



Special - Regular Meeting Agenda
City Council

Rich Constantine - Mayor
John McKay - Mayor Pro Tem
Gino Borgioli - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Wednesday, February 17, 2021 5:00 p.m.

Virtual Meeting

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

City Council meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling in to: (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>

* Please note that comments made on Facebook are not considered public comment.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:00 pm for the purpose of conducting a workshop.

5:00 pm Workshop

7:00 pm Regular Meeting

SPECIAL MEETING

5:00 pm Workshop

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
City Clerk Michelle Bigelow

WORKSHOP

1. LAST MILE (LOCAL) DELIVERY/DISTRIBUTION

Recommendation:

Examine what “last mile (local) delivery” is and how it could serve or impact our community, discuss what the City has done to date to regulate distribution, and explore regulations for last mile (local) delivery uses.

REGULAR MEETING

7:00 pm

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.

PRESENTATIONS

YAC PRESENTATION- ASSET # 26- CARING

RECOGNITIONS

Recognizing Communications and Engagement Director Maureen Tobin for her Hard Work, Dedication, and Many Years of Service to Morgan Hill

Morgan Hill Community Foundation Donation for Inclusive Playground
Nick Gaich, Matt Wendt, Peggy Martin, and Pamela Meador

PROCLAMATIONS

Proclaiming the month of February 2021 as Black History Month.

CITY COUNCIL REPORTS

Mayor Constantine

February 17, 2021

CITY MANAGER'S REPORT

City Manager Christina Turner

MORGAN HILL EMERGENCY OPERATIONS PLAN UPDATE

RESPONSES TO 2/3/21 AGENDA QUESTIONS

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

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 DONATION FROM THE MORGAN HILL COMMUNITY FOUNDATION FOR THE MORGAN HILL MAGICAL BRIDGE INCLUSIVE PLAYGROUND

Recommendation:

1. Accept donation of \$72,660 from the Morgan Hill Community Foundation for the construction of the Morgan Hill Magical Bridge Inclusive Playground at Community Park; and
2. Authorize the City Manager to execute and administer any agreements necessary to accept the funds.

3. ADOPT RESOLUTION FINDING AN UNREASONABLE HARDSHIP WILL OCCUR UNLESS ATTORNEYS' FEE AWARD IS PAID IN INSTALLMENTS

Recommendation:

Adopt the proposed resolution declaring that an unreasonable hardship will occur unless City's share of the judgment awarded to the Hotel Coalition on November 13, 2020 is paid in installments.

4. ADOPT RESOLUTION TEMPORARILY TOLLING PLANNING, SUBDIVISION, AND BUILDING PERMIT APPROVALS

Recommendation:

Adopt resolution tolling Planning, Subdivision, and Building Permit approvals due to COVID-19 emergency.

5. APPROVE FUNDING AGREEMENT WITH THE VTA FOR THE MADRONE CHANNEL TRAIL PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for improvements to the Madrone Channel Trail.

6. APPROVE AGREEMENT WITH MARK THOMAS AND COMPANY FOR CONSTRUCTION SUPPORT SERVICES FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer a Service Agreement for Design Professionals with Mark Thomas & Company for construction support services for the Hale Avenue Extension Project for \$143,295.

7. APPROVE FIFTH AMENDMENT TO THE LEASE AGREEMENT WITH THE MORGAN HILL UNIFIED SCHOOL DISTRICT FOR USE OF SPACE AT THE CORPORATION YARD

Recommendation:

Approve and authorize the City Manager to enter into a Fifth Amendment to the lease agreement with the Morgan Hill Unified School District.

8. APPROVE THE JANUARY 20, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

9. APPROVE THE JANUARY 29 AND 30, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

10. APPROVE THE FEBRUARY 9, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

11. REVIEW PLANNING COMMISSION'S DECISION ON CONDITIONAL USE PERMIT (UP2020-0004) MAST - TITAN SPORTS ACADEMY/KINETIC PERFORMANCE INSTITUTE TO ALLOW INDOOR COMMERCIAL RECREATION FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 817-02-063 LOCATED AT 195 MAST STREET.

Recommendation:

1. Open/close public hearing; and
2. Adopt resolution:
 - a. reaffirming the decision of the Planning Commission to deny the Conditional Use Permit.
OR
 - b. making the necessary findings to support a Conditional Use Permit.
3. Direct staff to return to the City Council with Zoning Code changes removing conditional use conflicts with industrial preservation.

Estimated Time: 75 Minutes

OTHER BUSINESS

12. CONSIDER CITY COUNCIL INITIATED AGENDA ITEM REQUESTING CITY COUNCIL ADOPT A RESOLUTION CONDEMNING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL IN WASHINGTON D.C.

Recommendation:

Consider whether to direct staff to prepare a resolution condemning the January 6, 2021 riots at the United States Capitol in Washington D.C.

Estimated Time: 15 Minutes

13. CONSIDER CITY COUNCIL INITIATED AGENDA ITEM REQUESTING CITY COUNCIL ADOPT A RESOLUTION EXPRESSING SUPPORT FOR ACTIONS TO STRENGTHEN LOCAL DEMOCRACY, AUTHORITY, AND CONTROL

Recommendation:

Consider whether to direct staff to prepare a resolution expressing support for actions to strengthen local democracy, authority, and control.

Estimated Time: 15 Minutes

14. APPROVE UPDATES TO SUSTAINABLE MORGAN HILL VISION, ONGOING AND STRATEGIC PRIORITIES, CITY COUNCIL NORMS, AND COUNCIL POLICY REGARDING RULES FOR CONDUCT OF CITY COUNCIL MEETINGS

Recommendation:

Adopt updates to:

1. Sustainable Morgan Hill vision, ongoing priorities, and 2020 – 2021 strategic priorities;
2. City Council Norms; and
3. City Council Policy (CP 97-01) – Rules for Conduct of City Council Meetings.

Estimated Time: 20 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 and Preserving Open Space and Agricultural Land
- Maintaining Infrastructure
- 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

2020-2021 Strategic Priorities

- **Fiscal Sustainability**
- Affordable Housing and Homelessness
- Community Engagement and Messaging
- Economic Development
- Transportation



These strategic priorities were established prior to the COVID-19 pandemic. In light of recent events, we recognize that all of these goals and priorities will be viewed through the lens of the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

PREPARED BY: Edith Ramirez, Assistant City Manager
APPROVED BY: City Manager

LAST MILE (LOCAL) DELIVERY/DISTRIBUTION

RECOMMENDATION(S)

Examine what “last mile (local) delivery” is and how it could serve or impact our community, discuss what the City has done to date to regulate distribution, and explore regulations for last mile (local) delivery uses.

Workshop Purpose:

This workshop is intended to examine what “last mile (local) delivery” is and how it could serve or impact our community. At this workshop we will discuss what the City has done to date to regulate distribution and explore regulations for last mile (local) delivery uses. Policy questions to be considered by the City Council include:

- Does last mile distribution fit into the uses allowed within Morgan Hill?
- Is the community better off with a local last mile distribution facility?
- Is traffic better or worse with a local distribution facility?
- If we allow last mile delivery facilities, where should they be allowed? How many? How big?

Background:

At the October 21, 2020 City Council meeting, the City Council approved an ordinance prohibiting large fulfillment centers/heavy distribution and parcel sorting centers. At this meeting, the City Council did not approve last mile (local) delivery/distribution centers and instead directed staff to hold a workshop to discuss whether last mile (local) delivery uses would be appropriate for the City.

To learn more about the recently adopted ordinance you can review the City-initiated Code Amendments (aka Industrial Ordinance) FAQs or you can visit the project web page.

LINKS/ATTACHMENTS:

1. Workshop Presentation
2. Ordinance 2317 Zoning Code Amendments- Industrial Ordinance
3. Zoning Map



Last Mile (local) Delivery/Distribution Workshop



Attachment: Workshop Presentation (2995 : Last Mile Delivery)

Policy Questions

- Does last mile distribution fit into the uses allowed within Morgan Hill?
- Is the community better off with a local last mile distribution facility?
- Is traffic better or worse with a local distribution facility?
- If we allow last mile delivery facilities, where should they be allowed? How many? How big?

Background

October 28, 2020

City Council considered a proposed ordinance to:

- Prohibit heavy distribution and parcel sorting uses
- Amend provisions related to local delivery services

November 18, 2020

Council adopted Ordinance 2317

- Prohibits heavy distribution and parcel sorting facilities, and local delivery services (referenced as parcel hubs) in all zones within the City.

Directed staff to schedule workshop to discuss local delivery service uses

Background

Responsible Growth Initiative

- Attempts to address e-commerce facilities
- Defines “fulfillment centers” by physical features only, rather than by use
- Impacts existing businesses
- Limits facilities’ ability to meet future needs
 - prohibited from converting existing drive through doors or punch-outs to dock-high-doors

City’s Proposed ordinance

- Regulates e-commerce uses
- Regulates by use and physical features and uses
- Prohibits large distribution facilities
- Could allow certain local delivery services

Facility	MHRGC Initiative	Proposed Ordinance
Heavy Distribution	Prohibited*	Prohibited
Sorting Center	Prohibited*	Prohibited
Parcel Hub-Large	Permitted**	Conditionally Permitted
Parcel Hub-Small	Permitted	Permitted

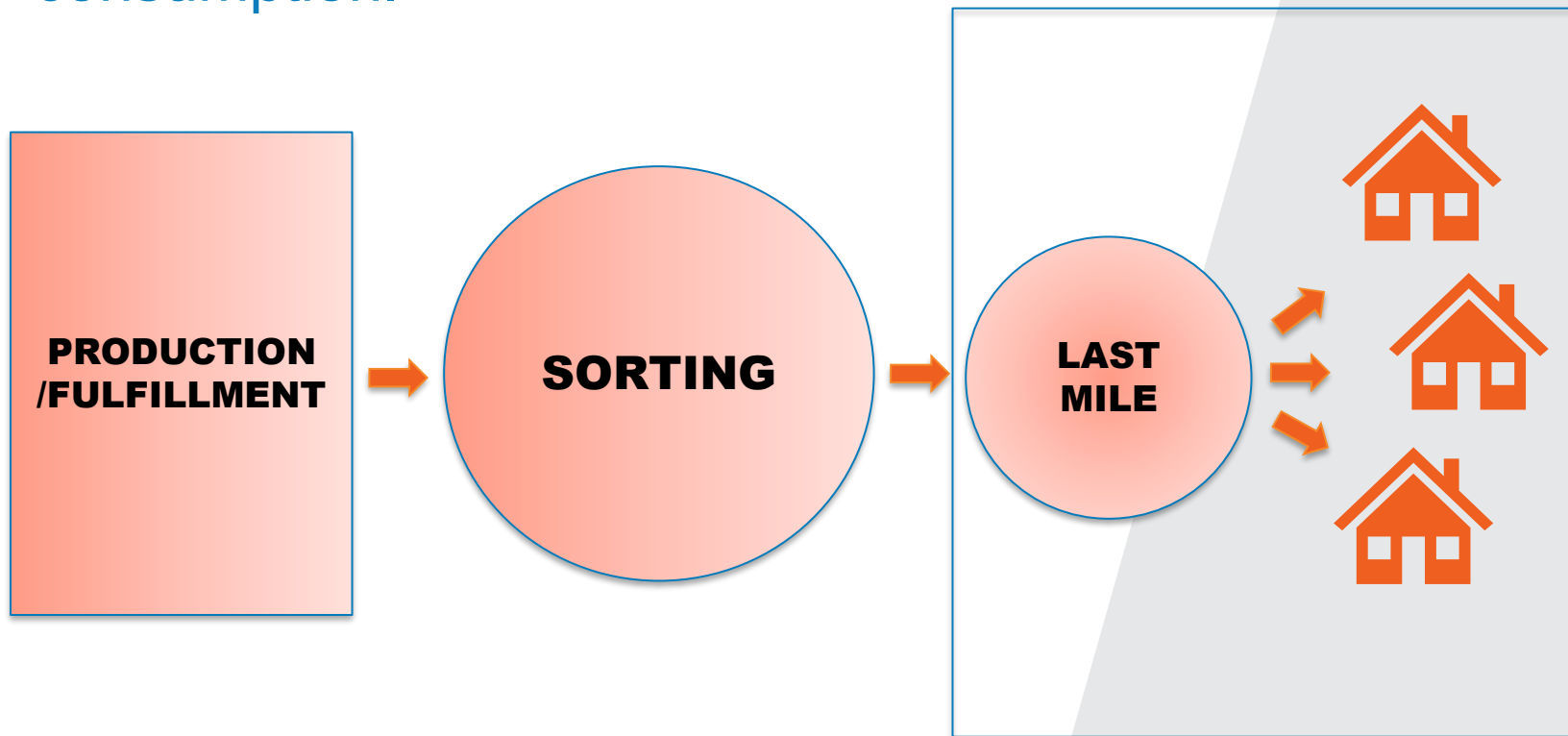
Prohibited 11-18-20

*Permitted with fewer than 1 dock door per 25,000 square feet of floor area or with a clear ceiling height of less than 24 feet.

**As Parcel Hub is defined in the Proposed Ordinance, which requires local delivery using vehicles rated 10,000 pounds or less. These smaller vehicles do not use dock-high doors

What is Last Mile Delivery?

Last-mile delivery represents the final leg of the supply chain as goods are delivered from production to consumption.



City Regulations

Ordinance 2317 created new definitions for distribution use and prohibited these uses:

- **Heavy Distribution.** A Fulfillment Center or similar use with a minimum gross floor area of 200,000 square feet and a minimum ceiling height of 24 feet. The Fulfillment Center's primary purpose is storage and distribution of e-commerce products to consumers or end-users, either directly or through a Parcel Hub.
- **Parcel Sorting Facilities.** Establishments for the sorting and or re-distribution of parcels or products from Heavy Distribution (Fulfillment Centers) to a Parcel Hub via intramodal transit truck to truck.
- **Parcel Hub.** A "Last Mile" facility or similar establishment for the processing and/or re-distribution of parcels or products. A Parcel Hub's primary function is moving a shipment from one mode of transport to vehicles with rated capacities less than 10,000 pounds, for delivery directly to consumers or end-users primarily within the Morgan Hill zip code.
 - **Parcel Hub, Large** - 75,000 square feet or more in building area.
 - **Parcel Hub, Small** - Less than 75,000 square feet in building area.

City Regulations

How would new regulations on Parcel Hubs impact industrial properties?

Industrial zoned properties

Yes

Properties with Planned Developments (PD) or Development Agreements (DA)

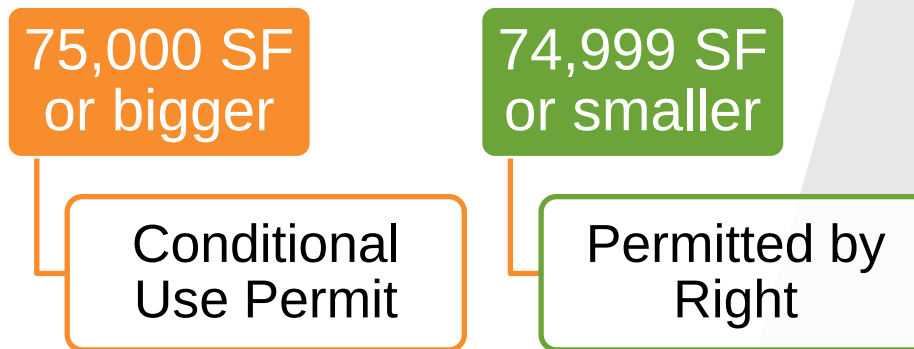
No, unless PD or DA defaults to current Municipal Code or allows applicant to chose to use current code.

Properties vested under previous code

No – but could create a legal non-conformity

Recommended Regulation for Last Mile (Local) Delivery

- Allow Last Mile (Local) Delivery to service the community
- Community will continue to order online and City will get impacts of traffic/trucks regardless



Requirements for use:

- delivery vehicles are rated 10,000 pounds or less (this is typically a van or other smaller vehicle)
- deliveries occur primarily within the City of Morgan Hill zip code

Recommendations

- **Allow a limited number of local delivery hubs as defined in the original industrial ordinance**
 - ❖ Permitted by Right - Parcel hubs with 75,000 square feet or less of floor area
 - ❖ Conditional Use Permit - Parcel hubs larger than 75,000 square feet
- Permitting the use allows the City to regulate
- City maintains control through the creation of design and performance standards
 - Proximity standards
 - Limit to overall number
 - Limit on number of dock-high doors
- City has ability to require conditions of approval
- City retains enforcement ability
- If not allowed, City will get the vehicle traffic

Policy Questions

- Does last mile distribution fit into the uses allowed within Morgan Hill?
- Is the community better off with a local last mile distribution facility?
- Is traffic better or worse with a local distribution facility?
- If we allow last mile delivery facilities, where should they be allowed? How many? How big?

Questions?



ORDINANCE NO. 2317, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING TABLE 18.26-1 (PERMITTED LAND USES IN THE INDUSTRIAL ZONING DISTRICTS) OF SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS); SECTION 18.108.040 (DESIGN PERMIT) OF CHAPTER 18.108 (SPECIFIC PERMIT REQUIREMENTS; SECTIONS 18.124.050 (INDUSTRIAL USES) AND 18.124.060 (TRANSPORTATION, COMMUNICATION, AND UTILITY USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING E-COMMERCE DISTRIBUTION USES AND DESIGN REVIEW FOR LARGE PROJECTS

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

Section 1. Table 18.26-1 (Permitted Land Uses in the Industrial Zoning Districts) of Section 18.26.020 (Land Use Regulations) of Chapter 18.26 (Industrial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.26.020– Land Use Regulations

- A. Permitted Land Uses.** Table 18.26-1 identifies land uses permitted in the industrial zoning districts.

TABLE 18.26-1 PERMITTED LAND USES IN THE INDUSTRIAL ZONING DISTRICTS

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required – Use not allowed	Zoning District					Additional Regulations
	CI	IO	IC	IL	IG	
Residential Uses						
Caretaker Quarters	–	–	–	C	C	
Public and Quasi-Public Uses						
Colleges and Trade Schools	C	C	C	C	C	
Community Assembly	C	–	–	C	C	
Instructional Services	A	–	–	–	–	
Medical Offices and Clinics	A	–	–	–	–	
Parks and Recreational Facilities	C	–	–	C	C	
Public Safety Facilities	C	–	–	C	C	
Commercial Uses						

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Adult Businesses	-	-	P	P	P	18.92.020
Animal-Related Commercial Uses						
Animal Boarding	C	-	-	C	C	
Veterinarian Clinics and Hospitals	A	A	A	C	C	
Banks and Financial Institutions	C [4]	-	-	-	-	
Business Support Services	P	C	P	P	P	
Cinemas and Theaters	A	-	-	-	-	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	P	C	C	C	C	
> 15,000 sq. ft.	C	C	C	C	C	
Eating and Drinking Uses						
Restaurants, Fast Food	C [4]	- [5]	- [5]	- [5]	- [5]	
Restaurants, Sit-Down	C [4]	- [5]	- [5]	- [5]	- [5]	
Tasting Rooms	P [6]	-	-	A [6]	A [6]	
Lodging Facilities						
Hotels and Motels	P	-	-	-	-	
Mini-Storage	-	-	-	C	C	18.92.100
Personal Service	C [4]	- [5]	- [5]	- [5]	- [5]	
Plant Nurseries	C	-	-	P	P	
Professional Offices	P	P	P	P	P	
Retail						
Building Materials	C	-	-	P	P	
Convenience Markets	C [4]	- [5]	- [5]	- [5]	- [5]	
General Retail	C [4]	- [5]	- [5]	- [5]	- [5]	
Home Improvement Centers	C	-	-	C	C	
Large Commodity Retail	C	-	-	C	C	
Vehicle-Related Uses						
Towing and Impound	-	-	-	C	P	
Vehicle Repair and Maintenance, Major	-	-	-	C	P	
Vehicle Repair and Maintenance, Minor	-	-	-	P	P [1]	
Wholesaling	P	-	-	P	P	
Retail						
Building Materials	C	-	-	P	P	
Convenience Markets	C [4]	- [5]	- [5]	- [5]	- [5]	
General Retail	C [4]	- [5]	- [5]	- [5]	- [5]	
Home Improvement Centers	C	-	-	C	C	
Large Commodity Retail	C	-	-	C	C	
Vehicle-Related Uses						
Towing and Impound	-	-	-	C	P	

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Vehicle Repair and Maintenance, Major	-	-	-	C	P	
Vehicle Repair and Maintenance, Minor	-	-	-	P	P [1]	
Wholesaling	P	-	-	P	P	
Industrial Uses						
Construction and Material Yards	C	C	C	P	P	18.36.030.C
Food and Beverage Production						
< 5,000 sq. ft. [7]	A [2]	A [2]	A [2]	P [2]	P [2]	
5,000 sq. ft. to 10,000 sq. ft. [7]	C [2]	C [2]	C [2]	P [2]	P [2]	
> 10,000 sq. ft.	C	C	C	P [2,8]	P [2,8]	
Manufacturing, Light	P	C [3]	C	P	P	
Manufacturing, General	-	-	-	-	C	
Research and Development	P	P	P	P	P	
Salvage and Wrecking	-	-	-	-	C	
Warehousing and Distribution						
Warehousing and Distribution, Large	C	C [3]	C [3]	C	P	
Warehousing and Distribution, Small	C	C [3]	C [3]	P	P	
Warehousing and Distribution with Outdoor Storage	C	-	-	C	C	
Heavy Distribution	-	-	-	-	-	
Parcel Sorting Facilities	-	-	-	-	-	
Parcel Hub Small < 75,000 sq. ft.	-	-	-	-	-	
Parcel Hub Large > 75,000 sq. ft.	-	-	-	-	-	
Recycling Facilities						
Reverse Vending Machine	P	C	C	P	P	
Recycling Collection Facility	C	-	-	C	C	
Recycling Processing Facility	-	-	-	-	C	
Utilities, Major	-	-	-	C	C	
Wireless Communications Facilities	See Chapter 18.96					
Agriculture and Natural Resource Uses						
Crop Cultivation	-		-			
Other Uses						
Accessory Uses	See Chapter 18.44					
Temporary Uses	See Section 18.92.150					

Notes:

[1] Retail sale of automotive products allowed only when ancillary to a vehicle repair and maintenance use. Retail display areas for automotive products may not exceed 25 percent of the building floor area.

[2] Must be 150 feet or more from a residential zoning district, otherwise requires a CUP.

[3] Permitted only when ancillary to another permitted use.

[4] Allowed as a primary use only when the Planning Commission finds that the use supports the primary job-generating uses within a business park setting.

[5] Allowed when accessory to a permitted primary use subject to the limitations in Section 18.26.020.D (Accessory Uses).

[6] Allowed only when accessory to a brewery, winery, or other alcoholic beverage production facility. Tasting rooms must be located

within the building occupied by the primary use and may not exceed 5,000 square feet or 10 percent of the gross floor area of the building, whichever is less.

[7] On-site wholesale or retail sales required.

[8] Conditional Use Permit required when the type of food being produced will emit a generally offensive odor. Examples include primary processing of seafood, coffee roasting, pickled foods, or processes involving primarily fat and oils.

Section 2. Section 18.108.040 (Design Permit) of Chapter 18.08 (Specific Permit Requirements) of Title 18 (Zoning) is hereby amended to read as follows:

18.108.040 – Design Permit

A. Purpose. A Design Permit is a discretionary action that enables the City to ensure that proposed development exhibits high quality design consistent with the General Plan and any other applicable specific plan or area plan adopted by the City Council. The Design Permit process is also intended to ensure that new development and uses are compatible with their surroundings and minimize negative impacts on neighboring properties.

B. Review Authority.

1. Except as provided below, the Community Development Director shall review and act on all Design Permit applications.
2. The Community Development Director may elevate any Design Permit application under their authority to the Planning Commission for review and final decision.
3. The City Council shall review and act on all Design Permit applications for new City projects (e.g., new municipal buildings, parks) determined by the Community Development Director to be significant in accordance with Subsection D below.
4. Except for new City projects, the Planning Commission shall act on any Design Permit Application for any other projects determined by the Community Development Director to be significant in accordance with Subsection D below.

C. When Required. The following types of projects require a Design Review permit:

1. Three or more new residential units.
2. One or more new residential unit on a sensitive site as defined in Subsection E (Sensitive Sites) below.
3. New non-residential buildings, structures physical site improvements determined to be significant in accordance with Subsection D (Significant Projects) below.
4. Additions to existing buildings, structures, or other physical site improvements visible from a public right-of-way and determined to be significant in accordance with Subsection D (Significant Projects) below. Single-family homes are exempt unless the home is on a sensitive site as defined in Subsection E below.

5. Additions to existing residences located on a sensitive site as defined in Subsection E below.
6. Site alterations that change the topography of the currently developed site area on a sensitive site as defined in Subsection E below.
7. Relocation of existing buildings, structures or other physical site improvements.
8. Exterior changes to existing buildings, structures or other site improvements determined to be significant in accordance with Subsection D (Significant Projects) below. Single-family homes are exempt unless the home is on a sensitive site as defined in Subsection E below.
9. Grading of more than 50 cubic yards on slopes greater than ten percent.
10. New accessory structures including secondary dwelling units or guest homes on a sensitive site as defined in Subsection E below.
11. City projects, including but not limited to municipal buildings, parks and open spaces, landscaping within the right-of-way, and street furniture.
12. Other projects determined by the Community Development Director to be significant or which may adversely affect the environment or adjacent development.

D. Significant Projects.

1. The Community Development Director shall determine whether a project in Subsection C above is significant and thus requires a Design Review permit. When determining if a project is significant, the Community Development Director shall consider:
 - a. The visual prominence of the project when viewed from the public right-of-way and/or private property;
 - b. The project height, mass, and area of site disturbance;
 - c. The type, character, and proximity of adjacent development; and
 - d. The potential of the project to create adverse impacts on adjacent uses or the community at large.
2. Any structure with more than 75,000 square feet of floor area or a building height greater than 40 feet, not including projections allowed by-right under Table 18.56-1, is presumed to be significant for purposes of this Chapter.
3. Any residential development of more than 100 units is presumed significant for purposes of this chapter.
4. The Community Development Director's determination that a project is significant may be appealed to the Planning Commission in accordance with Chapter 18.112 (Appeals).

E. Sensitive Sites.

1. The Community Development Director may require a Design Permit for a project located on a sensitive site where a Design Permit may not otherwise be required.
2. The Community Development Director's determination that a site is sensitive and that a Design Permit is required may be appealed to the Planning Commission in accordance with Chapter 18.112 (Appeals).
3. The City shall consider a site to be sensitive if the site:
 - a. Contains a notable natural feature such as a hillside, ridgeline, watercourse, major drainage way or floodplain;

Section 3. Section 18.124.050 (Industrial Uses) of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

18.124.050 – Industrial Uses

- A. Construction and Material Yards.** Storage of construction materials and/or heavy equipment on a site other than a construction site.
- B. Food and Beverage Production.** A manufacturing establishment producing or processing food products or beverages for off-site consumption and wholesale distribution where the processing of food is primarily from previously prepared or farmed ingredients.
- C. Heavy Distribution.** A fulfillment center or similar use with a minimum gross floor area of 100,000 square feet and a minimum ceiling height of 24 feet. The fulfillment center's primary purpose is storage and distribution of e-commerce products to consumers or end-users, either directly or through a Parcel Hub. Heavy Distribution is prohibited in all zones in the City of Morgan Hill.
- D. Manufacturing, Light.** The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mills and manufacturing uses involving primary production of wood, metal or chemical products from raw materials.
- E. Manufacturing, General.** Manufacturing of products from extracted or raw materials or recycled or secondary materials, or bulk storage and handling of such products and materials. Includes operations such as agriculture processing, apparel manufacturing; photographic processing plants; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; chemical manufacturing; plastics and rubber products manufacturing; nonmetallic mineral product manufacturing; primary metal manufacturing; fabricated metal product

manufacturing; and automotive and heavy equipment manufacturing.

- F. Parcel Hub.** A “last mile” facility or similar establishment for the processing and/or re-distribution of parcels or products. A Parcel Hub’s primary function is moving a shipment from one mode of transport to vehicles with rated capacities less than 10,000 pounds, for delivery directly to consumers or end-users primarily within the Morgan Hill zip code.
1. **Parcel Hub, Large.** A parcel hub facility that occupies 75,000 square feet or more in building area.
 2. **Parcel Hub, Small.** A parcel hub facility that occupies less than 75,000 square feet in building area.
- G. Parcel Sorting Facilities.** Establishments for the sorting and or re-distribution of parcels or products from Heavy Distribution (fulfillment centers) to a Parcel Hub via intramodal transit truck to truck.
- H. Research and Development.** A facility for scientific research and the design, development, and testing of electrical, electronic, magnetic, optical, pharmaceutical, chemical, and biotechnology components and products in advance of product manufacturing. Includes assembly of related products from parts produced off site where the manufacturing activity is secondary to the research and development activities.
- I. Salvage and Wrecking.** Storage and dismantling of vehicles and equipment for sale of parts, as well as their collection, storage, exchange or sale of goods including, but not limited to, any used building materials, used containers or steel drums, used tires, and similar or related articles or property.
- J. Warehousing and Distribution.** A use engaged in storage, wholesale and distribution of manufactured products, supplies, and equipment to retailers; to industrial, commercial, institutional, farm, or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Includes merchant wholesalers; agents, merchandise or commodity brokers, and commission merchants; assemblers, buyers and associations engaged in the cooperative marketing of farm products; and bottling works.
1. **Warehousing and Distribution, Large.** A warehousing distribution facility 75,000 square feet or more in building/or use area.
 2. **Warehousing and Distribution, Small.** A warehousing distribution facility less than 75,000 square feet in building area, or as a secondary/companion use of no more than 75,000 sf ancillary to another activity contained within a larger building area.

City of Morgan Hill
Ordinance No. 2317, New Series
Page 8 of 9

3. **Outdoor Storage.** Storage of commercial goods in open lots.

Section 4. Subsection B (Light Fleet Based Services) of Section 18.124.060 (Transportation, Communication, and Utility Uses) of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

- A. Light Fleet-Based Services.** Passenger transportation services, medical transport, and other businesses that rely on fleets of three or more vehicles with rated capacities less than 10,000 pounds. Includes parking, dispatching, and offices for taxicab and limousine operations, ambulance services, nonemergency medical transport, local messenger and document delivery services, and similar businesses. Excludes towing operations (see "Towing and Impound") or delivery services with two or fewer fleet vehicles on site (see "Business Support Services").

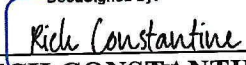
Section 5. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 6. Effective Date; Posting. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 28th DAY OF OCTOBER 2020, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF NOVEMBER 2020, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rene Spring, John McKay Yvonne Martinez Beltran, Rich Constantine
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

DocuSigned by:

RICH CONSTANTINE, Mayor

ATTEST:

DocuSigned by:

IRMA PEREZ, City Clerk

Attachment: Ordinance 2317 Zoning Code Amendments- Industrial Ordinance (2995 : Last Mile Delivery)

City of Morgan Hill
Ordinance No. 2317, New Series
Page 9 of 9

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. 2317, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of November 2020.

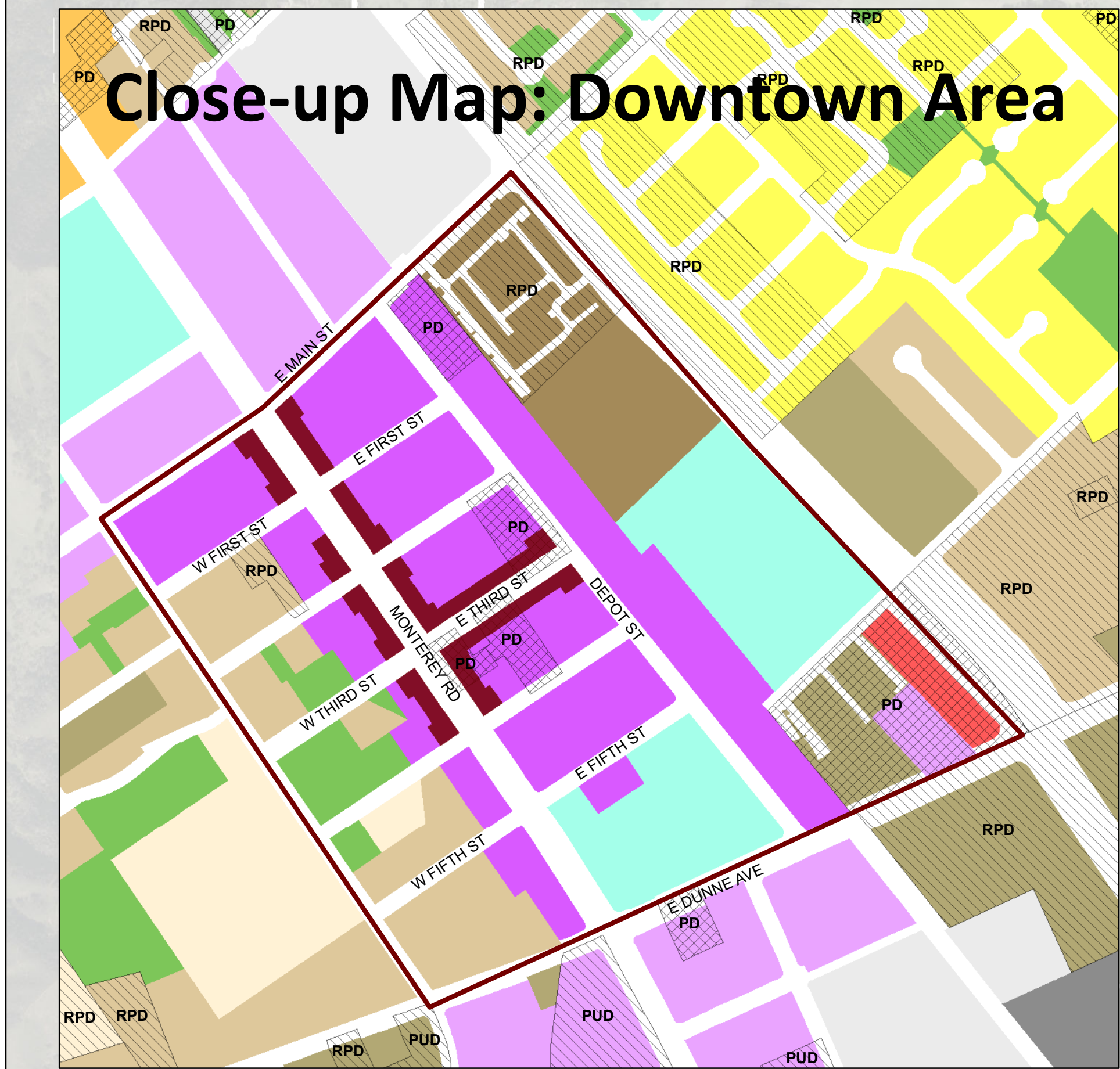
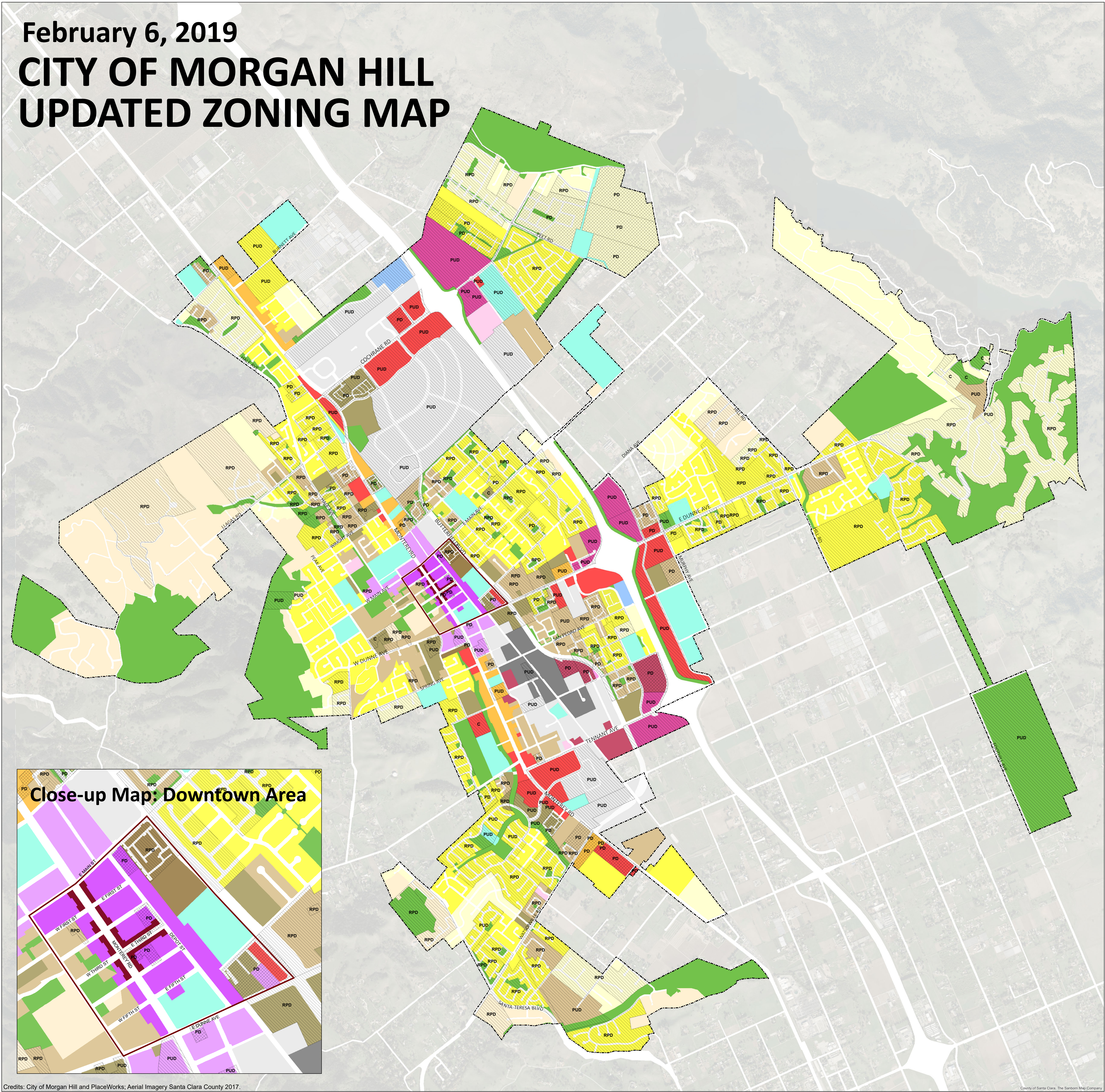
WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 12/1/2020

DocuSigned by:


IRMA TORREZ, City Clerk

Attachment: Ordinance 2317 Zoning Code Amendments- Industrial Ordinance (2995 : Last Mile Delivery)

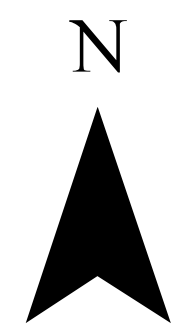


Credits: City of Morgan Hill and PlaceWorks; Aerial Imagery Santa Clara County 2017.
Document Path: H:\Projects\Planning\GIS\Maps\ZoningCodeUpdate\ZoningCodeUpdated_2019-02-06.mxd

Legend

- City Boundary
- Residential Zoning Districts**
 - Residential Estate (RE 1 or RE 2.5)
 - Residential Detached Low Density (RDL 20,000 or RDL 12,000)
 - Residential Detached Medium Density (RDM 9,000 or RDM 7,000)
 - Residential Detached High Density (RDH 4,500)
 - Residential Attached Low Density (RAL 3,500 or RAL 3,000)
 - Residential Attached Medium Density (RAM)
 - Residential Attached High Density (RAH)
- Mixed Use Zoning Districts**
 - Downtown Mixed Use (MU-D)
 - Neighborhood Mixed Use (MU-N)
 - Mixed Use Flex (MU-F)
- Commercial Zoning Districts**
 - Administrative Office (CO)
 - Neighborhood Commercial (CN)
 - General Commercial (CG)
 - Highway Commercial (CH)
 - Service Commercial (CS)
- Industrial Zoning Districts**
 - Commercial Industrial (CI)
 - Office Industrial (IO) *
 - Campus Industrial (IC) *
 - Light Industrial (IL)
 - General Industrial (IG)
- Public, Open Space, and Recreational Zoning Districts**
 - Open Space (OS)
 - Public Facilities (PF)
 - Sports Recreation Leisure (SRL A and B) *
- Legacy Zones (may be either base or overlay zones)**
 - PUD Planned Unit Development (PUD)
 - RPD Residential Planned Development (RPD)
 - C Conditional Zoning (C)
- Overlay Zones and Combining Districts**
 - DTSP Downtown Specific Plan Overlay Zone (DTSP)
 - DGF Downtown Ground Floor Overlay Zone (DGF)
 - PD Planned Development Combining District (PD)

* Note: This zone not yet applied to any properties



0 0.125 0.25 0.5 Miles



Attachment: Zoning Map (2019 - Last Mile Delivery)



February Developmental Asset #26 Caring

Young person places high value on helping other people.



February Complementary Asset #9 Service to Others

Young person serves in the community one or more hours per week.

Kalena Santilanes, Active Member



How has being caring impacted me? What does it mean to me?



→ My story...

- ◆ Being kind and complimenting others
- ◆ Having empathy
- ◆ Being there for others
- ◆ How I feel about myself and others



Paras Gandhi, Active Member

How has being caring impacted me? What does it mean to me?



→ My story...

- ◆ Serving the community
- ◆ Helping others in need
- ◆ Looking out for each other
- ◆ Making everyone feel comfortable

No One Left Behind



Hassti Tirgardoona, YAC President

How has being caring impacted me? What does it mean to me?



→ My story...

- ◆ Morgan Hill cares
- ◆ Community service
- ◆ 30 seconds could mean a lifetime



Gifts

Acts of Service

Words of Affirmation

Quality Time

Physical Touch

Tips for Community Members



- ❖ Compliment others
- ❖ Make others smile
- ❖ Write notes to others
- ❖ Reconnect with friends/family





Questions to Council:



- What acts of kindness do you implement in your daily lives?
- What is a current citywide issue that you care deeply about?
(environment, healthcare, etc)





Emergency Operations Plan



*“Partnering with the community to improve the quality of life
in Morgan Hill through preparedness”*

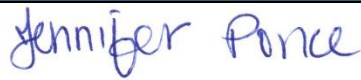
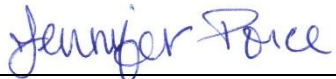
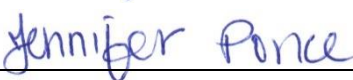
Revision 2.2
January 20, 2021



Revision History

REV	DATE	DESCRIPTION	AUTHOR
1.0	06-JAN-2013	Initial Release	Jennifer Ponce
2.0	11-JAN-2018	New document format with multilevel paragraph & subject numbering; Added activation levels chart (page 9); Updated EOC Organization (pages 13-15); EOC Operations update (page 17); Dissemination of Information update (page 18); Removed CERT Section (page 21); Updated web reference links (pages 27, 30, 31); Appendices broken out into new separate document.	Jennifer Ponce
2.1	08-FEB-2018	Inserted Letter of Promulgation	Jennifer Ponce
N/A	23-JAN-2019	Annual Review; No changes	Jennifer Ponce
2.2	13-JAN-2021	Revised with minor updates to sections 2.1, 2.2.6, 2.3.11.3, 3, 4.3.1, 4.2, 4.3.2, 4.7, 10. New Letter of Promulgation from Mayor Constantine	Jennifer Ponce

Approval Signatures

REV	NAME	TITLE/POSITION	SIGNATURE
1.0	Jennifer Ponce	OES Coordinator	
2.0	Jennifer Ponce	OES Coordinator	
2.1	Jennifer Ponce	OES Coordinator	
N/A	Jennifer Ponce	OES Coordinator	
2.2	Jennifer Ponce	OES Coordinator	

Communication: Morgan Hill Emergency Operations Plan Update (CITY MANAGER'S REPORT)



17555 PEAK AVENUE
MORGAN HILL, CA 95037
PHONE: (408) 776-7373
FAX: (408) 778-7869
www.morgan-hill.ca.gov

Date: January 20, 2021

To: City Council, Employees, Businesses, and Residents of the City of Morgan Hill

From: Rich Constantine, Mayor

Subject: Letter of Promulgation

In this past year our community has experienced significant hazards requiring coordinated planning and response by our Emergency Operations Center Team (EOC) and local partners. The Team alongside our community members successfully navigated through Public Safety Power Shutoffs, Wildland Fires, and currently the global COVID-19 pandemic.

The preservation of life, environment, and property is an inherent responsibility of local, state, and federal government. The City of Morgan Hill updates this Emergency Operations Plan annually to ensure the most effective and economical allocation of resources for the maximum benefit and protection of the community in time of emergency.

This plan establishes the emergency organization, assigns tasks, specifies policies and general procedures, and provides for coordination of planning efforts of the various emergency staff and service elements utilizing the Standardized Emergency Management System (SEMS). The plan also meets requirements established by the National Incident Management System (NIMS).

Morgan Hill's Office of Emergency Services partners with our community members to strengthen our preparedness and response capabilities by delivering free emergency response training to all members of our community.

The City Council gives its full support to this plan and encourages the community to individually and collectively do their share in the emergency efforts of the City of Morgan Hill.

Communication: Morgan Hill Emergency Operations Plan Update (CITY MANAGER'S REPORT)

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SECTION 1: EXECUTIVE SUMMARY

1.1 PURPOSE

The purpose of the Emergency Operations Plan (EOP) is to define the actions required of the City of Morgan Hill before, during, and after an emergency and to guide the City's response to major emergencies/disasters.

Additionally, this Plan supports the Morgan Hill Municipal Code Chapter 2.44 Civil Disaster and Emergency Organization Purposes, which are "to provide for the preparation and carrying out of plans for the protection of persons and property within the city in the event of an emergency..."

1.2 CONCEPT OF OPERATIONS

The City of Morgan Hill's Emergency Operations Center (EOC) follows California's Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS) as the emergency management response structure for disaster operations. These systems provide for Management, Operations, Logistics, Planning and Intelligence, and Finance and Administration Sections of the organization.

The operational priorities are protecting lives, meeting human welfare needs, temporary restoration of publicly provided facilities and services, as well as those provided by private organizations and special districts, protecting property, preserving the environment, and permanent restoration of facilities.

The Office of Emergency Services (OES) identifies potential threats to life, property and the environment, and then develops plans, procedures, and guidelines to minimize or respond to those threats. Together these documents will help coordinate and support emergency response and recovery and will be tested through exercises and validated by the results of actual response. The goal is to maintain a robust emergency management organization with collaborative ties among governments, community based organizations, volunteers, public service agencies and the private sector.

Morgan Hill OES follows the four (4) phases of Emergency Management.

- **Mitigation**
Actions taken to reduce the exposure to, probability of, or potential loss from hazardous events. Mitigation is often accomplished in conjunction with other local, state, and/or federal agencies
- **Preparedness**
Establishing of authorities and responsibilities for emergency actions and the garnering of resources to support them. Preparedness includes staff training, identifying possible facility, and asset needs and encompasses a program of tests, drills, and exercises. Public outreach is imperative and Community Emergency Response Team (CERT) training is an excellent vehicle to accomplish this work.
- **Response**
Time-sensitive actions taken to save lives and protect property, including actions which stabilize the situation. Response includes notifying and activating the emergency management organization, warning, evacuating, or sheltering the local population, keeping the population informed, rescuing individuals and providing emergency medical care, maintaining law and order, assessing damage addressing mitigation issues that arise from response actions, and requesting help from outside sources, when needed.
- **Recovery**
Efforts to restore the infrastructure, social, and economic life of the City. Recovery actions can last over an

extended period of time and involve costly expenditures, including Disaster Assistance funding from state and federal sources.

1.3 THE CITY OF MORGAN HILL'S EMERGENCY ORGANIZATION

1.3.1 Municipal Leadership

The Municipal Code provides for a Disaster Council to develop and recommend for adoption by the city council, emergency and mutual aid plans and agreements. The Disaster Council shall meet upon call of the Chair or in his/her absence the Vice Chair. It is important to note this Council does not have a response role during times of disaster and that it acts solely in an advisory capacity. The Disaster Council is comprised of:

- Council Chair – the Mayor
- Council Vice Chair – the Director of Emergency Services
- Assistant Director of Emergency Services
- The Chief of Police, Director of Public Works, and the Fire Chief
- Such other persons as may be appointed by the Mayor with the advice and consent of the City Council

1.3.2 Director of Emergency Services

This position is filled by the City Manager, who according to the Municipal Code is empowered to make a variety of decisions and take a variety of actions during an emergency on behalf of the City, including acting in the absence of the City Council. Several, but not all, of these powers and duties include:

- Request the City Council proclaim a local emergency
- Request the Governor proclaim a state of emergency
- Control and direct the emergency efforts of the City
- Direct cooperation and coordination between services and staff of the emergency organization of the city
- Represent the City in all dealings with public or private agencies on matter pertaining to emergencies
- Require emergency services of any City staff in the event of a proclamation

1.3.3 City Organization

- Field Personnel
 - Morgan Hill Police Department
 - Morgan Hill Fire Department (Cal Fire)
 - Corporation Yard Staff
 - Volunteers - Community Emergency Response Team (CERT), ARES/RACES amateur radio, Volunteers in Policing (VIP), and spontaneous volunteers, while under supervision
- EOC Personnel
 - Dedicated City staff who are trained in EOC operations
 - Other City staff to serve as needed
 - Volunteers – CERT, ARES/RACES, VIP
 - Fire Representative
 - Morgan Hill Unified School District Representative
 - American Red Cross Representative
 - Outside agencies as needed

SECTION 2: PLAN DETAILS

2.1 PLAN OVERVIEW

The City of Morgan Hill Emergency Operations Plan (EOP) is an all hazards document describing the City's Emergency Operations organization, compliance with relevant legal statutes, other guidelines, and critical components of the Emergency Response System. This plan is not intended to address specific emergency responses.

It is the responsibility of the Office of Emergency Services (OES) Coordinator to develop emergency plans. The OES Coordinator will update and seek approval of the plan as needed.

The Morgan Hill EOP addresses the planned response to and recovery from conditions of disaster or of extreme peril to the safety of persons, property and the environment, by natural or human causes, affecting the City of Morgan Hill and its sphere of influence.

The Plan delineates the City emergency management organization and identifies policies, priorities, responsibilities, and procedures for the EOC.

The Plan also establishes the framework for implementation of SEMS within the City of Morgan Hill and guides its relationship with other levels of government as well as with Field Level Incident Commanders.

The plan is aligned with the State of California Emergency Plan, the Santa Clara Operational Area Interim Agreement, Santa Clara County Emergency Operations Plan, the Morgan Hill Municipal Code as well as plans and Standard Operating Procedures (SOPs) of contract agencies and Special Districts.

The Plan is designed to guide the EOC staff through all phases of emergency management. It is flexible and can be used for all sorts of emergencies and will facilitate both short-term response and long-term recovery.

The Plan describes the basic concept of emergency management. It also describes the structure of the City of Morgan Hill emergency management organization, its responsibilities, and the operational concepts for all-hazard emergencies.

2.2 ACTIVATION OF THE EOC

The EOC is activated by an order of the Director of Emergency Services, or designated representative, in response to threats or disasters which may affect the City of Morgan Hill.

Other times when the EOC will be activated include:

- When the Governor has proclaimed a State of Emergency in an area that includes the City of Morgan Hill
- By a Presidential Declaration of a National Emergency
- The existence of a State of War Emergency

The Director of Emergency Services is authorized to activate the City of Morgan Hill's EOC. In the absence of the City Manager, the Police Chief, Assistant City Manager, or any of the City Department Heads may activate the EOC.

These personnel have the responsibility to determine whether the emergency condition requires the partial or full mobilization of the City Emergency Operations Organization to staff the EOC.

The response to an incident affecting the City of Morgan Hill will be dictated by the overall impact of the incident, rather than the type of incident.

2.2.1 General Criteria for an EOC Activation

- Resources beyond the local capabilities are/will be required
- The emergency may be of a long duration
- Major policy decisions may be needed
- A local or state emergency has been declared
- Activation of the EOC will be advantageous to the successful management of the incident

2.2.2 The EOC Activation Process

Upon notification of the existence of a threat to public safety, property or the environment, (e.g. winter storm, flooding), the Director of Emergency Services (DES) will call together key City staff to assess the scope of the incident/emergency and make a decision regarding EOC activation and the level of activation. These response levels are described within the following Levels of Activation chart.

EVENT/INCIDENT EXAMPLES	ACTIVATION LEVEL	MINIMUM STAFFING	AUTHORIZATION LEVEL
MINOR EVENT • Single site • Two or more departments involved • Potential threat of flood, severe storm, interface fire	ONE	• EOC Coordinator • Public Information Officer • Liaison Officer • Operations Coordinator	• DES • Department Head(s) • OES Coordinator
MODERATE EVENT • Single site • Several response agencies involved • Partial evacuation	TWO	• City Manager or designate • EOC Coordinator • Public Information Officer • Liaison Officer • Section Coordinators	• DES • Department Head(s)
MAJOR EVENT • Multiple site • Regional disaster • Multiple agencies involved • Extensive evacuations • Resources or support required	THREE	• All EOC functions and positions as required	• DES • Department Head(s)

Levels of Activation

2.2.3 City EOC Management, Direction and Control

The EOC is managed by the Director of Emergency Services. The City of Morgan Hill's EOC will utilize multi/interagency coordination as defined in SEMS.

2.2.4 Concept of Operations

Emergency operations address the entire spectrum of contingencies, ranging from relatively minor incidents, such as a utility failure, to large scale disasters such as an earthquake. Some emergencies will be preceded by a buildup or warning period, providing sufficient time to warn the public and implement mitigation measures designed to reduce loss of life, property damage and effects on the environment. Other emergencies occur with little or no

advance warning, thus requiring immediate activation of the Emergency Operations Plan and efficient and coordinated mobilization and deployment of resources. City departments and agencies must be prepared to respond promptly and effectively to any foreseeable emergency, including the provision for, and utilization of, mutual aid assets.

2.2.5 Coordination with Other Emergency Responders

The City of Morgan Hill has identified the jurisdictions, special districts, community-based organizations (CBOs), volunteer agencies, private agencies, including non-government organizations (NGOs) that operate within the City's geographical area and sphere of influence. Many organizations will have a response role during an incident. Their roles will be coordinated by the OES, usually through pre-established relationships, and may include:

- American Red Cross, Silicon Valley Chapter
- CERT
- Faith-based organizations
- Local medical clinics
- Local veterinary clinics
- Medical Volunteer Disaster Response (MVDR aka Medical Reserve Corps)
- Morgan Hill Amateur Radio Emergency Services (MHARES)
- Morgan Hill Unified School District (MHUSD)
- Mount Madonna Y.M.C.A
- Volunteers in Policing (VIP)

Deactivation will occur at the direction of the Director of Emergency Services or designee.

2.2.6 Shelter Operations

In the event of a large scale emergency or disaster, it may be necessary to open a shelter (or shelters) due to evacuation or damage to residences. Sheltering is the responsibility of the City; however, the American Red Cross (ARC) will join efforts as soon as they are able to respond. The City has established sheltering relationships with several local churches who have completed ARC training in shelter management and shelter operations with a dedicated team of City and Volunteer Disaster Service Workers.

In Morgan Hill shelter surveys are conducted to identify facilities that meet the minimum requirements of the Americans with Disabilities Act of 1990.

2.3 ORGANIZATIONAL STRUCTURE

2.3.1 Incident Command System (ICS)

The Incident Command System (ICS) is a nationally used, standardized, on-scene emergency management system specifically designed to allow the user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents without being hindered by jurisdictional boundaries. ICS addresses both organization and process. ICS is used to manage facilities, equipment, personnel, procedures, and communications through the use of a common organizational structure and standardized procedures.

ICS was developed in California by the Fire Resources of California Organized for Potential Emergencies (FIRESCOPE) to enable successful multi-agency operations during emergency response operations. In addition, it has been adopted by the state and is specifically required for SEMS compliance. It has been adopted by the federal government and is specifically required for NIMS compliance.

2.3.2 Standardized Emergency Management System (SEMS)

The Standardized Emergency Management System (SEMS) is the system required by California Government Codes §8607(a) for managing response to multi-agency and multi-jurisdiction emergencies in California.

SEMS incorporates the use of the ICS, the Master Mutual Aid Agreement and existing mutual aid systems, the Operational Area Concept, the Operational Area Satellite Information System (OASIS), and multi-agency coordination. Local governments must use SEMS to be eligible for reimbursement of their response-related personnel costs under state disaster assistance programs.

2.3.3 SEMS Functions

There are five (5) designated levels in the SEMS organization: Field Response, Local Government, Operational Area, Regional, and State. Each level is activated as needed.

- The **Field Response Level** commands emergency response personnel and resources to carry out tactical decisions and activities in direct response to an incident or threat.
- The **Local Government Level** manages and coordinates the overall emergency response and recovery activities within its jurisdiction. The local government level includes cities, counties, and special districts.
- The **Operational Area Level** manages and/or coordinates information, resources, and priorities among local governments; and serves as the coordination and communication link between the local government level and the regional level. The Operational Area includes all the jurisdictions and special districts within the county geographical area. The County of Santa Clara is the lead agency for the Operational Area.
- The **Regional Level** manages and coordinates information and resources among operational areas within the mutual aid region designated and between the operational areas and the state level. This level, along with the state level, coordinates overall state agency support for emergency response activities.
- The **State Level** manages state resources in response to the emergency needs of the other levels, manages and coordinates mutual aid among the mutual aid regions and between the regional level and state level, and serves as the coordination and communication link with the federal disaster response system.

2.3.4 Local Government Level in SEMS

The basic role of a local government is to manage and coordinate the overall emergency response and recovery activities within its jurisdiction.

Under SEMS, special districts are units of local government (other than a city, county, or city and county) with authority or responsibility to own, operate or maintain a project (as defined in the California Code of Regulations for purposes of natural disaster assistance). This may include joint powers authority.

The City is responsible for emergency response within its boundaries, although some services are contracted for from other agencies. All local governments are responsible for coordinating with other local governments, to their field response level, and with the operational area. The City may support its emergency response by opening its EOC and providing mutual aid within its capabilities.

The City is primarily responsible during emergencies for restoration of services that it normally provides. It is also responsible for safety of people at its facilities or on its property and for warning of hazards from its facilities or operations. Some special districts may assist other local governments in the emergency response.

2.3.5 SEMS Requirements for Local Governments

The City will comply with SEMS regulations in order to be eligible for state funding of response-related personnel costs and will:

- Use SEMS when a local emergency is declared or proclaimed.
- Establish coordination and communications with field incident commanders.
- Use existing mutual aid systems to assist in dealing with fire, law enforcement, and all other incidents.
- Establish coordination and communications between the City EOC when activated, to the Operational Area's EOC, and any state or local emergency response agency having jurisdiction for an incident.
- Use coordination with other agencies to facilitate decisions for emergency response activities.
- SEMS includes fulfilling the management and coordination role of local government and providing for the five (5) essential functions of Management, Operations, Planning, Logistics and Finance/Administration.

2.3.6 National Incident Management System (NIMS)

Homeland Security Presidential Directive (HSPD) – 5 requires all states and local governments to adopt and implement NIMS.

NIMS include the following components:

- Command and management, including the ICS
- Communications and information management
- Preparedness
- Resource management
- Multi-Agency coordination
- Supporting technologies
- Joint Information System (JIS)
- NIMS management and maintenance

2.3.7 Operational Area Responsibilities under SEMS and NIMS

The implementation of SEMS and NIMS is a cooperative effort of all departments and agencies within the county, cities, and special districts that have an emergency response role.

All City staff who may work in the EOC, in a Departmental EOC or at the field level will receive appropriate SEMS/NIMS/ICS training as recommended by the Department of Homeland Security. To validate preparedness and planning efforts, the City will develop an exercise program that provides periodic exercises for EOC and DEOC personnel under SEMS/NIMS/ICS guidelines.

2.3.8 National Response Framework (NRF)

The National Response Framework is built upon the premise that incidents are typically handled at the lowest jurisdictional level. In the vast majority of incidents, state and local resources and interstate mutual aid will provide the first line of emergency response and incident management support. When state resources and capabilities are overwhelmed, governors may request federal assistance. The NRF provides the framework for federal interaction with state, local, tribal, private sector, and non-governmental entities in the context of domestic incident management to ensure timely and effective federal support. The NRF is the core operational plan for national incident management, and establishes national-level coordinating structures, processes, and protocols that will be incorporated into certain existing federal interagency incident- or hazard-specific plans.

2.3.9 Special District Involvement

Special districts are defined as local governments in SEMS. The emergency response role of special districts such as the Santa Clara Valley Water District is generally focused on the return to normal services. During disasters, some types of special districts will be extensively involved in the emergency response by assisting the City.

2.3.10 Area Command and Unified Command

An Area Command may be established when the complexity of an incident or incident management span-of-control issues are present. An Area Command oversees the management of multiple incidents, each being handled by separate ICS organizations. These incidents may also be non-site-specific, geographically dispersed or evolve over a long period of time (e.g., a bio-terrorism incident). An Area Command organization can also be used if there are a number of incidents in the same area and of the same type, such as HAZMAT spills or wildfires. These are incidents using the same resources. Multi-jurisdictional incidents may be handled by a Unified Command wherein each jurisdiction has a representative in the command structure.

2.3.11 Incident Command System under SEMS

ICS/SEMS is composed of five (5) functions: Management, Operations, Planning/ Intelligence, Logistics and Finance/Administration. These functions are present in every EOC and mirror the ICS functions which may, or may not, be contained in Field Level Command Posts. The exact EOC organizational staffing level is decided by the Director of Emergency Services, upon consultation with the EOC Section Coordinators, with consideration given to the circumstances and scope of the emergency/disaster.

2.3.11.1 Management Section “Leads It”

The Director of Emergency Services/EOC Director has responsibility for the overall management of the City’s response. The Director ensures that all EOC functions are staffed by the most qualified individuals. This section sets objectives, reviews and approves action plans, provides public information, keeps track of legal concerns and makes policy decisions, subject to later ratification by the City Council. The EOC Management Section should focus on strategy and policy, not tactics. This Section also coordinates the activities of other county, state, and federal agencies with the City.

The Management Section Staff consists of:

- Director of Emergency Services (DES)
- Deputy DES
- EOC Coordinator / Liaison Officer
- Public Information Officer
- Legal Advisor
- Safety & Security Officer

2.3.11.2 Operations Section “Does It”

The Operations Section Coordinator is responsible for the coordination and management of all branches in the Operations Section. Depending upon the type of event which is occurring, the Operations Section Coordinator may be from the Public Works Branch, the Law Enforcement Branch or the Fire Services Branch. This section develops the Operations Section of the EOC Action Plan to meet objectives set by the Management Section. It allocates personnel and equipment, identifies staging areas and manages mutual aid. Multi-purpose staging areas are also under the management of this section. This Section responds to field requests, anticipates needs, and coordinates information gathering in conjunction with the Plans Section.

This Section may have to deal with inmate issues (the Boys Ranch), special populations, animal control issues, hazardous materials, coroners, emergency medical, crisis counseling for emergency responders, urban search and rescue, disease control, utility restoration, flooding, damage assessment, safety assessments, sheltering and feeding, and potable water.

The Operations Section Staff consists of:

- Law Enforcement Branch

- Fire and Rescue Branch
 - CERT Field Unit
- Public Works/Engineering Branch
 - Building Inspection Unit
 - Dept. Emergency Operations Center (DEOC)
 - DEOC Support
- Community Services Branch
 - American Red Cross Unit
 - MHUSD Unit
 - Care and Shelter Unit
 - Shelter Operations Field Unit

2.3.11.3 Planning/Intelligence Section “Plans It”

The Planning/Intelligence Section Coordinator leads this Section which may be structured into several units depending upon the needs of the incident. Situation Analysis and Damage Assessment are examples of units which may be formed within this Section. The Planning/Intelligence Section is responsible for gathering, tracking, and displaying verified information which correctly describes the incident status. It compiles the status of utilities, road conditions, public buildings, schools, shelters, and damaged/destroyed buildings and homes. Planning/Intelligence maintains documentation for historical and legal records. It makes projections on the course of the event and makes forward-looking plans. The Planning/Intelligence Section is also responsible for compilation of and publication of the Incident Action Plan and ensures information reporting is shared with the Operational Area via the countywide web based system “WebEOC”.

The Planning/Intelligence Section is responsible for the collection, distribution, and display of information related to the incident status. As the incident progresses, the Section anticipates the needs for demobilization long before needed.

The Planning/Intelligence Section Staff consists of:

- Situational Analysis Branch
- Advanced Planning Unit
- Documentation Unit
 - GIS/CAD Unit
 - WebEOC Unit

2.3.11.4 Logistics Section “Gets It”

The Logistics Section Coordinator leads the Section and is responsible for providing all support needs to the incident. This Section maintains records of requests and the disposition of resources. It provides personnel support including volunteers, specialized equipment and contractor services not available in-house, transportation, housing, feeding, tracking of resources as they move, provision of sanitation services, information technology support, and communications. Requests for personnel, equipment, supplies, and shelters are a few examples of what this Section handles.

The Logistics Section Staff consists of:

- Personnel Branch
 - Emergency Volunteer Center Field Unit
- Resources Branch
 - Supply Unit

- Transportation Branch
- Communication Branch
 - ARES Unit

2.3.11.5 Finance/Administration Section “Pays for It”

The Finance/Administration Section Coordinator leads this Section and is responsible for fiscal management, time-keeping on personnel and equipment, and tracking the overall cost of the incident. This Section handles procurement, the administration of vendor contracts, compensation, travel requests, and claims. Finance also prepares and maintains adequate records for cost recovery.

The Finance/Administration Section Staff consists of:

- Time Branch
- Cost Branch
- Compensation/Claims Branch

2.4 COORDINATION WITH THE FIELD RESPONSE LEVEL – ICS

Common terminology is used to describe organizational functions, resources, and facilities within ICS/SEMS.

Modular organization is the method by which the organizational structure develops based upon the kind and size of the incident. The organization's staff builds from the top down with responsibility and performance placed initially with the Incident Commander. Several sections may be covered by one person in a relatively simple organization.

Unified Command is a structure which allows all agencies with responsibility for the incident, either geographical or functional, to manage an incident by working with other agencies in establishing a common set of incident objectives. This is accomplished without losing or abdicating agency authority, autonomy, responsibility, or accountability.

An Incident Action Plan identifies objectives and strategies made by the Director of Emergency Services for the incident based upon the requirements of the jurisdiction. In the case of Unified Command, the event objectives must adequately reflect the policy and needs of all the jurisdictional agencies. The Incident Action Plan for an event documents the support activities required for the operational period.

Span of control within the EOC is a limitation on the number of EOC staff positions that can effectively be supervised or directed by an individual. The span-of-control range is usually from three (3) to seven (7) personnel.

Comprehensive resource management is the identification, grouping, assignment, and tracking of resources.

Integrated communications are established through the use of a communications plan.

2.5 THE ACTION PLANNING PROCESS (DURING AN INCIDENT)

2.5.1 Purpose of the EOC Action Plan

- Establishes the direction and priorities for EOC operations operational objectives for each SEMS function in the EOC and tracks progress.
- Establishes the operational period timeframe for completion of objectives.
- Operational periods are normally in twelve (12) hour increments except for the first and last period.
- May be set by Santa Clara Operational Area for area-wide disasters.

- Provides for accountability and reduces redundancy.
- Provides documentation for the After Action Report.

2.5.2 Emergency Management Teams Action Planning Responsibilities

- **Director of Emergency Services**
Ensures the Incident Action Plan is accomplished.
- **Planning/Intelligence Coordinator:**
Acts as the Facilitator for the Action Planning process. Conducts the Action Planning meeting and prepares or assigns staff to reproduce and distribute the Action Plan.
- **Situation Analysis Unit Leader:**
Assists the Planning/Intelligence Coordinator as required in the preparation of the Action Plan.
- **Documentation Unit Leader:**
Assists in the preparation and distribution of the Plan. Keeps a permanent record of all documents related to the incident.
- All Section Coordinators provide input for the Incident Action Plan.

2.5.3 Planning Meeting

- Reviews the initial situation immediately upon EOC activation.
- Guides the EOC Team through the “Planning P” process.
- Develops the incident objectives.
- Decides on initial size of EOC staff.
- Announces when first action planning meeting will occur. (Usually within two (2) hours of EOC activation).
- Considers declaration of Local Emergency. Initial meeting is brief - usually no longer than twenty (20) minutes.
- Hold the meeting at a site away from the EOC, and the Director, Command and General Staff attend, along with any Liaison Officers.
- The Action Plan can be written on ICS forms or on the WebEOC template.

SECTION 3: EOC OPERATIONS

The City is prepared to operate a primary or alternate EOC when emergencies occur. The locations and facilities of the primary and secondary EOCs have been predefined, equipped and organized. The City is also prepared to activate the EOC remotely.

3.1 EOC SET UP

The set-up of the EOC is the responsibility of the EOC Coordinator. Instructions for the setup of the EOC can be found in "Setup Guides" located at EOC locations.

3.2 EOC STAFFING

Staffing decisions will be driven by the nature and scope of the emergency and the activation level ordered by the Director of Emergency Services. The EOC Sections must be prepared for extended operations on a twenty four (24) hour basis using two (2) twelve (12) hour shifts. Incidents requiring extended EOC Operations may see adjustments in the staffing shift hours, staffing levels, or a combination thereof. The Safety Officer is authorized to recommend to Section Coordinators to order EOC staff members exhibiting fatigue or stress to leave the EOC.

EOC Staff assignments (at least one (1) primary and an alternate) are pre-designated by the Director of Emergency Services in the EOC Staffing Plan which is published separately and updated by the OES.

Contract agencies, special districts, utilities, Community Based Organizations (CBOs), and Non-Governmental Organizations (NGOs) may be requested to send agency liaison representatives to the EOC.

ARES volunteers play a significant role in EOC operations, donating their time, personal communications equipment, and expertise to maintain an auxiliary set of communications channels (voice/packet computer/bulletin board) with other cities/towns/special districts and the Santa Clara County EOC. A secondary or backup ARES capability may be located in the volunteers' vehicles to ensure there are no lost communications during incidents.

3.3 EOC TRAINING

The EOC Staff will participate in an ongoing training program. The OES will make this training available to the team. This program will include the following elements:

3.3.1 Basic Training:

Orientation to the EOC, introduction to the Emergency Operations Plan and basic SEMS/NIMS, used primarily to brief new EOC Staff members.

3.3.2 Specialized/Technical Training:

Training focused on and emphasizing procedures such as WebEOC reporting or setting up a shelter.

3.3.3 Exercises

Table top exercises, functional exercises, or full scale exercises may be used to involve Emergency Management Team members in the processes of emergency management. The team will have at least one (1) exercise each year, unless it is involved in an actual EOC activation during the year.

SECTION 4: DISASTER SERVICE WORKERS – EMPLOYEES AND VOLUNTEERS

Disaster Service Workers (DSWs) are defined as:

- Any person properly registered for the purpose of engaging in disaster service, including paid staff and volunteers.
- Any person registered with an accredited Disaster Council for the purpose of engaging in disaster service without pay or other consideration.
- Unaffiliated persons impressed into service by competent authority during an incident.

4.1 CITY EMPLOYEES

4.1.1 During Working Hours:

When an emergency occurs, all on-duty City staff must remain at work until properly relieved or excused by their supervisors.

4.1.2 During Non-Duty Hours:

During non-working hours, when emergencies occur, City employees with EOC or other emergency assignments should:

- Immediately look to the safety and security of their families.
- As soon as possible, contact their City work station or EOC Section Coordinator to advise of their family status and availability for disaster duties.

4.1.3 Dissemination of Information:

The Public Information Officer of the City, or EOC personnel, can disseminate employee work information during an emergency by the following means.

- The City Cable Channel 17
- Alert SCC; including the Wireless Emergency Alert (WEA) system.
- The Emergency Alert System (all commercial radio and television stations)
- The Police Department
- The City Web Site: www.morganhill.ca.gov
- Social Media

4.2 VOLUNTEER ORGANIZATIONS AND PRIVATE AGENCIES

These groups constitute a significant part of Morgan Hill's emergency response resources. Groups including the Santa Clara Chapter of the American Red Cross are essential elements of the public response efforts to meet the care and shelter needs of local disaster victims. Private sector medical/health resources provide emergency medical care. Government radio communication nets are backed up in the Morgan Hill EOC by highly qualified "HAM" radio operators of the Morgan Hill ARES/RACES who offer their own equipment and separate auxiliary nets as well as field communications units from sources such as fire stations, school campuses, and the Community Emergency Response Team (CERT).

Private agencies, organized groups and service clubs which desire to volunteer to perform specific tasks during emergencies should identify their interests and goals to the OES for pre-disaster recognition and registration processing.

4.2.1 Length of Enrollment/Termination

The Emergency Management Team is authorized to establish enrollment periods, and to coordinate the activities of the various volunteer groups in preparing for emergencies. Spontaneous volunteers (see below for further definition) will normally be enrolled only for the length of the on-going disaster at the time they come forth to provide assistance. Termination may be accomplished if the volunteers fail to perform their responsibilities.

4.3 COORDINATION OF VOLUNTEERS

4.3.1 Pre-Registered Volunteers

Pre-registered volunteers have been assigned specific disaster duties by nature of their registration, i.e. ARES, CERT, Volunteers in Policing (VIPs), etc. These pre-registered volunteers will work under lines of authority designated before the emergency. However, once deployed to field sites on order of the EOC Sections, these organized volunteers will report either individually or as a unit to the Incident Commander at the Incident Command Post. In certain instances, such as a major disaster, these pre-registered volunteers may operate independently but under positive communications control of their respective organizational representative present in the EOC.

4.3.2 Spontaneous Volunteers

Community members may offer their services to the City during emergency situations. Although appreciated the coordination of Spontaneous Volunteers is crucial and must be coordinated through the EOC or OES. The key to successful volunteer employment is to identify individuals' skills and utilize the volunteers in a safe, supervised manner to the extent of their capabilities. These volunteers must register as DSWs prior to serving the City and fall under the control of a designated team/project leader who will supervise their work efforts.

DSW volunteers registered under this program are considered to be acting within the scope of disaster service duties while assisting any unit of an emergency organization or performing any act contributing to the protection of life, property, and the environment or mitigating the effects of a potential emergency.

4.4 REGISTRATION

DSW Volunteers must have certain data registered with the City Clerk's Office and execute a signed loyalty oath or affirmation subscribed by an officer authorized to administer oaths. The City Clerk (or designee) is authorized to administer the loyalty oath to DSWs.

4.5 WORKER'S COMPENSATION CLAIMS

All DSW volunteers are eligible to submit claims for worker's compensation for injuries sustained while performing disaster service under the same authority and guidelines as paid government employees. Injuries sustained should be reported immediately to the volunteer's supervisor who is responsible to advise the EOC Logistics Section, Personnel Branch and/or the Morgan Hill Human Resources Director.

4.6 LIABILITY CLAIMS

Any liability claims or actions filed against a DSW-volunteer will be immediately delivered to the City Attorney or the EOC Finance Section, Claims Branch.

4.7 ACTIVATION OF DSWs

During instances of activation of the EOC, pre-registered volunteers shall be available to assist in the disaster response based on their qualifications. These volunteers are expected to respond to notifications by phone or email, or to self-deploy, by reporting to the Mobilization Center in the Bus Yard.

Self-deploying DSWs will be considered on duty during their direct travel time to and from the Mobilization Center/Cache or other assigned worksite.

For other incidents, requests for DSWs will be announced via:

- Telephonic requests from the EOC, Police Dispatch, or OES
- Email announcement
- AlertSCC
- Announcements on the City's Public Service Television Channel-17 Cable
- Announcements over the Morgan Hill Community Access Television (MHAT) Channel-19 Cable
- Postings on the City's Web Site
- Social Media

4.8 EMPLOYEE EMERGENCY PREPAREDNESS TRAINING

All new employees are required to attend a training session on Emergency Preparedness within the initial first year of employment. The class includes SEMS/NIMS/ICS, personal and family preparedness, requirements of being a DSW, and contents of each employee's seventy two (72) hour emergency kit. All City employees and volunteers are expected to have an emergency kit containing the equipment that might reasonably be required during an activation.

Specialized Training is available for EOC Staff members and may include WebEOC, AlertSCC, EOC section, and position training, ICS and other advanced courses available through FEMA, Emergency Management Institute, and California Specialized Training Institute.

City employees may attend free CERT training or other programs offered by the City OES, American Red Cross, ARES, and other organizations involved in disaster preparedness. The OES will announce training schedules, dates, times and enrollment information as they become available.

SECTION 5: WEBEOC

The City of Morgan Hill utilizes a web-based system of information sharing and reporting. The WebEOC system is used to report emergency information to the Santa Clara County Operational Area (SCC OES).

WebEOC is an internet-based system that assists the Emergency Management Team in capturing and reporting resource status and requests, and also has standard formats for the various ICS forms in use. These forms can be called up online, filled out and submitted electronically.

SECTION 6: EMERGENCY PROCLAMATIONS

6.1 WHAT CONSTITUTES AN EMERGENCY?

The California Emergency Services Act § 8550 and SEMS defines an emergency as “conditions of disaster or of extreme peril to the safety of persons and property...” by natural or human causes. Environmental considerations are also a factor.

Morgan Hill Municipal Code (MHMC) § 2.44.020 defines emergency as “the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the city caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, or other conditions including conditions resulting from war or imminent threat of war, but other than conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment and facilities of the city, requiring the combined forces of other political subdivisions to combat.”

6.2 LOCAL EMERGENCIES

The City Council or the City Manager, or designee, may proclaim a Local Emergency in Morgan Hill when there is a threat to the safety of people and property within the City boundaries.

The proclamation of a Local Emergency provides legal authority for the Director of Emergency Services to:

- Request that the Governor proclaim a State of Emergency,
- Put forth orders and regulations to protect life and property, including emergency orders to command the aid of citizens in the community.
- Provide mutual aid to and for the people of the City.
- Require the services of any local official or employee.
- Requisition necessary personnel and material of any department or agency.
- Obtain vital supplies and equipment and, if there is an immediate need, to commandeer the same for public use.
- Impose penalties for violation of lawful orders.

Proclamations of a Local Emergency must be submitted for approval to the City Council by the City Manager and extended or cancelled after periodic reviews within specific timeframes (MHMC § 2.44.070).

SECTION 7: CONTINUITY OF GOVERNMENT

A major disaster could result in the death or injury of key government officials, the partial or complete destruction of established seats of government, and the destruction of public and private records essential to continued operations of government. At all levels, government is responsible for providing continuity of effective leadership and authority and for the direction of emergency operations and management of recovery operations. It is essential that the County of Santa Clara and all the cities/towns and special districts within the county continue to function as government entities.

The California Government Code and other California laws provide the authority for state and local governments to reconstitute themselves in the event incumbents are unable to serve.

7.1 LINES OF SUCCESSION

The California Government Code permits the appointment of up to three (3) standby officers for each member of the governing body. This code also provides for the succession of officers who head departments responsible for maintaining law and order, or for furnishing public services relating to health and safety. The standby officers shall have the same authority and powers as the regular officers or department heads.

Additionally, procedures exist to assure continued functioning of political subdivisions in the event the governing bodies, including standby officers, are unavailable to serve.

The Line of Succession for Director of Emergency Services in Morgan Hill is as follows:

- Assistant City Manager
- Chief of Police
- City Engineer
- Director of Planning and Community Management
- Director of Administrative Services
- Director of Community Services

The Acting Director of Emergency Services shall serve until the Director is available or until a successor is appointed by the City Council.

Any questions as to the availability of the Director of Emergency Services shall be decided by the City Council or any remaining available members of said body.

7.2 RECONSTITUTION OF THE GOVERNING BODY

The California Government Code authorizes local governing bodies to convene, as soon as possible, whenever a State of Emergency or Local Emergency exists and at a place not necessarily within the political subdivision. The duties of a governing body during emergencies include ascertaining the damage to the jurisdiction and its personnel and property, reconstituting itself and any subdivisions, performing functions in preserving law and order, and furnishing local services

The California Government Code establishes a method for reconstituting the governing body. In the case that all members, including all standbys, be unavailable, temporary officers shall be appointed by the chair of the County Board of Supervisors, in which the political subdivision is located, by the Chair of the Board of Supervisors of any other county within one hundred and fifty (150) miles or by the Mayor of any City within one hundred and fifty (150) miles.

The City Government could be reconstituted at City Hall or at any of the alternate EOC locations.

7.3 PROTECTION OF VITAL RECORDS

In the City of Morgan Hill, the City Clerk's Office is responsible for the preservation and protection of vital records. Each department within the City shall identify, maintain, and protect its vital records. Vital records are defined as those records that are essential to the rights and interests of individuals, governments, corporations and other entities, including vital statistics, land and tax records, license registers, articles of incorporation, and historical information. Vital records also include those records essential for emergency response and recovery operations, including utility system maps, emergency supply and equipment locations, emergency operations plans and procedures, and personnel rosters.

These vital records will be essential to the reestablishment of normal government functions, protecting the rights and interests of government. These rights and interests may include the Constitutions, charters, statutes, ordinances, court records, official proceedings, and financial records of Morgan Hill.

Vital records of City of Morgan Hill are routinely stored in the City Clerk's Office, in the files of the various departments, and in off-site storage.

SECTION 8: MULTI-AGENCY / INTERAGENCY COORDINATION

Multi-agency or inter-agency coordination is the participation of agencies and disciplines involved at any level of the ICS/SEMS organization working together in a coordinated effort to facilitate decision-making for overall emergency response activities, including the sharing of critical resources, information and the prioritization of incidents. The Multi-Agency Coordination System (MACS) is a decision-making system used by member jurisdictions of the Santa Clara Operational Area to prioritize and coordinate resource allocation and response to multiple incidents affecting the Operational Area. MACS is usually implemented during a large-scale incident involving multiple agencies or jurisdictions.

Multi-agency or inter-agency coordination is important for:

- Establishing priorities for response
- Allocating critical resources
- Developing strategies for handling multi-agency response problems
- Sharing information
- Facilitating communications

8.1 MULTI-AGENCY OR INTERAGENCY COORDINATION IN THE EOC

Multi-agency or interagency coordination is an integral part of the functioning of the City's EOC. The EOC is staffed by representatives from City departments and agencies who work together at the EOC to coordinate the City's emergency response. Representatives from outside agencies including special districts, volunteer agencies and private organizations may also participate at the EOC with departmental representatives in coordinating the City's response efforts. Coordination with agencies not represented in the EOC may be accomplished through telecommunications, emails, or faxes.

SECTION 9: MUTUAL AID SYSTEM

The foundation of California's emergency planning and response is a statewide mutual aid system which is designed to ensure that adequate resources, facilities, and other support is provided to jurisdictions whenever their own resources prove to be inadequate to cope with a given incident. The basis for the system is the California Master Mutual Aid Agreement, as provided in the California Emergency Services Act. It created a formal structure in which each jurisdiction retains control of its own personnel and facilities, but can give and receive help whenever it is needed. The state government is obligated to provide available resources to assist local jurisdictions in emergencies.

The statewide system includes several discipline-specific mutual aid systems, such as, but not limited to, fire and rescue, law, emergency managers, medical, and public works. The adoption of ICS/SEMS does not alter existing mutual aid systems. To further facilitate the mutual aid process, particularly during day-to-day emergencies

involving public safety agencies, fire and rescue, and law enforcement mutual aid coordinators have been selected and function at the Operational Area, regional and state levels.

Incoming mutual aid resources may be received and processed at several types of facilities including: Incident Command Posts, staging areas, bases, camps, and mobilization centers. Units in staging areas are ready to be sent directly to the disaster site. Staging Areas are off-incident locations at which emergency response personnel and equipment are temporarily located pending assignment, release or reassignment.

During a proclaimed emergency, mutual aid will be coordinated by the Operational Area. The Santa Clara County EOC/Santa Clara Operational Area will coordinate mutual aid requests between the Operational Area member jurisdictions and the State OES Regional Emergency Operations Center (REOC).

9.1 MUTUAL AID AGREEMENTS/COUNTY-OP AREA COORDINATORS

The following depicts the statewide mutual aid agreements, some of which are still under development, in which the Santa Clara County/Santa Clara Operational Area is a participant:

- Medical Examiner/Coroner
- Disaster Medical/Health Mutual Aid
- Emergency Managers Mutual Aid Agreement
- Fire Mutual Aid
- Hazardous Materials Mutual Aid
- Law Enforcement Mutual Aid Agreement
- American Red Cross
- Mental Health Mutual Aid
- Public Works Mutual Aid Agreement
- Search and Rescue Mutual Aid
- Urban Search and Rescue Mutual Aid

Morgan Hill is located in Mutual Aid Region II. This Region is geographically the same as the Coastal OES Region. It is administered by the California Emergency Managers Association Regional Headquarters.

9.2 MUTUAL AID POLICIES AND PROCEDURES

Mutual aid resources will be provided and utilized in accordance with the California Master Mutual Aid Agreement and supporting separate agreements.

Due to the incompatibility of radio communications equipment between most agencies, local agencies should, where possible, provide incoming mutual aid forces with portable radios using local frequencies.

SECTION 10: HAZARD ANALYSIS

The City of Morgan Hill is a reasonably safe place to live and work. Natural threats to life and property include earthquakes, flooding, wildfires, environmental problems and landslides. Human-caused threats to life and property include aircraft crashes, hazardous materials incidents, utility interruptions, communicable diseases, terrorist acts, train derailments, and dam failure. For more information on Anderson Dam, see the Valley Water "Emergency Action Plan for Anderson Dam".

10.1 SEISMIC HAZARDS

The City lies between the Calaveras Fault Zone to the east and the San Andreas Fault system to the west. The off-shore San Gregorio Fault Zone lies a few miles further west. At the western edge of the Diablo Mountain Range lies a segment of the Silver Creek Fault, three (3) Coyote Creek Thrust faults, a small horseshoe shaped, unnamed fault, and the Range Front Thrust Fault.

10.2 GEOLOGICAL HAZARDS

Landslides are a geological hazard in the foothills and low mountains of the City and adjacent area. Occurrences can range from rapid rock falls to slow soil and bedrock creep. Natural contributing causes include weak soil and rock over hillsides made steeper by rapid stream erosion, adverse geological structure, ground water levels, and high rainfall rates. Man-made causes include improper grading altering surface and sub-surface drainage, excessive irrigation, and removal of natural vegetation.

10.3 WILDFIRE HAZARDS

Wildfires can occur in Morgan Hill. Narrow ingress/egress routes can impede residents' escape. The access of first responders to favorable tactical positions to combat the fire's leading edges may also be limited. Failure of homeowners and tenants to trim back flammable decorative landscaping and failure to replace wood shake or shingle roofs with non-flammable roofs compound the dangers to property and lives of both residents and firefighters.

10.4 FLOODING

Watersheds in mountain ranges produce creeks, streams and rivulets in the City with continual flooding potential. Hillside soil composition contributes to saturation during the winter rainy season, particularly during the meteorological phenomenon known as El Nino. Elevated flows, higher stream velocity, and debris accumulation may occur in watercourses. Coyote Creek, located on the east side of the City, can threaten the developments west of Malaguerra Avenue-Cochrane Road. West Little Llagas Creek can inundate portions of the downtown business district as well as areas along Monterey Road between Cochrane Road and Watsonville Road.

Several dams in the area represent a threat to safety of people and property. The primary issues are covered in the Flood Emergency Guideline, the Evacuation Routes Appendix to the Emergency Guidelines.

SECTION 11: HAZARD MITIGATION

11.1 THE CASE FOR HAZARD MITIGATION

Every disaster can teach us valuable lessons about building construction, land use, and emergency response. Unfortunately, many of these lessons are soon forgotten and there is a tendency to return to poor construction, unsafe land use, and other short-sighted practices that add to the disaster's negative impact. For this reason, the federal and state governments require safe land use and construction practices as a condition of receiving federal disaster aid. Mitigation has been shown to significantly reduce emergency costs.

11.2 HAZARD MITIGATION ACTIONS

11.2.1 Avoid the Hazard

Avoiding a hazard usually involves restricting land use near the hazard area. This can be accomplished by:

11.2.2 Zoning

Zoning is usually a function of local government, except where state or federally-owned lands are exempt from local zoning laws. Other interests may propose zoning regulations, but only local government can adopt them. By mutual agreement, state or federal restrictions may be locally adopted and enforced.

Zoning can be useful, but its powers are limited. Therefore, zoning usually reflects, rather than dictates, current land use trends. Zoning is vulnerable to political pressure. This is particularly true if an area is very attractive for development and rarely experiences major disasters.

Zoning is generally best suited to restricting the use of smaller areas (such as very steep slopes) within larger areas, as opposed to restricting large areas (such as areas of potential earthquake shaking).

11.2.3 Purchase

The most reliable way to restrict the use of land is to buy the land outright. Although this can be expensive, costs must be weighed against the repercussions of future disasters. Lands purchased for hazard mitigation can often be used for parks, agriculture, or other constructive purposes. In Santa Clara County, the Open Space District is a public agency that buys open space for, among other reasons, hazard mitigation.

11.2.4 Improve Building Standards

Buildings in hazardous areas can often be made safe. This can be as simple as the addition of a fireproof roof or as extensive as demolishing the building. Building standards can be implemented for a variety of reasons.

11.2.4.1 Local Standards

Building codes are usually a function of local government, except where state or federal buildings are exempt from local codes. Codes can be strengthened for hazardous areas. Usually stronger codes are enforced only for new construction or remodeling, but some recent laws require hazard related inspections for existing buildings that are considered at risk. Inspections will produce knowledge of liability, which will motivate the owners to improve their buildings.

11.2.4.2 State Standards

For state-owned facilities and schools which are outside the jurisdiction of local governments, construction standards are adopted and enforced by the responsible state agency(s). In some cases, these standards may serve as models for local governments.

11.2.4.3 Federal Standards

A federal agency may require local or state governments to adopt and enforce certain hazard mitigation regulations as a condition for federal assistance or participation in federally assisted programs.

The Governor's Office and FEMA may be involved in establishing construction standards for hazard mitigation projects.

Federal law authorizes, as a condition of any disaster loan or grant, the recipient shall agree that any repair or construction to be financed by the loan or grant shall be in accordance with applicable standards of safety, decency and sanitation, in conformity with applicable codes, specifications, and standards.

As a further condition of any loan or grant made, the state or local government shall agree that the natural hazards in the areas in which the proceeds of the grants or loans are to be used shall be evaluated and appropriate action shall be taken to mitigate such hazards, including safe land use and construction practices.

11.2.4.4 Reduce the Hazard

The hazard itself can be reduced. This depends on the type of hazard, for example; double containment of a storage tank will reduce the hazard from the chemical inside, but an earthquake or a storm cannot be stopped.

The City may decide to expend its funds to reduce hazards. The City maintains its Local Hazard Mitigation Plan (LHMP), identifying hazards.

The LHMP can be found by visiting the Santa Clara County's Office of Emergency Management website.

SECTION 12: AFTER THE DISASTER

The Governor, with the federal government, may execute a Federal/State Agreement, which includes hazard mitigation measures.

12.1 LOCAL

The City's Authorized Representative, the City Manager, is responsible for local performance of hazard mitigation measures under the terms of a Federal/State Agreement. The City Manager, in coordination with the Governor's Authorized Representative, shall:

- Appoint a Local Hazard Mitigation Coordinator to work with the Federal/ State Hazard Mitigation Team.
 - Submit adequate assurance that required hazard mitigation measures have been taken or will be completed for any project application.
 - Implement and enforce land use regulations and safe construction practices which are agreed upon as conditions for FEMA grants or loans, to the extent of legal authority. Cities may request state or federal advice or assistance in taking these actions.
 - Provide evidence of compliance with conditions for any approved FEMA grants or loans as required by the Governor's Authorized Representative.
- Local Hazard Mitigation Coordinator
 - Working with the Federal/State Hazard Mitigation Team, the City's Hazard Mitigation Coordinator shall assess disaster damage within the local jurisdiction.
 - Arrange for local participation in the Federal/State Hazard Mitigation Team.
 - Inform local officials and citizens about significant team activities, collect any local comments on these matters, and report them to the Hazard Mitigation Coordinator.
 - Work with the Federal/State Hazard Team to review and update existing hazard mitigation plans, or in developing new hazard mitigation plans.

SECTION 13: RECOVERY OPERATIONS

A recovery operation refers to certain measures undertaken by the City both during and following a disaster. Effective recovery consists of a complex array of interdependent and coordinated actions which may include federal and state disaster relief efforts.

A successful recovery starts at the beginning of the incident. There is no clearly defined separation between the response and recovery efforts.

Recovery operations are divided into three (3) phases.

1. Short Term Recovery (Disaster impact to two (2) months) - The focus is on debris removal, building safety inspections, coordination of shelter services to victims, information on assistance programs, and providing basic emergency services (particularly public safety).
2. Mid-Term Recovery (Two (2) months to one (1) year) - The “rehabilitation” or reconstruction period between immediate response and long-term recovery.
3. Long Term Recovery (One (1) to ten (10) years and beyond) - Actions that will return the jurisdiction’s social and economic situation back to normal pre-disaster levels of service or improved levels.

13.1 SHORT TERM OBJECTIVES

- Protection of individual well-being and private/public property
- Family reunification
- Restoration of essential public services and public safety

13.2 MID TERM OBJECTIVES

- Restoration of infrastructure/physical recovery to pre-disaster levels
- Restoration of normal government operations

13.3 LONG TERM OBJECTIVES

- Permanent restoration of private and public property
- Economic, social, and institutional stabilization
- Assess needs for, and accomplish, hazard mitigation
- Update Emergency Plans based on lessons learned

13.4 DISASTER RECOVERY ASSISTANCE CENTERS

Joint Federal, State and Local Assistance Center (LAC) may be set up in affected areas.

These centers are staffed under the one-stop shopping concept by disaster relief agencies’ specialists, local officials, and representatives from private relief organizations.

Individual citizens and organizations desiring to donate money, food, clothing, and other goods or services to disaster victims may contact these LACs. Federal relief policy calls for cash donations to be given to private non-profit organizations involved in disaster relief services such as the American Red Cross, the Salvation Army, the Goodwill, or FBOs.

Additional information about Morgan Hill’s LAC is contained in the Local Assistance Center Emergency Guideline.

13.5 RECOVERY PLANNING

As soon as the EOC is operational, recovery planning begins. The Advanced Planning Unit, under the Planning/Intelligence Section Coordinator, has primary responsibility for recovery planning. Recovery considerations will be reflected in the Incident Action Plans as the scope and approximate duration of the incident

is identified. The City Recovery Plan will provide a road map for planning actions. Availability of funding will also dictate the exact steps in the recovery process.

13.6 RECOVERY FUNDING

13.6.1 Federal

Federal disaster assistance is available to communities which are covered by Presidential Proclamations. This assistance, provided under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, is coordinated through FEMA.

13.6.2 State

California's Emergency Management Agency coordinates disaster recovery and mitigation activities within California.

SECTION 14: PUBLIC EDUCATION – DISASTER PREPAREDNESS

If the general public knows what to do before, during and after a disaster, the impact of the disaster can be greatly reduced in saved lives and preserved property. Public education is largely a local function, although the state and federal governments make a variety of educational materials available.

The Morgan Hill OES routinely conducts or sponsors public education seminars on the subject of disaster preparedness and related topics.

The OES offers the "Map Your Neighborhood" program to assist neighborhoods in preparing for emergencies. In addition, it offers CERT training and opportunities for volunteering in a number of emergency response roles.

SECTION 15: APPROVALS, AUTHORITIES, AND REFERENCES

1. Morgan Hill City Council approval of this plan
2. City of Morgan Hill Municipal Code, <https://www.morgan-hill.ca.gov/655/Municipal-Code>
3. State Laws
 - i) California Emergency Services Act, Chapter 7 of Division 1 of Title 2 of the Government Code
 - ii) California Code of Regulations (CCR) Title 19, Chapter 2, Subchapter 3, 2620 et seq.
 - iii) CCR Title 21, Division 2
 - iv) California Government Code 8607 (a)
4. Federal Laws and Mandates
 - i) Federal Disaster Relief Act of 1974 (PL 93-288)
 - ii) Federal Civil Defense Act of 1950 (PL 920)
 - iii) Public Law 84-99 (Emergency Flood Assistance),
http://www.mvp.usace.army.mil/Portals/57/docs/Operations%20Center/Emergency_Assistance_2011.pdf
 - iv) Homeland Security Presidential Directives 5,
<https://www.dhs.gov/sites/default/files/publications/Homeland%20Security%20Presidential%20Directive%205.pdf>

- v) Homeland Security Presidential Directives 8, <https://www.dhs.gov/presidential-policy-directive-8-national-preparedness>
- vi) National Incident Management System (NIMS) at the NIMS Integration Center, <https://www.fema.gov/national-incident-management-system>
- vii) Americans with Disabilities Act (ADA), 1990, <https://www.ada.gov/pubs/adastatute08.htm>

5. References

- i) National Response Framework, <https://www.fema.gov/media-library/assets/documents/32230>
- ii) NFPA 1600, <https://www.nfpa.org/codes-and-standards/all-codes-and-standards/list-of-codes-and-standards/detail?code=1600>
- iii) Emergency Management Accreditation Program, <https://www.emap.org/>
- iv) US Department of Homeland Security National Preparedness Goal, <https://www.dhs.gov/national-preparedness-goal>
- v) FEMA National Exercise Plan, <https://www.fema.gov/national-exercise-program>
- vi) A Guide To the Disaster Declaration Process and Federal Disaster Assistance, https://www.fema.gov/pdf/rrr/dec_proc.pdf
- vii) California Constitution, <http://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml?tocCode=CONS&tocTitle=+California+Constitution+-+CONS>
- viii) California Fire Service and Rescue Emergency Mutual Aid System – Mutual Aid Plan, [http://www.oes.ca.gov/Operational/OESHome.nsf/PDF/California%20Master%20Mutual%20Aid%20Agreement/\\$file/CAMasterMutAid.pdg](http://www.oes.ca.gov/Operational/OESHome.nsf/PDF/California%20Master%20Mutual%20Aid%20Agreement/$file/CAMasterMutAid.pdg)
- ix) California Emergency Plan, <http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES%20-%20Fire%20and%20Rescue%20-%20Mutual%20Aid%20Plan%20-%2020141201.pdf>

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Donald Larkin](#)
Subject: FW: Responses to Questions on 2/3/2021 Agenda
Date: Wednesday, February 3, 2021 9:59:36 AM
Attachments: [Madrone Channel Trail Location Map.pdf](#)
[image001.png](#)

Please supplement.

Please see below responses.

1. Sustainable Morgan Hill document – **Vision Statement needs to be updated.**

Response: The updated document will be brought forward to City Council for formal adoption at the February 17 Council meeting.

2. Agenda item 1 – Madrone Channel Trail

- a. **Is there a project location map to see where this is?**

Response: Map attached.

- b. “The City may use Park Impact Funds for the project if additional grant funding is not achieved” – **Where are the park impact fund dollars? Is it currently in the budget? Are these dollars routine and come in regularly?**

Response: The trail runs on the channel adjacent to 101 from Tennant Avenue to Cochrane Road. There are dollars budgeted, but additional funding will need to be appropriated for Phase 2. This appropriation would include the grant dollars and Park Impact Fund dollars. We are currently working to close out and complete Phase 1, which once completed will determine how many budgeted dollars we have remaining for Phase 2. Once this and the total grant funding is determined the City will return to amend the budget for this project. We hope to receive even more grant funding for this project. This will most likely occur at mid-cycle as the project will likely not begin until next fiscal year, but if we obtain more funding sooner, we may bring this amendment back to the Council separately. However, we need to secure this grant funding now. Park Impact funds are dollars developers pay to construct new Park and Recreation facilities and do come in regularly with development.

3. Agenda item 4 – Hazardous Vegetation Abatement Program

- a. “The City does not retain any revenues for this activity” – **Can you please explain this further?**

Response: Fee revenues from the hazardous vegetation abatement program are collected directly by the County and retained by the County to offset the direct expenditures relating to inspection, abatement, and administration. The City does not receive any fee revenues and, to date, has not had to contribute to the County to offset their expenses relating to activities within the City. In other words, to date, their fee revenues have been adequate to offset their expenses. They evaluate their planned expenditures annually and can adjust the fees accordingly. The City’s costs

have been limited to the staff time required to administer the County contract and the Morgan Hill Fire Marshal's time spent inspecting, communicating, and ordering abatement for properties in the brush abatement program.

4. Agenda item 5 – Preliminary Review of SR2020-006

- a. "The developer can still propose a senior community within the center of the development and have some of those units be deed-restricted. But to meet the IHO, the applicant would have to include deed restricted affordable units throughout the entire project."
- i. **So this may not be in the best interest of seniors in that seniors prefer to stay within a grouping in a community. In addition, the proposal for this deed restricted (senior) community is in very close proximity to the club house which have tremendous benefits to an older population that may use such things as exercise equipment. By not having these units in one location as proposed and spreading these units out to satisfy IHO, makes no sense. In fact, it discriminates the senior age group by dispersing the housing throughout the development for the stated reasons I explained above. Please try to clarify this for me.**

Response: The developer can build an age restricted project and keep the age-restricted units clustered. However, the affordable housing units of the project need to be dispersed throughout the project. The developer can meet the affordability requirement by making some of the age-restricted units affordable and some of the other units in the project affordable. The reason why clustering all the affordable units is not allowed is because it contradicts the City's goals of creating complete, inclusive, and diverse communities. If all affordable units are clustered, it would create low-income pockets and neighborhoods that can also have other unintended consequences. Integration of mix-incomes in a neighborhood supports social justice, equity, and access to economic opportunities such as jobs, schools, and resources.

b. **Was traffic impact analysis done?**

Response: No, the traffic impact analysis will be required as part of the environmental analysis.

c. **What is feathering?**

Response: Feathering is a method used to integrate new projects with its surroundings. It is a technique to provide gradual transition of densities and heights into its adjacent neighborhood(s). Below is the reference to feathering the City's General Plan:

Policy CNF-9.1 Density Feathering from High to Low Densities: Encourages feathering from higher urban densities to lower rural densities to occur within the City limits. Feathering should begin as development nears the Urban Growth Boundary.

d. Hanson Bridgett letter: **Is the below statement in the letter correct?**

With regard to affordable housing, the proposed Project will satisfy the City's inclusionary housing requirements by (1) providing 15% of the total project units available at affordable sales prices in the senior multi-family portion of the Project, and (2) including accessory dwelling units for a number of proposed single family detached housing units, which will be affordable by design. Therefore, the proposed percentage of affordable multi-family housing units satisfies the City's inclusionary requirements for the percentage of units, and the proposed construction of accessory dwelling units would exceed this percentage requirement.

Response: The project meets the required 15% but it does **not** meet the goals of the City's IHO that requires the affordable units to be dispersed. Also, the program requires that the affordable units be at least the same size as the smallest market-

rate unit in the project. Finally, the City's program does not allow the use of ADU's to meet the affordability requirement and would require a program evaluation. The City code contemplates allowing clustering when the project goes beyond the minimum requirements. The Council can deviate from the ordinance requirements, but only if they find that it improves the level or type of affordability.

Thank you!
Christina

Madrone Channel Trail Location Map





CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

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

ACCEPT DONATION FROM THE MORGAN HILL COMMUNITY FOUNDATION FOR THE MORGAN HILL MAGICAL BRIDGE INCLUSIVE PLAYGROUND

RECOMMENDATION(S)

1. Accept donation of \$72,660 from the Morgan Hill Community Foundation for the construction of the Morgan Hill Magical Bridge Inclusive Playground at Community Park; and
2. Authorize the City Manager to execute and administer any agreements necessary to accept the funds.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan

REPORT NARRATIVE:

Since early 2015, the City and numerous volunteers have partnered to construct an Inclusive Playground in Morgan Hill. An “inclusive playground” differs from an “accessible playground” in that it has the aim to make it not only accessible to those with mobility issues, but just as importantly, to encourage and enable all children to engage with one another while using the playground.

The effort has gone through numerous evolutions, with volunteers starting under the auspices of the Morgan Hill Community Foundation as the Morgan Hill Inclusive Playground Committee. The Committee and City developed an initial concept design for the Playground with Verde Design in late 2015. The City eventually partnered with the Magical Bridge Foundation who were hired to design the park, support grant writing, and fundraise for the Playground. Ultimately, fundraising efforts were not as successful as originally anticipated, but the City did receive significant grant funding, and the Magical Bridge Foundation successfully designed the project, which was bid and awarded in March of 2020. The Playground is currently under construction.

During the initial fundraising effort for the project, the Morgan Hill Community Foundation served as the organization holding funds for the project that were collected by volunteers. With the Playground now under construction and the City paying for the construction, the Community Foundation has agreed to transfer the donated funds to the City. The Community Foundation funding totals \$72,660.

COMMUNITY ENGAGEMENT: Inform

This project was brought forward by community members and is being driven by community members. The design process was developed and coordinated by the Morgan Hill Inclusive Playground Committee volunteers. This committee has continued to be involved with the process and help drive the project to the goal of completion.

Acceptance of the Community Foundation's support will be recognized through various City communication channels. Recognition will also be provided onsite on the donor wall at the Playground. This recognition will include the Community Foundation and the individual donors that made donations to the Community Foundation for this purpose.

ALTERNATIVE ACTIONS:

The funds coming from the Community Foundation have been anticipated and budgeted so there are no reasonable alternatives to acceptance of the donation.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council and Parks and Recreation Commission have taken numerous actions related to grant funding and donation acceptance for this project. The major actions related to the project development are outlined below.

May 17, 2016 – City Council approved the concept designs for the Inclusive Playground Project.

June 21, 2017 – City Council approved updates for the Capital Improvement Plan, including funding in FY 2017-18 for the Inclusive Playground Project.

July 19, 2017 – City Council approved an agreement with the Magical Bridge Foundation for the support in fundraising, grant writing, and design for the Morgan Hill Inclusive Playground.

October 4, 2017 – City Council authorized the City Manager to apply for the County of Santa Clara All Inclusive Playground Grant, which the City was ultimately awarded \$2 million towards the playground.

October 17, 2018 – City Council authorized the City Manager to enter into a design agreement with the Magical Bridge Foundation for the completion of designs for the playground project.

December 19, 2018 – City Council approved the updated Magical Bridge Morgan Hill Playground Design.

March 18, 2020 – The City Council awarded the contract for construction of the Playground to CRW Industries, Inc.

FISCAL AND RESOURCE IMPACT:

The specified funds (\$72,660) would go directly towards the construction of the Morgan Hill Magical Bridge Inclusive Playground. The funds will be deposited into the Park Impact Fund (301) and have been included in the Fiscal Year (FY) 2020-21 Program Budget.

CEQA (California Environmental Quality Act): Categorical Exemption

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



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

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

ADOPT RESOLUTION FINDING AN UNREASONABLE HARDSHIP WILL OCCUR UNLESS ATTORNEYS' FEE AWARD IS PAID IN INSTALLMENTS

RECOMMENDATION(S)

Adopt the proposed resolution declaring that an unreasonable hardship will occur unless City's share of the judgment awarded to the Hotel Coalition on November 13, 2020 is paid in installments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

On November 13, 2020, the Santa Clara County Superior Court issued an order awarding attorneys fees to the Morgan Hill Hotel Coalition in the amount of \$416,508.75. For detailed background, please see the order granting motion for award of attorney fees (Attachment 1).

The City and Real Party in Interest, River Park Hospitality, Inc. are jointly and severally liable for these fees. This means that the Hotel Coalition can collect the full amount of the award from either the City or River Park.

Due to the COVID-19 pandemic, City General Fund revenues are projected to decline by \$17.7 million over a three-year period. The City maintains a General Liability Fund to pay for liabilities and unemployment claims. The Fund will go into a deficit due to the lump sum payment, in addition to the increased insurance costs and unemployment claims. Payment of the award in a lump sum would jeopardize the City's ability to pay future claims.

Under Government Code section 970.6, the City Council can request that the City's share of the award is paid in installments if it finds that payment of the full amount would be an unreasonable hardship. Due to the current state of emergency, which is likely to continue throughout the current fiscal year and well into the next fiscal year, we believe that installment payment may be necessary to prevent an unreasonable hardship.

COMMUNITY ENGAGEMENT: Not Applicable.

ALTERNATIVE ACTIONS:

The City Council could choose not to pay any share of the attorneys' fees award in installments, and instead pay in full, further drawing down its General Fund (010) reserves.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

While the litigation has a lengthy history, the Council has not previously acted on the attorneys' fees award.

FISCAL AND RESOURCE IMPACT:

The exact amount of the City's share of the attorneys' fees award is unknown but will not exceed \$416,508.75.

CEQA (California Environmental Quality Act):

Not a Project

The creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment are not projects subject to environmental review.

LINKS/ATTACHMENTS:

1. Order Awarding Attorneys' Fees
2. Hardship Resolution Final

FILED

NOV 13 2020

Clerk of the Court
 Superior Court of California, County of Santa Clara
 BY *[Signature]* DEPUTY
 I. ARMENTA

**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA CLARA**

CITY OF MORGAN HILL, a municipality,

Case No. 16CV292595

Petitioner/Plaintiff,

vs.

ORDER ON SUBMITTED MATTER

SHANNON BUSHEY, REGISTRAR OF
 VOTERS FOR COUNTY OF SANTA CLARA,
 in her official capacity; IRMA TORREZ, CITY
 CLERK OF MORGAN HILL, in her official
 capacity; and DOES 1-50, inclusive,

ORDER GRANTING MOTION FOR
 AWARD OF PRIVATE ATTORNEY
 GENERAL FEES

Respondents/Defendants,

MORGAN HILL HOTEL COALITION, an
 unincorporated association, RIVER PARK
 HOSPITALITY, INC., a California Corporation,
 and ROES 1-15, inclusive,

Real Parties in Interest.

I. Background and Introduction

In March 2016, petitioner and plaintiff the City of Morgan Hill (the City) filed its
 "Petition for Alternative and Peremptory Writ of Mandate (CCP § 1085) and Complaint for

1 Declaratory Relief (CCP § 1060) to Determine Invalidity of Proposed Referendum Measure and
 2 Remove Said Referendum From Ballot of June 7, 2016 Election.” The City named the Morgan
 3 Hill Hotel Coalition (Hotel Coalition), which had submitted the referendum that the petition
 4 sought to invalidate and remove from the upcoming ballot, as a real party in interest in the
 5 litigation. Hotel Coalition opposed the City’s petition. This litigation came after Hotel
 6 Coalition’s vocal opposition to a zoning ordinance passed by the City Council that allowed the
 7 development by River Park Hospitality, Inc. (River Park) of what would be a competing hotel
 8 business, and Hotel Coalition’s submission of a referendum measure. Hotel Coalition’s own
 9 prior petition for a writ of mandate to compel the City to place the referendum measure on the
 10 ballot was resolved. The City then placed the measure on the ballot but also filed this action
 11 seeking to invalidate the referendum and to remove it from the ballot by judicial order.

12 The City’s legal position undergirding its petition was that the referendum measure was
 13 invalid because it would leave a zoning designation that was inconsistent with the City’s general
 14 plan. As evidenced even by its first briefing in the case, Hotel Coalition’s opposition to the
 15 City’s petition urged that the City’s decision to rezone land is subject to the constitutional
 16 referendum power; and that the specific referendum at issue was valid as it did not ask the voters
 17 to enact a zoning ordinance inconsistent with the general plan, but rather to adopt a consistent
 18 one or to reject that specific zoning designation, leaving open the possibility that some other
 19 consistent zoning designation could still be selected. Hotel Coalition further argued that the
 20 holding of *deBottari v. City of Norco* (1985) 171 Cal.App.3d 1204 (*deBottari*), on which the City
 21 relied, did not control here because the ordinance challenged by the proposed referendum had
 22 never gone into effect and the ballot measure would simply permit the voters to maintain the
 23 status quo, accept the proposed ordinance, or require the City Council to choose another
 24 consistent zoning designation.

25 On March 29, 2016, the court (Judge Theodore C. Zayner) by written order granted the
 26 City’s petition and directed the issuance of a writ of mandate, relying principally on *deBottari*.
 27 The stated grounds for the issuance of the writ were that “[i]t is not disputed that the current
 28 zoning in question is inconsistent with the City’s General Plan—and [is] therefore presumptively

1 invalid” and that per *deBottari*, “ ‘[s]tate law prohibits enactment of a zoning ordinance that is
2 not consistent with the general plan. (Gov. Code, § 65860.)’ ”

3 Hotel Coalition immediately appealed from the court’s order. It also sought a stay from
4 the superior court, which was denied. It then sought an appellate stay and petitioned in the Court
5 of Appeal for a writ of supersedeas. The Court of Appeal granted that relief, staying the effective
6 date of the City’s proposed zoning ordinance.¹ This decision to seek a stay pending appeal of the
7 court’s order granting the City’s writ petition was a strategic and necessary legal step to preserve
8 the viability of Hotel Coalition’s legal position on the validity of the referendum, and to avoid
9 the matter being overtaken by events and becoming moot. In a published opinion, the Sixth
10 District Court of Appeal ultimately reversed the trial court’s order, disagreeing with *deBottari*’s
11 holding that referendums are always invalid if they reject a zoning ordinance enacted by the local
12 government to bring a property’s zoning into compliance with the jurisdiction’s general plan. In
13 cases where multiple available zoning designations could comply with the general plan, the
14 Court of Appeal held that a referendum rejecting the zoning change was acceptable because the
15 jurisdiction could adopt another zoning designation that would be consistent with the general
16 plan within a “reasonable time.” (*City of Morgan Hill v. Bushey* (2017) 12 Cal.App.5th 34, 43,
17 vac. on grant of rev.) This holding confirmed Hotel Coalition’s legal position all along.

18 The City petitioned for review in the California Supreme Court, which was granted. In its
19 later opinion vacating the judgment of the Court of Appeal and remanding the matter to the trial
20 court with directions, the Supreme Court identified the issue it was deciding as “whether the
21 people of a county or city may challenge by referendum a zoning ordinance amendment that
22 would bring the ordinance into compliance with a change to the county’s or city’s general plan,
23 even though such a referendum would temporarily leave in place a zoning ordinance that does
24 not comply with the general plan.” (*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1076
25 (*Morgan Hill*).) The Supreme Court concluded that the “Court of Appeal was correct to hold that
26 a referendum can be used to challenge a zoning ordinance amendment that attempts to make the

27
28 ¹ As it did in the trial court, Hotel Coalition had alternatively sought as its first preference
that the referendum remain on the ballot only to be addressed for its validity if it passed. But this
alternative was opposed by the City and rejected in both the trial court and the Court of Appeal.

1 zoning ordinance consistent with the general plan.” (*Id.* at p. 1091.) This holding, again
 2 consistent with Hotel Coalition’s legal positions in the case, affirmed and clarified the voters’
 3 constitutional power of referendum, and disapproved of *deBottari*, which had been, before the
 4 Court of Appeal’s opinion in this case, the generally accepted state of the law on whether voters
 5 may exercise the power of referendum even if passage of the referendum would leave in place
 6 zoning that has been rendered inconsistent by a recent general plan amendment. But, specific to
 7 this case, the Supreme Court further concluded that “it was not clear [from the record] if other
 8 zoning designations were available for the property here, or whether the City has other means to
 9 comply with a successful referendum while making the zoning ordinance and the general plan
 10 consistent with one another. So we vacate the judgment of the Court of Appeal and remand the
 11 case to the Court of Appeal with directions to remand to the trial court to address these
 12 questions.” (*Morgan Hill, supra*, at p. 1091.)

13 The Court of Appeal then issued a new opinion, which directed this court to vacate its
 14 prior order granting the City’s petition and “to reconsider the petition after determining (1)
 15 whether other zoning designations were available for the property and (2) whether the City has
 16 other means to comply with a successful referendum while making the zoning ordinance and the
 17 general plan consistent with one another.” (*City of Morgan Hill v. Bushey* (Dec. 27, 2018,
 18 H043426) [nonpub. opn.].) The remittitur from the Court of Appeal followed on March 15, 2019,
 19 restoring jurisdiction over the case to this court, which issued an order on May 19, 2020,
 20 vacating the prior order granting the City’s petition.

21 Meanwhile, on December 18, 2019, the City Council of Morgan Hill exercised its right
 22 under Elections Code section 9241 to rescind the subject zoning ordinance (Ordinance No. 2131)
 23 rezoning the property, and to amend the general plan land-use designation for the property to
 24 commercial-industrial. The City then argued that its rescission of the ordinance mooted this case
 25 because it meant that the zoning ordinance that was the subject of the referendum no longer
 26 existed. Hotel Coalition disputed that the City’s action rescinding the ordinance resulted in
 27 mootness of the case. The City, as plaintiff and petitioner, then sought dismissal of the action
 28 with prejudice under Code of Civil Procedure section 581. All parties agreed that this disposition

1 was appropriate under the circumstances. On August 6, 2020, the Court then entered its order
2 dismissing the action with prejudice and judgment thereon. That ruling is now final.

3 On September 5, 2019, Hotel Coalition filed its motion for an award of private attorney
4 general fees under Code of Civil Procedure section 1021.5 (section 1021.5). The initial hearing
5 was vacated by agreement to allow discovery on the fee issues. The motion was thereafter fully
6 briefed. The matter came on for hearing on July 24, 2020, in Department 27 of the court, the
7 Honorable Helen E. Williams presiding. Donald Larkin from the Office of the City Attorney and
8 Katherine A. Alberts of Leone & Alberts appeared for the petitioner and plaintiff the City of
9 Morgan Hill; Mary Elizabeth Hanna-Weir of the Office of the County Counsel appeared for
10 respondent and defendant Shannon Bushey as the Registrar of Voters for the County of Santa
11 Clara; Asit S. Panwala and J. Randall Toch appeared for real party in interest Hotel Coalition;
12 and Jolie Houston of Berliner Cohen appeared for real party in interest River Park.² The matter
13 was submitted upon the court's receipt of the reporter's transcript of the hearing. After
14 consideration of the parties' papers and arguments, and the applicable law, the court now orders
15 as follows.

16 II. *Hotel Coalition's Motion and the Oppositions*

17 As adjusted through its reply papers, Hotel Coalition seeks a minimum of \$650,000 in
18 attorney fees, consisting of a lodestar of 617.05 attorney hours at the rate of \$700 per hour, plus a
19 multiplier of at least 1.5.³ The \$700 hourly rate is urged to be a "reasonable" rate; it is not what
20 either of Hotel Coalition's counsel billed or were actually paid during the course of the litigation.
21 It appears that whatever fee agreement there is between Hotel Coalition and its counsel—which
22

23 ² There was no appearance for Irma Torrez, City Clerk of Morgan Hill. For clarity, there
24 are two adverse sides with respect to the motion for award of attorney fees. Hotel Coalition seeks
25 an award of fees and the City and River Park opposed the motion.

26 ³ As best the court can tell after several adjustments, the time claimed by Mr. Panwala
27 before the reply brief and hearing on the motion is 440.45 hours. The parallel figure for Mr. Toch
28 is 158.6 hours. Add to these numbers time spent on Hotel Coalition's reply and preparing for and
attending the hearing on the motion. These additional fees claimed are 18 hours by Mr. Panwala,
for a total number of hours claimed by him of 458.45, plus the 158.6 hours claimed for Mr.
Toch, for a grand total of 617.05 attorney hours claimed. And there has been some billing
judgment exercised for some services performed but not claimed in the motion.

1 agreement has not been provided to the court—reflects an hourly rate of \$350 for each lawyer.
2 The moving papers assert that this is a “reduced” rate from what is asserted to be reasonable but
3 there is no evidence of counsels’ normal rates charged to clients in a civil case involving
4 litigation in the time periods involved. Further, counsel candidly acknowledge that Mr. Toch’s
5 legal experience is in land use, not litigation, and that Mr. Panwala’s litigation experience is
6 primarily in criminal cases, or civil rights cases where there is a contingent fee agreement. Thus,
7 there is a lack of data other than this case from which to establish counsels’ going rates to paying
8 clients in a similar type of case.

9 Given that Hotel Coalition did not initiate the action and that it was named by the City as
10 a real party in interest, it appears that its critical and significant litigation decisions were first to
11 appeal the superior court’s grant of the City’s petition and to seek a stay pending that appeal, and
12 then to protect its intermediate appellate victory by opposing the City’s petition for review in the
13 California Supreme Court and litigating there once review was granted, as occurs in only a small
14 number of cases seeking high court review. It appears that the case was not initially taken by
15 Hotel Coalition’s counsel on a true contingency basis, which by design allocates the risk of loss
16 to the attorney and necessarily means deferral of any compensation until the end of successful
17 litigation. But it also appears that the financial burden of hiring specialized appellate counsel at
18 the critical juncture of whether to appeal the court’s order and seek a stay was cost prohibitive,
19 and that present counsel agreed to the \$350 “reduced” rate that Hotel Coalition could afford to
20 pay. Further, it was only at the later point of Supreme Court review and the contemplation of
21 incurring additional fees to protect its appellate victory that Hotel Coalition and its counsel
22 specifically discussed or allocated a portion of the financial risk associated with continuing the
23 litigation. They agreed at that juncture that if Hotel Coalition were to ultimately prevail at the
24 Supreme Court, then private attorney general fees could be sought and counsel could enjoy the
25 benefits of any fee award that exceeded what had been billed at the rate of \$350 per hour after
26 reimbursement of amounts already paid by Hotel Coalition at that rate. But counsel billed all
27 along for services rendered at the rate of \$350 per hour, consistently with the fee agreement, and
28 were paid until only recently when the financial effects of the COVID-19 pandemic affected

1 Hotel Coalition's commensurate ability to pay. The total amount billed at that rate was roughly
2 \$215,000, of which some \$193,000 has been paid.

3 The City and River Park oppose the motion for an award of fees, contending first that the
4 motion was not timely filed. On the substance, they argue that Hotel Coalition has not shown one
5 of the required elements for private attorney general fees—that the financial burden of private
6 enforcement makes an award appropriate, because, they argue, Hotel Coalition's victory in the
7 litigation did not transcend its members' own financial interests such that litigating the case
8 imposed a burden out of proportion to those interests. Finally, the City and River Park argue that
9 even if a fee award is determined to be appropriate, the fees sought are excessive in that (1) the
10 claimed hourly rate of \$700 is unreasonable and far exceeds counsels' actual rates billed and
11 paid by Hotel Coalition and (2) for several reasons, no multiplier on the lodestar is warranted.
12 They do not generally challenge the overall number of hours claimed or particular entries as
13 unreasonable or unnecessary, raising only a couple of specific topics in this regard—fees claimed
14 for the "impartial analysis," which Hotel Coalition has withdrawn from its claim, and fees for
15 "lobbying," which were never claimed as part of the motion. But they do generally challenge
16 Hotel Coalition's counsels' practice of "block-billing," which renders it difficult to ascertain the
17 amount of time claimed for each specific task billed for time entries covering multiple tasks, and
18 they contest the category of time claimed for counsel conferring with each other (without
19 suggesting what that amount of time is or a reduced number to account for its deletion).

20 III. *Requests for Judicial Notice*

21 The City filed a request for judicial notice of 34 matters or facts, and Hotel Coalition
22 objected to some of those, asserting various bases of objection. Hotel Coalition also filed its own
23 request for judicial notice on reply, which request is unopposed. The court grants this latter
24 request and will accordingly take judicial notice under Evidence Code section 452, subdivision
25 (d) of the court's 2016 order in this case granting the City's petition; the Sixth District Court of
26 Appeal's opinion on appeal from that order filed on May 30, 2017, but vacated on grant of
27 review; the Supreme Court's *Morgan Hill* decision in this case filed on August 23, 2018; and
28 *Save Lafayette v. Lafayette* (2018) 20 Cal.App.5th 657, a published case that relied on the Sixth

District's published opinion in this case before grant of review. The court also takes judicial notice under Evidence Code section 452, subdivision (h) (as a matter not reasonably subject to dispute and capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy) of the 2017 Court Statistics Report published by the Judicial Council of California, as bearing on the likelihood of success of Hotel Coalition's appellate endeavor.

The court rules as follows on Hotel Coalition's objections to the matters and facts of which the City requested judicial notice:

1. "Fees Matrix—2015-2020" prepared by the Civil Division of the United States Attorney's Office for the District of Columbia. Sustained for lack of relevance.

2. "Judicial Salary Plan: Washington Baltimore-Arlington, DC-MD-WV-PA—Table DCB" prepared by the United States Judicial Department. Sustained for lack of relevance.

3. The "Judicial Salary Plan: San Jose-San Francisco-Oakland, CA-Table" prepared by the United States Judicial Department. Sustained for lack of relevance.

8. The City's Official Video Recording of the City Council meeting on March 18, 2015, requested under Evidence Code section 452, subdivision (c)—official acts. The objections are overruled but judicial notice does not generally extend to the truth of matters or facts stated therein or to interpretations that might be drawn. Judicial notice is not taken under Evidence Code section 452, subdivision (h) except to the extent that such statements were made.

10. Morgan Hill Hotel Coalition Presentation to City Council on March 18, 2015, as a record maintained by the City Council. The objections are overruled but judicial notice does not generally extend to the truth of matters or facts stated therein or to interpretations that might be drawn. Judicial notice is not taken under Evidence Code section 452, subdivision (h) except to the extent that such statements were made.

11. The asserted composition of the "Morgan Hill Hotel Coalition" as a real party in interest in this case. The objections are sustained.

12. The asserted fact that the "Coalition Anticipated that 294 New Rooms in the City as of March 18, 2015 Would Cause Them to Suffer a 30-40% Occupancy Decrease." The objections are sustained.

1 14. The asserted fact that the “Coalition’s Members’ Yearly Revenue at the Time of
2 the March 18, 2015 City Council Meeting Totaled Approximately \$15,580,390.” The objections
3 are sustained.

4 16. “The City’s Official Video Recording of the City Council Meeting on July 15,
5 2015.” The objections are sustained.

6 18. Morgan Hill Hotel Coalition’s “Presentation to City Council on July 15, 2015”
7 under Evidence Code section 452, subdivisions (c) and (h). The Court takes judicial notice of the
8 document as a record maintained by the City but this does not extend to the truth of matters or
9 statements made therein or the interpretations or inferences to be drawn from those matters or
10 statements. Judicial notice is not taken under Evidence Code section 452, subdivision (h) except
11 to the extent that such statements were made.

12 19. The asserted fact that the “Coalition Members Believed They Were Already on
13 the Brink of Bankruptcy as of July 15, 2015 Because of Two Other Hotels Already Under
14 Construction in the City.” The objections are sustained.

15 20. The Business Licenses for the Comfort Inn of Morgan Hill. The relevance
16 objection is sustained.

17 21. The asserted fact that the “Comfort Inn Morgan Hill is Operated by Marutiz, Inc.”
18 The relevance objection is sustained.

19 22. The Statement of Information for Marutiz, Inc. (2019). The relevance objection is
20 sustained.

21 23. The Statement of Information for Marutiz, Inc. (2008). The relevance objection is
22 sustained.

23 24. The asserted fact that “Legal Counsel Asit S. Panwala is a Director of Marutiz,
24 Inc.” The relevance objection is sustained.

25 25. The asserted fact that “Legal Counsel Asit S. Panwala is the secretary/vice
26 president of Marutiz, Inc.” The relevance objection is sustained.

27 29. The Minutes to the City Council Meeting on January 23, 2019. The relevance
28 objection is overruled.

30. The City's Official Video Recording of the City Council Meeting on January 23, 2019, under Evidence Code section 452, subdivision (c)—official acts. The Court takes judicial notice of the matter as a record maintained by the City but this does not extend to the truth of matters or statements made therein or the interpretations or inferences to be drawn from those matters or statements. Judicial notice is not taken under Evidence Code section 452, subdivision (h) except to the extent that such statements were made.

31. The asserted fact that the "City Council Reviewed a Zoning Amendment to the Madrone Village Property at its Meeting on January 23, 2019." The relevance objection is overruled.

32. The Morgan Hill Hotel Coalition's "Presentation to City Council on January 23, 2019." The relevance objection is sustained.

34. The relevance objection to the asserted fact as stated is sustained but the court will take judicial notice under Evidence Code section 452, subdivisions (c) and (h) of the fact that the City Council rescinded Ordinance No. 2131 New Series on December 18, 2019, in response to the referendum petition submitted by the Morgan Hill Hotel Coalition, and in the face of the litigation result.

The court will grant under the cited authority the City's requests for judicial notice of matters as to which Hotel Coalition's objections are overruled as above or matters that were not opposed (City's request numbers 4, 5, 6, 7, 9, 13, 15, 17, 26, 27, 28, and 33).

IV. Discussion

A. *Hotel Coalition's Motion for Fees Was Timely Filed*

The City and River Park contend that Hotel Coalition's motion filed on September 5, 2019, after remand and issuance of the Court of Appeal's remittitur on March 15, 2019, was untimely. They claim that rules 3.1702(c)(1) and 8.278(c)(1) of the California Rules of Court together required the motion to have been filed within 40 days after issuance of the remittitur, or by April 24, 2019. But it is not rule 3.1702(c)(1), which expressly excepts from its application fees claimed under rule 3.1702(b), that controls here. It is instead rule 3.1702(b)(1) that applies. This rule provides that for fees incurred prejudgment, as all fees here are, a "notice of motion to

claim attorney fees for services up to and including the rendition of judgment in the trial court—including attorney’s fees on an appeal before the rendition of judgment in the trial court—must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case” This generally means within 60 days of notice of entry of judgment or an appealable order, meaning the ultimate judgment or appealable order entered and not one that was reversed on appeal. (*Highland Springs Conference & Training Center v. City of Banning* (2019) 42 Cal.App.4th 416, 427-429.) The ultimate judgment of dismissal was not filed and served in this case until August 6, 2020. Therefore, Hotel Coalition’s motion filed in September 2019 was filed timely, if not early.

B. *Private Attorney General Fees*

1. *Relevant Legal Backdrop*

“ ‘The Legislature adopted section 1021.5 as a codification of the private attorney general doctrine developed in prior judicial decisions.’ [Citation.] ‘[T]he fundamental objective of the doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases.’ [Citation.] ‘Due to the burdens imposed on public agencies, adequate government enforcement of the laws is not always possible, making private action imperative.’ [Citation.]” (*Sweetwater Union High School District v. Julian Union Elementary School District* (2019) 36 Cal.App.5th 970, 980 (*Sweetwater*).)

Section 1021.5 provides in relevant part: “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.” Where, as here, there is no monetary recovery, the criterion expressed at section 1021.5, subdivision (c) does not apply. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 935.)

“Thus, ‘[t]o obtain attorney fees under section 1021.5, the party seeking fees must show that the litigation: “ ‘ (1) served to vindicate an important public right; (2) conferred a significant benefit on the general public or a large class of persons; and (3) [was necessary and] imposed a financial burden on [the successful party] which was out of proportion to [its] individual stake in the matter.’ [Citation.]” [Citation.]’ ” [Citations.] Because the statute states the criteria in the conjunctive, each must be satisfied to justify a fee award. [Citations.]’ [Citation.]” (*City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, 429.) “The burden is on the party requesting section 1021.5 fees to demonstrate all elements of the statute, including that the litigation costs transcend [that party’s] personal interest. [Citation.]” (*Millview County Water District v. State Water Resources Control Board* (2016) 4 Cal.App.5th 759, 769 (*Millview*)).

“The determination whether a party has met the requirement for an award of fees and the reasonable amount of such an award are matters best decided by the trial court in the first instance. [Citation.] That court ‘must realistically assess the litigation and determine from a practical perspective whether the statutory criteria have been met.’ [Citation.]” (*Sweetwater, supra*, 36 Cal.App.5th at p. 980; see also *Millview, supra*, 4 Cal.App.5th at p. 769 [trial court undertakes this task utilizing its traditional equitable discretion].) Once and if entitlement to fees under section 1021.5 is determined, the court must assess a reasonable amount, which is primarily done using the lodestar-adjustment method prescribed in *Serrano v. Priest* (1977) 20 Cal.3d 25, 48, fn. 23 (*Serrano*). (See also *Press v. Lucky Stores* (1983) 34 Cal.3d 311, 322 [use of the lodestar figure as starting point achieves fundamental objectivity]; *Serrano v. Unruh* (1982) 32 Cal.3d 621; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136 (*Ketchum*) [lodestar method primarily used for all fee-shifting statutes but this is not a “blanket” rule].) This method begins with a determination of the lodestar—a reasonable hourly rate times a reasonable number of hours—and this figure may be adjusted if appropriate.

Here, the City and River Park wisely do not dispute that Hotel Coalition is the successful party, that its legal efforts enforced an important right affecting the public interest, and that those efforts also conferred a significant benefit on the general public. Nor do the City and River Park

appear to challenge that private enforcement was necessary. These conclusions are not fairly debatable, especially as Hotel Coalition did not initiate the litigation, instead having been named by the City in its petition as a real party in interest. But the City and River Park do challenge that Hotel Coalition has borne a financial burden in the litigation that transcends or is out of proportion to its own pecuniary interests, or that of its members. As the statutory elements of section 1021.5 are in the conjunctive, the failure to satisfy one criterion requires denial of the motion for fees. It is thus not necessary for the court to address the remaining and undisputed statutory criteria, and it will focus on the financial burden element. (See *Millview*, *supra*, 4 Cal.App.5th at pp. 767-773 [no need to adjudicate other elements of section 1021.5 if element of financial burden not met]; *Children & Families Commission of Fresno County v. Brown* (2014) 228 Cal.App.4th 45, 63 (*Fresno County*) [party's failure to meet "financial burden" element of section 1021.5 rendered it unnecessary for court to consider whether it satisfied other criteria].) And, to reiterate, "[a] party seeking fees under section 1021.5 has the burden of establishing [that] its litigation costs transcend its personal interests. [Citations.]" (*Id.* at pp. 55-56.)

2. *The Financial Burden of Private Enforcement in This Case*

As noted, an award under section 1021.5 requires a showing that 1) the litigation enforced an important public right affecting the public interest; 2) it conferred a significant benefit on the general public or a large class of persons; and 3) the necessity and financial burden of private enforcement were such as to make the award appropriate. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1214 (*Whitley*); *Fresno County*, *supra*, 228 Cal.App.4th at p. 55.) "The third element, the necessity and financial burden requirement, involves two issues: " "whether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party's attorneys." " (*Whitley*, *supra*, 50 Cal.4th at pp. 1214-1215.) It is the second prong [of this third element] at issue here. Our Supreme Court has explained this prong as follows: 'In determining the financial burden on litigants, courts have quite logically focused not only on the costs of the litigation but also any offsetting financial benefits that the litigation yields or reasonably could have been expected to yield. " "An award on the "private attorney general" theory is appropriate when the cost of the claimant's legal

1 victory transcends his personal interest, that is, when the necessity for pursuing the lawsuit
 2 placed a burden on the [party] “out of proportion to [its] individual stake in the matter.”
 3 [Citation.]’ ” [Citation.] “This requirement focuses on the financial burdens and incentives
 4 involved in bringing [or resisting] the lawsuit.” ’ (*Whitley, supra*, 50 Cal.4th at p. 1215.) But
 5 where “the party ‘had a “personal financial stake” in the litigation “sufficient to warrant [the]
 6 decision to incur significant attorney fees and costs in the vigorous prosecution [or defense]” of
 7 the lawsuit, an award under ... section 1021.5 is inappropriate.’ (*Millview[, supra,]* 4
 8 Cal.App.5th [at pp.] 768-769.)” (*Department of Forestry & Fire Protection v. Howell* (2017) 18
 9 Cal.App.5th 154, 201 (*Howell*)). That said, “[w]hen each of the [section 1021.5] criteria is met,
 10 the fact the primary effect of the action was to vindicate a plaintiff’s personal economic interests
 11 does not foreclose an award of attorney fees.’ [Citation.]” (*People v. Investco Management &*
 12 *Development LLC* (2018) 22 Cal.App.5th 443, 468 (*Investco*)).

13 The consideration of the financial burdens and incentives involved in bringing or
 14 resisting the lawsuit requires examination of “ ‘the costs of the litigation [and] any offsetting
 15 financial benefits that the litigation yields or reasonably could have been expected to yield.’
 16 [Citation.] This cost-benefit analysis seeks to determine whether the financial burden of the
 17 lawsuit was out of proportion to the [victor’s] individual stake in the matter. [Citation.]”
 18 (*Sweetwater, supra*, 36 Cal.App.5th at p. 992.) The court first “must estimate the expected
 19 monetary value of the case at the time the party seeking fees made vital litigation decisions.
 20 [Citation.] The focus is on the litigant’s *expected recovery* at the time litigation decisions are
 21 being made because section 1021.5 ‘is intended to provide an incentive for private plaintiffs to
 22 bring public interest suits when their personal stake in the outcome is insufficient to warrant
 23 incurring the costs of litigation.’ [Citation.] Once the expected monetary value is determined, a
 24 court must next discount that value by “ ‘some estimate of the probability of success at the time
 25 vital litigation decisions were made which eventually produced the successful outcome.” ’
 26 [Citation.] As a third step, the court making the fee decision must determine “ ‘the costs of the
 27 litigation—the legal fees, deposition costs, expert witness fees, etc., which may have been
 28 required to bring the case to fruition.” ’ [Citation.] Finally, the court must “ ‘place the estimated

value of the case beside the actual cost and make the value judgment whether it is desirable to offer the bounty of a court-awarded fee in order to encourage litigation of the sort involved in this case.” [Citation.]” (*City of Oakland v. Oakland Police & Fire Retirement System* (2018) 29 Cal.App.5th 688, 699-700.); see also *Fresno County, supra*, 228 Cal.App.4th at p. 56-57 [trial court first estimates the monetary value of the benefits obtained by successful litigant, discounted by estimate of probability of success at time litigation decisions made that produced successful outcome; trial court then accounts for costs of litigation and places the estimated value of the case beside its actual cost, making a value judgment whether the bounty of court-awarded fee is desirable to encourage such litigation]; cf. *Millview, supra*, 4 Cal.App.5th at p. 755-756 [the Supreme Court in *Whitley* did not compel the calculations enunciated in *Los Angeles Police Protective League v. City of Los Angeles* (1986) 188 Cal.App.3d 1, 9-10; rather this test was characterized in *Whitley* as “merely” illustrative and simply to demonstrate that courts have focused on monetary and not nonmonetary benefits in evaluating financial burden under section 1021.5.] When evaluating the financial burden criterion in section 1021.5, a court may not consider nonpecuniary interests. (*Maywood, supra*, 208 Cal.App.4th at pp. 432-433.) A “ ‘bounty will be appropriate except where the expected value of a litigant’s own monetary award exceeds by a substantial margin the actual litigation costs.” [Citation.]” (*Fresno County, supra*, at p. 57.)

The circumstances of performing this calculus here are unusual in that the successful party was not the initiator of the litigation, and the litigation was never expected to and did not directly produce a monetary recovery. But it is clear that the “ ‘absence of a monetary award, or of precise amounts attached to financial incentives, does not prevent a court from determining whether the [victor’s] financial burden in pursuing the lawsuit is “ ‘out of proportion to his individual stake in the matter.” ’ ” [Citation.]” (*Sweetwater, supra*, 36 Cal.App.5th at p. 992.) And it is also clear that when evaluating this element of section 1021.5, even for a defendant claiming fees, the court should “consider the comparative financial burden and exposure defendants faced in litigation.” (*Howell, supra*, 18 Cal.App.5th at p. 201 [court considers defendants’ litigation costs or potential financial benefits or burdens they would realize through

1 litigation in determining whether costs transcended defendants' personal interest in avoiding
2 liability].)

3 Thus, the pivotal issue here is whether the legal victory secured by Hotel Coalition
4 transcended its own financial incentives or expected benefits from the litigation such that a fee
5 award is appropriate, i.e., whether the financial burden of the litigation placed on Hotel Coalition
6 is out of proportion to its members' personal, pecuniary stake in the lawsuit. Hotel Coalition
7 contends that whatever financial incentives it may have had in litigating as a named real party in
8 interest—the “monetary value of the case”—these benefits were entirely indirect and speculative,
9 first because any financial losses its fee-paying members might suffer as a result of the zoning
10 ordinance (that allowed development of a competing hotel and that was the subject of the
11 referendum) cannot be quantified with any reasonable certainty at the junctures at which its
12 critical litigation decisions were made. And then, even estimating some degree of success in the
13 litigation at these junctures, meaning that the referendum would likely be judicially determined
14 to be valid, no one knows if the referendum, if put to the voters, would have passed. In other
15 words, Hotel Coalition's victory in the litigation would by no means assure that the referendum
16 would ultimately be passed by the voters, and this passage was required to nullify any financial
17 threat posed by the zoning ordinance allowing a competing hotel. Thus, any financial benefit
18 Hotel Coalition might enjoy was at least once removed from the litigation and its outcome.

19 The City and River Park, for their part, seek to stick Hotel Coalition with high estimates
20 of financial losses its members might annually suffer that were contained in its City Council
21 presentations against the proposed zoning ordinance to allow the competing hotel. These high
22 estimates, it is argued, suggest that Hotel Coalition had a sufficient, direct, and quantifiable
23 incentive to avoid financial losses such that the litigation did not ultimately transcend any
24 personal financial interests and did not impose any burden that was out of proportion to those
25 interests. Furthermore, according to the City and River Park, just the delay occasioned by the
26 litigation was a goal of Hotel Coalition and this alone imparted sufficient financial incentive on
27 Hotel Coalition to litigate based on the numbers contained in the presentations, because the mere
28 delay in the development of a competitor hotel, pending whatever outcome of litigation, still

1 annually translated directly to Hotel Coalition's avoidance of financial loss, and in a sufficient
2 amount each year such that the financial burden of the litigation was nowhere near out of
3 proportion to Hotel Coalition's own financial interests.

4 In response, Hotel Coalition argues that its City Council presentations lobbying against
5 enactment of the zoning ordinance do not properly depict any financial incentive or motive for
6 its members to have participated in the later litigation involving the validity of the referendum. It
7 further responds that the City and River Park are here conflating Hotel Coalition's financial
8 incentives behind its opposition to the ordinance and its related political push for the referendum
9 as opposed to its motives for participating in the litigation, which were to secure and to protect
10 the rights of citizens to resort to the referendum process, which the City sought to narrow or
11 eliminate in this instance. What's more, Hotel Coalition urges, these presentations were made up
12 to a year before its first litigation decisions, and even longer before it was forced to make the
13 critical (and comparatively costly) decision to further litigate in the Supreme Court to protect its
14 intermediate appellate victory. And, as contended by Hotel Coalition, the financial estimates of
15 its members' potential losses in the presentations, and the assumptions behinds those estimates,
16 were understood by them to be wrong or far overestimated by the time any litigation decisions
17 were made. Hotel Coalition further posits that the purpose of the presentations was to lobby
18 against the zoning ordinance in a legislative setting, not to quantify or estimate its actual and
19 expected avoidance of financial loss if successful first in the litigation and then later with the
20 referendum by voter approval. Finally, Hotel Coalition points out that it never sought delay
21 through the litigation, and that it was the City which initiated proceedings in court and then
22 sought Supreme Court review, and then dragged its feet since the case returned to the superior
23 court on remand. Further, against the pitch that Hotel Coalition sought a financial benefit by
24 delay, it points out that all along, whether in the trial court or the Court of Appeal, it sought to
25 have the referendum remain on the ballot and to litigate its validity only if it were to have been
26 passed by the voters, and the City objected to that proposed path.

27 For its argument that any personal benefit derived from the litigation is indirect and
28 speculative, and thus the financial-burden criterion is satisfied without further calculations, Hotel

Coalition principally relies on *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 739-740, & fn. 14 (*Keep Our Mountains Quiet*) [rejecting as conjecture attempt to quantify the value of an avoided property-value loss based on unsupported assumptions; any such benefit was only indirect and speculative and financial burden thus satisfied]; *Heron Bay Homeowners Association v. City of San Leandro* (2018) 19 Cal.App.5th 376, 386-397 (*Heron Bay*); *Citizens Against Rent Control v. City of Berkeley* (1986) 181 Cal.App.3d 213, 219-220 (*Citizens Against Rent Control*) [plaintiffs had received no direct pecuniary benefit from the litigation and any benefit in the form of avoidance of property-value loss was at least once removed from the litigation; showing of financial burden satisfied]; and *Galante Vineyards v. Monterey Peninsula Water Management District* (1997) 60 Cal.App.4th 1109, 1116, 1124, 1126-1127 (*Galante Vineyards*) [private attorney general fees appropriate where plaintiffs derived no direct pecuniary benefit from litigation success and any future financial advantage was speculative].

The City and River Park, in contrast, contend that Hotel Coalition's financial incentives to litigate have from the beginning been primarily to eliminate competition and that the legal costs associated with securing this goal do not transcend Hotel Coalition's personal interests such that the costs are out of proportion to those interests. They principally rely on *Millview, supra*, 4 Cal.App.5th at pp. 767-773 [financial incentive of the litigation, the result of which directly impacted plaintiffs' financial investment, was unmistakable and sufficient such that financial burden of the litigation was not out of proportion to their stake in the litigation]; *Summit Media LLC v. City of Los Angeles* (2015) 240 Cal.App.4th 171, 192-194 [although plaintiff's allegations in pleadings that it would suffer a substantial competitive disadvantage without judicial relief, the absence of a monetary award or of precise amounts attached to financial incentives does not prevent a court from determining whether the plaintiff's financial burden in pursuing the lawsuit is out of proportion to its individual stake in the matter]; and *Norberg v. California Coastal Commission* (2013) 221 Cal.App.4th 535, 544-548 [where plaintiff's goal of litigation was to enhance his private property with \$250,000 in improvements, this was a sufficient and direct financial incentive so as to defeat private attorney general fees even though

no pecuniary value such as damages resulted from the litigation and enhanced property value would not be enjoyed until some later sale]. The City and River Park also cite *Boatworks, LLC v. City of Alameda* (2019) 35 Cal.App.5th 290, 309-311 (*Boatworks*) for the notion that even if the financial benefit of the litigation is indirect, this is only a factor for the court to consider and it does not ipso facto mean that the financial-burden prong is satisfied. They further rely on *Boatworks* to posit that to the extent there is uncertainty or speculation in the extent of Hotel Coalition's direct financial benefit as an incentive to litigate, or in the likelihood of success when litigation decisions were made, any fee award can be proportionally discounted. (See also *Heron Bay, supra*, 19 Cal.App.5th at pp. 387-397 [affirming partial fee award and apportionment done by trial court in part to address speculation and uncertainty in estimating financial benefit of litigation and likelihood of its success].)

The court has realistically assessed the litigation and determined from a practical perspective that all the statutory criteria for an award of private attorney general fees have been met. The court concludes on all the circumstances of this case and the evidence presented that whatever actual financial interests incentivized Hotel Coalition to participate in the litigation, those perceived benefits, even if they are subject to rough calculation here (questionable on the evidence presented), they are at least one step removed and too indirect and speculative to be realistically considered. Those financial incentives were fully dependent not only on success in the litigation but also on the later electoral success of the referendum. The case is more analogous to those cases finding the financial burden criterion to be satisfied where such indirectness and speculation are present. (*Baggett v. Gates* (1982) 32 Cal.3d 128, 143; *Investco, supra*, 22 Cal.App.5th at p. 470; *Heron Bay, supra*, 19 Cal.App.5th at pp. 388, 390, 394 [party's subjective fear of financial consequences in the absence of objective evidence of a direct financial interest did not disqualify and avoiding a potential loss is evaluated differently than seeking an "immediately bankable" financial gain that could be used to pay counsel]; *Keep Our Mountains Quiet, supra*, 236 Cal.App.4th at p. 719; *Galante Vineyards, supra*, 60 Cal.App.4th at pp. 1116, 1124, 1126-1127; *Citizens Against Rent Control, supra*, 181 Cal.App.3d at pp. 219-220.) Further, for the same reasons, the evidence and circumstances of this case do not readily

lend themselves to an accurate apportionment of time spent for protecting public versus private interests. The court also rejects on the facts and record presented the proposition that Hotel Coalition sought litigation delay as an incentive or that this factor, in and of itself, was a pecuniary motivator for its participation as a real party in interest in the lawsuit. Finally, the cases relied on by the City and River Park are generally distinguishable in that in each, the litigation itself provided a direct or more direct financial benefit that was much more readily ascertainable than it is here.

C. *The Amount of Fees to be Awarded*

1. *Applicable Law*

Turning to the amount of the award, “the fee setting inquiry in California ordinarily begins with the ‘lodestar,’ i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. ‘California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys’ fee award.’ [Citation.] The reasonable hourly rate is that prevailing in the community for similar work. [Citations.] The lodestar figure may then be adjusted, based on the consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citations.] Such an approach anchors the trial court’s analysis to an objective determination of the value of the attorney’s services, ensuring that the amount awarded is not arbitrary. [Citation.]” (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM*).)

Of note here, while counsel’s own billing rates carry a presumption of market reasonableness (*Russell v. v. Foglio* (2008) 160 Cal.App.4th 653, 661; *Goglin v. BMW of North America, LLC* (2016) 4 Cal.App.5th 462, 473), counsel charging below market rates in a particular case are not restricted to those rates in claiming private-attorney-general fees. (*Glaviano v. Sacramento City Unified School District* (2018) 22 Cal.App.5th 744, 755; *Building a Better Redondo Beach, Inc. v. City of Redondo Beach* (2012) 203 Cal.App.4th 852, 870 (*Redondo Beach*).) It is the reasonable market value that is the measure of a reasonable hourly rate and this is quantified by the “range of reasonable rates charged by and judicially awarded

[to] comparable attorneys for comparable work” in the geographic locale. (*Children's Hospital & Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 783 (*Children's Hospital*); see also *PLCM, supra*, 22 Cal.4th at p. 1098 [market rate standard applies regardless of whether attorneys claiming fees charged nothing, charge at below-market or discounted rates, represent client on contingency basis, or are in-house counsel].) Further, it matters not whether the attorney practices in a large firm or is a solo practitioner. The critical inquiry is whether the rate is in line with rates charged by attorneys of reasonably comparable skill, experience, and reputation for reasonably comparable services in the locale. (*Children's Hospital, supra*, at p. 783; *Ketchum, supra*, 24 Cal.4th at p. 1136; *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal.4th 553, 583; *Altavion, Inc. v. Konica Minolta Systems Lab., Inc.* (2014) 226 Cal.App.4th 26, 71 [forum rate is default rate]; *Syers Props. III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702 (*Syers*) [affirming Bay Area rates for San Francisco attorneys litigating in Alameda County].)

“ ‘After the trial court has performed the calculations [of the lodestar], it shall consider whether the total award so calculated under all the circumstances of the case is more than a reasonable amount and, if so, shall reduce the ... award so that it is a reasonable figure.’ ‘It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court [Citations.] The value of the legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] ... The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case.’ [Citation.]” (*PLCM, supra*, 22 Cal.4th at pp. 1095-1096; see also *Roe v. Halbig* (2018) 29 Cal.App.5th 286, 311 (*Halbig*) [basis for trial court’s award must be the actual hours counsel has devoted to the case less those that result from inefficient or duplicative use of time].) The trial court has broad authority in determining the amount of a reasonable fee and “ ‘[t]he “experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced” that it is clearly wrong and constitutes an abuse of discretion. (*PLCM, supra*, 22

Cal.4th at p. 1095.) “[D]iscretion must not be exercised whimsically, and reversal is appropriate where there is no reasonable basis for the ruling or the trial court has applied ‘the wrong test’ or standard in reaching its result. [Citation.]” (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1239.)

“In determining the lodestar figure, the trial court [is] not required to specify which hours” it allows or disallows. (*Taylor v. Nabors Drilling USA, LP* (2014) 222 Cal.App.4th 1228, 1250.) And an appellate court will presume that the trial court considered all appropriate factors. (*Id.* at pp. 1249-1250.) But on review, an appellate court must be able to determine how the trial court arrived at its award. (*Halbig, supra*, 29 Cal.5th at p. 312.)

A party seeking an award of attorney fees bears the burden on the reasonableness of the fees and must present evidence of the time spent and the hourly rate of the timekeepers. (*Copenbarger v. Morris Cerullo World Evangelism, Inc.* (2018) 29 Cal.App.5th 1, 14.) Detailed time records are not required and attorney declarations may suffice. (*Syers, supra*, 226 Cal.App.4th at p. 698; *Hjelm v. Prometheus Real Estate Group, Inc.* (2016) 3 Cal.App.5th 1155, 1177 [prevailing party motion for fees adequately supported by detailed attorney declarations].) But a breakdown generally assists the court in reviewing the fees requested. A court may reduce the amount of fees sought to eliminate any fees for services that are determined to have been unnecessary, duplicative, or excessive. (*Hill v. Affirmed Housing Group* (2014) 226 Cal.App.4th 1192, 1198-1199; *Holguin v. Dish Network LLC* (2014) 229 Cal.App.4th 1310, 1329-1331.)

2. A Reasonable Fee Award in This Case

The court here has carefully reviewed all the billings and declarations presented by Hotel Coalition in support of its fee request and finds in the context of this case and as measured by the relevant criteria that the hourly rate of \$350 charged and paid is under-market for this type of case in this locale. Attorney fee hourly rates in Santa Clara County generally exceed \$350 in cases presenting similar levels of complexity, particularly when the vast majority of services performed here were at the appellate level. Attorneys performing appellate work often command a higher hourly rate. The court further finds that based on these factors and Hotel Coalition’s counsels’ particular experience, skill, and reputation, an hourly rate of \$450 in the context of this

1 case is reasonable and appropriate. This is further supported by the Declaration of Thomas P.
2 Murphy, River Park's specialized appellate counsel who charged at the rates of \$450-\$465 for
3 appellate work performed in this case. (*Center for Biological Diversity v. County of San*
4 *Bernardino* (2010) 188 Cal.App.4th 603, 619, fn. 9 [opposing counsel's billing rates are not
5 conclusive but may be relevant factor in assessing an attorney's reasonable hourly rate].) While
6 Mr. Murphy is a recognized appellate practitioner who is certified as an appellate specialist by
7 the State Bar of California, in this court's experience, the rates he charged in this period are
8 comparatively low for specialized appellate work.

9 As to the total number of hours claimed and the services performed, these generally
10 appear to be reasonable and necessary in the context of this case, and neither the City nor River
11 Park appear to argue otherwise. While there are some redactions in the billings and the practice
12 of block-billing sometimes appears, the bills still do provide the relevant information and
13 context. And the motion is further supported by counsel declarations that aid in analyzing the
14 total fees claimed with respect to categories of services and time periods in which the services
15 were provided. (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 487 [block-billing
16 challenge rejected because evidence was sufficient to permit court to determine whether case
17 was overstaffed, the time spent on particular tasks, and whether that time was reasonable].) As to
18 the City's objections that an unspecified amount of time is claimed for the attorneys conferring
19 with each other, the court's own review of the billings confirms that such instances do not appear
20 to be excessive and that some conferring is to be expected in a case like this presenting some
21 legal complexity. (*Redondo Beach, supra*, 203 Cal.App.4th at p. 872, fn. 14.)

22 The court therefore determines the lodestar here to be \$277,672.50, calculated at 617.05
23 hours at the hourly rate of \$450.

24 In evaluating the question of a multiplier or enhancement to the lodestar, the Court in
25 exercising its discretion has further considered all the relevant facts and circumstances, including
26 as pertinent here, the complexity and difficulty of the legal questions involved; the accepted state
27 of the law before the contrary holding in this case by the California Supreme Court; the
28 exceptional results obtained; the importance of the rights vindicated and the nonmonetary

benefits the litigation has achieved for the public; and that the award may fall at least to some extent on the taxpayers.⁴ (*Ketchum, supra*, 24 Cal.4th at p. 1122 [discussion of non-exclusive factors to consider on whether to adjust lodestar]; *PLCM, supra*, 22 Cal.4th at pp. 1095-1096 [same]; *Serrano, supra*, 20 Cal.3d at p. 49 [same]; *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 65 [exceptional success may permit enhancement of lodestar when reasonable fee would exceed that figure].) Based on these considerations, the Court finds a 1.5 multiplier to be reasonable here.

Accordingly, the court determines that a reasonable fee in this case to be awarded to Hotel Coalition is \$416,508.75, consisting of the lodestar of \$277,672.50 times a multiplier of 1.5.

V. Conclusion

Hotel Coalition's motion for an award of private-attorney-general fees is granted. It is awarded such fees in the amount of \$416,508.75 against the City and River Park, jointly and severally.

IT IS SO ORDERED.

Dated: November 12, 2020


HELEN E. WILLIAMS
Judge of the Superior Court

⁴ At the hearing, the court inquired as to the responsibility or apportionment of any fee award as between the City and River Park. The general response was that these two parties represented one side in the litigation, which supports a joint and several approach. And the court is not aware of the extent to which there may be express or implied indemnity principles at play.



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSE, CALIFORNIA 95113
CIVIL DIVISION

FILED

NOV 13 2020

RE: **City of Morgan Hill et al vs Shannon Bushey et al**
Case Number: **16CV292595**

Clerk of the Court
Superior Court of CA County of Santa Clara
BY *[Signature]* DEPUTY
I. ARMENTA

PROOF OF SERVICE

ORDER GRANTING MOTION FOR AWARD OF PRIVATE ATTORNEY GENERAL FEES was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on November 13, 2020. CLERK OF THE COURT, by Ismael Armenta, Deputy.

cc: Louis A Leone Leone & Alberts 1390 Willow Pass Rd Ste 700 Concord CA 94520
Asit S Panwala 4 Embarcadero Center Suite 1400 San Francisco CA 94111
MARY E HANNA - WEIR OFFICE OF CITY COUNSEL 70 West Hedding Street East Wing Ninth Floor SAN JOSE CA 95110
Jolie Houston Berliner Cohen 10 Almaden Blvd 11th Fl San Jose CA 95113-2233

Attachment: Order Awarding Attorneys' Fees (2996 : Resolution Finding Unreasonable Hardship)

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL FINDING THAT AN UNREASONABLE HARDSHIP WILL OCCUR UNLESS THE ATTORNEYS' FEES AWARD DATED NOVEMBER 13, 2020 IS PAID IN INSTALLMENTS

WHEREAS, the City of Morgan Hill is currently operating under a state of emergency due to the COVID-19 pandemic; and

WHEREAS, it is likely that the state of emergency will continue through the remainder of the current fiscal year and well into Fiscal Year 2021-22; and

WHEREAS, City General Fund revenues are projected to decline by \$17.7 million over a three year period; and

WHEREAS, the City is currently using reserve funds to pay operating expenses; the City is expected to draw down its General Fund reserves by more than \$4.0 million for the current fiscal year and an additional \$1.0 million for Fiscal Year 2021-22; and

WHEREAS, the City maintains a General Liability Insurance Fund, which pays for liability and unemployment claims; and

WHEREAS, the City is self-insured for the first \$100,000 of tort claims, and the full amount of unemployment and non-tort judgments; and

WHEREAS, the City's General Liability Insurance Fund will go into deficit due to the lumpsum payment, in addition to the increased insurance costs and unemployment claims; and

WHEREAS, the Superior Court has found the City and River Park Hospitality, Inc. jointly and severally liable for attorneys' fees in the amount of \$416,508.75; and

WHEREAS, because the parties are jointly and severally liable, the City could be held to pay the full amount of the judgment, and under the Government Code the full amount would need to be paid immediately absent a hardship finding; and

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

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

Section 2. Finding. The City Council does hereby find, determine and resolve that an unreasonable hardship will result unless the judgment of \$416,508.75 is paid in installments.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 17th day of February 2021 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-0XX, adopted by the City Council at a regular meeting held on February 17, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

PREPARED BY: Gina Paolini, Interim Principal Planner
APPROVED BY: City Manager

ADOPT RESOLUTION TEMPORARILY TOLLING PLANNING, SUBDIVISION, AND BUILDING PERMIT APPROVALS

RECOMMENDATION(S)

Adopt resolution tolling Planning, Subdivision, and Building Permit approvals due to COVID-19 emergency.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging
Economic Development
Fiscal Sustainability

GUIDING DOCUMENTS

Economic Blueprint
Morgan Hill 2035 General Plan

OREPORT NARRATIVE:

On March 17, 2020, the County Health Officer issued the County's first Shelter in Place (SIP) order addressing the COVID-19 emergency. The SIP Order placed restriction on non-essential activities to minimize the spread of COVID-19. The March 17, 2020 SIP Order allowed specified construction activities, deemed essential, to continue under the Order, including essential infrastructure and residential construction. On March 31, 2020, the SIP Order was amended to place further restrictions on construction activities, allowing only essential infrastructure projects and affordable housing projects to proceed. The SIP Order was amended on April 29, 2020 to relax restrictions on construction activities, allowing all construction to commence, requiring adherence to social distancing protocols. The County orders have continued to evolve over the last 11 months, as the COVID-19 emergency has continued to surge.

The COVID-19 viral pandemic continues to cause an unprecedented economic impact to business and industry. The uncertainty of the magnitude and timeline of these impacts has stifled the ability of many individual property and business owners to move forward with any plans for investment and expansion. Many local business owners are still trying to adjust their business models to remain profitable under the limitations and constraints of the current reality.

Further, the financing options available to these individuals and businesses have similarly been affected by the uncertainty of the long-term impacts associated with the

virus. This has impacted the ability of some businesses, as well as individual homeowners, to move forward with procuring a building permit, as financing becomes tighter and as individuals' income and business revenues are impacted by the COVID-19 emergency.

For these reasons, it is proposed that existing approvals for planning, subdivision, and building permits be extended (or tolled) to allow additional time for individuals and businesses to procure permits. A tolling period of eighteen (18) months is recommended, which would allow permits that were issued and in effect prior to March 4, 2020 and set to expire prior to December 31, 2021 to be automatically extended.

COMMUNITY ENGAGEMENT: Inform

Applicants with permits set to expire will be informed of the extension upon City Council approval.

ALTERNATIVE ACTIONS:

The City Council could suggest an alternative tolling period or not move forward with the tolling period.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

The City Development Review functions are cost recovery, with fees collected from applicants to cover cost of services. There is no direct fiscal impact of extending existing approvals. However, extension will provide an incentive for current approval holders to proceed with the projects considering they do not need to restart the process, therefore the related permit and or impact fees would still be collected but may be delayed.

CEQA (California Environmental Quality Act):

This action is not a project subject to CEQA because it involves only general policy and procedure making and does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

LINKS/ATTACHMENTS:

1. Resolution- COVID 19 Emergency (Tolling of Permits)

RESOLUTION NO. 21-**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF MORGAN HILL TOLLING PLANNING,
SUBDIVISION, AND BUILDING PERMIT APPROVALS
DUE TO COVID-19 EMERGENCY**

WHEREAS, the State of California declared a State of Emergency on March 4, 2020 due to the Covid-19 pandemic; and

WHEREAS, the City of Morgan Hill Director of Emergency Services declared a local emergency due to the Covid-19 pandemic on March 13, 2020, which was ratified and extended by the City Council on March 18, 2020; and

WHEREAS, the County of Santa Clara declared an Order of the Health Officer on March 16, 2020, ordering a Shelter in Place for County residents and restricting business operations to slow the spread of COVID-19; and,

WHEREAS, these restrictions included restrictions on all operations other than essential operations, including construction, planning, and building, with further Order revisions providing for limited operations which are still in effect; and,

WHEREAS, these responses to the Covid-19 pandemic crisis have been critical to protect public health and safety. However, these restrictions have, and will continue to cause, financial stress to residents, business owners, and property owners alike in the City of Morgan Hill and throughout Santa Clara County and the State of California; and

WHEREAS, the financial impacts of these restrictions have impacted local businesses and property owners through both restrictions on construction activity and financial impacts; and

WHEREAS, the health of local businesses is critical to the City's economy and the ability of businesses and property owners to make improvements to their properties and pursue their business interests are a critical component of the City's long-term recovery from the financial impacts of Covid-19 pandemic; and,

WHEREAS, the City Council of the City of Morgan Hill wishes to support local residents, business owners, and property owners throughout this emergency and in their recovery; and,

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

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

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

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

Section 2. The City Council hereby extends for an additional period of eighteen (18) months the effectiveness of entitlements that were (a) issued and in effect prior to March 4, 2020 and (b) set to expire prior to December 31, 2021. This includes entitlements approved under City of Morgan Hill Municipal Code Title 15 ("Building and Construction"), Title 17 ("Subdivisions"), and Title 18 ("Zoning").

Section 3. If above-referenced entitlements are extended by the State of California through legislative action, this tolling shall be superseded and replaced by State action, and the State extension only shall apply.

Section 4. No action shall be required by holders of entitlements to receive this extension.

Section 5. These actions shall be implemented consistent with State law and/or any directive issued by the Governor.

Section 6. This Resolution shall take effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 17th day of February, 2021 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No.21-0XX, adopted by the City Council at the meeting held on February 17, 2021.

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

DATE: _____

Michelle Bigelow, CITY CLERK



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

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

APPROVE FUNDING AGREEMENT WITH THE VTA FOR THE MADRONE CHANNEL TRAIL PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for improvements to the Madrone Channel Trail.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan
Vision Zero

REPORT NARRATIVE:

The purpose of this report is to provide the Council with an opportunity to consider accepting a grant for the Madrone Channel Trail. The 2016 Measure B has dedicated funding for Bicycle and Pedestrian Safety Projects to be granted by the Santa Clara Valley Transportation Authority (VTA). One eligible project for the City of Morgan Hill is the Madrone Channel Trail Improvement. The City has applied for and successfully been awarded \$335,000. To receive these funds a funding agreement (Attachment 1) must be approved.

The Madrone Channel Trail Improvements are part of the City's Bikeways, Trails, Parks and Recreation Master Plan adopted in July 2017 by the City Council. The expansion of pathways along drainage channels was identified as a priority in the Master Plan and is also cited in the Morgan Hill General Plan Policy HC-3.14. Working in partnership with Valley Water to establish easements and develop trails and linear parks along creeks and drainage channels is a priority to ensure natural resources are protected and restored. Furthermore, the project is included in the current Capital Improvement Program (Project #117018).

This project will pave the existing unpaved trail located on the Valley Water maintenance road adjacent to the eastside of the Madrone Channel. Phase 1 of this Project was recently completed paving the trail from Cochrane Road south to Main Avenue. This funding would fund Phase 2 of the Project and take the trail south from Main Avenue to Tennant Avenue.

Staff recommends that the City Council approve the agreement and authorize the City Manager to execute the funding agreement for \$335,000.

COMMUNITY ENGAGEMENT: Involve and Inform

Adding a paved bike and pedestrian trail to the Madrone Channel Trail was discussed and brought forward by community members during the development of the City's Bikeways, Trails, Parks and Recreation Master Plan. The local Morgan Hill Bicycle and Pedestrian Advocacy Group has advocated for a paved pathway on the Madrone Channel Trail for many years. During construction, staff will inform the community regarding the progress of this project using media, social media, and the City's website.

ALTERNATIVE ACTIONS:

The Council could choose to not approve the agreement and not move forward with the project.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

July 20, 2017 – Adopted the Bikeways, Trails, Parks and Recreation Master Plan.

January 23, 2019 – Adopted a Resolution Authorizing Santa Clara Valley Water District Safe, Clean Water Grant Application.

May 15, 2019 – Adopted a Resolution Authorizing Transportation Development Act Article 3 Grant Application.

February 19, 2020 – Approved Funding Agreement and Budget Amendment for Madrone Channel Trail Improvements Project Grant.

March 4, 2020 – Awarded Madrone Channel Trail Improvement Phase 1 Project to Terramark General Engineering Contractors, Inc.

FISCAL AND RESOURCE IMPACT:

Phase 1 of the Project is complete and was funded primarily through grant funds from multiples sources. The project construction cost for Phase 2 is estimated at \$563,270. This funding agreement will provide \$335,000, which will fund a majority of the project. The City has secured another grant for \$70,500 from the Bay Area Air Quality Management District for the trail as well. City staff are working on additional funding through use of remaining Phase 1 grant dollars and potential other grant funding sources. City staff will return at the mid-cycle budget check-in with the full funding plan for the project based on the outcome of this work. The City may use Park Impact Fund dollars for the project if complete grant funding is not achieved.

CEQA (California Environmental Quality Act): Categorical Exemption

The proposed improvements of the Madrone Channel Trail Improvements are categorically exempt from CEQA under Section 15304, Minor Alterations to Land, which covers minor public or private alterations to the condition of land, water, and/or vegetation which do not include removal of healthy, mature, scenic trees for forestry or agricultural purposes, including the creation of bicycle lanes on existing right-of-way.

LINKS/ATTACHMENTS:

1. Funding Agreement - Measure B Madrone Channel Trail

**FUNDING AGREEMENT
BETWEEN
CITY OF MORGAN HILL
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
MADRONE CHANNEL TRAIL IMPROVEMENTS PHASE 2**

THIS AGREEMENT ("AGREEMENT") is between the CITY OF MORGAN HILL, referred to herein as "CITY", and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA", for funding of construction of Madrone Channel Trail Improvements Phase 2. Hereinafter, CITY and VTA may be individually referred to as "PARTY" or collectively referred to as "PARTIES".

I. RECITALS

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax ("2016 MEASURE B") for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
4. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program ("PROGRAM") and adopted the 2016 Measure B Program Category Guidelines; and
5. Whereas, the PROGRAM includes a Bicycle and Pedestrian program category ("BIKE/PED CATEGORY") to fund bicycle and pedestrian projects and educational programs; and
6. Whereas, the BIKE/PED CATEGORY consists of three sub-categories, including a Capital Projects Competitive Grant Program ("BIKE/PED CAPITAL PROGRAM"); and
7. Whereas, on October 3, 2019 the VTA Board of Directors adopted the BIKE/PED CAPITAL PROGRAM criteria; and
8. Whereas, on December 3, 2019 the Fiscal Year (FY) 2020 (July 1, 2019 to June 30, 2020) to Fiscal Year 2030 (July 1, 2029 to June 30, 2030) BIKE/PED CAPITAL PROGRAM call for projects was released; and
9. Whereas on June 4, 2020 the VTA Board of Directors approved the FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM; and

10. Whereas, Madrone Channel Trail Improvements Phase 2 (PROJECT) is an eligible project on the VTA Board of Directors approved FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM; and
11. Whereas, VTA and CITY desire to specify herein the terms and conditions under which the BIKE/PED CAPITAL PROGRAM funds will be administered to CITY by VTA as directed by the VTA Board of Directors.

NOW, THEREFORE, the PARTIES agree as follows:

II. AGREEMENT

1. PROJECT DESCRIPTION

PROJECT is the paving of the Valley Water maintenance road adjacent to the Madrone Flood Control Channel. The PROJECT is between Main and Tennant Avenue. Improvements include an ADA compliant Class I Bike and Walking Path, ADA compliant sidewalk and crosswalk connections at Main and Dunne Avenues, interpretative and bike wayfinding signs, dog waste stations and trash/recycling bins.

2. SCOPE OF WORK

The SCOPE OF WORK for this AGREEMENT includes the construction for the PROJECT.

3. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the Effective Date (as defined in the signature block below) and continue through the later of: (i) June 30, 2022, (ii) completion of the PROJECT, or (iii) cancellation of the PROJECT.

4. COST OF PROJECT

Total cost of the PROJECT is estimated not to exceed \$563,270.00. Total cost of the PROJECT includes construction costs.

The Total PROJECT Cost means the total cumulative dollar amount actually incurred and expended toward the PROJECT by all PARTIES involved, as measure at the completion or termination of the PROJECT.

5. FINANCIAL CONTRIBUTION TO COST OF PROJECT

- a. VTA's Financial Contribution for PROJECT. VTA will contribute an amount not to exceed \$335,000.00 of BIKE/PED CAPITAL PROGRAM funds to be used by CITY for completion of the PROJECT. All funds will be available on a reimbursement basis only, pursuant to the terms and conditions set forth herein.
- b. CITY's Financial Contribution for PROJECT. CITY will contribute \$228,270 for completion of the

PROJECT. City is solely responsible for all funds CITY has expended toward the PROJECT prior to Effective Date of this AGREEMENT, and CITY must not seek reimbursement from VTA for such costs.

- c. Additional Funds. Any additional funds required to complete the PROJECT will be CITY's sole responsibility.

6. PROJECT SAVINGS

If the PROJECT is anticipated to be delivered under budget, BIKE/PED CAPITAL PROGRAM funds will be reduced in proportion to CITY's Financial Contribution to PROJECT.

7. ELIGIBLE USE OF FUNDS

Only PROJECT costs incurred by CITY after the Effective Date of this AGREEMENT, will be eligible for reimbursement.

VTA will only reimburse CITY for actual costs directly related to the PROJECT ("ELIGIBLE COSTS"). ELIGIBLE COSTS are costs that: (i) are directly related to the construction and administration of the PROJECT; and (ii) were incurred in compliance with all applicable 2016 Measure B program requirements.

8. CITY's ROLE

- a. Tasks. CITY will be the sponsor and implementing agency for the PROJECT. In its role as sponsor and implementing agency under this AGREEMENT, CITY must perform and/or be responsible for the following tasks:
 - i. Serve as project manager for PROJECT;
 - ii. All actions necessary to procure design services for the PROJECT, including but not limited to advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded design contract in accordance with all applicable laws, regulations, and codes, including but not limited to the California Public Contract Code and the California Labor Code.
 - iii. All actions necessary to procure construction services for the PROJECT, including but not limited to advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded construction contract in accordance with all applicable laws, regulations, and codes, including but not limited to the California Public Contract Code and the California Labor Code.
 - iv. Obtain all necessary permits for performance of the PROJECT.
 - v. Serve as project manager and the construction management team for construction

of the PROJECT.

- vi. Conduct standard close-out activities for the PROJECT, including but not limited to performing final accounting review and reviewing all contractual requirements.

b. Other PROJECT Management Duties. CITY must:

- i. Submit to VTA the most current version of VTA's 2016 Measure B Complete Streets Checklist for Capital Projects (as supplied by VTA to CITY) within five (5) business days of the Effective Date of this AGREEMENT.
- ii. Submit a project management plan (PMP) to VTA within thirty (30) business days of the Effective Date of this AGREEMENT. The PMP must be in writing and must include information regarding staffing plan, cost, schedule, contracting plan, and risk assessment.
- iii. Actively monitor actual PROJECT expenditures to ensure that the 2016 MEASURE B funds are used to pay only for ELIGIBLE COSTS (as defined in Section 7).
- iv. Provide VTA with written quarterly progress updates on the PROJECT, including but not limited to updates on PROJECT expenditures, any changes in scope and schedule, and PROJECT status.
- v. Submit the PROJECT's final report ("FINAL REPORT") to VTA. This FINAL REPORT must be in writing and must include information regarding final PROJECT costs and post-construction photos, along with any other information VTA may require for inclusion in the FINAL REPORT.
- vi. Provide VTA copies of PROJECT deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials. CITY will provide VTA a minimum of thirty (30) calendar days to review and provide comments. VTA's comments must be considered in the final design phase of the PROJECT before CITY constructs the PROJECT. If CITY chooses not to incorporate any VTA comment into the final design for the PROJECT, CITY must provide VTA with a written explanation of why such comment was not incorporated.
- vii. CITY will make staff available to present on the PROJECT at VTA committees as needed.

9. VTA's PROJECT Role. VTA will perform and/or be responsible for the following tasks:

- a. Tasks. VTA will perform and be responsible for the following tasks to perform oversight for ELIGIBLE PROJECT ACTIVITIES:
 - i. Review PROJECT's Complete Streets checklist to ensure Complete Streets compliance;

- ii. Provide technical oversight of PROJECT; including reviews of PMP and PROJECT deliverables listed in Section 8.b.ii and Section 8.b.vi.
- iii. Provide oversight of the delivery of the PROJECT to ensure PROJECT compliance with the 2016 Measure B Program Category Guidelines.

Costs and expenses to perform these tasks will be paid for by 2016 Measure B Program Administration funds.

10. CITY's OBLIGATIONS

CITY must:

- a. Ensure that all 2016 MEASURE B funds are expended on only allowable BIKE/PED CAPITAL PROGRAM expenditures as described above in Section 7. ELIGIBLE USE OF FUNDS.
- b. Request reimbursement of ELIGIBLE COSTS (see Section 7. ELIGIBLE USE OF FUNDS) from VTA within one (1) year of the Effective Date of this AGREEMENT.
- c. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- d. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. CITY shall make such records available to VTA upon VTA's written request for review and audit purposes. Financial audits will be performed at VTA's sole discretion.
- e. Submit invoices to VTA, no more frequently than monthly, for reimbursement of ELIGIBLE COSTS (see Section 7. ELIGIBLE USE OF FUNDS). CITY must submit invoices within one year of the date CITY incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

11. VTA's OBLIGATIONS

VTA will remit the amount due to the CITY under an invoice within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein.

12. INDEMNIFICATION

Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to CITY's acts or omissions under or in connection with any work, authority, or jurisdiction associated with this AGREEMENT. Pursuant to California Government Code §895.4, CITY must fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description arising from an injury (as defined by California Government Code §810.8) relating to CITY's acts or omissions under or in connection with any work, authority, or jurisdiction delegated to CITY under this AGREEMENT. This provision will survive the termination or expiration of this AGREEMENT.

13. INSURANCE

At all times during this AGREEMENT, CITY must comply with the insurance requirements and specifications of Attachment A attached hereto, and herein incorporated by reference.

14. ADDITIONAL INSURED AND INDEMNITY PROVISION

In any agreement executed between the CITY and a third party for purposes related in any way to the subject matter of this AGREEMENT ("Third Party Contract"), the CITY must require that VTA be named as (i) Additional insureds on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance, except when not applicable required in the Third Party Contract and (ii) indemnified parties in any indemnity provision contained in the Third Party Contract. Third Party Contracts must contain insurance requirements with coverages at least as broad as, and limits at least as great as, the requirements of Attachment A in this AGREEMENT.

15. PUBLIC WORKS

If the CITY awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a "Public Works Contract") in connection with this AGREEMENT, CITY must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the Public Works Contract is funded in whole or in part with federal funds, the CITY must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

16. COMPLIANCE WITH APPLICABLE LAW

In the execution of the PROJECT and performance of its responsibilities set forth herein, CITY must comply with all applicable requirements of state, federal, and local law.

17. COMPLIANCE WITH 2016 MEASURE B REQUIREMENTS

In its performance under this AGREEMENT, CITY must comply with, and must ensure PROJECT compliance with all 2016 MEASURE B requirements set forth in the 2016 Measure B Program Category Guidelines for the BIKE/PED CATEGORY as identified in Attachment B, attached hereto.

18. TERMINATION

Each of the PARTIES may at any time terminate this AGREEMENT by giving ten (10) business days' written notice of such termination to other PARTY. Notice must identify the effective date of such cancellation and must be provided in accordance with the terms and conditions of this AGREEMENT.

In the event of termination as set forth herein, CITY must submit its final invoice to VTA within thirty (30) calendar days of the effective date of termination, solely for ELIGIBLE COSTS incurred by CITY prior to termination (see Section 7).

19. AUDIT AND RECORDS

- a. ALL PARTIES shall maintain, and shall require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data pertaining to services performed under this AGREEMENT, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.
- b. For the duration of the AGREEMENT, and for a period of five (5) years after final payment, the PARTIES and their representatives shall have access during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

20. NOTICES

All notices required or permitted under this AGREEMENT must be in writing, will be effective five (5) days after being sent by personal service or certified mail, or forty-eight (48) hours after being sent by electronic mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the PARTIES hereto.

VTA:
 Marcella Rensi
 Deputy Director, Grants & Allocations
 Santa Clara Valley Transportation Authority
 3331 N First Street
 San Jose, CA 95134
 Email: marcella.rensi@vta.org

CITY:
 Chris Ghione
 Director of Public Services
 City of Morgan Hill
 17575 Peak Ave
 Morgan Hill, CA 95037
 Email: chris.ghione@morganhill.ca.gov

Written notification to the other PARTY must be provided, in advance, for changes in the name or address of the individuals identified above.

21. GENERAL TERMS AND CONDITIONS

- a. **Headings.** The subject headings of the articles and paragraphs in this AGREEMENT are included for convenience only and will not affect the construction or interpretation of any of its provisions.

- b. **Construction and Interpretation of Agreement.** This AGREEMENT, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the PARTIES. Accordingly, each PARTY expressly acknowledges and agrees that (i) this AGREEMENT will not be deemed to have been authored, prepared, or drafted by any particular PARTY and (ii) the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this AGREEMENT or in the resolution of disputes.
- c. **Amendment.** No alteration or variation of the terms of this AGREEMENT will be valid unless made in writing and signed by both of the PARTIES hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the PARTIES hereto.
- d. **Entire Agreement.** This AGREEMENT contains the entire understanding between VTA and CITY relating to the subject matter hereof. This AGREEMENT supersedes any and all other agreements which may have existed between the PARTIES, whether oral or written, relating to the subject matter hereof. This AGREEMENT is binding upon each PARTY, their legal representatives, and successors for the duration of the AGREEMENT.
- e. **Representation of Authority.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a party to this AGREEMENT.
- f. **No Waiver.** The failure of either PARTY to insist upon the strict performance of any of the terms, covenants and conditions of this AGREEMENT will not be deemed a waiver of any right or remedy that either PARTY may have, and will not be deemed a waiver of either PARTY's right to require strict performance of all of the terms, covenants, and conditions hereunder.
- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this AGREEMENT or its performance, or (ii) the alleged failure of a PARTY to perform, the PARTY raising the question or making the allegation shall give written notice thereof to the other PARTY. The PARTIES shall promptly meet in an effort to resolve the issues raised. If the PARTIES fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the PARTIES to the greatest extent possible to avoid litigation as a method of dispute resolution.
- h. **Severability.** If any of the provisions of this AGREEMENT (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and CITY shall negotiate an equitable adjustment in the provisions this AGREEMENT with a view toward effecting the purpose of this AGREEMENT, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this AGREEMENT, as well as any claim that might arise between CITY and VTA, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this AGREEMENT must be commenced and prosecuted in the courts of Santa Clara County, California. CITY agrees to submit to the

personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

- k. **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for; in the process of being assembled or prepared by or for; or furnished to VTA or CITY under this AGREEMENT are the joint property of all PARTIES. Each PARTY is entitled to copies and access to these materials during the progress of the PROJECT and upon completion of the PROJECT or termination of this AGREEMENT. All PARTIES may retain a copy of all material produced under this AGREEMENT for use in their general activities.
- l. **Attribution to the VTA.** CITY must include attribution to VTA that indicates part of work was funded by 2016 Measure B Funds. This provision applies to any project or publication that was funded in part or in whole by 2016 Measure B Funds. Acceptable forms of attribution include 2016 Measure B's branding on project-related documents, construction signs, public information materials, and any other applicable documents. VTA will provide 2016 Measure B branding to CITY.
- m. **Non-discrimination.** The PARTIES and any contractors performing services on behalf of the PARTIES ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the PARTIES and Contractors shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of applying for and/or having to use family care leave. The PARTIES and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- n. **Relationship of the PARTIES.** It is understood that this is an AGREEMENT by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.
- o. **Warranty of Authority to Execute Agreement.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a PARTY to this AGREEMENT.

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the last date set forth below ("Effective Date").

***Santa Clara Valley
Transportation Authority***

City of Morgan Hill

Nuria I. Fernandez
General Manager/CEO

Christina Turner
City Manager

Date

Date

Approved as to Form

Approved as to Form

Shannon Smyth-Mendoza
Sr. Assistant Counsel for VTA

Donald Larkin
City Attorney

ATTACHMENT A INSURANCE REQUIREMENTS

CITY'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT LESSEES CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS AGREEMENT.

INSURANCE (Required for ALL agreements)

Without limiting CITY's indemnification and defense of claims obligations to VTA, CITY must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise under or in connection with any work, authority, or jurisdiction associated with the Agreement. The cost of such insurance must be borne by CITY. CITY must furnish complete copies of all insurance policies within three (3) business days of any request for such by VTA.

A. MINIMUM SCOPE OF INSURANCE

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage ("occurrence" form CG 0001). General Liability insurance written on a "claims made" basis is not acceptable.
2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance.
4. Contractor's Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.

B. MINIMUM LIMITS OF INSURANCE

- a. CITY must maintain limits no less than:
 1. General Liability: \$4,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this

project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella, but in no event may the General Liability primary policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage, and a "Drop Down" provision.

2. Automobile Liability (including umbrella/excess liability): \$4,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto with Excess or Umbrella, but in no event may the Automobile Liability primary policy limit per occurrence be less than \$2,000,000, unless Excess policies feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.
 3. Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.
 4. Contractor's Pollution Liability: \$3,000,000 per occurrence. This requirement may be satisfied by a combination of Pollution Liability with Excess or Umbrella, but in no event may the Pollution Liability primary policy limit per occurrence be less than \$2,000,000, unless Excess policies feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- b. Notwithstanding any language in this Lease to the contrary, if CITY carries insurance limits exceeding the minima stated in Section B(a)(1)-(3) immediately above, such greater limits will apply to this Agreement.

C. SELF-INSURED RETENTION

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if CITY is a publicly-traded company) must be declared to and approved by VTA. If CITY is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$50,000, CITY must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess CITY's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require CITY to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom

will be borne solely by CITY. CITY may request execution of a nondisclosure agreement prior to submission of financial reports.

D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must comply with the following:

1. The policy retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, CITY must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.
3. No prior acts exclusion may be added to the policy during the Agreement period.
4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

E. OTHER INSURANCE PROVISIONS

The policies must contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising out of CITY's performance under this Agreement. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. Coverage must state that Lessee's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- d. The General Liability General Aggregate limit must apply per project, not per policy.

2. All Coverages

- a. CITY must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising under or in connection with any work, authority, or jurisdiction associated with the Agreement.
- b. CITY's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to CITY's insurance. CITY's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Agreement are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Agreement, VTA reserves the rights to require CITY to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

F. ACCEPTABILITY OF INSURERS

Insurance must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

G. CERTIFICATES OF INSURANCE

CITY must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. CITY must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to real.estate@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required herein, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
 3331 North First Street
 San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Agreement documents.

It is a condition precedent to granting of this Agreement that all insurance certificates and endorsements be received and approved by VTA before Agreement execution. No occupancy may be taken until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If CITY receives notice that any of the insurance policies required by this Attachment may be cancelled or coverage reduced for any reason whatsoever, CITY must immediately provide written notice to VTA that such insurance policy required by this Attachment is canceled or coverage is reduced.

H. MAINTENANCE OF INSURANCE

If CITY fails to maintain insurance as required herein, VTA, at its option, may suspend the Agreement until a new policy of insurance is in effect.

ATTACHMENT B

Bicycle & Pedestrian Program Guidelines

(Adopted by VTA Board of Directors on October 5, 2017)

Definition from Resolution No. 2016.06.17

To fund bicycle and pedestrian projects of countywide significance identified by the cities, County and VTA. The program will give priority to those projects that connect to schools, transit and employment centers; fill gaps in the existing bike and pedestrian network; safely cross barriers to mobility; and make walking or biking a safer and more convenient means of transportation for all county residents and visitors. Bicycle and pedestrian educational programs such as Safe Routes to Schools, will be eligible for funding.

Total Funding

- \$250 million in 2017 dollars.

Distribution

- Board of Directors will allocate funding schedule and amount for program through the budget cycle.
- VTA anticipates that allocations will be programmed based upon the total allocation for the Bicycle & Pedestrian Program contained in 2016 Measure B divided by the number of years in the measure.
- Future allocations will vary depending on the amount of sales tax revenue collected.
- Funds will be distributed on a 2-year cycle. The program will consist of three categories: education & encouragement programs, planning studies, and capital projects.
- A total of 15% of available program area funds will be set aside for the education & encouragement category. The funds will be allocated as follows:
 - \$250,000 for countywide (including targeting unincorporated areas) education & encouragement programs
 - Remaining funds allocated by city population formula with a \$10,000 annual minimum allocation per city
- A maximum of 5% of available program area funds will be allocated to planning studies grants category.
- If the planning studies grants category is not fully awarded, the remaining funds will roll into the capital category.
- If a cycle's funds are not fully awarded, the balance will roll into the next cycle's budget.
- Example of breakdown of grant program funding: If Bicycle/Pedestrian Program Area is programmed at \$8.3 million/year:
 - Capital - \$6.6 million (minimum)
 - Planning - \$415,000 (maximum)
 - Education & Encouragement - \$1.25 million (maximum)

Implementation

Education & Encouragement (Formula Distribution)

- VTA and individual agencies will enter into a Master Agreement for Education & Encouragement funds.
- VTA will notify agency of estimated allocation for two-year cycle.
- Agency will submit annual education & encouragement work program.
- Funds will be available on a reimbursable basis. Agencies may submit invoices to VTA on a monthly, quarterly or annual basis. Invoices must be submitted within one year of the date posted on the contractor's invoice.
- Education & Encouragement funds may be banked for a maximum of three years with explanation of banking purposes.
- VTA will conduct an assessment regarding the effectiveness of the program.

Grant Program (Competitive)

- Only a public agency can serve as a project sponsor. Other entities must partner with a public agency to apply for a grant.
- The grant program will contain two categories:
 - Capital projects
 - Activities leading to/including:
 - Environmental Clearance
 - Design
 - Right of Way
 - Construction
 - Construction grant requests must include cost estimates supported by 30% to 35% design.
 - Planning studies
 - Includes planning studies to support capital project development for those projects currently listed on Attachment A of 2016 Measure B. It does not include general/master planning efforts.
- The minimum grant award is \$50,000.
- The maximum grant award per sponsoring agency can be no more than 50% of the total available funds per call for projects per cycle, unless the cycle is undersubscribed.
- Project criteria will be developed in conjunction with the VTA Technical Advisory Committee (TAC) Capital Improvement Program Working Group, and brought to the TAC and Bicycle & Pedestrian Advisory Committee (BPAC) for input.
- Scoring committee for the grant program will be comprised of three BPAC members, three Member Agency staff, and one VTA staff person.

Criteria

- Only projects currently listed on Attachment A of 2016 Measure B are eligible.
- Capital Projects will be scored on criteria that supports the language in 2016 Measure B.

- Countywide significance
- Connection to/serves schools, transit, or employment centers
- Fills gaps in bicycle/pedestrian network
- Provides safer crossings of barriers
- Makes walking or biking safer
- Makes walking or biking more convenient
- Other criteria to consider:
 - Safety benefits
 - Increase in bicycle and pedestrian usage
 - Community support
 - Project readiness
 - Projects serve Communities of Concern

Requirements

- Competitive grant projects require a 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- All applications must include a delivery schedule.
- Funds will be available on a reimbursement basis.
- VTA Complete Streets reporting requirements will be required for Planning and Capital projects.
- All collateral material will be required to display a 2016 Measure B logo.



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

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

APPROVE AGREEMENT WITH MARK THOMAS AND COMPANY FOR CONSTRUCTION SUPPORT SERVICES FOR THE HALE AVENUE EXTENSION PROJECT

RECOMMENDATION(S)

Approve and authorize the City Manager to execute and administer a Service Agreement for Design Professionals with Mark Thomas & Company for construction support services for the Hale Avenue Extension Project for \$143,295.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan
Morgan Hill 2035 General Plan
Water System Master Plan

REPORT NARRATIVE:

Upon the passage of the County's Measure B sales tax initiative in November 2016, the Morgan Hill City Council approved a Service Agreement for Design Professionals with Mark Thomas & Company to prepare design plans for the Hale Avenue Extension Project, which involves the construction of a new two-lane multi-modal roadway from the Main Avenue and Hale Avenue intersection to the Spring Avenue and Dewitt Avenue intersection. The project has now been divided into two phases in order to accommodate the construction that will be done in the area of the Main Avenue & Hale Avenue intersection with Valley Water's Phase 2A Flood Control Project (Attachment 1).

The first phase of the Hale Avenue Extension project has been awarded to DeSilva Gates Construction in the amount of \$14.17M with construction anticipated to commence in late March or early April 2021. Given the project phasing and increased complexity involving multiple stake holders, multiple contractors, overlapping projects, relocating utilities, complex intersection improvements, and substantial undergrounding of overhead electric lines, staff recognizes the need for additional construction support services from the project designer.

Thus, staff recommends that a new contract with Mark Thomas & Company be approved in the amount of \$143,295 to account for the additional construction support that is anticipated to be needed for the two phases of the Hale Avenue Extension project. The Mark Thomas & Company agreement (Attachment 2) scope of work includes; attend construction meetings, respond to requests for information, site visits, review submittals, prepare change orders, provide record drawings. Included in this contract are support services from three subconsultants which will provide geotechnical support (\$10K), environmental permitting support (\$10K), and landscape construction support (\$10K).

COMMUNITY ENGAGEMENT: Inform

Significant engagement has occurred over the last decade as it relates to the Hale Avenue Extension Project. Projects of this size require long term decisions be made for the future of Morgan Hill. The City's General Plan Updates and the Environmental Impact Report for this project both included significant engagement that set the framework for developing a funding strategy and the planning documents. City staff recently held a Town Hall meeting on Thursday, June 11 to specifically discuss the Hale Avenue Extension. The City's Hale Avenue Project webpage provides significant project background on the history of the project and its intended purpose. A full communications plan has been developed for the construction phase of this project.

ALTERNATIVE ACTIONS:

City Council could decide not to move forward with the agreement at this time. This is not recommended as it would be difficult to construct the project without engineering support from the lead civil design firm and supporting sub-consultants.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On January 18, 2017, City Council approved a Service Agreement for Design Professionals with Mark Thomas & Company to design the Hale Avenue Extension Project for \$401,873.

FISCAL AND RESOURCE IMPACT:

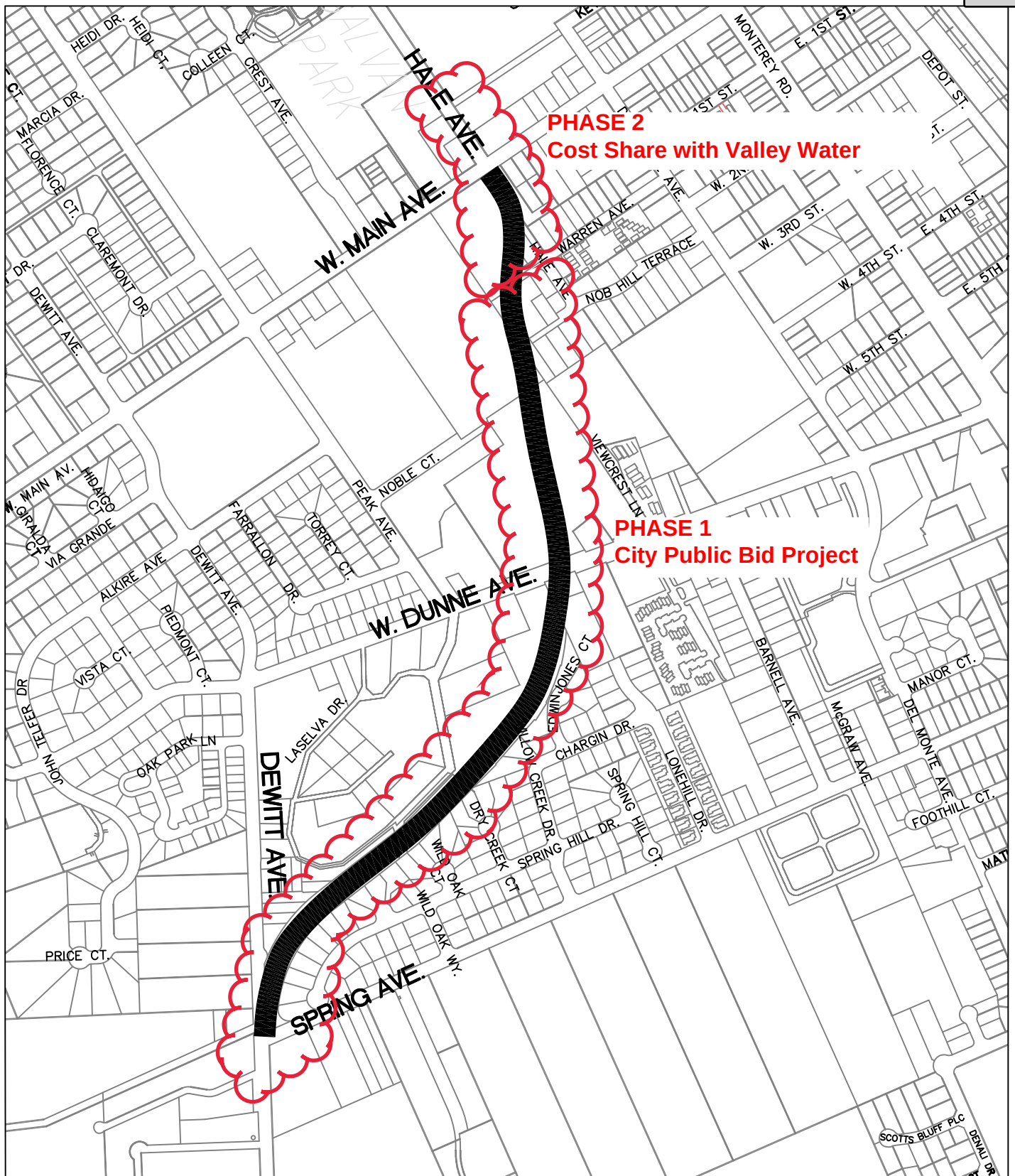
The total not to exceed amount of the Mark Thomas & Company agreement is \$143,295. Sufficient funds and budgetary appropriations are available in the adopted Capital Improvement Program, under the Hale Avenue Extension project (546007). The project is funded from Traffic Impact (309) and Storm Drain Impact (303) Funds. The project will receive reimbursement funds in the amount of \$16.5M from VTA - Measure B. This work is eligible for reimbursement from the Measure B funding.

CEQA (California Environmental Quality Act): Project.

A Final Environmental Impact Report was prepared by David J. Powers & Associates for the Hale Avenue Extension and Hale Avenue Plan Line Projects. City Council certified the Final Environmental Impact Report (FEIR) and adopted a Mitigation and Monitoring Program (MMRP) for construction of the Hale Avenue Extension Project ("Project") by Resolution No. 17-070, adopted on August 23, 2017.

LINKS/ATTACHMENTS:

1. Project Location Map
2. Mark Thomas Contract-signed1

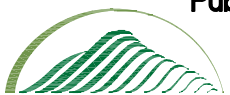


Attachment: Project Location Map (2972 : Approve Mark Thomas Construction Services Contract)

SCALE: NTS

City of Morgan Hill

Public Works Department



CITY OF MORGAN HILL

N:\PROJECTS\CIP\STREETS\546007-Santa Teresa Const\Staff Reports\hale plot 8-24-11.dwg

LOCATION PLAN

Hale Avenue Extension

Date: 2/3/21

Drwn by: DIG

PAGE 1 OF 1

Packet Pg. 132

SERVICE AGREEMENT FOR DESIGN PROFESSIONALS

Mark Thomas & Company, 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 Mark Thomas & Company, 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 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 1, 2022 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 provide construction support services for the Hale Avenue Extension project as further described in **Exhibit A.**
4. **Compensation.** CONSULTANT shall be compensated as follows:
 - 4.1. **Amount.** \$143,295.00. Total compensation to CONSULTANT under this Agreement during its initial term set forth in Section 2 above shall not exceed One Hundred Forty Three Thousand Two Hundred and Ninety 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.

5.1. **Non-Appropriations.** Notwithstanding anything contained in this Agreement to the contrary, if insufficient funds are appropriated, or funds are otherwise unavailable in the budget for CITY for any reason whatsoever in any fiscal year, for payments due under this Agreement, CITY will immediately notify CONSULTANT of such occurrence, and this Agreement shall terminate after the last day during the fiscal year for which appropriations shall have been budgeted for CITY or are otherwise available for payments.

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. Any deductibles or self-insured retentions must be declared to and approved by City. 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 CONSULTANT'S liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs arising out of the work or services to be performed under this Agreement. Coverage shall be provided for both work performed on site, as well as during the transport of hazardous materials. Such coverage shall be in the minimum amount of: (i) one million dollars (\$1,000,000.00) for any one accident or occurrence, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.
- 7.1.5. Professional Liability.

7.1.5.1. If the performance of CONSULTANT's work or service under this Agreement involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, and appraisers), CONSULTANT shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) one million dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to CONSULTANT under CONSULTANT's combined insurance policies (including any excess or

“umbrella” policies), whichever is greater. Further, if CONSULTANT maintains a claims-made policy, CONSULTANT shall provide written evidence of such insurance to the CITY for at least five (5) years after the completion of work performed under this Agreement.

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

7.1.6. 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 certificates as outlined herein, whether new or modified, promptly upon receipt. In the event of a claim or legal action, CONSULTANT shall promptly furnish CITY of Morgan Hill with copies of all policies outlined herein. 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. A "material change" is a change that results in non-compliance with any insurance requirements in this section 7. 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.**

- 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:

Mark Thomas & Company, Inc.
Mike Cooper, P.E
2290 North First Street, suite 304
San Jose, CA 95131

Address of CITY is as follows:

Development Services Center	with a copy to:
David Gittleson, P.E.	City Clerk
City of Morgan Hill	City of Morgan Hill
17575 Peak Avenue	17575 Peak Avenue
Morgan Hill, CA 95037	Morgan Hill, CA 95037

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

15. **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.
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 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.

[Signatures on Next Page]

Attachment: Mark Thomas Contract-signed1 (2972 : Approve Mark Thomas Construction Services Contract)

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:

Mark Thomas & Company, Inc.

 City Attorney

By: _____

 Donald A. Larkin

Sasha Dausky, VP

 Print Name

 Print Name and Title of Signer.

If Corporate: Chairman, President or Vice President

Date: _____

Date: 1/15/21

By: _____

JAMES D. HOWELL, CFO

 Print Name and Title of Signer.

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

Date: 1/15/2021

**EXHIBIT A
SCOPE OF SERVICES**

Attachment: Mark Thomas Contract-signed1 (2972 : Approve Mark Thomas Construction Services Contract)



MARK THOMAS

January 11, 2021

Project No.: SJ-17101

Mr. David Gittleston
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA

RE: Hale Avenue Extension & Hale Avenue 2A- Services During Construction

Dear David:

As requested by the City, Mark Thomas proposes to provide services during construction. This will include:

MANAGEMENT PLAN

Services are provided on-call, as needed to clarify design intent and resolve issues arising from differing field conditions or other unanticipated issues. Our main duty in design support during construction (DSDC) is to respond to Requests for Information (RFI) and review and refine owner (contractor) directed plan changes/modifications for Contract Change Orders. Additionally, our environmental subconsultant, will provide environmental monitoring and reporting, as required In the Regulatory Agency permits. We will coordinate with Valley Water and their consultants, Woodard & Curran, for the Hale 2A project.

Our management plan is based upon the following components:

- ***Responsiveness:*** When called upon to provide design support activities we will communicate with the CM and City to come to a mutual understanding of the Plan of Action to solve the issue at hand.
- ***Timely review of submitted materials/questions:*** All contractor submittals and RFIs provided by the CM to Mark Thomas will be reviewed and responded to in a timely manner (typically 2 working days or as otherwise noted.)
- ***Availability of resources:*** With ten offices throughout California, Mark Thomas has the resources to handle any situation that may arise during construction and assign adequate staff to handle the workload.



(408) 453-5373
2290 NORTH FIRST STREET, SUITE 304
SAN JOSE, CA 95131

MARKTHOMAS.COM

Packet Pg. 145

Attachment: Mark Thomas Contract-signed1 (2972 : Approve Mark Thomas Construction Services Contract)

► January 11, 2021

- ***Flexibility to meet in the field as needed:*** When requested by the CM and/or the City, Mark Thomas staff will meet in the field to examine field conditions and develop solutions to issues that arise.
- ***Familiarity with design:*** Mark Thomas' design team has been involved in the City with the Hale Avenue Extension project since the preliminary design phase of the project and is intimately familiar with the concept, design and details of the project.
- ***Communication:*** The Mark Thomas team will follow through with the plan of action and will clearly communicate with City staff and the CM as appropriate.
- ***Prioritize construction support:*** When called upon to provide design support activities we will prioritize those efforts above other responsibilities to the degree possible and will always be responsive to keep the CM and the City informed of anticipated timeline, challenges and deliverables.

STAFFING PLAN

Sasha Dansky will be the Project Director and Mike Cooper will continue to be the Project Manager and day-to-day contact for the City and CM.

SCOPE OF SERVICES

TASK 1. PROVIDE DESIGN SERVICES DURING CONSTRUCTION

TASK 1.1 ATTEND MEETINGS / GENERAL SUPPORT

When requested by the City, CM or other authorized representative, Mark Thomas will attend project meetings and respond to general telephone calls, electronic mail, or facsimile, and provide general (miscellaneous) project support. This task also covers general administrative work associated with coordination of subconsultants, progress reports, and maintenance of Project files.

TASK 1.2 RESPOND TO REQUESTS FOR INFORMATION (RFI'S)

When requested by the City, CM or other authorized representatives, Mark Thomas and Phoenix Design will respond to Contractor's RFI's and provide minor clarification of the Plans, Specifications, and Estimate (PS&E) documents for the Project.

TASK 1.3 PROJECT SITE VISITS

When requested by or with the approval of the City, Valley Water, CM or other authorized representatives, Mark Thomas will make site visits to observe the progress of the construction, meet with City, Valley Water or CM staff to identify work that does not



► January 11, 2021

conform to or is not following the intent of the contract PS&E documents. Written jobsite reports will be prepared and submitted to the City and/or Valley Water if conflicts or problems are identified during each jobsite visit. Mark Thomas shall notify the CM or authorized representative when Mark Thomas is present on the jobsite. Mark Thomas' personnel and equipment shall be in compliance with current City construction safety policies and procedures when visiting the jobsite.

TASK 1.4 REVIEW SHOP DRAWINGS/SUBMITTALS

When requested by or with the approval of the City, Valley Water, CM or other authorized representatives, Mark Thomas will review Shop Drawings and miscellaneous submittals from the Contractor for the Project. Mark Thomas shall review or take other appropriate action required by Contractor's submittals as requested by the City, Valley Water or CM. Review of submittals is limited to checking for submittal conformance with the design concept expressed in the Contract Documents. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. Mark Thomas' review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Mark Thomas, of construction means, methods, techniques, sequences or procedures. Mark Thomas' review for conformance with contract documents of a specific item shall not indicate approval of an assembly of which the item is a component. Phoenix Design will provide reviews of Landscape and Irrigation shop drawings and submittals.

TASK 1.5 PREPARE CONTRACT CHANGE ORDER DOCUMENTS (CCO'S)

When requested by or with the approval of the City, CM or other authorized representatives, Mark Thomas shall prepare construction Contract Change Order (CCO) documents for the Hale Avenue Extension project consisting of PS&E to the level of detail as needed, or as directed, for each request. Since Mark Thomas has no control over local conditions, the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, Mark Thomas does not guarantee the accuracy of any opinions of probable construction cost as compared to construction contractor's bids or the actual cost to the City.

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► January 11, 2021

Because the level of effort to provide ongoing construction support services cannot be anticipated ahead of time, Mark Thomas and the other subconsultants working on the Mark Thomas team will perform services related to this task on a time and materials basis in an on-call fashion.

TASK 1.6 PREPARE RECORD DRAWINGS

Once Mark Thomas has received the field mark-up plans from the project CM, Record Drawings can be prepared as an optional task. A budget has been included for reference for this task. Since the actual required level of effort for this task cannot be anticipated ahead of time, the work to be performed by Mark Thomas and subconsultants will be done on a time and materials basis. An estimated budget for this task may be developed once the filed mark-up plans have been received.

Deliverables

- Draft Record Drawings for CM review (1 CD, 1 hard copy)
- Final Record Drawings (2 hardcopy, 1 CD with DGN and TIFF files)

TASK 1.7 PROVIDE GEOTECHNICAL CONSULTATION

Geo-Logic will provide consultation services for the Hale Avenue Extension project upon request from the City.

TASK 1.8 PROVIDE ENVIRONMENTAL PERMITTING CONSULTATION

WRA will provide consultation services for the Hale Avenue Extension project as required by permitting agencies and upon request of the City.

FEE: Hourly as requested by City.

TOTAL ESTIMATED FEE: \$ 143,295

Thank you for the opportunity to provide this proposal for additional services for the Hale Avenue Extension Improvement project. Please give me a call if you need any additional information or have any questions regarding this proposal.

Sincerely,

Attachment: Mark Thomas Contract-signed1 (2972 : Approve Mark Thomas Construction Services Contract)



▶ January 11, 2021

MARK THOMAS



Sasha Dansky, PE
Principal/Vice President



Mike Cooper, PE
Senior Project Manager

Attachment: Mark Thomas Contract-signed1 (2972 : Approve Mark Thomas Construction Services Contract)



(408) 453-5373
2290 NORTH FIRST STREET, SUITE 304
SAN JOSE, CA 95131

MARKTHOMAS.COM

COST PROPOSAL FOR PROJECT SCOPE - Morgan Hill: Hale Avenue Extension - Construction Services

	Mark Thomas							Subconsultants				TOTAL COST
	Principal \$415	Sr. Project Manager \$250	Design Engineer II \$134	Design Engineer I \$108	Sr. Project Coordinator \$129	Total Hours	Total MT Cost	GEOLOGIC DBE	WRA DBE	Phoenix Design Non-DBE	Sub Mark-Up 5%	
1.0 DESIGN SERVICES DURING CONSTRUCTION												
1.1 Attend Meetings/General Support	8	150				158	\$40,820	-	-	-	\$0	\$40,820
1.2 Respond to Requests for Information		60	60			120	\$23,040	-	-	5,000	\$250	\$28,290
1.3 Project Site Visits		60	60			120	\$23,040	-	-	-	\$0	\$23,040
1.4 Review Shop Drawings/Submittals			24			24	\$3,216	-	-	5,000	\$250	\$8,466
1.5 Prepare Construction Change Order Documents		8	16		20	44	\$6,724	-	-	-	\$0	\$6,724
1.6 Prepare Record Drawings		2	24	40		66	\$8,036	-	-	-	\$0	\$8,036
1.7 Provide Geotechnical Consultation						0	\$0	10,000	-	-	\$500	\$10,500
1.8 Provide Environmental Permitting Consultation						0	\$0	-	10,000	-	\$500	\$10,500
Subtotal Phase 1	8	280	184	40	20	532	\$104,876	\$10,000	\$10,000	\$10,000	\$1,500	\$136,376
TOTAL HOURS	8	280	184	40	20	532		0	0	0		532
Contingency							\$0	0	0	0	0	532
Anticipated Salary Increases (3% for 2 years)							\$6,387	\$0	\$0	\$0	\$0	\$6,387
OTHER DIRECT COSTS							\$0	\$0	\$0	\$0		\$0
TOTAL COST	\$3,320	\$70,000	\$24,656	\$4,320	\$2,580		\$111,263	\$10,000	\$10,000	\$10,000	\$1,500	\$143,295

Attachment: Mark Thomas Contract-signed1 (2972 : Approve Mark Thomas Construction Services

EXHIBIT B
SCHEDULE OF COMPENSATION RATES

Attachment: Mark Thomas Contract-signed1 (2972 : Approve Mark Thomas Construction Services Contract)

Mark Thomas & Company, Inc. Rate Schedule

Expires June 30, 2021*

HOURLY CHARGE RATE RANGES

Engineering Services

Intern	\$48 - \$85
Technician	\$78 - \$128
Design Engineer I	\$97 - \$138
Sr. Technician	\$116 - \$163
Design Engineer II	\$125 - \$162
Project Engineer	\$147 - \$180
Sr. Project Engineer	\$164 - \$213
Sr. Technical Engineer	\$164 - \$213
Project Manager	\$194 - \$243
Technical Lead	\$194 - \$243
Sr. Project Manager	\$221 - \$314
Sr. Technical Lead	\$221 - \$314
Engineering Manager	\$286 - \$352
Practice Area Leader	\$286 - \$352
Sr. Engineering Manager	\$320 - \$430
Principal	\$404 - \$480

Construction Management Services

Office Technician	\$80
Office Engineer	\$150
** Asst. Resident Engineer	\$200
** Inspector - CM	\$200
Project Manager - CM	\$250
RE/Structural Representative	\$250
Sr. Project Manager - CM	\$260
Division Manager - CM	\$310
Sr. Division/Area Manager	\$355

District Management Services

** Inspector - Apprentice	\$65 - \$100
** Inspector	\$97 - \$135
** Sr. Inspector	\$123 - \$156
Assistant Sanitary Engineer	\$142 - \$171
Associate Sanitary Engineer	\$155 - \$206
Sanitary Project Engineer	\$160 - \$220
Operations Manager	\$221 - \$314
Deputy District Manager	\$275 - \$338
District Manager-Engineer	\$307 - \$359

Grant Writing Services

Funding Specialist	\$150
Sr. Funding Specialist	\$250

Survey Services

Survey Intern	\$56 - \$103
Survey Technician	\$85 - \$137
Sr. Survey Technician	\$95 - \$170
Surveyor	\$118 - \$145
Sr. Surveyor	\$130 - \$187
Lead Survey Technician	\$153 - \$183
Project Surveyor	\$161 - \$197
Sr. Project Surveyor	\$183 - \$216
Survey Manager	\$195 - \$248
Sr. Survey Manager	\$217 - \$289
Survey Division Manager	\$274 - \$348
** Single Chief	\$152 - \$172
** Single Instrumentman	\$142 - \$150
** Single Chainman	\$133 - \$140
** Apprentice	\$66 - \$145
** 1 Person Field Crew	\$152 - \$192
** 2 Person Field Crew	\$265 - \$345
** 3 Person Field Crew	\$351 - \$482
Drone Pilot	\$210

Project Support/Coordination Services

Project Assistant	\$65 - \$99
Technical Writer	\$65 - \$103
Sr. Project Assistant	\$90 - \$124
Project Coordinator	\$90 - \$128
Graphic Designer	\$100 - \$131
Sr. Technical Writer	\$94 - \$149
Project Accountant	\$103 - \$142
Sr. Project Coordinator	\$116 - \$160
Sr. Graphic Designer	\$120 - \$167
Sr. Project Accountant	\$129 - \$174
Sr. Graphic Manager	\$152 - \$178

Urban Planning/Landscape Architecture Services

Landscape Intern	\$48 - \$85
Landscape Designer	\$81 - \$160
Landscape Architect	\$113 - \$203
LAUD Division Manager	\$233 - \$284
LAUD Project Manager	\$184 - \$217
Sr. LAUD Project Manager	\$197 - \$256
Sr. LAUD Division Manager	\$259 - \$302

Special Services

Expert Witness	\$420
Strategic Consulting	\$420

Note: Additional Promotional Steps Exist within Various Rate Categories

OTHER DIRECT COSTS

Reimbursables including, but not limited to:

Reproductions, Delivery and Filing Fees	Cost Plus 5%	Outside Consultant Fees	Cost Plus 5%
Mileage	Per IRS Rate	Survey Field Expenses	Cost Plus 5%

*Rates subject to escalation with new hourly rate schedule as of July 1, 2021

**These charge rates are subject to Prevailing Wage laws and Union contract.

PA

**EXHIBIT C
SCHEDULE OF PERFORMANCE**

Contract to expire on December 1, 2022, unless extended by the City Manager

Attachment: Mark Thomas Contract-signed1 (2972 : Approve Mark Thomas Construction Services Contract)



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

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

APPROVE FIFTH AMENDMENT TO THE LEASE AGREEMENT WITH THE MORGAN HILL UNIFIED SCHOOL DISTRICT FOR USE OF SPACE AT THE CORPORATION YARD

RECOMMENDATION(S)

Approve and authorize the City Manager to enter into a Fifth Amendment to the lease agreement with the Morgan Hill Unified School District.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The City currently leases approximately 3.4 acres of space to the Morgan Hill Unified School District for use as its Bus Yard. The current lease term expires June 30, 2021. The recommended action would extend this lease for an additional three years, with a two-year option.

The City and School District have been actively collaborating on planning the future of the Corporation Yard. On November 4, 2020, the City Council received a space study for the Corporation Yard. This space study was the first step in planning for the long-term future of the Corporation Yard. Staff from the City and MHUSD are working to identify a recommended option for long-term/permanent joint use of the existing site versus the long-term plans for development of a new site. Staff are recommending the extension of the lease agreement for an additional three years to allow this planning to continue.

COMMUNITY ENGAGEMENT: Not Applicable

This is an agreement between the City and School District. Community engagement has not been sought.

ALTERNATIVE ACTIONS:

The Council could elect to ask staff to change terms and renegotiate the extension.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Council last extended the agreement in May of 2016. The original agreement was executed in May 2000. The City Council received the Corporation Yard Space Study on November 4, 2020.

FISCAL AND RESOURCE IMPACT:

The lease agreement will generate approximately \$90,000 annually for the General Fund (010).

CEQA (California Environmental Quality Act): Not a Project

The City's entrance into this agreement is not a project, as defined in Section 15378 of the State CEQA Guidelines.

LINKS/ATTACHMENTS:

1. MHUSD - Lease - Fifth Amendment

**FIFTH AMENDMENT TO LEASE
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT
AND THE CITY OF MORGAN HILL**

CORPORATION YARD LEASE

This Fifth Amendment ("Amendment") to the Lease between Morgan Hill Unified School District ("District" or "Tenant") and the City of Morgan Hill ("City" or "Landlord"), dated May 22, 2000 ("Lease") is entered into as of _____, 2021. Landlord and Tenant may be referred to collectively as the "Parties" in this Agreement.

RECITALS

The following recitals are a substantive part of this Amendment:

1. Landlord is the owner of certain real property (the "Property") described on Exhibit A to the Lease.
2. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to Tenant.
3. The Parties entered into that certain First Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010, amending the payment schedule, and deleting the section regarding rent establishment upon extension.
4. The Parties entered into that certain Second Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill ("Second Amendment") as of July 1, 2010 extending the term of the Lease to June 30, 2011, and amending the payment schedule.
5. The Parties entered into that certain Third Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill ("Third Amendment") as of July 1, 2011 extending the term of the Lease to June 30, 2016, and amending the payment schedule and the right to enter section.
6. The Parties entered into that certain Fourth Amendment to the Lease between the Morgan Hill Unified School District and the City of Morgan Hill ("Fourth Amendment") as of July 1, 2016 extending the term of the Lease to June 30, 2021, amending the payment schedule and adding a maintenance section. The Lease and the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment thereto are attached to this Amendment collectively as Exhibit 1.
6. Pursuant to the terms and conditions set forth below, the Parties desire to extend the term of the Lease of the Premises another three (3) years.

///

///

AGREEMENT

The Parties Mutually Agree as Follows:

1. Section 1.02 (erroneously referred to as Section 1102 in the Lease) of the Lease shall be amended in its entirety and replaced with the following provisions:

“The term of this Lease shall expire June 30, 2024. On or before January 1, 2024, Tenant may notify Landlord that it wishes to extend the Lease for up to another two years. If Landlord consents to such extension, this Lease will be extended for up to a two-year period upon the same terms and conditions in this Lease as amended, except as jointly modified by the Parties in writing. This Lease may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Lease with at least three hundred sixty-five (365) days’ advance written notice to either Party. In the event of termination, Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period.”

2. Except as amended by this Amendment, the Lease shall remain in full force and effect.

In WITNESS WHEREOF, the Parties have executed this Amendment as of the date set forth in the first paragraph.

CITY OF MORGAN HILL

By: _____

CHRISTINA J. TURNER
City Manager
City of Morgan Hill

APPROVED AS TO FORM:

By: _____

DONALD A. LARKIN
City Attorney
City of Morgan Hill

ATTEST:

By: _____

MICHELLE BIGELOW
City Clerk
City of Morgan Hill

MORGAN HILL UNIFIED SCHOOL DISTRICT

By: _____

STEVE BETANDO
Superintendent
Morgan Hill Unified School District

**FOURTH AMENDMENT TO LEASE
BETWEEN THE MORGAN HILL UNIFIED SCHOOL DISTRICT
AND THE CITY OF MORGAN HILL
CORPORATION YARD LEASE**

This Fourth Amendment ("Amendment") to the Lease between Morgan Hill Unified School District ("District" or "Tenant") and the City of Morgan Hill ("City" or "Landlord"), dated May 22, 2000 ("Lease") is entered into as of July 1, 2016. Landlord and Tenant may be referred to collectively as the "Parties" in this Amendment.

RECITALS

The following recitals are a substantive part of this Amendment:

1. Landlord is the owner of certain real property (the "Property") described on Exhibit A to the Lease.
2. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to Tenant.
3. Landlord and Tenant entered into that certain First Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010, amending the payment schedule, and deleting the section regarding rent establishment upon extension.
4. Landlord and Tenant entered into that certain Second Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("Second Amendment") as of July 1, 2010 extending the term of the Lease to June 30, 2011, and amending the payment schedule.
5. Landlord and Tenant entered into that certain Third Amendment to the Lease Between the Morgan Hill Unified School District and the City of Morgan Hill ("Third Amendment") as of July 1, 2011 extending the term of the Lease to June 30, 2016, and amending the payment schedule and the right to enter section. The Lease and the First Amendment, Second Amendment, and Third Amendments thereto are attached to this Amendment collectively as Exhibit A.
6. Pursuant to the terms and conditions set forth below, the Parties desire to extend the term of the Lease of the Premises another five (5) years and to make certain further amendments to the Lease.

AGREEMENT

The Parties Mutually Agree as Follows:

1. Section 1.02 (erroneously referred to as Section 1102 in the Lease) of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2021. This Lease may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Lease with at least three hundred sixty-five (365) days' advance written notice to either Party. In the event of termination, Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period."

2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows

Period	Annual Payment	Quarterly Payment
7/06 – 6/07	\$151,800.00	\$37,950.00
7/07 – 6/10	\$155,000.00	\$38,750.50
7/10 – 6/11	\$155,000.00	\$38,750.50
7/11 – 6/16	\$72,000.00	\$18,000.00
7/16 – 6/17	\$81,900.00	\$20,475.00

7/17 – 6/21 Rate determined by Implicit Price Deflator for State and Local Government Purchases of Goods and Services.

Beginning in the fiscal year starting in July 2017, Annual Payment shall be increased annually. The amount of increase shall be the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 1 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 1 of the second preceding fiscal year, as reported by the State Department of Finance. The Parties' intention is to align the annual increases to the cost of living adjustment provided to schools as defined in California Education Code Section 42238.1.

The rent shall be due to Landlord on the first day of the following months: January, April, July, and October. A onetime ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date."

3. Section 5.02 shall be added to the Lease to include the following provision:

"Section 5.02. Maintenance

The ongoing and routine operations and maintenance (including landscaping, grounds maintenance, and custodial services) of the Premises' facilities, furnishings, and equipment are the responsibility of Tenant. Routine maintenance is that recurring maintenance to properly maintain a system or asset during its useful life, generally of a less costly nature, and not involving a replacement of an entire system due to an age-related failure. Examples of routine maintenance include replacing of filters on HVAC units, replacing light bulbs or ballasts, trimming of trees, maintaining of grass and grounds, replacing irrigation components, and replacing windows, door locks, breakers, or individual parts of any systems not involving a major component which needs to be replaced due to age-related or impending failure.

Landlord is responsible for major maintenance, which includes the major repair or replacement of plumbing, heating, ventilation, air conditioning, electrical, roofing, underground tanks, wall systems, floor systems, paving, and exterior and interior painting. Characteristically, these projects represent a significant investment with an expenditure criteria not unlike that required for capitalizing an expenditure as a capital asset, normally more than \$5,000.

Where a difference of opinion exists as to the nature of the proposed maintenance work (routine v. major), both Parties will use best efforts to come to an agreement. Absent an agreement, both Parties will agree upon an independent expert to determine the proper expense allocation. The cost of this independent expert will be split equally by the Parties."

4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

The individuals executing this Amendment represent and warrant that they have the legal capacity and authority to do so on behalf of their respective entities.

In WITNESS WHEREOF, the Parties have executed this Amendment as of the effective date set forth above.

CITY OF MORGAN HILL

By: 

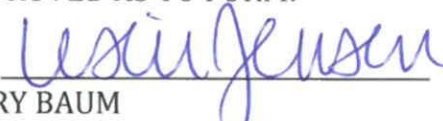
STEVE RYMER
City Manager
City of Morgan Hill

MORGAN HILL UNIFIED SCHOOL DISTRICT

By: 

STEVE BETANDO
Superintendent
Morgan Hill Unified School District

APPROVED AS TO FORM:

for By: 
GARY BAUM
Interim City Attorney
City of Morgan Hill

Resolution No. 16-048

ATTEST:

By: 
MICHELLE WILSON
Deputy City Clerk
City of Morgan Hill

**THIRD AMENDMENT
TO
LEASE
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
CITY OF MORGAN HILL
CORPORATION YARD LEASE**

This third amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2011.

Recitals

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The City and the District entered into a First Amendment to the Lease ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010 on the same terms and conditions as the Lease.
- D. The City and the District entered into a Second Amendment to the Lease ("Second Amendment") as of July 1, 2010, extending the term of the Lease to June 30, 2011, on the same terms and conditions as the Lease.
- E. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises another year and to make certain further amendments to the Lease.

Agreement

- 1. Section 1.02 (erroneously referred to as Section 1102 in the lease dated May 22, 2000) of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2016. This Agreement may be terminated by Landlord or Tenant with or without cause prior to the expiration of the term of this Agreement with at least three hundred sixty-five (365) days advance written notice to either party. Tenant shall pay Landlord a prorated amount from the beginning of that current year through the end of the termination period."
- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 – 6/07	\$151,800.00	\$37,950.00
7/07 – 6/10	\$155,000.00	\$38,750.50
7/10 – 6/11	\$155,000.00	\$38,750.50
7/11 – 6/16	\$72,000.00	\$18,000.00

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date."

3. Section 3.04 of the Lease shall be amended in its entirety and replaced with the following provision:

"Landlord reserves the right to enter and inspect the Premises and Property at any time, upon reasonable advance notice to the Tenant. Furthermore, the Landlord retains the right to access the portion of the Property north of the Premises at all times without notice to the Tenant."

4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

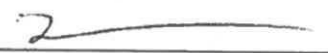
LANDLORD:

TENANT:

City of Morgan Hill

Morgan Hill Unified School District

By: 

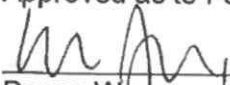
By:  8/23/12

J. Edward Tewes
City Manager

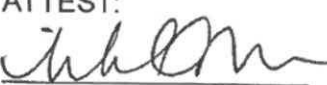
STEVE Rymer

Dr. Wesley Smith
Superintendent

Approved as to Form:

for  Deputy City Attorney
Danny Wan
City Attorney 02/19/13

ATTEST:


City Clerk, Deputy

**SECOND AMENDMENT
TO
LEASE
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
CITY OF MORGAN HILL
CORPORATION YARD LEASE**

This second amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2010.

Recitals

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The City and the District entered into a First Amendment to the Lease ("First Amendment") as of July 1, 2006, extending the term of the Lease to June 30, 2010 on the same terms and conditions as the Lease.
- D. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises another year and to make certain further amendments to the Lease.

Agreement

- 1. Section 1.02 of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2011."
- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 – 6/07	\$151,800.00	\$37,950.00
7/07 – 6/10	\$155,000.00	\$38,750.50
7/10 – 6/11	\$155,000.00	\$38,750.50

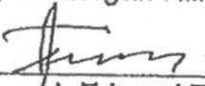
The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date.

3. Section 2.02 is deleted in its entirety.
4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

LANDLORD:

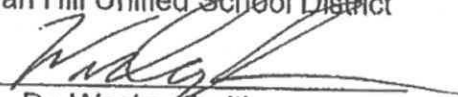
City of Morgan Hill

By: 

J. Edward Tewes
City Manager

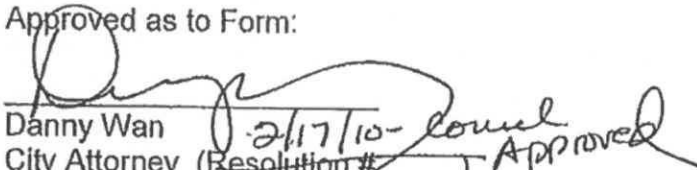
TENANT:

Morgan Hill Unified School District

By: 

Dr. Wesley Smith
Superintendent

Approved as to Form:


Danny Wan

City Attorney

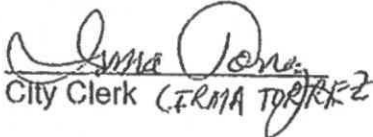
2/17/10 - Council Approved

Approved as to Risk:



Kevin Riper
Risk Manager

ATTEST:


City Clerk (IRMA TORRES)

06099

FIRST AMENDMENT
TO
LEASE
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
CITY OF MORGAN HILL
CORPORATION YARD LEASE

This first amendment ("Amendment") to the Lease between Morgan Hill Unified School District and the City of Morgan Hill dated May 22, 2000 ("Lease") is entered into as of July 1, 2006.

Recitals

- A. The City of Morgan Hill ("City" or "Landlord") is the owner of certain real property ("Property") described on Exhibit A to the Lease.
- B. Pursuant to the Lease, Landlord has leased a portion of the Property (the "Premises") as described on Exhibit B to the Lease to the Morgan Hill Unified School District ("District" or "Tenant").
- C. The Lease provides that on or before July 1, 2006, Tenant may notify Landlord that it wishes to extend the lease for another one-year period. Tenant has so notified Landlord.
- D. Pursuant to the terms and conditions set forth below, the parties desire to extend the term of the Lease of the Premises and to make certain further amendments to the Lease.

Agreement

- 1. Section 1.02 of the Lease shall be amended in its entirety and replaced with the following provision:

"The term of this Lease shall expire June 30, 2010."
- 2. Section 2.01 of the Lease shall be amended in its entirety and replaced with the following provision:

"Rent shall be paid quarterly as follows:

<u>Period</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
7/06 – 6/07	\$151,800.00	\$37,950.00
7/07 – 6/10	\$155,000.00	\$38,750.50

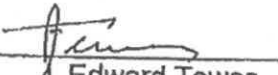
The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten percent (10%) late fee shall apply on any amounts which remain unpaid sixty (60) days from the due date.

3. Section 2.02 is deleted in its entirety.
4. Except as amended by this Amendment, the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date set forth in the first paragraph.

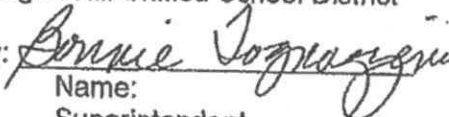
LANDLORD:

City of Morgan Hill

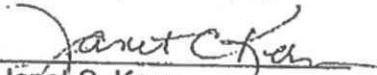
By: 
Edward Tewes
City Manager

TENANT:

Morgan Hill Unified School District

By: 
Name:
Superintendent

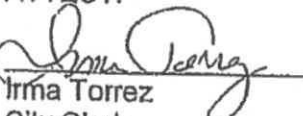
Approved as to Form:


Janet C. Kern
City Attorney

Approved as to Risk:


Jack Dilles
Risk Manager

ATTEST:


Irma Torrez
City Clerk

00220

**LEASE
BETWEEN MORGAN HILL UNIFIED SCHOOL DISTRICT
AND
THE CITY OF MORGAN HILL**

PREAMBLE AND RECITALS

THIS LEASE ("Lease") is entered into on this 22nd day of May 2000, by and between the City of Morgan Hill ("Landlord") and the Morgan Hill Unified School District ("Tenant").

- A. Whereas, Landlord is the owner of certain real property ("Property") in the county of Santa Clara, State of California, described on Exhibit "A" which is attached and made a part of this lease. Landlord desires to lease a portion of that Property to Tenant, which portion of the Property shall be referred to in this lease as "the Premises." The Premises consist of approximately 3.42 acres with a 9,900 square foot building, a parking lot and underground storage tanks located at the Transportation Services Building, 105 Edes Court, Morgan Hill, California. The Premises are shown on Exhibit "B", attached hereto and incorporated herein.
- B. Whereas, the City and District formed the Corporation Yard Commission, a joint powers authority, in 1975. In addition, in May 1975, the City and District entered into a lease agreement whereby the City leased a portion of the Corporation Yard to the District. That lease has been extended on at least one occasion.
- C. Whereas, Tenant desires to enter into a successor lease to lease the Premises for use as a bus barn for fueling of gasoline and diesel fuel, bus and vehicle maintenance, parking and washing.

**ARTICLE 1
LEASE OF PREMISES AND TERM OF LEASE**

Section 1.01. Agreement to Lease.

Landlord hereby agrees to lease the Premises to Tenant, and Tenant agrees to lease the Premises from Landlord, on the terms and conditions set forth in this lease

Tenant acknowledges that Landlord has made no representation or warranty regarding the condition of the Premises or the Property. The City has no knowledge of any hazardous condition on or under the property other than that which is the subject of Morgan Hill Unified School District v. Minter & Fahy Construction Company, Inc., Santa Clara County Superior Court, Case No. CV 772368.

Section 1102. Term of Lease

The term of this Lease shall be for a period of seven years commencing on the effective date set forth above. However, by July 1 of any year Tenant may serve notice of its intent to terminate the lease effective January 1 of the next year. On or before July 1 in the year 2006, Tenant may notify Landlord that it wishes to extend the lease for another one-year period. If Landlord consents to such extension, this Lease will be extended for a one-year period upon the same terms and conditions in this document, except as jointly modified by the parties in writing. The rent for any additional year lease period shall be the fair market rental value at the beginning of the extension as determined by Landlord and Tenant. Should Landlord not consent to such extension, and desire to rent the Premises to a third party, Landlord must offer Tenant a first right of refusal to rent the Premises on the same terms and conditions as Landlord is willing to rent the Premises to a third party. Tenant shall have thirty (30) days from the date of notification by Landlord of its intention to rent to a third party and of the acceptable terms and conditions to exercise the right of first refusal by notifying Landlord in writing of its intent to accept the terms and conditions set forth by Landlord.

Section 1.03. No Partnership or Joint Venture.

For the purpose of this Lease, nothing in this Lease shall be construed to render the Landlord and Tenant in any way or for any purpose a partner, joint venturer, or associate in any relationship with the other, other than that of Landlord and Tenant, nor shall this lease be construed to authorize either to act as agent for the other.

ARTICLE 2 RENT

Section 2.01. Payments

Within ten (10) days from execution of the Lease by all Parties, Tenant shall pay Landlord a pro-rated amount from the date of execution to December 31, 2000, based upon \$45,000 per year rent, for the first year's rent. Thereafter, rent shall be paid quarterly as follows:

<u>Year</u>	<u>Annual Payment</u>	<u>Quarterly Payment</u>
2001	\$ 62,800.00	\$15,700.00
2002	\$ 80,600.00	\$20,150.00
2003	\$ 98,400.00	\$24,600.00
2004	\$116,200.00	\$29,050.00
2005	\$134,000.00	\$33,550.00
2006	\$151,800.00	\$37,950.00

The rent shall be due to the Landlord on the first day of the following months: January, April, July and October. A one-time ten-percent (10%) penalty shall apply on any amounts which remain unpaid sixty (60) days from the due date.

Section 2.02. Rent Establishment upon Extension.

Should this lease be extended pursuant to Section 1.02 above, the rental shall be set at the fair market value rental ("FMV"). If the parties cannot mutually agree upon the FMV, it shall be established by an independent appraisal by an appraiser mutually agreed upon by the parties.

**ARTICLE 3
USE OF PREMISES**

Section 3.01. Permitted Use.

Tenant shall use the Property and Premises solely for the purpose of a bus barn, including fueling of gasoline and diesel fuel only, bus and vehicle maintenance, parking and washing. Tenant shall not use or permit the Property and Premises to be used for any other purpose(s) without Landlord's written prior consent. Any use by or for the benefit of a private third party must have the Landlord's prior written consent, and Tenant shall indemnify, defend, and hold harmless Landlord from any damages arising out of such use. Landlord acknowledges that Tenant has, from time to time, allowed other governmental entities to use the fueling stations and maintenance operations. Landlord agrees that such use may continue, however, Tenant shall timely notify the Landlord of the identify of such entities, and shall indemnify, defend and hold harmless Landlord from any damages arising out of such use.

Section 3.02. Compliance with Laws and Payment of Fees.

Tenant shall, at Tenant's own cost and expense, comply with all statutes, ordinances, regulations, and requirements of all governmental entities, both federal and state and county or municipal, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. If any license, permit, or other governmental authorization is required for the lawful use or occupancy of the Premises or any portion of the Premises, the Tenant shall procure and maintain it throughout the term of this lease.

Section 3.03. Use of Hazardous Materials.

Tenant shall not cause or permit any Hazardous material, as defined below, to be generated, brought onto, used, stored, or disposed of in or about the Premises or the Property by the Tenant or its agents, employees, contractors, or invitees, except for such substances that are required in the ordinary course of Tenant's use as defined in Section 3.01 above, or as otherwise approved by Landlord, which consent shall not be reasonably withheld. Tenant shall use, store and dispose of all such Hazardous material in strict compliance with all applicable statutes, ordinances, and regulations that relate to public health, safety and protection of the environment. Tenant shall comply with all environmental laws in effect during the term of this Lease. Landlord acknowledges the pre-existing hazardous materials condition referred to in Section 1.01, and this section shall not apply to this pre-existing condition except as such condition is unknown to City as of date of execution of this lease.

Section 3.03.02. Notice of Release or Investigation.

If, during the Lease term (including any extensions), Tenant becomes aware of (a) any actual or threatened release of any hazardous material on, under, or about the Premises or Property which may result in administrative or court action, or (b) any inquiry, investigation, proceeding, or claim by any governmental agency or other person regarding the presence of hazardous material on, under, or about the Premises or the Property, Tenant shall give landlord written notice of the release or investigation within five (5) days after learning of it and shall simultaneously furnish to Landlord copies of any claims, notice of violation, reports, or other writings received by Tenant that concern the release or investigation. Tenant agrees and acknowledges that it bears the responsibility of determining whether a particular actual or threatened release meets the criteria for reporting such release to Landlord, and agrees to assume all liability in connection with making such determination.

Section 3.03.02. Remediation Obligations.

If the presence of any hazardous material brought onto the Premises or the Property by Tenant or Tenant's employees, agents, contractors, or invitees results in contamination, Tenant shall promptly take all necessary actions to remove or remediate such hazardous materials, at Tenant's sole expense, and shall return the Premises or Property to the condition that existed before the introduction of such hazardous materials. Tenant shall first obtain Landlord's approval of the proposed removal or remedial action, which approval shall not be unreasonably withheld. This provision does not limit the indemnification agreement set forth above. Landlord acknowledges the pre-existing hazardous material condition referred to in Section 1.01, and this section shall not apply to this pre-existing condition except as such condition is unknown to City as of date of execution of this Lease. Tenant agrees and acknowledges that it bears the responsibility of determining whether a particular actual or threatened release results in "contamination," and agrees to assume all liability in connection with making such determination.

Section 3.03.03. Definition of "Hazardous Material(s)."

"Hazardous material(s)" means any hazardous or toxic substance, material, or waste of any concentration that exceeds state or federal maximum concentrations or action levels as determined by the appropriate oversight committee, or that is or becomes regulated by the federal, state or any local government authority, including as the term is defined in CERCLA, RCLA, any federal, state or local governmental definition, petroleum products, radioactive materials, asbestos in any form or condition, MTBEs, PCBs and substances or compounds containing PCBs.

Section 3.04. Right to Enter and Inspect.

Landlord reserves the right to enter and inspect the Premises and Property at any time, upon reasonable advance notice to Tenant.

ARTICLE 4 IMPROVEMENTS

Section 4.01. Improvements.

Exhibit "C" contains a list of existing improvements to the Property that shall be considered Tenant's at the end of the Lease and a list of improvements that shall be considered Landlord's at the end of the Lease. Tenant may make improvements only with the prior written consent of the Landlord, and only those improvements, which are consistent with the uses, stated in Section 3.01 above. Any improvements Tenant makes to the Property after the effective date of this Lease that are fixtures (e.g., those items affixed to the land by roots, or imbedded in the land, such as a building or permanently attached to such items by means of cement, plaster, nails, bolts or screws) shall be considered Landlord's, unless Landlord and Tenant agree otherwise in writing. Any improvements that Tenant makes to the Property after the effective date of this Lease that are not fixtures shall at Tenant's option prior to the end of the Lease, be considered Tenant's and may be removed by Tenant within sixty (60) days of the end of the Lease at Tenant's cost; provided however, that if Tenant does not remove these improvements within sixty (60) days of the end of the lease, the improvements shall become the property of Landlord.

**ARTICLE 5
UTILITIES, SAFE AND CLEAN CONDITIONS
AND APPLICATION OF INSURANCE PROCEEDS**

Section 5.01. Utilities, Safe and Clean Conditions and Application of Insurance Proceeds

Tenant shall pay or cause to be paid, and hold Landlord and the property of Landlord including the Premises free and harmless from, all charges for the furnishing of gas, water, electricity, telephone service, and other public utilities, including garbage and trash collection and custodial services and any other such services to the Premises during the term of this Lease. Payment for utilities used by Tenant at the Premises shall be the responsibility of Tenant.

Tenant shall control the utilities for the Premises. At all times during the term of this Lease Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and all improvements to the Premises in a safe and clean condition. Landlord shall have reasonable access to the Premises during business hours and emergencies for inspection of the Property. Any and all insurance proceeds that become payable at any time during the term of this Lease because of damage to or destruction of any improvements on the Premises shall be paid to Tenant and to Landlord, and applied by Landlord, toward the cost of repairing and restoring the damaged or destroyed improvements.

**ARTICLE 6
INDEMNITY AND INSURANCE**

Section 6.01. Indemnity Agreement.

Tenant agrees to indemnify, defend, and hold harmless Landlord for any and all claims for liability or other claims for damages or claims for compensation, including but not limited to, any and all claims of liability for personal injury, death, contract claims and the like arising out of the negligent acts of omission or commission or willful act of Tenant, its agents, representatives, assigns or employees which occur during the term of this Lease, including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

- a. The death or injury of any person, including any person who is an officer, employee, assign or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or by any person who is an employee or agent of Tenant, while that person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;

- b. The death or injury of any person, including any person who is an officer, employee, assign or agent of Tenant, or by reason of the damage to or destruction of any property, including property owned by Tenant or any person who is an employee or agent of Tenant, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises, or (2) some act or omission on the Premises of Tenant or any person in, on, or about the Premises with the permission and consent of Tenant;
- c. Any work performed on the Premises or materials furnished to the Premises at the instance or request of Tenant or any person or entity acting for or on behalf of Tenant; or
- d. Tenant's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Tenant or the Premises by any duly authorized governmental agency or political subdivision.

Tenant shall not be responsible for willful or negligent acts of omission or commission leading to personal injury or other liability to the extent caused by Landlord, its agents, representatives, employees or assigns during the term of this Lease. However, any such liability shall be assessed on a proportionate fault basis between Landlord and Tenant.

Landlord agrees to indemnify, defend, and hold harmless Tenant for any and all claims for liability or other claims for damages or claims for compensation, including but not limited to, any and all claims of liability for personal injury, death, contract claims and the like solely arising out of the negligent acts of omission or commission or willful act of Landlord, its agents, representatives, assigns or employees which occur during the term of this Lease, including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

- a. The death or injury of any person, including any person who is an officer, employee, assign or agent of Landlord or by reason of the damage to or destruction of any property, including property owned by Landlord or by any person who is an employee or agent of Landlord, while that person or property is in or on the Premises or in any way connected with the Premises or with any of the improvements or personal property on the Premises;
- b. The death or injury of any person, including any person who is an officer, employee, assign or agent of Landlord, or by reason of the damage to or destruction of any property, including property owned by Landlord or any person who is an employee or agent of Landlord, caused or allegedly caused by either (1) the condition of the Premises or some building or improvement on the Premises or (2) some act or omission on the Premises of Landlord or any or any person in, on, or about the Premises with the permission and consent of Landlord;

- c. Any work performed on the Premises or materials furnished to the Premises at the instance or request of Landlord or any person or entity acting for or on behalf of Landlord; or
- d. Landlord's failure to perform any provision of this Lease or to comply with any requirement of law or any requirement imposed on Landlord or the Premises by any duly authorized governmental agency or political subdivision, except as otherwise stated in this Lease.

Landlord shall not be responsible for willful or negligent acts of omission or commission leading to personal injury or other liability to the extent caused by Tenant, its agents, representatives, employees or assigns during the term of this Lease.

Section 6.02. Liability Insurance.

Tenant shall obtain a separate policy of insurance, subject to Landlord's reasonable approval, for the diesel and underground storage tanks, regardless of location, including, but not limited to, above and below ground tanks, product delivery systems, pumps, lines, dispensers, and all apparatus and appurtenant thereto, which shall operate prospectively only and which Tenant shall maintain for the duration of the Lease. Tenant shall pay all premiums; Landlord shall pay nothing for such policy or premiums or make any payments pursuant thereto.

- a. \$2,000,000 for injury to or death of one person and, subject to that limitation for the injury or death of one person, of not less than \$1,000,000 for injury to or death of two or more persons as a result of any one accident or incident; and
- b. \$2,000,000 for damages to or destruction of any property.

This insurance shall operate prospectively only. It shall not cover any events occurring prior to the effective date of this Lease, nor shall it affect the rights, duties and obligations of Landlord and Tenant with respect to any litigation concerning events occurring prior to the effective date of this Lease. This Lease cannot be used for the purpose of exonerating or establishing liability for either Landlord or Tenant for events occurring prior to the effective date of this Lease.

Section 6.03. Deposit of Insurance with Landlord.

Tenant shall, within 10 days after the execution of this Lease and promptly thereafter when any such policy is replaced, rewritten, or renewed, deliver to Landlord a true and correct copy of each insurance policy required by this Article or a certificate executed by the insurance company or companies or their authorized agent evidencing that policy or policies.

Section 6.04. Notice of Cancellation of Insurance.

Each insurance policy required under this Article shall contain a provision that it cannot be canceled for any reason unless at least 30 days prior written notice of the cancellation is given to Landlord in the manner required by this Lease for service of notices on Landlord by Tenant. Landlord, its officers, employees, agents and representatives, shall be listed as co-insureds on all insurance Tenant is required to maintain pursuant to this Lease.

Section 6.05. No Effect on Events, Obligations, Rights, Duties or Litigation Existing Prior to Effective Date of this Lease.

Nothing in this Lease shall affect the rights, duties and obligations of Landlord and Tenant regarding any events that occurred prior to the effective date of this Lease. No provision of this Lease shall affect the rights, duties and obligations of Landlord and Tenant with respect to any litigation concerning events occurring prior to the effective date of this Lease or be used for the purpose of exonerating or establishing liability for either Landlord or Tenant.

ARTICLE 7 ASSIGNMENT AND SUBLEASING

Section 7.01. No Assignment without Landlord's Consent.

Tenant may not assign this Lease or any interest in this Lease without the prior written consent of Landlord.

ARTICLE 8 DEFAULT AND REMEDIES

Section 8.01. Termination.

In the event of a Tenant default under this Lease, Landlord may terminate this Lease by sixty (60) days written notice to Tenant. All covenants and terms contained in this Lease are declared to be conditions to this Lease. Should Tenant fail to perform any covenant, condition, or term contained in this Lease and the default not be cured within sixty (60) business days after written notice of the default is served on Tenant by Landlord or Landlord's representative or assignee of Landlord, then Tenant shall be in default under this Lease.

ARTICLE 9 RECORDS

Section 9.01. Records.

Tenant shall maintain accurate, timely, and complete records sufficient to demonstrate it has complied with all its obligations under this Lease. The parties agree that the standards set forth in the audit report prepared by Dames & Moore, as modified by operation of statute or other regulation, regarding record maintenance on the fueling operations shall be sufficient to meet the requirements of this paragraph regarding the fueling operations. Tenant shall allow Landlord access to such records upon reasonable notice. Landlord shall have the right to perform an audit on such records.

ARTICLE 10 MISCELLANEOUS

Section 10.01. Notices to Landlord.

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Landlord shall be in writing and shall be deemed duly served and given when personally delivered or sent via certified mail to the City Clerk of the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037.

Section 10.02. Notices to Tenant.

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Lease or by law to be served on or given to Tenant by Landlord shall be in writing and shall be deemed duly served and given when personally delivered to Tenant, any managing employee of Tenant, or, in lieu of personal service, when deposited in the United States mail, first-class postage prepaid, addressed to Tenant at Morgan Hill Unified School District, 15600 Concord Circle, Morgan Hill, California 95037, Attn: Director of Fiscal Services.

Section 10.03. Governing Law and Interpretation.

This Lease, and all matters relating to this Lease, shall be governed by the laws of the State of California in force at the time any need for interpretation of this Lease or any decision or holding concerning this Lease arises. Unless the context otherwise requires, the term "day" shall refer to calendar days. Subtitles are for convenience only and shall not be words of limitation regarding any provision of this Lease. This Lease shall be deemed jointly drafted and reviewed by the parties. There shall be no presumption against the drafter of this Lease. Both parties shall be deemed to have participated in the drafting of this Lease.

Section 10.04. Binding on Heirs and Successors.

Subject to the restriction of assignment, this Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing in this section shall be construed as a consent by Landlord to any assignment of this Lease or any interest in the Lease by Tenant.

Section 10.05. Partial Invalidity.

If any provision of this Lease is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Lease shall remain in full force and effect unimpaired by the holding.

Section 10.06. Sole and Only Agreement.

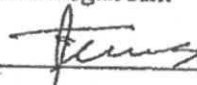
This Lease, together with exhibits hereto, constitutes the sole and only agreement between Landlord and Tenant respecting the Premises and the leasing of the Premises to Tenant and the Lease terms set forth in this Lease, and correctly sets forth the obligations of Landlord and Tenant to each other as of its effective date. Any agreements or representations respecting the Premises, their leasing to Tenant by Landlord, or any other matter discussed in this Lease not expressly set forth in this instrument are null and void.

EXECUTION

This Agreement is executed on this 22nd day of May, 2000, at Morgan Hill, California.

LANDLORD:

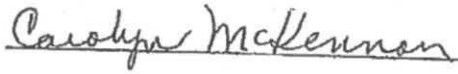
City of Morgan Hill

By: 

Its: City Manager

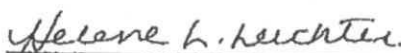
TENANT:

Morgan Hill Unified School District

By: 

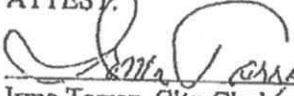
Its: Superintendent

APPROVED AS TO FORM:



Helene L. Leichter, Interim City Attorney

ATTEST:



Irma Torrez, City Clerk

Corporation Yard Lease draft, 5/22/00 adoption

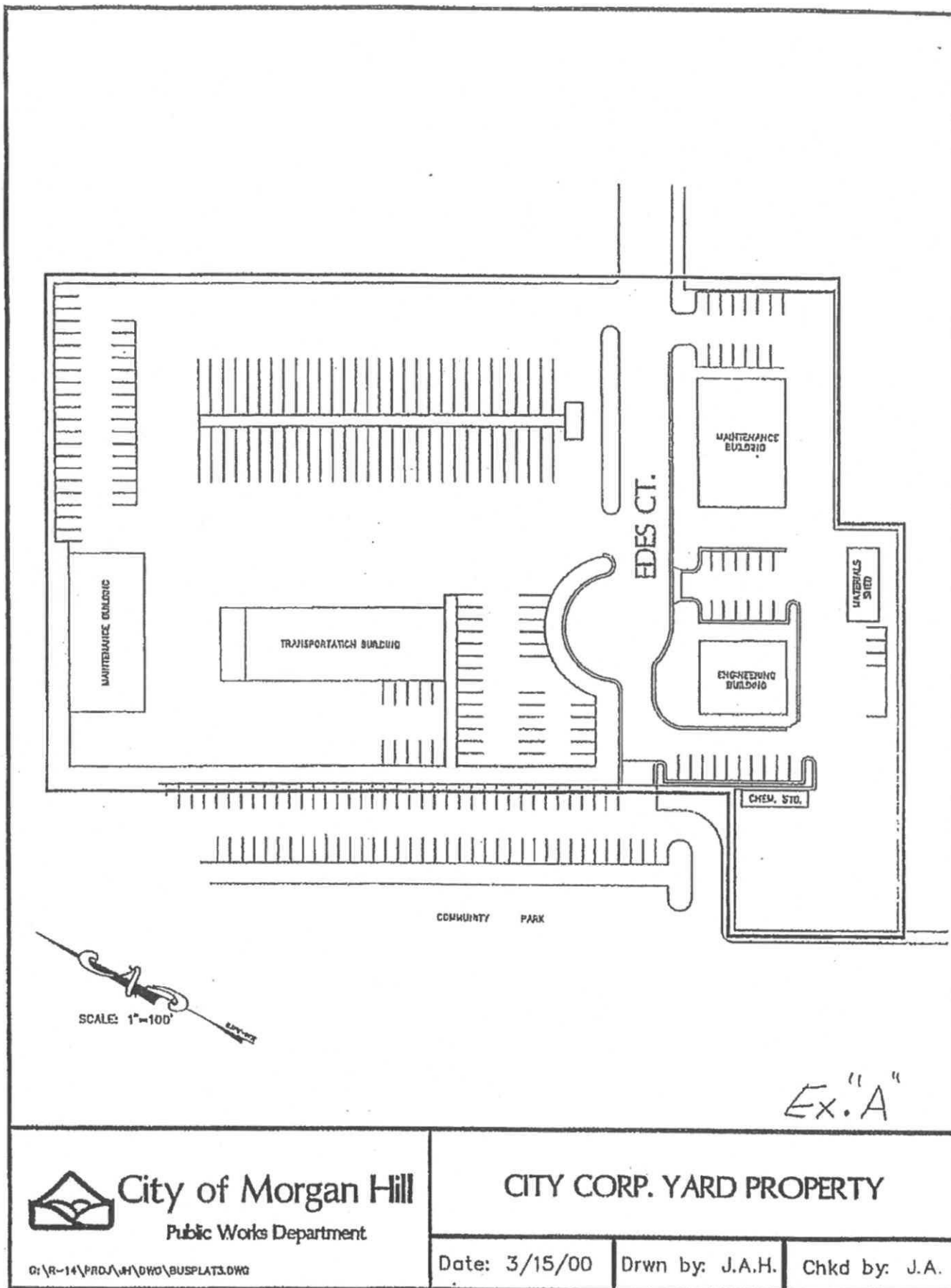


Exhibit "B"

Boundary Description to Accompany Lease Agreement

Being a portion of lots 8 and 9, as delineated upon that certain map entitled "Catherine Dunne Ranch Map No. 3", which map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, Book H of Maps at page 65, and more particularly described as follows:

BEGINNING at a point of common intersection of lots 8, 9, 14, and 15 of said Catherine Dunne Ranch Map No. 3; thence along the southwesterly line of said lot 8, North 24° 29' 00" West 121.00 feet; thence North 65° 31' 00" East 420.00 feet; thence South 24° 29' 00" East 352.00 feet; thence South 65° 31' 00" West 240.82 feet; thence southeasterly along the arc of a circular curve to the right but not tangent thereto, with a radius of 50.00 feet, through a central angle of 180° 00' 00" for an arc length of 157.08 feet; thence leaving said curve but not tangent thereto South 65° 31' 00" West 79.10 feet; thence North 24° 29' 00" West 231.00 feet returning to said point of beginning, and containing 3.30 acres of land, more or less.



Packet Pg. 180

EXHIBIT "C"

**REMOVAL OF MORGAN HILL UNIFIED SCHOOL DISTRICT
TRANSPORTATION PROPERTY**

June 16, 1999

The following preliminary list highlights equipment that would be removed from the Corporation Yard Maintenance Facility (CYMF) prior to the facility reverting to the City of Morgan Hill:

- Bus wash rack
- Tire racks and shelves
- Tire changer, bus coats hit 5000
- Tire changer auto FMC 76000
- Tire safety rack
- Wheel balance FMC 5800
- Tire spreader Branic (bus)
- Snap on wheel balance (bus)
- Stock tires
- All bus and automotive parts and supplies, belts, filters, etc.
- Bulk oil tank and barrels
- Upholstery and shelving
- Benches and tables
- Part washer
- Fork lift
- Hydraulic 30 ton jack
- Shop tool box
- Drill press
- Mohawk lift LMF-12 12,000 LB lift
- Sun Computer MCS4000 (scope)
- Sun Smog Inspector
- Bolts and nuts crib and shelves
- Sun Alt Tester #1600
- OTC 10 ton hydraulic shop press
- Rockwell lathe
- Hunter electronic balance
- Baldor grinder #f170 serial
- Baldor grinder #f1577
- Sioux Valve grinder #580
- Ammco auto brake lathe #7900
- Ammco bus brake lathe #5000
- J&T Ble drum lift
- Refrigerator, Signature frostless 22
- Water cooler Elkay
- Microwave ovens
- Book shelves
- Exhaust system
- Steam cleaner
- Four ship containers
- Security cameras
- Exhaust blowers

**BOARD OF EDUCATION
MORGAN HILL UNIFIED SCHOOL DISTRICT**

May 22, 2000

Topic:	Approve corporation yard lease for the transportation yard
Prepared by:	Bonnie Branco, Assistant Superintendent of Business Services
Presented by:	Bonnie Branco, Assistant Superintendent of Business Services
Type of Item:	Action

Over the course of the last several months, the Corporation Yard Commission has met to prepare and review a draft lease for the proposal of maintaining the transportation yard on the 3.42 acres where the yard currently resides. Although the District took action to extend the lease on March 31, 1990, the current lease has been extended by the District until the year May 7, 2002, the details of any extension were not enumerated.

The new draft lease specifies that the transportation department will remain on this property for an additional seven years commencing on the effective date this contract is approved by the Board. This seven-year lease may be extended annually on a year-to-year basis with the City and the District in agreement on the same terms and conditions stated in this lease agreement, or as jointly modified by both parties in writing. If the District chooses to terminate this agreement, notification must be given to the City of Morgan Hill by July 1 of its intent to terminate the lease effective January 1 of the following year.

The City of Morgan Hill City Council approved this lease on April 5, 2000. The final draft was presented for Board discussion at the Board meeting of May 8, 2000 and is returning for approval at the Board meeting of May 22, 2000. The contract will be dated to coincide with the Board adoption date.

RECOMMENDED ACTION:

Approve corporation yard lease for the transportation yard

ADDITIONAL INFORMATION:

Attached: Draft of corporation yard lease with exhibits

Available: Yes

BB:sr
000522 Corporation Yard lease action

Item Number 414

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
John McKay - Mayor Pro Tem
Gino Borgioli - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Wednesday, January 20, 2021 7:00 pm

Virtual Meeting

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

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:00 pm.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

Attendee Name	Title	Status	Arrived
Rich Constantine	Mayor	Remote	
John McKay	Mayor Pro Tem	Remote	
Gino Borgioli	Council Member	Remote	
Yvonne Martinez Beltran	Council Member	Remote	
Rene Spring	Council Member	Remote	

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

Minutes Acceptance: Minutes of Jan 20, 2021 7:00 PM (CONSENT CALENDAR)

PRESENTATIONS

YAC PRESENTATION- ASSET #32- PLANNING AND DECISION MAKING

RECOGNITIONS

2020 STEM Winners

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations and upcoming community events and meetings. She announced that Council Members received an invitation to the Cal Cities Peninsula Division Kickoff Member Meeting. That meeting is next week, more information is available on the League's website.

Upcoming Community Town Halls and Council Meetings:

- Thursday, January 21, 2021 Leadership Morgan Hill is hosting their first webinar, the topic is Growth in Morgan Hill. You can register for the webinar on Leadership Morgan Hill's website.
- Sunday, January 24, 2021 at 2:00 pm we will be partnering with the County on their Online Community Forum. This is going to be in Spanish to provide a COVID-19 update with an opportunity for questions. Gilroy will also be participating in this forum.
- Thursday January 28, 2021 we will have our next Community Town Hall at 5:30 pm. We are partnering with Gilroy and the County to provide a COVID-19 update and have an opportunity for questions
- Thursday, February 11, 2021 Community Town Hall, we will have the County come and provide a presentation on the history and future of Reid-Hillview and San Martin Airports.
- There will not be a Council Meeting on Wednesday, January 27, 2021.
- Friday, January 29, 2021 at 1:00 pm and Saturday, January 30, 2021 at 9:00 am Annual Goal Setting Workshop.
- Wednesday, February 3, 2021 Council Workshop at 5:00 pm on Last Mile Delivery Distribution followed by the Regular City Council Meeting at 7:00 pm.

She mentioned that on December 14, 2020 the Santa Clara County Board of Supervisors recognized individuals and organizations for courage, innovation, and outstanding community service during COVID-19. Service Medals were awarded to non-profits and service agencies, Supervisor's Medals were awarded to individuals, and President's Medals were awarded for exemplary service. There were many recognitions for individuals and organizations from Morgan Hill:

President's Medal

Jesse Winnen, EMS Battalion Chief, Morgan Hill Fire Department

Supervisor Mike Wasserman's Medal

Noel Weeks, Nurse, Morgan Hill Unified School District

Kristin Stonehouse, Human Resources Specialist, Morgan Hill Unified School District

Marcus Hernandez, Fire Marshall, Morgan Hill Fire Department

Service Medal

Morgan Hill Restaurant Group

Morgan Hill Community Foundation

The Edward Boss Prado Foundation

There was one additional medal from Supervisor Mike Wasserman, that recognition was specifically named with City Manager Christina Turner's name. However, she noted that the medal is absolutely the result of all of the tireless efforts that the Morgan Hill Team, staff and Council, dedicated to responding to COVID-19. She recommended that everyone look at the City Manager Supplement #1 which highlights all of the COVID actions taken to date by department.

Minutes Acceptance: Minutes of Jan 20, 2021 7:00 PM (CONSENT CALENDAR)

CITY MANAGER'S REPORT SUPPLEMENT 1CITY MANAGER'S REPORT SUPPLEMENT 2**CITY ATTORNEY'S REPORT**

City Attorney Donald Larkin had no report.

PUBLIC COMMENT**PUBLIC COMMENT SUPPLEMENT 1****PUBLIC COMMENT SUPPLEMENT 2****PUBLIC COMMENT SUPPLEMENT 3**

Public Comment opened at 7:34 pm. The following people were called to speak:

Diya Kandhra

Suman Ganapathy

Nikki Carpendale

Joe Baranowski

Milan Ong

Dave Matthews

Brian Faircloth

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

ADOPTION OF AGENDA**MOTION:**

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

CONSENT CALENDAR

Approving consent calendar items 3 through 5 and 7.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

Minutes Acceptance: Minutes of Jan 20, 2021 7:00 PM (CONSENT CALENDAR)

1. **PULLED FOR DISCUSSION**
2. **PULLED FOR DISCUSSION**
3. **APPROVE CITY POSITION AND COMMUNICATION REGARDING VTA'S PROPOSED MEASURE B FUNDING REALIGNMENT, VALLEY WATER'S FUNDING OF PHASE 2A OF UPPER LLAGAS CREEK FLOOD PROTECTION PROJECT AND FEDERAL STIMULUS SUPPORT FOR STATE AND LOCAL GOVERNMENTS**

Recommendation:

1. Ratify City position and accept City communication sent to Santa Clara County Board of Supervisors regarding opposition of Valley Transportation Authority's (VTA) proposed 2016 Measure B 10-year outlook base scenario and funding realignment;
2. Authorize City Manager to communicate the City's position to Valley Transportation Authority Board when the matter is placed on its agenda;
3. Ratify City position and accept City communication sent to Valley Water in support of funding Phase 2A of the Upper Llagas Flood Control Protection Project; and
4. Ratify City position and accept City communication sent to Federal legislative representatives in support for economic stimulus for state and local governments.

4. **APPROVE AGREEMENT WITH BLACK & VEATCH FOR RISK AND RESILIENCY ASSESSMENT (RRA) AND EMERGENCY RESPONSE PLAN (ERP) SERVICES**

Recommendation:

Approve and authorize the City Manager to execute and administer an agreement with Black & Veatch Corporation in the amount of \$143,880 for the development of a Risk and Resilience Assessment and Emergency Response Plan.

5. **APPROVE FIRST AMENDMENT TO AGREEMENT WITH SANTA CLARA COUNTY FOR ISOLATION QUARANTINE PROGRAM**

Recommendation:

Approve the First Amendment to the agreement between the County of Santa Clara and the City of Morgan Hill for the Countywide Isolation and Quarantine Support Program to extend the term through June 30, 2021.

6. **PULLED FOR DISCUSSION**
7. **APPROVE THE DECEMBER 16, 2020 MEETING MINUTES**

Recommendation:

Approve Minutes.

ITEMS PULLED FOR DISCUSSION

1. **ACCEPT VTA COMMUNITY BASED TRANSPORTATION PLAN FOR MORGAN HILL**

Recommendation:

Accept the Morgan Hill Community-Based Transportation Plan (CBTP).

Public Services Director Chris Ghione provided a report.

Public Comment opened at 8:05 pm.

There being no requests to speak, public comment closed.

MOTION:

Approving the recommended action and directing staff to work with VTA to add language to the report on east-west transportation improvement opportunities and support the disadvantaged area.

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Gino Borgioli, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

2. ADOPT ORDINANCE 2319 MISC CODE AMENDMENTS

Recommendation:

Waive the reading, adopt Ordinance No. 2319, New Series, and declare that said title, which appears on the agenda, shall be determined to have been read by title and further reading waived.

Public Comment opened at 8:13 pm.

Joe Baranowski was called to speak.

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

MOTION:

Approving the recommended action and directing staff to review language in Code Section 18.115.010 at the next Code Cleanup.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

6. AB 1763 -AFFORDABLE HOUSING-DENSITY BONUS CONCESSION REQUEST

Recommendation:

Adopt resolution approving the request for the following affordable housing concessions, pursuant to Government Code:

1. Increase in floor area ratio;
2. Reduction in on-site parking;
3. Reduction in common open space; and
4. Increase in building height.

Principal Planner Gina Paolini provided a report.

Public Comment opened at 8:29 pm.

There being no requests to speak, public comment closed.

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Mayor Pro Tem
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

PUBLIC HEARING

8. ADOPT RESOLUTION OF NECESSITY DETERMINING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF REAL PROPERTY FROM GARCIA FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

1. Adopt Resolution of Necessity determining that the public interest and necessity require the acquisition by eminent domain of real property from Roche and Glenda Garcia as identified in Exhibit A for the Hale Avenue Extension Project; and
2. Authorize the City Attorney to file suit in eminent domain with respect to said property.

Public Services Director Chris Ghione provided a report.

Public Hearing opened at 9:12 pm. The following people were called to speak:
Roche Garcia

Due to audio issues of the speaker, the meeting recessed at 9:16 pm and reconvened at 9:20 pm.

The public hearing resumed with the following speakers:

Roche Garcia

Joe Baranowski

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

MOTION:

Approving the recommended actions.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Gino Borgioli, Council Member
SECONDER:	John McKay, Mayor Pro Tem
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

OTHER BUSINESS

9. RECEIVE MONTHLY BUDGET UPDATE, DECEMBER 2020 FINANCIAL AND INVESTMENT REPORTS, AND CITY MANAGER AUTHORITY REPORT

Recommendation:

Accept and file report.

Finance Director Dat Nguyen provided the report and presentation.

Public Comment opened at 10:08 pm.

There being no requests to speak, public comment closed.

RESULT:	ACCEPT REPORT
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10. REVIEW AND APPROVE CITY COUNCIL APPOINTMENTS TO OUTSIDE AGENCIES

Recommendation:

1. Review, discuss, and approve the City Council appointments to Outside Agencies as necessary; and
2. Direct the City Clerk to notify the appropriate agencies of the updated assignments and update the Form 806 as necessary.

City Clerk Michelle Bigelow provided the report.

Public Comment opened at 10:47 pm.
There being no requests to speak, public comment closed.

MOTION:

Approving the recommended action.

RESULT:	DIRECTED [UNANIMOUS]
MOVER:	Gino Borgioli, Council Member
SECONDER:	John McKay, Mayor Pro Tem
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Martinez Beltran asked that the Climate Action Efforts be included in the Goal Setting Workshop and that a statement come before the Council talking about the January 6, 2021 assault on our Capitol and the commitment of equity, diversity, and open democratic process and practices.

Council Member Borgioli requested a discussion and action plan around bicycle speeds on walking paths and a discussion on the zoning code

ADJOURNMENT

There being no further business, the meeting adjourned at 10:52 pm.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
John McKay - Mayor Pro Tem
Gino Borgioli - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Friday, January 29, 2021 1:00 pm

Virtual Meeting

CITY COUNCIL ANNUAL GOAL SETTING WORKSHOP

A Special Meeting of the City Council was called Friday, January 29, 2021 at 1:00 pm for the purpose of conducting the Annual Goal Setting Workshop and Saturday, January 30, 2021 at 9:00 am for the continuation of the Annual Goal Setting Workshop.

CALL TO ORDER

Mayor Constantine called the workshop to order on Friday at 1:00 pm.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

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

DECLARATION OF POSTING OF AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

Minutes Acceptance: Minutes of Jan 29, 2021 1:00 PM (CONSENT CALENDAR)

PUBLIC COMMENT

Public comment opened at 1:02 pm.

Peter Mandel was called to speak.

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

ADOPTION OF AGENDA

MOTION

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	John McKay, Mayor Pro Tem
SECONDER:	Rene Spring, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

GOAL SETTING WORKSHOP

1. CITY COUNCIL GOAL SETTING WORKSHOP

Recommendation:

1. Review 2020 Accomplishments;
2. Review and discuss City Council Norms, Policies, Procedures, Protocols, and Legal and Administrative Considerations;
3. Review and discuss 2020 - 2021 Sustainable Morgan Hill, including Vision, Ongoing Priorities, Strategic Priorities, and Staff Work Plan;
4. Receive updates on: Budget, Climate Action, Fire, Police, Development Projects, and Communications and Engagement;
5. Discuss upcoming redistricting process; and
6. Review Council Follow-up/Future Business Items.

City Manager Christina Turner, along with facilitator Shawn Spano facilitated the City Council Annual Goal Setting Workshop.

The City Council participated in team building, reviewed the purpose of the workshop and the 2020 accomplishments.

Public comment opened at 1:57 pm.

Nick Gaich was called to speak.

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

The City Council reviewed and discussed its norms, policies, and procedures.

The workshop recessed at 2:45 pm and reconvened at 2:55 pm.

The City Council reviewed and discussed its Sustainable Morgan Hill document.

The City Council received a presentation regarding the City Council District re-districting process from Doug Johnson with NDC.

Public comment opened at 4:58 pm. The following people were called to speak:

Armando Benavides

Nick Gaich

Joe Baranowski

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

ADJOURNMENT TO SATURDAY, JANUARY 30, 2021 AT 9:00 AM

The workshop adjourned at 5:05 pm to Saturday, January 30, 2021 at 9:00 am.

SATURDAY, JANUARY 30, 2021 9:00 AM

CALL TO ORDER

Mayor Constantine called the continued workshop to order on Saturday at 9:00 am.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

All Members of the Council were present.

GOAL SETTING WORKSHOP CONTINUED

Continuation of the January 29, 2021 City Council Goal Setting Workshop.

City Manager Christina Turner, along with facilitator Shawn Spano, continued facilitation of the Goal Setting Workshop.

Public comment opened at 9:01 am.

There being no requests to speak, public comment closed.

The City Council heard from City teammates and discussed Fiscal Sustainability.

Public comment opened at 10:09 am.

Joe Baranowski was called to speak.

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

The meeting recessed at 10:11 am and reconvened at 10:21 am.

The City Council discussed Climate Action.

Public comment opened at 10:59 am. The following people were called to speak:

Diya Kandhra and Jarod Lebovitz

Dashiell Leeds

Linda Hutchins-Knowles

Josie Gaillard

Milan Ong

Cynthia Maciel

Emma Emata

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

The City Council heard from the City Attorney about and discussed Legal and Administrative Considerations.

Public comment opened at 12:21 pm.

Joe Baranowski was called to speak.

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

The workshop recessed for lunch at 12:23 pm and reconvened at 1:06 pm.

The City Council had a discussion regarding campaign contribution limits.

The City Council received updates regarding Fire Services and Police Services.

The workshop recessed at 2:55 pm and reconvened at 3:00 pm.

Public comment opened at 3:05 pm

Joe Baranowski was called to speak.

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

The City Council received an update regarding Communications and Engagement as well as Social Media Best Practices.

Public comment opened at 4:08 pm. The following people were called to speak:

Doug Muirhead

Joe Baranowski

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

City Manager Christina Turner shared what's on the horizon and the Council wrapped up the workshop.

Public comment opened at 4:36 pm.

Joe Baranowski was called to speak.

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

ADJOURNMENT

There being no further business the workshop adjourned at 4:42 pm.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk

DRAFT



Meeting Minutes City Council

Rich Constantine - Mayor
John McKay - Mayor Pro Tem
Gino Borgioli - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Tuesday, February 9, 2021 5:30 pm

Virtual Meeting

SPECIAL MEETING

A Special Meeting of the City Council was called at 5:30 pm for the purpose of conducting a closed session.

CALL TO ORDER

Mayor Constantine called the meeting to order at 5:30 pm.

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow called the roll.

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

DECLARATION OF POSTING OF AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

Minutes Acceptance: Minutes of Feb 9, 2021 5:30 PM (CONSENT CALENDAR)

PUBLIC COMMENT

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

Public comment opened at 5:31 pm.

There being no requests to speak, public comment closed.

CLOSED SESSION

City Attorney Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

Public comment opened at 5:33 pm.

Joe Baranowski was called to speak.

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

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 5:36 pm.

CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION (Govt. Code 54956.9(d)(1))

Name of case: City of Morgan Hill v. Bushey (Case No. 16-CV-292595)

CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION:

Significant exposure to litigation pursuant to § 54956.9(b)

Number of cases unknown

ADJOURNMENT

There being no further business, the meeting adjourned at 7:55 pm. Should there be reportable action from the closed session items, it will be shared at the next regular City Council meeting under the City Attorney's report.

MINUTES PREPARED BY:

City Clerk Michelle Bigelow



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

PREPARED BY: Joey Dinh, Associate Planner
APPROVED BY: City Manager

REVIEW PLANNING COMMISSION'S DECISION ON CONDITIONAL USE PERMIT (UP2020-0004) MAST - TITAN SPORTS ACADEMY/KINETIC PERFORMANCE INSTITUTE TO ALLOW INDOOR COMMERCIAL RECREATION FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 817-02-063 LOCATED AT 195 MAST STREET.

RECOMMENDATION(S)

1. Open/close public hearing; and
2. Adopt resolution:
 - a. reaffirming the decision of the Planning Commission to deny the Conditional Use Permit.
 - OR
 - b. making the necessary findings to support a Conditional Use Permit.
3. Direct staff to return to the City Council with Zoning Code changes removing conditional use conflicts with industrial preservation.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land
Supporting Our Youth
Seniors
and Entire Community

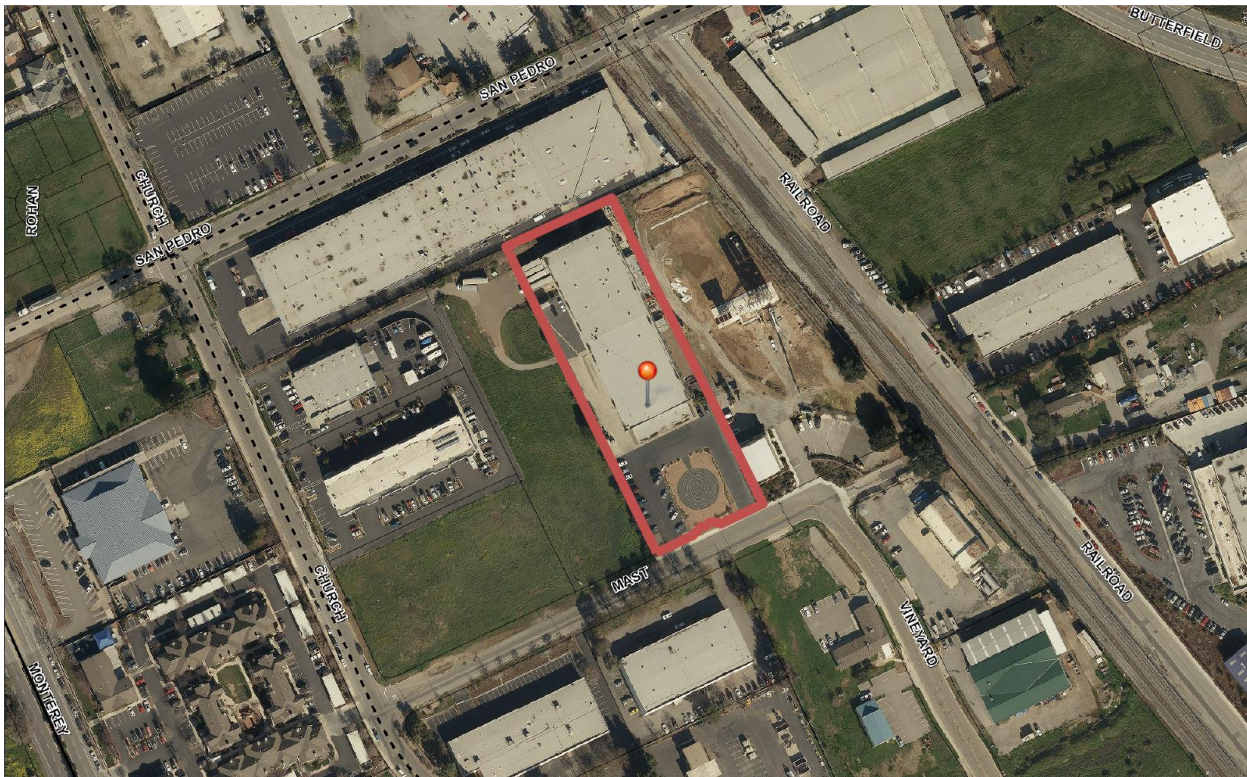
2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Economic Blueprint
Morgan Hill 2035 General Plan

LOCATION MAP:



POLICY CONSIDERATIONS:

Does the proposed project comply with the findings for a Conditional Use Permit (CUP)?

Does the project comply with the City's General Plan policies for industrial preservation?

- **Policy CNF-17.1 Industrial Land Conversion.** Discourage the conversion of property designated for industrial to non-industrial uses.
- **Policy CNF-17.2 Industrial Land Use Conflicts.** Ensure proposed new uses adjacent to industrial uses do not introduce land use conflicts that would adversely impact industrial activities.
- **Policy CNF-17.3 Buffer between Industrial and Incompatible Uses.** Ensure that all industrial uses are well sited and buffered from incompatible uses; buffers may include offices adjacent to sensitive uses, landscaping, berms, etc.

Does the project comply with the City's General Plan policies for business retention?

- **Policy ED-3.1 Business Retention, Expansion, and Attraction Efforts.** Encourage retention and expansion of existing businesses and attract new businesses.
- **Policy ED-3.7 Flexible Business District Zoning.** Maintain flexibility within industrial, business park, and office zoning districts that support modern industry uses and that are integrated appropriately with other land uses and attract a broad range of users.

Does the proposed project comply with the City's General Plan policies for supporting youth development?

- **Policy HC-2.6 Healthy Kids.** Support the implementation of the 41 Developmental Assets identified as crucial to supporting healthy youth development.

REPORT NARRATIVE:

Calls for Review

In accordance with Section 18.112.040 (Calls for Review), the City Council may call for a review of any decision of the Community Development Director or Planning Commission. The Planning Commission denied a Conditional Use Permit (UP2020-0004) to allow for indoor commercial recreation within an existing industrial building for a youth gymnastics academy and youth baseball athletic training facility for property located at 195 Mast Street. The City Council has initiated a call for review of the Planning Commission decision. The Planning Commission decision is suspended until a final decision is rendered by the City Council. The City Council may affirm, affirm with conditions, or reverse the Planning Commission decision.

Planning Commission Actions

The Planning Commission discussed the project and received public testimony at its January 12, 2021 Planning Commission meeting (Attachment 1 and 2). Issues raised during the hearing included:

- a. Consistency with the City's industrial preservation General Plan policies,
- b. Potential impacts to existing and future industrial users with the introduction of sensitive receptors into the industrial area,
- c. Parking impacts and,
- d. Loss of limited General (heavy) industrial inventory

The Planning Commission deliberated the desire to support two existing businesses, Titan and Kinetic, and those that support youth development while balancing the City's goals to preserve industrial lands for job-generating uses. An initial motion was made to approve the CUP, however, the motion failed because a majority of the Commission was unable to find the proposed industrial zoned property to be an acceptable location for the proposed uses. After hearing public testimony and discussing the previously identified issues, the Planning Commission adopted Resolution No. 21-02 (Attachment 3), denying the Conditional Use Permit. As with all forms of appeals, this staff report is written from and to carry forward the perspective of the decision-making authority. The Planning Commission requested staff come back immediately with a review of the Zoning Code to evaluate the Conditional Use Permits in Industrial Zones.

Conditional Use Permit Findings

A Conditional Use Permit is required for land uses that are generally appropriate within a district, but potentially undesirable on a particular parcel or in large numbers. A Conditional Use Permit is a discretionary action that enables the Planning Commission or City Council to ensure that a proposed use is consistent with the General Plan and will not create negative impacts to adjacent properties or the general public. The following findings are necessary for approval of the Conditional Use Permit:

a. **The proposed use is allowed in the applicable district.**

The project site is located within the General Industrial (IG) zoning district. The purpose of the IG zoning district is to provide areas for general industrial, manufacturing, wholesale and service uses needed by the city and region subject to regulations necessary to protect other nearby uses from hazards and noise and other disturbances. Pursuant to Section 18.26.020.A (Permitted Land Uses) of the Morgan Hill Municipal Code, commercial recreation-indoor uses would be allowed within the IG zone district with a Conditional Use Permit.

b. **The proposed use is consistent with the general plan, zoning code, and any applicable specific plan or area plan adopted by the City Council.**

Commercial uses are designated as an allowed use within industrial designated areas of the General Plan. Although there are policies in the General Plan that discourage the conversion of industrial lands for non-industrial uses, it is important to note that these are existing businesses within the City of Morgan Hill looking to relocate from one industrial property to another. There are also General Plan policies that encourage supporting and retaining existing businesses. Lastly, these businesses provide a safe and supportive environment for youth development, which meets several of the 41 Development Assets that the General Plan has deemed a priority.

c. **The site is suitable and adequate for the proposed use.**

Indoor commercial recreation is allowed in the IG zone district with an approved Conditional Use Permit. The industrial building is approximately 45,000 square feet which has been divided into individual tenant suites. No expansion of the industrial building is required for the proposed uses. Onsite parking includes 69 parking spaces for all uses at the site. The surrounding area has little traffic with street parking available. The parking lot would be restriped with approval of the Conditional Use Permit.

d. **The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the property.**

The proposed uses would be contained within an existing industrial tenant building. Although this is an industrial area, most of the surrounding businesses reduce operations or close by 6 pm. Most of the training sessions or classes are scheduled in the evening and therefore there will be minimized interaction between other uses at the site.

e. **The proposed use will not be detrimental to the public health, safety, and welfare.**

The proposed indoor commercial recreation will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or

impair the utility or value of property of other persons located in the vicinity of the site. Most of the classes will be held in the evening when most of the surrounding businesses have closed. The youth athletic facility will not utilize hazardous materials, equipment, or processes. The proposed uses would not impact the general character of the surrounding area at this time. However, there is concern that future industrial users will require additional CEQA analysis and wider notification for Bay Area Air Quality Management District (BAAQMD) if the use employs chemicals or processes that require BAAQMD approval. Not all potential industrial users would be affected but some may have to meet a broader notification requirement due to the proximity of the gym and presence of children.

It is important to note that the adjacent property owner Star Concrete submitted a comment letter (Attachment 4) and expressed concerns during the Planning Commission meeting against any outdoor use by the two youth athletic development businesses. There were no outdoor activities such as outdoor training indicated in either operational statements by Titan or Kinetic. When the Planning Commission questioned the applicants, Kinetic stated typical operations are indoor, however because of the COVID-19 pandemic, outdoor activities were temporarily explored. The property owner for Star Concrete expressed interest in conditioning the project operations to remain solely indoors if the Conditional Use Permit were approved.

- f. **The proposed use would not have a substantial adverse effect in traffic circulation and on the planned capacity of the street system.**

Classes and training sessions are typically held during the evening hours, when other uses are not operating. The expected increase in traffic will be minimal and will not have a significant effect on the planned capacity of the street system.

- g. **The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.**

The property is located within City limits and the City's Urban Service Area. Water and sewer are adequately provided by the City, while electricity will be provided by PG&E.

General Plan

The site has an Industrial General Plan designation in the Morgan Hill General Plan. Additionally, the site is located within Subarea 4 which is considered an Established Employment Area, as identified in the Morgan Hill 2035 General Plan. As an Established Employment Area, it contains heavier industrial uses and provides future opportunities for a diverse range of industrial uses, including manufacturing, materials processing, and indoor storage. Because of this, policies were adopted within the General Plan discouraging the conversion of industrial land to non-industrial uses:

Policy CNF-17.1 Industrial Land Conversion. Discourage the conversion of property designated for industrial to non-industrial uses.

Policy CNF-17.2 Industrial Land Use Conflicts. Ensure proposed new uses adjacent to industrial uses do not introduce land use conflicts that would adversely impact industrial activities.

Policy CNF-17.3 Buffer between Industrial and Incompatible Uses. Ensure that all industrial uses are well sited and buffered from incompatible uses; buffers may include offices adjacent to sensitive uses, landscaping, berms, etc.

Both Titan and Kinetic are non-industrial users incompatible with surrounding industrial uses, especially in a General (heavy) industrial zone. While recreational services support retail and tourism efforts, and it is a use that could be considered with a Conditional Use Permit in a General Industrial (IG) zone district, this use does not align with the General Plan policies and is not consistent with the City's Economic Blueprint, Item No. 1. Preservation of Industrial Land. At the September 22, 2020 Planning Commission workshop on industrial preservation, the following policy recommendations were discussed as part of a potential industrial conservation policy:

- Hold the line. Prioritize wanted uses such as OEM
- Use It! Preserve industrial/employment lands to use them for industrial purposes
- Limit discretion of CUP use to employment-generating uses

Additionally, according to Colliers, a leading provider of commercial real estate services and information, in the third quarter of 2020 the vacancy rate of warehouse space in Morgan Hill is 3.2 percent. For R&D uses the vacancy rate is 8.4 percent. In the last 60 days the City has received three direct inquiries by R&D/manufacturing firms looking for available space in Morgan Hill and struggling to find a match. It is believed that the site amenities and improvements that include 20-foot clear heights, dock doors, high speed access to fiber in the IG zoning district would be better suited for an industrial use.

Titan is an existing business in Morgan Hill, previously located within an existing 13,200 square foot industrial building within the Morgan Hill Business Ranch Industrial Park area. Both Titan and Kinetic are existing businesses that serve mostly the local community by supporting youth athletic development. The General Plan Policy HC 2.6 supports youth development:

Policy HC-2.6 Healthy Kids. Support the implementation of the 41 Developmental Assets identified as crucial to supporting healthy youth development.

Providing and supporting youth development programs has always been a priority for the City. Both businesses provide a safe environment and supportive service to the youth. This is consistent with several of the 41 Development Assets created by the Search Institute and sponsored by youth advocate groups such as Y.M.C.A., that the City has committed to supporting such as:

3. Other Adult Relationships. *Young person receives support from three or more non-parent adults.*

10. Safety. *Young person feels safe at home, school, and in the neighborhood.*

18. Youth Programs. *Young person spends three or more hours per week in sports, clubs, or organizations at school and/or in the community.*

Gymnastic operations require a specific amount of clear wide-open space and high ceilings with minimal columns in between. These spatial requirements are more typical of industrial spaces compared to retail ones. According to the applicant, there were few to none retail spaces that would meet the spatial requirements necessary for a youth gymnastics gym to safely operate within the space. If the Conditional Use Permit is denied, then the gyms would be forced to locate outside City limits, forcing approximately 500 youth athletes to travel out of town.

Conclusion

The General Plan has policies that can support denial or approval of the proposed Conditional Use Permit. The project is consistent with General Plan policies promoting the retention of existing businesses and supporting youth development programs. However, the project does not align with industrial preservation policies of the General Plan.

While the Economic Blueprint has strong language on supporting goals associated with preserving industrial lands for innovation and advanced manufacturing, the Blueprint also highlighted the role sports recreation can have on supporting the City's retail nodes. As widely seen in other communities, indoor sports recreation has a lot of synergies to adjacent uses in retail centers and in some cases are the new anchors to aging retail locations.

To support the Economic Blueprint and better align retail uses, staff held a workshop with the Planning Commission on November 28, 2017 to discuss augmenting uses in the Zoning code to better support Indoor Recreation. Staff proposed to increase the amount of the then permitted indoor recreation uses from 3,000 sq ft to 15,000 sq ft in all of the commercial zoning districts. The change was adopted which specifically supported the growing interest in indoor recreation and provide a path forward for recreation uses in Morgan Hill instead of using industrial buildings for such uses.

Currently there are only two commercial spaces that are vacant over 15,000 sq ft in Morgan Hill. The applicant stated at Planning Commission they reviewed and toured the spaces and they do not have the necessary clear height or column width to support their operations and thus have exhausted their ability to locate into commercial space. It should be noted that since the Conditional Use Permits run with the land, subsequent gymnastics facilities could establish and could continue to operate at this location if a Conditional Use Permit is approved. If the City Council chooses to overturn the Planning Commission decision, a resolution for approval of the conditional use permit has been prepared (Attachment 6). A letter of appeal (Attachment 7) to the Planning Commission

from the business owner, a letter of support (Attachment 8) to Planning Commission of the conditional use permit, as well as, letters to the City Council (Attachment 9) in opposition, and letters to the City Council (Attachment 10) in support are also attached.

COMMUNITY ENGAGEMENT: Inform and Involve

The Planning Commission denied the project at its meeting on January 12, 2021. A Call-for-Review hearing was publicly noticed (mailing to property owners within 300 feet of the project and newspaper legal noticing) for the minimum 10-day period. A sign was also posted on the site for the minimum 10-day period.

ALTERNATIVE ACTIONS:

The City Council could decide to overturn the Planning Commission's decision to deny the project and approve the Conditional Use Permit UP2020-0004: Mast – Titan Sports Academy/Kinetic Performance Institute.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Planning Commission denied the project at the January 12, 2021 meeting (4-3), with Commissioners Habib, Mueller, and Tanda voting no, against the motion to deny the Conditional Use Permit. The Commissioners voting no were primarily concerned with supporting an existing and local business that supports youth development in the community.

FISCAL AND RESOURCE IMPACT:

The City Development Review functions are cost recovery, with fees collected from applicants to cover cost of services. These fees have been collected from the applicant.

CEQA (California Environmental Quality Act):

This action is categorically exempt by Section 15301 of the California Environmental Quality Act. There would be no expansion of the existing building, all improvements would be contained within the building (except for restriping the parking lot) to accommodate the proposed uses, therefore, no further environmental review is warranted. A Notice of Exemption has been prepared and will be posted if the Conditional Use Permit is approved.

LINKS/ATTACHMENTS:

1. January 12, 2021 Planning Commission Meeting Minutes (weblink)
2. January 12, 2021 Planning Commission Staff Report & Attachments (weblink)
3. Planning Commission Resolution No. 21-02 (Denial)
4. UP2020-0004 Objection-StarConcrete
5. CC Resolution Affirming PC Decision (Denial)
6. CC Resolution Overturning PC Decision (Approval)
7. Applicant Letter of Appeal
8. Letter to PC in Support of UP2020-0004
9. Letters of Opposition
10. Letters of Support

RESOLUTION NO. 21-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MORGAN HILL DENYING A CONDITIONAL USE PERMIT TO ALLOW INDOOR COMMERCIAL RECREATION FOR A YOUTH GYMNASTICS GYM AND ALSO YOUTH ATHLETIC BASEBALL TRAINING LOCATED NORTH OF MAST STREET AND WEST OF VINEYARD BOULEVARD AT 195 MAST STREET (APN 817-02-063)

WHEREAS, on August 24, 2020, Titan Sports Academy and Kinetic Performance Institute submitted an application for a Conditional Use Permit to allow for indoor commercial recreation at an existing industrial building; and

WHEREAS, such request was considered by the Planning Commission at their regular meeting of January 12, 2021; and

WHEREAS, the Development Services Director has determined that the Mast-Titan Sports Academy and Kinetic Performance Institute project proposed is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 (Existing Facilities); and

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

NOW, THEREFORE, THE MORGAN HILL PLANNING COMMISSION DOES RESOLVE AS FOLLOWS:

SECTION 1. The Conditional Use Permit for Titan Sports Academy and Kinetic Performance Institute is denied based upon the following findings:

a. The proposed use is allowed in the applicable district.

While the use is allowed with a Conditional Use Permit, it is undesirable on this particular parcel for the reasons identified below. The project site is located within the General Industrial (IG) zoning district. Pursuant to Section 18.26.020.A (Permitted Land Uses) of the Morgan Hill Municipal Code, commercial recreation-indoor uses could be allowed with a Conditional Use Permit. However, it has been determined that the proposed non-industrial uses would not align with the General Plan industrial preservation policies and therefore, a Conditional Use Permit could not be approved for the site.

b. The proposed use is not consistent with the general plan, zoning code, and any applicable specific plan or area plan adopted by the City Council.

Although a Conditional Use Permit could be approved for the non-industrial uses, it has been determined that the Conditional Use Permit could not be approved because the proposed uses do not align with the General Plan industrial preservation policies.

c. The site is not suitable and adequate for the proposed use.

The site is not suitable for the proposed uses because it would be a conversion of industrial land for a non-industrial use.

d. The location, size, design, and operating characteristics of the proposed use will not be compatible with the existing and future land uses in the vicinity of the property.

The proposed non-industrial uses would not be compatible with other industrial uses, therefore, a Conditional Use Permit could not be approved for the site. The proposed use creates potential negative impacts to adjacent properties.

e. The proposed use will not be detrimental to the public health, safety, and welfare.

The proposed indoor commercial recreation will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area at this time.

THE PLANNING COMMISSION HAS DENIED CONDITIONAL USE PERMIT ON THE 12th DAY OF JANUARY 2021, AT A REGULAR MEETING OF THE PLANNING COMMISSION BY THE FOLLOWING VOTE:

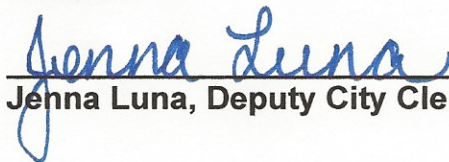
AYES: COMMISSIONERS: KUMAR, GONZALEZ-ESCOTO, DOWNEY, MUNOZ-MORRIS

NOES: COMMISSIONERS: HABIB, MUELLER, TANDA

ABSTAIN: COMMISSIONERS: NONE

ABSENT: COMMISSIONERS: NONE

ATTEST:


Jenna Luna, Deputy City Clerk

APPROVED:


Mohammad Habib, Chair

Michael S. Walsh,
General Counsel
Cell (408) 655-7903
mikewalsh@starconcrete.com



6475 Automall Parkway
Gilroy, CA 95020
Phone (408) 842-1427
Fax (408) 840-2739

January 11, 2021

Planning Commission
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Project Planner: Joey Dinh

Project No. UP2020-0004
Mast-Titan Sports Kinetic Performance Institute
APN: 817-02-063

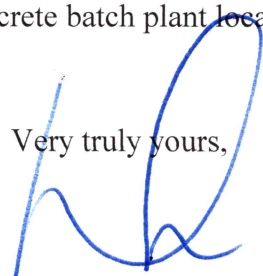
Please be advised that the owner of 199 Mast Street, Gerald R. Blatt, and his tenant, Sandman, Inc., dba Star Concrete, object to the issuance of the conditional use permit proposed for the above described project.

Applicant is seeking a conditional use permit to allow for indoor commercial recreation within an existing industrial building together with a reduction in the requirements for on-site parking. Applicant states that this project is categorically exempt from CEQA because it is an existing facility.

The subject property is zoned industrial. It's existing use is not recreation. As such, it is not categorically exempt from CEQA as stated by Applicant. Applicant proposes to use the project site for commercial recreation, yet it has installed outdoor turf on the east side of its parcel, between itself and the concrete batch plant owned/operated by Blatt/Star Concrete. This outdoor use is clearly not an indoor use and it is a bad idea to train young gymnastics and athletes on a strip of land contiguous to a concrete batch plant.

Gerald R. Blatt and Star Concrete ask that the Planning Commission, if it feels that the issuance of this conditional use permit is appropriate under the circumstances and that it is exempt from CEQA, to actually limit the Project's use to the interior of the Project building and to prohibit youth training/activities on the strip of land between the Project and the concrete batch plant located at 199 Mast Street.

Very truly yours,


Michael S. Walsh

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REAFFIRMING THE DENIAL OF THE CONDITIONAL USE PERMIT UP2020-0004: MAST-TITAN SPORTS ACADEMY/KINETIC PERFORMANCE INSTITUTE TO ALLOW INDOOR COMMERCIAL RECREATION FOR A YOUTH GYMNASTICS GYM AND ALSO YOUTH ATHLETIC BASEBALL TRAINING LOCATED NORTH OF MAST STREET AND WEST OF VINEYARDYARD BOULEVARD AT 195 MAST STREET (APN 817-02-063)

WHEREAS, such request was considered by the Planning Commission at its regular meeting of January 12, 2021 Planning Commission meeting, at which time the Planning Commission denied Conditional Use Permit UP2020-0004: Mast-Titan Sports Academy/Kinetic Performance Institute; and

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

WHEREAS, the City Council, called for review of the Planning Commission's decision on the Application to the City Council pursuant to the applicable provisions of the Morgan Hill Municipal Code; and

WHEREAS, at the time and place noticed for a hearing on the appeal, the City Council of the City of Morgan Hill conducted a hearing on the Application, provided all interested persons an opportunity to be heard, and received, reviewed and considered all testimony and other evidence provided regarding the subject of this appeal.

NOW, THEREFORE, BASED UPON ALL OF THE INFORMATION SUBMITTED TO THE CITY COUNCIL FOR THE APPEAL AT THE PUBLIC HEARING CONDUCTED FOR THE APPEAL, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Council has reviewed the criteria for denial of a conditional use permit and makes one or more of the following findings in accordance with Section 18.108.030 of the City of Morgan Hill Municipal Code and California Government Code Section 66474:

- a. The proposed use is not allowed in the applicable district.
- b. The proposed use is not consistent with the general plan, zoning code, and any applicable specific plan or area plan adopted by the City Council.
- c. The site is not suitable and adequate for the proposed use.
- d. The location, size, design, and operating characteristics of the proposed use will not be compatible with the existing and future land uses in the vicinity of the property.

- e. The proposed use will be detrimental to the public health, safety, and welfare.
- f. The proposed use would have a substantial adverse effect in traffic circulation and on the planned capacity of the street system.
- g. The proposed use is not properly located within the city and adequately served by existing or planned services and infrastructure.

SECTION 2. The denied Conditional Use Permit plans attached hereto, by this reference incorporated herein.

SECTION 3. For the reasons set forth above, the Planning Commission decision to deny Conditional Use Permit UP2020-0004: Mast-Titan Sports Academy/Kinetic Performance Institute is affirmed.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 17th day of February 2021 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-XXX, adopted by the City Council at a regular meeting held on February 17, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL OVERTURNING THE DENIAL OF THE CONDITIONAL USE PERMIT UP2020-0004: MAST-TITAN SPORTS ACADEMY/KINETIC PERFORMANCE INSTITUTE TO ALLOW INDOOR COMMERCIAL RECREATION FOR A YOUTH GYMNASTICS GYM AND ALSO YOUTH ATHLETIC BASEBALL TRAINING LOCATED NORTH OF MAST STREET AND WEST OF VINEYARDYARD BOULEVARD AT 195 MAST STREET (APN 817-02-063)

WHEREAS, such request was considered by the Planning Commission at its regular meeting of January 12, 2021 Planning Commission meeting, at which time the Planning Commission denied Conditional Use Permit UP2020-0004: Mast-Titan Sports Academy/Kinetic Performance Institute; and

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

WHEREAS, the City Council, called for review of the Planning Commission's decision on the Application to the City Council pursuant to the applicable provisions of the Morgan Hill Municipal Code; and

WHEREAS, at the time and place noticed for a hearing on the appeal, the City Council of the City of Morgan Hill conducted a hearing on the Application, provided all interested persons an opportunity to be heard, and received, reviewed and considered all testimony and other evidence provided regarding the subject of this appeal.

NOW, THEREFORE, BASED UPON ALL OF THE INFORMATION SUBMITTED TO THE CITY COUNCIL FOR THE APPEAL AT THE PUBLIC HEARING CONDUCTED FOR THE APPEAL, THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The proposed use is allowed in the applicable district.

SECTION 2. The approved conditional use is consistent with the Zoning Ordinance and the General Plan.

SECTION 3. The site is suitable and adequate for the proposed use.

SECTION 4. The location, size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the property.

SECTION 5. The proposed use will not be detrimental to the public health, safety, and welfare.

SECTION 6. The proposed use would not have a substantial adverse effect in traffic circulation

and on the planned capacity of the street system.

SECTION 7. The proposed use is properly located within the city and adequately served by existing or planned services and infrastructure.

SECTION 8. The use shall be expressly conditioned in conformance with conditions incorporated herein and as attached as Exhibit “A”.

SECTION 9. The approved project shall be conducted in a manner consistent with the Conditions of Approval attached hereto as Exhibit A.

SECTION 10. Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements, or as a part of your application for development allocations under the City’s Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.

SECTION 11. For the reasons set forth above, the Planning Commission decision to deny Conditional Use Permit UP2020-0004: Mast-Titan Sports Academy/Kinetic Performance Institute is overturned.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 17th day of February 2021 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATION ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-XXX, adopted by the City Council at a regular meeting held on February 17, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

A F F I D A V I T

We, _____, applicants, hereby agree to accept and abide by the terms and conditions specified in this resolution.

By: _____

Date: _____

EXHIBIT "A"

CONDITIONS OF APPROVAL

APPLICATION: UP2020-0004: Mast-Titan Sports Academy and Kinetic Performance Institute

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

ACRONYMS:

MHMC – Morgan Hill Municipal Code

MHARH – Morgan Hill Architectural Review Handbook

PLANNING DIVISION

I. TIME LIMITS

- A. The Conditional Use Permit approval granted under this Resolution shall remain in effect for 24 months to February 17, 2023. Failure to commence the use within this term shall result in termination of approval unless an extension of time is granted prior to the expiration date. **(MHMC 18.104.210)**

II. PARKING & VEHICULAR ACCESS

- A. PARKING AREA LANDSCAPING: The interior of any parking area shall be landscaped with planter areas measuring a minimum five feet in width, minimum inside dimension. Additional planters shall be provided at both ends of a row of spaces with the planter area length equal to the adjoining parking spaces. The landscape planter shall contain a 12" strip extension (created as an integral pour) of concrete inside the 6" curb of the planter, to create an 18" concrete strip. **(MHMC 18.64.050)**

III. OTHER CONDITIONS

- A. The Conditional Use Permit is approved solely for the operation of indoor commercial recreation as described in the applicants' proposed statement of operations on file with the planning division date stamped August 17, 2020 (Titan Sports Academy), December 16, 2020 (Kinetic Performance Institute) and as shown in the set of plans date stamped December 16, 2020. Any expansion,

intensification, or changes to the uses approved under this Conditional Use Permit shall be permitted only upon amendment of this Conditional Use Permit or approval of a separate Conditional Use Permit application.

- B. The Conditional Use Permit is approved solely for the operation of indoor commercial recreation. If the structure or approved use is no longer in operation for a minimum of 12 months continuously, the Conditional Use Permit shall be reviewed for revocation.
- C. Defense and indemnity: Applicant agrees to defend and indemnify and hold City, its officers, agents, employees, officials and representatives free and harmless from and against any and all claims, losses, damages, injuries, costs and liabilities arising from any suit for damages or for equitable or injunctive relief which is filed against City by reason of its approval of this conditional use permit approval. In addition, applicant shall pay all pre-tender litigation costs incurred on behalf of the City including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals, but shall not be required to pay any litigation from the City. However, applicant shall continue to pay reasonable internal City administrative costs, including but not limited to staff time and expense spent on the litigation, after tender is accepted. The undersigned hereby represents that they are fully empowered by the applicant as their agent to agree to provide the indemnification, defense and hold harmless obligations, and the signature below represents the unconditional agreement by applicant to be bound by such conditions.
- D. MITIGATION FEE ACT: Notice is hereby given that, pursuant to the Mitigation Fee Act, the City of Morgan Hill charges certain fees (as such term is defined in Government Code Section 66000) in connection with approval of your development project for the purpose of defraying all or a portion of the cost of public facilities related to your development project (Mitigation Fee Act Fees). These fees do not include fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements, or as a part of your application for development allocations under the City's Residential Development Control System. The Mitigation Fee Act Fees applying to your project are listed in the schedule of fees provide. Notice is also hereby given that you have the opportunity to protest the imposition of the Mitigation Fee Act Fees within 90 days of the approval of the approval or conditional approval of your development project and that the 90-day approval period in which you may protest has begun. This right to protest does not apply to voluntary Residential Development Control System fees.
- E. Signed copies of Resolution: Submit two (2) signed copies of Resolution 20-xx to the Planning Division prior to issuance of building permits.

January 27, 2021

City of Morgan Hill

Development Services Center
17575 Peak Avenue, Morgan Hill, CA 95037

MAST – Titans Sports Academy/Kinetic Performance Institute
Project Number: UP2020-0004

This letter is being submitted to appeal the Planning Commission's decision denying our Conditional Use Permit (CUP). We feel our appeal should be heard and the Commission's decision be overturned for the following reasons:

1. City of Morgan Hill Staff and Commission failed to inform us that said property is considered "Heavy Industrial" and that a CUP is not permitted for our type of business.
2. City of Morgan Hill allowed us to proceed with our CUP application at a building that is prohibited from receiving such a permit.
3. Our company operations requires a specific amount of clear wide-open space and exceptionally high ceilings. These accommodations are specific and discoverable only in an industrial type locale.
4. There are no other available site options that fit our criteria of spatial requirements. Retail space is not an option.

Titans is a small family-owned business and operated by more than 50% women. Titans was established in Morgan Hill in 2015 and we wish to continue long term operations in the city of Morgan Hill. We dedicate ourselves to the development of young athletes competing in the sport of gymnastics.

Dub Baseball/KPI has been running its' operation in Morgan Hill since 2014. Erik Wagle (owner) is a Morgan Hill resident and teaches for the school district. KPI provides high level athlete training for 200 local athletes. The program also participates in many community service endeavors.

Together we strive to deliver high-level training in a safe and positive environment. Our facility provides recreational through competitive level training. Without our local gym, the approximate five-hundred (500) athletes otherwise would be forced to travel further out of town.

We respectfully urge the Council to reconsider, overturn, and approve our CUP application. Please allow us to continue to serve and shape our special community of families, and athletes within the City of Morgan Hill.

Sincerely,

Titans Sports Academy

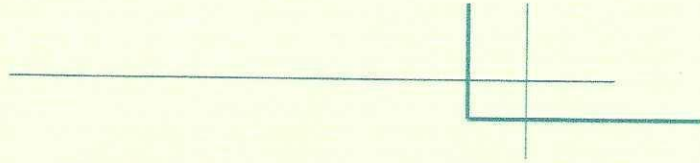


Kinetic Performance Institute



408.782.2872 • TITANSMH.COM

Gordon Jacoby & Associates



January 11, 2021

To: Chairperson Mohammad Habib, Commissioners Malisha Kumar, Laura Gonzalez Escoto, Wayne Tanda, Joseph Mueller, Liam Downey, Juan Miguel Munoz Morris; Development Services Director Jennifer Carman, Associate Planner Joey Dinh

From: Gordon D. Jacoby,

I am writing in support of the Mast-Titan Sports Academy/Kinetic Performance Institute for a Condition Use Permit for youth gymnastics and an indoor baseball training facility (UP2020-0004). From both professional and personal experience with both Morgan Hill industrial buildings and baseball facilities, it appears that this is the best near-term use of the building for the owner, the applicants and the Morgan Hill community.

Reasons:

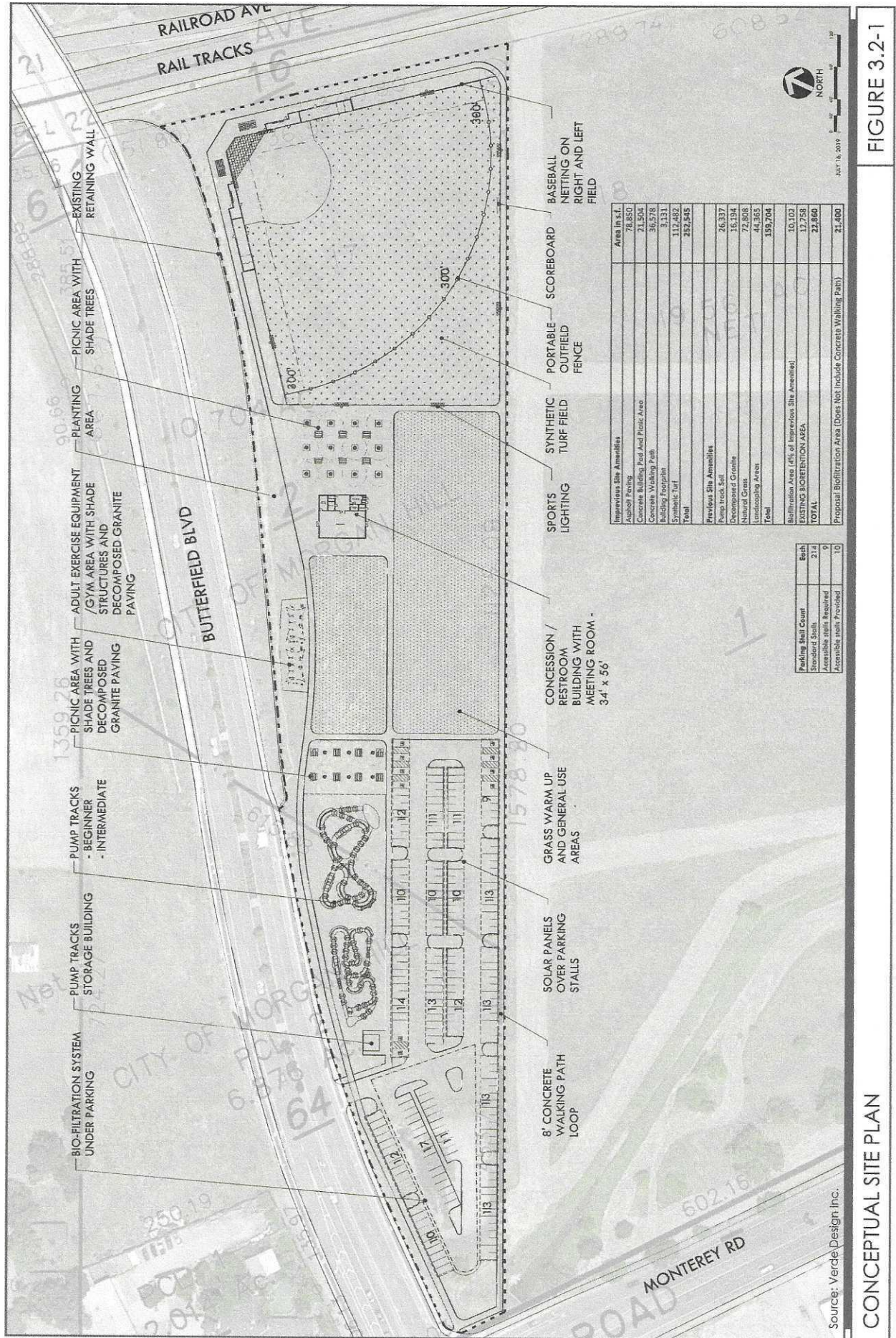
Good near-term uses: The proposed uses offer near-term uses for both the applicants and the owner, particularly coming out of the pandemic. Indoor sports uses have a hard time economically competing for indoor space unless the space has compromised features. The 2.5 -acre site is compromised for the uses desired in the City's Economic Blue Print because of its: a) parcel size, b) current building form and size; c) its neighbors - a concrete plant adjacent to the railroad line (lessens options for multi-parcel redevelopment), and d) market dynamics. Some of these circumstances are self evident given that the project applicants and land owner support the use. If there were higher/better/more job producing industrial uses, the property owner would have pursued them. The property owner and the City still have that long-term option if the market circumstances change.

Current need for more baseball practice facilities: The proposed uses can, in some small measure, fulfill a Morgan Hill need/commitment to youth baseball. That commitment dates back when baseball fields could not be accommodated in the Youth Sports Complex. The City's last 5-8 year effort to satisfy a combined sports and economic development need (see both a) Economic Blue Print and b) Bike, Trails, Parks and Recreation Master Plan) was rejected by regional agencies and advocacy groups. That rejection included an indoor recreation building on the 3.8 acre non-farmland parcel immediately adjacent to the Kennedy Swim Center (from personal discussion with former owner Angelo Grestoni; property now owned by City). High ceiling/air conditioned/adequate parking needed for new indoor sports facilities do not normally pencil out unless they have significant public subsidy or unique economic circumstances.

Complies with desires of regional agencies (LAFCO, Santa Clara County Open Space Authority, County of Santa Clara) Despite questions regarding the logic (very hard to put a 5-acre baseball field on two smaller, unconnected parcels), the regional agencies prevailed and the City is doing its best to comply. Their preference was use of undeveloped or redeveloped industrial/commercial land. The proposed re-use of the subject building, and DUB's help with the City in the design of the Butterfield Public Park, demonstrates such an effort (see attached).

Applicant's Commitment to Morgan Hill. DUB (aka Kinetic Performance Institute) has been a Morgan Hill leader in youth baseball. Their performance can be measured. I visited their earlier facility on Peet Road and later in a long-empty retail space on Cochrane Road. The other organizations, Pony and Spirit, are also very important but naturally their leadership is constantly changing during the cycle of their child's interest/play. Again, coming out of the pandemic, the City needs seasoned youth sport experience and enthusiasm.

6114 LaSalle Avenue, #348
Oakland, CA 94611
510-339-6367 ■ GDJacoby@aol.com



From: Larry Breniman
To: [CC Public Comment](#)
Subject: Rezoning of 195 Mast Street.
Date: Friday, February 5, 2021 4:35:03 PM

I am opposed to Rezoning of this industrial property to accommodate a Sports Academy. We cannot keep losing land that could provide multiple jobs for other purposes.

Thank you,
Larry Breniman
Morgan Hill

Sent from my iPhone

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Morgan Hill: 16959 Monterey Rd. Morgan Hill, CA 95125

Phone: [REDACTED]
www.calsportscenter.com

Email: [REDACTED]

February 10, 2021

ccpubliccomment@morganhill.ca.gov

Re: "Call for Review" regarding Titan Sports; Planning Commission denial

Council Members,

I would like to thank the City of Morgan Hill for the opportunity to provide public comment during this "Call for Review." As a youth sport's operator involved in gymnastics training since 1987, and with a location in Morgan Hill at the corner of Dunne and Monterey since 2012 - next to Ross Stores, I urge the council to support the Planning Commission's denial of Titan Sports operation in this facility.

Though I have not discussed this particular issue, Edith Ramirez, Assistant City Manager and former head of economic development may remember, I have been seeking to expand my gymnastics operations in Morgan Hill for several years. I continue to seek the potential purchase of a larger building, and have continued to be challenged to find the right space, at the right price, in the right location, **with the right zoning**. I understand that facilities zoned for recreation are more costly and less readily available with the correct type of open space and high ceilings as can be easily found in less costly heavy industrial spaces. In my efforts to consider growth, I have been reminded many times that the land and areas zoned for recreation near the soccer fields and aquatics center on the east side of Hwy 101 would be an ideal location to grow, or perhaps other retail locations. While I am disappointed that my expansion has not happened yet, I remain very hopeful that we will be able to do so sometime after the restrictive COVID orders are fully lifted.

Having a choice in programs, or more space to conduct business, is also a good thing for the consumer/athlete and for the sport – however, my business growth has been challenged due to my understanding of, and adherence to, the zoning and planning rules within the City. Previous to this location, Titan Sports operated as a welcome competitor in a 12,000 square foot location off Cochrane Rd. which had been operating for several years under a different name when they took over the business. I share this fact to clarify that fair competition is not the issue in this case. I believe that there are plenty of young athletes in the City of Morgan Hill, and surrounding communities, to provide an opportunity for multiple gymnastics businesses.

Despite the fact that operations are already underway, it would not be right or fair for Titan Sports to be given forgiveness rather than getting permission in advance.

Providing the opportunity to become the best you can be – SINCE 1987
www.calsportscenter.com

In further support to the denial within a heavy industrial area, I would offer the fact that at this time Santa Clara County COVID restrictions only allows outdoor training for all youth sports. Be advised, it is my fervent hope that the orders are lifted/released/relaxed soon – for everyone’s sake and for so many more sound reasons. In fact, I have expressed my belief that we never should have been closed while able to follow all the outlined protocols, and are an essential business for the health and safety of the children we serve. Maureen Tobin, Communications and Engagement Director can attest to the number of emails I have sent in response to the City newsletters about this. However, with COVID restrictions and County/State orders in mind, I would simply ask if the facility in question is able to provide any limited outdoor training safely, like we have been forced to safely accommodate/endure in our very limited outdoor spaces? I dare say ‘no’, not at this industrial location.

Thank you for your time and again, I urge the Council to support the denial by the Planning Commission.

Best regards and stay safe,

David Peterson
Director
California Sports Center

From: Steve Chappell
To: [Christina Turner](#); [Rich Constantine](#); [John McKay](#); [Rene Spring](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#); [Michelle Bigelow](#)
Subject: The State of Morgan Hill Telcom/Datacom Infrastructure
Date: Thursday, February 4, 2021 2:52:34 PM

***** City Clerk Bigelow: Please add my email to the Council record of the next CC meeting in public comment. Thank you, -Steve***

4 February, 2021

City Manager Turner and City Council-

The event of 3 February 2021 completely crippling Morgan Hill from communicating to the outside world should be of zero surprise to all of you. Why? Because for nearly 20 years I and others have warned multiple City Councils, City Staff members and the ever elusive Tony Eulo and his follow-on John Lang this was going to happen.

And it has happened, several times alone in the past years, namely because Mr. Eulo et al and City Council have outright refused to make modern, accountable and progressive movements toward preserving and protecting our critical infrastructure. You are also in Violation with Federal Guidelines as repeatedly warned to City Staff, who have ignored the fact that they should have, or could have, done something about this years ago. I have a stack of communications sent back and forth, but most notably 5 years ago when the charade of how the City was planning for it's improvements which have never come.

The event of 3 February placed the bulk of forced Work From Home citizens in jeopardy from not being productively engaged with their employers. It jeopardized our Emergency Lifeline to Local First Responders at MHPD and MHFD. It cut off the entire City from educating it's Children at home and access to remote teachers within MHUSD. In other words, this disaster, partially created by the City of Morgan Hill left all of us in the dark for an entire day.

You should ALL be consumed with concern by now over these very fundamental issues:

- Why has City Staff, namely Tony Eulo et al failed the Citizens of Morgan Hill with his and others complete inaction and disregard for the preservation of our critical infrastructure as guided by **42 U.S. Code § 5195c** - Critical infrastructures protection, which demands that Cities must defend and prepare critical infrastructure in the event of disaster, such as that of 3 February. He has been advised by myself and many others that lack of action would lead to this. He has also failed to exercise the City's rights under US Code to ensure that all providers involved were held to ensure they had appropriate backup, redundancy and fail over to prevent crippling an entire City. In other words, Mr. Eulo has failed to do his job for years, maybe even a decade or more, and it's only appropriate he is relieved of his City Position immediately and

terminated. Failure to take action against a City Staff member that has had years to correct this mean that all of you are equally complicit in failing the Citizens of Morgan Hill

- What immediate actions are you taking to prevent this from happening again? How are you accountable to the Residents and Citizens who entrust you by never acting in a proactive way after being repeatedly warned and advised that you need to act? Well that ship has long sailed, and none of you have acted responsibly, appropriately or under any semblance of best practices when it comes to preserving and protecting our critical telcom/datacom infrastructure. In fact, you have acted with complete disregard. How many more years of warnings do you need?

You next actions should be as follows, without wasting another moment of time:

#1 - In the next 30 Days, demand by subpoena Spectrum/Charter/Frontier Gov reps appear to a public hearing at City Hall to answer for immediate plans on Tel/Datacom Redundancy and Failure mode. It is your job to protect our City Infrastructure, it is their job to ensure they follow your guidance.

#2- Demand instantly all Tel/Datacom providers supply a short term 3 month plan (90 days) to add capacity via alternate backbone circuits into and out of the entire south County area.

#3- Conjoin as a party of interest with the City of Gilroy and town of San Martin to form a coalition and collaboration for the Broadband Health/Safety and security of our joint Tel/Datacom Infrastructure. Make a 30 day plan of action to form the coalition, the players, the oversight. Have a 90 day plan to put boots on the ground, shovels in the dirt and facilities placed to begin that plan of action.

#4- Begin immediate discussions with AT&T, Comcast and any / all about a possible growth and take-over of all facilities in the entire South County Region as a collective with Gilroy and San Martin predicated on multiple backup and redundant services and extremely modern QOS and strict SLA's.

#5- Fire Tony Eulo at the City of Morgan Hill, Fire John Lang and any others who have failed to do their job and protect the Citizens of Morgan Hill. Tony and John should just quit now because they have for years failed the Citizens of Morgan Hill. Yesterday PROVES that.

#6- City Council- do your job working to protect the interests of the Citizens of Morgan Hill and stop bickering for endless hours in City Council meetings about your agendas for better campaign contributions and all you waste our tax dollars on. Do your damn job. Make things work better. If that requires people like Tony Eulo getting fired, then get it done and let's get someone who can modernize our Infrastructure that actually knows what they are doing and can get it done. The #1 Job you all have is Preserving the safety and security of Morgan Hill Residents. Public safety is #1. #2 is our infrastructure. #3 is cutting expenditures and fat from the City, City Staff and people

who can't do the job. If you waste one minute of time on anything else in City Council meetings, you are failing to do what you are elected to do. All you have to do is those 3 things, absolutely nothing else in this City is more important than that.

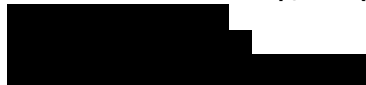
The disaster this week is all your fault for once again NOT LISTENING to the Residents wishes. All of you sitting on your high table have been warned for years about this and you have DONE NOTHING. Stop making empty promises, stop writing plans that go no where, stop spending our tax dollars on consultants that deliver NO Results. Just do your job and prevent disasters like that of 3 February from EVER happening again. Once again, it's time to replace staff that haven't done what they should have over 10 years ago.

If you plan on not doing anything, or waiting for some magical fairy to waive a wand and fix all the infrastructure ills, you are likely to find yourself approaching another lawsuit. Because apparently only suing the City is how things get done when you don't listen to the Residents and tax paying Citizens who pay for this City to run. And that includes all the jobs of City Staff.

Do the right thing, do it swiftly and smartly.

KR, --Steve

Steve Chappell, Chief Technology Officer
Accudata Partners Group, Inc. (APGI)



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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Support Dub/KPI
Date: Tuesday, February 2, 2021 11:34:04 AM

From: gary green <[REDACTED]>
Date: February 1, 2021 at 4:44:21 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>
Cc: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay
 <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran
 <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>
Subject: Support Dub/KPI

Hello Morgan Hill City Council

I want to express my 100% support for DUB/KPI being granted a CUP. I hope you will be in support also.

DUB/KPI is a unique organization and Morgan Hill is lucky to have such an organization in your great city.

I don't live in Morgan Hill, but I have been sending my son to DUB/KPI for over 2 years. I do that for a reason.

The organization is professional, well run and dedicated to one thing above all else, the KIDS. I appreciate that very much.

Many parents are involved with DUB/KPI who don't live in Morgan Hill, providing additional positive economics to your city.

Thank you for your time and please remember, supporting a home grown, impactful, community business like DUB/KPI makes good business sense. Please feel free to call me in addition please read this letter of support into the record at the City Council meeting when you take this issue up for debate.

Thank You
 Gary Green
 [REDACTED]
 [REDACTED]
 [REDACTED]

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transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: DUB/KPI conditional use permit
Date: Tuesday, February 2, 2021 11:35:04 AM

From: [adkester13](#) [REDACTED]
Date: February 1, 2021 at 2:53:41 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, John McKay
 <john.mckay@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>
Cc: erik@dubbaseball.com
Subject: DUB/KPI conditional use permit
Reply-To: [adkester13](#) [REDACTED]

Members of the Morgan Hill City Council,

I'm shocked that you would deny DUB/KPI a conditional use permit. They have been a positive influence to the youth of Morgan Hill and surrounding communities for many years. My twin boys have been with DUB since they were 10 years old. They are now 17 and continue to thrive with the training, coaching, camaraderie and overall positive professional atmosphere DUB/KPI provides. One of my boys has verbally committed to pitch at a D-1 University and I'm confident my other son will also play in college. If not for the training they have received with DUB/KPI I doubt they would have that opportunity. DUB/KPI builds relationships with colleges and advocates for its players/members.

I understand a portion of our monthly fees (which aren't cheap) go to Morgan Hill thru taxes and as this business has grown the tax benefit to the city has grown. We don't just spend money with DUB/KPI as many nights the boys train during dinner hours so instead of cooking at home we often order from local restaurants. If DUB/KPI isn't given this permit we will be forced to take our business out of town as there is no alternative in Morgan Hill. That would be devastating.

Please grant this permit. It's so much more important to have a place for our youth to train, grow, build friendships and give back to the community than it is to recruit some unknown arbitrary business to fill the building when you already have a known Morgan Hill business/community member.

Thank you,
 Angela Kester

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: KPI and Dub in Morgan Hill
Date: Tuesday, February 2, 2021 11:35:47 AM

From: Kevin Hawkins <[REDACTED]>

Date: February 1, 2021 at 1:38:09 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>

Subject: KPI and Dub in Morgan Hill

Hello Morgan Hill City Council,

I hope this email finds you well. And I am sure you are going to be receiving a lot of emails specific to KPI and Dub and desired support for them to remain in Morgan Hill along with the Titans. So I will be quick to share my story and hope that it is of value.

WE moved to Morgan Hill in 2007 as our boys were just getting ready to start Kindergarten. We left San Mateo for a place that we decided was far more conducive in raising kids. And have not regretted a single day. We love this community. My boys are now 16 and 18 and still very engaged in sports, education, and working in local businesses. We started early with Champions Academy for my oldest and had a great 5 years of gymnastics. We also participated with both boys for karate, community soccer, flag football, and other sports. The boys soon took to baseball and MHPB. We built fantastic friends and community bonding. My oldest continued on umpiring for MHPB which was a great first job. He is now a senior at Live Oak and hoping to play baseball in his senior year. He also works part time for Rosy's and In n Out. My youngest took a path of baseball, basketball, flag football. Erik and Dub started as we went through the MHPB years as well. Although we had concerns, I've watched the program evolve and especially with the huge response to player development with KPI. They are cutting edge and they have kids engaging from not only Morgan Hill, but 8 other schools like MVCS, Gilroy, Christopher, Valley Christian, San Benito, and more. Parents are driving here because the program is working and helping these MHPB kids get offers and scholarships into quality colleges. These are kids that grew up and played both Pony baseball and travel baseball together. So it's inspiring for my kids. And they've invited friends to come here and participate as well.

I love how our downtown and community are evolving and growing. I can't tell you how much baseball plays a part in Morgan Hill and so many parents. I think keeping Dub and KPI in MH is super important. Although we have known Erik and Dub since the inception, My youngest joined KPI only 4 months ago. With the outdoor facility and much of the remote exercises, he's gone from being a good sophomore player and pitcher, to being on the radar and extremely relevant to colleges in that short span. I'm

very confident this will attract so many people to MH in a positive way. I am happy to answer any questions you have for me if any. But I do want to express my support for finding ways to keep Erik/Dub/KPI in Morgan Hill. Appreciate your time.

Kevin Hawkins
MH resident, parent
[REDACTED]

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: KPI/Dub Baseball Conditional Use Permit
Date: Tuesday, February 2, 2021 11:36:40 AM

From: Mark Mitchell <[REDACTED]>

Date: February 1, 2021 at 10:25:41 AM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>

Subject: KPI/Dub Baseball Conditional Use Permit

I was surprised to hear that KPI/Dub Baseball's application for a conditional use permit was denied. KPI/Dub is a business that provides significant benefits to Morgan Hill from an economic and cultural perspective. I urge the City Council to reconsider.

I live in the Santa Cruz Mountains, over an hour from Morgan Hill, but have been bringing my son to KPI/Dub several times a week for three years. In addition to spending thousands of dollars with Dub itself, those trips routinely result in food purchases (Starbucks, Jamba Juice, Red Robin, etc.) and other shopping (Target, Dick's Sporting Goods, Safeway, CVS, Home Depot, etc.).

We make that lengthy drive because KPI/Dub provides my son with unique baseball training and playing opportunities. If we had found a comparable offering in Santa Cruz or San Jose, we would have seized upon it -- but we have not. KPI/Dub has done a lot to develop youth baseball in Morgan Hill, with benefit to Morgan Hill citizens and those of us who live further away.

Sincerely,

--

Mark Mitchell

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Zoning for Dub/KPI Institute
Date: Tuesday, February 2, 2021 12:47:57 PM

From: Christopher Raines <[REDACTED]>
Date: February 2, 2021 at 10:43:05 AM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Zoning for Dub/KPI Institute

Hello Councilman Spring,

I live in south San Jose and commute weekly to Morgan Hill to take my son to the Dub/KPI Sports Institute for baseball development and practice. I understand from a communication provided by the owner (Eric Wagle) that the location where Dub/KPI is located presently is not formally zoned for this type of business, and that this could result in increased cost and disruption to relocate.

I'm writing this email to encourage you and your MH City Council members to provide a zoning exception to Dub/KPI in this case. The reasons are as follows:

- We are going through tough times re: covid. Most people are pinching pennies. Our kids are limited in social activity that is so important to their growth and to positive community development. Dub/KPI provides a great outlet to overcome these limitations at a reasonable price
- My son is excited to participate at Dub/KPI because of the focused attention he receives and how this helps develop not just his baseball skills, but his advance his maturity.
- For Morgan Hill, Dub/KPI represents an economic plus on a few levels:
 - The city benefits from revenue that generates tax income
 - Many parents buy dinner in Morgan Hill on those practice nights helping the struggling restaurants
 - I usually visit Trader Joes on Dunne one of the practice nights, or one of the other retail outlets
 - Because of Dub/KPI, I've discovered places in Morgan Hill that bring me back with friends on weekends to dine etc.

Bottom line, businesses like Dub/KPI are small but important parts of Morgan Hill that have positive-collateral benefit across the community by

helping to raise good kids, bring money into the community, and raise the value of your nice city. Considering the work they do, and benefit this adds in the time we are facing is a positive that we must endorse and support.

Thanks for considering this position, and best wishes in 2020.

Regards, Christopher T. Raines

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Dub/KPI
Date: Wednesday, February 3, 2021 7:37:39 AM

From: Henry Salkever <[REDACTED]>
Date: January 31, 2021 at 10:57:33 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Dub/KPI

Hello Ms. Spring,

My name is Henry Salkever, and I am an athlete that trains at the Dub/KPI training facility. The reason I come to the Dub/KPI training facility instead of staying where I live to train is because it is the best training environment I have ever been a part of, the coaches and staffers there display a greater level of expertise than I have ever experienced within the state (I have been to many facilities), and because they are extremely well organized and well run. I drive an hour and a half twice a week just to train for a couple of hours in the facility, something that should be a testament to what type of operation they are truly running. What makes Dub/KPI so special is that when an athlete goes to train there, it is one of the few places where you can go learn from top tier coaches, but also from fellow high-level athletes, many of whom are already committed to division one baseball programs. As well as the great service that Dub/KPI provides to its trainees, it supports the local economy in the following ways; All payments for training to Dub/KPI are processed in the town of Morgan Hill, athletes who come to Morgan Hill to train frequently patronize the surrounding stores, gas stations and restaurants (My father and I order burritos from a small Mexican restaurant called Chachos in the downtown area every time we come down to train, and even though I have only been training at Dub/KPI for a little less than two months, we have stopped at the gas station across the street more times than I can count). I have also had such a good experience training at Dub/KPI that I have recommended the facility to a number of my friends, all of whom mentioned other friends of theirs who they knew would love to check out the facility. Please know that from a citizen's point of view, Dub/KPI is an integral part of the community, and it would be a shame to lose it. I'd love to answer any more questions you might have at this email address. Lastly, thank you for your time, and for your service to the community in these times that are far from normal.

Sincerely
Henry Salkever

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Kinetic Performance Institute (KPI) - Morgan Hill
Date: Wednesday, February 3, 2021 7:39:25 AM

From: Cristopher Barrett <[REDACTED]>
Date: January 31, 2021 at 9:42:53 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli
 <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>
Subject: Kinetic Performance Institute (KPI) - Morgan Hill

Dear Mayor Constantine & Morgan Hill City Council Members,

My name is Cris Barrett and I am writing to you as a parent of two (2) Mountain View, CA-based baseball players. One of my kids is a 17 YO HS senior at Mountain View High School (MVHS) who is committed to play baseball at Claremont McKenna College this fall. The other is a 14 YO MVHS freshman who has aspirations to also play baseball in college. In fact, both boys are working as hard as they can at KPI and on their own to juggle KPI training sessions 3x/week, schoolwork, soccer, and a COVID-affected social life to play professional baseball some day. I want this email to help you understand how important the next few years are to both of my sons.

There are no facilities and communities in our immediate area (the Peninsula) that are anywhere close to the quality coaching/technology/knowledge and caring culture that Erik, Dan and the rest of the leaders of this program have created at KPI. Once we were referred to KPI/Dub, we started driving our kids 45-75 minutes each way (traffic dependent). Luckily for us, our eldest can now drive down themselves. When they/we are in Morgan Hill, we shop in your stores and take food away from your restaurants and buy gasoline from your station owners. To be clear, this time and mileage on our cars are worth it due to the quality of the program at KPI. If no program like this exists there, we and the 5-6 families we have since recommended to join the program have little reason to visit Morgan Hill and your small business owners and we will spend our money elsewhere.

With access to a place like KPI and their coaches, our and other players who share the same goals, are there to compete with and for each other, and push each other to the highest heights. If this access is taken away, I am extremely fearful that many kids in our community will be doing other less productive and responsible things with their time.

Similarly, I am sure that this and future cohorts of kids will be less prepared and less motivated to go play at schools like Claremont McKenna, which is, as you may know, one of the top 10 liberal arts schools in the nation. In addition to my own son (who was throwing 85mph when he joined KPI and is now pushing 90mph on his fastball) KPI has produced many players who are in or who will attend Pac-12, WCC, Ivy League and other top academic conference schools. It's beyond me why we would consider taking something away or threatening/restricting access to a place that means so much to our kids and which will produce so much name recognition for your city on a national level, whether for baseball or leadership further down the road.

More optimistically, I am hopeful that my sons will use KPI as their home for training for years to come, even on breaks when/if they are taking the field for their university and their professional ball club(s). I look forward to having them share in their to-be-written stories in which a major part of their journey will have been through KPI, Morgan Hill and our collective Bay Area community, especially when reflecting on all of the hurdles they and KPI/Dub have had to clear during COVID times. I see it super clearly. I hope you can see it as well.

I can't begin to understand the enormity of your responsibility and the challenge of planning the best future of your city. But any attempt to not grant this group use of a facility in a town as large and well-designed for something like this makes zero sense to me. I trust that you are doing all that you can to balance serving business interests, families, children, elderly, underserved communities and your natural environment/open space. But I think we all need to do more for this particular cohort of kids and future generations. It's been a really challenging and dispiriting year and I fear the next year will bring more of the same, as this pandemic is not going to just end in a flash. It's just one small building that would otherwise be empty, zoning and "rules" aside, but it's an important building.

I look forward to hearing back from you and to participating in whatever dialogue needs to happen to ensure our kids have this specific place to go which will help them pursue dreams that are well within reach, all thanks to your city and KPI/Dub.

Sincerely,

Cris Barrett

Father of Gabriel Barrett (MVHS Class of 2021/Claremont McKenna Class of 2025) & Liam Barrett (MVHS Class of 2024/TBD Class of 2028)

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: KPI Training Facility
Date: Wednesday, February 3, 2021 7:39:42 AM

From: Julie King <[REDACTED]>

Date: February 1, 2021 at 8:35:07 AM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli
 <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>

Subject: KPI Training Facility

Dear Morgan Hill City Council Members Constantine, Borgioli, McKay, Martinez Beltran & Spring,

I am reaching out regarding the KPI Facility in Morgan Hill, CA. We live in San Mateo and my son, Wyatt (Junior at St. Francis HS) has been driving to Morgan Hill to train at the facility for the past year +! This facility has been SO important to him, especially through the pandemic, as it is the only place that has the equipment, coaching and development necessary for him to train for his HS and collegiate baseball career. Thanks to the incredible work and support of Erik Wagle and the KPI team, he verbally committed to Cal Poly this summer as a junior to play D1 baseball in college!

Wyatt travels over an hour from San Mateo at least once a week, and often twice, to train at the facility. While there, he meets up with friends, enjoys dinner, food and other amenities from Morgan Hill. We are happy to spend this money in Morgan Hill at the KPI facility and surrounding businesses as we are HUGE supporters of youth sports and believe there is no other place like KPI for the type of training and development that my son needs.

Erik has invested so much in building his business with top technology, equipment and coaching! This is all for the kids and the growth of youth baseball! We hope so much that Morgan Hill Council Members will continue to support KPI's endeavors and recognize the huge draw that the KPI facility has for many many kids from all over the area!

Thank you for your consideration!

Julie King, son Wyatt
 San Mateo, CA

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numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

From: Jacqui Kilson
To: [General: CC Public Comment: Jennifer Carman](#)
Subject: Titans Sports Academy
Date: Saturday, February 6, 2021 12:01:47 PM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)

To Whom It May Concern:

This letter is in regards to Titans Sports Academy's (on Mast Avenue) request for a Conditional Use Permit. My 12 year old daughter has attended Titans since they opened their doors 5 years ago. She has also known and been coached by some of the same coaches since the age of 3. While I don't know much about city planning, I do know the impact it would have on my daughter, many Titans families, and the community of Morgan Hill, if Titan's is no longer allowed to operate within our city limits. I also know it has been clearly stated that a gymnastics academy of this caliber has no other location options in Morgan Hill. Titans is the only gymnastics center in Morgan Hill that offers competitive team training, recreational gymnastics, children's parties, and serves Morgan Hill's home school community.

Titans is not just a gym, it is a family. It is my daughter's second home. It is a place athletes put in grueling hours of tough workouts, not because they have to, but because they want to. It is a place where goals are reached and dreams are made. It is a place these girls learn they can do more than they ever thought possible. It is a place where everyone helps and supports each other in a way I haven't seen before.

If Titans is no longer allowed to operate in this city, it would be very difficult for my daughter, as well as other members of Titans, to get to a gym. It would mean that her goal of doing collegiate gymnastics is no longer attainable.

It is with that, that I ask you to please grant Titans request for a Conditional Use Permit. This will allow our children to continue to dream, reach their goals and will allow Titans to continue to serve our community. Please, do not take this away from our girls and our community.

Before I close, here are just some of the faces of Titans.



The faces of the team taking first place!



The face of a coach who will always catch her when she falls.



The face of victory...first place on floor at the State Competition!

Thank you very much for your time and consideration.

Respectfully,

Jacqui Kilson

[Redacted Signature]

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From: Donald Cotriss
To: [Rich Constantine](#); [CC Public Comment](#); [Jennifer Carman](#); [Christina Turner](#); [General](#); [Gino Borgioli](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Rene Spring](#)
Cc: [REDACTED]
Subject: Titans Sports Academy CUP Call for Review
Date: Saturday, February 6, 2021 8:33:19 PM
Attachments: [Titans Sports Academy.pdf](#)

<letter attached>

Morgan Hill City Council
 17575 Peak Ave.
 Morgan Hill, CA 95037

Bodavann and Don Cotriss
 [REDACTED]
 Morgan Hill, CA 95037
 [REDACTED]

Re: Titans Sports Academy and CUP

Dear City Council,

We are writing the City Council of Morgan Hill today in order to help you understand what Titans Sports Academy means to us and our daughter. We moved to Morgan Hill approximately five years ago. During that time, our daughter took up gymnastics as a personal after school activity. She has progressed from recreational gymnastics to fully competitive gymnastics and has really grown to love it over the years.

Our daughter has been attending Titans Sports Academy for three years now. Prior to attending Titans, she attended another gymnastics team in Morgan Hill. They never offered the same level of support or the hands on attention that the coaches at Titans have. We have seen significant increases in both her skill level as well as her self esteem. We believe this is directly attributable to the attention and coaching she is receiving from Titans. If Titans were to be forced to move out of Morgan Hill, we know there is no good alternative for her. Having a gymnastics program as good as Titans in Morgan Hill is extremely important for our family. Having to go outside the city to San Jose or Gilroy when I work in Redwood City and my wife works full time is extremely difficult. We don't have the time or the resources to make that work for our family. The schools also don't offer gymnastics nor are they any community centers that would offer gymnastics.

I can understand the Planning Commission's stance that they want to keep the heavy industrial area, as just that, heavy industrial. However, during that decision making meeting of the planning commission, it was clear to me that their arguments did not hold up. There,

supposedly, was high demand for that type of real estate. However, the owner of the building said there was only one inquiry I believe in the previous six months and the property would not work for them due to its layout. When pressed as to whether there was another property in Morgan Hill that would work for Titans, the commission admitted there wasn't.

We believe that it would be more important to have a tenant in that building that is doing something good for the community rather than letting it sit empty. In fact, in the immediate vicinity, there appears to be several other businesses including an accounting firm and a gun store that would not be considered heavy industrial.

Titans Sports Academy has had a profound impact on our daughter in her confidence and self esteem. She continues to become more confident in day to day situations. It would truly be a shame to lose a program that is teaching our girls valuable life skills due to a zoning issue. I implore the City Council to overturn the Planning Commission's decision (noting the Planning Commission appeared to not want to make the final decision as they encouraged Titans repeatedly to appeal the decision) and let Titans continue to do good for the community.

Thank you for your time,
Bo and Don Cotriss, parents of Makayla Cotriss

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Morgan Hill City Council
17575 Peak Ave.
Morgan Hill, CA 95037

Bodavann and Don Cotriss


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Bo and Don Cotriss, parents of Makayla Cotriss

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Dub/KPI
Date: Sunday, February 7, 2021 4:56:29 PM

From: Henry Salkever <[REDACTED]>
Date: January 31, 2021 at 10:57:33 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Dub/KPI

Hello Ms. Spring,

My name is Henry Salkever, and I am an athlete that trains at the Dub/KPI training facility. The reason I come to the Dub/KPI training facility instead of staying where I live to train is because it is the best training environment I have ever been a part of, the coaches and staffers there display a greater level of expertise than I have ever experienced within the state (I have been to many facilities), and because they are extremely well organized and well run. I drive an hour and a half twice a week just to train for a couple of hours in the facility, something that should be a testament to what type of operation they are truly running. What makes Dub/KPI so special is that when an athlete goes to train there, it is one of the few places where you can go learn from top tier coaches, but also from fellow high-level athletes, many of whom are already committed to division one baseball programs. As well as the great service that Dub/KPI provides to its trainees, it supports the local economy in the following ways; All payments for training to Dub/KPI are processed in the town of Morgan Hill, athletes who come to Morgan Hill to train frequently patronize the surrounding stores, gas stations and restaurants (My father and I order burritos from a small Mexican restaurant called Chachos in the downtown area every time we come down to train, and even though I have only been training at Dub/KPI for a little less than two months, we have stopped at the gas station across the street more times than I can count). I have also had such a good experience training at Dub/KPI that I have recommended the facility to a number of my friends, all of whom mentioned other friends of theirs who they knew would love to check out the facility. Please know that from a citizen's point of view, Dub/KPI is an integral part of the community, and it would be a shame to lose it. I'd love to answer any more questions you might have at this email address. Lastly, thank you for your time, and for your service to the community in these times that are far from normal.

Sincerely
Henry Salkever

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: CONCERN-Conditional Use Permit KPI
Date: Sunday, February 7, 2021 4:57:39 PM

From: Nick Muccilli <[REDACTED]>
Date: February 5, 2021 at 12:57:18 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli
 <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>
Subject: CONCERN-Conditional Use Permit KPI

Dear City Council of Morgan Hill,

I am writing to you today in regards to the business permitting of KPI in Morgan Hill. I would like for you to understand what an incredible business this is for our youth. We are a Santa Cruz family with 2 kids both participating at KPI. We found KPI a few months ago and it has been huge in my kids lives. There is NO place like this in Santa Cruz or San Jose! All the indoor sports training / batting cages for youth sports have been closed and don't seem to be a top priority in any city any more, and that is a shame! Where do the kids go to train, practice, work with professionals, meet peers & develop great skills and work habits? There is no other place out there! We have been so happy to find this and we have spread the word to other families who have joined. And a few live right here in Morgan Hill!

We are coming from a playground of outdoor activities to be had at the beach in Santa Cruz.....and yet, I hear from my kids how clean and friendly Morgan Hill is! We have talked about potentially moving here because the difference is so apparent that there is pride in the community!

My sister and her family also live in Morgan Hill and before KPI we rarely saw them. Now, we see them twice a week, grab food from all different restaurants and shop together! We have all really been enjoying all that the town has to offer. Please see what a unique businesses this is and how it should be cherished to be in Morgan Hill.

Please take this into consideration.

Tara Guglielmo Muccilli

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Essential to the Morgan Hill community
Date: Sunday, February 7, 2021 5:00:15 PM
Attachments: [image002.png](#)

From: Ted Turkington <[REDACTED]>
Date: February 7, 2021 at 11:42:12 AM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli
 <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>
Subject: Essential to the Morgan Hill community

Good morning

I'm reaching out in support of Kinetic Performance Institute. This business has been the lifeblood for our sons. KPI provides so much more than simply a place to train for baseball. Erik Wagle and his staff have created a thoughtful, caring and supportive environment where young athletes can grow and gain confidence in their lives. I have been a high school teacher and coach for over 25 years. I see the ebbs and flows of teenage emotions daily. KPI is one of the most positive, highly motivated environments I've witnessed. In the last few months, my oldest son received a scholarship to a NCAA Division 1 school. This would not have been possible without the support of Erik Wagle, his staff and the growth my son was able to make at KPI under their guidance.

I grew up in the Bay Area, spent all of my life here and now where I've raised my family. I have to admit, I never spent much, if any time in Morgan Hill. But since KPI has brought our family into the community, we've come to love the time we spend in Morgan Hill, which now includes so much more than just our time at KPI. My sons are regulars at Chipotle and In-n-Out burger on Cochrane Road. While my sons work at KPI, I find the convenience of shopping at Safeway on Tennant Ave. A great option for us to maximize our time and schedules. We've discovered Henry Coe Park, which has provided quality family time walking, hiking and appreciating the beauty of Morgan Hill.

It is KPI and their business in Morgan Hill that has brought us deeper into your community. We look forward to our time in Morgan Hill and supporting local businesses. But most importantly, KPI has impacted young lives in a way no commercial business can. KPI is a fabric of the community and absolutely essential to Morgan Hill.

Sincerely,

Ted Turkigton & family



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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: KPI Permit
Date: Sunday, February 7, 2021 5:00:29 PM

From: piazzalm <[REDACTED]>
Date: February 7, 2021 at 8:57:22 AM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: KPI Permit

Hello Ms. Spring,

I hope this email finds you happy and healthy.

It has come to my attention that my son's training facility, KPI has been denied permits to continue in it's current location.

This is devastating news to us and especially my son, if he cannot continue to train at KPI.

The uniqueness of this program is unparalleled. I have not seen my son so excited and engaged in a baseball program, for he has been in a few other programs and never showed such enthusiasm as he does for KPI.

This program is unique with its technology and emphasis on individualized development of both physical and mental growth. This is huge especially during these trying times. The program is worth every dollar.

We are residents of San Jose, but we commute 2-3 times a week to Morgan Hill for the camps and hopefully, future practices. We love Morgan Hill and it's sense of community; Have even considered moving there because of that smaller town feel and close knit community. I have enjoyed the downtime in Morgan Hill while my son is attending the KPI camps. This time is spent supporting the Morgan Hill community by shopping at your local Target, Dick's, Thinker Toys and the infamous Hobby Lobby just to name a few.

Our love and voice for the KPI/Dub program has recruited even more San Jose families to join. That is more San Jose families willing to commute to Morgan Hill (even though we have many local programs near us), and albeit they too support Morgan Hill by shopping at the same stores during camp hours.

Obviously, my point is that KPI not only supports our our youth, but it also stimulates Morgan Hill's economy. I personally had never been to Hobby Lobby until last year when my son joined KPI and I spend a good amount of time and money there-monthly, if not weekly. I'm also looking forward to dining in the many restaurants in the

downtown part of Morgan Hill during the spring and summer months, when it is safe to do so...

I personally ask you to please reconsider your decision not to permit KPI. From the very beginning, I could see the pride of not only the founder, but all the local families in their Morgan Hill community. It would be an absolute shame not to let such a wonderful youth program stay within their roots of Morgan Hill.

I don't live there, yet I feel equally devastated and honestly betrayed by the decision to not grant a permit for Morgan Hill grown youth program. It would be a huge loss for the youth in the local community during these times of Covid especially; this is an opportunity for Morgan Hill to be a part of healing process for the next generation.

Thank you for your time.

Best Regards,

Lisa Piazza-DeLap

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Kinetic Performance Institute
Date: Sunday, February 7, 2021 5:00:49 PM

From: "Forbell, David (Lt Col)" <[REDACTED]>
Date: February 7, 2021 at 9:48:15 AM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli
 <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>
Cc: erik@dubbaseball.com
Subject: Kinetic Performance Institute

Morgan Hill City Council,

Good morning, my name is David Forbell and I am writing to you today in regards to the Kinetic Performance Institute, which operates out of the building located on Mast St. in Morgan Hill, and the issue with their conditional use permit. My note to you this morning is from the position of a concerned citizen who would like to express what this organization means to my family and how future decisions about KPI's continued use of this building will impact us.

My daughter, Ally, began training at KPI last fall when a fellow teammate provided a referral. Ally is a 16yr old fastpitch softball pitcher who was looking for a workout/training facility that specializes in softball/baseball. We currently reside in Salinas, CA and we haven't found any facilities in the Monterey/Salinas area that provide the specialty training and equipment that KPI does. For example, KPI uses Rapsodo devices which measures performance metrics when she pitches. These devices are the latest technology used to enhance performance in the sport and are not commonly found in local gyms. In addition, to equipment like the Rapsodo, the training staff has been crucial to Ally's training and development. They design custom workouts for her and push her to reach her full potential. Training at KPI has helped Ally both physically and mentally, especially under the current conditions with COVID, and she thoroughly enjoys being able to workout there.

Due to Ally's positive experience at KPI, we recently had our son, Jacob (13), try out for the Dub Baseball teams that KPI runs. Jacob made the team and will now start practicing at the KPI facility. Jacob had been a part of a baseball team here in Salinas, but the organization struggled after COVID and lost the use of their indoor training facility. It is unknown at this time if the team will continue to play

in the spring. He is so excited to have found a new team and get to train at such a unique facility with the state-of-the-art baseball technology equipment that I mentioned earlier.

Over the last 5 months of taking Ally up to Morgan Hill to train, the city has started to grow on me. Her workouts are typically only a couple of hours and it doesn't make sense for me to drive back to Salinas. So, I usually find myself grabbing a bite to eat right there in Morgan Hill or knocking out errands at the grocery or hardware stores, it's so convenient. So much so that my wife and I are considering moving up to Morgan Hill. I am an active duty Marine Corps officer currently stationed at the Naval Postgraduate School in Monterey. This fall I am going to be retiring from the military after 21+ years of service. We plan to stay in central California following my retirement as our kids finish high school. I am looking for work in San Jose, so Morgan Hill would be a much closer commute.

I provide all of this information to express how connected we are to this organization and their unique facility. If something happened to KPI's ability to use this facility it would be a major impact to both of my children. I ask that you please take this into consideration as the council weighs the information surrounding this issue.

Thank you for your time and service to the community of Morgan Hill.

Respectfully,

LtCol David Forbell
Deputy Senior Marine Corps Representative
Naval Postgraduate School

[REDACTED]
[REDACTED]
[REDACTED]

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From: [General](#)
To: [Michelle Bigelow](#)
Subject: FW: Permit - Titans
Date: Friday, February 5, 2021 10:55:29 AM

From: diana@[REDACTED]
Sent: Friday, February 5, 2021 10:52 AM
To: General <general@morganhill.ca.gov>; ccpubliccomment@morgahill.ca.gov; Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Cc: Xcel Titans <[REDACTED]>
Subject: Permit - Titans

Dear Morgan Hill City Council,

Recently, the City Council rejected an application of Titans Sports Academy for use of a facility on Mast Ave as a gym. While we understand that the area is meant to be reserved for (heavy) industrial use, we would like to express our sincere concerns with that decision.

Titans and their partner DUB Baseball were thriving small local businesses that offered much needed recreational and athletic services for the youths in Morgan Hill until the pandemic and its health, social and economic impacts hit us. Both businesses managed to survive through the pandemic due to persistent engagement of their owners, employees and the parents of the youths they serve. Now, as we finally have sight of an end of the pandemic, they are once more in a dire situation as they need to leave their current location and alternatives in Morgan Hill are sparse or non-existent. Coming out of one existence-threatening crisis they are heading right into the next one.

As migration to Morgan Hill from expensive Peninsula locations continues to grow, Morgan Hill needs entrepreneurs and businesses like those of Titans and Dub. Both our teenage children besides numerous other Morgan Hill teenagers have benefitted tremendously over the last five years. These organizations have provided Morgan Hill's youths with a place to pursue their passions and a safe and positive environment to be active and healthy. In times of increasingly negative impacts of social media, gaming and "screen time" in general this is critically important for a healthy upbringing of the next generation citizens and social, political and economic leaders.

We sincerely hope that you will reconsider your decision to reject the application in the

interest of thriving small local businesses that provide essential services for the well-being of Morgan Hill's youths.

Sincerely,

Dr. Horst Groesser and Diana Groesser Duval

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: DUB/KPI Conditional Use - Please Approve
Date: Sunday, February 7, 2021 5:06:53 PM

From: Mark Matthews <[REDACTED]>

Date: February 6, 2021 at 5:30:52 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli
 <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>

Subject: DUB/KPI Conditional Use - Please Approve

To: Morgan Hill City Council

Subject: Dub/KPI Facility

As a longtime resident of Morgan Hill, I believe our children need and deserve healthy sports outlets to develop growth, discipline and leadership. The DUB/KPI business does just that and deserves a facility to further develop great kids into great adults. Youth sports are prevalent in nearly all cities and builds positive and lasting relationships with the kids and adults. It also generates sales, income and taxes for the local community. Businesses like Dicks, Big 5, Walmart, grocery stores, fast food, gas and other stores all benefit from parents and kids driving to workouts, games and purchasing equipment. With our two boys we spend thousands of dollars each year that affect each of those businesses and ultimately the city. Yes, I agree we need more businesses in Morgan Hill for professionals and others to continue to make Morgan Hill a desirable place to live. However, that desirable place to live also needs a balanced approach for a healthy community.

Isn't that what we should be all about?

Please approve/uphold the conditional use permit to allow the DUB/KPI business to remain in its current facility.

Thank You,

Mark Matthews

Resident of Morgan Hill

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Titan Parent
Date: Sunday, February 7, 2021 5:18:27 PM

From: Macy Crane <[REDACTED]>
Sent: Sunday, February 7, 2021 5:13 PM
To: Jennifer Carman <jennifer.carman@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; General <general@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>
Cc: Titans Xcel <[REDACTED]>; Lina Celio <[REDACTED]>; [REDACTED]
Subject: Fw: Titan Parent

Resending my email from 1/18 to ensure it is put into the record for the upcoming meeting regarding the Titan Gymnastics permit.

Macy Crane
 [REDACTED]

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

From: Macy Crane <[REDACTED]>
To: jennifer.carman@morganhill.ca.gov <jennifer.carman@morganhill.ca.gov>; christina.turner@morganhill.ca.gov <christina.turner@morganhill.ca.gov>; general@morganhill.ca.gov <general@morganhill.ca.gov>; gino.borgioli@morganhill.ca.gov <gino.borgioli@morganhill.ca.gov>; john.mckay@morganhill.ca.gov <john.mckay@morganhill.ca.gov>; yvonne.martinezbeltran@morganhill.ca.gov <yvonne.martinezbeltran@morganhill.ca.gov>; rene.spring@morganhill.ca.gov <rene.spring@morganhill.ca.gov>
Cc: Titans Xcel <[REDACTED]>; Lina Celio <[REDACTED]>; Angelica McDonald <[REDACTED]>
Sent: Monday, January 18, 2021, 12:31:42 PM PST
Subject: Fw: Titan Parent

Morgan Hill City Council and Other Interested Parties,

As a resident, parent, and volunteer within Morgan Hill, I respectfully request that you reconsider the non-community centric decision that was made at the Wednesday, January 12th Planning Commission. Titans Gymnasts and Dub Baseball's request for the permit to provide recreational services at their current 195 Mast Street address (exception for non-industrial services I believe) was denied, but should be approved.

I attended the Planning Commission Meeting and it became clear that the Commission members do not feel empowered to make "Good for the Community" decisions or there may be politics at play that are outside my area of understanding. What leads me to that conclusion were three events that occurred in the meeting.

- First was the inappropriate verbal assault on the owner of Titans when he was called "niece" two times by one of the Commissioners regarding Titans knowledge of Morgan

Hill Zoning (Our owner had called or talked with officials from the City of Morgan Hill at least three times and was led to believe that the permit was "no problem." Talking of officials multiple times is evidence of his putting forth a good faith effort to understand the rules, only to be misled by the Morgan Hill Officials, who also took the money for the permit or permit process.)

- The second was when the Commissioner named John, who appears to be the person with an understanding of all Commercial, Industrial, and Light Industrial property within Morgan Hill stated, "There are NO Commercial or Light Industrial Properties within Morgan Hill that meet the very narrow specification for a Gymnastics Facility."
- The Third was when one of the Commissioners who had not been vocal until asked at the end of the Three Hour Meeting glibly said "Can I just say No?" rudely implying that the requesters did not deserve an explanation of his objection before he basically voted to put them out of business in Morgan Hill.

Now for the Community Centric part of my request. My daughter has been a part of the Titan family for about a year and a half. Gymnastics and other youth recreational activities are an essential part of a viable suburban community. As mentioned by Commissioner John in the meeting, there is no viable space for a Gymnastics facility within Morgan Hill that is zoned as commercial or light industrial. If the permit is not approved, we will not have a Morgan Hill facility appropriate to train competitive gymnasts. As a parent of a competitive gymnast, I will find another gym if Titans Gym is put out of business by this lack of community perspective, but the opportunity to train, compete, and develop friendships with other local youth would be removed. My daughter is Home Schooled through Ocean Grove, as are a number of other participants within the Titans community. Ocean Grove parents value not only the tremendous care and training offered to our youth at Titans, but the opportunity to be with (even if on Zoom) local children.

On a final note, the property was available for rent for over 4 months with no interest or "nibbles." Empty!!!!

Please give Titans their permit. If there is a fear that Morgan Hill will miss out on some future business opportunity, possibly additional property should be zoned for Heavy Industrial. Killing a loved business in the time of Covid for a future unknown does not meet with my values of Community.

Thank you for the Consideration,

Macy Crane
[REDACTED]

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

From: Macy [REDACTED] <[REDACTED]>

To: "planning_commission@morganhill.ca.gov" <planning_commission@morganhill.ca.gov>

Sent: Tuesday, January 12, 2021, 09:33:57 PM PST

Subject: Titan Parent

Tonight you are making a decision about having Gymnastics in Morgan Hill with competitive training opportunities for our children.

There is no place in Morgan Hill in the Commercial districts. And sounds like no place in light industrial.

My child needs her gymnastics. I really do not want to have to drive my 10 year old to San Jose or wherever.

Thank you,

Macy Crane

Sent from my iPhone

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Dub/KPI CUP Appeal - Our Program
Date: Sunday, February 7, 2021 5:35:12 PM

From: Erik Wagle <[REDACTED]>
Date: February 7, 2021 at 5:20:41 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>, Rich Constantine
 <Rich.Constantine@morganhill.ca.gov>, John McKay
 <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran
 <yvonne.martinezbeltran@morganhill.ca.gov>, Gino Borgioli
 <Gino.Borgioli@morganhill.ca.gov>
Subject: Dub/KPI CUP Appeal - Our Program

City of Morgan Hill City Council Members,

Thank you all for your time and thoughtful conversations as we navigate these trying times with our appeal to the City Council for a conditional use permit at 195 Mast Street. Over the course of this week I will send you a series of messages explaining different aspects of our program and objective facts about the circumstances surrounding our appeal of the Planning Commission's decision regarding our Conditional Use Permit with Titans Sports.

Dub Baseball was founded in August of 2012, but the foundation for our program was laid many years earlier. My family moved to Morgan Hill when I was 4 years old and I have lived here ever since (with brief periods living out of the area in college and when I coached college during my career). Growing up we were involved with every aspect of this community. I went to local public schools, graduated from Live Oak High School in 1999, and went on to become an All American college player. Along the way my family participated in Morgan Hill Pony Baseball, Morgan Hill Raiders, and YMCA Basketball. We attended every 4th of July Parade and festival/event... we quite literally are Morgan Hill through and through. Upon receiving my Bachelor's and Masters degrees, I started my teaching career at Live Oak High School and currently teach in the district at Martin Murphy Middle School. I have coached at Live Oak and Sobrato High School and have been very supportive of all local athletics. Morgan Hill is my entire life and the community charm and dedication to community members is why I have chosen to remain in Morgan Hill and grow my business here, despite lucrative offers to further my career at different levels in different areas.

We founded Dub in August of 2012 to provide local athletes the ability to get high level training and coaching in Morgan Hill. At the time youth

athletics was beginning to become a boom and most serious Morgan Hill players were heading North to San Jose and Santa Clara to receive this type of training and coaching. We started with one small camp of 18 players, and since have grown into one of the most recognizable club programs in the entire nation, and our indoor training center, Kinetic Performance Institute, is widely regarded as the finest baseball and softball training facility in Northern California, and many consider it the best in the state. We have state of the art technology and training methods, and have hired coaches from Major League teams to train our athletes. We have athletes that drive to us as far North as Marin, as far east as Modesto, as far South as Paso Robles, and have hundreds of athletes littered in between. We also have remote clients in the Sacramento and Los Angeles areas. On average, 50—60% of our athletes hail from Morgan Hill. Our local athletes get to enjoy this world class training facility and atmosphere by just driving around the corner, while other athletes come to Morgan Hill from miles around to receive our training.

We also have a non-profit 501c3 public charity partner of our program, the Dub Foundation. The Dub Foundation is a true differentiator for us, as the club baseball/softball and training worlds are very expensive for families. The Dub Foundation's mission is to keep our services available to all athletes that choose to seek it. Over the last 7 years, the Dub Foundation has granted over \$200,000 in financial aid to families that could not afford our full prices. On top of that, we give every single one of our graduating seniors in high school a college scholarship. 2021 will see us award for the first time the Brandon Villafuerte Diversity Award. We are going to be awarding a large college scholarship to an athlete that comes from a diverse background. Brandon Villafuerte is the only player from Morgan Hill to ever reach Major League Baseball and his father, Ralph, has been coaching Morgan Hill for over 40 years and currently coaches in our program. We also have done extensive community every year since the Dub Foundation's inception, see below for the many community service projects we have been involved in...

- Restoration of Community Park Ballfields
- Restoration of Live Oak High School Baseball and Softball fields
- Morgan Hill Relay For Life
- Blue Star Moms (targeting soldiers from South County)

Annually, only 11% of high school baseball players across the nation are able to continue their playing careers in college. It is incredibly difficult to play baseball at the collegiate level. Through the 8.5 years of Dub, 85% of our graduating seniors have gone on to play in college. We are multiplying the national trend by 7-8 times for local players. Our training and structure allow local players to achieve their dreams and represent our community on the largest of national stages. Below is a small list of the hundreds of universities our players have attended...

- University of California Berkeley
- University of Oregon
- Santa Clara University
- University of Arizona
- University of San Francisco
- University of Hawaii
- University of Nevada Reno
- So many more!

We have huge plans for Dub Baseball and Kinetic Performance Institute. We plan on keeping our home base in Morgan Hill as we expand to have a national footprint and offerings. We have hired a marketing consultant, have full-time coaches, and have an aggressive business plan that should make Morgan Hill the mecca of baseball and softball training in Northern California. A part of this is our partnership with the City of Morgan Hill, as we have been working for years with the City to bring a park of ballfields to our town. We have pledged an incredible amount of structural and financial support to make this project a reality. Baseball training and tournaments are a huge business opportunity for Morgan Hill, and the city is very well positioned to be a hub of that interest with Dub and KPI leading the charge in modern baseball/softball training.

My next email will highlight the business side of our program. We look forward to explaining the large amount of business we bring to the city with the indispensable services we provide. As always, please let me know if there are any questions. I can be reached at this email or my cell,

[REDACTED]

Thank you!

Erik Wagle
 President/Executive Director
 Dub Sports, KPI & Dub Foundation
www.dubbaseball.com





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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Dub/KPI Conditional Use Permit
Date: Sunday, February 7, 2021 6:53:56 PM

From: Signe Johnson [REDACTED] >
Date: February 5, 2021 at 6:06:34 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli
 <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>
Subject: Dub/KPI Conditional Use Permit
Reply-To: Signe Johnson [REDACTED]

Dear Morgan Hill City Council Members:

As a longtime resident of Morgan Hill, I kindly request that you support the appeal by Dub/KPI for a Conditional Use Permit that was rejected by the City Planning Commission on January 19, 2021.

As a concerned parent of two teenage boys that have been participating in the Dub/KPI training facility since finishing MH Pony Baseball, I can't imagine the facility not being available to them here in MH. We had the pleasure of being exposed to the Dub Organization many years ago. Our boys are now Juniors at Live Oak High School.

Our attraction to the Dub Organization was immediate - not only because of the opportunity for our boys to further develop their baseball skills, but equally important to us was the Community aspect of the Dub Program. Dub is deeply rooted in the fabric of Morgan Hill. Children throughout our town belong to Dub, and many have been playing together throughout their childhood and into their teens.

Equally as important - is a key Charter of the Dub Organization - to give back to our Community. All kids enrolled in Dub/KPI contribute to the community through participation in annual Community events - from Walk-A-Thon for Alzheimer's & Breast Cancer Awareness to Community Park Clean-Up events. Any or all of these organized events teaches them more than simply the baseball skills learned between the base lines - They learn about "community" and how to give back to the town they've grown up in.

The Dub/KPI Training Facility is the very best at what it offers our youth in Morgan Hill and throughout the Bay Area. We are extremely fortunate to have the facility here in town. Other children/families are not as lucky. Besides Morgan Hill, families travel from all over the North, South, Central and East Bay Counties to Morgan Hill. We and our boys have formed life long friends with families from Monterey, Pacific Grove, Salinas, Hollister, Los Banos, San Jose, Fremont, San Francisco and more - ALL with the same goal of giving our children the VERY BEST opportunity to excel in a sport they love. Families from outside of Morgan Hill spend a tremendous amount of money eating at our restaurants, buying gas locally, shopping at our stores - even attending our movie theater to pass the time while their child gets the training they pay for! MH benefits tremendously from the revenue these families infuse into our local economy.

Our financial sacrifice to enable our boys to participate in the Dub/KPI Development Program, also benefits the City of Morgan Hill through the taxes Dub/KPI pays back to the City. Thousands of dollars are willingly paid annually by every family to get the experience

and instruction offered at Dub/KPI.

Please vote to support the appeal for a Conditional Use Permit, allowing Dub/KPI to continue its mission supporting our youth and its citizens HERE in Morgan Hill.

Sincerely,

Signe L. Johnson

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From: Nancy Valone
To: [CC:Public Comment](#)
Cc: [Rob](#)
Subject: Building Permit for Titans Gymnastics
Date: Monday, February 8, 2021 7:42:23 AM

To Whom it may concern,

I am told that the gym might be forced to relocate out of the area. My granddaughters, Ava and Ellie Valone have been going to Titan Gymnastics for 6 or more years. This has been a wonderful experience for them.

First, Tony the owner / instructor and Coach Lora have been amazing, and very devoted. Tony and all the instructors work so hard with the gymnasts, and truly care about each one of them.

It has been a pleasure to watch the growth of Ava and Ellie. Both physically and mentally over the years. They practice at least 3-4 times a weeks for many hours, and never complain about going to practice. When Covid hit, I found it amazing that the Tony, Lora and staff members were able to put together training/practice via Zoom. Thus, the gymnasts didn't miss a beat.

The parents and families of the gymnasts have put so much time and effort to make sure they thrive. Over the years, it's like they all became family.

I believe Titan Gymnastics is the only one in the Morgan Hill area that goes beyond level 5. Right now, Ava is at level 7 with hopes of achieving more. If Titan has to relocate out of the area, there would be a good possibility of the gymnasts having to travel out of Morgan Hill and/or dropping gymnastics all together. Truly a sad thought after so much time and devotion they have put in.

Lastly, I would like to give you an example of the importance of keeping Titan in Morgan Hill. My granddaughter, Ava turned 14 in October. Rather than have a party, she wanted to go to Titan practice because they always make it special to celebrate birthdays.

Sincerely,

Nancy Valone - Grandparent

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: MH City Council - Permit for Kinetic Performance Institute (KPI)
Date: Monday, February 8, 2021 9:12:37 AM

From: Todd Milholland <[REDACTED]>

Date: February 4, 2021 at 10:53:48 AM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>

Subject: MH City Council - Permit for Kinetic Performance Institute (KPI)

Dear Morgan Hill City Council,

I am writing to you as a concerned parent and on behalf of the Kinetic Performance Institute (KPI) located at 195 Mast Ave in Morgan Hill.

My son attends KPI as a high school pitcher at Bellarmine College Prep in San Jose who has the potential to pitch in college. We drive to KPI 3 days a week because it is the only program we have found that offers the combination of hi-tech, baseball-focused strength and conditioning along with the chance to play on an elite travel team with excellent coaches experienced with the college recruiting process.

In addition to the KPI fees, we now spend money and time in Morgan Hill shopping, eating, drinking and exploring in general. These are things that we had never done before in our now

15 years of living in the Bay Area. We were introduced to KPI through other Bellarmine families and we have in turn introduced more so that now there is a true growing pipeline of several Bellarmine players that attend KPI and spend time in Morgan Hill that did not previously.

KPI is a unique program that brings player/families to Morgan Hill that would have not otherwise come. And many of the families have and will come to appreciate Morgan Hill as we do.

I and on behalf of KPI, urge the City Council to approval KPI's permit application to allow this special and beneficial program to continue in Morgan Hill at it's current location.

Thank you in advance for you consideration.

Best Regards,

Todd Milholland

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From: [linda vrabel](#)
To: [CC Public Comment](#)
Subject: Titan Sports Academy
Date: Monday, February 8, 2021 4:40:47 PM

Please accept my comment on Titan Sports Academy/Kinetic Performance Institute.

Honorable members of council please approve the Conditional Use Permit for Titan Sports to operate at 195 Mast Street, in a General (heavy) industrial zoned property.

Project Number: UP2020-0004

Conditional use permit to permit indoor commercial recreation to allow for youth gymnastics and baseball training inside an existing industrial building and potential reduction to on-site parking requirements. The project is also potentially seeking an off-site parking agreement.

Location

North side of Mast Street approximately 150 feet west of its intersection with Vineyard Boulevard (APN: [817-02-063](#)).

Morgan Hill youth require many different opportunities to exercise and to receive an education in gymnastics and baseball. These indoor activities require a significant amount of space and are often extremely expensive in a space approved for retail.

My children were involved in these indoors activities and learned many team and individual goal setting skills.

While the Planning Commission denied this permit, the City Council has the ability, under the City's Municipal Code to "Call for Review" and reconsider this decision. This use is meaningful and should be considered for approval. Morgan Hill has an every increasing population of youth who require many different opportunities for enriching experiences. Please Change the zoning for this location from heavy industrial to something that accepts this type of important activity.

Thank you for this opportunity to comment.

Respectfully
Linda Vrabel



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Dear Morgan Hill City Council members,

On 1/19/21 the City of Morgan Hill planning commission rejected KPI/Titan's application for a Conditional Use Permit. This ruling has many implications for the families of the KPI/Titan organization.

The sentiment to protect Morgan Hill's industry sector is valid. The importance of keeping our youth thriving in a safe, healthy community, and "home grown" program should also be viewed as pertinent. Our son has been a participant in this program going on 4 years. We are not Morgan Hill residents. In fact, we drive to Morgan Hill 2 to 3 days per week so that he can participate in what we deem an exceptional program. When our son is at the KPI facility, you will find us frequenting local eateries, doing our weekly grocery shopping and visiting many Morgan Hill retail centers. We choose to spend our money in the city we love so very much. We recently sold our house so that we can purchase our new home in Morgan Hill. The warm welcoming small-town feel coupled with the opportunities for both of our children to experience a sustainable unique program such as KPI are the main driving forces behind our decision to relocate.

The competitive youth sports experience is unique and is ripe with opportunity for families. Needless to say there are many programs available for families to choose from. We are one of the families that have chosen the Dub program over others that might be cheaper or offer other incentives. There are many values being taught to our son in the program which align with our core family values. These programs are for the players that want a more competitive environment and is voluntary. We choose Dub over others, for all of the reasons discussed.

The KPI/Titan programs use of the building in question has a positive impact on the community's general welfare and doesn't damage public interests nor public property. Housing the KPI/Titan programs participants does not cause any unwanted or excessive noise, traffic or otherwise.

The pandemic has affected the lives of our children in several ways, many of them being negative. We are hoping this isn't yet another way that our children will feel the negative impact of the pandemic.

Thank you for your time.

Sincerely,

Ron and Sarah Paiva

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: ReDub/KPI CUP Appeal - Our Business
Date: Tuesday, February 9, 2021 7:34:03 AM

From: Erik Wagle <[REDACTED]>
Date: February 8, 2021 at 6:23:54 PM PST
To: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, Rich Constantine
 <Rich.Constantine@morganhill.ca.gov>, Yvonne Martinez Beltran
 <yvonne.martinezbeltran@morganhill.ca.gov>, John McKay
 <john.mckay@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: ReDub/KPI CUP Appeal - Our Business

City of Morgan Hill City Council Members,

Thank you for taking the time to read my message yesterday regarding our program and all the different way we serve the community. Today's note will be about our business and how we do our part to financially help the city and we have a large multiplier effect with the wide variance of clients that enjoy our various offerings.

We have a large amount of offerings, but most of our clients typically spend \$400-600 a month to be in our program. For a program that ranges between 150-200 athletes at any point in time, we usually process \$60,000-80,000 per month in credit card fees. All transactions in our program are done through automated credit card payments. According to the Moody's Analytics Studies...

"Increased credit and debit card usage contribute to economic activity by reducing transaction costs, increasing transparency and improving efficiency in the flow of goods and services."

High amounts of processed credit card transactions are very good for local economies. On top of that, we have many athletes that come from areas outside of Morgan Hill to seek out our training. Because our trainings are 2.5-3 hours long, and we do not allow parents to view them, parents are left to explore Morgan Hill. They do their grocery shopping here, eat in our restaurants, visit our hardware stores, and gas up at our stations. Many parents estimate they spend \$100-200 per visit that they are in town, doing things they would normally do in their hometowns, but instead spending that money supporting our businesses and community.

Youth sports/recreation are also a huge business multiplier, meaning that the presence of a certain business increases the effect on other surrounding businesses and the overall community. As evidenced in the article linked below, youth sports/recreation is one of the highest business

multipliers that benefits a local economy, rated as nearly 3x that of retail.

<https://www.epi.org/publication/updated-employment-multipliers-for-the-u-s-economy/>

Factoring in that between Titans and Dub/KPI, there are nearly 400 athletes signed up for our programs at any time, and there are thousands of different athletes coming through over the course of a year, we have a huge multiplier effect on the local economy. So we are not just good for the community side of things, our programs provide massive economic benefit to the local economy. This objective fact, along with the fact that we are already in place as long standing businesses, could make it easy to argue we are much more valuable to the local economy than any "potential" industrial business that might house itself in an old, outdated industrial building.

Our next message will focus on the building that we are inhabiting at 195 Mast Street and the notion that this building is far from Grade A Industrial space.

Thank you!

Erik Wagle
President/Executive Director
Dub Sports, KPI & Dub Foundation
www.dubbaseball.com



From: Erik Wagle <[REDACTED]>
Date: Sunday, February 7, 2021 at 5:20 PM
To: Rene Spring <Rene.Spring@morganhill.ca.gov>

rich.constantine@morganhill.ca.gov <rich.constantine@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, gino.borgioli@morganhill.ca.gov <gino.borgioli@morganhill.ca.gov>

Subject: Dub/KPI CUP Appeal - Our Program

City of Morgan Hill City Council Members,

Thank you all for your time and thoughtful conversations as we navigate these trying times with our appeal to the City Council for a conditional use permit at 195 Mast Street. Over the course of this week I will send you a series of messages explaining different aspects of our program and objective facts about the circumstances surrounding our appeal of the Planning Commission's decision regarding our Conditional Use Permit with Titans Sports.

Dub Baseball was founded in August of 2012, but the foundation for our program was laid many years earlier. My family moved to Morgan Hill when I was 4 years old and I have lived here ever since (with brief periods living out of the area in college and when I coached college during my career). Growing up we were involved with every aspect of this community. I went to local public schools, graduated from Live Oak High School in 1999, and went on to become an All American college player. Along the way my family participated in Morgan Hill Pony Baseball, Morgan Hill Raiders, and YMCA Basketball. We attended every 4th of July Parade and festival/event... we quite literally are Morgan Hill through and through. Upon receiving my Bachelor's and Masters degrees, I started my teaching career at Live Oak High School and currently teach in the district at Martin Murphy Middle School. I have coached at Live Oak and Sobrato High School and have been very supportive of all local athletics. Morgan Hill is my entire life and the community charm and dedication to community members is why I have chosen to remain in Morgan Hill and grow my business here, despite lucrative offers to further my career at different levels in different areas.

We founded Dub in August of 2012 to provide local athletes the ability to get high level training and coaching in Morgan Hill. At the time youth athletics was beginning to become a boom and most serious Morgan Hill players were heading North to San Jose and Santa Clara to receive this type of training and coaching. We started with one small camp of 18 players, and since have grown into one of the most recognizable club programs in the entire nation, and our indoor training center, Kinetic Performance Institute, is widely regarded as the finest baseball and softball training facility in Northern California, and many consider it the best in the state. We have state of the art technology and training methods, and have hired coaches from Major League teams to train our athletes. We have athletes that drive to us as far North as Marin, as far

east as Modesto, as far South as Paso Robles, and have hundreds of athletes littered in between. We also have remote clients in the Sacramento and Los Angeles areas. On average, 50—60% of our athletes hail from Morgan Hill. Our local athletes get to enjoy this world class training facility and atmosphere by just driving around the corner, while other athletes come to Morgan Hill from miles around to receive our training.

We also have a non-profit 501c3 public charity partner of our program, the Dub Foundation. The Dub Foundation is a true differentiator for us, as the club baseball/softball and training worlds are very expensive for families. The Dub Foundation's mission is to keep our services available to all athletes that choose to seek it. Over the last 7 years, the Dub Foundation has granted over \$200,000 in financial aid to families that could not afford our full prices. On top of that, we give every single one of our graduating seniors in high school a college scholarship. 2021 will see us award for the first time the Brandon Villafuerte Diversity Award. We are going to be awarding a large college scholarship to an athlete that comes from a diverse background. Brandon Villafuerte is the only player from Morgan Hill to ever reach Major League Baseball and his father, Ralph, has been coaching Morgan Hill for over 40 years and currently coaches in our program. We also have done extensive community every year since the Dub Foundation's inception, see below for the many community service projects we have been involved in...

- Restoration of Community Park Ballfields
- Restoration of Live Oak High School Baseball and Softball fields
- Morgan Hill Relay For Life
- Blue Star Moms (targeting soldiers from South County)

Annually, only 11% of high school baseball players across the nation are able to continue their playing careers in college. It is incredibly difficult to play baseball at the collegiate level. Through the 8.5 years of Dub, 85% of our graduating seniors have gone on to play in college. We are multiplying the national trend by 7-8 times for local players. Our training and structure allow local players to achieve their dreams and represent our community on the largest of national stages. Below is a small list of the hundreds of universities our players have attended...

- University of California Berkeley
- University of Oregon
- Santa Clara University
- University of Arizona
- University of San Francisco
- University of Hawaii
- University of Nevada Reno
- So many more!

We have huge plans for Dub Baseball and Kinetic Performance Institute. We plan on keeping our home base in Morgan Hill as we expand to have a national footprint and offerings. We have hired a marketing consultant, have full-time coaches, and have an aggressive business plan that should make Morgan Hill the mecca of baseball and softball training in Northern California. A part of this is our partnership with the City of Morgan Hill, as we have been working for years with the City to bring a park of ballfields to our town. We have pledged an incredible amount of structural and financial support to make this project a reality. Baseball training and tournaments are a huge business opportunity for Morgan Hill, and the city is very well positioned to be a hub of that interest with Dub and KPI leading the charge in modern baseball/softball training.

My next email will highlight the business side of our program. We look forward to explaining the large amount of business we bring to the city with the indispensable services we provide. As always, please let me know if there are any questions. I can be reached at this email or my cell, 408-623-2520.

Thank you!

Erik Wagle
 President/Executive Director
 Dub Sports, KPI & Dub Foundation
www.dubbaseball.com



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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: KPI and Dub Baseball: an important part of our Morgan Hill community
Date: Tuesday, February 9, 2021 2:03:41 PM

From: "Uyeda-Allen, Jennifer" <[REDACTED]>

Date: February 9, 2021 at 9:50:03 AM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>

Subject: KPI and Dub Baseball: an important part of our Morgan Hill community

Hello City Council Board Members.

I am writing to you in regards to the Kinetic Performance Institute and Dub Dynasty Baseball Conditional Use Permit situation. My name is Jennifer Uyeda-Allen and I have been involved in the community since arriving in Morgan Hill in 2002. I have been involved in all aspects of my children's activities especially in their education and local sports programs. Because of my community involvement, I was fortunate enough to have been asked to be on the Dub Foundation Executive Board.

My decision to join was a very simple one. This program is unlike any other. My son has been with Dub Baseball since he was 9 years old. Being small and young for his grade, this program gave him the opportunity to grow after starting Pony Baseball at the age of 4 and gain confidence, baseball education, and skills that he uses today as a sophomore at Live Oak High School. The coaches and program worked with him and believed in him. This program had and has so much to offer him and knowing that it is a part of our Morgan Hill community makes it even better.

Because of the Dub Foundations mission to give any and all baseball player the opportunity to play on a travel baseball team, is amazing. The Foundation helps pay fees for those players that cannot afford to play on a travel ball team. We are taking players and keeping them busy, fit, and off the streets. They are bettering themselves and building long lasting friendships that will last a lifetime. Our program has also allowed many players to continue their dreams at the college level. We have players from all over the Bay Area attending Dub baseball and KPI. We are bringing in revenue to our little town by supporting local businesses when our boys are in their sessions, our fees are also money that we put back into our community. KPI and Dub Baseball have year round programs and the kids who participate in both know that they have a safe place to go and have the opportunity to better themselves. We need to continue this growth for our youth and our community.

Because of all of the reasons listed above, I am honored to be a part of the Dub Foundation Executive Board and am a firm believer that without this opportunity to maintain this for the youths in our community that we will be impacting a lot

businesses, families, and most of all kids. KPI and Dub Baseball are essential to the people in this community and should be allowed to continue their mission to keeping the youth of our community safe and helping them grow.

Please feel free to contact me with any questions or concerns. We love our travel ball community and we love our Morgan Hill community. At the end of the day, the two go hand-in-hand to make us who we are. The best well-rounded community around!

Thank you for your time and have a wonderful day.

Warm regards always,
Jennifer Uyeda-Allen

[REDACTED]

Jennifer Uyeda-Allen
Literature Manager
Anritsu Company

[REDACTED]

[REDACTED]

www.anritsu.com

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January 27, 2021

City of Morgan Hill

Development Services Center
17575 Peak Avenue, Morgan Hill, CA 95037

MAST – Titans Sports Academy/Kinetic Performance Institute
Project Number: UP2020-0004

This letter is being submitted to appeal the Planning Commission's decision denying our Conditional Use Permit (CUP). We feel our appeal should be heard and the Commission's decision be overturned for the following reasons:

1. City of Morgan Hill Staff and Commission failed to inform us that said property is considered "Heavy Industrial" and that a CUP is not permitted for our type of business.
2. City of Morgan Hill allowed us to proceed with our CUP application at a building that is prohibited from receiving such a permit.
3. Our company operations requires a specific amount of clear wide-open space and exceptionally high ceilings. These accommodations are specific and discoverable only in an industrial type locale.
4. There are no other available site options that fit our criteria of spatial requirements. Retail space is not an option.

Titans is a small family-owned business and operated by more than 50% women. Titans was established in Morgan Hill in 2015 and we wish to continue long term operations in the city of Morgan Hill. We dedicate ourselves to the development of young athletes competing in the sport of gymnastics.

Dub Baseball/KPI has been running its' operation in Morgan Hill since 2014. Erik Wagle (owner) is a Morgan Hill resident and teaches for the school district. KPI provides high level athlete training for 200 local athletes. The program also participates in many community service endeavors.

Together we strive to deliver high-level training in a safe and positive environment. Our facility provides recreational through competitive level training. Without our local gym, the approximate five-hundred (500) athletes otherwise would be forced to travel further out of town.

We respectfully urge the Council to reconsider, overturn, and approve our CUP application. Please allow us to continue to serve and shape our special community of families, and athletes within the City of Morgan Hill.

Sincerely,

Titans Sports Academy



Kinetic Performance Institute



408.782.2872 • TITANSMH.COM

From: [General](#)
To: [Michelle Bigelow](#)
Subject: FW: Keep Titans open
Date: Wednesday, February 10, 2021 7:33:34 AM

-----Original Message-----

From: Elizabeth Bettencourt [REDACTED] >
Sent: Wednesday, February 10, 2021 6:50 AM
To: General <general@morganhill.ca.gov>
Subject: Keep Titans open

Good morning,

Please consider keeping Titans open as it is a place both my daughters have enjoyed going for a couple of years now. They have even celebrated a birthday party with the Titans staff and our family and friends! There is no other facility in this area that offers their services and allows my daughters to participate in their love of gymnastics. The Titans staff has become family to us and without their facilities, my family would suffer a huge void!

Thank you for your time.

Sent from my iPhone

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From: [General](#)
To: [Michelle Bigelow](#); [CityCouncil](#); [Christina Turner](#)
Subject: FW: Titans Sports Academy
Date: Wednesday, February 10, 2021 8:43:19 AM

FYI

-----Original Message-----

From: Stephanie Barton <[REDACTED]>
Sent: Wednesday, February 10, 2021 8:42 AM
To: General <general@morganhill.ca.gov>
Subject: Titans Sports Academy

Good Morning,

I am writing you to please reconsider approving the permit for Titans Academy. Since becoming members of Titans two years ago, my daughter has grown and excelled not only in her gymnastics ability but also in her confidence. All the staff at Titans have always been so welcoming and caring to all of the kids and parents!

In this time what our city needs is more businesses supporting our city, not ANOTHER business shutting its doors and pulling revenue from our city. Titans gives so many young children a safe place to excel and grow, please keep them in our amazing town and let them continue to teach our children.

I hope you decide to grant them their permit.

Best regards,
Stephanie Barton - dedicated Titan parent

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From: Dana Shubert
To: [CC Public Comment](#)
Subject: Re: Titans Sports Academy CUP support
Date: Wednesday, February 10, 2021 10:02:24 AM

On Feb 10, 2021, at 9:58 AM, Dana Shubert <[REDACTED]> wrote:

February 10, 2021

To whom it may concern,

This letter is in reference to the Titans Sports Academy building permit issue located at 195 Mast Street in Morgan Hill. As a parent of three children who have been a part of the Titans Sports family for over 4 years, I am deeply saddened and equally outraged that the city has denied their application for a conditional use permit to conduct business in their new location.

My husband and I were both raised in Morgan Hill/San Martin and have continued to follow the traditions of our families and raise our children in the same community. My family has resided in this area since the 1930's (other than a mandatory relocation during the Japanese Internment during WWII) and we have experienced many changes, both good and bad. Being a young girl raised this area I am highly aware of the lack of sport opportunities available to girls at the time and I am relieved that there are more choices for our children today. That being said, this is only true when these types of sports clubs are able to remain open and of service to our community.

Before the pandemic, Titans Sports Academy was my oldest daughter's second home. The coaches and her teammates are her second parents and siblings. We are extremely lucky to have found such a supportive sport that encourages mental and physical health, teamwork, communication and cooperation. This safe place for my oldest daughter has been shaken with the switch to zoom classes and at home workouts. My middle daughter, who took recreational classes at Titans, is also missing friendships and exercise routines. My youngest toddler, who has lived almost half of her life during the pandemic, had started to take toddler gymnastics classes to gain gross motor skills and socialization before all classes were cancelled. Our whole family has been affected by the pandemic and just as COVID-19 cases are slowly declining and we can see a light at the end of the tunnel we now face a new challenge with the prospect of losing our gym too.

This is not just a sports facility for dozens if not hundreds of families in Morgan Hill, it is a safe and healthy space for their children. With so many local businesses being forced to close their doors during this pandemic you do not need to add another to the list. This community is suffering enough already. Titans' choices were to go out of business due to increased rents or move to a new location; now they face the possibility of being shut down due to a permitting issue. How is this serving the community of Morgan Hill? Would the city council

rather have a large building sit empty and another beloved youth program out of business not being able to enrich our community?

The future of our community's children is at stake. You have the ability to positively contribute to their upbringing. Please remember why you have chosen to serve the community of Morgan Hill.

Sincerely,

Dana Shubert
Parent of three Titans Sports Academy students

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From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Subject: FW: Titian's Sports Academy CUP Appeal
Date: Thursday, February 11, 2021 5:05:49 AM

-----Original Message-----

From: Kadence Dilaure <[REDACTED]>
 Sent: Wednesday, February 10, 2021 10:03 PM
 To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>; Christina Turner <Christina.Turner@morganhill.ca.gov>; General <general@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>
 Subject: Fwd: Titian's Sports Academy CUP Appeal

>>>

>>>>

>>>> Hi my name is Kadence Di Laura, I am 16 years old and a Titans level 8/9 team member. I have been doing gymnastics since I was 3 years old. If you were to not grant them with there CUP I would be forced to quit the sport that I love and enjoy and work so hard to be a collage gymnast. If you didn't know gymnastics is one of the most challenging and rewarding sports you can do. It's not easy to be full time high student and be able to be in the gym 19 hours a week. To achieve my dream I eat dinner in the car on the way home after practice and still be able to keep a 3.5 GPA. You are not only taking away from me but my teammates as well and my coaches and my parents that have dedicated so much time and years of taking and watching me do the sport that I love. Gymnastic facilities have been shut down or closed due to the pandemic and there are not many gyms open and available in are area like Titans. Titans is all about family and trust in each other. I trust my coaches, they are my second family. This sport is NOT only about gymnastics it teaches you time management, organization, maturity, social skills, team work, confidence, perseverance and to never give up even when things get hard. So if you could strongly reconsider in giving Titans Sports Academy the CUP so my gym can stay open and I can achieve my gymnastics dream.

>>>>

>>>> Sincerely,

>>>> Kadence Di Laura

>>>> Titans Team Member

>>>>

>>>>

>>>

>>>

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: supporting MH youth/KPI conditional use permit
Date: Thursday, February 11, 2021 7:26:00 AM

From: "Waxman, Mark" <[REDACTED]>
Date: February 9, 2021 at 6:49:50 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: supporting MH youth/KPI conditional use permit

Rene:

You probably don't know me, but as a long time resident and community supporter I have been an advocate for the city's planning permitting and zoning priorities. I fully understand the longer term need for industrial space, but the denial of a conditional use permit for a community benefit organization like KPI seems particularly short sighted. I know personally about the benefit this group has brought to many youth in Morgan Hill, and especially now when the need is so great, to deny them access to one of their limited options simply does more harm than good.

This organization is uniquely community oriented, unlike typical gyms or workout facilities, structured with a non profit foundation (full disclosure I am on that board) to support needy youth, and is a much needed outlet for the young people of our community.

Please consider allowing the operation of this resource to continue under a conditional use permit. The youth of Morgan Hill need and deserve it – and I know that you understand that.

Mark Waxman



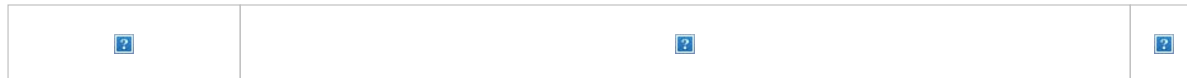
Mark M Waxman
 Chief Marketing Officer
 CBIZ

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Dub/Titans CUP Appeal - The Building
Date: Thursday, February 11, 2021 7:26:17 AM

From: Erik Wagle <[REDACTED]>
Date: February 9, 2021 at 6:54:03 PM PST
To: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, Rich Constantine
 <Rich.Constantine@morganhill.ca.gov>, Yvonne Martinez Beltran
 <yvonne.martinezbeltran@morganhill.ca.gov>, John McKay
 <john.mckay@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Dub/Titans CUP Appeal - The Building

Members of the City of Morgan Hill City Council,

Thank you for taking the time to read my message about the business side of our program. This email will shift the focus towards the actual building in question at 195 Mast Street. While the building is zoned General Industrial, there are quite a few reasons why this building is not suitable for modern industrial purposes, and fits our needs almost perfectly.

History

This building was built in 1964 and has received minimal upgrades since then. For the majority of the time the building has been in use it was occupied by Ra-tek, a sheet metal fabrication company that specialized in building casino slot machine frames and main-frame computer components. Ra-Tek operated in this and surrounding buildings during most of the 1980's, 1990s, and up to 2004 when the current building owner purchased the property. Throughout Ra-Tek's time in business, it owned/operated out of the 195 Mast Street, and also the property directly to the North, 140 San Pedro, that is now a company called Airtronics. When Ra-Tek was fully operational, the large building on San Pedro was the manufacturing hub of the business. That building had the heavy machinery, built out electricity and ventilation, and had the large truck docks that backed into the building. The building on Mast never was used for manufacturing or general industry, it was the storage and administrative office buildings for Ra-Tek. The reason I know so much about the Ra-Tek company and building usage is because my best friend's father, Ray Alcini, owned Ra-Tek and I worked there for 4 years.

Since the current building owner purchased this property (the San Pedro property was sold separately by Ra-Tek), the Mast building has been used for a similar usage as Ra-Tek, for storage and office space. For all intents and purposes, the Mast Street property has never been used to produce industry or to manufacture, it has been used for storage and offices. So

while the building owns a General Industry zoning from its early days, the building has never been used for that purpose in the last 40 years and it is certainly not fit to house a modern, industrial company.

Building Features

As explained in the previous section, this building is almost 60 years old. Below is a list of reasons that the building cannot house a modern industrial business and why the zoning of General Industry does not apply well to this property...

- Small size – the area being examined for the CUP is only 24,000 square feet of which about 30% of that is office space. The space in question does not fit the criteria most industrial companies would need
- Storage – the building has no storage space on the inside and a very narrow strip outside, but that strip is not accessible by trucks or vehicles and does not have much overhead coverage, deeming it fairly useless for storage purposes
- HVAC – the warehouse area of the building does not have working HVAC, meaning a company would have to install that to operate manufacturing equipment
- Truck Docks – The area in question only has one truck dock, and that dock does not back up to the building. There also is very limited space for a large truck to navigate and back into the dock. I have personally never seen a truck use this dock.
- Electricity – The building is not setup for the electricity needed for heavy machinery. We have had to get extensive work done to just get suitable regular electrical needs accessible and up to code
- Waste Lines – modern industrial buildings have sand and oil waste lines. This building does not contain those lines.
- Daylight – the building has very few, very small windows. Modern industrial buildings aim to capture daylight, this building does not have that.
- Energy Efficiency – modern industrial buildings should take advantage of energy efficient systems, this building has no such upgrades

Building Features – Our Use

While the building is obviously not suitable to modern industry, it does fit our uses perfectly. Here are some of the features of the building that make it one of the only buildings in town that can effectively accommodate both the Titans and Dub/KPI...

- Circular Driveway – all of our clients get dropped off by parents, there is a natural and safe driveway for cars/drop-offs at this location

- Large/Open Space – The warehouse section of the building has an open floorplan with little interference from poles and walls
- High Ceilings – The ceiling clearance is high enough to serve our very unique needs
- Low Traffic – the area the building is housed in has very little road traffic, making it a safe place for families. Along with that, the building is set over 100' off the street, meaning there is no danger for kids being dropped off/picked up

In conclusion, this building is not suitable for modern industrial use. While the City is not incorrect in its desire to preserve industrial space, this building does not fit that criteria. The city would be much better served looking at re-zoning some Light Industrial buildings that better fit modern industrial needs, building more General Industrial buildings, and/or utilizing newer/larger industrial buildings for their intended purposes (Shoe Palace building). There is a reason there was not any serious inquiries for this building while it was on the market for much of 2020, it is because this building does not meet the needs of very many businesses. Fortunately for Dub/KPI and the Titans, this building fits our unique needs perfectly.

In our next message we will examine the area around the building in question and comment on how our usage fits in with the surrounding area.

Thank you!

Erik Wagle
 President/Executive Director
 Dub Sports, KPI & Dub Foundation
www.dubbaseball.com



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From: Gloria Murray
To: [CC Public Comment](#)
Subject: Titans Gymnastics
Date: Thursday, February 11, 2021 9:57:32 AM

To Whom It May Concern:

Our daughters have attended gymnastics at Titans in Morgan Hill since the beginning about 6 years ago. Prior to this we were part of Champions in Morgan Hill. To have such a high quality facility IN OUR TOWN is such an opportunity for our children. Not having to Fight Traffic, Waste time and community involvement are all reasons why we should INVEST in keeping this gymnastics club in Morgan Hill. Part of why we LOVE living in this town is that it has everything we need. As a parent - living in a town that has opportunities for our children is one of the main draws of living here. I want to remind you that during COVID or bad weather or fires - having someplace for children to go and practice and play is SO IMPORTANT.

Titans NEEDS A warehouse with high ceilings due to all of the equipment and type of training needed for gymnastics. Can you imagine doing the bars with a 10 ft. ceiling? Titans has helped out the community with opening up their gym to the Live Oak cheerleaders camp - as it is the perfect place because of the high ceilings. It is constantly donating party packages to all the school auctions and fundraisers and participates in many other community events.

I would hope that City Council would want to INVEST in our children. That is what makes Morgan Hill so special. Titans is a safe place for our children and helps them achieve their dreams AND exercise. I know my daughter is NOT on her phone while she is at gymnastics practice. To me this is priceless.

Kind regards,
 Gloria and Kevin Murray

--

-Gloria Murray

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From: Lora Perez
To: [CC Public Comment](#)
Subject: Message in support of Titans Sports Academy
Date: Thursday, February 11, 2021 11:28:02 AM

Dear Members of Morgan Hill City Council,

I understand that Titans Sports Academy is facing challenges with being granted a Conditional Use Permit at their current location within the City of Morgan Hill. I write today to lend my voice to a mentor and friend who I believe is doing a service to our community and deserves to be spoken for. I'd like to speak specifically to the importance that Titans Sports Academy provides to the health and well-being of young athletes and each of the families in our community that call Titans home, especially during the Covid-19 pandemic

As a kid, I wasn't what one would consider "athletic". I preferred to read and draw. Unfortunately, this type of behavior made me quite an easy target for bullies and anyone that wanted my snack money for their own. Needless to say, the experiences weren't pleasant. That was, however, until my parents chose to enroll me in a gymnastics program. I became a student of Tony McDonald, the owner of Titans Sports Academy.

Fast forward some time. Isolation turned to deep friendship and comradery with my team. Fear and uncertainty turned to confidence. The person I was before my time under the head coach, Tony, was drastically different than the person I grew into. Those changes for the better would have never happened without the help of my newfound family and mentor. I reflect on the importance of this time period in my development as an adult quite often.

This important period of time is taking place right now for the families and kids who call Titans home. If anything, it is more drastically needed in the face of once in a lifetime social isolation and pressure. For many kids that are like me, Titans Sports Academy provides a place where they are not only learning gymnastics skills, but more importantly having social interaction, learning about goal setting, learning how to overcome failure and learning how to work hard. Morgan Hill is lucky to have a program like this, and a program like Titans Sports Academy that cares so deeply about the whole child, not just the athlete.

So I urge you to grant a Conditional Use Permit to Titans Sports Academy with no restrictions. It would be almost cruel to unnecessarily take away this valuable social and developmental foundation from the families of Morgan Hill.

Best regards,

Garrett Perez

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From: Brandon Fitzpatrick
To: [CC Public Comment](#)
Subject: Titans Gymnastics - Morgan Hill
Date: Thursday, February 11, 2021 11:58:50 AM

Hello,

I'd like to express my opinion on Titans Gymnastics in Morgan Hill.

Regarding the facility that they are operating out of, it is a safe, clean and an effective gymnastics training center. My daughter gets exercise, learns discipline and builds friendships through her association at Titans. It would be a shame for Titans to have to relocate or worse, close, if they were not permitted to have activities take place at the current gym location. I don't see how operating in this facility could pose harm to users or the community. It is important now more than ever to support small businesses and for our city representation to do everything possible to keep businesses running and in the Morgan Hill community.

Thank you for taking my thoughts into consideration.

Thank you,

Brandon Fitzpatrick
Partner and Executive Vice President NeXgen Facilities Group
www.nexgenfg.com

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From: Erik Murawsky
To: [Erik Murawsky](#)
Cc: [CC Public Comment](#); [General](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#); [Titans Team](#)
Subject: Titans Sports Academy - 195 Mast Street
Date: Thursday, February 11, 2021 1:34:24 PM

Dear City of Morgan Hill Officials and City Council Members,

With our 11-year-old daughter being a member of Titans Sports Academy, I am extremely compelled to share my thoughts on the pending approval of Titans' Conditional Use Permit at their new space located at 195 Mast Street. Needless to say, I was shocked to have heard that the Planning Commission made the decision to deny use permit approval at the January 12 Council meeting.

My family & I are happy Morgan Hill residents of 7-1/2 years and we've been so thankful for all that the Titans Academy have done for our daughter's confidence, health, fitness and all around well-being since joining the team.

I know I am not alone in saying that it would be an absolute tragedy to not only our family, but the entire Morgan Hill community should Titans Academy be forced out of their new space. We believe whole-heartily that Titans is far from your ordinary youth sports club. Titans has proven to provide a family atmosphere and translates a true passion for the sport of gymnastics. This sort of atmosphere is very difficult to find in any sport. The City Morgan Hill has a community jewel in Titans Academy that can't afford to be lost. Our family, along with our older daughter who also had participated in gymnastics while at a younger age, has been members of other gymnastics facilities in the past and there really is no comparison; Titans reigns supreme to all of them. We've found that other gyms, including those in Morgan Hill do offer positives, but none of them have shown that each and every athlete is cared for and not just considered another paying member.

While the tight-knit Titans Academy community alone makes them special. The fact that they offer coaching from top flight experienced leaders of great spirit & character, their coach/owner grew up as a gymnast himself competing at the highest levels of the sport through college all the way to the US Olympic trials, (only an unfortunate injury kept him from the team) makes them elite! How many facilities anywhere can offer training experience from coaches who have reached the pinnacles of their sport? Titans can!

Now I know that my daughter is not destined for the Olympic trials, but before joining Titans she never had aspirations to compete in gymnastics at the college level like she does now. The confidence that Titans have instilled in her to accomplish anything and to push beyond her comfort zone cannot be measured in a young athlete's future successes toward whatever paths they choose to take.

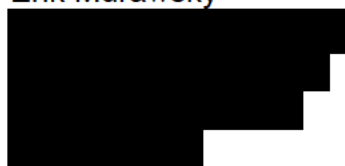
In short, the Murawsky family respectfully requests that Morgan Hill City Council vote to award Titans Sports Academy their requested conditional use permit at the upcoming Council meeting on February 17. A failure to award the use permit would

result in a tremendous loss to our City and the many, many families and young athletes it has served. Due to the lack of alternate facilities in Morgan Hill and neighboring cities, and the costs related to moving, a use permit rejection would be almost certain to force a permanent closure of this wonderful facility, resulting in job and City revenue losses. I just don't know how I would even tell my gymnastics loving daughter that our City has forced Titans Academy to close.

Let's all come together and do what's best for our community by continuing to offer the outstanding services of Titans Sports Academy!!

Feel free to reach out to me with any questions or comments you might have.

Sincerely,
Erik Murawsky



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From: Tiffany Sirwet
To: [CC Public Comment](#)
Subject: Titans Gymnastics Morgan Hill
Date: Thursday, February 11, 2021 2:19:05 PM

To whom it may concern:

My daughter attends Titans gym in Morgan Hill. We live in San Juan Bautista and make the commute there. Morgan Hill is a lovey community. While my daughter is attending her practice my family and I get to explore all the mom and pop stores and restaurants your community had to offer. We love that Morgan Hill supports many Americans in their dreams of owning their own business and providing services for others. We visit Morgan Hill 3 days a week and we enjoy our time there.

Our family believes it is important to have a place for kids to be active and social in a safe environment. Morgan Hill is a family oriented community and we love our time there.

We hope Titans Gymnastics can stay a part of your community

Thank you for your time,

Tiffany Lee

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From: Angela Campbell
To: [John McKay](#); [Rene Spring](#); [CC Public Comment](#); [General](#); [Gino Borgioli](#); [Jennifer Carman](#); [Rich Constantine](#); [Yvonne Martinez Beltran](#)
Subject: Titans Sports Academy-February 17
Date: Thursday, February 11, 2021 4:44:41 PM

Dear City of Morgan Hill,

I would love it if you take the time to read this email. I am one of the students that go to Titans Sports Academy. It's my home, I love it there. The coaches and the environment are amazing, and they are very caring and compassionate towards their students. And taking that away from me and all the others that go there would be very devastating. And that would mean taking gymnastics away from me because I couldn't imagine going to another gym. I've formed many bonds with the coaches and other girls there. Now if you guys decide to shut this gym down, most of these girls will either quit, or move away, because for a lot of these girls, this gym is the reason we are staying in this county. I love morgan hill, it's home to me, i've spent several years in activity's here in Morgan Hill. And i'd like to spend several more years doing activities. So please, take this email into consideration when you hopefully approve Titans to stay in their current location.

Sincerely,
Emma Campbell

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From: [Jennifer Carman](#)
To: [Christina Turner](#); [Michelle Bigelow](#)
Subject: Fw: OWNER LETTER Titan's / Kinetic Call for review Feb 17th
Date: Thursday, February 11, 2021 4:59:34 PM

From: Nora Monaco <nora@monaco.us.com>
Sent: Thursday, February 11, 2021 4:58 PM
To: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>; Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>; John McKay <john.mckay@morganhill.ca.gov>; Rich Constantine <Rich.Constantine@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>
Cc: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: OWNER LETTER Titan's / Kinetic Call for review Feb 17th

Re: Property Owner Comment for UP2020-0004: Mast Titan Sports Public Hearing Scheduled for Feb 17th, 2021

Dear City Council Members,

We kindly ask your consideration in approving this CUP.

As a long time local business owner and the property owner of 195 Mast Street, I sincerely hope that you will authorize a Conditional Use Permit for Titans Sports/Kinetic. We feel this property is the perfect location for their needs. Please consider that this location is NOT in an actual traditional high volume manufacturing area. We are within **1,000 feet of the apartment complexes on Church St.** The newly constructed building next door contains **16 units that are only 1500sf each** full of businesses that are primarily warehousing and offices. We are near the **Post Office, Police Department** and many other NON-heavy industrial businesses in this area.

When we were first approached by Titans I went online to the City's website to see what would be involved to possibly lease to them. Online the automated system indicated they would need a Conditional Use Permit. To discuss this further I personally called the Planning Dept. to confirm what was needed should we lease to Titans. They also confirmed they would need a CUP. During this discussion at no time did I get any impression that there would be a difficulty in obtaining this due to any zoning issues. We also had discussed that previously there had been a gymnastics facility directly across the street from us, along with other information that was exchanged. After the conversation I felt confident in proceeding to discuss leasing to them.

It was not until the Jan 12, 2021 meeting that I learned the planning commission had been directed not to authorize any CUP on General Industrial properties, which is a large reason they referred this request for reconsideration back to you. It was apparent from the meeting that many of the members wanted to say YES to the CUP, but some felt it was more important to follow a directive given by the Council to no longer approve CUPs for General Industrial land, which had been completely unknown to us. It seemed that many did feel this location made sense for Titans.

Granting this CUP would also reinforce the **City's support for Youth SPORTS within Morgan Hill**. This location meets the unique needs for a Gymnastics Sports facility and would allow them to stay in Morgan Hill rather than relocating out of town. During the discussion at the January planning commission meeting multiple commissioners also brought up the fact that previous CUPs had been granted in industrial areas for churches and other facilities in the past.

For the past 15 years our building housed my company AngelStar. Before that time the location was used for storage, an internet reseller (Outback Equipment) and several other non-manufacturing, non-heavy industrial companies. Based on our records, the last time the building may have been used for any actual manufacturing was possibly back in the 1980's & even then it seems they may have only used it for storage & offices. It was brought to my attention that the upgrades that would be necessary to bring this building up to the current manufacturing standards may not be cost effective and that it would be more advantageous for a heavy industrial user to purchase land and build elsewhere in the area. Since I now understand there are few General Industrial buildings in the City, perhaps consideration should be given to ZONE other available bare land as General Industrial, if there is a need.

For us as property owners, we had listed the property for more than 6 months prior to Titans approaching us. During that time, there were NO HEAVY INDUSTRIAL businesses showing interest. We had one company that dealt with hazardous gases, that inquired but they needed enclosed outdoor areas our location simply does not have. There was NO interest for any heavy industrial type of use at our property, and I would not expect this to change in the future. **But there was a perfect match with the space for Titans/Kinetic. Granting a CUP would allow them to stay in the City and provide needed Sports training and recreation to the community. Please consider this in your decisions.** Thank you for your time.

Respectfully

Nora Monaco

LOCAL SPORTS MATTERS- OUR KIDS MATTER - TITANS/KINETIC MATTERS

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January 29, 2021

City of Morgan Hill
17575 Peak Avenue
Morgan Hill, California 95037

RE: Titans Sports Academy, Inc. & KPI (Kinetic Performance Institute)
195 Mast Street
Morgan Hill, CA 95037
#UP2020-0004

Dear members of the City Council,

This letter is in regards to a CUP application for Titans Sports Academy and KPI at 195 Mast Street. I am working with D&Z Design to help our clients obtain a space in the City of Morgan Hill where they can continue helping kids in the community by expanding their business to a larger existing warehouse with more open space geared towards their sports and training needs.

Our client is moving their current business from a different location within the City.

There were no other alternatives for this type of business to move into, which require tall ceiling heights and space clear of any structural columns.

Since it was mentioned to our client that they could apply for a CUP in this high industrial area, the space at 195 Mast Street was available and was the perfect match for their needs.

From my personal experience, my kids have always been involved in sports since they were younger and we have seen the tremendous importance these types of facilities and spaces offer.

My daughter has been playing softball for 6 years and my son has played baseball at facilities such as these which are a huge help in training. My daughter still plays travel ball and we know that competitive teams really search for facilities with this kind of space to practice and condition in.

In order to compete at a higher level and hopefully be considered for scholarships to play in college our kids need to practice year round.

Having a place like this to practice in with coaches and trainers is really important to the kids in any community, especially during the rainy winter season where the kids can hit and pitch in the cages where there is enough depth in the building to do so. Most of the facilities we have been in have very little window glazing because of the balls being hit or pitched. The warehouse space at 195 Mast Street provides the kind of environment that is perfect for both gymnastics and baseball/softball training.

We have friends who have traveled from Hollister to train with the Titans organization for years. The same goes for the DUB/KPI facility. Many players and teams travel from Hollister and nearby communities travel to practice at this facility. The training usually occurs in the evenings, so there is usually no traffic and there is plenty of parking since nearby businesses are off for the day.

Therefore, I completely agree that these organizations which have been around for years in the Morgan Hill are crucial for kids and this community as they both thrive for success. I truly hope the City Council will see the importance and consider the CUP application. Many Thanks.

Respectfully,
Diana Gutierrez

D&Z Design Associates, Inc.

T: 408.778.7005 F: 408.778.7004 18640 Sutter Blvd., Ste. 500
dzdesignassociates.com Morgan Hill, CA 95037

From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: Titans permit - scheduled 2/17
Date: Thursday, February 11, 2021 6:30:03 PM

From: Rebecca Rubel-Seider <rubelseider@gmail.com>
Sent: Thursday, February 11, 2021 6:28 PM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: Titans permit - scheduled 2/17

I am writing to today to ask you to please allow Titans the permit required to remain in the building they currently occupy on Mast Ave.

As an appeal to the economics of Morgan Hill it makes sense to allow Titans to remain. I live in San Martin, but choose to spend my money in Morgan Hill instead of Gilroy only because I am up here for practices. Additionally, many gymnastics gyms have closed down due to COVID. Once restrictions are relaxed more gymnasts will come to Titans and with that the money their families will spend.

If the issue has to do with the safety of this facility in an industrial zone, I have been to many drop off and pick ups. They are safe. There is no traffic issues on the road, the parking lot is more than adequate.

Finally on a personal level. Our children have lost SO much over the last year. My daughter would be devastated if the one solid thing she still has left was taken away. She would not be able to practice gymnastics as the only other gym in town is full.

Please allow the permit as it is a smart decision for the city and our children.

Rebecca Rubel-Seider
 1965 Gwinn Ave.
 San Martin, CA 95046
 408-507-4955

Rebecca

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From: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: New titans open please
Date: Thursday, February 11, 2021 6:42:01 PM

From: Rebecca Seider <adiaseider@gmail.com>
Sent: Thursday, February 11, 2021 6:35 PM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: New titans open please

Hello,

My name is Adia Seider. I am a competitive member of the Titans XCEL gymnastics team. My mom told me that Titans may have to shut down due to a permit issue. If Titans were to shut down I would loose a lot. I would loose the skills I have worked hard to get as a gymnasts. I would loose many friends. Also I would loose a place to be active as participate in my community. Please allow the permit to go through.

Adia Seider
1965 Gwinn Ave.
San Martin, CA 95046
408-507-4955

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From: [ellen.ruskin](#)
To: [General](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [yvonne.martinezbeltan@morganhill.ca.gov](#); [Gino Borgioli](#); [CC Public Comment](#)
Subject: Titans Sports Academy Mast Avenue
Date: Thursday, February 11, 2021 10:14:56 PM

Dear City Of Morgan Hill,

Hi! My name is Ellen, and I'm 12 years old. Titans Sports Academy means so much to me, and my life wouldn't be the same without it. I've been here at TITans for almost half of my life. Titans is more than just a place for me to do gymnastics. It is my second family. I've accomplished so much, and I can't imagine accomplishing more things anywhere else. One of my greatest accomplishments is when I became the floor state champion. The year before covid, I won first place individually and my team won first at all of our competitions. None of this would have been possible without Titans and our amazing coaches. My coaches make me feel safe and motivated. I love all of my teammates and coaches so much.

Titans Sports Academy is located in the perfect place to allow me to focus on keeping my grades up and continue to work hard to reach my dream of doing college gymnastics. Pre-COVID, I was already sometimes doing homework and eating dinner in the car while rushing to get to the gym. Gymnastics is a sport that you can't do unless you are that dedicated. I've been working toward this dream since I was 3. I can't even imagine how any of this would be possible if we have to travel outside of Morgan Hill for practice. I also know how many hearts and dreams you'll be crushing if we can no longer operate in this facility.

Please give Titans Sports Academy the conditional use permit so we can continue to practice and make the community of Morgan Hill proud!

Sencerly,

Ellen Ruskin

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From: [Sherri Dodd](#)
To: [CC Public Comment](#)
Subject: Titan Sports
Date: Friday, February 12, 2021 8:21:38 AM

Titan Sport's request for industrial placement is similar to K-1 Sports, Pump It Up, Table Tennis Academy and Bravo Gymnastics - all located in the industrial part of Santa Clara. It works well and especially on the weekends, there's more parking available for the larger crowd because the industrial offices are closed. I support!

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CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

PREPARED BY: Harjot Sangha, Assistant to the City Manager
APPROVED BY: City Manager

CONSIDER CITY COUNCIL INITIATED AGENDA ITEM REQUESTING CITY COUNCIL ADOPT A RESOLUTION CONDEMNING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL IN WASHINGTON D.C.

RECOMMENDATION(S)

Consider whether to direct staff to prepare a resolution condemning the January 6, 2021 riots at the United States Capitol in Washington D.C.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging

REPORT NARRATIVE:

The purpose of this report is for the City Council to consider whether to direct staff to bring back a resolution for City Council adoption condemning the January 6, 2021 riots at the United States Capitol in Washington D.C.

At the January 20, 2021 City Council meeting, Councilmember Martinez Beltran requested this item be brought before the City Council for consideration.

COMMUNITY ENGAGEMENT: Inform

The report serves to inform the community of the potential consideration of City Council adopting a resolution condemning the January 6, 2021 riots at the U.S. Capitol.

ALTERNATIVE ACTIONS:

City Council could direct staff to bring this item forward at an upcoming meeting or take no further action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact to this item. Should the Council direct staff to return with a resolution for consideration, staff will accommodate the resource impact for research, preparation, and presentation of resolution within the Department's existing workplan.

CEQA (California Environmental Quality Act):

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



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

PREPARED BY: Christina Turner, City Manager
APPROVED BY: City Manager

CONSIDER CITY COUNCIL INITIATED AGENDA ITEM REQUESTING CITY COUNCIL ADOPT A RESOLUTION EXPRESSING SUPPORT FOR ACTIONS TO STRENGTHEN LOCAL DEMOCRACY, AUTHORITY, AND CONTROL

RECOMMENDATION(S)

Consider whether to direct staff to prepare a resolution expressing support for actions to strengthen local democracy, authority, and control.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Engagement and Messaging

REPORT NARRATIVE:

The purpose of this report is for the City Council to consider whether to direct staff to prepare a resolution expressing support for actions to strengthen local democracy, authority, and control.

At the January 29 and 30, 2021 City Council annual goal setting workshop, Councilmember Spring requested this item be brought before the City Council for consideration.

COMMUNITY ENGAGEMENT: Inform

The report serves to inform the community of the potential consideration of City Council adopting a resolution expressing support for actions to strengthen local democracy, authority, and control.

ALTERNATIVE ACTIONS:

City Council could direct staff to bring this item forward at an upcoming meeting or take no further action.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Not applicable.

FISCAL AND RESOURCE IMPACT:

There is no direct fiscal impact to this item. Should the Council direct staff to return with a resolution for consideration, staff will accommodate the resource impact for research, preparation, and presentation of resolution within the Department's existing workplan.

CEQA (California Environmental Quality Act):

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



CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

PREPARED BY: Christina Turner, City Manager
APPROVED BY: City Manager

APPROVE UPDATES TO SUSTAINABLE MORGAN HILL VISION, ONGOING AND STRATEGIC PRIORITIES, CITY COUNCIL NORMS, AND COUNCIL POLICY REGARDING RULES FOR CONDUCT OF CITY COUNCIL MEETINGS

RECOMMENDATION(S)

Adopt updates to:

1. Sustainable Morgan Hill vision, ongoing priorities, and 2020 – 2021 strategic priorities;
2. City Council Norms; and
3. City Council Policy (CP 97-01) – Rules for Conduct of City Council Meetings.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure
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

2020-2021 Strategic Priorities

Community Engagement and Messaging
Economic Development
Fiscal Sustainability
Infrastructure
Regional Initiatives
Telecommunications
Agricultural Preservation
Cannabis Policy
High Speed Rail
Affordable Housing and Homelessness
Housing
Transportation

REPORT NARRATIVE:

On January 29 and 30, 2021, the City Council held its annual Goal Setting Workshop virtually via Zoom. The following topics were reviewed and discussed:

1. Council Norms, Policies, Procedures and Protocols
2. Sustainable Morgan Hill
3. Redistricting
4. Fiscal Sustainability to include Funding Priorities for Local Government
5. Climate Action
6. Legal and Administrative Considerations
7. Updates on Fire and Police Services
8. Communications and Engagement

9. Upcoming City Council Discussion Topics: Broadband, Industrial Ordinance, County Solid Waste Opportunity, Housing, and Development Fee Update

The City Council reaffirmed the current vision, ongoing priorities, and the strategic priorities with a few amendments. The Council added Equity to its vision statement and ongoing priorities, added a new ongoing priority of Advocating for Local Control, and amended existing strategic priority to include “Outreach” in Community Engagement and Messaging (Attachment 1).

During the workshop, Council also spent time reviewing, discussing, validating, and committing to the City Council Norms established on January 26, 2019. As a result, the City Council added two new norms to the list to include: 1) Be flexible and willing to compromise and 2) Be Professional (Attachment 2).

For Council Policy - CP 97-01 – Rules of Conduct for City Council Meetings, Council discussed Public Comment, Council Reports, and Other Reports. The updated draft policy is included as an attachment based on City Council’s direction at the workshop. The changes include:

- Council Reports – on rotating basis with limit of three minutes
- Other Reports – with limit of one minute
- Public Comment
 - Up to two speakers may concede their time to one speaker, unless a majority of the City Council objects. Speakers that wish to designate a group speaker shall notify the City Clerk before discussion on the item begins.
 - Additionally, any speaker that concedes their time must be present at that City Council meeting.
 - Speaker who would like to share documents or presentations may do so by submitting said document to the City Clerk by noon on the day of the City Council Meeting. Speaker may not share videos or presentations with videos embedded within them.
- Council Questions and Discussion
 - During both questions and discussion, when one Council Member has the floor, they are limited to 5 minutes. After each Council Member that wishes to speak has done so, a Council Member may speak again for up to 5 minutes.

COMMUNITY ENGAGEMENT: Involve

The City Council Goal Setting Workshop was open to the public, broadcast live on the City’s website, Facebook, and channel 17, and recorded for later viewing on the City’s website.

ALTERNATIVE ACTIONS:

City Council could decide to make additional changes to Sustainable Morgan Hill, City Council Norms and Council Policy - CP 97-01 – Rules of Conduct for City Council Meetings.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council reviews its goals and priorities each year in January and mid-year.

FISCAL AND RESOURCE IMPACT:

Updating Sustainable Morgan Hill, ongoing priorities, and the strategic priorities does not have an immediate fiscal or resource impact. The adopted budget and workplans align to the Council's adopted priorities and as implementation moves forward, staff will convey to the Council any additional resources necessary to achieve the desired outcomes in each area.

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. Updated 2020-21 Sustainable Morgan Hill
2. City Council Norms - Updated
3. CP-97-01 CC Procedures-Protocols MB 2-2-21

SUSTAINABLE MORGAN HILL



VISION

To sustain a safe, equitable, 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 and Preserving Open Space and Agricultural Land
- Maintaining Infrastructure
- Supporting our Youth, Seniors, and Entire Community
- Fostering a Positive Organizational Culture
- Preserving and Cultivating Public Trust
- Preserving our Community History
- Enhancing Equity, Diversity, and Inclusiveness
- Advancing Regional Initiatives
- Advocating for Local Control

2020-2021 Strategic Priorities

- **Fiscal Sustainability**
- Affordable Housing and Homelessness
- Community Outreach, Engagement, and Messaging
- Economic Development
- Transportation



These strategic priorities were established prior to the COVID-19 pandemic. In light of recent events, we recognize that all of these goals and priorities will be viewed through the lens of the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.



2020 - 2021

STRATEGIC PRIORITIES:

Fiscal Sustainability

The City will continue to be financial stewards of its resources and assets to ensure longterm fiscal sustainability. Through the upcoming biennial budget development process, the City will continue to control and/or reduce costs to achieve a structurally balanced budget, while maintaining adequate fund balance reserves. The City will evaluate its existing user fee schedules to ensure reasonable costs of providing services are appropriately assessed. The City will explore new or expand existing tax revenue sources to address the City's unfunded needs and liabilities.

- Continue the Engage Morgan Hill efforts (conversation about services, funding and priorities)
- Consider a revenue measure in November 2020
- Employ a sustainable budget strategy and identify funding gap
- Define the funding plans for police and fire services, and the City's infrastructure needs

Affordable Housing and Homelessness

Morgan Hill will continue to improve, preserve, and develop new safe, quality, rental and ownership housing for residents at all income levels. To the extent possible, the City will respond to and reconcile new housing initiatives and legislative mandates. The City will explore opportunities to respond to changes that are beneficial to the community as well as compliant with the law.

The City of Morgan Hill will collaborate with Santa Clara County and the City of Gilroy to continue to build a South County homeless response system that integrates County Safety Net Services and provides rapid response to people in need. The City will continue to employ a balanced approach, offering resources and referrals to services, partnering with the faith-based community and non-profits to create appropriate local service points, while also utilizing code compliance to protect private and public property.

- 
- In preparation for the Statewide 6th Housing Cycle, update the Housing Element of the General Plan to respond to new production mandates and actively participate in the development of formula and allocations of "fair share" housing unit assignments
 - Engage the community in decisions about where to locate new housing density requirements and necessary on-going changes to objective design criteria which guide quality development
 - Continue to respond to the new and proposed housing legislative and policy matters to the benefit of the community
 - Respond to the Governor's 2020 Homelessness initiatives by advocating for direct local dollars and direct access to funding for communities of less than 50,000 population
 - Seek out partnerships with non-profit housing developers to create new housing opportunities directly aligned with the City's "fair share" Regional Housing Needs Allocation (RHNA)
 - Work with the non-profit owner of affordable units to rehabilitate and extend the life of vital housing supplies at Depot Commons, the Willows, Skeels Hotel, and Villa Ciolino

2020 - 2021

STRATEGIC PRIORITIES (CONTINUED):

Community Outreach, Engagement, and Messaging

The City will continue to engage the community through the Engage Morgan Hill process. Engage Morgan Hill is a conversation about services, funding, and priorities. The focus of this process is both educating and engaging the community regarding what services the City provides, how the services are provided, and the funding sources/options for the services as we look toward the future. While educating the community, the City will provide opportunities for the community to be part of the decision-making process to ensure the City's fiscal sustainability in the future. The City will continue to nurture connections with all facets of our community, finding the best ways to outreach and share important community information.

- Continue to facilitate the Engage Morgan Hill process
- Continue to inform the community about significant development projects
- Provide outreach and engagement with the community on the 2020 United States Census
- Continue to find better ways to reach members of the community that do not speak English

Economic Development

The City's Economic Development efforts will focus on implementing the Economic Blueprint strategies and actions in the areas of healthcare, innovation, retail, and tourism, to help build long-term fiscal sustainability and improve quality of life for residents. This will be achieved by attracting jobs and commercial investment which generate revenues to support general City services, improving access to fast and reliable wireless connectivity, and increasing telecommunications infrastructure.

- Complete Request for Proposal (RFP) process and select provider for telecommunications services for City facilities
- Complete an Industrial Land Preservation Policy
- Complete a Retail Concentration Strategy
- Economic Development Outreach and Education/Awareness Campaign



Transportation

The City has clearly identified traffic and transportation issues facing Morgan Hill as regional in nature. Morgan Hill will partner with the City of Gilroy to advocate for improvements and funding for the South Santa Clara County Transportation Corridor. The City will actively advocate on regional transportation planning issues. Locally, the City will prioritize funding for Vision Zero safety strategies over congestion management. The City will take actions to implement its goal to create a culture that prioritizes safety, creates livable streets, and seeks to eliminate traffic fatalities. Safety of pedestrians, bicyclists, drivers, and passengers is paramount.

- Respond to the Environmental Impact Report on the High-Speed Rail Authority's (HSRA) preferred alternative
- Continue efforts on Hale Avenue extension
- Advocacy will include:
 - Working with the Valley Transportation Authority (VTA), Caltrain, the County, the HSRA and the State to enhance service, secure funding for transportation projects and road maintenance, and protect the community from negative impacts of regional projects
 - Expansion of Highway 101 between Morgan Hill and Gilroy to reduce pass-through traffic and improve commute traffic for South County residents
 - Electrification of commuter rail from San Francisco to Gilroy
 - Funding for priority projects in South County



CITY OF MORGAN HILL

morganhill.ca.gov



City Council Norms

Established January 26, 2019

Revised January 29, 2021

- ❖ Be respectful of each other
- ❖ Address issue, not person
- ❖ Be honest and real
- ❖ “Clear air” if needed; have hard discussions
- ❖ Listen to each other
- ❖ Be aware of how we represent the City as leaders in the community
- ❖ Be accurate in statements
- ❖ Be open minded; avoid concluding on your position prior to the item being heard
- ❖ **Be flexible and willing to compromise**
- ❖ Recognize that experience comes in diverse ways
- ❖ Be mindful of time
- ❖ **Be professional;** keep decorum of meeting throughout
- ❖ No side conversations
- ❖ Come prepared
- ❖ Give enough time to discuss issues
- ❖ Ok to ask City Council to continue an item if not ready
- ❖ Don’t be repetitive on requests and comments
- ❖ Wait to be recognized before speaking
- ❖ Keep the order of the meeting (questions, public comment, and then discussion)
- ❖ Provide early notice of request for alternates to attend outside appointment meetings
- ❖ Speak into the microphone
- ❖ Cell phones silenced
- ❖ Be punctual
- ❖ Send questions in advance of meeting; let City Manager know if you plan to pull a consent item
- ❖ Be engaged
- ❖ Be concise

CITY OF MORGAN HILL

CITY COUNCIL POLICIES AND PROCEDURES

CP-97-01

SUBJECT: RULES FOR THE CONDUCT OF CITY COUNCIL MEETINGS, PLACEMENT OF ITEMS ON THE AGENDA, AND MATTERS TO BE RECONSIDERED

EFFECTIVE DATE: May 7, 1997

REVISED DATE(S): July 25, 2018, February 5, 2020, February 17, 2021

ORIGINATING DEPARTMENT: CITY MANAGER

SECTION 1 - SCOPE

- 1.1** These rules shall establish the procedures for the conduct of all meetings of the City Council of the City of Morgan Hill. The purpose of these rules is to provide procedures consistent with the Ralph M. Brown Act, establish procedures which will be convenient for the public, be fair to all members of the City Council, and contribute to the orderly conduct of City business.

SECTION 2 - MEETINGS

- 2.1** Open to Public: All meetings of the City Council, whether regular or special, shall be open to the public, unless a closed session is scheduled as authorized by law.
- 2.2** Regular Meetings: The City Council shall conduct its regular meetings at the time and place established by ordinance, if specified in the ordinance or resolution.
- 2.3** Review Status of Agenda at 10:00 p.m.: The City Council may review the agenda at 10:00 p.m. to determine if it will be able to conclude its business by 11:00 p.m. If, at 11:00 p.m., the City Council has not concluded its business, before continuing the meeting it shall review and discuss the status of the remaining agenda items and determine by majority vote whether to continue any remaining items to a future regular or special meeting, adjourn the meeting to another date and time, or extend the meeting beyond 11:00 p.m. as needed.
- 2.4** Special Meetings/Workshops: A special meeting and/or workshop may be called at any time by the Mayor or Presiding Officer of the City Council or by three members of the City Council. Written notice of any such meeting must specify the purpose of the meeting. Notice of the meeting must be made in accordance with the law.
- 2.5** Closed Sessions: The City Council may hold closed sessions during a regular or special meeting, or at any time authorized by law, to consider or hear any matter which is authorized by law. At times, Closed Sessions may have to be held in an order different than presented due to the timeliness of the matter, to save the City money when an outside attorney has been retained or due to the need for extra time to discuss and deliberate an important closed session item. Closed session items may be continued to the conclusion of the agenda.

- 2.6 Quorum:** Three (3) members of the City Council shall constitute a quorum and shall be sufficient to transact business. If less than three Council members appear at a regular meeting, the Mayor, Mayor Pro Tempore in the absence of the Mayor, any member of the City Council, or in the absence of all Council members, the City Clerk or Deputy City Clerk shall adjourn the meeting to a stated day and hour.
- 2.7 Adjourned Meetings:** The City Council may adjourn any regular, adjourned regular, special, or adjourned special meeting to a time and place specified in the order of adjournment and permitted by law.

SECTION 3 - POSTING NOTICE AND AGENDA

- 3.1 Posting of Notice and Agenda:** For every regular or special meeting, the City Clerk or other authorized person, shall post a notice of the meeting specifying the time and place at which the meeting will be held and an agenda containing a brief description of all items of business to be discussed at the meeting. The notice and agenda may be combined in a single document.
- a. Posting for Regular Meetings:** For any regular meeting of the City Council, the notice and agenda shall be posted no later than seventy-two (72) hours prior to the time set for the meeting consistent with all Brown Act requirements.
 - b. Posting for Special Meetings:** For any special meetings of the City Council, the notice and agenda shall be posted no later than twenty-four (24) hours prior to the time set for the meeting consistent with all Brown Act requirements.
- 3.2 Location of Posting:** The notice and agenda shall be posted on the City's website and in a place to which the public has unrestricted access during at least normal business hours and where the notice and agenda are not likely to be removed or obscured by other posted materials.
- 3.3 Availability of the Agenda to the Public:** The agenda for any regular or special meeting shall be made available to the public as soon as is practical after delivery to the members of the City Council.

SECTION 4 - AGENDA CONTENTS

- 4.1 Description of Matters:** All items of business to be discussed at a meeting of the City Council shall be briefly described on the agenda. The description of the item and the proposed action to be considered should be set forth as clearly as practical so that members of the public will know the nature of the action under review and consideration.
- 4.2 Placement of items on the agenda:** The Mayor, City Manager, or City Attorney may place items on the agenda. Members of the City Council may request items to be added to an upcoming City Council agenda by requesting an item during the "Future Council Initiated Agenda Items" Section of the agenda. A City Council verbal report will then be placed on an upcoming agenda for Council discussion and consideration.

- 4.3 Limitation to Act on Only Items on the Agenda:** No action shall be taken by the City Council on any item not on the posted agenda, subject only to the exceptions listed below:
- a. Upon a majority determination that an "emergency situation" (as defined by State Law) exists; and
 - b. Upon a determination by a 4/5 vote of the City Council that there is a need to take immediate action and that the need to take the action came to the attention of City officials subsequent to posting of the agenda.
- 4.4 Change in Order of Business:** The Mayor or Presiding Officer may decide to take matters listed on the agenda out of the prescribed order unless a majority of members present object to this variation.
- 4.5 City Council Reports:** On an alternating basis, at each Regular City Council meeting, with a time limit of three minutes, a Council Member has the opportunity to share with the Council and community any pertinent updates or information in regard to their appointments to outside agencies, upcoming events, or relevant City business. These are non-action items.
- 4.6 City Manager Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or recognitions. These are non-action items.
- 4.7 City Attorney Report:** These are updates on current City activities, reports on issues raised at previous Council meetings, or reportable actions of the City Council in Closed Sessions and/or current litigation. These are non-action items.
- 4.8 Other Reports:** These are pertinent updates or information on upcoming activities or events relevant to City business with a time limit of one minute. These are non-action items.
- 4.9 Public Comment for items not on the agenda:** This refers to those matters not scheduled on the agenda where a member of the public wants to address a matter of importance to the City Council. Since the matter is not on the agenda, no action by Council can be taken. If a member of Council so desires, the matter can be placed on the agenda of a future Council meeting for review and consideration.
- 4.10 Consent Calendar:** These are items of a routine or generally uncontested nature. Any member of the Council or member of the public may request to have an item pulled from the consent calendar and acted on individually by the Council. Items pulled will be discussed after action is taken on the balance of the consent calendar. The Mayor shall decide if the items are heard before or after moving on to public hearing and other business items.
- 4.11 Public Hearings:** These are matters that are duly noticed and published in a newspaper of general circulation and where required by law, written notice is given to the affected residents who have the opportunity to speak in favor or against a matter or ask questions about the matter.
- 4.12 Other Business:** These are other matters of City business which are not appropriately placed on the consent calendar and do not require published notices and require Council action and direction.

- 4.13 Future Business:** These are items that members of the City Council wish to discuss to potentially take action on or have placed on future agendas.

SECTION 5. ORDER OF BUSINESS

5.1 The order of business at meetings of the City Council shall be as follows:

- a.** CALL TO ORDER
- b.** ROLL CALL ATTENDANCE
- c.** DECLARATION OF POSTING AGENDA
- d.** WORKSHOP (if needed; 5:00-6:00 p.m., or as deemed appropriate)
- e.** CLOSED SESSION (if needed; 6:00-7:00 p.m., or as deemed appropriate)
- f.** SILENT INVOCATION
- g.** PLEDGE OF ALLEGIANCE
- h.** PRESENTATIONS
- i.** PROCLAMATIONS
- j.** RECOGNITIONS
- k.** CITY COUNCIL REPORTS
- l.** CITY MANAGER'S REPORT
- m.** CITY ATTORNEY'S REPORT
- n.** OTHER REPORTS
- o.** PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA
- p.** ADOPTION OF AGENDA
- q.** CONSENT CALENDAR
- r.** PUBLIC HEARINGS
- s.** OTHER BUSINESS
- t.** FUTURE COUNCIL INITIATED AGENDA ITEMS
- u.** CLOSED SESSION
- v.** ADJOURNMENT

SECTION 6. PUBLIC COMMENT

- 6.1 Public Comment:** Persons present at meetings of the City Council may comment on individual items on the agenda at the time the items are scheduled to be heard. In addition, comments may be offered on items not on the agenda under that portion of the agenda. In accordance with State law, matters not scheduled on the agenda cannot be acted upon by the City Council, but items raised by the public during public comment may be referred to a future City Council agenda at the request of the Mayor or City Council.
- 6.2 Limitations:** The public comment period may be 3 minutes for items on the agenda or items not listed on the agenda. Speakers are called in the order the speaker cards are submitted. Project applicants or appellants will be allowed more than the designated 3 minutes in accordance with City Council Policy 03-01. Consistent with this policy, the Mayor or Presiding Officer may recall an applicant or appellant to address questions after the public comment is heard. In addition, applicants will be given time at the end of the public hearing to address any questions or comments.

The Mayor or Presiding Officer may allow speakers who wish to speak under public comment for items not on the agenda to concede a portion of their time, specifically, one speaker may concede a portion of their time to one other speaker. For all other business items, the Mayor or Presiding Officer may allow speakers more time and/or allow speakers to concede a portion of their time to a designated speaker of a group, specifically up to two speakers may concede their time to one speaker, unless a majority of the City Council objects. Speakers that wish to designate a group speaker shall notify the City Clerk before discussion on the item begins. Additionally, any speaker that concedes their time must be present at that City Council meeting. Speaker who would like to share documents or presentations may do so by submitting said document to the City Clerk by noon on the day of the City Council Meeting. Speaker may not share videos or presentations with videos embedded within them.

- 6.3 Procedure:** To address the City Council, each speaker is requested to fill out a Speaker Card and turn it in to the City Clerk before discussion on the agenda item begins. The speaker is requested to provide their name, contact information, and the subject(s) upon which the speaker wishes to address the City Council. Speakers who do not wish to provide their name should provide an alternative designation so that they can be called to speak by the City Clerk.

SECTION 7. PROCEDURES FOR THE CONDUCT OF MEETINGS

7.1 Role of the Mayor/Presiding Officer:

- a. The Presiding Officer of the City Council, who shall be the Mayor or in the Mayor's absence shall be the Mayor Pro Tempore, or in their absence any other designated member of the City Council, shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the Presiding Officer to ensure that the rules of operation and decorum contained herein are observed. The Presiding Officer shall maintain control of communication between Council Members and between the Council, staff, and public.
- b. Communication with Council Members:
 1. Council Members should request the floor from the Presiding Officer before

speaking.

2. When one member of the Council has the floor and is speaking, other Council Members shall not interrupt or otherwise disturb the speaker.

2.3. During both questions and discussion, when one Council Member has the floor, they are limited to 5 minutes. After each Council Member that wishes to speak has done so, a Council Member may speak again for up to 5 minutes.

- 3.4. With the concurrence of the Mayor, a Council Member holding the floor may address a question to another Council Member. The Council Member being questioned may or may not respond while the floor is still held by the Council Member asking the question. The reply shall be limited to the question asked.

- c. The Mayor or Presiding Officer may declare that an item within the meeting will be conducted in “workshop” format, which means that the procedures described in section 7.1B do not strictly apply. This is to allow for a more open discussion without strict formalities. The Mayor or Presiding Officer may end the workshop format for the item at his/her discretion.
 - d. Communication with Members of the Public Addressing the Council
 1. The Mayor or Presiding Officer shall open the floor for public testimony as appropriate.
 2. After a witness or subject matter expert has addressed the City Council during public comment, Council members may only ask questions of witnesses or subject matter experts. Such questions should be directed to the person through the Presiding Officer unless the Presiding Officer grants the Council Member permission to directly question the person.
 3. Staff members, through the City Manager, shall be a resource to the City Council to answer questions arising during discussions between Council Members and between Council Members and members of the public. Communications in this regard shall be through the Presiding Officer.
 4. Members of the public shall direct their questions and comments through the Presiding Officer.
- 7.2 Rules of Order: The City Council adopts no specific rules of order except those listed herein. The City Council shall refer to The Standard Code of Parliamentary Procedure by Alice Sturgis (McGraw Hill) as a guide for the conduct of meetings. The Sturgis guideline regarding not requiring seconds for governmental bodies' motions, resolutions or ordinances is not adopted as the rule in the City. The Mayor or Presiding Officer has the discretion to impose reasonable rules at any particular meeting based upon facts and circumstances found at any particular meeting. These latter rules will be followed unless objected to by a majority of the City Council members present.
- 7.3 Motions: The Mayor or any member of the City Council may bring a matter of business on the agenda before the Council by making a motion. Before the matter can be considered or debated it must be seconded. Once the motion has been properly made and seconded, the Presiding Officer shall open the matter for full debate offering the first opportunity to

debate to the moving party and, thereafter, to any Council Member recognized by the Mayor or Presiding Officer. Debate shall be closed upon consent of a majority of the Council.

- 7.4** Reconsideration: Immediately after a vote on a matter, any member of the City Council may request to have his/her vote changed on a matter before the Council moves on to the next item. Such a request will be granted by the Mayor or Presiding Officer unless a majority of the Council objects.

A matter may be reconsidered by the City Council if a member on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Council, however, nothing in this policy precludes the majority of members of the City Council from requesting reconsideration of any item.

7.5 Debate:

- a.** The discussions and deliberations at meetings of the City Council are to secure the informed judgement of Council members on proposals submitted for decision. This purpose is best served by the exchange of thought through discussion and debate.

Debate is regulated by these rules in order to assure every member a reasonable and equal opportunity to be heard.

- b.** Obtaining the Floor for Debate:

As soon as a debatable motion has been stated to the Council by the Mayor or Presiding Officer, any member of the Council has a right to discuss it after obtaining the floor. The member obtains the floor by seeking recognition from the Mayor or Presiding Officer. A member who has been recognized is entitled to be heard so long as he/she observes the rules of debate.

- c.** Speaking More Than Once:

To encourage the full participation of all members of the Council, no member or members shall be permitted to monopolize the discussion of the question. If a Council member has already spoken and other members wish to speak, the latter members should be recognized in preference to the member who has already spoken. However, if no other members seek recognition, the Mayor or Presiding Officer may recognize the member who has already spoken.

- d.** Relevancy of Debate:

All discussion must be relevant to the motion before the City Council. A member is given the floor only for the purpose of discussing the pending question; discussion which departs is out of order. The Mayor or Presiding Officer should then direct the speaker to limit discussion to the question before the City Council.

A motion-its nature or consequences-may be attacked vigorously. But it is never permissible to attack the motives, character, or personality of a member either directly or by innuendo or implication. It is the duty of the Mayor or Presiding Officer instantly to stop any member who engages in personal attacks. It is the

motion, not its proposer, that is the subject of debate. Meetings must discuss measures and ideas, not people.

Arguments, for or against a measure, should be stated as concisely as possible.

Debate must be fundamentally impersonal. All discussion is addressed to the Mayor or Presiding Officer and must never be directed to any individual.

e. Mayor's Duties During Debate:

The Mayor or Presiding Officer has the responsibility of controlling and expediting debate. A Council member who has been recognized to speak on a question has a right to the undivided attention of the Council.

It is the duty of the Mayor or Presiding Officer to keep the subject clearly before the members, to rule out irrelevant discussion, and to restate the question whenever necessary.

SECTION 8. DECORUM

8.1 Council Members: Members of the City Council value and recognize the importance of the trust invested to them by the public to accomplish the business of the City. Council Members shall accord the utmost courtesy to each other, to City employees, and to the public appearing before the City Council.

8.2 City Employees: Members of City staff shall observe the same rules of order and decorum applicable to the City Council. City staff shall act at all times in a business and professional manner towards Council Members and members of the public.

8.3 Public: Members of the public attending City Council meetings shall observe the same rules of order and decorum applicable to the City Council.

8.4 Noise in the Chambers: Noise emanating from the audience within the Council Chambers or lobby area, which disrupts City Council meetings, shall not be permitted.

8.5 Sergeant-at-Arms: The Chief of Police, or his/her designated representative shall be ex-officio Sergeant-at-Arms of the City Council.

SECTION 9. VIOLATIONS OF PROCEDURES

9.1 Nothing in these policies and procedures shall invalidate a properly noticed and acted upon action of the City Council in accordance with State Law.

This policy shall remain in effect until modified by the City Council.

APPROVED:

RICH CONSTANTINE, MAYOR

Attachment: CP-97-01 CC Procedures-Protocols MB 2-2-21 (2988 : Updates to Priorities 2020-21, norms, and CP97-01)

From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Opposed to Last Mile distribution for the City of Morgan Hill at any level.
Date: Tuesday, February 16, 2021 9:50:11 AM

From: Erin Gil <[REDACTED]>
Sent: Friday, February 12, 2021 1:38:48 PM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: Opposed to Last Mile distribution for the City of Morgan Hill at any level.

Hi Jennifer ~ As a long time resident of Morgan Hill (33 years), please place my vote as against any and all logistical warehouse delivery sites within the city limits of Morgan Hill.

Morgan Hill is not Tracy, nor does it have the geography to easily assist with such an operation.

Morgan Hill is better suited to other economic options that promote a family lifestyle, consistent with the traditions of the city. Just because its easy economic 'development' does not make it appropriate for the community.

Do not detract from what makes Morgan Hill as an attractive lifestyle community. The roads are already becoming dangerous for pedestrians, cyclists as well as motorists along Hwy 101. Infrastructure improvements before additional load carrying when our road ways are at capacity.

Sincerely,
Erin Gil

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Item # 01

AGENDA DATE: 02/17/2021
SUPPLEMENT # 2

From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: comment City Council February 17 Item #1: Last mile workshop
Date: Monday, February 15, 2021 11:14:32 AM

A comment for City Council Meeting February 17, 2021
Agenda Item #1: Last mile (local) delivery/distribution workshop

Dear Morgan Hill City Council and Staff,

You are looking at this as Economic Development and Zoning.
From the presentation:

- Community will continue to order online and City will get impacts of traffic/trucks regardless

I will comment on your Strategic Priority to Protect the Environment.

- 1) Consolidation at the edges
- 2) Responsibility for post-delivery packaging

1: I have seen a model where multiple companies come together at a common sorting facility at the edge of a delivery zone and combine items from all companies destined for a specific area to a single delivery vehicle.

It is not uncommon in my apartment complex for trucks from multiple companies to be on-site at the same time, blocking driveways and even each other. This is not a way to reduce congestion or VMT.

2: I would love to see the equivalent of producer takeback responsibility for the large amount of cardboard wasting space in our recycle carts or going into the garbage dumpsters. While recycling practices at single-family homes and businesses may be easier to motivate and monitor than at multi-unit housing, too many of my neighbors shove large empty boxes and pieces into the carts (denying use of the cart for other recyclables until the next pickup) or leaving them on the ground (where they are not picked up by Recology and eventually go into the dumpster).

Thank you for your consideration, Doug Muirhead, Morgan Hill

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Just say NO. Last-mile distribution facilities in our City make NO sense and we can't just keep ignoring the fiscal impact decisions have.



Unfunded General Fund Needs

Total Annual Unfunded General Fund Needs = **\$6M**

- Police \$1.3M
- Fire \$2.3M
- Building Maintenance and LAD **\$0.1M**
- Pavement Rehabilitation **\$1.1M**
- Street Maintenance \$0.2M
- **Operational loss due to RDSCS Suspension \$1.0M**

(Source: Jan 2021, Goal Setting Workshop)

General Fund revenues projected to decline by \$17.7 million over three year period. (Source: City's proposed

'hardship' Resolution. Feb. 17, City Council meeting, agenda item #3)

Item # 01

**AGENDA DATE: 02/17/2021
SUPPLEMENT # 3**

Joe Baranowski
February 14, 2021



No meaningful fiscal benefit because of CA tax laws and other factors.

- **Last-mile delivery has no “meaningful fiscal benefit to the city’s general fund”. [1]**

- » Recent report from JLL. Main point is that sales tax from on-line transactions that get delivered from a Distribution Center located in Morgan Hill would get allocated to our General Fund via the Santa Clara County pool. MH’s share of that pool is **~2.4%**.
- » “No meaningful fiscal benefit” is gross understatement, because report does not consider ‘opportunity cost’ and other factors. In deciding the type of Land Uses to promote / allow you **MUST** look at alternatives. Not only fiscal impact but JOB creation, traffic and environmental impacts.

- ~45K taxpayer funded study in July 2020 by consultant that City has used for many years [2]. Allows different ‘development scenarios’ to be compared using MH specific data for many of the key assumptions. Staff, Council and Residents don’t want distribution and the fiscal impact model shows there are urgent reasons we must **act** to achieve that goal.

- » Advanced Manufacturing / R&D developments generate higher Property Taxes than Distribution. July study only estimated secured property but Personal Property taxes can be estimated and are likely much higher for many advanced manufacturing / R&D firms than for distribution.
- » Warehouse and distribution use cases do NOT generate General Fund revenue from ‘business-to-business’ taxes. Other uses do and this makes a very big difference in the fiscal benefit which would be realized by the City and it’s residents.
- » **‘Last Mile’ typically means 40 - 45 mile delivery radius.** The City has used (or implied) a new term, ‘true last mile’ delivery (i.e. just Morgan Hill) but how could that possibly be monitored and enforced? The economic reality is that outside very high density populations, these facilities are built to service an area significantly larger than just the city they reside in. Last mile distribution facilities in MH would likely service, San Martin, Gilroy, South San Jose, and beyond. This means Big-Rig truck traffic does not just go away and the number of delivery Vans using MH city streets will be MUCH higher. Compared to passenger cars, these vehicles cause significantly more road wear and tear and the City’s street maintenance costs (already under-funded) will be relatively higher.

» **JOBS?** July study shows distribution use cases generate fewer jobs but consultant used outdated assumptions (including operators own statement of operations which can be easily found on-line) and completely ignored the impact automation will have.

[1] “E-Commerce Tax Revenue in California: Is this the right way to do it?,” Joel Woodmass & Greg Matter, JLL Research Northern California, January 2021

[2] <https://www.morgan-hill.ca.gov/DocumentCenter/View/36930/Morgan-Hill-Technology-Park-Fiscal-Impact-Analysis?bidId=>



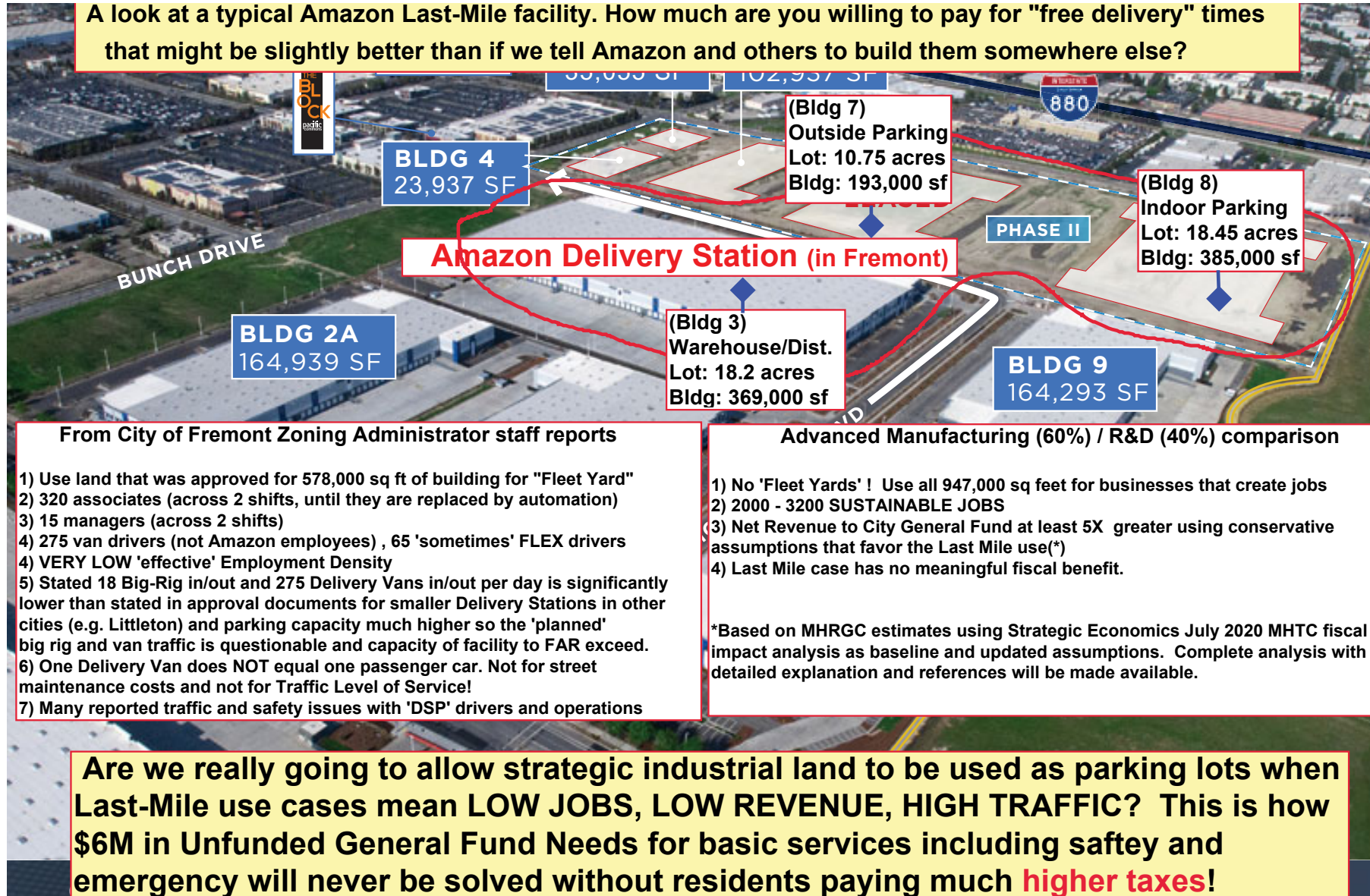
Potential impact to a City that HAS Walmart, Target, and ?

- **Many experts point to root cause for explosion in Last-Mile facilities as Amazon's reaction to Target & Walmart.**
 - » E.g. "Historically, Amazon gnawed away at brick-and-mortar rivals from warehouses on the exurban fringes, where it operated mostly out of sight and out of mind. That worked fine when the company was promising to get products to customers in two days. Now Walmart and Target Corp. are using their thousands of stores to beat Amazon at its own game by offering same-day delivery of on-line orders. Walmart also recently started its own Prime-style subscription service, upping the competitive ante." [3]
- City says we need Distribution facilities to "allow Last Mile (Local) Delivery to service the community".
 - » We ALREADY have Last Mile Delivery for a growing number of products from EXISTING businesses.
- "Community will continue to order on-line and the City will get impacts of traffic/trucks regardless".
 - » Online ordering will certainly 'continue' but encouraging Last-Mile facilities to be located in MH where they would directly compete with existing high sales tax generating businesses seems absurd. (More generally it is not consistent with a responsible Climate Action plan.)
 - » When an on-line order is delivered from inventory of a store with a point-of-sales presence, the allocation of the 1% Bradley-Burns sales tax goes to the jurisdiction (i.e. city) where the store is located. If the same thing is ordered from a Last Mile operator that has no point-of-sale presence (i.e. a retail store), the tax is allocated via countywide pool. Morgan Hill's pool share is ~2.4%. So things like Amazon Fresh or Amazon Pantry would potentially REDUCE realized sales tax revenue for an already large and rapidly growing number of products. City should support online delivery from EXISTING businesses, NOT encourage Last Mile operators who have no brick-and-mortar operations in the city.
 - » Despite the promise, online delivery does NOT reduce local traffic (especially in the U.S.). Retailers are motivated by market-share grab and encourage customers to place small, ad-hoc orders. The total number of 'trips' is increased by a LOT not decreased. "True Last Mile" is a made up term. Last Mile facilities will likely serve customers well beyond Morgan Hill bringing MORE Vans and Big Rig Trucks not less.
 - » Competitive market forces (and the overall high disposable income of MH residents) will ensure that residents CONTINUE to have receive near 'best in class' delivery service without Last Mile distribution facilities in Morgan Hill.

[3] <https://www.bloomberg.com/news/articles/2020-09-16/amazon-plans-to-put-1-000-warehouses-in-neighborhoods>



A real world example & comparison to what we say want



We need to focus on what we want NOT what the market wants to give us

- *Not* saying Fremont example is exactly like every other last-mile case or one that any developer would bring to MH
- But, the same fundamental reasons that result in the example scenario having ‘no meaningful fiscal benefit’ ESPECIALLY compared to advanced manufacturing / R&D use cases would exist for other specific last-mile developments
- Potential ‘solutions’ to the fiscal problem proposed in the JLL report would face major obstacles
 - » ‘More pain more gain’ change to tax law (allocating share of countywide pool based on the share of last-mile inventory within each city) has no visibility while previous attempts to change CA allocation from “point-of-sale” to “point-of-delivery” have been proposed (ACA 13, 2019) and (SCA 20, 2018) . Some momentum at federal level and many states already adopting destination based sourcing (SST). The city of Dinuba which JLL references says in most recent budget report that “while the amendments were not pushed through, the possibility of losing the point-of-sale designation is still a looming threat”
 - » Higher impact fees to be used for General Fund discretionary uses? VMT traveled ‘cost savings’ realized by operator to be shared with City? Warehouse / Distribution Center ‘business use tax’?
- Why spend very limited resources to look at risky ways to make distribution use cases ‘less bad’ when we don’t want them ?!
- Adopt Zoning regulations that will bring in development projects that EVERYBODY wants AND that can be expected to address the Unfunded General Funds Need issue. Yes, even though there is probability of success and timing unknowns. Do not let the current insatiable e-commerce market demand or the additional Covid-19 budget ‘hardship’ determine how our available industrial land will be used for the next ~35 years. Carefully, cautiously consider economic incentives to attract advanced manufacturing / R&D businesses that are the sustainable **job generators** of the future.





CITY OF MORGAN HILL

CITY COUNCIL STAFF REPORT

MEETING DATE: February 17, 2021

PREPARED BY: Edith Ramirez, Assistant City Manager

APPROVED BY: City Manager

LAST MILE (LOCAL) DELIVERY/DISTRIBUTION

RECOMMENDATION(S)

Examine what “last mile (local) delivery” is and how it could serve or impact our community, discuss what the City has done to date to regulate distribution, and explore regulations for last mile (local) delivery uses.

Workshop Purpose:

This workshop is intended to examine what “last mile (local) delivery” is and how it could serve or impact our community. At this workshop we will discuss what the City has done to date to regulate distribution and explore regulations for last mile (local) delivery uses. Policy questions to be considered by the City Council include:

- Does last mile distribution fit into the uses allowed within Morgan Hill?
- Is the community better off with a local last mile distribution facility?
- Is traffic better or worse with a local distribution facility?
- If we allow last mile delivery facilities, where should they be allowed? How many? How big?

Background:

At the October 21, 2020 City Council meeting, the City Council approved an ordinance prohibiting large fulfillment centers/heavy distribution and parcel sorting centers. At this meeting, the City Council did not approve last mile (local) delivery/distribution centers and instead directed staff to hold a workshop to discuss whether last mile (local) delivery uses would be appropriate for the City.

To learn more about the recently adopted ordinance you can review the City-initiated Code Amendments (aka Industrial Ordinance) FAQs or you can visit the project web page.

LINKS/ATTACHMENTS:

1. Workshop Presentation
2. Ordinance 2317 Zoning Code Amendments- Industrial Ordinance
3. Zoning Map



Last Mile (local) Delivery/Distribution Workshop



Attachment: Workshop Presentation (2995 : Last Mile Delivery)

Policy Questions

- Does last mile distribution fit into the uses allowed within Morgan Hill?
- Is the community better off with a local last mile distribution facility?
- Is traffic better or worse with a local distribution facility?
- If we allow last mile delivery facilities, where should they be allowed? How many? How big?

Background

October 28, 2020

City Council considered a proposed ordinance to:

- Prohibit heavy distribution and parcel sorting uses
- Amend provisions related to local delivery services

November 18, 2020

Council adopted Ordinance 2317

- Prohibits heavy distribution and parcel sorting facilities, and local delivery services (referenced as parcel hubs) in all zones within the City.

Directed staff to schedule workshop to discuss local delivery service uses

Background

Responsible Growth Initiative

- Attempts to address e-commerce facilities
- Defines “fulfillment centers” by physical features only, rather than by use
- Impacts existing businesses
- Limits facilities’ ability to meet future needs
 - prohibited from converting existing drive through doors or punch-outs to dock-high-doors

City’s Proposed ordinance

- Regulates e-commerce uses
- Regulates by use and physical features and uses
- Prohibits large distribution facilities
- Could allow certain local delivery services

Facility	MHRGC Initiative	Proposed Ordinance
Heavy Distribution	Prohibited*	Prohibited
Sorting Center	Prohibited*	Prohibited
Parcel Hub-Large	Permitted**	Conditionally Permitted
Parcel Hub-Small	Permitted	Permitted

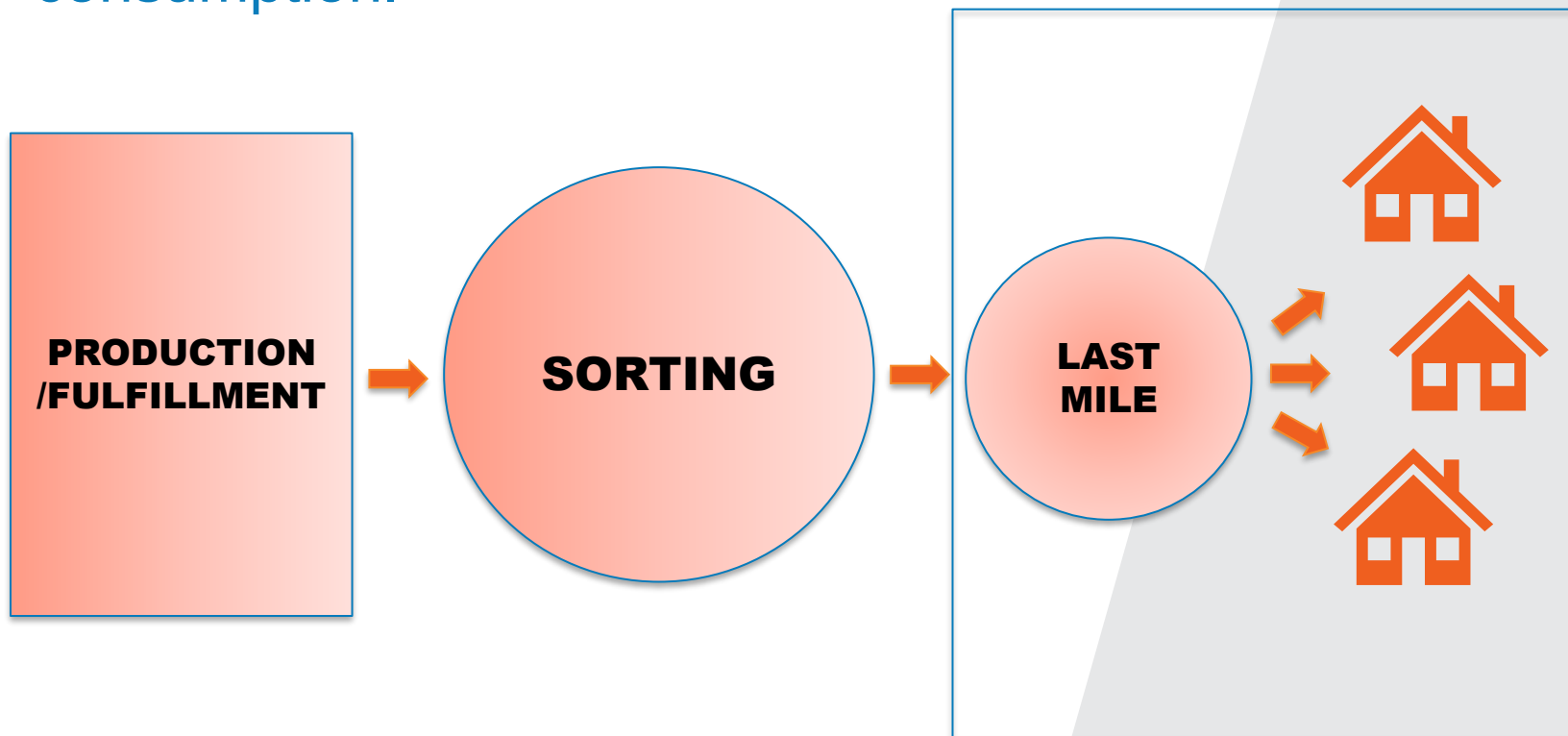
Prohibited 11-18-20

*Permitted with fewer than 1 dock door per 25,000 square feet of floor area or with a clear ceiling height of less than 24 feet.

**As Parcel Hub is defined in the Proposed Ordinance, which requires local delivery using vehicles rated 10,000 pounds or less. These smaller vehicles do not use dock-high doors

What is Last Mile Delivery?

Last-mile delivery represents the final leg of the supply chain as goods are delivered from production to consumption.



City Regulations

Ordinance 2317 created new definitions for distribution use and prohibited these uses:

- **Heavy Distribution.** A Fulfillment Center or similar use with a minimum gross floor area of 200,000 square feet and a minimum ceiling height of 24 feet. The Fulfillment Center's primary purpose is storage and distribution of e-commerce products to consumers or end-users, either directly or through a Parcel Hub.
- **Parcel Sorting Facilities.** Establishments for the sorting and or re-distribution of parcels or products from Heavy Distribution (Fulfillment Centers) to a Parcel Hub via intramodal transit truck to truck.
- **Parcel Hub.** A "Last Mile" facility or similar establishment for the processing and/or re-distribution of parcels or products. A Parcel Hub's primary function is moving a shipment from one mode of transport to vehicles with rated capacities less than 10,000 pounds, for delivery directly to consumers or end-users primarily within the Morgan Hill zip code.
 - **Parcel Hub, Large** - 75,000 square feet or more in building area.
 - **Parcel Hub, Small** - Less than 75,000 square feet in building area.

City Regulations

How would new regulations on Parcel Hubs impact industrial properties?

Industrial zoned properties

Yes

Properties with Planned Developments (PD) or Development Agreements (DA)

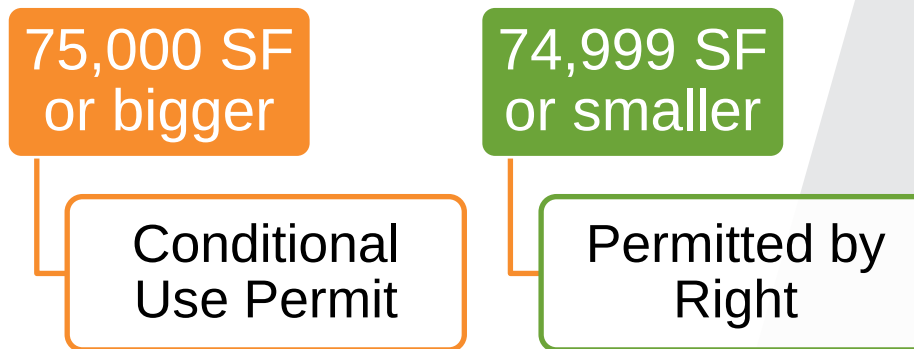
No, unless PD or DA defaults to current Municipal Code or allows applicant to chose to use current code.

Properties vested under previous code

No – but could create a legal non-conformity

Recommended Regulation for Last Mile (Local) Delivery

- Allow Last Mile (Local) Delivery to service the community
- Community will continue to order online and City will get impacts of traffic/trucks regardless



Requirements for use:

- delivery vehicles are rated 10,000 pounds or less (this is typically a van or other smaller vehicle)
- deliveries occur primarily within the City of Morgan Hill zip code

Recommendations

- **Allow a limited number of local delivery hubs as defined in the original industrial ordinance**
 - ❖ Permitted by Right - Parcel hubs with 75,000 square feet or less of floor area
 - ❖ Conditional Use Permit - Parcel hubs larger than 75,000 square feet
- Permitting the use allows the City to regulate
- City maintains control through the creation of design and performance standards
 - Proximity standards
 - Limit to overall number
 - Limit on number of dock-high doors
- City has ability to require conditions of approval
- City retains enforcement ability
- If not allowed, City will get the vehicle traffic

Policy Questions

- Does last mile distribution fit into the uses allowed within Morgan Hill?
- Is the community better off with a local last mile distribution facility?
- Is traffic better or worse with a local distribution facility?
- If we allow last mile delivery facilities, where should they be allowed? How many? How big?

Questions?



ORDINANCE NO. 2317, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING TABLE 18.26-1 (PERMITTED LAND USES IN THE INDUSTRIAL ZONING DISTRICTS) OF SECTION 18.26.020 (LAND USE REGULATIONS) OF CHAPTER 18.26 (INDUSTRIAL ZONING DISTRICTS); SECTION 18.108.040 (DESIGN PERMIT) OF CHAPTER 18.108 (SPECIFIC PERMIT REQUIREMENTS; SECTIONS 18.124.050 (INDUSTRIAL USES) AND 18.124.060 (TRANSPORTATION, COMMUNICATION, AND UTILITY USES) OF CHAPTER 18.124 (LAND USE DEFINITIONS) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING E-COMMERCE DISTRIBUTION USES AND DESIGN REVIEW FOR LARGE PROJECTS

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

Section 1. Table 18.26-1 (Permitted Land Uses in the Industrial Zoning Districts) of Section 18.26.020 (Land Use Regulations) of Chapter 18.26 (Industrial Zoning Districts) of Title 18 (Zoning) is hereby amended to read as follows (additions in underline, deletions in ~~strikeout~~):

18.26.020– Land Use Regulations

- A. Permitted Land Uses.** Table 18.26-1 identifies land uses permitted in the industrial zoning districts.

TABLE 18.26-1 PERMITTED LAND USES IN THE INDUSTRIAL ZONING DISTRICTS

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required – Use not allowed	Zoning District					Additional Regulations
	CI	IO	IC	IL	IG	
Residential Uses						
Caretaker Quarters	–	–	–	C	C	
Public and Quasi-Public Uses						
Colleges and Trade Schools	C	C	C	C	C	
Community Assembly	C	–	–	C	C	
Instructional Services	A	–	–	–	–	
Medical Offices and Clinics	A	–	–	–	–	
Parks and Recreational Facilities	C	–	–	C	C	
Public Safety Facilities	C	–	–	C	C	
Commercial Uses						

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Adult Businesses	-	-	P	P	P	18.92.020
Animal-Related Commercial Uses						
Animal Boarding	C	-	-	C	C	
Veterinarian Clinics and Hospitals	A	A	A	C	C	
Banks and Financial Institutions	C [4]	-	-	-	-	
Business Support Services	P	C	P	P	P	
Cinemas and Theaters	A	-	-	-	-	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	P	C	C	C	C	
> 15,000 sq. ft.	C	C	C	C	C	
Eating and Drinking Uses						
Restaurants, Fast Food	C [4]	- [5]	- [5]	- [5]	- [5]	
Restaurants, Sit-Down	C [4]	- [5]	- [5]	- [5]	- [5]	
Tasting Rooms	P [6]	-	-	A [6]	A [6]	
Lodging Facilities						
Hotels and Motels	P	-	-	-	-	
Mini-Storage	-	-	-	C	C	18.92.100
Personal Service	C [4]	- [5]	- [5]	- [5]	- [5]	
Plant Nurseries	C	-	-	P	P	
Professional Offices	P	P	P	P	P	
Retail						
Building Materials	C	-	-	P	P	
Convenience Markets	C [4]	- [5]	- [5]	- [5]	- [5]	
General Retail	C [4]	- [5]	- [5]	- [5]	- [5]	
Home Improvement Centers	C	-	-	C	C	
Large Commodity Retail	C	-	-	C	C	
Vehicle-Related Uses						
Towing and Impound	-	-	-	C	P	
Vehicle Repair and Maintenance, Major	-	-	-	C	P	
Vehicle Repair and Maintenance, Minor	-	-	-	P	P [1]	
Wholesaling	P	-	-	P	P	
Retail						
Building Materials	C	-	-	P	P	
Convenience Markets	C [4]	- [5]	- [5]	- [5]	- [5]	
General Retail	C [4]	- [5]	- [5]	- [5]	- [5]	
Home Improvement Centers	C	-	-	C	C	
Large Commodity Retail	C	-	-	C	C	
Vehicle-Related Uses						
Towing and Impound	-	-	-	C	P	

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Vehicle Repair and Maintenance, Major	-	-	-	C	P	
Vehicle Repair and Maintenance, Minor	-	-	-	P	P [1]	
Wholesaling	P	-	-	P	P	
Industrial Uses						
Construction and Material Yards	C	C	C	P	P	18.36.030.C
Food and Beverage Production						
< 5,000 sq. ft. [7]	A [2]	A [2]	A [2]	P [2]	P [2]	
5,000 sq. ft. to 10,000 sq. ft. [7]	C [2]	C [2]	C [2]	P [2]	P [2]	
> 10,000 sq. ft.	C	C	C	P [2,8]	P [2,8]	
Manufacturing, Light	P	C [3]	C	P	P	
Manufacturing, General	-	-	-	-	C	
Research and Development	P	P	P	P	P	
Salvage and Wrecking	-	-	-	-	C	
Warehousing and Distribution						
Warehousing and Distribution, Large	C	C [3]	C [3]	C	P	
Warehousing and Distribution, Small	C	C [3]	C [3]	P	P	
Warehousing and Distribution with Outdoor Storage	C	-	-	C	C	
Heavy Distribution	-	-	-	-	-	
Parcel Sorting Facilities	-	-	-	-	-	
Parcel Hub Small < 75,000 sq. ft.	-	-	-	-	-	
Parcel Hub Large > 75,000 sq. ft.	-	-	-	-	-	
Recycling Facilities						
Reverse Vending Machine	P	C	C	P	P	
Recycling Collection Facility	C	-	-	C	C	
Recycling Processing Facility	-	-	-	-	C	
Utilities, Major	-	-	-	C	C	
Wireless Communications Facilities	See Chapter 18.96					
Agriculture and Natural Resource Uses						
Crop Cultivation	-		-			
Other Uses						
Accessory Uses	See Chapter 18.44					
Temporary Uses	See Section 18.92.150					

Notes:

[1] Retail sale of automotive products allowed only when ancillary to a vehicle repair and maintenance use. Retail display areas for automotive products may not exceed 25 percent of the building floor area.

[2] Must be 150 feet or more from a residential zoning district, otherwise requires a CUP.

[3] Permitted only when ancillary to another permitted use.

[4] Allowed as a primary use only when the Planning Commission finds that the use supports the primary job-generating uses within a business park setting.

[5] Allowed when accessory to a permitted primary use subject to the limitations in Section 18.26.020.D (Accessory Uses).

[6] Allowed only when accessory to a brewery, winery, or other alcoholic beverage production facility. Tasting rooms must be located

within the building occupied by the primary use and may not exceed 5,000 square feet or 10 percent of the gross floor area of the building, whichever is less.

[7] On-site wholesale or retail sales required.

[8] Conditional Use Permit required when the type of food being produced will emit a generally offensive odor. Examples include primary processing of seafood, coffee roasting, pickled foods, or processes involving primarily fat and oils.

Section 2. Section 18.108.040 (Design Permit) of Chapter 18.08 (Specific Permit Requirements) of Title 18 (Zoning) is hereby amended to read as follows:

18.108.040 – Design Permit

A. Purpose. A Design Permit is a discretionary action that enables the City to ensure that proposed development exhibits high quality design consistent with the General Plan and any other applicable specific plan or area plan adopted by the City Council. The Design Permit process is also intended to ensure that new development and uses are compatible with their surroundings and minimize negative impacts on neighboring properties.

B. Review Authority.

1. Except as provided below, the Community Development Director shall review and act on all Design Permit applications.
2. The Community Development Director may elevate any Design Permit application under their authority to the Planning Commission for review and final decision.
3. The City Council shall review and act on all Design Permit applications for new City projects (e.g., new municipal buildings, parks) determined by the Community Development Director to be significant in accordance with Subsection D below.
4. Except for new City projects, the Planning Commission shall act on any Design Permit Application for any other projects determined by the Community Development Director to be significant in accordance with Subsection D below.

C. When Required. The following types of projects require a Design Review permit:

1. Three or more new residential units.
2. One or more new residential unit on a sensitive site as defined in Subsection E (Sensitive Sites) below.
3. New non-residential buildings, structures physical site improvements determined to be significant in accordance with Subsection D (Significant Projects) below.
4. Additions to existing buildings, structures, or other physical site improvements visible from a public right-of-way and determined to be significant in accordance with Subsection D (Significant Projects) below. Single-family homes are exempt unless the home is on a sensitive site as defined in Subsection E below.

5. Additions to existing residences located on a sensitive site as defined in Subsection E below.
6. Site alterations that change the topography of the currently developed site area on a sensitive site as defined in Subsection E below.
7. Relocation of existing buildings, structures or other physical site improvements.
8. Exterior changes to existing buildings, structures or other site improvements determined to be significant in accordance with Subsection D (Significant Projects) below. Single-family homes are exempt unless the home is on a sensitive site as defined in Subsection E below.
9. Grading of more than 50 cubic yards on slopes greater than ten percent.
10. New accessory structures including secondary dwelling units or guest homes on a sensitive site as defined in Subsection E below.
11. City projects, including but not limited to municipal buildings, parks and open spaces, landscaping within the right-of-way, and street furniture.
12. Other projects determined by the Community Development Director to be significant or which may adversely affect the environment or adjacent development.

D. Significant Projects.

1. The Community Development Director shall determine whether a project in Subsection C above is significant and thus requires a Design Review permit. When determining if a project is significant, the Community Development Director shall consider:
 - a. The visual prominence of the project when viewed from the public right-of-way and/or private property;
 - b. The project height, mass, and area of site disturbance;
 - c. The type, character, and proximity of adjacent development; and
 - d. The potential of the project to create adverse impacts on adjacent uses or the community at large.
2. Any structure with more than 75,000 square feet of floor area or a building height greater than 40 feet, not including projections allowed by-right under Table 18.56-1, is presumed to be significant for purposes of this Chapter.
3. Any residential development of more than 100 units is presumed significant for purposes of this chapter.
4. The Community Development Director's determination that a project is significant may be appealed to the Planning Commission in accordance with Chapter 18.112 (Appeals).

E. Sensitive Sites.

1. The Community Development Director may require a Design Permit for a project located on a sensitive site where a Design Permit may not otherwise be required.
2. The Community Development Director's determination that a site is sensitive and that a Design Permit is required may be appealed to the Planning Commission in accordance with Chapter 18.112 (Appeals).
3. The City shall consider a site to be sensitive if the site:
 - a. Contains a notable natural feature such as a hillside, ridgeline, watercourse, major drainage way or floodplain;

Section 3. Section 18.124.050 (Industrial Uses) of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

18.124.050 – Industrial Uses

- A. Construction and Material Yards.** Storage of construction materials and/or heavy equipment on a site other than a construction site.
- B. Food and Beverage Production.** A manufacturing establishment producing or processing food products or beverages for off-site consumption and wholesale distribution where the processing of food is primarily from previously prepared or farmed ingredients.
- C. Heavy Distribution.** A fulfillment center or similar use with a minimum gross floor area of 100,000 square feet and a minimum ceiling height of 24 feet. The fulfillment center's primary purpose is storage and distribution of e-commerce products to consumers or end-users, either directly or through a Parcel Hub. Heavy Distribution is prohibited in all zones in the City of Morgan Hill.
- D. Manufacturing, Light.** The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mills and manufacturing uses involving primary production of wood, metal or chemical products from raw materials.
- E. Manufacturing, General.** Manufacturing of products from extracted or raw materials or recycled or secondary materials, or bulk storage and handling of such products and materials. Includes operations such as agriculture processing, apparel manufacturing; photographic processing plants; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; chemical manufacturing; plastics and rubber products manufacturing; nonmetallic mineral product manufacturing; primary metal manufacturing; fabricated metal product

manufacturing; and automotive and heavy equipment manufacturing.

- F. Parcel Hub.** A “last mile” facility or similar establishment for the processing and/or re-distribution of parcels or products. A Parcel Hub’s primary function is moving a shipment from one mode of transport to vehicles with rated capacities less than 10,000 pounds, for delivery directly to consumers or end-users primarily within the Morgan Hill zip code.
1. **Parcel Hub, Large.** A parcel hub facility that occupies 75,000 square feet or more in building area.
 2. **Parcel Hub, Small.** A parcel hub facility that occupies less than 75,000 square feet in building area.
- G. Parcel Sorting Facilities.** Establishments for the sorting and or re-distribution of parcels or products from Heavy Distribution (fulfillment centers) to a Parcel Hub via intramodal transit truck to truck.
- H. Research and Development.** A facility for scientific research and the design, development, and testing of electrical, electronic, magnetic, optical, pharmaceutical, chemical, and biotechnology components and products in advance of product manufacturing. Includes assembly of related products from parts produced off site where the manufacturing activity is secondary to the research and development activities.
- I. Salvage and Wrecking.** Storage and dismantling of vehicles and equipment for sale of parts, as well as their collection, storage, exchange or sale of goods including, but not limited to, any used building materials, used containers or steel drums, used tires, and similar or related articles or property.
- J. Warehousing and Distribution.** A use engaged in storage, wholesale and distribution of manufactured products, supplies, and equipment to retailers; to industrial, commercial, institutional, farm, or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies. Includes merchant wholesalers; agents, merchandise or commodity brokers, and commission merchants; assemblers, buyers and associations engaged in the cooperative marketing of farm products; and bottling works.
1. **Warehousing and Distribution, Large.** A warehousing distribution facility 75,000 square feet or more in building/or use area.
 2. **Warehousing and Distribution, Small.** A warehousing distribution facility less than 75,000 square feet in building area, or as a secondary/companion use of no more than 75,000 sf ancillary to another activity contained within a larger building area.

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3. **Outdoor Storage.** Storage of commercial goods in open lots.

Section 4. Subsection B (Light Fleet Based Services) of Section 18.124.060 (Transportation, Communication, and Utility Uses) of Chapter 18.124 (Land Use Definitions) of Title 18 (Zoning) is hereby amended to read as follows:

- A. Light Fleet-Based Services.** Passenger transportation services, medical transport, and other businesses that rely on fleets of three or more vehicles with rated capacities less than 10,000 pounds. Includes parking, dispatching, and offices for taxicab and limousine operations, ambulance services, nonemergency medical transport, local messenger and document delivery services, and similar businesses. Excludes towing operations (see "Towing and Impound") or delivery services with two or fewer fleet vehicles on site (see "Business Support Services").

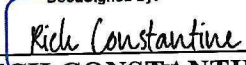
Section 5. Severability. Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 6. Effective Date; Posting. This ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 28th DAY OF OCTOBER 2020, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18th DAY OF NOVEMBER 2020, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Larry Carr, Rene Spring, John McKay Yvonne Martinez Beltran, Rich Constantine
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

DocuSigned by:

RICH CONSTANTINE, Mayor

ATTEST:

DocuSigned by:

IRMA PEREZ, City Clerk

Attachment: Ordinance 2317 Zoning Code Amendments- Industrial Ordinance (2995 : Last Mile Delivery)

City of Morgan Hill
Ordinance No. 2317, New Series
Page 9 of 9

∞ **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. 2317, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 18th day of November 2020.

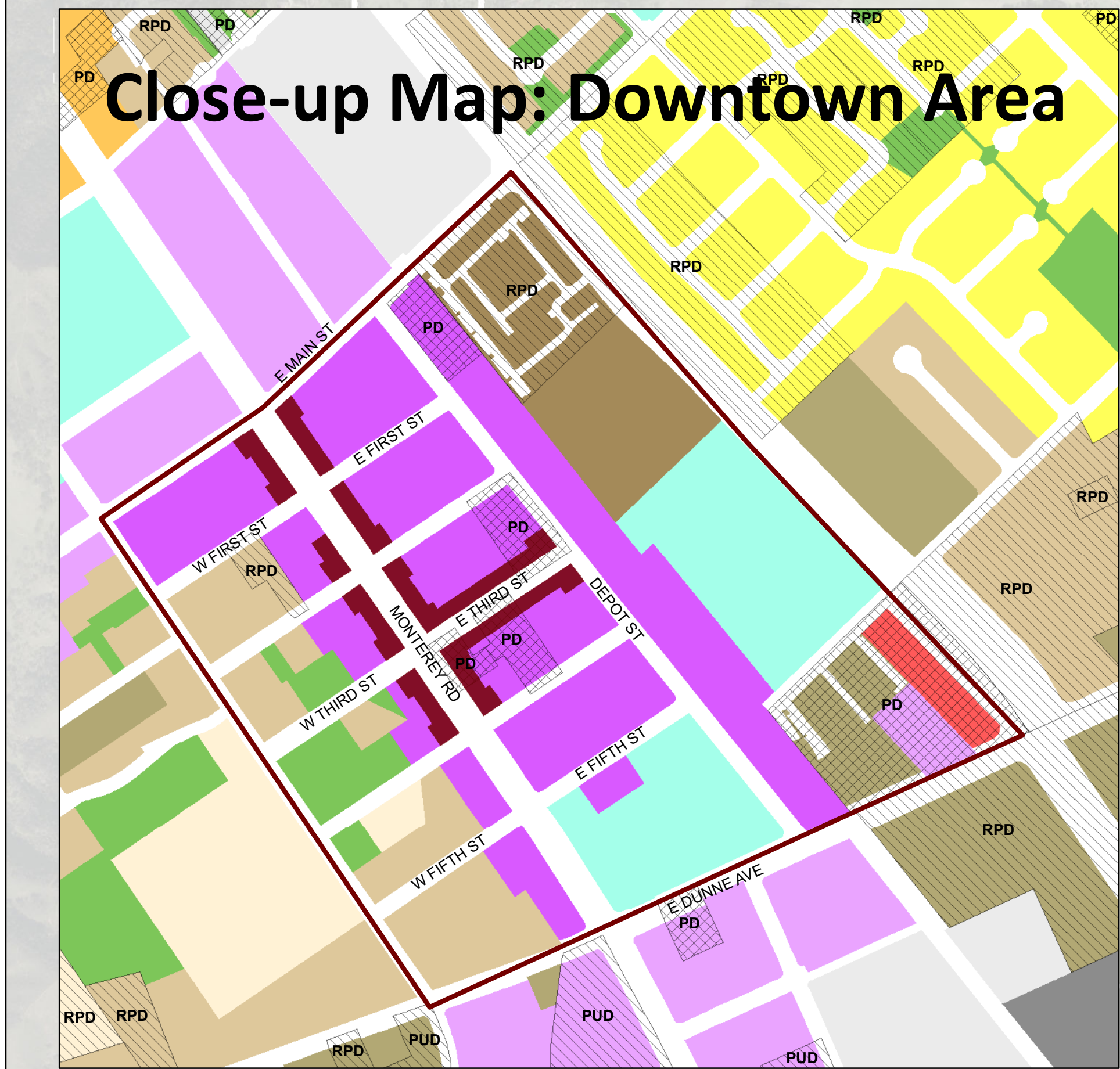
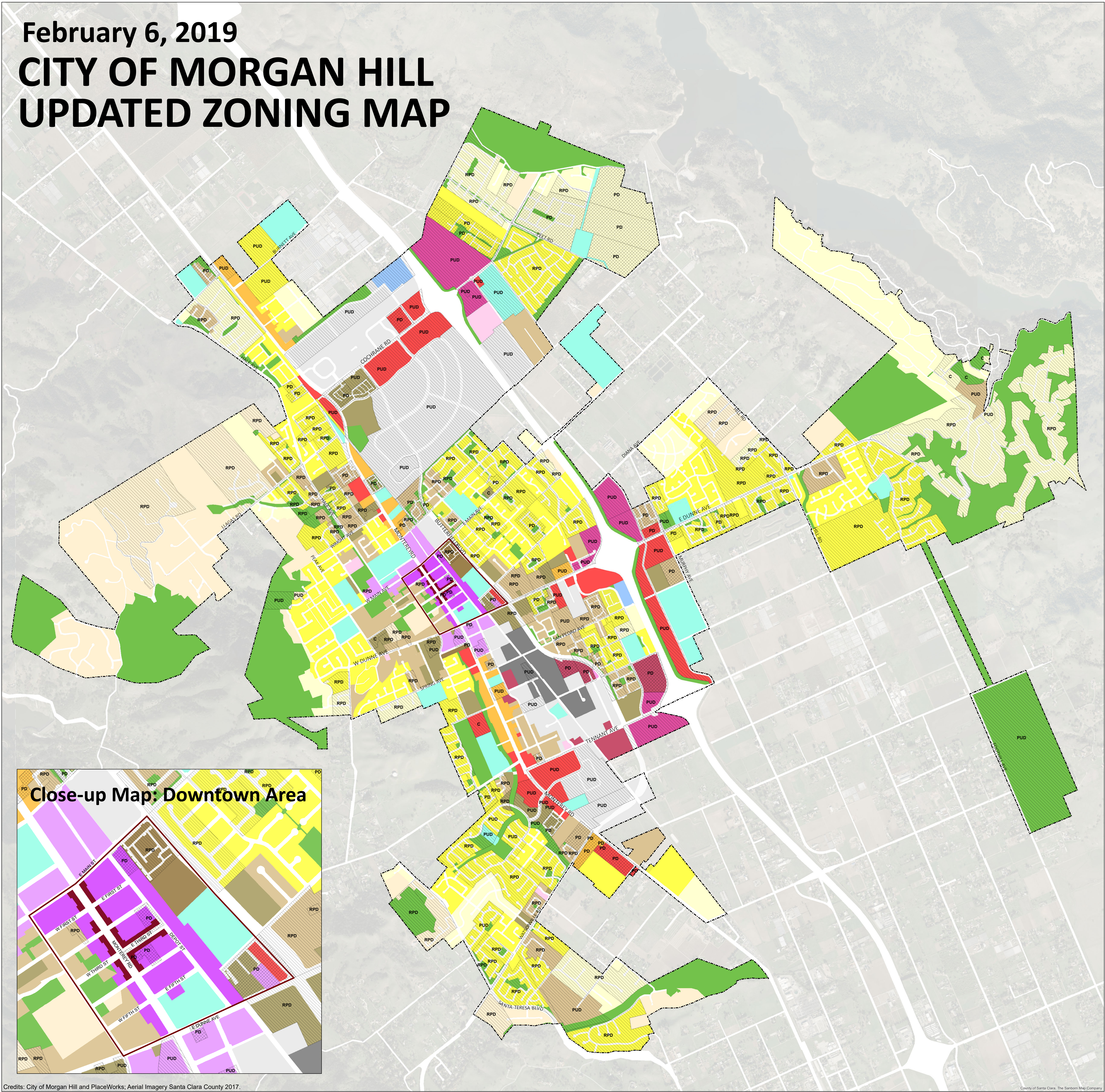
WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 12/1/2020

DocuSigned by:


IRMA TORREZ, City Clerk

Attachment: Ordinance 2317 Zoning Code Amendments- Industrial Ordinance (2995 : Last Mile Delivery)

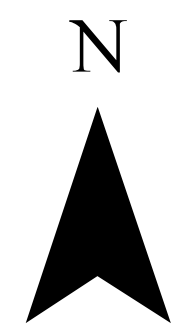


Credits: City of Morgan Hill and PlaceWorks; Aerial Imagery Santa Clara County 2017.
Document Path: H:\Projects\Planning\GIS\Maps\ZoningCodeUpdate\ZoningCodeUpdated_2019-02-06.mxd

Legend

- City Boundary
- Residential Zoning Districts**
 - Residential Estate (RE 1 or RE 2.5)
 - Residential Detached Low Density (RDL 20,000 or RDL 12,000)
 - Residential Detached Medium Density (RDM 9,000 or RDM 7,000)
 - Residential Detached High Density (RDH 4,500)
 - Residential Attached Low Density (RAL 3,500 or RAL 3,000)
 - Residential Attached Medium Density (RAM)
 - Residential Attached High Density (RAH)
- Mixed Use Zoning Districts**
 - Downtown Mixed Use (MU-D)
 - Neighborhood Mixed Use (MU-N)
 - Mixed Use Flex (MU-F)
- Commercial Zoning Districts**
 - Administrative Office (CO)
 - Neighborhood Commercial (CN)
 - General Commercial (CG)
 - Highway Commercial (CH)
 - Service Commercial (CS)
- Industrial Zoning Districts**
 - Commercial Industrial (CI)
 - Office Industrial (IO) *
 - Campus Industrial (IC) *
 - Light Industrial (IL)
 - General Industrial (IG)
- Public, Open Space, and Recreational Zoning Districts**
 - Open Space (OS)
 - Public Facilities (PF)
 - Sports Recreation Leisure (SRL A and B) *
- Legacy Zones (may be either base or overlay zones)**
 - PUD Planned Unit Development (PUD)
 - RPD Residential Planned Development (RPD)
 - C Conditional Zoning (C)
- Overlay Zones and Combining Districts**
 - DTSP Downtown Specific Plan Overlay Zone (DTSP)
 - DGF Downtown Ground Floor Overlay Zone (DGF)
 - PD Planned Development Combining District (PD)

* Note: This zone not yet applied to any properties



0 0.125 0.25 0.5 Miles



Item #05

AGENDA DATE: 02/17/2021
SUPPLEMENT # 1

From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Consent Calender Item #5 - Support in Favor
Date: Wednesday, February 17, 2021 4:55:28 PM

From: Lisa Aragon [REDACTED]
Sent: Wednesday, February 17, 2021 3:17 PM
To: PIO <PIO@morganhill.ca.gov>
Subject: Consent Calender Item #5 - Support in Favor

Hello,

If not too late, I'd like to share my request for approval and my support for the City to accept the funding agreement with VTA for the completion of Madrone Channel Trail.

http://morganhillca.iqm2.com/Citizens/Detail_Legifile.aspx?Frame=&MeetingID=2004&MediaPosition=&ID=2993&CssClass=

Completing this paved pathway will be a wonderful addition to our trail system allowing a couple of miles of safe (automobile free) pedestrian/cycling trails.

Thank you!

Lisa Aragon-Faust
BPAG
Morgan Hill Bicycle Pedestrian Advocacy Group
Morgan Hill Resident

Regards, Lisa Aragon
AT&T 5G

----- Original message -----

From: City of Morgan Hill <pio@morganhill.ca.gov>
Date: 2/13/21 12:01 PM (GMT-08:00)
To: laragon_99@yahoo.com
Subject: City of Morgan Hill Weekly 411 - News for the Week of February 15, 2021



Your Morgan Hill Weekly 411 News for the Week of February 15, 2021

Happy Weekend Morgan Hill!

Yesterday was the Lunar New Year! After all the challenges that have been thrust upon us this past year, we hope that this year will bring you many new blessings. As we transition from winter to spring, let us welcome new beginnings and opportunities. Stay safe and stay strong! The celebrating continues throughout the weekend with Valentine's Day on Sunday (Don't forget your sweetheart!) and President's Day on Monday, providing a three day weekend for many. Enjoy!



Just a reminder that the **City of Morgan Hill will be observing the President's Day Holiday on Monday, February 15, 2021**. All public safety services will continue as usual but calls to City Hall and the virtual call center will not be answered. All messages will be returned on Tuesday, February 16th.

February is Black History Month and this year's theme is _____

_____.



The first official observance of Black History Month came in February 1976, from President Gerald Ford. He proclaimed: "In the Bicentennial year of our Independence, we can review with admiration the impressive contributions of black Americans to our national life..."

We invite you to learn more about Black History Month this February on the _____

Planned Volunteer Cleanups for Parks and Public Spaces



Thank you to all of the volunteers and groups working to help keep Morgan Hill beautiful through individual and group cleanup efforts!

[View our Current Planned Cleanups \(PDF\)](#)

Help do your part to keep our parks, trails, and creeks clean. You can help Morgan Hill's parks, trails, and creeks by donating your time or purchasing a new park improvement. Visit our web site at www.helpmorganhillparks.com for more information and opportunities.

Food Services and Supper Programs in Morgan Hill

Did you know that there are many organizations in Morgan Hill that offer free food services for our community?

For information regarding these programs, please view the flyers below.

[Morgan-Hill-Faith-Based-Free-Food-and-Supper-Program \(ca.gov\)](#)

[Morgan-Hill-Food-Services-and-Supper-Program-Trifold \(ca.gov\)](#)

COVID-19 Updates



Summary of changes effective January 25, 2021



For more updates and information, the public may visit the county's [website](#).

Information regarding COVID-19 testing is available at www.sccfreetest.org.

Information about vaccine eligibility and distribution is available at www.sccfreevax.org.

Meetings and Opportunities to Engage

Tuesday, February 16, 2021

Parks and Recreation Commission Meeting
7:00 P.M.

[View complete agenda](#)



The Parks and Recreation Commission meeting will be live-streamed on Channel 17 and on the City's website.

Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/ParksandRecreationCommission> or by calling in to: (669) 900-9128, then enter the meeting ID: 845 7667 3771#

Public comment for Parks and Recreation Commission meetings will be accepted via email to chris.ghione@morganhill.ca.gov. Members of the public participating in the electronic meeting wishing to speak may do so during public comment.

Wednesday, February 17, 2021

**City Council Workshop on
Last Mile (local) Delivery/Distribution**
5:00 P.M. - 7:00 P.M.

City Council Meeting
7:00 P.M.

[View complete agenda](#)



Those members of the public wishing to participate remotely may do so via the electronic meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling in to: (669) 900-9128,

then enter the meeting id: 841 4277 4329#

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov
- This City Council Workshop will be live streamed on Channel 17, on the City's website and on the [City's Facebook*](#) page.

* Please note that comments made on Facebook are not considered public comment.

Weds & Thurs, February 24 & 25, 2021

Valley Water - Pacheco Reservoir Expansion Project

Wednesday, Feb. 24, 2021, 1:00–3:00 p.m.
Please click the link below to join the webinar:
<https://valleywater.zoom.us/j/91921107970>
Dial-in +1 669 900 9128
Webinar ID: 919 2110 7970

Thursday, Feb. 25, 2021, 5:30–7:30 p.m.
Please click the link below to join the webinar:
<https://valleywater.zoom.us/j/98088128557>
Dial-in +1 669 900 9128
Webinar ID: 980 8812 8557

[PLEASE READ THE NOTICE OF VIRTUAL PUBLIC SCOPING MEETINGS AND PROJECT OPEN HOUSE](#)

Public Project and Maintenance Updates



Partner Agency News



Caltrain, SamTrans Adjust Schedules For Presidents' Day Holiday

Caltrain will operate a [modified schedule](#) on Presidents' Day, Monday, February 15. Caltrain will operate 38 trains, including early morning service and two round trip trains between Gilroy and San Francisco.

For more information about Caltrain and SamTrans holiday service, call 1.800.660.4287 (TTY 650.508.6448) or visit <http://www.caltrain.com/holidays/> or www.samtrans.com/holidays.



Annual Floodplain Mailer 2020-21

Each year, Valley Water sends residents and businesses in Santa Clara County's Special Flood Hazard Areas an Annual [Floodplain Mailer](#). For more information click [HERE](#).

Join Valley Water's FREE Virtual Water Infrastructure Tour

Valley Water invites the public to take a free virtual tour of some of our water infrastructure facilities. On this tour, attendees will learn how our infrastructure works together to provide safe, clean drinking water to residents of Santa Clara County and how Valley Water is responding to the various challenges that impact our water supply.

- All sessions in the February series (Feb. 16 - 25) run from **11:30 a.m. to 12:30 p.m.**
- To join one of the webinars [Click HERE](#).

Eight Community Choice Aggregators Partner to Form California Community Power – A Joint Powers Authority



Read full article [HERE](#).

\$20,000 in Scholarships for Youth Film Competition: EmPower Silicon Valley

Do you know a high school student interested in climate solutions? Silicon Valley Clean Energy is providing \$20,000 in scholarships as part of a new youth competition. Youth will share their ideas and solutions for fighting climate change. No prior film or climate change knowledge necessary. Learn more about the competition and sign up for updates at SVCleanEnergy.org/Empower-SV.



VTA is making more room to social distance. View the newsletter [HERE](#).

Morgan Hill Community Foundation Meals for Heroes Program



Two of the most impacted Morgan Hill

industries in the midst of COVID-19 are medical and hospitality. Your donation will help provide meals for local healthcare workers and financial support for local small business restaurants.

[Donate today!](#)



February Free Library Events:

Find details and register to receive Zoom link at: www.sccld.org/events

New Online Program Helps Adults Get High School Diplomas

The Santa Clara County Library District is happy to offer a new online program that makes it simple and convenient for adults to obtain high school diplomas and learn new careers. View [this FLYER](#) for more information.

Darren Dean Vocational Education Grant

The Rotary Club of Morgan Hill is offering financial aid to Adults, age 17+, who live in the Morgan Hill Unified School District boundaries.



The Darren Dean Vocational Education Grant supports people who want experience and knowledge in skilled labor, such as the construction trades. Due date is March 15, 2021. See the [attached flyer](#) for additional information.

For the application and more information, visit <https://www.morganhillrotary.org/deangrant>

Your Morgan Hill

City hall



**Morgan Hill City Hall
Office Hours**

Elected Officials

[Morgan Hill City Council](#)

- [Rich Constantine, Mayor](#)
- [Gino Borgioli, District A](#)
- [Yvonne Martínez Beltrán, District B](#)
- [Rene Spring, District C](#)
- [John McKay, District D, Mayor Pro Tem](#)

City of Morgan Hill offices are closed due to the current State Stay Home order.

If you have questions or concerns during this time please call our virtual call center.

408.767.6404

Monday - Friday, 8am - 5pm

Messages will be returned within 24 hours.

The **City of Morgan Hill will be observing the President's Day Holiday on Monday, February 15, 2021.** All public safety services will continue as usual but calls to City Hall and the virtual call center will not be answered. All messages will be returned on Tuesday, February 16th.

County Supervisor

District 1:

[Mike Wasserman](#)

California State Assembly District 30:

[Robert Rivas](#)

California State Senate District 17:

[John Laird](#)

U.S. Congressional District 19:

[Zoe Lofgren](#)

City of Morgan Hill

Advisory Commissions:

- [Library, Culture and Arts](#)
- [Parks and Recreation](#)
- [Planning](#)

City of Morgan Hill

Advisory Committees:

- [City/School Liaison Committee](#)
- [Youth Action Council](#)

[Visit our Website](#)



City of Morgan Hill | 17575 Peak Avenue, Morgan Hill, CA 95037

[Unsubscribe laragon_99@yahoo.com](#)

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Sent by pio@morganhill.ca.gov powered by



[Try email marketing for free today!](#)

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.



Agenda Item #: 11

Call for Review of UP2020-0004: Mast – Titan Sports Academy/Kinetic Performance Institute

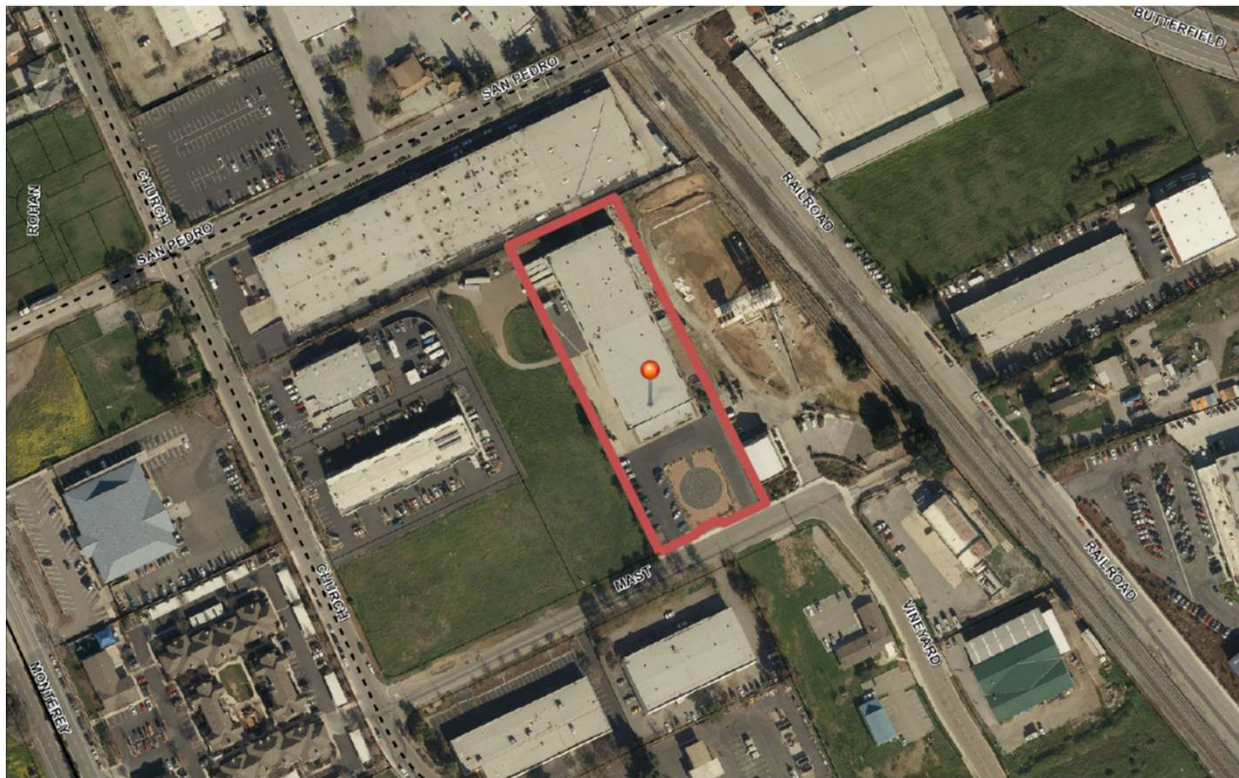


February 17, 2021

Call for Review: Location



Conditional Use Permit (CUP) to allow indoor commercial recreation within an existing industrial building.



Call for Review – 18.112.040



- City Councilmembers may initiate a call for review
- City Staff shall schedule the matter for a City Council public hearing within 90 days
- City Council may consider any issue involving the application; and affirm, affirm in part, or reverse the action
- Adopt additional conditions of approval
- Findings shall identify the reasons for the action on the matter called for review and verify the compliance of the matter with the zoning code
- City Council shall render its decision on the matter within 60 days of the public hearing.
- The decision of the previous review authority shall remain in effect if a decision is not reached.

Required Findings



Conditional Use Permit

- The proposed use is allowed in the applicable district
- The proposed use is consistent with the General Plan, Zoning Code, and any applicable specific plan or area plan adopted by the City Council
- The site is suitable and adequate for the proposed use
- The location size, design, and operating characteristics of the proposed use will be compatible with the existing and future land uses in the vicinity of the property

Required Findings (Cont'd)



Conditional Use Permit – (cont'd)

- The proposed use will not be detrimental to the public health, safety, and welfare
- The proposed use would not have a substantial adverse effect on traffic circulation and on the planned capacity of the street system
- The proposed use is properly located within the city and adequately served by the existing and planned services and infrastructure

General Plan Policies



Policy CNF-17.1 Industrial Land Conversion. Discourage the conversion of property designated for industrial to non-industrial uses.

Policy CNF-17.2 Industrial Land Use Conflicts. Ensure proposed new uses adjacent to industrial uses do not introduce land use conflicts that would adversely impact industrial activities.

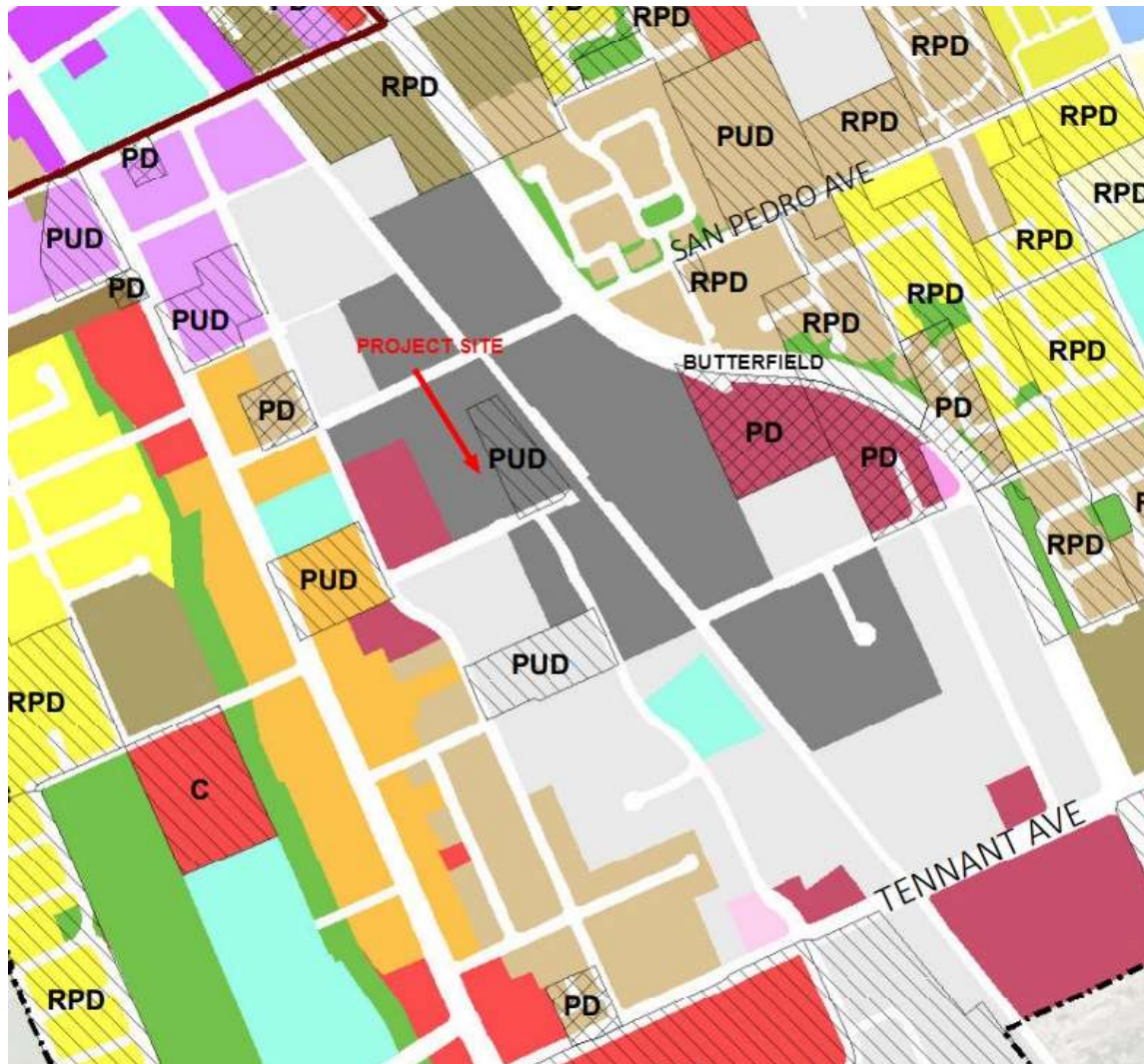
Policy CNF-17.3 Buffer between Industrial and Incompatible Uses. Ensure that all industrial uses are well sited and buffered from incompatible uses; buffers may include offices adjacent to sensitive uses, landscaping, berms, etc.

Policy ED-3.1 Business Retention, Expansion, and Attraction Efforts. Encourage retention and expansion of existing businesses and attract new businesses.

Policy ED-3.7 Flexible Business District Zoning. Maintain flexibility within industrial, business park, and office zoning districts that support modern industry uses and that are integrated appropriately with other land uses and attract a broad range of users.

Policy HC-2.6 Healthy Kids. Support the implementation of the 41 Developmental Assets identified as crucial to supporting healthy youth development.

Existing Zoning



Mixed Use Zoning Districts

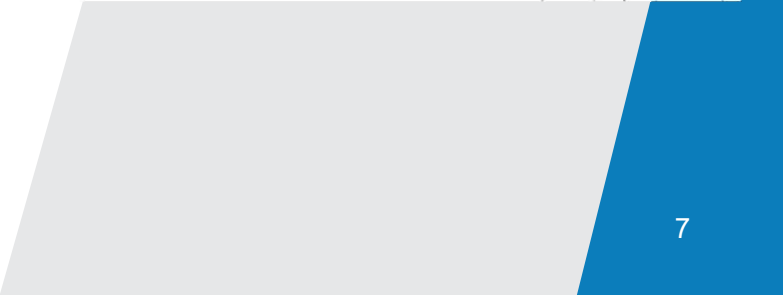
- Downtown Mixed Use (MU-D)
- Neighborhood Mixed Use (MU-N)
- Mixed Use Flex (MU-F)

Commercial Zoning Districts

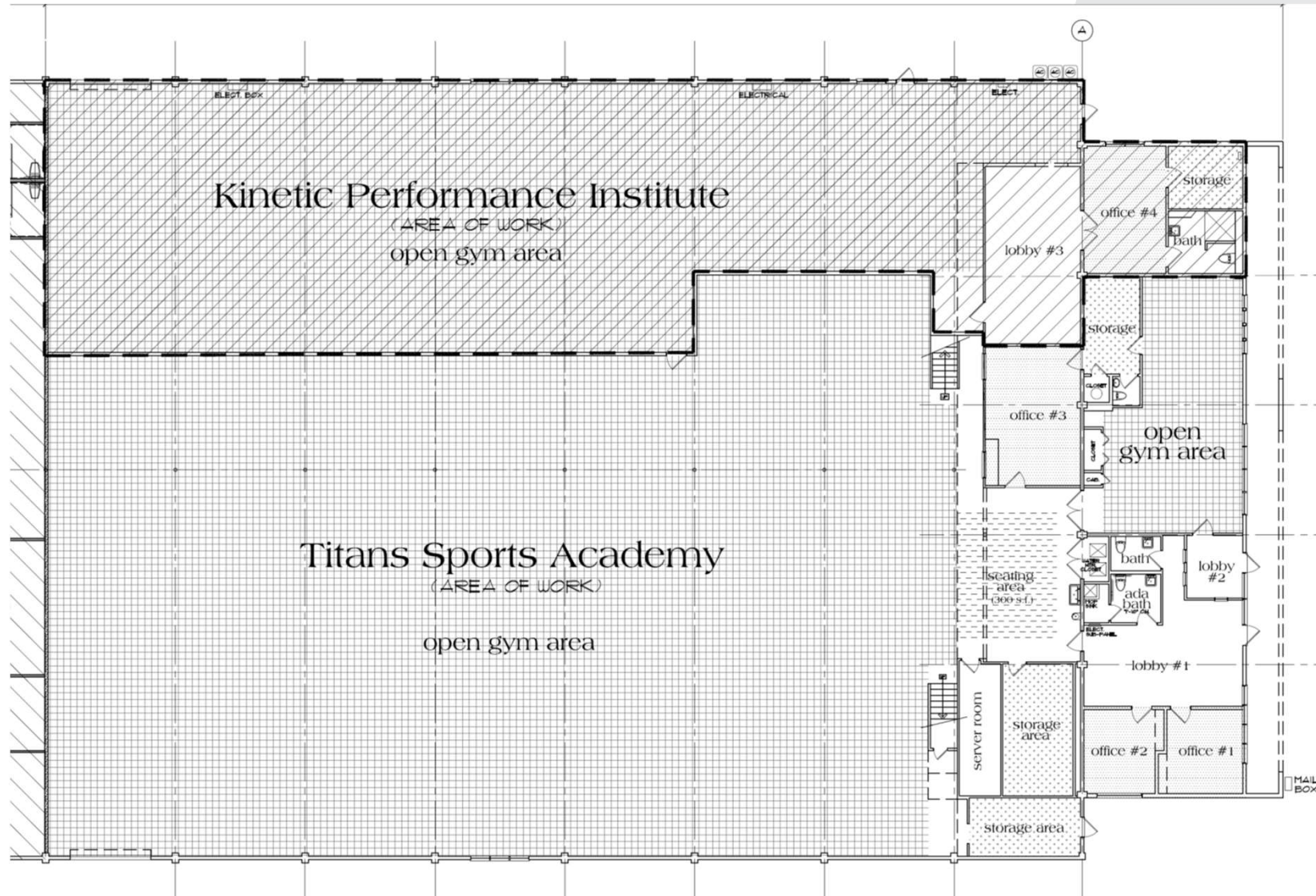
- Administrative Office (CO)
- Neighborhood Commercial (CN)
- General Commercial (CG)
- Highway Commercial (CH)
- Service Commercial (CS)

Industrial Zoning Districts

- Commercial Industrial (CI)
- Office Industrial (IO) *
- Campus Industrial (IC) *
- Light Industrial (IL)
- General Industrial (IG)



Floor Plan



CEQA

Categorically Exempt pursuant to Section
15301 Class 1 (Existing Facilities)



Recommendations



1. Open/close public hearing
2. Adopt resolution:
 - a. reaffirming the decision of the Planning Commission to deny the Conditional Use Permit
 - OR-
 - b. making the necessary findings to support a Conditional Use Permit
3. Direct staff to return to the City Council with Zoning Code changes removing conditional use conflicts with industrial preservation

Questions?



CITY OF MORGAN HILL

Michael S. Walsh,
General Counsel
Cell (408) 655-7903
mikewalsh@starconcrete.com



6475 Automall Parkway
Gilroy, CA 95020
Phone (408) 842-1427
Fax (408) 840-2739

Item # 11

AGENDA DATE: 02/17/2021
SUPPLEMENT # 1

February 12, 2021

City Council
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Re: Council Meeting: February 17, 2021
Call For Review: Planning Commission Hearing: January 12, 2020

195 Mast Street
Project No. UP2020-0004
Mast-Titan Sports Kinetic Performance Institute
APN: 817-02-063

Honorable Members of the Morgan Hill City Council:

I am writing to inform you that the owner of 199 Mast Street, Gerald R. Blatt, and his tenant, Sandman, Inc., dba Star Concrete, object to the issuance of the conditional use permit (“CUP”) proposed for the above described project.

Applicant is seeking a CUP to allow indoor commercial recreation on a property zoned heavy industrial, together with a reduction in the on-site parking requirements for that use. Applicants proposed use is inappropriate within heavy industrial zoning and their project has not been subjected to environmental review.

Applicants refer to their business as a commercial recreation facility, but in essence, they are operating a school. Their clientele are kids, and they’re providing the kids with advanced instruction in baseball and gymnastics. Commercial recreation may be an appropriate zoning classification, but in substance, this is a school, and it’s a bad idea to allow kids with sensitive receptors to engage in arduous physical activity in an atmosphere laden with heavy industrial emissions.

Applicants assert their project is “Categorically Exempt” from CEQA because it is an “Existing Facility” but there is no history of commercial recreational use of 195 Mast Street. This is being employed as a legal fiction to avoid CEQA environmental review. Furthermore, even if Applicants had a valid categorical exemption under CEQA, circumstances are such that, given the proximity of 195 Mast to the old hazmat site at the intersection at Vineyard and Mast, I question whether any categorical exemption would apply.

Granting Applicant’s CUP would be detrimental to Applicant’s neighbors. The number of heavy industrial zoned parcels in Morgan Hill is extremely limited to less than 25 parcels. Every city needs some heavy industry in order to function and a lot of thought and effort has been expended by City planners and

officials over the years to confine heavy industrial uses to designated parcels on Vineyard and Mast. Applicant's proposed rezoning of 195 Mast is contrary to all the planning that has gone into the creation of Morgan Hills heavy industrial area and would threaten the existence of the businesses that reside there should Applicant or their successor decide later that our uses conflict with theirs.

Applicant supports its CEQA exemption with the argument that there was once a gym (across the street) to the south ten or more years ago. This parcel is now (zoned heavy industrial) an automotive body shop. A parcel south and east of applicant distributes bulk road oil and we, on the east, manufacture concrete. All these businesses produce emissions which are heavily regulated by the BAAQMD and although we all adhere strictly to those regulations, these are not the kind of businesses that you would let us build next to a school. Applicant, by establishing its business next to heavy industry, is doing the same thing, just in reverse.

A number of other arguments were made during the Planning Commission hearing, stated below in no particular order, which also support a denial of Applicant's CUP:

Applicants argued that 195 Mast is the only building in Morgan Hill suitable for their business, but this is disingenuous. Applicants operated out of a building off Jarvis for years. Per their own statements during public hearing, their move to Mast was for financial reasons. It was not clear to me whether they could not afford their rent or whether they could not pay their rent, but it was clear their move was related to their rent. Apparently, 195 Mast is a building they can afford which has interior dimensions which fit their needs. Applicant's inability to pay the Jarvis rent is not a valid reason to rezone a heavy industrial property to commercial recreation.

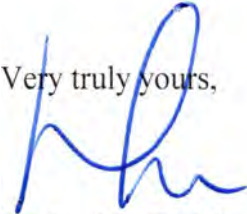
The Planning Commission was sympathetic with Applicant's plight. One member commented that if Applicants were from out of town, their CUP would be summarily denied, but because they were an existing Morgan Hill business, their CUP should be approved. This is a discriminatory standard. Applicant's residence is not determinative of the legality of their proposed use.

Applicants made improvements to 195 Mast without obtaining building permits which exposed the fact that they had no CUP. Thereafter they applied for a CUP for "indoor" use and while awaiting approval, improved the area outside their building between themselves and Star Concrete with synthetic turf and training stations. Their current outdoor use exceeds the scope of their stated use, not to mention it is clearly a bad idea to train young gymnastics and athletes outdoors, contiguous to the noise and emissions from a concrete batch plant.

We sympathize with Applicants, but upon review of our situation it boils down to this. We have little choice but to oppose Applicant's project using all legal means. If issued, their CUP will attach to 195 Mast and will enable Applicants or their successors to oppose our use of our property if it conflicts with or is dangerous to them. We cannot afford to allow them the potential ability to destroy our business and others in the neighborhood. This same situation occurred with a concrete batch plant located for decades in Fremont, California. The City of Fremont allowed a parcel appurtenant to the batch plant to be rezoned for a school. Thereafter, the school sued to force a closure and removal of the batch plant. Star has invested considerable time and capital in the construction of what we believe is the cleanest concrete batch plant ever built in California. Our vehicles are powered by compressed natural gas and in time, the batch plant will be

repowered by solar electricity. We and our predecessor worked with the City for years to establish our batch plant, which the City deemed vital and necessary to Morgan Hill's future development. As such, we ask that the Council continue to follow Morgan Hill's long term planning for our heavy industrial sites and deny Applicant's CUP as it is an illegal and inconsistent use within heavy industrial zoning.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'M. Walsh', is positioned above the printed name.

Michael S. Walsh
Star Concrete, General Counsel

Item # 11

AGENDA DATE: 02/17/2021
SUPPLEMENT # 2

From: [Michelle Bigelow](#)
To: [Angie Gonzalez](#)
Subject: FW: Titans Gymnastics on Mast St
Date: Friday, February 12, 2021 12:14:26 PM

From: Melissa Rosenberry <[REDACTED]>
Sent: Friday, February 12, 2021 11:52 AM
To: Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: Titans Gymnastics on Mast St

To whom this may concern,

I am writing about my concern over the potential closure of Titan's Gymnastics on Mast St in Morgan Hill. I have been made aware that due to misinformation given to Titans by someone in the city planning department, they are being told they may have to move locations again, even though they were already told by someone on city council that there is currently no available space that would meet their needs. My understanding is that they were originally told by someone in the planning department that as long as they applied and paid for a permit, they would be able to use that space. This already economically-hit business went ahead in good faith and paid thousands of dollars for this permit, only to be denied and told that they should spend THOUSANDS of additional dollars to appeal. This seems like a shameless and embarrassing money grab on the behalf of the city of Morgan Hill, even though this entire situation was caused by an error from someone who works for the city of Morgan Hill. How is it that the planning department makes a mistake, takes and keeps the businesses money, and now it's the businesses responsibility, financially and otherwise, to deal with the ramifications of this mistake? This seems so incredibly wrong. I do understand that the city stands to make much more money in tax revenue if an industrial business goes into that space, however the building has already been empty for a year with no other prospects according to the landlord.

As we all know, the last year has been incredibly tough on most businesses, but particularly small businesses and the fitness industry. Titan's is barely hanging on by a fingernail due to no fault of their own. If they are forced to spend more money or move, they may very well have to move out of Morgan Hill or close their business altogether. This would be such a loss for our community in general, and especially considering that other gymnastic facilities in the south county have already permanently closed due to Covid-related financial hardships. When our county is in a different tier and this business is able to be in person, it is such a benefit for all our children. It is a safe space where they can have social interactions and get exercise.

They foster a sense of both independence via personal performance but also teamwork in working together for stunts and routines. Unlike most gymnastics programs, they never focus on weight or body type, and you will find all shapes, sizes and abilities there. As a mother of a 9 year old girl, this in particular is incredibly important and invaluable to me. As a small business owner, I want to champion and help another small business during this trying time. I truly implore you to right this wrong and give this long-standing community participant business their permit.

Thank you for your time,

Melissa Rosenberry

Dear City Council Member,

My name is Savannah Rosenberry, I go to Titans Gymnastics, and I`m a Silver member of the team. I know you don't want to give them the permit that they need to function in their current building. I really love going there and want to be able to when we can go back in person. That is why I am writing this letter.

I would like you to give them the permit because gymnastics it's fun and healthy. It's fun because we get to see our friends when we can be there in person, and do captivating tricks like back handsprings and front handsprings. It's healthy for people because it gets your heart pumping, gets your blood flowing, and supports your immune system. It's exciting because we get to try new things and have to work hard. If you shut it down I'll be sad, mad, and

not be getting the proper exercise I need and like.

Titans mean a lot to me because it's my only "get away" from reality and life.

So please, give them the permit they need.

Sincerely,

Savannah Rosenberry

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From: [Lora Perez](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#)
Subject: Letter in support of Titans Sports Academy
Date: Friday, February 12, 2021 1:44:58 PM

Dear Members of City Council,

I'm writing to show my support and graciously ask that you grant Titans Sports Academy a conditional use permit with no restrictions! I understand that there is a hearing next week, so I'd like my voice of support to officially go on record.

I'm sure you are hearing from many people in the community about how they love Titans Sports, and the unique training facility that they provide for the citizens of Morgan Hill and beyond. I completely agree, yet would like to focus my letter on another aspect of why this business in this location is a must.

Gymnastics is a very specialized sport, and as athletes rise through the ranks, fewer and fewer gymnastics facilities serve the needs of higher level athletes. Titans Sports Academy is one of the few facilities in the entire Bay Area that trains high level athletes. That means that this facility is not only giving local Morgan Hill athletes the ability to train at a high level, but they also bring in athletes from surrounding areas, including San Jose, Gilroy, Hollister and Santa Cruz. As those parents come into town to drop off their athletes for training, they don't make the long drive home, just to turn around and drive back. What those parents do is shop at Target, go get a Starbucks, visit TinkerToys, go out to dinner downtown, or go grocery shopping at one of our local supermarkets. This is bringing real, additional revenue into the City of Morgan Hill, that would not otherwise be brought in.

In addition, Titan Sports Academy provides jobs to local citizens. Kids that have trained in the program often come back in their high school years to be a coach at the gym. Tony McDonald and the other coaches in the gym provide mentorship, training and guidance for these young adults in what is usually their first job. And then when those same kids come home from college during the summer (in non-covid times), they always come back and help out at summer camps, giving them additional experience to put on their resume as well as income.

I understand that this particular building was the only building in Morgan Hill able to have the height, square footage, and lack of obstructive poles in the way to accommodate the equipment needed for this training facility. With all the value that this program provides to the community--not only as a pure sports program, but as a business that is bringing people from out of town to spend money in Morgan Hill and a business that provides jobs for local residents as well--I urge you to grant Titans Sports Academy a conditional use permit at this specific location.

Thank you for your consideration,
Lora Perez (Morgan Hill resident for 20 years)

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From: [Matthew Monaco](#)
To: [CC Public Comment](#); [Rich Constantine](#); [Gino Borgioli](#); [Yvonne Martinez Beltran](#); [Rene Spring](#); [John McKay](#)
Subject: Titan Sports Academy/KPI Conditional Use Permit
Date: Friday, February 12, 2021 1:55:20 PM

Hello board members,

My name is Matthew Monaco, and my family owns the building on Mast Street that is subject to a CUP appeal for Titans Sports Academy/Kinetic Performance Institute.

I apologize that this email is long, but it is simply impossible to make these points in a three-minute speech.

For background, I would like to make it clear that the move by Titans to this location was not by their own choosing. With a change in ownership of their former building, Titans was forced out, and needed to find an alternate location. Unfortunately, as John Lang eloquently pointed out at the January 7th planning commission meeting, they didn't have many options. Here is a quote directly from John:

- *"I can tell you without a shadow of a doubt, their requirements from floor space to ceiling space does not exist in our commercial building stock. While our code says that's where we would prefer them to be, it does not exist in our community. We don't have an ideal land opportunity for them." He went on to state "most recently in terms of building stock i don't think there are many options available to them at all."*

Based on comments by the commissioners at the meeting, and reading through the staff report, it is apparent that the CUP was denied because this is in the Commercial Industrial or "Heavy Industrial" district of Morgan Hill. I would like to address the reasoning one-by-one, and hope you will agree with me that this CUP should be approved.

From the staff report:

- The project has been comprehensively analyzed and it has been determined that the proposed use would be compatible with the surrounding uses; however, approval of the Conditional Use Permit would eliminate an opportunity for an industrial user to occupy.

As it turns out, it is very possible that there has **never been a 'heavy industrial' user in the building**. I was shocked to find this out, but in this case, the only user that may have been "heavy industrial" was J L Clark, which occupied the building from 1964 to 1989. J L Clark manufactured cans. Specifically, the can material came to them pre-printed, and they rolled the sides and affixed the bottom to the can. The code is quite nuanced, and according to John Lang, the question of whether this was "heavy industrial" is if they used a stamping machine, presumably to stamp out the bottom of the can.

Regardless, after 1989 we are quite sure there has not been a heavy industrial user in the building. Erik Wagle, the applicant from KPI/Dub Baseball, worked at Ra-Tek for 4 years, and I have personally seen all tenants that have come in after Ra-Tek. Every single business has been offices and warehousing. **For at least the last 32 years, there have been no heavy-industrial users in this building.**

The Staff report also mentions 3 policies that ultimately lead to the denial:

- **Policy CNF-17.3** Buffer between Industrial and Incompatible Uses. Ensure that all industrial uses are well sited and buffered from incompatible uses; buffers may include offices adjacent to sensitive uses, landscaping, berms, etc.

Last year, the property at 16500 Railroad Avenue was approved to house 12 tanker trucks along with an above-ground fuel tank. This facility shares a property line with the Loma Clara Senior Living Facility and The Huntington Apartments, all three conforming uses. If a fuel delivery company can move in next to apartments, it goes without saying that a youth sports complex (again, a conforming use) would be appropriate next to far less dangerous businesses. The staff report also concludes that this use would be compatible with the surrounding businesses.

- **Policy CNF-17.2** Industrial Land Use Conflicts. Ensure proposed new uses adjacent to industrial uses do not introduce land use conflicts that would adversely impact industrial activities.

Again, from the staff report:

- *"The project has been comprehensively analyzed and it has been determined that the proposed use would be compatible with the surrounding uses"*
- **Policy CNF-17.1** Industrial Land Conversion. Discourage the conversion of property designated for industrial to non-industrial uses.

As stated above, this building has not had a heavy industrial tenant for at least 32 years. No one is taking this building 'off the market' for heavy industry. It took itself off the market by being too small to fit the use. The smallest building that houses a heavy-industrial tenant in Morgan Hill is 75,000 square feet, almost twice the size of this building. If a heavy-industrial tenant would have been interested, we would have gladly leased it to them.

In addition, I contend that the heavy-industrial area of Morgan Hill is being eroded by time, not policy or approved resolutions. The most recent construction project in the Heavy Industrial area is the Sid Ceballos construction storage building and yard. This beautiful building would also be permitted by right in a light-industrial area. In 2018, our next door neighbor at 155 Mast St, was built to provide 22,000 square feet split into 16 units. It should surprise no one that there are zero heavy industrial tenants in a building that provides 1,400 square feet per tenant. Those buildings, and those light-industrial uses are why the General Industrial area of Morgan Hill has a less-than 2% vacancy rate. Although exceptions do exist, you should expect this trend to continue, as that is what is being demanded by tenants.

As you can see from the arguments stated above, Titan's options are severely limited, and by your staffs' own admission, only available in the Industrial zone of Morgan Hill. The use fits with the area, despite being in the General Industrial or "Heavy Industrial" zone of Morgan Hill, and the approval of this CUP does not remove this building from the heavy industrial

building stock.

Over the last 10 years, my family has been heavily involved with San Martin/Gwinn Elementary school, working as a parent to better the school and the community. My wife is the president of the Home and School Club, and I have been involved in everything from clean-up days to supporting the school at board meetings. Again, I find myself advocating not just for myself and my children, but for the community as a whole. A denial of this Use Permit means Titans will be forced to leave Morgan Hill, and the children of this community will suffer. As a parent, and a lifelong resident of the area, I do not want to see this happen because of policy that is not fit for the times. I hope you will join with me in supporting the Conditional Use Permit for Titans.

Please feel free to reach out to me via email or on my cell phone at [REDACTED] if you have any questions or would like to discuss this matter further.

Thank You for your time.

Matt Monaco
[REDACTED]

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Dear City of Morgan Hill,

February 11, 2021

I hope this email finds you well. I am a parent of 4 Titans' gymnasts. My 3 boys have done recreational classes through Titans and my daughter is on their competitive team. We have been a part of the Titan's family for a few years now. What can I say about Titans? They are absolutely amazing! You know a place is great when your kids look forward to working out for several hours a day, several times a week. During Covid, she even looks forward to the Zoom practices. She has been able to excel as a gymnast, physically, emotionally and socially. The values of the owners and their coaches is impeccable. These values are instilled in the children who train at Titans. They truly love what they are doing and have a deep love for all their families. They treat every gymnast, parent and employee with fairness and equality. When you speak to the owners, it feels as though you have been best friends for years and years. It's effortless for them to love their community.

Our daughter's love for and advancement within the Titans community is literally our top reason for remaining in South County. Gymnastics is such an important sport and although there are many gyms to choose from, she would be just devastated if Titans was no longer around. I believe many people in the Morgan Hill/Gilroy community would be devastated. I have seen amazing growth in my children since starting with Titans. My daughter is physically and mentally strong and has developed close, encouraging bonds with all her teammates. She has discovered who she is and what she can do by training at Titans. She has built strength and confidence, learned the value of self-care and exercise and has received immeasurable encouragement combined with expectation from the staff at Titans. Their top-notch coaches seamlessly balance years of technical experience with an endless passion and commitment to their athletes.

For years, the Titans team looked for a suitable place for their gymnasts to continue to grow and thrive. Finding a building suitable for their needs was no easy task. But the building they are currently in is a perfect match for safe gymnastics. It has enough space for the gymnasts to spread out and enough ceiling clearance for them to safely train.

We spent some time at another gym, who was also looking for a larger space to expand. We had to leave that gym, as years of promises of searching out a safer site went unfulfilled. Having children train in a space not fit for high level gymnastics is dangerous. At our previous gym, we witnessed many "near misses", along with several injuries that occurred due to lack of space, both square footage and height. Girls' toes would skim the ceiling as they practiced their skills. Advanced gymnasts would perform their daring dismounts just inches from preschool recreation classes. Many of the classes (recreation preschoolers up to advanced competition athletes) were combined to "share" equipment. It was very frightening to watch. This is one of the biggest reasons we moved to Titans: safety. Titans has always put the safety of their gymnasts first. They space out their equipment and maintain enough equipment to accommodate all of their students.

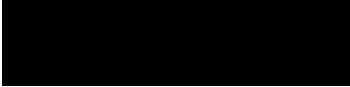
The previous are among the reasons we found ourselves extremely excited about the new space Titans is in, as it has been a long journey to get there. If Titans was no longer allowed to operate in Morgan Hill, we would likely leave the South County area altogether. I worry for my daughter, as she is approaching a very difficult age. She is 14 years old and finds solace in gymnastics. She is very attached to Titans, all their coaches and her teammates. She finds positivity in everything she does because of the way gymnastics makes her feel. If we were no longer able to attend Titans, I feel it would be a huge blow to her self-esteem and confidence. It is so important that activities like this, for our children of all ages, remain available in Morgan Hill. These types of activities create more well-rounded adults for our future. And we could all appreciate well-rounded people!

Incidentally, even though we live in Gilroy, when my daughter or sons attend class, we typically go to dinner in MH, meet with friends and THEN go to dinner, go shopping and spend time at your amazing dog park. I find myself stopping for coffee before and sometimes after gym practice. After gym, I am "forced" to stop to get my kids food or ice cream. I have found myself grocery shopping, going to the movie theater and even furniture shopping right there in MH. What you have done with your downtown is stunning, so I love to spend time there. Your stores are also more convenient than Gilroy's, as they tend to be "on the way home" for me. If we were no longer at Titans, I would no longer have a convenient excuse to do all my shopping and errands in MH.

In closing, I truly hope you allow Titans to stay put in the building they are currently in. The benefits to Morgan Hill and the community very much outweigh the negatives. I hope you, too, can see this. My children and I would be so disappointed to see Titans close. They have had and will continue to have a profound impact on this and future generations to come. I would also love to continue to support MH for many years! Please approve their CUP so we can start going to gym in the beautiful "new" building. I look forward to seeing each and every one of you at the upcoming City Council meeting on Feb 17th.

Many "Emotional" Thanks,

Angela Campbell, RN, BSN



From: [Jay. q Lincoln](#)
To: [General](#); [CC Public Comment](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Cc: [REDACTED]
Subject: Titans/KPI Conditional Use Permit (CUP)
Date: Friday, February 12, 2021 7:10:46 PM

Commissioners, Council-Members, and To Whom It May Concern,

I am writing this email regarding the Conditional Use Permit (CUP) for Titans and KPI on Mast Street. I am a resident of Morgan Hill and the parent of a teenager competing at Titans Gymnastics Academy. I am also a business owner with over 200 employees. I along with everyone else have been affected by the pandemic. Besides that I am aware of what comes with being a business owner in California such as:

Insurance (Workman's Comp., liability), business license, numerous and various permits to operate, attorneys fees, affordable care act (ACA) insurance, employee training such as sexual-harassment and various Labor relations training.

It is my understanding that Titans paid over \$10,000 for a CUP application to the city of Morgan Hill. In my opinion any reasonable person paying this sum of money, in good faith, that the implication is there would be zero or minimal future fiduciary or procedural issues/hoops for this company to do business in the city of Morgan Hill at the particular site in question.

I attended the City Planning Commission Zoom hearing last month. Commissioner Downey stated that he was "in a pickle" several times regarding his decision. I believe he should feel that way as this company did indeed act in good faith to move forward conducting their business. Commissioner Tanda stated that he was in favor and felt that the commission created this issue. It was further stated on the record by the building owner, Nora Monaco, that she advertised occupancy for the building, and received one inquiry in six months; only to have that inquiry disappear and lose interest. It was further stated on the record that the building was built in 1964, does not have sufficient docks for heavy industrial, and has not been retrofitted properly for heavy industrial.

The city of Morgan Hill currently has this business \$10, 000 in the hole and the unsure direction of where they will settle. If the CUP is not granted, the city of Morgan Hill will displace approximately 400 clients not including KPI client totals. The question remains why would the city of Morgan Hill decide this fate in the hopes of a reliance on a future type of heavy industrial business occupying the site in the unforeseeable near future; rather than accept the current business owners circumstances and investment. It is apparent that having Titans and KPI in the city of Morgan Hill benefits the city. These are businesses which promote youth sports, training, and the inherent and necessary constructive socialization that our future adults, leaders greatly need; all of which promote positivity in every fashion. "Yea" votes in favor of the CUP grant by the city of Morgan Hill are absolute righteous and ethical optics. "Nay" votes and the non granting of the CUP not only kill these companies, but hundreds of families and athletes that are truly invested in their respective popular sport and this city.

Lastly, on behalf of Titans and in my opinion, this business is tops in the area. My daughter began her gymnastics training over a decade ago here in Morgan Hill at "Little Gym", a Morgan Hill staple. Since then she bounced around and attended another local gym before

discovering Titans. I am a doting father who is careful where I place my child in this most difficult of sports, if not the most difficult. The level of training and concern for safety notwithstanding the dedication, expertise, and overall caring from the Owners and Coaches is second to none. The kids and their parents are not only teammates but family. The Owners and Coaches simply care, in every way! Titans promotes and encourages these children to excel in school and then sport. The preaching of a sound mind, sound body is a truism and Titan Owners and Coaches are mentors and inspirations to all.

There is no easier decision for this vote to be granted and accepted by The city of Morgan Hill. The discovery of a proper locale for these types of businesses is virtually impossible and almost nil. They have discovered a proper site that is an ideal fit after a difficult search and much due diligence. As a parent I implore you to vote in favor of the CUP; to do otherwise creates a massive hardship and ruination not only to the companies in question, but hundreds of families, most of which are Morgan Hill residents.

Respectfully,

Jason Lara

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From: [REDACTED]
To: [CC Public Comment](#); [General](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Titans Request for Conditional Use Permit (CUP)
Date: Friday, February 12, 2021 7:45:24 PM

Dear Morgan Hill City Council and
Members of the Morgan Hill Planning Commission:

Re: Titans Request for Conditional Use Permit
City Council Meeting February 17, 2021 at 7:00 PM

We are Morgan Hill residents and love and support our city. We have raised our daughters here, whom attend MHUSD. We believe strongly in extracurricular activities and after school sports. We are writing this letter in support of Titans Sports Academy (Mast Street) of Morgan Hill and their request for a Conditional Use Permit (CUP). Titans is a family owned business that is near and dear to our hearts, as well as many families in the Morgan Hill and South Bay community. Titan's offers team gymnastics, including a Junior Olympic (JO) program, Xcel program, recreation classes, and a homeschool program.

Our two daughters have been doing gymnastics in Morgan Hill for over 11 years. They started at The Little Gym, a family owned franchise in Morgan Hill, where their love for gymnastics flourished. When our oldest was 6 years old, she joined competitive gymnastics team at Champions, which later changed ownership to Titans about 5 years ago. Titan is the only competitive gymnastics facility in Morgan Hill. Our oldest daughter has competed through level 7, and will now be competing level 8. This is a significant achievement. Her good friend and teammate is level 9; after level 10 it is collegiate. Our younger daughter is following in our older daughters footsteps and is currently trying to score out of level 5.

Titans' coaches have dedicated their time and effort to make sure our kids are striving to be their best. These are serious and dedicated athletes that thrive in their sport. Our girls are working out 16 hours per week (prior to Covid-19 shut downs), all while achieving straight A's in school.

Competitive gymnastics creates dedication, discipline, talent, strong work ethic, and mentally tough core skill set that will serve them well in all aspects of life. The gymnasts have established incredible friendships with their teammates in Morgan Hill and bonds with their coaches, who provide strong positive adult role models in their lives.

Titans has received 1st, 2nd and 3rd place at many of their competitive meets. We compete against many local gymnastics teams in Fremont, Stockton, and Sacramento. Our

daughter achieved 1st place at State Championships in Sacramento, CA, when she competed level 6, two years ago. Last year in level 7, she earned 1st All-Around at the prestigious Pasadena Meet “Heart of a Champion” which was hosted by Chris Waller, the UCLA gymnastics coach.

Titans' gymnasts have also had the incredible opportunity to showcase their talent and skill at exhibitions before the commencement of meets held at San Jose State University (SJSU) and at Stanford University. This has been an incredible honor for our Morgan Hill gymnastics team.

Morgan Hill should be proud to have this family owned business in the heart of our town. We understand the building space Titans' leased was vacant for a period of time and the landlord was eager to rent it. We further understand that Titans will have to close its doors if the CUP is denied, as there is no other viable building space within Morgan Hill for Titans to operate. This would result in many Morgan Hill youths giving up the sport they love and quitting gymnastics all together. Titans would also lose their large recreational program and Home School program.

We sincerely hope you reconsider the request for a Conditional Use Permit. Morgan Hill is not a heavy industrial town, nor are all the businesses on Mast Street. It is our hope that the City Council takes into account all the positive benefits Titans provides for our youth and our community, and grants the CUP.

Sincerely,

Robert and Alison Valone

[REDACTED]
[REDACTED]
[REDACTED]

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Titans Sports Academy Mast Avenue
Date: Tuesday, February 16, 2021 9:56:06 AM

----- Forwarded message -----

From: **Maddison Lara** <[REDACTED]>
Date: Fri, Feb 12, 2021 at 5:16 PM
Subject: Titans Sports Academy Mast Avenue
To: [REDACTED] >

Dear City of Morgan Hill,

My name is Maddison, and I am 14 years old and a level 7, training to become a level 8 at Titans Sports Academy. I have been into gymnastics my entire life, and have been competitive for as long as I can remember. Gymnastics is my outlet from everything that could be going on. I have been to a few other gyms, but I can say that Titans have helped me grow so much. Titans is an amazing gym and is my second family. I have been with Titans since the opening, and the first of three, and I can say that it has been an amazing experience. Titans coaches help me work harder and push myself so that I reach my full potential, and my teammates and I have all grown close throughout the years. Titans has not only shown me how to improve in gymnastics but it helps me improve in many other ways. The placement of the gym is perfect so that I have enough time to get to the gym on time and get home at a reasonable time. The location of Titans allows me to continue to be a Honor Roll student, and get all the necessary tasks that I need to get done outside of the gym. I have improved so much since I have begun at Titans. The most drastic change, I would say, is when I moved up to Level 6, or optionals. My coaches know me and know what pushes me and what my limits are. They have helped me get to where I am today, and have shown me a great deal of knowledge that I admire about them. My coaches also have helped me achieve goals that I would not have thought I could do 5 years ago. I am able to say that Titans is an amazing facility, and helps the gymnasts improve greatly in many ways. Please allow Titans Sports Academy to stay open and operate by granting them the conditional use permit. Thank you for your time, and please allow Titans, my second home, to stay open and continue to coach my gym family and I.

Sincerely,
Maddison

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From: [Sandra Vallejo](#)
To: [Jennifer Carman](#); [CC Public Comment](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Cc: [Titans Team](#)
Subject: Titan's Building Permit
Date: Saturday, February 13, 2021 11:35:44 AM

Hello,

I've been a resident of Morgan Hill since 2008. My husband and I chose to leave the bigger city and raise our 3 kids in a family friendly town. That's what Morgan Hill is to us, family friendly. There is something here for all of us. There is no need to leave Morgan Hill to have a good time, from our amazing restaurants to the distinguished school districts and to a strong community that has many sports options for our children.

Morgan Hill is a thriving community that we would like to sustain, and not have to go outside of Morgan Hill, to experience these options. Having stated our families love and respect for this community, Titans Sports Academy has been a huge part of not only our community, but also our families life. My daughter has been with the coaching staff since she was 4 years old. In 2019, my daughter was one of the Northern California Regional Team members that competed against multiple states and won the Region. It's very evident that my daughter has a natural athletic skill, but I can honestly say, if it wasn't for the dedication, leadership and love of the Titans coaching staff, she would not have been able to reach the Regional Team. If Titan's is not allowed to operate in Morgan Hill, not only will this crush my daughter, but being working parents, we will not be able to send her to San Jose for coaching. And why should we send our girls to San Jose, when Morgan Hill can give our girls what they need? Isn't this what we want to keep our girls close to home with exceptional training, so that when these kids get college scholarships or even one day make it to the Olympics, they can say we trained at Titans in Morgan Hill!!

I hope the City will reconsider and allow Titans to operate and be represented as a part of our wonderful family friendly Morgan Hill community.

--

Sandra Z. Vallejo

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From: [REDACTED]
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Titans Sports Academy Morgan Hill
Date: Saturday, February 13, 2021 5:28:06 PM

My name is Tammy Massman and I am respectfully writing this letter on behalf of Titans Sports Academy in Morgan Hill. Before the pandemic Titans Sports Academy was my daughter's second home. Isabel is going on three years of being a competitive gymnast for Titans Sports Academy, where she would practice four days a week. Isabel is ten years old and has been dedicated to this amazing sport since she was three and has finally found a place where her coaches believe in her.

The pandemic has made this an extremely difficult year to say the least, especially for young gymnasts. They have lost so much crucial time being away from the gym and the sport they love. As parents we are so excited to get our daughter back to what she loves. We are so grateful for the facility Titans Sports Academy has provided and for how much they care about our kids!

We live in Hollister and we commute to Morgan Hill to get Isabel to practice, because there is no other facility like Titans Sports Academy from Hollister to Morgan Hill. We are so lucky there is a place for gymnastics of this caliber in Morgan Hill. It would be devastating and most likely the end of gymnastics for Isabel if we had to go any further away. My husband and I both work full time jobs and have two sons in addition. Commuting any further from where we are would sadly be completely unrealistic. As a family we have dedicated and sacrificed so much to get Isabel to Morgan Hill to practice, it is essentially our home away from home. Our time spent during practice sessions is spent eating and shopping in Morgan Hill. Target, DSW, MOD Pizza, Dick's Sporting Goods, Halloween Warehouse (in the season) Wal-Mart, Super Taqueria, etc. We have altered our regular supply shopping to accommodate our trips to Morgan Hill.

Please consider how much having Titans Sports Academy in Morgan Hill is an asset to the community and the families traveling from cities south of Morgan Hill, it makes gymnastics and so much more there, attainable to us. With school schedules and work schedules, getting any further than Morgan Hill is not even a viable option for most families.

Titans Sports Academy coaches are second to none and the facility they built is beyond comparable to any other gym. Isabel and her teammates are working so hard for their future, I humbly ask you to please reconsider the decision of the Conditional Use Permit and please allow Titans Sports Academy to remain a safe, amazing outlet for our children in their new location.

Thank you for your time and consideration!

Sincerely,

Tammy Massman

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From: [Mia Flores](#)
Subject: Titans CUP
Date: Sunday, February 14, 2021 12:12:10 AM

To Whom It May Concern

I am writing this email with a heavy heart. I have been fortunate enough to be a part of Titans in multiple ways. I am a parent, Team Mom, and employee. I met the owners several years prior to their start and consider them family.

My daughter started gymnastics at two (2) years old at *Little Gym*, here in town. We loved the facility and the staff but she outgrew them. We ventured off to other facilities outside the area. The drive became too difficult once she was in school. Gymnastics at this point was for fun but we had an opportunity to train with the team. We realized that when she had practice it helped her focus unlike other various sports. She needed an outlet to release adolescent energy. We tried another facility in town but were sadly disappointed by the lack of involvement from the coaches. Titans helps mold gymnasts to become successful in their everyday life. Gymnasts have to be able to complete a grueling workout mentally and physically; pushing their limits and then be able to go to school and make time to do homework. Titans coaches also make sure their gymnasts maintain academic standards. Titans is fully aware what it takes to succeed. They realize gymnasts limits, outside real-life issues, all the while still encouraging and remaining proud of any and all accomplishments. For both my daughter and I, we have discovered a second home and my daughter has gained a new sisterhood with her teammates.

When Titans first opened I wished them much success. In the beginning I volunteered my time in the evenings during Titans start-up. Eventually my volunteer time became paid time, and now 5 years have passed and I am still here with even more enthusiasm for the future. I am so very grateful to be part of the Titans family.

As most relocations go, the Titans move was not an easy one. Finding a building that can accommodate all our needs was an almost impossible feat. Before we went to visit a facility we would dutifully check the address to assure it was even an option. We would check the Morgan Hill City zoning website, find the location, and then call and email City Planning. For the Mast street site, City Planning never stated or corresponded that the location was not an option. Instead they said to "go through the CUP process" (application and various processing fees). As a family owned business that was struggling with COVID, the fee amounts appeared high. However we complied with the process and paid all fees. Shortly thereafter a representative from the city contacted us with a list of items we needed to provide. This process continued a few more times and was always seemingly at the eleventh hour. The planning meeting was rescheduled a few times; and during COVID and the holidays it became two (2) months later.

I attended the Zoom meeting on January 12. I was devastated to hear the Commissioner's opinion about how Titans handled the process and ended up in the present predicament. I have researched other cities CUP processes. Each city seems to be different in their respective operations, which is fine. However the City of Morgan Hill contributed false hope instructing this company to "go through the process" only to deny, but then present a glimmer of hope with more possible financial and emotional expense. Why allow a business to go through the process when the planning committee was never going to approve it?

I urge you to allow this family owned business continue to keep their doors open during a pandemic. They produce amazing and talented kids who I know will later pay it forward and give back to the community that raised them.

Best,

Mia Flores

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From: [Ethan Ruskin](#)
To: [CC Public Comment](#)
Subject: Conditional use Permit Titans Sports Academy
Date: Sunday, February 14, 2021 1:24:47 PM

Dear Rich Constantine, John McKay, Renee Spring, Yvonne Martinez Beltran, and Gino Borgioli:

I am writing to you in regard to the upcoming Council meeting on February 17th, specifically in regard to the appeal of the Planning Commission's denial of Permit for Titan's Sports Academy. My family has lived in the Mission Ranch neighborhood of Morgan Hill since 2006. We love living in Morgan Hill and my daughter was born here. She is 12 years old and has been training at Titan's since they opened their doors in Morgan Hill 5 years ago.

I cannot tell you how grateful our family is to the coaches and the staff at Titan's. I have watched her grow into a wonderful young woman. I have watched her grow and learn how to organize her time while she works hard at gymnastics and at school. In fact, her last semester she received all A's in her 7th grade classes. I truly believe the discipline she learned at Titan's is a big part of the reason for her success in school as well in gymnastics. We look forward to the days when my daughter will be able to return to regular in person work outs and hopefully gets to compete again in 2022.

I understand there are concerns regarding the permit for the new location, but I hope you can make an exception for such a wonderful organization. Titans helps many young girls like my daughter from our community and the surrounding area. We are fortunate to have a gym like Titans in our own backyard. I hope you can see your way to approve the conditional use permit so that Titans can continue to provide a wonderful service in Morgan Hill. On behalf of my daughter and myself, we thank you for taking the time to read this letter.

Sincerely,

Ethan Ruskin, MPH

[REDACTED]
[REDACTED]

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From: [REDACTED]
To: [CC Public Comment](#); [General](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Titans Request for Conditional Use Permit (CUP)
Date: Sunday, February 14, 2021 1:50:56 PM

Ava Valone
February 13, 2021
Titans Sports Academy

I would like to thank the City of Morgan Hill for allowing us to write letters to “save” Titans Sports Academy. On my behalf of being a gymnast that attends this facility, I would just like to express my gratitude to my gym, team, and second family. Titans Gymnastics has been open for 5 years and I have been with them the whole time. Titans is a gymnastics center that represents dedication, compassion, determination, and I like to think of them as my big family.

As I am writing this letter I want to talk about my experience at Titans and how it developed me into a better athlete and gymnast. While living in Morgan Hill my whole life, I have recognized the community has developed and grown. Titans Sports Academy is most in fact part of this Morgan Hill community and it is a place where I have grown and keep growing. My history of gymnastics starts way back when I was about 3 years old when I fell in love with this sport. Ever since I have started I have improved an enormous amount. Starting with Champions, the first gym where I competed, led me on the path to success. Continuing the journey I have moved to Titans where I have flourished and improved more and more every day. Titans treats all the kids at the gym as a family and supports every decision they make. If Titans doesn’t end up getting this conditional use permit, it would be a shame and would be a huge effect on my life and maybe some of mine teammates. To start off it would shut down my opportunity/dream to grow as a gymnast/athlete. To add on there are only a few gymnastics facilities besides Titans which would make my whole lifestyle change. Due to this lack of gymnastics facilities, I would have to travel farther to get to practice which could have an effect on many things such as my education. When traveling farther to my sport/activity I would have less time to get homework/extracurricular activities making me fall behind in school and not thriving to my potential as a student or athlete.

To conclude this letter I would just like to thank you one more time for reading my letter and taking into consideration to keep Titans Sports Academy open.

Sincerely,

Ava Valone

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From: [Adria Reiner](#)
To: [General](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#); [CC Public Comment](#)
Subject: Titan's Sports Academy - "Call For Review"
Date: Sunday, February 14, 2021 2:54:50 PM

To whom it may concern,

I am writing this letter on behalf of the Titan's Sport's Academy, which is scheduled to be reviewed by the City Counsel for a Conditional Use Permit by the City of Morgan Hill on February 17, 2021. Supporting the Titan's Sports Academy and our local South Bay youth with this request is imperative for many reasons.

Our 10 year old daughter previously participated in the USA Sports Gymnastics Team Program in Gilroy, but as a result of the COVID 19 Pandemic, they could no longer sustain keeping their doors open and ultimately had to close. The news of the gym's closure was unsettling to our daughter, our family, and many other gymnasts, as we were unsure where to turn. We were very fortunate to have found another local gymnastics facility, the Titan's Sports Academy. The owners were gracious enough to accept our daughter, and several other USA Sports gymnasts, to participate in their team program. Had they had not done so, our gymnasts may have no longer been afforded the opportunity to participate in a local competitive gymnastics program. Traveling an additional 30 to 45 minutes in one direction to the San Jose area for our daughter to receive the type of training Titans offers definitely would not have been feasible for our family.

Since joining the Titan's Team, the owners and staff have all been amazing and they have operated with the utmost professionalism during these uncertain times, making the safety of our gymnasts and their staff a top priority. The Titans industrial gym location and structural setting is ideal for this type of competitive gymnastics training given the amount of large equipment required to train our gymnasts. Failing to allow them to remain in their current facility would be devastating for our local youth.

I myself work with "at risk" youth in the County of Santa Clara and as many of you know, local sports programs are extremely beneficial for our youth. Not only does it help youth stay focused and out of trouble, but it is also crucial for their own mental health, especially during the current pandemic. Failing to allow the Titan's Sports Academy, or even DUB, to continue operating in their current location merely because it is located in an industrial area just doesn't make sense. Not only could it be detrimental to our local youth, but our daughter and our family would be devastated if another local gymnastics program had to close their doors during these uncertain times.

As a local parent, I am asking that you please take the time to really hear our voices today and grant the Titan's Sports Academy their Conditional Use Permit. It is the BEST decision you can make for our local youth! Thank you for your time.

Sincerely,

Adria Reiner

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From: [Olivia Benamou](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Titans Gymnastics
Date: Sunday, February 14, 2021 4:14:58 PM

Dear City of Morgan Hill,

Hi. My name is Olivia. I am 8 years old and I would feel very very very very very very very very very very sad if you shut Titans down. I would cry everyday because you shut down the gym and there would be nowhere else to do gymnastics. Gymnastics is very very important to me, I have been with Titans since I was 4 years old. I really hope you let us stay at the gym if you don't me and my friends will be very very very very very very very very sad.

Please let Titans stay open in Morgan Hill.

Thank you,
Olivia

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From: [Jennifer Alvernaz](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Parents letter for Titans Sports Academy
Date: Sunday, February 14, 2021 4:50:33 PM

Esteemed Board Members,

We have two daughters who have been enrolled at Titans as a part of the Xcel gymnastics team. During this time both of our daughters have grown and developed new skills, where they have been physically and mentally challenged.

Titans is not just a gym. It is an educational facility where our girls go to learn. Not just tricks, but life skills. Dedication, persistence, balance, respect; these are traits they will take with them far beyond their gymnastics careers. Titans is their home away from home. Their coaches and teammates are their second family.

I was once a competitive gymnast who competed in the city of Sunnyvale and the city co-sponsored our team. Multiple times the city threatened to stop funding or limit the usage of their facilities for our team. I showed up at multiple city council meetings to help fight for our team, being scared and terrified that something I loved would be taken from me. I now watch my daughters have the same fear I once had.

According to the current decision, Titans would have to find a new building. Currently, there are no buildings in the city of Morgan Hill that would support Titans Sports Academy. If Titans are made to leave Morgan Hill we would have to drive our girls a great distance for a gymnastics team, which is not something we are able to do. There are no other gymnastics teams like Titans in this area that would support our daughters' needs.

Before Titans our daughters were at CSC Morgan Hill. We pulled our daughters from the xcel team at that location for multiple reasons. One being that the CSC Morgan Hill gymnastics location is very small. The facility is packed with equipment and is filled with more gymnasts than it can handle. It was clear to us that it was quantity over quality and our money was more important than our girls safety. Another reason we left was because we learned that once our girls were going to be advancing to the next level they had to go to another CSC gym. This meant we would have to drive into San Jose for every practice.

We drive our daughters in from Gilroy to attend Titans. While I am in Morgan Hill I am able to do my errands during their practice time. I go to Trader Joes to pick up a few groceries, and usually pick up dinner for that night from one of the restaurants in the downtown area. Every once in a while we will hit up Fro-Yo Delite before we head home!

Council members, do you have kids? Were or are your kids involved in any after school

activities that put them on the path of success? Gave them something fun and productive to do? Allowed them to safely socialize and learn new skills? Gave them joy and challenged them? Titans Sports Academy checks all of these boxes for our daughters. We would greatly appreciate your support as a family and members of the community.

Thank you for your time and consideration,
Jennifer and Tim Alvernaz

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From: [Nicole Stasiowski](#)
To: [CC Public Comment](#)
Subject: CUP For Titans Sports Academy
Date: Sunday, February 14, 2021 4:52:46 PM

To whomever it may concern,

My name is Nicole Stasiowski and I am a former competitive gymnast and current employee at Titans Sports Academy. I want to voice my opinion on why Titans should obtain their CUP on Mast St. in Morgan Hill. Titans Sports has done so much for me since they first opened their doors in 2015. The coaches, employees, and gymnasts make this gym an amazing welcoming community for everyone who walks through our doors. I consider the Titans community as my second family, as does every single gymnast at Titans. As a former gymnast I have attended three different gyms and Titans has the best community, coaches, and environment by far. This gym has helped shape me into the person I am today. Now to speak from a coach perspective. During the last meeting Commissioner, Juan Morris, said "Can I just say no and get away with it?", that comment really bothered me because while to many city workers this may not seem like a detrimental case, oppositely to the Titans community it is. As you know we have amazing parent support who voice their concerns about the gym's situation every day, and who would be really disappointed with the city if it comes to a closure. Many of our gymnasts are too young to write to you about the situation but I can assure you that all would be heartbroken. These girls have dreams about doing gymnastics at higher levels and I have never seen such determination in kids so young. If our gym comes to a close or moves out of town many if not all of these kids dreams will vanish. Many parents simply don't want to, or can't drive any farther due to certain occupations and schedules. The only other gymnastics facility in town is overcrowded and unlikable. It would hurt not to see their smiling faces everyday. Not to mention the closure of Titans Sports Academy would impact the entire city of Morgan Hill. Our gym has become extremely popular with the citizens of Morgan Hill and I am sure many would be sad to see a small business run out of town, and not even due to the COVID-19 Pandemic but because of our own city council members. Right now during these difficult times cities should be helping keep small, family owned businesses alive. I am aware of the points the city has made against us obtaining our CUP, such as how the building is zoned High Industrial. No, Titans is not a high industrial business, but if you look at the building's history it has never been used for high industrial purposes. As a gymnastics facility Titans needs a certain square footage that no alternate buildings here in Morgan Hill have. If we are to be denied this permit we would have nowhere else to go in this city. Titans would be forced out of Morgan Hill, or forced into closure. None of the Commissioners points are strong enough to where they should close this gym and pain so many kids in our community, and in your community. This situation should not be decided upon a business point of view, but from a community point of view. Thank you for taking the time to read this email, and I hope all is taken into consideration this Wednesday.

Sincerely,
Nicole Stasiowski

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personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.

From: [Ella Alvernaz](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Gymnast for Titans Sports
Date: Sunday, February 14, 2021 5:56:24 PM

Dear Morgan Hill City Council,

Our names are Ella and Brooke Alvernaz, we are fifteen and thirteen years old. We have been at Titans for almost two years now. Titans has provided us with a safe environment to workout and to be ourselves. The coaches truly want the best for us, mentally and physically.

This gym means everything to us. Right now, through Covid, things are hard enough. We know our coaches and the gym are there for us when things go back to normal. The thought of the brand new gymnastics facility being taken away from us breaks our hearts. If there is no other place for all our equipment, where are we supposed to go? This new gym meets all our needs.

Before Titans we were in a small gym that was packed with equipment that was too close and filled with too many bodies. We were constantly nervous we were going to be injured by running into another person, a fence, a wall, a pillar, or a piece of equipment. We were working out with junior olympic girls, xcel team girls, recreational gymnasts, and children who were maybe five years old; all in the same facility, all at the same time. It was hard to give it our all when we did not feel safe when training.

Ella, has femurs that are twisted and it causes extreme knee pain. It also limits a lot of exercises and skills I am able to perform. Titans takes my physical limitation and works with me to attain my goals. Titans has helped strengthen my legs and gain more confidence through their patience and support. The previous gym constantly neglected my physical

problems and in return my legs got worse.

Please take it into consideration for us to stay, this is a perfect place for us,

Ella and Brooke Alvernaz

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City Council Members, City Clerks,

Thank you for taking the time. I am writing to ask that you reconsider the CUP approval for Titans Sports Academy in Morgan Hill.

My daughter, Isabel Massman is a gymnast with Titans. Prior to the COVID 19 pandemic she was a level 5 gymnast working towards testing out of level 6 and into level 7. If successful, she would be among an optional core of gymnasts across the country, competing level 7 at a relatively young age. If you asked Isabel what her goal is she would tell you it is to earn a scholarship to Michigan University. Isabel is a vibrant, brilliant, funny, confident, willful, and focused girl. As parents, we hope that our children find something they love and pursue it. Pursue it with passion and an abandon that generates self-discipline, dedication, commitment, and accomplishment. Traits that will bleed into all areas of their life and help them become the best they can be. Traits that will help them live a life bigger and better than ours. Gymnastics is Isabel's joy. Always has been. All of the gymnasts practicing at Titans share that same abandon. Titan's staff, program, coaches, facilities and ownership are second to none in the gym industry, providing exceptional experiences and opportunity for every child that practices there.

As a resident of Hollister, while supporting Isabel's gymnastics journey we have also supported the economy of Morgan Hill. All of the families that commute from Hollister do the same. The sport of gymnastics requires hours upon hours of training. While accommodating those hours our families eat at MOD Pizza, Five Guys, L&L Hawaiian BBQ, Sushi Ichiban (Isabel's favorite after a long Friday practice), and Trail Dust BBQ to name a few. We frequent Dick's Sporting Goods, Petco and Target. We go to Post-N-Print for our postal needs and we visit Sport Clips when we need a haircut. Men's Wearhouse, DSW, Petco, O'Reilly and Napa Auto Parts. Lokey Firearms. We have switched our veterinary care for our animals to South County Animal Hospital. The peripheral benefit to the Morgan Hill economy is consistent and exactly what a business such as Titans should be contributing to its community.

The COVID pandemic has changed our world permanently. Through the shelter-in-place orders, stay-at-home orders, school closures, and business closures those who suffer most are our children. Combinations of remote learning, social isolation, and the overnight disappearance of organized sports has left them without the essential sociological building blocks we were afforded in our youth. As COVID pressed on through summer and fall of 2020, and we had already ironed out the challenges involved with home schooling, our thoughts turned to how we were going to keep our kids healthy. As the world comes out of this pandemic our collective priority should be to ensure the futures of our children.

As the world emerges from COVID-19, I don't believe it is the time to allow another youth sports provider to disappear overnight. Our children will need every outlet available to them in the coming months and years.

Thank you,

Kris Massman

From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Dub/KPI Conditional Use Permit
Date: Tuesday, February 16, 2021 10:32:07 AM

From: Angela Bellino [REDACTED] >

Date: February 14, 2021 at 5:11:24 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>

Subject: Dub/KPI Conditional Use Permit

Dear Morgan Hill City Council,

I'm reaching out in support of Dub Baseball and Kinetic Performance Institute. I kindly request that you support the appeal by Dub/KPI for a Conditional Use Permit.

My son has been a part of Dub/KPI program for three years and it has been the best thing ever for him. We have been so fortunate to have a program like this in Morgan Hill. Erik Wagle has worked hard to not only make Dub an amazing baseball program, but a place that gives our youth a place to feel like they belong. There is a sense of community within Dub that makes it such a successful program. Dub/KPI is a part of Morgan Hill and is a small business that makes our town so great.

I urge the City Council to approval KPI's permit application to allow this special and beneficial program to continue in Morgan Hill at it's current location.

Sincerely,
Angie Bellino

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Please Support Kinetic Performance Institute and Local Businesses!
Date: Tuesday, February 16, 2021 10:37:29 AM

From: Heather Randol <[REDACTED]>

Date: February 14, 2021 at 12:22:13 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>

Subject: Please Support Kinetic Performance Institute and Local Businesses!

Dear Honorable Mayor and City Council Leaders,

I am writing this email as a long-time Morgan Hill resident, working mother of two active boys, and fierce supporter of the City of Morgan Hill.

We have been heavily involved in our local youth sports programs since my boys could walk. Programs, like Kinetic Performance Institute (KPI) and DUB Baseball, have not only provided my boys with physical and social development, but they were an essential part of community engagement for our family. Since then, my youngest son has developed a passion for baseball. One that has tempted us to seek training and support outside of our beloved city, Morgan Hill. However, because of programs like DUB and KPI we have both the benefit of advanced training and, more importantly, a continued connection with Morgan Hill.

It saddens me to see families leaving our great city to seek training and opportunities elsewhere. They drive to San Jose and other Bay Area locations to get the advanced training needed to compete at the highest level. This fractures our sense of community and takes much needed financial support from our local businesses.

We also fell victim to this for a short time by looking at a program in San Jose. This meant I drove my son 30 minutes to training for 1 -2 hours. During this time, I ran errands, picked up dinner as well as other shopping in San Jose while my son trained. I would much rather have my son training with his lifelong friends while I spent our hard-earned money right here in Morgan Hill to support our local businesses.

The community has sent the message loud and clear. We want Morgan Hill to thrive, but we also want to maintain our local connections and our support for our wonderful business community.

Without the KPI facility, families will once again leave for San Jose to prepare their children for a high level of competition. We need this in Morgan Hill. Please support local business and our youth!

Sincerely,

Heather Randol

Morgan Hill Resident

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Team Titans Gymnastics in Morgan Hill
Date: Tuesday, February 16, 2021 10:39:51 AM

From: Andria Leaf [REDACTED]
Date: February 14, 2021 at 9:37:48 AM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>, Rich Constantine <Rich.Constantine@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Cc: General <general@morganhill.ca.gov>, Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>
Subject: Team Titans Gymnastics in Morgan Hill

Dear Council Members,

Writing this is quite emotional as picturing my daughter without Titans is extremely difficult. While my daughter is only seven, she loves nothing more than gymnastics, her Titans team, and most importantly her coaches and the support staff at the gym.

We moved to the area 2.5 years ago and Titans welcomed our family with open arms, and brought confidence out in my daughter that was lacking after our move. We encourage our daughter to follow her dreams and will support her in whatever she wants... all of her passion right now is in gymnastics.

What the future holds is unknown, but what I do know is gymnastics is teaching her hardwork, teamwork, discipline, how to respect others and take direction, and even constructive criticism... all things she'll need to be prepared for the future. Right now, she wants to compete in college and is focusing on improving her skills and doing well in school, as she knows this will help her accomplish her dreams!

Not only is Morgan Hill Titans family to my daughter, but we spend much time in Morgan Hill as well... I often work from local restaurants and coffee shops during her practice, grocery shop (we love Trader Joes), and shop downtown. We love the home Titans has in Morgan Hill and we love our routine while we're in town.

Please feel free to reach out any time with questions. Appreciate you reading this and your consideration to keep Titans in Morgan Hill.

Kind regards,
Andria Leaf

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From: [Avyana Groesser](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: 195 Mast Avenue, Titans Sports Academy
Date: Sunday, February 14, 2021 7:01:19 PM

Dear City Council,

My name is Avyana Groesser. I'm 13 years old and I'm writing to you as the captain of the Xcel team at Titans Sports Academy. I've been living in Morgan Hill since I was born and Titans has been a huge part of my life for the past five years. I would like to ask you to let the owner of Titans move our gym into the building on Mast Avenue for the following reasons:

- First, our teams have been growing and our old gym on Jarvis Drive was no longer big enough. For almost a year now we have had either reduced or no practices at all. All of us are very eager to work out normally again and use the bigger gym.
- If Titans had to move out of Morgan Hill, I probably would not be able to continue this sport. My parents wouldn't be able to take me to practices out of town.
- Lastly, I think that the gym is a very positive environment for my team and I, and I would be heartbroken if I had to leave my amazing teammates and coaches behind. They all have taught me so much along my journey as a gymnast.

For those reasons I really hope you will consider keeping our gym on Mast Avenue.

Sincerely,

Avyana

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From: [Suzette Li](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#)
Subject: Titans Gymnastics
Date: Sunday, February 14, 2021 7:43:21 PM

Dear Jennifer and The City of Morgan Hill,

We have lived in Morgan Hill for over 10 years, and we love the community and how much they care about its youth and residents. Our son started gymnastics when we was 2.5 years old (at the former Champions location), and his younger sister started her gymnastics journey when they opened Titans Gymnastics in 2016. Titans is the only gymnastics faculty of its kind in Morgan Hill and that's something we are so proud of. We are heartbroken to hear that this may no longer be an option in our town. We are desperately pleading with you to allow Titans to remain where they are currently located and continue to operate. Our children and community need Titans in Morgan Hill. Not only does this affect the emotional well being of our children, but the towns financial impact could also be affected. While we wait and/or drop off our children at Titans, many of us run errands locally, such as shopping at nearby grocery stores and picking up meals at restaurants nearby. If Titans were to move to a different city, our spending habits will also move, causing some financial impact to our town.

We really hope you reconsider and allow Titans to operate and remain in Morgan Hill.

Thank you for your time,
Suzette

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From: [REDACTED]
To: [REDACTED]; [REDACTED]; [REDACTED]; [Maureen Tobin](#); [General](#); [CC](#)
[Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Titans Gymnastics Letter of Support for City Council Meeting on February 17, 2021
Date: Sunday, February 14, 2021 8:49:00 PM

Esteemed City Counsel,

I write to you now to reverse the decision made by the planning commission on January 12, 2021.

At issue here is the business support of Three (3) local businesses i.e. Titans Sports Academy, Kinetic Performance Institute, and the building owner of [195 Mast St.](#)

The planning commission has taken great pains to talk about zoning and general plan philosophy but I would like to counter with a few facts to the city council and opinions of my own.

The city of Morgan Hill should support and grow its own businesses, what the planning commission voted was despicable and they know as heard by their respective laments of their own voting. Both Titans and Kinetic Performance are benevolent and needed local home grown businesses that we should all encourage to support and succeed.

Liam Downey from the beginning of the Planning Commission meeting poisoned the discussion from the beginning with the leading notion that the businesses in question acted out of ignorance and miscommunication. He continued to do so throughout the Three (3) hours of the meeting. In my opinion he led the decision to its inevitable ultimate conclusion from the beginning despite his "due diligence" on the matter.

Titans Sports is a victim of the economy and growth of the area. They were priced out of the previous property on Jarvis and were practically forced out, giving them little time to find a new location. When the time came to move, **city staff allowed** Titans to proceed on the conditional use application. It was at the **city staff's direction** which led them to the current situation with the property on Mast St. With the denial of the CUP I have to tell the council in simple terms; This is not the way any municipality treats its own local businesses EVER. There is income generated by Morgan Hill businesses for Morgan Hill. Gymnastics ain't cheap.

John Lang of Economic Development disclosed a the 43 minute mark and 2 hour and 9 minute mark that there is no other facility within the city's inventory that has the spatial and geometric criteria that this particular business needs. "Not all buildings are created equal" is the quote he used. But this building is perfect for Titans' needs.

It should be a simple evaluation of zero sum gain. The property owner "Nora" spoke that despite the attractiveness of heavy industrial zoning, it sat vacant for six months. Heavy industrial prospects came and went as the facility lacks the amenities that current heavy industrial applicants are looking for i.e. a outdoor yard, and a proper dock. The property was built in 1964. It is possible that it is outdated for modern needs. But there was a local owner with an empty and two local businesses needed a home...

...a match made in business heaven.

As far as traffic in the industrial area conflicts are concerned, working families are patrons of this business. The hours of activity at these business will be on the off times of pretty much everyone else in the area.

Regarding traffic concerns, I have driven down Mast street many times for wrong turns, going to Precision Auto of Morgan Hill, or just checking out [195 Mast street](#). I only learned recently that the neighbor was a concrete plant. I had no idea as it is closed after 5pm and I do not believe it's open on weekends. Mast is what I label as a "dead street" after normal work hours.

My daughter is dyslexic. This business has been critical in her ability to cope with a learning disability. When she has been frustrated with school, she has used her time with Titans to focus her energy and cope with the academic world. As a result she has straight "A"s and has aspirations in the medical field.

At the 2 hour 28 minute mark of the planning commission meeting Commissioner Laura Gonzalez-Escoto made the real world comment that she doubts it would be used for industrial anytime soon.

While the Planning Commission drones on about zoning and what the future may hold, I would like to remind council of an old saying "A bird in the hand, is worth two in the bush". Stop punishing local business owners during the pandemic.

Please reverse the commission's decision and support Titans Gymnastics, Kinetic Performance, and your local property owner of [195 Mast Street](#).

Regards,
Paul Pascoal, a voting Morgan Hill resident.

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From: [Gloria Pinon](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Gino Borgioli](#); [Yvonne Martinez Beltran](#)
Subject: KEEP TITANS GYMNASTICS OPEN
Date: Sunday, February 14, 2021 10:22:18 PM

Hello,

My name is Gloria Pinon and I am the mother of two gymnasts who attend Titans gymnastics in Morgan Hill. My daughters are 5 and 10 years old and in their short years of being gymnasts this gym has already impacted their lives. My oldest daughter Khloe realized at the age of 5 she loved gymnastics but she was at a different gym where she did not feel welcomed. Although she loved gymnastics she dreaded going to practice due to the coaches and the culture of the gym. My husband and I knew that if this was a sport she really wanted to pursue we had to find her a different gym. Luckily we had friends who recommended titans gymnastics, sure enough after her first practice she was SO happy and asked to transfer over. Not only was she happy but my husband and I felt welcomed from the moment we stepped foot into the gym. The owner took the time to chat with us and explain the culture he was building in his establishment, the staff took the time to give us a tour and answer questions. We knew we had found the place and staff we trusted our children with. Fast forward to 5 years later and not only has our oldest daughter's passion for gymnastics grown but our 5 year old daughter is now evolving into a gymnast herself.

I say all of this to ask the City of Morgan Hill to truly consider the impact of NOT approving Titans to stay open. We will not have another option but to tell our daughters they no longer can evolve their love for gymnastics. Khloe has dreams of being a UCLA gymnast, we've asked her many times if there is another sport or activity she would like to try and her answer is always NO because she loves gymnastics. Please do not take this opportunity away from my girls and all the other gymnasts who depend on Titans to make their dreams come true.

Sincerely,

Gloria and Anthony Pinon- proud parents of titans gymnasts Khloe and Kalea Pinon

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From: [Personal](#)
To: [Gino Borgioli](#); [General](#); [Jennifer Carman](#); [Rene Spring](#); [Yvonne Martinez Beltran](#); [Rich Constantine](#); [John McKay](#); [CC Public Comment](#)
Subject: Titans Letter for CUP
Date: Sunday, February 14, 2021 11:03:39 PM

Dear Morgan Hill City Council,

My name is Marla Perrier, and I am 14 years old. I am a competitive gymnast from Titans Sports Academy. I have been a part of our team program for 3 years now, and I can say that I've made some of the best memories of my life at this gymnastics facility. I believe that Titans should be able to stay in business because it has given so much happiness to all of its athletes, myself included. Especially during these trying times, it's important to be able to have something to look forward to and enjoy doing, and in this case, Titans is my joy.

Not only does Titans provide excellent training, but they also have given their athletes lifelong skills that are proven to be useful in the future. Titans has taught me the values of perseverance, teamwork, time management, discipline, and has overall shown me as an athlete what I am truly capable of. It would be a shame to have yet another joy taken away from us during this pandemic, as we are all aware that many opportunities have been taken from us prior to this incident. We have done our part in terms of staying safe and complying with Covid restrictions. Please support this local business during these rough times. It would be a tragedy to have such an amazing business like Titans go down. Thank you so much for considering this message.

Sincerely,
Marla Perrier

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From: [Melanie Reynisson](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#)
Cc: [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Titans Sports Academy CUP- Support
Date: Sunday, February 14, 2021 11:09:24 PM

Morgan Hill City Council
17575 Peak Ave.
Morgan Hill, CA 95037

Re: Titans Sports Academy Support for CUP at 195 Mast St. Morgan Hill

Dear City Council,

I am writing you in support of a Conditional Use Permit for Titans Sports Academy at 195 Mast St. Morgan Hill. The space at 195 Mast St. is the only available location that meets the requirements needed for this type of gymnastic business within Morgan Hill.

There are many reasons this space is a great fit for Titans. The open floor, free of columns, allows for adequate space for gymnastics equipment while maintaining necessary social distancing. The height of the ceilings allows for Titans to add needed advanced level gymnastics equipment to train athletes for National/College level gymnastics (many of Titans athletes will be reaching this level in the next 2-4 years). The design of the building's driveway allows for a planned one-way entrance, drop off/pick-up of athletes and one way exit, which will keep traffic at a regulated and controlled level. The majority of training time takes place in the evenings/weekends after traditional business hours so not to disturb surrounding businesses.

My 13-year-old daughter has been an athlete at Titans for the past 5 years and is part of their Junior Olympics Gymnastics Team. Her goal is to be a collegiate gymnast at Stanford, UCLA, or Berkeley. She is a 4.25 GPA student and ranked #1 in academics in her class. With this academic dedication underway she and her coaches at Titans need this CUP issued for the Mast location so she can further her gymnastics career at a level needed to accomplish her goal as a college gymnast. This goal is not far away for her. She has the next 3 years to reach this elite level. We are not Morgan Hill residents but have chosen Titans over other facilities in the South Bay because of their skilled coaches, safe practices, and their dedication to their athletes. Pre-Covid, we were spending 4-5 evenings every week in Morgan Hill and shopping at local businesses or dining at local restaurants during training times. If we were not at this gym, the closest gym with coaches of Titans skill level would be in Santa Clara or San Mateo and we would no longer have a reason to patronize Morgan Hill.

This year has been extremely difficult for businesses and our youth. Titans has persevered and they are giving every last effort to keep this elite program going for their current and future

athletes.

Between the tremendous benefits to the community of Morgan Hill, zero negative effects to the surrounding businesses, and a devoted business to fill an otherwise empty/insufficient/outdated for high industrial use building, I urge you to support Titans Sports Academy and approve a Conditional Use Permit for 195 Mast St.

Thank you for your time and consideration!

Melanie Reynisson | Owner

Retail Genie

Corporate Gift Guru & Merchandising Specialist



www.retailgenie.co

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From: [Melanie Reynisson](#)
To: [CC Public Comment](#)
Subject: Titans-Support
Date: Sunday, February 14, 2021 11:45:42 PM

Dear City Council,

My name is Julia Reynisson and I am 13 years old. I have been a gymnast at Titans for 5 years and hope to continue my gymnastics training at the new location.

Due to the pandemic, we've had to do training over zoom. Even though we've been limited to doing zoom, gymnastics still helps me mentally to be doing something that I love. It was also very exciting to hear that we moved to a new location. The reason this new location is perfect for us is because we needed a much larger space than our old gym so we can continue to make progress in our gymnastics. This larger space would also allow us to stay socially distanced once we can get back into the gym. My goal is to hopefully either make the national team or be a college gymnast at UCLA or Stanford. This new building would make that much more possible as we would be able to train at higher levels.

I am asking you all to please approve our CUP for Titans Sports Academy.

Thank you,

Julia Reynisson

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From: [Krista Cantu](#)
To: [CC Public Comment](#)
Subject: Call for review Mast Titan Sports Academy/Kinetic Performance
Date: Monday, February 15, 2021 12:55:59 AM

Dear Council Members,

I have been a part of Titans Sports Academy for over 4 years and I strongly urge you to support this business and program and their location. I am writing to ask you to approve their operations in their new facility for many reasons.

As a long time resident in the South County area I know it's very important to offer many different children's activities in this community. Having something close by makes it easy and convenient for us to participate in the gymnastics program. Titans has offered a great program for my daughter and without it we would be saddened.

I believe all members of Titans are giving back to the city and community and supporting it in different ways.

Often times when my daughter is training at Titans I visit and support other Morgan Hill businesses such as stores and restaurants.

The current space is adequate for the equipment and to accommodate both recreational and competitive team. It also has necessary space for the advancement of levels for team members to reach their goals. Without this, members of the program will not be able to reach or compete in elite, national or college level gymnastics or beyond that.

This building allows space for social distancing requirements and future growth.

Because of their location, building and parking lot they have a great drop off/pick up process which allows for less traffic.

I believe there are no negative affects to surrounding businesses because of Titans but I do believe there would be many negative impacts should this facility not be able to operate here.

Thank you for your time,
Krista Cantu

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Please Keep Titans in Morgan Hill
Date: Tuesday, February 16, 2021 11:23:29 AM

From: Ronan Benamou <[REDACTED]>
Date: February 14, 2021 at 8:08:41 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>
Cc: General <general@morganhill.ca.gov>, ccpubliccomment@morganhill.ca, Jennifer Carman <Jennifer.Carman@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: Please Keep Titans in Morgan Hill

Dear Mr. Constantine,

Hi, it's me Ronan. I'm not sure if you remember me but I interviewed you in 3rd grade for a class project at Charter School of Morgan Hill (CSMH). I heard that Titans may be forced to close or move out of Morgan Hill. I have been doing gymnastics since I was 2.5 years old. It has helped me become more flexible and coordinated, that is a big advantage in baseball, one of the sports I play in Morgan Hill (Our MH baseball team won the West Coast World Series in 2017). My sister is now doing competitive gymnastics at Titans and gymnastics is her favorite thing to do, she is really good at it. I would be very sad if they are forced to close because my sister loves gymnastics and she would be very sad. I really hope that you let Titans operate in Morgan Hill. I already missed out on a year of MH Pony Baseball, and I don't want my sister and all the other gymnasts to miss out on their dream of becoming a famous gymnast. Thank you for taking the time to read my email.

Sincerely,
Ronan

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John V. Salamida, President
The Screen Shop



February 8, 2021

Dear Mr. Spring,

It has come to my attention that Dub/KPI has been denied a conditional use permit needed to operate in the City of Morgan Hill. For the past 5 years, my son has been training under the Dub/KPI program, he is now in his senior year at San Benito High School. I chose this program in Morgan Hill to provide him with a high quality, year around baseball training facility that would continue to challenge his athletic abilities. I looked for a program with properly trained coaches and staff members and a well-equipped training facility. I researched programs from Salinas, Hollister, and San Jose and found the Dub/KPI program to be the best program to help my son become a well-rounded athlete. I pay fees to the program which are bringing tax dollars to the City of Morgan Hill, not to mention, the money that I am spending at restaurants and local stores while my son is training. I have and will in the future recommend the Dub/KPI program in Morgan Hill to any family looking for a high-quality program for their child.

I am asking that you reconsider issuing a conditional use permit to the Dub/KPI program.

Sincerely,

John V. Salamida

From: [Hilary Wolfe](#)
To: [CC Public Comment](#)
Subject: Fwd: Save our Gym
Date: Monday, February 15, 2021 5:39:50 PM

>

>

> To Whom It May Concern,

>

> I am writing to you in hopes that you will change your ruling on the CUP for Titans Gym and DUB. As a family that has two parents that work full time, it has been a blessing to not have to drive all the way to San Jose for our daughter to participate in the sport she loves. As a gymnast our daughter has really excelled since joining Titans (she was previously at another gym), she loves being a part of Titans, and to take that away would be very upsetting to her. She has really bonded with her teammates they are some of her best friends, and the bond she has with her coaches is something else that cannot be replaced. If Titans were forced to move, and most likely this would be farther North (San Jose) I am not sure if we would be able to get her to practices on time with the added commute. Plus the added time would mean eating dinner in the car, doing homework in the car, and getting home much later than if she were able to continue in Morgan Hill. If they cannot find another location and forced to close that would be devastating to her.

>

> Morgan Hill is a great city and as a smaller town, there are not as many options for activities for children to participate in. To take these two options away from kids would force them to commute to participate in the activities they love and be unfair. We love spending time in Morgan Hill while our daughter is at practice it is a great town. Before COVID many nights we would visit the restaurants for dinner (now we will order and pick up dinner) I can get my grocery shopping done while I wait for her, fill up with gas, and any other tasks I need to complete before we return home.

>

> I hope you take all of our concerns and thought and change your ruling on the CUP for the building. Having local activities for families can only benefit a town while forcing families to commute to keep their children active takes so much more away from the community, examples are family time, friends, tax dollars, sense of connection with the community, etc. Morgan Hill then just becomes a place you come to sleep each night.

>

> Thank you for your consideration,

>

> Hilary Wolfe



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From: [Ruben Gonzalez](#)
To: [General](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [Gino Borgioli](#); [John McKay](#); [Yvonne Martinez Beltran](#); [CC Public Comment](#)
Subject: Support letter for Titans Sport Academy
Date: Monday, February 15, 2021 7:12:57 PM

February 14th, 2021.

Dear Mayor and Honorable Council;

My name is Ruben Gonzalez and I am married to Elsa Gonzalez and we have two teenage children that are heavily involved in sports and academics. My daughter has been involved in gymnastics programs since the age of 5 years old and it has been a great benefit for her especially in these trying times. I am writing this letter because I am concerned that her gymnastic's club "Titans Sports Academy" is in jeopardy of losing its facility. As a parent, I am sure many of you can empathize with other parents, how your child's sports/activities can have an enormous impact on their lives while growing up. I must tell you as a child growing up in an environment that was not conducive for migrant children whose parents were constantly working just to make sure we had a roof over our heads and food on the table. I had sports to help me become a better student because of the self-sacrifice and disciplined to excel in my particular sport. Over the years, I was able to use my sport of wrestling to earn a scholarship and attend college. I used the sport as a vehicle to further my education. Over the years, I built good habits of hard work ethic, mental fortitude, accountability, resiliency, and responsibility just to name a few. I know having these experiences has helped in life which I hope my daughter could have these similar experiences as she goes through her life.

I hope my voice has any bearing on your decisions. We don't live in the beautiful city of Morgan Hill but my wife and I constantly come to your great town for dinners (Odeum, Ladera, Chachos, Craft Roots, Bubbles, etc...) festivals, special events before the covid-19 took effect. We spend a lot of time in your town because of my daughter's gymnastic program at Titans Sports Academy. I know I am not the only parent that spends a lot of time in your town while waiting for their children to finish practice.

I believe Titans Sports Academy plays a vital role in these young ladies' lives. They not only learn hard work ethic, but they learn what it is to be a person of good character. I am not a gymnast by any means, but I see my daughter's love for this sport. Going to practice, being part of the team and seeing her teammates gives her a sense of belonging. After practices or competitions, she brings back great stories of her teammates and the little experiences they shared. I truly believe your decision will have a great impact not only on my daughter's life but also on other young girls competing for Titans Sports Academy.

I thank you, Mayor Constantine and Council members Borgioli, Beltran, Spring, and

McKay. I appreciate your time in reading this letter.

Sincerely,

Ruben Gonzalez

San Mateo County Deputy Sheriff

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From: [Hilary Wolfe](#)
To: [CC Public Comment](#)
Subject: Fwd: Save my Gym (Piper Wolfe)
Date: Monday, February 15, 2021 7:43:08 PM

hello,im piper i would be so upset if you closed our gym.If I could not go to gym every week I would feel terrible.Its a really good gym and there are really nice people there that are always there to help you.pls don't close the gym.
From,Piper

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From: [REDACTED]
To: [CC Public Comment](#)
Cc: [Rich Constantine](#); [John McKay](#)
Subject: [FWD: Support Titans Academy]
Date: Monday, February 15, 2021 10:15:13 PM

----- Original Message -----

Subject: Support Titans Academy

From: <[REDACTED]>

Date: Mon, February 15, 2021 4:07 pm

To: "rene.spring@morganhill.ca.gov" <rene.spring@morganhill.ca.gov>

Dear Morgan Hill City Council members,

I support allowing for Titans Academy to operate in the Morgan Hill community at the building on Mast.

My daughter has been a competitive gymnast for many years and has been fortunate to train at the Titans Academy. There are no other programs with the mix of professional coaches and facilities in our area. The location which is within a block of industry and residential areas near shopping and services. I frequently shop while waiting for my daughter and often get hair and nail services at some of the local businesses.

I have not been concerned with any traffic or industrial activities on Mast. The location and facility are a good match for the gymnastics venue. Titans academy is a unique gymnastics service that has benefited the athletes in Morgan Hill and beyond.

Please vote to support them in their mission

Sincerley,

Annie Zanger

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From: [REDACTED]
To: [CC Public Comment](#)
Cc: [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: [FWD: Support Titans Academy CUP]
Date: Monday, February 15, 2021 10:24:00 PM

----- Original Message -----

Subject: Support Titans Academy CUP

From: <[REDACTED]>

Date: Mon, February 15, 2021 3:47 pm

To: "rene.spring@morganhill.ca.gov" <rene.spring@morganhill.ca.gov>

Dear Morgan Hill City Council members,

I am writing in support of the Conditional Use Permit for Titans Gymnastics in Morgan Hill.

Titans Academy provides a first class recreational and competitive gymnastics venue in the greater Morgan Hill area. Titans Academy has developed a reputation as a professional operated competitive gym that can develop and enhance the skills of recreational and competitive gymnasts in a safe environment. We chose to send our daughter there because of the structured program and commitment of the owners. I encourage you to look beyond location of the 30+ year old building and look deeper into the mission of Titans Academy where gymnasts can develop their skills and talents learning the lessons of discipline, and focus to improve themselves to become confident, driven, capable citizens.

Gymnastics venues have unique requirements of ceiling heights and open floor plans so not all facilities meet their needs. It is my understanding that after an exhaustive search in Morgan Hill and review with planning officials that the landlord and tenants have spent thousands of dollars to renovate and enhance the facility. In my experience it is typical that gymnastics centers are located in industrial areas throughout the Bay Area often located adjacent to freeways and other commercial and industrial buildings. Since we travel to Titans from out of town our weekly routine is to drop off our daughter and then remain in the Morgan Hill until the 2 or 4 hour practice is completed. It has become our practice to shop in Morgan Hill businesses during this time. Almost every week we go to the Saturday Farmers Market with coffee from Two guys coffee. Regular trips to Trader Joes, Ace Hardware, Safeway, Target, Hobby Lobby, Big 5, Dick's CVS are common. After practice we purchase meals from Panda Express, Subway, In and Out, Sushi and Safeway. Shopping trips to TJ Maxx, Thinker toys and the Car Wash are also in our plans. Many of these shops are close to our residence but we find it more convenient to buy from these stores since we are in Morgan Hill with time during gym practice.

Please consider the broader benefits that Titans provides to the gymnasts and community as you decide to allow their use in this industrial area suited for their unique needs.

Sincerely,

Gene Zanger

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From: [Sandra DiLaura](#)
To: [Rene Spring](#); [CC Public Comment](#); [General](#); [Gino Borgioli](#); [Jennifer Carman](#); [John McKay](#); [Rich Constantine](#); [Yvonne Martinez Beltran](#)
Subject: Titans Gymnastics
Date: Monday, February 15, 2021 10:55:58 PM

To the members of the city council,

Our daughter, Kadence, is a member of Titans Gymnastics Team. She has been doing gymnastics since the age of 3 and it is a huge part of her and our lives. Our oldest daughter was a gymnast for many years as well and we have been to several gymnastics gyms but none of them are like Titans. There is not another gym or coaching staff like this in Morgan Hill. The closest around would be San Jose or Monterey. While our daughter is at practice we go to restaurants and stores and gas stations in Morgan Hill about 4 times a week bringing revenue to the town. Having this gym close because of a zoning issue would be a huge disservice to the community as well as to these athletes that have spent their time and effort and love of the sport. Our daughter has learned so much from doing this sport that will stay with her for life. She has learned time management and to work hard to achieve her goals. During this trying times these girls need something to look forward to, many gyms may not reopen after being closed for almost a year. So having a gym in Morgan Hill will be a great opportunity for more families to come to Titans. The city council has done rezoning in the past so we strongly urge you to please make an exception for Titans & Dubs because there is no other facility that can accommodate this type of equipment and training. By denying this you could be crushing the dreams of many young athletes that may not be able to go to another gym farther away as well as scholarships. So please reconsider and allow Titans to be open.

Sincerely
Jason & Sandra DiLaura

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From: [Joseph Mendoza](#)
To: [Gino Borgioli](#); [Yvonne Martinez Beltran](#); [John McKay](#); [Rich Constantine](#); [Rene Spring](#)
Cc: [Jennifer Carman](#); [General](#); [CC Public Comment](#)
Subject: Titans Sports Academy – Gymnastics Use Permit Application – 195 Mast Street Meeting – 2/17 (Wednesday) 7pm
Date: Monday, February 15, 2021 11:20:28 PM

Dear Morgan Hill City Council Members:

Please approve the use permit for Titans Sports Academy at 195 Mast Street. The building is extremely suitable for the recreational gymnastic programs' competitive gymnastics teams' needs.

The facility is large enough to comfortably accommodate the current equipment and allow for future expansions. For example, this facility has two gymnastic floors whereas the prior facility only had room enough for one. This is particularly important to the competitive gymnasts because the new facility provides these elite Morgan Hill and nearby area athletes greatly improved access to gymnastic equipment, which is essential to their success. And the new facility allows even more such improvements in the future. The facility provides these young promising athletes the best chance to reach their goals and aspirations of being elite, national, college level gymnasts.

The facility has the space needed to comfortably comply with social distancing requirements which is an extremely important consideration now and will continue to be in the future. The entrance and exit layout at the facility allows for an easy drop off/pick up process which greatly reduces traffic and the need for parking. This seemingly further minimizes the risk of Covid-19 transmission.

For both the competitive and recreational gymnasts, the facility provides a place where they can develop into disciplined, driven, successful adults well beyond their gymnastic careers. The facility allows for the addition of various after school programs. Such programs will allow even more of Morgan Hill's and nearby area's youth to experience the safe, positive, fun and productive environment that Titans Sports Academy provides.

The gymnastic programs have little to no effect on the surrounding businesses because the gymnasts typically train after business hours and on weekends. In any event, the positive aspects of the gymnastic and after school programs provided to Morgan Hill and nearby area youth far outweigh the negligible impact, if any, on surrounding businesses.

Not granting the use permit would be devastating. Many of Morgan Hill's and nearby area's brightest young athletes would be deprived of the incredible opportunities that Titan's Sports Academy provides. For example, my daughter, Jada Mendoza is a level-9 gymnast. She is a sophomore at Live Oak High School and aspires to be level-10 gymnast (i.e. the highest level in the Junior Olympic program) by her junior year and eventually go on to compete at the college level. Jada has a 3.7 GPA. She has flourished at Titans Sports Academy not only as a gymnast but also as a person. The coaches, staff and family support system at Titans Sports Academy are amazing. Jada had previously trained at Champions Academy (recreational to pre-team), USA Sports Hollister (level 3 to level 4) and USA Sports Gilroy (level 5 to level 7). She had plateaued at USA Sports Gilroy and struggled in level 7 as they did not have the facilities, nor the coaching needed to take Jada to the next level. Luckily, in early 2017, we found Titan's Sports Academy. Within Jada's first year at Titans

Sports Academy (the 2017-2018 season), due in large part to the coaching, support from the staff, and moral support from Jada's teammates and their families, Jada developed into Region 1 Champion level 7 (Region 1 includes California, Arizona, Utah, Nevada) in balance beam, uneven bars and All-around. Jada continued to greatly improve and as a high school freshman competed as a level 9 gymnast in the 2019-2020 season until her season was cut short due to Covid-19.

But even more amazing than her growth as a gymnast, Jada has grown as a person because of Titan's Sports Academy. The coaches have not only nurtured Jada as an athlete but also as a person. Jada has developed close friendships with many of her teammates. My wife and I have also developed good friendships with many of Jada's teammates' families. Titans Sports Academy's coaching philosophy and gym culture they have created are extremely effective but not cut-throat. This is evident not only in the success of their programs and the well-deserved notoriety that Titans Sports Academy has gained in such a short amount of time, but also in the happiness and camaraderie of the young ladies who participate in their programs, and the supportive culture amongst the families of the athletes. My wife and I truly feel that we are part of a Titan's family not just the parents of a child who trains at their gym.

Titans Sports Academy is truly a gem of a gym. It provides children and young adults a place to work hard, to excel, to strive to be great, to have fun, to make friendships, and to develop qualities, attitudes and skills that will help them throughout their lives. A decision to grant Titans Sports Academy the use permit at 195 Mast Street would allow Titans Sports Academy the room to comfortably serve Morgan Hill and nearby area youth and to further enhance its already exceptional gymnastic and after school programs. If the use permit is granted, Titans Sports Academy will become an even greater asset to Morgan Hill attracting and creating exceptional young people/athletes throughout the South Bay.

We respectfully request that you grant the use permit. Please call/email if you have any questions, comments or need additional information.

Sincerely,

Joe Mendoza (Father) [REDACTED]

Michele Mendoza (Mother) – [REDACTED]

Jada Mendoza (Daughter – Gymnast)

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From: [Jenedith Gaby Jacquez](mailto:Jenedith.Gaby.Jacquez@teamtitans.mh@gmail.com)
Cc: teamtitans.mh@gmail.com
Subject: Petition for Approval of CUP for TitansSports/KPI on Mast St
Date: Monday, February 15, 2021 6:33:26 PM

To whom this may concern,

This email is in regards to the upcoming City Council Meeting taking place on Wednesday, February 17th, 2021 for the consideration of a Conditional Use Permit for Titans Sports and KPI.

I am writing to you as a current employee at Titans Sports Academy. I have been working with Titans since December 2016 as a Front Desk Receptionist. Over the years of working for this family-owned business, I have had the opportunity to meet amazing people which include all of the driven and inspiring kids that train at Titans.

My position in Titans has grown over time. I am also the party coordinator for birthday parties that we host in the facility. Titans has been successful in occupying our facility every weekend (pre-covid) for celebrations for the past five years. During these occasions, families from Morgan Hill and its surrounding cities such as Gilroy and San Jose come to celebrate their special occasions with us. We have received multiple positive reviews from our events and have consistently been told that it is a great, clean, and spacious place for kids to jump and play. Parents who host their parties with us also take advantage of how conveniently close all of the grocery stores, party stores, and retail stores are around the city of Morgan Hill and buy most of their supplies and food from other Morgan Hill family-owned businesses.

From my understanding, the City of Morgan Hill had first given Titans Sports Academy and KPI the high hopes that with receiving their Conditional Used Permit, they were granted to use the facility as a recreational site for youth sports. However, the CUP was denied due to the zoning where the building is located, which is considered a Heavy Industrial Zone. The Planning Commission meeting that was held on January 12th denied the CUP and explained that their decision was solely made by following the book orders and they admitted multiple times that they did not feel good about their decision. They were right, who wouldn't feel good about denying the chance for our kids to continue on their sports, which they have trained for the majority of their lives along with coaches that are like family to them. We are currently one of the few training facilities where the children in the community can come and train without making a sacrifice and having to make the commute to other towns/cities just to participate in the sport they love. Many of our current members have even mentioned that if Titans were no longer able to operate in Morgan Hill they might leave town to find another facility, that's how important these sports are to these kids.

My question is why didn't anyone from the City of Morgan Hill ever inform us during the

process, which had started since August-September when the application was submitted, that there were little to no chances of receiving the CUP due to the zoning. During the process, we were told that our biggest issue would be parking but that topic barely brought up during the Planning Commission meeting. It is cruel and unprofessional to have two family-owned businesses whose owners are both born and raised in Morgan Hill to spend over \$10,000 for their CUP permit only to be rejected and told they were “naive” for even applying for it by the Planning Commission. Why do these two small businesses have to suffer for the mistakes that the City of Morgan Hill made?

Respectfully,
Gaby Jacquez

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From: [george.mcdonald](#)
To: [General](#)
Subject: Titan Sports academy:
Date: Monday, February 15, 2021 10:21:17 AM

My name is George McDonald, I'm the father of Anthony McDonald CEO of Titan Sports Academy. My family moved to Morgan hill back in 1977, we bought a home off Watsonville Rd. I served in U.S. Army for a total of fifteen years two of which as a Combat veteran in the Republic of Vietnam with the 9th Inf Div and the 101st Airborne Div. I also served with the California Dept of Corrections at CTF (California Training Facility) Soledad Ca for 21 yrs. My son Anthony started his career in gymnastics at the age of five in the Morgan hill rec dept, he joined South Valley Gymnastics club located in Morgan hill. Anthony and his wife Angelica have both spent many years teaching and coaching and building the sport that they love so much.

Titan Sports Academy has been located in Morgan hill for six year now, It's brought in revenue to both, the city and county, aside from that it has helped the children in the cities and counties by providing a place where the children can go to learn expand their physical ability's their pride in self and teammates learn social skills. Now because of a shortage of facilities and or sites to relocate to, are they to be closed down? This would be a big mistake! What they give to the community would be lost and what our children have would be lost.

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From: [Jennifer Karp](#)
To: [CC Public Comment](#)
Subject: Titans Sports Academy/Kinetic Performance Institute Call for Review public comment
Date: Tuesday, February 16, 2021 3:07:48 PM

I ask the City Council of Morgan Hill to please affirm (or affirm with conditions) the Conditional Use Permit for Titan Sports to operate at 195 Mast Street, a General (heavy) industrial zoned property.

I believe that Titans Sports Academy is one of only two companies in Morgan Hill offering gymnastics classes and is the only one that accepts instructional funds from my child's charter school. Pre-pandemic, Titans was an important part of the physical education for my child and will hopefully be again post-pandemic.

Given the impact of the pandemic on local businesses, I suggest that Titans be allowed to operate in an industrial zone in order to keep the business afloat at least until their current lease in the industrial zone expires. Parents of all child gymnasts accept a certain amount of injury risk for the sport (and sign waivers acknowledging that risk). Please let parents decide if they will accept a certain additional (and temporary) risk for a location in an industrial zone.

Allowing the permit (even with time limits such as to the end of the current lease) would benefit the community by keeping a local business employing local instructors and by providing much needed exercise options for our children and youth. Finally, if Titans made the decision to lease in an industrial area based on erroneous information given to them by city of Morgan Hill staff, then it only seems fair that city leadership find a way to help them stay in business as a way to mitigate the city's mistake.

Jennifer Karp


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Item # 11

AGENDA DATE: 02/17/2021

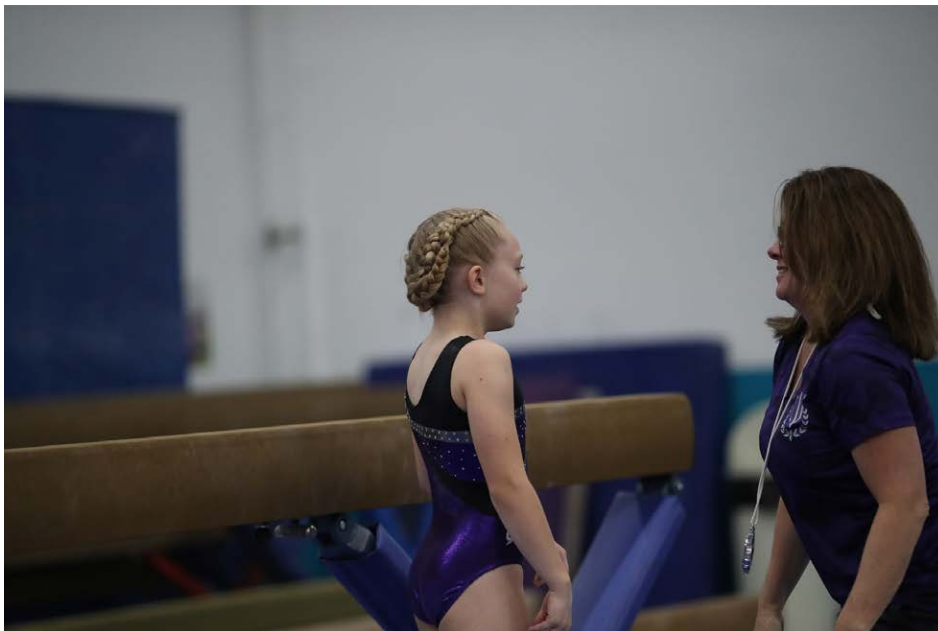
SUPPLEMENT # 3

From: [Isabel Massman](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Cc: [REDACTED]; [Tammy Massman](#)
Date: Tuesday, February 16, 2021 4:00:22 PM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)

Dear City of Morgan Hill,

My name is Isabel Massman, and I am a ten-year-old level 5 competitive gymnast at Titans Sports Academy! I have loved doing gymnastics since I was three years old, and Titans is the third gym I have been to, and it is where I have finally found a home and family! My coaches and teammates have pushed me to be better than I thought I could be! I look forward to going to gymnastic practice every day, I have accomplished so much at Titans more than I ever have before! Titans has helped me grow more than ever, and I have no idea what I would do without all these good people in my life!

This past year has been very hard for my team and coaches, but we have pushed through together, and we hope to continue to do so in our new facility. I hope to become a level 6 gymnast and go very far to become an Olympian, and Titans is the gym I know can get me there. I also want to receive a scholarship from Michigan University and compete gymnastics for them. Coach Tony and Coach Lora are the best coaches I have ever had, I am so thankful and grateful for the new facility they have created for us. It's the most amazing gym I have been to! I would not like to go anywhere else, please consider allowing us to stay in our new location. My heart will be broken if Titans must close, and I will fear for my hopes and dreams as well.





me!

Coach Lora and Coach Tony always support



Because of COVID we have not be able to compete since 2019,
much!!!

and I miss it so

Please let Titans Sports Academy have their Conditional Use Permit, so that my teammates and I can achieve our dreams and goals! Thank you for your time.

Sincerely,

Isabel Massman

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From: [Allie Murray](#)
To: eneral@morganhill.ca.gov; [CC Public Comment](#); [Jennifer Carman](#)
Subject: Titans Gymnastics
Date: Tuesday, February 16, 2021 5:32:58 PM

Titans gymnastics has been my home since I was 3. Without Titans I would not be the person I am today. The coaches have helped teach me how to be a good person and stay healthy and active, especially at home during this pandemic. I have met teammates that have become my best friends for life. I am also doing gymnastics skills that I would have never thought that I would have been able to do. This pandemic it has been tough but the coaches have helped keep me positive through zoom calls and by giving me work outs to do at home, which gave me something to do. When we were in person I would typically have practice 3-4 days a week for 3-4 hours each. I spent a lot of time at that gym and I have never had a negative experience there. The coaches are some of the kindest adults I know and they shaped into being a good person, with healthy habits. All in all, Titans is a very good place with a great environment for young kids, such as myself, and everyone else. If you close their doors forever, not only will you put several adults out of a job but you will cause kids to have to stop doing what they love, and you are forcing them to become lazy and do nothing.

Sincerely,
Allie Murray

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From: [robert rivas](#)
To: [CC Public Comment](#)
Subject: PLEASE Keep Titans open
Date: Tuesday, February 16, 2021 7:11:32 PM

My daughter's name is Mikenna Joy Rivas. She and her sister Aleena Janay Rivas are the two most important people in my life, and as their father I would do anything to make them happy. When my daughter was 5 she had such a hard time in school and social gatherings. It was hard as a father to see. I tried so hard to bring her out of her shell but nothing seemed to really help. I tried to sign her up for softball and soccer but she refused to go. Then I found gymnastics. At 6 she was still at my hip and she needed me to be there every single second to watch so she felt comfortable. Little by little I can see the team spirit from the awesome coaches and gymnasts, helping to bring her more and more out of her shell. Then one day she said, "Dad, if you want to go home and wait for me I'm ok." Such a meaningless statement at any other time, time, I couldn't tell you how much that meant, knowing my daughter felt comfortable with herself and the gym to be without me. This lasted for 5 years. Doing meets, getting confident and competing, but not really getting any medals in the top 5. Then one day the gym said they could no longer offer competition and the girls had to find somewhere else to go. Mikenna was so devastated, I could see all those feelings of when she was 5, scared and unsure of herself started to come back. I was more concerned then she was, but his honestly was a huge blessing in disguise. It forced us to look elsewhere, and we found Titans Gymnastics in Morgan Hill. I live 30 miles south in Hollister and the thought of driving 4 days a week 60 miles a day 12 months a year after work, sounded horrible, but the payoff is beyond any miles I put on my car, any money I pay for gas or any food and travel that comes out of my pocket. My daughter has not only been welcomed with open arms at Titans Gym but has excelled in her gymnastics, winning multiple first, second, third, and first all around medals as well as being part of the first level 4 team at Titans to win first at each and every meet. She has excelled at school as well. currently on honor roll and actually enjoying what she's learning. my daughter is a product of what a strong support system can do for a child. Titans has been what we have been looking for after she lost her first gym. A competitive gym that any city would be proud to call their own and a loving spirit from the coaches and staff that continue to help my daughter become a strong confident young woman. I will gladly drive for many more years that 60 miles round trip, 4 days a week 12 months a year to get the kind of support and dedication that Titans Gym has to offer my daughter. PLEASE KEEP TITANS OPEN.

Sincerely,
Robert Rivas

[Sent from Yahoo Mail on Android](#)

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From: [Henry Salkever](#)
To: [CC Public Comment](#)
Subject: Public Comment for City Council Hearing for Dub/KPI
Date: Tuesday, February 16, 2021 9:00:49 PM

I am an athlete that trains at the Dub/KPI training facility. The reason I come to the Dub/KPI training facility instead of staying where I live to train is because it is the best training environment I have ever been a part of, the coaches and staffers there display a greater level of expertise than I have ever experienced within the state (I have been to many facilities), and because they are extremely well organized and well run. I drive an hour and a half twice a week just to train for a couple of hours in the facility, something that should be a testament to what type of operation they are truly running. What makes Dub/KPI so special is that when an athlete goes to train there, it is one of the few places where you can go learn from top tier coaches, but also from fellow high-level athletes, many of whom are already committed to division one baseball programs. As well as the great service that Dub/KPI provides to its trainees, it supports the local economy in the following ways; All payments for training to Dub/KPI are processed in the town of Morgan Hill, athletes who come to Morgan Hill to train frequently patronize the surrounding stores, gas stations and restaurants (My father and I order burritos from a small Mexican restaurant called Chachos in the downtown area every time we come down to train, and even though I have only been training at Dub/KPI for a little less than two months, we have stopped at the gas station across the street more times than I can count). I have also had such a good experience training at Dub/KPI that I have recommended the facility to a number of my friends, all of whom mentioned other friends of theirs who they knew would love to check out the facility. Please know that from a citizen's point of view, Dub/KPI is an integral part of the community, and it would be a shame to lose it.

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Dear City Council Member,

I am writing this letter to express my complete support for the KPI/DUB Baseball conditional use permit. As a resident of Morgan Hill for over 35 years I have experienced the growth of our small town firsthand. Despite the growth we have experienced, Morgan Hill continues to offer the close-knit community feel that was one of the main reasons I decided to stay here and raise children in the town that I grew up in. I feel very strongly in preserving that part of Morgan Hill and investing in the well-being and future of the youth that grow up here. There is no question that Erik Wagle, founder of Dub Baseball, feels the same. Having grown up here, I also grew up with Erik. We graduated together at Live Oak (GO NUTS!) Erik could have taken his knowledge and love of baseball and youth sports anywhere he wanted and would have been successful, but he didn't. He invested his time, effort, and money into the close-knit town that he grew up in because he too believes in the value of his program in our community and the positive impact it is having here. In addition to running Dub Baseball, Erik is employed as a public-school teacher for the Morgan Hill School District, again, demonstrating his strong dedication and loyalty to the city and the youth in our community.

To view KPI/DUB Baseball as simply a baseball team would be a gross understatement of what their program and facility is about and what they offer to our community. KPI/DUB offers a state-of-the-art training facility that encourages and facilitates an environment dedicated to the overall health and development of young athletes. They are not just hitting and throwing but are learning invaluable lessons about how to develop into an athlete, the importance of being a responsible student and responsible young adult.

This program focuses on nutrition, fitness, determination, goal setting, perseverance, teamwork, and countless other life skills that will continue to be assets for their overall health and well-being into adulthood and as members of our Morgan Hill community. KPI/DUB continues to showcase an extremely high college acceptance rate and scholarship opportunities by instilling the importance of not just being an athlete but being a student athlete and by helping with college recruiting. They are currently providing these invaluable services to approximately 200 athletes in our community, the future of Morgan Hill.

It is no secret that the last year has been a dark time in every way possible for student athletes. The things they had ripped away from them cannot be replaced. They continue to live every day in uncertainty not knowing when they will be able to go back to school, sports, "normal life". The information provided to them about possible return and then quickly yanked away from them affects more than developing their skill as an athlete. KPI/DUB has offered a consistent and safe place for these athletes to continue to train throughout the pandemic. It has offered them a healthy and active way to deal with the emotions that they continue to deal with during this pandemic and has gotten them away from the screen they sit in front of majority of the day. As a parent, I cannot express how thankful I am that my son was able to have the stability and structure offered in this program not only for his physical well-being, but for his mental well-being. I cannot imagine where he would be if not for the outlet this program provided during the last year. I would like to point out that KPI/DUB baseball makes it a priority to ensure every athlete has access to their program, despite their financial situation. 30% of DUB players are on financial aid which is paid for by the DUB Foundation non-profit. Without this commitment from DUB my son would not have been able participate in this program.

KPI/DUB believes that part of developing athletes into successful young adults is teaching them to give back and builds this belief into their program. Since 2012 Dub has participated in restoring Live Oak High School ball fields, restoring Community Park ball fields, donating tens of thousands of dollars in equipment to the Morgan Hill Unified School District, participating in Relay for Life, and donating to Blue Star Moms.

Losing the permit for this facility would have a fiscally negative impact on Morgan Hill. Morgan Hill currently receives tens of thousands of dollars alone from KPI/DUB sales. In addition, our city is profiting from the countless families who travel several hours away from their homes because they believe so strongly in this program. As a city we benefit fiscally from the money spent while their child is training and they patronize local restaurants, retail stores, gas stations, etc. Losing the permit for this facility with limited viable options to relocate in Morgan Hill would force KPI/DUB to move completely to another location, outside of Morgan Hill, taking the above-mentioned revenue away from Morgan Hill. There is currently no shortage of industrial space available in Morgan Hill. Allowing this permit for KPI/DUB is not taking away a business opportunity from an industrial entity.

I urge you to reconsider your denial of this permit and to give the same support, consideration, and priority that I have seen several of you give to other local businesses publicly on social media. I urge you to be a voice for our youth and for our close-knit community. I urge those of you that have relocated here to remember why you came to Morgan Hill, and to protect that. I urge those of you who's children grew up alongside Erik and I as fellow acorns to protect the same community we grew up in and to allow our children the same close-knit community to grow up in. I urge you not to take away the safe and stable environment KPI/DUB provides to our youth. Morgan Hill is their home, and it is your responsibility to protect that.

Respectfully,

Victoria Enos

From: [REDACTED]
To: [CC Public Comment](#); [General](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); [John McKay](#); [Yvonne Martinez Beltran](#); [Gino Borgioli](#)
Subject: Re: Titans Request for Conditional Use Permit (CUP)
Date: Tuesday, February 16, 2021 11:31:24 PM

Titans Conditional Use Permit

My name is Ellie Valone, I am 11 years old and I am on the JO gymnastics team at Titans Sports Academy. I am writing this letter to state reasons why Titans Sports Academy should get the conditional use permit. Here are a few that are most important to me. I have been going to Titans for several years now and it is very important to me. I have gotten so close with the coaches and have met so many friends there. The coaches there are the best, they help you grow every practice and they help you through the hard times. At Titans we also have so much fun, we do fun games and challenges that are gymnastics related. It would be a shame if Titans Sports Academy closed down and I would be so sad. In the end, I really hope Titans Sports Academy does not close down and if it does that would be really unfortunate. Thank you for reading my letter and I hope you consider keeping titans open.

Sincerely,

Ellie Valone

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From: [jorge Torres](#)
To: [Rene Spring](#); [Rich Constantine](#); [Yvonne Martinez Beltran](#); [John McKay](#); [Gino Borgioli](#); [Jennifer Carman](#); [General](#); [CC Public Comment](#)
Subject: Titans Sports Academy
Date: Tuesday, February 16, 2021 11:37:14 PM

Titans conditional permit

I'm writing this because this is why I want Titans Sports Academy to stay open. I haven't been here for long but this gym has made me better than I have ever been and the coaches are amazing. They give you amazing corrections and make you a better gymnast every day. Titans is the best gym I have ever been to. The coaches are really nice and help you through a lot of tough times. The coaches get you over your fears and make you become a better gymnast. I have always been scared of doing new thing but Titans has changed that and I'm really grateful for that. If Titans Sports Academy ever closes I would be devastated because my whole career may end. I love gymnastics so much that I can be at the gym 24/7. Gymnastics is where I get my happiness from and I have met a whole lot of amazing friends and I don't want to lose them. We all have great times playing gymnastic games with the coaches. I have always loved gymnastics so much and I really hope Titans Sports Academy doesn't close. Thank you for having the time to read my letter.

Camila Torres
Level 5

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Dub/Titans CUP Appeal - Location
Date: Wednesday, February 17, 2021 12:21:15 PM
Attachments: [image004.png](#)

From: Erik Wagle [REDACTED] >

Date: February 15, 2021 at 4:52:46 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>

Subject: Dub/Titans CUP Appeal - Location

Morgan Hill City Council Members,

I hope you all had a restful weekend. As we head towards the City Council meeting on Wednesday, there are a couple of more issues I want to bring to your attention. Today's message is regarding the location of the building, and the subsequent surrounding areas.

The area surrounding our building is a very quiet area, with very little car or foot traffic. The area has a high variance of uses mixed into the small geographic footprint that the Mast and Vineyard streets create between Church and Tennant. We have been welcomed with open arms by our new neighbors and many of the businesses have been very accommodating and helped us with the CUP process. Please see below for a list of notable points of interest within 1,500 feet of our building...

- 100' – Small office type businesses with multiple suites in a long, narrow building.
 - Each business has store-front windows and none of them are manufacturing
- 285' – Auto repair business (formerly a gymnastics center that had a CUP on the building)
 - Creates a precedent for a CUP in the immediate area
- 600' – Apartment complex and start of long residential strip down Church Street
- 630' – Post Office
- 720' – New housing development on Church & San Pedro
- 1200' – Police Station

As evidenced by the above list, this immediate area is a mixed use space with a wide variety of different types of businesses located here. This area is far from a heavy industrial area. It is a quiet, low traffic area that houses businesses from all the different zoning designations. We do have a concrete plant as a neighbor, but that they are awesome people with a very clean business. The plant is extremely quiet, is clean energy, and is not a concern in anyway. Because they are a clean energy plant, the workers do not have to wear masks and there are not pollutants emitted into the air. We recently met with the representative from the concrete plant and he stated they have absolutely no issue with our presence and the nature of our businesses, rather they are only concerned with the area not being a heavy industrial area and they may eventually be asked to leave the area because there are so many non-industry businesses in the immediate vicinity.

As can be clearly seen by this message and the staff report from the City, our use is within the general use of the different businesses in the area. In my final message to the council, I will outline a 2014 decision made by LAFCO that has a heavy bearing on our particular situation. As the meeting gets closer, please feel free to reach out to me with any questions on our business. Thank you!



Erik Wagle
President/Executive Director
[Dub Sports, KPI & Dub Foundation](#)
www.dubbaseball.com



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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: KPI baseball
Date: Wednesday, February 17, 2021 12:06:37 PM

From: Lee Alexander [REDACTED] >
Date: February 16, 2021 at 2:42:27 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: KPI baseball

Dear Ms Spring:

I am writing you today to ask for your support in keeping the Kinetic Performance Institute in its current location in Morgan Hill.

I have two sons that are being trained by KPI. KPI/DUB baseball has been a vital part of my sons development. We live in San Juan Bautista, the boys attend school in Watsonville. Year round we travel from school and home to be a part of this phenomenal organization. We also shop, eat out and use services in Morgan Hill while we are there.

KPI has brought us to Morgan Hill. I will continue to support them and Morgan Hill businesses until our boys graduate high school. Please consider their request to keep their business as is.

Thank you-
The Brothers Family
LeeAnna
[REDACTED]

Sent from my iPhone

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Kinetic Performance Institute / DUB Foundation
Date: Wednesday, February 17, 2021 12:17:31 PM

From: Carlton Pace <[REDACTED]>

Date: February 15, 2021 at 8:10:05 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>

Cc: Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay
<john.mckay@morganhill.ca.gov>, yvonne.martinez@morganhill.ca.gov, Rene Spring
<Rene.Spring@morganhill.ca.gov>

Subject: Kinetic Performance Institute / DUB Foundation

Dear City Council Members,

I would like to express my deep and sincere support for Kenetic Performance Institute (KPI). I can't express enough to you the importance of what KPI brings to the community of Morgan Hill. Our son joined the organization to play baseball and to participate in a training program when he was 12 years old. He is now 17 and a Junior in High School at San Benito High in Hollister. This organization was by far the best place in the Bay Area to help develop our son's talent to help him achieve his dream of playing college baseball and potentially professionally. We live in Hollister and we have driven to Morgan Hill 3-5 days per week for the last 5 years sacrificing time and money to be a part of this program. Our son's dream is now coming true as he is committed to play baseball on scholarship at USC in 2022. We attribute a major part of this accomplishment to the dedication that KPI has given to developing him into a Division 1 baseball player. We are truly grateful for the work they do for our family and for our son.

I would like to address the financial side of this commitment we have made to our son training at KPI. As I mentioned, we have traveled to Morgan Hill 3-5 days per week from Hollister. In doing so we spend thousands of dollars in Morgan Hill at gas stations, restaurants, sporting goods stores, coffee shops, retailers, various businesses. We have utilized the resources of the library for several years before training to get homework done. We spend time in Morgan Hill eating dinner frequently after training and shopping at Dicks, Target, Staples, Ace Hardware and many others. We would never had spent all this time and ultimately money if it weren't for being in town for KPI. As a parent who speaks with other parents I know this is very common for the out of town families to spend hours in town waiting for their son to do his practices and training. They all spend a tremendous amount of money in the community. This helps to support the people of Morgan Hill fulfill their livelihoods and keeps their business thriving. This also leads to taxes being paid in Morgan Hill which helps expansion and growth in the community. KPI is the type of business that has a domino effect for success in the community.

Additionally I think it's really important to express to you our family's philanthropic

philosophy and how KPI and the DUB Foundation aligns with that vision. I am a firm believer that education is the most important factor in lifting a person's standard of living and ability to achieve upward mobility in life. When we give a child the resources to control their own outcome in life and take control of their destiny we give them freedom and empower them to become whatever they dream for their lives. My wife and I support organizations that help further the possibility of helping young men and women to receive a college education through sports. The most important organization helping to develop athletes and prepare them for college is KPI. Their training facility has advanced all of their high school seniors in the last year to go on and play college baseball. This directly aligns with our passion for education.

I was a college baseball player that received a scholarship to play at UCSB and it changed my life forever. I'm now a Managing Director at a major global financial institution helping to positively impact the lives of families all over the country. This is the kind of future that I envision for the youth of the Morgan Hill community who can go to college on a baseball scholarship and become future leaders and men in the process.

Finally, because of the impact that KPI and the DUB Foundation has had on my family and what I have seen through our involvement, I decided to join the Foundation Board of Directors to give back to the organization. I know their service to the community makes a difference in people's lives because I have lived it and I have talked with many parents who it has helped. The mission of the Foundation is to help support the youth in the community through financial aid to allow less fortunate families financially be able to afford the incredible training services and facilities through KPI. This allows these young athletes the opportunity to develop into college athletes where they can make a better life for themselves and their families. They also provide college scholarship money to graduating seniors as well as educational incentives to all the players in the organization who achieve good grades which assists them getting into college. As an example, just last week a young athlete that I have known since he was 8 years old and is 17 now just started training with KPI. He is very talented but needs help developing and needs someone to guide his athletic future. He has a wonderful family but they don't have the resources to pay for the services of KPI. This is where the Foundation stepped in and provided a full financial aid program for this young man to be able to develop his talents and work toward his dream of playing college baseball. That's what KPI is really doing, helping kids live their dreams and give them a better life. I have watched the Foundation spend countless hours in the community of Morgan Hill as well with these boys helping to improve the community.

I am so grateful for all they do and I hope you will see the same vision that I do for the youth in our community. KPI is a vital organization in Morgan Hill.

Sincere Regards,

Carlton Pace
Managing Director
Senior Portfolio Manager
Certified Financial Planner(R)
Certified Investment Management Analyst(R)


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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Titans/Dub CUP - LAFCO Decision
Date: Wednesday, February 17, 2021 12:04:40 PM

From: Erik Wagle [REDACTED] >
Date: February 16, 2021 at 2:29:31 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Cc: Anthony McDonald <[REDACTED]>, [REDACTED], Catherine Grattan <[REDACTED]>
Subject: Titans/Dub CUP - LAFCO Decision

Morgan Hill City Council Members,

Thank you for taking the time to read all the communication we have sent over regarding our very important CUP Call for Review that we will discuss at tomorrow night's City Council meeting. We know it has been a pain staking task to sift through all the information that has been sent in, but this is a very nuanced issue and it is very important that every aspect of this case be presented properly. In our final message before tomorrow night's meeting, below is a quick examination of a LAFCO decision that correlates with some of the aspects of our CUP situation.

[2016 LAFCO Decision](#)

In the PDF linked above you will find a 2016 LAFCO ruling on a proposed indoor sports recreation facility that was to be located near the Aquatics Center. Two main points that can be taken from the ruling and apply to our situation are...

- Based on internal LAFCO factors and data provided by the City of Morgan Hill, the proposed indoor recreation center was deemed inappropriate for the land parcel near the Aquatic Center
- Based on data provided by the City of Morgan Hill, it was determined that Morgan Hill had a large amount of commercial and industrial land and buildings that could be used for indoor recreation centers
 - The city provided data stating that there was a supply of **45 year supply of vacant commercial land**
 - The city provided data stating that there was a supply of **27-67 years of vacant industrial land**, depending on absorption

rate.

- Outlined below are some excerpts from the LAFCO ruling that apply to our case
 - ***As described in Appendix X, the City has nearly 100 years of vacant land supply within its existing boundaries which would allow development of the proposed uses.***
 - ***As mentioned above, the City has large inventories of vacant commercial and industrial land where such recreational facilities and commercial development may be allowed.***
 - ***A review of the City of Morgan Hill's Zoning Ordinance indicates that commercial recreational uses such as those proposed in the SRL designation are allowed as conditional uses on all Industrial designated lands; and in a more limited manner, permitted or conditionally permitted on some Commercial designated lands.***

As evidenced in the LAFCO decision, it was determined (less than 5 years ago) that the city had a large amount of industrial buildings and land to house usage for a very long time. Our CUP request is the exact reason the CUP process is in place and why the council retains the right to make exceptions... to take an outdated building that does not fit its zoning and grant usage to a business that can fully utilize the building to its maximum potential, all while helping the local community and economy.

We look forward to discussing this more at tomorrow night's council meeting. Thank you so much for your time.

Erik Wagle
President/Executive Director
Dub Sports, KPI & Dub Foundation
www.dubbaseball.com





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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: DUB/KPI Conditional Use Permit Review 2/17/2021
Date: Wednesday, February 17, 2021 12:21:49 PM

From: Valerie Renggli [REDACTED] >
Date: February 15, 2021 at 4:01:11 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Cc: Erik Wagle <[REDACTED]>
Subject: DUB/KPI Conditional Use Permit Review 2/17/2021

Hello Mr. Spring,

My name is Valerie Renggli and my family and I have been community members in Morgan Hill for over 15 years. My son, who is now 18 and a freshman at the University of Oregon, was part of the first DUB (now KPI) baseball team when he was 10. Our family has been involved with the DUB/KPI organization and worked to see it thrive because we believe in the program, its leaders, and their vision and commitment to the children in our community. I have been a board member since DUB created its non-profit foundation in 2015 to raise money for scholarships and playing fees for families that cannot afford travel baseball.

When Erik Wagle started DUB, his vision was to focus on player development, both on the field and off. In addition, he wanted to ensure that kids who could not afford to play "travel" baseball would have an opportunity to play regardless of their economic situation. These values, and his vision, were not always popular with parents and his business advisors. Without fail, 25-35% of the kids in the DUB program received financial aid. That is unheard of in the travel ball community. Those of us with business backgrounds tried to get Erik to back off that commitment to help him improve the bottom line of his business. He emphatically refused, and thus the Foundation was born. Since its inception, the Foundation has provided resources for hundreds of young men who ordinarily wouldn't be able to play baseball at a high level. In addition, the Foundation has provided scholarships for kids to play baseball in college which the program encourages through the GPA incentive program every season.

Off the field, Erik has driven a commitment to education and community service. Every season, players are rewarded for their GPA and incented to excel in academics.

Additionally, DUB has performed numerous acts of community service throughout the years. From participating in Relay For Life, packing care packages for soldiers overseas, doing food drives, offering free baseball clinics, cleaning up and donating turf and materials to the Live Oak baseball/softball fields and the community center fields, etc... Erik has maintained his commitment to teaching young people to participate in their larger community by getting involved and being of service.

Several years ago Erik teamed up with Dan Cabuling, whose excellence and expertise is in overall physical development and conditioning. Dan added a level of knowledge and value to the organization helping athletes in all sports improve their overall physical and mental performance. These two gentlemen have focused on investing profits in

new technology for baseball/softball as well as equipment and staff to better train our local athletes.

Their vision and commitment to new technology and methods allowed them to pivot when COVID hit. Today, they are a premier baseball and sports conditioning organization in Northern CA. They have repeatedly invested in Morgan Hill, its infrastructure and community. To force them out of Morgan Hill would be a huge disservice to our local youth and our economy. Please reconsider your position and make an exception for this important youth organization.

Thank you for your time and service to Morgan Hill. Please feel free to reach out to me via telephone or email if you have questions.

Sincerely,

Valerie Renggli



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From: [Cali](#)
To: [General](#); [CC Public Comment](#); [Jennifer Carman](#); [Rene Spring](#); [Rich Constantine](#); jogn.mckay@morganhill.ca.gov; yvonne.martinezbeltran@morganhill.ca.gov; [Gino Borgioli](#)
Subject: Titans
Date: Wednesday, February 17, 2021 12:28:15 PM

Dear Mayor and City Council Members,

I wanted to send this to let you know how important Titans is to me. I have been doing gymnastics since I was little. Recently the gym I went to in Gilroy ended up closing due to COVID. If this gym closes to I most likely will have to quit gymnastics. It would be devastating to me and all the gymnast if they couldn't open again.

Thank you

Cali

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Item # 11

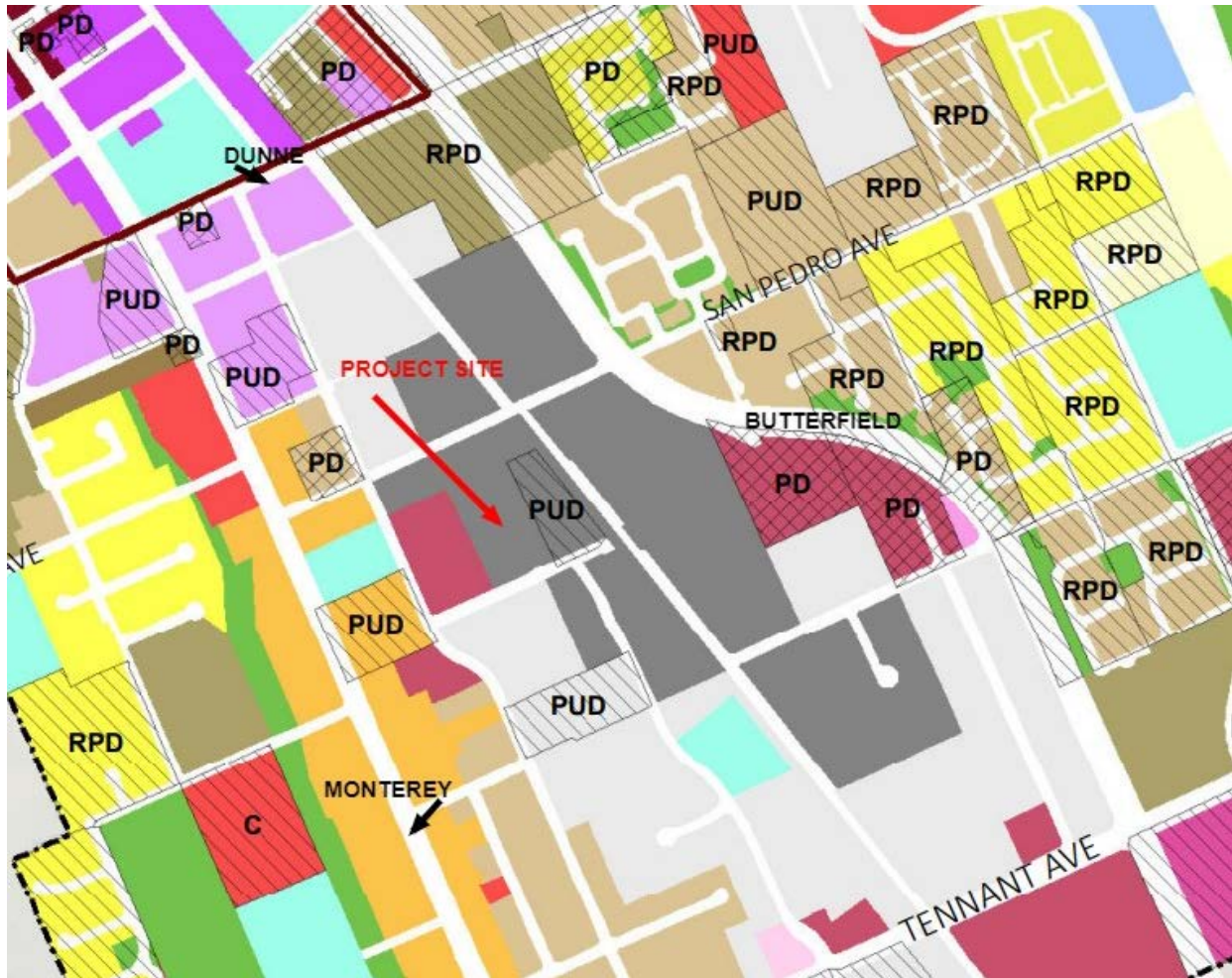
**AGENDA DATE: 02/17/2021
SUPPLEMENT # 4**

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Donald Larkin](#); [Edith Ramirez](#); [Jennifer Carman](#)
Subject: Item 11 Supplement - Zoning information regarding Titan/KPI
Date: Tuesday, February 16, 2021 7:09:03 PM
Attachments: [image.png](#)
[Industrial zones - land use regulations.pdf](#)
[image001.png](#)

Hi Michelle and Angie – please supplement the info below and the attachment. In addition, in response to the question of how long the spaces were vacant - the owner stated at the Planning Commission that the building was vacant for six months.

Attached please find the Land Use Regulations for the Industrial Zoning Districts. We've zoomed in and broken out the General Industrial zoning from the Zoning Map for easier reference below - all of the dark gray is General Industrial. The entire Zoning Map is available here: <https://www.morgan-hill.ca.gov/DocumentCenter/View/328/Zoning-Map>

The revised Zoning Ordinance was adopted on June 6, 2018.



 Service Commercial (CS)

Industrial Zoning Districts

 Commercial Industrial (CI)

 Office Industrial (IO) *

 Campus Industrial (IC) *

 Light Industrial (IL)

 General Industrial (IG)

18.26.020 - Land use regulations.

- A. Permitted Land Uses. Table 18.26-1 identifies land uses permitted in the industrial zoning districts.

Table 18.26-1 Permitted Land Uses in the Industrial Zoning Districts

Key P Permitted Use A Administrative Use Permit required C Conditional Use Permit required — Use not allowed	Zoning District					Additional Regulations
	CI	IO	IC	IL	IG	
Residential Uses						
Caretaker Quarters	—	—	—	C	C	
Public and Quasi-Public Uses						
Colleges and Trade Schools	C	C	C	C	C	
Community Assembly	C	—	—	C	C	
Instructional Services	A	—	—	—	—	
Medical Offices and Clinics	A	—	—	—	—	
Parks and Recreational Facilities	C	—	—	C	C	
Public Safety Facilities	C	—	—	C	C	
Commercial Uses						
Adult Businesses	—	—	P	P	P	<u>18.92.020</u>

Animal-Related Commercial Uses						
Animal Boarding	C	—	—	C	C	
Veterinarian Clinics and Hospitals	A	A	A	C	C	
Banks and Financial Institutions	C [4]	—	—	—	—	
Business Support Services	P	C	P	P	P	
Cinemas and Theaters	A	—	—	—	—	
Commercial Recreation, Indoor						
≤ 15,000 sq. ft.	P	C	C	C	C	
> 15,000 sq. ft.	C	C	C	C	C	
Eating and Drinking Uses						
Restaurants, Fast Food	C [4]	— [5]	— [5]	— [5]	— [5]	
Restaurants, Sit-Down	C [4]	— [5]	— [5]	— [5]	— [5]	
Tasting Rooms	P [6]	—	—	A [6]	A [6]	
Lodging Facilities						
Hotels and Motels	P	—	—	—	—	
Mini-Storage	—	—	—	C	C	<u>18.92.100</u>

Personal Service	C [4]	— [5]	— [5]	— [5]	— [5]	
Plant Nurseries	C	—	—	P	P	
Professional Offices	P	P	P	P	P	
Retail						
Building Materials	C	—	—	P	P	
Convenience Markets	C [4]	— [5]	— [5]	— [5]	— [5]	
General Retail	C [4]	— [5]	— [5]	— [5]	— [5]	
Home Improvement Centers	C	—	—	C	C	
Large Commodity Retail	C	—	—	C	C	
Vehicle-Related Uses						
Towing and Impound	—	—	—	C	P	
Vehicle Repair and Maintenance, Major	—	—	—	C	P	
Vehicle Repair and Maintenance, Minor	—	—	—	P	P [1]	
Wholesaling	P	—	—	P	P	
Industrial Uses						
Construction and Material Yards	C	C	C	P	P	18.26.030.C

Food and Beverage Production						
< 5,000 sq. ft. [7]	A [2]	A [2]	A [2]	P [2]	P [2]	
5,000 sq. ft. to 10,000 sq. ft. [7]	C [2]	C [2]	C [2]	P [2]	P [2]	
> 10,000 sq. ft.	C	C	C	P [2,8]	P [2,8]	
Manufacturing, Light	P	C [3]	C	P	P	
Manufacturing, General	—	—	—	—	C	
Research and Development	P	P	P	P	P	
Salvage and Wrecking	—	—	—	—	C	
Warehousing and Distribution						
Warehousing and Distribution, Large	C	C [3]	C [3]	C	P	
Warehousing and Distribution, Small	C	C [3]	C [3]	P	P	
Warehousing and Distribution with Outdoor Storage	C	—	—	C	C	
Heavy Distribution	—	—	—	—	—	
Parcel Sorting Facilities	—	—	—	—	—	
Parcel Hub Small < 75,000 sq. ft.	—	—	—	—	—	
Parcel Hub Large > 75,000 sq. ft.	—	—	—	—	—	

Recycling Facilities						
Reverse Vending Machine	P	C	C	P	P	
Recycling Collection Facility	C	—	—	C	C	
Recycling Processing Facility	—	—	—	—	C	
Utilities, Major	—	—	—	C	C	
Wireless Communications Facilities	See Chapter 18.96					
Agriculture and Natural Resource Uses						
Crop Cultivation	—		—			
Other Uses						
Accessory Uses	See Chapter 18.44					
Temporary Uses	See Section 18.92.150					

Notes:

[1] Retail sale of automotive products allowed only when ancillary to a vehicle repair and maintenance use. Retail display areas for automotive products may not exceed twenty-five percent of the building floor area.

[2] Must be one hundred fifty feet or more from a residential zoning district, otherwise requires a CUP.

[3] Permitted only when ancillary to another permitted use.

[4] Allowed as a primary use only when the planning commission finds that the use supports the primary job-generating uses within a business park setting.

[5] Allowed when accessory to a permitted primary use subject to the limitations in Section 18.26.020.D (Accessory Uses).

[6] Allowed only when accessory to a brewery, winery, or other alcoholic beverage production facility. Tasting rooms must be located within the building occupied by the primary use and may not exceed five thousand square feet or ten percent of the gross floor area of the building, whichever is less.

[7] On-site wholesale or retail sales required.

[8] Conditional use permit required when the type of food being produced will emit a generally offensive odor. Examples include primary processing of seafood, coffee roasting, pickled foods, or processes involving primarily fat and oils.

B. Additional Permits. In addition to permits identified in Table 18.26-1, development projects in the industrial districts may also require a design permit pursuant to Section 18.108.040 (Design Permits). Modifications to a historic resource may require a Historic Alteration pursuant to Chapter 18.60 (Historic Resources).

C. Outdoor Uses.

1. In the IO zoning district, all uses shall be conducted wholly within a completely enclosed building. Outdoor uses are prohibited.
2. In all other industrial zoning districts, outdoor uses shall be screened from public view and the area containing the outdoor use shall meet the minimum design standards applicable to off-street parking facilities as specified in Section 18.72.060 (Parking Design and Development Standards).

D. Accessory Uses.

1. In all industrial zoning districts, retail, personal service, recreation, restaurants, and other similar uses are permitted as an accessory use provided the following conditions are met:
 - a. The use is conducted within the building occupied by the primary use; and
 - b. The use is to serve only employees and guests of the primary use; and
 - c. The use is limited to no more than three thousand square feet or ten percent of the floor area of the primary use, whichever is less.
2. Tasting rooms associated with a brewery, winery, or other alcoholic beverage production facility are allowed in industrial zoning districts as specified in Table 18.26-1.

(Ord. No. 2277 N.S., § 5(Exh. A), 6-6-2018; Ord. No. 2317, N.S., § 1, 11-18-2020)

Item # 11

AGENDA DATE: 02/17/2021

SUPPLEMENT # 5

From: [William Fischer](#)
To: [CC Public Comment](#)
Subject: Kinetic Performance Institute (KPI)
Date: Wednesday, February 17, 2021 2:47:12 PM

My name is William Fischer, my two sons attend training at KPI and also play on the Dubs baseball team in Morgan Hill. We travel from San Jose four times a week to Morgan Hill. I spend a lot of time shopping at the different stores and eating at the restaurants while waiting for my boys. KPI and Dubs baseball are very important for my sons as well as other youths that play baseball and softball. Please help keep KPI and Dubs sport in Morgan Hill it is a very important part of Morgan Hill area. Thanks you.

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February 15, 2021

To Morgan Hill City Council,

We are writing this letter in support of granting Titans Sports Academy a conditional use permit. I have a 7-year old daughter who participates in their recreation gymnastics program. We also have a 14-year old sister who is on the Titans' competitive gymnastics team. We transferred to Titans Sports Academy from another gym in Morgan Hill where we were highly dissatisfied. Titans Sports Academy was like a breath of fresh air. At Titans, the coaches are incredible. They are talented, patient, passionate, and take great pride in what they do. My daughter has struggled with weight and finding a sport that could keep her motivated has been challenging. But at Titans, she has never thrived more; she would do gymnastics at Titans everyday if she could. At the previous gym, the equipment was so squished together and there were so many classes occurring at the same time that it was extremely unsafe. There were 16-year old competitive gymnasts flipping off beams, landing on 4 and 5-year olds who were practicing on the floor just a couple feet away. On top of the safety concern, my daughter wasn't getting the full gymnastics experience and was not engaged. At Titans, they ensure that their equipment is so spread out with virtually no overlap among classes. They also have several of the same apparatus to ensure all children get fair and adequate instruction during their classes. On top of that, they have small class sizes that are offered at a much more affordable price in comparison to all of the local gymnastic programs. All of these aspects speak to their mission to provide high quality, affordable, accessible, and most importantly, **safe** gymnastics to children of all ages.

Furthermore, the argument that the surrounding area and businesses are constantly traveled by large trucks and heavy machinery is just not true. We have personally been in the area and driven by several times on various days at various times and have not once encountered a large truck or dangerous situation. The entrance to the building is extremely distanced from the street. We feel it's also important to note that when Titans Sports Academy is open, they operate exclusively indoors and that children are either dropped off at the door or accompanied inside by an adult (either a parent or staff member).

We hope you take our letter into consideration when making your decision. Titans Sports Academy is a family-run, local business who gives so much to not only its members but to its community. To operate in a building such as the one on Mast Street is not just a desire or an act of desperation, it's a necessity- a necessity to keep our children safe no matter what level of gymnastics they may be in. If Titans is unable to continue operating and/or moves out of town, many families (ours included), will have no comparable gym to go that even remotely resembles Titans and what it offered to our children.

Sincerely,

Alyssa and Logan Marcouillier

From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Please Allow KPI to remain in building
Date: Wednesday, February 17, 2021 4:57:41 PM

From: Aimee Plata <[REDACTED]>
Date: February 17, 2021 at 3:47:23 PM PST
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Please Allow KPI to remain in building

Dear Council Members,

I am writing you to appeal for your decision in allowing KPI's application to move forward, despite the Planning Commission's denial.

The KPI program has had a tremendous impact on our two teenage boys and has been a stable and solid program which has carried them through this difficult time of Covid.

Before joining KPI, our family rarely spent time in Morgan Hill, as living in San Jose provided for all our necessities. However, the KPI programs have been so important to us that it is worth the drive in traffic to come to Morgan Hill five times a week.

Our time spent in Morgan Hill each day includes shopping at stores nearby while waiting for our sons and eating daily at local restaurants. We realize we are consistently spending quite a bit of money at Morgan Hill businesses (membership dues, retail, dining, and gas) rather than in our local economy, but we are happy to do so because of the benefits we receive from the programs at KPI.

Please accept KPI's application. We wish to continue to come to Morgan Hill and frequent the many Morgan Hill businesses, and we truly hope that KPI may remain in this safe and amply spaced building to serve our youth during this much needed time, both now and in the future.

Sincerely,

Aimee Plata

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Conditional Use Permit for The Titan's Sports Academy and The Kinetic Performance Institute
Date: Wednesday, February 17, 2021 4:58:32 PM

From: Daniel Cabuling <[REDACTED]>

Date: February 17, 2021 at 2:19:55 PM PST

To: Rene Spring <Rene.Spring@morganhill.ca.gov>

Subject: Conditional Use Permit for The Titan's Sports Academy and The Kinetic Performance Institute

Dear Council Member Spring,

My name is Daniel Cabuling and I am a co-founder of The Kinetic Performance Institute. I am writing to you in regards to the Conditional Use Permit for The Titan's Sports Academy and KPI. I wanted to take a moment to introduce myself and each of the coaches who are working at a very unique facility in your town.

Khailyn Neumayer, born and raised in Morgan Hill, Live Oak High School graduate, received her Kinesiology degree from UM-Crookston BS. Chase Spivey born and raised in San Jose, graduated from Coker University, BS in Exercise Science. Curtis Gomez born and raised in Watsonville, graduated from University of Pacific with a degree in Sports Management. Lauren Atlas transplant from east coast, New Jersey, BS in Physical Education and MS in Sport Psychology. Lastly, Justin Sanders, another Morgan Hill native, Live Oak High School graduate and has his Business Degree from Westmont College. Lastly, I graduated from Westmont College with a BS in Kinesiology and received my MS degree in Exercise Physiology from Carroll University.

Why does this information matter?

They are a mixture of homegrown talent and others who could be working elsewhere within our industry but have chosen to work at KPI. We believe that we have a super star staff of highly educated and motivated individuals who provide the best player development program to the bay area.

We aren't big on opinion's, we like objective data. I know you have heard from 100's of families and have probably noticed we have clients who come from all over. 150+ athletes who travel on average 30 minutes to come to Morgan Hill. Our furthest is 2 athletes who travel down 2+ times a week from Marin to train.

Why would they do that?

Our mission resonates with each of them and their families!

“Facilitate complete athletic development by providing the best value to ensure individual success.”

How do we carry out our mission?

We utilize gold standard technology to help identify and assess areas for development, use that information to design individualized performance programs, and create a feedback loop that ensures each athlete is progressing towards their goals each day. We do all this for every athlete that comes in the building and charge less than the going rate for baseball/softball player development. With your support we will be able to continue our mission of helping every athlete achieve their goals.

--

Daniel Cabuling MS, CSCS
Strength Coach



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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: REVIEW PLANNING COMMISSION'S DECISION ON CONDITIONAL USE PERMIT (UP2020-0004) MAST - TITAN SPORTS ACADEMY/KINETIC PERFORMANCE INSTITUTE
Date: Wednesday, February 17, 2021 4:59:04 PM

From: Tamara Goldie <[REDACTED]>

Date: February 16, 2021 at 7:08:14 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>

Subject: REVIEW PLANNING COMMISSION'S DECISION ON CONDITIONAL USE PERMIT (UP2020-0004) MAST - TITAN SPORTS ACADEMY/KINETIC PERFORMANCE INSTITUTE

Dear Morgan Hill City Council Members,

I know you have received many letters with regards to the planning commission's decision on allowing a conditional use permit for Titan Sports/KPI but I would like to lend my voice to this conversation as a new Dub parent.

I am writing this letter in support of allowing DUB/KPI to operate at their current facility. My 12-year-old son who has been an avid baseball player since he was 4 years old has been playing recreational baseball including MHPB for the last 6 years. In the last two years, my son wanted to play more competitive baseball but there were no options in Morgan Hill except for DUB. Therefore for the last two years, I had to drive my son back and forth between San Jose and Gilroy so he could play a higher level of baseball. Recently, however, he started practicing with DUB/KPI and is so excited and proud to be part of this exceptional organization and to have it located in our hometown. Baseball has been my son's outlet growing up and is something that he can feel proud of. It has been especially hard for him this past year being stuck at home and doing online learning away from his friends without recess or lunch or much physical activity. Baseball practices have been so beneficial to help alleviate his stress and anxiety especially this past year.

There are so many [benefits to playing baseball](#). During these trying times with the pandemic and downward economy, this is something that is so beneficial for kids and families. Why would you consider taking this away from them?

Without DUB/KPI being located in Morgan Hill, I would have to travel 20 miles or more for practices and even farther for tournaments. This puts an

undue strain on my family when we are just trying to give my son opportunities for playing sports. My son also wants to play baseball in high school and DUB allows a mechanism to support that while nurturing his skills and talents.

It would be a very disappointing decision for the city to take away this amazing opportunity for local kids in Morgan Hill. Morgan Hill is a big baseball community and they need more options outside recreational baseball for kids who want to play at higher levels. DUB/KPI fulfills this need for Morgan Hill families without having to drive 30-40 mins 3x a week. Many families already commute 5 days a week for work, it is great that we do not have to for baseball.

Please provide your support for youth travel baseball in Morgan Hill and allow DUB/KPI to stay at their current facility.

Thank you for your consideration,

Tamara Goldie
Community Member Morgan Hill
MHUSD Parent

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: CUP for KPI
Date: Wednesday, February 17, 2021 4:59:25 PM

From: Ryan Becks <[REDACTED]>

Date: February 16, 2021 at 9:04:30 PM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>, John McKay <john.mckay@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>

Subject: CUP for KPI

Dear Mayor & City Council Leaders,

It has come to our attention that our son's sports training Organization KPI was denied a Conditional Use Permit by the City of MH.

We would like to express our support of KPI and ask the City to reconsider this decision! We have lived in MH for 19 yrs raising our 3 children. We love this town and all it has to offer including local businesses that make it such a unique place to live!

KPI is a great Organization (home grown in MH) and provides an outstanding place for our 2 boys to get training for their athletic development. We LOVE it because it is so close to home and a professionally run organization. Our 2 boys have been inspired by the training, coaching, and camaraderie KPI provides. I would not take the time to send an email if it was not that important to my kids. If KPI is forced to shut down, we would have to look into going back out to SJ where we already commute back from work.

Again the experience at KPI has been overwhelmingly positive for my kids health/well being and is an ideal representation of what a home grown MH business should be!

Thank you for your attention to this matter. We hope that the City reconsiders their decision so KPI can continue helping serve our youth athletes here in Morgan Hill!

Sincerely,

Becks Family
Live Oak HS Baseball/Basketball



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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Please keep KPI in its place
Date: Wednesday, February 17, 2021 4:59:55 PM

From: Henry Plata [REDACTED] >
Date: February 17, 2021 at 3:58:14 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Please keep KPI in its place

Dear Council Member Spring,

I am writing you to appeal for your decision in allowing KPI's application to move forward, despite the Planning Commission's denial.

The KPI program has had a tremendous impact on our two teenage boys and has been a stable and solid program which has carried them through this difficult time of Covid.

Before joining KPI, our family rarely spent time in Morgan Hill, as living in San Jose provided for all our necessities. However, the KPI programs have been so important to us that it is worth the drive in traffic to come to Morgan Hill five times a week.

Our time spent in Morgan Hill each day includes shopping at stores nearby while waiting for our sons and eating daily at local restaurants. We realize we are consistently spending quite a bit of money at Morgan Hill businesses (membership dues, retail, dining, and gas) rather than in our local economy, but we are happy to do so because of the benefits we receive from the programs at KPI.

Please accept KPI's application. We wish to continue to come to Morgan Hill and frequent the many Morgan Hill businesses, and we truly hope that KPI may remain in this safe and amply spaced building to serve our youth during this much needed time, both now and in the future.

Sincerely,

Henry P. Plata

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Please Help KPI
Date: Wednesday, February 17, 2021 5:00:43 PM

From: Nate P <[REDACTED]>
Date: February 17, 2021 at 4:17:00 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: Please Help KPI

Dear Mr. Spring,

Please help KPI's application to keep them in their place.

The KPI program has helped me to get better. Also, the leadership of the program has helped me too.

Before joining KPI, I never spent time in Morgan Hill. Since then, we eat after we leave in Morgan Hill. My Mom and Dad also shop in Morgan Hill for food while they wait for me.

We want to continue to come to Morgan Hill to help us get better at baseball and for me to be around my team.

Thank you,

Nathan Plata

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From: [Dave Peterson](#)
To: [Rich Constantine](#); [CC Public Comment](#)
Cc: [Gino Borgioli](#); [Yvonne Martinez Beltran](#); [Rene Spring](#); [John McKay](#)
Subject: Titan Sports Review
Date: Wednesday, February 17, 2021 10:59:22 PM

Mayor Constantine, Council members,

If you have the opportunity to read this while the meeting is going on, that's great, and so I would ask that you make note of my letter and the fact that there is another gymnastics program in Morgan Hill that does in fact offer competitive gymnastics for most, not all, of the levels of training and competition referenced and available at Titans. California Sports Center has provided similar training longer and with similar and even more success than Titan's in Morgan Hill.

We wish Titan's well, despite our belief that the planning commission decision should be upheld. We understand it is costly and challenging to find the right space, at the right price, etc., but not impossible. Planning ahead would help. That said, the City should consider all its options with regard to zoning and perhaps I too can further expand improving opportunities for more children as well.

Again, they are not the only programming offering quality gymnastics programming in Morgan Hill, but the partnership with the baseball group is a good move.

Be well,

Dave Peterson
Director
California Sports Center

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From: [Brad Mountz](#)
To: [CC Public Comment](#)
Subject: Item 11 CUP Review
Date: Wednesday, February 17, 2021 9:00:02 PM

My name is Brad Mountz. I have lived in MH since 1970. I have two points to make.

The first, is my view on what builds community in towns like MH. Much of this view is in line with Morgan Hill Policy HC2.6 related to Healthy Kids.

What builds community are positive stories. When you have businesses that connect people's hopes and dreams you have the making of a great community story. When we send our kids to Titans, or Kinetic Performance Institute it supports a positive story for our kids, our families, our community and future generations

This includes lessons of proficiency, hard work, physical fitness, perseverance, a place where lifelong skills are developed that transcend sport and strengthen the fabric of our youth and form them into strong and capable adults.

This is the story we want for Morgan Hill. Morgan Hill should be a place where bright futures are forged. Where young dreamers become college, Olympic or professional athletes because they developed the tools to turn their dreams into reality. And we want this for Morgan Hill, the place where these amazing stories begin. And though most aspiring athletes may fall short of professional fame, they will have learned critical life skills. Skills to be a productive citizen. A have a healthy body and mind. They learn these skills at places like Titans and KPI.

That is the story that every progressive community needs. That is the story that organizations like KPI and Titans facilitate for Morgan Hill and many other programs like them that allow our young people to thrive. And our children need it more now than ever. If ever there was time to expand our view of conditional use permitting, now is that time.

My second point is that these programs require large facilities, where training can occur.

Usually these are warehouse and industrial locations that are the only suitable space for these businesses. You find these types of conditional use permits granted everywhere in America for businesses like these, including Morgan Hill. They have been granted before for these businesses in other locations. They're only so many buildings in MH that can house these types of businesses. Refuse their permit and you drive them out of Morgan Hill.

Is Morgan Hill's legacy going to be one where the politics of zoning laws outweigh the stories that unite our community and inspire our youth? I can tell from tonight the leaders of this great town recognize the importance of supporting the needs and the dreams of our youth. I just encourage you not to forget the small businesses that help fuel these dreams.

Thank you.

Brad Mountz

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Dub/KPI Morgan Hill Hearing
Date: Friday, February 19, 2021 5:15:04 PM

From: James Ducker <[REDACTED]>
Date: February 17, 2021 at 5:26:49 PM PST
To: Rene Spring <Rene.Spring@morganhill.ca.gov>
Subject: RE: Dub/KPI Morgan Hill Hearing

To Whom it May Concern:

My family has been transformed by Dub Baseball. Over 6 years ago my son joined the Dub program as an 11 yr old youth player. For the past 6 years he and I have made the trip from Pacific Grove, CA to Morgan Hill 3-4 times per week. Honestly I had never been to Morgan Hill prior to joining Dub/KPI. Now, the city is a large part of our weekly routine.

As I understand the current situation the primary driver of this hearing is promoting the economic stability of Morgan Hill. I can't speak to the opportunity cost of Dub/KPI with respect to another business but I can speak to how much I interact and invest in Morgan Hill each week because of Dub/KPI. The pragmatic aspect of baseball training is that parents have 2 hours to "kill" while their daughter/son is with Dub/KPI coaches. As a result, I along with numerous other families use this time for commerce in Morgan Hill for shopping and errands. Dub/KPI is a magnet for this type of business with their families. **My "local" shopping has been transformed many days of the week from Pacific Grove to Morgan Hill. From groceries, to coffee, to car washes, to gifts -- all of these items I now purchase in Morgan Hill.**

Finally, I can't stress enough what a positive influence Dub/KPI has had on my sons and my family. Erik and his team are not only teachers of baseball but also teachers of life. Their effort is investing in the future of Morgan Hill via its youth. I can't think of a better return on investment than investing in our youth to ensure a positive outlook for Morgan Hill.

Best regards,
Keith Ducker
Pacific Grove, CA
[REDACTED]

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Agenda Item #: 14

Updates to Sustainable Morgan Hill Vision, Ongoing and Strategic Priorities, Council Norms, and Rules of Conduct for City Council Meetings



February 17, 2021

SUSTAINABLE MORGAN HILL



VISION

To sustain a safe, equitable, 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 and Preserving Open Space and Agricultural Land
- Maintaining Infrastructure
- Supporting our Youth, Seniors, and Entire Community
- Fostering a Positive Organizational Culture
- Preserving and Cultivating Public Trust
- Preserving our Community History
- Enhancing Equity, Diversity, and Inclusiveness
- Advancing Regional Initiatives
- Advocating for Local Control

2020-2021 Strategic Priorities

- Fiscal Sustainability
- Affordable Housing and Homelessness
- Community Outreach, Engagement, and Messaging
- Economic Development
- Transportation



These strategic priorities were established prior to the COVID-19 pandemic. In light of recent events, we recognize that all of these goals and priorities will be viewed through the lens of the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.



City Council Norms

Established January 26, 2019

Revised January 29, 2021



- ❖ Be respectful of each other
- ❖ Address issue, not person
- ❖ Be honest and real
- ❖ "Clear air" if needed; have hard discussions
- ❖ Listen to each other
- ❖ Be aware of how we represent the City as leaders in the community
- ❖ Be accurate in statements
- ❖ Be open minded; avoid concluding on your position prior to the item being heard
- ❖ **Be flexible and willing to compromise**
 - ❖ Recognize that experience comes in diverse ways
 - ❖ Be mindful of time
- ❖ **Be professional; keep decorum of meeting throughout**
 - ❖ No side conversations
 - ❖ Come prepared
 - ❖ Give enough time to discuss issues
 - ❖ Ok to ask City Council to continue an item if not ready
 - ❖ Don't be repetitive on requests and comments
 - ❖ Wait to be recognized before speaking
 - ❖ Keep the order of the meeting (questions, public comment, and then discussion)
 - ❖ Provide early notice of request for alternates to attend outside appointment meetings
 - ❖ Speak into the microphone
 - ❖ Cell phones silenced
 - ❖ Be punctual
 - ❖ Send questions in advance of meeting; let City Manager know if you plan to pull a consent item
 - ❖ Be engaged
 - ❖ Be concise

CP 97-01: Rules for the Conduct of City Council Meetings



Updates to:

- Section 4.5 – City Council Reports
- Section 4.8 – Other Reports
- Section 6.2 – Public Comment Limitations
- Section 7.1(b) – Role of Mayor/Presiding Officer

CP 97-01: Rules for the Conduct of City Council Meetings (Cont'd)



Updates to:

- Section 4.5 – City Council Reports
- Section 4.8 – Other Reports

4.5 City Council Reports: On an alternating basis, at each Regular City Council meeting, with a time limit of three minutes, a Council Member has the opportunity to share with the Council and community any pertinent updates or information in regard to their appointments to outside agencies, upcoming events, or relevant City business. These are non-action items.

4.8 Other Reports: These are pertinent updates or information on upcoming activities or events relevant to City business with a time limit of one minute. These are non-action items.

CP 97-01: Rules for the Conduct of City Council Meetings

(Cont'd)



Updates to:

- Section 6.2 – Public Comment Limitations

The Mayor or Presiding Officer may allow speakers who wish to speak under public comment for items not on the agenda to concede a portion of their time, specifically, one speaker may concede a portion of their time to one other speaker. For all other business items, the Mayor or Presiding Officer may allow speakers more time and/or allow speakers to concede a portion of their time to a designated speaker of a group, specifically up to two speakers may concede their time to one speaker, unless a majority of the City Council objects. Speakers that wish to designate a group speaker shall notify the City Clerk before discussion on the item begins. Additionally, any speaker that concedes their time must be present at that City Council meeting. Speaker who would like to share documents or presentations may do so by submitting said document to the City Clerk by noon on the day of the City Council Meeting. Speaker may not share videos or presentations with videos embedded within them.

CP 97-01: Rules for the Conduct of City Council Meetings

(Cont'd)



Updates to:

- Section 7.1(b) – Role of Mayor/Presiding Officer

2. When one member of the Council has the floor and is speaking, other Council Members shall not interrupt or otherwise disturb the speaker.

2.3. During both questions and discussion, when one Council Member has the floor, they are limited to 5 minutes. After each Council Member that wishes to speak has done so, a Council Member may speak again for up to 5 minutes.

3.4. With the concurrence of the Mayor, a Council Member holding the floor may address a question to another Council Member. The Council Member being questioned may or may not respond while the floor is still held by the Council Member asking the question. The reply shall be limited to the question asked.

Questions?



From: [D. Muirhead](#)
To: [CC Public Comment](#)
Subject: comment City Council February 17 Item #14: Conduct of City Council Meetings
Date: Monday, February 15, 2021 11:18:15 AM

A comment for City Council Meeting February 17, 2021
Agenda Item #14: Conduct of City Council Meetings

Dear Morgan Hill City Council and Staff,

The Rules may be amended to include

- Council Reports on rotating basis with limit of three minutes
- Other Reports with limit of one minute

The Rules do not indicate whether Council meetings are only for business purposes of Council and Administration, or whether there is a co-equal goal to inform and engage the community. Without the explicit co-equal goal, and based on past experience, the opportunity to provide a Report will be underutilized.

I see two practices from other agencies, one that might encourage use of Reports, and one that might be a useful substitute.

1) The City of Gilroy includes in each Council agenda the outside assignments of each Council member. You could do this. You could also include the dates for those meetings occurring in the period between the current and next Council meeting to motivate a Report.

2) The LAFCO Executive Officer includes at each meeting a section called Executive Officer's Report, which describes activities of staff. An entry in the February 3, 2021 packet was a meeting with City of Morgan Hill, which I include here as an example for this item but also so that our Community may know of this interaction

11.3 MEETING WITH CITY OF MORGAN HILL ON URBAN SERVICE AREA AMENDMENTS

At the request of the City of Morgan Hill staff, EO Palacherla and Legal Counsel Subramanian met with the Assistant City Manager, City Attorney, Development Services Director, and Principal Planner on December 16, 2020 to discuss issues relating to the Annexation EIR and Urban Service Area (USA) amendments.

City staff and LAFCO staff discussed the following:

- City staff informed LAFCO staff that the City does not anticipate any USA amendments in the next two years and therefore does not see the need to prepare an annexation EIR at this time. LAFCO staff agreed. The City and LAFCO entered into a Settlement Agreement on February 1, 2017. Per the agreement, the City's environmental review for an USA amendment and/or annexation shall not rely on or tier from the City's General Plan EIR, and the City shall prepare an Annexation EIR which shall include specific analysis of environmental impacts.
- In order to eliminate potential conflicts and confusion at the City, City staff requested clarification and LAFCO staff clarified that the City does not need LAFCO approval to approve development and provide services to areas already located within the Morgan Hill city limits, even if they are located outside the City's USA, as the City has full jurisdiction once lands are within its city limits. The City agreed.
- City staff confirmed that funding is a concern in terms of the City's ability to serve the unincorporated Holiday Lake Estate area. City staff stated that

the City is open to discussing the potential future annexation of that area, if funding sources become available. LAFCO staff agreed.

Thank you for your consideration, Doug Muirhead, Morgan Hill

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Questions on agenda
Date: Wednesday, February 17, 2021 12:03:27 PM

From: Christina Turner <Christina.Turner@morganhill.ca.gov>
Sent: Tuesday, February 16, 2021 6:45 PM
To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Angie Gonzalez <Angie.Gonzalez@MorganHill.ca.gov>
Cc: Donald Larkin <Donald.Larkin@morganhill.ca.gov>
Subject: RE: Questions on agenda

Hi Michelle and Angie –please supplement under my CM report for tomorrow’s meeting. Thank you!

Last Mile Workshop:

Packet Page 17: What is the point of this analysis, this is the way e-commerce works today and in the past. Unless the taxing law changes so the end address’s city gets the tax, there’s simply no benefit.

Response: *The benefit is the employees of the use - including drivers for any use - will utilize MH services and businesses for their daily needs.*

Packet Page 18: Regulate in what way, can you give examples?

Response: *The City can regulate operational times, routes, parking spaces, where vehicles fuel up, etc.*

Packet Page 18: Please explain further relative to traffic?

Response: *The City knows the vehicles are coming into MH for deliveries on a regular basis. As individuals, we see dozens of delivery vehicles circulating in the community each day - these vehicles typically come from the north. If this use was allowed, the City could put limits on uses so that vehicles that start in MH, stay in MH. This would eliminate extra 101 traffic because those vehicles would originate in and stay within the community.*

Packet Page 27: Is there a component in this distribution that brings in revenue for the products sold?

Response: *Warehouse distribution could have a sales tax opportunity like a Young’s market where one business is distributing and selling to another business.*

Typically, last mile distribution serves the consumer directly. In this case, there is no business-to-business sales tax revenue opportunity. The taxable transaction happens at the moment the order was made. Currently, the sales tax goes to a county pool and then gets redistributed to the cities in that pool. Legislation discussions are underway to change the business model for these types of uses. So, this could change in the future.

Emergency Operations Plan

Packet Page 43: Utilization of VIP (Volunteers in Policing) Program during Telecom outage

Response: *VIPs were not required for the February 3rd internet outage event due to the initial short time Charter/Spectrum provided for restoration for services. Further, the VIP program onboarding/training has been suspended during the pandemic to limit any exposure to our police officers and our community.*

Titans/KPI:

Packet Page 209: How will the use be detrimental to public health, safety and welfare?

Response: *If approved, this use will place a large number of sensitive receptors (children) into an area zoned for heavy industrial uses. They will be next door to a concrete plant and due to zoning could be next to other intensive industrial uses. Should any accidents happen, it could prove detrimental to the populations using the facility.*

**PENINSULA DIVISION
MEMBER CITIES**

ATHERTON
BELMONT
BRISBANE
BURLINGAME
CAMPBELL
COLMA
CUPERTINO
DALY CITY
EAST PALO ALTO
FOSTER CITY
GILROY
HALF MOON BAY
HILLSBOROUGH
LOS ALTOS
LOS ALTOS HILLS
LOS GATOS
MENLO PARK
MILLBRAE
MILPITAS
MONTE SERENO
MORGAN HILL
MOUNTAIN VIEW
PACIFICA
PALO ALTO
PORTOLA VALLEY
REDWOOD CITY
SAN BRUNO
SAN CARLOS
SAN FRANCISCO
SAN JOSE
SAN MATEO
SANTA CLARA
SARATOGA
SOUTH SAN FRANCISCO
SUNNYVALE
WOODSIDE

DIVISION OFFICERS

PRESIDENT
EMILY BEACH
COUNCILMEMBER
BURLINGAME

VICE PRESIDENT
NEYESA FLIGOR
MAYOR, LOS ALTOS

TREASURER
CHAPPIE JONES
VICE MAYOR, SAN JOSE

SECRETARY
JULIA MATES
VICE MAYOR, BELMONT

SAN MATEO COUNTY REP.
ALICIA AGUIRRE
COUNCILMEMBER
REDWOOD CITY

**SANTA CLARA LEGISLATIVE
ACTION COMMITTEE**
JOHN MCKAY
MAYOR PRO TEM
MORGAN HILL

**SAN MATEO LEGISLATIVE
ACTION COMMITTEE**
MARK NAGALES
VICE MAYOR
SOUTH SAN FRANCISCO

PAST PRESIDENT
MARICO SAYOC
MAYOR, LOS GATOS

STAFF LIAISON
SETH MILLER
REGIONAL MANAGER

Peninsula Division
Santa Clara County
San Mateo County
San Francisco County



February 2, 2021

Dear President Viegas-Walker and The Cal Cities Board of Directors:

Our Cal Cities Peninsula Division thanks and applauds your leadership and renewed commitment to Diversity, Equity, and Inclusion. We appreciate the Board's June 2020 statement: "we stand firmly opposed to any expression of discrimination or racism towards any person and we commit to rooting out systemic racial bias wherever, and whenever, it exists." This is a bold declaration of values, and our Division stands shoulder-to-shoulder with you.

Following the Board's adoption of Cal Cities 2021 Strategic Advocacy Priorities, the Peninsula Division finalized our strategic plans for the year ahead. In addition to supporting COVID-19 recovery, housing, disaster preparedness, and infrastructure modernization, we also adopted an overarching theme for 2021: the advancement of equity and social justice. Through this lens, we will create our Division's programs and events, debate opinions on bills, advocate with legislators, recruit new members to our Executive Committee, and appoint our Division's policy committee representatives.

Congratulations also on launching the Cal Cities Advancing Equity Committee. We think this is a great step and we are eager to learn more about the tools, resources, and best practices the Committee will develop in support of local leaders. We also hope the Committee will explore ways Cal Cities can improve its own internal diversity, equity, and inclusion efforts.

In this spirit, we challenge the Cal Cities Board of Directors to lead from the front and explore ways to diversify Board membership to reflect the diversity of our state. We know there are many ways to define diversity on the Board — like race, gender, ethnicity, geography, population, age, and socioeconomics. We hope all diversity markers and ideas will be considered, including possible structural and/or procedural amendments to the Board's by-laws in support of this goal. We suggest using Cal Cities' Diversity Caucuses as thinking partners during this process.

Once again, we appreciate the creation of the Cal Cities Advancing Equity Committee and wish everyone success. On behalf of our Peninsula Division Executive Committee, thank you for your visionary leadership, service, and dedication to Cal Cities' mission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Emily Beach".

Emily Beach
President, Cal Cities Peninsula Division
Councilmember and former Mayor, City of Burlingame
ebeach@burlingame.org
415-377-8125 (mobile)

CAL CITIES PENINSULA DIVISION EXECUTIVE COMMITTEE

Emily Beach, President
Councilmember, Burlingame



Neysa Fligor, Vice President
Mayor, Los Altos



Chappie Jones, Treasurer
Vice Mayor, San Jose



Julia Mates, Secretary
Vice Mayor, Belmont



Alicia Aguirre, San Mateo County Representative
Councilmember and Former Mayor, Redwood City



John McKay, Santa Clara County Legislative Action
Mayor Pro Tem, Morgan Hill



Mark Nagales, San Mateo County Legislative Action
Vice Mayor, South San Francisco



Marico Sayoc, Past President
Mayor, Los Gatos



Special - Regular Meeting Agenda

City Council

Rich Constantine - Mayor
John McKay - Mayor Pro Tem
Gino Borgioli - Council Member
Yvonne Martinez Beltran - Council Member
Rene Spring - Council Member

Wednesday, February 17, 2021 5:00 p.m.

Virtual Meeting

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. Physical meetings will not be in the City Council Chamber until further notice.

City Council meetings will be live streamed on Channel 17, on the City's website and on the City's Facebook page. Those members of the community that would like to participate in the meetings remotely may do so by joining the virtual meeting at: <https://bit.ly/MHCityCouncilMeeting> or by calling in to: (669) 900-9128, then enter the webinar id: 873 3200 8380#.

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
- Join the virtual meeting by calling in to the number above, dial *9 to raise your hand and be called upon to speak for up to 3 minutes
- Send public comments in writing to the City Clerk at ccpubliccomment@morganhill.ca.gov <<mailto:ccpubliccomment@morganhill.ca.gov>>

* Please note that comments made on Facebook are not considered public comment.

SPECIAL/REGULAR MEETING

A special meeting of the City Council is called at 5:00 pm for the purpose of conducting a workshop.

5:00 pm Workshop

7:00 pm Regular Meeting

SPECIAL MEETING

5:00 pm Workshop

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
City Clerk Michelle Bigelow

WORKSHOP

1. LAST MILE (LOCAL) DELIVERY/DISTRIBUTION

Recommendation:

Examine what “last mile (local) delivery” is and how it could serve or impact our community, discuss what the City has done to date to regulate distribution, and explore regulations for last mile (local) delivery uses.

REGULAR MEETING

7:00 pm

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.

PRESENTATIONS

YAC PRESENTATION- ASSET # 26- CARING

RECOGNITIONS

Recognizing Communications and Engagement Director Maureen Tobin for her Hard Work, Dedication, and Many Years of Service to Morgan Hill

Morgan Hill Community Foundation Donation for Inclusive Playground
Nick Gaich, Matt Wendt, Peggy Martin, and Pamela Meador

PROCLAMATIONS

Proclaiming the month of February 2021 as Black History Month.

CITY COUNCIL REPORTS

Mayor Constantine

February 17, 2021

CITY MANAGER'S REPORT

City Manager Christina Turner

MORGAN HILL EMERGENCY OPERATIONS PLAN UPDATE

RESPONSES TO 2/3/21 AGENDA QUESTIONS

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

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 DONATION FROM THE MORGAN HILL COMMUNITY FOUNDATION FOR THE MORGAN HILL MAGICAL BRIDGE INCLUSIVE PLAYGROUND

Recommendation:

1. Accept donation of \$72,660 from the Morgan Hill Community Foundation for the construction of the Morgan Hill Magical Bridge Inclusive Playground at Community Park; and
2. Authorize the City Manager to execute and administer any agreements necessary to accept the funds.

3. ADOPT RESOLUTION FINDING AN UNREASONABLE HARDSHIP WILL OCCUR UNLESS ATTORNEYS' FEE AWARD IS PAID IN INSTALLMENTS

Recommendation:

Adopt the proposed resolution declaring that an unreasonable hardship will occur unless City's share of the judgment awarded to the Hotel Coalition on November 13, 2020 is paid in installments.

4. ADOPT RESOLUTION TEMPORARILY TOLLING PLANNING, SUBDIVISION, AND BUILDING PERMIT APPROVALS

Recommendation:

Adopt resolution tolling Planning, Subdivision, and Building Permit approvals due to COVID-19 emergency.

5. APPROVE FUNDING AGREEMENT WITH THE VTA FOR THE MADRONE CHANNEL TRAIL PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for improvements to the Madrone Channel Trail.

6. APPROVE AGREEMENT WITH MARK THOMAS AND COMPANY FOR CONSTRUCTION SUPPORT SERVICES FOR THE HALE AVENUE EXTENSION PROJECT

Recommendation:

Approve and authorize the City Manager to execute and administer a Service Agreement for Design Professionals with Mark Thomas & Company for construction support services for the Hale Avenue Extension Project for \$143,295.

7. APPROVE FIFTH AMENDMENT TO THE LEASE AGREEMENT WITH THE MORGAN HILL UNIFIED SCHOOL DISTRICT FOR USE OF SPACE AT THE CORPORATION YARD

Recommendation:

Approve and authorize the City Manager to enter into a Fifth Amendment to the lease agreement with the Morgan Hill Unified School District.

8. APPROVE THE JANUARY 20, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

9. APPROVE THE JANUARY 29 AND 30, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

10. APPROVE THE FEBRUARY 9, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

PUBLIC HEARING

11. REVIEW PLANNING COMMISSION'S DECISION ON CONDITIONAL USE PERMIT (UP2020-0004) MAST - TITAN SPORTS ACADEMY/KINETIC PERFORMANCE INSTITUTE TO ALLOW INDOOR COMMERCIAL RECREATION FOR PROPERTY IDENTIFIED BY ASSESSOR PARCEL NUMBER 817-02-063 LOCATED AT 195 MAST STREET.

Recommendation:

1. Open/close public hearing; and
2. Adopt resolution:
 - a. reaffirming the decision of the Planning Commission to deny the Conditional Use Permit.
OR
 - b. making the necessary findings to support a Conditional Use Permit.
3. Direct staff to return to the City Council with Zoning Code changes removing conditional use conflicts with industrial preservation.

Estimated Time: 75 Minutes

OTHER BUSINESS

12. CONSIDER CITY COUNCIL INITIATED AGENDA ITEM REQUESTING CITY COUNCIL ADOPT A RESOLUTION CONDEMNING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL IN WASHINGTON D.C.

Recommendation:

Consider whether to direct staff to prepare a resolution condemning the January 6, 2021 riots at the United States Capitol in Washington D.C.

Estimated Time: 15 Minutes

13. CONSIDER CITY COUNCIL INITIATED AGENDA ITEM REQUESTING CITY COUNCIL ADOPT A RESOLUTION EXPRESSING SUPPORT FOR ACTIONS TO STRENGTHEN LOCAL DEMOCRACY, AUTHORITY, AND CONTROL

Recommendation:

Consider whether to direct staff to prepare a resolution expressing support for actions to strengthen local democracy, authority, and control.

Estimated Time: 15 Minutes

14. APPROVE UPDATES TO SUSTAINABLE MORGAN HILL VISION, ONGOING AND STRATEGIC PRIORITIES, CITY COUNCIL NORMS, AND COUNCIL POLICY REGARDING RULES FOR CONDUCT OF CITY COUNCIL MEETINGS

Recommendation:

Adopt updates to:

1. Sustainable Morgan Hill vision, ongoing priorities, and 2020 – 2021 strategic priorities;
2. City Council Norms; and
3. City Council Policy (CP 97-01) – Rules for Conduct of City Council Meetings.

Estimated Time: 20 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 and Preserving Open Space and Agricultural Land
- Maintaining Infrastructure
- 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

2020-2021 Strategic Priorities

- **Fiscal Sustainability**
- Affordable Housing and Homelessness
- Community Engagement and Messaging
- Economic Development
- Transportation



These strategic priorities were established prior to the COVID-19 pandemic. In light of recent events, we recognize that all of these goals and priorities will be viewed through the lens of the global pandemic, and we will continue to have equity, public health, and financial responsibility in mind.

In Paket**Letters of support**

Steve Chappell
gary green
Angela Kester
Kevin Hawkins
Mark Mitchell
Christopher Raines
Henry Salkever
Christopher Barrett
Julie King
Jacqui Kitson
Bodavann and Don Cotriss
Henry Salkever
Nick Muccilli
Ted Turkington
Lisa Piazza-DeLap
LtCol David Forbell
Dr. Horst Groesser and Diana Groesser Duval
Mark Matthews
Macy Crane
Erik Wagle
Signe Johnson
Nancy Valone
Todd Milholland
Linda Vrabel
Ron and Sarah Paiva
Erik Wagle
Jennifer Uyeda-Allen
Titan Sports Academy
Elizabeth Bettencourt
Stephanie Barton
Dana Shubert
Kadence Dilaura
Mark Waxman
Erik Wagle
Gloria and Kevin Murray
Garrett Perez
Brandon Fitzpatrick
Erik Murawsky
Tiffany Sirwet
Emma Campbell
Nora Monaco
Diana Gutierrez
Rebecca Rubel-Seider
Adia Seider
Ellen Ruskin

Letter
#2

Letter

#3

Letter

Supplement**In support**

Melissa & Savannah Rosenberry
Lora Perez
Matt Monaco
Angela Campbell
Jason Lara
Madison Lara
Sandra Z. Vallejo
Tammy Massman
Mia Flores
Ethan Ruskin
Ava Valone
Adria Reiner
Olivia Benamou
Jenifer and Tim Alvernaz
Nicole Stasiowski
Ella and Brooke Alvernaz
Kris Massman
Angela Bellino
Heather Randol
Andria Leaf
Avyana Groesser
Suzette Li
Paul Pascoal
Hailey Pascoal
Gloria and Anthony Pinon
Marla Perrier
Melanie Reynisson
Julia Reynisson
Krista Cantu
Ronan Benamou
John V. Salamida
Hilary Wolfe
Ruben Gonzalez
Piper (Wolfe)
Annie Zanger
Gene Zanger
Jason & Sandra DiLaura
Joseph, Michelle, & Jada Mendoza
Gaby Jacquez
George McDonald
Jennifer Karp

Sherri Dodd

In Opposition

Larry Breniman

David Peterson

nts1 and 2
in Opposition
Michael Walsh- Letter

Supplement 3

Isabel Massman
Allie Murray
Robert Rivas
Henry Salkever
Victoria Enos
Ellie Valone
Camila Torres
Erik Wagel #4
Lee Alexander
Carlton Pace
Erik Wagel #5
Valerie Renggli
Cali

46
5
41
13
105

Supplement 5

William Fischer

Alyssa and Logan Marcouillier

Aimee Plata

Daniel Cabuling

Tamara Goldie

Ryan Becks

Henry Plata

Nathan Plata



February

Developmental Asset #26

Caring

Young person places high value on helping other people.



February

Complementary Asset #9

Service to Others

Young person serves in the community one or more hours per week.

Kalena Santilanes, Active Member



How has being caring impacted me? What does it mean to me?



→ My story...

- ◆ Being kind and complimenting others
- ◆ Having empathy
- ◆ Being there for others
- ◆ How I feel about myself and others



Paras Gandhi, Active Member

How has being caring impacted me? What does it mean to me?



→ My story...

- ◆ Serving the community
- ◆ Helping others in need
- ◆ Looking out for each other
- ◆ Making everyone feel comfortable

No One Left Behind



Hassti Tirgardoona, YAC President



How has being caring impacted me? What does it mean to me?



→ My story...

- ◆ Morgan Hill cares
- ◆ Community service
- ◆ 30 seconds could mean a lifetime



Gifts

Acts of Service

Words of Affirmation

Quality Time

Physical Touch



Tips for Community Members



- ❖ Compliment others
- ❖ Make others smile
- ❖ Write notes to others
- ❖ Reconnect with friends/family

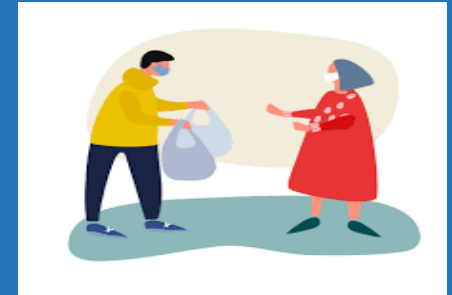




Questions to Council:



- What acts of kindness do you implement in your daily lives?
- What is a current citywide issue that you care deeply about?
(environment, healthcare, etc)





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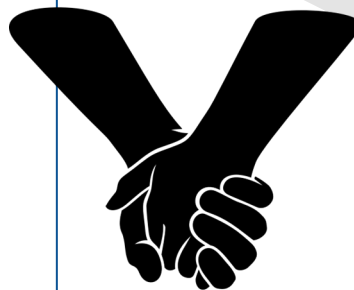
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