ordinance, to ensure compliance with the business standards and practices of the [City / County] and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to youth, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

References

1. Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.
2. U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.
3. Family Smoking Prevention and Tobacco Control Act § 3(1), Pub. L. No. 111-31, 123 Stat. 1776-1858 (2009).
4. Roeseler A, Burns D. The quarter that changed the world. *Tob Control*. 2010;19 Suppl 1:i3-i15. doi: 10.1136/tc.2009.030809.
5. U.S. National Cancer Institute. *A Socioecological Approach to Addressing Tobacco-Related Health Disparities*. National Cancer Institute Tobacco Control Monograph 22. NIH Publication No. 17-CA-8035A. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. 2017.
6. United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd in part, vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009), and order clarified, 778 F. Supp. 2d 8 (D.D.C. 2011).
7. California Tobacco Control Program. *California Tobacco Facts and Figures: A Retrospective Look at 2017*. Sacramento, CA: California Department of Public Health. 2018.
8. California Tobacco Education and Research Oversight Committee. *New Challenges—New Promise for All: Toward a Tobacco-Free California Master Plan 2018-2020*. Sacramento, CA: California Tobacco Education and Research Oversight Committee. 2018.
9. California Tobacco Control Program. *A Story of Inequity*. 2018; <http://tobaccofreeca.com/story-of-inequity/>. Accessed July 13, 2018.
10. Cal. Bus. & Prof. Code § 22972(a).
11. Cal. Bus. & Prof. Code § 22970.1 (Finding that state tobacco excise tax revenues “have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products,” and that “the licensing of ... retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.”).
12. Cal. Rev. & Tax Code § 30111 (providing that state tobacco taxes “are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products.”); Cal. Bus. & Prof. Code § 22964 (providing that the Stop Tobacco Access to Kids Act does not “preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive legal age to purchase or possess tobacco products.”).
13. Cal. Bus. & Prof. Code § 22971.3 (“Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.”).
14. Cal. Penal Code § 308(a)(1)(A).
15. Cal. Bus. & Prof. Code §§ 22950-22964.
16. 21 C.F.R. §§ 1140.14(a)(4), 1140.16(b).
17. 21 C.F.R. § 1140.14(a)(2), (b)(2).
18. California Tobacco Control Program. Policy Evaluation Tracking System (PETS). Accessed May 24, 2018.
19. The American Lung Association in California Center for Tobacco Policy and Organizing. *Matrix of Strong Local Tobacco Retailer Licensing Ordinances*. 2017. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2017/06/Matrix-of-Strong-Local-TRL-Ordinances-June-2017.pdf>.
20. The American Lung Association in California Center for Tobacco Policy and Organizing. *Local Tobacco Policies in the Retail Environment*. 2017. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2017/08/Local-Tobacco-Policies-in-the-Retail-Environment-2017-08.pdf>.
21. The American Lung Association in California Center for Tobacco Policy and Organizing. *Tobacco Retailer Licensing is Effective*. 2013. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2016/10/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>.
22. U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at:

- <https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/>.
23. 21 U.S.C. § 387g(a)(1)(A).
 24. Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014. *Tob Control*. 2016;25(Suppl 2):ii14-ii20. doi: 10.1136/tobaccocontrol-2016-053329.
 25. King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: findings from the 2009-2010 National Adult Tobacco Survey. *Nicotine Tob Res*. 2013;15(2):608-614. doi: 10.1093/ntr/nts178.
 26. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. Available at: <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.
 27. Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*. 2011. Available at: <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
 28. Villanti AC, Collins LK, Niaura RS, Gagosian SY, Abrams DB. Menthol cigarettes and the public health standard: a systematic review. *BMC Public Health*. 2017;17(1):983. doi: 10.1186/s12889-017-4987-z.
 29. Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *Am J Prev Med*. 2015;48(1):93-97. doi: 10.1016/j.amepre.2014.07.044.
 30. Cohn AM, Johnson AL, Hair E, Rath JM, Villanti AC. Menthol tobacco use is correlated with mental health symptoms in a national sample of young adults: implications for future health risks and policy recommendations. *Tob Induc Dis*. 2016;14:1. doi: 10.1186/s12971-015-0066-3.
 31. Chen C, Isabelle LM, Pickworth WB, Pankow JF. Levels of mint and wintergreen flavorants: smokeless tobacco products vs. confectionery products. *Food Chem Toxicol*. 2010;48(2):755-763. doi: 10.1016/j.fct.2009.12.015.
 32. Morris DS, Fiala SC, Pawlak R. Opportunities for policy interventions to reduce youth hookah smoking in the United States. *Prev Chronic Dis*. 2012;9:120082. doi: 10.5888/pcd9.120082.
 33. Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tob Control*. 2014;23(1):77-78. doi: 10.1136/tobaccocontrol-2012-050604.
 34. Tsai J, Walton K, Coleman BN, et al. Reasons for Electronic Cigarette Use Among Middle and High School Students - National Youth Tobacco Survey, United States, 2016. *MMWR Morb Mortal Wkly Rep*. 2018;67(6):196-200. doi: 10.15585/mmwr.mm6706a5.
 35. Cullen J, Mowery P, Delnevo C, et al. Seven-year patterns in US cigar use epidemiology among young adults aged 18-25 years: a focus on race/ethnicity and brand. *Am J Public Health*. 2011;101(10):1955-1962. doi: 10.2105/AJPH.2011.300209.
 36. Delnevo CD, Giovenco DP, Miller Lo EJ. Changes in the Mass-merchandise Cigar Market since the Tobacco Control Act. *Tob Regul Sci*. 2017;3(2 Suppl 1):S8-S16.
 37. American Academy of Pediatrics, American Cancer Society Cancer Action Network, American Heart Association, American Stroke Association, American Lung Association, Kids Aft-F. *The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars*. 2017.
 38. Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *JAMA*. 2015;314(17):1871-1873. doi: 10.1001/jama.2015.13802.
 39. Corey CG, Ambrose BK, Apelberg BJ, King BA. Flavored Tobacco Product Use Among Middle and High School Students — United States, 2014. *MMWR Morb Mortal Wkly Rep*. 2015;64(38):1066-1070.
 40. Bonhomme MG, Holder-Hayes E, Ambrose BK, et al. Flavoured non-cigarette tobacco product use among US adults: 2013-2014. *Tob Control*. 2016;25(Suppl 2):ii4-ii13. doi: 10.1136/tobaccocontrol-2016-053373.
 41. Institute of Medicine. *Ending the Tobacco Problem: A Blueprint for the Nation*. Washington, DC. 2007. Available at: <https://www.nap.edu/catalog/11795/ending-the-tobacco-problem-a-blueprint-for-the-nation>.
 42. Community Preventive Services Task Force. *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products*. 2012. Available at: <https://www.thecommunityguide.org/sites/default/files/assets/Tobacco-Increasing-Unit-Price.pdf>.
 43. Centers for Disease Control and Prevention. State Cigarette Minimum Price Laws—United States, 2009. *MMWR Morb Mortal Wkly Rep*. 2010;59(13):389-392.
 44. Chaloupka FJ, Cummings KM, Morley C, Horan J. Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies. *Tob Control*. 2002;11(Supplement 1):i62-i72. doi: 10.1136/tc.11.suppl_1.i62.
 45. Chaloupka F. *Tobacco Control Lessons Learned: The Impact of State and Local Policies*. ImpactTeen. 2010.

- Available at: <http://tobaccopolicycenter.org/wp-content/uploads/2017/11/153.pdf>.
46. Chaloupka FJ, Yurekli A, Fong GT. Tobacco taxes as a tobacco control strategy. *Tob Control*. 2012;21(2):172-180. doi: 10.1136/tobaccocontrol-2011-050417.
 47. Huang J, Gwamnicki C, Xu X, Caraballo RS, Wada R, Chaloupka FJ. A comprehensive examination of own- and cross-price elasticities of tobacco and nicotine replacement products in the U.S. *Prev Med*. 2018. doi: 10.1016/j.ypmed.2018.04.024.
 48. Pesko MF, Huang J, Johnston LD, Chaloupka FJ. E-cigarette price sensitivity among middle- and high-school students: evidence from monitoring the future. *Addiction*. 2018;113(5):896-906. doi: 10.1111/add.14119.
 49. Jawad M, Lee JT, Glantz S, Millett C. Price elasticity of demand of non-cigarette tobacco products: a systematic review and meta-analysis. *Tob Control*. 2018. doi: 10.1136/tobaccocontrol-2017-054056.
 50. U.S. Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon General*. 2010. Available at: https://www.cdc.gov/tobacco/data_statistics/sgr/2000/complete_report/pdfs/fullreport.pdf.
 51. Campaign for Tobacco-Free Kids. *State Excise Tax Rates for Non-cigarette Tobacco Products*. 2018. Available at: <https://www.tobaccofreekids.org/assets/factsheets/0169.pdf>.
 52. Cal. Rev. & Tax. Code § 30111.
 53. Schleicher NC, Johnson T, Ahmad I, Henriksen L. *Tobacco Marketing in California's Retail Environment (2011-2014)*. Palo Alto, CA: Stanford Prevention Research Center, Stanford University School of Medicine. 2015. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/TobaccoMarketinginCaliforniasRetailEnvironmentNotationsFinal2916.pdf>.
 54. Federal Trade Commission. *Cigarette Report for 2016*. 2018. Available at: https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2016-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_for_2016_0.pdf.
 55. Wang TW, Falvey K, Gammon DG, et al. Sales Trends in Price-Discounted Cigarettes, Large Cigars, Little Cigars, and Cigarillos—United States, 2011–2016. *Nicotine Tob Res*. 2017. doi: 10.1093/ntr/ntx249.
 56. White VM, White MM, Freeman K, Gilpin EA, Pierce JP. Cigarette promotional offers: who takes advantage? *Am J Prev Med*. 2006;30(3):225-231. doi: 10.1016/j.amepre.2005.11.001.
 57. Pierce JP, Gilmer TP, Lee L, Gilpin EA, de Beyer J, Messer K. Tobacco industry price-subsidizing promotions may overcome the downward pressure of higher prices on initiation of regular smoking. *Health Econ*. 2005;14(10):1061-1071. doi: 10.1002/hec.990.
 58. Ling PM, Glantz SA. Why and How the Tobacco Industry Sells Cigarettes to Young Adults: Evidence From Industry Documents. *Am J Public Health*. 2002;92(6):908-916. doi: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447481/>.
 59. Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. *Arch Pediatr Adolesc Med*. 2007;161(5):440-445. doi: 10.1001/archpedi.161.5.440.
 60. Xu X, Wang X, Caraballo RS. Is Every Smoker Interested in Price Promotions? An Evaluation of Price-Related Discounts by Cigarette Brands. *J Public Health Manag Pract*. 2016;22(1):20-28. doi: 10.1097/PHH.0000000000000223.
 61. Xu X, Pesko MF, Tynan MA, Gerzoff RB, Malarcher AM, Pechacek TF. Cigarette price-minimization strategies by U.S. smokers. *Am J Prev Med*. 2013;44(5):472-476. doi: 10.1016/j.amepre.2013.01.019.
 62. Doogan NJ, Wewers ME, Berman M. The impact of a federal cigarette minimum pack price policy on cigarette use in the USA. *Tob Control*. 2018;27(2):203-208. doi: 10.1136/tobaccocontrol-2016-053457.
 63. Cal. Health & Safety Code § 118950(b)-(c)(1). The California Supreme Court upheld this law, finding that federal law did not preempt the state law. *People v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408 (Cal. 2005).
 64. Chicago Municipal Code § 4-64-905.
 65. New York City Administrative Code § 17-176.1.
 66. Oakland, California, Municipal Code § 5.91.040.
 67. Providence, Rhode Island Municipal Code § 14-303.
 68. Nat'l Ass'n of Tobacco Outlets, Inc. v. City of New York, 27 F. Supp. 3d 415 (S.D.N.Y. 2014).
 69. Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I., 731 F.3d 71 (1st Cir. 2013).
 70. 21 C.F.R. § 1140.16(b).
 71. California Department of Public Health California Tobacco Control Program. *Tobacco in the Retail Environment*. 2012. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/TobaccoRetailEnvironmentFactsheetEasyPrint.pdf>.
 72. Henriksen L, Andersen-Rodgers E, Zhang X, et al. Neighborhood Variation in the Price of Cheap Tobacco Products in California: Results From Healthy Stores for a

- Healthy Community. *Nicotine Tob Res.* 2017;19(11):1330-1337. doi: 10.1093/ntr/ntx089.
73. Huang J, Chiqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. Do state minimum markup/price laws work? Evidence from retail scanner data and TUS-CPS. *Tob Control.* 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocontrol-2016-053093.
 74. Sonoma County, California Municipal Code § 32A-3(k).
 75. Windsor, California Municipal Code § 3-11-115(l).
 76. San Leandro Municipal Code § 4-36-150(k).
 77. Golden SD, Farrelly MC, Luke DA, Ribisl KM. Comparing projected impacts of cigarette floor price and excise tax policies on socioeconomic disparities in smoking. *Tob Control.* 2016;25(Suppl 1):i60-i66. doi: 10.1136/tobaccocontrol-2016-053230.
 78. Brock B, Carlson SC, Moilanen M, Schillo BA. Effectiveness of Local Policy Efforts to Increase the Price of Cheap Cigars in Minnesota. *Am J Public Health.* 2017;107(1):127-129. doi: 10.2105/AJPH.2016.303517.
 79. Hill S, Amos A, Clifford D, Platt S. Impact of tobacco control interventions on socioeconomic inequalities in smoking: review of the evidence. *Tob Control.* 2014;23(e2):e89-97. doi: 10.1136/tobaccocontrol-2013-051110.
 80. California Department of Public Health California Tobacco Control Program. *State Health Officer's Report on Tobacco Use and Promotion in California.* Sacramento, CA. 2013. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/Policy/RetailStrategies/CAHealthOfficersReportonTobaccoFINARevised010213.pdf>.
 81. Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health.* 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.
 82. Lipperman-Kreda S, Grube JW, Friend KB, Mair C. Tobacco outlet density, retailer cigarette sales without ID checks and enforcement of underage tobacco laws: associations with youths' cigarette smoking and beliefs. *Addiction.* 2016;111(3):525-532. doi: 10.1111/add.13179.
 83. Novak SP, Reardon SF, Raudenbush SW, Buka SL. Retail tobacco outlet density and youth cigarette smoking: a propensity-modeling approach. *Am J Public Health.* 2006;96(4):670-676. doi: 10.2105/AJPH.2004.061622.
 84. Siahpush M, Jones PR, Singh GK, Timsina LR, Martin J. Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods. *Public Health.* 2010;124(9):525-529. doi: 10.1016/j.puhe.2010.04.010.
 85. Lee JG, Sun DL, Schleicher NM, Ribisl KM, Luke DA, Henriksen L. Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study. *J Epidemiol Community Health.* 2017;71(5):487-492. doi: 10.1136/jech-2016-208475.
 86. Finan LJ, Lipperman-Kreda S, Abadi M, et al. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tob Control.* 2018. doi: 10.1136/tobaccocontrol-2017-054065.
 87. Schleicher NC, Johnson TO, Fortmann SP, Henriksen L. Tobacco outlet density near home and school: Associations with smoking and norms among US teens. *Prev Med.* 2016;91:287-293. doi: 10.1016/j.ypmed.2016.08.027.
 88. McCarthy WJ, Mistry R, Lu Y, Patel M, Zheng H, Dietsch B. Density of tobacco retailers near schools: effects on tobacco use among students. *Am J Public Health.* 2009;99(11):2006-2013. doi: 10.2105/AJPH.2008.145128.
 89. Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Prev Med.* 2008;47(2):210-214. doi: 10.1016/j.ypmed.2008.04.008.
 90. Lovato CY, Hsu HCH, Sabiston CM, Hadd V, Nykiforuk CIJ. Tobacco Point-of-Purchase marketing in school neighbourhoods and school smoking prevalence: a descriptive study. *Can J Public Health.* 2007;98(4):265-270. doi: 10.17269/cjph.98.865.
 91. Cantrell J, Pearson JL, Anesetti-Rothermel A, Xiao H, Kirchner TR, Vallone D. Tobacco Retail Outlet Density and Young Adult Tobacco Initiation. *Nicotine Tob Res.* 2016;18(2):130-137. doi: 10.1093/ntr/ntv036.
 92. Young-Wolff KC, Henriksen L, Delucchi K, Prochaska JJ. Tobacco retailer proximity and density and nicotine dependence among smokers with serious mental illness. *Am J Public Health.* 2014;104(8):1454-1463. doi: 10.2105/AJPH.2014.301917.
 93. Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health.* 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.
 94. Luke DA, Ribisl KM, Smith C, Sorg AA. Family Smoking Prevention And Tobacco Control Act: banning outdoor tobacco advertising near schools and playgrounds. *Am J Prev Med.* 2011;40(3):295-302. doi: 10.1016/j.amepre.2010.11.018.
 95. Fakunle DO, Milam AJ, Furr-Holden CD, Butler J, 3rd, Thorpe RJ, Jr., LaVeist TA. The inequitable distribution of tobacco outlet density: the role of income in two Black Mid-Atlantic geopolitical areas. *Public Health.* 2016;136:35-40. doi: 10.1016/j.puhe.2016.02.032.

96. Galiatsatos P, Kineza C, Hwang S, et al. Neighbourhood characteristics and health outcomes: evaluating the association between socioeconomic status, tobacco store density and health outcomes in Baltimore City. *Tob Control*. 2017. doi: 10.1136/tobaccocontrol-2017-053945.
97. Berg CJ, Henriksen L, Cavazos-Rehg PA, Haardoefer R, Freisthler B. The emerging marijuana retail environment: Key lessons learned from tobacco and alcohol retail research. *Addict Behav*. 2018;81:26-31. doi: 10.1016/j.addbeh.2018.01.040.
98. Feighery EC, Schleicher NC, Boley Cruz T, Unger JB. An examination of trends in amount and type of cigarette advertising and sales promotions in California stores, 2002-2005. *Tob Control*. 2008;17(2):93-98. doi: 10.1136/tc.2007.022046.
99. Jernigan DH, Sparks M, Yang E, Schwartz R. Using public health and community partnerships to reduce density of alcohol outlets. *Prev Chronic Dis*. 2013;10:E53. doi: 10.5888/pcd10.120090.
100. Cal. Bus. & Prof. Code § 23817.5.
101. D'Angelo H, Ammerman A, Gordon-Larsen P, Linnan L, Lytle L, Ribisl KM. Sociodemographic Disparities in Proximity of Schools to Tobacco Outlets and Fast-Food Restaurants. *Am J Public Health*. 2016;106(9):1556-1562. doi: 10.2105/AJPH.2016.303259.
102. Loomis BR, Kim AE, Goetz JL, Juster HR. Density of tobacco retailers and its association with sociodemographic characteristics of communities across New York. *Public Health*. 2013;127(4):333-338. doi: 10.1016/j.puhe.2013.01.013.
103. Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine Tob Res*. 2017;19(2):239-244. doi: 10.1093/ntr/ntw185.
104. Bright Research Group for the San Francisco Tobacco-Free Project. *Reducing Tobacco Retail Density in San Francisco: A Case Study*. 2016. Available at: <http://2gahjr48mok145j3z438sknv.wpengine.netdna-cdn.com/wp-content/uploads/Retail-Density-Case-Study-1.27.16-FINAL-to-TFP.pdf>.
105. Center for Public Health Systems Science. *Point-of-Sale Report to the Nation: Realizing the Power of States and Communities to Change the Tobacco Retail and Policy Landscape*. St. Louis, MO: Center for Public Health Systems Science at the Brown School at Washington University in St. Louis and the National Cancer Institute, State and Community Tobacco Control Research Initiative. 2016. Available at: https://cpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/e/1037/files/2017/10/Reporttothenation_2016-2mfepqr.pdf.
106. Attorneys General Call on Retail Pharmacies to Stop Selling Tobacco Products [press release]. March 28, 2014. Available at: <https://news.delaware.gov/2014/03/18/attorneys-general-call-on-retail-pharmacies-to-stop-selling-tobacco-products/>.
107. Henriksen L, Schleicher NC, Barker DC, Liu Y, Chaloupka FJ. Prices for Tobacco and Nontobacco Products in Pharmacies Versus Other Stores: Results From Retail Marketing Surveillance in California and in the United States. *Am J Public Health*. 2016;106(10):1858-1864. doi: 10.2105/AJPH.2016.303306.
108. Jin Y, Lu B, Klein EG, Berman M, Foraker RE, Ferketich AK. Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts. *Am J Public Health*. 2016;106(4):679-685. doi: 10.2105/AJPH.2015.303040.
109. Polinski JM, Howell B, Gagnon MA, Kymes SM, Brennan TA, Shrank WH. Impact of CVS Pharmacy's Discontinuance of Tobacco Sales on Cigarette Purchasing (2012-2014). *Am J Public Health*. 2017;107(4):556-562. doi: 10.2105/AJPH.2016.303612.
110. Cal. Bus. & Prof. Code § 22963.
111. Prevent All Cigarettes Trafficking Act of 2009, Pub. L. No. 111-154, 124 Stat. 1087 (2009).
112. 21 U.S.C. § 387f(d)(4)(A).
113. Food and Drug Administration. *Report to Congress—Progress and Effectiveness of the Implementation of the Family Smoking Prevention and Tobacco Control Act*. U.S. Department of Health and Human Services. 2013. Available at: <https://www.fda.gov/downloads/tobaccoproducts/labeling/rulesregulationsguidance/ucm371271.pdf>.
114. Williams RS, Derrick J, Phillips KJ. Cigarette sales to minors via the internet: how the story has changed in the wake of federal regulation. *Tob Control*. 2017;26(4):415-420. doi: 10.1136/tobaccocontrol-2015-052844.
115. Williams RS, Derrick J, Liebman AK, LaFleur K, Ribisl KM. Content analysis of age verification, purchase and delivery methods of internet e-cigarette vendors, 2013 and 2014. *Tob Control*. 2018;27(3):287-293. doi: 10.1136/tobaccocontrol-2016-053616.
116. FDA announces comprehensive regulatory plan to shift trajectory of tobacco-related disease, death [press release]. July 28, 2017. Available at: <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm568923.htm>.
117. Stebbins KR. Tobacco, politics and economics: Implications for global health. *Social Science & Medicine*. 1991;33(12):1317-1326. doi: 10.1016/0277-9536(91)90275-h.

118. Jamal A, Gentzke A, Hu SS, et al. Tobacco Use Among Middle and High School Students - United States, 2011-2016. *MMWR Morb Mortal Wkly Rep.* 2017;66(23):597-603. doi: 10.15585/mmwr.mm6623a1.
119. Healthy Retail SF. <https://susanahennessey-lavery.squarespace.com>. Accessed July 13, 2018.
120. Davis KC, Grimshaw V, Merriman D, et al. Cigarette trafficking in five northeastern US cities. *Tob Control.* 2014;23(e1):e62-68. doi: 10.1136/tobaccocontrol-2013-051244.
121. Kurti MK, von Lampe K, Thompkins DE. The illegal cigarette market in a socioeconomically deprived inner-city area: the case of the South Bronx. *Tob Control.* 2013;22(2):138-140. doi: 10.1136/tobaccocontrol-2011-050412.
122. World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2013: Enforcing Bans on Tobacco Advertising, Promotion and Sponsorship.* 2013. Available at: http://www.who.int/tobacco/global_report/2013/en/.
123. California Department of Public Health California Tobacco Control Program. The #1 Preventable Cause of Death. <http://tobaccofreeca.com/other-tobacco-products/the-number-1-preventable-cause-of-death/>. Accessed July 20, 2018.
124. Lortet-Tieulent J, Goding Sauer A, Siegel RL, et al. State-Level Cancer Mortality Attributable to Cigarette Smoking in the United States. *JAMA Intern Med.* 2016;176(12):1792-1798. doi: 10.1001/jamainternmed.2016.6530.
125. Campaign for Tobacco-Free Kids. The Toll of Tobacco in California. <https://www.tobaccofreekids.org/problem/toll-us/california>. Accessed April 18, 2018.
126. California Department of Public Health California Tobacco Control Program. *California Tobacco Facts and Figures 2016.* Sacramento, CA: California Department of Public Health. 2016. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>.
127. U.S. Census Bureau. *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties and Puerto Rico Commonwealth and Municipios: April 1, 2010 to July 1, 2017.* U.S. Census Bureau, Population Division 2018. Available at: https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPAGESEX&prodType=table.
128. Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017. *MMWR Surveill Summ.* 2018;67(8):1-114. doi: 10.15585/mmwr.ss6708a1.
129. Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance — United States, 2017. Supplementary Tables 52-93: Tobacco Use. 2018; https://www.cdc.gov/healthyyouth/data/yrbs/2017_tables/tobacco_use.htm.
130. Burrows, D.S. "Estimated Change in Industry Trend Following Federal Excise Tax Increase." UCSF Library Truth Tobacco Industry Documents. Date Mod. Industry, Apr. 17, 2012: <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/nnnw0084>. Accessed September 28, 2016.
131. The American Lung Association in California Center for Tobacco Policy and Organizing. *Cigarettes Generate Big Revenue for Convenience Stores.* 2013. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2016/10/Cigarettes-Generate-Big-Revenue-September-2013.pdf>.
132. DiFranza JR, Savageau JA, Fletcher KE. Enforcement of underage sales laws as a predictor of daily smoking among adolescents: a national study. *BMC Public Health.* 2009;9:107. doi: 10.1186/1471-2458-9-107.
133. McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool.* Tobacco Control Legal Consortium. 2010. Available at: <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>.
134. Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products.* Washington, DC: The National Academies Press. 2015. Available at: <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.
135. Villanti AC, Johnson AL, Ambrose BK, et al. Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014). *Am J Prev Med.* 2017;53(2):139-151. doi: 10.1016/j.amepre.2017.01.026.
136. California Department of Public Health California Tobacco Control Program. *2016 Healthy Stores for a Healthy Community Survey Results-all counties.* 2016. Available at: <http://healthystoreshealthycommunity.com/media-center/?campaign>.
137. Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res.* 2006;8(3):403-413. doi: 10.1080/14622200600670389.
138. Wackowski O, Delnevo CD. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addict Behav.* 2007;32(9):1964-1969. doi: 10.1016/j.addbeh.2006.12.023.

139. Oliver AJ, Jensen JA, Vogel RI, Anderson AJ, Hatsukami DK. Flavored and nonflavored smokeless tobacco products: rate, pattern of use, and effects. *Nicotine Tob Res.* 2013;15(1):88-92. doi: 10.1093/ntr/nts093.
140. Yerger VB, Przewoznik J, Malone RE. Racialized geography, corporate activity, and health disparities: tobacco industry targeting of inner cities. *J Health Care Poor Underserved.* 2007;18(4 Suppl):10-38. doi: 10.1353/hpu.2007.0120.
141. Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health.* 2008;98(9):1685-1692. doi: 10.2105/AJPH.2007.125542.
142. Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res.* 2012;14(1):116-121. doi: 10.1093/ntr/ntr122.
143. Courtemanche CJ, Palmer MK, Pesko MF. Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *Am J Prev Med.* 2017;52(5):e139-e146. doi: 10.1016/j.amepre.2016.11.019.
144. Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control.* 2017;26(1):78-84. doi: 10.1136/tobaccocontrol-2015-052418.
145. Hoffmann D, Hoffmann I. Chapter 3: Chemistry and Toxicology. In: *Smoking and Tobacco Control Monograph No. 9: Cigars: Health Effects and Trends.* National Cancer Institute; 1998.
146. National Cancer Institute. Cigar Smoking and Cancer. 2010; <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cigars-fact-sheet>. Accessed July 13, 2018.
147. Akl EA, Gaddam S, Gunukula SK, Honeine R, Jaoude PA, Irani J. The effects of waterpipe tobacco smoking on health outcomes: a systematic review. *Int J Epidemiol.* 2010;39(3):834-857. doi: 10.1093/ije/dyq002.
148. Schaller K, Ruppert L, Kahnert S, Bethke C, Nair U, Pötschke-Langer M. *Electronic Cigarettes – An Overview.* German Cancer Research Center, Heidelberg. 2013. Available at: https://www.dkfz.de/de/tabakkontrolle/download/Publikationen/RoteReihe/Band_19_e-cigarettes_an_overview.pdf.
149. Stepanov I, Biener L, Knezevich A, et al. Monitoring tobacco-specific N-nitrosamines and nicotine in novel Marlboro and Camel smokeless tobacco products: findings from Round 1 of the New Product Watch. *Nicotine Tob Res.* 2012;14(3):274-281. doi: 10.1093/ntr/ntr209.
150. National Cancer Institute. *Monograph 2: Smokeless Tobacco or Health: An International Perspective.* 1992.
151. Jacob P, 3rd, Abu Raddaha AH, Dempsey D, et al. Nicotine, carbon monoxide, and carcinogen exposure after a single use of a water pipe. *Cancer Epidemiol Biomarkers Prev.* 2011;20(11):2345-2353. doi: 10.1158/1055-9965.EPI-11-0545.
152. Pickworth WB, Rosenberry ZR, Koszowski B. Toxicant exposure from smoking a little cigar: further support for product regulation. *Tob Control.* 2017;26(3):269-276. doi: 10.1136/tobaccocontrol-2015-052633.
153. Johnston LD, O'Malley PM, Bachman JG, Schulenberg JE, Miech RA. *Monitoring the Future national survey results on drug use, 1975–2013: Volume I, Secondary school students.* Ann Arbor, MI: Institute for Social Research, The University of Michigan. 2014. Available at: http://monitoringthefuture.org/pubs/monographs/mtf-vol1_2013.pdf.
154. Harrell PT, Naqvi SMH, Plunk AD, Ji M, Martins SS. Patterns of youth tobacco and polytobacco usage: The shift to alternative tobacco products. *Am J Drug Alcohol Abuse.* 2017;43(6):694-702. doi: 10.1080/00952990.2016.1225072.
155. Substance Abuse and Mental Health Services Administration. *Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings.* Rockville, MD: Substance Abuse and Mental Health Services Administration. 2011. Available at: <https://www.samhsa.gov/data/sites/default/files/NSDUH-NationalFindingsResults2010-web/2k10ResultsRev/NSDUHresultsRev2010.pdf>.
156. Wang TW, Gentzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A. Tobacco Product Use Among Middle and High School Students - United States, 2011-2017. *MMWR Morb Mortal Wkly Rep.* 2018;67(22):629-633. doi: 10.15585/mmwr.mm6722a3.
157. Cobb C, Ward KD, Maziak W, Shihadeh AL, Eissenberg T. Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States. *American Journal of Health Behavior.* 2010;34(3):275-285. doi: 10.5993/ajhb.34.3.3.
158. Yao T, Ong MK, Max W, et al. Responsiveness to cigarette prices by different racial/ethnic groups of US adults. *Tob Control.* 2018;27(3):301-309. doi: 10.1136/tobaccocontrol-2016-053434.
159. Tessman GK, Caraballo RS, Corey CG, Xu X, Chang CM. Exposure to tobacco coupons among U.S. middle and high school students. *Am J Prev Med.* 2014;47(2 Suppl 1):S61-68. doi: 10.1016/j.amepre.2014.05.001.
160. Counter Tobacco. Disparities in Point-of-Sale Advertising and Retailer Density. <https://countertobacco.org/resources-tools/evidence-summaries/disparities-in-point-of-sale-advertising-and-retailer-density/>. Accessed July 13, 2018.

161. Lempert LK, Glantz SA. Tobacco Industry Promotional Strategies Targeting American Indians/Alaska Natives and Exploiting Tribal Sovereignty. *Nicotine Tob Res.* 2018. doi: 10.1093/ntr/nty048.
162. Cal. Penal Code § 308.3(a).
163. Gammon DG, Loomis BR, Dench DL, King BA, Fulmer EB, Rogers T. Effect of price changes in little cigars and cigarettes on little cigar sales: USA, Q4 2011-Q4 2013. *Tob Control.* 2016;25(5):538-544. doi: 10.1136/tobaccocontrol-2015-052343.
164. Ringel JS, Wasserman J, Andreyeva T. Effects of public policy on adolescents' cigar use: evidence from the National Youth Tobacco Survey. *Am J Public Health.* 2005;95(6):995-998. doi: 10.2105/AJPH.2003.030411.
165. Katz MH. Banning tobacco sales in pharmacies: the right prescription. *JAMA.* 2008;300(12):1451-1453. doi: 10.1001/jama.300.12.1451.
166. Hudmon KS, Fenlon CM, Corelli RL, Prokhorov AV, Schroeder SA. Tobacco sales in pharmacies: time to quit. *Tob Control.* 2006;15(1):35-38. doi: 10.1136/tc.2005.012278.
167. Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction.* 2015;110(1):152-161. doi: 10.1111/add.12718.
168. Yu D, Peterson NA, Sheffer MA, Reid RJ, Schnieder JE. Tobacco outlet density and demographics: analysing the relationships with a spatial regression approach. *Public Health.* 2010;124(7):412-416. doi: 10.1016/j.puhe.2010.03.024.
169. Rodriguez D, Carlos HA, Adachi-Mejia AM, Berke EM, Sargent JD. Predictors of tobacco outlet density nationwide: a geographic analysis. *Tob Control.* 2013;22(5):349-355. doi: 10.1136/tobaccocontrol-2011-050120.
170. Rodriguez D, Carlos HA, Adachi-Mejia AM, Berke EM, Sargent J. Retail tobacco exposure: using geographic analysis to identify areas with excessively high retail density. *Nicotine Tob Res.* 2014;16(2):155-165. doi: 10.1093/ntr/ntt126.
171. Myers AE, Hall MG, Isgett LF, Ribisl KM. A comparison of three policy approaches for tobacco retailer reduction. *Prev Med.* 2015;74:67-73. doi: 10.1016/j.ypmed.2015.01.025.
172. Luke DA, Hammond RA, Combs T, et al. Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *Am J Public Health.* 2017;107(5):740-746. doi: 10.2105/AJPH.2017.303685.
173. Henriksen L, Schleicher NC, Ababseh K, Johnson TO, Fortmann SP. Marijuana as a 'concept' flavour for cigar products: availability and price near California schools. *Tob Control.* 2017. doi: 10.1136/tobaccocontrol-2017-053961.
174. Richter L, Pugh BS, Smith PH, Ball SA. The co-occurrence of nicotine and other substance use and addiction among youth and adults in the United States: implications for research, practice, and policy. *Am J Drug Alcohol Abuse.* 2017;43(2):132-145. doi: 10.1080/00952990.2016.1193511.
175. DiFranza JR. Which interventions against the sale of tobacco to minors can be expected to reduce smoking? *Tob Control.* 2012;21(4):436-442. doi: 10.1136/tobaccocontrol-2011-050145.
176. Macinko J, Silver D. Impact of New York City's 2014 Increased Minimum Legal Purchase Age on Youth Tobacco Use. *Am J Public Health.* 2018;108(5):669-675. doi: 10.2105/AJPH.2018.304340.
177. Institute of Medicine Committee on Preventing Nicotine Addiction in Children and Youths. Youth Access to Tobacco Products. In: Lynch BS, Bonnie RJ, eds. *Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths.* Washington, DC: National Academies Press. 1994.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: David Swing, Police Chief
APPROVED BY: City Manager

PROVIDE DIRECTION REGARDING NON-STOREFRONT (DELIVERY ONLY) CANNABIS RETAIL ORDINANCE

RECOMMENDATION(S)

1. Direct staff to return with an ordinance which allows non-storefront, delivery only, cannabis retail within the City limits.
OR
2. Continue to maintain Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis, unless otherwise allowed by state law.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2019 Strategic Priorities
Cannabis Policy

REPORT NARRATIVE:

Since the passage of California Proposition 64 – the Adult Use of Marijuana Act (AUMA) in November 2016, which allows for the recreational possession, sale and use of marijuana, the City Council has spent considerable time studying, reviewing, and discussing whether to allow commercial cannabis within the Morgan Hill City limits.

In February 2019, staff presented a workshop on cannabis where Council expressed that if they were to consider commercial cannabis within the Morgan Hill City limits, Council would like for staff to obtain Planning Commission (PC) recommendations regarding the number of allowable retail licenses and the required buffer zones around sensitive areas such as schools, day care centers, and youth centers.

On November 6, 2019, staff presented the PC recommendations regarding licenses and land use and provided a zoning ordinance amendment which would allow commercial cannabis within the City limits. After receiving community input from various stakeholders via public comment, supplemented emails, and thoughtful deliberation, the City Council voted 3 - 2 in favor of continuing to maintain Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis.

During the future council initiated agenda items section, Council Member Spring requested an item regarding an ordinance allowing non-storefront cannabis retail to be brought back on a future agenda.

As a result, staff has brought this topic back to see if there is adequate interest, by majority of Council, for staff to pursue work on an ordinance which would allow non-storefront retail within City limits.

Next Steps

If Council would like for staff to bring back an ordinance for consideration making non-storefront cannabis retail (delivery only) an approved use within City limits, staff will first return to PC with an ordinance and seek their recommendation and bring back the ordinance and impacts at a future meeting.

If Council reaffirms their approved motion/direction from the November 6th meeting to continue maintaining prohibition on all commercial cannabis, unless otherwise allowed by state law, staff will return with a regulatory ordinance to address regulating out of town delivery businesses, delivering within City limits.

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, July 18, 2018
and November 6, 2019.

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 of receiving this report and providing direction for next steps.

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.



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Jim Crawford, Division Chief of Operations for Morgan Hill Fire
APPROVED BY: City Manager

DISCUSS FIRE SERVICES HAZARD-RISK ASSESSMENT AND STANDARDS OF COVERAGE ASSESSMENT PREPARED AND PRESENTED BY CITYGATE ASSOCIATES, LLC

RECOMMENDATION(S)

1. Receive report; and
2. Provide direction to staff on next steps.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Advancing Regional Initiatives

2019 Strategic Priorities

Financial Stewardship
Traffic/Transportation

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

BACKGROUND:

The fire services for the City have undergone several evolutions since Morgan Hill incorporated. From one downtown station, in the first half of the last century shared with The California Division of Forestry (now CAL FIRE), to a two-station department in the early 1970's. During the economic challenges in the early 90's, City Fire Services was contracted, and all assets were sold to the Santa Clara County Fire Department. In 2013, a transition to a regional fire protection model with CAL FIRE providing fire and administrative services in Morgan Hill was established and the two fire stations were repurchased. This includes shared facilities at the CAL FIRE/ South Santa Clara County Fire District (SSCCFD) Headquarters and a Regional Boundary Drop Agreement with SSCCFD and the City of Gilroy.

In 2012, the State Legislature repealed all redevelopment agency authority throughout California. This change placed the City in a situation to determine disposition of future landholdings that the Successor Agency would need to assign or dispose of. One of the parcels included, was land that was set aside as a location of a future fire station in the Downtown Area. Lands must be sold or built as determined by the Successor Agency by 2024.

In 2014, Council contracted with The Center for Public Safety Management, LLC (CPSM) to provide operational and administrative analysis of the City and surrounding

SSCCFD. In their report to Council provided in January 2017, CPSM provided 11 findings including the recommendation to *“conduct a formal fire risk analysis that concentrates on strip commercial establishments, big-box occupancies, high-rise structures, and processing and institutional properties.”*

In November 2018, to address these items, Council approved participation in a three-department Hazard Risk Assessment and Standards of Coverage Study (SOC). The SOC was to include a 3-year historical assessment of emergency types, risk of incident types occurring impact on the community, current resource deployment in the South County and the ability to deliver adequate staffing to meet rapidly escalating incidents throughout the South County. The SOC would also include evaluation of potential future changes to the allocation of facilities, personnel, and delivery models. Since then, Citygate has been working with Gilroy, SSCCFD and Morgan Hill to collect data, create visual references, in the form of maps, and provide an accurate portrayal of the hazard-risk analysis of the three department service areas and provide findings and recommendations based on the SOC.

STANDARDS OF COVERAGE ASSESSMENT REPORT

The assessment (Attachment 1) is presented in several parts, including an Executive Summary outlining the most significant findings and recommendations, and the fire station/crew deployment analysis supported by maps and response statistics. A separate Map Atlas (Attachment 2) contains all the maps referenced throughout this report. The study outlines 40 key findings, 10 specific action recommendations and immediate and intermediate next steps which can be found in Section 4 and 5 of the report, pages 77 through 85 (Attachment 1).

Overall the study highlights the three agencies are facing three primary challenges in delivering fire services:

Daily Staffing Capacity: While the three agencies’ physical resources are appropriate to protect against hazards likely to impact each jurisdiction, the daily staffing in the Cities of Morgan Hill and Gilroy provide a total response force only minimally sufficient for a single emerging fire incident, or a one to three patient EMS incident. The Cities of Morgan Hill and Gilroy are dependent on the Fire District to provide both first-due and effective response force (ERF) staffing capacity. Similarly, the Fire District is dependent on one or both Cities for first-due and ERF staffing capacity. The consultant recommends each City construct and staff an additional fire station as soon as fiscally feasible.

Fire Station Location: The report illustrates none of the station response areas receive service close to the 7:30 minute best practice goal for urban/suburban. The region-wide call-to-arrival response time of 9:15 minutes from 9-1-1 call answer is significantly slower than the recommended 7:30 minutes due to multiple response time challenges. Overall this is due to the current fire station spacing, the non-grid street network designs in some areas of each jurisdiction, gated/limited access, topography, and traffic congestions.

Mutual Aid Isolation: While the three agencies have automatic aid agreements that provide for the dispatch of the closest first-due and ERF response resources regardless of jurisdiction, they are poorly located geographically for prompt additional mutual aid from agencies like San Jose, Watsonville, Hollister, or the Pajaro Valley and Aromas Tri-County Fire Districts. The jurisdictions are self or co-reliant to provide resources to resolve all but the most catastrophic emergencies without outside assistance. Such isolations, combined with fiscal realities to provide/afford an adequate service level, make a cooperative service delivery model which maximizes utilization of combined resources to provide optimal operational and fiscal effectiveness and efficiency, the best long-term alternative for all three agencies.

KEY TAKEAWAYS FOR MORGAN HILL

- Adopt performance objectives meeting all best practice elements for time and desired outcomes and monitor unit hour utilization and simultaneous incident rates of the busiest units on a quarterly basis.
- Build a third City fire station, raising daily staffing, to make Morgan Hill less dependent on the Fire District's staffing for serious emergencies requiring a multiple-unit response; or incrementally staff the truck with three personnel as a fourth unit, or dynamically deploy a two-person Peak Activity Unit during peak service demand periods.
- Review fire crew deployment, turn out, and first unit travel time for improvement.
- Continue to collaborate with Fire District to provide shared services wherever feasible to enhance fire and EMS service delivery in both jurisdictions.
- Establish and participate in a joint strategic planning team with policy-level direction to evaluate potential cooperative service elements for approval by response policy bodies.

NEXT STEPS FOR MORGAN HILL

Staff will return to City Council in early 2020 with recommendations addressing findings specific to Morgan Hill and performance objectives for the Council to review and adopt as a policy.

One of the primary takeaways from this study is it validates the need for the third fire station within the City of Morgan Hill and confirms the current proposed location of the facility on Butterfield Blvd. and Diana Avenue to be an appropriate location. This is critical information as the City heads into its next budget and capital improvement development process which will outline the timing of the design and construction of the third fire station.

COMMUNITY ENGAGEMENT: Inform

The study was made available to the community on November 20, 2019 for review. This report informs on the findings and recommendations regarding Fire Services in the South County Sub-Region of Santa Clara County.

ALTERNATIVE ACTIONS:

Not Applicable, as this is a report only, and no action is requested as this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On November 28, 2018, City Council approved the Citygate Consultant agreement and reimbursement agreement with the City of Gilroy and SSCCFD.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts to receiving the report. The cost of the study was previously appropriated by Council and the City bills the other entities for their proportionate share of the total cost.

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. Vol 1 of 2: Standards of Coverage Assessment- Technical Report (web link)
2. Vol 2 of 2: Standards of Coverage Assessment- Map Atlas (web link)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Dat Nguyen, Finance Director
APPROVED BY: City Manager

ACCEPT SEPTEMBER 2019 FINANCIAL AND INVESTMENT AND CITY MANAGER AUTHORITY REPORTS

RECOMMENDATION(S)

Accept and file report.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Fiscal Responsibility
Preserving and Cultivating Public Trust

2019 Strategic Priorities

Financial Stewardship

REPORT NARRATIVE:

As part of the City Council's expectation to maintain a high level of transparency and to be responsible stewards of public funds, attached are the Financial and Investment Reports for the three months ended September 30, 2019. Overall, the City received 16% of the budgeted revenues for all funds, reflecting a delay in remittances which is typical for the first quarter of the year. The amount received year to date for all funds is approximately \$3.3 million or 14% lower than prior year at this time, primarily due to a decrease in Capital Projects Funds revenues of \$2.8 million.

General Fund revenues totaled \$5.2 million and General Fund expenditures totaled \$10.4 million, or 24% of the budget. Expenditures, including encumbrances amounted to \$12.7 million or 29% of the budget. The encumbrances represent commitments or contractual obligations that the City entered into with vendors or suppliers, such as Chrisp Company for the City's streets maintenance services, and the partnership agreement with the YMCA of Silicon Valley for the management and operation of the Community Recreation Center. The services from these vendors are expected to be utilized by the City and paid throughout the fiscal year.

Community Development Fund revenues totaled \$1.1 million, or approximately 21% of the budget. The amount received to date is approximately \$278,000 less than the prior year. Expenditures and encumbrances totaled \$1.9 million, or approximately 33% of the budgeted appropriation.

Enterprise Funds revenues which comprised of Water and Sewer totaled \$8.5 million or 21% of the budget, a slight increase of \$284,000 or 3% from a year ago at this time.

At the October 3, 2018 meeting, City Council directed staff to periodically report to the

Council any contracts or agreements between \$25,000 to \$60,000 or the limit of the California Uniform Public Construction Cost Accounting Act (CUPCCAA) that were entered into by the City Manager. Staff drafted and presented a City Council Policy for consideration on November 7, 2018. The policy was approved and signed with the effective date of November 24, 2018. Staff has since developed a reporting mechanism that would report the requested information to the Council quarterly along with the financial and investment report. Page 17 of the attachment 2 shows the contracts and or agreements between \$25,000 to \$60,000 or the limit of the CUPCCAA entered into by the City Manager since the last report on August 22, 2019 through November 4, 2019.

COMMUNITY ENGAGEMENT: Inform

Finance staff prepares these financial reports in an effort to keep City officials, the Council, the community, and various lenders and stakeholders informed on the financial health of the organization, which assists each one of the interested parties in making sound financial and investment decisions.

ALTERNATIVE ACTIONS:

No alternative action is recommended, as this is a quarterly financial report on City transactions which have already occurred.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council receives and files the financial and investment report for each month. At the September 16, 2015 meeting, City Council recommended monthly financial and investment reports be agendized under the Consent Agenda, and quarterly financial and investment reports be presented to City Council as an "Other Business" item.

FISCAL AND RESOURCE IMPACT:

The preparation of the report is a part of the Finance workplan.

CEQA (California Environmental Quality Act):

Not a Project.

This report is not a project, as defined in Section 15378 of the State CEQA Guidelines. Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. September 2019 Financial Statement Analysis
2. September 2019 Financial and Investment Report
3. Presentation - 1st Qter FY19-20 Financial Report

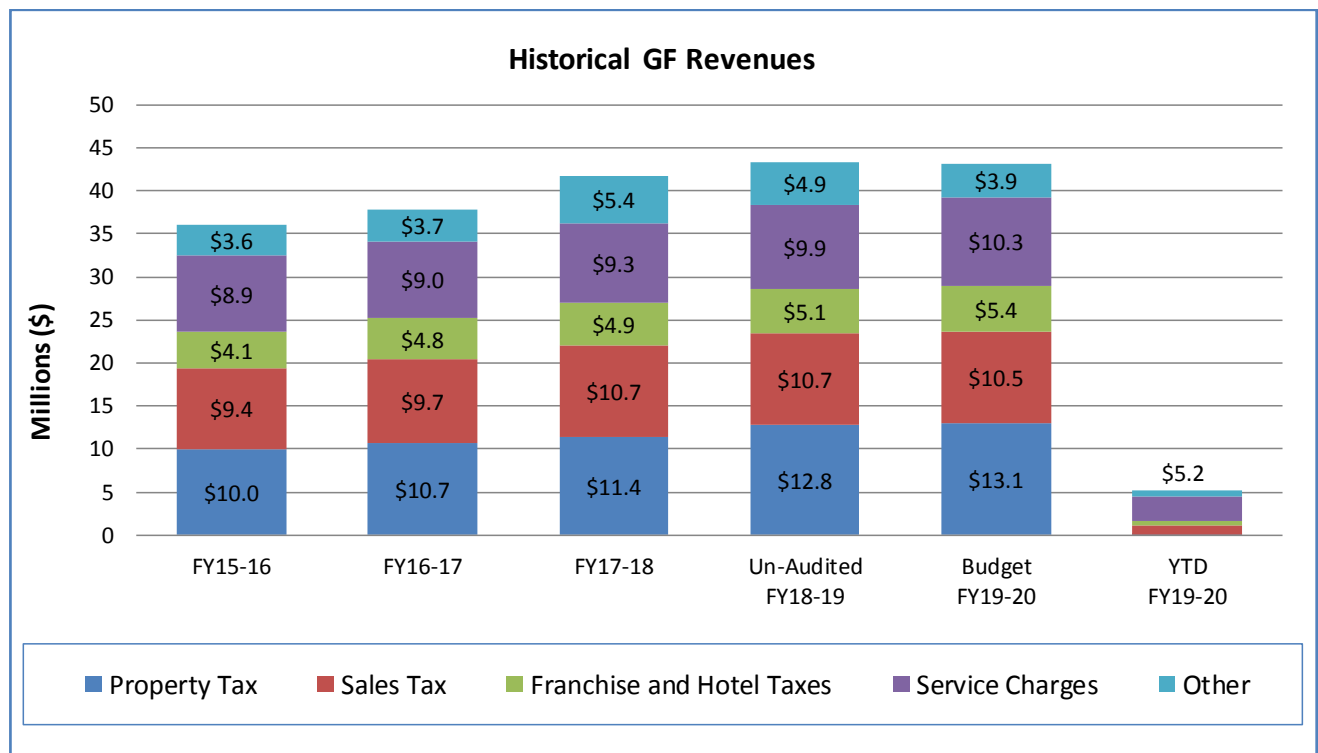


CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED SEPTEMBER 2019 – 25% OF YEAR COMPLETE

- **General Fund** – Revenues through the month of September totaled \$5.2 million, or 12% of the budgeted revenues as some of the major revenue categories such as property tax are received later in the fiscal year. With respect to the property tax revenue forecast, the County's most recent estimate projected Morgan Hill property tax revenue, excluding the property transfer tax, at \$14.0 million for the fiscal year 2019-20, which is approximately \$900,000 more than the revised budget, partially attributable to the higher excess Educational Revenue Augmentation Fund (ERAF) distribution and former Redevelopment Agency (RDA) residual apportionment. Excess ERAF is the money that is returned to the cities, counties, and special districts after schools reach their state-mandated thresholds. Former RDA residual apportionment is the residual amount paid to the taxing entities after sufficient funds had been set aside to pay for former RDA enforceable obligations. Property tax is the largest source of Morgan Hill's General Fund revenue. However, it accounts for only 30% of the approximately \$43.1 million General Fund revenue. Although property tax tends to be a more predictable revenue source, other major revenue categories such as sales tax and transient occupancy tax, which account for a large portion of the City's General Fund revenue, are more volatile and tend to fluctuate more with swings in the economy.

The small category of business licenses was already at 57% of the budgeted amount as annual business license renewal payments are usually received in the first few months of the fiscal year.

The chart below shows historical General Fund revenues by major revenue category from FY15-16 through FY17-18 Actual, Un-audited FY18-19, FY19-20 Budget, and YTD as of September 30, 2019.

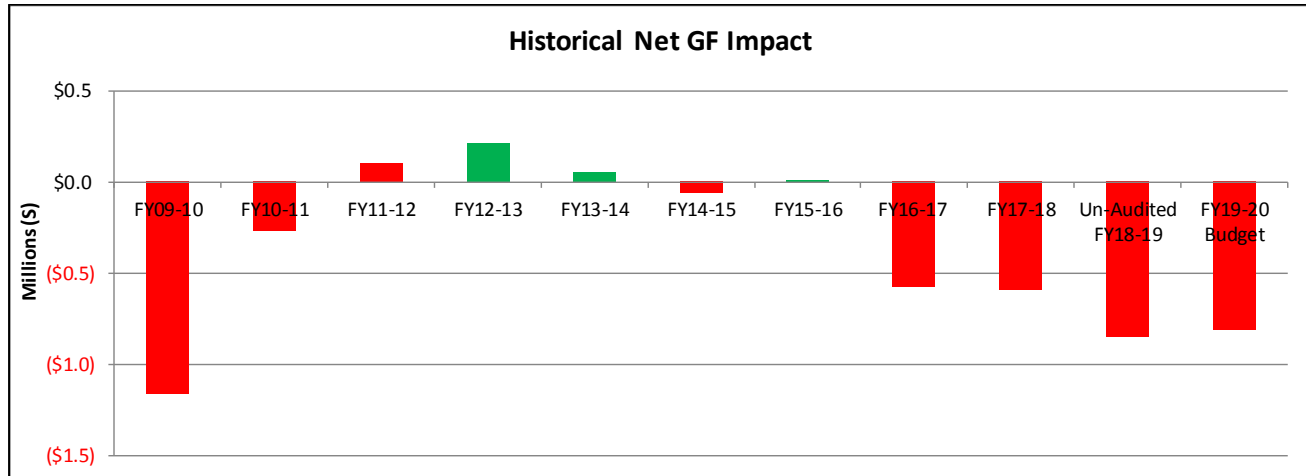


General Fund expenditures and encumbrances as of September 30, 2019 totaled \$12.7 million, of which approximately \$2.3 million is attributable to outstanding encumbrances.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED SEPTEMBER 2019 – 25% OF YEAR COMPLETE

- **Community Services** - The Community Services Department's recreation operations, as reflected in the schedule presented on page 4 of the Monthly Financial and Investments Reports, shows a negative impact to the General Fund of approximately \$1.4 million through the month of September. Without the carry-over encumbrances, through the month of September operations resulted in a small positive impact to the general fund of approximately \$63,000. Any net impact from the recreation operations increases (decreases) reserves in the General Fund.



Due to longstanding governmental accounting and budgeting convention, the City's recreation operations are not charged for indirect costs (known in Morgan Hill as "General Fund Administration") from the central services departments of City Attorney, City Manager, and Administrative Services. The City's other governmental funds, such as Community Development, and the proprietary funds, such as Water and Wastewater, and the Information Services Fund, are assessed such charges through the City's indirect cost allocation plan, prepared in compliance with the Federal government's OMB Circular No. A-87, which mandates certain calculation and cost allocation practices that must be followed in order to qualify for Federal grant funding, but which also represent best practice for non-grant funded City operations like utilities and information services.

- **Development Services Fund** – Revenues through September totaled \$1.1 million. Expenditures, including encumbrances, totaled \$1.9 million. Without the outstanding encumbrances, however, expenditures through the month of September amounted to \$1.2 million. The fund is budgeted to end the fiscal year with an operating deficit of approximately \$0.6 million, a slight improvement from prior year un-audited actual deficit of approximately \$0.7 million. The projected deficit is primarily due to the timing of fee increases, services or new projects unsupported by fees, such as front counter services, responding to public inquiries, tree removal permits, use permits for non-profits or special projects, and continued implementation of Measure S.
- **Debt Service Funds** – Expenditures through the month of September totaled \$3,477. The debt service for the first half of the year includes both interest and principal, while the second half of the year will include interest only. Debt service payments were all scheduled when the bonds were issued, and are budgeted for in the months delineated in the underlying bond documents. The General Fund's portion of the annual debt service payments is approximately \$200,000, less than one percent of the General Fund's budgeted revenues.



CITY OF MORGAN HILL, CALIFORNIA
FINANCIAL STATEMENT ANALYSIS - FISCAL YEAR 2019-20
FOR THE MONTH ENDED SEPTEMBER 2019 – 25% OF YEAR COMPLETE

- **Wastewater Operations** – Revenues from Sewer Operations through the month of September totaled \$1.7 million. Expenditures and outstanding encumbrances totaled \$3.1 million or approximately 26% of the budget. The table below shows historical Sewer Operations revenues and expenditures from FY15-16 through FY17-18 Actual, Un-audited FY18-19, FY19-20 Budget, and YTD as of September 30, 2019.

(amount in millions)	FY15-16	FY16-17	FY17-18	Un-Audited FY18-19	Budget FY19-20	YTD FY19-20
Revenues	10.2	9.7	10.3	11.4	12.1	1.7
Expenditures	12.0	9.8	10.8	10.6	12.1	3.1
Operating Margin	(1.8)	(0.1)	(0.5)	0.8	-	(1.4)
Operating Margin without Encumbrances	(1.8)	(0.0)	(0.3)	1.2	-	(0.8)

- **Water Operations** – Water Operations includes Utility Billing, Water Conservation, and Water Operations. Revenues from Water Operations through the month of September totaled \$2.7 million. Water Operations expenditures, including outstanding encumbrances, totaled \$5.0 million for the year. Without the encumbrances, however, the expenditures amounted to \$3.1 million. The table below shows Water Operations revenues and expenditures from FY15-16 through FY17-18 Actual, Un-audited FY18-19, FY19-20 Budget, and YTD as of September 30, 2019.

(amount in millions)	FY15-16	FY16-17	FY17-18	Un-Audited FY18-19	Budget FY19-20	YTD FY19-20
Revenues	8.5	10.9	13.0	14.2	14.8	2.7
Expenditures	9.7	11.2	12.1	12.9	15.1	5.0
Operating Margin	(1.2)	(0.3)	0.9	1.3	(0.3)	(2.3)
Operating Margin without Encumbrances	(1.2)	(0.1)	1.4	2.2	(0.3)	(0.4)

- **Investments** – Two securities were called during the month of September 2019. Total interest earnings received on investments were \$107,000 during the month.

CITY OF MORGAN HILL
Monthly Financial and Investment Reports
September 30, 2019 - 25% of Year Complete

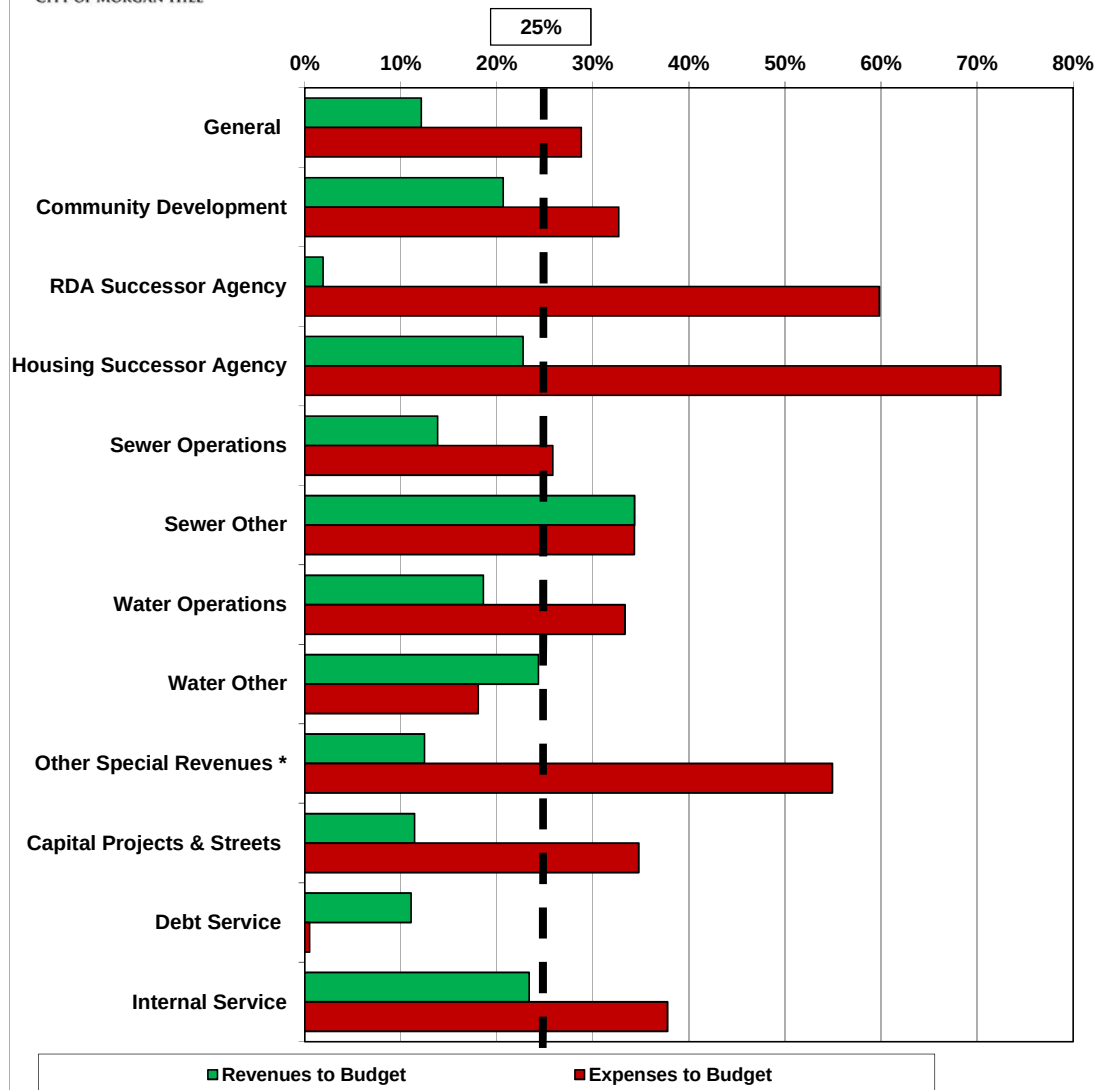


CITY OF MORGAN HILL

Prepared by:
FINANCE DIVISION



Morgan Hill YTD Revenue & Expense Summary September 30, 2019 - 25% of Year Complete



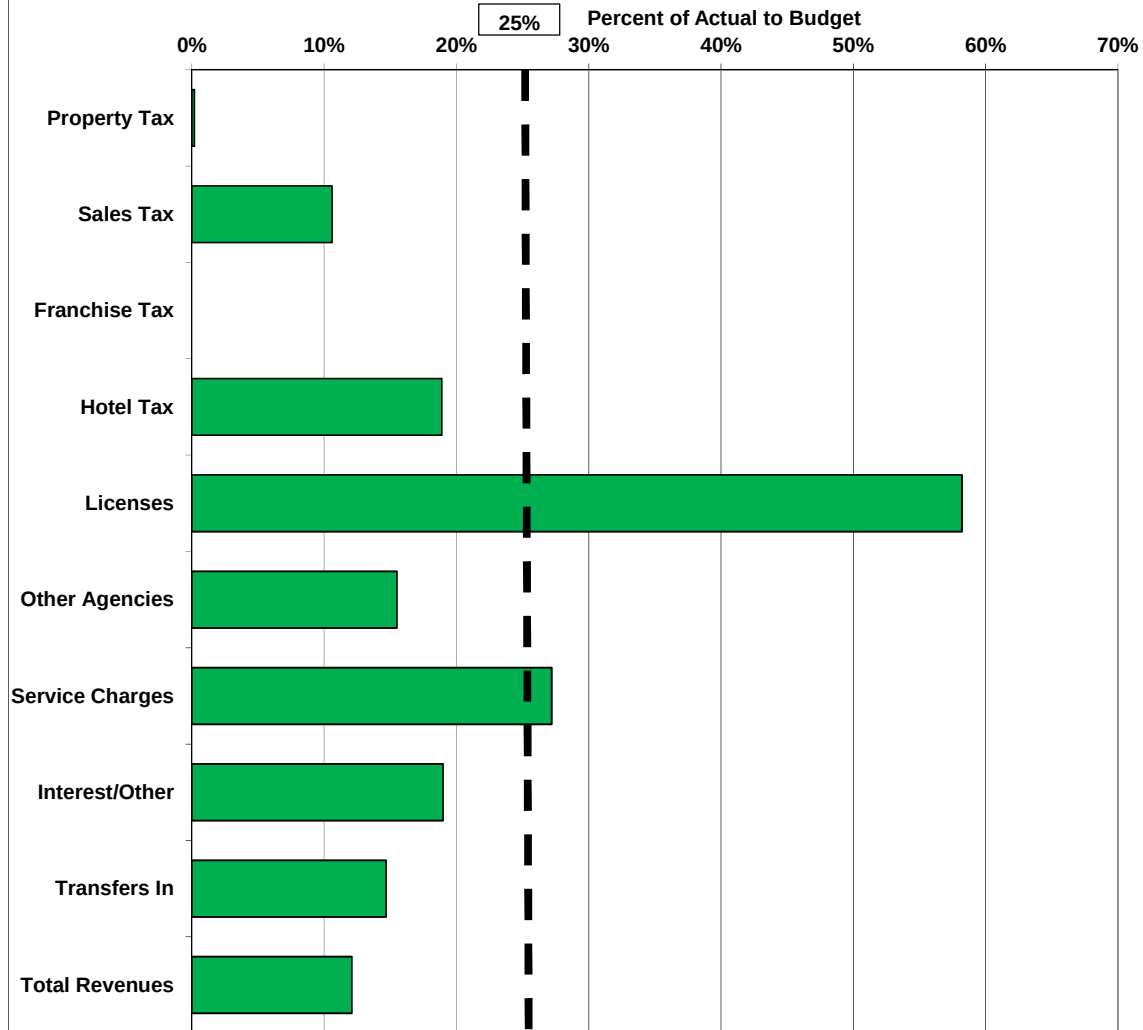
FUND NAME	REVENUES		EXPENSES	
	ACTUAL	% OF BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET
General	\$ 5,235,105	12%	\$ 12,667,759	29%
Community Development	1,088,400	21%	1,912,260	33%
RDA Successor Agency	133,065	2%	4,170,587	60%
Housing Successor Agency	125,892	23%	678,141	72%
Sewer Operations	1,678,014	14%	3,122,359	26%
Sewer Other	2,732,498	34%	5,669,093	34%
Water Operations	2,747,840	19%	5,034,721	33%
Water Other	1,301,918	24%	857,595	18%
Other Special Revenues *	481,457	12%	1,293,241	55%
Capital Projects & Streets	2,392,462	11%	7,287,792	35%
Debt Service	75,174	11%	3,477	1%
Internal Service	2,783,270	23%	4,122,248	38%
TOTAL FOR ALL FUNDS	\$ 20,775,094	16%	\$ 46,819,274	33%

* Includes all Special Revenue Funds except Community Development, Street Funds, and RDA and Housing Successor Agencies.



Morgan Hill YTD General Fund Revenues

September 30, 2019 - 25% of Year Complete

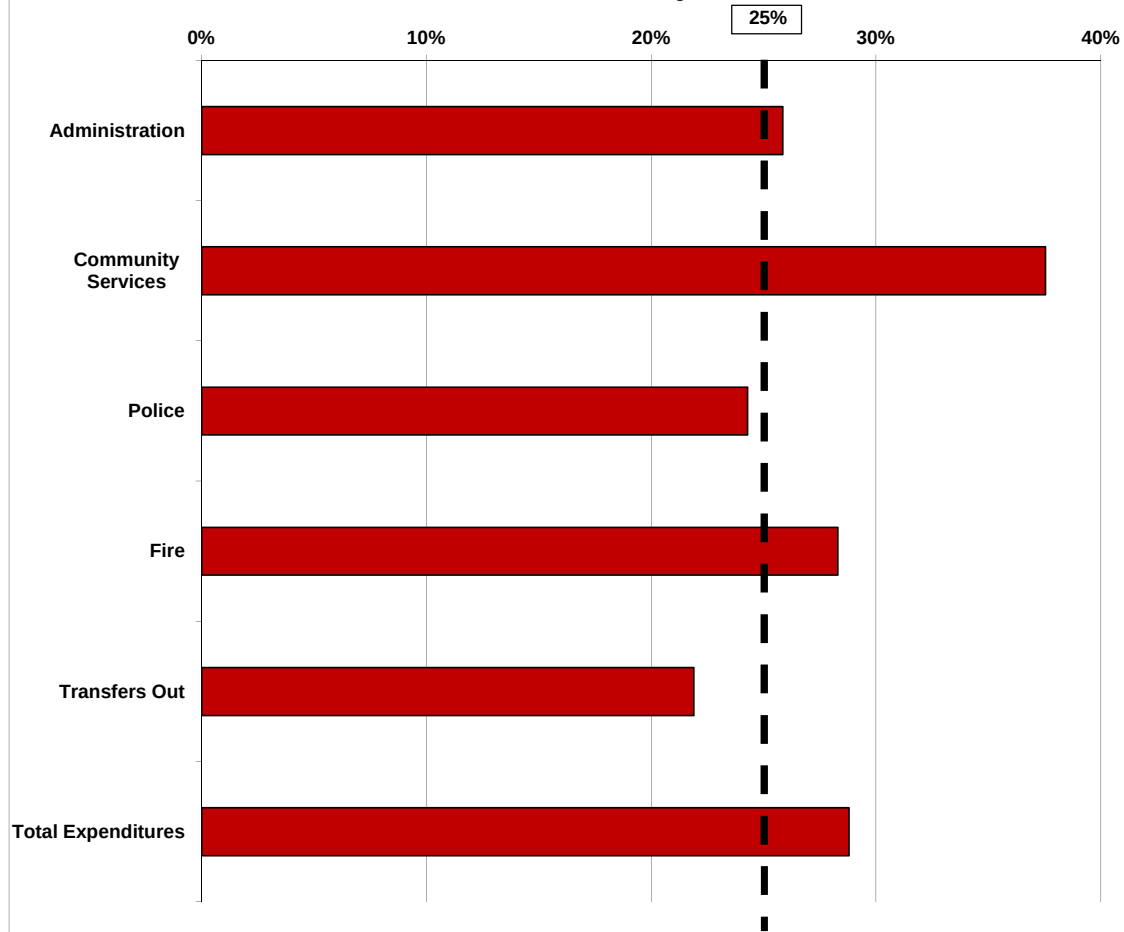


REVENUE CATEGORY	BUDGET	ACTUAL	% OF BUDGET	PRIOR YEAR TO DATE	% CHANGE FROM PRIOR YEAR
Property Tax	\$13,082,377	\$ 24,485	0%	\$ 103,321	-76%
Sales Tax	10,476,000	1,105,756	11%	991,931	11%
Franchise Tax	2,319,566	-	-	-	N/A
Hotel Tax	3,080,880	583,038	19%	510,945	14%
Licenses	206,940	120,504	58%	178,183	-32%
Other Agencies	403,389	62,570	16%	124,547	-50%
Service Charges	10,267,724	2,790,139	27%	2,688,112	4%
Interest/Other	1,461,324	277,691	19%	334,051	-17%
Transfers In	1,847,658	270,922	15%	199,689	36%
TOTAL REVENUES	\$43,145,858	\$ 5,235,105	12%	\$ 5,130,780	2%



Morgan Hill YTD General Fund Expenditures September 30, 2019 - 25% of Year Complete

Percent of Actual to Budget



EXPENDITURE CATEGORY	BUDGET	ACTUAL PLUS ENCUMBRANCES	% OF BUDGET	PRIOR YTD PLUS ENCUMBRANCES	% CHANGE FROM PRIOR YEAR
Administration	\$ 4,835,112	\$ 1,250,084	26%	\$ 1,445,109	-13%
Community Services	12,679,427	4,760,314	38%	4,433,601	7%
Police	17,372,961	4,218,214	24%	4,532,388	-7%
Fire	6,961,396	1,970,148	28%	1,845,140	7%
Transfers Out	2,142,463	468,999	22%	455,259	3%
TOTAL EXPENDITURES	\$ 43,991,359	\$ 12,667,759	29%	\$ 12,711,498	0%



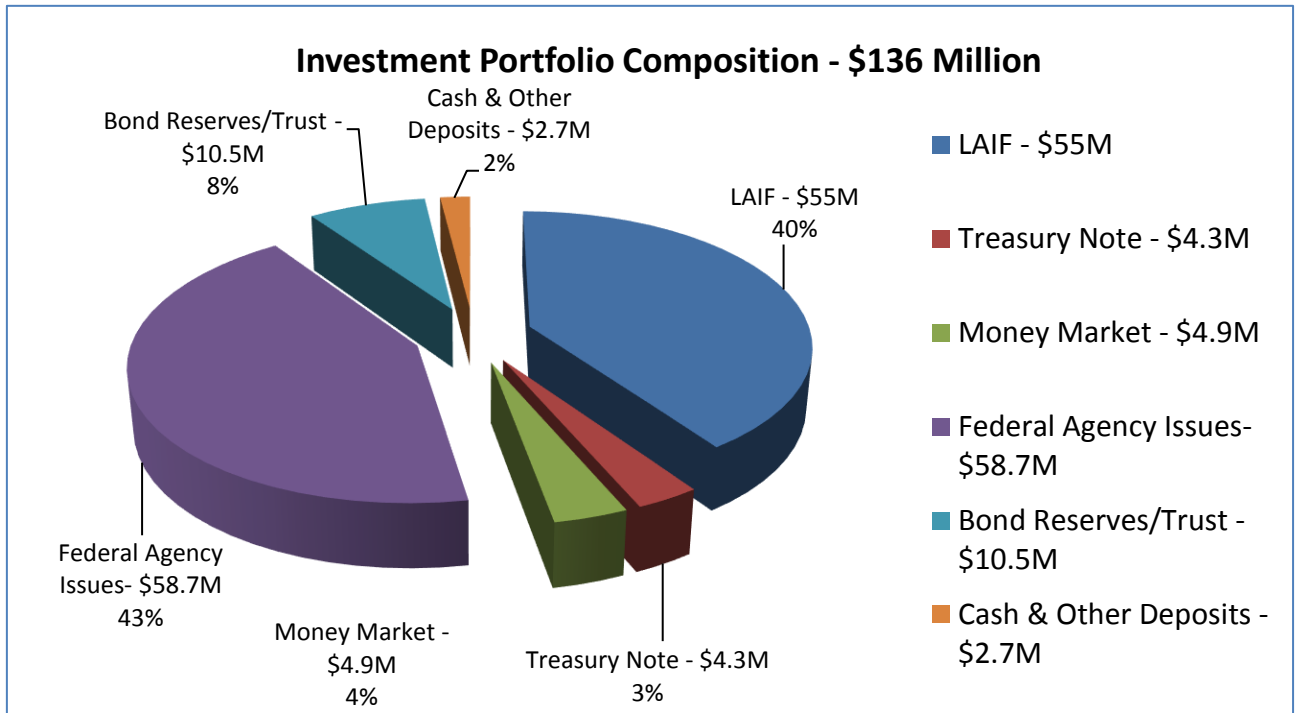
City of Morgan Hill
Recreation Report - Fiscal Year 2019-20
For the Month and Three Months Ended September 30, 2019
25% of Year Complete

	<u>Budget</u>	<u>September 2019</u>	<u>YTD</u>	<u>% of Budget</u>
Revenues				
Membership Services & Rec Programs	\$ 6,426,631	\$ 484,659	\$ 1,876,751	
Facility Rentals	915,330	71,097	278,456	
Community Services	149,705	5,396	12,213	
Transfers in	75,000	6,250	18,750	
Total Revenues	\$ 7,566,666	\$ 567,402	\$ 2,186,170	29%
Less: Expenditures				
Membership & Program Services	\$ 6,371,297	\$ 345,273	\$ 1,643,777	
Facility Rentals	1,356,318	109,548	332,037	
Community Services	648,407	41,072	147,113	
Total Expenditures	\$ 8,376,023	\$ 495,892	\$ 2,122,927	25%
Net Impact without encumbrances	\$ (809,357)	\$ 71,510	\$ 63,243	
Encumbrances	-	-	1,507,295	
Net Impact with encumbrances	\$ (809,357)	\$ 71,510	\$(1,444,052)	

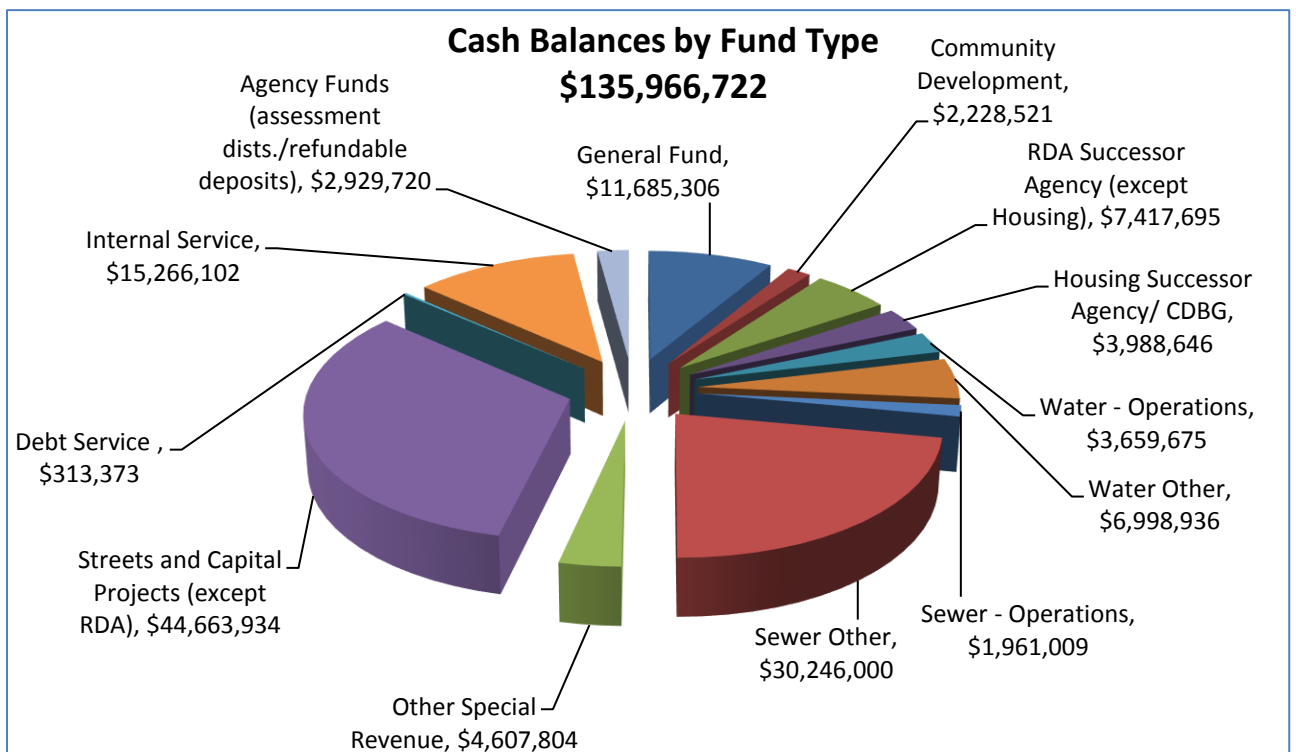
City of Morgan Hill

Monthly Investment Report - September 30, 2019

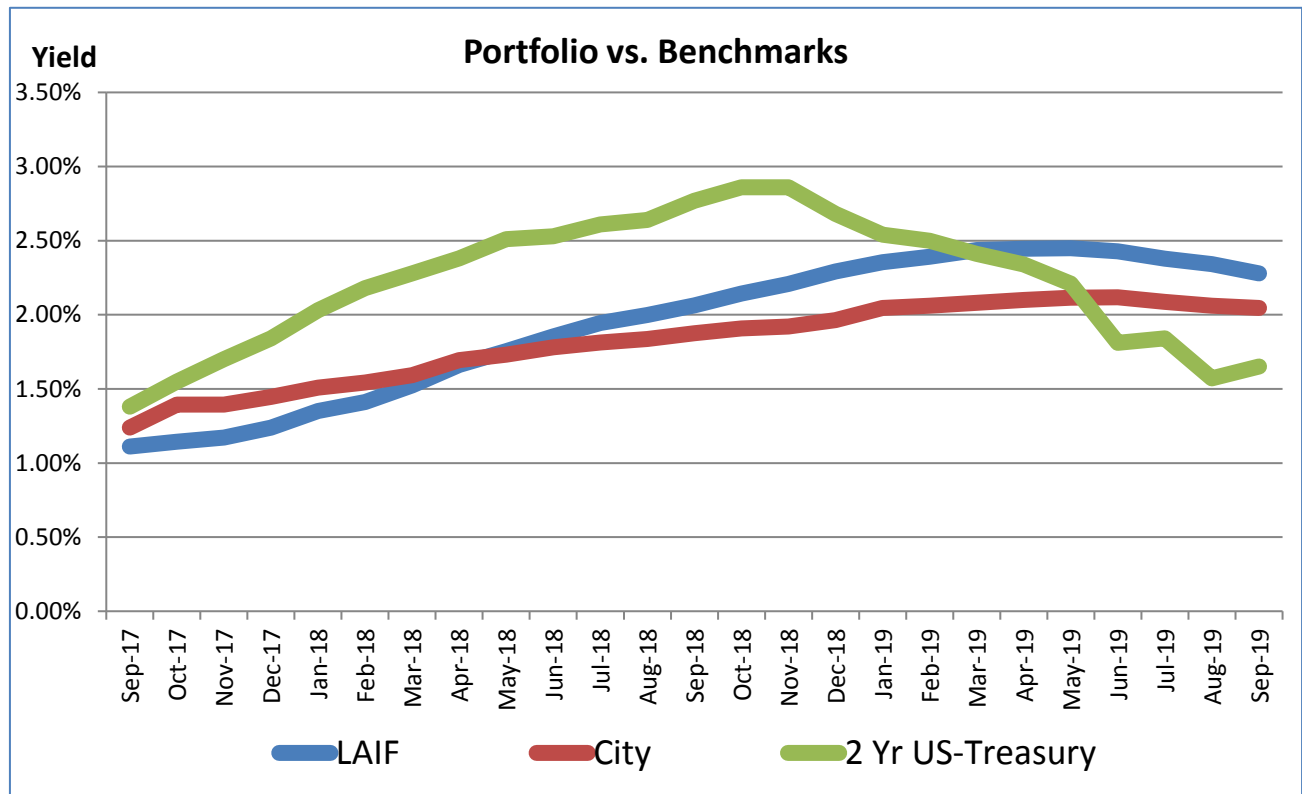
The following are the snapshots of City's investment portfolio as of September 30, 2019. The first chart shows the portfolio composition by investment type:



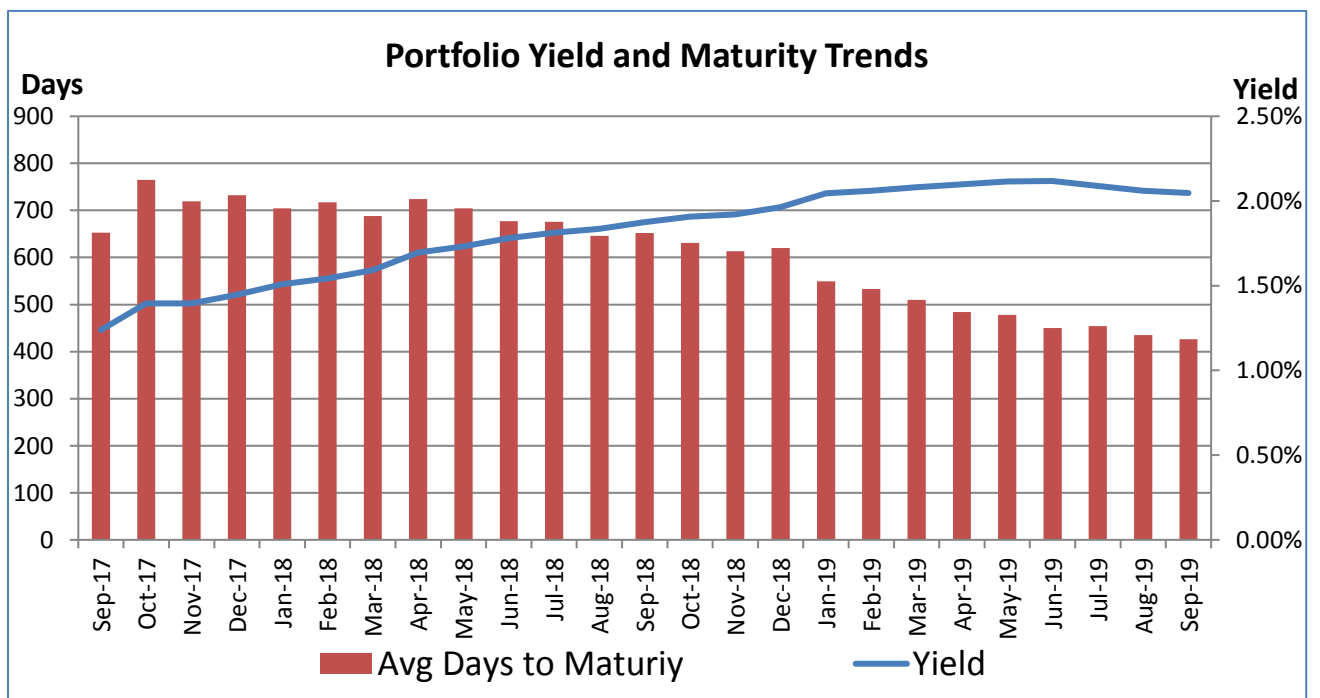
The chart below shows cash balances by fund type reconciled to City's financial system:



The following chart illustrates a yield comparison by month among the City's portfolio, LAIF and 2-Year US Treasury:



The chart below illustrates monthly average days to maturity of the City's portfolio along with the weighted average yield for the past two years:





City of Morgan Hill
Investment Portfolio Detail
As of September 30, 2019

Investment Type	Settlement Date	Book Value	% of Portfolio	Market Value	YTM at Cost	Next Call Date	Date of Maturity
L A I F		\$ 54,811,570	40.31%	\$ 54,905,396	2.28%		
City Managed							
Fed Home Loan Bank	10/19/2015	4,000,000	2.94%	3,992,600	1.70%	10/19/2019	10/19/2020
Fed Home Loan Bank	6/30/2016	4,000,000	2.94%	3,981,360	1.50%	6/30/2020	6/30/2021
Fed Natn'l Mortgage Assn	8/25/2016	4,000,000	2.94%	3,979,040	1.40%	8/25/2020	8/25/2021
Fed Home Loan Mortgage	9/29/2016	2,000,000	1.47%	1,993,380	1.65%	8/29/2020	9/29/2021
Fed Natn'l Mortgage Assn	9/29/2016	4,000,000	2.94%	3,980,280	1.60%	9/29/2020	9/29/2021
Fed Home Loan Mortgage	10/27/2016	4,000,000	2.94%	3,982,200	1.60%	10/27/2019	10/27/2021
Fed Natn'l Mortgage Assn	10/28/2016	4,000,000	2.94%	3,985,880	1.55%	10/28/2019	10/28/2021
Fed Home Loan Mortgage	10/28/2016	2,000,000	1.47%	1,993,560	1.65%	10/28/2019	10/28/2021
Fed Home Loan Mortgage	11/15/2016	4,000,000	2.94%	3,966,000	1.55%	10/15/2019	11/15/2021
Fed Home Loan Mortgage	11/23/2016	3,000,000	2.21%	2,990,790	1.65%	11/23/2019	11/23/2021
Fed Home Loan Mortgage	11/23/2016	4,000,000	2.94%	3,986,200	1.63%	11/23/2019	11/23/2021
Fed Home Loan Mortgage	11/30/2016	4,000,000	2.94%	4,000,320	1.88%	10/26/2019	11/26/2021
Fed Home Loan Mortgage	6/29/2017	1,300,000	0.96%	1,301,287	2.15%	8/29/2020	6/29/2022
Fed Home Loan Bank	10/19/2017	3,850,000	2.83%	3,850,154	2.15%	10/19/2019	10/19/2022
Fed Natn'l Mortgage Assn	10/26/2017	4,150,000	3.05%	4,150,830	2.20%	10/26/2019	10/26/2022
Fed Home Loan Mortgage	7/10/2019	3,000,000	2.21%	3,005,640	2.15%	7/2/2020	7/2/2024
Fed Home Loan Bank	9/26/2018	748,456	0.55%	751,890	2.80%	3/30/2020	3/30/2020
Fed Home Loan Bank	11/6/2018	744,527	0.55%	749,490	2.87%	11/15/2019	11/15/2019
Fed Home Loan Mortgage	1/18/2019	999,519	0.74%	1,003,410	2.59%	4/23/2020	4/23/2020
Fed Farm Credit Sys Disc	4/30/2019	894,693	0.66%	896,589	2.39%	12/31/2019	12/31/2019
Treasury Note	4/30/2018	4,319,881	3.18%	4,489,650	2.73%	3/31/2023	3/31/2023
Sub Total/Average		\$ 63,007,077	46.34%	\$ 63,030,550	1.85%		
Money Market		\$ 4,948,397	3.64%	\$ 4,948,397	1.96%		
Total City Managed/Average		\$ 122,767,044	90.29%	\$ 122,884,343	2.03%		
Bond Reserve Accounts - Held By Trustees		\$ 7,940,642	5.84%	\$ 7,940,642			
Cash/Deposits		\$ 2,671,631	1.96%	\$ 2,671,631			
PARS Trust		\$ 2,587,404	1.90%	\$ 2,983,425			
GRAND TOTAL/AVERAGE		\$ 135,966,722	100%	\$ 136,480,042			

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



CITY OF MORGAN HILL CASH AND INVESTMENT REPORT
FOR THE MONTH OF SEPTEMBER 30, 2019
FOR THE FISCAL YEAR OF 2019-20

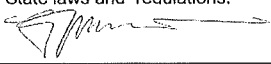
	Invested in Fund	Yield	Book Value End of Month	% of Total	Market Value
Investments					
State Treasurer LAIF - City	All Funds Pooled	2.28%	\$ 51,903,983	38.17%	\$ 51,992,832
2015 Wastewater Rev Bonds - CIP	Wastewater Fund	2.28%	2,907,587	2.14%	2,912,564
Federal Issues	All Funds Pooled	1.66%	58,687,196	43.16%	58,540,900
US Treasury Notes	All Funds Pooled	2.73%	4,319,881	3.18%	4,489,650
Dreyfus Treas Cash Management Acct	All Funds Pooled	1.96%	4,948,397	3.64%	4,948,397
	SUBTOTAL		\$ 122,767,044	90.29%	\$ 122,884,343
Bond Reserve Accounts - held by trustees					
Zions Bank - Civic Center/Library Facility					
Blackrock Liq Fund	Debt Service	1.96%	81	0.00%	81
Zions Bank - MH Police Facility Lease Revenue Bonds					
Blackrock Liq Fund	Debt Service	1.96%	103	0.00%	103
BNY - RDA Bonds					
Dreyfus Cash Mgmt 521	Successor Fund	2.21%	7,421,052	5.46%	7,421,052
US Treasury Notes - Reserve Acct.	Successor Fund	1.25%	-	0.00%	-
Zions Bank - MH Ranch 2015					
Blackrock Liq Funds Fed Fund -DI -2015	Agency Fund	1.96%	256,095	0.19%	256,095
Zions Bank - Madrone Bus Park Taxable/ Tax Exempt 2015					
Blackrock Liquidity Temp Fund-2015	Agency Fund	1.96%	263,311	0.19%	263,311
	SUBTOTAL		7,940,642	5.84%	7,940,642
Other Cash/Deposits					
General Checking	All Funds		2,634,519	1.94%	2,634,519
Workers' Comp Administrators	Workers' Comp		30,000	0.02%	30,000
Petty Cash & Emergency Cash	General Fund		7,112	0.01%	7,112
PARS - OPEB Trust			1,787,404	1.31%	2,052,413
PARS - PENSION Trust			800,000	0.59%	931,012
	SUBTOTAL		5,259,035	3.87%	5,655,056
Total Cash and Investments			\$ 135,966,722	100.00%	\$ 136,480,042

CASH ACTIVITY SUMMARY
FY 2019-20

Fund Type	07/01/18 Unaudited Balance	Change in Cash Balance	9/30/2019 Balance
General Fund	\$ 15,044,885	\$ (3,359,579)	\$ 11,685,306
Community Development	3,419,872	(1,191,351)	2,228,521
RDA Successor Agency (except Housing)	12,277,198	(4,859,503)	7,417,695
Housing Successor Agency/ CDBG	4,150,303	(161,657)	3,988,646
Water - Operations	2,317,454	1,342,221	3,659,675
Water Other	4,954,819	2,044,117	6,998,936
Sewer - Operations	1,505,059	455,950	1,961,009
Sewer Other	29,212,866	1,033,133	30,246,000
Other Special Revenue	5,052,285	(444,481)	4,607,804
Streets and Capital Projects (except RDA)	42,155,711	2,508,222	44,663,934
Debt Service	253,454	59,919	313,373
Internal Service	12,991,987	2,274,115	15,266,102
Agency Funds (assessment dists./refundable deposits)	4,116,381	(1,186,661)	2,929,720
Total	\$ 137,452,276	\$ (1,485,555)	\$ 135,966,722

Note: See Investment Portfolio Detail for maturities of "Investments." Market values are obtained from the City's investment brokers' monthly reports.

I certify the information on the investment reports on pages has been reconciled to the general ledger and bank statements and that there are sufficient funds to meet the expenditure requirements of the City for the next six months. The portfolio is in compliance with the City of Morgan Hill investment policy and all State laws and regulations.

Prepared by: 
 Gina Nazareno, Senior Accountant

Approved by:

Reviewed by: 
 Dat Nguyen, Finance Director


 David Clink, Treasurer



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Three Months Ended September 30, 2019
25% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
010 GENERAL FUND							
TAXES							
Property Tax - Secured/Unsecured	\$ 11,189,507	\$ 11,189,507	\$ -	0%	\$ -	\$ -	0%
Property Tax - RPTTF Residual Distribution	1,573,610	1,573,610	-	n/a	73,755	(73,755)	-100%
Property Tax - Supplemental Roll	319,260	319,260	24,485	8%	29,567	(5,081)	-17%
Sales Tax	10,091,000	10,091,000	1,076,636	11%	925,151	151,485	16%
Public Safety Sales Tax	385,000	385,000	29,120	8%	66,780	(37,660)	-56%
Transient Occupancy Taxes	3,080,880	3,080,880	583,038	19%	510,945	72,093	14%
Franchise (Refuse, Cable, PG&E)	2,319,566	2,319,566	-	0%	-	-	n/a
Property Transfer Tax	515,000	515,000	96,585	19%	108,533	(11,948)	-11%
TOTAL TAXES	29,473,823	29,473,823	1,809,865	6%	1,714,731	95,134	6%
LICENSES/PERMITS							
Business License	202,000	202,000	115,159	57%	174,878	(59,719)	-34%
Other Permits	4,940	4,940	5,345	108%	3,305	2,040	62%
TOTAL LICENSES/PERMITS	206,940	206,940	120,504	58%	178,183	(57,680)	-32%
FINES AND PENALTIES							
Parking Enforcement	8,500	8,500	1,045	12%	1,872	(827)	-44%
Bails & Fines	73,645	73,645	5,830	8%	12,186	(6,356)	-52%
Administrative Citations	9,785	9,785	10,566	108%	2,043	8,523	417%
TOTAL FINES AND PENALTIES	91,930	91,930	17,441	19%	16,101	1,340	8%
OTHER AGENCIES							
Motor Vehicle in-Lieu	24,652	24,652	-	0%	-	-	n/a
Other Revenue - Other Agencies	403,389	403,389	62,570	16%	124,547	(61,977)	-50%
TOTAL OTHER AGENCIES	428,041	428,041	62,570	15%	124,547	(61,977)	-50%
CHARGES CURRENT SERVICES							
Police False Alarm Charge	33,990	33,990	1,260	4%	6,478	(5,218)	-81%
Business License Application Review	36,000	36,000	7,664	21%	13,062	(5,398)	-41%
Membership Services & Rec Programs	6,426,631	6,426,631	1,876,751	29%	1,849,254	27,496	1%
Facility Rentals	915,330	915,330	278,456	30%	282,367	(3,911)	-1%
Community Services	149,705	149,705	12,213	8%	14,375	(2,162)	-15%
General Administration Overhead	1,795,198	1,795,198	447,855	25%	426,528	21,327	5%
Other Charges Current Services	910,870	910,870	165,940	18%	96,048	69,892	73%
TOTAL CURRENT SERVICES	10,267,724	10,267,724	2,790,139	27%	2,688,112	102,027	4%
OTHER REVENUE							
Use of money/property	517,900	517,900	115,153	22%	85,049	30,104	35%
Other Revenues	311,842	311,842	48,512	16%	124,368	(75,856)	-61%
TOTAL OTHER REVENUE	829,742	829,742	163,665	20%	209,417	(45,752)	-22%
TRANSFERS IN							
One Time Transfer	180,000	180,000	44,997	25%	-	44,997	0%
Asset Seizure	-	-	-	0%	-	-	0%
Public Safety	100,000	100,000	-	0%	-	-	0%
Fire Impact	-	25,000	25,000	0%	-	25,000	0%
Streets	738,968	738,968	-	0%	-	-	n/a
Park Maintenance	-	-	-	0%	-	-	n/a
Police Impact	25,000	25,000	6,249	25%	6,249	-	n/a
Sewer Operations	351,845	351,845	87,963	25%	87,345	618	1%
Water Operations	351,845	351,845	87,963	25%	87,345	618	1%
Park Development	75,000	75,000	18,750	25%	18,750	-	n/a
TOTAL TRANSFERS IN	1,822,658	1,847,658	270,922	15%	199,689	71,233	36%
TOTAL GENERAL FUND	43,120,858	43,145,858	5,235,105	12%	5,130,780	104,325	2%
SPECIAL REVENUE FUNDS							
202 STREET MAINTENANCE							
Gas Tax 2105 - 2107.5	738,968	738,968	102,476	14%	101,875	601	1%
Interest / Other Revenue/Other Charges	-	-	169	n/a	57	112	199%
202 STREET MAINTENANCE	738,968	738,968	102,645	14%	101,932	713	1%

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Three Months Ended September 30, 2019
25% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
SPECIAL REVENUE FUNDS							
205 PUBLIC SAFETY TRUST							
Interest Income	135	135	134	99%	23	111	490%
Police Grant/SLEF/JAG	100,000	100,000	-	n/a	-	-	0%
205 PUBLIC SAFETY TRUST	100,135	100,135	134	0%	23	111	490%
206 COMMUNITY DEVELOPMENT							
Building Fees	3,275,864	3,275,864	810,302	25%	874,455	(64,154)	-7%
Planning Fees	1,476,912	1,476,912	216,124	15%	299,596	(83,473)	-28%
Engineering Fees	495,977	495,977	58,365	12%	190,448	(132,083)	-69%
Other Revenue/Current Charges	14,682	14,682	3,610	25%	2,293	1,317	57%
206 COMMUNITY DEVELOPMENT	5,263,435	5,263,435	1,088,400	21%	1,366,793	(278,393)	-20%
207 LONG RANGE PLANNING	736,371	736,371	169,062	23%	204,782	(35,720)	-17%
215 and 216 HCD BLOCK GRANT							
Interest Income/Other Revenue	3,660	3,660	91	2%	30	61	201%
215 and 216 HCD BLOCK GRANT	3,660	3,660	91	2%	30	61	201%
225 ASSET SEIZURE	2,227	2,227	187	8%	1,286	(1,099)	-85%
229 LIGHTING AND LANDSCAPE	189,158	189,158	200	0%	67	133	197%
230 COMMUNITY FACILITIES DISTRICT	44,504	44,504	152	0%	36	116	319%
232 ENVIRONMENTAL PROGRAMS	409,843	409,843	114,775	28%	121,665	(6,890)	-6%
234 MOBILE HOME PARK RENT STAB.	873	873	75	9%	20	56	282%
235 SENIOR HOUSING	4,462	4,462	328	7%	102	226	222%
236 HOUSING MITIGATION	2,336,690	2,336,690	191,643	8%	115,188	76,455	66%
240 EMPLOYEE ASSISTANCE	29,256	29,256	4,616	16%	5,700	(1,083)	-19%
247 ENVIRONMENT REMEDIATION	2,824	2,824	192	7%	64	128	200%
250 COMH-SUCCESSOR AGENCY-MHRDA	6,935,750	6,935,750	133,065	2%	862,762	(729,697)	-85%
255 HOUSING SUCCESSOR AGENCY	553,622	553,622	125,892	23%	7,415	118,477	1598%
TOTAL SPECIAL REVENUE FUNDS	17,351,779	17,351,779	1,931,460	11%	2,787,866	(856,407)	-31%
CAPITAL PROJECTS FUNDS							
301 PARK DEVELOPMENT	2,647,562	2,677,562	298,094	11%	558,334	(260,240)	-47%
302 PARK MAINTENANCE	1,371,696	1,371,696	93,227	7%	231,406	(138,180)	-60%
303 LOCAL DRAINAGE	1,652,576	1,652,576	18,159	1%	311,757	(293,598)	-94%
304 LOCAL DRAINAGE/NON AB1600	83,498	83,498	2,245	3%	71,356	(69,112)	-97%
306 AGRICULTURE & OPEN SPACE PRESERVATION	3,420,324	3,420,324	425,317	12%	1,304,443	(879,125)	-67%
308 STREET CIP	5,068,938	5,068,938	388,579	8%	856,029	(467,450)	-55%
309 TRAFFIC IMPACT	1,283,196	1,283,196	594,273	46%	722,952	(128,679)	-18%
311 POLICE IMPACT	295,109	295,109	70,873	24%	87,679	(16,806)	-19%
313 FIRE IMPACT	469,220	469,220	37,254	8%	77,713	(40,459)	-52%
346 PUBLIC FACILITIES NON-AB1600	630,420	630,420	-	n/a	93,952	(93,952)	-100%
347 PUBLIC FACILITIES IMPACT	221,932	221,932	70,086	32%	58,736	11,349	19%
348 LIBRARY	936,224	936,224	100,941	11%	226,659	(125,717)	-55%
350 UNDERGROUNDING	50,079	50,079	1,238	2%	133,662	(132,424)	-99%
355 SCHOOL PEDESTRIAN/TRAFFIC SAFETY	656,864	656,864	7,078	1%	5,691	1,386	24%
360 COMMUNITY/REC IMPACT FUND	1,359,693	1,359,693	182,454	13%	295,529	(113,075)	-38%
TOTAL CAPITAL PROJECTS FUNDS	20,147,331	20,177,331	2,289,816	11%	5,035,898	(2,746,082)	-55%
DEBT SERVICE FUNDS							
420 CIVIC CENTER DEBT	301,874	301,874	75,073	25%	74,236	837	1%
441 POLICE FACILITY BOND	376,090	376,090	100	0%	-	100	n/a
TOTAL DEBT SERVICE FUNDS	677,964	677,964	75,174	11%	74,236	937	1%

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



City of Morgan Hill
Year to Date Revenues - Fiscal Year 2019-20
For the Three Months Ended September 30, 2019
25% of Year Complete

FUND REVENUE SOURCE	ADOPTED BUDGET	AMENDED BUDGET	CURRENT YTD ACTUAL	% OF BUDGET	PRIOR YTD	INCR (DECR) FROM PRIOR YTD	% CHANGE
ENTERPRISE FUNDS							
640 SEWER OPERATION							
Sewer Service Fees	11,746,083	11,746,083	1,634,986	14%	1,712,237	(77,251)	-5%
Interest Income/Transfers	43,166	43,166	3,370	8%	1,007	2,362	234%
Other Revenue/Current Charges	328,660	328,660	39,658	12%	107,866	(68,208)	-63%
640 SEWER OPERATION	12,117,909	12,117,909	1,678,014	14%	1,821,111	(143,097)	-8%
641 SEWER EXPANSION							
Interest Income	253,972	253,972	30,138	12%	9,045	21,093	233%
Development Impact Fee	4,801,041	4,801,041	1,979,427	41%	1,619,679	359,748	22%
Transfers/Other	-	-	-	0%	-	-	0%
641 SEWER EXPANSION	5,055,013	5,055,013	2,009,565	40%	1,628,724	380,841	23%
642 SEWER RATE STABILIZATION	52,262	52,262	3,770	7%	1,173	2,598	222%
643 SEWER-CAPITAL PROJECT	2,853,531	2,853,531	719,162	25%	687,054	32,108	5%
TOTAL SEWER FUNDS	20,078,715	20,078,715	4,410,511	22%	4,138,062	272,450	7%
650 WATER OPERATION							
Water Sales	13,400,000	13,400,000	2,414,058	18%	2,516,229	(102,171)	-4%
Meter Install & Service	125,500	125,500	2,014	2%	65,816	(63,802)	-97%
Transfers-In / Interest Income	478,039	478,039	108,010	23%	100,859	7,151	7%
Other Revenue/Current Charges	776,961	776,961	223,758	29%	340,116	(116,358)	-34%
650 WATER OPERATION	14,780,500	14,780,500	2,747,840	19%	3,023,020	(275,180)	-9%
651 WATER EXPANSION							
Interest Income/Other Revenue/Transfer	73,821	73,821	3,723	5%	1,266	2,457	194%
Development Impact Fee	1,452,925	1,452,925	342,345	24%	413,505	(71,160)	-17%
651 WATER EXPANSION	1,526,746	1,526,746	346,069	23%	414,771	(68,702)	-17%
652 Water Rate Stabilization	11,107	11,107	2,530	23%	251	2,279	908%
653 Water Capital Project	3,812,288	3,812,288	953,319	25%	600,333	352,986	59%
TOTAL WATER FUNDS	20,130,641	20,130,641	4,049,758	20%	4,038,375	11,383	0%
TOTAL ENTERPRISE FUNDS	40,209,356	40,209,356	8,460,269	21%	8,176,437	283,832	3%
INTERNAL SERVICE FUNDS							
730 INFORMATION SYSTEMS	1,783,719	1,783,719	451,201	25%	468,773	(17,572)	-4%
740 BUILDING MAINTENANCE	3,258,548	3,258,548	804,185	25%	821,386	(17,201)	-2%
741 BUILDING REPLACEMENT	831,677	831,677	192,586	23%	184,533	8,053	4%
745 CIP ADMINISTRATION	1,871,909	1,871,909	342,510	18%	325,434	17,077	5%
760 UNEMPLOYMENT INSURANCE	2,898	2,898	202	7%	74	128	172%
770 WORKERS COMPENSATION	800,422	800,422	215,117	27%	187,969	27,148	14%
790 EQUIPMENT REPLACEMENT	1,052,269	1,052,269	316,203	30%	253,941	62,262	25%
791 EMPLOYEE BENEFITS	1,229,852	1,229,852	196,505	16%	338,512	(142,007)	-42%
793 CORPORATION YARD COMMISSION	-	-	-	0%	1,100	(1,100)	-100%
795 GENERAL LIABILITY INSURANCE	1,076,586	1,076,586	264,760	25%	251,222	13,538	5%
TOTAL INTERNAL SERVICE FUNDS	11,907,880	11,907,880	2,783,270	23%	2,832,945	(49,675)	-2%
TOTAL FOR ALL FUNDS	\$ 133,415,168	\$ 133,470,168	\$ 20,775,094	16%	\$ 24,038,163	\$ (3,263,069)	-14%

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Three Months Ended September 30, 2019
 25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
010 GENERAL FUND								
I. ADMINISTRATION								
	CITY COUNCIL	\$ 25,420	\$ 336,684	\$ 102,852	\$ 64,000	\$ 166,852	50%	\$ 7:
	CITY ATTORNEY	49,341	763,698	149,350	68,130	217,480	28%	14:
	CITY MANAGER	34,339	580,167	107,202	-	107,202	18%	16:
	HUMAN RESOURCES	49,776	751,908	176,885	-	176,885	24%	16:
	COUNCIL SVCS & RECORDS MGMT							
	Council Svcs & Records Mgmt	36,694	601,560	136,978	6,131	143,108	24%	14:
	Elections	1,589	178,037	4,949	-	4,949	3%	4:
	COUNCIL SVCS & RECORDS MGMT	38,283	779,597	141,927	6,131	148,058	19%	15:
	FINANCE	121,204	1,623,059	403,958	29,649	433,607	27%	41:
	TOTAL ADMINISTRATION	318,363	4,835,112	1,082,175	167,909	1,250,084	26%	1,11:
II. COMMUNITY SERVICES								
	Membership Services & Rec. Programs	345,273	6,371,297	1,643,777	1,408,322	3,052,099	48%	1,60:
	Recreation Facility Rentals	109,548	1,356,318	332,037	28,653	360,689	27%	32:
	Community Services	41,072	648,407	147,113	70,321	217,434	34%	13:
	Environmental Services	16,361	293,918	52,208	-	52,208	18%	5:
	Street Maintenance	162,826	2,386,836	404,647	240,488	645,135	27%	45:
	Downtown Maintenance	22,448	321,475	66,967	65,316	132,283	41%	6:
	Cable Television	1,692	22,594	5,274	-	5,274	23%	1:
	COMMUNITY SERVICES	699,220	11,400,845	2,652,022	1,813,100	4,465,122	39%	2,64:
	CODE COMPLIANCE	12,055	160,943	36,122	-	36,122	22%	3:
	CONGESTION MANAGEMENT	20,065	318,537	63,076	-	63,076	20%	4:
	ECONOMIC DEVELOPMENT PROGRAMS	38,640	799,102	157,394	38,599	195,994		17:
	TOTAL COMMUNITY SERVICES	769,980	12,679,427	2,908,614	1,851,699	4,760,314	38%	2,85:
III. PUBLIC SAFETY								
	POLICE							
	PD Administration	80,254	1,300,288	308,271	12,763	321,033	25%	29:
	Field Operations	658,455	9,094,915	2,126,583	150,826	2,277,409	25%	1,73:
	Support Services	168,183	2,318,572	567,311	7,500	574,811	25%	54:
	Emergency Services/Haz Mat	13,175	195,641	41,930	-	41,930	21%	4:
	Special Operations	187,480	2,747,543	585,216	-	585,216	21%	48:
	Dispatch Services	130,497	1,716,002	417,816	-	417,816	24%	39:
	POLICE	1,238,044	17,372,961	4,047,126	171,089	4,218,214	24%	3,49:
	FIRE	512,886	6,961,396	1,905,801	64,347	1,970,148	28%	1,78:
	TOTAL PUBLIC SAFETY	1,750,930	24,334,358	5,952,927	235,436	6,188,363	25%	5,27:
IV. TRANSFERS								
	Other	156,333	2,142,463	468,999	-	468,999	22%	45:
	TOTAL TRANSFERS	156,333	2,142,463	468,999	-	468,999	22%	45:
	TOTAL GENERAL FUND	2,995,605	43,991,359	10,412,715	2,255,044	12,667,759	29%	9,70:

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)



City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Three Months Ended September 30, 2019
 25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
SPECIAL REVENUE FUNDS								
202	STREET MAINTENANCE	342	743,072	1,026	-	1,026	0%	1
205	PUBLIC SAFETY/SUPP.LAW	572	106,863	1,716	-	1,716	2%	1
206	COMMUNITY DEVELOPMENT FUND							
	Planning	137,970	2,516,024	440,447	74,932	515,378	20%	51
	Building	213,031	1,998,366	515,220	265,760	780,981	39%	38
	Engineering	108,797	1,332,942	291,981	323,920	615,901	46%	31
206	COMMUNITY DEVELOPMENT FUND	459,798	5,847,332	1,247,648	664,612	1,912,260	33%	1,21
207	LONG RANGE PLANNING	27,621	736,054	87,026	174,074	261,100	35%	12
215/216	CDBG	434	5,209	1,302	-	1,302	25%	1
225	ASSET SEIZURE	-	-	-	-	-	0%	-
229	LIGHTING AND LANDSCAPE	16,711	206,031	36,663	46,629	83,291	40%	3
230	COMMUNITY FACILITIES DISTRICT	2,297	46,979	9,083	-	9,083	19%	1
232	ENVIRONMENT PROGRAMS	28,883	439,095	100,987	33,087	134,075	31%	8
234	MOBILE HOME PARK	35	425	105	-	105	25%	-
236	HOUSING MITIGATION	478,980	785,207	700,328	91,140	791,468	101%	1,40
240	EMPLOYEE ASSISTANCE	4,081	28,477	10,772	-	10,772	38%	1
247	ENVIRONMENTAL REMEDIATION	110	-	329	-	329	0%	-
250	COMH-SUCCESSOR AGENCY-MHRDA	4,165,164	6,973,161	4,170,587	-	4,170,587	60%	5,86
255	HOUSING SUCCESSOR AGENCY	72,783	935,845	263,909	414,231	678,141	72%	65
TOTAL SPECIAL REVENUE FUNDS		5,257,811	16,853,750	6,631,481	1,423,773	8,055,255	48%	9,41
CAPITAL PROJECT FUNDS								
301	PARK DEVELOPMENT	56,776	5,240,802	217,889	869,938	1,087,828	21%	7
302	PARK MAINTENANCE	84,978	1,227,852	234,989	160,684	395,673	32%	23
303	LOCAL DRAINAGE	(426)	2,513,533	17,322	7,912	25,234	1%	3
304	LOCAL DRAIN. NON-AB1600	5,841	153,783	6,297	9,950	16,247	11%	-
306	AGRICULTURE & OPEN SPACE PRESERVATION	4,547	1,640,771	13,245	51,356	64,601	4%	1,82
308	STREET CIP	79,041	5,414,791	182,124	4,432,530	4,614,654	85%	4
309	TRAFFIC IMPACT	72,164	1,267,514	244,424	152,244	396,668	31%	94
311	POLICE IMPACT	2,739	226,130	7,456	-	7,456	3%	1
313	FIRE IMPACT	594	53,425	26,134	9,462	35,596	67%	1
346	PUBLIC FAC.NON AB1600	1,214	588,826	53,876	38,706	92,582	16%	2
347	PUBLIC FACILITIES IMPACT	13,690	119,458	38,225	60,971	99,195	83%	1
348	LIBRARY IMPACT	18,943	655,384	78,327	36,143	114,470	17%	13
350	UNDERGROUNDING	90	1,075	270	-	270	25%	-
355	SCHOOL PEDESTRIAN & TRAFFIC SAFETY	114,228	663,118	160,551	33,435	193,986	29%	1
360	COMM/REC CENTER IMPACT	567	458,875	23,911	118,396	142,308	0%	2
TOTAL CAPITAL PROJECTS FUNDS		454,985	20,225,338	1,305,039	5,981,727	7,286,766	36%	3,36
DEBT SERVICE FUNDS								
420	CIVIC CENTER DEBT	839	311,636	2,517	-	2,517	1%	1
441	POLICE FACILITY BOND DEBT	320	380,552	960	-	960	0%	-
TOTAL DEBT SERVICE FUNDS		1,159	692,188	3,477	-	3,477	1%	1

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City of Morgan Hill
 Year to Date Expenses - Fiscal Year 2019-20
 For the Month and Three Months Ended September 30, 2019
 25% of Year Complete

FUND NO.	FUND/ACTIVITY	CURRENT MONTH ACTUAL EXPENSES	AMENDED BUDGET	YTD EXPENSES	OUTSTANDING ENCUMBRANCE	TOTAL ALLOCATED	PERCENT OF TOTAL TO BUDGET	PRIOR YTD
ENTERPRISE FUNDS								
SEWER								
640	SEWER OPERATIONS	1,526,745	12,087,541	2,514,660	607,699	3,122,359	26%	2,441
641	SEWER CAPITAL EXPANSION	74,498	12,040,565	159,045	344,457	503,501	4%	111
642	SEWER RATE STABILIZATION	90	1,078	270	-	270	25%	
643	SEWER-CAPITAL PROJECTS	1,800,004	4,480,646	1,842,286	3,323,036	5,165,322	115%	2,161
TOTAL SEWER FUND(S)		3,401,337	28,609,829	4,516,260	4,275,192	8,791,452	31%	4,721
WATER								
	Water Operations	1,019,216	14,118,964	2,941,880	1,740,472	4,682,352	33%	2,451
	Utility Billing	64,651	789,099	212,507	27,131	239,638	30%	191
	Water Conservation	4,758	198,464	15,182	97,549	112,731	57%	21
650	WATER OPERATIONS	1,088,625	15,106,526	3,169,569	1,865,152	5,034,721	33%	2,661
651	WATER CAPITAL EXPANSION	121,706	1,538,305	392,334	372,323	764,657	50%	321
652	WATER RATE STABILIZATION	29	352	87	-	87	25%	
653	WATER-CAPITAL PROJECTS	8,712	3,210,663	26,352	66,500	92,851	3%	91
TOTAL WATER FUND(S)		1,219,072	19,855,846	3,588,341	2,303,975	5,892,316	30%	3,081
TOTAL ENTERPRISE FUNDS		4,620,409	48,465,676	8,104,601	6,579,167	14,683,768	30%	7,801
INTERNAL SERVICE FUNDS								
730	INFORMATION SYSTEMS	139,847	2,025,467	440,025	108,558	548,582	27%	371
740	BUILDING MAINTENANCE	230,497	3,233,319	729,278	334,414	1,063,693	33%	671
741	BUILDING REPLACEMENT	16,995	278,950	35,967	124,112	160,079	57%	81
745	CIP ADMINISTRATION	124,079	1,619,521	376,877	10,192	387,069	24%	321
760	UNEMPLOYMENT	-	10,000	2,135	-	2,135	21%	
770	WORKERS COMPENSATION	80,645	952,045	673,707	-	673,707	71%	391
790	EQUIPMENT REPLACEMENT	-	1,136,915	-	374,915	374,915	33%	
791	EMPLOYEE BENEFITS FUND	12,130	615,000	116,573	-	116,573	19%	201
793	CORP YARD COMMISSION	-	-	-	-	-	0%	
795	GEN. LIABILITY INSURANCE	9,201	1,044,568	795,495	-	795,495	76%	731
TOTAL INTERNAL SERVICE FUNDS		613,394	10,915,784	3,170,058	952,190	4,122,248	38%	2,791
REPORT TOTAL		\$ 13,943,363	\$ 141,144,095	\$ 29,627,372	\$ 17,191,902	\$ 46,819,274	33%	\$ 33,081

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)

 City of Morgan Hill Fund Activity Summary - Fiscal Year 2019-20 For the Three Months Ended September 30, 2019 25% of Year Complete									
Fund No.	Fund	Preliminary Fund Balance 06-30-19	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved
010	GENERAL FUND	\$ 18,724,089	\$ 5,235,105	12%	\$ 10,412,715	24%	\$ (5,177,610)	\$ 2,255,044	\$ 11,291,435
	TOTAL GENERAL FUND	\$ 18,724,089	\$ 5,235,105	12%	\$ 10,412,715	24%	\$ (5,177,610)	\$ 2,255,044	\$ 11,291,435
202	STREET MAINTENANCE	37,376	\$ 102,645	14%	\$ 1,026	26%	\$ 101,619	\$ -	\$ 138,995
205	PUBLIC SAFETY/SUPPL. LAW	93,997	134	0%	1,716	22%	(1,582)	-	92,415
206	COMMUNITY DEVELOPMENT	1,329,077	1,088,400	21%	1,247,648	21%	(159,248)	664,612	505,217
207	LONG RANGE PLANNING	1,248,188	169,062	23%	87,026	12%	82,036	174,074	1,156,150
215 / 216	CDBG	62,328	91	2%	1,302	25%	(1,211)	-	61,117
225	ASSET SEIZURE	129,741	187	8%	-	n/a	187	-	129,928
229	LIGHTING AND LANDSCAPE	82,282	200	0%	36,663	18%	(36,462)	46,629	(809)
230	COMMUNITY FACILITIES DISTRICT	92,596	152	0%	9,083	19%	(8,930)	-	83,666
232	ENVIRONMENTAL PROGRAMS	332,708	114,775	28%	100,987	23%	13,788	33,087	313,408
234	MOBILE HOME PK RENT STAB.	52,295	75	9%	105	25%	(30)	-	52,265
235	SENIOR HOUSING	227,806	328	7%	-	n/a	328	-	228,134
236	HOUSING MITIGATION	2,572,871	191,643	8%	700,328	89%	(508,684)	91,140	1,973,046
240	EMPLOYEE ASSISTANCE	52,272	4,616	16%	10,772	38%	(6,156)	-	46,116
247	ENVIRONMENT REMEDIATION	132,766	192	7%	329	n/a	(137)	-	132,629
250	COMH-SUCCESSOR AGENCY-MHRDA	(178,647)	133,065	2%	4,170,587	60%	(4,037,522)	7,421,052	(11,637,221)
255	HOUSING SUCCESSOR AGENCY	960,570	125,892	23%	263,909	28%	(138,017)	414,231	408,321
260	PUBLIC ART	185	-	n/a	-	-	-	-	185
	TOTAL SPECIAL REVENUE FUNDS	\$ 7,228,411	\$ 1,931,460	11%	\$ 6,631,481	39%	\$ (4,700,022)	\$ 8,844,825	\$ (6,316,436)
301	PARK DEV. IMPACT FUND	4,116,066	\$ 298,094	11%	\$ 217,889	4%	\$ 80,204	\$ 869,938	\$ 3,326,332
302	PARK MAINTENANCE	4,078,868	93,227	7%	234,989	19%	(141,762)	160,684	3,776,422
303	LOCAL DRAINAGE	9,826,411	18,159	1%	17,322	1%	837	7,912	9,819,336
304	LOCAL DRAINAGE/NON-AB1600	1,556,343	2,245	3%	6,297	4%	(4,052)	9,950	1,542,341
306	AGRICULTURE AND OPEN SPACE PRESERV	7,929,839	425,317	12%	13,245	1%	412,072	51,356	8,290,555
308	STREET CIP	3,223,422	388,579	8%	182,124	3%	206,455	4,432,530	(1,002,653)
309	TRAFFIC IMPACT FUND	991,301	594,273	46%	244,424	19%	349,849	152,244	1,188,906
311	POLICE IMPACT FUND	(640,897)	70,873	24%	7,456	3%	63,417	-	(577,480)
313	FIRE IMPACT FUND	3,873,198	37,254	8%	26,134	49%	11,121	9,462	3,874,856
346	PUBLIC FACILITIES NON-AB1600	(159,653)	-	n/a	53,876	9%	(53,876)	38,706	(252,235)
347	PUBLIC FACILITIES IMPACT FUND	694,036	70,086	32%	38,225	32%	31,861	60,971	664,926
348	LIBRARY IMPACT FUND	2,987,436	100,941	11%	78,327	12%	22,614	36,143	2,973,907
350	UNDERGROUNDING	859,066	1,238	2%	270	25%	968	-	860,034
355	SCHOOL PEDESTRIAN/TRAFFIC SFY	1,477,523	7,078	1%	160,551	24%	(153,473)	33,435	1,290,615
360	COMM/REC CTR IMPACT FUND	2,122,228	182,454	13%	23,911	5%	158,543	118,396	2,162,374
	TOTAL CAPITAL PROJECT FUNDS	\$ 42,935,187	\$ 2,289,816	11%	\$ 1,305,039	6%	\$ 984,778	\$ 5,981,727	\$ 37,938,237
420	CIVIC CENTER DEBT	170,884	\$ 75,073	25%	\$ 2,517	1%	\$ 72,556	\$ 81	\$ 243,359
441	POLICE FACILITY BOND DEBT	70,281	100	0%	960	0%	(860)	103	69,318
	TOTAL DEBT SERVICE FUNDS	\$ 241,165	\$ 75,174	11%	\$ 3,477	1%	\$ 71,697	\$ 185	\$ 312,677

Fund No.	Fund	City of Morgan Hill Fund Activity Summary - Fiscal Year 2019-20 For the Three Months Ended September 30, 2019 25% of Year Complete							
		Preliminary Fund Balance 06-30-19	Revenues		Expenses		Year to-Date Deficit or Carryover	Ending Fund Balance	
			YTD Actual	% of Budget	YTD Actual	% of Budget		Reserved ¹	Unreserved

640	SEWER OPERATIONS	\$ 2,823,174	\$ 1,678,014	14%	\$ 2,514,660	21%	\$ (836,646)	607,699	1,378,829
641	SEWER IMPACT FUND*	18,041,000	2,009,565	40%	159,045	1%	1,850,520	344,457	19,547,063
642	SEWER RATE STABILIZATION	2,616,622	3,770	7%	270	25%	3,500	-	2,620,122
643	SEWER-CAPITAL PROJECTS	8,665,393	719,162	25%	1,842,286	41%	(1,123,123)	3,323,036	4,219,234
650	WATER OPERATIONS	4,446,414	2,747,840	19%	3,169,569	21%	(421,729)	1,865,152	2,159,533
651	WATER IMPACT FUND*	2,133,422	346,069	23%	392,334	26%	(46,265)	372,323	1,714,834
652	WATER RATE STABILIZATION	1,724,231	2,530	23%	87	25%	2,443	-	1,726,674
653	WATER -CAPITAL PROJECT	1,158,362	953,319	25%	26,352	1%	926,968	66,500	2,018,830
TOTAL ENTERPRISE FUNDS		\$ 41,608,618	\$ 8,460,269	21%	\$ 8,104,601	17%	\$ 355,668	\$ 6,579,167	\$ 35,385,119

730	INFORMATION SERVICES	\$ 955,305	\$ 451,201	25%	\$ 440,025	22%	\$ 11,176	108,558	\$ 857,924
740	BUILDING MAINTENANCE	111,327	804,185	25%	729,278	23%	74,907	334,414	(148,180)
741	BUILDING REPLACEMENT	2,512,264	192,586	23%	35,967	13%	156,618	124,112	2,544,770
745	CIP ENGINEERING	28,366	342,510	18%	376,877	23%	(34,367)	10,192	(16,193)
760	UNEMPLOYMENT	142,357	202	7%	2,135	21%	(1,933)	-	140,424
770	WORKERS COMPENSATION	2,013,976	215,117	27%	673,707	71%	(458,590)	30,000	1,525,386
790	EQUIPMENT REPLACEMENT	4,825,134	316,203	30%	-	n/a	316,203	374,915	4,766,422
791	EMPLOYEE BENEFITS FUNDS	(189,229)	196,505	16%	116,573	19%	79,932	-	(109,297)
793	CORP YARD COMMISSION	-	-	n/a	-	n/a	-	-	-
795	GEN. LIABILITY INSURANCE	1,395,245	264,760	25%	795,495	76%	(530,735)	-	864,510
TOTAL INTERNAL SERVICE FUNDS		\$ 11,794,745	\$ 2,783,270	23%	\$ 3,170,058	29%	\$ (386,788)	\$ 982,190	\$ 10,425,767

SUMMARY BY FUND TYPE

GENERAL FUND GROUP	\$ 16,923,251	\$ 5,235,105	12%	\$ 10,412,715	24%	\$ (5,177,610)	\$ 2,255,044	\$ 11,291,435
SPECIAL REVENUE GROUP	22,843,805	1,931,460	11%	6,631,481	39%	(4,700,022)	8,844,825	(6,316,436)
DEBT SERVICE GROUP	241,165	75,174	11%	3,477	1%	71,697	185	312,677
CAPITAL PROJECTS GROUP	43,698,791	2,289,816	11%	1,305,039	6%	984,778	5,981,727	37,938,237
ENTERPRISE GROUP	42,719,956	8,460,269	21%	8,104,601	17%	355,668	6,579,167	35,385,119
INTERNAL SERVICE GROUP	15,152,608	2,783,270	23%	3,170,058	29%	(386,788)	982,190	10,425,767
TOTAL ALL GROUPS	\$ 122,532,217	\$ 20,775,094	16%	\$ 29,627,372	21%	\$ (8,852,277)	\$ 24,643,139	\$ 89,036,799

For Enterprise Funds: Unrestricted fund balance = Fund balance net of fixed assets and long-term liabilities.

*Unreserved fund balance includes bond proceeds reserved for projects listed in bond documents.

¹ Amount restricted for encumbrances, fixed asset replacement, long-term receivables, and bond reserves.

² Amount restricted for debt service payments and AB1600 capital expansion projects as detailed in the City's five year CIP Plan and bond agreements.

City Manager's Signature Authority

Contracts and Agreements Between \$25,000 to \$60,000 Entered Since 8/22/19 to 11/4/19

Vendor Name	Description of Service	Begin Date	End Date	Department	Amount
Critical Incident Videos, LLC	Technical Expertise for putting together a critical incident video	8/23/2019	6/30/2020	PD	\$45,000
Flexground Surfaces, Inc	CRC Pool Deck Resurfacing Project	9/13/2019	10/18/2019	CSD	\$56,223
Advanced Auto Body, Inc	Auto body repair including paint for Police Department vehicles	9/20/2019	6/30/2021	PD	\$40,000
Godbe Corporation	Revenue Measure Voter Polling	10/14/2019	3/31/2020	PD	\$30,550
Strategic Economics	Update of Strategic Economics 2013 Industrial Lands Analysis	10/8/2019	2/28/1950	DS	\$45,000
Burke, Williams & Sorensen, LLP	General Municipal Law Advice	10/29/2019	6/30/2020	CAO	\$45,000

Attachment: September 2019 Financial and Investment Report (2542 : Accept September 2019 Financial and Investment Report)

1st Quarter FY2019-20 Financial Report





General Fund

- Both Revenues and Expenditures are tracking within budget
- Key GF revenues:

Category	Budget	YTD Actual	Prior YTD
Property Tax	\$13,082,377	\$ 24,485	\$ 103,321
Sales Tax	10,476,000	1,105,756	991,931
Svc Charges	10,267,724	2,790,139	2,688,112
Hotel Tax	3,080,880	583,038	510,945

- Expenditures including encumbrances:

Total Exp	\$43,991,359	\$12,667,759	\$12,771,498
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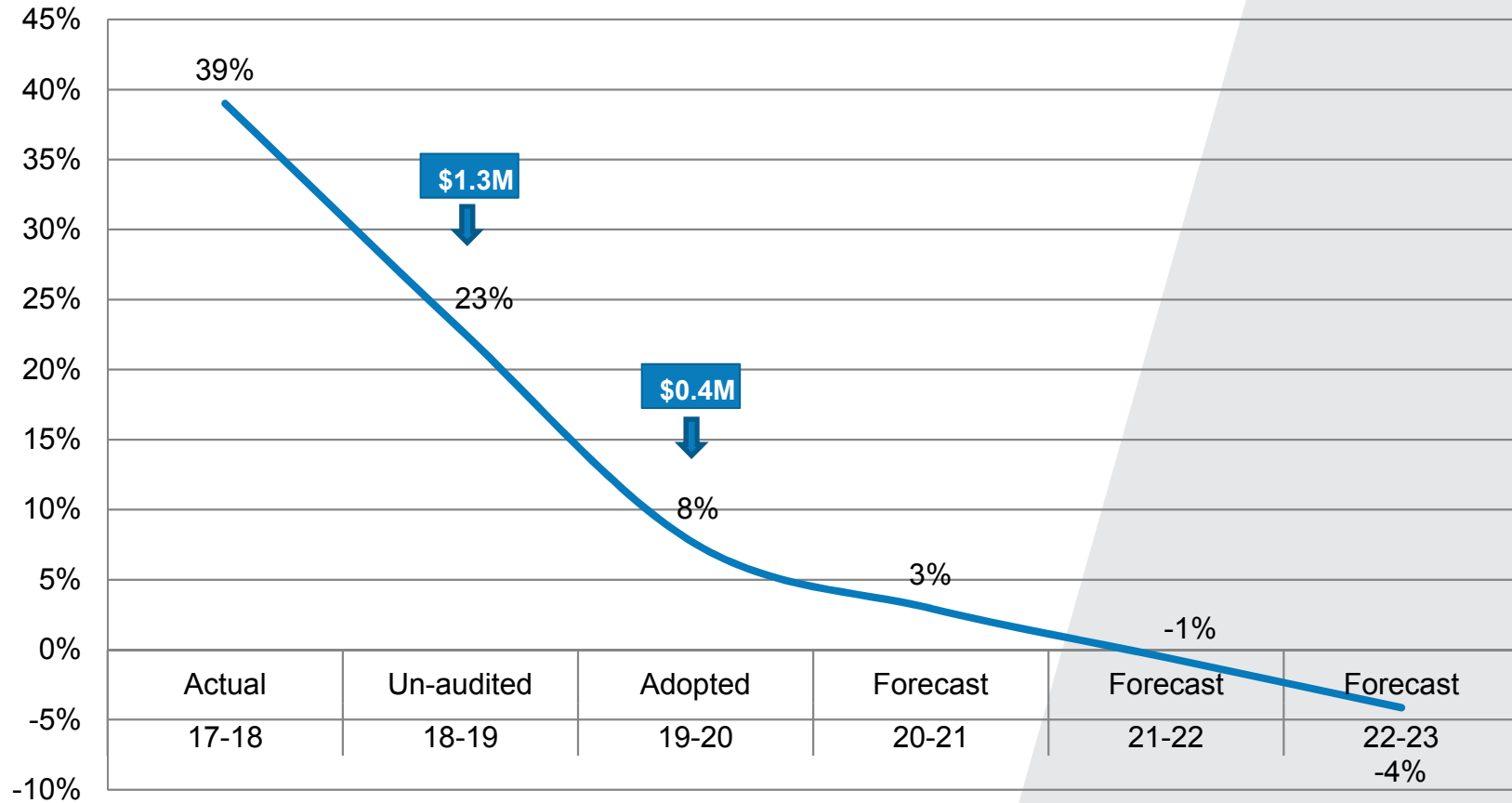


Development Services Fund

- Both revenues and expenditures are tracking below budget

Category	Budget	YTD Actual	Prior YTD
Revenues	\$5,263,435	\$1,088,400	\$1,366,793
Expenditures	5,847,332	1,912,260	2,007,462
Net	(\$583,897)	(\$823,860)	(\$640,669)

Development Services Fund (cont'd)





Enterprise Funds

- Wastewater Operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$12,117,909	\$1,678,014	\$1,821,111
Expenditures	12,087,541	3,122,359	2,640,645
Net	\$30,368	(\$1,444,345)	(\$819,534)

- Per City Council reserve policy – excess funds will be transferred to Wastewater capital projects fund



Enterprise Funds (cont'd)

- Water operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$14,780,500	\$2,747,840	\$3,023,020
Expenditures	15,106,526	5,034,721	3,778,338
Net	(\$326,026)	(\$2,286,881)	(\$755,318)

- Per City Council reserve policy – excess funds will be transferred to Water capital projects fund



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Michelle Bigelow, Deputy City Clerk
APPROVED BY: City Manager

SELECT CITY COUNCIL MAYOR PRO TEMPORE AND REVIEW CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

RECOMMENDATION(S)

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01;
3. Review and approve the City Council Appointments to Outside Agencies; and
4. Direct the City Clerk to notify the appropriate agencies of the updated assignments and update the Form 806 as necessary.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment
Maintaining Fiscal Responsibility
Supporting Our Youth
Seniors
and Entire Community
Fostering a Positive Organizational Culture
Preserving and Cultivating Public Trust
Preserving Our Community History
Enhancing Diversity and Inclusiveness
Advancing Regional Initiatives

2019 Strategic Priorities

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

REPORT NARRATIVE:

Mayor Pro Tempore

The City Council has an adopted policy, which sets forth the criteria for the selection of Mayor Pro Tempore annually for a one-year term. The adopted policy is intended to provide every Council Member with the opportunity to serve as Mayor Pro Tempore. Nomination for the Mayor Pro Tempore seat is generally based on: (1) the length of time that an individual has served on the City Council, and (2) whether or not the nominee has previously had the opportunity to serve as Mayor Pro Tempore. However, these factors are not binding, and every member is eligible to serve as Mayor Pro Tempore. The Mayor or any member of the City Council may nominate a member to serve as

Mayor Pro Tempore. A copy of the Council Policy CP-99-01 is attached and the recent Mayor Pro Tempore history is as follows:

**CITY COUNCIL
MAYOR PRO TEMPORE RECENT HISTORY**

	From:	To:
Council Member Siebert	December 5, 2012	January 15, 2014
Council Member Librers	January 15, 2014	December 3, 2014
Council Member Carr	December 3, 2014	December 2, 2015
Council Member Constantine	December 2, 2015	December 14, 2016
Council Member Carr	December 14, 2016	January 17, 2018
Council Member Constantine	January 17, 2018	December 19, 2018
Council Member Spring	December 19, 2018	December 4, 2019

Appointments to Outside Agencies

The City Council is committed to actively participating in regional committees and agencies as an important way to influence decisions that benefit Morgan Hill. The Appointments to Outside Agencies chart only includes appointments made by the City Council to outside agencies. It does not include appointments made by other agencies or organizations. Staff requests that the City Council review the attached Appointments to Outside Agencies chart. The Mayor makes appointments, subject to Council approval.

Once the appointments are made, the City is required to post the Fair Political Practices Commission (FPPC) Form 806 on its website. The Form 806 lists all the paid appointed positions to which an official can vote on the City's website including those assignments that do not receive a stipend. Staff requests that Council Members notify the City Clerk's Office immediately when new assignments are made and when there is compensation of \$250.00 or more in a 12-month period.

Cities Association – City Selection Committee Appointment

The Cities Association is one of the outside agencies that Council Members are appointed to. It is an association that represents the 15 cities in the county. Their City Selection Committee also makes appointments to local and regional bodies. One of those appointments is to the Santa Clara County Recycling and Waste Reduction Commission (commission). The City Selection Committee will be making its appointments to the commission in January and are asking that Council Members interested in serving on the commission submit their letters of interest by the end of December. Per the commission bylaws the cities of Morgan Hill and Gilroy are represented by one primary and one alternate delegate. The primary delegate has historically been filled by a Council Member from the City of Gilroy as the commission's meetings, which take place on the 4th Wednesdays of the month, conflict with the City of Morgan Hill's City Council meetings. As such, staff recommends that if a member or members of the Morgan Hill City Council are interested in serving on the commission, it be as the alternate delegate. If more than one Council Member is interested in serving on the commission, staff recommends that they submit their letter of interest to the Mayor by December 18th for review. At that point, the Mayor would review the Council

Members' reasons for their interest in serving on the commission along with their current appointments to determine the best applicant to move forward to the City Selection Committee for consideration and possible appointment.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the process for selection of the Mayor Pro Tempore, as well as provide a listing of the City Council appointments to outside agencies.

ALTERNATIVE ACTIONS:

Not Applicable.

PRIOR CITY COUNCIL AND commission ACTIONS:

The Council selects a Council Member to serve as the Mayor Pro Tempore and appoints Council members to outside agencies annually.

FISCAL AND RESOURCE IMPACT:

There are no fiscal impacts. Selection of Mayor Pro Tempore and review of appointments to outside agencies are activities of the City Council's annual workplan.

CEQA (California Environmental Quality Act):

Selection of a Mayor Pro Tempore and reviewing the appointment listing are administrative governmental activities that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. CP-99-01 Selection of Mayor Pro Tem 12-19-16.pdf
2. DRAFT Council Member Assignments to Committees 2020

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP 99-01

(Rescinded CP 94-05, CP 98-03)

SUBJECT: SELECTION OF MAYOR PRO TEMPORE

DATE: December 17, 1999, Reviewed 6/27/07,

AMENDED: August 24, 2005, December 19, 2016

It is the policy of the City Council of the City of Morgan Hill to annually nominate and select a member to serve as Mayor Pro Tempore for a one year term. The Mayor or any member of the City Council may nominate a member, who shall be selected by majority vote.

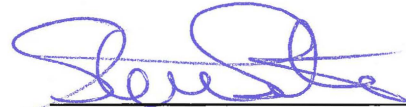
In order to provide every member with an opportunity to serve as Mayor Pro Tempore, it is the policy of the City Council that nominations be made on the basis of the length of time that a nominee has served on the City Council, and whether or not the nominee has previously had the opportunity to serve. However, these factors are not binding, and every member is eligible to serve as Mayor Pro Tempore. If more than one individual is nominated, the first person to receive a majority of the votes shall be selected to serve.

Selection of Mayor Pro Tempore shall occur at the first regular meeting of the City Council held after the general municipal election, and after the new members have been sworn in and have taken their seats; or at the second regular meeting in November in each year that a general municipal election is not held.

The Mayor Pro Tempore shall serve at the pleasure of the City Council and may be removed from the appointed position by a majority vote of the Council. The City Council shall fill all vacancies for Mayor Pro Tempore in accordance with the selection procedure set forth herein.

This policy shall remain in effect until modified by the City Council.

APPROVED:



STEVE TATE, MAYOR

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Countywide	<u>Santa Clara County Library District Joint Powers Authority</u> 1370 Dell Avenue Campbell, CA 95008 Cynthia Rios Garcia, Secretary CRiosGarcia@sccl.org (408) 293-2326, ext. 3090 https://www.sccl.org/About/Governance/JPA-Board-Meetings Tracy Ellenberger, Executive Assistant tellenberger@sccl.org 408-293-2326 x3093	Provide policy direction and governance for the Santa Clara County Library District. Cities of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Milpitas, Monte Sereno, Morgan Hill & Saratoga.	Meets 4 times per year typically on the 4th Thursday of month; 1:30—3:30 pm <u>12:00 pm</u> 1370 Dell Avenue Campbell, CA 95008	(P) Constantine (A) Carr	

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Environmental	<u>Santa Clara Valley Habitat Agency Governing Board</u> 535 Alkire Avenue, Suite 100 Morgan Hill, CA 95037 Ed Sullivan, Executive Officer Edmund.sullivan@scv-habitatagency.org (408) 779-7261 https://scv-habitatagency.org/31/Governance-Policies	Serves as governing body for JPA and makes all decisions except those delegated to the Implementation Board Staff.	Quarterly, 3 rd Thursday 3:00 pm - 5:00 pm Morgan Hill City Council Chamber 17555 Peak Avenue	(P) Spring (P) Constantine (A) McKay (A) Carr	
Environmental	<u>Santa Clara Valley Habitat Agency Implementation Board</u> 535 Alkire Avenue, Suite 100 Morgan Hill, CA 95037 Ed Sullivan, Executive Officer Edmund.sullivan@scv-habitatagency.org (408) 779-7261 https://scv-habitatagency.org/31/Governance-Policies	Makes recommendations to the Governing Board regarding fees and budget, appoints executive officers and hiring of other agency personnel, services and equipment, makes decision regarding real property acquisition and makes recommendations to the executive officers regarding grants and other funding.	Bi-Monthly, 3 rd Thursday 3:00 pm - 5:00 pm Morgan Hill City Council Chamber 17555 Peak Avenue	(P) Constantine (A) Spring (A) McKay (P) Carman (A) Little	

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Environmental	<u>Silicon Valley Clean Energy Authority</u> 333 W. El Camino Real, Suite 290 Sunnyvale, CA 94087 Andrea Pizano andreap@svcleanenergy.org (408) 721-5301 x.1005 https://www.svcleanenergy.org/board	The JPA created to collectively study, promote, develop, conduct, operate, and manage energy supply and efficiency programs related to the provision of clean power.	2 nd Wednesday of the month 7:00 pm Cupertino City Hall 10350 Torre Ave	(P) Martinez Beltran (A) Eulo	
Flood Control	<u>Pajaro River Watershed Flood Prevention Authority</u> PO Box 809 Marina, CA 93933 Ana Flores Regional Analysis & Planning Services aflores@ambag.org (831)883-3750 ext. 300 http://www.pajaroriverwatershed.org	Identify, evaluate, fund and implement environmentally sound flood prevention and control strategies in the Pajaro River Watershed, on an intergovernmental, cooperative basis as required by the Pajaro River Watershed Flood Prevention Authority Act.	Meet bi-monthly 1 st Friday 9:00 am Meeting locations alternate between the Cities of Gilroy, Hollister, Salinas & Watsonville	(P) Spring/Carr (non-voting member)	Chris Ghione, Public Services Director

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Flood Control	<u>Santa Clara Valley Water District Elected Officials Quarterly Meeting (Llagas Creek PL 566)</u> 5750 Almaden Expressway San Jose, CA 95118-3686 (mailing address) Michelle King, Clerk of the Board board@valleywater.org (408) 265-2600	Specifically address Llagas Creek flooding and PL 566 legislation and Anderson Dam Retrofit Project.	Quarterly on Fridays 10:00 am Morgan Hill City Hall, Grand Conference Room 17575 Peak Ave	(P) Spring (P) Carr (A) Martinez Beltran	Chris Ghione, Public Services Director
Housing	<u>Santa Clara County Housing & Community Development Advisory Committee (HCDAC)</u> Office of Supportive Housing 3180 Newberry Drive, Ste 150 San Jose, CA 95118 Tracy Cunningham, Management Analyst Tracy.cunningham@hhs.sccgov.org (408) 793-0560	The role of the HCD Advisory Committee is to be the policy-recommending body to the Board of Supervisors on the planning, implementation, monitoring, and evaluation of the Urban County HCD Program. The Committee guides the development of a coordinated housing and community development plan and hears project proposals, reviews staff recommendations, and makes recommendations to the Board of Supervisors for final approval and forwarding to HUD.	As needed 70 West Hedding Street, 1 st Floor Board Chambers	(P) McKay (A) Martinez Beltran	Rebecca Garcia, Housing Manager

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Land Use/ Transportation	<u>South County Joint Planning Advisory Committee</u> Santa Clara Co. Planning Office 70 W. Hedding, E Wing, 7 th Floor San José, CA 95110	Cities of Gilroy & Morgan Hill, County of Santa Clara and unincorporated area of San Martin addressing issues re: land use planning of regional significance. Staff coordination rotates between the three sponsoring organizations, Gilroy, Morgan Hill, and Santa Clara County.	As-needed	(P) Carr (A) McKay Joseph Mueller, Planning Commissioner Dennis Delisle, Citizen Representative _____, Citizen Representative	Jennifer Carman, Community Development Director Rob Eastwood, County of Santa Clara Kristi Abrams, City of Gilroy

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Local Partnership	<u>City-School Liaison Committee</u> Morgan Hill Unified School District; 15600 Concord Circle or City of Morgan Hill 17575 Peak Avenue Morgan Hill, CA 95037-4128 Kelly Shriefer, Secretary to the Superintendent, MHUSD shreiferk@mhusd.org (408) 201-6001 Michelle Bigelow, Deputy City Clerk Michelle.bigelow@morganhill.ca.gov (408) 310-4678 http://mhusd.org/board-of-education/cityschool-liaison-committee/	To facilitate communication between the City and School District on issues of common concern.	Every other month, typically on Fridays 8:30 am Meetings alternate between the City of Morgan Hill, City Hall 17575 Peak Ave and the Morgan Hill Unified School District Office 15600 Concord Cir	(P1) Carr (P2) Constantine (A1) Martinez Beltran (A2) McKay	Christina Turner, City Manager David Swing, Police Chief Chris Ghione, Public Services Director

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Local Partnership	<u>South County United for Health Leadership Team</u> County of Santa Clara, Public Health Department Active and Safe Communities Sobrato Center for Nonprofits 1400 Parkmoor Avenue, Suite 120 B San Jose, CA 95126 Alice Kawaguchi, MPH, RD Health Care Program Manager II Alice.Kawaguchi@PHD.sccgov.org (408) 793-2733	South County United for Health is a collaborative effort to create healthier communities where people live, work, learn and play in the cities of Morgan Hill, Gilroy, San Martin, and parts of unincorporated Santa Clara County, also known as South County.	Meets quarterly on Thursdays 10:00 am to noon Morgan Hill Community & Cultural Center 17000 Monterrey Road February 7, 2019 April 4, 2019 August 1, 2019 October 3, 2019	(P) Spring (A) Constantine	
Regional Government	<u>ABAG</u> 375 Beale Street San Francisco Fred Castro, Clerk of the Board fcastro@bayareametro.gov (415) 820-7913 https://abag.ca.gov/overview/ga.html	Council of governments representing Cities & Counties in the Bay Area; a comprehensive planning agency addressing regional social, environmental and economic issues.	Meets annually, usually in April Location varies (Oakland or San Francisco)	(P) Martinez Beltran (A) McKay	(P) Leslie Little, Assistant City Manager for Development Services (A) Jennifer Carman, Community Development Director

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Regional Government	<u>Cities Association of Santa Clara County Board</u> PO Box 1079 Los Gatos, CA 95031 Andi Jordon, Executive Director andi@citiesassociation.org (408) 766-9534 http://citiesassociation.org/about-us.php	Promotes cooperation, represents the mutual interest, and presents a unified voice for the fifteen cities of Santa Clara County; each city in Santa Clara County appoints the Mayor or a Council Member to the Board of Directors; advocates for positive action to enhance the quality of life for the people of our county.	Monthly 2nd Thursday 7:00 pm 456 W. Olive Ave Sunnyvale	(P) Constantine (A) Spring Mayor Pro Tem is the Alternate	None, unless Morgan Hill serves as President, then City Manager
Regional Government	<u>Cities Association of Santa Clara County Board</u> <u>City Selection Committee</u> PO Box 1079 Los Gatos, CA 95031 Andi Jordan, Executive Director andi@citiesassociation.org (408) 766-9534 http://citiesassociation.org/about-us.php	The committee makes recommendations on appointments to regional and countywide organizations.	Meets as needed before the Cities Association Board Meeting 456 W. Olive Ave Sunnyvale	(P) Constantine (A) Spring Mayor Pro Tem is the Alternate	
Regional Government	<u>Cities Association of Santa Clara County Board</u> <u>Legislative Action Committee</u> PO Box 1079 Los Gatos, CA 95031 Andi Jordan, Executive Director andi@citiesassociation.org (408) 766-9534 http://citiesassociation.org/about-us.php	The committee provides basic legislative updates to cities with little or no legislative staff, organizes emergency responses to urgent issues, and enables the Cities Association to advocate on issues of mutual interest.	Meets as needed before the Cities Association Board Meeting 456 W. Olive Ave Sunnyvale	(P) Constantine (A) Spring Mayor Pro Tem is the Alternate	

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Regional Government	<u>League of California Cities Peninsula Division</u> Seth Miller P.O. Box 5630 San Francisco, CA 94080 sethl_miller@yahoo.com (415) 595-8629 http://www.cacities.org/Member-Engagement/Regional-Divisions/Peninsula	Comprised of the 36 cities from San Francisco to Gilroy, division members work together to enhance the quality of life in our communities, our region and our state.	4 meetings per year: January 30, 2019; 11:30 – 1:30 March 20, 2019; 8:00 – 10:00 May 22, 2019; 11:30 – 1:30 August 28, 2019; 8:00 – 10:00 special meetings added as needed	(P) Martinez Beltran (A) McKay	
Transportation	<u>Caltrain Local Policy Maker Group</u> 1250 San Carlos Avenue San Carlos, CA 94070 (650) 508-6200 Casey Fromson fromsonc@samtrans.com (650) 508-6493 http://www.caltrain.com/projects/plans/CaltrainModernization/Meetings.html	Advisory group, comprised of elected officials and provides a formal venue to facilitate local input and guidance on the Caltrain Modernization Program.	Monthly 4 th Thursday 5:30 pm Edward J. Bacciocco Auditorium, Second Floor 1250 San Carlos Ave	(P) Carr (A) Constantine	Edith Ramirez, Economic Development Director Tiffany Brown, Associate Planner

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Transportation	<u>Comprehensive County Expressway Planning Study Policy Advisory Board</u> Santa Clara County Roads and Airports 101 Skyport Drive San Jose, Ca 95110-1302 Ellen Talbo ellen.talbo01@rda.sccgov.org (408) 573-2462 http://sccgov.igm2.com/citizens/default.aspx?	Provides an elected officials' forum for policy input to the <i>Expressway Plan 2040</i> – a long range plan for the improvement and maintenance of the eight County expressways and the Santa Teresa-Hale Corridor. All areas of need are included: capacity and operational improvements, signal operations, high-occupancy vehicle (HOV) lanes, bicycle and pedestrian improvements, finishing elements, and ongoing operating and maintenance needs and funding strategy recommendations.	As needed 70 West Hedding Street, 1 st Floor Board Chambers	(P) McKay (A) Constantine	Chris Ghione, Public Services Director

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Transportation	<u>Santa Clara Valley Transportation Authority (VTA) Policy Advisory Committee (PAC)</u> 3331 North First Street, Building B-1 st Floor San Jose, CA 95134-1927 Steven Flynn Advisory Committee Coordinator Elaine Baltao, Board Secretary Board.secretary@vta.org (408) 321-5680 http://www.vta.org/get-involved/advisory-committee/policy-advisory-committee-pac	Advises the Authority Board of Directors on policy matters relating to transportation and congestion management. <i>Board Member cannot serve on the PAC.</i> <i>(Note: participation is State-mandated)</i>	Monthly, 2 nd Thursday 4:00 pm VTA River Oaks Campus 1331 N. 1 st Street Room B-104 San Jose	(P) Constantine (A) Martinez Beltran	Chris Ghione, Public Services Director Edith Ramirez, Economic Development Director
Transportation	<u>Santa Clara Valley Transportation Authority (VTA) MG - Group 4</u>	Cities of Morgan Hill and Gilroy, advises the PAC (see above) on transportation policy and funding issues.	Tuesday before each Thursday Board meeting, 9:00 am Morgan Hill City Hall 17575 Peak Ave	(P) Carr (A) Constantine	Christina Turner, City Manager Chris Ghione, Public Services Director Edith Ramirez, Economic Development Director

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CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Transportation	<u>Santa Clara Valley Transportation Authority (VTA) Board of Directors</u> 3331 North First Street San Jose, CA 95134-1906 Elaine Baltao, Board Secretary board.secretary@vta.org (408) 321-5680 http://www.vta.org/get-involved/board-of-directors	Reviews issues relating to transportation and congestion management.	Monthly, 1 st Thursday 5:30 pm County Government Center 70 W. Hedding St. San Jose	(P) Carr (A) Marie Blankley (Gilroy) <i>(Alternates between MH and Gilroy every two years based on VTA preference – sometimes longer for continuity)</i>	Christina Turner, City Manager Chris Ghione, Public Services Director
<u>Transportation</u>	<u>South County Transportation</u>	<u>Discuss transportation items of mutual interest to the cities of Morgan Hill and Gilroy</u>	<u>(P) Constantine</u> <u>(P) Carr</u>	<u>Christina Turner,</u> <u>City Manager</u> <u>Chris Ghione,</u> <u>Public Services</u> <u>Director</u> <u>Edith Ramirez,</u> <u>Economic</u> <u>Development</u> <u>Director</u>	

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Water/Wastewater	<u>Santa Clara Valley Water Commission</u> 5750 Almaden Expressway San Jose, CA 95118-3686 (mailing address) Glenna Brambill gbrambill@valleywater.org (408) 630-2408	Advises the District on water supply, legislative issues and integrated water resource management. <i>(Note: Most issues relate to imported water; Morgan Hill is 100% ground water)</i>	12:00 pm-2:00 pm January 23, 2019 April 10, 2019 July 24, 2019 October 23, 2019 January 22, 2020 Santa Clara Valley Water District Headquarters Building Boardroom 5700 Almaden Expressway, San Jose	(P) Constantine (A) Martinez Beltran	Dan Repp, Deputy Director for Utilities Services or Tony Eulo, Program Administrator <i>(Note: Staff member serves as alternate)</i>
Water/Wastewater	<u>South County Regional Wastewater Authority (SCRWA) Board Meeting</u> 1500 Southside Drive Gilroy, CA 95020 Gina Bonnell Gina.bonnell@ch2m.com Secretary/Clerk of the Board (408) 848-0480 http://www.ci.gilroy.ca.us/561/South-County-Regional-Wastewater-Authority	The South County Regional Wastewater Authority established by Joint Powers Agreement (Cities of Gilroy & Morgan Hill) to provide common authority relating to Joint Wastewater Gilroy/Morgan Hill Sewage Treatment Plant located in Gilroy.	1st Wednesday of the Month 8:00 am 1500 Southside Drive Gilroy	(P1) Carr (P2) Spring (A) Constantine (A) Martinez Beltran (A) McKay	Dan Repp, Deputy Director for Utilities Services or Chris Ghione, Public Services Director Christina Turner, City Manager

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Page 13 of 14 Approved 2/6/19

CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Category	AGENCY NAME	PURPOSE	MEETS	DELEGATES (P=Primary) (A=Alternate)	STAFF REP/S (If applicable)
Water/Wastewater	<u>Joint Water Resource Committee</u> 5750 Almaden Expressway San Jose, CA 95118-3686 (mailing address) Garth Hall ghall@valleywater.org (408) 630-2750 http://www.valleywater.org/About/CitiesofGilroyMorganHill.aspx X	Advance South County Water interests. This joint committee is made up of two City Council members each from Morgan Hill and Gilroy, and two Santa Clara Valley Water District (SCVWD) Board members. The members from the two cities will also represent the South County Regional Wastewater Authority (SCRWA). Policy matters to be discussed include recycled water, groundwater, and long-term water resource planning.	Meetings follow SCRWA Board Meetings - 1 st Wednesday of the month 8:30 am (at the request of the committee) 1500 Southside Drive Gilroy	(P1) Carr (P2) Spring (A) Constantine (A) Martinez Beltran (A) McKay	Christina Turner, City Manager Chris Ghione, Public Services Director

LIST OF CITY COUNCIL ADJUNCT COMMITTEES

Mayor Rich Constantine

- Governance, Transparency and Labor Relations Policy Committee for the League of California Cities (Chair)
- City Liaison to the Sister City Committee
- Board Member of the Healthier Kids Foundation
- South County Youth Task Force
- Morgan Hill Chamber of Commerce Board (Mayor is ex-officio member)

Council Member Larry Carr

- Silicon Valley Regional Interoperability Authority (appointment through VTA)
- Capital Program Committee of VTA (Chair)
- Governance & Audit Committee of VTA
- Mobility Partnership Advisory Board for VTA
- Administration & Finance Committee of VTA (Chair)

Council Member John McKay

- Downtown Association
- Santa Clara County Representative to the Peninsula Division of the League of California Cities
-

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Council Member Yvonne Martinez Beltran

- City Liaison to the Sister City Committee (alternate)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Terry Linder, Senior Planner
APPROVED BY: City Manager

APPROVE AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR DUNNE-YOUNG TO INCORPORATE 26 BUILDING ALLOTMENTS FOR FISCAL YEAR 2020-21 AWARDED FROM THE 2018 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AND TRANSFERRED FROM THE MONTEREY-LUCKY SHING (MANZANITA PARK) PROJECT FOR THE 46-UNIT EAST DUNNE-YOUNG PROJECT (ALSO KNOWN AS ANDALUSIA) LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE BEHIND THE KINDERCARE LEARNING CENTER LOCATED AT 605 E. DUNNE AVENUE

RECOMMENDATION(S)

1. Open/close public hearing;
2. Waive the first and second reading of ordinance approving amendment to a Development Agreement (DA 2018-0002) and a transfer of allotments from the Monterey-Lucky-Shing project; and
3. Introduce ordinance amending the Development Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2019 Strategic Priorities

Housing

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

PROJECT DESCRIPTION

On October 17, 2019, a Development Agreement Amendment request was filed by Diana Dunne Investors, LLC, requesting the incorporation of 15, Fiscal Year (FY) 2020-21 residential building allotments into the Andalusia project Development Agreement. Also requested is the transfer of 11 of the 24, FY 2020-21 residential allotments awarded to RDCS2019-0005: Monterey-Lucky Shing (Manzanita Park), into the Andalusia project Development Agreement. The applicant's letter of request is attached (Attachment 1). Also attached is a letter from the owners of the property for application RDCS2019-0005 Monterey-Lucky Shing, consenting to the transfer of allotments to the Andalusia project (Attachment 2).

ANALYSIS

The proposed request was analyzed with respect to consistency with the: 1) General Plan; 2) Zoning Ordinance; and 3) Residential Development Control System (RDCS)

1. **General Plan**

The City of Morgan Hill controls population growth through implementation of the RDCS. The RDCS establishes a voter-approved population ceiling, which is managed by metering the number of residential units that can be built on an annual basis.

The project is consistent with the General Plan land use designation and the provisions of the RDCS. The proposed Development Agreement Amendment request will not alter the project's consistency with the General Plan and will further implement the provisions of the RDCS through the public benefit commitments.

2. **Zoning Ordinance**

Chapter 18.116 (Development Agreements) of the Morgan Hill Municipal Code establishes procedures for processing Development Agreements in compliance with Government Code Sections 65864 through 65869.5. Any Development Agreement may be modified by mutual consent of the parties in accordance with Government Code section 65868 and compliance with the procedures specified in Municipal Code Section 18.116.040 (Consideration of Proposed Development Agreements).

Consistent with the Morgan Hill Municipal Code, Section 3.04 (Amendments) of the Development Agreement (Attachment 3) states that amendments or modifications to the Agreement or Project Approval are subject to applicable and procedural provisions of the City's General Plan, zoning, subdivision, and other applicable land use ordinances and regulations.

3. **Residential Development Control System**

Section 18.156.100 of the Municipal Code requires the City Council to adopt and maintain an RDCS Competition Manual. Chapter IV of the RDCS Competition Manual incorporates the RDCS Implementation Policies.

Pursuant to Section M of Chapter IV "RDCS Implementation Policies" of the RDCS Competition Manual, completion of a project can be expedited through the transfer of fiscal year allotments between and within projects. Transfers must meet the following criteria:

a. **The receiving project has sufficient lead time to exercise the transferred allotment prior to the deadline.**

The E. Dunne-Young project is fully entitled as follows:

- Tentative Map SD2018-0004: November 27, 2018
- Development Agreement DA2018-0002: January 23, 2019
- Site Review SR2018-0020: February 28, 2019

The E. Dunne-Young project submitted master plans for building permits on October 14, 2018.

The FY 2020-21 allotments must be exercised by March 4, 2022 (within 30 months of approval). Considering the progress of the project, there would be sufficient time to exercise the RDCS allotments.

b. **The transfer must work as a trade between two developments or within a project.**

The transfer of 11 allotments from RDCS 2019-0005: Monterey-Lucky Shing would provide a fully allotted project allowing for uninterrupted completion. The 13 allotments remaining for RDCS 2019-0005: Monterey-Lucky Shing are sufficient to represent phase one of that project and/or be non-applicable after January 1, with the implementation of the provisions within Senate Bill 330.

c. **The transfer may apply to partially allotted and fully allotted projects.**

Both projects involved in the transfer are partially allotted.

d. **Both on-going and recently allotted first time projects may transfer allotments.**

RDCS2017-0012: E. Dunne-Young is considered an on-going project and RDCS 2019-0005: Monterey-Lucky Shing is a recently allotted first time project.

Conclusion

The proposed Development Agreement amendment would modify the Development Agreement to incorporate 15, FY 2020-21, On-Going residential building allotments and incorporate 11, FY 2020-21 transferred allotments from RDCS2019-0005: Monterey-Lucky Shing. The proposed Development Agreement amendment (Attachment 4) is mutually agreed to by the City and the applicant and is consistent with the criteria specified within Chapter IV. RDCS Implementation Policies, Section M of the RDCS Competition Manual. It is recommended the City Council adopt the attached (Attachment 5) ordinance approving an amendment to the Development Agreement for the Andalusia project.

COMMUNITY ENGAGEMENT: Public notice of the development agreement amendment request was mailed to property owners within 300 feet of the project and notice was published in the November 22 edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS: Deny the development agreement amendment exempting the remaining 26-units from the 2017 RDCS requirements.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council affirmed the award of 20, FY 2019-20 allotments in June 2018, to the 46-unit Andalusia project.

Tentative Subdivision Map was approved by the Planning Commission in November of 2018.

On January 23, 2019, City Council adopted the Development Agreement via ordinance.

On July 23, 2019, the Planning Commission awarded the project 15 on-going residential building allotments for FY 2020-21.

On September 4, 2019, the City Council approved Resolution No. 19-044, reaffirming the distribution of the RDCS allotments for FY 2020-21.

On November 12, 2019 the Planning Commission considered this current development agreement amendment and transfer request and unanimously recommended City Council approval (Attachment 6).

FISCAL AND RESOURCE IMPACT:

Application filing fees were paid by the applicant to cover the staff time required to process the development agreement amendment request.

California Environmental Quality Act (CEQA):

A Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program were approved in 2018 as part of the project entitlements. No further environmental analysis is required.

LINKS/ATTACHMENTS:

1. Request for Transfer of Allotments (Andalusia)
2. Transfer Authorization (Manzanita Park)
3. Recorded DA
4. E Dunne Young Amendment Agreement
5. Ordinance Amending Development Agreement
6. November 12, 2019 Planning Commission Staff Report (web link)

DIANA DUNNE INVESTORS, LLC
 385 WOODVIEW AVE., SUITE 100
 MORGAN HILL, CA 95037
 408-779-5900 FAX 408-779-3840
roliver@dividendhomes.com
mfrankel@dividendhomes.com

October 16, 2019

Ms. Terry Linder
 City of Morgan Hill, Planning Department
 17575 Peak Avenue
 Morgan Hill, CA 95037

Re: Development Agreement Amendment, Andalusia Project, RDCS2017-0012 E. Dunne-Young and Request for Transfer of 11 Allotments from Manzanita Park to Andalusia

Dear Ms. Linder:

We have attached hereto, our application for a Development Agreement Amendment for the above referenced Project for the purpose of including into the Development Agreement the remaining units in Phase 2 (15) and in Phase 3 (11 units), so that the project can be constructed and completed in one larger Phase. The final working drawings for the project have been submitted to Building for plan check.

Phase 2 (for 15) allocations for Andalusia as an "On-Going Project" were confirmed by the City Council on September 5, 2019. We hereby request the transfer of 11 allocations (in order to expedite the completion of the Andalusia Project) from the Manzanita Park, RDCS 20192019-0005, pursuant to Subsection M of IV. RDCS Implementation Policies. Because of the pending changes to the California Building Codes, that are to be effective January 1, 2020, the working drawings, including all the solar requirements, for the project would have to substantially revised for the 11 units in Phase 3, unless we are able to complete plan check process prior to the end of December 2019. The changes required could be substantial and make it difficult to meet the new requirements with the current plans.

Both applicants are related entities to Dividend Homes, Inc. and we can meet the four requirements set forth in Subsection M, Transfer of Allotments. A separate letter, signed by both controlling entities, agreeing to this Transfer is also attached.

We understand and accept that all the provisions of the existing Development Agreement for the Andalusia Project would be applicable to all three Phases of the Andalusia Project, as part of the Development Agreement Amendment

Very truly yours,

Dianna Dunne Investors, LLC

By:  James A. Pedicini
 Vice-President

Attachment: Request for Transfer of Allotments (Andalusia) (2565 : AAE2019-0010)

NORTH CORRIDOR INVESTORS LLC
 385 WOODVIEW AVE., SUITE 100
 MORGAN HILL, CA 95037
 408-779-5900 FAX 408-79-3840
roliver@dividendhomes.com
mfrankel@dividendhomes.com

October 17, 2019

Ms. Gina Paolini
 City of Morgan Hill Planning Department
 17575 Peak Ave.
 Morgan Hill, CA 95037

Re: Transfer of Allotments – Manzanita Park RDCS 2019-0005

Dear Ms. Paolini:

Our Manzanita Park Project received 24 building allotments, as confirmed by the City Council on September 5th which would be Phase One for the project. Since we would need an additional three allocations to complete the construction of all unit on the south side of the extension of Tilton Ave., we would delay the start of construction until almost a year later, when we could reasonably expect to be awarded another 15 ongoing allocations. Thus, the transfer of 11 allocations from Manzanita Park Project to the Andalusia Project would not adversely or unreasonably delay the Manzanita Park Project but would expedite the completion of the entire Andalusia Project.

Manzanita Park Project still has to process a PD Permit, which would in any case push the processing of Manzanita Park into 2020. Given the recent signing of SB 330 by the Governor of California, which will now pre-empt Measure S, that transfer of 11 units from Manzanita Park now will not have any adverse impact on Manzanita Park which could request all the allotments as a compliant project, but it will have a significant positive impact on Andalusia allowing that project's completion be expedited without further delay and without the necessity to redesign plans to comply with new building codes.

Reference is made to the attached Request by Diana Dunne Investors LLC for Transfer of Allocations along with their request for a Development Agreement Amendment to implement this transfer. We hereby consent to the requested Transfer of Allocations, as provided for in Subsection M of IV. RDCS Implementation Policies, which provisions are still applicable up December 31, 2019.

Respectfully submitted:

North Corridor Investors LLC

By: Mary Beth Long, VP

Respectfully accepted:

Diana Dunne Investors LLC

By: James A. Pedicini, President

Attachment: Transfer Authorization (Manzanita Park) (2565 : AAE2019-0010)

24133963Regina Alcomendras
Santa Clara County - Clerk-Recorder

03/13/2019 02:20 PM

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:City of Morgan Hill
Development Services Department
17575 Peak Avenue
Morgan Hill, CA 95037

Titles: 1 Pages: 42

Fees: \$0.00
Taxes: \$0
Total: \$0.00RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

168-04-19-010

DEVELOPMENT AGREEMENT**BY AND BETWEEN****THE CITY OF MORGAN HILL****AND****DIANA DUNNE INVESTORS LLC****REGARDING****ANDALUSIA RESIDENTIAL DEVELOPMENT PROJECT**

Attachment: Recorded DA (2565 : AAE2019-0010)

RESIDENTIAL DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MORGAN HILL
AND
DIANA DUNNE INVESTORS LLC REGARDING THE ANDALUSIA RESIDENTIAL
DEVELOPMENT PROJECT

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

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

RECITALS

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

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

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

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

1. **RDCS Application:** RDCS 2017-0012: E. Dunne-Young, 20 FY 2019-20 allotments
2. **EA 2018-0014:** E. Dunne-Young;
3. **SD 2018-0004:** E. Dunne-Young;

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

F. On June 20, 2018, the Morgan Hill City Council awarded an allotment for the Project as set forth in the Developer's application for residential allotments pursuant to Chapter 18.156 ("**Residential Development Control System**", or "**RDCS**") of the Morgan Hill Municipal Code ("**Code**"). This Agreement serves to secure in a permanent and enforceable manner the public benefits and commitments included in the Developer's application as required under Section 18.156.120.J of the Code.

G. On October 23, 2018, November 13 and November 27, 2018, following a duly noticed and conducted public hearing, the Planning Commission of the City ("**Planning Commission**") considered the Development Agreement for recommendation to the City Council, and determined that the Development Agreement is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan; is compatible with the uses authorized in the zoning district in which the real property is located; duly considers City mitigation programs in effect at the time of execution of the agreement; will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood; complies with the provisions of the California Environmental Quality Act and City's procedures adopted pursuant thereto; and will not adversely affect the orderly development of property or the preservation of property values.

ARTICLE 1 **ADMINISTRATION**

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

1.02 Definitions.

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

- (1) "**Allotments**" shall mean those residential allotments awarded Developer through the Residential Development Control System

- (2) **“Applicable Law”** shall have that meaning set forth in Section 2.01(a) of this Agreement.
- (3) **“Commitments”** shall have that meaning set forth in Section 2.04(a) of this Agreement.
- (4) **“Director”** shall mean the Director of Community Development, and his or her designee.
- (5) **“Existing Approvals”** shall have that meaning set forth in paragraph D of the Recitals of this Agreement.
- (6) **“Existing City Laws”** shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, RDCS, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.
- (7) **“Impact Fees”** shall mean those fees imposed so that developments bear a proportionate share of the cost of public facilities and service improvements that are reasonably related to the impacts and burdens of the Project, adopted pursuant to Morgan Hill Municipal Code Chapter 3.56 and California Government Code Section 66001 et seq.
- (8) **“Legal Effect”** shall mean the ordinance, resolution, permit, license or other grant of approval that has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.
- (9) **“New City Laws”** shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes "Legal Effect" after the Effective Date of this Agreement, and that applies City wide.
- (10) **“Project”** means the development containing 20, three story, condominium units and .83 acres of open space, as more particularly described in Exhibit B. Any reference in this Agreement to the "Project" shall mean and include the "Property".
- (11) **“Project Approvals”** mean, collectively, the Project's Existing Approvals and the Subsequent Approvals.
- (12) **“RDCS”** means the Residential Development Control System set forth in Chapter 18.156 of the Morgan Hill Municipal Code.

- (13) **"Second Notice"** shall have that meaning set forth in Section 4.07(c) of this Agreement.
- (14) **"Subdivision Document"** means, pursuant to Government Code Section 66452.6(a) and this Agreement, any tentative map, vesting tentative map, parcel map, or final map, or any such new map or any amendment to any such map, or any resubdivision.
- (15) **"Subsequent Approvals" and "Subsequent Approval"** mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Ordinance, including without limitation, subdivision maps and building permits.

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

1.03 **Term.**

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

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

ARTICLE 2 APPLICABLE LAW

2.01 Applicable Law—Generally.

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

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

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

2.02 Vested Right to Applicable Law.

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

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

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

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

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

2.03 Project Impacts and Costs.

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

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

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

2.04 RDCS and Other Specific Project-Specific Requirements.

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

(b) Substitution of Commitments within the same Objective may be allowed in limited circumstances, as provided in Section IV. F of the RDCS Competition Manual, with approval of the Community Development Director documented through an Administrative Amendment as provided in Section 3.05 of this Agreement. Substitution may be allowed only if the proposed changes result in the project receiving the same or higher score within each Objective, maintain or improve the quality of the project, and would result in the same or greater value to the City or its future residents. No changes which would subject the Project to further environmental review under CEQA shall be approved. In circumstances in which Substitution within the same Objective is not possible, Substitution may be allowed only by resolution of the Planning Commission.

(c) The Developer's RDCS application – RDCS 2017 – 0012: E. Dunne-Young approved on June 20, 2018, by the City Council and approval actions (as reflected in the official records, including agendas and minutes of the City Planning Commission and City Council) shall be incorporated into this Agreement by this reference.

2.05 Construction Codes.

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

2.06 Timing of Development.

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

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

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

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

2.07 Improvements.

In any instance where Developer is required to install improvements (including those set forth in Exhibit C), Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation of improvements and provided Developer has supplied all

information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner. Where the actual cost of any improvement exceeds Developer's estimated cost or commitment, Developer shall be solely responsible for all improvement costs in excess of those approved by City unless otherwise provided for in a reimbursement agreement.

2.08 Overcapacity, Oversizing.

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

(b) Unless no credit or reimbursement is owed to Developer pursuant to Section 2.04 of this Agreement, Developer's right to receive credits and reimbursements for Oversizing or excessive payment or performance shall be determined and processed pursuant to the City's Municipal Code and controlling practices (relative to credits and reimbursements) on the Effective Date.

2.09 New City Laws.

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

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

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

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

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

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

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

(d) Developer in its sole and absolute discretion may elect to have applied to the Project a New City Law that is not otherwise a part of the Applicable Law, subject to the limitations set forth in this subdivision (d). In the event Developer so elects to be subject to a New City Law that is not otherwise a part of the Applicable Law, Developer shall provide notice to City of that election and thereafter such New City Law shall be part of the Applicable Law. In no event shall any New City Law become part of the Applicable Law if it would relieve Developer from, or impede Developer's compliance with, Developer's obligations pursuant to this Agreement, including without limitation Developer's obligations of full "Project Mitigation" pursuant to Section 2.03 or the "RDCS and Other Project Specific Requirement" pursuant to Section 2.04.

Further, for the purposes of this Agreement, the "New City Laws" Developer may elect to be subject to pursuant to this Section shall not mean nor include any or all individual development agreements with other developers (including without limitation such development agreements' term and conditions, exhibits, etc.) executed before or after the Effective Date of this Agreement.

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

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

ARTICLE 3 **PROCESSING**

3.01 Processing.

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

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

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

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

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

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

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

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

3.04 Amendments.

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

No amendment to this Development Agreement shall be necessary to extend the RDCS exercise of allotment date as provided in Section 3.03, nor to substitute an RDCS Commitment as provided in Section 2.04(b) of this Agreement. Future minor amendments, such as allotment adjustments for ongoing projects, shall be approved by Planning Commission resolution.

3.05 Administrative Amendment

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

ARTICLE 4 DEFAULT, VALIDITY PROVISIONS, ASSIGNMENT

4.01 Defaults.

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

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

4.02 Actions During Cure Period.

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

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

4.03 Resolution of Disputes.

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

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

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

4.04 Periodic Review.

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

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

4.05 Force Majeure Delay, Extension of Times of Performance.

(a) Performance by any Party hereunder shall be excused, waived or deemed not to be in default where delays or defaults are due to acts beyond a Party's control such as war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God,

unexpected acts of governmental entities other than City, including revisions to capacity ratings of the wastewater plant by the Regional Water Quality Control Board, the State Water Resources Board, enactment of conflicting State or Federal laws or regulations, or litigation (including without limitation litigation contesting the validity, or seeking the enforcement or clarification of this Agreement whether instituted by the Developer, City, or any other person or entity) (each a "Force Majeure Event").

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

4.06 Third Party Legal Actions.

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

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

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

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

Agreement and/or Project Approval as necessary or desirable to permit execution of this Agreement and/or Project Approval.

4.07 Estoppel Certificate.

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

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

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

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

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

4.08 Assignment/Covenants Run with the Land.

(a) Right to Assign. Developer shall have the right to sell, assign, or transfer this Agreement with all its rights, title and interests therein to any person, firm or corporation acquiring an interest in the Project or Property (or portion thereof associated with the Project) at any time during the term of this Agreement ("**Assignee**"). Developer shall provide City with written notice of any assignment or transfer of all or a portion of the Property no later than thirty (30) days prior to such action, which notice shall include specific portions of the Project or Property to be assigned and the proposed form of assignment. Any proposed assignment shall be subject to the express written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned. City's approval of a proposed assignment or transfer shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit and capability to successfully carry out the development of the Property to completion. The written

assignment, assumption or release of rights or obligations with respect to a portion of the Project or of the Property shall specify the portion of the Project or Property and the rights assigned and obligations assumed and shall be approved by the City Attorney. The express written assumption by an Assignee of the obligations and other terms and conditions of this Agreement with respect to the Property or such portion thereof sold, assigned or transferred shall relieve Developer of such obligations so assumed. Any such assumption of Developer's obligations pursuant to this Agreement shall be deemed to be to the satisfaction of the City Attorney if executed in the form as may be approved by the City Attorney.

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

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

4.09 Encumbrances on the Property.

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

4.10 Obligations and Rights of Mortgage Lenders.

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

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

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

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

4.11 Termination.

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

of such termination, in a form satisfactory to the City Attorney that the Agreement has been terminated.

ARTICLE 5 GENERAL PROVISIONS

5.01 Miscellaneous.

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

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

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

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

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

prepared, supplied or approved of, plans and/or specifications for the subdivision. Notwithstanding anything herein to the contrary, Developer's indemnification of City shall not apply to the extent that such action, proceedings, demands, claims, damages, injuries or liability is based upon the active negligence of the City.

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

Limit of Liability for Injury or Accidental Death:
 Per Occurrence \$1,000,000
 Limit of Liability for Property Damage:
 Aggregate Liability for Loss \$1,000,000

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

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

(h) Notices.

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

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

Attachment: Recorded DA (2565 : AAE2019-0010)

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

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

If to Developer: Diana Dunne Investors LLC
 c/o Dick Oliver and Mary Beth Long
 385 Woodview Ave, Suite 100
 Morgan Hill, CA 95037

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

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

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

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

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

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

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

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

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

Exhibit B Description of Project.

Exhibit C RDCS Specific Restrictions and Requirements.

Signatures of all parties are on the following page.

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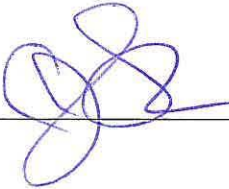
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IN WITNESS WHEREOF, City and Developer have executed this Agreement as of the date first hereinabove written.

CITY OF MORGAN HILL:

s/ 

Christina J. Turner
City Manager

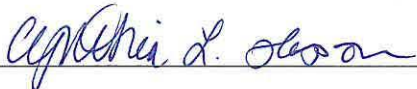
Date: 3/1/19

Attest:

s/ 

3/6/19
Deputy City Clerk

Approved as to Form:

s/ 

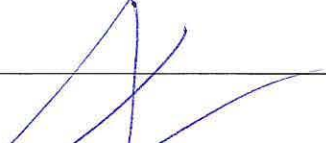
Cynthia L. Hasson

for Donald A. Larkin
City Attorney

Date: 2-28-19

DEVELOPER:

Diana Dunne Investors LLC

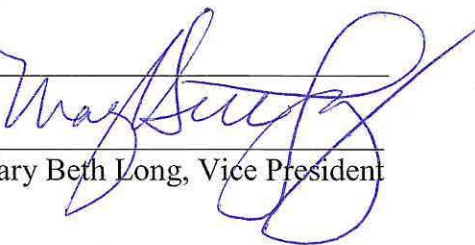
s/ 

James Pedicini
President

Date: 2/27/19

Corporate entities must provide a second signature:

Diana Dunne Investors LLC

s/ 

Mary Beth Long, Vice President

Date: 2-27-2019

Adopted by Ordinance No. 2294
by action of City Council on
January 23, 2018
9 CH

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

Attachment: Recorded DA (2565 : AAE2019-0010)

NOTARY ACKNOWLEDGEMENT

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

State of California
County of Santa Clara

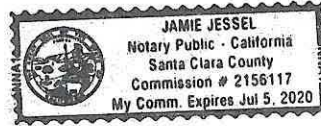
On February 27, 2019 before me, Jamie Jessel, Notary Public
(insert name and title of the officer)

personally appeared Mary Beth Long, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Jamie Jessel (Seal)



NOTARY ACKNOWLEDGEMENT

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

State of California
County of Santa Clara

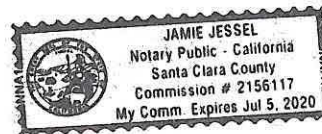
On February 27, 2019 before me, Jamie Jessel, Notary Public
(insert name and title of the officer)

personally appeared James A. Pedicini, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Jamie Jessel (Seal)



Attachment: Recorded DA (2565 : AAE2019-0010)

See Agent - MHB DO (Andalusia)

EXHIBIT A**LEGAL DESCRIPTION OF THE PROPERTY ON WHICH
PROJECT IS BE LOCATED****LEGAL DESCRIPTION**

Real property in the City of Morgan Hill , County of Santa Clara, State of California, described as follows:

PARCEL ONE:

PARCEL "A", AS SHOWN UPON THAT CERTAIN MAP ENTITLED, "PARCEL MAP IN THE CITY OF MORGAN HILL OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, PORTION OF LOT 71 MORGAN HILL RANCH, MAP NO. 1", WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON MAY 21, 1986 IN BOOK 560 OF MAPS, AT PAGE 1.

PARCEL TWO:

AN EASEMENT FOR INGRESS, EGRESS AND PUBLIC UTILITIES OVER THE NORTHEAST 30 FEET OF PARCEL B, AS SHOWN ON PARCEL MAP ABOVE REFERRED TO.

APN: 726-02-007

Attachment: Recorded DA (2565 : AAE2019-0010)

EXHIBIT B**DESCRIPTION OF PROJECT****PHASE 1 (20 UNITS) OF RDCA APPLICATION 2017-0012: E. DUNNE YOUNG.****Attachment: Recorded DA (2565 : AAE2019-0010)**

EXHIBIT B

-1-

EXHIBIT C

SPECIFIC RESTRICTIONS AND REQUIREMENTS

(INCLUDING RDCS REQUIREMENTS)

The following restriction and requirements apply to Phase 1 (20 units) of the Development proposed in RDCS application 2017-0012 E. Dunne -Young and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

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

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.	Schools			
4.	Student Transportation Improvements	\$5000 per unit to contribute to the City's Safe Access to Schools Fund	Prior to issuance of building permit	\$5000/Unit
2.	Location			
6.a	Water distribution lines	Local water distribution lines are of sufficient size to serve the proposed project. The project does not require replacing existing local water distribution lines with larger diameter pipes. New water mains to serve the site do not need to be installed.	NA	NA
6.b	Wastewater collection	The existing wastewater collection system is sufficient to serve the proposed project. The project does not require extending or	NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		replacing existing sewer pipes or lift stations outside of the project site.		
6.c	Off-site drainage facilities	Existing off-site storm drainage facilities are sufficient to serve the project.	NA	NA
3.	Affordable Housing			
2.	Voluntary Contribution to Housing Fund	NA	NA	NA
3.	Development of Affordable Units	Developer committed to 4 BMR's - 3 at 80% AMI and 1 at 90% AMI. Phase 1 BMR's will be located in Bldg #2 - unit #7 and Bldg #4 - unit #15. Unit type for BMR's is AZ – approximately 1628 sq feet (the same size as Unit type A - Market Rate Units) The Project shall provide in Phase 1 at least 2 units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process. Applicant commits as part of phase one, two (2), low income BMR(s): 3-bedroom, 2 bath and approximately 1628 sq. ft of living area. BMR sales price determination is based on median income and household size. All BMR units, including Moderate BMRs are deed restricted. Final BMR sales price is based on verification	Prior to issuance of a building permit.	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		of property zoning and housing types. Low Income for this BMR commitment is defined as 80% Area Median Income and Moderate Income for this BMR commitment is defined as 90% Area Median Income (as determined and updated annually by the State HCD). Individual unit prices are dependent on unit sizes/bedroom counts and subject to the prices shown in the City of Morgan Hill's "New BMR Sales Pricing Index" table. BMRs are also subject to the requirements listed under "Additional Requirements" and as referenced per the Affordable Housing Agreement (AHA). BMR units are subject to the following development standards: 1. Location. BMR units shall be distributed evenly throughout the project. 2. Lot Size. Lot size shall be at least the same size as the smallest lot of a market rate unit within the project; 3. Bedroom Count. Average bedroom count shall be the same as the average bedroom count in the market rate units in the project; 4. Exterior. Exterior trim entry door hardware, and finish to the same standard as the Market Rate 5. Minimum standards for equipment, fixtures, appliances and finishes have been established for the BMR units. All items installed by the developer shall be of good quality and in new condition. Good quality shall be deemed as entry level but generally not the lowest level of product offered for that application. All products shall offer durability, reliability and maintain a quality appearance and function that is standard to most other median priced homes in the		

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		area. The below listed items must be installed as a basic feature of each BMR home. 6. Minimum Interior standard finishes will be as follows a. All closets shall have doors b. Interior doors to be raised panel type or same as market rate c. Door hardware to be brass finish or equivalent d. Appliances shall be major brand name e. Microwave with an exhaust vent shall be installed over the range f. Kitchen counters shall be white ceramic tile g. Kitchen cabinets shall be stained wood with white melamine interiors h. Units will be roughed in for AC including electrical and line set i. Basic alarm system to secure all accessible openings to the home j. Carpet in bedrooms, hallways, family rooms k. Linoleum or tile entry, bathroom kitchens l. Laminate flooring may substitute for carpet or linoleum m. Electric garage door opener 7. Timing of Construction. BMR units shall be constructed in proportion to the BMR ownership housing requirement applicable to the project per the rules established for the RDCS. At least one (1) BMR unit shall be constructed before or concurrently with every 11th market rate unit constructed. The last two (2) market rate units to be completed in the project may not receive a certificate of occupancy until the last BMR unit has received a certificate of occupancy. The director may approve a modified schedule if the timing requirement will create unreasonable		

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		delays in the issuance of certificates of occupancy for market rate units		
4.	Housing Diversity			
1.	Accessory Dwelling Units	NA	NA	NA
2.	Diversity of Housing Types	Commits to two (2) different types of Housing - Triplex or Quadplex and Multi-Family	Design Permit approval	NA
3.	Variation in Housing Size	10 units will be 2 bedroom and approximately 1628 sq. ft. 3 units will be 3 bedroom and approximately 1850 sq. ft. 7 units will be 4 bedroom and approximately 1725-1845 sq. ft.	Design Permit approval	NA
4.	Small Units	NA	NA	NA
5.	Housing Stock Diversity	100% Owner Occupied Multi-Family Housing	NA	NA
6.	Single-Story Homes	NA	NA	NA
5.	Parks and Open Space			
1.	Park Fund Contribution	NA	NA	NA
2.	Excess Park Land	NA	NA	NA
3.	Agricultural Conservation or Open Space Easement	NA	NA	NA
4.	Agricultural Buffer	NA	NA	NA
5.	Agricultural Preservation or Open Space Fund Contribution	The project contributes to the City's agriculture preservation or open space fund beyond the minimum requirement. The project shall pay \$3,899.09 per unit.	Paid prior to unit occupancy	\$3,899.09 per unit

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.	On-Site Recreational Amenities	As part of phase one (20 units) project shall provide one of the two tot lots each with a minimum of three age-appropriate activities.	Design Permit approval	NA
7.	Amenities for Age Group	Project provides an outdoor picnic/ barbeque area for adults. The second "gathering area" would be a space for grandparents to watch their grandchildren plan. Seniors could also use the first "gathering area."	Future Phases	NA
8.	Public Gathering Places	Gathering place #1 with seat wall, trellis, wind-break, adjacent to public street, visible to Plaza, for public, residents, senior, adults and guests. Gathering Place #2 also. Cost is at least \$1,000/unit.	Design Permit approval	\$1000/unit
9.	Proximity to Public Parks	Project is within 1/4 mile of Diana Park and Stone Creek Park.	NA	NA
10.	Open Space Design	Project will maintain appropriate open space size, edges of Plaza are the buildings and landscaping. A plaza visible from street & at least 6-units. 2nd tot lot (for toddlers) is provided which is viewable from units and away from streets for safety. Pedestrian walks are provided for access.	Future Phases	NA
6.	Environmental Protection			
1.	Energy Efficiency	Project will provide a 5% reduction in its energy budget compared to the standard design building, as calculated by Title 24, Part 6 Compliance Software certified by the California Energy Commission.	Prior to issuance of a building permit.	NA
2.	On-site Solar Energy Generation	NA	NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
3.	Indoor Water Use	projects that exceed the minimum indoor water efficiency and conservation requirements by 5%. Project shall demonstrate attainment of water efficiency standards utilizing methods consistent with Cal Green and industry standards.	Prior to issuance of a building permit.	NA
4.a	Natural Turf	Less than 50% of landscaped area contains natural turf.	Prior to issuance of a building permit.	NA
4.b	No Natural Turf Outside Common Areas	Project will contain no natural turf outside common areas used for active play	Prior to issuance of a building permit.	NA
4.c	Exceeds Outdoor Water Efficiency 10%	NA	NA	NA
4.d	Exceeds Outdoor Water Efficiency 20%	NA	NA	NA
4.e	Exceeds Outdoor Water Efficiency 30%	NA	NA	NA
4.f	Subsurface Irrigation	NA	NA	NA
5.	Sustainable Site and Building Design	Project agrees to a minimum of 94 BIG points, over the minimum required by Chapter 15.65 of the City of Morgan Hill Municipal Code.	Prior to issuance of a building permit.	NA
7.	Transportation			
1.	Bicycle and Pedestrian Improvements	NA	NA	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
2.	Transit Improvements	NA	NA	NA
3.	Off-Site Street and Parking Improvements or Fund Contribution	NA	NA	NA
4.a	Transportation Demand Management fund	NA	NA	NA
4.b	Transportation Demand Management (rental projects)	NA	NA	NA
5.a	Aligns and connects streets	The project aligns and connects streets intersecting the project boundary with all adjoining streets.	Subdivision Map approval	NA
5.b	Extends Streets	The project extends streets to the adjoining undeveloped land to provide access to undeveloped land in the event of its future development.	Subdivision Map approval	NA
5.c	Off-street bicycle and pedestrian connections	The project provides off-street bicycle and pedestrian connections to adjacent destinations, including parks, open space, transit facilities, and commercial areas. Connections must be established and maintained through an easement, dedication or other similar method to guarantee it remains accessible to the general public.	Improvement Plan approval	NA
6.a	Complete Streets	The project incorporates “complete streets” that meet the needs of multiple users, including motorists, bicyclists, pedestrians, transit users, and persons of different physical capabilities.	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
6.b	Enhanced bicycle and pedestrian improvements	The project incorporates enhanced bicycle and pedestrian improvements such as bicycle storage facilities, traffic calming measures, intersection crossings, and wayfinding signage.	Design Permit approval	NA
6.c	Direct pedestrian connections	The project provides direct pedestrian connections from units to common open space, recreational facilities, and other project amenities.	Design Permit approval	NA
6.d	Neighborhood traffic management techniques	The project incorporates neighborhood traffic management techniques, such as traffic circles, narrow lanes, and bulb-outs, to control vehicle speeds and increase the safety of bicycle and pedestrian travel.	Design Permit approval	NA
7.	Electric Vehicle Charging Stations	Project will provide four publicly available charging stations	Design Permit approval	NA
8.	Municipal Infrastructure			
1.	Water Infrastructure	NA	NA	NA
2.	Wastewater Infrastructure	NA	NA	NA
3.a	Reduces off-site storm water flows	The project reduces the volume of off-site storm water flows beyond minimum requirements using low impact development (LID) techniques.	Building permit approval	NA
3.b	Off-site storm water improvements	The project provides off-site stormwater infrastructure improvements beyond minimum requirements.	Improvement Plan approval	\$1000/unit
4.	Infrastructure and Services Fund Contribution	Project will contribute to the City's infrastructure and Services Fund.	NA	NA
5.a	Installs broadband conduit in public right-of-way	The project installs broadband conduit in the public right-of-way.	Improvement plan approval	NA
5.b	Installs broadband conduit to	The project installs broadband conduit from the public right-of-	Building permit	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
	home/buildings	way to each home or occupied building in the project.	approval	
5.c	Pre-installs indoor conduit	The project pre-installs indoor conduit, wiring and other necessary infrastructure so that broadband service may be provided to each unit.	Building permit approval	NA
5.d	Provides primary broadband service	NA	NA	NA
9.	Project Quality			
1.a	Front Porches	A minimum of 50 percent of homes facing a street or common interior courtyard include a front porch. Porches must be part of the home's primary entrance, connected to the front yard or common interior courtyard, a minimum of 6 feet by 5 feet, and in full view of the street or common interior courtyard.	Design Permit approval	NA
1.b	Balconies Facing Street or Courtyard	A minimum of 25 percent of homes facing a street or common interior courtyard include a balcony overlooking a public space. Balconies must provide usable private outdoor space for residents, be in full view of a street or common interior courtyard, and face away from neighbors' yards to maintain privacy. 25 percent of upper floor units facing a street or common interior courtyard include a balcony.	Design Permit approval	NA
1.c	Balconies Facing Alleys	A minimum of 25 percent of homes abutting a shared alley include a balcony overlooking the alley, parking area, or drive aisle.	Design Permit approval	NA
1.d	Facade Articulation and Finishes	Front building facades feature quality facade articulation and finishes to break up blank, flat walls and provide visual interest.	Design Permit approval	NA
1.e	360-degree Architecture	The project features full and consistent articulation and design detail on all building facades.	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
1.f	Corner Treatments	For projects where the side or rear of a home faces a street or common courtyard street, the project incorporates enhanced treatments of these side and rear facades to support a welcoming and visually interesting public realm.	Design Permit approval	NA
1.g	Colors and Materials	The project incorporates a mix of exterior finish materials and colors that is compatible with the architecture of the homes and enhances visual interest.	Design Permit approval	NA
1.h	Multi-family Ground Level Entrances	Project provides as many private, exterior ground-level entries to individual units as possible.	Design Permit approval	NA
1.i	Individual Residences- Attached Projects	Large buildings are architecturally subdivided so that they appear as individual residences or small groups of units. Buildings incorporate features such as window bays, balconies, porches and entrance vestibules, varied color schemes, and individual roof volumes to define individual units.	Design Permit approval	NA
1.j	Residential-Scale Design Elements- Attached Projects	Buildings incorporate design details, including but not limited to porches, projections, eaves, bay windows, and other similar architectural elements, that provide residential scale and help to break up the building mass.	Design Permit approval	NA
2.a	Entrance Orientation- Collector and Residential Streets	The primary entrance of homes face streets along the project perimeter	Design Permit approval	NA
2.b	Entrance Orientation-Single-Family Detached Projects/Arterial Streets	NA	NA	NA
2.c	Variation in Building Height	The project incorporates variation in building heights to minimize monotony and enhance visual interest.	Design Permit approval	NA
2.d	Variation in Building	The project incorporates variation in building front setbacks	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
	Placement	and placement on lots to minimize monotony and enhance visual interest.		
2.e	Roof Line Variation	Variation in roof lines through changes in roof height and form break of building massing and create visual interest.	Design Permit approval	NA
2.f	Upper Floor Setback-Detached Homes	NA	NA	NA
2.g	Upper Floor Setback-Attached Homes	NA	NA	NA
2.h	Height and Project Edge-Attached Projects	NA	NA	NA
2.i	Separate Structures-Attached Projects	Divides units into multiple separate structures. Maximum 10 units maximum per structure	Design Permit approval	NA
2.j	Adjacent Building Types-Attached Projects	NA	NA	NA
3.a	Landscaping-Parkway Design	The project provides a landscape parkway along the street 50 percent wider than the minimum required for the street type. Street trees and pedestrian-scale lighting within or adjacent to the parkway exceed minimum requirements and help create a distinctive and memorable design environment.	Design Permit approval	NA
3.b	Landscaping-Visual Relief	Landscaping is placed and designed to minimize the appearance of building bulk and mass and to emphasize building features that create visual interest and support a pedestrian-friendly environment.	Design Permit approval	NA
3.c	Exterior Lighting	Exterior lighting fixtures are architecturally integrated with the primary building's design, style, material, and colors	Design Permit approval	NA
3.d	Entrance Pathways	No more than 50 percent of multi-family homes feature an	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
		identical garage configuration. Garage configuration may include front loaded attached, front loaded detached, side loaded, and rear loaded garages.		
3.e	Public/Private Transitions	NA	NA	NA
3.f	Mechanical Equipment	Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	Design Permit approval	NA
4.a	Garage Door Orientation	Garage doors do not face the front street. Garages are configured on the site such that garage doors face either the side or rear of the property.	Design Permit approval	NA
4.b	Garage Door Design-Minimizing Visual Dominance	NA	NA	NA
4.c	Garage Door Design-Detailing	Garage doors feature enhanced windows or architectural detailing consistent with the main dwelling.	Design Permit approval	NA
4.d	Garage Configuration	NA	NA	NA
4.e	Parking-Attached Projects	The project locates parking lots serving attached residential units at the rear or side of the site to allow a majority of dwelling units to front on the street or an internal courtyard. Parking is not located between a building and any public sidewalk or street.	Design Permit approval	NA
4.f	Screening	Parking visible from a public street is screened with fences, walls, and/or landscaping to the greatest extent possible.	Design Permit approval	NA
4.g	Landscaping-Attached Projects	The project incorporates landscaping to soften the appearance of off-street parking areas and private drive aisles in attached single family and multi-family projects	Design Permit approval	NA

Section No.	Category/Criteria	Public Benefit/Commitment	Implementation	Estimated Contribution*
4.h	Setback Areas	NA	NA	NA
4.i	Pavement Design	Areas for vehicle parking and circulation feature enhanced paving finishes such as stone, brick, and colored and textured concrete that complement the architectural style of buildings.	Design Permit approval	NA
4.j	Cluster Units	NA	NA	NA
5.	Public Art	NA	NA	NA
6.a	Home Automation	The project installs home automation devices within units.	Prior to unit occupancy	\$2000/unit
6.b	Home Automation (reduce energy)	The project installs home automation devices within units that reduce energy consumptions, such as devices that automatically adjust lighting, heating, and air conditioning.	Prior to unit occupancy	\$1000/unit

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Morgan Hill
Community Development Agency
17575 Peak Avenue
Morgan Hill, CA 95037

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

AMENDMENT TO DEVELOPMENT AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AGREEMENT (“**Amendment**”) is entered into as of the ____ day of _____, 2019, by and among Diana Dunne Investors, LLC a California limited liability company (“**Developer**”) and CITY OF MORGAN HILL, a municipal corporation of the State of California (“**City**”).

RECITALS

A. Developer entered into a Development Agreement (DA) with City adopted by the City Council on January 23, 2019 as Ordinance No. 2294, to facilitate the development of that certain real property owned by Developer within the City of Morgan Hill, State of California, which is legally described in Exhibit A to the Development Agreement (“**Property**”) for the Andalusia Residential development Project (“**Project**”). Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Development Agreement.

B. On July 23, 2019, the Planning Commission awarded 15 ongoing allotments to the project for FY 2020/21.

C. On _____, the City Council approved the transfer of 11 allotments from the Monterey- Lucky Shing (Manzanita Park) (RDCS2019-0005) project to this Project.

D. Developer and City desire to enter into this Amendment to incorporate an additional 26 allotments for this ongoing project.

AGREEMENT

NOW, THEREFORE, Developer and City hereby agree as follows:

1. Amendment to the Development Agreement

a. Exhibit B of the Development Agreement is hereby amended to incorporate 26 additional allotments as follows:

DESCRIPTION OF PROJECT

PHASE 1 (20 UNITS) OF RDCS APPLICATION 2017-0012: E. DUNNE YOUNG.

PHASE 2 (15 UNITS) OF RDCS APPLICATION 2017-0012: E. DUNNE YOUNG.

PHASE 3 (11 UNITS) OF RDCS APPLICATION 2017-0012: E. DUNNE YOUNG.

b. The first paragraph of Exhibit C of the Development Agreement is hereby amended to reference the additional phases of the project for the allotments incorporated in Exhibit B as follows:

The following restriction and requirements apply to Phase 1 (20 units), Phase 2 (15 units) and Phase 3 (11 units) of the Development proposed in RDCS application 2017-0012 E. Dunne - Young and shall apply to that portion of the Property included in the said phases of the development on the Property. The following chart describes the applicable reference in the Morgan Hill Municipal Code to the requirement, a description of the commitments specific to the Project, the requirement timing of the implementation and the total estimated costs of improvement or applicable fee commitment. These commitments are IN ADDITION to any mitigation requirements pursuant to CEQA, impact fees, in-lieu fees, or other requirements pursuant to federal or state laws, or the Morgan Hill Municipal Code (See Section 2.03 of the Agreement)

c. The first three paragraphs of the “Public Benefit/Commitment” column in Subsection 3 “Development of Affordable Units” of Section 3 “Affordable Housing” shall be amended to read as follows:

Developer committed to 4 BMR's - 3 at 80% AMI and 1 at 90% AMI. Phase 1 BMR's will be located in Bldg #2 - unit #7 and Bldg #4 - unit #15. Phase 2 BMR will be located in Bldg #6- unit #1. Phase 3 BMR will be located in Bldg #12 - unit #10. Unit type for BMR's is AZ – approximately 1,428 sq feet (the same size as Unit type A - Market Rate Units)

The Project shall provide ~~in Phase 1~~ at least ~~2-4~~ units for participation in a Below Market Rate (BMR) for sale program approved by the Community Development Department. The BMR units shall be approved by the City of Morgan Hill Planning Commission and Site and Architectural Review process.

Applicant commits ~~as part of phase one, two (2),~~ four (4) low income BMR(s): 3-bedroom, 2 bath and approximately 1428 sq. ft of living area.

d. The “Public Benefit/Commitment” column in Subsection 3 “Variation in Housing Sizes” of Section 4 “Housing Diversity” shall be amended to read as follows:

~~10~~ 22 units will be 2 bedroom and approximately 1,428 sq. ft.
~~3~~ 7 units will be 3 bedroom and approximately 1,850 sq. ft.
~~7~~ 17 units will be 4 bedroom and approximately 1,725-1,845 sq. ft.

e. The “Public Benefit/Commitment” column in Subsection 6 “On-Site Recreational Amenities” Category/Criteria of Section 5 “Parks and Open Space” shall be amended to read as follows:

As part of phase one (20 units) project shall provide one of the two tot lots each with a minimum of three age-appropriate activities. As part of phase two (15 units), project shall provide second tot lot with minimum of three age appropriate activities and a small gathering area equipped with benches, tables, and shade arbor.

f. The “Implementation” column in Subsection 7 “Amenities for Age Group” Category/Criteria of Section 5 “Parks and Open Space” shall be amended to read as follows:

~~Future~~ Phases two

g. The “Implementation” column in Subsection 10 “Open Space Design” Category/Criteria of Section 5 “Parks and Open Space” shall be amended to read as follows:

~~Future~~ Phases two

2. Development Agreement in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions, and provisions of the Development Agreement shall remain in full force and effect.

3. Recording. City shall cause this Amendment to be recorded in the Official Records of Santa Clara County.

4. Severability. Except as otherwise provided herein, if any provision(s) of this Amendment is (are) held invalid, the remainder of this Amendment shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

5. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute the same instrument, with the same effect as if all of the Parties to this Amendment had executed the same counterpart.

6. Effective Date/Amendments. The Effective Date of this Amendment shall be the date upon which this Amendment is approved by the City of Morgan Hill City Council. This Amendment shall not be amended except by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

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[Signature Page Follows]

Attachment: E Dunne Young Amendment Agreement [Revision 2] (2565 : AAE2019-0010)

IN WITNESS WHEREOF, Developer and City have entered into this Agreement as of the date first above written.

“CITY”

CITY OF MORGAN HILL

Christina J. Turner
City Manager

Approved as to form:

Donald A. Larkin
City Attorney

Date: _____

“DEVELOPER”

**DIANA DUNNE INVESTORS, LLC
A CALIFORNIA LIMITED LIABILITY
COMPANY**

By _____

Name _____

Its _____

Date: _____

(ALL SIGNATURES, EXCEPT CITY ATTORNEY, MUST BE ACKNOWLEDGED BEFORE A
NOTARY)

Attachment: E Dunne Young Amendment Agreement [Revision 2] (2565 : AAE2019-0010)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____
 _____ (insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

Attachment: E Dunne Young Amendment Agreement [Revision 2] (2565 : AAE2019-0010)

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, before me, _____
 _____ (insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING THE TRANSFER OF 11 ALLOTMENTS FROM THE MONTEREY-LUCKY SHING (MANZANITA PARK) PROJECT AND A DEVELOPMENT AGREEMENT AMENDMENT AAE2019-0010 (DAA2018-0002): E. DUNNE-YOUNG (ANDALUSIA) TO INCORPORATE 26 BUILDING ALLOTMENTS INTO THE APPROVED DEVELOPMENT AGREEMENT FOR THE 46-UNIT ANDALUSIA DEVELOPMENT LOCATED ON THE NORTH SIDE OF EAST DUNNE AVENUE, DIRECTLY NORTH OF THE MORGAN HILL KINDERCARE FACILITY LOCATED AT 605 EAST DUNNE AVENUE (APN 726-02-007)

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

SECTION 1. On June 20, 2018, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, the City Council reaffirmed the Planning Commission's award of 20 building allotments to application RDCS 2017-0012: E. Dunne-Young (Andalusia) (FY2019-2020).

SECTION 2. The California Government Code Sections 65864 thru 65869.5 authorizes the City of Morgan Hill to enter binding Development Agreements, and to amend said agreements, with persons having legal or equitable interests in real property for the development of such property.

SECTION 3. On January 23, 2019, the City Council adopted Ordinance No. 2294 which approved a Development Agreement for RDCS2017-0012: E. Dunne-Young.

SECTION 4. On September 4, 2019, the City Council, pursuant to Chapter 18.156 of the Morgan Hill Municipal Code, reaffirmed the Planning Commission RDCS award of allotments, affirming the 15 ongoing allotments for Andalusia and 24 building allotments for RDCS 2019-0005: Monterey-Lucky Shing (Manzanita Park) FY2020-2021.

SECTION 5. Section M of Chapter IV "RDCS Implementation Policies" of the RDCS Competition Manual authorizes the transfer of fiscal year allotments between and within project in order to expedite the completion of projects awarded allotments under the RDCS.

SECTION 6. The applicant is requesting a transfer of 11 of the 24 building allotments awarded to RDCS2019-0005: Monterey-Lucky Shing to the Andalusia project and is further requesting an amendment to the Development Agreement to incorporate 15 ongoing building allotments and 11 of the 24 building allotments to be transferred from RDCS2019-0005: Monterey-Lucky Shing.

City of Morgan Hill
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SECTION 7. The Development Agreement amendment and transfer of allotments request was considered by the Planning Commission at its regular meeting of November 12, 2019 at which time the Planning Commission recommended to City Council the approval of the amendment to the Development Agreement (DAA2018-0002): E. Dunne-Young (Andalusia);

SECTION 8. Testimony received at a duly-noticed public hearing, along with exhibits and drawings and other materials have been considered in the review process.

SECTION 9. The City Council hereby approves the transfer of 11 allotments from RDCS 2019-0005: Monterey- Lucky Shing to RDCS 2017-0012: E. Dunne-Young as the request meets the following criteria as specified by Section M “Transfer of Allotments” of Chapter IV “RDCS Implementation Policies” of the RDCS Competition Manual:

- a. **The receiving project has sufficient lead time to exercise the transferred allotment prior to the deadline.**

The E. Dunne-Young project is fully entitled as follows:

- Tentative Map SD2018-0004: November 27, 2018
- Development Agreement DA2018-0002: January 23, 2019
- Site Review SR2018-0020: February 28, 2019

The E. Dunne-Young project submitted master plans for building permits on October 14, 2018.

The FY 2020-21 allotments must be exercised by March 4, 2022 (within 30 months of approval). Considering the progress of the project, there would be sufficient time to exercise the RDCS allotments.

- b. **The transfer must work as a trade between two development or within project.**

The transfer of 11 allotments from RDCS 2019-0005: Monterey-Lucky Shing would provide a fully allotted project allowing for uninterrupted completion. The 13 allotments remaining for RDCS 2019-0005: Monterey-Lucky Shing are sufficient to represent phase one of that project and processing of entitlements.

- c. **The transfer may apply to partially allotted and fully allotted projects.**

Both projects involved in the transfer are partially allotted.

- d. **Both on-going and recently allotted first time projects may transfer allotments.**

RDCS2017-0012: E. Dunne-Young is considered an on-going project and RDCS 2019-0005: Monterey-Lucky Shing is a recently allotted first time project.

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SECTION 10. The Development Agreement Amendment is consistent with the goals, objectives, policies, general land uses and programs specified in the General Plan and any applicable specific plan.

The project would provide a total of 46 multi-family residential units. The project is consistent with the General Plan land use designation and the provisions of RDCS. The proposed Development Agreement Amendment request will not alter the project's consistency with the General Plan and will further implement the provisions of the RDCS through the public benefit commitments. There have been no General Plan policy conflicts identified with the proposed project.

SECTION 11. The Development Agreement Amendment is compatible with the uses authorized in the zoning district in which the property is located.

The proposed residential use is permitted within the Residential Attached Low (RAL) zoning district and would be compatible with the surrounding residential uses.

SECTION 12. The Development Agreement Amendment complies with the provisions of the California Environmental Quality Act and city's procedures adopted pursuant thereto.

The project is subject to CEQA and an Initial Study/Mitigated Negative Declaration has been prepared and adopted for the project. No further environmental analysis is required.

SECTION 13. The Development Agreement Amendment will not adversely affect the orderly development of property or the preservation of property values.

SECTION 14. The Development Agreement Amendment will be non-detrimental to the public health, safety and general welfare of persons residing or working in the neighborhood and to property and improvements in the neighborhood.

The project's construction would adhere to state, local and federal laws. The project is residential apartments that would include the normal daily operations of other residential sites.

SECTION 15. Authority is hereby granted for the City Manager to execute the amendment approved by the City Council by this ordinance.

SECTION 16. Severability. If any part of this ordinance is held to be 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 17. Effective Date; Publication. This ordinance shall take effect thirty (30)

City of Morgan Hill
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Page _____

days after the date of its adoption. The City Clerk is hereby directed to publish this ordinance or a summary thereof pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 4^h DAY OF DECEMBER, 2019, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE ____ DAY OF _____ 2019, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSTAIN: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

ATTEST:

APPROVED:

IRMA TORREZ, City Clerk

RICHARD 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 Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at its 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

Attachment: Ordinance Amending Development Agreement [Revision 2] (2565 : AAE2019-0010)



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Scott Nelson, Economic Development Fellow
APPROVED BY: City Manager

ADOPT ORDINANCE AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

RECOMMENDATION(S)

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

COUNCIL PRIORITIES, GOALS & STRATEGIES

2019 Strategic Priorities
Economic Development

GUIDING DOCUMENTS

Economic Blueprint

REPORT NARRATIVE:

Over the past eighteen months, City staff have received several inquiries from owners of convenience markets and fuel and service station businesses wanting to expand the footprints of their convenience store operations. In some cases, fuel operators have researched purchasing older gas stations and learned that current regulations prohibit expansion of the convenience market component. Most recently, the owner of the Chevron Gas Station at the Vineyard Shopping Center requested to expand the retail sales area within the existing building, however, current regulations prohibit the expansion.

Title 18, Division 1, Chapter 18.92.030 (Convenience Markets) establishes supplemental standards for convenience markets (Attachment 1). Currently, a new convenience market is required to be located a minimum of 1,000 feet from an existing or approved convenience market. Exceptions to the separation requirement may be

allowed if the convenience market is on property that is adjacent to U.S. Highway 101 and Dunne Avenue, Tennant Avenue and Cochrane Road or has less than three hundred square feet of area devoted to sales and display. The current definition of a Convenience Market also includes a liquor store use.

Today, the business model for convenience markets and fuel and service station use has changed. Consumers want more amenities, clean, well-lit areas, and expansive sales area. Fuel and service stations are often accompanied by a quick serve restaurant and a car wash. Based on recent conversations with convenience market owners, the industry standard for the size of a new convenience market is between 2,500 to 5,000 square feet. This new model has proven to be successful; therefore, owners of older facilities would like to upgrade to include similar amenities to remain competitive.

The City's existing zoning regulations limit the ability for these often-older facilities to increase their sales areas. In some cases, business owners have lost the opportunity for significant reinvestment in these aging buildings due to current regulations thereby not maximizing sales tax revenue. In order to accommodate the current market standard size of convenience markets, the separation restriction would need to be removed or modified. Also, updated definitions for convenience markets, convenience markets with fuel service stations, and liquor stores should be updated to provide clarity for planning staff and applicants.

PLANNING COMMISSION ACTION:

The Planning Commission reviewed the proposed ordinance (Attachment 2) on November 12, 2019.

The Planning Commission voted in favor of recommending the proposed ordinance to the City Council with a 4-3 vote (Attachment 3), with the following amendments:

- 1) Add language to section 18.92.030.D (Restrooms and Automotive Services) that restrooms be "well-lit and made safe". The following language was added to the proposed amendment in section 18.92.032.C.1 "and shall comply with the lighting and crime prevention measures in Section E of this section."
- 2) Add language to section 18.124.040.P.8 (Liquor Store definition) that this type of land use requires a "Type 21" license from the Alcoholic Beverage Commission (ABC). This language was added to the attached proposed amendment.

In addition, two Planning Commission members requested the Morgan Hill Unified School District be contacted to evaluate whether they see a need for keeping the 1,000-foot separation distance between a convenience market and/or liquor store and a school. Concerns from the Planning Commission members who voted no included the following issues:

1. Questions were raised as to whether the definitions created loopholes where a business with 45% liquor sales qualified as a convenience store rather than a liquor store. The reference to a Type 21 license (sale of distilled spirits) was inserted to respond to the concern.

2. Concerns that the distance requirements from schools for convenience markets and convenience market with a fuel and service station were an unnecessary encumbrance on businesses trying to operate in the City of Morgan Hill. Notably, no business owners have contacted city staff requesting a change to this distance separation requirement.

Following the Planning Commission meeting on November 12, 2019, the Morgan Hill Unified School District was contacted for their input on the 1,000-foot separation requirement from schools. The school district specially requested the 1,000-foot separation requirement be maintained as a minimum distance. This distance requirement applies to new businesses, not existing liquor/convenience stores.

Further research was completed regarding ABC distance restrictions between school and convenience establishments that hold an alcoholic beverage sales license. According to ABC, they may deny any retail license in the following locations:

- (a) within the immediate vicinity of churches and hospitals, or
- (b) within at least 600 feet of schools, public playgrounds, and nonprofit youth facilities.

Generally, ABC will deny a license in the above situations when there is evidence that normal operation of the licensed premises will be contrary to public welfare and morals. Mere proximity by itself is not sufficient to deny the license.

A review of best practices from other municipalities in Santa Clara County shows that standard distance separation between a school and retail location that sells alcoholic beverages is between 500-1,000 feet.

Staff recommends no change to the existing 1,000-foot separation requirement between school and convenience markets or liquor stores. Staff also recommends the City Council approve the amended ordinance as recommended by the Planning Commission.

COMMUNITY ENGAGEMENT: Inform and Consult

Staff has reached out to other cities in Santa Clara County to understand best practices. Additionally, staff reached out to the Mothers Against Drunk Drivers (MADD), the Police Department, the Morgan Hill Chamber of Commerce and Alcoholic Beverage Control (ABC). The Police Department did not have any objections to the ordinance as proposed, as their main concern was that the separation requirement remains in place for liquor stores. The Morgan Hill Chamber of Commerce is supportive of this proposed amendment. MADD has been contacted regarding this proposed amendment and has not provided any feedback. ABC provided information that Morgan Hill is no longer a "moratorium city" for type 20 licenses. However, they did not provide a statement of support or opposition for this proposed amendment.

A 10-day public hearing notice was published in the Friday, November 22, 2019 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the City of Morgan Hill website and via social media.

PRIOR COUNCIL/COMMISSION ACTIONS:

On April 9, 2019, Economic Development Director Edith Ramirez and Economic Development Manager John Lang conducted a workshop with the Planning Commission regarding the Convenience Market Ordinance. Input was also received from current business owners, members of the public, and the Morgan Hill Chamber of Commerce. The Planning Commission directed staff to develop amendments to the Municipal Code that regulates convenience markets with the intention to individually define liquor store and convenience market uses.

On November 18, 2019, the Planning Commission voted in favor of recommending the proposed ordinance to the City Council with a 4-3 vote (Attachment 4).

FISCAL AND RESOURCE IMPACT:

At the present time, it is unknown the amount of potential sales tax revenue that may be generated from convenience markets expanding their retail sales areas. There may be potential for expanded revenues, however it is not possible to determine the amount that may be received as many factors will determine this amount.

CEQA (California Environmental Quality Act):

This ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed text amendment to the Morgan Hill Zoning Code is covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. Any development that occurs in the future subject to such standards will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. Current Ordinance 18.92.030
2. Proposed Ordinance
3. Planning Commission Resolution 19-25
4. November 12, 2019 Planning Commission Staff Report (web link)

City of Morgan Hill - Current Ordinance

18.92.030 - Convenience markets.

- A. Purpose. This section establishes standards for convenience markets in order to:
 - 1. Ensure the compatibility of convenience markets with neighboring commercial and residential land uses;
 - 2. Minimize potential negative impacts from convenience markets on adjacent land uses; and
 - 3. Require new convenience markets to incorporate crime prevention measures to protect the public health, safety, and welfare.
- B. Separation Between Convenience Markets.
 - 1. A new convenience market shall be located a minimum of one thousand feet from an existing or approved convenience market except as allowed by Paragraph 2 below. The distance between convenience markets shall be measured as the straight-line distance between the exterior walls of the market structures.
 - 2. The city may allow exceptions to the separation requirement in Paragraph 1 above for:
 - a. One convenience market (regardless of size) on property adjacent to the interchange of Highway 101 and Dunne Avenue, Tennant Avenue, and Cochrane Road; and
 - b. Convenience markets with three hundred square feet or less of area devoted to sales and display.
- C. Separation from Schools. A new convenience market shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.
- D. Restrooms and Automotive Services. Convenience markets which also sell automotive fuels shall provide the following additional services without charge:
 - 1. One restroom for women and one restroom for men available to customers and employees. If restroom entrances open directly to the outside of the building, the restroom entrances shall be screened from public view.
 - 2. Hoses conveying air and water for the service of automotive vehicles available for public uses in locations approved by the development services department.
- E. Loiter Control.
 - 1. Public pay telephones on an exterior wall of the convenience market or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.
 - 2. Video games may not be installed or operated on the premises of the convenience market.
 - 3. The police department may require additional loiter control measures as conditions of approval for the convenience market conditional use permit.
- F. Crime Prevention Measures.
 - 1. The exterior of the convenience market shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the convenience market. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.

2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.
 3. The police department may require additional crime prevention measures as conditions of approval for the convenience market conditional use permit.
 4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.
- G. Concurrent Sale of Alcoholic Beverages and Automotive Fuels. If concurrent sale of alcoholic beverages and automotive fuels are proposed in conjunction with the convenience market use, the following additional requirements shall apply as specified in Section 23790.5 of the Business and Professions Code:
1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.
 2. No display or sale of alcoholic beverages shall be made from an ice tub.
 3. No alcoholic beverage advertising shall be located on fuel pump islands and no advertising for alcoholic beverages shall be located on buildings or windows.
 4. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018)

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

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

Section 1. The Retail Uses and Vehicle-Related Uses sections in Section 18.24.020 (Land Use Regulations) Of Chapter 18.24 (Commercial Zoning Districts) of Title 18 (Zoning) are hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.24.020 - Land use regulations.

- A. Permitted Land Uses. Table 18.24-1 identifies land uses permitted in the commercial zoning districts.

Table 18.24-1 Permitted Land Uses in the Commercial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CO	CN	CG	CH	CS	
Retail Uses						
Convenience Markets	—	C	C	C	C	
<u>Convenience Market with Fuel and Service</u>	=	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	

<u>Station</u>						
General Retail	—	P	P	P	C	
Home Improvement Centers	—	—	P	—	P	
<u>Liquor Store</u>	=	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	
Large Commodity Retail	—	—	C	—	C	
Vehicle-Related Uses						
<u>Convenience Market with Fuel and Service Station</u>	=	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	
Fuel and Service Stations	—	C	C	C	C	
Towing and Impound	—	—	—	—	C	
Vehicle Rentals	—	C [2]	C [2]	P	P	
Vehicle Repair and Maintenance, Minor	—	—	C	—	P	
Vehicle Sales and Leasing	—	C [1]	C [1]	P	P	
Vehicle Washing	—	C	C	C	C	

Section 2. Section 18.92.030 (Convenience Markets) of Chapter 18.92 (Supplemental Standards) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.92.030 - Convenience markets.

A. Purpose. This section establishes standards for convenience markets in order to:

1. Ensure the compatibility of convenience markets with neighboring commercial and residential land uses;

2. Minimize potential negative impacts from convenience markets on adjacent land uses; and
3. Require new convenience markets to incorporate crime prevention measures to protect the public health, safety, and welfare.

~~B. Separation Between Convenience Markets.~~

- ~~1. A new convenience market shall be located a minimum of one thousand feet from an existing or approved convenience market except as allowed by Paragraph 2 below. The distance between convenience markets shall be measured as the straight-line distance between the exterior walls of the market structures.~~
- ~~2. The city may allow exceptions to the separation requirement in Paragraph 1 above for:~~
 - ~~a. One convenience market (regardless of size) on property adjacent to the interchange of Highway 101 and Dunne Avenue, Tennant Avenue, and Cochrane Road; and~~
 - ~~b. Convenience markets with three hundred square feet or less of area devoted to sales and display.~~

B.G. Separation from Schools. A new convenience market shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.

~~D. Restrooms and Automotive Services. Convenience markets which also sell automotive fuels shall provide the following additional services without charge:~~

- ~~1. One restroom for women and one restroom for men available to customers and employees. If restroom entrances open directly to the outside of the building, the restroom entrances shall be screened from public view.~~
- ~~2. Hoses conveying air and water for the service of automotive vehicles available for public uses in locations approved by the development services department.~~

E.C. Loiter Control.

1. Public pay telephones on an exterior wall of the convenience market or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.
2. Video games may not be installed or operated on the premises of the convenience market.
3. The police department may require additional loiter control measures as conditions of approval for the convenience market conditional use permit.

D.F. Crime Prevention Measures.

1. The exterior of the convenience market shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the convenience market. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.

2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.
3. The police department may require additional crime prevention measures as conditions of approval for the convenience market conditional use permit.
4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.

~~GE. Concurrent Sale of Alcoholic Beverages and Automotive Fuels. If concurrent sale of alcoholic beverages and automotive fuels are proposed in conjunction with the convenience market use, the following additional requirements shall apply as specified in Section 23790.5 of the Business and Professions Code:~~

1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.
2. No display or sale of alcoholic beverages shall be made from an ice tub.
3. No alcoholic beverage advertising ~~shall be located on fuel pump islands and no advertising for alcoholic beverages shall be located on buildings or windows.~~
4. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.

Section 3. Sections 18.92.031 (Liquor Store) and 18.92.032 (Convenience Markets with Fuel and Service Stations) is hereby added to Chapter 18.92 (Supplemental Standards) of Title 18 (Zoning) to read as follows:

18.92.031 – Liquor Store

- A. Purpose. This section establishes standards for liquor stores in order to:
 1. Ensure the compatibility, concentration of liquor stores with neighboring commercial and residential land uses;
 2. Minimize potential negative impacts from liquor stores on adjacent land uses; and
 3. Require new liquor stores to incorporate crime prevention measures to protect the public health, safety, and welfare.
- B. Separation Between liquor stores.
 1. A new liquor store shall be located a minimum of one thousand feet from an existing or approved liquor store except as allowed by Paragraph 2 below. The distance between liquor stores shall be measured as the straight-line distance between the exterior walls of the market structures.
 2. The city may allow exceptions to the separation requirement in Paragraph 1 above for one liquor store (regardless of size) per interchange on property

adjacent to the interchange of Highway 101 and Dunne Avenue, Tennant Avenue, and Cochrane Road; and

- C. Separation from Schools. A new liquor store shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.
- D. Loiter Control.
 - 1. Public pay telephones on an exterior wall of the liquor store or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.
 - 2. Video games may not be installed or operated on the premises of the liquor store.
 - 3. The police department may require additional loiter control measures as conditions of approval for the liquor store conditional use permit.
- E. Crime Prevention Measures.
 - 1. The exterior of the liquor store shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, throughways, and alleys under control by the liquor store. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.
 - 2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.
 - 3. The police department may require additional crime prevention measures as conditions of approval for the liquor store conditional use permit.
 - 4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.

18.92.032 - Convenience Markets with Fuel and Service Stations

- A. Purpose. This section establishes standards for convenience markets which also have fuel and service stations, as described in Section 18.124.040 Q. 1., in order to:
 - 1. Ensure the compatibility, concentration of convenience markets with fuel and service stations with neighboring commercial and residential land uses;
 - 2. Minimize potential negative impacts from convenience markets with fuel and service stations on adjacent land uses; and
 - 3. Require new convenience markets with fuel and service stations to incorporate crime prevention measures to protect the public health, safety, and welfare.

- B. Separation from Schools. A new convenience market shall be located a minimum of one thousand feet from the boundary of an existing school or a proposed school site as designated by the Morgan Hill Unified School District.
- C. Restrooms. Convenience markets which also sell automotive fuels shall provide the following additional services without charge:
 - 1. One restroom for women and one restroom for men available to customers and employees. If restroom entrances open directly to the outside of the building, the restroom entrances shall be screened from public view and shall comply with the lighting and crime prevention measures in Section E of this section.
 - 2. Hoses conveying air and water for the service of automotive vehicles available for public uses in locations approved by the development services department.
- D. Loiter Control.
 - 1. Public pay telephones on an exterior wall of the convenience market fuel and service stations or anywhere on the site shall not allow incoming calls. Public telephones allowing incoming calls are allowed within the building interior.
 - 2. Video games may not be installed or operated on the premises of the convenience market with fuel and service stations.
 - 3. The police department may require additional loiter control measures as conditions of approval for the convenience market with fuel and service stations conditional use permit.
- E. Crime Prevention Measures.
 - 1. The exterior of the convenience market with fuel and service stations shall be illuminated during all hours of darkness during which the market is open for business. Exterior illumination shall allow law enforcement personnel to easily identify persons within front entry areas, adjacent public sidewalks, parking areas, thoroughways, and alleys under control by the convenience market. Illumination shall be located and designed to minimize interference with the quiet enjoyment of nearby residential properties.
 - 2. Commercial alarm systems and video security cameras shall be installed and maintained within the building to the specifications of the police department as required by the conditional use permit.
 - 3. The police department may require additional crime prevention measures as conditions of approval for the convenience market with fuel and service stations conditional use permit.
 - 4. Persons under the age of eighteen who are employed in a capacity which allows for selling of alcoholic beverages must be under the continual supervision of a person twenty-one years of age or older.
- F. Concurrent Sale of Alcoholic Beverages and Automotive Fuels. If concurrent sale of alcoholic beverages and automotive fuels are proposed in conjunction with the convenience market with fuel and service stations use, the following additional

requirements shall apply as specified in Section 23790.5 of the Business and Professions Code:

1. No alcoholic beverages shall be displayed within ten feet of the cash register or front door unless located within a permanently affixed cooler.
2. No display or sale of alcoholic beverages shall be made from an ice tub.
3. No alcoholic beverage advertising shall be located on fuel pump islands and no self-illuminated advertising for alcoholic beverages shall be located on buildings or windows.
4. Employees on duty between the hours of ten p.m. and two a.m. who sell beer or wine shall be at least twenty-one years of age.

G. A Liquor Store with a fuel and service station is not a permitted use.

H. Parking

1. For convenience markets permitted prior to January 1, 2019, the planning commission may consider a reduction in on-site parking as set forth in section 18.72.060.K. Any reductions in on-site parking requires planning commission approval through a conditional use permit.

Section 4. Subsection P (Retail) of Section 18.124.040 (Commercial Uses) Of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

P. Retail.

1. Building Materials. An establishment engaged in the retail sale of lumber and other building materials primarily to contractors and home builders.
2. Convenience Markets. A retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. ~~Includes liquor stores where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages.~~ Excludes full-service grocery stores containing less than five thousand square feet of gross floor area where at least ten percent of the floor area is allocated for the sale of fresh meat, seafood, and fresh produce products.
3. Convenience Market with Fuel and Service Station. A retail business establishment that meets the combined definitions of Convenience Markets (See section 18.124.040.P.2) and Fuel and Service Stations (See Section 18.124.040.Q.1).
4. General Retail. Stores and shops selling merchandise to the general public. Includes grocery stores, specialty food markets, drug stores, general merchandise stores, department stores, clothing stores, pet stores, small hardware stores, cellular phone sales and service, florists, arts and crafts galleries, and other similar retail establishments. Excludes "building materials," "convenience markets," "home improvement centers," and "large commodity retail."

45. **Goods Produced On-Site.** A retail establishment selling goods produced by a related on-site manufacturing use.
56. **Home Improvement Centers.** A retail establishment which carries a full line of building materials, appurtenances, and decorator items primarily for homeowners (not contractors) to improve and maintain individual dwellings. Excludes building supply yards and lumberyards for contractors and home builders (see "building materials").
67. **Large Commodity Retail.** A retail use where more than seventy-five percent of the gross floor area is used for display, sales, and related storage of bulky commodities, and which typically generate a demand for fewer parking spaces than do other types of retail uses. Includes retail sale of carpeting and floor covering; catalog and mail order sales; construction equipment and machinery; garden and farm equipment; heating, ventilating, air conditioning, and other mechanical equipment and supplies; kitchen, bathroom and plumbing appliances, equipment, and supplies; lumber and building materials; office furniture, equipment, and machinery, including computers; and household furniture.
8. **Liquor Store.** A retail establishment, having a Type 21 (Off-Sale General) license issued through the Alcoholic Beverage Control, and where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages (which includes beer, wine, and distilled spirits) for off-premises consumption.

Section 5. 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 6. 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 _____, 2019, and adopted at a meeting held on the _____ day of _____, 2019, 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

RESOLUTION NO. 19-25

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF AMENDMENT (ZA2019-0013: CONVENIENCE MARKET TEXT) TO TITLE 18, ZONING CODE TO AMEND TABLE 18.24-1 IN SECTION 18.24.020 "LAND USE REGULATIONS", AMEND CHAPTER 18.92 "SUPPLEMENTAL STANDARDS", AND CHAPTER 18.124 "LAND USE DEFINITIONS" OF THE MORGAN HILL MUNICIPAL CODE REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES.

WHEREAS, this proposed Ordinance (Zoning Amendment ZA2019-0013) was considered by the Planning Commission of the City of Morgan Hill at its regular meeting of November 12, 2019; and

WHEREAS, the Planning Commission has reviewed recommendations contained in the November 12, 2019, staff report on this item; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL THAT:

SECTION 1. The Planning Commission hereby finds that the proposed amendments to the Zoning Code established by this ordinance herein described are compatible with the goals, objectives and policies of the General Plan of the City of Morgan Hill including, the General Plan policies in the Land Use Element, for example Policy CNF-2.1 (Orderly Development), which promotes sensible, orderly growth that will promote the local economy. Furthermore, the proposed zoning text amendment for convenience markets is consistent with the General Plan in that it follows current land use development standards for commercial uses.

SECTION 2. The proposed amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City. A land use program for convenience markets that includes a Conditional Use Permit for each use allows the approval bodies to evaluate each use to ensure they will not be detrimental to the City.

SECTION 3. The proposed revisions for convenience market uses are internally consistent with the overall zoning code. The land use changes require a Conditional Use Permit for each use and overall development standards consistent with the zone district each business would be located within.

SECTION 4. The Planning Commission hereby recommends approval of changes to the text of the Morgan Hill Municipal Code amending table 18.24-1 in Section 18.24.020 (Land Use Regulations); amending Section 18.92.030 (Convenience Markets); adding Sections 18.92.031 (Liquor Store) and 18.92.032 (Convenience Markets with Fuel and Service Stations); and amending Section 18.124.040 (Commercial Uses) which are shown by strike-out text for deletions, and underline text for additions. All text amendments recommended to be made as shown in the draft ordinance (Attachment 2 to the staff report).

PASSED AND ADOPTED THIS 12nd DAY OF NOVEMBER 2019, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:	MUNOZ-MORRIS, MUELLER, GONZALES-ESCOTO, KUMAR
NOES:	COMMISSIONERS:	HABIB, TANDA, DOWNEY
ABSTAIN:	COMMISSIONERS:	NONE
ABSENT:	COMMISSIONERS:	NONE

ATTEST:

APPROVED:

JENNA LUNA, Deputy City Clerk

JUAN MIGUEL MUNOZ-MORRIS, Chair



CITY COUNCIL STAFF REPORT

MEETING DATE: December 4, 2019

PREPARED BY: Adam Paszkowski, Principal Planner
APPROVED BY: City Manager

ADOPT ZONING ORDINANCE AMENDING CHAPTER 18.84: ACCESSORY DWELLING UNITS AND UPDATING DEFINITIONS IN CHAPTER 18.124 OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881, AND SENATE BILL 13

RECOMMENDATION(S)

1. Open/close the public hearing;
2. Waive first reading of the Zoning Amendment Ordinance; and
3. Introduce the Zoning Amendment Ordinance.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Enhancing Diversity and Inclusiveness

2019 Strategic Priorities

Housing

GUIDING DOCUMENTS

General Plan/Housing Element

REPORT NARRATIVE:

On October 9, 2019, Governor Gavin Newsom signed Assembly Bill 68, Assembly Bill 881, and Senate Bill 13, which amend Government Code Sections 65852.2 and 65852.22 and the Health and Safety Code regarding accessory dwelling units (ADU) and junior accessory dwelling units. All bills are effective January 1, 2020. The Bills make major changes to the ADU statute to facilitate the development of more ADUs and address perceived barriers to ADUs.

Staff has proposed text amendments (Attachment 1) to Chapter 18.84 (Accessory Dwelling Units) and Chapter 18.124 (Land Use Definitions) of the Morgan Hill Municipal Code intended to align with changes made in State law (Government Code Sections 65852.2 and 65852.22).

Chapter 18.84 is proposed to be amended to apply to both accessory dwelling units and junior accessory dwelling units. Chapter 18.124 is proposed to be amended to modify the definition of accessory dwelling unit and to add a definition for junior accessory dwelling unit. New language has been identified with an underline and deleted text has been identified by ~~strikethrough~~.

Pursuant to Section 18.114.060 (Findings for approval), the City Council may approve a zoning code amendment only if all of the following findings are made:

1. *The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by Government Code Section 65860.* The proposed zoning amendment is consistent with the General Plan in that it encourages the production of accessory dwelling units which may serve as affordable housing and promotes integrating affordable units into existing and proposed developments.
2. *The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City.* The proposed zoning amendment requires accessory units to comply with all applicable building and safety codes, and, therefore, will not be detrimental to the City.
3. *The proposed amendment is internally consistent with other applicable provisions of the zoning code.* The proposed revisions to Chapter 18.84 (Accessory Dwelling Units) and Chapter 18.124 (Land Use Definitions) are internally consistent with the overall zoning code.

If the proposed Ordinance is approved, the Zoning Code Amendment becomes effective 30 days following the adoption of the Ordinance by the City Council.

Planning Commission Action

The Planning Commission reviewed the project on November 18, 2019. During the review of the project, the Commission discussed and expressed concern regarding parking requirements/exceptions for accessory dwelling units as well as the new State law allowing accessory dwelling units within multi-family dwelling developments.

Many of the exceptions to on-site parking requirements for accessory dwelling units are in place today; the new State law states no on-site parking is required for an accessory dwelling unit if it is located within one-half mile walking distance of public transit (with no frequency of service interval required) or when the unit is constructed within the residence or an accessory structured.

Following discussion of the project, the Planning Commission unanimously approved Resolution No. 19-26 (Attachment 2) recommending the City Council approve the proposed Zoning Amendment.

COMMUNITY ENGAGEMENT: Inform

A 10-day public hearing notice was published in the Friday, November 22, 2019 edition of the Morgan Hill Times pursuant to Government Code Sections 65090-65096. Notice was also provided on the website and via social media. On November 18, 2019 the

Planning Commission held a public hearing regarding the proposed zoning amendment in which a 10-day public hearing notice was published in the Friday, November 8, 2019 edition of the Morgan Hill Times.

ALTERNATIVE ACTIONS:

If the City Council does not take action, Chapter 18.84 – Accessory Dwelling Units will not be in accordance with Government Code Sections 65852.2 and 65852.22, and therefore, if an application for a permit to create an Accessory Dwelling Unit is received by the City, the City shall approve or disapprove the application ministerially without discretionary review pursuant to Government Code Subdivision 65852.2(a). The City shall act on the application to create an accessory dwelling unit or a junior accessory dwelling unit with 60 days from the date the local agency receives a completed application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory dwelling unit or a junior accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the accessory dwelling unit or the junior accessory dwelling unit until the City acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit or junior accessory dwelling unit shall still be considered ministerially without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay. If the City has not acted upon the completed application within 60 days, the application shall be deemed approved.

By not taking action, the City could not:

1. Enforce or limit a maximum unit size for Accessory Dwelling Units except for limiting an attached accessory dwelling unit to 50 percent of the existing primary dwelling;
2. Enforce a height restriction of 16-feet within a reduced side or rear setback; or
3. Restrict short term rentals within accessory units.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 6, 2018 – City Council adopted Ordinance No. 2277, New Series, approving the first comprehensive update of Title 18 – Zoning of the City's Municipal Code since 1981. Ordinance No. 2277, N.S. became effective on July 7, 2018. The comprehensive update of Title 18 – Zoning included Chapter 18.84 – Accessory Dwelling Units, which replaced Chapter 18.55 – Secondary Dwelling Units, which was last updated in 2010.

On November 18, 2019 – Planning Commission considered and recommended, unanimously, the City Council approve the proposed Zoning Amendment (Attachment 3).

FISCAL AND RESOURCE IMPACT:

This amendment is a direct result of recent legislative changes in the State laws for which the cost is borne and work is accommodated within the Planning Division's annual workplan and budget.

CEQA (California Environmental Quality Act):

This Ordinance is categorically exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines. The proposed text amendments are covered by the common-sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed amendments are changes to the requirements of Accessory Dwelling Units and Junior Accessory Dwelling Units contained within the Municipal Code as required by State Law pursuant to the amendments made by Assembly Bill 68, Assembly Bill 881 and Senate Bill 13 and will not result in any direct impact upon the physical environment. Any development that occurs in the future subject to such standards will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. Ordinance Chapter 18.84 & 18.124 Accessory Dwelling Units
2. Planning Commission Resolution No. 19-26
3. Novemebr 18, 2019 Planning Commission Staff Report (web link)
4. Staff Presentation (ADU Ordinance)

ORDINANCE NO. , NEW SERIES

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 18.84 (ACCESSORY DWELLING UNITS) AND SECTION 18.124.020 (RESIDENTIAL LAND USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING CODE) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881, AND SENATE BILL 13

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

Section 1. Chapter 18.84 (Accessory Dwelling Units) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

Chapter 18.84 - ACCESSORY DWELLING UNITS

18.84.010 - Purpose.

This chapter establishes standards for the location and construction of accessory dwelling units and junior accessory dwelling units (jointly referred to 'accessory units' in this Chapter) in conformance with Government Code Sections 65852.2 and 65852.22, respectively. These standards are intended to allow for accessory ~~dwelling~~ units as an important form of affordable housing while preserving the character and integrity of residential neighborhoods in Morgan Hill, and to comply with State law.

18.84.020 - Permits required.

- A. ~~Zoning Clearance~~. Accessory ~~dwelling~~ units consistent with the requirements of this chapter are allowed by-right with the issuance of a Building Permit ~~zoning clearance~~.
- B. Time Limit to Act. The city shall complete its review of an accessory ~~dwelling~~ unit application requiring a Building Permit ~~zoning clearance~~ and approve or deny the application within sixtyone hundred twenty days after receiving an application if there is an existing single-family or multifamily dwelling on the lot. If the permit application to create an accessory unit is submitted with a permit application to create a new single-family dwelling on the lot, the City may delay acting on the permit application for the accessory until the City acts on the permit application to

create the new single-family dwelling. The application to create the accessory unit shall be considered without discretionary review or hearing.

18.84.030 - Permitted zoning districts.

Accessory dwelling units are permitted in any zoning district where single-family ~~detached or multi-family~~ dwellings are a permitted land use as identified in Part 2 (Zoning Districts and Overlay Zones) of the zoning code. Junior accessory dwelling units are permitted in any zoning district where single-family dwellings are a permitted land use as identified in Part 2 (Zoning Districts and Overlay Zones) of the zoning code.

~~18.84.040 – Accessory dwelling units in existing space.~~

~~An accessory dwelling unit within an existing primary dwelling, garage, or other accessory structure is permitted regardless of all other standards in this chapter if the accessory dwelling unit:~~

- ~~A. Complies with all applicable building and safety codes;~~
- ~~B. Provides independent exterior access from the primary dwelling; and~~
- ~~C. Complies with all side and rear yard setback requirements of the applicable zoning district.~~

18.84.050 - Site and design standards.

- A. General. Accessory units are subject to the same requirements that apply to primary dwellings on the same lot in the applicable zoning district except as specified in this section.
- B. Number of Accessory Units. No more than one accessory dwelling unit and no more than one junior accessory dwelling unit is permitted on a single lot with a single-family dwelling. Multifamily dwelling structures may have no more than one accessory dwelling unit or up to 25% of the existing multi-family dwelling units, whichever is larger.
- C. Relationship to Primary Dwelling.
 1. An accessory dwelling unit may be within, attached to, or detached from the primary dwelling. Attachment to the primary dwelling shall be by sharing a common interior wall or common roof. No passageway (as defined in Government Code Section 65852.2(i)(5)) is required in conjunction with the construction of an accessory dwelling unit.
 2. An accessory dwelling unit shall have its own kitchen, bathroom facilities, and entrance separate from the primary dwelling.
 3. The city shall allow junior accessory dwelling units as defined in Government Code Section 65852.22 to be constructed within the walls of the proposed or existing single-family residence with a separate entrance from the main entrance to the primary dwelling, an efficiency kitchen (consisting of a cooking facility with appliances, a food preparation counter and storage cabinets) and shared or independent bathroom facilities shared with the primary dwelling.

4. The accessory ~~dwelling~~ unit shall be clearly subordinate to the primary dwelling by size, appearance, and location on the parcel and shall comply with all applicable building and safety codes.

D. Maximum Unit Size.

1. ~~Detached Accessory Units.~~ Table 18.84-1 identifies the maximum floor area for detached and attached accessory dwelling units.

Table 18.84-1: Maximum Accessory Dwelling Unit Floor Area

Zoning District	Maximum Floor Area
RE 10	1,200 sq. ft. ¹
RE 2.5	1,000 sq. ft. ¹
RE 1	900 sq. ft. <u>(1 Bedroom)</u> 1000 sq. ft. <u>(2 or more Bedrooms)</u> ¹
All other zoning districts	750 850 sq. ft. <u>(1 Bedroom)</u> 1000 sq. ft. <u>(2 or more Bedrooms)</u> ¹

¹ An attached accessory dwelling unit shall not exceed 50 percent of the existing primary dwelling.

2. The maximum floor area of junior accessory dwelling units shall be 500 square feet. ~~Attached Accessory Units. The maximum floor area of attached accessory dwelling units is thirty percent of the floor area of the primary dwelling or the floor area specified in Table 18.84-1, whichever is less.~~

~~E. Separation from Primary Dwelling. Detached accessory dwelling units must be setback a minimum of six feet from the primary dwelling unit.~~

~~FE.~~ Property Line Setbacks.

1. No setback is required for an existing accessory structure or living area as defined by Government Code Section 65852.2 ~~garage~~ that is converted to an accessory dwelling unit.
2. No setback is required for an accessory dwelling unit constructed in the same location and the same footprint as an existing accessory structure.
- ~~23.~~ A minimum setback of ~~five-four~~ feet from the side and rear property lines is required for an accessory dwelling unit 16-feet in height or less ~~constructed above a garage.~~ An accessory dwelling unit in excess of 16-feet shall comply with setback requirements of the applicable zoning district.

EG. Parking.

1. On-site parking spaces is not required for junior accessory dwelling units.
2. Except as specified in this subsection, on-site parking for accessory dwelling units shall comply with all parking requirements in Chapter 18.72 (Parking and Loading).
23. In addition to on-site parking spaces required for the primary dwelling unit, one on-site parking spaces shall be provided for each accessory dwelling units per unit or bedroom, whichever is less as shown in Table 18.84-2.

~~Table 18.84-2: Required On-Site Parking Spaces for Accessory Dwelling Units~~

Accessory Dwelling Unit Size	Required Number of On-Site Parking Spaces
Studio and one-bedroom accessory dwelling units	1 space (may be tandem)
Two-bedroom accessory dwelling units	2 spaces (may be tandem)

3. On-site parking spaces for accessory dwelling units may be covered or uncovered and may be located within the front, side or rear setback areas (may be tandem).
4. No off-street parking is required for an accessory dwelling unit in the following cases:
 - a. The accessory dwelling unit is located within one-half mile walking distance of public transit ~~of the Morgan Hill Caltrain station or a bus transit stop with a frequency of service interval of fifteen minutes or less during the morning and afternoon peak commute periods.~~
 - b. The accessory dwelling unit is located within a National Register Historic District or other historic district officially designated by the city council.
 - c. When an accessory dwelling unit is constructed within the primary residence or an accessory structure.
 - ed. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - ed. When there is a car share vehicle pick-up/drop-off location within one block of the accessory dwelling unit.

5. When an existing garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, or converted to an accessory dwelling unit, the on-site parking spaces are not required to be replaced and the zoning code requires that those parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

H.G. Design. The design of accessory dwelling units shall be compatible with the design and scale of the primary dwelling (using substantially the same landscaping, color, materials and design on the exterior) and the general character of the neighboring residential properties.

H.H. Doors and Windows. Openings (e.g., doors and windows) on exterior walls that are closest to and face adjacent residentially-zoned properties shall be designed to minimize privacy impacts and maintain access to light and ventilation on adjacent properties.

H.I. Utility Connections.

1. General. An accessory dwelling unit shall not be considered a new residential use for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service unless constructed in conjunction with a new single-family residence.
2. Accessory Dwelling Units in Existing Space. For ~~an~~ accessory dwelling units within an existing primary dwelling, garage, or other accessory structure, the city shall not require an applicant to install a new or separate utility connection directly between the accessory dwelling unit ~~with~~ and the utility or impose a related connection fee or capacity charge.
3. Attached and Detached Accessory Dwelling Units.
 - ~~a. For detached accessory dwelling units and accessory dwelling units attached to and added on to a primary dwelling, the city shall require a new or separate utility connection directly between an attached or detached accessory dwelling unit and the utility.~~
 - ~~b.~~ Consistent with Government Code Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.
4. Fire Sprinklers. ~~The city shall not require accessory dwelling units to provide fire sprinklers if they would not be required for the primary residence under the current fire code.~~ The installation of fire sprinklers shall not be required in an accessory unit if sprinklers are not required for the primary residence.

K.J. Septic Tank Disposal System.

1. In areas where septic tank disposal systems are allowed due to lack of sanitary sewer lines, detached accessory dwelling units shall be served by separate and independent septic tank sewage disposal systems. All leach lines shall be designed and installed in accordance with current septic system requirements of the Santa Clara County Environmental Health Services.
2. In other areas of the city, accessory dwelling units shall be connected to the sanitary sewer system through the existing lateral line serving the primary dwelling unit.

~~L. Maximum Number of Bedrooms. An accessory dwelling unit may contain no more than two bedrooms.~~

18.84.060 - Deed restrictions.

- A. Deed Restriction Required. Before obtaining a building permit for an accessory ~~dwelling~~ unit, the property owner shall file with the county recorder a declaration of restrictions containing a reference to the deed under which the property was acquired by the current owner. The deed restriction shall state that:
 1. The accessory ~~dwelling~~ unit may not be sold separately from the primary dwelling.
 2. The accessory ~~dwelling~~ unit is restricted to the approved size as set forth in Section 18.84.040-050 (ED).
 3. The accessory unit shall not be rented for a period of less than 30 days.
- B. Binding on Future Owners. The above declarations shall be binding upon any successor in ownership of the property. Lack of compliance shall be cause for code enforcement and/or revoking the city's approval of the accessory ~~dwelling~~ unit.

18.84.070 – Fees

- A. Impact fees shall not be imposed on an accessory dwelling unit less than 750 square feet in size.
- B. Impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

Section 2. Subsection A of Section 18.124.020 (Residential Land Uses) of Chapter 18.04 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

A. Accessory Dwelling Units. A self-contained living unit, either attached to or detached from, and in addition to, the primary residential unit on the parcel, that includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling or multifamily dwelling is situated. This includes an

efficiency unit as defined in Section 17958.1 of the Health and Safety Code and a manufactured home, as defined in Section 18007 of the Health and Safety Code. Further includes a Junior Accessory Dwelling Unit which is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence and includes separate or shared sanitation facilities with the existing structure.

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. 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

Attachment: Ordinance Chapter 18.84 & 18.124 Accessory Dwelling Units (2550 : ADU Ordinance)

RESOLUTION NO. 19-26

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL RECOMMENDING APPROVAL OF ZONING AMENDMENT ZA2019-0015: ADU ORDINANCE AMENDING CHAPTER 18.84 ACCESSORY DWELLING UNITS AND CHAPTER 18.124 LAND USE DEFINITIONS OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881 AND SENATE BILL 13.

WHEREAS, this proposed Ordinance (Zoning Amendment ZA2019-0015) was considered by the Planning Commission of the City of Morgan Hill at its special meeting of November 18, 2019;

WHEREAS, the Planning Commission has reviewed recommendations contained in the November 18, 2019, staff report on this item;

WHEREAS, the amendments proposed by this Ordinance are necessary to comply with changes in State law implemented by Assembly Bill 68, Assembly Bill 881 and Senate Bill 13;

WHEREAS, this ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines, as the proposed text amendments to the Morgan Hill Zoning Code is not a project with potential for causing a significant effect on the environment requiring California Environmental Quality Act (CEQA) analysis;

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

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The Planning Commission hereby finds that the proposed amendments to the Zoning Code established by this Ordinance herein described are compatible with the goals, objectives and policies of the General Plan of the City of Morgan Hill including, the General Plan policies in the Housing Element, including Policy HE-1i (Flexible Housing), which encourages attached or detached accessory dwelling suites;

City of Morgan Hill
Resolution No. 19-26
Page 2 of 2

Policy HE-1q (Affordable Housing) which encourages the production of affordable housing units; as well as Policy HE-1ddd (Integration of Affordable and Market Rate Housing), which promotes integrating affordable units into existing or proposed developments. Furthermore, the proposed zoning text amendment for accessory dwelling units is consistent with the General Plan in that it encourages the production of accessory dwelling units which may serve as affordable housing and promotes integrating affordable units into existing and proposed developments.

SECTION 2. The proposed amendments will not be detrimental to the public interest, health, safety, convenience, or welfare of the City. The proposed zoning amendment requires accessory units to comply with all applicable building and safety codes, and, therefore, will not be detrimental to the City.

SECTION 3. The proposed amendment is internally consistent with other applicable provisions of the zoning code. The proposed revisions to Chapter 18.84 (Accessory Dwelling Units) and Chapter 18.124 (Land Use Definitions) are internally consistent with the overall zoning code.

SECTION 4. The Planning Commission hereby recommends approval of changes to the text of the Morgan Hill Municipal Code amending Chapter 18.84 (Accessory Dwelling Units) and Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) of the Municipal Code which are shown by strike-out text for deletions and underline text for additions. All text amendments recommended to be made as shown in the draft ordinance (Attachment 2 to the staff report).

PASSED AND ADOPTED THIS 18th DAY OF NOVEMBER 2019, AT A SPECIAL MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

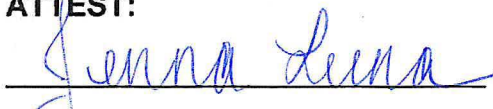
AYES: **COMMISSIONERS:** MUNOZ-MORRIS, HABIB, MUELLER,
TANDA, KUMAR, DOWNEY

NOES: **COMMISSIONERS:** NONE

ABSTAIN: **COMMISSIONERS:** NONE

ABSENT: **COMMISSIONERS:** GONZALEZ-ESCOTO

ATTEST:


JENNA LUNA, Deputy City Clerk

APPROVED:


JUAN MIGUEL MUNEZ-MORRIS, Chair

Attachment: Planning Commission Resolution No. 19-26 (2550 : ADU Ordinance)



ZA2019-0015 ACCESSORY DWELLING UNIT ORDINANCE



Attachment: Staff Presentation (ADU Ordinance) (2550 : ADU Ordinance)

December 4, 2019

ADU Ordinance



Project:

Zoning Amendment Amending Chapter 18.84: Accessory Dwelling Units & Updating Definitions in Chapter 18.124

Request:

Adopt Ordinance approving Chapter 18.84: Accessory Dwelling Unit and Chapter 18.124: Land Use Definitions Zoning Amendment

ADU Ordinance (Cont'd)



Background:

- October 9, 2019 Governor Gavin Newsom signed Assembly Bill 68, Assembly Bill 881 & Senate Bill 13 amending Government Code regarding Accessory Dwelling Units (ADUs)

Government Code Changes to ADUs:

- Requires ADUs be processed ministerially;
- Allows Accessory units on a single lot with SFD or MFD;
- Reduced or no parking requirements for accessory units;
- Restricts jurisdictions limiting the size of ADUs; and
- Provides for tiered impact fees.



ADU Ordinance (Cont'd)

Chapter 18.84 Modifications

General:

- Accessory Dwelling Units and Junior Accessory Dwelling Units
- 60-day time frame to approve or deny an ADU Building Permit
- ADUs allowed with SFD or MFD
- Shall not be rented for less than 30 days

Setbacks:

- No setback for existing accessory structure or living area converted to ADU or constructed within same footprint
- 4-foot setback from Rear and Side property lines

Height:

- 16-feet if ADU does not meet base zoning setback

ADU Ordinance (Cont'd)



Chapter 18.84 Modifications

Parking:

- On-site parking not required for Junior ADUs
- 1 on-site parking space required for each ADU
- May be tandem
- On-site parking for primary dwelling not required to be replaced

No off-street parking required for ADU when:

- Within ½ mile from public transit
- Within a historic district
- Constructed within primary residence or accessory structure
- On-street parking permits are required
- Car share vehicle within 1 block



ADU Ordinance (Cont'd)

Table 18.84-1: Maximum Accessory Dwelling Unit Floor Area

Zoning District	Maximum Floor Area
RE 10	1,200 sq. ft.*
RE 2.5	1,000 sq. ft.*
RE 1	900 sq. ft. (1 Bedroom) 1,000 sq. ft. (2 or more Bedrooms)*
All other zoning districts	850 sq. ft. (1 Bedroom) 1,000 sq. ft. (2 or more Bedrooms)*

* An attached ADU shall not exceed 50% of the existing primary dwelling

The maximum floor area of a Junior ADU shall be 500 square feet.



ADU Ordinance (Cont'd)

Chapter 18.84 Modifications

Fees:

- ADU < 750 sq. ft. = no impact fees
- ADU • 750 sq. ft. = proportional impact fees

Chapter 18.124 Modifications

ADU Definition:

- Self contained living unit (attached or detached)
- Permanent provisions for living, sleeping, eating, cooking and sanitation
- Includes Junior ADU (unit contained within a SFD • 500 sq. ft.)
- Includes Manufactured Home and Efficiency Unit (unit • 150 sq. ft.)

ADU Ordinance (Cont'd)



Recommendation

1. Open/close public hearing
2. Waive first reading of the Zoning Amendment
3. Introduce the zoning ordinance amendment

Findings

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by GC Section 65860
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City
3. The proposed amendment is internally consistent with other provisions of the zoning code

Questions?



CITY OF MORGAN HILL

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: comments on South County Fire Standards of Coverage Assessment Novemb
Date: Tuesday, December 3, 2019 8:22:31 AM

From: D. Muirhead [<mailto:doug.muirhead@stanfordalumni.org>]
Sent: Monday, December 2, 2019 8:33 AM
To: Assistant Fire Chief Jim Crawford <battalionchief@morganhill.ca.gov>
Cc: EngageMorganHill <EngageMorganHill@morganhill.ca.gov>
Subject: comments on South County Fire Standards of Coverage Assessment November 2019

Dear Assistant Fire Chief Jim Crawford, cc EngageMH

I made some comments to the Engage Morgan Hill meeting on Public Safety based on the Cities of Gilroy and Morgan Hill and the South Santa Clara County Fire District Standards of Coverage Assessment November 2019 For the record, here is a more formal and expanded version of my comments. They are followed by what I consider to be the most useful highlights from the SOC report for our residents.

Thank you for your consideration, Doug Muirhead, Morgan Hill

-----+-----+-----+-----+-----+-----+-----+-----+-----+

Comments

- 1) dispatch alternatives for medical calls
- 2) EMS on motorcycles as a solution to congestion-impacted roadways
- 3) 911 reporting by text message and video
- 4) GIS and Fire Records Management systems for level of protection
- 5) building code support for SVRCS
- 6) Planning Commission consideration of cul-de-sacs and gated communities on response travel time
- 7) demographic data use in Risk Assessment
- 8) SVRCS South County cell sites

Comment #1

I would like to see more focus on County-level regionalization (discussed at the April 2013 Cities Association).

I also continue to be in favor of reviewing alternatives to dispatching full-crew trucks for the 75% of calls which are medical (2011 County Civil Grand Jury report). SOC Finding #28: Citygate projects service demand will continue to increase approximately 25 percent annually over the next 1621 years (20352040), with EMS service demand increasing at a slightly higher 36 percent annually and comprising an increasing percentage of total service demand.

The SOC report mentions that Gilroy has implemented a pilot Alternative Service Model (ASM) study that provides a two-person Type-1 ambulance or

Type-6 wildland fire engine for EMS calls.

The SOC report suggests dynamic deployment of a two-person Type-6 all-risk unit in central Morgan Hill during peak service demand hours.

[Note] Type-6 is a 18,000- to 20,000-pound GVW truck chassis with utility body, fire pump, water tank, and hose. May also be equipped to provide ALS/BLS EMS and initial rescue services.

Comment #2

The SOC report notes that mutual aid cannot realistically be provided in a timely manner by San Jose from the north unless southern San Jose units are available and do not encounter traffic congestion on southbound U.S. 101.

A possible alternative to dispatching a full-crew truck for medical calls, used in some European cities, is the use of motorcycles. It may be the most rational solution to our congestion-impacted roadways.

Comment #3

County Communications is looking at receiving 911 as text messages and video. This has two ramifications. One is the ability to better evaluate the level of response required (CalFire vs EMS). This will be an argument for dispatching smaller units in the future. For video, dispatchers will also need to get training to deal with the emotional component of that communication.

Comment #4

Do we have adequate support from Morgan Hill GIS and Fire Records Management systems so that we can use local risk and demographics to determine the level of protection best fitting a community's needs.

The SOC report suggests that for non-single-family residential buildings, consider modifying the risk assessment scoring to allow a finer differentiation for other risk factors such as occupancy classification, built-in fire protection and alarm systems, required fire flow, historic service demand, and ERF response capacity.

Comment #5

Are we fully supporting the Silicon Valley Regional Communication System capabilities? For example, several years ago, the Fire Chiefs proposed a building code addition to insure that SVRCS would function inside larger building. Future commercial and multi-unit residential building may be much larger/taller than current practice allows, requiring internal signal boosters.

Comment #6

The SOC report notes that the Insurance Services Office recommends that urban stations cover a 1.5-mile distance response area. Depending on a jurisdiction's road network, the 1.5-mile measure usually equates to a 3:30- to 4:00-minute travel time and is thus conservative.

The geographic mapping indicates that while stations are appropriately located in all the major neighborhoods, they are spaced too far apart.

The overall longer-than-desired first-due unit travel times are partially the result of a lack of fire stations. Other causes are the non-grid street network design in some areas, topography, natural and built barriers (hills and the highways), simultaneous incidents at peak hours of the day, and traffic congestion.

I believe that Public Safety and City Engineering used to review proposals during the RDCS scoring. But I have never heard an actual discussion by the Planning Commission on the impact of allowing cul-de-sacs and gated communities on response travel time.

Comment #7

In the SOC report for 2.7.1 Service Demand,

Figure 9--Number of Incidents by Year by Incident Type 2016-2018 One category is "fire/ems/other". What are examples of Other?

Add footnote that Other is answered by

Table 12--Number of Incidents by Incident Type 2018

Why is demographic data on Education (population over 24 years of age) of interest in Risk Assessment?

Comment #8

Have the SVRCS South County cell sites been added to the list of critical facilities?

-----+-----+-----+-----+-----+-----+-----+-----+

The SOC report provides useful educational material for our residents.

Some examples:

- 1) fire service **speed** and **weight** of response
 - 2) hazard and risk
 - 3) risk assessment methodology
 - 4) task analysis and effective response
 - 5) urban versus rural response time
 - 6) three-jurisdiction service area
 - 7) physical isolation from other regional fire service providers
 - 8) fire station siting guidelines
 - 9) classes of hazard
 - 10) county operational area hazard mitigation plan
 - 11) next steps
-
- 1) Fire service deployment is about the **speed** and **weight** of the response.
Speed refers to initial response (first-due) of all-risk intervention resources (engines, trucks, and/or ambulances) ...
Weight refers to multiple-unit responses (Effective Response Force (ERF) also commonly called a First Alarm) for more serious emergencies ...
 - 2) Community Risk Assessment
A hazard is broadly defined as a situation or condition that can cause or contribute to harm. Examples include fire, medical emergency, vehicle collision, earthquake, flood, etc.
Risk is broadly defined as the probability of hazard occurrence in combination with the likely severity of resultant impacts to people, property, and the community as a whole.
 - 3) Risk Assessment Methodology
The City of Gilroy Fire Department has implemented a Citywide risk assessment of all non-single-family residential buildings using a two-factor life safety and community risk scoring scale.
The program identifies specific higher-risk buildings and occupancies within the City, which also provides information to modify emergency responses to these buildings to mitigate additional risk.
 - 4) Critical Task Analysis and Effective Response Force Size
Given that the three agencies' ERF plan delivers 14 personnel to a moderate-risk building fire, it reflects a goal to confine serious building fires inside the building of origin, but not inside the compartment of origin and to prevent the spread of fire to adjoining buildings. This is a typical desired outcome in less populated suburban areas.
 - 5) The service area patterns show the need for at least an urban and a rural response time goal so that the rural incident response times do not overly mask adequate response times in the core populated areas.

- 6) The three-jurisdiction service area includes thousands of housing units and hundreds more non-residential occupancies ... described in Appendix A.
- 7) Projected future growth and development in south Santa Clara County will not alter Gilroy, Morgan Hill, and the Fire District's physical isolation from other regional fire service providers
- 8) Fire Station Siting Guidelines
1. Serve the most people in the shortest travel time possible
 2. Provide a 360-degree first-due service area
 3. Avoid political, natural, and human-built barriers within the first-due travel time goal¹⁰
 4. Provide direct access to primary travel routes in all cardinal directions.
- 9) Hazard Identification
- Building Fire
 - Vegetation/Wildland Fire
 - Medical Emergency
 - Hazardous Material Release/Spill
 - Technical Rescue
- 10) 2017 Santa Clara County Operational Area Hazard Mitigation Plan (Volume 2) identifies critical facilities and infrastructure within the two Cities and the unincorporated Fire District areas.
- 11) Next Steps
- Establish a joint agency strategic planning team with policy-level direction to evaluate potential cooperative service opportunities, including, but not limited to, fire crew staffing, deployment, cost sharing, and fire dispatch services, with the intent to develop a mutually beneficial long-term commitment and solution that optimizes the use of all three jurisdictions' resources to provide efficient and cost-effective fire services in south Santa Clara County.

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: comments on South County Fire Standards of Coverage Assessment November 2019
Date: Wednesday, December 4, 2019 6:09:36 PM

From: Crawford, Jim@CALFIRE <Jim.Crawford@fire.ca.gov>
Sent: Wednesday, December 4, 2019 4:35 PM
To: D. Muirhead; Battalionchief Emails
Cc: Engage Morgan Hill; Harjot Sangha
Subject: RE: comments on South County Fire Standards of Coverage Assessment November 2019

Mr. Muirhead,

Thank you very much for responding with comments to the Study. We have added your correspondence as a supplement to the City Council Agenda packet.

In your comments, you have a few questions that I would like to provide a response to:

Question 4-

Morgan Hill GIS and City/District Fire Records Management Systems are available and City GIS has been supportive in providing information related to local risk assessment. The RMS we use is compliant with the National Fire Information System (NFIRS) and collects data on occupancy class, fire protection and alarm systems. Reports generated for the SOC Study included 3 prior years of data with the information from the NIFIRS Compliant RMS and Computer Aided Dispatch System (CAD) and includes inputs you mentioned.

Question 5-

Morgan Hill is fully supporting the SVRCS. This summer, the system acceptance testing was completed for the Morgan Hill/Gilroy Area and Morgan Hill PD and Fire participated in that testing process with the vendor. Fire is currently testing fire radio programming in the field to determine the best final channel programming of radios. Since Fire is constantly providing aid and receiving aid from others, organized timing of implementation is being worked out. Any implementation includes new standard operating procedures, training and training before implementation can take place. We expect that Fire will transition in late winter to the use of SVRCS in South County.

The City has adopted requirements for in-building amplifiers in locations where system penetration is not satisfactory. The City Fire Marshal reviews all applications for new building and fire will be testing as part of their operation to identify any unsatisfactory radio coverage. So far, we do not have any problems identified with the system working unsatisfactorily in buildings. Of note, in other areas in the County it has been determined that in some buildings the in-building amplifiers are being removed as they are not necessary and interfering with the system outside the building. This is a causal factor of the system being at full buildout.

Question 7

Per the consultant, education is a typical census question. A correlation can be made that the education component drives EMS call volume. Age and ability (higher education) to be in the workforce affects calls for service. The very young, very old, under educated, under employed or unemployed, without healthcare drive EMS responses. Fire occurrence has no correlation with education the factor.

Question 8

The County Hazard Mitigation plan has communications facilities listed. Most of the sites in the SVRCS were already critical communication sites in the last County Hazard Mitigation Plan, so indirectly yes. However, in the next review which the County will need to do soon, that will be an asset that will be evaluated. Certain remote sites in the County were built to add coverage so those will be new sites. Morgan Hill sites (Holiday Lakes and Woodland Acres) were already critical communication sites. SVRCS Equipment was just added to the infrastructure.

If you have any further questions please feel free to reach out.

Thank you,

Jim Crawford-Assistant Chief Cooperative Fire Services
CAL FIRE Santa Clara Unit
South Santa Clara County Fire
Morgan Hill Fire

408-472-1605

www.fire.ca.gov

www.sccfd.com

www.morganhillfire.org

-----Original Message-----

From: D. Muirhead [<mailto:doug.muirhead@stanfordalumni.org>]

Sent: Monday, December 2, 2019 8:33 AM

To: Assistant Fire Chief Jim Crawford <battalionchief@morganhill.ca.gov>

Cc: EngageMorganHill <EngageMorganHill@morganhill.ca.gov>

Subject: comments on South County Fire Standards of Coverage Assessment November 2019

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Dear Assistant Fire Chief Jim Crawford, cc EngageMH

I made some comments to the Engage Morgan Hill meeting on Public Safety based on the Cities of Gilroy and Morgan Hill and the South Santa Clara County

Fire District Standards of Coverage Assessment November 2019 For the record, here is a more formal and expanded version of my comments. They are followed by what I consider to be the most useful highlights from the SOC report for our residents.

Thank you for your consideration, Doug Muirhead, Morgan Hill

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Comments

- 1) dispatch alternatives for medical calls
- 2) EMS on motorcycles as a solution to congestion-impacted roadways
- 3) 911 reporting by text message and video
- 4) GIS and Fire Records Management systems for level of protection
- 5) building code support for SVRCS
- 6) Planning Commission consideration of cul-de-sacs and gated communities
on response travel time
- 7) demographic data use in Risk Assessment
- 8) SVRCS South County cell sites

Comment #1

I would like to see more focus on County-level regionalization (discussed at the April 2013 Cities Association).

I also continue to be in favor of reviewing alternatives to dispatching full-crew trucks for the 75% of calls which are medical (2011 County Civil Grand Jury report). SOC Finding #28: Citygate projects service demand will continue to increase approximately 25 percent annually over the next 1621 years (20352040), with EMS service demand increasing at a slightly higher 36 percent annually and comprising an increasing percentage of total service demand.

The SOC report mentions that Gilroy has implemented a pilot Alternative Service Model (ASM) study that provides a two-person Type-1 ambulance or

Type-6 wildland fire engine for EMS calls.

The SOC report suggests dynamic deployment of a two-person Type-6 all-risk unit in central Morgan Hill during peak service demand hours.

[Note] Type-6 is a 18,000- to 20,000-pound GVW truck chassis with utility body, fire pump, water tank, and hose.

May also be equipped to provide ALS/BLS EMS and initial rescue services.

Comment #2

The SOC report notes that mutual aid cannot realistically be provided in a timely manner by San Jose from the north unless southern San Jose units are available and do not encounter traffic congestion on southbound U.S. 101.

A possible alternative to dispatching a full-crew truck for medical calls, used in some European cities, is the use of motorcycles. It may be the most rational solution to our congestion-impacted roadways.

Comment #3

County Communications is looking at receiving 911 as text messages and video. This has two ramifications.

One is the ability to better evaluate the level of response required (CalFire vs EMS). This will be an argument for dispatching smaller units in the future.

For video, dispatchers will also need to get training to deal with the emotional component of that communication.

Comment #4

Do we have adequate support from Morgan Hill GIS and Fire Records Management systems so that we can use local risk and demographics to determine the level of protection best fitting a community's needs.

The SOC report suggests that for non-single-family residential buildings, consider modifying the risk assessment scoring to allow a finer differentiation for other risk factors such as occupancy classification, built-in fire protection and alarm systems, required fire flow, historic service demand, and ERF response capacity.

Comment #5

Are we fully supporting the Silicon Valley Regional Communication System capabilities? For example, several years ago, the Fire Chiefs proposed a building code addition to insure that SVRCS would function inside larger building. Future commercial and multi-unit residential building may be much larger/taller than current practice allows, requiring internal signal boosters.

Comment #6

The SOC report notes that the Insurance Services Office recommends that urban stations cover a 1.5-mile distance response area. Depending on a jurisdiction's road network, the 1.5-mile measure usually equates to a

3:30- to 4:00-minute travel time and is thus conservative.

The geographic mapping indicates that while stations are appropriately located in all the major neighborhoods, they are spaced too far apart.

The overall longer-than-desired first-due unit travel times are partially the result of a lack of fire stations. Other causes are the non-grid street network design in some areas, topography, natural and built barriers (hills and the highways), simultaneous incidents at peak hours of the day, and traffic congestion.

I believe that Public Safety and City Engineering used to review proposals during the RDCS scoring. But I have never heard an actual discussion by the Planning Commission on the impact of allowing

cul-de-sacs and gated communities on response travel time.

Comment #7

In the SOC report for 2.7.1 Service Demand,

Figure 9--Number of Incidents by Year by Incident Type 2016-2018 One category is "fire/ems/other". What are examples of Other?

Add footnote that Other is answered by

Table 12--Number of Incidents by Incident Type 2018

Why is demographic data on Education (population over 24 years of age) of interest in Risk Assessment?

Comment #8

Have the SVRCS South County cell sites been added to the list of critical facilities?

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The SOC report provides useful educational material for our residents.

Some examples:

- 1) fire service *speed* and *weight* of response
- 2) hazard and risk
- 3) risk assessment methodology
- 4) task analysis and effective response
- 5) urban versus rural response time
- 6) three-jurisdiction service area
- 7) physical isolation from other regional fire service providers
- 8) fire station siting guidelines
- 9) classes of hazard
- 10) county operational area hazard mitigation plan
- 11) next steps

- 1) Fire service deployment is about the *speed* and *weight* of the response.

Speed refers to initial response (first-due) of all-risk intervention resources (engines, trucks, and/or ambulances) ...

Weight refers to multiple-unit responses (Effective Response Force (ERF) also commonly called a First Alarm) for more serious emergencies ...

- 2) Community Risk Assessment

A hazard is broadly defined as a situation or condition that can cause or contribute to harm. Examples include fire, medical

emergency, vehicle collision, earthquake, flood, etc.

Risk is broadly defined as the probability of hazard occurrence in combination with the likely severity of resultant impacts to people, property, and the community as a whole.

3) Risk Assessment Methodology

The City of Gilroy Fire Department has implemented a Citywide risk assessment of all non-single-family residential buildings using a two-factor life safety and community risk scoring scale.

The program identifies specific higher-risk buildings and occupancies within the City, which also provides information to modify emergency responses to these buildings to mitigate additional risk.

4) Critical Task Analysis and Effective Response Force Size

Given that the three agencies' ERF plan delivers 14 personnel to a moderate-risk building fire, it reflects a goal to confine serious building fires inside the building of origin, but not inside the compartment of origin and to prevent the spread of fire to adjoining buildings. This is a typical desired outcome in less populated suburban areas.

5) The service area patterns show the need for at least an urban and a rural response time goal so that the rural incident response times do not overly mask adequate response times in the core populated areas.

6) The three-jurisdiction service area includes thousands of housing units and hundreds more non-residential occupancies ... described in Appendix A.

7) Projected future growth and development in south Santa Clara County will not alter Gilroy, Morgan Hill, and the Fire District's physical isolation from other regional fire service providers

8) Fire Station Siting Guidelines

1. Serve the most people in the shortest travel time possible
2. Provide a 360-degree first-due service area
3. Avoid political, natural, and human-built barriers within the first-due travel time goal¹⁰
4. Provide direct access to primary travel routes in all cardinal directions.

9) Hazard Identification

Building Fire

Vegetation/Wildland Fire

Medical Emergency
Hazardous Material Release/Spill
Technical Rescue

10) 2017 Santa Clara County Operational Area Hazard Mitigation Plan (Volume 2) identifies critical facilities and infrastructure within the two Cities and the unincorporated Fire District areas.

11) Next Steps

Establish a joint agency strategic planning team with policy-level direction to evaluate potential cooperative service opportunities, including, but not limited to, fire crew staffing, deployment, cost sharing, and fire dispatch services, with the intent to develop a mutually beneficial long-term commitment and solution that optimizes the use of all three jurisdictions' resources to provide efficient and cost-effective fire services in south Santa Clara County.

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Regional Standards of Coverage Assessment

Gilroy, Morgan Hill, and South Santa Clara County Fire District

Presented on December 4, 2019



CITYGATE ASSOCIATES, LLC
FIRE & EMERGENCY SERVICES

The Business of Better Government



Fire Service Delivery Policy Choices

- There are no mandatory federal or state regulations directing the level of fire service response times and outcomes. Thus, communities can have the level of service they desire and can afford.
- The body of regulations on fire services states that *if fire services are provided at all, it must be with the safety of the firefighters and citizens in mind.*
- Deployment is about the **speed** and **weight** of the response:
 - **Speed** = single neighborhood-based units
 - **Weight** = multiple units amassing quickly enough to stop serious fires

Service Level Goals

- Time-temperature curve in building fires
- EMS survivability in full arrest
- Suppress other outdoor fires before they spread to buildings and wildland areas
- Keep small fires small
- Save people with potentially fatal medical emergencies
- This study addresses response time goals for fires and technical rescue
- Policy goal – Provide adequate response times *to all similar risk and population density neighborhoods*

Risk Assessment – Impact Severity Factors

- Population density
- Building density
- Critical facilities
- Service capacity
- Vehicle traffic volume
- Hazard mitigation
- Historic service demand
- Population demographics
- High-risk occupancies
- Economic resources
- Natural resources
- Cultural resources
- Water supply
- Response performance

Risk Assessment – Overall Risk Ratings by Hazard

Hazard	Risk Planning Zone								
	SSCCFD 1 Morgan Hill	SSCCFD 2 Masten	SSCCFD 3 Gilroy Gardens	Morgan Hill 4 El Toro	Morgan Hill 5 Dunne Hill	Gilroy 7 Chestnut	Gilroy 8 Las Animas	Gilroy 9 Sunrise	Gilroy Glen Loma
Building Fire	Moderate	Low	Low	Moderate	Moderate	Moderate	Moderate	Moderate	Low
Vegetation/Wildland Fire	Moderate	Moderate	Moderate	Moderate	Low	Low	Low	Moderate	Moderate
Medical Emergency	High	High	High	High	High	High	High	High	High
Hazardous Material	Moderate	Moderate	Low	Moderate	Moderate	Moderate	Moderate	Moderate	Moderate
Technical Rescue	Low	Low	Low	Low	Low	Low	Low	Low	Low

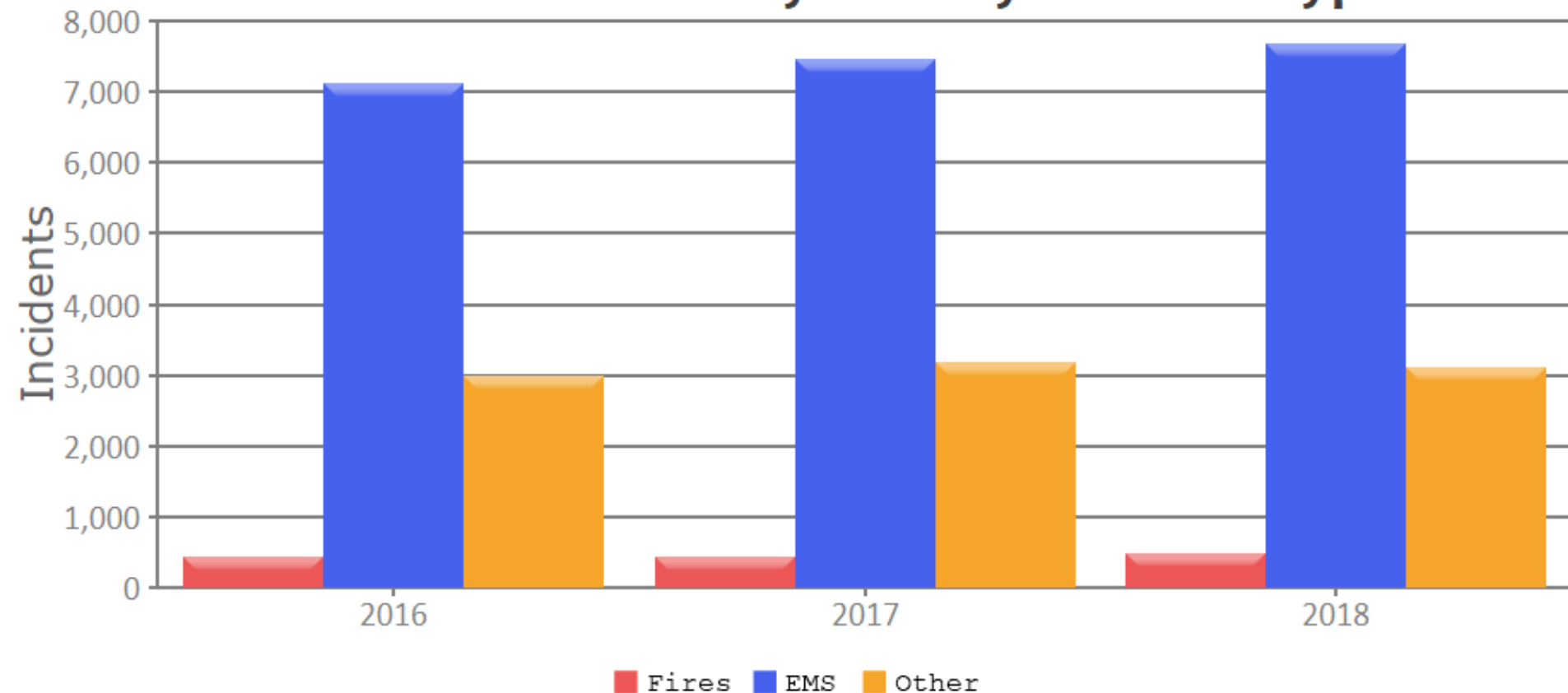


Service Demand – Combined for the Regional Partners



Service Demand by Incident Type – 2016–2018

Number of Incidents by Year by Incident Type

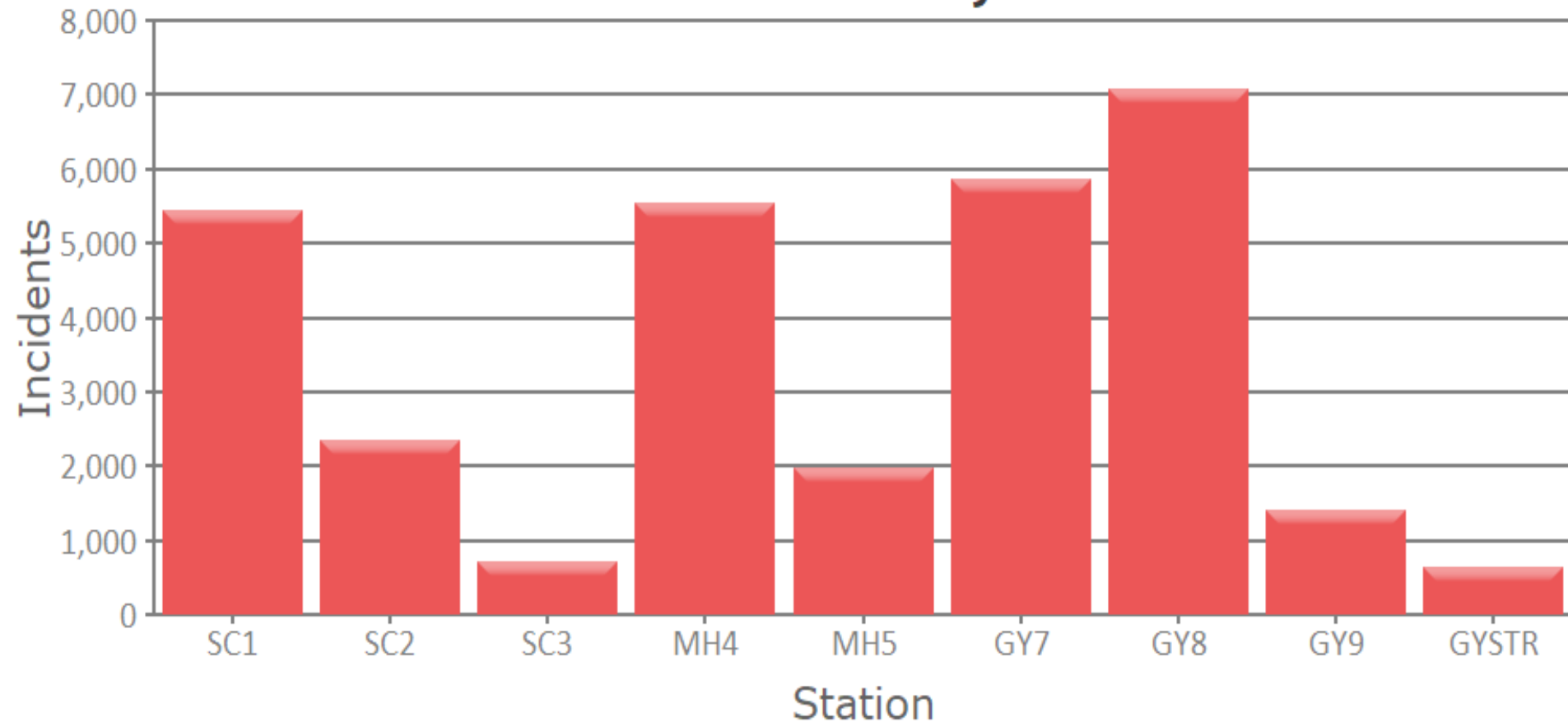


* Other includes: Veh. accident w & w/o injury, false alarm/call, public service etc.



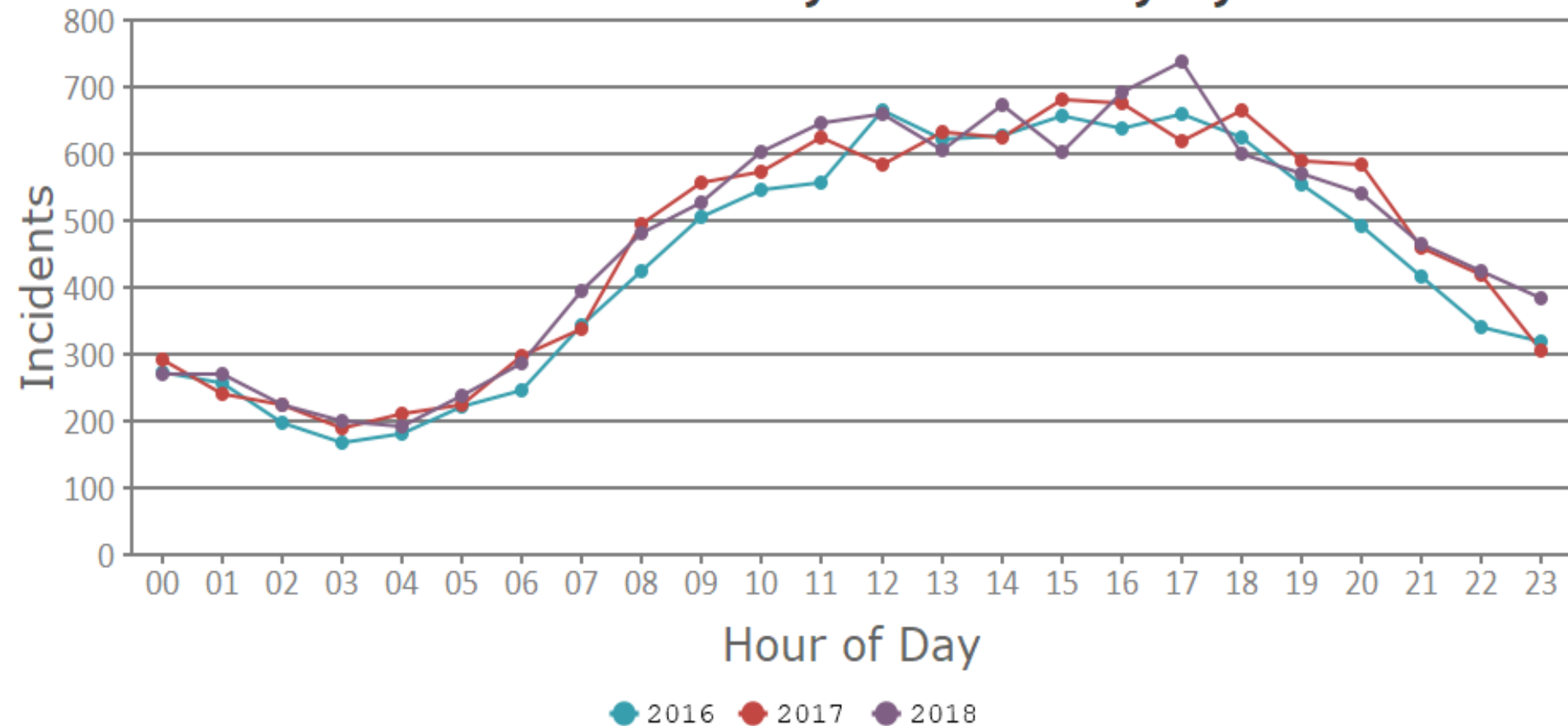
Service Demand by Station – 2016–2018

Number of Incidents by Station



Service Demand by Hour of Day – 2016–2018

Number of Incidents by Hour of Day by Year



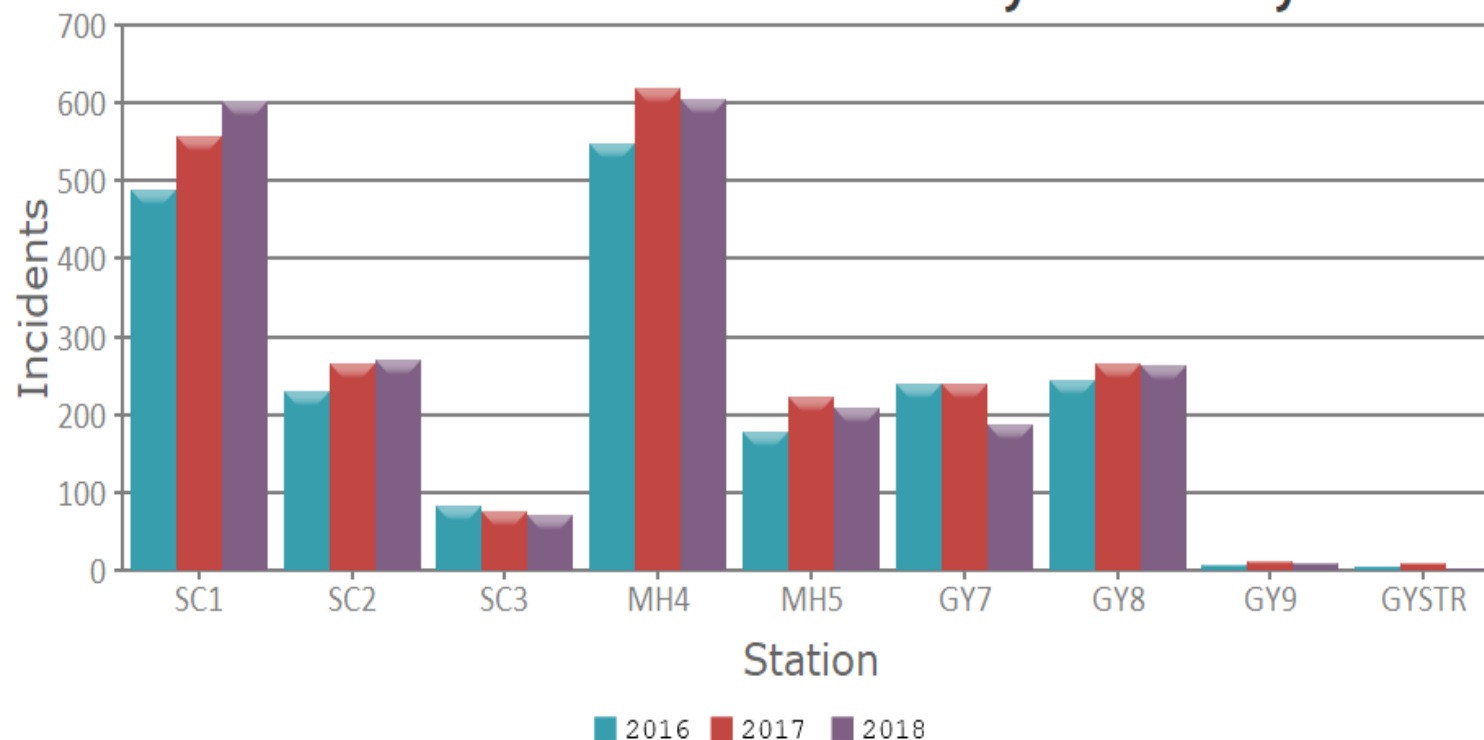
Service Demand by Incident Type – 2018

Incident Type	Number of Incidents
EMS call, excluding vehicle accident with injury	6,144
Vehicle accident with injuries	581
False alarm or false call, other	479
Medical assist, assist EMS crew	451
Motor vehicle accident no injuries	277
Assist invalid	156
Emergency medical service, other	130
Public service	105
Grass fire	67
Building fire	64

Simultaneous Incident Activity

Number of Simultaneous Incidents	Percentage of All Incidents 2018
1 or more	51.28%
2 or more	19.35%
3 or more	6.22%

Number of Simultaneous Incidents by Station by Year



Response Time Performance



Current Deployment Goals

- Gilroy – respond to emergency calls within **5:00 minutes, 75 percent** of the time
- Morgan Hill – no Council policy other than General Plan Goal SSI-11 to provide for efficient safety services
- Fire District – in urban and suburban areas in 7:59 minutes or less, and in rural areas in 11:59 minutes or less 95 percent of the time
 - These two measures come from the County's EMS system and ambulance provider plans

Deployment Best Practices

- Call Processing/Dispatch
 - NFPA: 90 seconds or less (90%)
- Crew Turnout
 - NFPA: 80 seconds or less (90%)
 - Citygate: 2:00 minutes or less (90%)
- First-Due Travel
 - NFPA: 4:00 minutes or less (90%)
- Total Response Time = 7:30
- Multiple-Unit Travel – 15 Personnel Minimum
 - NFPA: 8:00 minutes or less (90%)



Response Time Performance – 911 to 90% Arrival

Urban Goal = 7:30

Station	90 th Percentile Performance
Overall	9:15
SC1 – Morgan Hill	9:25
SC2 – Masten ¹	12:34
SC3 – Gilroy Gardens ¹	14:06
MH4 – El Toro	8:31
MH5 – Dunne Hill	9:51
GY7 – Chestnut	8:55
GY8 – Las Animas	8:11
GY9 – Sunrise	8:34
GYSTR – Glen Loma	10:51

Source: Fire Departments' incident records

¹ 14:00-minute call-to-arrival goal for rural response areas



Travel Time Performance – Travel Time to 90% Urban Goal = 4:00

Station	90 th Percentile Performance
Overall	6:08
SC1 – Morgan Hill	6:26
SC2 – Masten ¹	8:50
SC3 – Gilroy Gardens ¹	11:24
MH4 – El Toro	6:01
MH5 – Dunne Hill	7:25
GY7 – Chestnut	5:37
GY8 – Las Animas	5:06
GY9 – Sunrise	5:09
GYSTR – Glen Loma	7:39

Source: Fire Departments' incident records

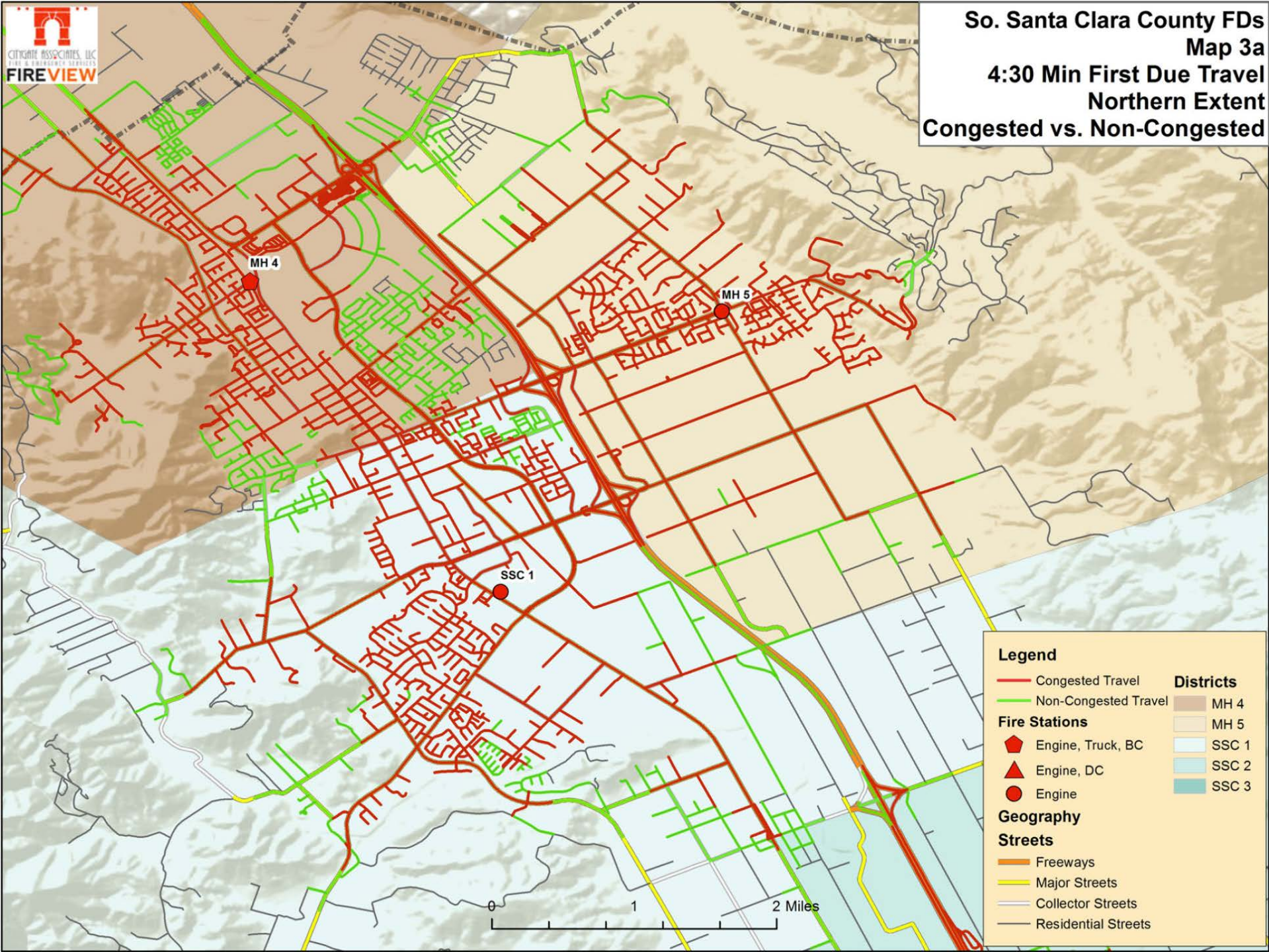
¹ 10:30-minute travel time goal for rural response



Deployment Coverage Maps



So. Santa Clara County FDs
Map 3a
4:30 Min First Due Travel
Northern Extent
Congested vs. Non-Congested



So. Santa Clara County FDs Map 3b 4:30 Min First Due Engine Travel South County Congested vs Non-Congested

Legend

— Congested
— Non-Congested

Fire Stations

● Engine, Truck, BC
▲ Engine, DC
● Engine

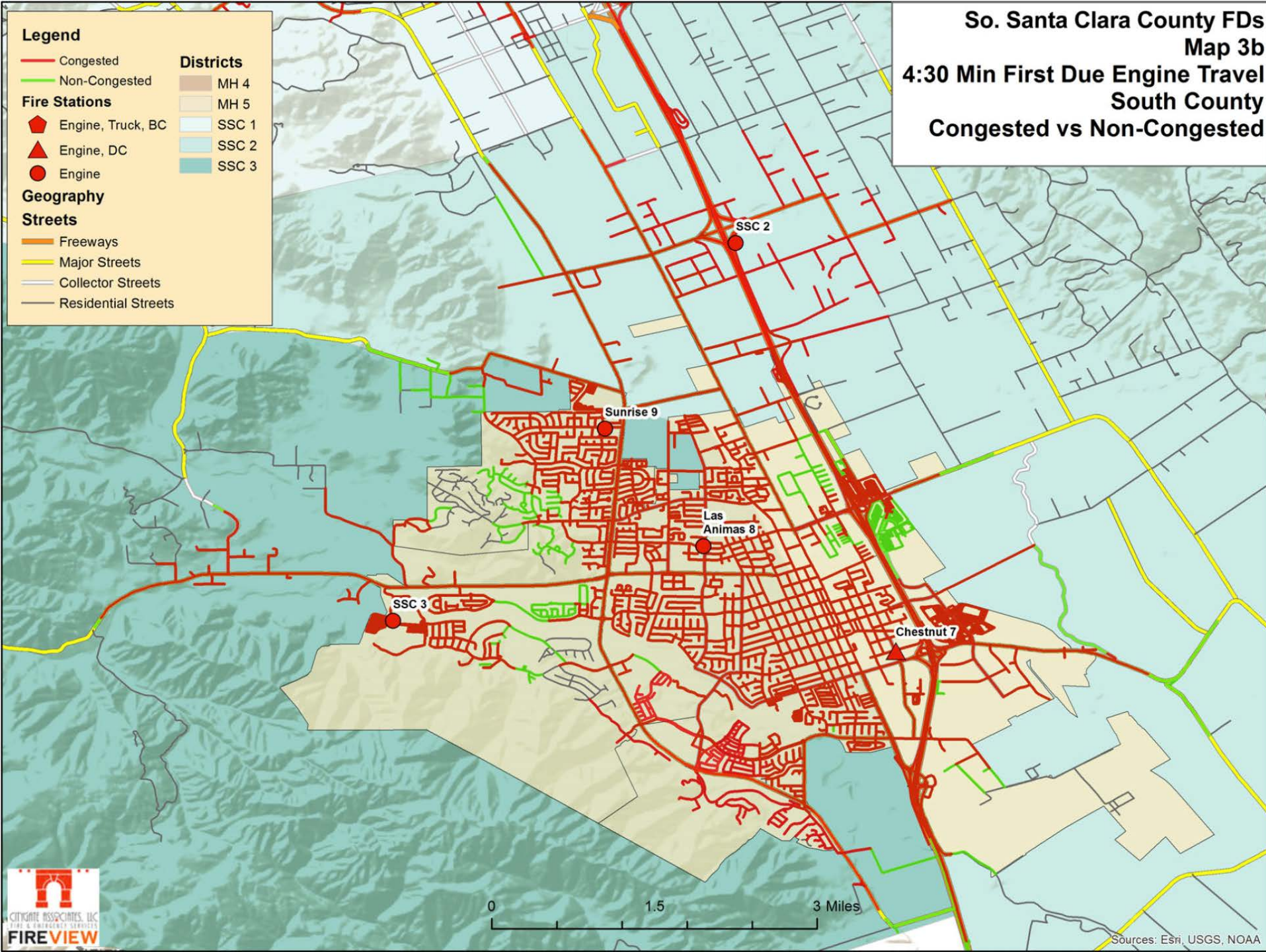
Geography

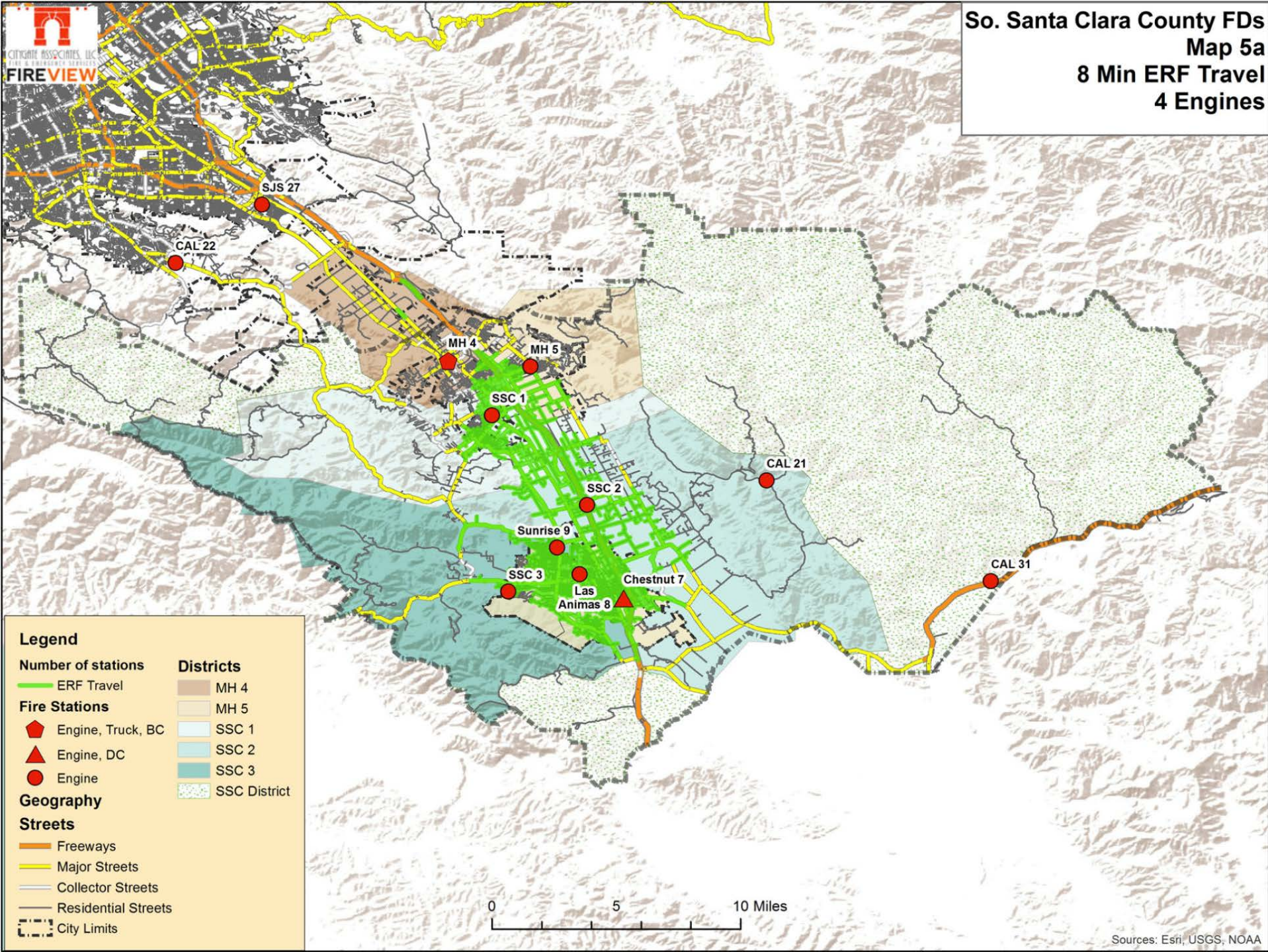
Streets

— Freeways
— Major Streets
— Collector Streets
— Residential Streets

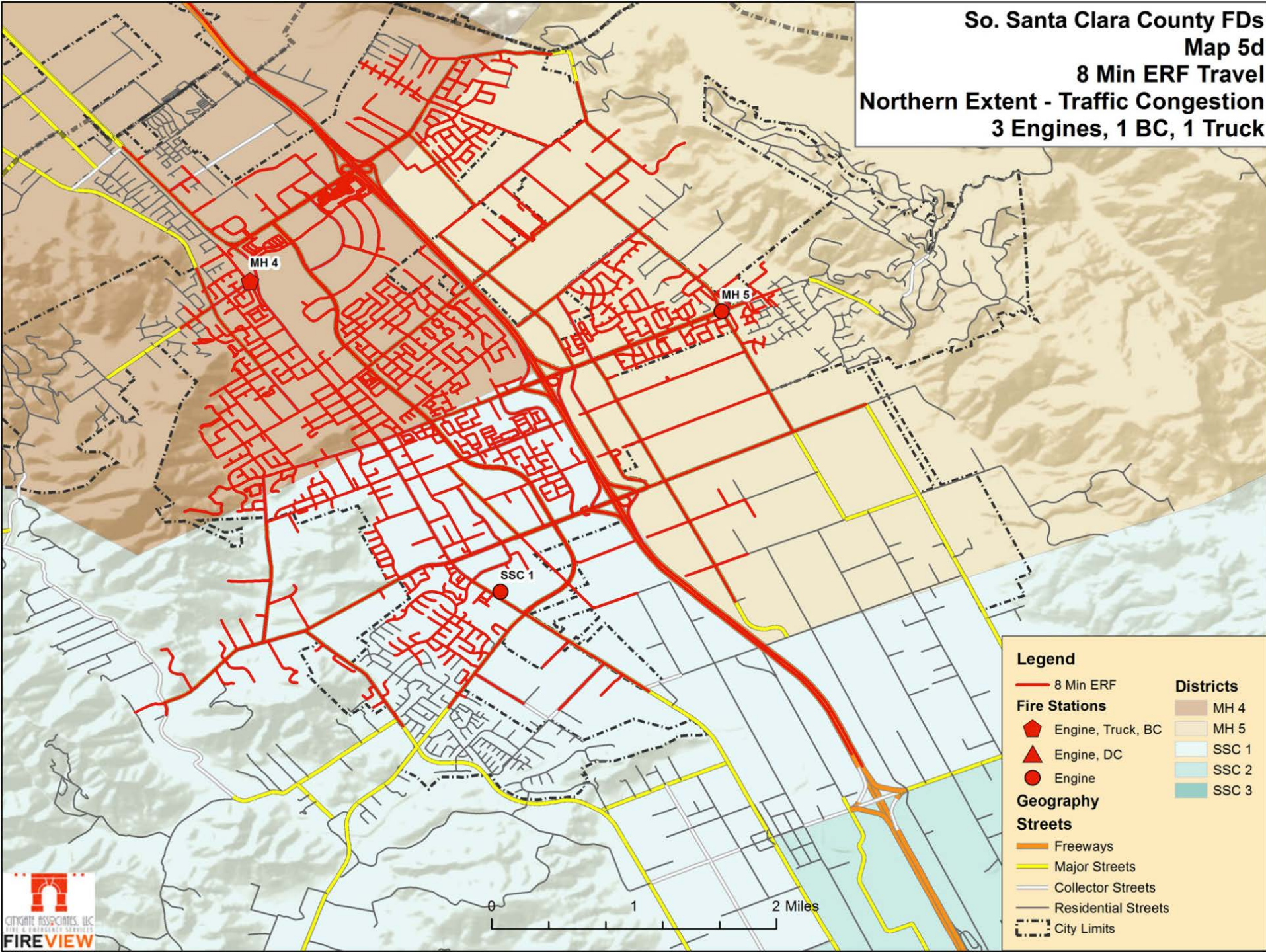
Districts

MH 4
MH 5
SSC 1
SSC 2
SSC 3



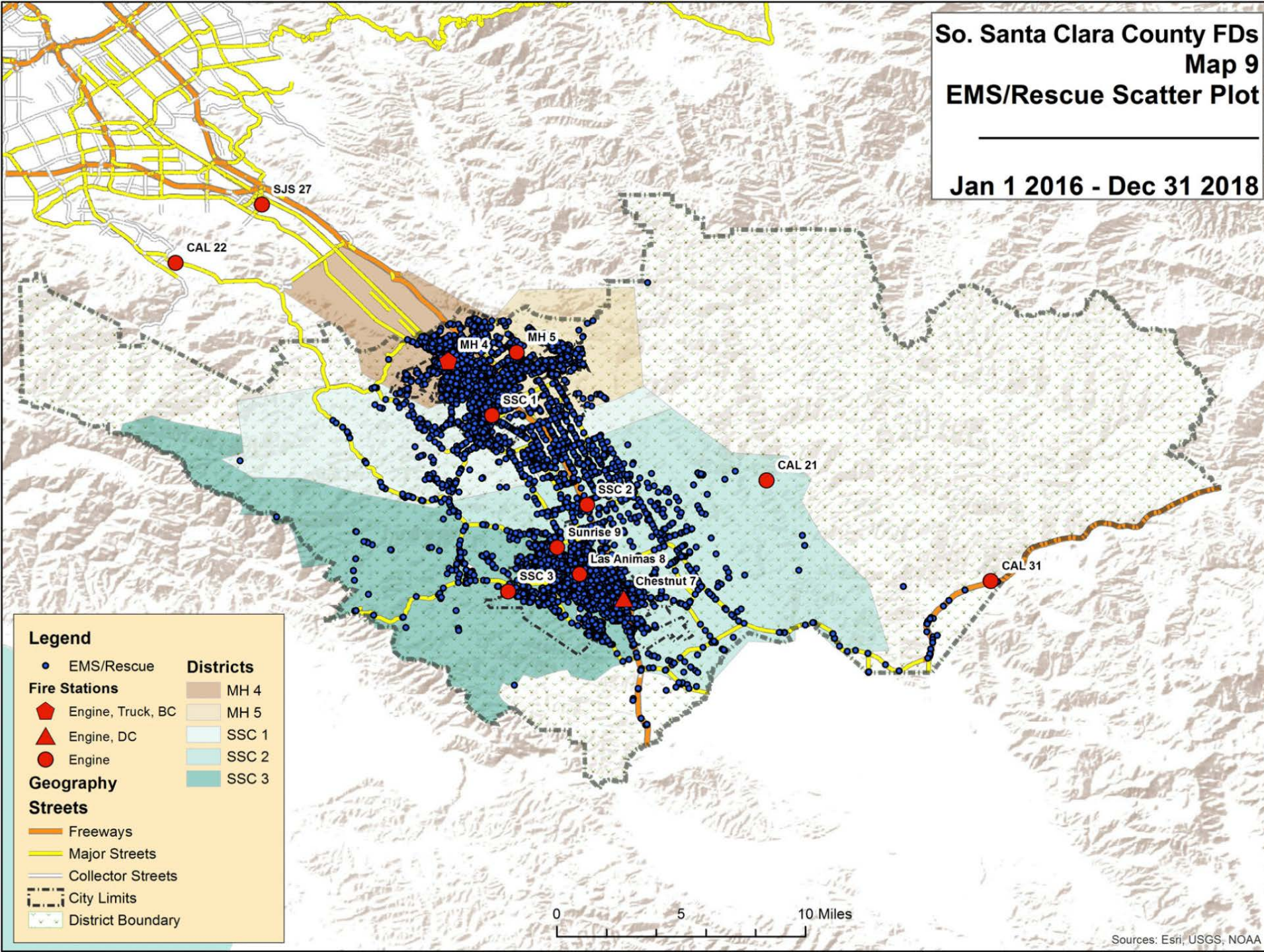


So. Santa Clara County FDs
Map 5d
8 Min ERF Travel
Northern Extent - Traffic Congestion
3 Engines, 1 BC, 1 Truck



So. Santa Clara County FDs
Map 9
EMS/Rescue Scatter Plot

Jan 1 2016 - Dec 31 2018



Legend

• EMS/Rescue

Districts

Fire Stations

Engine, Truck, BC

Engine, DC

Engine

Geography

Streets

Freeways

Major Streets

Collector Streets

City Limits

District Boundary

MH 4
MH 5
SSC 1
SSC 2
SSC 3

0 5 10 Miles

So. Santa Clara County FDs Map 11 Structure Fires Scatter Plot

Jan 1 2016 - Dec 31 2018

Legend

• Structure Fires

Districts

Fire Stations

Engine, Truck, BC

Engine, DC

Engine

Geography

Streets

Freeways

Major Streets

Collector Streets

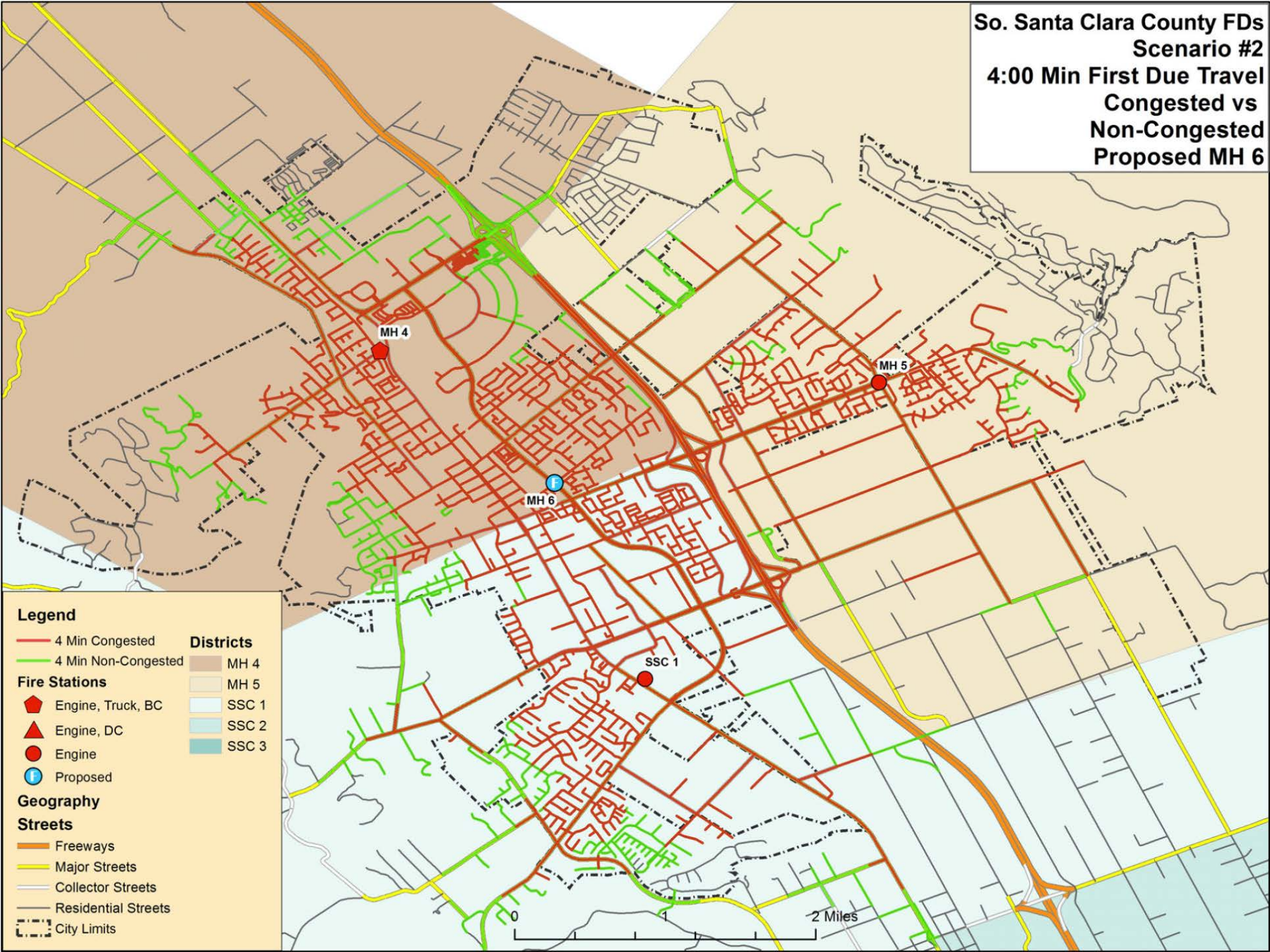
City Limits

District Boundary

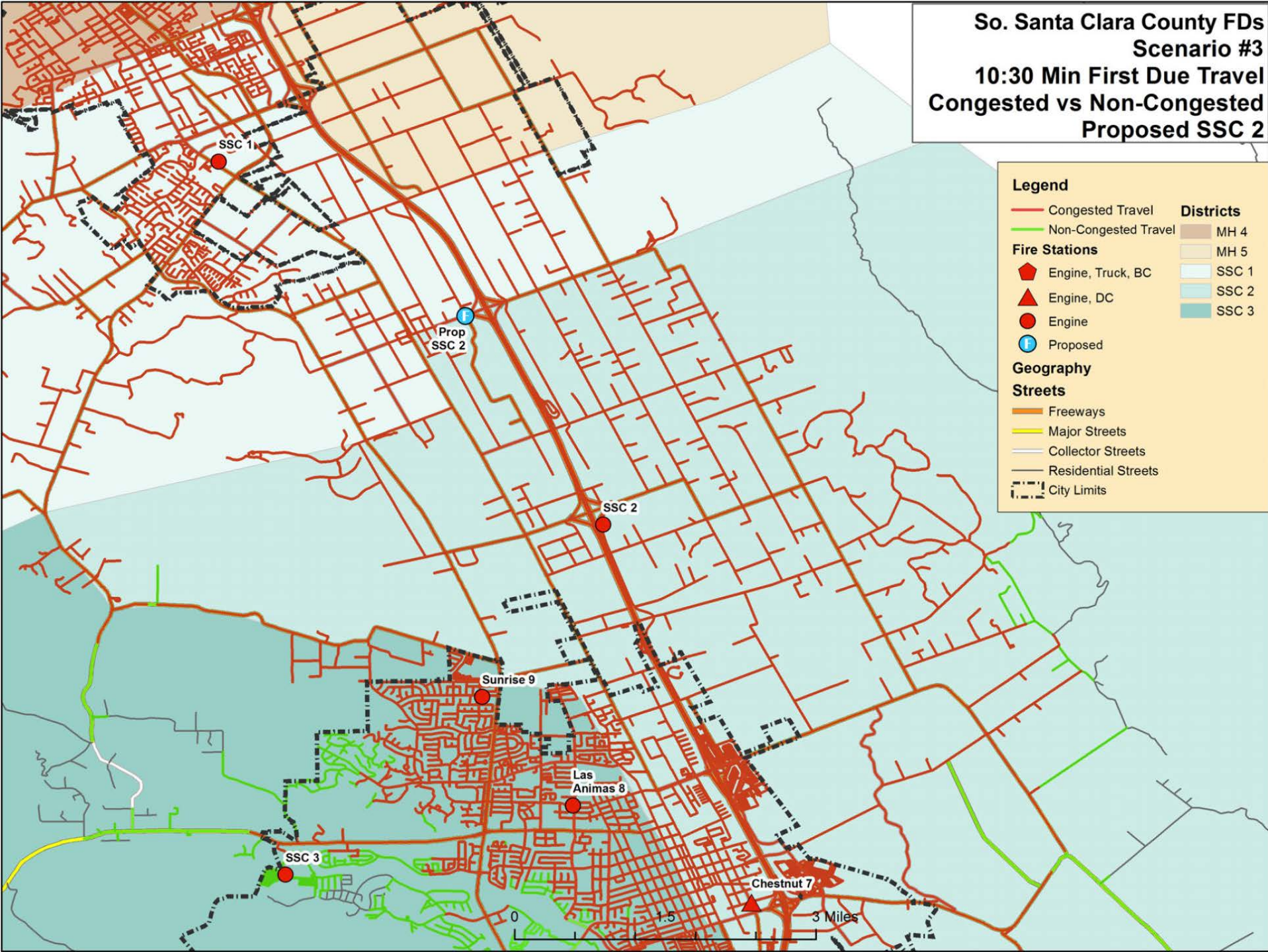
MH 4
MH 5
SSC 1
SSC 2
SSC 3

0 5 10 Miles

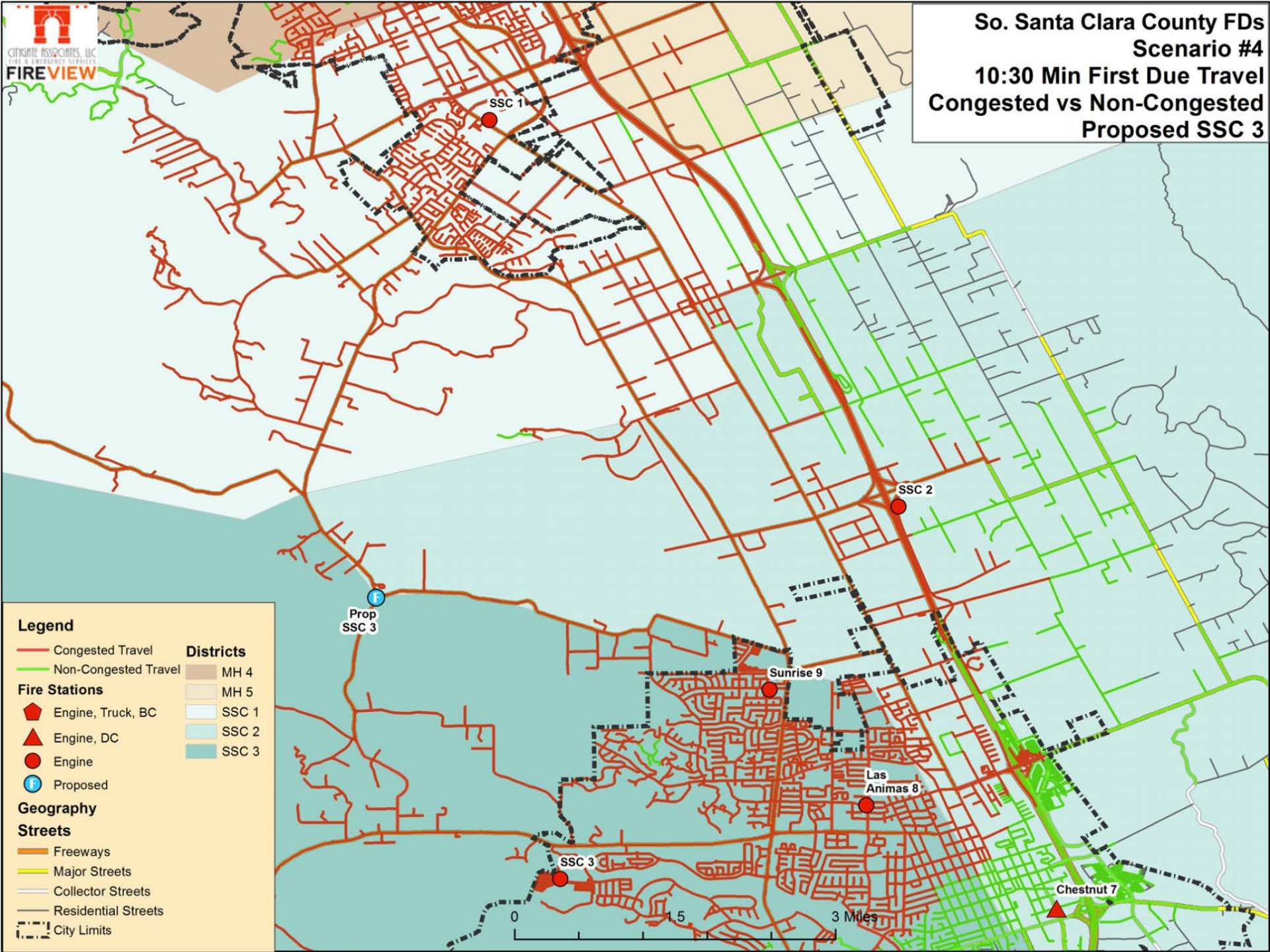
**So. Santa Clara County FDs
Scenario #2
4:00 Min First Due Travel
Congested vs
Non-Congested
Proposed MH 6**



**So. Santa Clara County FDs
Scenario #3
10:30 Min First Due Travel
Congested vs Non-Congested
Proposed SSC 2**



So. Santa Clara County FDs
Scenario #4
10:30 Min First Due Travel
Congested vs Non-Congested
Proposed SSC 3



Legend

- | | |
|--|---|
| <p>— Congested Travel</p> <p>— Non-Congested Travel</p> <p>Fire Stations</p> <p>■ Engine, Truck, BC</p> <p>▲ Engine, DC</p> <p>● Engine</p> <p>ⓘ Proposed</p> <p>Geography</p> <p>Streets</p> <p>— Freeways</p> <p>— Major Streets</p> <p>— Collector Streets</p> <p>— Residential Streets</p> <p> City Limits</p> | <p>Districts</p> <p> MH 4</p> <p> MH 5</p> <p> SSC 1</p> <p> SSC 2</p> <p> SSC 3</p> |
|--|---|

Road Mile Coverage at 4:00 Minutes Travel

Travel Time Measure	Total Public Road Miles	Non-Congested Miles Covered	Non-Congested Percent of Total Miles	Congested Miles Covered	Congested Percent of Total Miles	Congested vs. Non-Congested Difference (Miles)
4:30 Minutes First-Due	881.2	579.75	65.79%	461.9	52.41%	117.85
8:00 Minutes ERF (4 Engines)	881.2	420.82	47.75%	303.55	34.44%	116.45
8:00 Minutes ERF (3/1/1) ¹	881.2	258.19	29.29%	160.25	18.18%	97.94
8:00 Minutes BC/DC ²	881.2	637.63	72.35%	501	56.85%	136.63
8:00 Minutes Truck (MH 4) ³	881.2	302.06	34.27%	228.23	25.89%	73.83

¹ 3/1/1 = three engines, one truck, and one Battalion Chief

² BC/DC = one Battalion Chief or Division Chief

³ MH 4 = one truck from Station #4 in Morgan Hill



Deployment Findings Summary

- Station spacing and traffic congestion add to long response times in urban to suburban areas
- None of the agencies provide daily staffing to locally control serious, multiple response unit emergencies
- Morgan Hill is too large to serve from three fire stations
- Gilroy needs a fourth fire station even with the District's Gilroy Gardens station
- All three agencies are co-dependent for enough staffing at serious emergencies since there is not mutual aid close by
- The District can move either Station 2 and/or 3 *with impacts to either of the cities*

Recommendations and Next Steps



Recommended First-Due Unit Response Time Policy

- **Distribution of Fire Stations:** In *urban/suburban* population density areas, to treat pre-hospital medical emergencies and control small fires, the first-due unit should arrive within 7:30 minutes, 90 percent of the time from the receipt of the 9-1-1 call at fire dispatch. This equates to a 90-second dispatch time, a 2:00-minute company turnout time, and a 4:00-minute travel time.
- In rural population density areas, the first-due unit should arrive within 14:00 minutes from the receipt of the 9-1-1 call at fire dispatch at 80 percent or better reliability. This equates to a 90-second dispatch time, a 2:00-minute company turnout time, and a 10:30-minute travel time.

Recommended First Alarm Multi-Unit Response Time Policy

- In *urban/suburban* population density areas, to confine building fires near the room of origin, keep vegetation fires under one acre in size, and treat multiple medical patients at a single incident, a multiple-unit ERF of at least **17** personnel, including two Battalion Chiefs, should arrive within 11:30 minutes from the time of 9-1-1 call receipt at fire dispatch 90 percent of the time. This equates to a 90-second dispatch time, a 2:00-minute company turnout time, and an 8:00-minute travel time.
- For *rural* population density areas, a multiple-unit ERF of at least **13** personnel, including at least one Battalion Chief, should arrive within 19:30 minutes from the time of 9-1-1 call receipt at fire dispatch 80 percent of the time.

Deployment Recommendations Summary

- Lower dispatch process time in Gilroy and crew turnout time in Morgan Hill and the District
- The two cities each need to add a fire station
- The District's long-term station location plans are best discussed as part of a cooperative three-agency solution

Immediate Next Steps

- Prepare a staff report and draft Resolution for each City Council and the Fire District Board of Commissioners to adopt the included recommended response performance goals
- Determine interest and intent to provide long-term joint cooperative fire services in south Santa Clara County

Enhanced Regional Fire Planning

- Establish a joint agency strategic planning team with policy-level direction to evaluate potential cooperative service opportunities
- Goal is to develop a mutually beneficial long-term commitment and solution that optimizes the use of all three jurisdictions' resources to provide efficient and cost-effective fire services in south Santa Clara County

Discussion





City Council Meeting December 4th 2019

Item 14 Flavored Tobacco & E-Cigarettes



Overview



- Proposed ordinance summary
- Definitions for E-Cigarettes, flavored tobacco, etc.
- Santa Clara County Public Health Presentation
- Community outreach and feedback
- Questions

Tobacco Retail License



- Proposed ordinance is an update to our existing Tobacco Retail License (Chapter 5.64) of the Morgan Hill Municipal Code
- Options:
- **Flavored Tobacco:** It shall be a violation of this section for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to Sell or offer for Sale, or to possess with intent to Sell or offer for Sale, any Flavored Tobacco Product. (Ordinance exempts cigars and flavored pipe tobacco.)
- **E-Cigarette:** It shall be a violation of this section for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to Sell or offer for Sale, or to possess with intent to Sell or offer for Sale, any electronic cigarette product.

Flavored Tobacco

- “Flavored Tobacco Product” means any Tobacco Product that contains a Constituent that imparts a Characterizing Flavor.
- “Characterizing Flavor” means a Distinguishable taste or aroma or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing Flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a Distinguishable taste or aroma or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.
- Examples: Flavored “cigarillos, little cigars”, flavored chewing tobacco, Menthol cigarettes, Flavored “E-liquids, Juices, fluids”



Electronic Cigarette



“Electronic Cigarette” means any of the following products:

- (1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
- (2) Any component, part, or accessory of such a device or delivery system that is used during its operation.
- (3) Any flavored or unflavored liquid or substance containing nicotine, whether Sold separately or Sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.
- (4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.
- (5) Electronic Cigarette Products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if Sold separately. Electronic Cigarette Products shall not include any product that has been approved by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and Sold solely for such approved use. See 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.

Also referred to as: Vapes, Vaporizers, JUULS, E-Cig, E-Cigarette, Electronic Nicotine Delivery Systems (ENDS)

E-Cigarettes & Vape Pens Generations



Cig-a-Like

E-cigarettes came onto the market around 2007.

Most delivered nicotine and were disposable.

Variations

Variations on the first e-cigarettes included products like e-hookah and rechargeable versions.

Vape Pens

These have batteries that can reach higher temperatures, have refillable e-liquid cartridges, and allow users to regulate the frequency of inhalations.

Mods

Large size, modifiable e-cigarettes allow for more aerosol, nicotine, and other chemicals to be breathed into the lungs, at a faster rate.

Pod-Based

These e-cigarettes are shaped like USBs and contain pods with higher amounts of nicotine than previous generations.



Electronic Cigarette Examples on the Market



Vape Clothing and Apparel



VapeSourcing



“Juuling” and “Vaping” Influencers

Chloe Hill
@smoking_mermaid

Follow

Mixing it up with @kaosecigs @BLVKUnicorn
@SMOKTECHLOGY #vape #girlswhovape
#kaos #smok



CITY OF MORGAN HILL





Now Presentation by:
Don Tran, MPH
Lead Policy Coordinator
Tobacco Free Communities Program
County of Santa Clara - Public Health Department



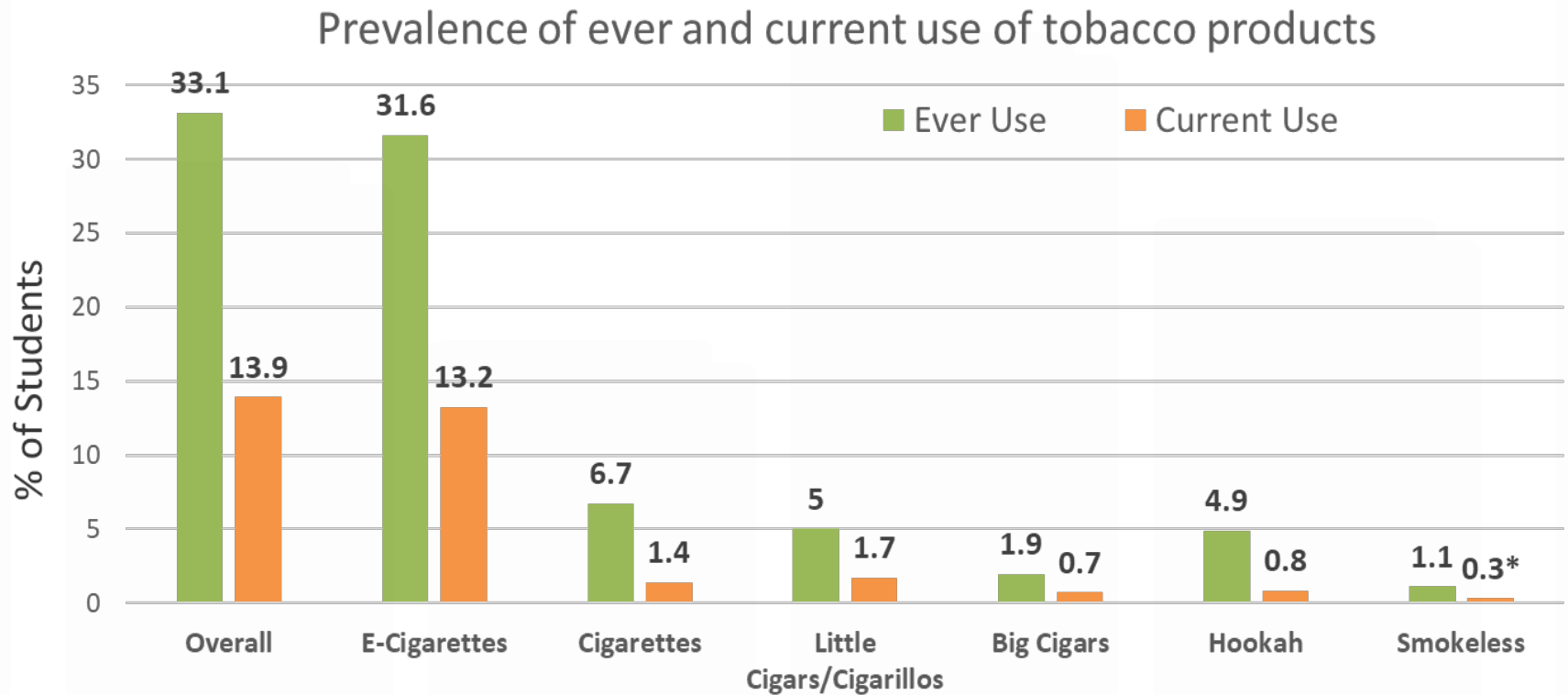
YOUTH TOBACCO USE

Morgan Hill City Council – Wednesday, December 4, 2019

- Tobacco remains the #1 preventable cause of death & disease
- SCC Healthy Cities recommends evidence-based tobacco control policies
- City received grant and technical assistance from County

Tobacco use among high school students in Santa Clara County

14



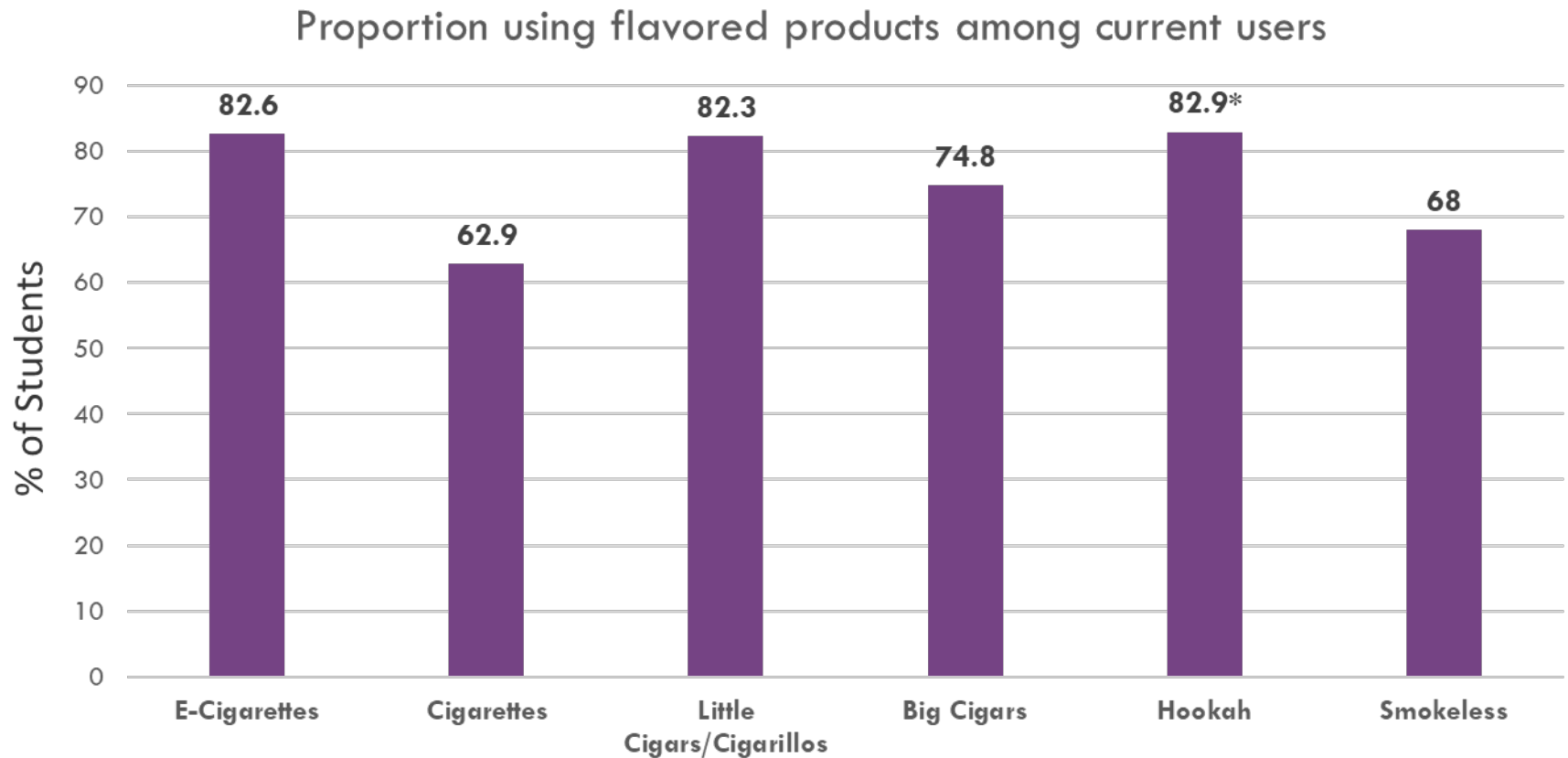
**Data are statistically unreliable.*

Flavored Tobacco

15

- E-cigarette use or “vaping” among middle and high school students increased nationally by 78 percent between 2017 and 2018, with over 3.6 million youth currently using e-cigarettes in 2018.
- The proportion of current e-cigarette users in high school who reported use on 20 days or more in the past 30-day period increased from 20 percent in 2017 to 27.7 percent in 2018.
- Youth believe that flavored products are safer and less addictive than non-flavored varieties.

Flavored Products Usage



**Data are statistically unreliable due to small sample size.*

Flavored Tobacco Products

17



Menthol Flavored Tobacco Products

18



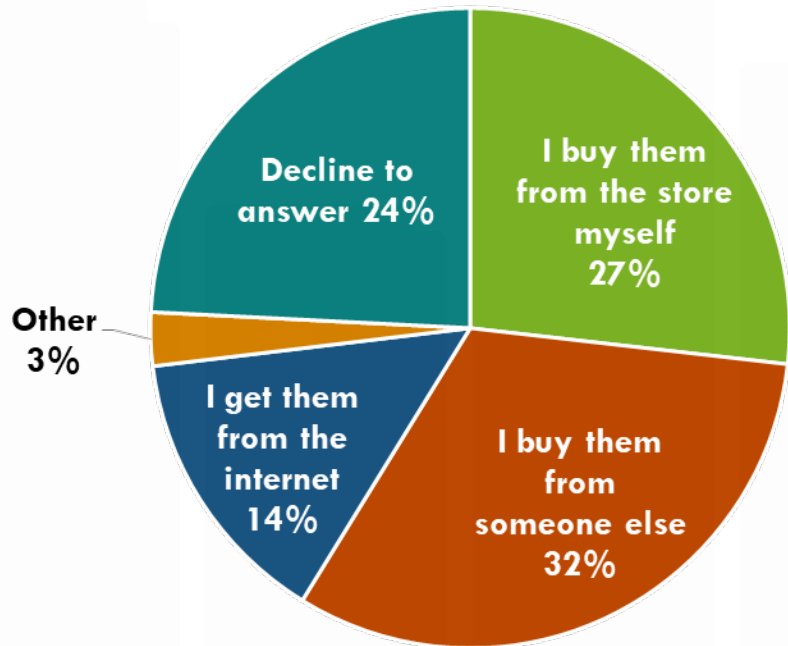
Where do youth report getting e-cigarettes?

19

■ **54.6%** of high school students report getting e-cigarettes from **social sources** VS. **45.4%** report **purchasing** their e-cigarettes

- Vape shops (62.5%) were the most popular store type for purchasing e-cigarettes

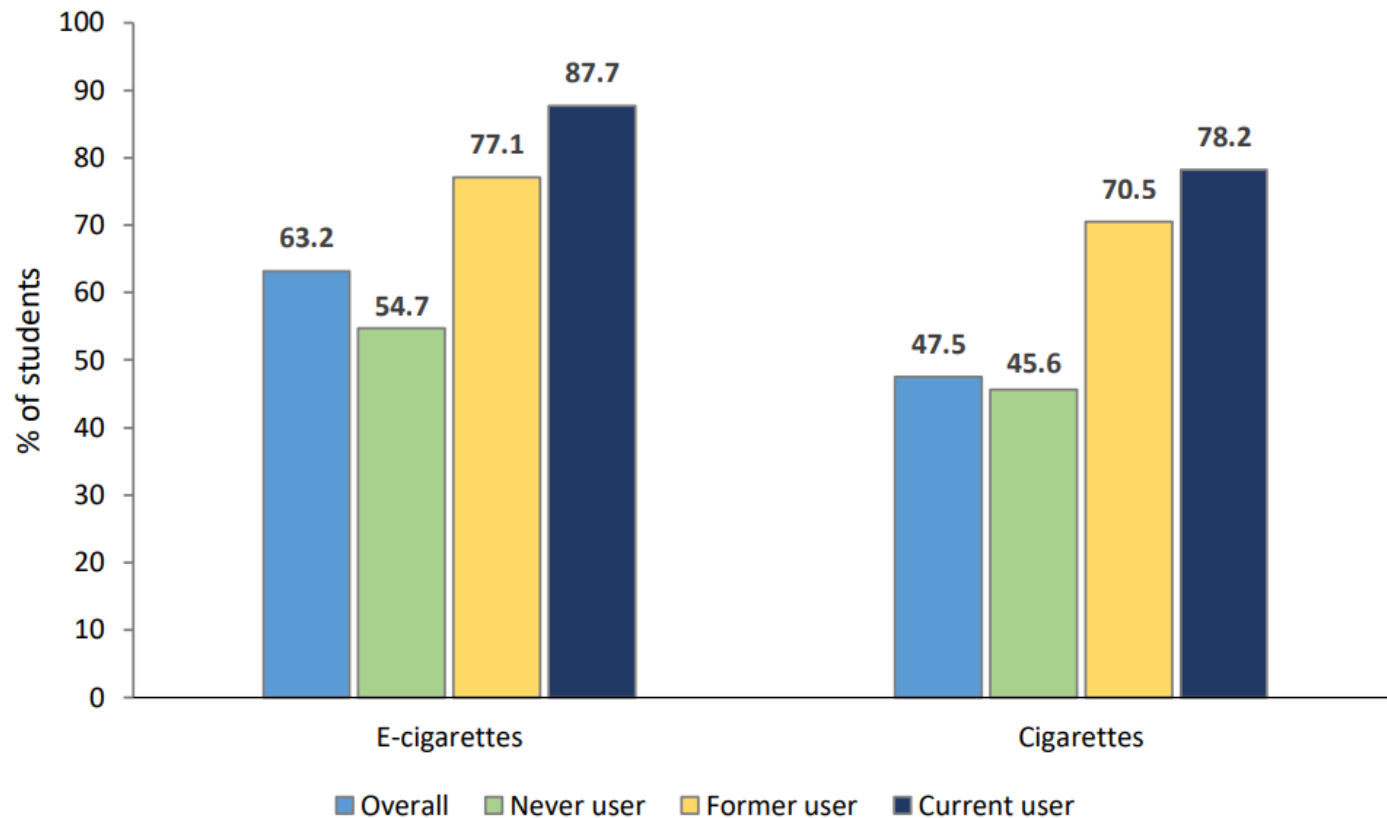
Acquisition of e-cigarettes/e-liquids among current e-cigarette users



Perceived ease of acquiring tobacco products

20

68.3% of students thought that it would be **very easy or somewhat easy** to get **e-cigarettes or cigarettes**.



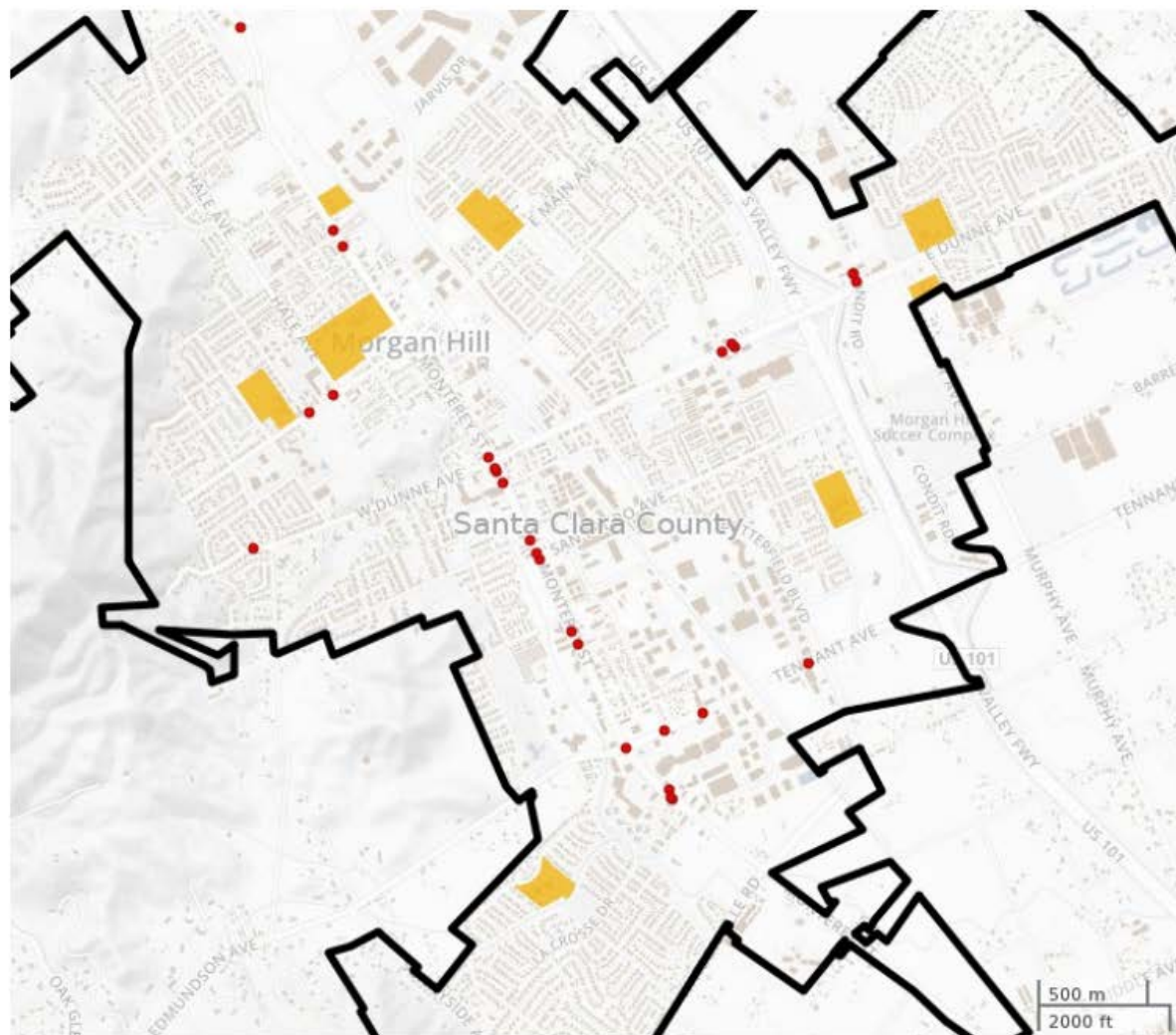
Susceptibility to future tobacco use

21

- ▣ **Two in five** (40.1%) high school students who had never used a tobacco product were susceptible to using at least one tobacco product in the future if offered by a best friend
- ▣ **Over one in four** (28%) high school students reported being offered a tobacco product in the last 30 days

Morgan Hill Map

- Tobacco Retailers
- School Boundary



11/2019: Tobacco-Free Communities - Policies Across Santa Clara County Jurisdictions

Jurisdiction	Reducing Exposure to Secondhand Smoke							Reducing Youth Access & Exposure to Tobacco Products				
	Parks & Trails	Outdoor Dining Areas	Entryways	Service Areas	Public Events	Multi-Unit Housing	Common Areas of Multi-Unit Housing	Tobacco Retail Permit	Reduce Density of Tobacco Outlets	Limit Sales Near Schools	Flavored Tobacco Restrictions	Limit Sales in Pharmacies
% of County population covered by policy	95.3%	97.2%	39.2%	85.9%	31.6%	24.3%	79.9%	72.5%	11.5%	14.3%	9.8%	9.8%
County of Santa Clara	2010	2010	2010	2010		2010	2010	2010	2010	2010	2010	2010
Campbell	2011	2011	2011	2011	2011			2012				
Cupertino	2011	2014	2014					2019	2019	2019	2019	2019
Gilroy								2014		2014		
Los Altos	2011	2018	2018	2018	2018							
Los Altos Hills		n/a*		n/a*	n/a*	n/a*	n/a*	n/a*	n/a*	n/a*	n/a*	n/a*
Los Gatos	2013	pre-2010	2016	2016	2016	2016	2016	2017	2017	2017	2017	2017
Milpitas	2012	2017										
Monte Sereno	n/a*	n/a*	n/a*	n/a*	n/a*			n/a*	n/a*	n/a*	n/a*	n/a*
Morgan Hill	2012	2012	2012	2012	2012			2014				
Mountain View		2012	2012		2012							
Palo Alto	2013	2014	2014	2014	2014	2016	2016	2017	2017	2017	2017	2017
San Jose	pre-2010	2012		2012			2012	2011				
Santa Clara	2019	2019	2019	2019	2019	2019	2019					
Saratoga	pre-2010	2016	2016	2016	2016		2016	2015	2016	2016	2018**	2018
Sunnyvale	2012	2016	2016	2016	2016	2016	2016					

* Not included in denominator of % of county population covered by policy because don't have the specific venues/areas covered by policy (Ex. Monte Sereno & Los Altos Hills do not have any tobacco retailers)

** Includes an exemption for menthol-cigarettes

Rev. 11/19

Comprehensive Flavors Ban

24

- Restrictions on sales of flavored products including menthol cigarettes
- Applies to tobacco retailers within the City
- 35 local laws including 5 in SCC: Cupertino, Los Gatos, Palo Alto, Saratoga, County

Strategies to address tobacco use among youth

25

- Comprehensive tobacco control policies
- Community engagement, mobilization, and education
 - Youth strategies
 - Provide mix of funding to community organizations already working with diverse youth
 - Educate and train youth to lead and mobilize on policy change efforts
 - Parent strategies
 - School strategies
 - Other priority populations



Vaping and E-Cigarette Education & Resources

Resources for Schools

Santa Clara County Office of Education's Tobacco-Use Prevention Education: Request a Vaping 101 presentation. <http://bit.ly/TUPE-Requests>

Request a Stanford Tobacco Prevention Toolkit Presentation for E-Cigs: Learn about inner workings of e-cigarettes, the content of the aerosols they produce, and thirdhand smoke. <https://med.stanford.edu/tobaccoprevention/toolkit/about.html>

Free Printed Materials: Includes flyers and posters for order or download regarding the hazards of tobacco and nicotine. https://digitalmedia.hhs.gov/tobacco/print_materials/search

CATCH E-Cigarette Prevention Program: Educational program and materials for teachers, tobacco prevention educators, counselors, nurses, and other public health advocates to teach youth. <https://catchinfo.org/modules/e-cigarettes/>

TND Project Towards No Drug Abuse: Project TND is an effective drug abuse prevention program that targets senior high school age youth. <https://tnd.usc.edu/>

SmokeSCREEN: A smoking prevention video game that is about developing a network of friends, family and acquaintances; while dealing with people who may like to smoke or vape. <http://www.smokescreengame.org/>

Scholastic Lesson and Research Activity to Educate Students on the Health Risks of Vaping: Understand the dangers of teen e-cigarette use. <http://www.scholastic.com/youthvapingpraks/>



Resources for Parents

Parent Workshops/Presentations: Request a workshop on e-cigarettes and vaping for a parent organization. <http://bit.ly/TUPE-Requests>

Facts for Parents from U.S. Surgeon General: Learn the facts on e-cigarette use among youth and young adults. <https://e-cigarettes.surgeongeneral.gov/>

California Department of Public Health Guide for Parents: Use this guide to help navigate how to keep kids healthy and nicotine-free in the age of a vaping epidemic. <https://bit.ly/2HMP2>

CDC Quick Facts on the Risks of E-Cigarettes: Learn what are the risks of e-cigarettes for kids, teens and young adults. https://www.cdc.gov/tobacco/basic_information/e-cigarettes/Quick-Facts-on-the-Risks-of-E-cigarettes-for-Kids-Teens-and-Young-Adults.html



Santa Clara County
PUBLIC HEALTH

San Jose State Office of Education



Resources for Youth

Santa Clara County Community Advocate Teens of Today (CATT): E-mail tobaccoprevention@phd.sccgov.org for more information, to join or to schedule a presentation.

Youth Peer Advocacy Program: For more information, to join or to schedule a presentation visit: <https://tupe.sccoe.org>

Quit Vaping – Texting Program: The program is tailored by age group to give teens and young adults appropriate recommendations about quitting. <https://bit.ly/2Wsd0Y>

Learn about the risks from vaping Becoming a Smoke-Free Teen: Learn about different tools to help you quit. <https://teen.smokefree.gov/>

Contact Information

Santa Clara County Public Health Department Tobacco-Free Communities Program
Email: tobaccoprevention@phd.sccgov.org
Phone: 408.793.2700
Website: www.sccphd.org/tobaccofree

Santa Clara County Office of Education Tobacco Use Prevention Education Program
Phone: (408) 453-6569
Website: <https://tupe.sccoe.org>



Santa Clara County
PUBLIC HEALTH

San Jose State Office of Education

Resources for the Community

Santa Clara County Public Health Department – Tobacco Free Communities Program: E-mail tobaccoprevention@phd.sccgov.org for more information or to schedule a presentation about e-cigarettes and vaping.

Tobacco-Free Coalition of Santa Clara County: Works to improve the health of all Santa Clara residents by: Changing community attitudes toward tobacco uses, Reducing the use of tobacco and Reducing exposure to secondhand smoke.

For more information or to attend a meeting e-mail tobaccoprevention@phd.sccgov.org.

Flavors Hook Kids Campaign: Learn more about flavored tobacco, nicotine, the health issues associated and how to take action. <https://flavorhookkids.santacleara.org/>

Quit Services in Santa Clara County: Local Listing for Tobacco Cessation and Education Resources. <https://bit.ly/2KjN5>

California Youth Advocacy Network Toolkits and Resources: Educational materials to support your tobacco-free efforts. <https://www.cyanonline.org/tools1/toolkit>

Tobacco Oversight / Regulations



California:

- Legal age to purchase tobacco is 21 years of age
- Online ordering is currently allowed, with age verification by retail seller
- SB 39 (Bus. Code 22963) Effective January 1, 2020 (in part);
 - 1) Delivered only to address on purchaser's credit card.
 - 2) the seller, distributor, or non-sale distributor shall obtain the signature of a person 21 years of age or older before completing the delivery.

Tobacco Oversight / Regulations (Cont'd)



Morgan Hill:

- Morgan Hill has 34 retail locations with tobacco retail licenses, with five retail establishments that earn the majority of their income from the sales of flavored tobacco and/or electronic cigarette products.
- Approximately \$25,500 sales tax revenue is received annually from these five businesses.
- Sales tax revenue is not broken down by product type (i.e. tobacco products, merchandise, food, etc.)

Implementation



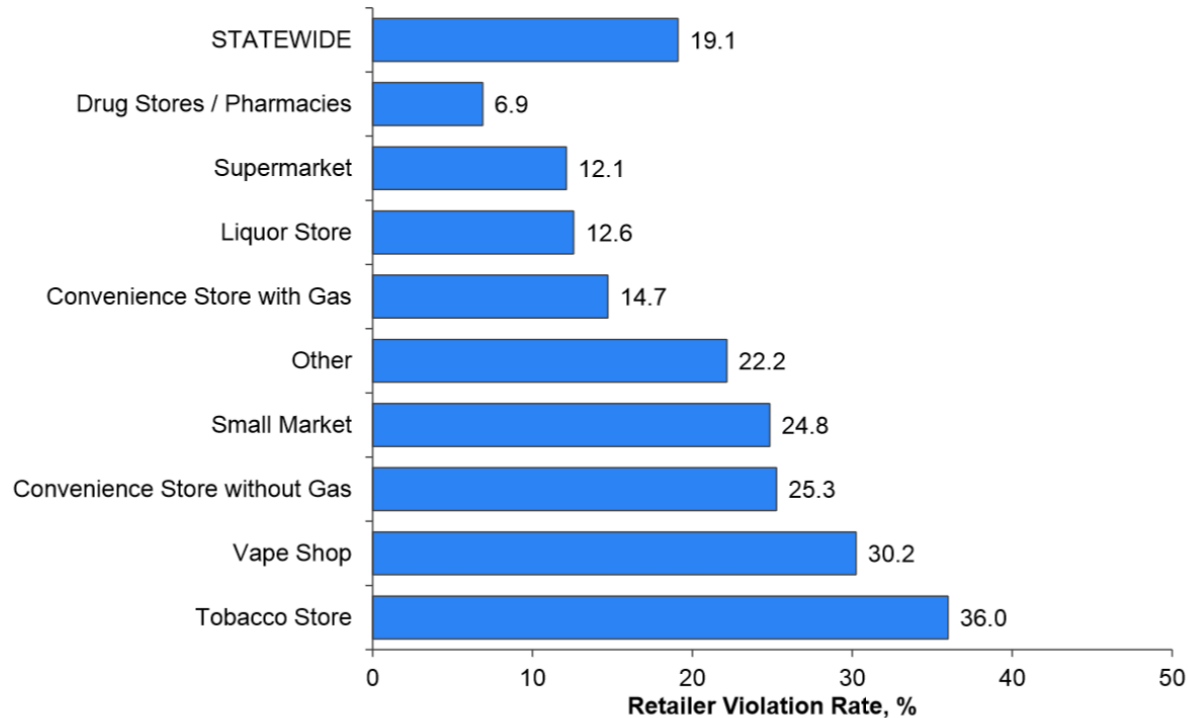
- Effective date for ordinance (7/1/2020)
- Educational material to retail tobacco license holders
- Provide smoking cessation resources to students and minors
- Continued enforcement measures

Frequently asked questions:

- Why not allow 21 and over stores to sell flavored tobacco and e-cigarettes?



Percent of Retailers Selling Tobacco to Underage Young Adults by Store Type, 2018



Note: Tobacco stores include vape shops/lounges. Store types with small sample sizes were grouped together with the "other" category (e.g. delis, discount stores, gift stores, hotels, car washes, restaurants, cafes, donut shops). Young adults are defined as 18-19 years old. Source: California Department of Public Health, California Tobacco Control Program. Young Adult Tobacco Purchase Survey, 2018. Sacramento, CA: California Department of Public Health; October 2018.

Frequently Asked Questions (Cont'd)



- Won't underage minors just order these products online?
- Will banning these products create, or increase, sales on the "black market" ?
- Aren't flavored tobacco and e-cigarettes being used as smoking cessation products for adults?
- Why include Menthol Cigarettes?
- Isn't enforcement of existing tobacco sales laws enough?

Questions?



Table of Contents

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4. Has America declined smoking?
5. Cost of smoking
6. Vape statistics
7. Flavor Prohibition
8. Accountability
9. The Real Issue
10. Deaths from vape
11. Why flavors are important
12. Conclusion/ Final Statement

1. About myself and Morgan Hills Vapors

My name is Peter Wu and I am 32 years old. I came to the USA when I was 12 years old with my proud immigrant family.

I am an Iraq infantry disabled combat veteran and went to college at San Jose State.

I am a proud home owner in Santa Clara and in the process of buying a second home.

My wife and I have been happily together for 14 years, (married 4 years ago), and we are in the process of having our own children.

My wife has been working as a vice principal of a private school in Palo Alto for 10 years where we are now part of the board.

She hears from her students about vaping and they work hard to educate them on the side effects and dangers of teen vaping. With the continued combined effort of the teachers and staff at her school they have not had a single incident.

90% of our products are not the ones continually being found with the kids in schools as we don't sell those type of products.

Gas stations, liquor stores and smoke shops are the ones that carry those types of products in the Morgan Hill area.

We do not sell anything we do not 100% believe in. I myself am an ex-smoker. I was able to quit smoking 2 packs a day because of vaping. I tried quitting cold turkey (just finishing a pack and not buying anymore), cutting back with the "lighter" cigarettes, the nicotine gums, and I even tried the over the counter patches.

2. This letter is in response to the City Council meeting on (Check date Oct. 2nd) regarding flavored tobacco products.

This letter is a response to the Agenda 4, "To provide direction to staff regarding regulation of flavored tobacco products."

The only part of this meeting I do not support is a "Flavor Ban".

In my opinion this needs further discussion and should have better guidelines.

Since our business is among the businesses effected by a potential flavor ban, I would like to use this moment to show just how unfair this can be to the legal businesses. The one area where I am in complete agreement with "City Council of Morgan Hill as well as the Anti Vape Marketers, and the FDA. It is our jobs as parents is to monitor what our children are doing in their lives. Rather this be explicit music, alcohol, driving unsafe, or using tobacco products. The parents can thank the City Council of Morgan Hill

for reminding them there is no substitute for parental guidance, but that is where the city councils job ends."

The choice of vaping is it gives legal age smokers another choice, and many people will argue a more effective way, among the many other ways marketed to quit smoking cigarettes and eventually quit all forms of nicotine addiction.

If you ban flavors in Morgan Hill people will simply drive the short distance to the next town and buy them or they will simply order off of websites that are not in flavor ban locations. Then there is the DIY (Do it yourself) market as well as the black market. The products sitting in vape only stores are all FDA registered and are all made by companies at least two years old and the majority are over five years old and there are some companies that are close to ten years old. These companies have been making E-liquid long enough to keep it safe for their consumers.

3. Smoking Kills

Nov 28, 2018 - Cigarette smoking is responsible for more than 480,000 deaths per year in the United States, including more than 41,000 deaths resulting from secondhand smoke exposure. This is about one in five deaths annually, or 1,300 deaths every day. On average, smokers die 10 years earlier than nonsmokers.

Thousands of young people start smoking cigarettes every day.
Each day, about 2000 people younger than 18 years smoke their first cigarette.
Each day, over 300 people younger than 18 years become daily cigarette smokers.
Many adult cigarette smokers want to quit smoking.

In 2015: Nearly 7 in 10 (68.0%) adult cigarette smokers wanted to stop smoking. More than 5 in 10 (55.4%) adult cigarette smokers had made a quit attempt in the past year.

****https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm**

Age of smokers starting

We have spoken to endless older people that have started smoking at the age between 12 and 14 years of age.

4. Has America declined smoking?

Cigarette smoking is down, but almost 38 million Americans still smoke. Overall, cigarette smoking among U.S. adults (aged ≥18 years) declined from 20.9 percent in 2005 to 15.5 percent in 2016. ... Since 1965, the NHIS has tracked cigarette smoking, the most common form of tobacco product use among U.S. adults. Jan 18, 2018

Many attribute this to "vaping" since it has given smokers a new and much more accepted way to stop smoking. Even when marketing laws changed for Big tobacco there was not as large of a decline in cigarette sales.

***<https://www.cdc.gov/media/releases/2018/p0118-smoking-rates-declining.html>**

5. Economic Costs Associated With Smoking

Smoking-related illness in the United States costs more than \$300 billion each year, including: Nearly \$170 billion for direct medical care for adults. More than \$156 billion in lost productivity, including \$5.6

billion in lost productivity due to secondhand smoke exposure.

6. Vaping is 95% safer than smoking

Point: Public Health England, a federal agency in the United Kingdom, last December reiterated its 2015 conclusion that vaping is 95% safer than smoking cigarettes. Britain's Public Health Service recommends vaping to smokers; vape shops often operate in hospitals. Clive Bates, a former director of the U.K. anti-tobacco group Action on Smoking and Health, calls efforts to discredit this research part of a "consistent effort to create moral panic around vaping."

<https://www.bmj.com/content/363/bmj.k5429>

7. Prohibition

If you enact a "Prohibition on Flavors" we will not stop use of flavored Eliquids, we will simply add to the risk to people that still choose to vape flavors. Currently all "Legal" Eliquid companies are registered with the FDA along with their product list, label art, and ingredients. By removing flavored e-liquids from store shelves you now open up an underground market (that already exist, but will thrive) and add to the risk of vaping. There has been people making "DIY" Eliquids since the start of vaping. By enacting a "Flavor Ban" you are simply sending the same people that vape to the next town that does not have a flavor ban, sending them online, or to someone making e-liquid in an unregulated, uncontrolled, and unsanitary environment. If we have learned anything from the THC cartridges is that they have killed 12 people and hospitalized 530 others, it is that people will go to the black market where their products are not overseen and people could very possibly die.

8. Accountability

By only letting stores that are 51% or more in gross sales of vapor products carry "vape related items" this would keep the accountability within reach of the local authorities. This would mean when and if someone under the legal age of smoking was caught with a vapor product, once seized, local authorities could then compare the confiscated item with a very small number of sellers within their Jurisdiction and take actions much faster and with more control. This is not to say a "vape store" would knowingly sell to a minor, but once we can designate the items of interest to minors we can then figure out who is of legal age buying the offending items and passing them along to minors.

The big mistake within all "Tobacco law enforcement" is simple. We always want to punish the seller and this is not necessarily a bad idea, however, it is flawed. Accountability needs to be on seller, in many cases the buyer (that is then handing the items to minors) and the actual minor caught with and or consuming the tobacco product. A great example is a first time offender would pay a \$100 fine. Second offense could be 6 months unsupervised probation, 3rd offense could be the loss of driving privileges for 1 year. This would be on their temporary record (until their 21st birthday) and then expunged. Many within our industry has proposed a step even further in that if you are a minor living with a custodian rather it be parent(s) or guardian they would also receive a financial penalty. This would force parents to better monitor what their children are doing.

Vape Stores should not be left without punishment either and there should be series of progressing penalties as well. First offense \$100, second offense \$500, 3rd offense \$1,000, 4th offense \$5,000, and 5th offense Review and likely closing of the business and their inability to receive a business license in any adult-related only market (alcohol, tobacco, firearms, or any other product that is commonly deemed adult only).

We have had exactly 0 underage sales violations in the 4+ years we have been in business here in

Morgan Hills as we do not want minors in possession of these products.

Self regulating industry

Long before the FDA accused any single "vape" company of "Marketing to Kids", our industry complained and actually spoke out against companies that used cartoon characters, child friendly product packaging copying, general copying of an established product labels of other similar tasting products on the market such as labels that look like Juice boxes candy packages, etc. We do understand if it is a cookie flavor you would logically put a cookie on the label, however, we do not agree with making a box that resembles a vanilla wafer box.

9. The Real issue is Juul and like-minded devices.

When coming off Juul will send smokers right to (or back to) cigarettes. When you vape a Juul you may be stopping smoking but will struggle to make the next step to stopping your nicotine addiction since a Juul pod has 59 milligrams per mL of liquid. Juul (The product of choice for many students) was designed to get cigarette smokers to quit cigarettes but, does not give them an easy option to quit Juul. With traditional vape liquids it is graduated from as high as 25/50 mg (Nic salts) or 24mg (rarely a starting point anymore) and graduates down to 12ng, 9mg, 6mg, 3mg, and eventually, 0mg. Sadly because of brands like Juul the vape industry has had to create 25/50mg Eliquids to compete but, unlike Juul they still left a step down process for people inclined to quit nicotine entirely. By removing flavors (other than tobacco and menthol) from the shelves of "Vape Retailers" you remove their chance of staying in business as well as remove the chance smokers can actually quit nicotine.

10. The Deaths are from bad THC carts not Real vape products.

The professor in the Department of Community Health Sciences at Boston University's School of Public Health, Dr. Michael Siegel, has voiced his frustration, "CDC Announces 'Major Breakthrough'

"They tested lung tissue samples from 29 case patients and all 29 (100%) were found to contain vitamin E acetate oil. This finding does represent a major breakthrough for four reasons:

The vitamin E acetate oil was detected in the actual lung tissue of the case patients.

The vitamin E acetate oil was detected in every single one of the lung tissue samples from these 29 case patients.

The samples came from 10 different states, confirming that the outbreak seems to have a common cause, rather than geographic variation.

Three of the patients whose lung samples revealed vitamin E acetate had reported using only nicotine-containing products, thus confirming that there is significant under-reporting which may explain why about 11% of the patients do not report vaping THC."

"This is significant because although not all of the case patients admitted to using THC vapes, the finding of vitamin E acetate in their lungs essentially proves that they were indeed vaping THC oils."

****<https://www.vapingpost.com/2019/11/12/the-cdc-finally-confirms-that-evali-is-caused-by-illegal-thc-not-legal-vapes/?fbclid=IwAR1kqBtmgBG8CDBiK7B8A5JWN4mNDj9HkK9k8s7HrvKx3lpKF3zBriK58Go>**

11. Why flavors are important

Despite old statistics most smokers that choose to quit smoking prefer flavors other than tobacco and menthol because as they have said over and over, if they smoke a similar flavor to a cigarette they will likely just go back to smoking.

People are nostalgic and in general want what they recognize. If you like a candy or bakery food you are

more inclined to like that as an e-liquid flavor also. Adults enjoy cereal, candy, cakes, and fruits just as they did as a child. I guess now we know why there is not a liver or peas flavored e-liquid. By simply banning flavors (non-tobacco and menthol) you are taking away the best chance a smoker has to quite their decades long cigarette addiction.

Not all people who vape are former smokers. We have met many diabetics online that vape flavored 0mg (0% nicotine) e-liquid to help resist cravings for sweets.

12. There is no authority that has the right or necessary insight to make these judgments for a smoker trying to quit rather than to continue smoking cigarettes and eventually develop lung diseases caused by smoking, including but not limited to, COPD, emphysema, and chronic bronchitis. Please note, cigarette smoking causes most cases of lung cancer. When I say necessary insight to make these judgments", I am not saying myself the federal government, not some anti-smoking group, and certainly not someone that has never been addicted to nicotine that has tried to quit many times without success until vaping. This is not to say that no authority has the power to create a flavor ban but, simply to say we do not have the right to make a life changing choice that could cost millions of people their lives and or shorten them by simply taking away their choice. This is about adult legal age smokers and not just children. You have the power to do what is right by the people of Morgan Hills and not ban flavors so more people can stop smoking and also continue the progress to get all tobacco products out of children's hands.

From: [Irma Torrez](#)
To: [Michelle Bigelow](#)
Subject: FW: Dec 4 Flavored Tobacco Discussion
Date: Monday, December 2, 2019 3:15:02 PM
Attachments: [ComprehensiveTRL_ModelOrdinance_FINAL_20190213_1 \(1\).docx](#)
[Morgan Hill tobacco discussion Dec 4.pdf](#)
[image002.png](#)
[image004.png](#)
Importance: High

Hello Michelle,
Did you receive a copy of this e-mail?

From: Jen Grand-Lejano <jen.grandlejano@cancer.org>
Sent: Wednesday, November 27, 2019 1:51 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: Irma Torrez <Irma.Torrez@morganhill.ca.gov>; Scott Nelson <scott.nelson@morganhill.ca.gov>
Subject: Dec 4 Flavored Tobacco Discussion
Importance: High

Dear Honorable Rich Constantine and Morgan Hill City Councilmembers,

Thank you for continuing to explore policy options to address the increasingly urgent problem of the teen nicotine epidemic we're seeing through in our local communities. Many communities have sought to begin the discussion by looking at a ban on sales of e-cigarettes pending FDA review. An e-cigarette moratorium is insufficient in addressing the challenge of youth tobacco use. The only way to protect the youth of Morgan Hill is to prohibit the sale of *all* flavors in all tobacco products, throughout the city.

Flavors are driving the epidemic of teenage e-cigarette use. The long-term health consequences of e-cigarettes are just emerging, but the consequences of combustible tobacco have long been known. If the sale of e-cigarettes is prohibited, while other flavored tobacco products like menthol cigarettes remain in place, youth will continue to be lured to this deadly addiction. Policies that could push young people toward combustible cigarettes should be avoided.

We urge you to adopt a strong comprehensive tobacco retailer licensing (TRL) policy to end the sale of all flavored tobacco products, including flavored e-cigarettes and menthol cigarettes, establish a minimum price and pack size for tobacco products with no discounting, end the sale of all tobacco products in pharmacies, and allow no new tobacco retailers to locate near youth areas. Together, these provisions go far to protect the lives of our young people from the predatory marketing of the tobacco industry.

I've provided our recommendations for model policies that have worked well in other communities, as well as model Tobacco Retailer License ordinance from ChangeLab Solutions, a legal TA

organization that specializes in tobacco control policy. I'm happy to work with you and staff to find what options might work best to meet the needs of Morgan Hill.

Thank you,
Jen

Jen Grand-Lejano

Northern California Government Relations Director
(510) 464.8107 | m: (925) 639.9130

American Cancer Society Cancer Action Network, Inc.
1001 Marina Village Parkway Suite 300
Alameda, CA 94501
fightcancer.org | 1.800.227.2345



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ChangeLab Solutions

Law & policy innovation for the common good.

Comprehensive Tobacco Retailer Licensing Ordinance

A Model California Ordinance Regulating the Tobacco Retail Environment

WITH ANNOTATIONS

Updated February 2019
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Developed by ChangeLab Solutions

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Introduction and Report

ChangeLab Solutions developed this *Comprehensive Tobacco Retailer Licensing Ordinance* (“Model Ordinance” or “Ordinance”) to assist California cities and counties interested in establishing or strengthening a local tobacco retailer licensing (“TRL”) program and further regulating the tobacco retail environment. Communities have adopted TRL laws to ensure compliance with local business standards, reduce youth access to tobacco products, limit the negative public health and equity effects associated with tobacco use, and enforce local, state, and federal tobacco control laws.

This Model Ordinance (revised February 2019) takes a comprehensive approach to regulating the sale of tobacco products and the tobacco retail environment. This revised Model Ordinance builds on core provisions such as requiring a local tobacco retailer license by incorporating many of the innovative policies previously maintained as separate “Plug-in” policy options. It also reflects recent changes to state and federal tobacco control laws such as Tobacco 21 and the federal Food and Drug Administration’s (“FDA”) Deeming Rule that expanded the FDA’s regulatory authority to all tobacco products. The Model Ordinance offers cities and counties a variety of options to tailor this policy to meet the needs of their communities.¹ Section II contains additional information about revisions to this Model Ordinance.

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

This Introduction and Report section summarizes our nonpartisan analysis and study of the public health problem surrounding tobacco use. It also provides a rationale for regulations on the sale of tobacco products as one possible policy intervention. It is intended for broad distribution to the public for the purpose of education and dissemination of information. Our presentation of this Model Ordinance, including this Introduction and Report, is based on our independent and objective analysis of the relevant law, evidence, and available data, and should enable readers to draw their own opinions and conclusions about the merits of this Model Ordinance. Readers should consider all the evidence and decide for themselves which approach is appropriate for their local jurisdiction.

I. Tobacco and Public Health

Tobacco use remains a significant public health problem and impediment to health equity in California and the United States. Each year, tobacco-related diseases cause the deaths of approximately 40,000 Californians¹ and nearly half a million individuals in the United States, making

¹ This Model Ordinance uses “community” as shorthand for a group of people who will be impacted, either directly or indirectly, by a proposed changemaking strategy. People in a community (1) are in a particular geographic area, like a neighborhood or jurisdiction, and/or (2) share a common identity or characteristic.

tobacco use the nation's leading cause of preventable death.² For decades, governments at the federal, state, and local levels have advanced various policies intended to address this significant public health crisis.

Under the 2009 federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), the FDA regulates the manufacture, marketing, and distribution of tobacco products.³ States and local governments have developed educational programs and media campaigns on the risks of tobacco use, offered resources to help tobacco users quit, increased excise taxes on cigarettes and other tobacco products, and adopted restrictions on the sale and use of tobacco products. Although these policies have reduced the use of tobacco products, recent estimates suggest that 441,000 Californians under 18 today will die from tobacco-related diseases.¹

a. Tobacco-Related Disparities and Health Inequities

California has made tremendous progress in reducing smoking rates and associated harms.⁴ But these gains have not been uniformly distributed across the population. Many underserved communitiesⁱⁱ continue to disproportionately bear the burden of tobacco-related harm,⁵ exacerbated by decades of pernicious targeting by the tobacco industry.⁶

People of Color: Tobacco use rates are significantly greater among many racial and ethnic populations. For example, a 2014–2015 California survey found that 29.5% of all Native American and Alaska Native adults and nearly half (46.5%) of low-income Native American and Alaska Native adults reported smoking.⁷ Almost 18% of all Black and African American adults in California smoke, including nearly 1 in 4 (24.4%) low-income Black or African American adults.⁷ Despite decreases in overall smoking prevalence, smoking prevalence among California's Native American, Alaska Native, and Black populations *increased* between the 2009 and 2014–2015 California Health Information Survey.⁸ Tobacco use also differs significantly among other racial and ethnic populations—13.4% of Whites, 11.1% of Hispanics, and 8.9% of Asian, Native Hawaiian, or Pacific Islanders reported smoking in 2014–2015, and within specific subpopulations, 27.8% of Vietnamese males and nearly 1 in 4 (24.3%) Korean males reported smoking, for example.⁷

Low-Income Populations: Smoking rates among low-income populations are also higher. Nearly 17% of California adults with incomes below the federal poverty level (“FPL”) smoke compared with 14.4% of adults with incomes between 100% and 184% FPL, 14% for those with incomes between 185% and 299% FPL, and 9.5% for those with incomes of 300% FPL or higher.⁷ Low-

ⁱⁱ This Model Ordinance uses the term “underserved communities” to refer to those communities that are more likely to experience greater health inequities, political marginalization, and disinvestment. Examples of underserved communities include people of color, low-income communities, LGBTQ+ communities, persons with mental health needs, and rural communities. For more information about the drivers of these inequities, see the California Health in All Policies Task Force's Equity in Government Practices Action Plan, *available at* http://sgc.ca.gov/programs/hiap/docs/20180201-HiAP_Equity_in_Government_Practices_Action_Plan_2018-2020.pdf.

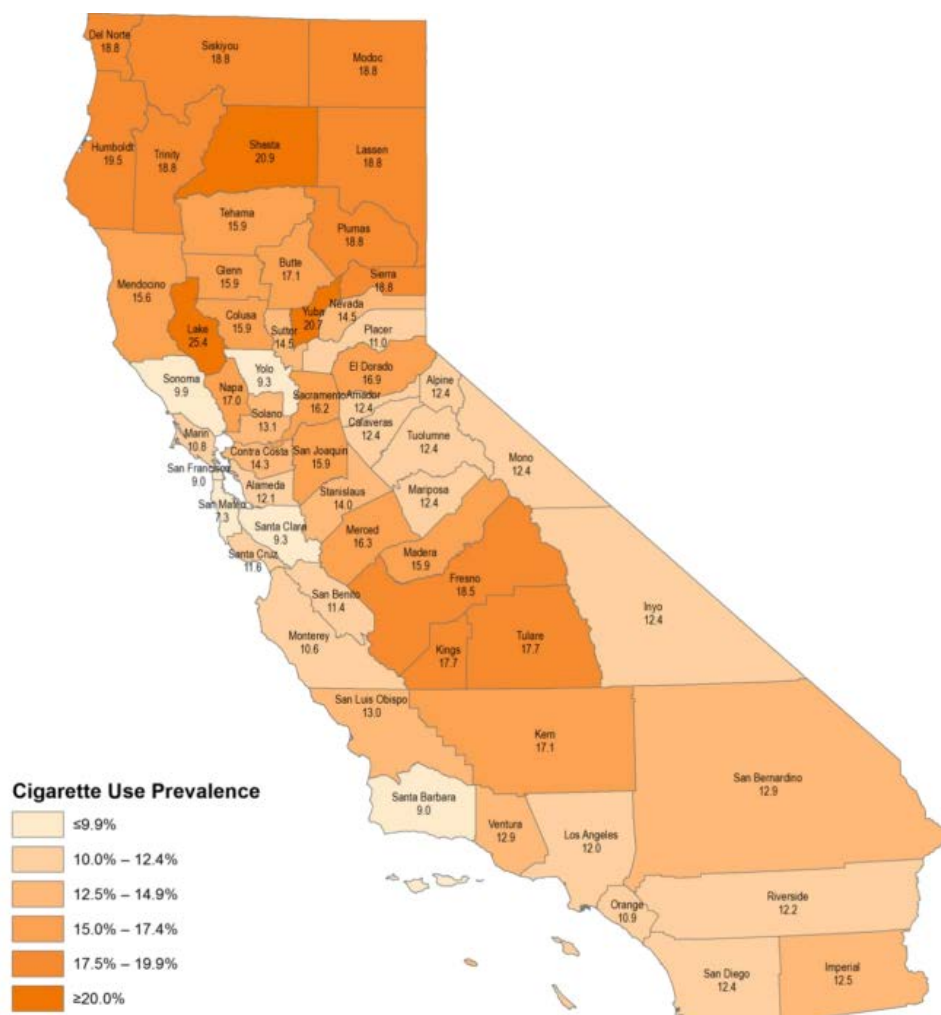
income communities are also targeted with cheaper cigarettes and flavored little cigars, and they experience the highest density of tobacco retailers.⁹

LGBTQ+ Populations: In 2013–2014, nearly a quarter (24%) of California’s lesbian, gay, and bisexual population used any tobacco product (eg, cigarettes, electronic smoking devices, other tobacco products) and 19.1% reported smoking cigarettes. In contrast, in 2013–2014, the general population reported significantly lower rates of any tobacco use (17.4%) and cigarette smoking (12.4%).⁹

Rural Populations: Rural counties in California have some of the highest smoking rates.⁹ Rural communities also report a lower proportion of smokers who try to quit within the last year than the general population and have a lower proportion of residents protected by a strong TRL law.⁹

Populations with Mental Health Needs: Persons with mental health needs have the second highest smoking and tobacco use rates in California at 27.1% and 24.2% respectively.⁹ Moreover, fewer smokers with mental health needs have tried to quit smoking within the last year.⁹

Because the harms associated with tobacco use fall disproportionately on these underserved populations, they may also experience greater benefits from policy interventions that reduce tobacco consumption. For more information on tobacco-related health inequities, visit A Story of Inequity at <http://tobaccofreeca.com/story-of-inequity/>.



California Adult Smoking Prevalence, 2011–2012
(Source: California Health Interview Survey, 2011–2012)

b. State and Federal Laws Regulating the Tobacco Retail Environment

The California Cigarette and Tobacco Products Licensing Act of 2003 (“CTPLA”) established a statewide licensing program that required tobacco retailers, among others, to obtain a license from the State of California.¹⁰ The CTPLA focuses on decreasing tobacco product tax evasion¹¹—not protecting public health—and provides no funding to support enforcement activities by local governments. Importantly, the CTPLA and other state laws do not preempt or supersede local tobacco control laws (except local tobacco taxes),¹² meaning that local jurisdictions can enact TRL and other laws that focus on protecting public health by, for example, providing for the suspension or revocation of a tobacco retailer license for illegal sales to underage individuals.¹³

Other state and federal laws also regulate various aspects related to the retail sale of tobacco products. California Penal Code 308, for example, prohibits the selling, giving, or furnishing of tobacco products and tobacco paraphernalia to most individuals under the age of 21.¹⁴ The Stop Tobacco Access to Kids Enforcement Act (“STAKE Act”) also prohibits tobacco sales to most individuals under the age of 21, restricts tobacco self-service displays and vending machine sales, and requires retailers to post signs at the point of sale about illegal underage tobacco sales.¹⁵ At the federal level, cigarettes must be sold in packages of at least 20,¹⁶ and the FDA requires retailers to check the identification of anyone purchasing tobacco products under the age of 27.¹⁷ Nevertheless, significant regulatory gaps remain and youth continue to access cigarettes and other tobacco products.⁷ Local governments may choose to take action to address these gaps by enacting tobacco control policies to further protect public health and advance health equity.

c. Local Policies Regulating the Tobacco Retail Environment

Nearly 200 California cities and counties have adopted TRL ordinances.¹⁸ More than 100 of these ordinances meet criteria set by the American Lung Association in California’s Center for Tobacco Policy and Organizing (“The Center”) for TRL best practices:

- (1) All tobacco retailers are required to obtain a license and renew it annually.
- (2) The license fee is sufficient to fund the effective administration and enforcement of the licensing program, including compliance checks.
- (3) A violation of any local, state, or federal tobacco control law constitutes a violation of the local license.
- (4) Penalties for violations include fines and license suspension and revocation.¹⁹

Cities and counties have also taken action to further regulate the tobacco retail environment by, for example, prohibiting retailers from locating near schools, reducing the density of tobacco retailers, prohibiting tobacco sales in pharmacies, requiring a minimum package size for little cigars and cigars, and restricting the sale of flavored tobacco products, including menthol.²⁰ Most of these communities enforce these policies through their local TRL ordinance,²⁰ underscoring the critical foundation that TRL laws provide for further regulation of the tobacco retail environment.

Evidence suggests that these policies are effective and may reduce tobacco-related health inequities by countering the tobacco industry's predatory targeting of underserved communities. For example, communities with strong enforcement provisions in their TRL ordinances have significantly lower rates of illegal tobacco sales to youth.²¹ And one study found that the odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth access laws.²² The following sections address the rationale and evidence base for specific policies in greater detail.

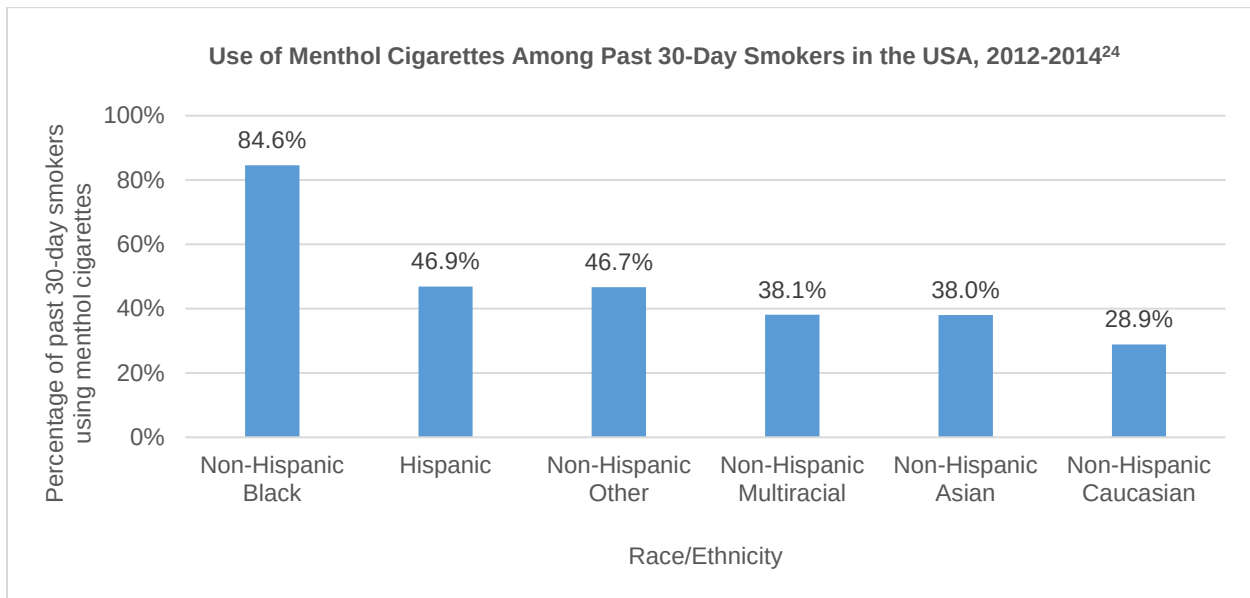
d. Menthol Cigarettes and Other Flavored Tobacco Products

The 2009 Tobacco Control Act banned flavored cigarettes.²³ However, the law exempts menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco and electronic smoking devices. Moreover, California doesn't have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.

Flavored tobacco products are considered “starter” products that help establish long-term tobacco use, and they are particularly appealing to youth and young adults.²² These products also pose significant barriers to achieving health equity. Thanks to tobacco companies' marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ+ communities are significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the burden of tobacco-related harm.⁹

Menthol cigarettes are of particular concern because despite decreases in overall cigarette use, the proportion of cigarette smokers who use menthol cigarettes continues to rise.²⁴ Tobacco companies add menthol to their products because the crisp, minty flavor masks the natural harshness and taste of tobacco, making the products milder and therefore easier to use and more appealing to youth and new users.^{25,26} Smoking menthol cigarettes is also associated with being more likely to use cigars²⁴ and reduced likelihood of successfully quitting smoking.²⁶⁻²⁸

Moreover, menthol cigarettes present significant equity concerns. The tobacco industry has a well-documented history of developing and marketing menthol tobacco products to underserved communities, including communities of color and youth.⁶ Comprehensive scientific reviews by the FDA Tobacco Products Scientific Advisory Committee (TPSAC) found that the marketing of menthol cigarettes likely increases the prevalence of smoking among the entire U.S. population, especially among youth, African Americans, and possibly Hispanic and Latino populations.^{26,27} These groups, as well as members of LGBTQ+ communities and young adults with mental health conditions, bear the greatest burden of menthol cigarette use.^{24,29,30}



Tobacco companies have also developed other flavored tobacco products that have the same youth-friendly characteristics as banned flavored cigarettes. For example, many of the cigar brands that are popular among teens are available in flavors such as apple, chocolate, grape, and peach.²² Smokeless tobacco products, including chewing tobacco, snuff, and snus, also come in flavors such as mint, wintergreen, berry, cherry, and apple.³¹ Hookah tobacco (shisha) is available in an array of fruit, herbal, and alcoholic beverage flavors, and there is a strong—and false—perception among young people that smoking hookah is safer than smoking cigarettes.³² Nicotine solutions, which are also known as e-liquids and are used with e-cigarettes, are sold in dozens of flavors that are attractive to youth, such as cotton candy and bubble gum.³³ In fact, among middle and high school e-cigarette users, the availability of flavors was the second most common reason for using the product (31%).³⁴ Like menthol, these flavorings help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products.²⁵

Consumption of flavored tobacco products has grown in recent years. Between 1995 and 2008, sales of little cigars increased by 316%.³⁵ Between 2008 and 2015, sales of flavored cigars increased by nearly 50% and in 2015, made up more than half of all cigar sales.”³⁶ A 2013–2014 survey found that “80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product.”^{37,38} In 2014, nearly two-thirds of U.S. middle school and high school cigar smokers reported using flavored cigars, and more than 1.5 million students reported using a flavored e-cigarette within the past 30 days.³⁹ Moreover, a 2013–2014 survey found higher rates of flavored cigar use among underserved populations, including “cigar smokers with lower income, with less education and those who were lesbian, gay or bisexual.”⁴⁰

Young people, people of color, low-income populations, and LGBTQ+ communities are much more likely to use menthol-, candy-, and fruit-flavored tobacco products. These products are considered “starter” products that help establish long-term tobacco use. Menthol cigarettes in particular pose a

significant barrier to achieving health equity given the disproportionate use and related burden among underserved communities. Policy interventions designed to regulate products that get people hooked on tobacco, such as restrictions on the sale of flavored tobacco products, can directly address the public health and equity consequences associated with tobacco use.

e. Tobacco Product Pricing

The link between the price of tobacco products and consumption is well established, especially among youth.^{2,22,41-46} When tobacco products cost more, fewer people use tobacco because fewer start and more quit.^{2,41-44,46} In fact, it is estimated that a 20% price increase on a pack of cigarettes reduces demand by 10.4%, decreases the prevalence of adult tobacco use by 3.6%, and decreases initiation of tobacco use among young people by 8.6%.⁴² There is also sufficient evidence that increases in the price of non-cigarette tobacco products reduces consumption for those products and that unequal price increases across products can lead to substitution from one product to another.⁴⁷⁻⁴⁹

Excise taxes are one of the most common methods to increase the price of tobacco products and raise revenue while also realizing the public health benefits associated with such increases such as decreased consumption.⁴⁶ The federal government, all 50 states, and Washington, D.C., currently impose excise taxes on cigarettes.⁵⁰ Many jurisdictions also tax other tobacco products.⁵¹ However, California state law preempts (ie, prohibits) cities and counties from imposing additional taxes on tobacco products.⁵²

The tobacco industry also spends millions of dollars each year to heavily promote and strategically price their products, often to counteract cigarette and other tobacco product tax increases.⁵³ Indeed, in 2016, despite a decrease in the number of cigarettes sold from 2015 by 3.7 billion units, the amount the tobacco industry spent on cigarette advertising and promotion increased from \$8.3 billion to over \$8.7 billion.⁵⁴ Of that amount, the industry spent \$380 million on coupons for consumers and another almost \$7.9 billion on price discounts and promotional allowances for retailers and wholesalers.⁵⁴ This includes off-invoice discounts, “buy downs,”ⁱⁱⁱ “master type” programs,^{iv} voluntary price reductions, volume rebates, value-added services, and incentive payments.⁵⁴ And their efforts result in price-discounted sales accounting for a substantial proportion of all tobacco sales.⁵⁵

Evidence suggests that tobacco companies deliberately target youth and underserved communities with price discounts and coupons,^{44,56-58} undermining the effects of tax increases on youth smoking initiation, especially among youth aged 14 to 17 years.^{57,59} Tobacco industry price reduction strategies also appeal to adult tobacco users, with nearly 20% of adult cigarette smokers using

ⁱⁱⁱ A “buy down” is a reimbursement program that allows retailers to provide customers an immediate price reduction on certain brands for a specific period of time, eg, 50 cents off each pack of Marlboro cigarettes sold from the store’s inventory for 30 days. The consumer gets an instant price reduction and, at the end of the incentive period, the manufacturer reimburses the retailer for the price reductions on the cigarettes sold at the reimbursed price.

^{iv} A “master type” program is a promotional program sponsored by the manufacturer and administered through a cigarette wholesaler. The wholesaler agrees to pay the retailer a rebate and is later reimbursed by the manufacturer. The wholesaler may also be paid a fee to administer the program. The payments are not deducted from the manufacturer’s list price shown on the invoice from the manufacturer but are paid or credited separately after the sale to the retailer.

coupons and other price discounts to purchase cigarettes.⁶⁰ Other studies have found that more than half of U.S. adult cigarette smokers use price minimization strategies.⁶¹

Non-tax policy interventions can counter these industry price-discounting strategies and have the potential to produce significant public health and equity benefits. For example, one study estimated the number of smokers would decrease by more than 13% if price discounts were prohibited across the country.⁵⁹ Another study modeling the potential effects of a nationwide minimum price for cigarettes found that “a \$10 minimum price could reduce sales by over 5 billion packs per year and induce cessation by over 10 million smokers.”⁶² Examples of non-tax policy interventions to address tobacco product pricing include

- (1) prohibiting the redemption of tobacco product discounts, coupons, and promotions;
- (2) establishing a minimum package size for little cigars and cigars; and
- (3) establishing minimum prices (ie, price floors) for tobacco products such as cigarettes, little cigars, and cigars.

i. Prohibit the Redemption of Tobacco Product Discounts, Coupons, and Promotions

Prohibiting the redemption of tobacco product discounts, coupons, and promotions presents one strategy for addressing tobacco product pricing. For example, this policy could prohibit retailers from accepting coupons allowing the purchase of tobacco products below a base price, selling tobacco products via any type of discount or promotion that drops the price below a base price, and giving away anything for free or at a discount with the purchase of any tobacco product. The purpose of this policy option is to prohibit price discrimination^v and increase the cost of low-cost tobacco products. A uniform pricing policy (ie, a prohibition on price discrimination) diminishes the tobacco industry’s ability to capture more price-sensitive consumers, including youth and lower-income individuals. This approach is most likely to impact the behavior of populations particularly affected by price increases and may not have as significant an impact on higher-income individuals who may not rely on coupons or discounts.

The California state law prohibiting those engaged in the sale or distribution of cigarettes or smokeless tobacco from distributing coupons to obtain those products for free or a nominal cost applies only to certain locations, includes several exemptions, and does not address other tobacco products like cigars and electronic smoking devices.⁶³ Given these limitations and the state law’s focus on coupon *distribution*, more recent policies have taken a different approach.

Local governments in Oakland, California; Providence, Rhode Island; New York City, New York; and Chicago, Illinois have laws that prohibit coupon redemption and tobacco discounts.⁶⁴⁻⁶⁷ Focusing on the redemption of coupons rather than their distribution provides a more comprehensive approach to eliminating tobacco industry price discounting schemes and may help communities avoid legal

^v Price discrimination is a method by which manufacturers and retailers draw in more consumers by selling the same product at different prices to different consumers. Price discrimination allows retailers to capture sales from consumers at a regular price without losing sales from more price-sensitive consumers.

challenges. These laws, however, reference a base price (defined in this Model Ordinance as “Full Retail Price”) that, without a minimum price provision in place, could still be manipulated. Nonetheless, these laws present a valuable policy option for increasing the cost of tobacco products, and multiple federal courts have upheld the authority for local governments to enact such policies.^{68,69}

ii. Establish a Minimum Package Size for Little Cigars and Cigars

Federal law requires that cigarettes be sold in packages containing at least 20 cigarettes,⁷⁰ but there are no minimum package size requirements for other tobacco products. This is especially concerning given the rising popularity of little cigars and cigars. From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%.³⁵ Additionally, while federal law prohibits the sale of most flavored cigarettes and individual cigarettes, these types of sales are not prohibited for other tobacco products. Thus, many retailers currently sell flavored cigars, little cigars, and cigarillos individually, making them more affordable to youth.⁷¹

Requiring little cigars and cigars to be sold in packs of a certain size raises the *overall* cost to purchase these products, even if the price *per* little cigar or cigar does not change. Increasing the amount of tobacco products purchased in a single transaction may seem counterintuitive, but raising the cost barrier is expected to improve public health and protect price-sensitive youth.^{22,45} However, minimum package size requirements are most effective when paired with minimum price policies.

iii. Establish Minimum Price Floors for Tobacco Products

Neither California state nor federal law establishes a minimum price for tobacco products, resulting in 84% of assessed licensed tobacco retailers across California in 2013 selling cigarettes for less than \$5 and 74% of stores selling a Swisher Sweet cigarillo for less than \$1.⁷² The same study found that “the cheapest [cigarette] pack price was significantly lower in [communities] with higher proportions of African American and Hispanic residents, in neighborhoods with higher proportions of school-age youth and young adults, and in neighborhoods with lower median household income.”⁷² Establishing a minimum price floor is one way to address these disparities.

At least 25 states (including DC) have enacted minimum markup and related laws, but these laws have historically focused on prohibiting unfair competition rather than protecting public health and typically require a minimum percentage markup to be added to the wholesale and/or retail price.⁴³ These minimum markup laws remain vulnerable to price manipulation by the tobacco industry⁷³ and may be more difficult for local jurisdictions to enforce.

Local jurisdictions can take a different approach by establishing a minimum price floor for the sale of certain tobacco products (eg, cigarettes, little cigars, and cigars). For example, a local jurisdiction can specify that cigarettes and little cigars must not be sold for less than \$7. Minimum price floors have become increasingly popular, and New York City recently became the first jurisdiction to enact price floors for many non-cigarette tobacco products such as smokeless tobacco, snus, loose tobacco, and

tobacco-containing hookah shisha.⁶⁵ A number of local California jurisdictions have enacted similar policies, setting a floor price for cigarettes,^{74,75} little cigars, and cigars,⁷⁴⁻⁷⁶ with at least one also establishing minimum prices for other tobacco products.⁷⁵ Because these types of policies are relatively new, only limited research is available on their effects. However, preliminary evidence suggests that establishing a minimum price for tobacco products is a promising strategy to reduce tobacco use and tobacco-related health disparities.⁷⁷⁻⁷⁹

f. Tobacco Retailer Location and Density

In 2012, there were approximately 36,700 licensed tobacco retailers in California.⁸⁰ Where tobacco retailers are located, the total number of tobacco retailers and the concentration of tobacco retailers in particular communities affect the availability of tobacco products and exposure to tobacco advertising and marketing, all of which affect tobacco use rates. A greater availability of tobacco products is associated with both youth and adult smoking,^{81,82} even when other neighborhood factors are taken into consideration.⁸³ Tobacco retailer location and density also heavily contribute to social inequities as retailers are more prevalent in lower-income areas^{84,85} and communities in which a greater percentage of residents identify as African American^{84,85} or Hispanic,⁸⁴ which perpetuates disparities in tobacco use and associated negative health effects. Reducing the availability of tobacco products by regulating the location and density of tobacco retailers is expected to improve public health and health equity.

Local governments set density and location restrictions for a variety of buildings and uses based on their community plans and development goals. Land use tools such as zoning ordinances and conditional use permits are common for such restrictions. With respect to tobacco retailers, communities are increasingly using TRL to achieve similar results while providing for more robust enforcement of both the density and location restrictions as well as other tobacco control laws. ChangeLab Solutions' resource *[Licensing & Zoning: Tools for Public Health](#)* includes additional information on the differences between licensing and zoning, including the benefits and drawbacks to each approach.

Communities can take a variety of approaches to regulate where tobacco retailers may locate and can limit the number of available tobacco retailer licenses. The right approach for a particular community will depend on the existing landscape of tobacco retailer locations, population demographics, a community's current land use practices, and other policy adoption, implementation, and enforcement considerations. The following sections provide examples of potential strategies for regulating the location and density of tobacco retailers, as well as the evidence base for each strategy.

i. Restrict Tobacco Retailers Near Residential and Youth Areas

Research shows that children are more likely to experiment with, and use, tobacco products when tobacco retailers are located near homes.^{86,87} Studies have also found positive associations between student smoking and the number and density of tobacco retailers near schools^{88,89} Tobacco retailers

near schools with high smoking rates have also been shown to have lower cigarette prices and more in-store promotions.⁹⁰

Adult smoking rates are also positively associated with higher tobacco retailer density near their home,⁹¹ and individuals with mental health needs may also be particularly vulnerable.⁹² Living near tobacco retailers also appears to negatively affect the ability for smokers to quit smoking.⁹³ Given this evidence, restricting tobacco sales within residential zones and within certain distances from areas where youth often gather such as schools, playgrounds, libraries, and child care centers may help reduce both youth and adult smoking rates. Various studies that have mapped the location of tobacco retailers have shown that communities can eliminate a substantial amount of tobacco product access and exposure by creating, for example, a 1,000-foot buffer zone around schools.⁹⁴

ii. Regulate the Proximity of Tobacco Retailers to Other Tobacco Retailers and Cannabis Retailers

In addition to its effects on youth tobacco use, excessive tobacco retailer density may exacerbate disparities in tobacco use and tobacco-related harm. Evidence consistently demonstrates that high tobacco retailer density in lower-income neighborhoods is associated with greater access to tobacco.^{83,95,96} More recent research has also linked high tobacco retailer density to lower life expectancy, underscoring the importance of policies that reduce tobacco retailer density to advancing more equitable public health outcomes.⁹⁶ Research has also found social inequities in the location and density of alcohol outlets and medical cannabis dispensaries, with these outlets and dispensaries disproportionately located in underserved communities.⁹⁷

Market conditions resulting from the concentration of tobacco retailers in a particular geographic area may also impact community health. For example, competition among retailers can lead to special promotions such as sales or discounts that drive additional demand and increase smoking by youth, who are particularly sensitive to the cost of tobacco products.^{44,45,98}

Regulating how closely tobacco retailers may locate near other tobacco retailers and cannabis retailers is one strategy for addressing the overconcentration of these businesses in particular communities. For example, a community can prohibit new tobacco retailers from operating within 500 feet of an existing tobacco retailer, which would limit increases in density and potentially even reduce density through attrition as existing retailers close or relocate.

iii. Limit the Number of Tobacco Retailer Licenses Available

Communities looking to address tobacco retailer density may also consider limiting the number of available tobacco retailer licenses. This approach is common in the alcohol context, where it is scientifically accepted that limiting alcohol outlet density will lead to less underage drinking, excessive drinking, and alcohol-related harm.⁹⁹ California state law limits the number of retailers in a city or county that may sell alcohol for consumption off premises to one license per 2,500

inhabitants.¹⁰⁰ State law does not include any similar restrictions for tobacco retailers, but cities and counties can adopt local laws limiting the number of available tobacco retailer licenses.

Importantly, with tobacco retailer density often being highest in underserved communities,^{84,101-103} a single limit on the number of licenses using the overall population size or even capping the total number of licenses to be issued will not necessarily prevent stores from clustering in certain areas. Instead, a combination of strategies or more localized limitations are necessary.

For example, San Francisco's density reduction ordinance, which went into effect in 2015, combines multiple strategies to address excessive tobacco retailer density in many underserved communities. It establishes a cap on the total number of tobacco retailer licenses (45) for *each district* within the city. Significant disparities in the number of licensed tobacco retailers in each district existed when the city adopted the policy, ranging from 37 licensed retailers in a district with a median household income of over \$94,000 to 180 licensed retailers in a district whose median income was just below \$37,500. Given these preexisting disparities, the added geographical element to San Francisco's density reduction policy has and is expected to continue to reduce tobacco retailer density most significantly in those districts disproportionately affected by an overconcentration of tobacco retailers.¹⁰⁴

g. Types of Retailers and Delivery

Restricting the types of businesses eligible for tobacco retailer licenses and requiring on-site sales of tobacco products are additional approaches to reduce the availability and accessibility of tobacco products.

i. Prohibit Tobacco Sales in Pharmacies and Other Health Facilities

In 2015, 14.3% of tobacco retailers in the country had a pharmacy counter.¹⁰⁵ This was despite CVS, one of the largest pharmacy chains in the country, voluntarily stopping selling tobacco products and more than half of state attorneys general encouraging five of the nation's largest retail pharmacies to cease selling tobacco products in their stores.¹⁰⁶

Sales of harmful tobacco products in pharmacies and other health-promoting organizations like hospitals and behavioral health facilities present an inherent conflict of interest and send mixed messages about the health risks posed by tobacco. Notably, research has also found that cigarettes are significantly cheaper in pharmacies despite other common consumer goods such as bottled water costing more in pharmacies than in other stores.¹⁰⁷ Thus, prohibiting tobacco sales in pharmacies and other health-promoting organizations not only decreases the availability of tobacco products, but also removes a source of discounted cigarettes.

Communities that have adopted policies prohibiting tobacco sales in pharmacies have seen up to three times greater reduction in tobacco retailer density compared with communities that have not adopted such policies.¹⁰⁸ Additional evidence from the nationwide CVS policy change also showed

that cigarette purchases declined and that smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely.¹⁰⁹

ii. Prohibit Mobile Tobacco Product Sales and Delivery

The California Department of Tax and Fee Administration has interpreted state law, the CTPLA, as prohibiting the licensure of mobile tobacco vendors.¹⁰ Prohibiting mobile sales ensures that enforcement agencies can conduct regular compliance checks at a tobacco retailer's permanent place of business. If a retailer sells tobacco products from a vehicle or on foot, it is difficult to conduct decoy operations or other inspections, since the retailer doesn't remain in the same location on a consistent basis.

The STAKE Act places restrictions on mail order and internet sales of tobacco products, including electronic smoking devices, but exempts the U.S. Postal Service and other common carriers from penalties when they deliver a package without any reason for knowing the package's content.¹¹⁰ The federal Prevent All Cigarette Trafficking Act of 2009 ("PACT Act") also places restrictions on mail order and internet sales of cigarettes and smokeless tobacco but exempts other tobacco products, does not clearly address delivery carriers, and limits state and local authority to fill in the gaps.¹¹¹ Additionally, while the Tobacco Control Act directed the FDA to issue regulations on mail order/internet sales of tobacco products,¹¹² given the PACT Act's passage, the FDA has not yet issued those regulations.¹¹³ Finally, portions of the PACT Act and other states' efforts to regulate internet tobacco sales have faced legal challenges, leaving much uncertainty about how to proceed at all levels of policymaking and enforcement on this issue.

Still, mail order and internet sales and delivery of tobacco products, especially electronic smoking devices, remain problematic.^{114,115} Local governments can take some limited steps by prohibiting retailers within their jurisdiction from selling products except at the licensed place of business (ie, strictly requiring on-site sales of tobacco products).

II. Comprehensive Tobacco Retailer Licensing Model Ordinance

This version of the Model Ordinance (revised in February 2019) includes five major revisions:

- (1) **Incorporates "plug-in" policies:** The prior version of the Model Ordinance included only core provisions related to TRL, such as requiring an annual license to sell tobacco products; establishing a license fee sufficient to cover implementation and enforcement costs; specifying that it is a violation of a license to violate any local, state, or federal tobacco control law; and establishing meaningful penalties for violations including license suspension or revocation. As more communities throughout California have adopted TRL, it has become evident that a more comprehensive approach to regulating the tobacco retail environment is necessary to further reduce tobacco-related harm and inequities. This version of the Model Ordinance reflects this by incorporating certain "plug-in" policies with well-established evidence bases. This includes prohibiting the sale of menthol cigarettes and other flavored

tobacco products, requiring minimum package sizes and prices for certain tobacco products, prohibiting tobacco retailers from locating near youth-populated areas or in pharmacies, and regulating the density of tobacco retailers.

- (2) **Updated the definition of *Tobacco Product*:** This version of the Model Ordinance includes an updated definition of *Tobacco Product*. The revised tobacco product definition (1) incorporates the previously separate definition of electronic smoking device; (2) specifies that components, parts, and accessories qualify as tobacco products if they are intended or reasonably expected to be used with a Tobacco Product; and (3) clarifies the exemption for products approved by the FDA for medical use.
- (3) **Alignment with new state and federal laws:** In 2016, the state of California enacted several new tobacco control laws, including raising the minimum legal sales age for tobacco products to 21. Also in 2016, the FDA exercised its authority under the Tobacco Control Act to regulate all tobacco products, including electronic smoking devices. This version of the Model Ordinance makes various technical amendments to conform to these changes in the state and federal tobacco control regulatory landscape.
- (4) **Require on-site sales:** Both California state law and previous versions of this Model Ordinance prohibit mobile tobacco vending. Nevertheless, the online sale and delivery of tobacco products to underage youth continues to present challenges for jurisdictions seeking to enforce youth access laws. This version of the Model Ordinance takes an additional step to address this issue by limiting the sale and delivery of tobacco products and tobacco paraphernalia within a jurisdiction to locations with a valid tobacco retailer license. It also prohibits a tobacco retailer from knowingly or recklessly selling tobacco products or tobacco paraphernalia to any person who intends to deliver those products to a consumer at a non-licensed location, such as a courier service delivering a tobacco product to a consumer's residence.
- (5) **Youth purchase, use, and possession penalties:** This version of the Model Ordinance clarifies that it does *not* penalize underage youth who purchase, use, or possess tobacco products or tobacco paraphernalia. Rather, the Model Ordinance penalizes only tobacco retailers who sell tobacco products or tobacco paraphernalia to individuals under 21 years old. A comment on pages 43 and 44 provides additional information on why penalizing the purchase, use, and possession of tobacco products by underage youth is not an evidence-based strategy and how such penalties may contribute to health inequities.

III. Additional Considerations

Policies that regulate the sale of tobacco products can raise tensions between the government's duty to protect individual liberty and its duty to promote and protect public health and well-being. Government efforts to regulate any product or industry are often met with resistance and assertions that the market should be allowed to operate free of government intrusion. This stems from the

theory that free markets are most effective and government intervention creates inefficiencies. Some question whether it is appropriate for government to discourage the use of a legal product by devising a regulatory scheme with the specific intent of decreasing sales. But the government does this in many industries. For example, liquor taxes discourage alcohol consumption, grocery bag fees discourage the purchase of disposable plastic bags, and public transit subsidies encourage transit use.

The issue then may be one of degree. The extent to which government seeks to curb tobacco sales may seem excessive compared with other goods and services, but tobacco is unique: There are significant public health risks caused directly by tobacco use. Indeed, tobacco is the only legal consumer product that is deadly when used as intended.^{2,116,117} Moreover, while tobacco industry representatives and retailer associations have argued that there are already laws that prohibit the sale of tobacco products to youth, young people continue to buy and use tobacco products. Overall youth tobacco use did not change significantly between 2011 and 2016. In a 2016 survey, more than 1 in 5 (20.2%) high school students reporting current tobacco use.¹¹⁸ And a jurisdiction's demographics may dictate which policies are most effective at reducing youth tobacco use. For example, while electronic smoking devices are the most common form of tobacco use by non-Hispanic white and Hispanic high school students, non-Hispanic black high school students most commonly use cigars.¹¹⁸

Retailer associations have also asserted that laws restricting tobacco product sales will result in lost revenues for local businesses. Local policymakers have discretion to assess whether the public health risks presented by tobacco products are significant enough that the sale of these products should be regulated, even if such a regulation results in reduced tobacco sales for local retailers. Local governments can also use a variety of strategies such as robust engagement, outreach, and education with retailers to understand their concerns, explain the rationale for specific policies, and inform the retailers about any applicable laws. Local governments may also consider programs that help retailers reduce their reliance on revenue from tobacco product sales. For example, Healthy Retail SF, a program of the City and County of San Francisco, helps retailers sell healthier products.¹¹⁹ ChangeLab Solutions also offers [resources](#) on creating healthier retail environments.

In addition to these more general considerations, specific policies such as increasing the cost of tobacco products and regulating the location and density of tobacco retailers raise additional considerations. Strategies that increase the cost of tobacco products may be considered regressive, meaning that low- to moderate-income individuals pay a higher percentage of their income toward the increased prices than high-income individuals. This can impose a significant financial burden on low-income smokers. And to the extent that low-income smokers continue to smoke, higher tobacco prices decrease their purchasing power for other goods and services (eg, daily needs).

However, any conversation about equity or regressivity should frame the issue in the broader equity context of tobacco use—that is, the tobacco industry has consistently targeted its products disproportionately to underserved communities and youth through predatory marketing. This contributes to the impacts of chronic disease associated with tobacco use being experienced

regressively, or disproportionately, by underserved communities. Increasing the price of tobacco products has been shown to have significant effects on consumption, providing disproportionate health *benefits* to low-income communities. Emerging evidence suggests policies that increase the cost of tobacco products such as establishing minimum prices may *decrease* tobacco-related health inequities.^{77,79}

A criticism of minimum pricing is that it does not necessarily achieve the benefits of a tobacco excise tax. Unlike a tax on an entire class of products (e.g., cigarettes), an established minimum price arguably affects only low-cost brands. Cigarette brands that are more expensive may not be directly affected by the minimum price. Local governments concerned about this outcome can pair a minimum floor price law that affects low-cost brands with a minimum mark-up requirement that affects all brands. An effective minimum pricing policy may also mean that tobacco retailers and manufacturers make more money from tobacco sales. This may sound counterintuitive to policymakers, but it nevertheless may simply be a side effect of increasing tobacco prices through minimum pricing. Moreover, tobacco retailers and manufacturers may be less likely to oppose minimum pricing policies if the policy will increase their revenues.

Evidence suggests increasing prices for tobacco products can encourage an illicit market for these products.^{120,121} An illicit market of cheap tobacco products negates, at least to some degree, the beneficial public health impact of increased prices. Ultimately, this is a balancing act. Local governments are responsible for weighing the public health benefits of higher tobacco prices against the unintended consequences of a potential illicit market for tobacco products. Local governments may address illicit market issues by tailoring pricing policies to raise prices enough to reduce consumption but at levels insufficient to incentivize the creation of an illicit market. They can also address illicit market issues with appropriate, equitable enforcement, though this requires adequate resources.

Additional considerations are also relevant to policies regulating the location and density of tobacco retailers, particularly with respect to avoiding unintended consequences. Jurisdictions pursuing location and density restrictions should carefully consider pre-existing inequities in the location and distribution of tobacco retailers. A policy establishing a single cap on the number of available tobacco retailer licenses may be less likely to reduce an overconcentration of retailers in underserved communities compared with policies that incorporate more granular geographic restrictions. Instituting a minimum distance requirement between tobacco retailers may also inadvertently increase tobacco retailer density in other parts of a community. Finally, jurisdictions may consider which retailers will be most affected by any location and density restrictions and take steps to mitigate any negative effects on those retailers. For example, many tobacco retailers are owned and/or operated by members of underserved communities, and policies affecting the tobacco retail environment may affect economic inequities. Given these considerations, jurisdictions should evaluate which combination of location and density restrictions are best suited to address their communities' unique characteristics and how best to balance the strongest public health protections with any secondary effects.

This Introduction and Report does not include a comprehensive summary or analysis of relevant legal authorities. This information is available in ChangeLab Solutions’ stand-alone model ordinances and associated resources. If you have questions related to legal authority, please contact ChangeLab Solutions via our website at www.changelabsolutions.org/tobaccoquestions.

IV. Conclusion

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

Optional Plug-in Provisions

ChangeLab Solutions has developed a number of supplementary plug-in provisions to accompany the Model Ordinance, any of which can be incorporated into a new ordinance or added to an existing tobacco retailer licensing law. Each plug-in addresses a different concern and provides a policy option. For example, plug-ins can be used to prohibit certain types of retailers from selling tobacco and to restrict the sales of certain products.

Currently, ChangeLab Solutions has a number of plug-in provisions that (1) prohibit tobacco sales at restaurants and bars, (2) prohibit tobacco sales at businesses that allow smoking, (3) prohibit tobacco retailers from selling drug paraphernalia, and (4) provide additional enforcement options for licensing laws. Other plug-in policies previously maintained in a separate document such as tobacco-free pharmacies, limiting the location and density of tobacco retailers, and establishing minimum package size and prices for certain tobacco products have been integrated into this Model Ordinance.

Although the plug-in provisions are intended to be incorporated into the Model Ordinance, some of them can be enacted independently, with revisions. Adopting a plug-in provision both as part of a licensing ordinance *and* as a separate ordinance may provide additional enforcement options. Please consult your local government attorney and/or ChangeLab Solutions if you want to incorporate any of the plug-in provisions into your existing licensing ordinance and/or adopt the provisions as a separate ordinance.

The provisions regarding “No Tobacco Product Sampling” have been removed from this version of the Model Ordinance because state and federal law now prohibit almost all free tobacco product sampling. The plug-in provisions limiting tobacco sales to off-sale alcohol retailers and prohibiting significant tobacco retailers have also been removed, but are available upon request. Please contact ChangeLab Solutions if you have questions regarding these plug-in policies.

Questions?

If you have questions about the Model Ordinance, please contact ChangeLab Solutions via our website at www.changelabsolutions.org/tobaccoquestions.

**AN ORDINANCE OF THE [CITY / COUNTY] OF [*Insert Jurisdiction Name*]
REGULATING TOBACCO PRODUCT SALES, REQUIRING THE LICENSURE OF
TOBACCO RETAILERS, AND AMENDING THE [*Insert Jurisdiction Name*]
MUNICIPAL CODE**

The [City Council of the City / Board of Supervisors of the County] of [*Insert Jurisdiction Name*] does ordain as follows:

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

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

COMMENT: The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. An ordinance based on this Model Ordinance should include findings of fact—data, statistics, relevant epidemiological information, for instance—that support the purposes of this ordinance, as well as any legal precedent that directly supports the ordinance. In addition to serving an educational purpose and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts will generally defer to legislative determinations of factual issues, which often influence legal conclusions. A list of findings supporting this Model Ordinance appears in “Appendix A: Findings” on page 50. Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

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

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

- (a) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this [article / chapter] is not an Arm’s Length Transaction.
- (b) “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

- (c) “Cannabis Product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

COMMENT: California state law prohibits the sale of Tobacco Products or alcoholic beverages at premises licensed to engage in Commercial Cannabis Activity (eg, Cannabis retailers, cultivators, manufacturers, and distributors). Although this Model Ordinance does not directly regulate Cannabis, it does include several Cannabis-related limitations on Tobacco Retailers. For example, this Model Ordinance prohibits new Tobacco Retailers from opening within a specified distance from businesses engaged in the retail Sale of Cannabis and Cannabis Products.

- (d) “Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.
- (e) “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its Packaging and Labeling, is likely to be offered to, or purchased by, Consumers as a Cigarette described herein.
- (f) “Characterizing Flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.
- (g) “Commercial Cannabis Activity” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

COMMENT: This term refers to conduct that requires a California state commercial Cannabis license, including “the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in [Cal. Bus. & Prof. Code Division 10].”

- (h) “Consumer” means a Person who purchases a Tobacco Product for consumption and not for Sale to another.
- (i) “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to

obtain an article, product, service, or accommodation without charge or at a discounted price.

- (j) “Department” means [*Insert Department Name*] and any agency or Person designated by the Department to enforce or administer the provisions of this [article / chapter].

COMMENT: This term is used in the Model Ordinance to refer to the city or county agency charged with issuing licenses and enforcing the Ordinance. The primary enforcing agency may designate additional agencies to assist in administering and/or enforcing the Ordinance.

- (k) “Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

COMMENT: This definition of Flavored Tobacco Product includes Cigarettes. Although federal law prohibits the manufacture of flavored Cigarettes, it contains an exemption for menthol Cigarettes. Moreover, neither federal nor California state law regulates the sale of flavored non-Cigarette Tobacco Products such as Little Cigars, smokeless tobacco, and e-cigarettes. This Model Ordinance is more restrictive than federal and state law because it prohibits the sale of all Flavored Tobacco Products, including menthol Cigarettes and flavored non-Cigarette Tobacco Products.

- (l) “Full Retail Price” means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.
- (m) “Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- (n) “Little Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. “Little Cigar” includes, but is not limited to, Tobacco Products known or labeled as small cigar, little cigar, or cigarillo.
- (o) “Manufacturer” means any Person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.
- (p) “Package” or “Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is Sold or offered for Sale to a Consumer.

- (q) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

COMMENT: The Municipal Code likely contains a definition of “person” and, if so, the definition provided here can be omitted.

- (r) “Proprietor” means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

COMMENT: This term is defined to help prevent sham ownership changes made to evade the license penalty provisions.

- (s) “Sale” or “Sell” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.
- (t) “Self-Service Display” means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.
- (u) “Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- (v) “Tobacco Product” means:
- (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
 - (2) any electronic device that delivers nicotine or other substances to the Person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
 - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “Tobacco Product” includes any component, part, or accessory intended or reasonably expected to be used with a Tobacco Product, whether or not sold separately. “Tobacco Product” does not include drugs, devices, or combination

products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

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

- (w) “Tobacco Retailer” means any Person who Sells, offers for Sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered for exchange.
- (x) “Youth-Populated Area” means a parcel [in the [City / County]] that is occupied by:
- (1) a private or public kindergarten, elementary, middle, junior high, or high school;
 - (2) [a library open to the public;]
 - (3) [a playground open to the public;]
 - (4) [a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;]
 - (5) [a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. “Recreation facility” includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;]
 - (6) [an arcade open to the public;]
 - (7) [a park open to the public or to all the residents of a private community;]
 - (8) [a licensed child-care facility or preschool [other than a small-family day care facility [or a large-family day care facility] as defined in California Health & Safety Code § 1596.78];]
 - (9) [_____].

COMMENT: This term is used to prevent Tobacco Retailers from locating near areas frequented by youth and young adults. Research shows that youth are more likely to experiment with Tobacco Products when Tobacco Retailers are located near schools and other areas where youth frequently gather. Restricting Tobacco Product Sales within a certain distance of these “Youth-Populated Areas” may help reduce youth tobacco use.

Small-family day care facilities are allowed on residentially zoned property and are limited to 8 or fewer children under age 10. Large-family day care facilities with up to 14 children under age 10 are also allowed on residentially zoned property. Depending on the number and location of these facilities, some communities might consider excluding them from the limitations where Tobacco Retailers may locate.

Sec. [____ (*2)]. GENERAL REQUIREMENTS AND PROHIBITIONS.

- (a) **TOBACCO RETAILER’S LICENSE REQUIRED.** It shall be unlawful for any Person to act as a Tobacco Retailer in the [City / County] without first obtaining and maintaining a valid Tobacco Retailer’s license pursuant to this [article / chapter] for each location at which Tobacco Retailing is to occur. Tobacco Retailing without a valid Tobacco Retailer’s license is a nuisance as a matter of law.

COMMENT: This is the primary operative section of the Model Ordinance. It requires a license for each retail location. So, for example, a supermarket chain would need a Tobacco Retailer license for each store. Note that this Ordinance uses the term “license,” but a city or county could choose to label the requirement a “permit,” as the two terms are generally interchangeable. The term used should be consistent with other provisions of the city or county code to which this Ordinance is added.

- (b) **LAWFUL BUSINESS OPERATION.** In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article / chapter] for a licensee, or any of the licensee’s agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

COMMENT: This provision makes licensing an effective tool for comprehensively enforcing tobacco control laws. A city or county can use the license suspension provisions to encourage compliance with all tobacco-related laws. This provision also gives a city or county additional enforcement options. The local jurisdiction may enforce the underlying tobacco law—such as the prohibition on selling tobacco to youth (Penal Code section 308 or the STAKE Act). It may also discourage illegal behavior by suspending or revoking a license. Losing the right to sell Tobacco Products for a period of time will likely be a bigger financial deterrent than an occasional fine imposed under other laws.

- (c) **DISPLAY OF LICENSE.** Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (d) **POSITIVE IDENTIFICATION REQUIRED.** No Person engaged in Tobacco Retailing shall Sell a Tobacco Product or Tobacco Paraphernalia to another Person who is under the age of [twenty-seven (27)] years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age for Sale of Tobacco Products as established by state law.

COMMENT: This provision deliberately omits stating a specific age, such as 21, so the Ordinance will not need to be amended if state law changes the minimum legal sales age for Tobacco Products and/or Tobacco Paraphernalia.

- (e) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco Retailing by means of a Self-Service Display is prohibited.

COMMENT: This provision goes beyond state law because it does not provide an exception for tobacco stores that restrict access to minors. As a result, this provision would prohibit Self-Service Displays of Tobacco Products by all Tobacco Retailers.

- (f) **ON-SITE SALES.** All Sales of Tobacco Products and Tobacco Paraphernalia to Consumers shall be conducted in-person at the licensed location. It shall be a violation of this [article / chapter] for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to Deliver Tobacco Products or Tobacco Paraphernalia or to knowingly or recklessly Sell Tobacco Products or Tobacco Paraphernalia to any Person that intends to Deliver the Tobacco Product or Tobacco Paraphernalia to a Consumer in the [City / County]. For purposes of this subsection, "Deliver" means the commercial transfer of Tobacco Products or Tobacco Paraphernalia to a Consumer at a location not licensed pursuant to this [article / chapter].

COMMENT: Prohibiting the delivery of Tobacco Products to Consumers aids in enforcement by ensuring that communities can conduct regular inspections at a Tobacco Retailer's licensed place of business. This subsection requires that all Sales of Tobacco Products and Tobacco Paraphernalia to Consumers occur at a business location licensed to engage in Tobacco Retailing under this Ordinance.

This subsection also makes it a violation of a Tobacco Retailer's license to *knowingly* or *recklessly* Sell a Tobacco Product or Tobacco Paraphernalia to a Person who intends to deliver the Tobacco Product or Tobacco Paraphernalia to a Consumer at a location not licensed to engage in Tobacco Retailing. The "knowingly or recklessly" requirement prevents a Tobacco Retailer from being penalized unless the retailer actually knew or reasonably should have known that the Person purchasing the Tobacco Product or Tobacco

Paraphernalia intended to deliver it to a Consumer at a non-licensed location.

Importantly, this subsection does *not* penalize a Tobacco Retailer for selling a Tobacco Product or Tobacco Paraphernalia to a Person who intends to transfer such products for non-commercial purposes, such as an individual purchasing these products for a family member or friend.

(g) **FALSE AND MISLEADING ADVERTISING PROHIBITED.** A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:

- (1) shall keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute Tobacco Retailing without a license under Section [____(*14)]; and
- (2) shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the Sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable Consumer to believe that such products can be obtained at that location.

COMMENT: This subsection provides that a retailer who cannot legally Sell Tobacco Products or Tobacco Paraphernalia may not display or advertise such products. To do so would be misleading to Consumers (see California Business & Professions Code Section 17500) and could invite illegal Sales. The First Amendment does not protect false commercial speech.

(h) [(The City or County may wish to add other desired requirements that, if violated, will constitute a violation of the license.)]

Sec. [____ (*3)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

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

COMMENT: Some communities have taken other, less comprehensive approaches to restricting the Sale of Flavored Tobacco Products, such as "buffer zones" and limiting the Sale of these products to adult-only tobacco stores. These approaches are important interventions, but they're not comprehensive prohibitions on Flavored Tobacco Product Sales. Communities should weigh the benefits and drawbacks of each approach.

"Buffer zones" prohibit the Sale of Flavored Tobacco Products within a specific distance of

Youth-Populated Areas, such as schools. An adult-only tobacco store approach limits the Sale of Flavored Tobacco Products to stores that primarily Sell Tobacco Products, derive a specified percentage of their annual revenue from Tobacco Products and Tobacco Paraphernalia, and prohibit Persons under the age of 18 from entering without a parent or legal guardian. Some jurisdictions also impose additional requirements on these stores, such as prohibiting them from selling alcohol or food for consumption on the premises.

These approaches may not provide the same public health benefits as a comprehensive, communitywide restriction on the Sale of Flavored Tobacco Products, and they are more complicated to implement and enforce. For example, buffer zones require the creation and maintenance of mapping surveys to determine the location of Tobacco Retailers, Youth-Populated Areas, and the distances between them. Buffer zones may also require more extensive education efforts and the development of tools and resources for Tobacco Retailers to determine whether their store is within a buffer zone. Similarly, restricting Flavored Tobacco Product Sales to adult-only tobacco stores requires tracking Tobacco Retailers' annual sales receipts to ensure they meet the specified requirements.

Despite these considerations, buffer zones and adult-only tobacco stores remain viable policy options for communities that wish to pursue less comprehensive restrictions on the Sale of Flavored Tobacco Products. If your community is interested in adopting one or more of these approaches, please contact ChangeLab Solutions for assistance.

- (b) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including, but not limited to, individual Flavored Tobacco Products, Packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to Sell or offer for Sale.
- (c) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:
 - (1) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
 - (2) used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
 - (3) taken action directed to Consumers that would be reasonably expected to cause Consumers to believe the Tobacco Product imparts a Characterizing Flavor.

COMMENT: This Model Ordinance penalizes only Tobacco Retailers who Sell or offer to Sell Flavored Tobacco Products, *not* individuals who purchase, attempt to purchase, possess, or use Flavored Tobacco Products.

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

Sec. [____ (*4)]. TOBACCO PRODUCT PRICING AND PACKAGING.

- (a) **PACKAGING AND LABELING.** No Tobacco Retailer shall Sell any Tobacco Product to any Consumer unless such product: (1) is sold in the original Manufacturer’s Packaging intended for Sale to Consumers; and (2) conforms to all applicable federal Labeling requirements.
- (b) **DISPLAY OF PRICE.** The price of each Tobacco Product offered for Sale shall be clearly and conspicuously displayed to indicate the price of the product.
- (c) **PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS.** No Tobacco Retailer shall:
 - (1) honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than the Full Retail Price;
 - (2) Sell any Tobacco Product to a Consumer through a multiple-Package discount or otherwise provide any such product to a Consumer for less than the Full Retail Price in consideration for the purchase of any Tobacco Product or any other item; or
 - (3) provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.

COMMENT: This subsection prohibits the following types of discounts:

- (1) Redemption of any Coupons, whether the Consumer obtains the Coupon in the store or elsewhere (eg, magazine, online printout, mailer, or phone app);
- (2) Discounts to reward Consumers for buying more than one Tobacco Product (eg, “Buy two packs of cigarettes, get one free,” “buy five Cigars, get a pack of Cigarettes for half price”); and
- (3) Discounts for other items (eg, “Buy a pack of Cigarettes and get a free lighter”).

(d) **MINIMUM PACKAGE SIZE FOR LITTLE CIGARS AND CIGARS.** No Tobacco Retailer shall Sell to a Consumer:

- (1) any Little Cigar unless it is sold in a Package of at least [twenty] Little Cigars;
or
- (2) any Cigar unless it is sold in a Package of at least at least [six] Cigars [;
provided, however, that this subsection shall not apply to a Cigar that has a price
of at least [\$X.00] per Cigar, including all applicable taxes and fees].

COMMENT: This subsection requires a minimum pack size for Little Cigars and Cigars. Requiring Little Cigars and Cigars to be sold in packs of a certain size raises the cost barrier to purchase these products. The purpose of this subsection is not to directly raise the price of Little Cigars and Cigars; rather, the purpose is to raise the cost of any single transaction. Section *4(e) directly establishes a price floor for these products.

The minimum Package size of twenty (20) Little Cigars is consistent with the minimum Package size for Cigarettes established by federal law. An option is provided to set a different minimum Package size for Little Cigars; however, because Little Cigars and Cigarettes are very similar, establishing different minimum Package sizes may simply encourage the substitution of one product for the other.

Subsection (2) provides an option to exempt Cigars that meet a certain price threshold. Because the policy goal of a minimum Package size requirement is to raise the cost barrier for any single transaction, the requirement may not be necessary for products that are already expensive enough to deter Sales to youth. For example, a single Cigar that costs \$10 may not need to be sold in a pack of six to deter youth Sales.

(e) **MINIMUM PRICES FOR CIGARETTES, LITTLE CIGARS, AND CIGARS.** No Tobacco Retailer shall Sell to a Consumer:

- (1) Cigarettes at a price that is less than [\$X.00] per Package of 20 Cigarettes, including all applicable taxes and fees;
- (2) Little Cigars at a price that is less than [\$X.00] per Package of Little Cigars, including all applicable taxes and fees; or
- (3) Cigars at a price that is less [\$X.00] per Cigar, including all applicable taxes and fees.

COMMENT: This section directly sets a price floor for the Sale of Cigarettes, Little Cigars, and Cigars. For Cigarettes and Little Cigars, the price floor is set as a minimum price required (eg, \$7) for a *Package* of Cigarettes or Little Cigars. The price floor is set differently for Cigars (*per Cigar* vs. *per Package*) because the number of Cigars in a Package varies greatly.

An option is provided to set different price floors for Cigarettes and Little Cigars; however, because these products are very similar, different price floors may simply encourage purchase of the cheaper alternative. Importantly, subsection (2) is intended to be adopted alongside Section *4(d)(1), which establishes a minimum Package size for Little Cigars. Local jurisdictions interested in adopting a minimum price for Little Cigars without a corresponding minimum Package size should contact ChangeLab Solutions for assistance.

Setting a minimum price for other types of Tobacco Products such as smokeless tobacco, pipe tobacco, and electronic smoking devices requires more careful deliberation due to the manner in which these other products are packaged and sold. Local jurisdictions interested in additional minimum pricing options should contact ChangeLab Solutions for assistance.

- (4) The minimum prices established in this section shall be adjusted annually (percent change in the annual average, not seasonally adjusted) by the Department in proportion with the Consumer Price Index: all urban consumers for all items for the [*Insert Statistical Area*] statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.

COMMENT: This subsection specifies that the minimum price for Cigarettes, Little Cigars, and Cigars established by subsections (1) through (3) will be adjusted annually in proportion with the Consumer Price Index. This annual adjustment occurs automatically without further action by the city council or board of supervisors and ensures that the effectiveness of the minimum prices do not diminish over time due to inflation.

The federal Bureau of Labor Statistics releases CPI data specific to particular regions or metropolitan areas, referred to as “statistical areas.” For California, these statistical areas include: (1) Los Angeles–Long Beach–Anaheim, (2) Pacific Division (includes all Pacific states), (3) Riverside–San Bernardino–Ontario, (4) San Diego–Carlsbad, and (5) San Francisco–Oakland–Hayward. Local jurisdictions should choose the nearest statistical area and insert it into the subsection above. More information on regional resources for the Consumer Price Index are available at <https://www.bls.gov/cpi/regional-resources.htm>. If your community has questions about selecting the appropriate statistical area, please contact ChangeLab Solutions for assistance.

Sec. [____ (*5)]. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

- (a) **MOBILE VENDING.** No license may issue to authorize Tobacco Retailing at other than a fixed location, including, but not limited to, Tobacco Retailing by Persons on foot or from vehicles.

COMMENT: Prohibiting mobile vending aids in enforcement by ensuring that communities can conduct regular inspections at the Tobacco Retailer’s permanent place of business.

- (b) **LICENSED CANNABIS BUSINESSES.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing at a location licensed for Commercial Cannabis Activity by the State of California in accordance with the Business and Professions Code Division 10. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article / chapter] for a licensee, or any of the licensee’s agents or employees, to engage in Commercial Cannabis Activity.

COMMENT: California state law prohibits the Sale of Tobacco Products at any location licensed to engage in Commercial Cannabis Activity (see California Business and Professions Code Section 26054(a)). This subsection incorporates this restriction by prohibiting the issuance or renewal of a Tobacco Retailer license for a location licensed to engage in Commercial Cannabis Activity.

- (c) **PHARMACIES.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing in a Pharmacy. For the purposes of this subsection, “Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for Sale, regardless of whether the retail establishment Sells other retail goods in addition to prescription pharmaceuticals.

COMMENT: The Sale of Tobacco Products at stores containing pharmacies may convey a mixed message to Consumers, who rely on these businesses for health-related services. Because stores containing pharmacies provide health-related information to the public, communities may be concerned that the Sale of Tobacco Products at these stores conveys a tacit approval of these products. Further, stores containing pharmacies often stock Tobacco Products near cessation aids, compromising the efforts of people who are trying to quit. This subsection addresses these concerns by prohibiting businesses that contain pharmacies from obtaining or renewing a Tobacco Retailer License. Existing pharmacies that lawfully Sell Tobacco Products at the time this Ordinance is adopted may apply for a one-time, non-renewable Tobacco Retailer license for the location (see Section *5(h)).

- (d) **PROXIMITY TO YOUTH-SENSITIVE AREAS.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [one thousand (1,000)] feet of a Youth-Populated Area as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Populated Area is located to the nearest point of the property line of the parcel on which the applicant’s business is located.

COMMENT: This subsection limits the proximity of Tobacco Retailers to areas frequented by youth. Research shows that children are more likely to experiment with Tobacco

Products when Tobacco Retailers are located near schools. Restricting Tobacco Product Sales within a certain distance of schools, playgrounds, libraries, and similar venues may help reduce youth initiation.

This subsection applies to both new and existing Tobacco Retailers. Existing Tobacco Retailers located within the specified distance of an existing Youth-Populated Area or that become ineligible to renew a license due to the creation of a new Youth-Populated Area may apply for a one-time, non-renewable license for the location (see Section *5(h)).

- (e) **PROXIMITY TO OTHER TOBACCO RETAILERS.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [five hundred (500)] feet of a Tobacco Retailer location already licensed pursuant to this [[article](#) / [chapter](#)] as measured by a straight line from the nearest point of the property line of the parcel on which the applicant’s business is located to the nearest point of the property line of the parcel on which an existing licensee’s business is located.

COMMENT: A high density of Tobacco Retailers has been associated with increased smoking rates, particularly among youth, and studies show that the number of Tobacco Retailers in underserved areas is disproportionately high. This subsection limits the proximity of new Tobacco Retailers to existing Tobacco Retailers. Under Section *5(i), existing Tobacco Retailers are “grandfathered” regardless of their distance from other Tobacco Retailers. However, a Tobacco Retailer will lose their grandfathered status if they fail to meet the conditions enumerated in Section *5(i).

The distance between Tobacco Retailers should be determined based on the needs of your community and the location of existing Tobacco Retailers. For example, a community that wants no more than one Tobacco Retailer per city block could examine whether a 500-foot buffer zone between retailers would sufficiently control the density of retailers. The density of existing Tobacco Retailers may vary significantly throughout a city or county. This provision could be further tailored to your community’s needs by restricting Tobacco Retailer density in specified areas or neighborhoods.

- (f) **PROXIMITY TO CANNABIS RETAILERS.** No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [five hundred (500)] feet of a Cannabis Retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant’s business is located to the nearest point of the property line of the parcel on which an existing Cannabis Retailer is located. For the purposes of this subsection, “Cannabis Retailer” means any retail establishment in which Cannabis or Cannabis Products are Sold or offered for Sale to Persons that do not hold a license to engage in Commercial Cannabis Activity issued by the State of California in accordance with the Business and Professions Code.

COMMENT: This subsection requires that Tobacco Retailers be located a specified minimum distance from existing businesses that Sell Cannabis or Cannabis Products to Consumers (“Cannabis Retailers”). Under Section *5(i), existing Tobacco Retailers are “grandfathered” regardless of their distance from a Cannabis Retailer. However, a Tobacco Retailer will lose their grandfathered status if they fail to meet the conditions enumerated in Section *5(i).

(g) **POPULATION AND DENSITY.** The issuing of Tobacco Retailer licenses is limited as follows:

- (1) The total number of Tobacco Retailer licenses within the [City / County] shall be limited to one for each [2,500], or fraction thereof, inhabitants of the [City / County].

COMMENT: Statewide, there is approximately one Tobacco Retailer for every 1,000 people. This provision provides a default of one Tobacco Retailer for every 2,500 people to reduce retailer density below the current statewide average. Setting the benchmark at 2,500 also makes the number of Tobacco Retailers in a community consistent with the number of off-sale alcohol retailers. A community will need to compare its population with the current number of Tobacco Retailers to determine whether the suggested benchmark will result in a reduction in retailers.

- (2) For the purposes of this subsection, the total population of the [City / County] shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.

COMMENT: This subsection is similar to California Business and Professions Code Section 23817.9, which dictates how the population will be measured to assist in determining the number of off-sale beer and wine retailers in a community.

- (3) No new license may be issued to authorize Tobacco Retailing if the number of Tobacco Retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).
- (h) A Tobacco Retailer operating lawfully on the date this ordinance is adopted that is ineligible to receive or renew a Tobacco Retailer’s license for a location pursuant to subsections (c) or (d) above, and any Tobacco Retailer operating lawfully that becomes ineligible to receive or renew a Tobacco Retailer’s license due to the creation of a new Youth-Populated Area, may apply for and receive a one-time, non-renewable license for the location pursuant to the standard licensing application procedure.

COMMENT: This subsection addresses the status of existing Tobacco Retailers that contain a pharmacy or are located too close to a Youth-Populated Area. A Tobacco Retailer lawfully operating on the date this ordinance is adopted that becomes ineligible to renew their Tobacco Retailer license because the store contains a pharmacy or is located too close to a Youth-Populated Area may receive a one-time, non-renewable Tobacco Retailer license.

- (i) Notwithstanding subsections (e) through (g), a Tobacco Retailer operating lawfully on the date this ordinance is adopted that would otherwise be eligible for a Tobacco Retailer license for the location for which a license is sought may receive or renew a license for that location so long as all of the following conditions are met:
- (1) The license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
 - (2) The Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days;
 - (3) The Tobacco Retailer does not substantially change the business premises or business operation. A substantial change to the business operation includes, but is not limited to, the transferring of a location:
 - i. to a new Proprietor(s) in an Arm's Length Transaction; or
 - ii. for which a significant purpose is avoiding the effect of violations of this [article / chapter]; and
 - (4) The Tobacco Retailer retains the right to operate under all other applicable laws.
 - (5) If the [City / County] determines that a Tobacco Retailer has substantially changed their business premises or operation and the Tobacco Retailer disputes this determination, the Tobacco Retailer bears the burden of proving by a preponderance of evidence that such change(s) do not constitute a substantial change.

COMMENT: A Tobacco Retailer lawfully operating on the date this ordinance is adopted and who meets the conditions enumerated in this subsection may continue to renew their Tobacco Retailer license regardless of their proximity to other Tobacco Retailers, proximity to Cannabis Retailers, or the total number of Tobacco Retailers licensed in the jurisdiction.

A Tobacco Retailer will lose this "grandfathered" status if they, for example, close their business or suspend Tobacco Retailing for more than sixty (60) consecutive days. They will also lose their grandfathering status if they substantially change the business premises or operations. For these purposes, a substantial change to the business operation includes the transfer of the business in an Arms-Length Transaction. However, so long as the transfer is not intended to avoid the effects of violations of this Ordinance, a Tobacco Retailer will not

lose their grandfathered status for transferring the business to a relative or related companies or partners.

- (j) [(The City or County may wish to add other desired limits.)]

COMMENT: Please see the optional Plug-in provisions available from ChangeLab Solutions for further limits on eligibility for a Tobacco Retailer license.

Sec. [____ (*6)]. APPLICATION PROCEDURE.

- (a) Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct retail tobacco Sales and shall be signed by each Proprietor or an authorized agent thereof.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the [City / County] that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this [article / chapter], contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section [____ (*13)(c)] of this [article / chapter]. Nothing in this [article / chapter] shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

- (1) The name, address, and telephone number of each Proprietor of the business seeking a license.
- (2) The business name, address, and telephone number of the single fixed location for which a license is sought.
- (3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this [article / chapter]. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
- (4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state license for the Sale of Tobacco Products, if the Tobacco Retailer Sells products that require such license.

- (5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this [article / chapter] and, if so, the dates and locations of all such violations within the previous five years.

COMMENT: This is an important provision because it requires a Tobacco Retailer to disclose past violations, which will make it easier for administrative and enforcement staff to determine if the application requires closer scrutiny. If the retailer does not disclose past violations and a license is issued, the license can be revoked as soon as the past violations are discovered pursuant to Section *11(c) below.

- (6) Such other information as the Department deems necessary for the administration or enforcement of this [article / chapter] as specified on the application form required by this section.

COMMENT: This requirement authorizes administrative and enforcement staff to establish application forms that require various types of information to aid effective operation and enforcement of the ordinance. For example, it may be useful to include in the application a statement, perhaps made under penalty of perjury, that the applicant has familiarized himself or herself with the legal requirements applicable to Tobacco Retailing. It would, of course, be helpful to provide written information about those requirements to those who apply for a license.

- (b) A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's license within [ten (10)] business days of a change.
- (c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law.

Sec. [____ (*7)]. ISSUANCE OF LICENSE. Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this [article / chapter], the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- (a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this [article / chapter];
- (b) The application seeks authorization for Tobacco Retailing at a location for which this [article / chapter] prohibits a license to be issued;
- (c) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this [article / chapter] prohibits a license to be issued; and/or

- (d) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this [article / chapter (eg, mobile vending)], that is unlawful pursuant to this Code [including without limitation the [eg, zoning ordinance, building code, and business license tax ordinance]], or that is unlawful pursuant to any other law.

COMMENT: This section makes issuance of licenses a mandatory, ministerial duty of staff unless substantial evidence can be shown supporting one of the four justifications for denial of the license. “Substantial evidence” referred to in this section is oral or written evidence within the city’s or county’s records that is sufficiently reliable and persuasive that a court will accept it. The usual test is that it must be the kind of evidence upon which responsible people rely in making important business, personal, and other decisions. The technical rules of evidence used for court proceedings do not apply.

Providing evidence of the bases for denial under subsections (b) and (c) should be simple and can take the form of a memo from Department staff or from staff members who maintain the records of suspensions and revocations. Proving that an application contains false information will be more difficult and require greater attention to the quality of evidence (ie, its persuasiveness and reliability). If oral evidence is to be relied upon, such as citizen complaints, it should be reduced to writing, as by a staff memo to the file.

Although a license technically should not be issued if prohibited elsewhere in the city or county code, it is valuable to make note of the other ordinances staff should consider under subsection (d). For example, if the code contains a zoning or conditional use permit ordinance affecting Tobacco Retailers, the licensing ordinance should refer to it directly to assist staff in implementing the ordinance. It is also helpful to cite building codes (to ensure the structure has been permitted) and any business license tax (to ensure that these taxes are also paid).

Sec. [____ (*8)]. LICENSE RENEWAL AND EXPIRATION.

- (a) **RENEWAL OF LICENSE.** A Tobacco Retailer’s license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer license is [one year]. Each Tobacco Retailer shall apply for the renewal of their Tobacco Retailer’s license and submit the license fee no later than [thirty (30)] days prior to expiration of the term.

COMMENT: The payment term of licenses is a matter for local policy. If this Ordinance is adopted as an amendment to a local business license ordinance, many administrative details, such as the term of licenses, may be covered by the existing license ordinance.

- (b) **EXPIRATION OF LICENSE.** A Tobacco Retailer’s license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

- (1) submit the license fee and application renewal form; and

- (2) submit a signed affidavit affirming that the Proprietor:
- (i) has not sold and will not Sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed; or
 - (ii) has waited the period of time required by Section [____(*14)(a)] of this [article / chapter] for Tobacco Retailing without a valid license before seeking renewal of the license.

Sec. [____ (*9)]. LICENSES NONTRANSFERABLE.

- (a) A Tobacco Retailer's license may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

COMMENT: This subsection requires a new Tobacco Retailer license for any change in ownership. For example, if a Proprietor to whom a license has been issued changes business locations, that Proprietor must apply for a new license prior to acting as a Tobacco Retailer at the new location. Or, if the business is sold or otherwise transferred to a new owner, the new owner must apply for a license for that location before acting as a Tobacco Retailer.

- (b) Notwithstanding any other provision of this [article / chapter], prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
- (1) the location has been transferred to new Proprietor(s) in an Arm's Length Transaction; and
 - (2) the new Proprietor(s) provide the [City / County] with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm's Length Transaction.

COMMENT: This subsection prevents sham transfers of ownership from defeating the effect of past violations. For example, if a Tobacco Retailer found in violation of the licensing law subsequently transfers ownership to a family member, and if the family member also violates the Ordinance, it would be counted as the second violation, not the first.

Sec. [____ (*10)]. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this [article / chapter] shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the [City / County] identified on the face

of the permit. Nothing in this [article / chapter] shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including, but not limited to:

- (a) any provision of this code [including without limitation the [eg, zoning ordinance, building codes, and business license tax ordinance]]; and/or
- (b) any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. Obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

COMMENT: This section makes clear that granting a Tobacco Retailer license does not affect a Tobacco Retailer's status under other local, state, or federal law. For example, obtaining a local license does not transform a business into a "retail or wholesale tobacco shop" in which smoking is allowed pursuant to California Labor Code Section 6404.5. The reference to zoning, building, and business tax licensing ordinances is intended to allow each community to enforce all of its local regulations and to not allow a Tobacco Retailer to claim that they reasonably believed that a Tobacco Retailer's license was all that was needed to do business in a given location. Tailor the list as appropriate.

Sec. [____ (*11)]. FEE FOR LICENSE.

The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of the [City Council / Board of Supervisors]. The fee shall be calculated so as to recover the cost of administration and enforcement of this [article / chapter], including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this [article / chapter]. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

COMMENT: It is lawful to impose a fee on applicants in an amount sufficient to offset the cost of the entire Tobacco Retailer enforcement program of the locality. *Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997); *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982 (2012).

The license fee can incorporate the cost of enforcing all tobacco laws related to Tobacco Retailing because a violation of any tobacco-related law is a basis for suspension of a license. For example, if the enforcing agency is the police department, a new police officer could be hired for Tobacco Retailer enforcement activities and a percentage of the cost of the hire could be included in the fee so long as the same percentage of the officer's efforts are used to monitor and enforce license-related tobacco laws.

One approach to setting the fee is to estimate the cost of administration and enforcement of the licensing program. For example, estimate the number of stores in the city or county and how much

time it will take a government employee to review applications and issue licenses. The fraction of that employee's time can then be used to calculate the annual cost of license administration, based on the cost of that employee's salary, benefits, and his or her share of administrative overhead, such as rent, insurance, legal advice, etc. As for enforcement costs, calculate, for example, how many yearly inspections are necessary (ideally one to four per retailer) and how much staff time each inspection demands.

It is important to document these calculations for two reasons: to provide support for the fee amount and to refute a legal challenge claiming the fee exceeds the cost of administration and enforcement. Budgeting for a Local Tobacco Retailer License Fee in California, available at www.changelabsolutions.org/publications/trl-fee-calculator-checklist, is a checklist designed to help jurisdictions think through all the costs of implementing and enforcing a Tobacco Retailer licensing ordinance. ChangeLab Solutions has also developed an online Tobacco Retailer license fee calculator, available at www.changelabsolutions.org/tobacco-control/trl-fee-calculator. Additional guidance on calculating a fee can also be found in the Griffith case cited above.

Note that the city or county can avoid having to calculate staff time by mandating that a set amount of time, eg, 15 hours a week, shall be spent on license enforcement activity (including enforcing the tobacco laws that give rise to a license violation). New staff could be hired to meet this mandate and the cost could be incorporated into the license fee.

Sec. [____ (*12)]. COMPLIANCE MONITORING.

- (a) Compliance with this [article / chapter] shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this [article / chapter]. The [City / County] may designate additional Persons to monitor compliance with this [article / chapter].

COMMENT: It is important to designate who will monitor Tobacco Retailers' compliance with this Ordinance. Explicitly naming the Department responsible for inspections helps ensure that the Ordinance will be enforced. Historically, many communities have focused their inspections on youth access laws intended to reduce the Sale of Tobacco Products to youth. Communities can also conduct inspections to determine compliance with a range of laws relating to the point-of-sale. For example, a community that has adopted this Model Ordinance could inspect Tobacco Retailers for compliance with restrictions on the Sale of Flavored Tobacco Products, minimum Package size and price requirements, and restrictions on the off-site Sale of Tobacco Products and Tobacco Paraphernalia (ie, Sales at a location that does not have a valid Tobacco Retailer license issued pursuant to this Ordinance).

- (b) The Department shall [(*see note on counties below)] inspect each Tobacco Retailer at least [three (3)] times per twelve (12) month period. Nothing in this paragraph shall create a right of action in any licensee or other Person against the [City / County] or its agents.

COMMENT: Providing a minimum number of inspections helps ensure some level of enforcement. One to four inspections per year may be appropriate depending on the number of Tobacco Retailers in a community and the level of funding established through the license fee. Communities with a large number of retailers may wish to inspect a subset of retailers that are selected either randomly or based on past violations and complaints.

*Note that counties likely may not directly mandate that the county sheriff conduct inspections. However, a county can provide dedicated funding to the sheriff that can be used only to conduct inspections. If this is desired, replace the first sentence in subsection (b) with:

“The Department shall be funded to inspect each Tobacco Retailer at least [three (3)] times per twelve (12) month period.”

Alternatively, the county could contract for enforcement and inspections. Cities, on the other hand, can directly mandate that a certain city law enforcement agency conduct inspections.

- (c) The [City Council / Board of Supervisors] of the [City / County] of [_____] does not intend and nothing in this [article / chapter] shall be interpreted to penalize the purchase, use, possession, or attempted purchase, use, or possession of Tobacco Products or Tobacco Paraphernalia by Persons under twenty-one years of age; provided, however, that Persons under twenty-one years of age remain subject to generally applicable laws regulating such conduct without respect to the Person’s age.

COMMENT ON YOUTH PENALTIES AND DECOYS: This provision clarifies that this Model Ordinance does not penalize youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia. Rather, the Model Ordinance penalizes only Tobacco Retailers who sell Tobacco Products or Tobacco Paraphernalia to individuals under 21 years old. Individuals under the age of 21 must, however, continue to abide by all generally applicable laws, such as local smokefree ordinances, that apply to everyone regardless of age.

Any jurisdiction that currently penalizes underage youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia should repeal such penalties. ChangeLab Solutions and other leading tobacco control organizations strongly recommend against the adoption or enforcement of laws penalizing youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia (commonly referred to as “Youth PUP Laws”). Evidence demonstrates that well-enforced laws targeting Tobacco Retailers provide greater public health benefits than Youth PUP Laws. Moreover, studies show that Youth PUP Laws only minimally affect tobacco use, and prioritizing enforcement of other tobacco control laws can more effectively reduce youth access to Tobacco Products. Finally, Youth PUP Laws raise significant equity concerns because their enforcement often disproportionately affects youth of color.

Previous versions of this Model Ordinance included a section granting immunity to youth that

participated in youth decoy (“sting”) operations. In 2016, California increased the minimum legal sales age for Tobacco Products and Tobacco Paraphernalia to 21 and repealed the state law that penalized youth who purchase or possess such products. In other words, current California state law penalizes only individuals or businesses that sell, give, or furnish Tobacco Products or Tobacco Paraphernalia to youth, not the youth who receive or possess such products.

Because there are no state law restrictions or penalties for youth who purchase or possess Tobacco Products or Tobacco Paraphernalia, local jurisdictions generally do not need to provide immunity to youth participating in enforcement operations. However, an exception applies to communities that have adopted local laws prohibiting youth from purchasing or possessing Tobacco Products or Tobacco Paraphernalia. Local communities with laws penalizing youth for purchasing or possessing Tobacco Products or Tobacco Paraphernalia should continue to include provisions granting immunity to youth who participate in enforcement operations. **Alternatively, the local community could align with evidence-based best practices by repealing youth purchase and possession penalties.**

Please contact ChangeLab Solutions for assistance if your community has questions about Youth PUP Laws, including questions about how to repeal existing Youth PUP laws, or questions about granting immunity to youth who participate in enforcement operations

Sec. [____ (*13)]. SUSPENSION OR REVOCATION OF LICENSE.

- (a) SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a Tobacco Retailer’s license shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee’s agents or employees, has violated any of the requirements, conditions, or prohibitions of this [article / chapter] or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law designated in Section [____(*2)] above.

COMMENT: The entire procedure for suspension of a license is not set forth in this Model Ordinance. The administrative procedure, civil proceeding, or combination of both should be tailored to the needs of your community and must comply with the basic requirements of due process (notice to retailer and an opportunity to be heard). ChangeLab Solutions can assist in creating a procedure for suspension of licenses that is appropriate for your community.

A plea of “no contest” or “nolo contendere” is usually used by a defendant to prevent having a “guilty” plea used against them in a subsequent civil suit. This provision puts a Tobacco Retailer on notice that even a “no contest” plea can still be used to establish a licensing violation and will result in the suspension of the retailer’s Tobacco Retailer license. Precedent exists in California state law for considering a “no contest” plea in relation to a license (see, eg, California Business and Professions Code Section 5063 regarding CPA

licenses). Note that a “no contest” plea can be used only to suspend a license, not to impose any other enforcement provisions provided in this Ordinance. If imposing additional enforcement provisions is desired (eg, imposing a civil fine), the city or county will need to prove that the underlying violation occurred and not rely on the “no contest” plea as conclusive evidence of a violation.

- (1) Upon a finding by the Department of a first violation of this [article / chapter] at a location within any [five-year (5)] period, the license shall be suspended for [thirty (30)] days.
- (2) Upon a finding by the Department of a second violation of this [article / chapter] at a location within any [five-year (5)] period, the license shall be suspended for [ninety (90)] days.
- (3) Upon a finding by the Department of a third violation of this [article / chapter] at a location within any [five-year (5)] period, the license shall be suspended for [one (1)] year.
- (4) Upon a finding by the Department of four or more violations of this [article / chapter] at a location within any [five-year (5)] period, the license shall be revoked.

COMMENT: This is the primary provision designating the length of time a Tobacco Retailer is ineligible to Sell Tobacco Products once the retailer's license is suspended pursuant to subsection (a). Stronger or more lenient penalties may be provided as a matter of local policy. For example, some local ordinances permit first-time offenders to “settle” their way out of a first suspension by instead paying a fine (\$1,000, for example). ChangeLab Solutions has prepared an optional Plug-in provision, which, if incorporated into the Model Ordinance, would establish guidelines for this policy alternative.

By providing mandatory penalties, this Model Ordinance does not provide any discretion to enforcement staff. This lack of discretion makes for a simple ordinance and standardized, even-handed enforcement. If discretion with respect to penalties is desired, the Ordinance must state the standard by which that discretion is to be exercised (eg, financial hardship, history of compliance, etc.). Note, too, that these penalty provisions do not prevent the use of other legal tools, such as criminal prosecution under Penal Code section 308, enforcement of the Stop Tobacco Access to Kids Enforcement Act (“STAKE Act,” California Business and Professions Code sections 22950-22962), or the several judicial remedies discussed below.

- (b) **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable to [the name of appellate agency, panel, or person (eg, police permit board, Board of Supervisors, city manager, or director of the health department)] and any appeal must be filed in writing with [the name of the

agency, panel, or person to receive the notice (eg, City Clerk or Clerk of the Board of Supervisors)] within ten days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to [the name of appellate agency, panel, or person] is not available for a revocation made pursuant to subsection (c) below.

COMMENT: Some right to appeal should be provided to ensure due process and to permit the city or county to correct any errors that may occur in the administrative process. How many levels of appeal to permit, which officer or body should hear the appeal, which officer should receive the notice of appeal, the time limits to set, etc. are local policy questions.

- (c) **REVOCATION OF LICENSE WRONGLY ISSUED.** A Tobacco Retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section [____(*7)] existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the [City / County]. Such a revocation shall be without prejudice to the filing of a new license application.

Sec. [____ (*14)]. TOBACCO RETAILING WITHOUT A VALID LICENSE.

- (a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:
- (1) After a first violation of this section at a location within any [five-year (5)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [thirty (30)] days have passed from the date of the violation.
 - (2) After a second violation of this section at a location within any [five-year (5)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [ninety (90)] days have passed from the date of the violation.
 - (3) After of a third or subsequent violation of this section at a location within any [five-year (5)] period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until [five (5)] years have passed from the date of the violation.

COMMENT: This provision prohibits a Person who Sells Tobacco Products or Tobacco Paraphernalia without a valid license from obtaining a license for a set amount of time. It does not apply to a wholly new business at the same site. This ineligibility period is in addition to any other penalty the city or county might pursue.

If a Tobacco Retailing location is sold in an Arm's Length Transaction, then the violations will not count against the location under the new owner's license pursuant to Section *7(b).

- (b) Tobacco Products and Tobacco Paraphernalia offered for Sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for Sale or exchange in violation of this [article / chapter]. The decision by the Department may be appealed pursuant to the procedures set forth in Section [____(*13)(b)]. Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

COMMENT: Seizing and destroying illegally offered products requires additional procedures beyond the normal hearing for license suspension. This is, in part, because the licensee may not be the true owner of the seized products (eg, a store owner could sell cigarettes on a consignment basis and share a portion of the sales price with the actual owner of the products). Such owners must be provided due process before destroying their property. We recommend an independent administrative hearing on the forfeiture of any seized products.

- (c) For the purposes of the civil remedies provided in this [article / chapter]:
- (1) Each day on which a Tobacco Product or Tobacco Paraphernalia is offered for Sale in violation of this [article / chapter] shall constitute a separate violation of this [article / chapter]; and
 - (2) Each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for Sale in violation of this [article / chapter] shall constitute a separate violation of this [article / chapter].

Sec. [____ (*15)]. ADDITIONAL REMEDIES.

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

COMMENT: The following subsections are designed to offer a variety of options to the jurisdiction and the enforcing agency. Jurisdictions may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency will have the discretion to choose which enforcement tools to use in all cases or from case to case. For example, an agency may want to use these alternative enforcement options to address violations that do not directly involve Sales to youth, such as self-service displays or failure to post STAKE Act signs. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time.

- (b) Whenever evidence of a violation of this [article / chapter] is obtained in any part through the participation of a Person under the age of twenty-one (21) years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this [article / chapter] and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

COMMENT: This provision is designed to eliminate any legal right a defendant might otherwise have to compel a youth decoy to testify or be deposed. If criminal remedies are pursued, constitutional rights of criminal defendants to confront witnesses against them may require a youth decoy to testify.

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

COMMENT: This provision provides civil fines for violating the licensing ordinance. It requires that the city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed \$1,000 per violation. California Government Code Section 36901.

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

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

- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this [article / chapter] shall also constitute a violation of this [article / chapter].

COMMENT: This is standard language that is typically included in a city or county code and may be omitted if duplicative of existing code provisions.

- (f) Violations of this [article / chapter] are hereby declared to be public nuisances.

COMMENT: By expressly stating that violations are public nuisances, this provision allows enforcement of the ordinance via the administrative nuisance abatement procedures commonly found in municipal codes. Such a declaration also facilitates injunctive relief, where a court orders that a defendant do certain things or refrain from doing certain things, such as selling Tobacco Products to youth.

- (g) In addition to other remedies provided by this [article / chapter] or by other law, any violation of this [article / chapter] may be remedied by a civil action brought by the [City Attorney / County Counsel], including, for example, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

COMMENT: It is common to provide that local government lawyers may go to court to seek injunctions and other penalties in addition to fines. The express provision for injunctive relief lowers the showing required to obtain a preliminary or permanent injunction as described in *IT Corp. v. County of Imperial*, 35 Cal. 3d 63 (1983).

Jurisdictions should carefully consider the appropriate nuisance abatement procedure. A nuisance abatement ordinance adopted pursuant to California Government Code Section 38773.5 may provide for treble damages for the second or subsequent nuisance abatement judgment within a two-year period (see California Government Code Section 38773.7 authorizing treble damages). However, treble damages are not available under the alternative nuisance abatement procedures authorized by California Government Code Section 38773.1 and California Health and Safety Code Section 17980.

Sec. [____ (*16)]. OTHER LAWS.

This [article / chapter] does not intend and shall not be interpreted to regulate any conduct where the regulation of such conduct has been preempted by the United States or the State of California.

SECTION III. CONSTRUCTION & SEVERABILITY. It is the intent of the [City Council / Board of Supervisors] of the [City / County] of [_____] to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed

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

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

SECTION IV. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after [30 days after date of enactment]; provided, however, that Section [____(*3)] shall not take effect until [6 months after date of enactment].

COMMENT: This section specifies the effective date of the Ordinance, and it should be tailored to give the city or county sufficient time to conduct implementation activities such as processing applications, issuing licenses, and educating Tobacco Retailers and the general public about the requirements and restrictions established by this Ordinance. General law cities and counties in California must provide a minimum of 30 days between an ordinance’s adoption and its effective date.

While this section specifies that most provisions go into effect 30 days after final adoption of the ordinance, it provides a six (6) month delay between when a jurisdiction adopts the Ordinance and when the prohibition on the Sale of menthol Cigarettes and other Flavored Tobacco Products goes into effect. This delay provides Tobacco Retailers with a six month period to Sell their remaining inventory of these products, as well as provides additional time for the local government to plan for implementation and enforcement.

Appendix A: Findings.

The [City Council of the City / Board of Supervisors of the County] of [*Insert Jurisdiction Name*] hereby finds and declares as follows:

WHEREAS, the [City Council / Board of Supervisors] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [City Council / Board of Supervisors], to protect the health, safety, and welfare of our residents;

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;²

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills roughly 6 million people and causes over half a trillion dollars in economic damage each year;¹²²

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;²

WHEREAS, tobacco use is the number one cause of preventable death in California¹²³ and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;
- More than 25% of all adult cancer deaths in California are attributable to smoking;¹²⁴
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;¹²⁵
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;²

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20%), Asian (15.6%), Hispanic (15.0%), and American Indian/Alaska Native (36.2%) males all report a higher smoking prevalence than White, Non-Hispanic males (14.8%);¹²⁶
- More than half (53.8%) of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;¹²⁶
- From 2002 to 2012, smoking prevalence increased among African American youth;¹²⁶
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;¹²⁶
- Those who identify as bisexual, compared with heterosexual, gay/lesbian/homosexual, not sexual, celibate, or other, smoke at rates disproportional to their population in California;¹²⁶
- Those who reported experiencing psychological distress over the past year smoke at rates disproportional to their population in California;¹²⁶
- [insert local data if available]

WHEREAS, despite the state’s efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;¹²⁶
- In California, from 2013 to 2015, approximately 15% of 9th and 11th grade students report using electronic smoking devices;¹²⁶
- Unless smoking rates decline, an estimated 5% of all California youth who are alive today will die prematurely from smoking-related diseases;^{125,127}
- In 2017, 22.8% of high school students in California had tried cigarette smoking;^{128,129}
- **[insert local data if available]**

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,⁶ as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;⁵⁸
- Tobacco industry documents state that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one”;¹³⁰
- The tobacco industry spends an estimated \$620 million annually to market tobacco products to California residents;¹²⁵

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 9.3% of high school students in California reported buying their own electronic cigarette from a store;^{128,129}
- 7.6% of California tobacco retailers unlawfully sold tobacco products to minors in 2015;¹²⁶
- **[insert local data if available]**

WHEREAS, requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the [City Council / Board of Supervisors] to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws, as evidenced by the following:

- Cigarettes are the number one product sold in U.S. convenience stores, and in 2012, they generated an average of \$622,248 in sales per store;¹³¹
- A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth tobacco sales laws;^{22,132}
- Studies found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations;^{133,134}
- A review of 33 California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 32 of these communities after the ordinances were enacted, with an average decrease of 28% in the youth sales rate;²¹

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,²³ largely because

these flavored products are marketed to youth and young adults,^{22,28,135} and younger smokers were more likely than older smokers to have tried these products;²²

WHEREAS, neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices;

WHEREAS, in 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;¹³⁶

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco^{22,137,138} and that these products help establish tobacco habits that can lead to long-term addiction;^{22,139}

WHEREAS, between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);²⁴

WHEREAS, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;^{6,22,140,141}

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;¹⁴²

WHEREAS, scientific reviews by the FDA and the Tobacco Products Scientific Advisory Committee (“TPSAC”) found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, but especially among youth, African Americans,²⁶ and possibly Hispanic and Latino individuals;²⁷ and that menthol cigarettes are associated with increased initiation and progression to regular cigarette smoking, increased dependence on cigarettes, and reduced success in smoking cessation, especially among African American menthol smokers;²⁶

WHEREAS, as a result of the FDA ban on all flavored cigarette products (except menthol), tobacco use by youth decreased by 6% and the likelihood of a youth becoming a cigarette smoker post flavor ban fell by 17%;¹⁴³

WHEREAS, an evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, found that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco;¹⁴⁴

WHEREAS, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens;¹⁴⁵⁻¹⁵²

WHEREAS, unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and in some cases actually increased among youth;^{22,153-157}

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are

made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use;^{2,41-44,46-49}

WHEREAS, research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;¹⁵⁸

WHEREAS, a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;⁴²

WHEREAS, unequal price increases across different types of tobacco products lead to substitution from one product to another;^{47,49}

WHEREAS, youth are particularly responsive to changes in tobacco prices,^{22,45} and evidence suggests that tobacco companies deliberately target youth with price reductions;^{44,56-58,159}

WHEREAS, evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,¹⁰⁷ Newport menthol cigarettes cost less in areas with higher proportions of African Americans,¹⁰⁷ and underserved communities are targeted with price discounts and coupons;^{160,161}

WHEREAS, tobacco companies spend considerably to decrease the price of their products in order to counter state and local tobacco control efforts, appeal to price-sensitive consumers, and increase demand for tobacco products. For example, tobacco companies spent the majority of their marketing budgets on price discounts, accounting for nearly \$8 billion of \$8.7 billion advertising and promotional expenditures in 2016;^{43,44,54}

WHEREAS, the tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, individuals who use price minimization strategies save an average \$1.04 per pack (or 18.6% off the total);⁶¹

WHEREAS, price-discounted sales account for a substantial proportion of overall tobacco product sales;⁵⁵

WHEREAS, although federal and state law ban the sale of individual cigarettes,^{70,162} neither federal nor California state laws restrict the sale of individual little cigars and cigars;

WHEREAS, many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.⁷¹ For example:

- 87.4% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than \$1.00;¹³⁶
- From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%;³⁵

WHEREAS, a 10% increase in cigar prices has been associated with decreased cigar sales¹⁶³ and may significantly reduce cigar use among youth;¹⁶⁴

WHEREAS, neither federal nor California state laws set a minimum price for tobacco products;

WHEREAS, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;⁷³

WHEREAS, studies have estimated that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13%;⁵⁹ the impact of a \$10 federal minimum floor price for cigarettes could reduce the number of packs sold in the United States by 5.7 billion per year and prompt 10 million smokers to quit; and that state-level minimum floor price laws designed to raise the average price of cigarette packs by \$2.00 could decrease cigarette consumption by 15.9% and reduce income-based smoking disparities more than a comparable excise tax increase;⁷⁷

WHEREAS, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke;^{165,166}

WHEREAS, pharmacies sell cigarettes cheaper than other stores;¹⁰⁷

WHEREAS, tobacco-free pharmacy sales policies decrease the availability of tobacco products by reducing tobacco retailer density by up to three times compared with communities that do not have such policies,¹⁰⁸ and immediately after the nationwide CVS policy change to not sell tobacco products, cigarette purchases declined and smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely;¹⁰⁹

WHEREAS, the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day;⁸¹

WHEREAS, the density of tobacco retailers near schools has been associated with increased youth smoking rates;⁸⁹

WHEREAS, adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller⁹³ and density is higher;¹⁶⁷

WHEREAS, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;^{84,85,102,168}

WHEREAS, disparities in tobacco retailer location and density differ between rural and urban settings, with higher density in urban locations¹⁶⁹ and variations for Hispanics in rural communities¹⁷⁰ as well as intra-urban differences by income;¹⁷⁰

WHEREAS, policies to reduce tobacco retailer density have been shown to be effective^{103,171,172} and may reduce or eliminate inequities in the location and distribution of tobacco retailers;

WHEREAS, six out of 10 tobacco retailers in California sold cigar products using cannabis-related flavor descriptors and these retailers were more prevalent in school neighborhoods with lower median income;¹⁷³

WHEREAS, both youth and adult tobacco users are more likely to also use cannabis;¹⁷⁴

WHEREAS, strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products;^{22,175}

WHEREAS, strong policy enforcement and monitoring of retailer compliance with tobacco control policies (eg, requiring identification checks) is necessary to achieve reductions in youth tobacco sales;¹⁷⁶

WHEREAS, the National Academy of Medicine recommends imposing penalties on business owners to provide sufficient incentives to comply with the law, and business owners with an

economic incentive to avoid violations are more likely to establish company-wide policies and incorporate instruction on tobacco laws into employee training;¹⁷⁷

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3);

WHEREAS, California courts have affirmed the power of the [City Council / Board of Supervisors] to regulate business activity to discourage violations of law. See, eg, *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010);

WHEREAS, over 130 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco;¹⁹

WHEREAS, the [City Council / Board of Supervisors] has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, the [City Council / Board of Supervisors] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [*Insert Jurisdiction Name*] in order to protect the health, safety, and welfare of our residents;

NOW THEREFORE, it is the intent of the [City Council / Board of Supervisors], in enacting this ordinance, to ensure compliance with the business standards and practices of the [City / County] and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to youth, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

References

1. Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs—2014*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.
2. U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.
3. Family Smoking Prevention and Tobacco Control Act § 3(1), Pub. L. No. 111-31, 123 Stat. 1776-1858 (2009).
4. Roeseler A, Burns D. The quarter that changed the world. *Tob Control*. 2010;19 Suppl 1:i3-i15. doi: 10.1136/tc.2009.030809.
5. U.S. National Cancer Institute. *A Socioecological Approach to Addressing Tobacco-Related Health Disparities*. National Cancer Institute Tobacco Control Monograph 22. NIH Publication No. 17-CA-8035A. Bethesda, MD: U.S. Department of Health and Human Services, National Institutes of Health, National Cancer Institute. 2017.
6. United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd in part, vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009), and order clarified, 778 F. Supp. 2d 8 (D.D.C. 2011).
7. California Tobacco Control Program. *California Tobacco Facts and Figures: A Retrospective Look at 2017*. Sacramento, CA: California Department of Public Health. 2018.
8. California Tobacco Education and Research Oversight Committee. *New Challenges—New Promise for All: Toward a Tobacco-Free California Master Plan 2018-2020*. Sacramento, CA: California Tobacco Education and Research Oversight Committee. 2018.
9. California Tobacco Control Program. *A Story of Inequity*. 2018; <http://tobaccofreeca.com/story-of-inequity/>. Accessed July 13, 2018.
10. Cal. Bus. & Prof. Code § 22972(a).
11. Cal. Bus. & Prof. Code § 22970.1 (Finding that state tobacco excise tax revenues “have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products,” and that “the licensing of ... retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.”).
12. Cal. Rev. & Tax Code § 30111 (providing that state tobacco taxes “are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products.”); Cal. Bus. & Prof. Code § 22964 (providing that the Stop Tobacco Access to Kids Act does not “preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive legal age to purchase or possess tobacco products.”).
13. Cal. Bus. & Prof. Code § 22971.3 (“Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.”).
14. Cal. Penal Code § 308(a)(1)(A).
15. Cal. Bus. & Prof. Code §§ 22950-22964.
16. 21 C.F.R. §§ 1140.14(a)(4), 1140.16(b).
17. 21 C.F.R. § 1140.14(a)(2), (b)(2).
18. California Tobacco Control Program. Policy Evaluation Tracking System (PETS). Accessed May 24, 2018.
19. The American Lung Association in California Center for Tobacco Policy and Organizing. *Matrix of Strong Local Tobacco Retailer Licensing Ordinances*. 2017. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2017/06/Matrix-of-Strong-Local-TRL-Ordinances-June-2017.pdf>.
20. The American Lung Association in California Center for Tobacco Policy and Organizing. *Local Tobacco Policies in the Retail Environment*. 2017. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2017/08/Local-Tobacco-Policies-in-the-Retail-Environment-2017-08.pdf>.
21. The American Lung Association in California Center for Tobacco Policy and Organizing. *Tobacco Retailer Licensing is Effective*. 2013. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2016/10/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>.
22. U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at:

- <https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/>.
23. 21 U.S.C. § 387g(a)(1)(A).
 24. Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014. *Tob Control*. 2016;25(Suppl 2):ii14-ii20. doi: 10.1136/tobaccocontrol-2016-053329.
 25. King BA, Dube SR, Tynan MA. Flavored cigar smoking among U.S. adults: findings from the 2009-2010 National Adult Tobacco Survey. *Nicotine Tob Res*. 2013;15(2):608-614. doi: 10.1093/ntr/nts178.
 26. Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. Available at: <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.
 27. Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*. 2011. Available at: <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
 28. Villanti AC, Collins LK, Niaura RS, Gagosian SY, Abrams DB. Menthol cigarettes and the public health standard: a systematic review. *BMC Public Health*. 2017;17(1):983. doi: 10.1186/s12889-017-4987-z.
 29. Fallin A, Goodin AJ, King BA. Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. *Am J Prev Med*. 2015;48(1):93-97. doi: 10.1016/j.amepre.2014.07.044.
 30. Cohn AM, Johnson AL, Hair E, Rath JM, Villanti AC. Menthol tobacco use is correlated with mental health symptoms in a national sample of young adults: implications for future health risks and policy recommendations. *Tob Induc Dis*. 2016;14:1. doi: 10.1186/s12971-015-0066-3.
 31. Chen C, Isabelle LM, Pickworth WB, Pankow JF. Levels of mint and wintergreen flavorants: smokeless tobacco products vs. confectionery products. *Food Chem Toxicol*. 2010;48(2):755-763. doi: 10.1016/j.fct.2009.12.015.
 32. Morris DS, Fiala SC, Pawlak R. Opportunities for policy interventions to reduce youth hookah smoking in the United States. *Prev Chronic Dis*. 2012;9:120082. doi: 10.5888/pcd9.120082.
 33. Cameron JM, Howell DN, White JR, Andrenyak DM, Layton ME, Roll JM. Variable and potentially fatal amounts of nicotine in e-cigarette nicotine solutions. *Tob Control*. 2014;23(1):77-78. doi: 10.1136/tobaccocontrol-2012-050604.
 34. Tsai J, Walton K, Coleman BN, et al. Reasons for Electronic Cigarette Use Among Middle and High School Students - National Youth Tobacco Survey, United States, 2016. *MMWR Morb Mortal Wkly Rep*. 2018;67(6):196-200. doi: 10.15585/mmwr.mm6706a5.
 35. Cullen J, Mowery P, Delnevo C, et al. Seven-year patterns in US cigar use epidemiology among young adults aged 18-25 years: a focus on race/ethnicity and brand. *Am J Public Health*. 2011;101(10):1955-1962. doi: 10.2105/AJPH.2011.300209.
 36. Delnevo CD, Giovenco DP, Miller Lo EJ. Changes in the Mass-merchandise Cigar Market since the Tobacco Control Act. *Tob Regul Sci*. 2017;3(2 Suppl 1):S8-S16.
 37. American Academy of Pediatrics, American Cancer Society Cancer Action Network, American Heart Association, American Stroke Association, American Lung Association, Kids Aft-F. *The Flavor Trap: How Tobacco Companies Are Luring Kids with Candy-Flavored E-Cigarettes and Cigars*. 2017.
 38. Ambrose BK, Day HR, Rostron B, et al. Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014. *JAMA*. 2015;314(17):1871-1873. doi: 10.1001/jama.2015.13802.
 39. Corey CG, Ambrose BK, Apelberg BJ, King BA. Flavored Tobacco Product Use Among Middle and High School Students — United States, 2014. *MMWR Morb Mortal Wkly Rep*. 2015;64(38):1066-1070.
 40. Bonhomme MG, Holder-Hayes E, Ambrose BK, et al. Flavoured non-cigarette tobacco product use among US adults: 2013-2014. *Tob Control*. 2016;25(Suppl 2):ii4-ii13. doi: 10.1136/tobaccocontrol-2016-053373.
 41. Institute of Medicine. *Ending the Tobacco Problem: A Blueprint for the Nation*. Washington, DC. 2007. Available at: <https://www.nap.edu/catalog/11795/ending-the-tobacco-problem-a-blueprint-for-the-nation>.
 42. Community Preventive Services Task Force. *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products*. 2012. Available at: <https://www.thecommunityguide.org/sites/default/files/assets/Tobacco-Increasing-Unit-Price.pdf>.
 43. Centers for Disease Control and Prevention. State Cigarette Minimum Price Laws—United States, 2009. *MMWR Morb Mortal Wkly Rep*. 2010;59(13):389-392.
 44. Chaloupka FJ, Cummings KM, Morley C, Horan J. Tax, price and cigarette smoking: evidence from the tobacco documents and implications for tobacco company marketing strategies. *Tob Control*. 2002;11(Supplement 1):i62-i72. doi: 10.1136/tc.11.suppl_1.i62.
 45. Chaloupka F. *Tobacco Control Lessons Learned: The Impact of State and Local Policies*. ImpactTeen. 2010.

- Available at: <http://tobaccopolicycenter.org/wp-content/uploads/2017/11/153.pdf>.
46. Chaloupka FJ, Yurekli A, Fong GT. Tobacco taxes as a tobacco control strategy. *Tob Control*. 2012;21(2):172-180. doi: 10.1136/tobaccocontrol-2011-050417.
 47. Huang J, Gwamnicki C, Xu X, Caraballo RS, Wada R, Chaloupka FJ. A comprehensive examination of own- and cross-price elasticities of tobacco and nicotine replacement products in the U.S. *Prev Med*. 2018. doi: 10.1016/j.ypmed.2018.04.024.
 48. Pesko MF, Huang J, Johnston LD, Chaloupka FJ. E-cigarette price sensitivity among middle- and high-school students: evidence from monitoring the future. *Addiction*. 2018;113(5):896-906. doi: 10.1111/add.14119.
 49. Jawad M, Lee JT, Glantz S, Millett C. Price elasticity of demand of non-cigarette tobacco products: a systematic review and meta-analysis. *Tob Control*. 2018. doi: 10.1136/tobaccocontrol-2017-054056.
 50. U.S. Department of Health and Human Services. *Reducing Tobacco Use: A Report of the Surgeon General*. 2010. Available at: https://www.cdc.gov/tobacco/data_statistics/sgr/2000/complete_report/pdfs/fullreport.pdf.
 51. Campaign for Tobacco-Free Kids. *State Excise Tax Rates for Non-cigarette Tobacco Products*. 2018. Available at: <https://www.tobaccofreekids.org/assets/factsheets/0169.pdf>.
 52. Cal. Rev. & Tax. Code § 30111.
 53. Schleicher NC, Johnson T, Ahmad I, Henriksen L. *Tobacco Marketing in California's Retail Environment (2011-2014)*. Palo Alto, CA: Stanford Prevention Research Center, Stanford University School of Medicine. 2015. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/TobaccoMarketinginCaliforniasRetailEnvironmentNotationsFinal2916.pdf>.
 54. Federal Trade Commission. *Cigarette Report for 2016*. 2018. Available at: https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2016-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_for_2016_0.pdf.
 55. Wang TW, Falvey K, Gammon DG, et al. Sales Trends in Price-Discounted Cigarettes, Large Cigars, Little Cigars, and Cigarillos—United States, 2011–2016. *Nicotine Tob Res*. 2017. doi: 10.1093/ntr/ntx249.
 56. White VM, White MM, Freeman K, Gilpin EA, Pierce JP. Cigarette promotional offers: who takes advantage? *Am J Prev Med*. 2006;30(3):225-231. doi: 10.1016/j.amepre.2005.11.001.
 57. Pierce JP, Gilmer TP, Lee L, Gilpin EA, de Beyer J, Messer K. Tobacco industry price-subsidizing promotions may overcome the downward pressure of higher prices on initiation of regular smoking. *Health Econ*. 2005;14(10):1061-1071. doi: 10.1002/hec.990.
 58. Ling PM, Glantz SA. Why and How the Tobacco Industry Sells Cigarettes to Young Adults: Evidence From Industry Documents. *Am J Public Health*. 2002;92(6):908-916. doi: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447481/>.
 59. Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. *Arch Pediatr Adolesc Med*. 2007;161(5):440-445. doi: 10.1001/archpedi.161.5.440.
 60. Xu X, Wang X, Caraballo RS. Is Every Smoker Interested in Price Promotions? An Evaluation of Price-Related Discounts by Cigarette Brands. *J Public Health Manag Pract*. 2016;22(1):20-28. doi: 10.1097/PHH.0000000000000223.
 61. Xu X, Pesko MF, Tynan MA, Gerzoff RB, Malarcher AM, Pechacek TF. Cigarette price-minimization strategies by U.S. smokers. *Am J Prev Med*. 2013;44(5):472-476. doi: 10.1016/j.amepre.2013.01.019.
 62. Doogan NJ, Wewers ME, Berman M. The impact of a federal cigarette minimum pack price policy on cigarette use in the USA. *Tob Control*. 2018;27(2):203-208. doi: 10.1136/tobaccocontrol-2016-053457.
 63. Cal. Health & Safety Code § 118950(b)-(c)(1). The California Supreme Court upheld this law, finding that federal law did not preempt the state law. *People v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408 (Cal. 2005).
 64. Chicago Municipal Code § 4-64-905.
 65. New York City Administrative Code § 17-176.1.
 66. Oakland, California, Municipal Code § 5.91.040.
 67. Providence, Rhode Island Municipal Code § 14-303.
 68. Nat'l Ass'n of Tobacco Outlets, Inc. v. City of New York, 27 F. Supp. 3d 415 (S.D.N.Y. 2014).
 69. Nat'l Ass'n of Tobacco Outlets, Inc. v. City of Providence, R.I., 731 F.3d 71 (1st Cir. 2013).
 70. 21 C.F.R. § 1140.16(b).
 71. California Department of Public Health California Tobacco Control Program. *Tobacco in the Retail Environment*. 2012. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/TobaccoRetailEnvironmentFactSheetEasyPrint.pdf>.
 72. Henriksen L, Andersen-Rodgers E, Zhang X, et al. Neighborhood Variation in the Price of Cheap Tobacco Products in California: Results From Healthy Stores for a

- Healthy Community. *Nicotine Tob Res.* 2017;19(11):1330-1337. doi: 10.1093/ntr/ntx089.
73. Huang J, Chiqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. Do state minimum markup/price laws work? Evidence from retail scanner data and TUS-CPS. *Tob Control.* 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocontrol-2016-053093.
74. Sonoma County, California Municipal Code § 32A-3(k).
75. Windsor, California Municipal Code § 3-11-115(l).
76. San Leandro Municipal Code § 4-36-150(k).
77. Golden SD, Farrelly MC, Luke DA, Ribisl KM. Comparing projected impacts of cigarette floor price and excise tax policies on socioeconomic disparities in smoking. *Tob Control.* 2016;25(Suppl 1):i60-i66. doi: 10.1136/tobaccocontrol-2016-053230.
78. Brock B, Carlson SC, Moilanen M, Schillo BA. Effectiveness of Local Policy Efforts to Increase the Price of Cheap Cigars in Minnesota. *Am J Public Health.* 2017;107(1):127-129. doi: 10.2105/AJPH.2016.303517.
79. Hill S, Amos A, Clifford D, Platt S. Impact of tobacco control interventions on socioeconomic inequalities in smoking: review of the evidence. *Tob Control.* 2014;23(e2):e89-97. doi: 10.1136/tobaccocontrol-2013-051110.
80. California Department of Public Health California Tobacco Control Program. *State Health Officer's Report on Tobacco Use and Promotion in California.* Sacramento, CA. 2013. Available at: <https://www.cdph.ca.gov/Programs/CCDCPHP/DCDIC/CTCB/CDPH%20Document%20Library/Policy/RetailStrategies/CAHealthOfficersReportonTobaccoFINARevised010213.pdf>.
81. Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health.* 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.
82. Lipperman-Kreda S, Grube JW, Friend KB, Mair C. Tobacco outlet density, retailer cigarette sales without ID checks and enforcement of underage tobacco laws: associations with youths' cigarette smoking and beliefs. *Addiction.* 2016;111(3):525-532. doi: 10.1111/add.13179.
83. Novak SP, Reardon SF, Raudenbush SW, Buka SL. Retail tobacco outlet density and youth cigarette smoking: a propensity-modeling approach. *Am J Public Health.* 2006;96(4):670-676. doi: 10.2105/AJPH.2004.061622.
84. Siahpash M, Jones PR, Singh GK, Timsina LR, Martin J. Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods. *Public Health.* 2010;124(9):525-529. doi: 10.1016/j.puhe.2010.04.010.
85. Lee JG, Sun DL, Schleicher NM, Ribisl KM, Luke DA, Henriksen L. Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study. *J Epidemiol Community Health.* 2017;71(5):487-492. doi: 10.1136/jech-2016-208475.
86. Finan LJ, Lipperman-Kreda S, Abadi M, et al. Tobacco outlet density and adolescents' cigarette smoking: a meta-analysis. *Tob Control.* 2018. doi: 10.1136/tobaccocontrol-2017-054065.
87. Schleicher NC, Johnson TO, Fortmann SP, Henriksen L. Tobacco outlet density near home and school: Associations with smoking and norms among US teens. *Prev Med.* 2016;91:287-293. doi: 10.1016/j.ypmed.2016.08.027.
88. McCarthy WJ, Mistry R, Lu Y, Patel M, Zheng H, Dietsch B. Density of tobacco retailers near schools: effects on tobacco use among students. *Am J Public Health.* 2009;99(11):2006-2013. doi: 10.2105/AJPH.2008.145128.
89. Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Prev Med.* 2008;47(2):210-214. doi: 10.1016/j.ypmed.2008.04.008.
90. Lovato CY, Hsu HCH, Sabiston CM, Hadd V, Nykiforuk CIJ. Tobacco Point-of-Purchase marketing in school neighbourhoods and school smoking prevalence: a descriptive study. *Can J Public Health.* 2007;98(4):265-270. doi: 10.17269/cjph.98.865.
91. Cantrell J, Pearson JL, Anesetti-Rothermel A, Xiao H, Kirchner TR, Vallone D. Tobacco Retail Outlet Density and Young Adult Tobacco Initiation. *Nicotine Tob Res.* 2016;18(2):130-137. doi: 10.1093/ntr/ntv036.
92. Young-Wolff KC, Henriksen L, Delucchi K, Prochaska JJ. Tobacco retailer proximity and density and nicotine dependence among smokers with serious mental illness. *Am J Public Health.* 2014;104(8):1454-1463. doi: 10.2105/AJPH.2014.301917.
93. Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health.* 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.
94. Luke DA, Ribisl KM, Smith C, Sorg AA. Family Smoking Prevention And Tobacco Control Act: banning outdoor tobacco advertising near schools and playgrounds. *Am J Prev Med.* 2011;40(3):295-302. doi: 10.1016/j.amepre.2010.11.018.
95. Fakunle DO, Milam AJ, Furr-Holden CD, Butler J, 3rd, Thorpe RJ, Jr., LaVeist TA. The inequitable distribution of tobacco outlet density: the role of income in two Black Mid-Atlantic geopolitical areas. *Public Health.* 2016;136:35-40. doi: 10.1016/j.puhe.2016.02.032.

96. Galiatsatos P, Kineza C, Hwang S, et al. Neighbourhood characteristics and health outcomes: evaluating the association between socioeconomic status, tobacco store density and health outcomes in Baltimore City. *Tob Control*. 2017. doi: 10.1136/tobaccocontrol-2017-053945.
97. Berg CJ, Henriksen L, Cavazos-Rehg PA, Haardoefer R, Freisthler B. The emerging marijuana retail environment: Key lessons learned from tobacco and alcohol retail research. *Addict Behav*. 2018;81:26-31. doi: 10.1016/j.addbeh.2018.01.040.
98. Feighery EC, Schleicher NC, Boley Cruz T, Unger JB. An examination of trends in amount and type of cigarette advertising and sales promotions in California stores, 2002-2005. *Tob Control*. 2008;17(2):93-98. doi: 10.1136/tc.2007.022046.
99. Jernigan DH, Sparks M, Yang E, Schwartz R. Using public health and community partnerships to reduce density of alcohol outlets. *Prev Chronic Dis*. 2013;10:E53. doi: 10.5888/pcd10.120090.
100. Cal. Bus. & Prof. Code § 23817.5.
101. D'Angelo H, Ammerman A, Gordon-Larsen P, Linnan L, Lytle L, Ribisl KM. Sociodemographic Disparities in Proximity of Schools to Tobacco Outlets and Fast-Food Restaurants. *Am J Public Health*. 2016;106(9):1556-1562. doi: 10.2105/AJPH.2016.303259.
102. Loomis BR, Kim AE, Goetz JL, Juster HR. Density of tobacco retailers and its association with sociodemographic characteristics of communities across New York. *Public Health*. 2013;127(4):333-338. doi: 10.1016/j.puhe.2013.01.013.
103. Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine Tob Res*. 2017;19(2):239-244. doi: 10.1093/ntr/ntw185.
104. Bright Research Group for the San Francisco Tobacco-Free Project. *Reducing Tobacco Retail Density in San Francisco: A Case Study*. 2016. Available at: <http://2gahjr48mok145j3z438sknv.wpengine.netdna-cdn.com/wp-content/uploads/Retail-Density-Case-Study-1.27.16-FINAL-to-TFP.pdf>.
105. Center for Public Health Systems Science. *Point-of-Sale Report to the Nation: Realizing the Power of States and Communities to Change the Tobacco Retail and Policy Landscape*. St. Louis, MO: Center for Public Health Systems Science at the Brown School at Washington University in St. Louis and the National Cancer Institute, State and Community Tobacco Control Research Initiative. 2016. Available at: https://cpb-us-w2.wpmucdn.com/sites.wustl.edu/dist/e/1037/files/2017/10/Reporttothenation_2016-2mfepqr.pdf.
106. Attorneys General Call on Retail Pharmacies to Stop Selling Tobacco Products [press release]. March 28, 2014. Available at: <https://news.delaware.gov/2014/03/18/attorneys-general-call-on-retail-pharmacies-to-stop-selling-tobacco-products/>.
107. Henriksen L, Schleicher NC, Barker DC, Liu Y, Chaloupka FJ. Prices for Tobacco and Nontobacco Products in Pharmacies Versus Other Stores: Results From Retail Marketing Surveillance in California and in the United States. *Am J Public Health*. 2016;106(10):1858-1864. doi: 10.2105/AJPH.2016.303306.
108. Jin Y, Lu B, Klein EG, Berman M, Foraker RE, Ferketich AK. Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts. *Am J Public Health*. 2016;106(4):679-685. doi: 10.2105/AJPH.2015.303040.
109. Polinski JM, Howell B, Gagnon MA, Kymes SM, Brennan TA, Shrank WH. Impact of CVS Pharmacy's Discontinuance of Tobacco Sales on Cigarette Purchasing (2012-2014). *Am J Public Health*. 2017;107(4):556-562. doi: 10.2105/AJPH.2016.303612.
110. Cal. Bus. & Prof. Code § 22963.
111. Prevent All Cigarettes Trafficking Act of 2009, Pub. L. No. 111-154, 124 Stat. 1087 (2009).
112. 21 U.S.C. § 387f(d)(4)(A).
113. Food and Drug Administration. *Report to Congress—Progress and Effectiveness of the Implementation of the Family Smoking Prevention and Tobacco Control Act*. U.S. Department of Health and Human Services. 2013. Available at: <https://www.fda.gov/downloads/tobaccoproducts/labeling/rulesregulationsguidance/ucm371271.pdf>.
114. Williams RS, Derrick J, Phillips KJ. Cigarette sales to minors via the internet: how the story has changed in the wake of federal regulation. *Tob Control*. 2017;26(4):415-420. doi: 10.1136/tobaccocontrol-2015-052844.
115. Williams RS, Derrick J, Liebman AK, LaFleur K, Ribisl KM. Content analysis of age verification, purchase and delivery methods of internet e-cigarette vendors, 2013 and 2014. *Tob Control*. 2018;27(3):287-293. doi: 10.1136/tobaccocontrol-2016-053616.
116. FDA announces comprehensive regulatory plan to shift trajectory of tobacco-related disease, death [press release]. July 28, 2017. Available at: <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm568923.htm>.
117. Stebbins KR. Tobacco, politics and economics: Implications for global health. *Social Science & Medicine*. 1991;33(12):1317-1326. doi: 10.1016/0277-9536(91)90275-h.

118. Jamal A, Gentzke A, Hu SS, et al. Tobacco Use Among Middle and High School Students - United States, 2011-2016. *MMWR Morb Mortal Wkly Rep.* 2017;66(23):597-603. doi: 10.15585/mmwr.mm6623a1.
119. Healthy Retail SF. <https://susanahennessey-lavery.squarespace.com>. Accessed July 13, 2018.
120. Davis KC, Grimshaw V, Merriman D, et al. Cigarette trafficking in five northeastern US cities. *Tob Control.* 2014;23(e1):e62-68. doi: 10.1136/tobaccocontrol-2013-051244.
121. Kurti MK, von Lampe K, Thompkins DE. The illegal cigarette market in a socioeconomically deprived inner-city area: the case of the South Bronx. *Tob Control.* 2013;22(2):138-140. doi: 10.1136/tobaccocontrol-2011-050412.
122. World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2013: Enforcing Bans on Tobacco Advertising, Promotion and Sponsorship.* 2013. Available at: http://www.who.int/tobacco/global_report/2013/en/.
123. California Department of Public Health California Tobacco Control Program. The #1 Preventable Cause of Death. <http://tobaccofreeca.com/other-tobacco-products/the-number-1-preventable-cause-of-death/>. Accessed July 20, 2018.
124. Lortet-Tieulent J, Goding Sauer A, Siegel RL, et al. State-Level Cancer Mortality Attributable to Cigarette Smoking in the United States. *JAMA Intern Med.* 2016;176(12):1792-1798. doi: 10.1001/jamainternmed.2016.6530.
125. Campaign for Tobacco-Free Kids. The Toll of Tobacco in California. <https://www.tobaccofreekids.org/problem/toll-us/california>. Accessed April 18, 2018.
126. California Department of Public Health California Tobacco Control Program. *California Tobacco Facts and Figures 2016.* Sacramento, CA: California Department of Public Health. 2016. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>.
127. U.S. Census Bureau. *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties and Puerto Rico Commonwealth and Municipios: April 1, 2010 to July 1, 2017.* U.S. Census Bureau, Population Division 2018. Available at: https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPAGESEX&prodType=table.
128. Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017. *MMWR Surveill Summ.* 2018;67(8):1-114. doi: 10.15585/mmwr.ss6708a1.
129. Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance — United States, 2017. Supplementary Tables 52-93: Tobacco Use. 2018; https://www.cdc.gov/healthyyouth/data/yrbs/2017_tables/tobacco_use.htm.
130. Burrows, D.S. "Estimated Change in Industry Trend Following Federal Excise Tax Increase." UCSF Library Truth Tobacco Industry Documents. Date Mod. Industry, Apr. 17, 2012: <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/nnnw0084>. Accessed September 28, 2016.
131. The American Lung Association in California Center for Tobacco Policy and Organizing. *Cigarettes Generate Big Revenue for Convenience Stores.* 2013. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2016/10/Cigarettes-Generate-Big-Revenue-September-2013.pdf>.
132. DiFranza JR, Savageau JA, Fletcher KE. Enforcement of underage sales laws as a predictor of daily smoking among adolescents: a national study. *BMC Public Health.* 2009;9:107. doi: 10.1186/1471-2458-9-107.
133. McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool.* Tobacco Control Legal Consortium. 2010. Available at: <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>.
134. Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products.* Washington, DC: The National Academies Press. 2015. Available at: <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.
135. Villanti AC, Johnson AL, Ambrose BK, et al. Flavored Tobacco Product Use in Youth and Adults: Findings From the First Wave of the PATH Study (2013-2014). *Am J Prev Med.* 2017;53(2):139-151. doi: 10.1016/j.amepre.2017.01.026.
136. California Department of Public Health California Tobacco Control Program. *2016 Healthy Stores for a Healthy Community Survey Results-all counties.* 2016. Available at: <http://healthystoreshealthycommunity.com/media-center/?campaign>.
137. Hersey JC, Ng SW, Nonnemaker JM, et al. Are menthol cigarettes a starter product for youth? *Nicotine Tob Res.* 2006;8(3):403-413. doi: 10.1080/14622200600670389.
138. Wackowski O, Delnevo CD. Menthol cigarettes and indicators of tobacco dependence among adolescents. *Addict Behav.* 2007;32(9):1964-1969. doi: 10.1016/j.addbeh.2006.12.023.

139. Oliver AJ, Jensen JA, Vogel RI, Anderson AJ, Hatsukami DK. Flavored and nonflavored smokeless tobacco products: rate, pattern of use, and effects. *Nicotine Tob Res.* 2013;15(1):88-92. doi: 10.1093/ntr/nts093.
140. Yerger VB, Przewoznik J, Malone RE. Racialized geography, corporate activity, and health disparities: tobacco industry targeting of inner cities. *J Health Care Poor Underserved.* 2007;18(4 Suppl):10-38. doi: 10.1353/hpu.2007.0120.
141. Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults. *Am J Public Health.* 2008;98(9):1685-1692. doi: 10.2105/AJPH.2007.125542.
142. Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods. *Nicotine Tob Res.* 2012;14(1):116-121. doi: 10.1093/ntr/ntr122.
143. Courtemanche CJ, Palmer MK, Pesko MF. Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use. *Am J Prev Med.* 2017;52(5):e139-e146. doi: 10.1016/j.amepre.2016.11.019.
144. Farley SM, Johns M. New York City flavoured tobacco product sales ban evaluation. *Tob Control.* 2017;26(1):78-84. doi: 10.1136/tobaccocontrol-2015-052418.
145. Hoffmann D, Hoffmann I. Chapter 3: Chemistry and Toxicology. In: *Smoking and Tobacco Control Monograph No. 9: Cigars: Health Effects and Trends.* National Cancer Institute; 1998.
146. National Cancer Institute. Cigar Smoking and Cancer. 2010; <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cigars-fact-sheet>. Accessed July 13, 2018.
147. Akl EA, Gaddam S, Gunukula SK, Honeine R, Jaoude PA, Irani J. The effects of waterpipe tobacco smoking on health outcomes: a systematic review. *Int J Epidemiol.* 2010;39(3):834-857. doi: 10.1093/ije/dyq002.
148. Schaller K, Ruppert L, Kahnert S, Bethke C, Nair U, Pötschke-Langer M. *Electronic Cigarettes – An Overview.* German Cancer Research Center, Heidelberg. 2013. Available at: https://www.dkfz.de/de/tabakkontrolle/download/publikationen/RoteReihe/Band_19_e-cigarettes_an_overview.pdf.
149. Stepanov I, Biener L, Knezevich A, et al. Monitoring tobacco-specific N-nitrosamines and nicotine in novel Marlboro and Camel smokeless tobacco products: findings from Round 1 of the New Product Watch. *Nicotine Tob Res.* 2012;14(3):274-281. doi: 10.1093/ntr/ntr209.
150. National Cancer Institute. *Monograph 2: Smokeless Tobacco or Health: An International Perspective.* 1992.
151. Jacob P, 3rd, Abu Raddaha AH, Dempsey D, et al. Nicotine, carbon monoxide, and carcinogen exposure after a single use of a water pipe. *Cancer Epidemiol Biomarkers Prev.* 2011;20(11):2345-2353. doi: 10.1158/1055-9965.EPI-11-0545.
152. Pickworth WB, Rosenberry ZR, Koszowski B. Toxicant exposure from smoking a little cigar: further support for product regulation. *Tob Control.* 2017;26(3):269-276. doi: 10.1136/tobaccocontrol-2015-052633.
153. Johnston LD, O'Malley PM, Bachman JG, Schulenberg JE, Miech RA. *Monitoring the Future national survey results on drug use, 1975–2013: Volume I, Secondary school students.* Ann Arbor, MI: Institute for Social Research, The University of Michigan. 2014. Available at: http://monitoringthefuture.org/pubs/monographs/mtf-vol1_2013.pdf.
154. Harrell PT, Naqvi SMH, Plunk AD, Ji M, Martins SS. Patterns of youth tobacco and polytobacco usage: The shift to alternative tobacco products. *Am J Drug Alcohol Abuse.* 2017;43(6):694-702. doi: 10.1080/00952990.2016.1225072.
155. Substance Abuse and Mental Health Services Administration. *Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings.* Rockville, MD: Substance Abuse and Mental Health Services Administration. 2011. Available at: <https://www.samhsa.gov/data/sites/default/files/NSDUH-NationalFindingsResults2010-web/2k10ResultsRev/NSDUHresultsRev2010.pdf>.
156. Wang TW, Gentzke A, Sharapova S, Cullen KA, Ambrose BK, Jamal A. Tobacco Product Use Among Middle and High School Students - United States, 2011-2017. *MMWR Morb Mortal Wkly Rep.* 2018;67(22):629-633. doi: 10.15585/mmwr.mm6722a3.
157. Cobb C, Ward KD, Maziak W, Shihadeh AL, Eissenberg T. Waterpipe Tobacco Smoking: An Emerging Health Crisis in the United States. *American Journal of Health Behavior.* 2010;34(3):275-285. doi: 10.5993/ajhb.34.3.3.
158. Yao T, Ong MK, Max W, et al. Responsiveness to cigarette prices by different racial/ethnic groups of US adults. *Tob Control.* 2018;27(3):301-309. doi: 10.1136/tobaccocontrol-2016-053434.
159. Tessman GK, Caraballo RS, Corey CG, Xu X, Chang CM. Exposure to tobacco coupons among U.S. middle and high school students. *Am J Prev Med.* 2014;47(2 Suppl 1):S61-68. doi: 10.1016/j.amepre.2014.05.001.
160. Counter Tobacco. Disparities in Point-of-Sale Advertising and Retailer Density. <https://countertobacco.org/resources-tools/evidence-summaries/disparities-in-point-of-sale-advertising-and-retailer-density/>. Accessed July 13, 2018.

161. Lempert LK, Glantz SA. Tobacco Industry Promotional Strategies Targeting American Indians/Alaska Natives and Exploiting Tribal Sovereignty. *Nicotine Tob Res.* 2018. doi: 10.1093/ntr/nty048.
162. Cal. Penal Code § 308.3(a).
163. Gammon DG, Loomis BR, Dench DL, King BA, Fulmer EB, Rogers T. Effect of price changes in little cigars and cigarettes on little cigar sales: USA, Q4 2011-Q4 2013. *Tob Control.* 2016;25(5):538-544. doi: 10.1136/tobaccocontrol-2015-052343.
164. Ringel JS, Wasserman J, Andreyeva T. Effects of public policy on adolescents' cigar use: evidence from the National Youth Tobacco Survey. *Am J Public Health.* 2005;95(6):995-998. doi: 10.2105/AJPH.2003.030411.
165. Katz MH. Banning tobacco sales in pharmacies: the right prescription. *JAMA.* 2008;300(12):1451-1453. doi: 10.1001/jama.300.12.1451.
166. Hudmon KS, Fenlon CM, Corelli RL, Prokhorov AV, Schroeder SA. Tobacco sales in pharmacies: time to quit. *Tob Control.* 2006;15(1):35-38. doi: 10.1136/tc.2005.012278.
167. Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction.* 2015;110(1):152-161. doi: 10.1111/add.12718.
168. Yu D, Peterson NA, Sheffer MA, Reid RJ, Schnieder JE. Tobacco outlet density and demographics: analysing the relationships with a spatial regression approach. *Public Health.* 2010;124(7):412-416. doi: 10.1016/j.puhe.2010.03.024.
169. Rodriguez D, Carlos HA, Adachi-Mejia AM, Berke EM, Sargent JD. Predictors of tobacco outlet density nationwide: a geographic analysis. *Tob Control.* 2013;22(5):349-355. doi: 10.1136/tobaccocontrol-2011-050120.
170. Rodriguez D, Carlos HA, Adachi-Mejia AM, Berke EM, Sargent J. Retail tobacco exposure: using geographic analysis to identify areas with excessively high retail density. *Nicotine Tob Res.* 2014;16(2):155-165. doi: 10.1093/ntr/ntt126.
171. Myers AE, Hall MG, Isgett LF, Ribisl KM. A comparison of three policy approaches for tobacco retailer reduction. *Prev Med.* 2015;74:67-73. doi: 10.1016/j.ypmed.2015.01.025.
172. Luke DA, Hammond RA, Combs T, et al. Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *Am J Public Health.* 2017;107(5):740-746. doi: 10.2105/AJPH.2017.303685.
173. Henriksen L, Schleicher NC, Ababseh K, Johnson TO, Fortmann SP. Marijuana as a 'concept' flavour for cigar products: availability and price near California schools. *Tob Control.* 2017. doi: 10.1136/tobaccocontrol-2017-053961.
174. Richter L, Pugh BS, Smith PH, Ball SA. The co-occurrence of nicotine and other substance use and addiction among youth and adults in the United States: implications for research, practice, and policy. *Am J Drug Alcohol Abuse.* 2017;43(2):132-145. doi: 10.1080/00952990.2016.1193511.
175. DiFranza JR. Which interventions against the sale of tobacco to minors can be expected to reduce smoking? *Tob Control.* 2012;21(4):436-442. doi: 10.1136/tobaccocontrol-2011-050145.
176. Macinko J, Silver D. Impact of New York City's 2014 Increased Minimum Legal Purchase Age on Youth Tobacco Use. *Am J Public Health.* 2018;108(5):669-675. doi: 10.2105/AJPH.2018.304340.
177. Institute of Medicine Committee on Preventing Nicotine Addiction in Children and Youths. Youth Access to Tobacco Products. In: Lynch BS, Bonnie RJ, eds. *Growing Up Tobacco Free: Preventing Nicotine Addiction in Children and Youths.* Washington, DC: National Academies Press. 1994.



November 27, 2019

The Honorable Rich Constantine
Morgan Hill City Council
17555 Peak Ave.
Morgan Hill, CA 95037

Dear Mayor Constantine and Members of the Morgan Hill City Council:

The American Cancer Society Cancer Action Network's mission is to end suffering and death from cancer, and we are committed to advancing that mission in Morgan Hill. To that end, we are deeply concerned about the availability of flavored tobacco products, which is contributing to the growing epidemic that is plaguing our communities here in Northern California and nationwide. An e-cigarette moratorium is insufficient in addressing the challenge of youth tobacco use. The only way to protect the youth of Morgan Hill is to prohibit the sale of *all* flavors in all tobacco products, throughout the city.

Flavors are driving the epidemic of teenage e-cigarette use. The long-term health consequences of e-cigarettes are just emerging, but the consequences of combustible tobacco have long been known. If the sale of e-cigarettes is prohibited, while other flavored tobacco products like menthol cigarettes remain in place, youth will continue to be lured to this deadly addiction. Policies that could push young people toward combustible cigarettes should be avoided.

We urge you to adopt a strong comprehensive tobacco retailer licensing (TRL) policy to end the sale of all flavored tobacco products, including flavored e-cigarettes and menthol cigarettes, establish a minimum price and pack size for tobacco products with no discounting, end the sale of all tobacco products in pharmacies, and allow no new tobacco retailers to locate near youth areas. Together, these provisions go far to protect the lives of our young people from the predatory marketing of the tobacco industry.

It is imperative to include menthol cigarettes and other flavored combustible tobacco as well as flavored e-cigarettes in a policy that aims to address the epidemic of youth tobacco use. Four out of five youth who have ever used a tobacco product started with a flavored tobacco product, and when asked why, say because they come in flavors they like. A recent study concluded that youth who use e-cigarettes are more than four times more likely to try cigarettes and nearly 3 times as likely to smoke cigarettes than those youth who never tried e-cigarettes.

Young people who smoke menthol cigarettes are disproportionately African American, Asian American, LGBT and from low-income communities already significantly impacted by tobacco-related disease. A 2014 study revealed internal industry studies that confirmed "menthol and candy-like flavors (e.g., vanilla and cherry)" increased the appeal of little cigars and cigarillos to new smokers "by masking the heavy cigar taste, reducing throat irritation and making cigar smoke easier to inhale. Prohibiting the sale of all flavored tobacco products, including menthol cigarettes, removes much of the allure of these products and is a key component of a comprehensive strategy to effectively help reduce tobacco initiation, and subsequent addiction.

Increasing the price and pack size of tobacco products reduces availability of these products to young people who are price sensitive, therefore making a minimum price for tobacco products adds a strong provision in any comprehensive tobacco retailer licensing policy. When tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use. We urge you to adopt a minimum price and pack size for tobacco products as part of your local policy.

We've learned from experience that exempting adult-only stores is problematic and weakens what could be a strong policy. All places where tobacco can be purchased, including adult-only tobacco shops, should be required to have a TRL. Research shows that smoke shops have higher rates of sales to minors, and should not be exempted from a TRL.

Tobacco-free pharmacies is a natural and necessary next step. Tobacco products, which are still the leading cause of preventable death in California, should not be sold in pharmacies where residents seek health promoting products. We urge you to join the 31 other jurisdictions across the state that have chosen to end the sale of all tobacco products in their pharmacies.

By not allowing any new retailers to locate near youth areas, youth exposure to tobacco product marketing decreases. Research shows that when tobacco retailers are located near schools, youth experimentation with tobacco products goes up. The tobacco industry pours millions of dollars a day into in-store marketing because they know it works.

ACS CAN urges this City Council to make the health of Morgan Hill youth a priority and join our neighbors in the 50 communities throughout California who have adopted strong policies to end the sale of flavored tobacco products. We ask that you end the sale of all flavored tobacco products citywide, including menthol cigarettes, flavored e-cigarettes, and other flavored tobacco products. We ask that you do this by requiring that all tobacco retailers obtain a tobacco retailer license that also includes a price floor and minimum pack size for tobacco products with no discounting, ends the sale of all tobacco products in pharmacies, and limits tobacco sales and marketing near youth areas.

Sincerely,



Jen Grand-Lejano
Government Relations Director, Northern California
American Cancer Society Cancer Action Network

From: [Christina Turner](#)
To: [Scott Nelson](#); [Michelle Bigelow](#)
Subject: RE: Menthol Cigarette Fact Sheets
Date: Monday, December 2, 2019 7:20:48 PM

Thank you. Michelle B, can you please supplement.

From: Scott Nelson <scott.nelson@morganhill.ca.gov>
Sent: Monday, December 2, 2019 10:28 AM
To: Christina Turner <Christina.Turner@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>
Subject: Menthol Cigarette Fact Sheets

Good morning,

Attached are two fact sheets from the California Department of Public Health regarding menthol Cigarettes. Below is an excerpt from the "kids Fact Sheet."

Please let me know if there is any further information that can be provided on this topic.

Scott

Excerpt:

While the tobacco industry initially marketed as menthol cigarettes a safer and healthier cigarette because of its cooling properties and reduced throat irritability, this could not be further from the truth. In fact, because menthol cigarettes are less harsh, are marketed as a smoother alternative and are associated with increased initiation and greater addiction, FDA found that it is "likely that menthol cigarettes pose a public health risk above that seen with nonmenthol cigarettes."

Both TPSAC's and FDA's own scientific analysis conclude that menthol cigarettes are associated with increased nicotine dependence and reduced success in smoking cessation. In fact, menthol smoking has hindered overall declines in cigarette smoking. While smoking rates have declined overall in recent years, use of menthol cigarettes has increased significantly. Overall, nearly 40 percent (38.8%) of smokers use menthol cigarettes. Menthol smoking rates have increased among young adults and remained constant among youth and adults, while non-menthol smoking has decreased in all three age groups. In recent years, use of menthol cigarettes has increased among White, Asian, and Hispanic smokers. Use of menthol cigarettes has remained constant among African American smokers, who continue to use menthol cigarettes more than any other racial/ethnic group.

TPSAC projected that by 2020, about 17,000 premature deaths will be attributable to menthol in cigarettes and about 2.3 million people will have started smoking because of menthol in cigarettes.¹⁸

Item # 14

AGENDA DATE: 12/4/19

SUPPLEMENT # 4

December 4, 2019

The Honorable Richard Constantine, Mayor of Morgan Hill
And Members of the Morgan Hill City Council
17575 Peak Avenue
Morgan Hill, CA 95037

Dear Mayor Constantine and Members of the City Council:

As members of the city's Youth Action Council (YAC) and members of the team within YAC known as W.A.V.E. – Warriors Against Vaping & E-Cigarettes, we would like to express our support for a ban on the sale of flavored tobacco products used for vaping and electronic cigarettes. As the W.A.V.E. team we have educated ourselves on the harmful and dangerous effects of vaping on the health of ^{the} community, especially teens and young adults. As W.A.V.E we are dedicated to getting the message to the youth in our community of the detrimental effects of tobacco and nicotine on a person's health.

Flavored tobacco products are a gateway to nicotine addiction, such as flavored e-cigarettes. Four out of five children using tobacco started using a flavored drug. Flavors such as raspberry or cotton candy are helping to disguise the harshness and risks of traditional tobacco products.

Most e-cigarettes are sold in youthful flavors and packages such as cotton candy, doughnut and rainbow sprinkles. In addition, the vape pens and e-cigarettes used to inhale these products are made to look like the ordinary products any teen would have – pens, highlighters, USBs, and key fobs. These are easily hidden and can be brought to school grounds.

The CDC reported that from 2017 to 2018 e-cigarette use by high school students has increased by 78% percent. The same study showed a 48% percent increase by middle school students. Since August 29, 2019 there have been over 300 cases of vaping related lung disease nationwide. Furthermore, since August 2019, there have been 8 deaths linked to vaping.

As teenagers, we see a dramatic rise in vaping among adolescents of Morgan Hill. At school, students carry vape pens and ^{are} vaping. There have been 59 incidents of student tobacco use or possession of tobacco products ^{reported} across the district since the beginning of the class year.

The dangers posed to youth from vaping/e-cigarettes is one of the most alarming health trends in this century. We want Morgan Hill youth to understand the dangers of vaping and lead a healthier tobacco/nicotine free lifestyle, this is why we support a decision by the city council to prevent the sale of all flavored tobacco products, including flavored e-cigarettes, especially to those under 21, in retail stores.

Sincerely,

WAVE TEAM!

Gissell Rodriguez

Hashti Tirgandoon

Matthew Say

McKenna Hernandez - Batten court

Justin Uribe

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Maria Olson

December 3rd, 2019City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Dear Mayor and Council Members:

The American Heart Association supports the proposal to prohibit the sale of flavored tobacco products in the City of Morgan Hill. This proposed policy will reduce access to the products that are the tobacco industry's key strategy for targeting and addicting new smoker's, Morgan Hill's youth. More than 80 percent of youth who ever used a tobacco product reported that their first product was flavored.

Cigarette smoking is the leading cause of preventable disease and death in the United States, claiming on average 480,000 lives each year. Evidence shows that smoking increases the risk for heart disease and stroke. It increases the risk for blood clots, decreases the ability to exercise, and decreases the good cholesterol in our bodies. The best way to prevent tobacco-related illness and death is to prevent people from starting to smoke in the first place.

The tobacco industry is actively and aggressively working to addict new young people, particularly those from communities of color, with flavored tobacco products. They know that flavors like grape, mint (menthol), cotton candy, bubble gum and gummy bears mask the harsh taste of tobacco and are highly appealing to youth. In California, approximately 1 in 10 young adults (18-24 years old) currently use e-cigarettes and mounting evidence shows that young people who start with e-cigarettes are likely to become the addicted cigarette smokers of tomorrow.

Ending the sale of menthol tobacco products will help protect our community from tobacco addiction and is crucial to preventing tobacco-related death and disease. In your consideration of a flavored tobacco ordinance, please do not exempt menthol. The American Heart Association respectfully asks for your support of this vital health policy. We ask that you put the health of your constituents above tobacco industry profits and help ensure that all Morgan Hill residents have the healthy and prosperous lives they deserve.

Sincerely,

A handwritten signature in cursive script that reads "Michelle A. Albert".

Michelle A. Albert, MD MPH
Co-President, Board of Directors
Bay Area Division, American Heart Association



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Golden Gate, and
Central Coast**

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December 3, 2019

The Honorable Rich Constantine, Mayor, and Council Members,
City of Morgan Hill
17575 Peak Ave.
Morgan Hill, CA 95037

Dear Mayor Constantine and Council Members:

I am writing to urge you to adopt tomorrow the proposed ordinance that will prohibit the sale of flavored tobacco and e-cigarette products. As the local nonprofit that has been fighting for clean air and healthy lungs for over 100 years in Santa Clara County, Breathe California stands 100% in support of this move. We especially applaud the inclusion of menthol cigarettes and e-cigarettes in the ban.

As you have been informed in the comprehensive staff report, four out of five youth who have tried tobacco started with a flavored product. The tobacco industry uses flavored tobacco products to entice vulnerable populations including youth, African Americans, Asians, and LGBTQ communities. Not only do flavored tobacco products mask the harshness of tobacco, they also make it more difficult to quit. E-cigarettes have even more dire consequences, which are now being reported regularly by health authorities, including CDC who warned against any use of these products.

It is our firm belief that if Morgan Hill acts to restrict the sale of flavored tobacco products, including menthol and e-cigarettes, it will make these products less accessible to youth and will lead to a healthier community.

Thank you for your leadership on this issue of flavored tobacco. It is vital that cities become involved in this fight, for they can act much more swiftly than the federal government!

Sincerely,

Margo Leathers Sidener, MS, CHES
Chief Executive Officer

CHAPTER XXII.
PERMITS FOR RETAILERS OF TOBACCO PRODUCTS

Sec. B11-576. Intent.

This Chapter is adopted to:

- (1) Ensure compliance with the business standards and practices of the County;
- (2) Encourage responsible retailing of Tobacco Products;
- (3) Discourage violations of laws related to Tobacco Products, especially those that prohibit or discourage the Sale or Distribution of Tobacco Products to individuals under 21;
- (4) Respond to a new wave of addiction to Electronic Cigarette Products;
- (5) Reduce vulnerability to unexplained illnesses associated with Electronic Cigarette Products; and
- (6) Protect the public health and welfare.

This Chapter does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws.

Sec. B11-577. Definitions.

For the purposes of this Chapter, the following definitions shall apply:

- (a) *Arm's Length Transaction* means a Sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, neither of which is under any compulsion to participate in the transaction. A Sale between relatives, related companies or partners, or a Sale for which a significant purpose is avoiding the effect of the violations of this Chapter is not an Arm's Length Transaction.
- (b) *Department* means the County's Department of Environmental Health and any agency or Person designated by the Director of the Department of Environmental Health to enforce or administer the provisions of this Chapter.

- (c) *Distribute* or *Distribution* means the transfer, by any Person other than a common carrier, of a Tobacco Product to another Person for Sale or personal consumption.
- (d) *Electronic Cigarette Products* means any of the following products:
 - (1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
 - (2) Any component, part, or accessory of such a device or delivery system that is used during its operation.
 - (3) Any flavored or unflavored liquid or substance containing nicotine, whether Sold separately or Sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.
 - (4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.
 - (5) Electronic Cigarette Products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if Sold separately. Electronic Cigarette Products shall not include any product that has been approved by the United States Food and Drug Administration for Sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and Sold solely for such approved use. *See* 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.
- (e) *Ownership* means possession of a ten percent or greater interest in the stock, assets, or income of a business, other than a security interest for the repayment of debt. Notwithstanding any other definition in this Code, an *Owner* means a Person who possesses Ownership.
- (f) *Permit* means a valid permit issued by the Department to a Person to act as a Retailer.
- (g) *Retailer* means any Person who Sells or Distributes Tobacco Products for any form of consideration. *Retailing* shall mean the doing of any of these actions. This definition is without regard to the quantity of Tobacco Products Sold or Distributed.

- (h) *School* means a public or private elementary, middle, junior high, or high school.
- (i) *Tobacco Product* means (unless specifically noted elsewhere) any product subject to Subchapter IX (21 U.S.C. § 387 et seq. (“Subchapter IX”)) of the Federal Food, Drug, and Cosmetic Act. (See 21 U.S.C. § 387a(b) (products subject to Subchapter IX); 21 C.F.R. §§ 1100.1-1100.3 (tobacco products subject to Subchapter IX).) Products subject to Subchapter IX include, but are not limited to, cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, cigars, pipe tobacco, waterpipe tobacco, and Electronic Cigarette Products. Products that are not subject to Subchapter IX include accessories of Tobacco Products, such as, but not limited to, ashtrays, spittoons, and conventional matches and lighters that solely provide an external heat source to initiate but not maintain combustion of a Tobacco Product.

Sec. B11-578. Requirements and prohibitions.

- (a) *Permit required.* It shall be unlawful for any Person to act as a Retailer in an unincorporated area of the County without first obtaining and maintaining a Permit pursuant to this Chapter for each location at which Retailing occurs.
- (b) *Lawful business operation.* It shall be a violation of this Chapter for any Retailer to violate any local, state, or federal law applicable to Tobacco Products or the Retailing of such Tobacco Products.
- (c) *Display of Permit.* Each Permit shall be prominently displayed in a publicly visible place at the location identified in the Permit.
- (d) *Notice of minimum age for purchase of Tobacco Products.* Retailers shall post conspicuously, at each point of purchase, a notice stating that selling Tobacco Products to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the Public Health Department.
- (e) *Positive identification required.* No Retailer shall Sell or Distribute a Tobacco Product to another individual who appears to be under 30 years of age without first examining the individual’s identification to confirm that the individual is at least the minimum age required under state law to purchase and possess the Tobacco Product.
- (f) *Minimum age for individuals selling Tobacco Products.* No individual who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Retailing.

- (g) *False and misleading advertising prohibited.* A Retailer without a Permit:
- (1) Shall keep all Tobacco Products out of public view.
 - (2) Shall not display any advertisement relating to Tobacco Products that promotes the Sale or Distribution of such products from the Retailer's location or that could lead a reasonable consumer to believe that Tobacco Products can be obtained at that location.
- (h) *Limitation on storefront advertising.* No more than 15 percent of the square footage of the windows and clear doors of a physical storefront used for Retailing Tobacco Products shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement of this subsection (h) shall not apply to an establishment where there are no windows or clear doors, or where existing windows are located only at a height that precludes a view of the interior of the premises by an individual standing outside the premises.
- (i) *Flavored Tobacco Products.*
- (1) Except as permitted in paragraph (3) of this subsection (i), no Retailer shall Sell a Tobacco Product containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, mint, menthol, or coffee, that is a characterizing flavor or aroma of the Tobacco Product, smoke, or vapor produced by the Tobacco Product.
 - (2) A Tobacco Product shall be subject to a rebuttable presumption that the product is prohibited by paragraph (1) of this subsection if:
 - (i) The product's manufacturer or any other Person associated with the manufacture or Sale of Tobacco Products makes or disseminates public statements or claims to the effect that the product has or produces a characterizing flavor or aroma, other than tobacco; or
 - (ii) The product's label, labeling, or packaging includes a statement or claim—including any text and/or images used to communicate

information—that the product has or produces a characterizing flavor or aroma, other than tobacco.

- (3) Except as provided in Paragraph (4) of this subsection (i), Paragraph (1) of this subsection (i) shall not apply to any Retailer that meets all the following criteria:
 - (i) Primarily sells Tobacco Products;
 - (ii) Generates more than 60 percent of its gross revenues annually from the sale of Tobacco Products;
 - (iii) Does not permit any individual under 21 years of age to be present or enter the premises at any time, unless accompanied by the individual's parent or legal guardian, as defined in Section 6903 of the Family Code;
 - (iv) Does not Sell alcoholic beverages or food for consumption on the premises; and
 - (v) Posts a sign outside the retail location that clearly, sufficiently, and conspicuously informs the public that individuals under 21 years of age are prohibited from entering the premises.
- (4) No Retailer that is issued a new Permit after December 19, 2019 shall Sell or Distribute flavored Tobacco Products under paragraph (3) of this subsection (i) after Permit issuance. No Retailer that receives a Permit renewal after December 19, 2019 shall Sell or Distribute flavored Tobacco Products under paragraph (3) of this subsection (i) after Permit renewal. Regardless of the date of Permit issuance or renewal, no Retailer shall Sell or Distribute flavored Tobacco Products after June 30, 2020.
- (j) *Vending machines prohibited.* No Tobacco Product shall be Sold or Distributed to the public from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.
- (k) *Prohibition on Sale or Distribution of Tobacco Products to individuals under 21.* No Retailer shall Sell or Distribute any Tobacco Product to any individual who is under 21 years of age.

- (l) *Prohibition on Sale or Distribution of Electronic Cigarette Products.* No Retailer that is issued a new Permit after December 19, 2019 shall Sell or Distribute Electronic Cigarette Products after Permit issuance. No Retailer that receives a Permit renewal after December 19, 2019 shall Sell or Distribute Electronic Cigarette Products after Permit renewal. Regardless of the date of Permit issuance or renewal, no Retailer shall Sell or Distribute Electronic Cigarette Products after June 30, 2020.

Sec. B11-579. Eligibility requirements for a Permit.

- (a) No Permit may be issued to authorize Retailing at or from other than a fixed location. For example, Retailing by Persons on foot or from vehicles is prohibited.
- (b) No Permit may be issued to authorize Retailing at a temporary or recurring temporary event. For example, Retailing at flea markets and farmers' markets is prohibited.
- (c) No Permit may be issued to authorize Retailing at any location where the profession of pharmacy is practiced by a pharmacist licensed by the State in accordance with the Business and Professions Code and where prescription drugs are offered for Sale.
- (d) No Permit may be issued to authorize Retailing at any location within 1,000 feet of a School, as measured by a straight line between any point along the property line of any parcel on which a School is located and any point along the perimeter of the Permit applicant's proposed business location; provided, however, that the prohibition contained in this subsection (d) shall not apply to the following:
- (1) Any Retailer of Tobacco Products (as such term was defined in the predecessor Ordinance on January 22, 2011) operating lawfully on January 21, 2011;
 - (2) Any Retailer of electronic smoking devices (as such term was defined in the predecessor Ordinance on August 23, 2014) operating lawfully on August 22, 2014; however, any such Retailer is subject to the prohibition on the Sale and Distribution of Electronic Cigarette Products established in B11-578(l); and
 - (3) Any lawfully operating Retailer of Tobacco Products that would otherwise become ineligible to receive or renew a Permit due to the creation or relocation of a School.

- (e) No Permit may be issued to authorize Retailing at a location which is within 500 feet of a location occupied by another Retailer, as measured by a straight line between any point along the perimeter of an existing Retailer's business location and any point along the perimeter of the Permit applicant's proposed business location; provided, however, that the prohibition contained in this subsection (e) shall not apply to:
 - (1) Any Retailer of Tobacco Products (as such term was defined in the predecessor Ordinance on January 22, 2011) operating lawfully on January 21, 2011; and
 - (2) Any Retailer of electronic smoking devices (as such term was defined in the predecessor Ordinance on August 23, 2014) operating lawfully on August 22, 2014; however, any such Retailer is subject to the prohibition on the Sale and Distribution of Electronic Cigarette Products established in B11-578(l).
- (f) Any exemption granted to a Retailer pursuant to subsections (d) and (e) shall cease to apply upon the earlier of the following to occur:
 - (1) The Retailer fails to timely renew the Permit pursuant to Section B11-582(b) of this Chapter.
 - (2) A new Person obtains Ownership in the business.

Sec. B11-580. Application procedure.

- (a) It is the responsibility of each Retailer to be informed of all laws applicable to Retailing, including those laws affecting the issuance of a Permit. No Retailer may rely on the issuance of a Permit as a determination by the County that the Retailer has complied with all laws applicable to Retailing. A Permit issued contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Retailer shall be revoked pursuant to Section B11-581 of this Chapter.
- (b) All Permit applications shall be submitted on a form supplied by the Department.
- (c) A permitted Retailer shall inform the Department in writing of any change in the information submitted on an application for a Permit within 14 calendar days of a change.

- (d) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (Government Code Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.

Sec. B11-581. Permit issuance, denial, and revocation.

- (a) Upon the receipt of a complete application for a Permit, the application fee, and the annual Permit fee, the Department shall issue a Permit unless substantial evidence demonstrates that one or more of the following bases for denial exists:
- (1) The information presented in the application is inaccurate or false.
 - (2) The application seeks authorization for Retailing at a location for which this Chapter prohibits issuance of a Permit.
 - (3) The application seeks authorization for Retailing by a Person to whom this Chapter prohibits issuance of a Permit.
 - (4) The application seeks authorization for Retailing that is prohibited pursuant to this Chapter (e.g., mobile vending, Electronic Cigarette Products) or that is unlawful pursuant to any other law.
- (b) A Permit shall be revoked if the Department finds that one or more of the bases for denial of a Permit under this section existed at the time application was made or at any time before the Permit issued. Such a revocation shall be without prejudice to the filing of a new Permit application.

Sec. B11-582. Permit term, renewal, and expiration.

- (a) *Term of Permit.* The term of a Permit is one year. A Permit is invalid upon expiration.
- (b) *Renewal of Permit.* The Department shall renew a Permit upon timely payment of the annual Permit fee provided that the Retailer is in compliance with this Chapter, as amended. The Department may, in its discretion, agree to renew any expired Permit within the three-month period following expiration if the Retailer pays the annual Permit fee and applicable late charges. For every calendar month, or fraction thereof, that a Retailer fails to renew an expired Permit, a late charge equal to 20 percent of the annual Permit fee shall be assessed. A Permit renewed within three calendar months of expiration shall be treated as if timely renewed.

- (c) *Issuance of Permit after revocation or expiration of Permit.* To apply for a new Permit more than three calendar months after expiration of a Permit or following revocation of a Permit that was wrongly issued, a Retailer must submit a complete application for a Permit, along with the application fee and annual Permit fee. The Department shall issue a Permit pursuant to the requirements of Section B11-581 of this Chapter.

Sec. B11-583. Permits nontransferable.

- (a) A Permit may not be transferred from one Person to another or from one location to another. Whenever a new Person obtains Ownership in a business for which a Permit has been issued, a new Permit shall be required, but any exemption granted pursuant to Section B11-579 of this Chapter shall cease to apply.
- (b) Notwithstanding any other provision of this Chapter, prior violations of this Chapter at a location shall continue to be counted against a location and Permit ineligibility and suspension periods shall continue to apply to a location unless:
- (1) One hundred percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners; and
 - (2) The County is provided with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction.

Sec. B11-584. Permit conveys a limited, conditional privilege.

Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Permit any status or right other than the limited, conditional privilege to act as a Retailer at the location in the County identified on the face of the Permit. All Permits are issued subject to the County's right to amend this Chapter, and Retailers shall comply with all provisions of this Chapter, as amended.

Sec. B11-585. Fees.

The Department shall not issue or renew a Permit prior to full payment of any applicable fees. The Board of Supervisors shall, from time to time, establish by resolution the fees to issue or to renew a Permit. The fees shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a Permit, administering the Permit program, Retailer education, Retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed

the cost of the regulatory program authorized by this Chapter. All fees and interest earned from such fees shall be used exclusively to fund administration and enforcement of this Chapter.

Sec. B11-586. Compliance monitoring.

- (a) Compliance with this Chapter shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this Chapter. The County Executive may designate any number of additional individuals to monitor and facilitate compliance with this Chapter.
- (b) The Department or other individuals designated to enforce the provisions of this Chapter shall check each Retailer at least once per 12-month period to determine if the Retailer is complying with all laws applicable to Retailing, other than those laws regulating underage access to Tobacco Products. Nothing in this paragraph shall create a right of action in any Retailer or other Person against the County or its agents.

Sec. B11-587. Prevention of underage Sales.

- (a) The Public Health Department, Department of Environmental Health, or other departments or individuals designated to enforce the provisions of this Chapter shall, in conjunction with the Sheriff's Office, check each Retailer at least twice per 12-month period to determine whether the Retailer is conducting business in a manner that complies with laws regulating youth access to Tobacco Products. Nothing in this paragraph shall create a right of action in any Retailer or other Person against the County or its agents.
- (b) The County shall not enforce any law establishing a minimum age for Tobacco Product purchases against an individual who otherwise might be in violation of such law because of the individual's age ("Youth Decoy") if the potential violation occurs when:
 - (1) The Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the County;
 - (2) The Youth Decoy is acting as an agent of a Department or individual designated by the County to monitor compliance with this Chapter; or
 - (3) The Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the County or the California Department of Public Health.

Sec. B11-588. Penalties for a violation by a Retailer with a Permit.

- (a) *Administrative fine.* In addition to any other penalty authorized by law, an administrative fine shall be imposed and a Permit shall be suspended if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence that the Retailer, or any of the Retailer's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to a such a violation.
- (b) *Amount of fine.* The amount of the administrative fine for each such violation shall be as follows:
 - (1) A fine not to exceed \$100.00 for a first violation within a 12-month period;
 - (2) A fine not to exceed \$200.00 for a second violation within a 12-month period; and
 - (3) A fine not to exceed \$500.00 for each additional violation within a 12-month period.
- (c) *Time period for Permit suspension.* The period of the suspension shall be as follows:
 - (1) For a first violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to 30 calendar days.
 - (2) For a second violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to 90 calendar days.
 - (3) For each additional violation of this Chapter at a location within any 60-month period, the Permit shall be suspended for up to one year.
- (d) *Waiver of penalties for first violation.* The Department may waive any penalties for a Retailer's first violation of any requirement, condition, or prohibition of this Chapter, other than a violation of a law regulating youth access to Tobacco Products, if the Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.

- (e) *Corrections period.* The Department shall have discretion to allow a Retailer a period of time to correct any violation of any requirement, condition, or prohibition of this Chapter, other than a violation of a law regulating youth access to Tobacco Products. If the Department exercises its discretion to provide a corrections period, and a Retailer's violation is corrected within the time allowed for correction, no penalty shall be imposed under this section.
- (f) *Written notice of penalties.* Whenever a fine is issued and/or a Permit is suspended based on a violation of this Chapter, the Department shall provide the Retailer written notice of the violation and the fine and suspension, including when the suspension shall take effect.

Sec. B11-589. Penalties for Retailing without a Permit.

- (a) *Administrative fine.* In addition to any other penalty authorized by law, an administrative fine and an ineligibility period for application or issuance of a Permit shall be imposed if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, that any Person has engaged in Retailing at a location without a valid Permit, either directly or through the Person's agents or employees, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to such a violation.
- (b) *Amount of fine.* The amount of the administrative fine for each such violation shall be as follows:
 - (1) A fine not to exceed \$100.00 for a first violation within a 12-month period;
 - (2) A fine not to exceed \$200.00 for a second violation within a 12-month period; and
 - (3) A fine not to exceed \$500.00 for each additional violation within a 12-month period.
- (c) *Time period for Permit ineligibility.* The ineligibility period shall be as follows:
 - (1) For a first violation of this section at a location within any 60-month period, no new Permit may be issued for the Person or the location (unless Ownership of the business at the location has been transferred in an Arm's Length Transaction) until 30 calendar days have passed from the date of the violation.

- (2) For a second violation of this section at a location within any 60-month period, no new Permit may be issued for the Person or the location (unless Ownership of the business at the location has been transferred in an Arm's Length Transaction) until 90 calendar days have passed from the date of the violation.
- (3) For each additional violation of this section at a location within any 60-month period, no new Permit may be issued for the Person or the location (unless Ownership of the business at the location has been transferred in an Arm's Length Transaction) until one year has passed from the date of the violation.
- (d) *Waiver of penalties for first violation.* The Department may waive any penalties for a Retailer's first violation of this section, unless the violation also involves a violation of a law regulating youth access to Tobacco Products, if the Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.
- (e) *Written notice of penalties.* Whenever a fine is issued and/or a Permit is suspended pursuant to this section, the Department shall provide the Retailer written notice of the fine and suspension, including when the suspension shall take effect.
- (f) *Appeals.* Any penalties imposed under this section may be appealed pursuant to Section B11-590 of this Chapter. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.

Sec. B11-590. Appeals.

- (a) Any Retailer served with a written notice of penalties may request an administrative hearing to appeal the existence of the violation, the amount of the fine, and/or the length of the suspension by returning a completed hearing request form to the Office of the County Hearing Officer within 10 days from the date of the written notice of penalties.
- (b) The Retailer shall include the following in or with the hearing request form:
 - (1) A statement indicating the reason the Retailer contests the written notice of penalties;
 - (2) Any evidence the Retailer wants the Hearing Officer to consider;

- (3) An advance deposit of the amount of any fine challenged; and
 - (4) The address of the Retailer and, if available, an email address that can be used for contact and correspondence by the Office of the County Hearing Officer and the Department. The Retailer may request service of notice by mail.
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- (c) The hearing request form shall be deemed filed on the date received by the Office of the County Hearing Officer. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.
 - (d) After receiving a timely hearing request form, the Office of the County Hearing Officer shall notify the Department as soon as practicable and then shall schedule an administrative hearing. The Office of the County Hearing Officer shall provide the Retailer and the Department at least ten calendar days' written notice of the date, time, and place of the administrative hearing and the name of the Hearing Officer who will conduct the hearing. The notice shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
 - (e) Between the time the Retailer requests the administrative hearing and the time of the Hearing Officer's decision, the Retailer, the Department, and each of their representatives shall not engage in *ex parte* communications with the Office of the County Hearing Officer or the Hearing Officer regarding the matters at issue in the hearing.
 - (f) The hearing shall be conducted by the Hearing Officer on the date, time, and place specified in the notice to the Retailer. A Retailer's failure to appear at the hearing shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies as a precedent to judicially challenge the existence of the violation and the imposition of the fine and suspension.
 - (g) At the hearing, the Retailer and the Department shall have the opportunity to present evidence, including witnesses, relevant to the Hearing Officer's determination of the matter. Neither the provisions of the Administrative Procedure Act (Government Code Section 11500 et seq.) nor the formal rules of evidence in civil or criminal judicial proceedings shall apply to such hearing. The Hearing Officer may admit any evidence, including witnesses, relevant to the determination of the matter, except as otherwise provided in section B11-591(c).
 - (h) The written notice of penalties and any other reports prepared by or for the Department concerning the violation shall be admissible and accepted by the

Hearing Officer as prima facie evidence of the violation and the facts stated in those documents.

- (i) The Hearing Officer may continue the hearing from time to time, in his or her sole discretion, to allow for its orderly completion. After receiving the evidence submitted at the hearing, the Hearing Officer may further continue the hearing and request additional information from either the Department or the Retailer.
- (j) After considering the evidence and testimony submitted the Hearing Officer shall issue a written decision regarding the matters properly raised in the request for administrative hearing. The Hearing Officer's decision shall:
 - (1) Be based on a preponderance of the evidence.
 - (2) Include a statement of the reasons for the decision.
 - (3) Be issued within 20 calendar days of the close of the hearing.
 - (4) Be served on both the Retailer and the Department. The decision shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
- (k) Based on the Hearing Officer's decision, the Office of the County Hearing Officer shall promptly refund to the Retailer any amount of the advance fine deposit the Department is not entitled to and shall provide the remainder to the Department.
- (l) The Hearing Officer's written decision shall constitute the final administrative decision of the County.

Sec. B11-591. Enforcement.

- (a) Any violation of this Chapter is hereby declared to be a public nuisance.
- (b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (c) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of an individual under the age of 21 years old, such an individual shall not be required over his or her objection to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged

violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

- (d) Violations of this Chapter may be remedied by a civil action brought by the County Counsel, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. For the purposes of the civil remedies provided in this Chapter, each day on which a Tobacco Product is offered for Sale in violation of this Chapter, and each individual retail Tobacco Product that is Sold or Distributed in violation of this Chapter, shall constitute a separate violation of this Chapter.
- (e) Any Person found guilty of violating any provision of this Chapter shall be deemed guilty of an infraction, punishable as provided by California Government Code § 25132.
- (f) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

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Sec. B11-592. No conflict with federal or state law.

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by, or in conflict with, federal or state law, rules, or regulations.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on _____, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

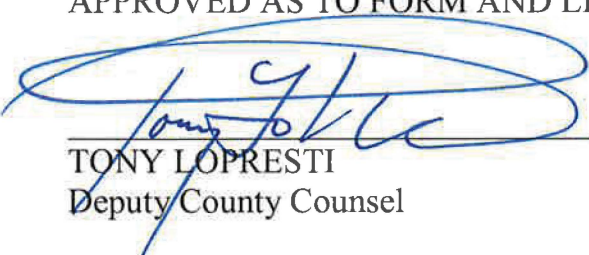
S. JOSEPH SIMITIAN, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

MEGAN DOYLE
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



TONY LOPRESTI
Deputy County Counsel

2103018

From: [Christina Turner](#)
To: [Steve Betando](#)
Cc: [Michelle Bigelow](#); [David Swing](#)
Subject: RE: More Research Proves Addictive Qualities of Cannabis and Adverse Impact of Local Business on our Youth
Date: Sunday, December 1, 2019 9:31:03 PM

Thank you. Email will be supplemented.

From: Steve Betando <betandos@mhUSD.org>
Sent: Sunday, December 1, 2019 7:36 PM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>; David Swing <David.Swing@morganhill.ca.gov>; Kirsten Perez <PerezK@mhUSD.org>; Fawn Myers <myersf@mhUSD.org>; Kelly Schriefer <schrieferk@mhUSD.org>; Lanae Bays <baysl@mhUSD.org>; Pilar Vazquez-Vialva <vazquez-vialva@mhUSD.org>
Subject: More Research Proves Addictive Qualities of Cannabis and Adverse Impact of Local Business on our Youth

Dear Honorable City Councilmembers,

You are faced with two more decisions impacting our community this Wednesday. One is for flavored tobacco - Agenda Item 14. Another is for pursuit of additional tax income by inviting on line cannabis industry into our community - Agenda Item 15. This message is about the later.

I encourage you to make your decision to reject any cannabis industry in Morgan Hill as a show of support to continue governing a community which places a high value on the health and education of our youth. I present additional research to further emphasize the concern. More and more research is informing our communities of the adverse impacts of laws allowing cannabis industry in communities.

POINT ONE: A key point here is that the cannabis opportunists are outrunning the researchers and more research is proving that communities are sacrificing educational health for tax revenues.

The following study is from Aarhus University. In summary: New research shows that a specific gene is associated with an increased risk of cannabis abuse. The gene is the source of a so-called nicotine receptor in the brain, and people with low amounts of this receptor have an increased risk of cannabis abuse.

Ditte Demontis and her colleagues used a nationwide Danish cohort to analyze the complete genome of more than 2,000 cannabis abusers and the genome of 50,000 control subjects. The researchers subsequently repeated these findings in an analysis of a further 5,500 cannabis abusers and more than 300,000 control subjects.

The researchers also included genetic data from studies in which researchers examined the underlying genetics for cognition such as e.g. the ability to complete an education.

Here, they found that people with a higher number of genetic variants associated with impaired cognition also have an increased risk of cannabis abuse.

"People who abuse cannabis often do worse in the education system, and results show that this can be partly explained by genetics. That is to say that people with an abuse problem have more genetic variations in the genome which increase the risk of cannabis abuse, while at the same time negatively affecting their ability to get an education," explains Ditte Demontis.

The study is the first of its kind on this scale and represents a step towards understanding the particular biological mechanisms, which lie behind the abuse of cannabis.

"We need to undertake even more research into how the genetic differences in the genome contribute to the development of cannabis abuse, and we need to map out the precise biological mechanisms that lead to one person having a higher risk of becoming a substance abuser than another. Our hope is to be able to improve treatment and perhaps in the long-term even prevent this abuse," says Ditte Demontis.

Story Source:

Journal Reference: Nature Neuroscience, 2019; DOI: 10.1038/s41593-019-0416-1

POINT TWO: A key point here is that location, access, and community acceptance is proving to have detrimental impacts on our youth and their future. The second set of research also addresses the addictive qualities of cannabis.

Marijuana use can lead to the development of problem use, known as a marijuana use disorder, which takes the form of addiction in severe cases. Data suggest that 30 percent of those who use marijuana may have some degree of marijuana use disorder. People who begin using marijuana before the age of 18 are four to seven times more likely to develop a marijuana use disorder than adults.

Marijuana use disorders are often associated with dependence—in which a person feels withdrawal symptoms when not taking the drug. People who use marijuana frequently often report irritability, mood and sleep difficulties, decreased appetite, cravings, restlessness, and/or various forms of physical discomfort that peak within the first week after quitting and last up to 2 weeks. Marijuana dependence occurs when the brain adapts to large amounts of the drug by reducing production of and sensitivity to its own endocannabinoid neurotransmitters. Studies suggest that 9 percent of people who use marijuana will become dependent on it, rising to about 17 percent in those who start using in their teens.

<https://www.drugabuse.gov/publications/research-reports/marijuana/references>

POINT THREE: A key point here is that, as a government agency, the Morgan Hill City Council has an obligation to protect the welfare of our youth. The third article quotes from an article that reviewed a span of research and interviewed the individuals who represent their communities who are dealing with the same matters Morgan Hill will predictably face. The study took place where such a situation has had time to simmer since their municipalities approved such businesses a few years ago.

Potent Pot, Vulnerable Teens Trigger Concerns in First States to Legalize Marijuana

June 16, 2019 at 3:25 p.m. PDT

DENVER — The first two states to legalize recreational marijuana are starting to grapple with teenagers' growing use of highly potent pot, even as both boost the industry and reap huge tax windfalls from its sales.

Though the legal purchase age is 21 in Colorado and Washington, parents, educators and physicians say youths are easily getting hold of edibles infused with tetrahydrocannabinol, or THC, the psychoactive component that causes a high, and concentrates such as "shatter," a brittle, honey-colored substance that is heated and then inhaled through a special device.

Each poses serious risks to adolescents' physical and mental health.

"Underage kids have unbelievable access to nuclear-strength weed," said Andrew Brandt, a Boulder, Colo., software executive whose son got hooked while in high school.

With some marijuana products averaging 68 percent THC — exponentially greater than the pot baby boomers once smoked — calls to poison control centers and visits to emergency rooms have risen. In the Denver area, visits to Children's Hospital Colorado facilities for treatment of cyclic vomiting, paranoia, psychosis and other acute cannabis-related symptoms jumped to 777 in 2015, from 161 in 2005.

The increase was most notable in the years following legalization of medical sales in 2009 and retail use in 2014, according to a study in the Journal of Adolescent Health published in 2018.

"Horrible things are happening to kids," said psychiatrist Libby Stuyt, who treats teens in southwestern Colorado and has studied the health impacts of high-potency marijuana. "I see increased problems with psychosis, with addiction, with suicide, with depression and anxiety."

It is unclear whether all of this means years of generally stagnant pot use among children are coming to an end. Surveys finding little change with pot since 2014 "may not reliably reflect the impact of legalization on adolescent health," the authors of that 2018 study concluded.

Washington's latest Healthy Youth Survey showed 20 percent of eighth-graders and nearly half of seniors "perceive little risk of regular marijuana use." Many teens consider it less risky than alcohol or cigarettes.

Is marijuana a gateway drug to opioid abuse? Surgeon General Jerome Adams responds

Is marijuana a gateway drug that can lead to opioid abuse? Surgeon General Jerome Adams

responds. (Washington Post Live)

As more than a dozen states from Hawaii to New Hampshire consider legalizing marijuana, doctors warn of an urgent need for better education — not just of teens but of parents and lawmakers — about how the products being marketed can significantly affect young people's brain development.

The limited scientific research to date shows that earlier and more frequent use of high-THC cannabis puts adolescents at greater jeopardy of substance use disorders, mental health issues and poor school performance.

"The brain is abnormally vulnerable during adolescence," said Staci Gruber, an associate professor of psychiatry at Harvard Medical School who studies how marijuana affects the brain. "Policy seems to have outpaced science, and in the best of all possible worlds, science would allow us to set policy."

The critics also insist that more must be done to maintain tight regulation of the industry. That's not been the case so far, they argue, with dispensaries opening near high schools in Seattle and with retail and medical pot shops in Denver outnumbering Starbucks and McDonald's locations combined.

The bills that passed this spring in each state's legislature, with bipartisan support, aimed mostly for industry expansion or deregulation. Washington lawmakers lightened the consequences of administrative violations, allowing for written warnings in lieu of fines. Colorado lawmakers approved broader investment in marijuana businesses and home delivery for medicinal users — followed by delivery for recreational users in 2021. Colorado also gave the go-ahead for consumers to use the drug in licensed dispensaries, restaurants and theaters.

Some physicians liken the states' actions to a public health experiment, one that supports the cannabis industry's interests while ignoring the implications for adolescents' health.

"I hope we don't lose a generation of people before we become clear we need to protect our kids' brains," said Leslie Walker-Harding, an adolescent medicine specialist who chairs the pediatrics department at Seattle Children's Hospital. It also is seeing more teens with marijuana-related symptoms.

The industry disagrees that potent products like crumble, budder and crystalline are a danger, saying additional studies are needed. Existing data are "inconclusive about whether the changes that have been linked to early cannabis use are damaging in the long term," Morgan Fox, media relations director for the National Cannabis Industry Association, said in an email. "There also needs to be more research on whether potency actually has an impact on consumers."

What's not disputed is how much is on the line financially. Ten states and the District of Columbia — with Illinois poised to be next — allow recreational marijuana use for adults, and 34 permit medical marijuana. Washington's commercial market posted a record \$978 million in retail sales in fiscal 2018, data show, which meant \$358 million in excise tax for state coffers. Colorado's pot industry racked up even higher sales in calendar 2018: a record \$1.54 billion, which brought in \$266 million in marijuana taxes, licenses and fees.

Colorado state Rep. Jonathan Singer, a Democrat from the community of Longmont, north of Boulder, expects the new delivery law to help block teens from buying marijuana via online and other easy sources. “We are in many ways stamping out a black market that doesn’t care whether they sell to kids,” he said in an interview.

Yet many educators and parents worry the opposite will occur: that the most recent measures will make it even easier for adolescents to get cannabis.

“It seems like everyone is looking the other way, and meanwhile kids are ending up in hospitals,” Brandt said in detailing the struggles over his son’s marijuana use. After the 20-year-old college student’s grades plummeted in the fall, his father enrolled him in a private treatment program costing thousands of dollars a month.

The popularity of cannabis concentrates — which bear no resemblance to the plant from which they’re derived — is linked to teens’ burgeoning use of electronic cigarettes, according to school officials. Some e-cigarette devices work with marijuana as well as nicotine. Unlike a burning joint, the vaped pot is odorless and smokeless.

The crossover is evident in Montrose, a recreation hub nestled in the Uncompahgre Valley on Colorado’s western slope. A 2017 national survey ranked Colorado at the top of 37 states for high-schoolers’ use of e-cigarettes, with a state survey that same year finding that more adolescents here vape than in any other region.

Vaping is an escalating disciplinary issue for Principal Scot Brown, a burly, no-nonsense administrator who has led Olathe Middle and High School for 11 years. He keeps the evidence in his “confiscation drawer.”

“This is from a four-day period,” he said recently, yanking open the drawer to reveal about a dozen vape pens and other devices. One was an angular gold-and-black teardrop-shaped gadget he found in a kid’s wallet. “Almost 50 percent of my students have vaped, whether it’s nicotine or marijuana. It’s an epidemic.”

Brown is hardly the only Montrose educator alarmed about students vaping cannabis. Matt Jenkins, who coordinates special education programs for the school district, mobilized after seeing students “going into the stratosphere, getting beyond way too high.” He obtained a \$750,000 grant, funded by state marijuana tax revenue, to hire two social workers and a nurse to help with “the Pandora’s box we opened.”

Jenkins quips that the district is “using weed money to tell the kids not to use weed” — and to prevent or reduce substance abuse. Its strategies include events that bring together students, parents, public health officials and even former users, as happened on a misty morning last month at Olathe.

In the school’s cavernous gym, back-to-back assemblies were introduced to a 40-year-old author, speaker and drug-treatment consultant named Ben Cort. Clad in a blazer and jeans, he paced the

floor and talked about how he'd kicked his marijuana habit as a teen — and why that was so important.

Cort explained which part of the brain controls which function. He focused on the frontal lobe, the area instrumental in problem solving, memory, language and judgment. Not until a person's mid-20s is it fully developed, he stressed.

"Think about it this way: Your brain is my phone — it's still growing and getting strong enough to handle everything the world will throw at it," he said, lifting his black cellphone high over his head. "When you put THC in it," Cort paused and flung the phone to the floor, eliciting gasps.

What will happen? he asked. His audience shouted the answer: "It will break!"

"Right," he responded. "The bottom line is, weed ain't for kids in any form — eating it, vaping it, smoking it. It's not okay."

The students bombarded him with questions: Is weed addictive? Is what it does to a teen's brain actually visible on a scan? Can you overdose on it? His answer, again and again and again: yes.

Cort conceded afterward that his talks with young people are often the hardest. They think they know so much more than they do, he said, and don't realize how vulnerable they are in a world of ever-more-powerful pot. The same applies to any state where pot is legal, he maintains.

"We are holding on to a construct of marijuana which today is antiquated," he said. "Ten years from now, there's going to be a reckoning."

Thank you for your careful consideration of 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

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From: [Christina Turner](#)
To: [Steve Betando](#)
Cc: [David Swing](#); [Michelle Bigelow](#)
Subject: RE: Please Do Not Invite Cannabis Industry into Morgan Hill in Any Form.
Date: Sunday, December 1, 2019 9:31:18 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

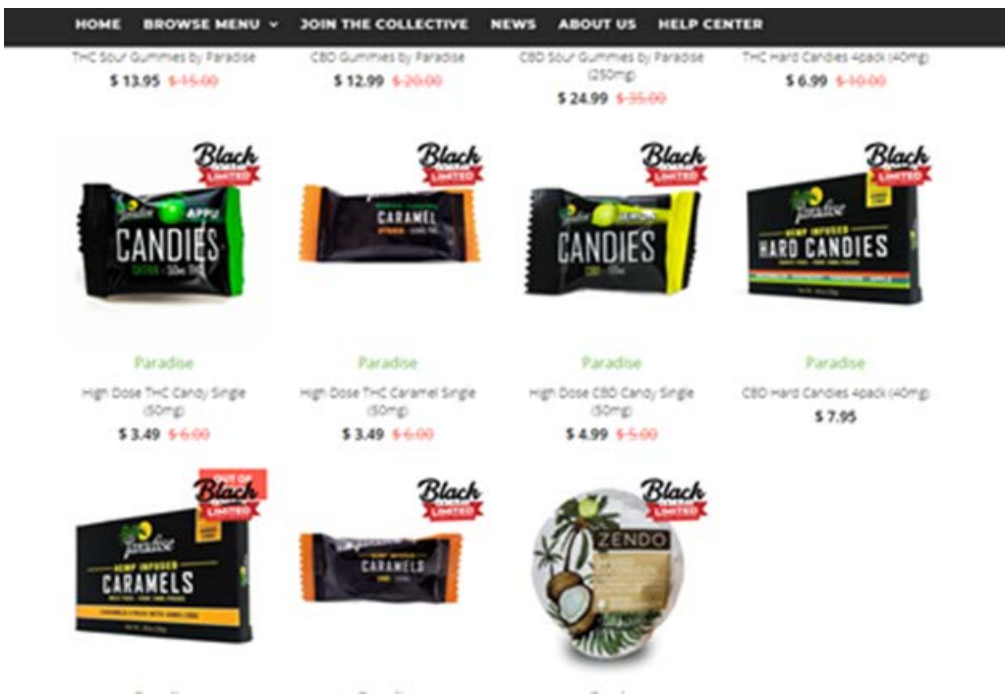
Thank you. Email will be supplemented.

From: Steve Betando <betandos@mhusd.org>
Sent: Sunday, December 1, 2019 9:03 PM
To: Rene Spring <Rene.Spring@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Larry Carr <Larry.Carr@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>; David Swing <David.Swing@morganhill.ca.gov>; Kirsten Perez <PerezK@mhusd.org>; Fawn Myers <myersf@mhusd.org>; Kelly Schriefer <schrieferk@mhusd.org>; Lanae Bays <baysl@mhusd.org>; Pilar Vazquez-Vialva <vazquez-vialvap@mhusd.org>
Subject: Please Do Not Invite Cannabis Industry into Morgan Hill in Any Form.

Dear Honorable Mayor and City Councilmembers,

Thank you for your consideration to ban flavored tobacco and any advertising that would appeal to minors who might be enticed to purchase such items due to the youth targeted product or advertising. Thank you also for your vote to prevent cannabis industry in your action to deny changing any related City ordinance at your prior meeting.

There would be a clear irony for the City Council if the vote of Agenda Item 15 at your December 4, 2019 City Council Meeting directs the Planning Commission to once again consider an ordinance allowing on-line industry to settle in Morgan Hill for the sales of on-line cannabis. This is the same meeting where you are considering another agenda item, that of banning flavored tobacco in the City. The online cannabis business has even more attractive qualities for youth and requires even more attention from law enforcement than does the tobacco industry. Please do not succumb to the enticement of exciting new tax revenues or to the pressure of those who are looking to invest in such local business ventures.



To better understand the ease of online shopping and delivery for cannabis, I risked my google-search user profile and did a search for on-line cannabis to see how the on-line cannabis industry operates and what products they sell. My search entered two terms in Google Search, then one click which took me to a site that asked me to verify with "yes" if I was of age to view the products. I clicked "yes," which gave me access to all their products. It was as easy as that.

Cannabis Vapes

Cannabis infused vape cartridges. Made with high quality Indica, Sativa, Hybrid & CBD oils.

Shop by Strain

Indica Strains
Sativa Strains
Hybrid Strains

Explore

Cannabis Vapes
Cannabis Strains
Cannabis Edibles
Cannabis Oils
CBD Products
Cannabis Topicals
PreRolls
Accessories



Below are some of the products for on-line cannabis. Clearly these products are appealing to minors. Many of these "flavors" are similar to the tobacco flavors which you are looking to ban.

Featured

DEATH BUBBA
GOLDEN PINEAPPLE
JUICY FRUIT
HAWAIIAN PUNCH

Ready to Deliver
ANGEL CAKE
ANIMAL GAS
ALIEN OG
BLACK DIAMOND
BLUE DRAGON
BLUEBERRY
BUBBLEBERRY
CAKE FROSTING
CRYSTAL COOKIES
CHOCOLATE ORANGES
CANDY LAND
FORBIDDEN FRUIT
EL JEFE
FROSTY BITE
GELATO #33
GOD'S GREEN CRACK
GIRL SCOUT COOKIES
JET FUEL
KING TUT
KUSHBERRY
LEMON HAZE
LEMON CREAMSICLE
MANDARIN COOKIES
MIMOSA
ORANGE INFUSED NUKEN
ORANGE JUICE
PABLO'S MINTS
ROCK STAR
SCOUT MASTER
SHERBERT CAKE
SNOW WHITE
SOUR TANGY
STAR KILLERS
STRAWBERRY COUGH
SUGAR CANE
SUNDAY DRIVER
SUPER LEMON HAZE
SWEET TOOTH
TORA BORA

TRAINWRECK
TROPICANA COOKIES
TWISTED VELVET
BLACK MAMBA
BLUE CHEESE
BLUEBERRY SKUNK
CANNALOPE
CBD DREAM
DEATH BUBBA
DEATH STAR
FROSTED CHERRY COOKIES
HONEY BANANAS
PEANUT BUTTER BREATH
PINK RHINO
RED CONGO X BLACK CHERRY PUNCH
SPACE COOKIES
WHITE CHEESE

New Products and Gummies

THE BLOX WATERMELON
APPLE JELLY BOMB
RASBERRY ZZZ BOMB
PINEAPPLE JELLY BOMB
MANGO JELLY BOMB
WEDDING CAKE

Special this week:

Phyto Extractions Disposable Vape Mix and Match (for On-Line Cannabis)

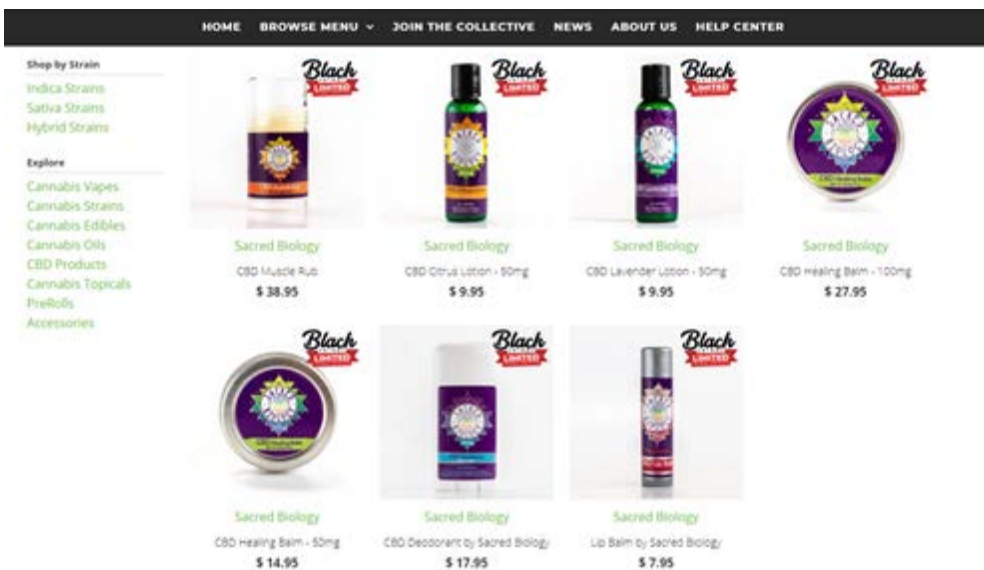


\$100.00

Pick 3 of your favourite flavours for only \$100! A savings of \$20!

- Typically Arrives in 2-3 Days via Express Post
- Free Shipping on Orders over \$149
- Raw
- Grape
- Rootbeer
- Watermelon
- Fruit Punch
- Green Apple
- Key Lime Pie
- Mango
- Blueberry
- Pineapple

Some of these websites offer "FREE VAPE PENS" with a minimum order amount.



Could regulation be an effective containment of sales to adults?

In 2017, forty-one percent of all search results linked to cannabis retailers advertising mail-order marijuana, promising delivery using a variety of methods including the United State Postal Service, commercial parcel companies such as UPS, or private courier. Moreover, mail-order marijuana retailers occupied half of the first-page results, and three out of every four searches resulted in a mail-order marijuana retailer as the very first suggested link. Is the City of Morgan Hill ready to regulate and fully enforce the law related to on-line businesses? Anyone, including teenagers, can

search for and buy marijuana from their smartphone. Having a local business exasperates the accessibility. Do the police have time in their day to monitor and catch local couriers? In consideration that law enforcement is now required to provide an arresting minor direct council from the public defender's office, it is difficult enough for the police to curb bad behaviors of our youth without inviting cannabis industry attractive for such violating minors.

Please do not act to create more burdens for our law enforcement or our schools. More importantly, please continue governance work to protect our youth. Please vote to retain the restrictive ordinance which not prohibits all cannabis industry in Morgan Hill.

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: Caitlin Robinett
To: [Yvonne Martinez Beltran](#); [Larry Carr](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#)
Cc: [Michelle Bigelow](#); [Christina Turner](#); [Donald Larkin](#)
Subject: Item 15
Date: Wednesday, December 4, 2019 4:48:44 PM

Council and Staff,

As many of you may know, my son Griffin has an immune disorder called EoE. I am hesitant to make his condition public, but in light of your discussion tonight I felt it was important for you to have a face to the myriad diseases, many of which affect children, that may react positively to CBD or medical cannabis products.

Eosinophilic Esophagitis is a disease that causes the body in response to every day factors such as food and/or environmental factors to collect white blood cells (eosinophils) in the esophagus, damaging the tissue and causing inflammation. For Griffin, it meant that at about 9 months old his esophagus was so inflamed that when he tried to swallow food, he would often vomit violently. Many kids with EoE are classified as “failure to thrive” because of their inability to gain weight and consume food like “normal” kids. If the foods and environmental factors triggering the EoE can not be discovered, patients are permanently fed a medical grade formula directly through the stomach. Even if the triggers are discovered, they can change at any time. Griffin is now 20 months old and he has already been put under general anesthesia 3 times just to try to monitor his disease. To try to get his condition under control, he was on steroids for over three months that caused further complications to his health. There are currently no treatments and no cure for this or any of the related Eosinophilic Gastrointestinal diseases.

I am lucky that because of my involvement on the council, I was introduced to Malisha Kumar, who also has children with EoE. Malisha got me hooked into an online group of moms who have children, or they themselves suffer from EoE. It's because of this group that I know how incredibly lucky we are. I have been introduced to children who have NO safe foods. There are some who can only consume white potato. These are kids who want to go to birthday parties and potlucks, but to fully participate would be to put their lives at risk. Many of these children are in constant pain. These moms are desperate to help their children. I can't tell you how much my heart aches for them- as silly as it is, I know Griffin will never be able to go to a birthday party and have cake, and I have to be the one to tell him. But it's worse to see him in pain and not be able to help.

But some moms are finding that CBD oil offers the only relief they have found for their children. Some are reporting that after years of food trials and endoscopies, CBD oil is helping to repair damaged tissue in the esophagus and send their kids into remission. I have seen photos of esophaguses taken during endoscopies where the tissue is diseased and furrowed, and after only CBD oil the tissue has healed. There isn't enough medical research around this treatment, but parents can't wait for bureaucracies to catch up while they are watching their children suffer- not while there is potentially a natural, safe, NON HALLUCINOGENIC option. But while the stigma of cannabis remains, we are losing precious time that could be used for scientific research. Because of this, parents are relegated to internet research to try to figure out what to buy. This is unacceptable. If these products are entering our town, they should be originated by vendors who we can speak to about their business practices and who I can ask questions of. I want them to be regulated and known by our law enforcement.

I am not ready to try CBD oil for Griffin because I am too scared of the unknowns and he is too early in his diagnosis. But if we get to the point where it becomes necessary, I hope I will be able to turn to an actual person in Morgan Hill I can ask questions to. I would not know the first thing about what to buy, and the internet is not a reliable place to turn.

I trust you will do what you can to balance the rights of law abiding citizens with the safety of our community.

Sincerely,

Caitlin Robinett Jachimowicz

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City Council Meeting

December 4, 2019

Item 16

Fire Services Standards of Coverage Assessment



Background



- November 2018 – City Council commissioned a joint Fire Services Standards of Coverage Assessment with the City of Gilroy and South Santa Clara County Fire District

The Assessment

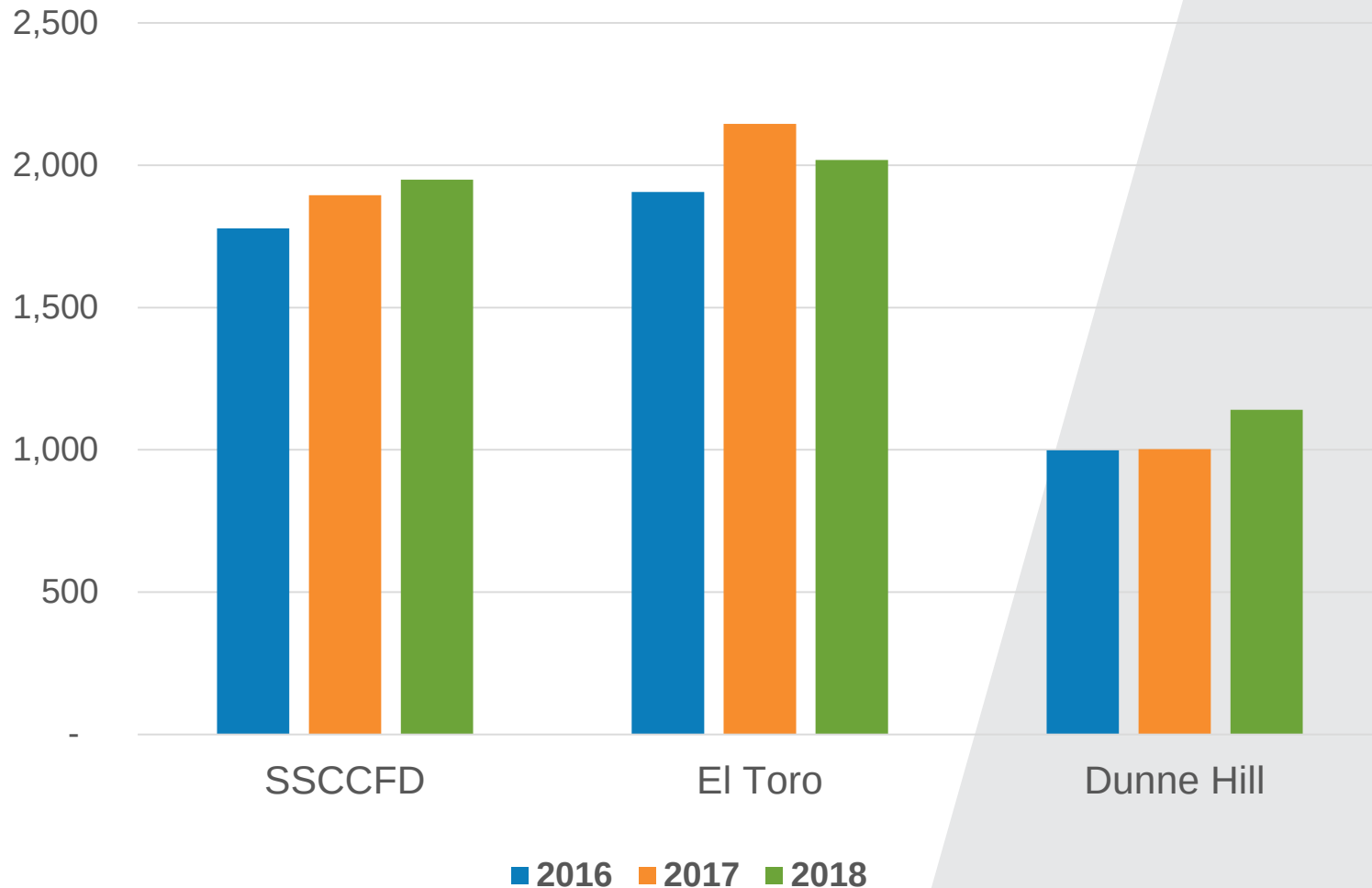


Overall three primary challenges in South region:

- Daily staffing capacity
- Fire station location
- Mutual-aid isolation

40 Findings and 10 Recommendations

Incidents by Stations in Morgan Hill (2016-2018)



Key Takeaways for Morgan Hill



- Adopt performance objectives and monitor unit hour utilization quarterly
- Build third fire station; or incrementally staff up an additional unit, or dynamically deploy two-person peak activity unit
- Review fire crew deployment, turn out, and first unit travel time for improvements
- Continue to collaborate with Fire District to provide shared services that enhance fire and EMS service delivery
- Establish and participate in joint strategic planning to evaluate potential cooperative service elements amongst the three agencies

Next Steps



- Staff will return to Council in early 2020 with recommendations addressing findings specific to Morgan Hill and performance objectives for the Council to review and adopt as a policy
- Third fire station: Assessment validates the need for third City station and confirms the proposed location to be appropriate. Related recommendations will be made through upcoming budget and Capital Improvement Program development

Questions?



**City Council
December 4, 2019**

**1st Quarter FY2019-20
Financial Report**

Item 17



General Fund

- Both Revenues and Expenditures are tracking within budget
- Key GF revenues:

Category	Budget	YTD Actual	Prior YTD
Property Tax	\$13,082,377	\$ 24,485	\$ 103,321
Sales Tax	10,476,000	1,105,756	991,931
Svc Charges	10,267,724	2,790,139	2,688,112
Hotel Tax	3,080,880	583,038	510,945

- Expenditures including encumbrances:

Total Exp	\$43,991,359	\$12,667,759	\$12,771,498
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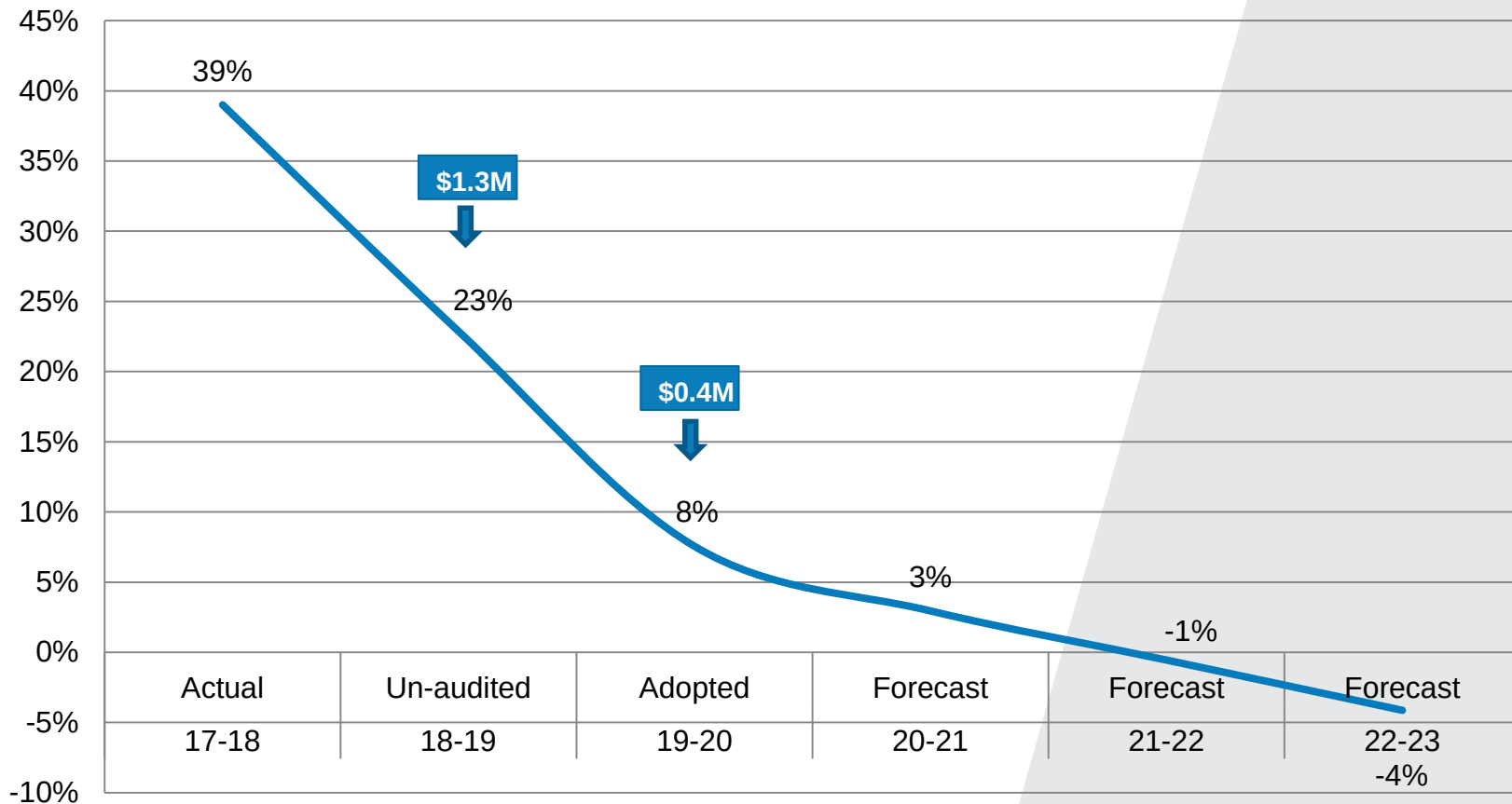
Development Services Fund



- Both revenues and expenditures are tracking below budget

Category	Budget	YTD Actual	Prior YTD
Revenues	\$5,263,435	\$1,088,400	\$1,366,793
Expenditures	5,847,332	1,912,260	2,007,462
Net	(\$583,897)	(\$823,860)	(\$640,669)

Development Services Fund (cont'd)



Enterprise Funds

- Wastewater Operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$12,117,909	\$1,678,014	\$1,821,111
Expenditures	12,087,541	3,122,359	2,640,645
Net	\$30,368	(\$1,444,345)	(\$819,534)

- Per City Council reserve policy – excess funds will be transferred to Wastewater capital projects fund

Enterprise Funds (cont'd)

- Water operations

Category	Budget	YTD Actual	Prior YTD
Revenues	\$14,780,500	\$2,747,840	\$3,023,020
Expenditures	15,106,526	5,034,721	3,778,338
Net	(\$326,026)	(\$2,286,881)	(\$755,318)

- Per City Council reserve policy – excess funds will be transferred to Water capital projects fund



CITY OF MORGAN HILL

City Council Meeting

December 4, 2019

Item 19

AAE2019-0010 (DA2018-0002)

East Dunne-Young



East Dunne-Young



Project:

46-unit East Dunne-Young (Andalusia) project
20 allotments awarded - 2017 RDCS competition
15 ongoing allotments – 2018 RDCS competition

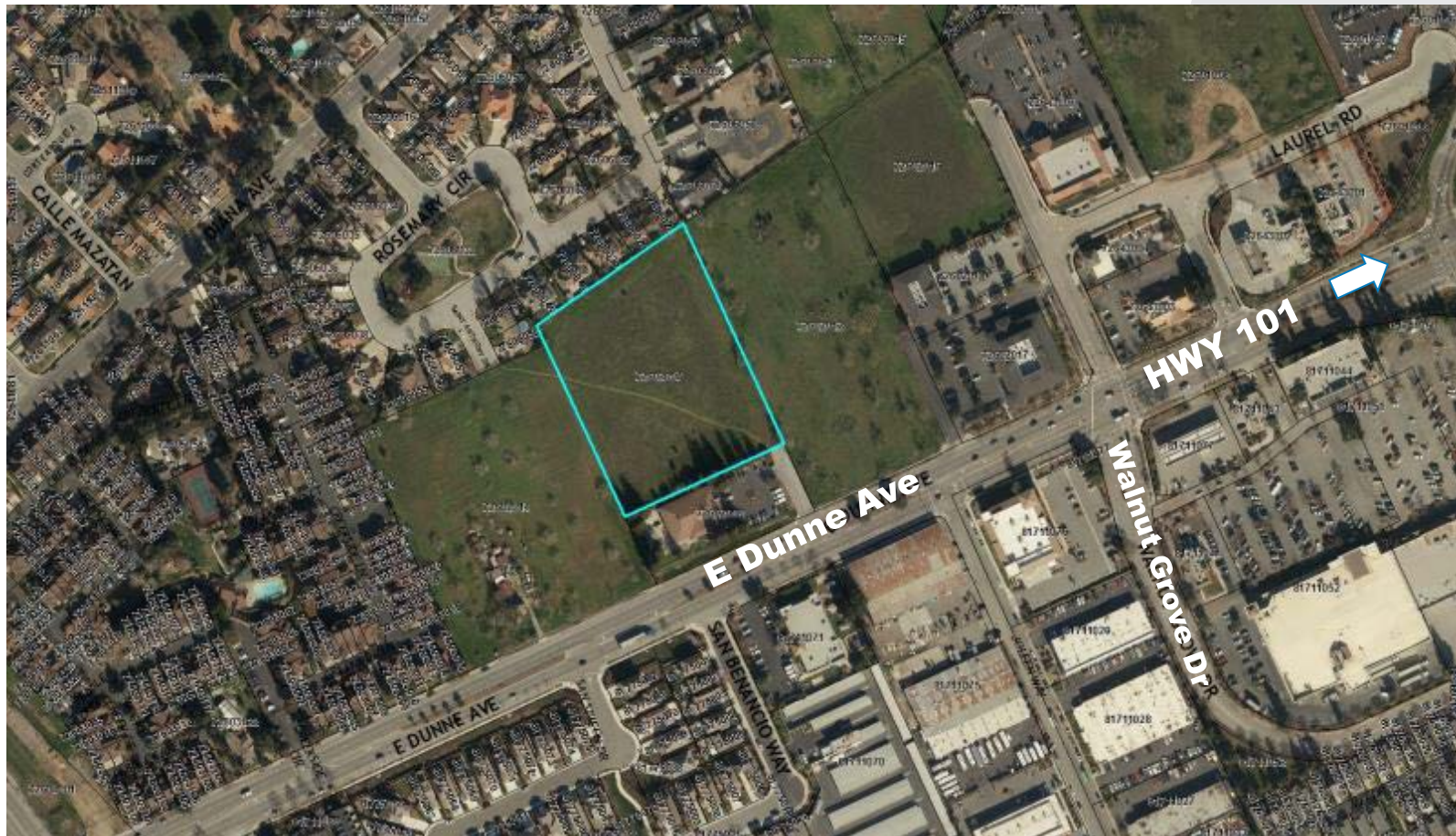
Request:

Development Agreement to incorporate 15 ongoing
FY 2020-21 allotments

Transfer of 11 Allotments from RDCS 2019-0005:Monterey-
Lucky Shing

East Dunne-Young (Cont'd)

Project Location:



East Dunne-Young (Cont'd)

Transfer of Allotment Findings

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

East Dunne-Young (Cont'd)

Transfer of Allotment Summary

- The E. Dunne-Young project is fully entitled:
 - Tentative Map SD2018-0004: November 27, 2018
 - Development Agreement DA2018-0002: January 23, 2019
 - Site Review SR2018-0020: February 28, 2019
- The transfer would provide uninterrupted completion of the project
- 13 allotments would remain for RDCS 2019-0005: Monterey-Lucky Shing for phase one of that project

East Dunne-Young (Cont'd)

Recommendation

1. Open/close public hearing;
2. Waive first reading of the Ordinance amending the DA and approving the transfer of allotments; and
3. Introduce the Ordinance.

Questions?





City Council Meeting

December 4, 2019

Item 20

*Convenience Market Ordinance
Update*

Scott Nelson

PROPOSED ORDINANCE (SUMMARY)

Proposal Seeks to Update and Establish:

- Separate Definitions For:
 - Convenience Market (Standalone)
 - Fuel and Service Stations
 - Convenience Market with Fuel and Service Station
 - Liquor Store
- Supplemental Standards :
 - Remove 1,000-foot separation requirement for standalone convenience market
 - Retain 1,000-foot separation requirement for liquor stores
- Land Use Table:
 - Updated to reflect above changes and provide clarity for applicants/staff

CONVENIENCE MARKETS

Background:

- Over the last 18 months, multiple business owners have approached the City regarding the current convenience market ordinance.
- On 4/9/2019, Economic Development and Planning Division provided a workshop on this topic to the Planning Commission.
- On 11/12/2019, staff provided the Planning Commission with proposed ordinances based on outreach to community members, business members, and best practices.
 - The Planning Commission voted in favor of recommending the proposed ordinance to the City Council, with minor language changes

ISSUES

- Convenience Markets have evolved:
 - Larger, brighter, and more “grab and go” ready-to-eat type foods
 - New industry standard size for convenience markets are between 2,500-5,000 square feet



ISSUES

- Current ordinance limits expansion and re-investment:
 - Current market owners that want to expand are limited to 300 square feet, if within 1,000 feet of another market
 - New convenience markets are also limited by distance restriction
- Unintended consequences:
 - Concentration concern for “liquor stores” also restricted “Convenience Markets” which only sell alcohol (beer/wine) incidental to other sales.

PROPOSED DEFINITIONS

Convenience Markets: A retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. ~~Includes liquor stores where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages.~~ Excludes full-service grocery stores containing less than five thousand square feet of gross floor area where at least ten percent of the floor area is allocated for the sale of fresh meat, seafood and fresh produce products.

Convenience Market with Fuel and Service Station: A retail business establishment that meets the combined definitions of Convenience Markets (See section 18.124.040.P.2) and Fuel and Service Stations (See Section 18.124.040.Q.1).

Liquor Store: A retail establishment, having a Type 21 (Off-Sale General) license issued through the Alcoholic Beverage Control, and where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages (which includes beer, wine, and distilled spirits) for off-premises consumption. (Type 21 license requirement added by Planning Commission)

PROPOSED ORDINANCE

Proposal Seeks to Update and Establish:

- **Separate Definitions For:**
 - Convenience Market (Standalone)
 - Fuel and Service Stations
 - Convenience Market with Fuel and Service Station
 - Liquor Store
- **Supplemental Standards :**
 - Remove 1,000-foot separation requirement for standalone convenience market
 - Retain 1,000-foot separation requirement for liquor stores
- **Land Use Table:**
 - Updated to reflect above changes and provide clarity for applicants/staff

CONVENIENCE MARKETS

	Standalone Convenience Markets	Convenience Markets with Fuel & Service Stations	Liquor Stores
Conditional Use Permit	Yes	Yes	Yes
School Proximity Restriction (1,000 ft.)	Yes	Yes	Yes
Separation Restriction	No	No	Yes (1,000 ft.)
Crime Prevention Measures (lighting/video)	Yes	Yes	Yes
Loiter Control Measures	Yes	Yes	Yes

PLANNING COMMISSION - RECOMMENDATION

The Planning Commission voted in favor of recommending the proposed ordinance to the City Council with a 4-3 vote, with the following amendments:

1) Add language to section 18.92.030.D (Restrooms and Automotive Services) that restrooms be “well-lit and made safe”.

-The following language was added to the proposed amendment in section 18.92.032.C.1 “and shall comply with the lighting and crime prevention measures in Section E of this section.”

2) Add language to section 18.124.040.P.8 (Liquor Store definition) that this type of land use requires a “Type 21” license from the Alcoholic Beverage Commission (ABC). This language was added to the proposed amendment.

-This requirement was added to address an issue where a business with 45% liquor sales qualified as a convenience store rather than a liquor store. The reference to a Type 21 license (sale of distilled spirits) was inserted to respond to the concern.

PLANNING COMMISSION - RECOMMENDATION

Two Planning Commission members raised concerns that the distance requirements from schools for convenience markets and convenience market with a fuel and service station were an unnecessary encumbrance on businesses trying to operate in the City of Morgan Hill.

- 1) The Morgan Hill Unified School District was contacted, and they specifically requested the 1,000-foot separation requirement be maintained as a minimum distance.
- 2) A review of best practices from other municipalities in Santa Clara County shows that standard distance separation between a school and retail location that sells alcoholic beverages is between 500-1,000 feet.
- 3) ABC has a presumptive 600-foot distance restriction between an establishment and a school, public playground or non-profit youth facility.
- 4) Notably, no business owners have contacted City staff requesting a change to this distance separation requirement.

OUTREACH

Alcoholic Beverage Control (ABC)

Business Owners / Organizations

Morgan Hill Chamber of Commerce

Morgan Hill Police Department

Mothers Against Drunk Drivers (MADD)

CONVENIENCE MARKET

Questions?

CURRENT ORDINANCE

Title 18, Division 1, Chapter 18.92.030 establishes standards for Convenience Markets.

- 1,000-foot distance restriction from another convenience market
 - Exceptions for Highway 101 and Dunne Ave., Tennant Ave., and Cochrane Rd.
 - Exception for 300 SF or less of sales/display area
- 1,000-foot distance restriction from a school site
- Gas Station shall provide restrooms and air/water service
- Loiter Control and Crime Prevention (public phone, video games)
- Gas & Alcohol: display, placement and advertisement

CURRENT ORDINANCE

Title 18, Division 1, Chapter 18.124.040 establishes the definition of a Convenience Markets.

A retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. **Includes liquor stores where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages.** Excludes full-service grocery stores containing less than five thousand square feet of gross floor area where at least ten percent of the floor area is allocated for the sale of fresh meat, seafood and fresh produce products.

CURRENT DEFINITIONS

Convenience Markets. A retail establishment which contains less than five thousand square feet of gross floor area allocated for the sale of groceries, staples, dairy products, sundry items, tobacco products and/or alcoholic beverages. Includes liquor stores where all or the majority of the floor area for retail sales is allocated for the sale of alcoholic beverages. Excludes full-service grocery stores containing less than five thousand square feet of gross floor area where at least ten percent of the floor area is allocated for the sale.

Fuel and Service Stations. A retail business establishment supplying fuels and oil and minor accessories for automobiles. Includes establishments supplying gasoline, hydrogen, and electric vehicle charging as a primary land use. Includes incidental food and beverage sales, car wash facilities, minor automotive repair and service, and towing service with up to two trucks. Excludes body and fender work, painting, and other major automotive repairs.

CURRENT DEFINITIONS

General Retail. Stores and shops selling merchandise to the general public. Includes grocery stores, specialty food markets, drug stores, general merchandise stores, department stores, clothing stores, pet stores, small hardware stores, cellular phone sales and service, florists, arts and crafts galleries, and other similar retail establishments. Excludes "building materials," "convenience markets," "home improvement centers," and "large commodity retail." of fresh meat, seafood and fresh produce products.

Large Commodity Retail. A retail use where more than seventy-five percent of the gross floor area is used for display, sales, and related storage of bulky commodities, and which typically generate a demand for fewer parking spaces than do other types of retail uses. Includes retail sale of carpeting and floor covering; catalog and mail order sales; construction equipment and machinery; garden and farm equipment; heating, ventilating, air conditioning, and other mechanical equipment and supplies; kitchen, bathroom and plumbing appliances, equipment and supplies; lumber and building materials; office furniture, equipment and machinery, including computers; and household furniture.



ZA2019-0015

ACCESSORY DWELLING UNIT ORDINANCE

Item 21



December 4, 2019

ADU Ordinance



Project:

Zoning Amendment Amending Chapter 18.84: Accessory Dwelling Units & Updating Definitions in Chapter 18.124

Request:

Adopt Ordinance approving Chapter 18.84: Accessory Dwelling Unit and Chapter 18.124: Land Use Definitions Zoning Amendment

ADU Ordinance (Cont'd)



Background:

- October 9, 2019 Governor Gavin Newsom signed Assembly Bill 68, Assembly Bill 881 & Senate Bill 13 amending Government Code regarding Accessory Dwelling Units (ADUs)

Government Code Changes to ADUs:

- Requires ADUs be processed ministerially;
- Allows Accessory units on a single lot with SFD or MFD;
- Reduced or no parking requirements for accessory units;
- Restricts jurisdictions limiting the size of ADUs; and
- Provides for tiered impact fees.

ADU Ordinance (Cont'd)



Chapter 18.84 Modifications

General:

- Accessory Dwelling Units and Junior Accessory Dwelling Units
- 60-day time frame to approve or deny an ADU Building Permit
- ADUs allowed with SFD or MFD
- Shall not be rented for less than 30 days

Setbacks:

- No setback for existing accessory structure or living area converted to ADU or constructed within same footprint
- 4-foot setback from Rear and Side property lines

Height:

- 16-feet if ADU does not meet base zoning setback

ADU Ordinance (Cont'd)



Chapter 18.84 Modifications

Parking:

- On-site parking not required for Junior ADUs
- 1 on-site parking space required for each ADU
- May be tandem
- On-site parking for primary dwelling not required to be replaced

No off-street parking required for ADU when:

- Within ½ mile from public transit
- Within a historic district
- Constructed within primary residence or accessory structure
- On-street parking permits are required
- Car share vehicle within 1 block

ADU Ordinance (Cont'd)



Table 18.84-1: Maximum Accessory Dwelling Unit Floor Area

Zoning District	Maximum Floor Area
RE 10	1,200 sq. ft.*
RE 2.5	1,000 sq. ft.*
RE 1	900 sq. ft. (1 Bedroom) 1,000 sq. ft. (2 or more Bedrooms)*
All other zoning districts	850 sq. ft. (1 Bedroom) 1,000 sq. ft. (2 or more Bedrooms)*

* An attached ADU shall not exceed 50% of the existing primary dwelling

The maximum floor area of a Junior ADU shall be 500 square feet.

ADU Ordinance (Cont'd)



Chapter 18.84 Modifications

Fees:

- ADU < 750 sq. ft. = no impact fees
- ADU ≥ 750 sq. ft. = proportional impact fees

Chapter 18.124 Modifications

ADU Definition:

- Self contained living unit (attached or detached)
- Permanent provisions for living, sleeping, eating, cooking and sanitation
- Includes Junior ADU (unit contained within a SFD ≤ 500 sq. ft.)
- Includes Manufactured Home and Efficiency Unit (unit ≥ 150 sq. ft.)

ADU Ordinance (Cont'd)



Recommendation

1. Open/close public hearing
2. Waive first reading of the Zoning Amendment
3. Introduce the zoning ordinance amendment

Findings

1. The proposed amendment is consistent with the General Plan and any applicable specific plan as provided by GC Section 65860
2. The proposed amendment will not be detrimental to the public interest, health, safety, convenience, or welfare of the City
3. The proposed amendment is internally consistent with other provisions of the zoning code

Questions?



From: [Chris Ghione](#)
To: [Michelle Bigelow](#)
Cc: [Christina Turner](#)
Subject: Supplemental Item - Parks and Recreation Commission Recommendation for Item 23
Date: Wednesday, December 18, 2019 6:23:30 AM

Michelle,

Last night, at their December 17, 2019 meeting, the Parks and Recreation Commission reviewed the potential purchase of sports facility land which is to be reviewed under item 23 on tonight's Council Agenda. By a 6-0 vote the Commission concurred with City staff's recommendation on purchasing the property.

Thank you,

Chris

Chris Ghione
Public Services Director
[Engage With Us!](#)

City of Morgan Hill
Community Services, Engineering and Utilities
17575 Peak Avenue, Morgan Hill, California, USA 95037

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morganhill.ca.gov | [facebook](#) | [twitter](#)

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Special - Regular Meeting Agenda

City Council

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

Wednesday, December 4, 2019 6:00 p.m.

Council Chamber
17555 Peak Avenue, Morgan Hill, CA 95037

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 6:00 pm for the purpose of conducting a Joint Morgan Hill City Council and the South Santa Clara County Fire District Board of Commissioners meeting to receive a presentation on the Fire Services Hazard-Risk Assessment and Standards of Coverage Study

TELECONFERENCE

Mayor Constantine will be participating in the meeting via teleconference as follows:

Hyatt Place Washington DC
400 E St SW
Washington DC 20024

Public comment from the teleconference location shall be allowed.

CALL TO ORDER

Mayor Pro Tem Spring

ROLL CALL ATTENDANCE

Deputy City Clerk Michelle Bigelow
Board Clerk Kim Camarena

ROLL CALL:

Mayor Constantine, Mayor Pro Tem Spring, Council Member Martinez Beltran, Council Member John McKay, Council Member Larry Carr

Commissioner Lewis, Commissioner Acker, Commissioner Ludewig, Commissioner Monaco,
Commissioner Scatena, Commissioner Velasco

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
Deputy City Clerk Michelle Bigelow
Board Clerk Kim Camarena

SPECIAL MEETING

6:00 P.M.

1. FIRE SERVICES HAZARD-RISK ASSESSMENT AND STANDARDS OF COVERAGE STUDY PRESENTATION

Recommendation:

Receive presentation.

REGULAR MEETING

7:00 P.M.

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

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

CITY COUNCIL REPORTS

Council Member Carr

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

2. ACCEPT COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 2019

Recommendation:

Accept the City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019.

3. ADOPT RESOLUTION APPROVING AND MAKING FINDINGS RELATED TO THE AB 1600 DEVELOPMENT IMPACT FEE ANNUAL REPORT FOR FISCAL YEAR 2018-19

Recommendation:

Adopt resolution making findings for unexpended development impact fees and accept the annual development impact fee report.

4. APPROVE SECOND AMENDMENT TO DESIGN SERVICES AGREEMENT WITH HYDROSCIENCE ENGINEERS FOR THE NEW SEWER TRUNK PROJECT

Recommendation:

1. Approve Second Amendment to Service Agreement for Design Professionals with HydroScience Engineers, Inc. to provide additional services for the New Sewer Trunk Line to Gilroy project for an additional \$531,050, for a total not to exceed amount of \$1,704,710; and
2. Authorize the City Manager to execute and administer the amended services agreement.

5. ADOPT RESOLUTION INITIATING 2020 HAZARDOUS VEGETATION PROGRAM

Recommendation:

Adopt resolution declaring weeds and brush to be a nuisance and setting the hazardous vegetation public hearing on February 5, 2020.

6. ACCEPT THE ANNUAL SB 165 REPORT FOR COMMUNITY FACILITIES DISTRICT NO. 2014-1 (FISHER CREEK)

Recommendation:

Accept the report.

7. APPROVE DESIGN SERVICES AGREEMENT WITH SCHAAF & WHEELER FOR INFLOW AND INFILTRATION PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer the design services agreement with SchAAF and Wheeler, in the not to exceed amount of \$145,555, for the design of the Sewer Inflow and Infiltration Project.

8. APPROVE AGREEMENT FOR WATER LABORATORY TESTING AND ANALYSIS SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer a three-year service agreement for a not to exceed amount of \$200,000 with Alpha Analytical Laboratories, Inc., for water laboratory testing and analysis services.

9. APPROVAL OF FINAL MAP FOR SAN SEBASTIAN PHASE 2C - TRACT NO. 10478

Recommendation:

1. Approve the Final Map;
2. Approve and Authorize the City Manager to execute and administer a Stormwater Best-Management-Practices (BMP) Operation and Maintenance Agreement pending review and approval by the City Attorney; and
3. Authorize the recordation of the Final Map and the Stormwater BMP Operation and Maintenance Agreement.

10. AWARD DOWNTOWN CROSSWALK SAFETY IMPROVEMENTS PROJECT

Recommendation:

1. Approve the Downtown Crosswalk Safety Improvements Project plans and specifications;
2. Award contract to Golden Bay Construction, Inc. for the Downtown Crosswalk Safety Improvements Project in the amount of \$123,309;
3. Authorize expenditure of construction contingency funds not to exceed \$12,331; and
4. Authorize the City Manager to execute and administer the construction contract with Golden Bay Construction, Inc., pending review and approval by the City Attorney.

11. REJECT PROPOSALS FOR LANDSCAPE MAINTENANCE GROUP 5

Recommendation:

Reject proposals for Landscape Maintenance Group 5 per Municipal Code Section 3.04.170, and direct staff to maintain the Group 5 Landscape Assessment Districts with in-house maintenance staff.

12. REJECT BIDS FOR CENTENNIAL RECREATION CENTER GENERATOR PROJECT

Recommendation:

1. Reject bids for the Centennial Recreation Center Generator Project and direct staff to re-bid the project with design changes; and
2. Authorize the City Manager to negotiate and execute modifications to the previously approved California Office of Emergency Services' 404 Hazard Mitigation Grant Program agreement.

13. ANDERSON DAM PROJECT ADVOCACY

Recommendation:

Informational Only.

OTHER BUSINESS

14. INTRODUCE ORDINANCE PROHIBITING SALE OF FLAVORED TOBACCO AND VAPING (E-CIGARETTE) PRODUCTS

Recommendation:

1. Waive the first and second reading of the ordinance; and
2. Introduce the ordinance prohibiting the sale of flavored tobacco and e-cigarette products.

Estimated Time: 60 Minutes

15. PROVIDE DIRECTION REGARDING NON-STOREFRONT (DELIVERY ONLY) CANNABIS RETAIL ORDINANCE

Recommendation:

1. Direct staff to return with an ordinance which allows non-storefront, delivery only, cannabis retail within the City limits.
OR
2. Continue to maintain Chapter 9.16 of the Morgan Hill Municipal Code prohibiting all activities related to commercial cannabis, unless otherwise allowed by state law.

Estimated Time: 10 Minutes

16. DISCUSS FIRE SERVICES HAZARD-RISK ASSESSMENT AND STANDARDS OF COVERAGE ASSESSMENT PREPARED AND PRESENTED BY CITYGATE ASSOCIATES, LLC

Recommendation:

1. Receive report; and
2. Provide direction to staff on next steps.

Estimated Time: 30 Minutes

17. ACCEPT SEPTEMBER 2019 FINANCIAL AND INVESTMENT AND CITY MANAGER AUTHORITY REPORTS

Recommendation:

Accept and file report.

Estimated Time: 10 Minutes

18. SELECT CITY COUNCIL MAYOR PRO TEMPORE AND REVIEW CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Recommendation:

1. Open floor to nomination(s) for Mayor Pro Tempore;
2. Select a Council Member to serve as Mayor Pro Tempore per City Council Policy 99-01;
3. Review and approve the City Council Appointments to Outside Agencies; and
4. Direct the City Clerk to notify the appropriate agencies of the updated assignments and update the Form 806 as necessary.

Estimated Time: 10 Minutes

PUBLIC HEARING

19. APPROVE AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR DUNNE-YOUNG TO INCORPORATE 26 BUILDING ALLOTMENTS FOR FISCAL YEAR 2020-21 AWARDED FROM THE 2018 RESIDENTIAL DEVELOPMENT CONTROL SYSTEM AND TRANSFERRED FROM THE MONTEREY-LUCKY SHING (MANZANITA PARK) PROJECT FOR THE 46-UNIT EAST DUNNE-YOUNG PROJECT (ALSO KNOWN AS ANDALUSIA) LOCATED ON THE NORTH SIDE OF E. DUNNE AVENUE BEHIND THE KINDERCARE LEARNING CENTER LOCATED AT 605 E. DUNNE AVENUE

Recommendation:

1. Open/close public hearing;
2. Waive the first and second reading of ordinance approving amendment to a Development Agreement (DA 2018-0002) and a transfer of allotments from the Monterey-Lucky-Shing project; and
3. Introduce ordinance amending the Development Agreement.

Estimated Time: 30 Minutes

20. ADOPT ORDINANCE AMENDING SECTION 18.24.020 (LAND USE REGULATIONS) OF CHAPTER 18.24 (COMMERCIAL ZONING DISTRICTS); AMENDING SECTION 18.92.030 (CONVENIENCE MARKETS) OF, AND ADDING SECTIONS 18.92.031 (LIQUOR STORE) AND 18.92.032 (CONVENIENCE MARKETS WITH FUEL AND SERVICE STATIONS) TO, CHAPTER 18.92 (SUPPLEMENTAL STANDARDS); AND AMENDING SECTION 18.124.040 (COMMERCIAL USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING CONVENIENCE MARKETS, FUEL AND SERVICE STATIONS, AND LIQUOR STORES

Recommendation:

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

Estimated Time: 30 Minutes

21. ADOPT ZONING ORDINANCE AMENDING CHAPTER 18.84: ACCESSORY DWELLING UNITS AND UPDATING DEFINITIONS IN CHAPTER 18.124 OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL IMPLEMENTING AMENDMENTS MADE TO THE CALIFORNIA PLANNING AND ZONING LAW REGARDING ACCESSORY DWELLING UNITS AND JUNIOR ACCESSORY DWELLING UNITS BY ASSEMBLY BILL 68, ASSEMBLY BILL 881, AND SENATE BILL 13

Recommendation:

1. Open/close the public hearing;
2. Waive first reading of the Zoning Amendment Ordinance; and
3. Introduce the Zoning Amendment Ordinance.

Estimated Time: 30 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

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: [Harjot Sangha](#)
To: [Michelle Bigelow](#)
Cc: [Christina Turner](#)
Subject: Questions for tonight's City Council meeting
Date: Wednesday, December 4, 2019 4:12:43 PM
Attachments: [SCC Tobacco Retail License Ordinance.pdf](#)

Hi Michelle – supplement for tonight's agenda.

Thank you,
Harjot

Questions on Morgan Hill City Council December 4, 2019 Agenda Items:

Item 3: Some fund balances are negative. Is this allowable as other fund balances are in excess or is it okay to run a negative balance for a short time? Negative for a long time?

There are a few funds that have negative fund balances and it is okay to run a negative balances for a short time. If they continue to have negative balance for a long time then they need to be evaluated, such as updating the fee amount, which the City Council just did two months ago, and/or postponing of projects/expenditures.

Item 4: Are the bidding and construction management aspects (from initial contract) out of contract and credited towards design use of just being held until later?

In short, being utilized towards design. The amended contract does not include the bidding and construction management components of the project. They were in the initial agreement, but the project complexity and issues outlined in the staff report has utilized much more funding than anticipated. We did not include the bidding and construction support in the current amendment as we do not feel we can accurately scope that work until we finalize the plans. The design is complicated and dependent on the City of Gilroy and County of Santa Clara commenting throughout and requesting changes through the design process.

Item 6: Last year income seems high if the fund balance is what it is and the expenditures were so low this year. Do revenues and costs vary from year to year or are they fairly consistent?

The City has experienced low expenses during the first few years of administering this district due to delays in the developer finalizing their permit – which required the developer to pay the expenses for the first several years. This enabled the City to accumulate a healthy reserve balance in the special fund. The City is now solely responsible for expenses and is learning what expenses are likely to be incurred on an annual basis. There is a variance from year-to-year based on the amount of rainfall received and when it occurs – as these factors dramatically impact the amount of manual weed abatement required in the area.

The reserve balance will be needed if revegetation or additional grading work is required. With the vegetation growth in a healthy state and the creek channel

remaining stable to date, the chance of the City facing extraordinary expenses is declining. With this development, and with a growing comfort level in anticipating normal maintenance expenses, staff will be reassessing the level of the special tax for FY 2020-21 and will include the recalculated amount in the recommended budget. It is likely that the special tax will be lowered.

Item 11: Can the residents responsible for the cost of maintenance be given the option to pay for the higher cost of maintenance without the potentially hazardous herbicide?

The short answer is yes. With that said it is not likely the majority of residents would support this. Through multiple meetings with Mill Creek residents, they have not requested this and are primarily concerned with just getting enough votes to increase the assessment to provide basic maintenance. Increasing the assessment at a higher level could result in the failure to pass the increase at all (which may happen anyway). With this said we are working through the non-herbicide options for the Council. We are also working through an assessment increase for basic services (as was heard on a separate item at the previous Council meeting). There is a difficult balancing act taking place as we try to move forward with the Council's direction on herbicides and continue to maintain the LAD sub areas.

Item 14: Where was the County Ordinance for review? How will that be introduced into the conversation tonight?

The County Retail Tobacco License ordinance is nearly identical in content to our proposal except for the removal of "cigars" and "pipe tobacco" from the ban. Direction was given at the last Council meeting to explore options to allow for cigar and pipe tobacco products to be excluded from the ban. If we were to adopt the county ordinance, they would facilitate the tobacco licensing process for us. However, they require that our ordinance "mirror" theirs with no variations to their ordinance. We have attached a copy of the County Ordinance to this email.

Item 19: Can a development with a development agreement void it by failing to execute within the scheduled dates of performance or does it attach itself to the land in some way? in other words can a developer with an development agreement with desirable terms for the community sit out the agreement and proceed to build something else completely, or sell to someone else who will not have to honor the DA?

If the amendment to the DA is not approved (or if the developer did not sign it), the commitments would not apply to the remaining 26 building allotments and the City would lose the opportunity for the remaining public benefit commitments; however, the DA (with its commitments) will remain in effect for the existing 20 allotments. The terms and conditions (covenants) run with the land, meaning if the property is transferred or sold, the DA remains in effect. Generally, DAs are in effect for 10 years, until the project is built, or until all residential allotments are lost (not an issue with SB 330). Some developers, especially those who have pulled some building permits, are motivated to lock in their remaining allotments this year to apply for building permits under the current building code. While a developer could wait until January 1 and not be concerned with RDCS, they would be required to comply with the new building codes.

