



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, March 17, 2021 7:00 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>](mailto:ccpubliccomment@morganhill.ca.gov)

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

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow

PRESENTATIONS

YAC presentation- Asset # 3- Other Adult Relationships

PROCLAMATIONS

Proclaiming March 31, 2021 as Cesar Chavez Day

Proclaiming the month of March 2021 as American Red Cross Month

Proclaiming the month of March 2021 as Women's History Month

CITY COUNCIL REPORTS

Council Member Borgioli

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPOINT EMERGENCY STANDBY COUNCIL

Recommendation:

Appoint the updated Emergency Standby Council membership.

2. APPROVE INSTALLATION OF COMMEMORATIVE PLAQUE AT THE CIVIC CENTER

Recommendation:

1. Approve the installation of a commemorative plaque honoring Japanese American World War II veterans;
2. Authorize the City Manager or designee to determine final location within the Civic Center; and
3. Authorize the City Manager to accept donation of the plaque.

3. APPROVE THE FINAL MAP AND SUBDIVISION IMPROVEMENTS AGREEMENT FOR JASPER - TRACT NO. 10545

Recommendation:

1. Approve the Final Map;
2. Approve and authorize the City Manager to execute and administer the Subdivision Improvements Agreement with City Ventures Homebuilding, LLC; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

4. ADOPT RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING ACCEPTING PROPOSITION 56 TOBACCO GRANT FROM STATE OF CALIFORNIA DEPARTMENT OF JUSTICE

Recommendation:

Adopt resolution authorizing the City Manager to execute and administer the Memorandum of Understanding (MOU) with the California Department of Justice to accept grant funds for the Proposition 56 Tobacco Grant for a total amount of \$431,728 over two fiscal years.

5. APPROVE THE FEBRUARY 24, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE MARCH 3, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

7. AUTHORIZE THE CITY MANAGER TO EXECUTE AND ADMINISTER A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT IN THE AMOUNT OF \$350,121 AND AWARD OF BRITTON MIDDLE SCHOOL PEDESTRIAN ENHANCEMENT PROJECT IN THE AMOUNT OF \$748,729 TO REDGWICK CONSTRUCTION CO

Recommendation:

1. Authorize the City Manager to execute and administer a Community Development Block Grant agreement in the amount of \$350,121 for the Britton Middle School Pedestrian Enhancement Project;
2. Approve Britton Middle School Pedestrian Enhancement Project plans and specifications;
3. Award contract to Redgwick Construction Co. for the Britton Middle School Pedestrian Enhancement Project in the amount of \$748,729;
4. Authorize expenditure of construction contingency funds not to exceed \$112,310; and
5. Authorize the City Manager to execute and administer the construction contract with Redgwick Construction Co.

8. EXTEND TERMS OF FOUR (4) MEMBERS ON THE LIBRARY, CULTURE & ARTS COMMISSION

Recommendation:

Extend the terms of four commissioners to April 21, 2021.

9. RATIFY CITY POSITION ON PENDING LEGISLATION SENATE BILL 9 - REQUIRING A LOCAL GOVERNMENT TO MINISTERIALLY APPROVE A HOUSING DEVELOPMENT CONTAINING TWO RESIDENTIAL UNITS IN SINGLE-FAMILY RESIDENTIAL ZONES.

Recommendation:

Ratify City's position on pending State Legislation Senate Bill 9.

10. RATIFY CITY POSITION ON PENDING LEGISLATION SENATE BILL 278 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM. DISALLOWED COMPENSATION. BENEFIT ADJUSTMENTS

Recommendation:

Ratify City's position on pending State Legislation Senate Bill 278 - Public Employees' Retirement System. Disallowed compensation. Benefit adjustments.

PUBLIC HEARING

11. ADOPT A RESOLUTION ESTABLISHING FEES FOR AMBULANCE AND EMERGENCY MEDICAL SERVICES

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing fees for ambulance and emergency medical services.

Estimated Time: 15 Minutes

OTHER BUSINESS

12. ADOPT RESOLUTION CONDEMNING ALL FORMS OF HATE AND VIOLENCE INCLUDING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL BUILDING IN WASHINGTON D.C

Recommendation:

Adopt resolution condemning all forms of hate and violence including the January 6, 2021 riots at the United States Capitol Building in Washington D.C.

Estimated Time: 30 Minutes

13. PROVIDE INPUT ON POLICY OPTIONS RELATING TO TREE PROTECTION

Recommendation:

Provide guidance to staff on the type and scope of policy changes the City Council is interested in considering relating to the protection of trees in the community.

Estimated Time: 30 Minutes

14. CONSIDER COUNCIL INITIATED AGENDA ITEM FOR POTENTIAL HAZARD PAY ORDINANCE

Recommendation:

Consider whether to direct the City Attorney to return with a Council Agenda Item with a potential ordinance regulating hazard pay for grocery workers in the City of Morgan Hill.

Estimated Time: 15 Minutes

15. CONSIDER COUNCIL INITIATED AGENDA ITEM FOR DOWNTOWN TRAFFIC CALMING REPORT

Recommendation:

Consider whether to direct staff to return with a Council Agenda Item on Downtown traffic calming, including the Monterey Road Complete Streets/Lane Reduction Program and various other alternatives.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

To sustain a safe, 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 STAFF REPORT

MEETING DATE: March 17, 2021

PREPARED BY: Jennifer Ponce, OES Coordinator
APPROVED BY: City Manager

APPOINT EMERGENCY STANDBY COUNCIL

RECOMMENDATION(S)

Appoint the updated Emergency Standby Council membership.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Community Outreach
Engagement and Messaging

REPORT NARRATIVE:

The Civil Disaster and Emergency Organization Chapter of the City of Morgan Hill's Municipal Code includes the appointment and duties of Emergency Standby Council members in the section entitled "Continuity of Government in the event of Disaster." The appointment of a Standby Council allows the City to appoint former council members who reside within the City limits. Without this appointment, the default procedure per California Code states that when council members are not available during a large-scale disaster, the authority goes to a neighboring municipality's City Council with the largest population.

A total of six past City Council members have agreed to continue to serve on the Emergency Standby Council: Steve Tate, Caitlin Jachimowicz, Marilyn Librers, Marby Lee, Greg Sellers, and Mark Grzan. In addition, Larry Carr has agreed to join the Emergency Standby Council.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the assignment of an Emergency Standby Council in order to strengthen the City of Morgan Hill's ability to act independently during a large disaster on issues relative to the community.

ALTERNATIVE ACTIONS:

One alternative action by the Council could be to decline appointment of Emergency Standby Council members. If a large-scale disaster were to occur and current City Council members were not available, the neighboring city with the largest population (San Jose) would step in to ratify any emergency proclamations and/or decisions relative to Morgan Hill.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The updated ordinance was introduced at the January 23, 2019 City Council meeting and was approved at the February 6, 2019 Council meeting. The original Emergency Standby Council was appointed at the April 17, 2019 Council meeting. At the January 15, 2020 Council meeting, the Emergency Standby Council was recognized with no changes to its membership.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact to appointing an Emergency Standby Council.

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. Chapter 2.44.094 - Continuity of Government (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

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

APPROVE INSTALLATION OF COMMEMORATIVE PLAQUE AT THE CIVIC CENTER

RECOMMENDATION(S)

1. Approve the installation of a commemorative plaque honoring Japanese American World War II veterans;
2. Authorize the City Manager or designee to determine final location within the Civic Center; and
3. Authorize the City Manager to accept donation of the plaque.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving Our Community History
Enhancing Equity
Diversity and Inclusiveness

2020-2021 Strategic Priorities

Community Outreach
Engagement and Messaging

REPORT NARRATIVE:

The City has received a request from a local resident and business owner to install a bronze plaque honoring Japanese American World War II Veterans (Attachment 1). The attachment to the staff report outlines the request and provides additional background information. The request is to allow the installation of a plaque and associated concrete monument that would be modeled after the soon to be released, "Go for Broke" postage stamp, commemorating the 442nd Regimental Combat Team, who local community member, Lawson Sakai, was a member of.

Initially, the requestor sought a location near the new round-a-bout that would be constructed as part of the Hale Avenue Extension, but now desires the location of the monument to be located at the Civic Center near the Library entrance.

The requestor is planning on doing fundraising for the installation, which would include a plaque, concrete monument, and small signage to recognize donors for the plaque/monument. City staff estimates the cost of the project at approximately \$3,000. The Morgan Hill Community Foundation has offered to serve as the fiscal entity to support the fundraising effort.

City staff are recommending the Council approve the installation and delegate authority to staff on the final location and design of the monument. City staff will work with the requestor and Library staff to find the most appropriate location within the Civic Center.

COMMUNITY ENGAGEMENT: Empower

This project has been brought forward by a community member and the City is facilitating the request.

ALTERNATIVE ACTIONS:

The City Council could deny the request or choose to provide alternative direction to City staff to work with the requestor.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The Library, Culture and Arts Commission reviewed the request at their March 2, 2021 meeting and recommended approval by the City Council. The Commission also expressed satisfaction with the proposed location. No prior Council action related to this item has occurred.

FISCAL AND RESOURCE IMPACT:

The proposed project will be funded by the fundraising efforts of the requestor.

CEQA (California Environmental Quality Act): Categorical Exemption

The minor modification to existing city facilities falls within the CEQA categorical exemption of Class 1, Existing Facilities.

LINKS/ATTACHMENTS:

1. Request Letter and Materials

City of Morgan Hill
Attn: Morgan Hill City Council
17575 Peak Avenue
Morgan Hill, CA. 95037

Members of the City Council,

Later this year, the United States Postal Service will be issuing a postage stamp entitled, "Go for Broke", honoring the Japanese American Soldiers of World War II. The motto, "Go for Broke", was that of the 442nd Regimental Combat Team. It was composed entirely of Japanese Americans. The 442nd RTC became the most highly decorated unit of its size in United States Military History. In less than two years of combat, this unit earned more than 18,000 military awards, including 9,486 Purple Hearts which were provided to those



who were killed or wounded, 4,000 Bronze Stars which were given to the many who had provided heroic service in a combat zone, and 21 Medals of Honor, awarded to those whom had distinguished themselves conspicuously by gallantry at risk of their life above and beyond the call of duty. This award is typically bestowed by the President of the United States. It is the highest military award a service member can earn.

Initially, Americans of Japanese descent, were not allowed to enter military service during the initial phases of World War II. However, as the need for soldiers increase, their value as interpreters, and their dedication to their country proved invaluable.



To those who knew him, Lawson Sakai was a humble gentleman, who represented the best in Americans. He passed away on June 16, 2020 at the age of 97. He would often share his stories serving as a soldier and a member of the 442nd Regimental Combat Team, fighting fascism in Europe during World War II. That was at a time when 120,000 of his fellow Japanese American Citizens were imprisoned in internment camps operated by the U.S. Government. These internment camps were located in the deserts of Arizona, Nevada and other inhospitable areas, often on lands taken from Native Americans. Lawson didn't hesitate to volunteer when a special unit of the U.S. Army was formed. He served in the 442nd RCT for the duration of the war. He was wounded several times. His efforts earned him a Bronze Star, Purple Heart and a Combat Infantryman Badge.



Due to issuance of this US. Postal Service Forever Stamp which symbolizes the many sacrifices that the members of the 442nd Regimental Combat Team have made, and to show our community that our city leaders realize the importance of racial harmony, I propose to the Morgan Hill City Council, the construction and placement of a bronze metal memorial plaque supported by a concrete base. Funds for this project will be raised by our supporters. These funds are to be held by the Morgan Hill Community Foundation.

THIS PROPOSAL WILL HELP STEM THE TIDE OF HATRED TOWARDS ALL ASIAN AME

It was noted after former President, Donald Trump, stated about the Covid 19 Pandemic virus "It came from China", that an alarming rise throughout California, and especially in the San Francisco Bay Area, of hate crimes directed against Asian Americans became evident. Citizens only had to listen to the news or read the newspapers.

In some bay area communities, extra law enforcement officers were assigned to patrol Asian American Communities, in others, Asian American Community members led such patrols to help insure the safety of its residents, especially its elderly.



Lawson Sakai, in 1944, served as the Grand Marshal in Morgan Hill's 4th of July Freedom Fest Parade

Rather than counter this racism with such less than effective measures, as mentioned in the news releases, having a plaque containing an image of an Asian American Soldier with the understanding of a history of selfless duty to one's country and community, would generate pride, fellowship and the understanding needed to counter the racial intolerance towards Asian Americans in our community and in today's world.

For those who wish to read a recent article published about this topic in the Morgan Hill Today newspaper, below is a link to view "Project Hopes to Honor a Japanese American Veteran of WWII."
<https://morganhilllife.com/2021/02/19/project-hopes-to-honor-japanese-american-vets-of-wwii/>

REQUIREMENTS FOR THE CONCRETE BASE USED FOR THE BRONZE 442ND MEMORIAL PLAQUE



Clear Acrylic document holder containing the names of the plaque donors. This will require the bronze plaque concrete base to have a forward slant for good visibility.



The names on the document protected by the clear acrylic document holder should be done in last name alphabetical order with the donor's first name placed ahead of the last name.

If the Morgan Hill Community Foundation donates their 5% fee, I would like this organization's name centered on top above the start of the donor's column. Maybe the "City of Morgan Hill" below the Foundation's name.

As previous mentioned or in another document, I would prefer the location of this plaque with its concrete base be placed near the entrance to our Morgan Hill Library



I would like as shown the icon for the 442nd RCT placed to the left or right of the document holder

Can this be done for the estimated budget of \$3,000



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

PREPARED BY: Maria Angeles, Senior Civil Engineer
APPROVED BY: City Manager

APPROVE THE FINAL MAP AND SUBDIVISION IMPROVEMENTS AGREEMENT FOR JASPER - TRACT NO. 10545

RECOMMENDATION(S)

1. Approve the Final Map;
2. Approve and authorize the City Manager to execute and administer the Subdivision Improvements Agreement with City Ventures Homebuilding, LLC; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Morgan Hill 2035 General Plan

REPORT NARRATIVE:

Jasper – Tract No. 10545 is a 101-unit residential condominium development (with a 2,245 square foot commercial/retail component) located on the east side of Monterey Road and Old Monterey Road intersection (Attachment No. 1). The developer, City Ventures Homebuilding, LLC, has completed all the conditions specified by the Planning Commission in the approval of the Vesting Tentative Map on March 24, 2020.

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

The Developer has furnished the City with the necessary documents to complete the processing of the Final Map (Attachment No. 2) and has provided the required fees, security, and insurance prior to recordation of the Final Map. The Final Map conforms to the requirements of the Subdivision Map Act, and all the conditions of approval have been met. Staff recommends that City Council authorize the City Manager to sign the Subdivision Improvements Agreement (Attachment No. 3) on behalf of the City.

COMMUNITY ENGAGEMENT: Inform

On March 24, 2020, the Planning Commission approved the Vesting Tentative Map and Design Review Permit. Residents within a 600 feet radius were informed of Planning Commission's intent to approve the Vesting Tentative Map and Design Review Permit

for the project, in which a public hearing was held to allow the public to be involved and voice their concerns over the project requirements.

ALTERNATIVE ACTIONS:

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

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 24, 2020, the Planning Commission approved the Vesting Tentative Map and Design Review Permit of the project per Resolution Numbers 20-03 and 20-04.

FISCAL AND RESOURCE IMPACT:

Development review costs for this project are paid for from development processing fees by the developer. Pursuant to the subdivision improvements agreement, the developer will contribute subdivision infrastructure improvements to the City at the estimated value of \$456,154.

CEQA (California Environmental Quality Act): Project

A Mitigated Negative Declaration for the project was adopted on March 24, 2020.

LINKS/ATTACHMENTS:

1. Site Map
2. Final Map
3. Subdivision Improvements Agreement



JASPER TRACT 10545
APN 726-25-006

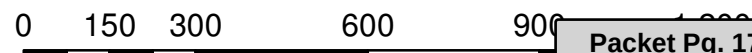
Attachment: Site Map (2950 : APPROVE THE FINAL MAP AND AGREEMENT FOR SUBDIVISION IMPROVEMENTS FOR JASPER - TRACT NO.



Engineering and Utilities Department
Land Development Engineering Division

Document Path: G:\R-14\PROJ\Agustin\GIS\Jasper.mxd

SITE MAP
JASPER TRACT 10545
APN 726-25-006



Owner's Statement

We hereby state that we are the owners of, or have some right, title, or interest in and to the real property included within the subdivision shown upon the herein map; that we are the only persons whose consents are necessary to pass a clear title to said real property; that we hereby consent to the preparation and filing of said map and subdivision as shown within the distinctive boundary line.

The real property described below is dedicated as an easement for public purposes: easements for public service facilities including, but not limited to sidewalks, wires and conduits for electrical, telephone, television, gas, storm, sanitary and water services, and all appurtenances thereto over the land designated as Public Service Easement (P.S.E.) as shown upon the within map.

The real property described below is dedicated as an easement for public purposes: easements for the installation and maintenance of public utility facilities including but not limited to electrical and gas facilities, and appurtenances thereto lying in, under, upon and across those strips of land delineated and designated as Public Utility Easement (P.U.E.) as shown upon the within map.

The real property described below is dedicated as an easement for public purposes: upon and over those strips of land delineated and designated as Emergency Vehicle Access Easement (E.V.A.E.), for emergency vehicle access purposes only.

We hereby reserve for the non-exclusive use of the owners of the Jasper Subdivision, a private storm drainage easement in, under, upon and across those strips of land delineated and designated as Private Storm Drainage Easement (P.S.D.E.). Those portions of said easement shall be conveyed to and maintained by the Homeowner's Association.

We hereby reserve for the non-exclusive use of the owners of the adjoining parcel "Sutter" Doc. No. 13433194, a private reciprocal easement for access purposes (ingress and egress) to and from the Public Street (Monterey Road), over, and upon those certain strips of land designated and delineated as Reciprocal Access Easement (R.A.E.). Said easement will be in effect only after adjoining parcel is developed and a similar reciprocal access easement is conveyed to the owners of the Jasper subdivision.

There shall be no further subdivision of Parcel A or use of Parcel A for residential development. Parcel A shall be conveyed to and maintained by the homeowners association for Tract No. 10545 for the benefit of all the residential Lots in Tract No. 10545. Parcel A shall be used for purposes of landscaping and recreation.

All of the herein described streets, parcels, and easements shall be kept free of buildings, except lawful unsupported roof overhangs, and obstructions that do not impair the use of or are inconsistent with the purposes of the streets, parcels, and easements.

The herein described offers of dedication to the City of Morgan Hill are to be accepted only when the City Council of the City of Morgan Hill or its successor agency adopts and records in the office of the Recorder of Santa Clara County a resolution accepting said streets and easements. Until said resolution(s) are recorded, all streets and easements encompassed within such offers of dedication shall be maintained by the developer during any required warranty period and thereafter by the owner(s) of the lots or parcels in the subdivision. The City of Morgan Hill shall not be responsible for maintenance and shall incur no liability with respect to such offered streets and easements or any improvement thereon. All dedicated Rights-of-Way and Easements not accepted for maintenance by the City or other public agency shall be maintained by the owner(s) of the lots or parcels in the subdivision.

As Owner:

City Ventures Homebuilding, LLC

By: _____

Name: Philip Kerr

Its: CEO

Tract No. 10545**Jasper****For Condominium Purposes**

- 101 Condominium Residential Units -

- 3 Condominium Commercial Units -

A Portion of the Laguna Seca Rancho lying west of the Southern Pacific Transportation Company right-of-way and east of the Monterey Road right-of-way, in the City of Morgan Hill, County of Santa Clara, State of California, as shown on "Morgan Hill Ranch Map No. 1", filed in Book "F" of Maps, at Page 11, in Santa Clara County Records.

Lying within the
City of Morgan Hill, County of Santa Clara, State of California
February 2021

NOTES

1. The distinctive boundary line indicates the boundaries of the land subdivided by this Final Map.
2. The area within the distinctive boundary is 5.665 Ac.
3. All distances and dimensions are in feet and decimals thereof.

Acknowledgment

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

State Of California
County Of San Francisco

On March 2, 2021, before me, David Anthony Shelly, Notary Public personally appeared Philip Kerr who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Name: David Anthony Shelly Notary Public In

And For Said County And State
San Francisco County, California

(Seal)

Principal County Of Business: San Francisco

Commission Expires: Dec 22, 2023

Commission # Of Notary: 2316817

City Clerk's Statement

I hereby state that the City Council of the City of Morgan Hill at its regular meeting held on _____ 20____, duly approved the final map shown hereon, authorized its recordation, and accepts on behalf of the public, subject to their improvement in accordance with city standards, the streets and easements offered for dedication for public use in conformity with the terms of the offer of dedication.

Irma Torrez
City Clerk of the City of Morgan Hill

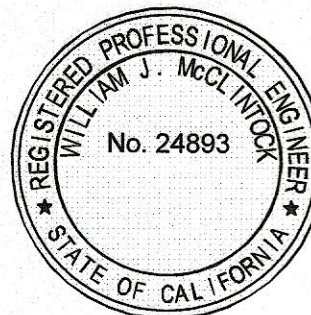
DATE _____

Engineer's Statement

This map was prepared by me or under my direction and is based upon a Field Survey in conformance with the requirements of the Subdivision Map Act and local ordinance at the request of City Ventures Homebuilding, LLC., on February 27, 2020. I hereby state that all the monuments are of the character and occupy the positions indicated or that they will be set in those positions before November 30, 2021 and that the monuments are, or will be sufficient to enable the survey to be retraced, and that this final map substantially conforms to the conditionally approved Tentative Map. The survey is true and complete as shown.

William J. McClintock
William J. McClintock
R.C.E. NO. 24893

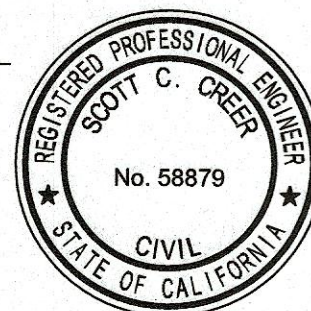
2/22/21
DATE

**City Engineer's Statement**

I hereby state that I have examined this final map. The Subdivision as shown is substantially the same as it appeared on the Tentative Map, if required, and any approved alterations thereof. All provisions of the Subdivision Map Act, as amended, and of any local ordinances applicable at the time of approval of the Tentative Map, if required, have been complied with.

Scott C. Creer - City Engineer
City of Morgan Hill, California
R.C.E. NO. 58879

DATE _____

**City Surveyor's Statement**

I hereby state that I have examined this final map and that I am satisfied that said map is technically correct.

John K. King - Acting City Surveyor
Hanna & Brunetti
P.L.S. NO. 6809

DATE _____

**Planning Commission Statement**

I hereby state that the tentative map for the final map shown hereon was conditionally approved on March 24, 2020, by the Planning Commission of the City of Morgan Hill, California, by Resolution Number 20-03 application number SD2019-0004.

Jennifer Carman
Secretary of the Planning Commission

DATE _____

County Recorder's Statement

Filed this _____ day of _____, 20____ at _____ M. In Book _____ of Maps, at Pages _____ at the request of MH Engineering Co.

File No. _____ Fee: _____

Regina Alcomendras, County Recorder of Santa Clara County

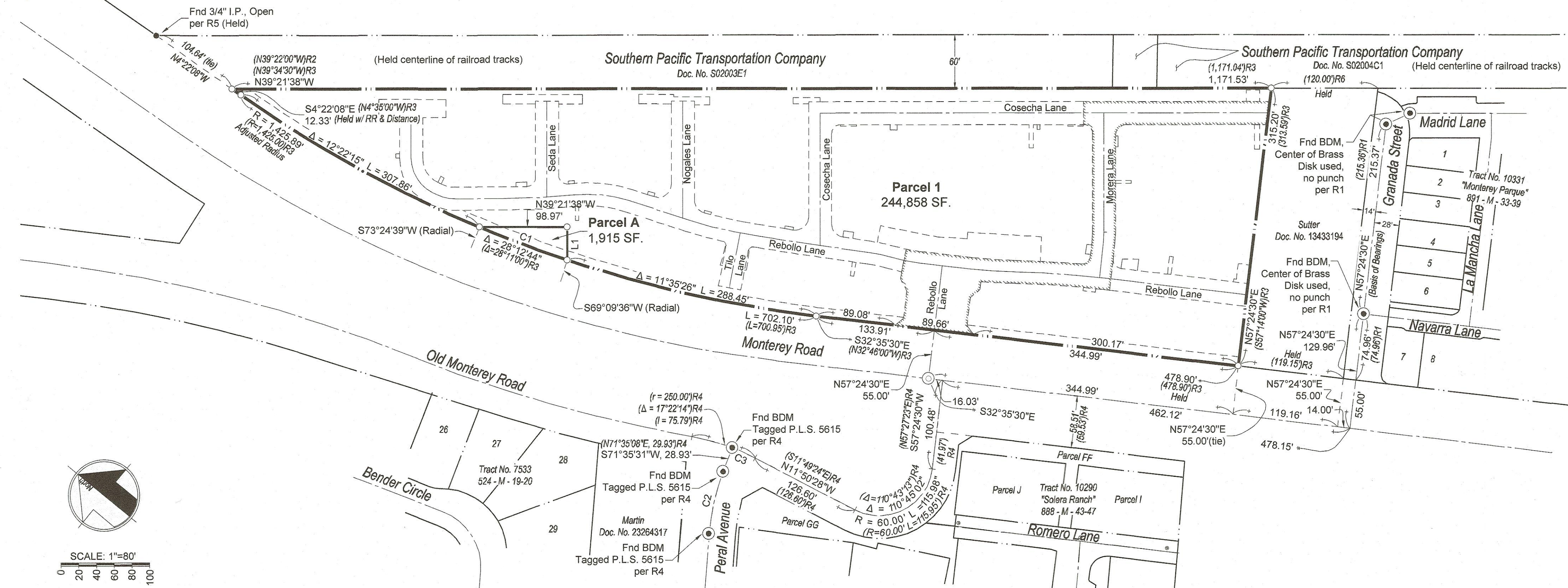
BY: _____
Deputy



MH engineering Co.
16075 Vineyard Boulevard
Morgan Hill, CA 95037
(408) 779-7381

MH Job No.: 220024

Sheet 1 of 4



Legend

- FOUND STANDARD CITY MONUMENT, AS INDICATED
- ⊙ SET STANDARD CITY MONUMENT, TAGGED R.C.E. 24893
- FOUND 3/4" IRON PIPE, AS INDICATED
- ⊕ SET TACK & TAG, TAGGED R.C.E. 24893
- SET 3/4" IRON PIPE, TAGGED R.C.E. 24893

BDM BRASS DISK MONUMENT
 E.V.A.E. EMERGENCY VEHICLE ACCESS EASEMENT
 Fnd FOUND
 I.P. IRON PIPE
 P.S.E. PUBLIC SERVICE EASEMENT
 P.U.E. PUBLIC UTILITY EASEMENT
 R.A.E. RECIPROCAL ACCESS EASEMENT
 SF. SQUARE FEET
 (...) RECORD DATA
 (r) RADIAL BEARING

CENTERLINE
 DISTINCTIVE BOUNDARY LINE
 EXISTING LOT LINE / RIGHT-OF-WAY LINE
 EASEMENT LINE
 RECIPROCAL ACCESS EASEMENT LINE

Reference Data

- R1 Tract No. 10331 "Monterey Parque"
 Book 891 of Maps, Pages 33 thru 39
- R2 Morgan Hill Ranch Map No. 1
 Book "F" of Maps, Page 11
- R3 Quitclaim Deed
 Document No. 24355551
- R4 Tract No. 10290 "Solera Ranch"
 Book 888 of Maps, Pages 43 thru 47
- R5 Record of Survey
 Book 235 of Maps, Page 49
- R6 Trust Transfer Deed
 Document No. 13433194

Curve Table			
#	Radius	Delta	Length
(C1)R3	C1 1425.89'	004°15'04"	105.79'
(C2)R4	C2 250.00'	016°25'14"	71.65'
(C3)R4	C3 250.00'	006°32'52"	28.57'

Line Table		
#	Direction	Length
L1	N50°38'22"E	37.29'

Basis of Bearings

The bearings shown on this map are based upon the centerline of Granada Street, recorded as North 57°24'30" East, as shown in that certain Tract No. 10331 filed for record in Book 891 of Maps, Pages 33 thru 39.

Tract No. 10545 Jasper

For Condominium Purposes

- 101 Condominium Residential Units -
- 3 Condominium Commercial Units -

A Portion of the Laguna Seca Rancho lying west of the Southern Pacific Transportation Company right-of-way and east of the Monterey Road right-of-way, in the City of Morgan Hill, County of Santa Clara, State of California, as shown on "Morgan Hill Ranch Map No.1", filed in Book "F" of Maps, at Page 11, in Santa Clara County Records.

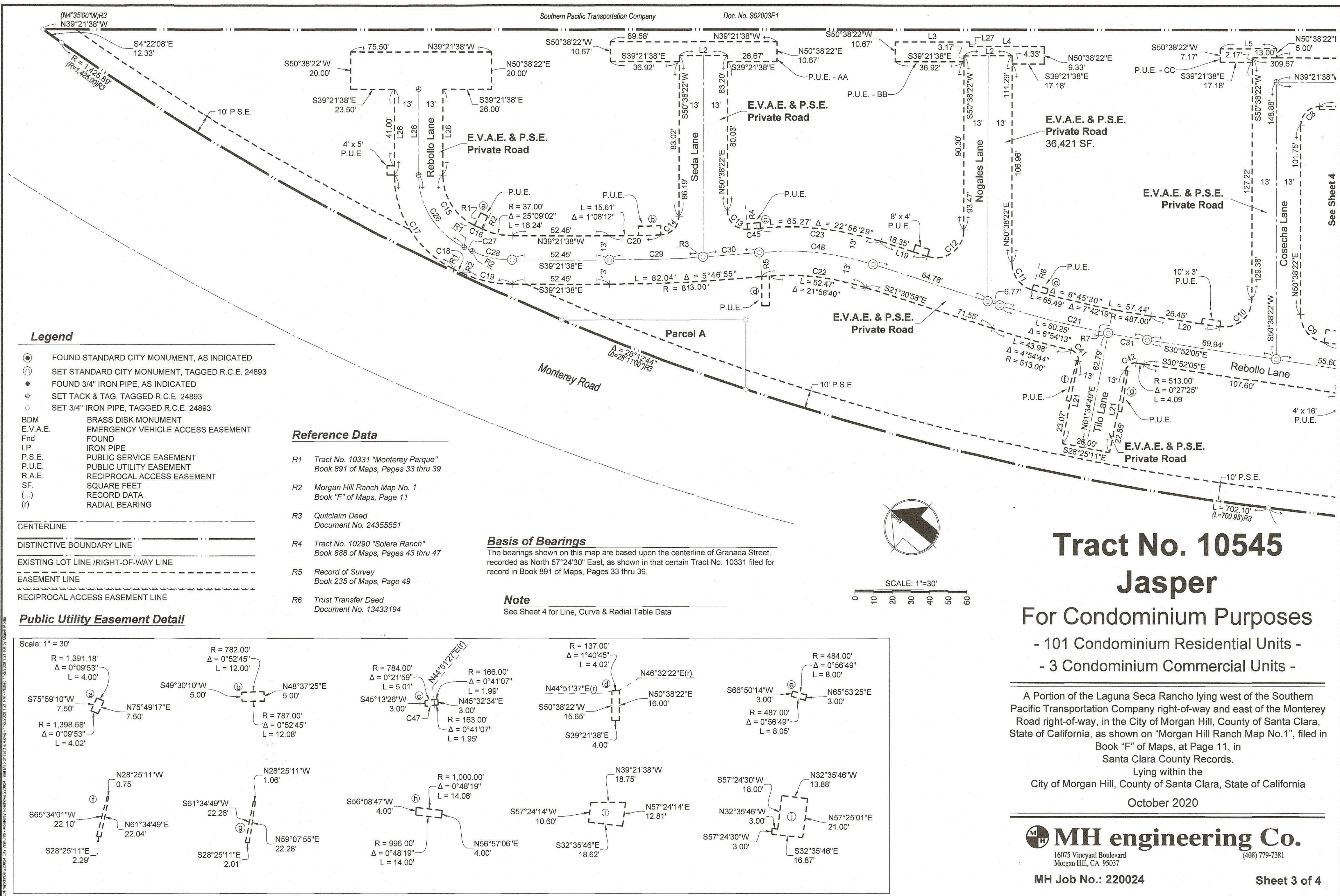
Lying within the
 City of Morgan Hill, County of Santa Clara, State of California

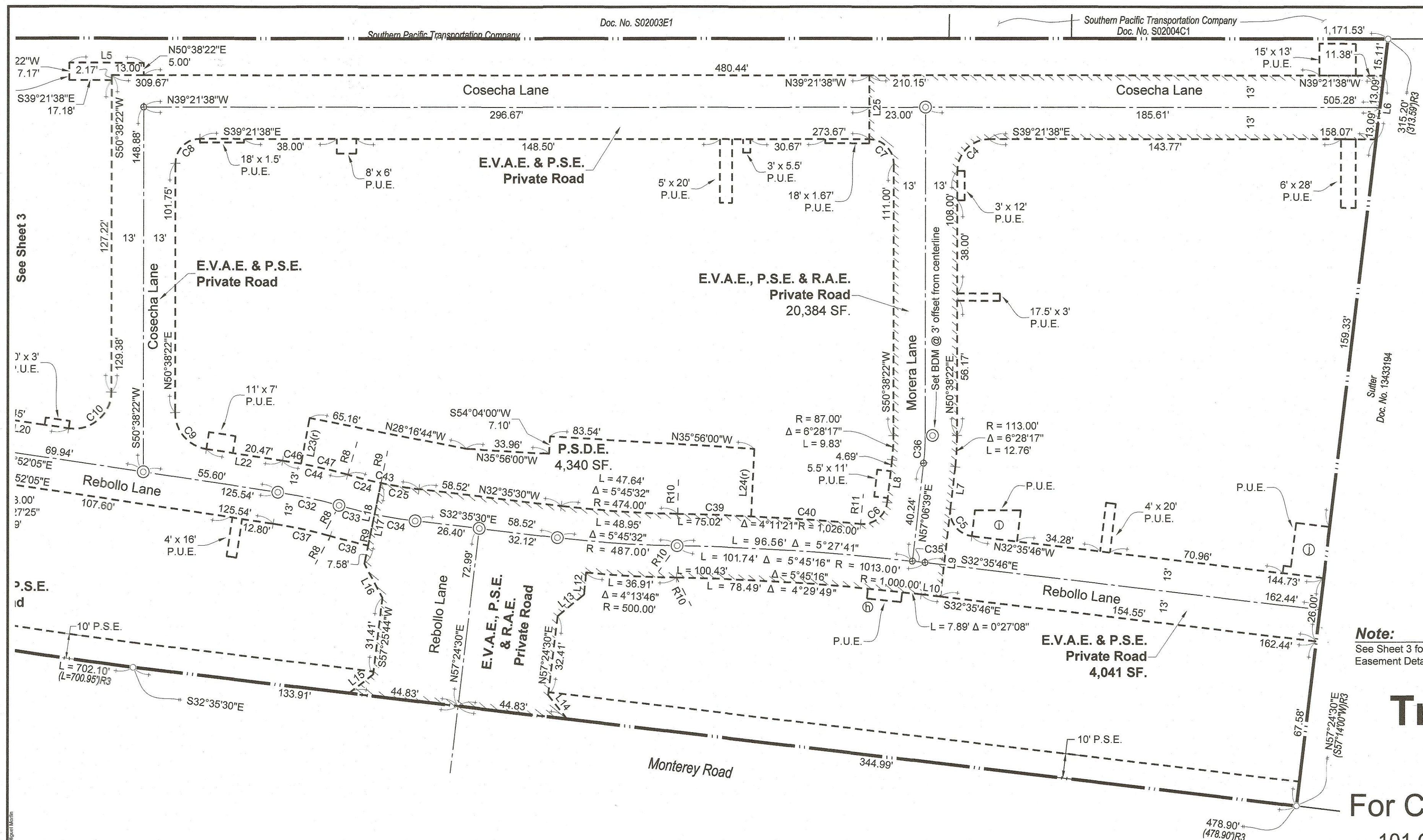
October 2020

MH engineering Co.
 16075 Vineyard Boulevard
 Morgan Hill, CA 95037
 (408) 779-7381

MH Job No.: 220024

Sheet 2 of 4





Line Table		
#	Direction	Length
L2	N39°21'38"W	26.00'
L3	N39°21'38"W	39.92'
L4	N39°21'38"W	40.18'
L5	N39°21'38"W	30.18'
L6	N57°24'30"E	26.18'
L7	N57°06'39"E	17.34'
L8	N57°06'39"E	17.50'
L9	S57°06'39"W	35.95'
L10	S32°35'46"E	7.89'
L12	N55°52'44"E	8.97'
L13	S78°21'23"E	13.91'
L14	N12°23'53"E	12.48'
L15	N77°34'53"W	12.48'
L16	S22°44'11"W	15.76'
L17	S62°14'03"W	33.58'
L18	N62°14'03"E	26.00'
L19	N21°30'58"W	26.35'
L20	N30°52'05"W	37.45'
L21	S61°34'49"W	45.11'
L22	N30°52'05"W	31.47'

Line Table		
#	Direction	Length
L23	S61°13'37"W	18.96'
L24	N53°19'39"E	27.62'
L25	S50°38'22"W	26.00'
L26	S50°38'22"W	46.00'
L27	N50°38'22"E	2.50'

Radial Table	
#	Direction
R1	N75°59'10"E
R2	N75°47'24"E
R3	S47°01'56"W
R4	S45°13'26"W
R5	N44°51'27"E
R6	S66°50'14"W
R7	S61°34'49"W
R8	N66°30'27"E
R9	S62°14'03"W
R10	N51°38'58"E
R11	S55°50'19"W

Note:
See Sheet 3 for Basis of Bearings, Legend, Reference Data & Public Utility Easement Detail

Tract No. 10545 Jasper

For Condominium Purposes

- 101 Condominium Residential Units -
- 3 Condominium Commercial Units -

A Portion of the Laguna Seca Rancho lying west of the Southern Pacific Transportation Company right-of-way and east of the Monterey Road right-of-way, in the City of Morgan Hill, County of Santa Clara, State of California, as shown on "Morgan Hill Ranch Map No.1", filed in Book "F" of Maps, at Page 11, in Santa Clara County Records.

Lying within the
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October 2020

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16075 Vineyard Boulevard
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Sheet 4 of 4

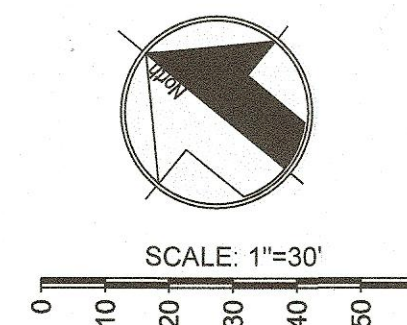
Curve Table			
#	Radius	Delta	Length
C4	13.00'	090°00'00"	20.42'
C5	10.00'	089°42'25"	15.66'
C6	10.00'	088°43'40"	15.49'
C7	10.00'	090°00'00"	15.71'
C8	10.00'	090°00'00"	15.71'
C9	15.00'	081°30'27"	21.34'
C10	15.00'	098°29'33"	25.79'
C11	15.00'	073°48'08"	19.32'
C12	15.00'	107°50'40"	28.23'
C13	10.00'	095°24'56"	16.65'
C14	10.00'	087°59'03"	15.36'

Curve Table			
#	Radius	Delta	Length
C15	30.00'	064°39'12"	33.85'
C16	1398.68'	000°11'46"	4.79'
C17	56.00'	064°39'12"	63.19'
C18	1424.68'	000°11'46"	4.88'
C19	63.00'	025°09'02"	27.65'
C20	787.00'	002°00'57"	27.69'
C21	500.00'	009°21'07"	81.61'
C22	137.00'	023°37'36"	56.49'
C23	163.00'	023°37'36"	67.21'
C24	187.00'	004°16'24"	13.95'
C25	187.00'	004°49'33"	15.75'

Curve Table			
#	Radius	Delta	Length
C26	43.00'	064°39'12"	48.52'
C27	1411.68'	000°11'46"	4.83'
C28	50.00'	025°09'02"	21.95'
C29	800.00'	003°36'26"	50.37'
C30	800.00'	002°10'30"	30.37'
C31	500.00'	002°26'54"	21.37'
C32	200.00'	007°22'32"	25.75'
C33	200.00'	004°16'24"	14.92'
C34	200.00'	004°49'33"	16.84'
C35	1013.00'	000°17'35"	5.18'
C36	100.00'	006°28'17"	11.29'

Curve Table			
#	Radius	Delta	Length
C37	187.00'	007°22'32"	24.07'
C38	213.00'	004°16'24"	15.89'
C39	1026.00'	001°40'41"	30.05'
C40	981.69'	002°37'29"	44.97'
C41	5.00'	088°00'31"	7.68'
C42	5.00'	088°00'31"	7.68'
C43	187.00'	009°05'57"	29.70'
C44	213.00'	007°22'32"	27.42'
C45	787.00'	000°21'59"	5.03'
C46	213.00'	002°05'42"	7.79'
C47	213.00'	005°16'49"	19.63'

Curve Table			
#	Radius	Delta	Length
C48	150.00'	023°37'36"	61.85'



RECORDING REQUESTED BY
WHEN RECORDED RETURN TO

CITY OF MORGAN HILL
City Clerk's Office
17575 PEAK AVENUE
MORGAN HILL, CA 95037

(RECORD AT NO FEE PURSUANT TO
GOVERNMENT CODE SECTION 27383)

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

SUBDIVISION IMPROVEMENTS AGREEMENT

CITY VENTURES HOMEBUILDING, LLC

JASPER – TRACT NO. 10545

This Subdivision Improvements Agreement ("Agreement") between the City of Morgan Hill, a municipal corporation ("City"), and **City Ventures Homebuilding, LLC**, a Delaware limited liability company ("Subdivider"), is entered into this ____ day of _____, 2021. City and Subdivider hereby acknowledge the following:

1. Subdivider has filed a Tentative Subdivision Map and supporting documents for **Tract No. 10545**, the subdivision known as **Jasper** ("Map").
2. City desires, as part of the conditions of approval ("Conditions") of the Final Tract Map or Parcel Map ("Final Map"), that certain improvements be installed by Subdivider ("Improvements") as shown on the City Engineer approved and signed Subdivision Improvement Plans entitled "Improvement Plans for **"Improvement Plans for Jasper – Tract No. 10545"**" ("Plans").
3. Subdivider has been unable to complete, prior to filing of the Final Map, all of the improvements required by City to the satisfaction of the City Engineer.
4. Subdivider is required by the terms of the Morgan Hill Municipal Code ("Municipal Code"), to improve all streets, highways, or public areas which are part of the development, including but not limited to necessary paving, curbs, sidewalks, catch basins, water mains, culverts, storm drains, and sanitary sewers, in accordance with the plans and specifications on file with the City Engineer and to post certain securities to secure the completion of the Improvements.
5. To assure City that Subdivider will construct, install and complete all Improvements required for the Subdivision, the parties have entered into this Agreement.

6. This Agreement is executed pursuant to California Government Code Section 66410 et seq., and Chapter 17.32 of the Municipal Code in order to provide for the manner in which Improvements shall be constructed and completed.

NOW, THEREFORE, and in consideration of the approval of the Final Map, and in order to ensure satisfactory performance by Subdivider of Subdivider's obligations under the Conditions, the Subdivision Map Act, and applicable ordinances of City, the parties hereto, for themselves, their successors, and assigns, hereby agree as follows:

Section 1. Incorporation by Reference

The Development Agreement between Subdivider and City, if applicable, Subdivider's Map application, the Conditions, the Map, all Plans as referenced in Section 2 below and all items submitted to the Planning Department, Planning Commission and City Council, all are incorporated herein by reference. In the event of any inconsistency between their representations in any incorporated documents and this Agreement, this Agreement shall govern.

Section 2. Construction of Improvements

(a) Subdivider shall construct to the approval of City, and as provided for in the Conditions, the Improvements as shown fully executed in the Plans entitled "Improvement Plans for "Improvement Plans for Jasper – Tract No. 10545".

(b) Subdivider shall acquire and dedicate, or pay the cost of acquisition by City, of all rights-of-way, easements, and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances.

(c) Survey Monumentation:

(1) Subdivider shall place survey monumentation as described on the Map.

(2) Subdivider shall replace or repair all survey monumentation that is destroyed or damaged as a result of Subdivider's activities. Any such repair or replacement shall be to the satisfaction and subject to the approval of City.

Section 3. Modification of Plans

Subdivider agrees that, if during the construction of the Improvements, it is determined by City that revisions to the Plans are necessary in the interest of the public, Subdivider will undertake such design and construction changes required by City. Said changes, if any, shall be confined to the premises owned by Subdivider.

Section 4. Security

(a) Pursuant to California Government Code Section 66499.3(a), and the Municipal Code, Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to at

least one hundred percent (100%) of the estimated construction cost of the Improvements as security guaranteeing the faithful performance of the Improvements and this Agreement ("Performance Bond").

Improvements and the City Engineer's Estimated Costs of Improvements as of **September 23, 2020** are attached hereto as Exhibit "A".

The Performance Bond shall be in a form substantially the same as Exhibit "B".

(b) Pursuant to California Government Code Section 66499.3(b), Subdivider shall, concurrently with the execution hereof, furnish a surety bond in an amount equal to one hundred percent (100%) of the estimated construction cost of the Improvements (as listed in Section 4(a) above) as security guaranteeing the payment to the contractors, subcontractors and persons furnishing labor, materials, or equipment in connection with this Agreement ("Labor and Materials Bond"). The Labor and Materials Bond shall be in a form substantially the same as Exhibit "C".

(c) Subdivider shall, upon completion of the Improvements, furnish a surety bond in an amount equal to fifty percent (50%) of the construction cost of the Improvements to secure the guarantee and warranty of the work for a period of one year following the completion and acceptance thereof by the City Council ("Warranty Period") against any defective work or labor performed, or defective materials furnished by Subdivider in connection with this Agreement ("Warranty Bond"). The Warranty Bond shall be in a form substantially the same as Exhibit "D".

(d) Pursuant to Government Code Section 66499.9, any liability upon the security given for faithful performance of any act or agreement shall be limited to:

(1) The performance of the work covered by the Agreement or the performance of the required act.

(2) The performance of any changes or alterations in such work; provided that all changes or alterations do not exceed ten percent of the original estimated cost of the Improvements.

(3) The guarantee and warranty of the work for a period of one year following completion and acceptance thereof, against any defective work or labor done or defective materials furnished in the performance of the Agreement or the performance of the act.

(4) Costs and reasonable expenses and fees, including reasonable attorneys' fees.

(e) The surety on each bond and the form thereof shall be satisfactory to City. The surety shall be furnished by a surety company authorized to write the same in the State of California and that is approved and accepted by the City's risk manager.

(f) Subdivider agrees to furnish any bonds required by the State or County for Improvements outside the City's jurisdiction.

(g) The release of any securities shall be governed by the provisions of Government Code Section 66499.7.

Section 5. Inspections

At least fifteen (15) calendar days prior to the commencement of any work hereunder, Subdivider shall notify City in writing of the fixed start date of construction so that City shall be able to provide inspection services. Subdivider shall at all times maintain proper facilities and provide safe access to all parts of the work site(s) for City inspections, including any workshops or plants where work related to the Improvements is being conducted.

Subdivider shall pay and reimburse City for all expenses incurred by City for inspecting and checking all work to be performed under the provisions of the Municipal Code or this Agreement. City Engineering plan checking and field improvement inspection costs are included in the Department of Public Works Fee Schedule which may be revised from time to time.

Section 6. Timing of Performance

Subdivider agrees to perform and complete all Improvements within eighteen (18) months from the date of the recording of the Final Map; provided however, the City Manager may extend the deadline for completion by not more than six (6) months at his or her reasonable discretion and determination that granting the extension will not be detrimental to the public welfare. No extension of this deadline for completion shall be made except upon the basis of a written application made by Subdivider stating fully the ground for the application and the facts relied upon for an extension.

It is further agreed by and between Subdivider and City that any extension granted shall in no way affect the validity of this Agreement or release the surety(ies) on any bond attached hereto or the financial institution guaranteeing the same. Subdivider further agrees to maintain the securities described in Section 4 above in full force and effect during the terms of this Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by City.

Section 7. Work Performance and Warranty

(a) Subdivider shall construct, at Subdivider's own expense, all of the Improvements in a good and workmanlike manner, and furnish all required materials incident thereto, in accordance with the Plans and to the satisfaction of City, including any changes required by City which in City's opinion are necessary to complete the Improvements.

(b) All work shall be conducted and completed in accordance with the Plans and federal, state, Municipal Code, laws, ordinances, and regulations. For any Improvements partially completed prior to this Agreement, Subdivider agrees to complete the Improvements in accordance with this Agreement.

(c) Neither Subdivider, nor any of Subdivider's agents or contractors in connection with Subdivider's obligations under this Agreement are, or shall be considered to be, employees or agents of City.

(d) The work performance for the Improvements shall not be deemed complete until such time as such Improvements have been accepted for maintenance by the City Council.

(e) Subdivider warrants that: (1) it has investigated the work to be performed under this agreement, (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 Subdivider discover any conditions materially differing from those inherent in the Improvements or work or as represented by City, it shall immediately inform City and shall not proceed, except at Subdivider's risk, until written instructions are received from City.

(f) Subdivider guarantees and warrants the work required by this Agreement and agrees to remedy any defects in the Improvements or work arising from faulty or defective materials or construction occurring within one year after its acceptance. Following notice, Subdivider shall, without delay or cost to City, repair, replace, or construct any defective or unsatisfactory portion of the Improvements. City may, at its sole option, perform the repair or replacement itself if Subdivider or its surety has failed to commence repair within twenty (20) days after City has mailed written notice to Subdivider. In such event, Subdivider or its surety agrees to pay the cost of repair and replacement to City, plus fifteen percent (15%); and City may recover such costs as a lien against the Subdivision. City may proceed immediately to make repairs should an emergency arises.

Section 8. Acquisition and Dedication of Easements or Rights-of-Way

(a) No construction or installation of the Improvements shall be commenced before:

(1) The offer of dedication to City of appropriate rights-of-way, easements, or other interests in real property for the Improvements, which offer of dedication shall be irrevocable and remain open pursuant to California Government Code Section 66477.2, and authorization from the property owner to allow construction or installation of Improvements, or

(2) The dedication to, and acceptance by, City of appropriate rights-of-way, easements, or other interests in real property, as determined by the City Engineer, or

(3) The issuance by a court of competent jurisdiction pursuant to state Eminent Domain Law of an order of possession.

(b) Except as otherwise provided by this Agreement, City rejects all lands, rights-of-way, and easements offered for dedication on the Final Map of the Subdivision. All such offers shall, however, remain open, and shall constitute irrevocable offers of dedication in accordance with Government Code Section 66477.2. All such offers may be accepted by City in its sole discretion at any later date without further notice to Subdivider as provided by law. By way of explanation only, it is the current intention of City to accept all or part of the irrevocable offers to dedicate upon acceptance of the Improvements called for in this Agreement.

(c) Nothing in this Section 8 shall be construed as authorizing or granting an extension of time to Subdivider.

Section 9. Indemnity

Subdivider hereby agrees to save harmless and indemnify, including, without limitation, City's defense costs (including reasonable attorney's fees), from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of any injuries or damages sustained by any person or property resulting or arising, or alleged to have resulted or arisen, from Subdivider or Subdivider's contractors, subcontractors, agents, or employees activities, omissions or operations pursuant to this

Agreement. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Subdivider will defend City, (at City's request and with counsel satisfactory to City) and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

Subdivider shall defend, indemnify, and hold harmless the City and its elective and appointive boards, officials, officers, agents, employees and volunteers from any claim, action, or proceeding to review, set aside, void, or annul an approval of the City concerning the Map and acts made in respect thereof, provided any such action is brought within the time period provided for in California Government Code Section 66499.37.

City shall promptly notify Subdivider of any claim, action, or proceeding, and cooperate fully in the defense of any claim, action, or proceeding.

It is expressly understood and agreed that this Section 9 will survive termination of this Agreement.

Section 10. Insurance

Concurrent with the execution of this Agreement, Subdivider is required to 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 Subdivider and its Subcontractors relating to or arising from the performance of work associated with the Improvements, and must remain in full force and effect at all times during the period covered by the Agreement, including any extensions of time as may be granted, and until such time as the Improvements have been accepted for maintenance by the City. 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. If the Subdivider will utilize the services of a General Contractor to perform all of the work associated with the Improvements, then Subdivider may opt to have all coverages provided by Subdivider's General Contractor, provided that a written contract is executed between Subdivider and the General Contractor whereby the written contract specifically required General Contractor to fulfill all of the City insurance requirements as outlined in this Agreement, including all endorsements in favor of the City. Verification of the written contract must be provided to City upon request. If Subdivider fails to provide any of the required coverage in full compliance with the requirements outlined in this Agreement City shall issue a stop work order, or terminate the Agreement for default. Subdivider further understands that the City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Subdivider, at any time as deemed necessary to protect the interests of the City.

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

- (1) **Commercial General Liability Insurance ("CGL"):** Subdivider shall maintain CGL and shall include coverage for liability arising from Subdivider's or its Subcontractor's acts or omissions in the performance of work associated with the Improvements against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) five million dollars (\$5,000,000.00) combined single limit each occurrence and either a general aggregate limit of ten million dollars (\$10,000,000.00) or a general aggregate limit of five million dollars (\$5,000,000) as applied on a "per project"

or “per location” basis, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. Further, if CGL coverage is being provided by Subdivider’s General Contractor pursuant to Section 10, General Contractor may elect to insure the CGL exposures under an “Owners and Contractors Protective Liability Policy (OCP)” on which the City is included as an additional insured.

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

b. CGL policy must include blanket contractual and completed operations.

c. CGL policy will apply as though separate policies have been issued to each insured (“separation of insureds”).

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

(3) **Automobile Liability:** Subdivider shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Subdivider does not own automobiles, then Subdivider 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, or (ii) the maximum amount of such insurance available to Subdivider under Subdivider’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

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

(b) Required Endorsements. Subdivider shall provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below. Further, if coverages are being provided by Subdivider's General Contractor pursuant to Section 10, endorsements may not be restricted to work performed "under a written contract" (i.e. "blanket endorsements")

(1) ALL Policies:

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

(2) ALL Policies except Workers Compensation:

- a. "Additionally Insured" - The City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers are named as additional insureds.
- b. "Primary and Non-Contributing" - Insurance shall be primary non-contributing.

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

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

(e) Certificates. Subdivider shall furnish City 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 Subdivider's agreement with the City shall be reduced, canceled, allowed to expire, or materially changed except after thirty (30) days' notice by the insurer to City, unless due to non-payment of premiums, in which case ten (10) days written notice must be made to City. Certificates, including renewal certificates, may be mailed electronically to riskmgmt@morganhill.ca.gov or delivered to the Certificate Holder address provided herein.

Certificate Holder address:

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

Section 11. Permits and Requisite Fees

(a) Subdivider shall pay all current fee obligations due under City Resolution No. 5592, as amended, in accordance with the Department of Public Work fee schedule, as follows:

- (1) **\$1,342,408.00** payable at the time of recording of the Final Map, and
- (2) **\$3,149,382.00** payable on a pro-rata basis for each individual lot in the Subdivision prior to final inspection of each and every residence.

(3) All fees payable pursuant to this Subsection (a) constitutes valid and due consideration for City's approval of the Final Map, and amounts set forth are estimates that are subject to change prior to the issuance of building permit(s), subject to resolution or ordinance of the City Council.

(b) Subdivider shall, at its expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices, and pay all fees and taxes required by law.

(c) Subdivider shall obtain a City of Morgan Hill Business License.

(d) Subdivider agrees to procure, at its expense, any necessary permits for Improvements outside the City's jurisdiction.

Section 12. On-Site Supervision

Subdivider shall designate an on-site supervisor, satisfactory to City, who shall be on the work site(s) at all times during the construction of the Improvements, and who has the authority to act on behalf of Subdivider when communicating with City personnel.

Section 13. Waiver

Waiver by City or Subdivider of any breach of any of the provisions of the Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. Acceptance by City of any work by Subdivider shall not be a waiver of any of the provisions of this Agreement.

Section 14. Notices. All notices shall be personally delivered or mailed, via first class mail to the below listed addresses. 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.

- a. Address of Subdivider is as follows:

City Ventures Homebuilding, LLC
3121 Michelson Drive, Suite 150
Irvine, CA 92612

b. Address of City is as follows:

City Engineer
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

With a copy to:

City Clerk
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037

Section 15. Noncompliance

If City determines that Subdivider is in violation of any federal, state, County or City laws, ordinances, rules, regulations, and requirements, and/or the terms and provisions of this Agreement, it may issue a cease and desist order, stop work order, or other action City deems necessary.

Section 16. Notice of Breach and/or Default

City may serve written notice upon Subdivider and surety of breach of this Agreement or of any portion thereof, and default of Subdivider for any of the following circumstances:

- (a) Subdivider refuses or fails to complete the Improvements as required in Section 6 above.
- (b) Subdivider refuses or fails to perform or cure any defects in the Improvements as required in Section 7.
- (c) Subdivider is insolvent, is subject to a receivership, or files any petition in bankruptcy, either voluntary or involuntary which Subdivider fails to discharge within thirty (30) days.
- (d) The commencement of a foreclosure action against the Subdivision or any portion thereof, or any conveyance in lieu of or in avoidance of foreclosure.
- (e) Subdivider or any of Subdivider's contractors, subcontractors, agent, or employees materially violates any of the provisions of this Agreement and not cure the violation within a reasonable time.

Section 17. Performance by Surety or City

- (a) In the event of a material breach and/or default by Subdivider, Subdivider's surety shall have the duty to take over and complete the Improvements.
- (b) If the surety, within a reasonable time after receiving notice of Subdivider's default does not provide City written notice to take over the performance of this Agreement or if the surety does not commence performance thereof within the time specified in such notice to City, City may take over the construction of the Improvements and prosecute the same to completion, by contract or by any method City may deem advisable, on behalf and at the expense of Subdivider, and Subdivider's surety shall be liable to City for any excess cost or damages incurred by City thereby. In such event, City, without liability for so doing, may take possession of and utilize such materials, appliances, and other property belonging to Subdivider as may be on the work site(s) and necessary therefore to complete the Improvements.

(c) City shall have the right to draw upon or utilize the appropriate security provided for in Section 4 to recover costs and damages to City damages. The right of City to draw upon or utilize the security is additional and not in lieu of any other remedy available to City at law or in equity. The parties agree that the estimated costs and security amounts may not reflect the actual cost of construction or installation of Improvements, and therefore, City damages for Subdivider's default shall be measured by the cost of completing the required Improvements.

(d) Failure of Subdivider to comply with terms of this Agreement shall constitute consent to filing by City of a notice of violation against all lots in the Subdivision, or to rescind the approval or otherwise revert the Subdivision to acreage. The remedies provided in this Subsection (d) are in addition to and not in lieu of other remedies available to City.

(e) In the event that Subdivider fails to perform any obligation under this Agreement, Subdivider agrees to pay all costs and expenses incurred by City in securing performance of such obligation, including the costs of suit and reasonable attorney's fees.

(f) The failure by City to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or subsequent default or breach.

Section 18. Successors in Interest

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties. It shall be recorded in the Office of the Recorder of Santa Clara County concurrently with the Final Map of the Subdivision and shall constitute a covenant running with the land and an equitable servitude upon the real property within the Subdivision. It shall be the responsibility of City to cause the executed Agreement to be recorded.

Section 19. Effective Date

This Agreement shall be effective as of the date and year first above written.

Section 20. Amendment of Agreement

This Agreement may only be amended by mutual consent of the original parties or their successors in interest, provided that any such amendment is executed in writing by the parties to be bound thereby.

Section 21. Execution

By signing this Agreement, the person signing states that he or she is authorized to enter into contracts on behalf of Subdivider. The undersigned, on behalf of Subdivider, binds Subdivider, its partners, successors, executors, administrators, and assigns with respect to the terms and conditions of this Agreement.

Section 22. 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.

Section 23. Law to Govern: Venue

The law of the State of California shall govern this Agreement. In the event of litigation between the parties, the action must be filed in the Santa Clara County Superior Court.

Section 24. Limitations Upon Subcontracting and Assignment.

Neither this Agreement or any portion shall be assigned by Subdivider without prior written consent of City.

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Section 25. Miscellaneous

(a) Compliance with Law: Subdivider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

(b) Non-Discrimination. Subdivider covenants there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, ancestry, or sexual orientation in any activity pursuant to this Agreement.

(c) Conflict of Interest and Reporting. Subdivider shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

(d) Time of Essence. Time is of the essence in the performance of this Agreement.

(e) Interpretation. This Agreement shall be interpreted as though prepared by both parties.

(f) Preservation of Agreement. Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

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

[TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS: (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR ASSISTANT TREASURER.]

CITY OF MORGAN HILL

By:

Christina J. Turner, City Manager

Date: _____

ATTEST:

By:

Michelle Bigelow, Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

By:

Donald A. Larkin, City Attorney

Date: _____

"Subdivider"

City Ventures Homebuilding, LLC

By:

Print Name and Title Phil Kerr, CEO
(If Corporation, must be Chairperson of the Board, President, or Vice President)

Date: 3-2-21

By:

Print Name and Title

(If Corporation, must be Secretary, Assistant Secretary, CFO, or Assistant Treasurer)

Date: _____

ACKNOWLEDGMENT

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

State of California

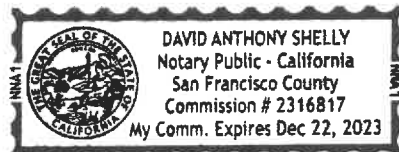
County of San Francisco)

On March 2 2021 before me, David Anthony Shelly, Notary Public
(insert name and title of the officer)

personally appeared Philip Kerv, CEO,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Signature

[Signature]

(Seal)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

EXHIBIT "A"

IMPROVEMENTS AND

ESTIMATED COSTS OF IMPROVEMENTS

AS OF SEPTEMBER 23, 2020

	Quantity	unit	Unit Price	Cost
Public Rough Grading				
Clearing & Grubbing	1	LS	\$5,000	\$5,000.00
Monterey Road Excavation	383	CY	\$5	\$1,915.00
Monterey Road Embankment	64	CY	\$10	\$640.00
Old Monterey Road Excavation	30	CY	\$5	\$150.00
Old Monterey Road Embankment	0.43	CY	\$10	\$4.00
Monterey Road Improvements (Public)				
sawcut	552	LF	\$3.00	\$1,656.00
pavement removal	8167	SF	\$2.00	\$16,334.00
Curb & Gutter demolition & haul-off	163	LF	\$5.00	\$815.00
subgrade prep and compact	14249	SF	\$0.50	\$7,124.50
6" Type A asphaltic concrete roadway	316	TON	\$130	\$41,080.00
15" Class II aggregate base roadway	790	TON	\$25.00	\$19,750.00
15" Class II aggregate base curb & gutter	125	TON	\$25.00	\$3,125.00
4" PCC sidewalk	71	TON	\$4.00	\$284.00
4" Class II aggregate base sidewalk	71	TON	\$25.00	\$1,775.00
City Standard Curb & Gutter	530	LF	\$15.50	\$8,215.00
PCC ADA Ramps	2	EA	\$800.00	\$1,600.00
street lights	2	EA	\$3,000.00	\$6,000.00
striping	3182	LF	\$0.75	\$2,386.50
Old Monterey Road Improvements (Public)				
subgrade prep and compact	1,282	SF	\$0.50	\$641.00
City Standard Curb and Gutter	50	LF	\$15.50	\$775.00
4" Type A asphaltic concrete roadway	31	TON	\$25.00	\$775.00
11" Class II aggregate base roadway	84	TON	\$25.00	\$2,100.00
9" Class II aggregate base curb & gutter	7	TON	\$25.00	\$175.00
4" PCC sidewalk	6	TON	\$4.00	\$24.00
4" Class II aggregate base sidewalk	6	TON	\$25.00	\$150.00
Public Waterline				
8" Ductile Iron waterline	1,744	LF	\$40.00	\$69,760.00
8" Water valve	39	EA	\$750.00	\$29,250.00
6" Service Laterals	229	LF	\$30.00	\$6,870.00
4" Fire Service Laterals	444	LF	\$20.00	\$8,880.00
Fire Hydrant, valve, etc	4	EA	\$5,500.00	\$22,000.00
Air Relief Valve	2	EA	\$750.00	\$1,500.00
1" domestic service	101	EA	\$1,700.00	\$171,700.00
2" commercial service with BFP	3	EA	\$2,500.00	\$7,500.00
1" irrigation service	2	EA	\$1,700.00	\$3,400.00
Public Sanitary Sewer Improvements				
8" Sanitary Sewer	220	LF	\$40	\$8,800.00
Sanitary Sewer Manhole	1	EA	\$4,000	\$4,000.00
Total				\$456,154.00

Attachment: Subdivision Improvements Agreement [Revision 3] (2950 : APPROVE THE FINAL MAP AND AGREEMENT FOR SUBDIVISION

EXHIBIT "B"
PERFORMANCE BOND
(100% of Engineer's Estimate)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **CITY VENTURES HOMEBUILDING, LLC** (hereinafter designated as "principal") have entered into a Subdivision Improvement Agreement:

CITY VENTURES HOMEBUILDING, LLC
JASPER – TRACT NO. 10545

whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 20_____, and identified as project **JASPER – TRACT NO. 10545**, is hereby referred to and made a part hereof; and

Whereas, said principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, we, the principal and _____, as surety, are held and firmly bound unto the City of Morgan Hill hereinafter called ("City"), in the penal sum of **Four hundred fifty six thousand one hundred fifty four dollars (\$456,154)** lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number are as follows:

License No.: _____

Address: _____

Telephone No.: _____

The non-resident agent for the Surety, if any, is a party to the transaction:

Name of non-resident agent: _____

Performance Bond Page 1 of 4
Version July 2017

Attachment: Subdivision Improvements Agreement [Revision 3] (2950 : APPROVE THE FINAL MAP AND AGREEMENT FOR SUBDIVISION

Non-resident agent's office address: _____

Telephone No.: _____

The condition of this obligation is such that if the above bounded principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and provisions in the said agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

Executed this _____ day of _____ 20 ____ .

[form document – do not execute]

[form document – do not execute]

Principal

Principal

By: *[form document – do not execute]*

Surety

By: *[form document – do not execute]*

Attorney-in Fact

By: *[form document – do not execute]*

California Resident Agent

By: *[form document – do not execute]*

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Performance Bond Page 4 of 4
Version July 2017

Attachment: Subdivision Improvements Agreement [Revision 3] (2950 : APPROVE THE FINAL MAP AND AGREEMENT FOR SUBDIVISION

EXHIBIT "C"
LABOR AND MATERIAL BOND
(100% of Engineer's Estimate)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California, and **CITY VENTURES HOMEBUILDING, LLC** (hereinafter designated as "the principal") have entered into a Subdivision Improvement Agreement:

CITY VENTURES HOMEBUILDING, LLC
JASPER – TRACT NO. 10545

whereby the principal agrees to install and complete certain designated public improvements, which agreement, dated _____, 20_____, and identified as project **JASPER – TRACT NO. 10545**, is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, the principal is required before entering upon the performance of the work, to file a good and sufficient payment bond with the City of Morgan Hill to secure the claims to which reference is made in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code of the State of California.

Now, therefore, the principal and the undersigned as corporate surety, and their successors and assigns are held firmly bound unto the City of Morgan Hill and all contractors, subcontractors, laborers, material suppliers, and other persons employed in the performance of the agreement and referred to in Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code in the sum of **Four hundred fifty six thousand one hundred fifty four dollars (\$456,154)**, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to this work or labor, that the surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by the City of Morgan Hill in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 3 (commencing with Section 9000) of Part 6 of Division 4 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The Surety's office is located at _____,

Telephone No. _____; the Surety is licensed to do business in the State of California; and the California Insurance Agent's License No., address, and telephone number as follows:

License No.: _____

Address: _____

Telephone No.: _____

The following non-resident agent, if any, for the Surety is a party to the transaction:

Name of non-resident agent: _____

Non-resident agent's office address: _____

Telephone No.: _____

The surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Executed this _____ day of _____ 20 ____.

[form document – do not execute]

[form document – do not execute]

Principal

Principal

By: *[form document – do not execute]*

Surety

By: *[form document – do not execute]*

Attorney-in Fact

By: *[form document – do not execute]*

California Resident Agent

By: *[form document – do not execute]*

Non-resident Agent - Attorney-in-Fact

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date: _____

(Acknowledgment on following page.)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Labor and Material Bond Page 4 of 4
Version 2017

EXHIBIT "D"
WARRANTY BOND
(50% of Cost of Construction)

Bond No.: _____

Premium: _____

Whereas, the City Council of the City of Morgan Hill, State of California (hereinafter designated as "City"), and **CITY VENTURES HOMEBUILDING, LLC** (hereinafter designated as "Principal") have entered into a Subdivision Improvement Agreement (hereinafter "Agreement"):

CITY VENTURES HOMEBUILDING, LLC
JASPER – TRACT NO. 10545

whereby the Principal agrees to install and complete certain designated public improvements (hereinafter "Improvements"), which said Agreement, dated _____, 20____, and identified as project **JASPER – TRACT NO. 10545**, is hereby referred to and made a part hereof; and

Whereas, under the terms of said Agreement, the Principal is required to furnish a bond to guarantee and warrant the work required by said Agreement for a period of one year following the completion and acceptance by the City of the Improvements, against any defective work or labor performed, or defective materials furnished by Principal.

Now, therefore, we, the Principal and _____ as Surety, are held and firmly bound unto the City of Morgan Hill in the penal sum of **Two hundred twenty eight thousand seventy seven dollars (\$228,077)** for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

If Principal faithfully carries out and performs its guarantee and warranty under the Agreement, and, on due notice from City, repairs and make good at its sole expense any and all defects in materials and workmanship in the Project which are discovered during the Warranty Period, or if Principal promptly reimburses City for all loss and damage that City sustains because of Principal's failure to makes such repairs in accordance with the Agreement requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.

Surety waives the provisions of Civil Code Sections 2819 and 2845. Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement

Warranty Bond Page 1 of 4
Version July 2017

or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

Any notice to Surety may be given in the manner specified in the Agreement and delivered or transmitted to Surety as follows:

Attn: _____

Address: _____

City/State/Zip: _____

Phone: _____

Fax: _____

Email: _____

This Bond will be governed by California law, and any dispute pursuant to this Bond will be venued in the Superior Court of Santa Clara County, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

In witness whereof, this instrument has been duly executed by the principal and surety above named.

SURETY:

Date: _____

s/ *[form document – do not execute]*

Name: _____

Title: _____

Principal:

Date: _____

s/ *[form document – do not execute]*

Name: _____

Title: _____

(Attach Acknowledgment with Notary

Seal and Power of Attorney)

APPROVED:

[form document – do not execute]

Scott Creer, City Engineer

Date: _____

APPROVED AS TO FORM:

By: *[form document – do not execute]*

Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

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

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

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

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

WITNESS my hand and official seal.

SIGNATURE OF NOTARY PUBLIC

(ABOVE AREA FOR NOTARY SEAL)

Warranty Bond Page 4 of 4
Version July 2017



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

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

ADOPT RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING ACCEPTING PROPOSITION 56 TOBACCO GRANT FROM STATE OF CALIFORNIA DEPARTMENT OF JUSTICE

RECOMMENDATION(S)

Adopt resolution authorizing the City Manager to execute and administer the Memorandum of Understanding (MOU) with the California Department of Justice to accept grant funds for the Proposition 56 Tobacco Grant for a total amount of \$431,728 over two fiscal years.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Public Safety Master Plan

REPORT NARRATIVE:

The Morgan Hill Police Department received a grant award from the California Department of Justice (DOJ) for the Proposition 56 – Tobacco Grant Program. The intent of this grant is to reduce and prevent the use of tobacco products among youth, teens, and our community at large. These include cigarettes, vape pens, and electronic cigarettes using flavored tobacco products. The grant total is \$431,728 to be expended over two fiscal years from FY 2021-22 through FY 2022-23. The City previously received a grant award in 2018 from Proposition 56 funds that will end on June 30, 2021, which funded a School Resource Officer, education, outreach and enforcement activities and our peer-to-peer team Warriors Against Vaping and E-cigarettes (WAVE).

When the Police Department submitted the application for this new grant in August 2020, our intent was to continue the work and the programming the School Resource Officer (SRO) had developed. At its meeting of March 2, 2021, the Board of Trustees of the Morgan Hill Unified School District voted 4- 2 to not continue the work of the grant-funded SRO within its schools. The Police Department notified the DOJ that we had to decline the grant due to the school board's decision, but DOJ approached us with a new and exciting anti-vaping/tobacco program. DOJ recognized the success of our current grant and wanted to build upon its success. Furthermore, Morgan Hill is the only city

within Santa Clara County to receive this grant award. Grant funding will now provide salary and benefits for an existing 1 FTE Community Enforcement Police Officer (CEO) dedicated to anti-vaping/tobacco outreach, education, and enforcement. The responsibilities of the CEO will include trainings for community-based organizations, churches, and clubs on tobacco-related issues occurring within our community. The CEO will conduct tobacco retailer compliance checks and retailer education sessions to ensure retailers are not selling tobacco products to minors and follow the City's ordinance prohibiting the sale of liquid and flavored tobacco. Grant funds will also include over-time hours for Police Officers and Multi-Service Officers to conduct city-wide enforcement activities at parks, events, and festivals. This grant does not include the peer-to-peer component due to funding constraints. The Police Department looks forward to the opportunity to continue and further the intent of this new grant by taking anti-vaping/tobacco messaging citywide.

The two-year grant term begins July 1, 2021. The resolution and MOU (Attachments 1 and 2) must be approved by City Council within 90 days of notification of the grant award on March 5, 2021.

COMMUNITY ENGAGEMENT: Inform

This staff report serves to inform the community of the grant award from the State Department of Justice to curb tobacco use among youth and teens.

ALTERNATIVE ACTIONS:

Should the City Council decline this grant, the Police Department will not have an officer dedicated to community wide anti-vaping/tobacco efforts. The 1 FTE position will go back to the patrol division and be fully funded by the General Fund (010).

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 6, 2019, the City Council voted to approve and accept the first Proposition 56 Tobacco Grant to fund the School Resource Officer position.

FISCAL AND RESOURCE IMPACT:

The total amount of this grant award is \$431,728, which includes 5% administrative costs. The City will include the additional grant revenue for FY 2021 – 22 as part of the mid-cycle budget update in May 2021 and will include the grant revenue for FY 2022 – 23 in the next two-year budget.

CEQA (California Environmental Quality Act):

Not a Project.

The grant entails organizational or administrative activities of governments and will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. 2020-21_MOU_Morgan Hill PD
2. RESOLUTION Tobacco Grant March 17 2021

MEMORANDUM OF UNDERSTANDING

PURPOSE

This Memorandum of Understanding ("MOU") is entered into by the Department of Justice ("DOJ") and the Morgan Hill Police Department (hereinafter, "Grantee"), to provide grant funds to Grantee for expenditure in compliance with the Grantee Handbook. The Grantee will expend funds for the purposes identified in the approved Grant Application submitted by Grantee in response to the DOJ's Request for Proposal for activities of Local Government Agencies to be funded under the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 (the "Act"), approved by the voters as Proposition 56.

The Request for Proposals, Grantee Handbook (dated February 2021), and Grant Application are hereby incorporated by reference into this MOU.

COST REIMBURSEMENT

DOJ agrees to reimburse Grantee in arrears, for Grantee's actual expenditures in performing the Scope of Work included in the approved Grant Application, upon receipt of invoices from Grantee and approval of the invoices by DOJ, in accordance with the reimbursement procedures set forth in the Grantee Handbook.

BUDGET CONTINGENCY CLAUSE

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under the agreement does not appropriate sufficient funds for this MOU, this MOU shall be of no further force and effect. In this event, the DOJ shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this MOU and Grantee shall not be obligated to continue performing any provisions of this agreement for which it would have been reimbursed.

If funding for any fiscal year is reduced or deleted in the Budget Act for purposes of this MOU, the DOJ shall have the option to either cancel this MOU with no liability occurring to the DOJ, or offer an addendum to the Grantee to reflect the reduced amount.

ADMINISTRATION

Should Grantee fail to comply with this MOU, including any expenditures for purposes not permitted under the MOU, DOJ may take one or more of the actions described under Remedies for Noncompliance in the Grantee Handbook.

MISCELLANEOUS PROVISIONS

Addendum – No addendum or variation of the terms of this MOU is valid unless made in writing, and signed by the duly authorized representatives of the parties.

Assignment – This MOU is not assignable by Grantee in whole or in part.

Indemnification – Grantee agrees to indemnify and hold harmless the DOJ, its officers, agents and employees from all claims, liabilities, or losses in connection with the performance of this MOU.

Termination – The DOJ may terminate this MOU and be relieved of any obligation to provide grant funds to Grantee should Grantee fail to perform the Scope of Work at the time and in the manner provided in this MOU.

TERMS

Grant Duration: 1/1/2021 – 6/30/2024

Award Amount				
Category of Expenditure	Budget FY 2020-2021	Budget FY 2021-2022	Budget FY 2022-2023	Budget FY 2023-2024
Personal Services	\$0	\$201,522	\$207,798	\$0
Operating Expenses and Equipment	\$0	\$900	\$950	\$0
Administrative Costs (Not to Exceed 5%)	0	\$10,121	\$10,437	\$0
TOTAL AWARD AMOUNT	\$431,728			

The time limit for reimbursements against this award ends 6/30/2024. Requests received after 7/15/2024 cannot be reimbursed by the DOJ.

GRANTEE CONTACT INFORMATION

Shane Palsgrove, Police Chief
 City of Morgan Hill - Police Department
 16200 Vineyard Blvd., Morgan Hill, CA 95037
 408-776-7318
 Shane.Palsgrove@morganhill.ca.gov

AUTHORIZATION

The DOJ and Grantee, by their duly authorized officials, have executed this MOU on the respective dates indicated below. This MOU and any future addendums shall be mailed to the Division of Operations, Local Assistance Unit, Tobacco Grant Program, and will become fully executed upon completion of signatures from all parties.

EXAMPLE

Shane Palsgrove, Police Chief
 City of Morgan Hill

Date

EXAMPLE

Christina Turner, City Manager
 City of Morgan Hill

Date

EXAMPLE

Donald Larkin, City Attorney
 City of Morgan Hill

Date

STACY HEINSEN, GRANT MGR.

Division of Operations
 California Department of Justice

Date

CHRIS RYAN, CHIEF

Division of Operations
 California Department of Justice

Date

RESOLUTION NO.**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE CITY TO ACCEPT GRANT FUNDS IN THE AMOUNT OF \$431,728 FROM THE STATE DEPARTMENT OF JUSTICE OFFICE OF ATTORNEY GENERAL TOBACCO GRANT PROGRAM**

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

WHEREAS, the reasons supporting the grant described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled “Approve MOU with California Department of Justice and Accept Proposition 56 Tobacco Grant Funds” submitted for City Council consideration at its meeting of March 17, 2021 submitted to the City Council by the City Manager (the “Staff Report”), the contents of which Staff Report are incorporated herein by this reference; and

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

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

- a. The City of Morgan hill is interested in participating in the Tobacco Program which is made available through The California Healthcare Research and Prevention Tobacco Tax Act of 2016 (Prop 56) and administered by the California Department of Justice (DOJ) to support local efforts to reduce the use of vaping and tobacco products in the City; and

- b. Following the City's submittal of a proposal for the Program, the State of California DOJ offered to award the City of Morgan Hill for the two-year grant program beginning July 1, 2021 and ending June 30, 2023; and
- c. Grant funds will be used for City of Morgan Hill 1FTE Police Officer salary and benefits; overtime costs for Police Officers and Multi-Service Officers related to tobacco education, outreach and enforcement operations, local retailer inspection, operating costs, materials, and supplies; and
- d. In order to be considered eligible to receive grant funding, the City must submit a completed Grant Award Memorandum of Understanding to the State of California DOJ; and
- e. That the City Manager is hereby delegated authority to and is authorized and directed to execute, and subsequently administer including the authority to accept grand funding in the amount of \$431,728 from the State of California DOJ; and
- f. The City Manager or a designated representative is hereby authorized on behalf of the City to execute grant documents and to submit all documents including without limitation, contracts, amendments, extensions, and payment requests as appropriate to accept the funds under and comply with the condition of the grant; and
- g. That the City Clerk is hereby authorized and directed to forward a copy of this Resolution to the City's Finance Director, who is hereby authorized and directed to take all actions necessary to implement the terms of this Resolution; and
- h. That the City Manager is hereby delegated authority to and is authorized to take all other ministerial actions that may be necessary or appropriate to implement the provisions of this Resolution.

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

PASSED AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th day of March 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 the meeting held on March 17, 2021.

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

DATE: _____

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

Wednesday, February 24, 2021 7:00 pm

Virtual Meeting

SPECIAL MEETING

A Special Meeting of the City Council was called at 7:00 pm for the purpose of conducting a Community-City Council Workshop.

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 OF AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

Minutes Acceptance: Minutes of Feb 24, 2021 7:00 PM (CONSENT CALENDAR)

COMMUNITY-CITY COUNCIL WORKSHOP

The City is and has been aware that broadband service in Morgan Hill does not meet the community's expectations, nor in many cases does it meet the community's true needs as was experienced during the internet outage on February 3, 2021 as a result of a fiber cut. The Morgan Hill Broadband Community Workshop Series (February 24, March, 24 & April 28) will provide an opportunity to share information, ask questions and better understand the challenges we face as a community. The workshops will focus on:

- Providing the community with a better understanding of the history of broadband services in Morgan Hill.
- What infrastructure (both wired and wireless) exists in Morgan Hill.
- How broadband is regulated and what that means to Morgan Hill.
- What the City can and cannot do.
- What residents and local businesses can and should do.

Mayor Constantine thanked the community for taking the time to join us for this important conversation. He acknowledged how impactful the internet outage that took place on February 3rd was to our community. Internet service in Morgan Hill has been an ongoing conversation as we know more needs to be done. In fact, this series of Broadband workshops to have this important conversation was scheduled before the internet outage happened. Please know that we take this very seriously and will continue to work with the community to address this issue.

He announced that in this workshop setting, to share your comments/questions, please do so by either raising your virtual hand to speak or by typing your comments/questions in the Q&A box. We would like community members to speak on their own behalf. As such, we will not allow ceding of time.

City Manager Christina Turner reiterated what Mayor Constantine said and thanked everyone for joining this important conversation, noting feedback is important to us. She acknowledged that now more than ever, losing internet service is incredibly impactful with so many people working from home and many families whose kids are participating in schooling from home. She then provided a summary of the evening's agenda. During the outage, the City contacted Charter to try to identify the scope and source of the outage. Messages were sent out to the community notifying residents that a significant outage had occurred and was being worked on. While staff knew that many people would not see the messages due to the outage, some residents who weren't Spectrum customers did maintain service and would see the messages. Police officers were doubled and sent to highly visible and heavily traveled locations within the City. Patrol teams also checked on vulnerable facilities such as assisted living centers. Fire protection and medical response services were unaffected. The City also sent letters to the California Public Utilities Commission and the community.

She shared that the City's 911 Dispatch Center was up and running during the February 3rd outage because it uses copper lines, not fiber, and has a backup internet service through South Valley Internet. The City proactively switched 911 services to the County during the outage, in an abundance of caution, but never lost landline services. We understand that many people could not call 911 because they lost their (voice over internet phone) VOIP and some Verizon Wireless service. The City has no franchise agreement with Charter/Spectrum for broadband internet services. Broadband services are essentially only regulated by the Federal Government. The minor regulatory role the City does have is limited to relatively insignificant cable television standards.

Other broadband providers have been encouraged and continue to be welcomed to come to Morgan Hill at any time. The vast majority of Americans are served by just one cable company due mostly to the high costs of building a second new broadband network in a community.

The City of Morgan Hill does not have the financial, infrastructure, nor staffing resources to become an independent wired broadband provider. The City has and continues to encourage public-private

partnerships with providers as the only realistic option the City has to facilitate improved services for our residents and local businesses. We have explored and will continue to explore wireless options for the community that may expand the options available.

Other services (Frontier landline, Frontier broadband, wireless broadband) are available to most people in the community. Those strongly interested in maintaining service and the ability to call 911 during service outages should consider maintaining two paths of connectivity. Even with enhanced system redundancy, outages will inevitably occur. The City, for example, gets backup service from a local internet service provider, South Valley Internet.

Lisa Ludovici spoke on behalf of Charter and provided the community with an overview of their services and what they can do to help with future issues.

The Mayor opened the questions and answers period. City staff, along with Lisa Ludovici, answered questions.

Mayor Constantine opened the floor to the Council Members, who shared their comments.

Christina Turner asked the community to communicate with the CPUC to demand redundancy and invited the community to join for the future two workshops in this broadband series.

WORKSHOP SUPPLEMENT 1

WORKSHOP SUPPLEMENT 2

WORKSHOP SUPPLEMENTS 3-5

BROADBAND WORKSHOP PRESENTATION

PUBLIC COMMENT

Public comment for items not on the agenda opened at 9:14 pm.

There being no requests, public comment closed.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:15 pm.

MINUTES PREPARED BY:

Michelle Bigelow

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, March 3, 2021 6:00 pm

Virtual Meeting

SPECIAL/REGULAR MEETING

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

6:00 pm Closed Session

7:00 pm Regular Meeting

SPECIAL MEETING

6:00 pm Closed Session

CALL TO ORDER

Mayor Constantine called the meeting to order at 6:00 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	

Minutes Acceptance: Minutes of Mar 3, 2021 6:00 PM (CONSENT CALENDAR)

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.

CLOSED SESSION

City Attorney Donald Larkin announced the closed session items.

OPPORTUNITY FOR PUBLIC COMMENT

Public comment opened at 6:02 pm.

There being no requests, public comment closed.

ADJOURN TO CLOSED SESSION

The meeting adjourned to closed session at 6:03 pm.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Initiation of litigation pursuant to § 54956.9(c)

One case

CONFERENCE WITH LEGAL COUNSEL- THREATENED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9.

One case

CONFERENCE WITH REAL PROPERTY NEGOTIATIONS

Pursuant to: Government Code Section 54956.8

Property: APN's - 81706001, 81714004, 81714009, 81714005

Negotiating Parties: Christina Turner and Chris Ghione

Property Owner: CHU JOHN C AND MAY-JIH C TRUSTEE

Under Negotiation: Price and Terms of Sale

REGULAR MEETING

7:00 pm

The Regular Meeting convened at 7:05 pm.

PROCLAMATIONS

Proclaiming the Month of March 2021 as Youth Arts Month

Minutes Acceptance: Minutes of Mar 3, 2021 6:00 PM (CONSENT CALENDAR)

CITY COUNCIL REPORTS

CITY COUNCIL REPORTS SUPPLEMENT 1

Mayor Pro Tem McKay spoke regarding his outside appointments to the League of California Cities (League). He is a Board member on the League's Peninsula Division which provides advisory recommendations to the statewide board. They work on subjects like employee rights and equity. The Board put together a letter to the statewide board, that reinforced their position on equity and social justice. He believes this is a great model and something that the City might want to review for our own community. Next, he spoke regarding the League's Housing, Economic, and Community Development Policy Committee. This organization is all about fighting for the rights of cities. We are looking at a lot of daunting legislation that we have to continue to watch, discuss locally, and fight for through the Policy Committee. He concluded by speaking regarding his appointment to the League's Public Safety Task Force, there are 22 appointed members from around the state. It is very important that we talk about public safety in our current climate. Cities are looking at ways their police activities are conducted and it has really become an important conversation. He shared that our City is already doing virtually everything that the task force has been discussing. He is very proud to be part of this team.

CITY MANAGER'S REPORT

City Manager Christina Turner spoke to the evening's supplements and presentations. She provided a COVID update and shared that the County moved into the red tier today. That aligns us with the State's blueprint for a safer economy. The County has lifted local activity specific health directives. Indoor dining can now resume at a maximum of 25% or 100 people, whichever is fewer. Retail stores are now at a maximum of 50%, Gym and fitness centers at 10%, and movie theaters at 25% or 100 people, whichever is fewer. The County Health Officer still urges businesses and residents to continue exercising caution even as restrictions are lifted by the State by following social distancing orders as well as wearing face coverings as much as possible. She shared that last week, the City served as a vaccination site in partnership with the County. The vaccinations were at the Community and Cultural Center where they issued 200 vaccinations each day for two days. Those who received their vaccinations at our site will be returning for their second dosage on March 16th and 17th. We are also working with the County in hopes that they will come back to provide additional first dosages to our community. We met with our County and our businesses last week. Many of our restaurants were fined significant violations for various enforcement items. We invited the County Enforcement Officials to come to talk with us and talk with our business community about protocols to understand the health orders and where the violations were. We heard from our business community and they provided suggestions to the County. She thanked the County as well as our business community for attending, helping to answer questions, listening to concerns, and for helping us to get out of this pandemic collaboratively. We hope to have more meetings in the future. She mentioned that last Sunday a vaccination site was held for farm workers at Monterey Mushrooms with a capacity of 1,000 people per day. The County is looking at that model for other sites around the state.

The City received notification that we have been approved for a Department of Justice Tobacco Grant that would provide funding for two years for a School Resource officer (SRO). Our current tobacco grant ends this summer. Last night, the School Board had on its agenda to review the grant and they decided not to support the grant. Since this grant requires the schools working collaboratively with the City, we will not be able to accept this grant. The grant total is \$432,000 for the SRO over two years. At this point, with the current grant going away this summer, we now only have one SRO.

She concluded by extending an invitation to the Mayor's State of the City Address next week, March 10th at 7:00 pm. It will be live streamed on our website as well as on Facebook.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that there was no reportable action from the first two closed session items. The third closed session item will be continued to after the regular session.

OTHER REPORTS

None.

PUBLIC COMMENT

PUBLIC COMMENT SUPPLEMENT 1

PUBLIC COMMENT SUPPLEMENT 2

PUBLIC COMMENT SUPPLEMENT 3

Public comment opened. The following people were called to speak:

Brian Faircloth

Dave Mathews

Susan Kirchhoff

Sharon Luna

Jarod Lebovitz

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

ADOPTION OF AGENDA

MOTION:

Adopting the agenda as posted.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	John McKay, Mayor Pro Tem
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

CONSENT CALENDAR

MOTION:

Approving consent calendar items 2 through 8.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

1. **ITEM PULLED FOR DISCUSSION**
2. **ADOPT RESOLUTION EXPRESSING SUPPORT FOR ACTIONS TO FURTHER STRENGTHEN LOCAL DEMOCRACY, AUTHORITY, AND CONTROL AS RELATED TO LOCAL ZONING AND HOUSING ISSUES**

Recommendation:

Adopt resolution expressing support for actions to further strengthen local democracy, authority, and control as related to local zoning and housing issues.

3. APPROVE 2020 EMERGENCY MANAGEMENT PERFORMANCE GRANT MEMORANDUM OF UNDERSTANDING

Recommendation:

Adopt resolution:

1. Authorizing the City Manager to execute and administer the Memorandum of Understanding with the County of Santa Clara for the 2020 Emergency Management Performance Grant; and
2. Amending the City's Fiscal Year 2020-21 adopted budget to recognize revenue and appropriate related expenditures, in the amount of \$7,340 from the General Fund (010).

4. APPROVE COST-SHARING AGREEMENT WITH SOUTH SANTA CLARA COUNTY FIRE DISTRICT

Recommendation:

Approve and authorize the City Manager to execute and administer a cost-sharing agreement with South Santa Clara County Fire District (SSCCFD) for City's contribution to the District's Engine 67.

5. APPROVE FIRST AMENDMENT TO AGREEMENT WITH KEYSER MARSTON ASSOCIATES, INC. FOR HOUSING PROGRAM SERVICES

Recommendation:

Approve and authorize the City Manager to execute and administer an amendment to the Consultant Agreement with Keyser Marston Associates, Inc. for Housing Program services through June 30, 2022, for an additional \$50,000 and a total not-to-exceed amount of \$90,000.

6. RATIFY CITY POSITION ON ASSEMBLY BILL 271 - AUTHORIZING VALLEY WATER TO UTILIZE "BEST VALUE" METHOD TO SELECT THE CONSTRUCTION CONTRACTOR FOR THE ANDERSON DAM SEISMIC RETROFIT PROJECT

Recommendation:

Ratify City position on pending State Legislation Assembly Bill 271.

7. APPROVE THE FEBRUARY 17, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

8. AWARD 2020 INFLOW AND INFILTRATION SEWER REPAIR PROJECT

Recommendation:

1. Approve 2020 Inflow and Infiltration Sewer Repair Project plans and specifications;
2. Award contract to Pacific Underground Construction, Inc. for the 2020 Inflow and Infiltration Sewer Repair Project in the amount of \$2,034,350;
3. Authorize expenditure of construction contingency funds not to exceed \$406,870; and
4. Authorize the City Manager to execute and administer the construction contract with Pacific Underground Construction, Inc.

PUBLIC HEARING

Minutes Acceptance: Minutes of Mar 3, 2021 6:00 PM (CONSENT CALENDAR)

9. ADOPT RESOLUTION AUTHORIZING THE COUNTY TO COMMENCE 2021 HAZARDOUS VEGETATION ABATEMENT PROGRAM

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution authorizing Santa Clara County to commence hazardous vegetation abatement activities on the attached list.

Program Administrator Anthony Eulo provided the report.

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

MOTION:

Approving the recommended action.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

OTHER BUSINESS

10. ADOPT RESOLUTION CERTIFYING THE INITIATIVE PETITION TITLED: CITIZENS' INITIATIVE CHANGING ZONING REGULATIONS THROUGHOUT THE CITY OF MORGAN HILL TO PROHIBIT CERTAIN NEW STORAGE AND DISTRIBUTION USES IN ALL AREAS OF THE CITY AND AMENDING THE REVIEW PROCESS FOR LARGE-SCALE DEVELOPMENT PROJECTS, AND DIRECT STAFF TO PREPARE IMPACT REPORT

Recommendation:

1. Adopt resolution accepting the City Clerk's Certificate of Sufficiency for the Initiative Petition Titled: Citizens' initiative changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects; and
2. Direct staff to prepare an impact report under Elections Code section 9212 no later than April 2, 2021 for City Council meeting, for the Council to consider next steps.

City Clerk Michelle Bigelow and Community Development Director Jennifer Carman provided a presentation and report.

MOTION:

Moving item 1, Adopt resolution condemning all forms of hate and violence including the January 6, 2021 riots at the United States Capitol Building in Washington D.C. to the March 17, 2021 City Council agenda.

RESULT:	CONTINUED [3 TO 2]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	Rene Spring, Council Member
AYES:	McKay, Martinez Beltran, Spring
NAYS:	Constantine, Borgioli

Public comment opened and the following people were called to speak:

Russell Blalack

Armando Benavides

Neil

Susie Jimenez spoke on behalf of herself, Zsanett Napoli, and Eric Sidle

Miguel Jimenez spoke on behalf of himself, Sonia Sidle, and Brian Nall

John Lukez

Craig

Brittney Sherman spoke representing the Chamber of Commerce

Julie Allen

Allan Abrams

Nick Gaich spoke representing the Chamber of Commerce

Rick Kent

Ranga Rayudu

Armando Garcia spoke representing the Chamber of Commerce

Scott Unger spoke representing Toray Advanced Composites

John Williams

Kathryn Rossi

Joe Baranowski spoke on behalf of himself, Bryan Espiritu, and Kathy Baranowski

Tandon Christopher

Linda Nowlen

David Stites

Jennifer Blalack

Aaron Smith

Robin Carrillo

Devang

Ruth Armstrong

Sean Voss

Margo Westfall

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

MOTION:

Adopting resolution accepting the City Clerk's Certificate of Sufficiency for the Initiative Petition Titled: Citizens' initiative changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large-scale development projects.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Gino Borgioli, Council Member
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

MOTION:

Directing staff to prepare impact analysis within 30 days and during that period meet with the proponents of the initiative to work on a compromise and come back with alternative actions.

RESULT:	DIRECTED [3 TO 2]
MOVER:	Yvonne Martinez Beltran, Council Member
SECONDER:	John McKay, Mayor Pro Tem
AYES:	Constantine, McKay, Martinez Beltran
NAYS:	Borgioli, Spring

MOTION:

Moving item 12 ahead of item 11. Hearing items 11 and 13 if time permits.

RESULT:	MOVED [UNANIMOUS]
MOVER:	Rich Constantine, Mayor
SECONDER:	Yvonne Martinez Beltran, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

12. COUNTYWIDE SOLID WASTE SERVICES

Recommendation:

1. Approve the concept of providing countywide solid waste administrative services;
2. Adopt resolution amending Fiscal Year 2020-21 Budget to recognize \$54,127 as revenue and expenditures for the administration of countywide solid waste program;
3. Adopt updated Management, Professional, and Confidential Employees Resolution establishing the Environmental Services Manager position and salary;
4. Authorize the increase of the existing Part-Time Management Analyst position to a Full-Time position;
5. Authorize the City Manager to execute an agreement with the County of Santa Clara for Fiscal Agent and Related Planning Services subject to the review and approval of the City Attorney; and
6. Provide direction to staff to return to the Council with required actions to increase the threshold for purchases made exclusively with countywide funds received for solid waste management program.

Program Administrator Anthony Eulo provided the report.

Public comment opened. There being no requests to speak, public comment closed.

MOTION:

Approving the recommended actions.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Rene Spring, Council Member
SECONDER:	Gino Borgioli, Council Member
AYES:	Constantine, McKay, Borgioli, Martinez Beltran, Spring

13. MONTHLY BUDGET UPDATE AND JANUARY 2021 FINANCIAL AND INVESTMENT REPORTS

Recommendation:

Accept and file report.

Item 13 was heard before item 11.

Finance Director Dat Nguyen provided a presentation and report.

Public comment opened.

Kproctor was called to speak.

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

RESULT:	ACCEPT REPORT
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11. PROVIDE INPUT ON POLICY OPTIONS RELATING TO TREE PROTECTION

Recommendation:

Provide guidance to staff on the type and scope of policy changes the City Council is interested in considering relating to the protection of trees in the community.

Item continued to the March 17, 2021 City Council meeting.

RESULT: CONTINUED TO NEXT MEETING

MOTION:

Extending the meeting to 11:15 pm.

RESULT: EXTENDED [UNANIMOUS]
MOVER: Rich Constantine, Mayor
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, McKay, Borgioli, Martinez Beltran, Spring

ITEMS PULLED FOR DISCUSSION

1. ADOPT RESOLUTION CONDEMNING ALL FORMS OF HATE AND VIOLENCE INCLUDING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL BUILDING IN WASHINGTON D.C

Recommendation:

Adopt resolution condemning all forms of hate and violence including the January 6, 2021 riots at the United States Capitol Building in Washington D.C.

Item continued to the March 17, 2021 City Council meeting.

RESULT: CONTINUED [3 TO 2]
MOVER: Yvonne Martinez Beltran, Council Member
SECONDER: Rene Spring, Council Member
AYES: McKay, Martinez Beltran, Spring
NAYS: Constantine, Borgioli

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Martinez Beltran asked that the issue of Downtown traffic be brought back to Council for discussion.

Mayor Constantine requested that an ordinance come to Council regarding hazard pay for grocery store workers.

ADJOURNMENT

The meeting adjourned to the continued closed session at 10:53 pm

City Attorney Don Larkin announced the continued closed session.

Public comment for the closed session opened. There being no requests to speak, public comment closed.

There being no further business, the meeting adjourned at 11:17 pm.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

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

AUTHORIZE THE CITY MANAGER TO EXECUTE AND ADMINISTER A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT IN THE AMOUNT OF \$350,121 AND AWARD OF BRITTON MIDDLE SCHOOL PEDESTRIAN ENHANCEMENT PROJECT IN THE AMOUNT OF \$748,729 TO REDGWICK CONSTRUCTION CO

RECOMMENDATION(S)

1. Authorize the City Manager to execute and administer a Community Development Block Grant agreement in the amount of \$350,121 for the Britton Middle School Pedestrian Enhancement Project;
2. Approve Britton Middle School Pedestrian Enhancement Project plans and specifications;
3. Award contract to Redgwick Construction Co. for the Britton Middle School Pedestrian Enhancement Project in the amount of \$748,729;
4. Authorize expenditure of construction contingency funds not to exceed \$112,310; and
5. Authorize the City Manager to execute and administer the construction contract with Redgwick Construction Co.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Fiscal Sustainability

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan

REPORT NARRATIVE:

Community Development Block Grant (CDBG)

For Fiscal Year (FY) 2020-21, the City of Morgan Hill was presented with the opportunity to apply for a CDBG Category IV grant. The eligibility requirements for this grant include the following:

- Maintenance and Rehabilitation of Existing Emergency Shelters;
- Maintenance and Rehabilitation of Transitional Housing;
- Improvement of other Eligible Community Facilities.

Staff submitted the grant application by the deadline of May 15, 2020. Through a competitive grant selection process within the County, the City of Morgan Hill was selected by the County to receive \$350,121 for the construction of the Britton Middle School Pedestrian Enhancement Project.

The Britton Middle School Pedestrian Enhancement Project will improve pedestrian access and safety in the area surrounding Britton Middle School. The proposed improvements (Attachment 1) will include increased lighting, the undergrounding of overhead utilities along the west side of Monterey Road fronting the school, new sidewalk improvements along the school frontage on Central Avenue and driveway modifications to both school driveways on Central Avenue to improve pedestrian safety at these locations for both students and residents in the area.

Staff recommends the acceptance of the CDBG grant and authorizing the City Manager to execute and administer the agreement in the amount of \$350,121. The grant will be used to partially fund the cost of construction and project management for the Britton Middle School Pedestrian Enhancement Project.

Project Bidding and Award

The services of CSG Consultants were utilized in the preparation of the improvement plans and specifications for the Britton Middle School Pedestrian Enhancement Project. The project plans and specifications were finalized in January 2021 and were released for bidding purposes in early February.

The bid opening for this project was held on March 4, 2021 and seven bids were received:

Redgwick Construction Co.	\$ 748,729
Terramark General Engineering Contractors, Inc.	\$ 886,221
Don Chapin Company	\$ 914,752
Galeb Paving, Inc	\$1,006,786
Granite Construction Company	\$1,018,685
Granite Rock Company	\$1,033,693
Lewis and Tibbetts, Inc.	\$1,283,408

Redgwick Construction Co.'s bid of \$748,729 is approximately 28% less than the engineer's estimate of \$1,050,000. Redgwick Construction Co. is a qualified contractor who has experience in doing this type of construction work. Therefore, staff recommends awarding the project contract to Redgwick Construction Co. in the amount of \$748,729. Staff requests a 15% contingency for the project. The project is scheduled to start in April 2021 and be completed by December 2021.

The project plans and specifications can be found on the City's webpage in the Community Project link <http://www.morgan-hill.ca.gov/1436/Project-Plans-Specifications-and-Bid-Res>.

COMMUNITY ENGAGEMENT: Inform

The Britton Middle School Pedestrian Enhancement Project fronts Britton Middle School and is adjacent to residential neighborhoods and local businesses. Staff have provided regular project updates to the School District to keep them informed of the project status and to receive their input on the proposed improvements. Staff will work with the contractor to minimize construction impacts to the school and surrounding neighborhoods. Staff will also provide weekly construction activity updates through Nextdoor and on the City's website.

ALTERNATIVE ACTIONS:

City Council may elect to not award this construction contract and request the project be re-bid. Staff does not recommend this alternative as competitive bids were received, rebidding the project is not likely to result in significant savings and it will delay the project approximately three to four months.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

June 6, 2018 - City Council adopted the FY 2018-19 through FY 2023-24 Capital Improvement Budget which identifies funding for the proposed project.

FISCAL AND RESOURCE IMPACT:

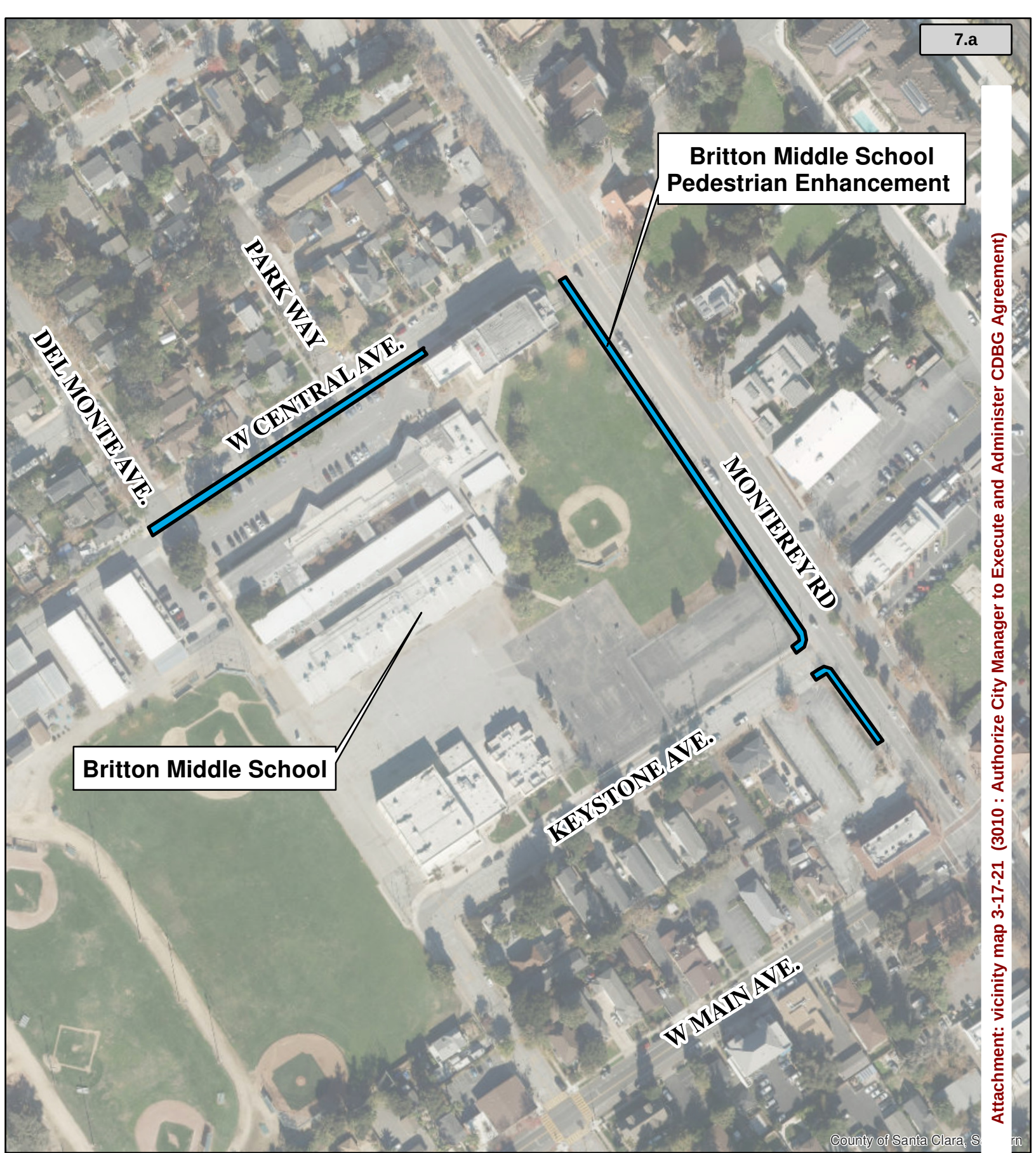
The total authorization for the project would be \$861,039, which includes a 15% contingency of \$112,310. The project is sufficiently funded in the Capital Improvement Program (CIP) budget under CIP Project 551008, RDCS School Safety Improvements, utilizing School Pedestrian & Traffic Safety Funds (355). If approved, \$350,121 from CDBG Grant will be appropriated to CIP Project 551008.

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. vicinity map 3-17-21
2. Plans and Specifications (weblink)
3. FY21 Morgan Hill CDBG Contract Final



Attachment: vicinity map 3-17-21 (2010 : Authorize City Manager to Execute and Administer CDBG Agreement)



**Engineering and Utilities Department
CIP Engineering Division**

Document Path: G:\R-14\PROJ\Agustin\GIS\Britton Middle School Pedestrian Enhancement.mxd

Britton Middle School Pedestrian Enhancement



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Packet Pg. 72

**SANTA CLARA COUNTY
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
CITY/COUNTY CONTRACT
between the
COUNTY OF SANTA CLARA and CITY OF MORGAN HILL
FY2021**

Contract No. MH-21-41 - Concrete Sidewalk - Britton Middle School

CDBG Grant Amount: \$350,121

THIS Contract (hereinafter "CONTRACT" or "AGREEMENT") is made and entered into pursuant to the Catalog of Federal Domestic Assistance (CFDA) 14.218 by and between the COUNTY OF SANTA CLARA, a political subdivision of the State of California (hereinafter "COUNTY"), and the CITY OF MORGAN HILL (hereinafter "CITY" or "SUBRECIPIENT") participating as a member of the County of Santa Clara COMMUNITY DEVELOPMENT BLOCK GRANT (hereinafter "CDBG") Joint Powers Agreement. The allocation of funds pursuant to this CONTRACT is a grant. COUNTY approved the allocation and disbursement of Community Development Block Grant (hereinafter "CDBG") funds on June 2, 2020.

RECITALS

WHEREAS, COUNTY has applied for and received Community Development Block Grant (hereinafter "CDBG") Entitlement Program funds (hereinafter "FUNDS"), identified more specifically as **B-19-UC-06-0007**, from the United States Department of Housing and Urban Development (hereinafter "HUD") as an entitlement jurisdiction pursuant to the provisions of Title 1 of the Housing and Community Development Act of 1974, Public Law 93-383 as amended (hereinafter "ACT"); and

WHEREAS, these FUNDS were received pursuant to CFDA Number 14.218 Department of Housing and Urban Development Community Development Block Grant Entitlement Grants; and

WHEREAS, COUNTY on **June 2, 2020**, authorized the allocation of CDBG FUNDS for **Fiscal Year 2021** in the total amount of **One Million Nine Hundred Forty Thousand and Seven Hundred and Twenty Dollars (\$1,940,720)**; and

WHEREAS, said allocation of FUNDS pursuant to this CONTRACT is a grant and includes Three Hundred Fifty Thousand One Hundred Twenty Dollars (\$350,120) to SUBRECIPIENT; and

WHEREAS, COUNTY has agreed to grant to SUBRECIPIENT a portion of COUNTY'S CDBG FUNDS for the PROGRAM as described below to be operated within COUNTY and the Program will benefit low-, very low- and extremely low-income households, as described herein; and

WHEREAS, COUNTY has agreed to the use by CITY, as a SUBRECIPIENT, a portion of COUNTY'S CDBG Entitlement Program funds for a Housing and Community Development Program to be operated within the COUNTY and which shall benefit extremely-low, very-low, and low income households.

NOW, THEREFORE, the parties agree as follows:

SECTION 1. PROGRAM

SECTION 1.1 COUNTY agrees to allocate a portion of its current CDBG FUNDS, and/or program income as defined in Title 2 Code of Federal Regulations (hereinafter "CFR") Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (hereinafter "UNIFORM ADMINISTRATIVE REQUIREMENTS") to SUBRECIPIENT, the total sum of **Three Hundred Fifty Thousand One Hundred Twenty One (\$350,120)** for the purpose of reimbursing SUBRECIPIENT for project and activity costs and expenses that are allowed and incurred in the implementation of the SUBRECIPIENT's program (hereinafter "PROGRAM"), as more particularly described in numerous Exhibits marked as noted herein, attached to this Contract, incorporated by this reference. Reimbursement for **Fiscal Year 2021** shall not exceed the total sum of the beginning balance of the Fiscal Year 2021 CDBG Funds allocated to CITY, and any roll-over of unexpended CDBG Funds from previous year's allocations to CITY. Such authority is contingent upon CITY's and its subrecipients' full compliance at all times with all Federal Rules and Regulations governing the CDBG Program, the COUNTY CDBG Reallocation Guidelines, and all other applicable laws.

SECTION 2. TERM

SECTION 2.1 The purpose of this CONTRACT is for the COUNTY to disburse CDBG FUNDS for eligible activities relating to SUBRECIPIENT PROGRAM. Unless amended or terminated prior to its expiration, the term of this CONTRACT for FY2021 disbursement and expenditure purposes will begin on **July 1, 2020** and the CONTRACT will end on June 30, 2022.

SECTION 2.2 RENEWAL TERM. The Parties may mutually agree to renew this AGREEMENT through a contract amendment.

SECTION 3. OBLIGATIONS OF SUBRECIPIENT

SECTION 3.1 SUBRECIPIENT will provide COUNTY with written certification that the following information is on file at the CITY offices, and is subject to monitoring by HUD and/or COUNTY (County's Housing and Community Development Department, "OSH") OSH staff, or their representatives:

- a. Names and addresses of the current CITY Manager and CITY Council members.
- b. Records of all discussions and actions taken at CITY Council meetings pertaining to the CDBG PROGRAM.
- c. Information and housing objectives for the Consolidated Plan required by HUD at the beginning of each program year.

SECTION 3.2 Program Performance by Subrecipient. SUBRECIPIENT warrants and represents that it shall do all of the following:

- a. Conduct the PROGRAM within Santa Clara County for the purpose of benefiting extremely low, low-or-moderate income households as defined in Exhibit A2 attached to this AGREEMENT, and
- b. Ensure PROGRAM activities within Santa Clara County benefitting low –or-moderate- income (LMI) individuals or households require a minimum **51%** of clients be of low –or -moderate-income, and
- c. Ensure PROGRAM activities within Santa Clara County benefitting low-and-moderate-income housing (LMH) activities require **100%** of homeowners be of low-or-moderate-income, and
- d. Ensure PROGRAM activities within Santa Clara County benefitting low-and-moderate-income area (LMA) activities require that at least **38.49%** (County CDBG exception percentage) of residents of that area be of low- or -moderate- income.

- e. The SUBRECIPIENT shall be responsible for administering PROGRAM as more fully described in Exhibit "A", in a manner satisfactory to the COUNTY and consistent with any and all standards required as a condition of providing these Funds.
- f. File Quarterly Progress Reports (hereinafter "QPR") as required by COUNTY on the type and number of services rendered through the operation of the PROGRAM, and a description of the beneficiaries of these services, and the QPR will evaluate the manner in which the PROGRAM is achieving its objectives and goals according to the standards established by COUNTY. The QPR will be due ten days after the close of each quarter and must cover the three months immediately preceding the date on which the QPR is filed, except for the 4th quarter. The 4th and final quarter report shall be due five days after the close of the fiscal year.
- g. Coordinate its services with other existing organizations providing similar services in order to foster community cooperation and to avoid unnecessary duplication of services.
- h. Seek out and apply for other sources of revenue in support of its operation or services from local, state, federal and private sources and, in the event of receipt of such award(s), inform COUNTY in writing within ten days of receipt of such award.
- i. Include an acknowledgement of COUNTY funding and support on SUBRECIPIENT stationery relating to the PROGRAM and on all appropriate PROGRAM-related public or County publications using words to the effect: "funded in whole or in part by the County of Santa Clara through the Housing and Community Development Act of 1974, as amended."

SECTION 3.3 Fiscal Responsibilities of CITY. CITY shall:

- a. Appoint and submit the name of a fiscal agent who will be responsible for the financial and accounting activities of SUBRECIPIENT, including the receipt and disbursement of SUBRECIPIENT Funds. The COUNTY must be notified immediately in writing of the appointment of any new fiscal agent and that agent's name.
- b. Comply with the requirements and standards of Title 24 Code of Federal Regulations, Part 570 of the Housing and Urban Development regulations concerning CDBG and all federal regulations and policies issued pursuant to these regulations and 2 CFR Part 200, UNIFORM ADMINISTRATIVE REQUIREMENTS.
- c. Document all PROGRAM costs by maintaining records in accordance with Section 3.5 below.
- d. Submit to the COUNTY, based on an agreed upon schedule, a request for payment, together with all supporting documentation. Invoices requesting disbursements submitted after the expiration of the CONTRACT will be honored only for eligible charges incurred during the CONTRACT term. All invoices must be submitted by the CONTRACT expiration date or within such other time period specified by the COUNTY for this CONTRACT term. Funds not disbursed will be reprogrammed for future reallocation by the County or may be carry forwarded and included into the SUBRECIPIENTS next fiscal year contract.
- e. Certify current and continuous insurance coverage, subject to COUNTY approval and in accordance with requirements as outlined in Exhibit F, "Insurance Requirements."
- f. Items a. through e. above are express conditions precedent to disbursement of any COUNTY funding and failure to comply with these conditions will, at discretion of COUNTY, result in suspension of funding or termination of this CONTRACT.
- g. If SUBRECIPIENT does not use CDBG Funds in accordance with the requirements of this CONTRACT, SUBRECIPIENT is liable for repayment of all disallowed costs. Disallowed costs may be identified through audits, monitoring or other sources. SUBRECIPIENT is required to respond to any adverse findings which may lead to disallowed costs subject to provisions of 2 CFR Part 200 Subpart E, "Cost Principles."

SECTION 3.4 CDBG Housing Rehabilitation Revolving Loan Fund Conditions. If CITY maintains a Revolving Loan Fund (“RLF”), CITY will maintain the RLF as a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities. The following are additional CITY RLF conditions and requirements:

- a. The RLF must be capitalized only with housing rehabilitation or housing acquisition repayment funds, which are considered CDBG Program Income for CDBG purposes. CDBG program Funds may not be drawn down to serve as the initial available funding or ongoing funding of the RLF.
- b. The RLF will cover a single, specific activity (i.e. housing rehabilitation). Properties that may be assisted under the RLF include:
 - Single-family properties occupied by low- and moderate-income households with annual gross incomes not to exceed 80% of the median area income threshold by family size, as issued by HUD for each program year; and,
 - Multi-family (rental) properties with at least 51% of the units (or such percentage as published by HUD as an exception area) occupied by tenants with annual gross incomes which meet the same HUD annual income thresholds.
- c. Program income received by the RLF from rehabilitation loan principal and interest repayments must be held in an interest bearing account. Note: Principal repayments and the interest paid by borrowers of CDBG-funded loans made from the RLF are considered CDBG Program Income and subject to the CDBG Program Income requirements.
- d. Any accrued interest on the total funds maintained in the account must be returned to HUD annually, to be remitted through the COUNTY to the U.S. Treasury.
- e. The COUNTY’s Consolidated Plan must be amended following a public review process to reflect the establishment of a RLF as a strategy to address priority-housing needs. The scope of the housing RLF should be described.
- f. In future years, the RLF’s estimated production and program income should be incorporated into each Annual Action Plan, as well as accomplishments and program income reported in the Consolidated Annual Performance and Evaluation Report (CAPER).
- g. An amendment of the applicable Annual Action Plan is required in order to transfer any RLF funds to the grantee’s main account for use with non-RLF but eligible activities. (See Title 24 CFR 570 Subpart J, 570.500 “Definitions,” 570.500(b) “Revolving Fund.”)

SECTION 3.5 Establishment and Maintenance of Records: CITY shall

- a. Maintain complete and accurate records of all its transactions including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, client statistical records, personnel, property and all other pertinent records sufficient to reflect properly (1) all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred to perform this CONTRACT or to operate the PROGRAM, and (2) all other matters covered by this CONTRACT.

SECTION 3.6 Preservation of Records. CITY will preserve and make available its records:

- a. Until five years following the expiration of this contract AGREEMENT, or
- b. For such longer period, if any as is required by applicable law; or

- c. If this AGREEMENT is completely or partially terminated, the records relating to the work terminated will be preserved and made available for a period of five years from the date of termination.

SECTION 3.7 Examination of Records and Project Site: At any time during normal business hours, and as often as may be deemed necessary, CITY agrees that HUD and the OSH, and/or any duly authorized representatives, may until expiration of (a) five years after final payment under this AGREEMENT, (b) five years from the date of termination of this AGREEMENT, or (c) such longer period as may be described by applicable law, have access to and the right to examine its offices and facilities used in the performance of this AGREEMENT or the operation of the PROJECT, and all its records with respect to the PROJECT and all matters covered by this AGREEMENT. CITY also agrees that the OSH or any duly authorized representatives will have the right to audit, examine, and make excerpts or transactions of and from such records and to make audits of all AGREEMENTs and SUB-AGREEMENTs, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to the PROJECT and matters covered by this AGREEMENT. CITY will be notified in advance that an audit will be conducted. CITY will be required to respond to any audit findings and have the responses included in the final audit report. The cost of any such audit will be borne by COUNTY.

The CITY must provide language in its contracts with all subrecipients stipulating that at any time during normal business hours, and as often as may be deemed reasonably necessary, subrecipient agrees that HUD and the COUNTY, and/or any authorized representatives may have access to and the right to examine subrecipient CDBG records and facilities until expiration of:

- a. five years after expiration of this CONTRACT;
- b. five years from the date of termination of this CONTRACT; or
- c. for such longer period as may be prescribed by law.

CITY also agrees that COUNTY and any authorized representatives has the right to audit, examine, and make excerpts or transactions of and from, such records and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to the PROGRAM and matters covered by this CONTRACT. CITY will be notified in writing of intended audits. CITY will be notified in writing of intended inspections of records and facilities and of intended audits no less than three business days before such inspections or audits. CITY is required to respond in writing to the OSH Director any audit findings within thirty (30) days of receipt of written audit findings. Responses will be included in the final audit report.

SECTION 3.8 Compliance with Law. CITY staff warrants and represents that it will become familiar and comply with and cause all its subcontractors, independent contractors, and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations and decrees including, but not limited to, those federal rules and regulations, executive orders, and statutes identified in Exhibit D "Assurances" and must comply with the requirements and standards of 2 CFR PART 200, Subpart E "Cost Principles."

SECTION 3.9 Suspension and Termination. In accordance with 24 CFR 85.43, suspension or termination of this Contract may occur if the CITY materially fails to comply with any term or condition of this CONTRACT. This CONTRACT may also be terminated for convenience or cause in accordance with 24 CFR 85.44, or in accordance with any other provision of this CONTRACT allowing for contract termination, cancellation or expiration.

SECTION 3.10 Reversion of Assets. Upon expiration or termination of this CONTRACT, or in the event HUD cancels its PROGRAM for any reason, the CITY will transfer to the COUNTY any CDBG Funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG Funds. Any real property under the CITY's control that was acquired or improved in whole or in part with CDBG Funds (including CDBG Funds provided to CITY in the form of a loan) in excess of \$25,000:

- a. Must be used to meet one of the national objectives stated in Title 24 CFR part 570.208 for a period of five years after expiration of this CONTRACT or for such longer period of time as required by the COUNTY; or,
- b. The CITY must reimburse the COUNTY an amount equal to the current market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property (reimbursement is not required after the period of time specified in Section 3.10 above).

SECTION 3.11 "Section 3" Provisions.

a. Compliance. Compliance with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this CONTRACT, shall be a condition of the federal financial assistance provided under this CONTRACT and binding upon the COUNTY, the CITY, and any subrecipients. Failure to fulfill these requirements shall subject the COUNTY, the CITY, and any subrecipients, their successors and assigns to those remedies specified in the CONTRACT through which federal assistance is provided and any other remedies available under applicable law. The CITY certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements. The CITY further agrees to comply with these "Section 3" requirements and to include the following language in all subrecipient contracts executed under this CONTRACT or using CDBG Funds:

"The work to be performed under the CONTRACT is a project or activity assisted under a PROGRAM providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project or activity area and agreements for work in connection with the project or activity be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project or activity."

The CITY certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

b. Notifications. The CITY and its subrecipients must send to each labor organization or representative of workers with which it has a collective bargaining agreement or other agreement or understanding, if any, a notice advising said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts. The CITY and its subcontractors will include this Section 3 clause in every contract and will take appropriate action pursuant to the contract upon a finding that the subcontractors is in

violation of regulations issued by COUNTY. The CITY will not contract with any subcontractors where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let, authorize, permit or allow any contract unless the subcontractors has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

SECTION 4. OBLIGATIONS OF COUNTY

SECTION 4.1 Method of Payment. During the CONTRACT term, COUNTY shall disburse CDBG Funds to CITY on a reimbursement basis unless otherwise provided herein for all allowable costs and expenses incurred in connection with the PROGRAM, not to exceed the sum of \$350,120.

COUNTY may, at any time in its absolute discretion, elect to suspend or terminate payment to, SUBRECIPIENT in whole or in part, pursuant to this CONTRACT based on SUBRECIPIENT's non-compliance, including, but not limited to, incomplete documentation of expenses, failure to substantially meet goals and objectives as required in Exhibits A (Scope of Services, Performance Outcomes and Measurements, and Budget), failure to submit adequate quarterly progress reports as required herein or other incidents of non-compliance as described in Section 6.2 of this CONTRACT or based on the refusal by SUBRECIPIENT to accept any additional conditions that may be imposed by HUD at any time, or based on the suspension or termination of the grant to COUNTY made pursuant to the Housing and Community Development Act of 1974, as amended.

SECTION 4.2 Non-Compliance. In the case of CITY substantial non-compliance prior to exercising any recourse authorized herein, COUNTY will initiate the following procedure:

- a. Notify the CITY Coordinator in writing of the alleged substantial non-compliance and request an immediate meeting between CITY Coordinator and COUNTY OSH CDBG Program Manager to resolve issues. If issues are not resolved satisfactorily within thirty (30) days, notify CITY Manager in writing requesting an immediate meeting between CITY Manager, CITY Coordinator and COUNTY OSH CDBG Program Manager to resolve the issues.
- b. Determine if any portion of the reimbursement request meets all eligible criteria, and if so, authorize payment for the eligible portion of the reimbursement request;
- c. Review the procedure to be followed pursuant to Section 6.3 of this CONTRACT (Contract Compliance, Corrective Action Procedure); and
- d. If applicable, forward a written report to HUD's Regional Office detailing the substantial non-compliance issues and the steps being instituted to correct performance with a copy to the CITY Manager.

SECTION 4.3 Compliance with Law. COUNTY shall become familiar and comply with, and require all its subcontractors and employees, if any, to become familiar and comply with, all applicable federal, state and local laws, ordinances, codes, regulations and decrees including, but not limited to, those federal rules and regulations, executive orders, and statutes identified in Exhibit D "Assurances." Specifically, COUNTY shall comply with the requirements of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local, Federally recognized Indian Tribal Governments," and OMB Circular A133 "Audits of State and Local Governments."

In addition, COUNTY will comply with federal regulations as cited in 24 CFR Part 570, Subpart J, and 24 CFR Part 85, and all other local, state or federal laws applicable to this PROGRAM.

SECTION 5. PROGRAM COORDINATION

SECTION 5.1 COUNTY. The County Executive will assign a single DIRECTOR for COUNTY who will render overall supervision of the progress and performance of this CONTRACT by COUNTY. All services agreed to be performed by COUNTY will be at the overall direction of the DIRECTOR.

SECTION 5.2 SUBRECIPIENT. As of the date hereof, SUBRECIPIENT has designated **Christie Thomas** to serve as CDBG Liaison and to assume overall responsibility for the progress and execution of this CONTRACT. The COUNTY will be immediately notified in writing of the appointment of a new CDBG Liaison.

SECTION 5.3 NOTICES. All notices or other correspondence required or contemplated by this CONTRACT shall be sent to the parties at the following addresses:

COUNTY: County of Santa Clara
Office of Supportive Housing
Housing and Community Development
2310 N. First Street, Suite 201
San Jose, CA 95131

CITY: Christina Turner, City Manager
City of Morgan Hill, City Hall
17575 Peak Avenue
Morgan Hill, CA 95037

All notices must either be hand delivered or sent by United States mail, registered or certified, postage prepaid. Notices given in such a manner will be deemed received when hand delivered or seventy-two (72) hours after deposit in the United States mail. Any party may change his or her address for the purpose of this section by giving five (5) days written notice of such change to the other party in the manner provided in this section.

SECTION 6. CONTRACT COMPLIANCE

SECTION 6.1 Monitoring and Evaluation of Services. Evaluation and monitoring of the PROGRAM performance is the mutual responsibility of COUNTY and CITY, with the understanding that HUD looks to COUNTY as the sole responsible party for meeting PROGRAM requirements. CITY will furnish data, statements, records, information and reports to COUNTY as necessary for COUNTY to monitor, review and evaluate the performance of the PROGRAM and its components. COUNTY has the right to request the services of an outside agent to assist in any such evaluation. Such services will be paid for by COUNTY.

SECTION 6.2 CONTRACT NON-COMPLIANCE. If CITY fails to comply with any provision of this CONTRACT, COUNTY has the right to terminate this CONTRACT or to require corrective action to enforce compliance with such provision. Such enforcement authority is pursuant to these CONTRACT terms and in accordance with the provisions of 24 CFR 85.43. Examples of non-compliance include but are not limited to:

- a. If SUBRECIPIENT (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to COUNTY in connection with the PROGRAM.
- b. If there is pending litigation with respect to the performance by CITY of any of its duties or obligations under this CONTRACT, which may materially jeopardize or adversely affect the undertaking of or the carrying out of the PROGRAM. The CITY and COUNTY may negotiate a reinstatement of this CONTRACT following termination or conclusion of such litigation.

- c. If CITY has taken any action pertaining or related to the PROGRAM or this CONTRACT, which action required COUNTY approval, and such approval was not obtained before the action was taken.
- d. If CITY is in default under any provision of this CONTRACT.
- e. If CITY makes illegal use of CDBG Funds.
- f. If SUBRECIPIENT submits to COUNTY any report which is incorrect or incomplete in any material respect.
- g. If CITY fails to meet all provisions of the COUNTY CDBG Reallocation Guidelines or the Joint Powers Agreement currently in full force and effect between the parties hereto.

SECTION 6.3. Corrective Action Procedure. COUNTY, in its absolute discretion and in lieu of immediately terminating this CONTRACT, upon occurrence or discovery of noncompliance by CITY pursuant to this CONTRACT, may give CITY notice of COUNTY'S intention to consider corrective action to enforce compliance utilizing the Corrective Action Procedure outlined below. Such notice will indicate the nature of the non-compliance and the procedure whereby CITY will have the opportunity to participate in formulating any corrective action recommendation. The Corrective Action Procedure contemplated herein is as follows:

1. COUNTY OSH Program Manager and CITY Manager will negotiate a time frame and course of action for correcting the non-compliance;
2. CITY will provide COUNTY with a written plan and time frame for correcting the non-compliance issue(s), subject to COUNTY approval. Such plan must be submitted by CITY to COUNTY within thirty (30) days of the initial non-compliance meeting between CITY and COUNTY;
3. CITY must initiate the corrective action procedure within sixty (60) days of the initial non-compliance meeting between the COUNTY OSH Program Manager and the CITY Coordinator (COUNTY, at its sole discretion, may extend this timeline for extenuating circumstances);
4. COUNTY will have the right to require the presence of CITY officers at any hearing or meeting called for the purpose of considering corrective action;
5. CITY has the right to appeal all findings of non-compliance, and subsequent corrective action, with both the COUNTY Board of Supervisors and HUD; and,
6. County reserves the right to seek any and all other remedies (equitable or other) available to it under the law.

In the event that CITY does not implement the corrective action recommendations in accordance with the corrective action timetable as approved by COUNTY, COUNTY may suspend payments hereunder, terminate this CONTRACT and/or exercise any other right or remedy available to it under the law.

SECTION 7. TERMINATION

SECTION 7.1 Termination for Cause. COUNTY may terminate this CONTRACT by providing written notice to SUBRECIPIENT for any of the following reasons:

- a. Uncorrected CONTRACT non-compliance as defined in Section 6.2; SUBRECIPIENT is in bankruptcy or receivership; a member of the SUBRECIPIENT'S Board of Directors or the Executive Director is found to have committed fraud or; there is reliable evidence that SUBRECIPIENT is unable to perform the PROGRAM as described in the attached Exhibits. The date of termination will be as specified in the notice.
- b. If CITY is in bankruptcy or receivership;
- c. If the CITY or a member of CITY'S Executive Management staff is found to have committed fraud in connection with or related to the PROGRAM;

- d. If the COUNTY determines or has reason to believe that there is reliable evidence that CITY is unable to effectively operate the PROGRAM or operate the PROGRAM in accordance with all requirements and obligations; or
- e. If CITY is in violation of any material term or condition of this CONTRACT.

SECTION 7.2 Termination for Convenience. In addition to the COUNTY'S right to terminate for cause set forth in Section 7.1, COUNTY may suspend or terminate this CONTRACT for any reason by giving thirty (30) days prior written notice to the other party. Upon receipt of such notice, performance of the services hereunder will be immediately discontinued. In the event that this CONTRACT is terminated, SUBRECIPIENT may be required to return funds according to HUD regulations. Upon termination of this CONTRACT, SUBRECIPIENT must immediately provide COUNTY access to all documents, records, payroll, minutes of meetings, correspondence and all other data pertaining to the CDBG FUNDS granted to SUBRECIPIENT pursuant to this CONTRACT.

- a. Upon termination, CITY will:

- 1. If termination is for convenience, be reimbursed for all documented allowable costs and expenses incurred in connection with the PROGRAM up to the date of such termination. COUNTY shall be obligated to compensate CITY only for allowable costs and expenses as determined by an audit or other monitoring method;

- 2. Turn over to COUNTY immediately any and all copies of studies, reports and other data, whether or not completed, prepared by CITY or its subcontractors, if any, in connection with this CONTRACT. Such materials shall become property of COUNTY. CITY, however, shall not be liable to COUNTY for COUNTY'S use of incomplete materials or for COUNTY'S use of completed documents if used for reasons not otherwise provided for or contemplated under the terms of this CONTRACT; and

- 3. Transfer to the COUNTY any CDBG Funds on hand and any accounts receivable attributable to the use of the CDBG Funds. All assets acquired with the CDBG Funds shall be returned to the COUNTY unless otherwise negotiated by separate contract per the provisions of the COUNTY CDBG REALLOCATION GUIDELINES.

- b. Upon termination of this CONTRACT, CITY will immediately provide COUNTY access to all documents, records, payroll, minutes of meetings, correspondence, and all other data pertaining to the CDBG Funds.

SECTION 8. PURCHASING REAL OR PERSONAL PROPERTY

SECTION 8.1 SUBRECIPIENT will comply with all applicable Federal Regulations as detailed by 24 CFR Part 570, Subpart J, i.e. 570.500 (Definitions), 570.503 (Agreements with SUBRECIPIENTS), 570.504 (Program Income), and 570.505 (Use of Real Property), with regards to the use and disposal of Real or Personal Property purchased in whole, or in part, with CDBG FUNDS.

SECTION 8.2 Grants. If a grant is provided for the acquisition of real property, SUBRECIPIENT will continually operate its PROGRAM for a minimum period of five (5) years from the effective date of this CONTRACT. This obligation will survive the term of this CONTRACT, the assignment or assumption of this CONTRACT and the sale of the property prior to expiration of the obligation period as set forth in this paragraph. If this obligation is not fully met, SUBRECIPIENT may be required to reimburse the COUNTY. The COUNTY may consider, but will not be limited by, the following factors in calculating the reimbursement obligation: initial grant sum, the duration of the initial contractual obligation to operate the PROGRAM versus the actual duration of operation, and the appreciated value.

SECTION 8.3 Security Document. As a condition precedent to COUNTY granting funds for the purchase of real property or an option to purchase real property, CITY will prepare and require its subrecipient(s)

to execute a Loan Agreement, Promissory Note, Deed of Trust and such other contracts restricting the use of said real property for purposes consistent with this CONTRACT and HUD and CDBG requirements.

SECTION 9. RELOCATION, ACQUISITION, AND DISPLACEMENT. CITY agrees to comply with 24 CFR 570.606 and all other applicable laws and regulations relating to the acquisition and disposition of all real property utilizing CDBG funds, and to the displacement of persons, businesses, and non-profit organizations as a direct or indirect result of any acquisition or disposition of real property utilizing or supported with the use of CDBG funds. CITY agrees to comply with all applicable state and federal laws, County ordinances, resolutions and policies concerning or related to the displacement of individuals from their residences or homes.

SECTION 10. PROGRAM INCOME. Income generated from activities carried out with CDBG Funds is Program Income and shall be regulated by all provisions of Title 24 CFR 570 Subpart J "Grant Administration," 570.503 "Agreements with Subrecipients," and 570.504 "Program Income." In addition, all provisions of the COUNTY REALLOCATION GUIDELINES apply to this CONTRACT. CITY must quarterly report all program income generated by activities carried out with CDBG funds made available under this CONTRACT. By way of further limitations, CITY may use such income during the CONTRACT term for activities permitted by this CONTRACT and shall reduce requests for additional funds by the amount of any such Program Income balances on hand. All unused Program Income will be returned to the COUNTY at the end of the CONTRACT term with the exception of rehabilitation loan payments.

SECTION 11. INDEPENDENT CONTRACTOR

SECTION 11.1. This is a CONTRACT by and between independent contractors and is not intended and will not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between SUBRECIPIENT and COUNTY. SUBRECIPIENT, including its officers, employees, agents or independent contractors or subcontractors, shall not have any claim under this Contract or otherwise against COUNTY for any Social Security, Worker's Compensation, or employee benefits extended to employees of COUNTY. If any obligation is performed for or on behalf of SUBRECIPIENT through a contractor or subcontractor, SUBRECIPIENT will remain fully responsible for the performance of all obligations under this Contract and SUBRECIPIENT will be solely responsible for all payments due to its contractors and subcontractors. No contract, subcontract or other agreement entered into by SUBRECIPIENT with any third party in connection with this CONTRACT will provide for any indemnity, guarantee or assumption of liability by, or other obligation of, County with respect to such arrangement. No contractor or subcontractor will be deemed a third party beneficiary for any purposes under or to this AGREEMENT.

SECTION 12. ASSIGNABILITY – THIRD PARTY CONTRACTORS

SECTION 12.1 None of the work or services to be performed hereunder will be assigned, delegated or subcontracted to third parties without the prior written approval of COUNTY. Copies of all third party contracts shall be submitted to COUNTY at least ten days prior to the proposed effective date. In the event COUNTY approves of any such assignment, delegation or sub-contract, the subcontractors, assignees or delegates shall be deemed to be employees of SUBRECIPIENT, and SUBRECIPIENT will be responsible for their performance and any liabilities attaching to their actions or omissions.

SECTION 12.2 This CONTRACT may not be assumed nor assigned to another subrecipient, person, partnership or any other entity without the prior written approval of COUNTY.

SECTION 13. DISCLOSURE OF CONFIDENTIAL CLIENT INFORMATION

SECTION 13.1 COUNTY AND SUBRECIPIENT agree to maintain the confidentiality of any information regarding existing, former or prospective applicants for services offered by the PROGRAM pursuant to this CONTRACT or their immediate families which may be obtained through application forms, interviews, tests, reports from public agencies or counselors, or any other source. Without the written permission of the applicant, such information may be divulged only if permitted by law as necessary for purposes related to the performance or evaluation of the services and work to be provided pursuant to or under this CONTRACT, and then only to persons having responsibilities under this CONTRACT, including those furnishing services under the PROGRAM through approved subcontracts.

SECTION 14. HOLD HARMLESS

SECTION 14.1 In addition to the indemnity obligations set forth in Exhibit F, "Insurance Requirements," SUBRECIPIENT warrants and represents that it shall indemnify, save, defend and hold harmless the COUNTY, its employees, agents, and officials, members of boards and commissions, from, for and against any and all claims, costs, settlements, litigation expenses, attorney's fees and court costs, allegations, direct and indirect damages, injuries, illnesses, deaths, actions, suits, charges and judgments whatsoever, arising out of or relating to (a) SUBRECIPIENT's negligent or intentional acts or omissions; (b) SUBRECIPIENT'S breach or violation of any term or condition of this CONTRACT; (c) SUBRECIPIENT's failure to comply with any applicable law, decrees, ordinance, code, regulations or other standard, including but not limited to as set forth in Exhibit D, "Assurances," attached herein and incorporated by reference.

SECTION 15. WAIVER OF RIGHTS AND REMEDIES

SECTION 15.1 In no event will any payment by COUNTY constitute or be construed to be a waiver by COUNTY of any breach or violation of the requirements, obligations, conditions, covenants or other provisions of this CONTRACT or any default which may then exist on the part of CITY, and the making of any such payment while any such breach, violation or default exists will in no way impair or prejudice any right or remedy available to COUNTY with respect to such breach, violation or default. In no event will payment to CITY by COUNTY in any way constitute a waiver by COUNTY of its rights to recover from CITY the amount of money paid to SUBRECIPIENT on any item which is not eligible for payment under or for the PROGRAM or this CONTRACT or any other right. No delay or omission by COUNTY to exercise any right occurring upon any noncompliance or default by CITY with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by COUNTY of any of the covenants, conditions or agreements to be performed by CITY shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition or agreement herein contained.

SECTION 16. COMPLIANCE WITH ALL LAWS, INCLUDING NONDISCRIMINATION, EQUAL OPPORTUNITY, AND WAGE THEFT PREVENTION

a. Compliance with All Laws. CITY shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies (collectively, "Laws"), including but not limited to the non-discrimination, equal opportunity, and wage and hour Laws referenced in the paragraphs below.

b. Compliance with Non-Discrimination and Equal Opportunity Laws: CITY shall comply with all applicable Laws concerning nondiscrimination and equal opportunity in employment and contracting, including but not limited to the following: Santa Clara County's policies for Contractors on nondiscrimination and equal opportunity; Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973 (Sections 503 and 504); the Equal Pay Act of 1963; California Fair Employment and Housing Act (Gov. Code § 12900 et seq.); California Labor Code sections 1101, 1102, and 1197.5; and the Genetic Information Nondiscrimination Act of 2008. In addition to the

foregoing, CITY shall not discriminate against any subconsultant, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political belief, organizational affiliation, or marital status in the recruitment, selection for training (including but not limited to apprenticeship), hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. Nor shall CITY discriminate in the provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex, gender identity, gender expression, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

c. Compliance with Wage and Hour Laws: CITY shall comply with all applicable wage and hour Laws, which may include but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and, if applicable, any local minimum wage, prevailing wage, or living wage Laws.

d. Definitions: For purposes of this Section 16, the following definitions shall apply. A “Final Judgment” shall mean a judgment, decision, determination, or order (a) which is issued by a court of law, an investigatory government agency authorized by law to enforce an applicable Law, an arbiter, or arbitration panel and (b) for which all appeals have been exhausted or the time period to appeal has expired. For pay equity Laws, relevant investigatory government agencies include the federal Equal Employment Opportunity Commission, the California Division of Labor Standards Enforcement, and the California Department of Fair Employment and Housing. Violation of a pay equity Law shall mean unlawful discrimination in compensation on the basis of an individual’s sex, gender, gender identity, gender expression, sexual orientation, race, color, ethnicity, or national origin under Title VII of the Civil Rights Act of 1964 as amended, the Equal Pay Act of 1963, California Fair Employment and Housing Act, or California Labor Code section 1197.5, as applicable. For wage and hour Laws, relevant investigatory government agencies include the federal Department of Labor, the California Division of Labor Standards Enforcement, and the City of San Jose’s Office of Equality Assurance.

e. Prior Judgments, Decisions or Orders against CITY: By signing this Agreement, CITY affirms that it has disclosed any final judgments that (A) were issued in the five years prior to executing this Agreement by a court, an investigatory government agency, arbiter, or arbitration panel and (B) found that CITY violated an applicable wage and hour law or pay equity law. CITY further affirms that it has satisfied and complied with – or has reached Agreement with the County regarding the manner in which it will satisfy – any such final judgments.

f. Violations of Wage and Hour Laws or Pay Equity Laws During Term of Contract: If at any time during the term of this Agreement, CITY receives a Final Judgment rendered against it for violation of an applicable wage and hour Law or pay equity Law, then CITY shall promptly satisfy and comply with any such Final Judgment. CITY shall inform the Office of the County Executive-Office of Countywide Contracting Management (OCCM) of any relevant Final Judgment against it within 30 days of the Final Judgment becoming final or of learning of the Final Judgment, whichever is later. CITY shall also provide any documentary evidence of compliance with the Final Judgment within 5 days of satisfying the Final Judgment. Any notice required by this paragraph shall be addressed to the Office of the County Executive-OCCM at 70 W. Hedding Street, East Wing, 11th Floor, San José, CA 95110. Notice provisions in this paragraph are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the Office of the County Executive-OCCM satisfies the notice requirements in this paragraph.

g. Access to Records Concerning Compliance with Pay Equity Laws: In addition to and notwithstanding any other provision of this Agreement concerning access to CITY’s records, CITY shall permit the County and/or its authorized representatives to audit and review records related to compliance with applicable pay equity Laws. Upon the County’s request, CITY shall provide the County with access to any and all facilities and records, including but not limited to financial and employee records, that are related to the purpose of this Subsection H, except where prohibited by federal or state laws, regulations or rules. County’s access to such records and facilities shall be permitted at any time during CITY’s normal business hours upon no less than 10 business days’ advance notice.

h. Pay Equity Notification: CITY shall (1) at least once in the first year of this Agreement and annually thereafter, provide each of its employees working in California and each person applying to CITY for a job in California (collectively, "Employees and Job Applicants") with an electronic or paper copy of all applicable pay equity Laws or (2) throughout the term of this Agreement, continuously post an electronic copy of all applicable pay equity Laws in conspicuous places accessible to all of CITY's Employees and Job Applicants.

i. Material Breach: Failure to comply with any part of this Section 16 shall constitute a material breach of this Agreement. In the event of such a breach, the County may, in its discretion, exercise any or all remedies available under this Agreement and at law. County may, among other things, take any or all of the following actions:

(i) Suspend or terminate any or all parts of this Agreement.

(ii) Withhold payment to CITY until full satisfaction of a Final Judgment concerning violation of inapplicable wage and hour Law or pay equity Law.

(iii) Offer CITY an opportunity to cure the breach.

j. Subcontractors: CITY shall impose all of the requirements set forth in this Section 16 on any subcontractors permitted to perform work under this Agreement. This includes ensuring that any subcontractor receiving a Final Judgment for violation of an applicable Law promptly satisfies and complies with such Final Judgment.

This non-discrimination provision must be included in CITY'S contracts with sub-contractors and vendors when utilizing (directly or indirectly) the CDBG FUNDS disbursed for the PROGRAM.

SECTION 17. AMENDMENTS. Amendments to the terms or conditions of this CONTRACT must be requested in writing by an authorized representative of the party desiring amendments, and any amendment will be effective only upon the mutual agreement in writing of the parties hereto by and through the parties authorized representatives. Amendments will not invalidate this CONTRACT nor relieve or release the COUNTY or the CITY from its obligations under this CONTRACT.

SECTION 18. TRANSFER OF FUNDS. During the CONTRACT term, CITY may choose to transfer funds within the PROGRAM described in Exhibits A through F. Fund transfers exceeding \$30,000 as well as new projects or activities added to CITY's PROGRAM, require City Council and County Board of Supervisors approval. New projects must be the same or similar in kind of the activity that was originally approved by the Board of Supervisors and City Council.

SECTION 19. INTEGRATED DOCUMENT- JOINT POWERS AGREEMENT. This CONTRACT, in conjunction with the Santa Clara County CDBG Joint Powers Agreement (JPA), contains the entire agreement between COUNTY and CITY with respect to the subject matter hereof. No written or oral agreements, other than the Santa Clara County CDBG Joint Powers Agreement, with any officer, agent or employee of COUNTY prior to execution of this Contract will affect or modify any of the terms or obligations contained in any documents comprising this Contract.

SECTION 20. NON-SMOKING POLICY. Contractor and its employees, agents and subcontractors shall comply with the County's No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities; (2) within thirty (30) feet surrounding County-owned buildings and leased buildings where the County is the sole occupant; and (3) in all County vehicles.

SECTION 21. FOOD AND BEVERAGE STANDARDS.

Except in the event of an emergency or medical necessity, the following nutritional standards shall apply to any foods and/or beverages purchased by CITY with County funds for County-sponsored meetings or events.

If food is to be provided, healthier food options shall be offered. "Healthier food options" include (1) fruits, vegetables, whole grains, and low fat and low calorie foods; (2) minimally processed foods without added sugar and with low sodium; (3) foods prepared using healthy cooking techniques; and (4) foods with less than 0.5 grams of trans fat per serving. Whenever possible, CITY shall (1) offer seasonal and local produce; (2) serve fruit instead of sugary, high calorie desserts; (3) attempt to accommodate special, dietary and cultural needs; and (4) post nutritional information and/or a list of ingredients for items served. If meals are to be provided, a vegetarian option shall be provided, and the CITY should consider providing a vegan option.

If pre-packaged snack foods are provided, the items shall contain: (1) no more than 35% of calories from fat, unless the snack food items consist solely of nuts or seeds; (2) no more than 10% of calories from saturated fat; (3) zero trans-fat; (4) no more than 35% of total weight from sugar and caloric sweeteners, except for fruits and vegetables with no added sweeteners or fats; and (5) no more than 360 mg of sodium per serving.

If beverages are to be provided, beverages that meet the County's nutritional criteria are (1) water with no caloric sweeteners; (2) unsweetened coffee or tea, provided that sugar and sugar substitutes may be provided as condiments; (3) unsweetened, unflavored, reduced fat (either nonfat or 1% low fat) dairy milk; (4) plant-derived milk (e.g., soy milk, rice milk, and almond milk) with no more than 130 calories per 8 ounce serving; (5) 100% fruit or vegetable juice (limited to a maximum of 8 ounces per container); and (6) other low-calorie beverages (including tea and/or diet soda) that do not exceed 40 calories per 8 ounce serving. Sugar-sweetened beverages shall not be provided.

SECTION 22. MISCELLANEOUS

SECTION 22.1 The captions and section headings used in this CONTRACT are for convenience of reference only, and the words contained herein will, in no way, be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this CONTRACT.

SECTION 22.2 All Exhibits attached hereto and referred to in this CONTRACT are incorporated herein by this reference as if set forth fully herein. **Exhibits are as follows:**

- Exhibit "A" (CDBG Scope of Services, Performance Outcomes and Measurements, and Budget),
- Exhibit "A1" (Income Definitions/Requirements)
- Exhibit "A2" (Exception Percentage Area Benefit)
- Exhibit "B" (Payments to CITY),
- Exhibit "C" (General Block Grant Conditions),
- Exhibit "D" (Assurances),
- Exhibit "E" (Declaration of Contractor),
- Exhibit "F" (Insurance Requirements).

SECTION 22.3 Nothing contained herein is to be construed as an indemnification for any loss, damage, injury or death arising out of or caused, in whole or in part, by the County or its Board of Supervisors, officers, executives, attorneys, employees, agents, representatives, contractors or subcontractors. Nothing contained herein shall be construed to, and nothing shall, obligate the County to provide any insurance for or on behalf of this Contract, the Program, the PROGRAM, SUBRECIPIENT, anyone, anything, any event, any use, any property, any action or inaction, or any reason or purpose.

SECTION 22.4 The rights and remedies of the parties to this CONTRACT, whether pursuant to this CONTRACT or in accordance with law, shall be construed as cumulative, and the exercise of any single right or remedy shall constitute neither a bar to the exercise of nor the waiver of any other available right or remedy.

SECTION 22.5 This CONTRACT may be executed in several counterparts, and all of such counterparts so executed together shall be deemed to constitute one and the same agreement, and each such counterpart shall be deemed to be an original. Facsimile or electronic signatures shall have the same legal effect as original or manual signatures if followed by mailing of a fully executed original to both parties.

SECTION 22.6 Unless otherwise prohibited by law or County policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the County.

SECTION 22.7 This CONTRACT shall not be construed more strongly against either party regardless of who is more responsible for its preparation.

SECTION 22.8 This CONTRACT, and all the rights and duties of the parties arising from or relating in any way to the subject matter of this CONTRACT or the transaction(s) contemplated by it, shall be governed by, construed and enforced in accordance with the law of the State of California (excluding any conflict of law’s provisions that would refer to and apply the substantive laws of another jurisdiction). Any suit or proceeding relating to this CONTRACT, including arbitration proceedings, shall be brought only in Santa Clara County, California. EACH OF THE PARTIES CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS, STATE AND FEDERAL, LOCATED IN SANTA CLARA COUNTY, CALIFORNIA.

SECTION 22.9 Those Sections and provisions that by their nature should survive termination, cancellation or expiration of this CONTRACT shall so survive, including but not limited to Sections 3 and Section 5; and, Sections 6 through and including Section 20.

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SECTION 22.10 The persons signing below are duly authorized to execute this CONTRACT.

IN WITNESS WHEREOF, the parties have executed this as indicated below.

CITY OF MORGAN HILL

By: _____
Christina Turner, City Manager

Date: _____

City Clerk Date

APPROVED AS TO FORM:

Donald Larkin Date
City Attorney

COUNTY OF SANTA CLARA:

By: _____
Jeffrey V. Smith, County Executive

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Christopher R. Cheleden Date
Lead Deputy County Counsel

**EXHIBIT A
SCOPE OF SERVICES,
OUTCOMES MEASURES AND BUDGET
FY 2021**

Contract No. MH-21-41

Grant Amount: \$350,121

1. SUBRECIPIENT INFORMATION:

Subrecipient Name

City of Morgan Hill

Program Name

Concrete Sidewalk – Britton Middle School

Program Contact

Christie Thomas

Phone

408-310-4674

Email

Christie.thomas@morganhill.ca.gov

2. LOCATION OF PROGRAM: Unless otherwise indicated, the Grant Services specified will be offered at the following location(s):

Site Name and Address: 80 W. Central Avenue, Morgan Hill, CA 95037

3. PROGRAM DESCRIPTION: The primary purpose of the Program is to:

Necessitated by current Britton Middle School Rehab and reconstruction, City will install new concrete sidewalk (north of existing curb and tree planting area) to connect existing sidewalks on Del Monte to the existing sidewalk in front of Britton Middle School auditorium, relocate all existing strain dorm facilities with the new curb alignment, replace the two driveway approaches to the Central Ave. parking lot with new depressed concrete driveway approaches, and restripe roadway with the new sidewalk alignment. The school is located near the City's neediest neighborhoods as identified by the U.S. Census and by ABAG/MTC Bay Area Plan as a "low resource area". The school and its students are disconnected from the neighborhood because of lack of sidewalks.

4. SERVICE AREA: Check the areas where the services will be provided:

☒ City of Morgan Hill

5. PROJECT FUNDING & ELIGIBLE ACTIVITY:

☒ Improvement of other eligible community facilities

6. INCOME ELIGIBILITY: Eligible clients under this Contract shall be Extremely Low, Very Low, and/or Low income individuals and/or families of all ethnic groups.

a. Extremely low-income which is defined as household income that is 30% or lower of the HUD median income for the San Jose Metropolitan Statistical Area (MSA),

b. Very low-income which is defined as household income that exceeds 30% but does not exceed 50% of

the HUD median income for the San Jose MSA, and

- c. **Low income** is defined as household income at or below 80% of the median income for the San Jose MSA.

7. URBAN COUNTY CONSOLIDATED PLAN ACTIVITY: *(check one)*

- ☐ Affordable Housing (Create or Maintain)
☐ Homelessness (Activities to end homelessness)
☒ Community Services
☐ Strengthen Neighborhoods (Capital Improvements or Public Facilities)
☐ Fair Housing Services

8. PERFORMANCE MEASUREMENT

The U.S. Department of Housing and Urban Development (HUD) requires a performance measurement system to better capture data for the activities that are undertaken with CDBG funding. For each proposed activity, an objective, outcome, and performance indicator must be identified.

a. **Primary Objectives: (Select One)**

- ☒ **Create Suitable Living Environment** – this objective relates to activities that are designed to benefit communities, families, or individuals by addressing issues in their living environment.

b. **Primary Outcome (check one)**

- ☒ **Availability/Accessibility** (Activity that makes services, infrastructure, housing, and or shelter available and accessible.)

9. SPECIFIC OUTCOME INDICATORS

1. **Number of Unduplicated to be assisted by this Program: 28,289**

a. **Of the Total Assisted, how many will**

Outcome Indicators	Number of
Have new or continued access to this service or benefit.	28,289
Have improved access to this service of benefit	
Receive a service or benefit that is no longer substandard	

10. **SCHEDULE OF PERFORMANCE:** *Estimate* the number of unduplicated Urban County persons/households to be served during FY22, per contract quarter:

ESTIMATES

Quarter	No. Served	Performance Indicator (check one)
Qtr 1: Jul 1 – Sept 30	28,289	
Qtr 2: Oct 1 – Dec 31		
Qtr 3: Jan 1 – Mar 31		
Qtr 4: Apr 1 – Jun 30		

11.

OUTCOME MEASURE STATEMENT AND MEASUREMENT METHODOLOGY.**a. Outcome Statement:**

The newly constructed sidewalk will connect and allow for safe pedestrian access to and from Britton Middle School and the surrounding areas. Britton Middle School has nearly 800 students enrolled with a high percentage of students walking to school from the surrounding neighborhoods. The improvements will eliminate a missing section of sidewalk, while also improving the pedestrian vehicle interface in the area, for increased safety to students and residents in the neighborhood. The sidewalk construction is consistent with City Vision Zero and Complete Streets policies.

12. BUDGET

FY21-22 BUDGET CATEGORY	CDBG FUNDS	PROPOSED AMOUNTS OF OTHER PROGRAM FUNDS (if any)	TOTAL PROGRAM COSTS
DIRECT COSTS:			
Architect/Engineering	\$0.00	\$41,700.00/City of Morgan Hill	\$41,700.00
Construction	\$285,121.00	\$9997.75/City of Morgan Hill	\$295,118.75
Right-of-way Dedication	\$0.00	\$2,500.00/City of Morgan Hill	\$2,500.00
Project Management	\$10,000.00		\$10,000.00
Construction Management	\$45,000.00		\$45,000.00
QC Testing	\$10,000.00		\$10,000.00
TOTAL:	\$350,121	\$54,197.75	\$404,318.75

15. REPORTING REQUIREMENTS.

1. Reporting Schedule. All required reports shall be submitted to the CDBG office no later than TEN (10) calendar days after the end of the first, second, and third quarters and no later than FIVE (5) calendar days after the end of the fourth quarter. SUBRECIPIENT agrees to submit quarterly progress reports via the CityData Grants Management website at www.Citydataservices.net.

2. Quarterly Progress Reports (QPR). At the end of each quarter, SUBRECIPIENT shall report the CDBG and or HOME number of Unduplicated Participants/Beneficiaries, Demographic Information, and the and how the activities being provided under this grant contribute to meeting performance measures stated in the contract.

3. Reimbursement Requests (RR). Program will be reimbursed on a quarterly basis, for approved invoices submitted pursuant to this Contract. Requests for reimbursement will be made quarterly via the CityData Grants Management website at www.Citydataservices.net.

EXHIBIT A1

INCOME DEFINITIONS/REQUIREMENTS

A low- and moderate- (L/M) income person is defined as a member of a family having an income equal to or less than the Section 8 Housing Assistance Payments Program low-income limits established by HUD applicable to the size of the person's family. A family is defined as all persons living in the same household who are related by blood, marriage, or adoption. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one person family for this purpose. Adult children who continue to live at home with their parent(s) are considered to be part of the family for this purpose and their income must be counted in determining the total family income. A dependent child who is living outside of the home (e.g., students living in a dormitory or other student housing) is considered for these purposes to be part of the family upon which he/she is dependent, even though he/she is living in another housing unit.

A low- and moderate-(L/M) income household is defined as a household in which the total income of all of the household members is equal to or less than the Section 8 Housing Assistance Payments Program low-income limit established by HUD for an equivalent sized family. A household is defined as all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

Persons vs Households

It is important to note that, for all but one of the subcategories under this national objective, the test of meeting the objective of Benefit to L/M is to be met based on L/M persons. Only with the subcategory of L/M Housing must the test be met based on L/M households.

There are reasons for this distinction. First, the statute requires that the focus be on the occupants of a CDBG-assisted housing unit when determining whether the national objective of benefit to L/M Income persons can be met. Secondly, there are two underlying assumptions in the CDBG regulations concerning this issue: 1) that all persons who reside in a housing unit that has been provided or improved with CDBG assistance will benefit from that housing unit; and 2) that the resources of all occupants could be brought to bear with respect to paying for the rental, improvement or purchase of the unit.

For housing units receiving CDBG assistance which are occupied by persons of the same family, totaling the income of all occupants of a unit easily determines whether or not the family is a L/M Income family. However, CDBG-assisted housing units can be occupied by persons who are not related to each other in the traditional family sense. Thus, there needs to be a way to determine whether the beneficiaries of such an assisted housing unit should be considered to be L/M Income for purposes of meeting the CDBG national objective. In addressing this problem, the regulations provide first, that the income of all persons occupying a CDBG-assisted housing unit must be counted without regard to their familial relationships, and secondly, by treating them (for this purpose only) as though they were all of the same family. If the "household/family" income qualifies it as L/M Income, then the assisted housing unit would be considered to be occupied by a L/M Income household.

LIMITED CLIENTELE

A *L/M income limited clientele activity* is an activity which provides benefits to a specific group of persons rather than everyone in a general area. It may benefit particular persons without regard to the area in which they reside, or it may be an activity which provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51% of the beneficiaries of the activity must be L/M income persons. It should be noted, however, that because of certain statutory limitations, the regulations preclude the following kinds of activities from qualifying under this subcategory: To qualify under this subcategory, a limited clientele activity must exclusively benefit a clientele who are generally presumed by HUD to be principally L/M income persons, which is 100% of beneficiaries are L/M Income.

The following groups are currently presumed by HUD to be made up principally of L/M income persons:

- ♦ abused children,
- ♦ elderly persons (62+),
- ♦ battered spouses,
- ♦ homeless persons,
- ♦ adults meeting Bureau of Census' definition of severely disabled persons,
- ♦ illiterate adults,
- ♦ persons living with AIDS, and
- ♦ migrant farm workers.

PUBLIC SERVICE ACTIVITIES INCOME DEFINITIONS

For the purpose of determining whether a family or household is low- and moderate-income under this Agreement, Annual Income is defined using the Section 8 Housing Assistance Payments program definition.

A. Income Determination

Annual income as defined at 24 CFR Part 5.6 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets, as defined in 24 CFR Part 5.6); or § 5.609 Annual income.

B. Annual Income means all amounts, monetary or not, which:

1. Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
2. Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
3. Which are not specifically excluded in paragraph C of this section.
4. Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

C. Annual income includes, but is not limited to:

1. The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
2. The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

3. Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (B)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
4. The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount of this section);
5. Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

Stated Income, Self-certification, or Intake forms for purposes of this Agreement must require a copy of at least one or more income verification document/s be collected by the Subrecipient in order to verify a client's or household's annual income and saved in the client/s file. The County, will monitor a minimum of 20% of each Subrecipients Stated Income, Self-certification, or Intake forms throughout the program year.

INCOME WORKSHEET EXAMPLE (Annual Income of Applicants and other Household Members over the age of 18)

Category (Do not complete, for example use)	Applicant 1	Applicant 2	Other Household Member 1
One or more documents verifying income from the following income categories:			
1) Gross Regular Earned Income from Employment (Wages, tips, salaries)			
2) Net Income from self-owned business or profession:			
3) Income Received from Social Security, Death, Disability, Private Disability, and/or Retirement and Pension Fund payments:			
4) Unemployment, Workers Compensation, Severance and other pay received in-lieu of payments for earnings:			
Include the following various income sources into the total income:			
Alimony, child support, gifts, other contributions:			
Other sources of income, non-documented income earned or received, including income from rental properties:			
Armed Forces Income:			
Interest and Dividend income received from trusts, royalties, and investments including stocks and bonds:			
Public assistance and food stamp payments:			
TOTAL:	\$	\$	\$

EXHIBIT A2

HUD Exception Grantee's Percentage for Low-and-Moderate-Income Area (LMA) Benefit FY 2020

The Community Block Grant Development (CDBG) program requires that each CDBG-funded activity must either principally benefit low and moderate income persons, aid in the prevention or elimination of slums or blight, or meet a community development need having a particular urgency. With respect to activities that benefit all the residents of a given area, at least 51% of the area's residents must be low and moderate income.

Some CDBG assisted activities, such as parks, neighborhoods, facilities, community centers and streets, serve an identified geographic area. These activities generally meet the low- and moderate-income principal benefit requirement if 51 percent of the residents in the activity's service area are low and moderate income.

However, some communities have no or very few areas in which 51 percent of the residents are low and moderate income. For these grantees, the CDBG law authorizes an exception criterion in order for such grantees to be able to undertake area benefit activities. Specifically, section 105(c)(2)(A)(ii) of the Housing and Community Development Act of 1974, as amended, states that an activity shall be considered to principally benefit low and moderate income persons when "the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income." (See Exception Percent Table Below)

Section 105(c)(2)(A)(ii) is implemented in the CDBG regulations at 24 CFR 570.208(a)(1)(ii), which identifies the following methodology to calculate a grantee's "exception" threshold: all block groups within the grantee's jurisdiction in which people are residing are rank ordered from the highest percentage of low- and moderate-income persons to lowest. (For urban counties, the rank ordering covers the entire area of the county, rather than being done separately by participating units of government within the county.) The total number of block groups is divided by four. If the percentage of low- and moderate-income persons in the last block group in the top quartile is less than 51 percent, that percentage becomes the grantee's low- and moderate-income threshold for area benefit activities. NOTE: whenever the total number of block groups does not divide evenly by four, the block group that would be fractionally divided is included in the top quartile.

The table below reflects the CDBG "exception grantee for the County of Santa Clara, Urban County and the exception threshold for the Urban County based on the 2011-2015 American Community Survey (ACS). This percentage represents the minimum percentage of low- and moderate-income persons that must reside in the service area of an area benefit activity for the activity to be assisted with CDBG funds. The Urban County Exception Grantee threshold for FY 2020 L/M Area-basis exception percentage is: 45.36%

American Community Survey 5-Year 2006-2010 Low and Moderate Income Summary Data (HUD FY20)

CDBG NAME	STATE	CDBG TYPE	LOW/MOD	LOW/MOD UNIV	LOW/MOD PCT	FY2020 EXCEPTION AREA PERCENTAGE
Santa Clara County	CA	Urban County	79,545	259,845	30.61%	45.36%

EXHIBIT B PAYMENTS TO CITY

COUNTY agrees to pay SUBRECIPIENT for the performance of the services, work, and duties, subject to and performed in connection with this AGREEMENT, a sum of money not to exceed the amount set forth in this AGREEMENT. Such sum shall be paid by COUNTY to SUBRECIPIENT on a reimbursement basis for services actually performed by SUBRECIPIENT and for eligible costs actually incurred by and paid by, pursuant to this AGREEMENT, for the cost categories appearing in this section.

SECTION 1. Payment Procedures.

A. No sum shall be paid until COUNTY has received from SUBRECIPIENT the following:

1. Reimbursement Request (RR) or Expense Summary (ES) request for the PROGRAM on a quarterly basis, for approved invoices submitted pursuant to this CONTRACT. The RR form must be accompanied by a request for reimbursement on SUBRECIPIENT's letterhead. Requests for reimbursement will be made quarterly via the CityData Grants Management website at www.Citydataservices.net and specify in detail the services performed by and the costs incurred by and paid by SUBRECIPIENT during the period for which payment is requested. Any Program Income received by the SUBRECIPIENT shall reduce total allowable payments by the same amount. "Program Income" is defined as income or earnings received by SUBRECIPIENT which are directly generated from the use of CDBG funds (as defined at 24 CFR 570.500(a)). It shall be reported by SUBRECIPIENT to COUNTY on a monthly basis. Any Program Income on hand when this Agreement expires or terminated or any Program Income received after this Agreement expires or terminates shall be promptly paid to COUNTY.

B. Payment. Payment to SUBRECIPIENT will be made within thirty (30) calendar days of receipt by COUNTY of all such required statements and supporting documents, including but not limited to, paid invoices, provided that the items on such statements and supporting data for which payment is requested can properly be paid under this Agreement, HUD regulations 2 CFR 200 applicable to the program, and the COUNTY-HUD Grant Agreement, as the same may from time to time be amended. In making such determination, COUNTY may rely upon the certification by SUBRECIPIENT that the items appearing on said statement and supporting data are eligible items for payment under this program and Agreement, and such determination by COUNTY shall in no way constitute a waiver by COUNTY of its right to recover from the amount of any money paid on any item which is not eligible for payment under the program and this Agreement. Payment will be delayed if the information provided to the COUNTY is missing or incomplete. COUNTY has the right to ask for additional documentation, which will assist in the determination of cost eligibility and is in accordance with HUD regulations as amended from time to time. In making such determination for payment, COUNTY may rely upon the certification by SUBRECIPIENT that the items appearing on said statement and supporting data are eligible items for payment under this program and Agreement, and such determination by COUNTY shall in no way constitute a waiver by COUNTY of its right to recover from the amount of any money paid toward any item which is not eligible for payment under the program and this Agreement.

C. Disbursement. The total amount of such payments to be made to SUBRECIPIENT shall be distributed in the following manner during the course of the PROGRAM.

1. Construction Costs. Total eligible payments made to SUBRECIPIENT's for time actually worked for all categories listed in EXHIBIT A entitled "CDBG Scope of Services, Performance Outcomes and Measurements, and Budget".
2. Audit. Eligible payments to an independent auditor to perform an audit in accordance with 2 CFR PART 200, Subpart F, if required. "Eligible," as used in this Agreement, means those costs, payments, and disbursements for activities for which community development grant moneys may be used pursuant to Section 570.201 of the Federal Rules and Regulations for the Implementation of Title I of the Housing and Community Development Acts of 1974 and 1977, as amended, (24 CFR 570) and all other applicable rules and regulations.
3. Classification of Costs. There is no universal rule for classifying certain costs as either direct or indirect F&A (Finance and Administration) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect F&A cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards can be found in 2 CFR 200.412 – Classification of Costs.

SECTION 2. Budget Amendments.

A. Line Item. Any amendments to a line item in the approved budget must receive prior written approval from the OSH. Requests for budget amendments shall be submitted via the CityData Grants Management website at www.Citydataservices.net.

B. Reallocating of Program Funds. On a monthly basis, COUNTY shall review the monthly expenditures, if any, for services performed and costs incurred by SUBRECIPIENT provided in this Exhibit. If such review reveals that the monthly expenditures in any such month for the PROGRAM as a whole or any cost category thereof are below the total amount allocated under this Agreement for the total PROGRAM or cost category thereof for such month, COUNTY may reallocate the amount of such under spending. In the case of under spending in a cost category, COUNTY may reallocate the unspent amount into another cost category of the PROGRAM. In the case of underspending in the PROGRAM as a whole, COUNTY may reallocate unspent amount to another community development PROGRAM. COUNTY shall, before reallocating, give SUBRECIPIENT ten (10) days' written notice of its intention to reallocate funds. Such notice shall include a copy of COUNTY's monthly expenditure review for the PROGRAM and statement of its reasons for such reallocation. COUNTY shall make its final determination with respect to reallocation only after SUBRECIPIENT has been given an opportunity to present its views and recommendations with respect to such contemplated reallocation. In no event, however, shall COUNTY be bound to accept SUBRECIPIENT's views or recommendations with respect to such contemplated reallocation. If the expenditures by SUBRECIPIENT in any month, for the PROGRAM or any cost category thereof, exceed the total amount allocated to the PROGRAM or any cost category thereof, COUNTY may terminate non-salary expenditures for the PROGRAM for such period of time as is necessary to bring expenditures into conformance with this Agreement.

C. Reallocation of Program Funds. The DIRECTOR of the Office of Supportive Housing or his or her designated representative may, at the request of SUBRECIPIENT, approve reallocation of funds from any cost category or categories to any other cost category or categories at any time provided that: (1) there is no increase in the total amount specified in this Agreement, and (2) the goals and objectives set forth in Exhibit A are not negatively affected. Approval by the DIRECTOR of the Office of Supportive Housing or his or her designated representative of such reallocation of funds must be in writing. Any unexpended funds at the end of the term of the Agreement shall be retained by the COUNTY. Expenses incurred prior to July 1, 2020, are not eligible for reimbursement under this Agreement.

COUNTY agrees to pay SUBRECIPIENT for the performance of the services, work, and duties, subject to and performed in connection with this AGREEMENT, a sum of money not to exceed the amount set forth in this AGREEMENT. Such sum shall be paid by COUNTY to SUBRECIPIENT on a reimbursement basis for services actually performed by SUBRECIPIENT and for eligible costs actually incurred by and paid by, pursuant to this AGREEMENT, for the cost categories appearing in this section.

EXHIBIT C GENERAL BLOCK GRANT CONDITIONS

SECTION 1. GENERAL GRANT CONDITIONS

- A. Definitions.** As used herein, "HUD" means United States Department of Housing and Urban Development. "PROGRAM Area" for the purposes of this Exhibit "COUNTY" means the Santa Clara County Urban County, which includes the unincorporated community within Santa Clara County in addition to seven small jurisdictions: Campbell, Los Altos, Los Altos Hills, Los Gatos, Monte Sereno, Morgan Hill and Saratoga.
- B. General Compliance.** SUBRECIPIENT shall comply with the provisions of 24 CFR 570, Subparts J and K, describing other program requirements, and the provisions of 2 CFR 200 relating to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards.

SECTION 2. ADMINISTRATIVE REQUIREMENTS

- A. Establishment and Maintenance of Records.** SUBRECIPIENT shall maintain records, including but not limited to, books, financial records, supporting documents, statistical records, personnel, property, and all other pertinent records sufficient to reflect properly:
- a. All direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this AGREEMENT, and
 - b. All other matters covered by this AGREEMENT. Such records shall be maintained in accordance with requirements now or hereafter prescribed by the COUNTY.
- 1. Records to be Maintained.** The SUBRECIPIENT shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:
- a. Records providing a full description of each activity undertaken;
 - b. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG Program;
 - c. Records required to determine the eligibility of activities;
 - d. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
 - e. Records documenting compliance with the fair housing and equal opportunity components of the CDBG Program;
 - f. Financial records as required by 24 CFR 570.502 and 24 CFR 84.21 - 28; and,
 - g. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.
- 2. Retention.** SUBRECIPIENT shall preserve and make available its records for the period of four (4) years from the date of final payment to SUBRECIPIENT under this AGREEMENT; or such longer period, if any, as may be required by applicable law; or if this AGREEMENT is completely or partially terminated, for a period of four (4) years from the date of any resulting final settlement.

3. **Client Data.** The SUBRECIPIENT shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to the COUNTY monitors or their designees for review upon request.
4. **HMIS Participation.** All agencies providing homeless services in receipt of funding from the COUNTY's CDBG Program are required to fully participate in the Homeless Management Information System ("HMIS") and work closely with the COUNTY's OSH to ensure the agency has the mechanisms and staffing in place to use the system appropriately and in a timely manner. Funded agencies are required to collect demographic information on all clients served by the funded PROGRAMs, the services provided, and consent to release the information to the COUNTY's OSH. Funded PROGRAMs must utilize all appropriate aspects of HMIS in order to generate the statistical information required for reporting to the COUNTY on all universal and program level elements of the HUD Data Standards. These statistical reports must be generated directly out of HMIS. No adjustments to the HMIS reports will be accepted, and it is therefore incumbent on the agency to ensure that the information they put into HMIS is accurate and up to date. SUBRECIPIENT will measure performance and outcomes relating to these funded PROGRAMs through the use of the HMIS statistical data, based on the HUD data elements, or other reporting requirements as determined by the COUNTY.
5. **Disclosure.** The SUBRECIPIENT understands that client information collected under this AGREEMENT is private and the use or disclosure of such information, when not directly connected with the administration of the SUBRECIPIENT's responsibilities with respect to services provided under this AGREEMENT, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.
6. **Property Records.** The SUBRECIPIENT shall maintain real property inventory records that clearly identify properties purchased, improved or sold. Properties retained shall continue to meet eligibility criteria and shall conform to the "changes in use" restrictions specified in 24 CFR Section 570.503(b)(8), as applicable.
7. **National Objectives.** The SUBRECIPIENT agrees to maintain documentation that demonstrates that the activities carried out with Funds provided under this AGREEMENT meet the CDBG Program's national objective of benefiting low-and moderate income persons, as defined in 24 CFR Section 570.208.
8. **Close-outs.** The SUBRECIPIENT's obligation to the COUNTY shall not end until all close-out requirements are completed pursuant to 24 CFR 570.509. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the SUBRECIPIENTS), and determining the custodianship of records.

Notwithstanding the foregoing, the terms of this AGREEMENT shall remain in effect during any period that the SUBRECIPIENT has control over CDBG funds, including program income.

- 9. Audits and Inspections.** At any time during normal business hours, and as often as may be deemed necessary, SUBRECIPIENT agrees that HUD and/or COUNTY, and/or any of their respective authorized representatives, shall have access to and the right to examine SUBRECIPIENT's offices and facilities engaged in performance of this AGREEMENT and all its records with respect to all matters covered by this AGREEMENT. SUBRECIPIENT also agrees that HUD and/or COUNTY, or any of their respective authorized representatives, shall have the right to audit, examine, and make excerpts or transcripts of and from such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials, and all other data relating to matters covered by this AGREEMENT. Notwithstanding anything in this AGREEMENT to the contrary for monitoring purposes, COUNTY shall not require access to any information of SUBRECIPIENT mutually determined by the parties hereto to be proprietary.
- a. **County Audits.** COUNTY may perform an independent audit. Such audits may cover program as well as fiscal matters. SUBRECIPIENT will be afforded an opportunity to respond to any audit findings and have the responses included in the final audit report. Costs of such audits will be borne by SUBRECIPIENT.
 - b. **Independent Audits.** Funds will be set aside in each SUBRECIPIENT's budget for an independent audit. A separate line item will be established. SUBRECIPIENT shall enter into an agreement with an independent public accountant certified to practice in the State of California no later than sixty (60) days before the end of this AGREEMENT calling for an audit to be done for the entire year. The audit must be in conformance with the applicable funding source. The audit must be completed and sent to COUNTY's OSH staff within the later of one hundred fifty (150) days of the end of this AGREEMENT or ninety (90) days after the end of SUBRECIPIENT's fiscal year. The independent fiscal audit shall conform to Generally Accepted Government Auditing Standards (GAGAS) 2 CFR 200.514(a) and the audit threshold 2 CFR 200.501(a).
 - c. **Requirements.** Such audits shall identify the funds received and disbursed under this AGREEMENT. For SUBRECIPIENTS that expend \$750,000 or more of Federal financial assistance in a fiscal year, in addition to conducting normal financial audit procedures, the SUBRECIPIENT's independent public accountant certified to practice in the State of California shall perform tests to ascertain that:
 - i. Expenditures submitted for reimbursement are allowable under 2 CFR Part 200 Subpart E, "Cost Principles";
 - ii. Expenditures are in compliance with the grant agreements between the COUNTY and SUBRECIPIENT; and,
 - iii. Applicable laws and regulations. Further, the independent public accountant certified to practice in the State of California shall render an opinion as to whether the Expenditures complied with the Single Audit Act of 1984 and 2 CFR 200 Subpart F "Audit Requirements".

- iv. Funds may be set aside in SUBRECIPIENT's budget in an amount equal to COUNTY's fair share of SUBRECIPIENT's cost of an independent audit, if required.
- d. **Components.** The Audit must include the following:
 - i. Balance Sheet or Statement of Financial Position;
 - ii. Statement of Support, Revenue and Expenses and Changes in Fund Balances or Statement Activities;
 - iii. Statement of Functional Expenses;
 - iv. Schedule of Expenditures of Federal Awards;
 - v. Independent Auditor's Report on the Financial Statement and Schedule of Expenditures of Federal Awards;
 - vi. Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters;
 - vii. Auditor's Report on Compliance with Requirements Applicable to Major Programs and on Internal Control over Compliance;
 - viii. Schedule of Findings and Questioned Costs;
 - ix. Summary of Schedule of Prior Audit Findings;
 - x. Corrective Action Plan; and,
 - xi. Data Collection Form.

B. Procedures Concerning Reporting and Payments.

1. **Program Income.** The SUBRECIPIENT shall report all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this AGREEMENT. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the SUBRECIPIENT may use such income during the CONTRACT period for activities permitted under this AGREEMENT and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the COUNTY at the end of the CONTRACT period. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the COUNTY.
2. **Indirect Costs.** If indirect costs are charged, SUBRECIPIENT may invoice for indirect costs up to a de minimis rate of 10% per 2 CFR 200.414 (f). If SUBRECIPIENT requests an indirect cost rate above the de minimis rate of 10%, SUBRECIPIENT shall develop an indirect cost allocation plan for determining the appropriate SUBRECIPIENT's share of administrative costs and shall submit such plan to the COUNTY for review. The COUNTY may approve or deny the plan in its sole discretion. Indirect Costs may not be charged or Capital Improvements or Housing Rehabilitation Projects.
3. **Relocation and Real Property Acquisition.** SUBRECIPIENT shall comply with (a) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (URA) and 24 CFR 570.606(b), and (b) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan (Plan) under section 104(d) of the HCD Act. Under the URA and the Plan, the SUBRECIPIENT must provide relocation assistance to persons (families,

individuals, businesses, non-profit organizations and farms) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted PROGRAM. All property occupants must be issued certain notices on a timely basis. The Plan also required the one-for-one replacement of any occupied or vacant occupiable low/moderate-income housing that is demolished or converted to another use in connection with a CDBG-assisted PROGRAM. Finally, the Plan requires the identification of the steps that will be taken to minimize displacement.

SECTION 3. PERSONNEL & PARTICIPANT CONDITIONS

A. Civil Rights

1. **General Compliance.** The SUBRECIPIENT agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.
2. **Nondiscrimination.** The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, sex, sexual orientation, actual or perceived gender identity, national origin, disability, or other handicap, age, marital status, family status, or status with regard to public assistance. The Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include, but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency setting forth the provision of this nondiscrimination clause.
3. **Land Covenants.** The SUBRECIPIENT under this AGREEMENT shall be subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and HUD regulations with respect thereto including the regulations under 24 CFR Part 1. In the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this AGREEMENT, SUBRECIPIENT shall require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination upon the basis of race, color, religion, sex, sexual orientation, actual or perceived gender identity, or national origin, in the sale, lease or rental, or in the use of occupancy of such land or any improvements erected or to be erected thereon, and providing that and the United States are beneficiaries of and entitled to enforce such covenant, in providing the services and work it is to provide, pursuant to this AGREEMENT, agrees to take such measures as are necessary to enforce such covenant and will not itself so discriminate.
4. **Section 504.** The SUBRECIPIENT agrees to comply with Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended, and implementing regulations when published which specify that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded

from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal assistance.

5. **Architectural Barriers Act.** The SUBRECIPIENT shall meet the requirements, where applicable, of the Architectural Barriers Act and the Americans with Disabilities Act, as set forth in 24 CFR 570.614. A building or facility designed, constructed, or altered with funds allocated or reallocated under CDBG program after December 11, 1995 and that meets the definition of a “residential structure” as defined in 24 CFR Part 40.2 or the definition of a “building” as defined in 41 CFR Part 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157) and shall comply with the Uniform Federal Accessibility Standards. The Americans with Disabilities Act (“ADA”) (42 USC 12131; 47 USC 155, 210, 218, and 255) requires that the design and construction of facilities for first occupancy after January 26, 1993 must include measures to make them readily accessible and usable by individuals with disabilities. The ADA further requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

B. Affirmative Action

1. **Approved Plan.** The SUBRECIPIENT agrees that it shall be committed to carry out pursuant to the County’s specifications an affirmative action program in keeping with the principles as provided in Executive Order 11246 (as amended).
2. **Women and Minority Business Enterprises.** The requirements relating to Minority-Owned and Women-Owned Business Enterprises set forth in Executive Order No. 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; and Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637, a SUBRECIPIENT must exercise affirmative outreach efforts when soliciting bids for service or construction when the Federal funds received by the SUBRECIPIENT or subcontractor exceeds \$10,000 and when the SUBRECIPIENT or subcontractor is a for-profit organization/business.
3. **Access to Records.** The SUBRECIPIENT shall furnish and cause each of its sub-subrecipients to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the COUNTY, HUD or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with rules, regulations and provisions stated herein.
4. **Notifications.** The SUBRECIPIENT will send to each labor union or representative of workers with which it may have a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or worker’s representative of the SUBRECIPIENT’s commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. **EEO/AA Statement.** The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that it is an Equal Opportunity and Affirmative Action employer. The SUBRECIPIENT shall comply with Executive Order 11246 as amended by Executive Order 12086 and the regulations issued pursuant thereto (41 CFR Chapter 60), and will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The SUBRECIPIENT will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

6. **Subcontract Provision.** The SUBRECIPIENT will include the provisions of Section 3. A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. **Prohibited Activities.** No funds provided in this AGREEMENT shall be used for any partisan political activity or to further the election or defeat of any candidate for public office; nor shall they be used to provide services, or for the employment or assignment of personnel in a manner supporting or resulting in the identification of programs conducted pursuant to this AGREEMENT with the following:
- a. Any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office;
 - b. Any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or,
 - c. Any voter registration activity.
2. **Labor Standards.** The SUBRECIPIENT agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act, as amended, the provisions of Contract Work Hours, the Safety Standards Act, the Copeland "Anti-Kickback" Act (40 U.S.C. 276a-276a-5; 40 U.S.C. 327 and 40 U.S.C. 276c and all other applicable laws pertaining to labor standards insofar as those acts apply to the performance of this AGREEMENT. The SUBRECIPIENT shall maintain documentation which demonstrates compliance with the hour and age requirements of this part. Such documentation shall be made available to the COUNTY for review upon request.

The David Bacon Act (40 USC, Chapter 3, Section 276a-5; and CFR Parts 1, 3, 5 and 7) is triggered when construction work over \$2,000 is financed in whole or in part with CDBG Funds. It requires that workers receive no less than the prevailing wages being paid for similar work in the same

area. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units or force account labor (construction carried out by employees). HUD has concluded that new construction (as well as rehabilitation) of residential property is exempt from Federal labor standards if the property contains less than eight (8) units. SUBRECIPIENT shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the Department of Labor under 29 CFR Parts 3, 5 and 5a, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under such regulations are imposed by state or local law, nothing hereunder is intended to relieve SUBRECIPIENT of its obligation, if any, to require payment of the higher rates. SUBRECIPIENT shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of 29 CFR 5.5 and for such contracts in excess of Twenty Five Thousand Dollars (\$25,000), pursuant to 29 CFR 5a.3.

3. **“Section 3” Clause.** Compliance with the provisions of “Section 3” of the **Housing and Community Development Act of 1968** pertaining to Employment Opportunities for Lower-Income Persons (12 USC 1701u), requiring that, to the greatest extent feasible on PROGRAMs financed by HUD, a SUBRECIPIENT must:
 - a. Provide opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction PROGRAM, are given to persons with household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area defined by the Secretary of HUD residing within the San Jose metropolitan area. Where feasible, priority should be given to residents within the service area of the PROGRAM or the neighborhood in which the PROGRAM is located who have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area (MSA as defined by the Secretary of HUD, and to participants in other HUD programs who have household income that is at or below 80% of the median income for the San Jose Metropolitan Statistical Area. The SUBRECIPIENT certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements;
 - b. Award contracts for work undertaken in connection with housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction PROGRAM to business concerns that provide economic opportunities for persons residing within the metropolitan area in which the CDBG-funded PROGRAM is located and have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area as defined by the Secretary of HUD. Where feasible, priority should be given to business concerns that provide economic opportunities to residents within the service area or the neighborhood in which the PROGRAM is located who have household income that is at or below 80% of the median income for San Jose Metropolitan Statistical Area as defined by the Secretary of HUD, and to participants in other HUD programs who have household income that is at or below 80% of the median income for that area;

- c. Self-certify whether they are a Section 3 business, employs Section 3 residents, or subcontracts with business that provide opportunities to low-income persons when an award of \$200,000 or more of HUD funding is provided for housing rehabilitation, housing construction, or other public construction PROGRAMs, and/or \$100,000 or more to subcontractors;
- d. At a minimum, provide documentation on federal compliance, reporting and outreach efforts; and,
- e. The SSUBRECIPIENT further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

The work to be performed under this agreement is a PROGRAM assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. "Section 3" requires that to the greatest extent feasible opportunities for training and employment be given to low and very low income residents of the PROGRAM area and contracts for work in connection with the PROGRAM be awarded to business concerns that provide economic opportunities for low and very low income persons residing in the metropolitan area in which the PROGRAM is located.

- 4. **Notifications.** The SUBRECIPIENT agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- 5. **Subcontracts.** The SUBRECIPIENT will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The SUBRECIPIENT will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct.

- 1. **Assignability.** The SUBRECIPIENT shall not assign or transfer any interest in this AGREEMENT without the prior written consent of the COUNTY provided, however, that claims for money due or to become due to the SUBRECIPIENT from the COUNTY under this AGREEMENT may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the COUNTY.
- 2. **Hatch Act.** The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this AGREEMENT, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C. Participants employed in the administration of the

CDBG Program, and participants whose principal employment is in connection with an activity financed by the CDBG Program or its proceeds are subject to limitation on political activities under the Hatch Act (5 U.S.C. 1502(a), 18 U.S.C. 595). All participants may take part in non-partisan activities outside working hours.

3. **Resident Aliens.** (24 CFR 570.613) Certain newly legalized aliens, as described in 24 CFR Part 49, are not eligible to apply for the benefits under covered activities funded by the CDBG Program. "Covered activities" are activities meeting the requirements of 24 CFR 570.208(a) that either (1) have income eligibility requirements limiting benefits exclusively to low- and moderate-income persons, or (2) are targeted geographically or otherwise to primarily benefit low- and moderate-income persons (except for activities that benefit the public at large), and provide benefits on the basis of an application.
4. **Conflict of Interest.** Under 24 CFR Part 570.66, no officer, employee or agent of COUNTY or SUBRECIPIENT who exercises any functions or responsibilities with respect to the CDBG Program or to the services and work to be performed by SUBRECIPIENT pursuant to this AGREEMENT, during such officer's, employee's or agent's tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof. SUBRECIPIENT shall incorporate or cause to be incorporated in every contract required to be in writing a provision prohibiting such interest pursuant to the purposes of this section.
7. **Subcontracts.** SUBRECIPIENT shall not award any contract or subcontract which is otherwise in compliance with this AGREEMENT to any person or subcontractor who is at the time ineligible under the provisions of any applicable regulations of the Department of Labor to receive an award of such contract.
8. **Lobbying.** The SUBRECIPIENT hereby certifies that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the SUBRECIPIENT, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the SUBRECIPIENT shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The SUBRECIPIENT shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all SUBRECIPIENTS shall certify and disclose accordingly.
 - d. **Lobbying Certification.** This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- 9. Copyrights.** If this AGREEMENT results in a book or other copyrightable material, the author is free to copyright the work, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, all copyrighted material and all material which can be copyrighted.
- 10. Patents.** Any discovery or invention arising out of or developed in the course of work aided by this AGREEMENT shall be promptly and fully reported to COUNTY and HUD for determination by HUD as to whether patent protection on such invention or discovery will be sought and how the rights in the invention or discovery, including the rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.
- 11. Religious Organizations.** SUBRECIPIENT shall not use any funds to construct, rehabilitate, maintain, or restore religious structures (including those which may be historic properties) currently used for religious purposes in accordance with the federal regulations specified in 24 CFR Section 570.200(j). CDBG FUNDS shall not be used to construct, rehabilitate, maintain, or restore structures or other real property owned by "pervasively sectarian" organizations. Block grant funds shall not be used to assist a religious organization in acquiring property. These prohibitions apply whether or not the property is used for religious services or instruction or is used in any other way for religious activities. CDBG Funds may be used for the provision of public services under the following conditions:
- a. The public services provided are exclusively non-religious in nature and scope;
 - b. There are no religious services, proselytizing, instruction, or any other religious influences in connection with the public services;
 - c. There is no religious discrimination in terms of employment or benefits under the public services; and,
 - d. The CDBG funds may be used only for the provision of public services and not for the construction, rehabilitation or restoration of any facility owned by the religious organization where the services are to be provided. A narrow exception to this prohibition is that minor repairs may be made where such repairs (a) are directly related to the public

services, (b) are located in a structure used exclusively for non-religious purposes, and (c) constitute in dollar terms a minor portion of the CDBG expenditure for the public services.

SECTION 4. ENVIRONMENTAL CONDITIONS

A. Environmental Requirements. (24 CFR 470.604) SUBRECIPIENT is not allowed to incur program expenses until the COUNTY has performed an environmental review of the proposed activities, received the release of funds, and provided the SUBRECIPIENT with formal clearance to initiate them, along with directives for any action necessary to mitigate negative environmental impacts (24 CFR Part 58).

1. SUBRECIPIENT will submit the correct Environmental Review Record for Maintenance and or Minor Rehabilitation activities to the County Housing Rehabilitation Specialist or HCD Program Manager for review.
2. County will provide SUBRECIPIENT with technical guidance when needed.
3. County will forward the executed Environmental Review Record to the SUBRECIPIENT once approved (Formal Clearance).

B. Air and Water. This AGREEMENT is subject to 42 U.S.C. 1857, and 33 U.S.C. 1251 *et sec.*, and the regulations issued pursuant thereto. Therefore, SUBRECIPIENT agrees as follows:

a. SUBRECIPIENT stipulates that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR 15.20;

b. SUBRECIPIENT agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1857c-8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Sections 114 and 308, and all regulations and guidelines issued thereunder;

c. SUBRECIPIENT stipulates that as a condition for the award of the contract prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities;

d. SUBRECIPIENT agrees that criteria and requirements in subparagraphs (a) through (d) of this section will be included in every non-exempt subcontract and SUBRECIPIENT shall take such action as the COUNTY or HUD requires as a means of enforcing such provisions;

e. In no event shall any amount of the assistance provided under this AGREEMENT be utilized with respect to a facility that has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

- C. Flood Disaster Protection.** Notwithstanding any other provision of this Agreement, SUBRECIPIENT shall comply with the Flood Disaster Protection Act of 1973, as amended (P.L. 93-234), and the standards issued thereto. No portion of the moneys to be paid to SUBRECIPIENT pursuant to this AGREEMENT shall be used for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in an area not in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any of said moneys for such acquisition or construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements of Section 102(a) of said Act.

Any contract or agreement for the sale, lease or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Secretary of HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001, ~., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973, as amended. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this AGREEMENT.

- D. Lead-Based Paint.** Notwithstanding any other provision, SUBRECIPIENT agrees to comply with the regulations issued by the Secretary of HUD set forth in 24 CFR 570.608 and all applicable rules and orders issued thereunder which prohibit the use of lead-based paint in residential structures undergoing federally assisted construction or rehabilitation and require the elimination of lead-based paint hazards. Every contract or subcontract, including painting, pursuant to which such federally assisted construction or rehabilitation is performed, shall include appropriate provisions prohibiting the use of lead-based paint.
- E. Historic Preservation.** SUBRECIPIENT shall not violate provisions of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a federal, state, or local historic property list. Before any commitments are made to make any physical improvements or alterations or demolition of any building, SUBRECIPIENT shall receive assurances from the COUNTY that the SUBRECIPIENT is in compliance.

EXHIBIT D ASSURANCES

The CITY hereby assures and certifies that it will comply with all regulations, policies, guidelines and requirements applicable to the acceptance and use of Federal funds for this Federally-assisted program and will be responsible for implementing and complying with all relevant future changes to Federal Regulations or OMB Circulars. Specifically the CITY gives assurances and certifies with respect to the PROGRAM that it is compliant with the following Regulations as defined by 24 CFR, Part 570, Subpart J; 24 CFR, Part 570, Subpart K; and will be conducted and administered in conformity with "Public Law 88.352 and Public Law 90-284." *Full text of the regulations can be located at: <http://www.gpoaccess.gov/cfr/index.html>*

1. **570.505. Use of Real Property**
2. **570.506. Records to be Maintained**
3. **570.508. Public Access to Public Records**
4. **570.601. Public Law 88-352 and Public Law 90-284;** affirmatively furthering fair housing; Executive Order 11063, as amended by Executive Order 12259 addresses discrimination. HUD regulations implementing Executive Order 11063 are contained in 24 CFR, Part 107.
5. **570.602. Section 109 of the Act addresses discrimination**
6. **570.603. Labor Standards**
7. **570.604. Environmental Standards**
8. **570.605. National Flood Insurance Program**
9. **570.606. Displacement, Relocation, Acquisition, and Replacement of Housing.**
10. **570.607. Employment and Contracting Opportunities**
11. **570.608. Lead-Based Paint**
12. **570.609. Use of Debarred, Suspended, or Ineligible Contractors or CITYs**
13. **570.610. Uniform Administrative Requirements and Cost Principles.** The COUNTY, its Cities, agencies or instrumentalities, shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 (Common Rule), and OMB Circulars A-110 (Grants and Agreements with Non-Profit Organizations), A-122 (Cost Principles for Non-Profits), A-128 (Audits of State and Local Governments-implemented at 24 CFR, Part 24), and A-133 (Audits of Institutions of Higher Education and Other Non-Profit Institutions), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR, Part 85 and OMB Circular A-100 are set forth at 570.502.
14. **570.611. Conflict of Interest**
15. **570.612. Executive Order 12372** allows States to establish its own process for review and comment on proposed Federal financial assistance programs, specifically the use of CDBG funds for the construction or planning of water or sewer facilities.
16. **570.613. Eligibility Restrictions for Certain Resident Aliens**
17. **570.614. Architectural Barriers Act and the Americans with Disabilities Act.**

EXHIBIT E**DECLARATION OF CONTRACTOR**

(To be completed by all Type I Contractors)

This is a Type I service contract under the Board of Supervisor's Resolution of Contracting Principles.

Type I Category: **Section II C.6**

Explanation: **Contract with another Public Government Agency**

I am authorized to complete this form on behalf of the **CITY OF MORGAN HILL**.

I have used due diligence in obtaining this information, and this information contained herein is complete and accurate.

CONTRACT PROVISIONS TO IMPLEMENT THE TERMS OF THE RESOLUTION RE: CONTRACTING PRINCIPLES

This CONTRACT is a Type I service contract, subject to the Resolution of Contracting Principles adopted by the Board of Supervisors on October 28, 1997 and subsequently amended on October 21, 2008. Accordingly, CITY shall comply with all of the following:

a. CITY shall, during the term of this contract, comply with all applicable federal, state, and local rules, regulations, and laws.

b. CITY shall maintain financial records adequate to show that COUNTY funds paid under the contract were used for purposes consistent with the terms of the contracts. These records shall be maintained during the term of this contract and for a period of three (3) years from termination of this contract or until all claims if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this contract.

The failure of Contractor to comply with this Section or any portion thereof may be considered a material breach of this contract and may, at the option of the County, constitute grounds for the termination and/or non-renewal of the contract. Contractor shall be provided reasonable notice of any intended termination or non-renewal on the ground of non-compliance with this Section, and the opportunity to respond and discuss the COUNTY's intended action.

City Manager Signature: _____ **Date** _____

Print Name: _____

EXHIBIT F

INSURANCE REQUIREMENTS FOR
STANDARD CONTRACTS ABOVE \$100,000

Indemnity

The Contractor shall indemnify, defend, and hold harmless the County of Santa Clara (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor contests its obligation to indemnify, defend and/or hold harmless the County under this Agreement and does not prevail in that contest.

Insurance

Without limiting the Contractor's indemnification of the County, the Contractor shall provide and maintain at its own expense, during the term of this Agreement, or as may be further required herein, the following insurance coverages and provisions:

A. Evidence of Coverage

Prior to commencement of this Agreement, the Contractor shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, a certified copy of the policy or policies shall be provided by the Contractor upon request.

This verification of coverage shall be sent to the requesting County department, unless otherwise directed. The Contractor shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

B. Qualifying Insurers

All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- V, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Insurance Manager.

EXHIBIT F

C. Notice of Cancellation

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified County insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the County of Santa Clara or their designated agent.

D. Insurance Required

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence - \$1,000,000
 - b. General aggregate - \$2,000,000
 - c. Products/Completed Operations aggregate - \$2,000,000
 - d. Personal Injury - \$1,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Products/Completed
 - c. Personal Injury liability
 - d. Severability of interest
3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the County:

Additional Insured Endorsement, which shall read:

“County of Santa Clara, and members of the Board of Supervisors of the County of Santa Clara, and the officers, agents, and employees of the County of Santa Clara, individually and collectively, as additional insureds.”

Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by the County of Santa Clara, its officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy. Public Entities may also be added to the

EXHIBIT F

additional insured endorsement as applicable and the contractor shall be notified by the contracting department of these requirements.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4a. Aircraft/Watercraft Liability Insurance (Required if Contractor or any of its agents or subcontractors will operate aircraft or watercraft in the scope of the Agreement)

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired aircraft/watercraft.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all-states coverage.
- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

E. Special Provisions

The following provisions shall apply to this Agreement:

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by the Contractor and any approval of said insurance by the County or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The County acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. However, this shall not in any way limit liabilities assumed by the Contractor under this Agreement. Any self-insurance shall be approved in writing by the County upon satisfactory evidence of financial capacity. Contractors obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.

EXHIBIT F

3. Should any of the work under this Agreement be sublet, the Contractor shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Contractor may insure subcontractors under its own policies.
4. The County reserves the right to withhold payments to the Contractor in the event of material noncompliance with the insurance requirements outlined above.

F. Fidelity Bonds (Required only if contractor will be receiving advanced funds or payments)

Before receiving compensation under this Agreement, Contractor will furnish County with evidence that all officials, employees, and agents handling or having access to funds received or disbursed under this Agreement, or authorized to sign or countersign checks, are covered by a BLANKET FIDELITY BOND in an amount of AT LEAST fifteen percent (15%) of the maximum financial obligation of the County cited herein. If such bond is canceled or reduced, Contractor will notify County immediately, and County may withhold further payment to Contractor until proper coverage has been obtained. Failure to give such notice may be cause for termination of this Agreement, at the option of County.



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

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

EXTEND TERMS OF FOUR (4) MEMBERS ON THE LIBRARY, CULTURE & ARTS COMMISSION

RECOMMENDATION(S)

Extend the terms of four commissioners to April 21, 2021.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

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

2020-2021 Strategic Priorities

Community Outreach
Engagement and Messaging

REPORT NARRATIVE:

The Library, Culture & Arts Commission (LCAC) has four seats up for appointment on April 1, 2021. Commissioner Jake Thompson notified staff that he will not be seeking reappointment. Commissioners Katie Khera, Suman Ganapathy and Poonam Chabra have expressed interest in applying for reappointment.

The City Clerk's Office has invited the current commissioners to apply for reappointment and has conducted recruitment efforts to fill these vacancies. In addition to the current commissioners that expressed interest in applying for reappointment, we have received two commission applications. The interviews to fill vacancies on the LCAC commission have been scheduled for April 21, 2021. Per state law the terms of the commissioners are automatically extended until new appointments are made, ensuring the commissions' ability to have a quorum if needed. As a matter of courtesy, staff has reached out to Commissioners Katie Khera, Poonam Chabra, Suman Ganapathy, and Jake Thompson to confirm they are willing to continue to serve until April 21, 2021 to allow time to recruit, interview, and appoint new commissioners.

COMMUNITY ENGAGEMENT: Involve

Recruitment efforts were undertaken to encourage citizens to apply for City Council appointment consideration to the LCAC via the Morgan Hill Times, City Website, outreach to community groups, and the weekly 411 emails.

ALTERNATIVE ACTIONS:

The City Council may, at this time, formally reappoint Katie Khera, Poonam Chabra and Suman Ganapathy to the LCAC for a term ending April 1, 2024.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

Recruitment efforts are conducted each year to maintain the seven (7) member Commissions.

FISCAL AND RESOURCE IMPACT:

There is no fiscal impact associated with the actions to interview and appoint, as the recruitment and appointment process is accommodated in the Council Services and Records Management operating budget.

CEQA (California Environmental Quality Act):

Not a project.

The interview and appointment of commissioners is not a project, as defined in Section 15378 of the State CEQA guidelines.

LINKS/ATTACHMENTS:

1. chapter 2.22 Master Provisions for boards and commissions

Chapter 2.22 - MASTER PROVISIONS FOR BOARDS AND COMMISSIONS*

Sections:

2.22.010 - Establishment of boards and commissions.

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

(Ord. 1778 N.S. § 2 (part), 2006)

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

2.22.030 - Clerk and secretary.

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

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

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.040 - Rules of procedure.

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

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.050 - Rules of attendance.

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

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.060 - Meetings.

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

(Ord. 1778 N.S. § 2 (part), 2006)

(Ord. No. 1930 N.S., § 3, 4-22-2009)

2.22.070 - Compensation.

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

(Ord. 1778 N.S. § 2 (part), 2006)

2.22.080 - Effect.

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

(Ord. 1778 N.S. § 2 (part), 2006)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

PREPARED BY: Christina Turner, City Manager
APPROVED BY: City Manager

RATIFY CITY POSITION ON PENDING LEGISLATION SENATE BILL 9 - REQUIRING A LOCAL GOVERNMENT TO MINISTERIALLY APPROVE A HOUSING DEVELOPMENT CONTAINING TWO RESIDENTIAL UNITS IN SINGLE-FAMILY RESIDENTIAL ZONES.

RECOMMENDATION(S)

Ratify City's position on pending State Legislation Senate Bill 9.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment and Preserving
Open Space and Agricultural Land
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Affordable Housing and Homelessness

REPORT NARRATIVE:

Per Resolution No. 20-010 (Attachment 1), the City Council recognizes occasional situations arise where communication indicating support or opposition on pending State, County, or other regional boards' legislation or action that could be important and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute and transmit written or verbal communications indicating a City's position when any of the following criteria are met: a) the League of California Cities, or a similar organization, has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State, County, or other regional boards' legislation or action clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy in a substantial manner such that it is in the best interest of the City to indicate its comment or position. When this occurs, a written report to the City Council for acceptance is required at the next possible meeting.

Senate Bill 9 (Attachment 2) authored by Senator Atkins, Caballero, Rubio, and Wiener, would require a local government to ministerially approve a housing development containing two residential units in single-family residential zones. Additionally, this measure would require local governments to ministerially approve urban lot splits.

The Mayor communicated a letter requesting amendments (Attachment 3) to proposed legislation which ensure bill affords local governments the local control in making

determinations for lot sizes subject to such developments and outlining Morgan Hill's success thus far in meeting its fair share of housing need.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community on City's position on pending legislation which directly impact the City of Morgan Hill.

ALTERNATIVE ACTIONS:

The City Council could rescind positions taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

City Council periodically ratifies City positions on various pending State, County or other regional board legislations or actions that have a direct impact on the City of Morgan Hill.

FISCAL AND RESOURCE IMPACT:

Tracking legislation is an activity included in the annual workplan of the City Manager's Office.

CEQA (California Environmental Quality Act):

Not a Project – administrative action/activity without an impact.

LINKS/ATTACHMENTS:

1. 20-010 - Resolution
2. Senate Bill 9 - Text (weblink)
3. SB 9 letter

RESOLUTION NO. 20-010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE MAYOR OR CITY MANAGER TO PREPARE, EXECUTE AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE, COUNTY, OR OTHER REGIONAL BOARDS' LEGISLATION OR ACTION ON CERTAIN MATTERS THAT MAY HAVE IMPACTS UPON THE CITY IN CERTAIN CIRCUMSTANCES AND DIRECTING A REPORT BACK TO CITY COUNCIL ON ANY SUCH COMMUNICATIONS TRANSMITTED. (THIS RESOLUTION RESCINDS RESOLUTION NO. 6851)

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to indicate City's position on proposed legislation of the State of California and is sometimes requested to so indicate City's position on such legislation for the benefit of the City; and

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in detail in that certain City Council Staff Report submitted for City Council consideration at its meeting of February 5, 2020, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

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

WHEREAS, the 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.

Attachment: 20-010 - Resolution (3024 : Ratify City position on SB 9)

Section 2. Approval and Authorization. The City Council prefers, whenever possible, that determinations on whether to take a position on pending State, County, or other regional boards' legislation or action be brought before the City Council as a whole for consideration and action. However, the City Council recognizes that occasional, limited situations arise where communications indicating support or opposition on pending State, County, or other regional boards' legislation or action that could be important to City are requested from cities within timeframes that have deadlines occurring prior to the next scheduled meeting of the City Council as a whole at which the City Council could consider and determine City's position on such pending legislation. For these reasons, the City Council does further resolve, order and/or direct as follows:

- a. That the Mayor and/or the City Manager is delegated authority to and is authorized to prepare, execute and transmit written or verbal communications indicating a City position on proposed pending State, County or other regional boards' legislation or action that may have impacts upon City when any of the following criteria are met:
 - i. The League of California Cities, or a successor or similar organization, has requested City comment or position on a piece of pending legislation or action, or the City has otherwise become aware of such pending legislation or action;
 - ii. A public hearing and an opportunity for City to comment or take a position upon such pending legislation or action is occurring in a timeframe and with a deadline to comment or express a position that occurs prior to the next scheduled meeting of the City Council at which the City Council could consider and determine City's comment or position on such pending legislation or action; or
 - iii. The pending legislation or action clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal or Strategy in a substantial manner such that it is in the best interests of City to indicate its comment or position on such pending legislation or action.
- b. That the Mayor and/or City Manager is hereby directed to provide a written report to the City Council for the Council's comment and acceptance at the City Council's next possible meeting whenever the Mayor or City Manager prepares, executes and transmits a communication indicating a comment or position on pending legislation or action pursuant to the authority delegated under this Resolution, which report shall include a copy of such pending legislation or action, and the comment or position transmitted.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 5th day of February 2020 by the following vote:

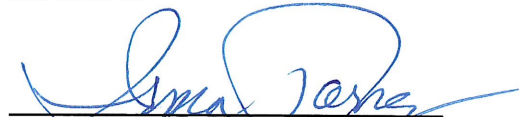
AYES:	COUNCIL MEMBERS:	Yvonne Martinez Beltran, Rene Spring, John McKay, Larry Carr, Rich Constantine
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



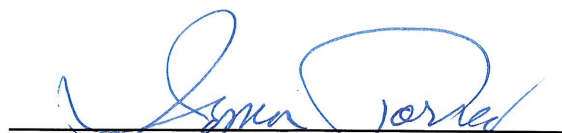
IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-010, adopted by the City Council at the meeting held on the 5th day of February 2020.

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

DATE: 3/3/2020



Irma Torrez, CITY CLERK

Attachment: 20-010 - Resolution (3024 : Ratify City position on SB 9)



17575 Peak Avenue
Morgan Hill, CA 95037-4128
TEL: (408) 779-7271
FAX: (408) 779-3117
www.morganhill.ca.gov

March 10, 2021

The Honorable Toni Atkins
President pro Tempore, California State Senate
State Capitol Building, Room 205
Sacramento, CA 95814

RE: SB 9 (Atkins) Increased Density in Single-Family Zones
Support with Amendments (As Introduced 12/7/2020)

Dear Senate President pro Tempore Atkins,

The City of Morgan Hill writes to request an amendment to SB 9, which would require a local government to ministerially approve a housing development containing two residential units in single-family residential zones and require ministerial approval of urban lot splits.

Morgan Hill has a proud history of affordable housing production that has resulted in 1 out of every 8 (13%) of for-ownership housing units being income restricted. As a subset of this amazing accomplishment, Morgan Hill has created more affordable ownership units per capita, than any other City in northern California.

Morgan Hill has historically invested money into other successful housing programs as well, such as down payment assistance, rehabilitation programs, and preservation of existing affordable housing. The City has actively supported ownership and rental affordable housing production, and continues to produce affordable housing, by requiring housing developments to produce 15% affordable units. Currently, the City's inclusionary housing ordinance is being revisited to explore expanding the program to create more affordable housing, especially lower income housing.

With every 1 in 8 units in the City deed restricted as affordable, the City also protects 840 lower and extremely low-income mobile home spaces by Ordinance policy and provides support for another 806 RV spaces providing temporary housing that are located in the City and in the nearby unincorporated area. Morgan Hill is committed to creating housing opportunities for families, seniors, developmentally disabled, and formerly unhoused. We are proud of the rich partnerships with non-profit housing providers, non-profit social service entities, the local development community, and the County to provide support to those in need and offer quality housing that is inclusive, dignified and ranges from single family homes in every neighborhood to converted motels, shared housing, family and senior, single room occupancy (SRO) housing, transitional services, mobile homes, sweat equity units, ownership and rental.

Attachment: SB 9 letter [Revision 1] (2024 : Ratify City position on SB 9)

Finally, it should be noted that Morgan Hill is not only leading in affordable housing creation, but also is growing at a fast, steady pace of 2% per year. Morgan Hill is often listed as one of the fastest growing cities in Santa Clara County. Morgan Hill is building its fair share of housing and are well underway towards meeting and in some areas exceeding our RHNA numbers. While the desire for housing production resonates strongly with us, we have the following concerns that we hope will be addressed with an amendment to the current SB 9:

- Clarify that a property owner using SB 9 is limited to constructing two residential units, not two residential units and additional accessory dwelling units (ADUs) on the same parcel;
- Require a housing developer to acquire a building permit within one year of a lot split, so that speculators do not sell lots and never build homes;
- Allow local governments to require adequate access for police, fire and other public safety vehicles and equipment;
- Prohibit developers from using SB 9 in very high fire hazard severity zones as is the case in the City of Morgan Hill;
- Allow cities to determine a range of lot sizes suitable for SB 9 development projects;
- Ensure HCD provides Regional Housing Needs Allocation (RHNA) credit for production of SB 9 units;
- Allow local governments to consider local conditions such as hillsides, lot dimensions, natural hazards, available infrastructure, etc. when approving or denying housing project applications.

The City of Morgan Hill is deeply committed to being part of the solution to the housing shortfall across all income levels and will continue to work collaboratively. Thank you for considering the above amendments.

If you have any questions, please do not hesitate to contact Christina Turner, City Manager, via phone at 408-776-7382, or via email at Christina.Turner@Morganhill.ca.gov.

Sincerely,



Rich Constantine
Mayor



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

PREPARED BY: Hilary Holeman, Administrative Analyst
APPROVED BY: City Manager

RATIFY CITY POSITION ON PENDING LEGISLATION SENATE BILL 278 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM. DISALLOWED COMPENSATION. BENEFIT ADJUSTMENTS

RECOMMENDATION(S)

Ratify City's position on pending State Legislation Senate Bill 278 - Public Employees' Retirement System. Disallowed compensation. Benefit adjustments.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Fiscal Sustainability

Regional Initiatives

REPORT NARRATIVE:

Per Resolution No. 20-010 (Attachment 1), the City Council recognizes occasional situations arise in which communication indicating support or opposition on pending State, County, or other regional boards' legislation or action that could be important and may occur prior to the next scheduled City Council meeting. Under these circumstances, the Mayor or City Manager is delegated the authority to prepare, execute and transmit written or verbal communications indicating a City's position when any of the following criteria are met: a) the League of California Cities, or a similar organization, has requested the City to comment or take a position, b) the timing to express a position occurs prior to the next scheduled Council meeting, and c) the pending State, County, or other regional boards' legislation or action clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal, or Strategy in a substantial manner such that it is in the best interest of the City to indicate its comment or position. When this occurs, a written report to the City Council for acceptance is required at the next possible meeting.

On March 4, 2021, the League of California Cities called attention to SB 278 requesting cities take opposition quickly as it was moving rapidly through Legislature.

SB 278 Public Employees' Retirement System: disallowed compensation: benefit adjustments

Bill Text (Attachment 2)

SB 278 is a reintroduction of SB 266 (Leyva, 2019) and would require public agencies to directly pay retirees and/or their beneficiaries, disallowed retirement benefits using

general fund dollars. SB 278 places 100 percent of the total liability for such overpayments on public agencies—abdicating all responsibility previously held by CalPERS to ensure that retirement benefits are calculated and administered correctly. As such, SB 278 is a de facto and retroactive benefit enhancement measure, which will further strain local agency budgets. This proposal raises serious legal issues for local government and compounds the pension-related issues cities face. Moreover, these perceived-giveaways of public funds will further undermine the public's perception and trust of local governments. As drafted, it is viewed CalPERS would have no responsibility and no incentive to properly calculate benefit payments.

The City submitted its letter of opposition (Attachment 3) electronically via the California Legislature Advocates Portal.

COMMUNITY ENGAGEMENT: Inform

This report serves to inform the community of the position and letter that the City sent regarding SB 278.

ALTERNATIVE ACTIONS:

Council could rescind positions taken.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 4, 2019, City Council ratified City's opposition position on SB 266, which was essentially the same bill as the current SB 278.

FISCAL AND RESOURCE IMPACT:

No fiscal impact at this time. Tracking legislation is an activity included in the annual workplan of the City Manager's Office.

CEQA (California Environmental Quality Act):

Not a Project - Proposals for legislation to be enacted by the State Legislature.

LINKS/ATTACHMENTS:

1. 20-010 Resolution
2. SB 278 Bill Text 1.29.2021
3. SB 278 PERS.Disallowed Letter of Opposition 3.4.2021

RESOLUTION NO. 20-010

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING THE MAYOR OR CITY MANAGER TO PREPARE, EXECUTE AND TRANSMIT COMMUNICATIONS INDICATING A POSITION ON PROPOSED STATE, COUNTY, OR OTHER REGIONAL BOARDS' LEGISLATION OR ACTION ON CERTAIN MATTERS THAT MAY HAVE IMPACTS UPON THE CITY IN CERTAIN CIRCUMSTANCES AND DIRECTING A REPORT BACK TO CITY COUNCIL ON ANY SUCH COMMUNICATIONS TRANSMITTED. (THIS RESOLUTION RESCINDS RESOLUTION NO. 6851)

WHEREAS, the City of Morgan Hill, a municipal corporation and general law city duly organized and existing under and pursuant to the Constitution and laws of the State of California ("City"), is authorized to indicate City's position on proposed legislation of the State of California and is sometimes requested to so indicate City's position on such legislation for the benefit of the City; and

WHEREAS, the reasons supporting the adoption of this Resolution are set forth in detail in that certain City Council Staff Report submitted for City Council consideration at its meeting of February 5, 2020, submitted to the City Council by the City Manager (the "Staff Report"), the contents of which Staff Report are incorporated herein by this reference; and

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

WHEREAS, the 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. Approval and Authorization. The City Council prefers, whenever possible, that determinations on whether to take a position on pending State, County, or other regional boards' legislation or action be brought before the City Council as a whole for consideration and action. However, the City Council recognizes that occasional, limited situations arise where communications indicating support or opposition on pending State, County, or other regional boards' legislation or action that could be important to City are requested from cities within timeframes that have deadlines occurring prior to the next scheduled meeting of the City Council as a whole at which the City Council could consider and determine City's position on such pending legislation. For these reasons, the City Council does further resolve, order and/or direct as follows:

- a. That the Mayor and/or the City Manager is delegated authority to and is authorized to prepare, execute and transmit written or verbal communications indicating a City position on proposed pending State, County or other regional boards' legislation or action that may have impacts upon City when any of the following criteria are met:
 - i. The League of California Cities, or a successor or similar organization, has requested City comment or position on a piece of pending legislation or action, or the City has otherwise become aware of such pending legislation or action;
 - ii. A public hearing and an opportunity for City to comment or take a position upon such pending legislation or action is occurring in a timeframe and with a deadline to comment or express a position that occurs prior to the next scheduled meeting of the City Council at which the City Council could consider and determine City's comment or position on such pending legislation or action; or
 - iii. The pending legislation or action clearly supports or clearly hinders the implementation or fulfillment of an adopted City Council Priority, Goal or Strategy in a substantial manner such that it is in the best interests of City to indicate its comment or position on such pending legislation or action.
- b. That the Mayor and/or City Manager is hereby directed to provide a written report to the City Council for the Council's comment and acceptance at the City Council's next possible meeting whenever the Mayor or City Manager prepares, executes and transmits a communication indicating a comment or position on pending legislation or action pursuant to the authority delegated under this Resolution, which report shall include a copy of such pending legislation or action, and the comment or position transmitted.

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

PASSED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 5th day of February 2020 by the following vote:

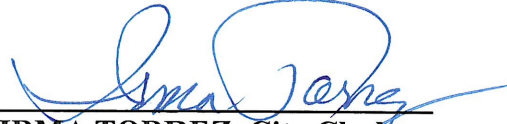
AYES:	COUNCIL MEMBERS:	Yvonne Martinez Beltran, Rene Spring, John McKay, Larry Carr, Rich Constantine
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:



RICH CONSTANTINE, Mayor

ATTEST:



IRMA TORREZ, City Clerk

∞ CERTIFICATION ∞

I, Irma Torrez, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-010, adopted by the City Council at the meeting held on the 5th day of February 2020.

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

DATE: 3/3/2020



Irma Torrez, CITY CLERK

SENATE BILL**No. 278****Introduced by Senator Leyva**

January 29, 2021

An act to add Section 20164.5 to the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 278, as introduced, Leyva. Public Employees' Retirement System: disallowed compensation: benefit adjustments.

(1) Existing law, the Public Employees' Retirement Law (PERL), establishes the Public Employees' Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. PERL authorizes a public agency to contract to make its employees members of PERS and prescribes a process for this. PERS is administered by its board of administration, which is responsible for correcting errors and omissions in the administration of the system and the payment of benefits. Existing law requires the board to correct all actions taken as a result of errors or omissions of the state or a contracting agency, in accordance with certain procedures.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

This bill would establish new procedures under PERL for cases in which PERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with PEPRA and other specified laws and thus impermissible under PERL. The bill would also apply these procedures retroactively to

determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies. At the threshold, after determining that compensation for an employee member reported by the state, school employer, or a contracting agency is disallowed, the bill would require the applicable employer to discontinue the reporting of the disallowed compensation. The bill would require that contributions made on the disallowed compensation, for active members, be credited against future contributions on behalf of the state, school employer, or contracting agency that reported the disallowed compensation and would require that the state, school employer, or contracting agency return to the member any contributions paid by the member or on the member's behalf.

With respect to retired members, survivors, or beneficiaries whose benefits are based on disallowed final compensation, the bill would require PERS to adjust the benefit to reflect the exclusion of the disallowed compensation, and provide that contributions made on the disallowed compensation be credited against future contributions on behalf of the employer entity that reported the disallowed compensation. Additionally, if specified conditions are met, the bill would require the employing entity to refund overpayment costs to the system and to pay retired members, survivors, and beneficiaries whose benefits have been reduced an annuity, or a lump sum, as prescribed, that reflects the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated without the disallowed compensation, as provided. The bill would require the system to provide certain notices in this regard. This bill would require the system to provide confidential contact information of retired members, and their survivors and beneficiaries, who are affected by these provisions to the relevant employing entities, the confidentiality of which the entities would be required to maintain.

The bill would authorize the state, a school employer, as specified, or a contracting agency, as applicable, to submit to the system an additional compensation item proposed to be included or contained in a memorandum of understanding or collective bargaining agreement on and after January 1, 2022, that is intended to form the basis of a pension benefit calculation in order for PERS to review its consistency with PEPPRA and other laws, as specified, and would require PERS to provide guidance regarding the review within 90 days, as specified. The bill would require PERS to publish notices regarding proposed

compensation language submitted to the system for review and the guidance given by the system that is connected with it. For educational entities that participate in the system, the final responsibility for funding payments to the system and to retired members, survivors, and beneficiaries would belong to the educational entity that is the actual employer of the employee. The bill would make related legislative findings and declarations.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The California Public Employees' Retirement
- 2 System (CalPERS) is the largest public pension fund in the United
- 3 States, administering defined benefit retirement plans for
- 4 California's public employees, including state and local
- 5 government firefighters, law enforcement personnel, and school
- 6 employees.
- 7 (b) Of the numerous positions maintained by the state, schools,
- 8 and local governments, each is unique and each is vital to ensuring
- 9 quality public services that help keep our state strong, a critical
- 10 component to promoting our state's continued economic recovery
- 11 and future growth.
- 12 (c) Fire service, law enforcement, school personnel, and other
- 13 public employees exhibit varying demographic features and career
- 14 patterns. Each requires a different skill set and knowledge base,
- 15 as well as unique requirements for recruitment, training, retention,
- 16 and compensation.
- 17 (d) Generations of hard-working members of California's middle
- 18 class have dedicated their careers to public service, often earning
- 19 less over the course of their careers when compared to their private
- 20 industry counterparts, to earn and pay for the promise of a secure
- 21 retirement.

1 (e) A public employee's pension is based on collectively
2 bargained compensation that takes the form of base pay and special
3 compensation for additional skills, extraordinary assignments, or
4 education.

5 (f) For CalPERS, it is the employer's responsibility to ensure
6 that employee information is reported to CalPERS accurately and
7 on a timely basis in order to correctly calculate an employee's
8 service credit and final compensation for retirement purposes.

9 (g) In 2012, after serving the public for nearly 30 years, a
10 firefighter employed by a CalPERS contracting agency, which
11 provided an official projection of retirement benefits based on the
12 firefighter's estimated retirement date, made the decision to retire
13 based on that projection.

14 (h) In 2017, five years after officially retiring, CalPERS notified
15 the firefighter retiree that the retiree's former employer had
16 erroneously reported and remitted contributions on certain
17 compensation, which CalPERS later determined in an audit was
18 not pensionable compensation. CalPERS sought repayment of the
19 purported overpayment directly from the retired firefighter totaling
20 thousands of dollars, as well as imposed a substantial future
21 reduction to the retiree's monthly allowance. Unfortunately, this
22 scenario is not isolated to just this one retiree. A handful of other
23 firefighter, law enforcement, and school retirees have reported
24 similar stories across multiple CalPERS employers.

25 (i) For over eight decades, CalPERS has proven its ability to
26 fairly administer the retirement system to uphold the promises
27 made by its employers for those members who invest their life's
28 work in public service. However, this kind of clawback has the
29 potential to take a major toll on the finances of retirees, including
30 firefighters and law enforcement officers who, unlike private sector
31 employees, do not receive social security benefits and instead rely
32 on their fixed monthly pension as their sole source of retirement
33 income.

34 (j) In enacting this bill, it is the intent of the Legislature to ensure
35 that a retired CalPERS member is protected when alleged
36 misapplication or calculation of compensation occurs as a result
37 of an employer's error, and that this protection be provided to
38 retirees whose appeal of CalPERS' determination, and subsequent
39 reduction of the retiree's allowance, is not final. It is further the
40 intent of the Legislature that errors made on the part of the

1 employer, with respect to a promise to a retiree, be borne by the
2 employer rather than through a retroactive clawback and permanent
3 reduction in the retired member's pension.

4 SEC. 2. Section 20164.5 is added to the Government Code, to
5 read:

6 20164.5. (a) For purposes of this section, "disallowed
7 compensation" means compensation reported for a member by the
8 state, school employer, or a contracting agency that the system
9 subsequently determines is not in compliance with the California
10 Public Employees' Pension Reform Act of 2013 (Article 4
11 (commencing with Section 7522) of Chapter 21 of Division 7 of
12 Title 1), Section 20636 or 20636.1, or the administrative regulations
13 of the system.

14 (b) If the system determines that the compensation reported for
15 a member by the state, school employer, or a contracting agency
16 is disallowed compensation, the system shall require the state,
17 school employer, or contracting agency to discontinue reporting
18 the disallowed compensation. This section shall also apply to
19 determinations made on or after January 1, 2017, if an appeal has
20 been filed and the member, the retired member, survivor, or
21 beneficiary has not exhausted their administrative or legal
22 remedies.

23 (1) In the case of an active member, all contributions made on
24 the disallowed compensation shall be credited against future
25 contributions to the benefit of the state, school employer, or
26 contracting agency that reported the disallowed compensation, and
27 any contribution paid by, or on behalf of, the member, including
28 contributions under Section 20691, shall be returned to the member
29 by the state, school employer, or contracting agency that reported
30 the disallowed compensation.

31 (2) In the case of a retired member, survivor, or beneficiary
32 whose final compensation at the time of retirement was predicated
33 upon the disallowed compensation, the contributions made on the
34 disallowed compensation shall be credited against future
35 contributions, to the benefit of the state, school employer, or
36 contracting agency that reported the disallowed compensation and
37 the system shall permanently adjust the benefit of the affected
38 retired member, survivor, or beneficiary to reflect the exclusion
39 of the disallowed compensation.

1 (3) (A) In the case of a retired member, survivor, or beneficiary
2 whose final compensation at the time of retirement was predicated
3 upon the disallowed compensation as described in paragraph (2),
4 the repayment and notice requirements described in this paragraph
5 and paragraph (4) shall apply only if all of the following conditions
6 are met:

7 (i) The compensation was reported to the system and
8 contributions were made on that compensation while the member
9 was actively employed.

10 (ii) The compensation was provided for in a memorandum of
11 understanding or collective bargaining agreement as compensation
12 for pension purposes.

13 (iii) The determination by the system that compensation was
14 disallowed was made after the date of retirement.

15 (iv) The member was not aware that the compensation was
16 disallowed at the time it was reported.

17 (B) If the conditions of subparagraph (A) are met, the state,
18 school employer, or contracting agency that reported contributions
19 on the disallowed compensation shall do both of the following:

20 (i) Pay to the system, as a direct payment, the full cost of any
21 overpayment of the prior paid benefit made to an affected retired
22 member, survivor, or beneficiary resulting from the disallowed
23 compensation.

24 (ii) Pay to the retired member, survivor, or beneficiary, as a
25 lump sum or as an annuity based on that amount, the actuarial
26 equivalent present value representing the difference between the
27 monthly allowance that was based on the disallowed compensation
28 and the adjusted monthly allowance calculated pursuant to
29 paragraph (2) for the duration that allowance is projected to be
30 paid by the system to the retired member, survivor, or beneficiary.
31 The payment, or payments, shall be made by the state, school
32 employer, or contracting agency that reported contributions on the
33 disallowed compensation as an annuity unless the retired member,
34 survivor, or beneficiary and the state, school employer, or
35 contracting agency, as may be applicable, mutually agree to a lump
36 sum payment or payments.

37 (4) The system shall provide a notice to the state, school
38 employer, or contracting agency that reported contributions on the
39 disallowed compensation and to the affected retired member,

1 survivor, or beneficiary, including, at a minimum, all of the
2 following:

3 (A) The amount of the overpayment to be paid by the state,
4 school employer, or contracting agency to the system as described
5 in subparagraph (B) of paragraph (3).

6 (B) The actuarial equivalent present value owed to the retired
7 member, survivor, or beneficiary as described in subparagraph (B)
8 of paragraph (3), if applicable.

9 (C) Written disclosure of the state, school employer, or
10 contracting agency's obligations to the retired member, survivor,
11 or beneficiary pursuant to this section.

12 (5) The system shall, upon request, provide the state, a school
13 employer, or a contracting agency with contact information data
14 in its possession of a relevant retired member, survivor, or
15 beneficiary in order for the state, a school employer, or a
16 contracting agency to fulfill their obligations to that retired
17 member, survivor, or beneficiary pursuant to this section. The
18 recipient of this contact information data shall keep it confidential.

19 (c) (1) The state, a school employer, including a county
20 superintendent of schools, school district, community college
21 district, charter school, regional occupational center, or other local
22 educational agency, or a contracting agency, as applicable, may
23 submit to the system for review an additional compensation item
24 that is proposed to be included, or is contained, in a memorandum
25 of understanding adopted, or a collective bargaining agreement
26 entered into, on and after January 1, 2022, that is intended to form
27 the basis of a pension benefit calculation, in order for the system
28 to review consistency of the proposal with the California Public
29 Employees' Pension Reform Act of 2013 (Article 4 (commencing
30 with Section 7522) of Chapter 21 of Division 7 of Title 1), Section
31 20636 or 20636.1, and the administrative regulations of the system.

32 (2) A submission to the system for review under paragraph (1)
33 shall include only the compensation item language and a
34 description of how it meets the criteria listed in subdivision (a) of
35 Section 571 or subdivision (b) of Section 571.1 of Title 2 of the
36 California Code of Regulations, along with any other supporting
37 documents or requirements the system deems necessary to complete
38 its review.

1 (3) The system shall provide guidance regarding the submission
2 within 90 days of the receipt of all information required to make
3 a review.

4 (d) The system shall periodically publish a notice of the
5 proposed compensation language submitted to the system pursuant
6 to paragraph (c) for review and the guidance provided by the
7 system.

8 (e) This section does not alter or abrogate any responsibility of
9 the state, a school employer, or a contracting agency to meet and
10 confer in good faith with the employee organization regarding the
11 impact of the disallowed compensation or the effect of any
12 disallowed compensation on the rights of the employees and the
13 obligations of the employer to its employees, including any
14 employees who, due to the passage of time and promotion, may
15 have become exempt from inclusion in a bargaining unit, but whose
16 benefit was the product of collective bargaining.

17 (f) For educational entities participating in the system, the final
18 responsibility for funding payments under subparagraph (B) of
19 paragraph (3) of subdivision (b) is that of the educational entity
20 that is the actual employer of the employee. A county
21 superintendent of schools shall have final responsibility for funding
22 payments for its own employees and not for those employees of
23 other educational entities that participate in the system under the
24 auspices of a county superintendent of schools pursuant to contract.

25 (g) This section does not effect or otherwise alter a party's right
26 to appeal any determination regarding disallowed compensation
27 made by the system.

28 SEC. 3. The Legislature finds and declares that Section 2 of
29 this act, which adds Section 20164.5 to the Government Code,
30 imposes a limitation on the public's right of access to the meetings
31 of public bodies or the writings of public officials and agencies
32 within the meaning of Section 3 of Article I of the California
33 Constitution. Pursuant to that constitutional provision, the
34 Legislature makes the following findings to demonstrate the interest
35 protected by this limitation and the need for protecting that interest:

36 In order to appropriately maintain the current confidentiality of
37 personal contact information held by the Public Employees'
38 Retirement System regarding retired members of the system, and
39 their survivors and beneficiaries, it is necessary to limit access to

- 1 this information if it is provided to other public entities for purposes
- 2 of Section 20164.5 of the Government Code.

O



17575 Peak Avenue
Morgan Hill, CA 95037-4128
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www.morganhill.ca.gov

March 5, 2021

The Honorable Dave Cortese
Chair, Senate Labor, Public Employment and Retirement Committee
Legislative Office Building, Room 545
Sacramento, CA 95814

RE: Senate Bill 278 (Leyva) - Public Employees' Retirement System. Disallowed Compensation.
Benefit Adjustments.
Notice of Opposition [As Introduced 1/29/2021]

Dear Senator Cortese:

The City of Morgan Hill must respectfully oppose SB 278, which would require public agencies to directly pay retirees and/or their beneficiaries, disallowed retirement benefits using general fund dollars. Our objections to this measure are rooted in policy, operational cost, and legal concerns that will inevitably face virtually every state and local government agency should this measure be signed into law.

CalPERS has No Incentive to Properly Calculate Benefit Payments:

SB 278 would place 100 percent of the total liability for disallowed retirement benefits on public agencies—abdicating all responsibility previously held by CalPERS to ensure that retirement benefits are calculated and administered correctly. As such, SB 278 is a de facto and retroactive benefit enhancement measure that would further strain our budget at a time where the impacts of COVID-19 and retirement obligations are making it exceedingly difficult to effectively provide critical services for the public. The City is already dealing with a significant loss of revenue, over \$17 million, due to the ongoing pandemic and has been frugal with its limited dollars. SB 278 would exacerbate the fiscal sustainability challenge we already face.

Requirements under SB 278 will Create Compliance and Implementation Issues:

SB 278 would require us to issue direct General Fund payments to retirees, which would trigger GASB 68 reporting requirements. Given the unique circumstances surrounding these overpayments, we would have to track and report these liabilities. Such additional responsibilities will require us to hire costly outside actuarial and legal experts to ensure that they follow federal reporting laws.

This measure also fails to consider the common practice of employees moving from jurisdiction to jurisdiction throughout their careers. Under normal circumstances, CalPERS pays out the benefit if an employee works for multiple agencies who enjoy reciprocity. However, under SB 278 it is unclear. Such confusion will lead to compliance, legal and implementation challenges. The lack of accountability by the administrator of public retirement benefits would lead to more confusion and compliance challenges for public agencies.

Gift of Public Funds is a Violation of the California Constitution:

Under SB 278, the City of Morgan Hill would be issuing unlawful payments to former employees and/or their beneficiaries. Continued payment of a disallowed benefit to a retiree would constitute a gift of

public funds, in violation of Section 6, Article 16 of the California Constitution. Such violation would leave a public agency left to defend itself from costly litigation lawsuits filed by members of the public.

For these reasons, the City of Morgan Hill opposes SB 278 (Leyva).

Sincerely,



Rich Constantine
Mayor

cc: The Honorable Connie Leyva
Assemblymember Robert Rivas
Senator John Laird
Seth Miller, Regional Public Affairs Manager, League of California Cities, smiller@cacities.org
Meg Desmond, League of California Cities, cityletters@cacities.org



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

PREPARED BY: Harjot Sangha, Assistant to the City Manager
APPROVED BY: City Manager

ADOPT A RESOLUTION ESTABLISHING FEES FOR AMBULANCE AND EMERGENCY MEDICAL SERVICES

RECOMMENDATION(S)

1. Open/Close public hearing; and
2. Adopt resolution establishing fees for ambulance and emergency medical services.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

In July 2019, the City Council approved the acceptance of a donated 2003 Ford Type III ambulance from the Monterey County Regional Fire District to be utilized as an additional resource by the City's Fire Department to transport the public in the City, under approved County guidelines, during high demand of 9-1-1 ambulance resources. The City's Fire Department has been working to take the necessary steps to outfit, permit, and put into service the additional ambulance resource.

The Emergency Medical Services Agency of the County of Santa Clara is responsible under state law for regulating advanced life support (ALS) providers within Santa Clara County and for authorizing the provision of ALS response and transport within the County. The City of Morgan Hill Fire Department provides ALS 911 emergency medical and ambulance services pursuant to a 911 Emergency Medical Services Provider Agreement between the City of Morgan Hill and the County of Santa Clara Emergency Medical Services Agency. The County has established required rates of ambulance and emergency medical services fees and billing requirements for all ambulance service providers throughout the County.

Medical billing is a key component of providing emergency medical and transport services. Billing for ambulance transport is a common practice. All municipalities in Santa Clara County that provide medical transport services bill for those services. The City has contracted with a third-party billing vendor who has the expertise and experience in medical billing. However, the City currently does not have a fee structure that allows for the medical billing.

The proposed resolution (Attachment 1) would add the County's established rates for

transport and medical equipment and supplies to the City's master fee schedule therefore allowing the billing services provider to bill Medicare and other insurance companies for the services.

There are two service level items in which the City is proposing a less (or no) fee than what the County has established. The hourly paramedic rate is proposed to be lower as the City contracts with CALFIRE for personnel and the fully burdened rate for the CALFIRE paramedics is less than what the County has established. County also has an established hourly rate for Emergency Medical Technician (EMT). Because CALFIRE cooperative agreement does not have a separate EMT classification we are proposing to not add this separate line item to the City's schedule.

Exhibit B to the resolution outlines the cost-of-service analysis which illustrates that the City's base cost of transport (\$4,329) assuming scenario 2 – at least 6 transports a year, is more than the County's established rate of \$1,885. It is important to note that the City is not planning to staff the ambulance with additional FTEs, rather will utilize the existing staff to deploy as needed, therefore the revenue will help offset existing costs that the City already bears.

COMMUNITY ENGAGEMENT: Inform

A public hearing notice was published in the March 5 and 12 publication for Morgan Hill Times.

ALTERNATIVE ACTIONS:

City Council could elect to not adopt fees to recover a portion of the costs of ambulatory transport and medical services, which would mean the already fiscally constrained General Fund (010) would need to further subsidize these services for which we could partially recover fees and it would be contra to the City Council priority of fiscal sustainability, which includes recovering the cost-of-service delivery when possible.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On July 17, 2019, the City Council approved the acceptance and outfitting of the donated ambulance to be put into service by the Fire Department.

FISCAL AND RESOURCE IMPACT:

The adoption of the fees enables the City to bill for medical transport services and the resulting revenue will allow the Fire Department to recover the estimated costs of providing the services.

CEQA (California Environmental Quality Act):

Not a Project.

Organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

LINKS/ATTACHMENTS:

1. Resolution

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ESTABLISHING FEES FOR AMBULANCE AND EMERGENCY MEDICAL SERVICES

WHEREAS, cities and counties may contract with one another for the provision of municipal services, including ambulance services; and

WHEREAS, the County of Santa Clara Emergency Medical Services Agency is responsible for system coordination, medical oversight, and support of the delivery of all emergency medical services of provider agencies within Santa Clara County (Cal. Health and Safety Code, §§ 1797.204 and 1798 et seq.); and

WHEREAS, the City of Morgan Hill Fire Department provides 911 emergency medical and ambulance services pursuant to a 911 Emergency Medical Services Provider Agreement between the City of Morgan Hill and the County of Santa Clara Emergency Medical Services Agency; and

WHEREAS, the County of Santa Clara has established the rates of ambulance and emergency medical services fees and billing requirements as set forth in **Exhibit A** incorporated herein by this reference, and are calculated so as not to exceed the estimated cost to provide ambulance services; and

WHEREAS, the City is authorized to charge a fee to cover the cost of any service which the City provides (Cal Const art XI, §§ 7 and 9) and to adopt a resolution establishing such fees at a meeting conducted by the City Council following notice of the City Council's intention to establish such fees (Cal. Government Code, § 66018); and

WHEREAS, the City has provided required notice of the public hearing for the proposed fees; and

WHEREAS, the Council heard all relevant testimony and reviewed all written materials submitted in connection with its hearing on this Resolution.

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

1. The fees for ambulance and emergency medical services established as set forth in **Exhibit A** are hereby adopted and shall be automatically adjusted as the County of Santa Clara revises its fee schedule annually, and the City shall adjust annually its hourly paramedic rate based on CPI for Urban Wage Earners and Clerical Workers (CPI-W) – SF – Oakland-Hayward, CA and provided the fees shall not exceed the costs reasonably borne by the City in providing ambulance-related and emergency medical services.

2. Any and all charges will be billed to the responsible party and/or party receiving assistance as applicable. When charges are not collected through the City's normal billing procedure, collection may occur by any means permitted by law.
3. The City Manager or designee is hereby authorized and directed to amend the City Fee Schedule to reflect the fees as set forth in **Exhibit A**.

PASSED, APPROVED, AND ADOPTED by the City Council of Morgan Hill at a Regular Meeting held on the 17th day of March 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-XXXX, adopted by the City Council at the meeting held on March 17, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Attachment: Resolution [Revision 5] (3015 : adopt resolution establishing ambulance fees)

EXHIBIT A

Table 1: User Fees

Service Levels	<i>County's Established Rate</i>	<i>City's Proposed Rate</i>
ALS - 1	\$ 1,885.41	\$ 1,885.41
ALS - 2	1,885.41	1,885.41
Mileage	61.10	61.10
Hourly Ambulance Standby	238.60	238.60
Hourly Paramedic - Individual	119.30	65.93
Hourly EMT - Individual	79.53	-

Table 2. User Fee Schedule for Disposable Supplies and Medications

Equipment/Supplies	
AIRWAY/NASAL	\$36.66
AIRWAY/ORAL	\$20.00
BAG VALVE MASK	\$121.65
BANDAGE, ELASTIC	\$9.83
BANDAGES TRIANGULAR	\$16.66
BED PAN	\$16.66
BLANKET, DISPOSABLE	\$39.99
BLOOD GLUCOSE TEST	\$33.33
BURN SHEET	\$61.66
CERVICAL COLLAR	\$119.98
COLD/HOT PACK	\$25.00
CPAP PROCEDURE	\$516.58
DEFIB PADS	\$73.32
DRESSING - MAJOR	\$16.66
DRESSING - MINOR	\$16.66
EKG ELECTRODES	\$31.66
EKG MONITOR 12 LEAD	\$158.31
EMESIS BASIN/BAG	\$12.99
ENDOTRACHEAL TUBE INTRODUCER/GUM ELASTIC BOUGIE	\$111.32
HEADBED IMMOBILIZER	\$28.33
HEPA MASK	\$41.66
HOOD, SPIT SOCK	\$27.44
INTRAVENOUS SALINE LOCK	\$87.74
INTRAVENOUS INFUSION SET	\$148.30
INTRAVENOUS START KIT	\$66.61
INTUBATION SUPPLIES	\$74.99
IO SUPPLIES	\$496.59
KING VISION VIDEO LARYNOSCOPE CHANNEL BLADE	\$27.56
LMA SUPREME - SUPRAGLOTTIC AIRWAY	\$33.08
MECONIUM ASPIRATOR	\$14.82
NEBULIZER	\$78.32
NON-REBREATHING MASK	\$18.33
O2 CANNULA WITH END-TIDAL	\$56.61
O2 MASK/CANNULA	\$38.33
OB PACK	\$133.31
PATIENT MOVER	\$53.48
PLUERAL DECOMPRESSION	\$113.39
PULSE OXIMETRY	\$69.99
RAZOR, DISPOSABLE	\$1.39
SPLINT ARM	\$25.00
SPLINT LEG	\$25.00

SPLINTING (EXTREMITY)	\$119.98
STRAP, 5 FOOT IMMOBIZATION	\$18.44
SUCTION TUBE	\$51.66
SUCTIONING	\$104.98
TEMPERATURE MEASUREMENT	\$28.13
TOURNIQUET, COMBAT	\$100.19
UNIVERSAL PRECAUTIONS	\$46.66
URINAL	\$16.66
Medications	
ACETAMINOPHEN (OFIRMEV)	\$201.76
ACTIVATED CHARCOAL	\$33.86
ADENOSINE	\$96.65
ALBUTEROL	\$39.99
AMIODARONE	\$64.28
ASPRIN	\$10.00
ATROPHINE	\$28.33
ATROPHINE HIGH DOSE	\$133.64
BENADRYL	\$28.33
CALCIUM CHLORIDE	\$28.33
DEXTROSE 10% 25G IN 250ML BAG	\$40.39
DOPAMINE DRIP	\$89.99
DUODOTE AUTOINJECTOR	\$83.74
EPI 1:1,000 1MG/1CC	\$46.66
EPI 1:10,000	\$46.66
GLUCAGON	\$474.92
GLUCOSE PASTE	\$14.51
LIDOCAINE 2%	\$36.66
MIDAZOLEM	\$2.65
MORPHINE	\$28.33
NARCAN	\$53.32
NITROGLYCERIN TABLET	\$1.42
NITROPASTE	\$12.98
NORMAL SALINE FLUSH PLS 10cc	\$24.91
NORMAL SALINE 1000cc	\$161.64
ONDANSETRON INJECTABLE	\$57.99
ONDANSETRON ORAL DISSOLVING TABLET	\$47.89
SODIUM BICARB	\$49.99
STERILE WATER	\$39.99

Exhibit B
Cost of Service Analysis

Amortized Expenditures

Description	Total	Amortization Period	Annual Amortized Cost
Initial ambulance outfitting	\$ 120,000.00	5.00	\$ 24,000.00

Estimated Staffing Cost Per Transport

Description	Quantity	Rate	Hours	Total
Fire Apparatus Engineer Paramedic	2.00	\$ 65.93	2.00	\$ 263.72
Battalion Chief	1.00	78.30	0.50	39.15
Billing charge (vendor)	1.00	26.00	-	26.00
Total Estimated Cost Per Transport				\$ 328.87

Description	# of Transports	Annual Staffing Cost	Annual Amortized Cost	Total Annual Cost	Base Cost Per Transport
Scenario 1 - Low	1	\$ 328.87	\$ 24,000.00	\$ 24,328.87	\$ 24,328.87
Scenario 2 - Medium	6	1,973.22	24,000.00	25,973.22	\$ 4,328.87
Scenario 3 - High	12	3,946.44	24,000.00	27,946.44	\$ 2,328.87

Ambulance Standby

Description	Quantity	Rate	Total
Ambulance Standby (Based on Scenario 2)	1.00	\$ 2,000.00	\$ 2,000.00

Attachment: Resolution [Revision 5] (2015 : adopt resolution establishing ambulance fees)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

PREPARED BY: Michelle Bigelow, City Clerk
APPROVED BY: City Manager

ADOPT RESOLUTION CONDEMNING ALL FORMS OF HATE AND VIOLENCE INCLUDING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL BUILDING IN WASHINGTON D.C

RECOMMENDATION(S)

Adopt resolution condemning all forms of hate and violence including the January 6, 2021 riots at the United States Capitol Building in Washington D.C.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Supporting Our Youth
Seniors
and Entire Community
Advancing Regional Initiatives

2020-2021 Strategic Priorities

Community Outreach
Engagement and Messaging

REPORT NARRATIVE:

The purpose of this report is for the City Council to adopt a resolution condemning hate and violence as demonstrated at 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.

At the February 17, 2021 City Council Meeting, Council directed staff to bring back a resolution (Attachment 1) for consideration in March 2021 condemning all forms of hate and violence, including the riots at the US Capitol.

The City Council has included diversity and inclusiveness as its ongoing priorities and has made a statement in 2016, which was reaffirmed via adoption of a resolution in 2017, regarding the City's commitment to a diverse, supportive, inclusive community and to protecting the constitutional rights of its residents (Attachment 2).

COMMUNITY ENGAGEMENT: Inform

The report serves to inform the community of the consideration of City Council adopting a resolution condemning the January 6, 2021 riots at the U.S. Capitol.

ALTERNATIVE ACTIONS:

City Council could elect not to adopt the resolution or direct staff to amend the resolution.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On February 17, 2021, City Council voted to direct staff to return with a proposed resolution for Council consideration.

FISCAL AND RESOURCE IMPACT:

There are no direct fiscal impacts to this item. The resource impact for research, preparation and presentation of the resolution is accommodated 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.

LINKS/ATTACHMENTS:

1. 17-033
2. 01 Supplement 1
3. 01 Supplement 2
4. Resolution

RESOLUTION NO. 17-033**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL REAFFIRMING THE CITY'S COMMITMENT TO A DIVERSE, SUPPORTIVE, INCLUSIVE COMMUNITY AND TO PROTECTING THE CONSTITUTIONAL RIGHTS OF ITS RESIDENTS**

WHEREAS, On December 14, 2016 the Morgan Hill City Council affirmed a Statement of Support and Assurance to the community assuring that hate crimes will not be tolerated in Morgan Hill, our Police will not be used for federal immigration enforcement, and our Constitutional rights will be protected; and

WHEREAS, The Morgan Hill City Council adopted "Sustainable Morgan Hill" as the Council's and organization's guiding principle; and

WHEREAS, The vision of Sustainable Morgan Hill is to be "a socially responsible, environmentally conscious, and economically sound community that embraces inclusiveness with participation by all"; and

WHEREAS, The Morgan Hill City Council adopted Inclusiveness as a 2017 Strategic Priority committing the City to embrace all community members as partners to advance our vision of being a socially responsible community; and

WHEREAS, The City of Morgan Hill values a community characterized by diversity, multiculturalism, and unity and acknowledges that the dignity, health, rights and privacy of all our residents must be respected; and

WHEREAS, each person is naturally and legally entitled to live a life without harassment, discrimination, persecution or assault, whether perpetrated by individuals, groups, businesses, or governments; and

WHEREAS, there exists significant and growing concern among our residents based upon recent national and regional incidents of hate crimes, intolerance of religious beliefs, discrimination, sexual harassment and assault, and the fear of a trend toward more of these crimes in the future; and

WHEREAS, there also exists considerable concern in our city about the potential risks for discrimination, harassment, persecution, assault, and deportation; and

WHEREAS, the city and its residents continually reject bigotry and affirm their commitment to a diverse, supportive, inclusive community; and

WHEREAS, all members of the city are valued regardless of religion, immigration status, ethnicity, disability, gender, sexual orientation, or gender identity.

Attachment: 17-033 (3021 : resolution condemning January 6 2021 riots)

NOW, THEREFORE, BE IT RESOLVED that the City Council reaffirms its commitment to a diverse, supportive and inclusive community and resolves as follows:

The City of Morgan Hill rejects bigotry in all its forms, including, but not limited to, Islamophobia, anti-Semitism, racism, nativism, misogyny, and homophobia; and

The City of Morgan Hill does not tolerate discrimination based on race, national origin, ethnicity, religion, age, gender, sexual orientation, color, or disability; and

The City of Morgan Hill does not tolerate Hate crimes, harassment, or assault; and

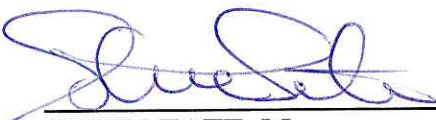
The City of Morgan Hill will oppose any attempts to undermine the safety, security, and rights of members of our community and will work proactively to ensure the rights and privileges of everyone in the city, regardless of religion, country of birth, immigration status, disability, gender, sexual orientation, or gender identity; and

The City of Morgan Hill will promote safety, a sense of security, and equal protection of constitutional and human rights, leading by example through equitable treatment of all by City officials and departments.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at a regular meeting held on the 3rd day of May, 2017.

AYES:	COUNCIL MEMBERS:	Larry Carr, Rich Constantine, Rene Spring, Caitlin Robinett Jachimowicz, Steve Tate
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:


STEVE TATE, Mayor

ATTEST:


IRMA TORREZ, City Clerk

Attachment: 17-033 (3021 : resolution condemning January 6 2021 riots)

∞ CERTIFICATION ∞

I, **Irma Torrez, City Clerk of the City of Morgan Hill, California**, do hereby certify that the foregoing is a true and correct copy of Resolution No. 17-033, adopted by the City Council at a regular meeting held on May 3, 2017.

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

DATE:

May 9, 2017



IRMA TORREZ, City Clerk

Attachment: 17-033 (3021 : resolution condemning January 6 2021 riots)

Item # 01**AGENDA DATE: 03/03/2021
SUPPLEMENT # 1**

From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: City Council Agenda Items 1, 2, 6, and 10
Date: Tuesday, March 2, 2021 8:58:10 PM

From: Armando Be <[REDACTED]>
Sent: Tuesday, March 2, 2021 1:25 PM
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>; Christina Turner <Christina.Turner@morganhill.ca.gov>; Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: City Council Agenda Items 1, 2, 6, and 10

Hello Mayor, Council Members, and
 City Manager.

Here are some comments I have on several agenda items.

ITEM 1: I applaud the city and the city council for bringing forth the Item 1 resolution condemning hate and violence. As the facts recited in the resolution show, such contemptuous acts of hate and violence have been carried out within our city ("The Congregation Emeth in Morgan Hill and City's Paradise Park were marked with anti-semitic graffiti"). By taking this resolute action the City and Council sends a clear message that such abhorrent acts are not tolerated nor condoned in our community. I do want to give special thanks to Councilmember Martines for her efforts to bring this item for consideration.

ITEM 2: I also applaud the city and city council for addressing the CA legislature attempts to usurp local control over zoning and housing development. More recently, the State Governor and Legislature have been extremely proactive in imposing significant restrictions over local control. The description of the item includes a list of all legislative acts that passed and failed that had the intent to limit local control. I would recommend that the city put together an advisory committee of interested citizens who would be tasked with monitoring all bills coming out of the the state and work with the City Manager and the City Council to defeat any measure that seeks to limit local control related to housing and zoning matters.

ITEM 6 (a Consent Item): BEST VALUE IN CONTRACTS AWARDS FOR DAMN RETROFIT PROJECT: As noted in the description, the opposite of "best value" would be competitive bidding with the selection of the lowest bid. The lowest bid assumes well qualified and excellent references for those seeking a contract. The lowest bid assumes that the City and County would save money by the award of the contract to the lowest bidder. The "best value" allows the governmental agency to award the contract to a company weighing other criteria, besides the lowest bidder.

There is no historical data or evidence that awarding a contract to the lowest bidder created or resulted in shoddy work or defective or delayed construction, no matter the size of the project. The lowest bid requirement makes the contract less expensive and would save the government agencies millions of dollars that could be spent on other vital infrastructure projects. Why would we want to replace the lowest bid procedures that we have followed for decades in the past and has served us well? I appreciate the effort of Assemblyperson Rivas, but I believe the proposed legislature will

Attachment: 01 Supplement 1 (3021 : resolution condemning January 6 2021 riots)

significantly increase the construction costs for the retrofit project overall. Even with competitive lowest cost bidding in place, the current and projected future costs of the retrofit project have increased tremendously over the years. Take away the lowest bid paradigm and that escalation will skyrocket. It is difficult to justify this request to change the bidding process criteria.

AGENDA ITEM 10: INITIATIVE PETITION: The CA Constitution, Ca statutes, and case law all favor the initiative process. It is a populist grassroots effort of direct governance, bypassing the wisdom, and political position of political and city leaders. The purpose and intent of the initiative process is to address perceived shortfalls in the management of the city's policy directions, both by the executive and the council. Hundreds of hours are invested by ordinary citizens to successfully complete the process and get to the initiative qualified. Most are not successful but a few do make it to the finish line.

Morgan Hill has had its share of initiative petitions. The last one dealing with rezoning was mishandled by the city and resulted in a significant loss to the city in money spent, the loss of hundred of hours in personnel time, the ultimate loss in the CA Supreme Court, and a loss at the ballot (and may be liable for attorney's fees to the prevailing party). I sure do hope that we avoid those shortfalls.

The Council is presented three choices on this item: 1. Direct the city to prepare an Impact Report, 2. Adopt the initiative, and 3. place the initiative to the ballot.

Option 1 would be costly and no matter what conclusions are reached in the report, it is highly doubtful it will have any impact in shaping the resolve of any party to change their stance. It will only delay the outcome and further divide the city constituencies once the report is publish as any conclusions rendered are going to be deemed biased. Option 2, accepts the will of the voters who signed the initiative petition and assumes they represent the will of the majority of voters and the matter is resolved with no further political costs. Option 3 assumes that the council does not deem the signatures represent a majority of voters and therefore the majority decide to place the initiative on the ballot. There are substantial costs associated with the selection of option 3.

The council should remember that recently a majority of voters rejected Measure A, a ballot initiative that the city was ultimately forced to place before before the voters. Voters in Morgan Hill are highly protective of the idea of preserving the small town fell as long as possible. Many voters moved to Morgan Hill precisely because it reflects a "small town feel" relative to our sister cities, north and south. This protective sentiment is going to weigh in heavily in voters minds as they cast their votes to accept or reject the initiative dealing with last mile distribution centers, should you chose option 3.

I look forward .hearing the discussion on this item and which option the majority council selects.
Regards
Armando Benavides

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From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: hate speech resolution
Date: Wednesday, March 3, 2021 11:17:19 AM

From: Nichola Carpendale <[REDACTED]>
Date: March 2, 2021 at 09:11:07 PST
To: John McKay <john.mckay@morganhill.ca.gov>
Cc: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring <Rene.Spring@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>
Subject: hate speech resolution

Dear Mr McKay,

Thank you for bringing up a condemnation of the recent hate crimes in our area at the recent City Council meeting.

You seemed to be thinking of attaching it to the resolution condemning the insurrection on January 6 in the Capitol.

I would suggest these be two separate resolutions.

A resolution regarding hate speech and crimes seems like a very important part of our City values.

These seem separate and distinct from acts meant to undermine the vote which is such an important part of holding onto a true democracy.

Thank you for all the time and effort you put into representing our City

Nikki Carpendale

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RESOLUTION NO. 21 - ____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL CONDEMNING ALL FORMS OF HATE AND VIOLENCE INCLUDING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL BUILDING IN WASHINGTON D.C.**

WHEREAS, on December 16, 2016, the Morgan Hill City Council affirmed a statement of Support and Assurance to the community assuring that hate crimes will not be tolerated in Morgan Hill; and

WHEREAS, on May 3, 2017, the Morgan Hill City Council reaffirmed the City's commitment to a diverse, supportive, inclusive community and to protecting the constitutional rights of its residents; and

WHEREAS, in January 2021, the Congregation Emeth in Morgan Hill and City's Paradise Park were marked with anti-semitic graffiti; and

WHEREAS, in January 2021, various locations throughout the City were marked with anti-police graffiti; and

WHEREAS, the January 6, 2021, attack on the U.S. Capitol Building is unprecedented and resulted in the terrorizing of our senators, congressional representatives and staff persons, the theft of personal possessions, and the violation of an important symbol of our democracy; and

WHEREAS, five people were killed as a result of the attack, including Capitol Police Officer Brian Sicknick; and

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

1. The City of Morgan Hill does not tolerate discrimination, hate crimes, harassment, or assault;
2. Any form of hate or violence on any individual or place is condemned;
3. The January 6, 2021 attack on the US Capitol Building is condemned;
4. The City Council offers its deepest condolences to the family of Officer Brian Sicknick and honors Officer Sicknick for his dedication and service to our country;
5. Our democracy is resilient to such acts of violence;
6. The City Council is committed to protecting our democracy;

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 17th day of March 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-xxxx, adopted by the City Council at the meeting held on March 17, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Attachment: Resolution (3021 : resolution condemning January 6 2021 riots)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

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

PROVIDE INPUT ON POLICY OPTIONS RELATING TO TREE PROTECTION

RECOMMENDATION(S)

Provide guidance to staff on the type and scope of policy changes the City Council is interested in considering relating to the protection of trees in the community.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

POLICY CONSIDERATIONS:

What changes, if any, should the City make to its tree protection ordinance and policies? The major questions are:

1. Should the City expand the universe of existing trees that are protected by the City's ordinance?
2. Should the City establish a Heritage Tree Program in which special trees, like majestic oaks and very large trees, are afforded special protections?
3. Should the City require compensation (e.g., replacement tree plantings) from property owners whenever a protected tree is removed?
4. Should the City, instead of a property owner, be in charge of arborist evaluations for trees proposed to be removed at existing homes and businesses and on new development lands? (with a full cost recovery fee established to pay for the arborist and City staff oversight of the program)
5. Should an enhanced fine schedule be adopted for illegal tree removal?
6. Should the cost of a tree removal permit be increased or should these permits continue to be subsidized by the General Fund?

REPORT NARRATIVE:

The purpose of this item is to present the City Council with an opportunity to provide initial input to staff on potentially changing the City's tree protection ordinance. At this point, staff is asking for guidance on the "big picture" of tree protection in the community and not answers to micro-level questions.

The City's Municipal Code includes the City's current ordinance relating to the protection of existing trees in the community. (Attachment 1) While there are currently

tree protection provisions, they are less strict than those found in some communities. Several members of our Urban Forest Management Plan Advisory Committee indicated that the provisions should be strengthened.

While protecting trees seems like a concept that would be universally embraced, protecting trees on private property can become thorny as property owners often feel like they should have ultimate discretion on the fate of trees that they literally own. Trees considered for removal could be threatening homes or hardscapes, causing allergic reactions, creating a fire risk, or even threatening to fall and injure someone. For properties undergoing development, trees may be located in areas that significantly infringe on the development potential of the property.

The attached memo (Attachment 2) is submitted to frame some of these major issues and receive the Council's feedback on the types of changes, if any, the Council would like staff to work on further in this area.

COMMUNITY ENGAGEMENT: Consult

As noted above, this work was initiated as a result of input received from the Advisory Committee established for the City's Urban Forest Management Plan. Staff intends to take the guidance provided by the Council and do additional engagement with the general community before preparing an ordinance and returning to the Council for further action.

ALTERNATIVE ACTIONS:

Not Applicable – no action is suggested at this time.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council last revised this section of the Municipal Code on June 15, 2016. At that time, the amendments to the Code were primarily minor clarifications of the ordinance.

FISCAL AND RESOURCE IMPACT:

While there are no impacts associated with the recommended action of providing policy impacts, the process could ultimately result in fiscal impacts if the number of tree removal permits increases or if the Council directs that additional activities be implemented. As noted in the attached memo, the current fee for tree removal permits does not cover the City's full costs of processing the permit. While the fee was set at the reduced level for affordability and practicality reasons, increasing the number of permits considered and issued will increase the level of subsidy needed if the fee is not increased. To the extent that the Development Services Fund occasionally requires support from the General Fund, this subsidy must be properly recognized as a subsidy that draws support away from other prioritized programs that are funded by the General Fund.

It is essential to note that increasing the cost of tree removal permits could result in customer dissatisfaction and an increase in the number of trees removed with no permit at all.

The funds to conduct this staff work have, to date, been grant funded. As this grant will shortly expire, future work will likely come from existing appropriations in the Environmental Services budget.

As tree permits do require staff time to process, it is important to note that any increase in the number of permits or additional processes will need to be planned for and funded in the City budget without significant impacts on the Development Services Department's ability to respond to the myriad of other applications and queries from the public that it receives.

CEQA (California Environmental Quality Act): Categorical Exemption

This Ordinance is exempt from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The consideration of proposed text amendments are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The scope of proposed amendments are minor changes to text within the Municipal Code and will not result in any direct impact upon the physical environment. Any tree removal or required replacement tree, as a result of a tree removal permit, subject to the revised standards will undergo an independent analysis pursuant to the requirements of CEQA.

LINKS/ATTACHMENTS:

1. Current Tree Ordinance (Attachment 1)
2. Tree Protection Memo to City Council (Attachment 2)
3. Presentation

ORDINANCE NO. 2205, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
AMENDING CHAPTER 12.23 (RESTRICTIONS ON
REMOVAL OF SIGNIFICANT TREES) OF TITLE 12
(STREETS, SIDEWALKS AND PUBLIC PLACE) OF THE
MORGAN HILL MUNICIPAL CODE TO ADD SEPARATE
SPECIFIC PROVISIONS FOR THE REMOVAL AND
REPLACEMENT OF STREET TREES**

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

SECTION 1: Chapter 12.32 (Restrictions on Removal of Significant Trees) of Title 12 (Streets, Sidewalks and Public Places) of the Morgan Hill Municipal Code is hereby amended to read in its entirety as follows:

Chapter 12.32 - RESTRICTIONS ON REMOVAL OF SIGNIFICANT TREES

12.32.010 - Council determinations.

The city council finds and declares:

A. The existing and future trees and tree communities located in the city are a valuable and distinctive natural resource. The trees and tree communities of the city augment the economic base through agricultural production, encouragement of tourism and enhancement of the living environment. These resources are a major component of both the highly localized and area-wide environment.

B. The following environmental consequences are among those which could result from the indiscriminate removal or destruction of trees and tree communities in the city:

1. Modification of microclimates;
2. Change or elimination of animal habitat, possibly including habitats of endangered species;
3. Change in soil conditions, resulting in modified biological activity and erosion of soils;
4. Creation of increased susceptibility of flood hazards;
5. Increased risk of landslides;
6. Increased cost of construction and maintenance of drainage systems through increased flow and diversion of surface waters;
7. Degradation of the human habitat;

8. Loss of environmental benefits of trees in neighborhoods, such as noise reduction, oxygen replacement, carbon dioxide reduction, interception of particulates and aesthetic qualities; and/or

9. Potential for irreparable wind damage to adjacent trees.

C. The preservation and replacement of significant tree communities on private and public property is necessary to protect the natural beauty of the area, protect property values, and prevent undesirable changes in the environment.

D. It is necessary to enact the ordinance codified in this chapter for the reasons stated in this section and to promote the public health, safety, general welfare and prosperity of the city, while respecting and recognizing individual rights to develop, maintain and enjoy private property to the fullest possible extent, consistent with the public interest, convenience and necessity.

12.32.020 - Definitions.

For the purposes of this chapter, the following words shall have the meaning ascribed to them in this section:

A. "City" means the city of Morgan Hill, California, acting by and through its authorized representatives.

B. "Community development director" means the community development director of the city, including his or her authorized or appointed representatives.

C. "Community of trees" means a group of trees of any size which are ecologically or aesthetically related to each other such that loss of several of them would cause a significant ecological, aesthetic, or environmental impact in the immediate area.

D. "Person" means an individual, public agency, including the city and its departments, firms, associations, and corporations, and their employees, agents, or representatives.

E. "Private property" means all property not owned by the city or any other public agency.

F. "Public property" means all property owned by the city, and any other city, county, city and county, special district, or other public agency in the incorporated area of the city.

G. "Ordinance Sized Tree" means any live woody plant rising above the ground with a single stem or trunk of a circumference of forty (40) inches or more for nonindigenous species and eighteen (18) inches or more for indigenous species measured at four and one-half (4 1/2) feet vertically above the ground or immediately below the lowest branch, whichever is lower, and having the inherent capacity of naturally producing one (1) main axis continuing to grow more vigorously than the lateral axes. All commercial tree farms, nonindigenous tree species in residential zones and orchards (including individual fruit trees) are exempted from the definition of tree for the purpose of this chapter.

H. "Street Tree" is a tree, of any size, situated within the public street right-of-way or publicly accessible private street (e.g., trees within a landscape park strip), or within five (5) feet of a publicly accessible sidewalk adjacent to a public or private street in the case of a street without a landscape park strip.

I. "Indigenous tree" means any tree which is native to the Morgan Hill region. Such trees include, oaks (all types), California Bays, Madrones, Sycamore, and Alder.

12.32.030 - Permit—Required.

It is unlawful for any person to cut down, remove, poison, or otherwise kill or destroy, or cause to be removed, any ordinance sized tree, street tree, or a community of trees on any city or private property without first securing a permit as provided in this chapter; provided, however, that a permit shall not be required for the following:

- A. Developments which have been reviewed and approved by the planning commission or community development director and the tree removal conforms with the landscape plans of those developments.
- B. Commercial tree farms.
- C. Non-indigenous trees within a single-family residential zoning district that do not qualify as street trees.

A permit shall otherwise be required for the removal of or pruning of which would reduce the canopy area by more than twenty five percent (25%) of any trees as defined in subsection G of Section 12.32.020 of this chapter.

12.32.040 - Permit—Application.

Any person desiring to cut down, remove, destroy, or cause to be removed any tree regulated in this chapter shall apply to the community development department for a tree cutting permit on forms provided by the department. The application shall be accompanied by such drawings, written material, photographs, and other information as are necessary to provide necessary data concerning trees within the affected area and which shall include:

- A. The diameter and height of the tree;
- B. The type of trees (e.g. coniferous, evergreen hardwood and deciduous hardwood);
- C. A map or accurate sketch of location and trees proposed to be cut (showing other significant trees, shrubs, buildings or proposed buildings; photographs may be used to show the area);
- D. Method for marking the tree proposed to be cut down, removed, or destroyed;
- E. Description of method to be used in removing the tree;

- F. Description of tree planting or replacement program;
- G. Reasons for proposing removal of the tree;
- H. Address where tree is located;
- I. General health of tree to be cut down or removed; and
- J. Other pertinent information which the community development director may require.

12.32.050 - Permit—Public notice procedures.

Within five (5) days after submission of a completed application, the applicant shall cause a notice of application on a form provided by the community development department to be posted in at least two (2) conspicuous locations clearly visible to the public on or close to the property affected, indicating the date of the application, a brief description thereof, identification of the subject property, the address to which comments may be directed and from which further information may be obtained, and the final date for receipt of comments. No action shall be taken upon any application until the applicant has filed an affidavit that such posting has been done.

12.32.060 - Permit—Review and action.

The community development director or his or her designee shall review the application and, if necessary, inspect the site, and shall determine on the basis of the information provided, the site inspection, and the criteria contained in this chapter whether to grant, grant with conditions, or deny the permit. Such action shall be taken within twenty (20) days after receipt of the affidavit referred to in the preceding section. Upon taking action, the community development director or his or her designee shall provide the applicant with a written statement indicating the action taken, any conditions imposed, and the findings made in support thereof.

12.32.070 - Permit—Approval—Criteria.

The community development director or any other person or body charged with determining whether to grant, conditionally grant, or deny a tree cutting permit may approve a permit only if one or more of the following findings are made:

- A. Removal of the tree is warranted because the tree meets one of the following conditions:
 1. Is diseased as demonstrated in a report provided by a qualified arborist or tree surgeon documenting the extent and nature of the disease and how the diseased conditions warrants the trees removal,
 2. Could adversely affect the general public health and safety,
 3. Could cause substantial damage,

4. Is a public nuisance,
 5. Is in danger of falling,
 6. Is too closely located to existing structures,
 7. All practical design alternatives for site layout have been exhausted without being able to design around the tree(s), etc.
 8. Interferes with utility service,
 9. Acts as a host for a plant which is parasitic to another species of tree which is in danger of being infested or exterminated by the parasite,
 10. Is a substantial fire hazard,
 11. Is necessary for the continuing agricultural use of the property, or
 12. Is a street tree that is not identified on a list of Suitable Street Trees maintained by the community development director.
- B. The required action is necessary:
1. To utilize the property in a manner which is of greater public value than any environmental degradation caused by the action, or
 2. To allow reasonable economic or other enjoyment of the property.
- C. The tree will be replaced by plantings approved by the community development director, unless special conditions indicate otherwise.

12.32.080 - Permit—Approval—Conditions.

In granting any permit as provided in this chapter, the community development director, planning commission, or city council may attach reasonable conditions to insure compliance with the intent and purpose of this chapter including, but not limited to,:

- A. Replacement of trees removed with plantings of trees acceptable to the community development director. In all cases, native trees shall be planted to replace native trees removed unless practical reasons preclude this option;
- B. Use of measures to effect erosion control, soil and water retention and diversion or control of increased flow of surface waters;

C. Use of measures to insure that the contemplated action will not have adverse environmental effects relating to shade, noise buffers, protection from wind, air pollution and historic features; and/or

D. Posting of a bond to insure maintenance of substitute landscaping pursuant to the requirements of Chapter 18.74 of this code.

12.32.090 - Application constitutes permission to enter property.

Filing of an application for a tree cutting permit shall constitute a grant of permission for city personnel concerned with administering this part to enter the subject permit area during normal working hours from the date of application to the completion of any approved action for the purpose of inspecting the area for compliance with the provisions of this chapter and applicable law.

12.32.100 - Inspection—Notification of violations.

The community development department may cause sufficient inspections to be made of the permit area to assure compliance with the provisions of this chapter and the requirements of any applicable law. Upon completion of any inspection, the permittee shall be given a written notice of any violations observed at the time of inspection for correction thereof.

12.32.110 - Commencement of work—Time limitations.

If work authorized by an approved permit is not commenced within a period of one (1) year from the date of approval, the permit shall be considered void.

12.32.120 - Emergencies.

In case of emergency caused by the hazardous or dangerous condition of a tree and requiring immediate action for the safety of life or property, such necessary action may be taken to remove the tree or otherwise reduce or eliminate the hazard without complying with the other provisions of this chapter, except that the person responsible for the cutting or removal of the tree shall report such action to the community development director within five (5) working days thereafter.

12.32.130 - Appeal procedures.

The applicant or any other person who is aggrieved by the issuance or nonissuance of the permit or any conditions thereof may appeal in the manner set forth in this section. A statement by the appellant shall be required indicating how the appellant is aggrieved or adversely affected by the decision. At the time the appeal is heard, the planning commission shall rule upon the appellant's standing as an aggrieved party. If the planning commission rules that the appellant is not aggrieved, all further proceedings shall be stayed except that the appellant may appeal the planning commission decision on standing to the city council as provided in this chapter.

A. Permits considered and acted upon by the community development director may be appealed to the planning commission by filing a written notice of appeal with the secretary of the planning commission within ten (10) days of the issuance or denial of the permit. The planning commission shall hear such appeal within thirty (30) days of the date of filing of the written protest or at a date selected by mutual consent of the appellant and the planning commission. The planning commission shall render a decision on the appeal within fifteen (15) days of the public hearing. The community development director shall notify the affected parties of the action.

B. Permits considered and acted upon by the planning commission may be appealed to the city council by filing a written notice of appeal with the secretary of the planning commission within ten (10) days from the decision of the planning commission. The city council shall hear such appeal within sixty (60) days or at a date selected by mutual consent of the appellant and the city council and render a decision within fifteen (15) days following such hearing. The decision of the city council shall be final. The action taken by the city council shall be reported to the affected parties.

12.32.140 - Removal or trimming without a permit deemed a misdemeanor.

Any property owner, lessee or his or her agent, or representative who engages in tree cutting or removal or conspires with another to engage in tree cutting or removal without a valid tree cutting permit is guilty of a misdemeanor. In addition, such party shall be liable to the city for a civil penalty in the amount of the cost of replacing the removed tree with a new tree as comparable to the removed tree as is reasonably feasible plus all attorney's fees.

SECTION 2. Environmental Determination. This Ordinance is exempt from environmental review under Section 15061(b)(3) of the State CEQA Guidelines. The proposed text amendments are covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed amendments are minor changes to text within the Municipal Code and will not result in any direct impact upon the physical environment. Any tree removal or required replacement tree, as a result of a tree removal permit, subject to the revised standards will undergo an independent analysis pursuant to the requirements of CEQA.

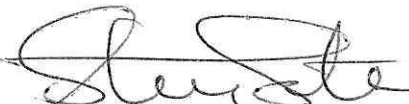
SECTION 3. Severability. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 4. Effective Date; Publication. This ordinance shall take effect on July 15, 2016. The City Clerk is hereby directed to publish this ordinance pursuant to §36933 of the Government Code.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 1ST DAY OF JUNE 2016 AND WAS FINALLY ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 15TH DAY OF JUNE 2016 AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:


STEVE TATE, Mayor

ATTEST:


IRMA TORREZ, City Clerk

DATE:

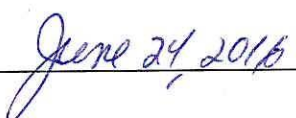


Effective Date: July 15, 2016

∞ 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. 2205, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 15th day of June 2016.

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

DATE: 


IRMA TORREZ, City Clerk



Memorandum

Community Services Department

Date: March 17, 2021

To: City Council

From: Anthony Eulo and Shannon Keener

Subject: Potential Enhancements to Tree Protection Ordinance

During the course of preparing an Urban Forest Management Plan for the City, most members of the advisory group formed to guide the effort expressed that the City's current tree protection ordinance did not offer enough protection to the community's trees. The purpose of this memo is to present some policy options to the Council and obtain direction from the Council on developing amendments to the ordinance. Once the Council provides staff with some preliminary policy guidelines, staff will draft proposed changes to the ordinance, engage the community on the proposed changes, and return to the Council for additional action.

The current City of Morgan Hill ordinance can be found in Chapter 12.32 of the Municipal Code and is attached to this item. Staff has compared the City's current ordinance with those from other communities and developed the following policy questions for the Council to consider.

1. Should the City expand the universe of existing trees that are protected by the City's ordinance?
 - a. When it comes to existing residential neighborhoods, the current ordinance only effectively addresses "Ordinance Sized" indigenous tree in City neighborhoods. This effectively means that the removal of only a few species of trees over 18 inches in diameter is regulated in any sense. All other trees on private property can be removed at any time without the need for a permit, notice to neighbors, or the planting of replacement trees. It is important to note that the removal of trees that are regulated by the ordinance is still allowed if a tree removal permit is obtained and, in most instances, a tree removal permit is granted because the reasons cited are compliant with the City's ordinance.
 - b. The rules in existing nonresidential neighborhoods work similarly except nonindigenous trees that are over 40 inches in diameter are also addressed.
 - c. Recommended provisions to consider based upon trees protected in other cities:
 - i. Protected Species – while the current provisions cover indigenous trees in residential neighborhoods, should other species be covered as well? It has been found that a diverse urban forest, of both indigenous and nonindigenous species, leads to reducing the risk for disease and insects to spread between trees.
 - ii. Size of Trees Regulated – should trees smaller than the existing limits be protected

- as well? Should trees over a certain height be protected?
- iii. Required Trees – should trees that were required to be planted or retained by the conditions of approval for any use permit, building site approval, grading permit, architectural and site approval, design review, special permit or subdivision receive additional protection?
 - iv. New Developments – should tree protection measures in new developments be strengthened?
 - v. Street trees – should there be additional protections afforded to any tree, regardless of size, planted within road rights-of-way and easements of the City?
2. Should the City establish a Heritage Tree Program in which special trees, like majestic oaks and very large trees, are afforded special protections?
 - a. The existing City ordinance does not provide for any “special” trees.
 - b. Should there be a list of Heritage Trees created that are provided additional special protections and would only be subject to removal in extraordinary circumstances?
 - c. What should the rules be for Heritage Trees?
 - d. How would the City fund a Heritage Tree program?
 3. Should the City require compensation (e.g., replacement tree plantings or funding) from property owners whenever a protected tree is removed?
 - a. The current ordinance only effectively addresses that tree removal may include one of the following: 1) replacement of trees removed with plantings acceptable, 2) erosion control, soil and water retention and diversion, 3) insure that the contemplated action will not have adverse environmental effects, or 4) posting of a bond.
 - b. What should the tree replacement ratio be when replacement plantings are required?
 - c. When trees cannot be replaced on site due to crowding or other physical constraints that make it impossible or undesirable to replace a tree of equal value in the same place, should there be alternative options available? Alternative options could possibly include ideas such as:
 - i. A carbon bank payment
 - ii. Creation of a “Tree Planting Fund”
 - iii. Trees of same value be planted on different property, instead of on site
 4. Should the City, instead of a property owner, be in charge of arborist evaluations for trees proposed to be removed at existing homes and businesses and on new development lands? (with a full cost recovery fee established to pay for the arborist and City staff oversight of the program)
 5. Should an enhanced fine schedule be adopted for illegal tree removal?

6. Should the cost of a tree removal permit be increased or should these permits continue to be subsidized by the General Fund?
 - a. The current ordinance only effectively funds its tree protection activities with the Tree Removal permit fee of \$105. This is less than the City's costs to process the permit application and was set at a level that encourages applications and discourages illicit tree removals. If the City increases the number of applications expected, this will require further support from the General Fund.
 - b. Recommended provisions to consider based upon trees protected in other cities:
 - i. Permit Fee Collection – should the permit application fee be increased to eliminate the subsidy?
 - ii. Additional Potential Fees – should there be any additional fees for protected trees that fall into different categories?
 1. Unsuitable and/or Dead Tree removal permit fee waiver
 2. Heritage Tree removal permit fee for extraordinary circumstances
 3. Appeals to City Council



City Council Meeting

Provide Input on Policy Options Related to Tree Protection Ordinance



Topics

- Discuss potential enhancements to the City's Tree Protection Ordinance
- Review examples from other local cities

Should the City expand the universe of existing trees that are protected by the City's ordinance?



- **Palo Alto** – specific species are protected (such as Coast Live Oak and Valley Oaks of 11.5” diameter) and all trees, when associated with a development project
- **Saratoga** – all trees of 10” diameter or more are protected (regardless of species) and a specific list of native trees 6” or more in diameter are protected
- **Santa Clara County** – protection is extended to any tree to be planted as a replacement for an unlawfully removed tree, trees planted or retained by the conditions of approval for any use permit



- Heritage Trees located on private properties are protected by **all of these cities**, previously mentioned, as well as **Menlo Park** and **San Jose**.

Should the City establish a Heritage Tree Program, in which special trees, like majestic oaks and very large trees, are afforded special protections?

13.c



- **Gilroy** – any tree with a single trunk of 28” or more in diameter
- **Saratoga** – property owners submit an application with a certified arborist report
- **Palo Alto** – City Council members decide which trees deserve Heritage status and can either deny or approve property owner applications
- **San Jose** – a list and map of approved Heritage Trees is provided which includes tree species, size, and location. Fines for unlawful action against Heritage Trees is much higher
- **Mountain View** – the Heritage Tree removal process differs from that of street trees



Should the City require compensation (e.g., replacement tree plantings or funding) from property owners whenever a protected tree is removed?



- **Palo Alto** – a defined tree replacement ratio is available and when tree replacement cannot occur at the removal site, there is a Tree Value Replacement Standard to determine the amount of money that shall be used to provide trees elsewhere
- **Los Gatos** - When a replacement tree cannot be planted, property owners can pay In-Lieu Fee to the Town Tree Replacement Fund to:
 - a) add or replace trees on public property near the subject property
 - b) add or replace trees on other Town property
 - c) support the Town's urban forestry management program
- **Gilroy** - tree replacement ratio available





Should the City, not the property owner, be in charge of arborists evaluations for tree removal on existing and new development lands?

(with a full cost recovery fee established to pay the arborist and city staff oversight of the program)



- **Menlo Park** – a list of 25 City approved arborists is available for property owners
- **Palo Alto** – has a City Arborist for all large pruning projects and a certified arborist is required for all removals and development projects. Palo Alto has recommendations for choosing a certified arborist but does not provide a specific person or group
- **Gilroy** – requires a report from an International Society of Arboriculture (ISA) arborist
- **San Jose** – the City Arborist is responsible for all street trees and Heritage Trees

Should an enhanced fine schedule be adopted for illegal removals?

- **Menlo Park** – if the Municipal Code is violated a fee of no more than \$5,000 (per violation) is applied and if the violation results in the removal of a Heritage Tree the fine will not exceed \$5,000 (per tree) or the appraised value, whichever is higher
- **Santa Clara County** – up to \$15,000 per tree unlawfully removed
- **Gilroy** – a civil penalty of no more than \$5,000 (per violation) is applied
- **San Jose** – for Heritage Trees unlawfully cut fines up to \$30,000 (per tree) may apply





Should the cost of tree removal permit be increased, or should these permits continue to be subsidized by the General Fund?



- **Gilroy** – Planning Application fee is \$300
- **Palo Alto** – protected tree removal permit is \$437
- **Saratoga** – tree removal permit is \$125
- **Santa Clara County** – permit fee for unsuitable c
dead tree removal is \$254 and permit fee for live
tree removal is \$2,204 and higher
- **Menlo Park** – Heritage Tree Removal Permit fee
1 - 3 trees = \$210 per tree
4 or more = additional \$180 per tree

Thank You



CITY OF MORGAN HILL



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

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

CONSIDER COUNCIL INITIATED AGENDA ITEM FOR POTENTIAL HAZARD PAY ORDINANCE

RECOMMENDATION(S)

Consider whether to direct the City Attorney to return with a Council Agenda Item with a potential ordinance regulating hazard pay for grocery workers in the City of Morgan Hill.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Equity
Diversity and Inclusiveness

POLICY CONSIDERATION:

Should the City Council mandate hazard pay for certain essential grocery workers, within the City limits?

REPORT NARRATIVE:

The purpose of this report is to allow the City Council to consider a request from the United Food and Commercial Workers (UFCW) asking the City to adopt a hazard pay ordinance. Attached are copies of materials provided by UFCW. This request was added to future business items by Mayor Constantine at the March 3, 2021 City Council meeting.

Attached is a Hazard Pay Fact Sheet from the UFCW (Attachment 1) and an example hazard pay ordinance from the City of Oakland (Attachment 2).

If approved, the City Attorney will return with potential ordinance language along with an analysis of the legal risks of any proposed ordinance.

COMMUNITY ENGAGEMENT: Not Applicable.

If approved, staff will inform the UFCW and local grocers of the request and proposed ordinance.

The Morgan Hill Chamber of Commerce reached out to City staff noting that the Chamber opposed a Hazard Pay Proposal for Santa Clara County and will be doing the same for Morgan Hill. The Chamber stated that they support fair wages but that a wage increase (on top of the recent minimum wage increase that already took effect earlier this year) is not supportive of the business community during a pandemic. Hazard pay

would add undue hardship to businesses who are already struggling to stay open and would lead to a reduction in jobs especially in the restaurant and retail industries.

ALTERNATIVE ACTIONS:

The City Council could choose not to spend staff resources on a hazard pay ordinance.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

None.

FISCAL AND RESOURCE IMPACT:

Preparation of an ordinance and analysis will require several hours of staff time. This activity would be absorbed into our existing work program.

CEQA (California Environmental Quality Act):

Not a Project. General policy and procedure making is not a project subject to environmental review.

LINKS/ATTACHMENTS:

1. UFCW 5 Hazard pay Fact Sheet 12.21.20 DRAFT
2. Final Oakland Grocery Emerg Ordinance 2020.02.02
3. Hazard Pay- MH Chamber Letter of Opposition

Grocery workers deserve “hazard pay”.

Since the onset of the pandemic grocery store workers have been deemed “essential” and continue to get up and go to work every day, despite the risks to their health.

According to a recent study¹ grocery workers have a 1 in 5 chance of contracting COVID-19 at the workplace, compared to an average citizen who has a 1 in 100 chance.

At the beginning of the pandemic because of this increased risk, many grocery store companies increased compensation for their workers in the form of “hazard/appreciation pay”, which ranged between \$2 - \$5 an hour.

It has been over 150 days since most essential workers have received any additional compensation for working during the pandemic. Only one major Bay Area Grocer is still paying “hazard pay” and that is Lucky/SavMart

At the same time, because of shelter-in-place orders limiting restaurants and other competition for food consumption, grocery store profits have soared. According to a recent Brookings Institute² study, grocery stores are reaping record profits (*increases range from 25% to over 150%*)

Instead of investing some of these profits back in their workforce, many companies have either increased compensation of their executives or used it to buyback shares to increase stock prices.

Examples of share-buyback

- Albertsons/Safeway spent \$1.6 billion in buybacks
- Walgreens invested \$4.2 billion in buybacks
- Kroger \$465 million
- Jeff Bezos of Amazon has seen his wealth grow by \$50 billion during the pandemic
- Walton family wealth has grown by \$14.6 billion since the pandemic

“We know there are ample profits to compensate essential grocery and drug store workers for placing their health and that of their families at risk. If executives refuse to act, then local government must step in and legislate hazard pay mandates for all grocery workers during today’s COVID-19 emergency” – John Nunes, President of UFCW 5

Therefore, UFCW is asking members of the council to support the initiative to increase hazard pay for all essential front-line grocery workers by \$5/hr. for as long as the county is above a yellow-tier status.

¹ <https://oem.bmj.com/content/early/2020/10/11/oemed-2020-106774>

² <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCIL PRESIDENT BAS AND
COUNCIL MEMBER GALLO


CITY ATTORNEY'S OFFICE

AS AMENDED DURING FEBRUARY 2, 2021 CITY COUNCIL MEETING TO ADD A WHEREAS CLAUSE ON PAGE 2.

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

EMERGENCY ORDINANCE (1) ADDING CHAPTER 5.96 TO THE OAKLAND MUNICIPAL CODE TO REQUIRE LARGE GROCERY STORES IN OAKLAND TO PAY EMPLOYEES AN ADDITIONAL FIVE DOLLARS (\$5.00) PER HOUR IN HAZARD PAY DURING THE NOVEL CORONAVIRUS (COVID-19) PANDEMIC AND (2) AMENDING CHAPTER 2.44 OF THE OAKLAND MUNICIPAL CODE TO INCLUDE ENFORCEMENT OF EMERGENCY HAZARD PAY TO GROCERY EMPLOYEES AS PART OF THE DUTIES OF THE DEPARTMENT OF WORKPLACE AND EMPLOYMENT STANDARDS

WHEREAS, on March 19, 2020, the California State Public Health Officer, designated specific sectors and their workers, including grocery stores, as Essential Critical Infrastructure Workers (“essential workers”) to ensure the “continuity of functions critical to public health and safety, as well as economic and national security;” and

WHEREAS, since the beginning of the COVID-19 pandemic, grocery workers in the City of Oakland have continued to report to work and serve their communities, despite the ongoing hazards and danger of being exposed to and infected by the novel coronavirus, helping to ensure individuals throughout the City of Oakland have had access to the food they need during this pandemic; and

WHEREAS, grocery workers are not highly paid, and according to an August 2020 article in *The Washington Post*, at least 130 U.S. grocery workers have died from COVID-19, and more than 8,200 have tested positive for the virus; and

WHEREAS, essential grocery workers cannot choose to work from home--they must come to work to do their jobs, which involve heightened risk of exposure and infection of COVID-19 through substantial interaction with customers on an ongoing basis and indoors where there is less air circulation; and

WHEREAS, despite the efforts of grocery stores to take precautions and keep customers and employees safe, including requiring masks, social distancing, and sanitizing cash registers, food conveyor belts, and shopping carts, there have been highly publicized outbreaks of COVID-

Attachment: Final Oakland Grocery Emerg Ordinance 2020.02.02 (3028 : Consider Hazard Pay)

19 among grocery store employees in the City of Oakland, and the health threats that these grocery workers face cannot be overstated; and

WHEREAS, Latinos comprise about 40% of California’s population but 54.9% of positive cases, according to state data as of January 20, 2021, and according to health experts, one of the main reasons Latinos are especially vulnerable to COVID-19 is because many work in jobs deemed “essential,” that require them to leave home and interact with the public, many in the retail food industry, which includes grocery stores; and

WHEREAS, United Food and Commercial Workers (“UFCW”) Locals in Northern California, which represent grocery workers, report that over 700 grocery workers in their ranks have tested positive with COVID-19, and members of their union have been hospitalized or have died from the coronavirus; and

WHEREAS, we are now in the height of the pandemic with a stay at home order in many regions of the state, including the Bay Area region, where ICU capacity is below fifteen (15) percent, and we are a long way from minimal risk where there would be one (1) daily new case per 100,000 or less than two (2) percent positivity; and

WHEREAS, the City of Oakland recognizes that essential grocery workers must be justly compensated for the clear and present dangers of doing their jobs during the pandemic, and increases in wages result in more money being spent to stimulate our local economy; and

WHEREAS, the United States’ top grocery retail companies have earned record-breaking profits during the pandemic, and this increase in profit has not transferred to workers, according to a Brookings Institution analysis published in November 2020; and

WHEREAS, the City of Oakland has recently adopted ordinances to address COVID-19-related protections for workers, including Emergency Paid Sick Leave; and

WHEREAS, the City of Oakland has adopted wage and employment ordinances specific to employment sectors in the past; and

WHEREAS, there are numerous large grocery chains operating in Oakland that employ workers in Oakland, and have at least 500 employees nationwide, with workers who are facing the hazards of COVID-19 in the workplace every day; and

WHEREAS, on January 17, 2021, the California Department of Public Health reported another COVID-19 variant that had grown more common across the state since December, with worrisome signs that this variant may be highly transmissible; and

WHEREAS, requiring large grocery stores with a larger number of employees to provide hazard pay during the pandemic will have a greater impact on the community including but not limited to encouraging employees to remain employed and thereby reducing the risk of food supply disruption, and large grocery stores are more readily positioned than smaller grocery stores to absorb any short-term burdens the ordinance’s requirements might impose on employers; and

WHEREAS, in December 2020 and January 2021, a growing list of cities across California, including Berkeley, Los Angeles, Long Beach, San Jose, and San Leandro began announcing legislation for hazard pay for essential grocery workers during the period where counties are in the Purple, Red, or Orange level of Community Transmission for COVID-19 under State Health orders; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council finds the foregoing recitals to be true and correct and hereby incorporates those recitals into this Ordinance.

SECTION 2. Emergency Need. In accordance with Section 213 of the Oakland City Charter, the City Council finds and declares that adoption of this Emergency Ordinance is necessary for preserving the public peace, health and safety for the following reasons:

- A. The COVID-19 pandemic has led to the current state of emergency in California.
- B. Governor Newsom issued the “Safer at Home” emergency order on December 3, 2020 as a result of the critically low availability Intensive Care Unit (“ICU”) beds. The City of Oakland is currently operating at maximum capacity in its ICUs.
- C. The virus is spreading rapidly across the region with many clusters arising within retail stores. Grocery stores remain a critical piece of infrastructure in our fight against the COVID-19 virus and in protecting the food supply chain.
- D. Grocery stores are the primary points of distribution for food and other daily necessities for the residents of the City of Oakland and are therefore essential to the vitality of our community.
- E. Turnover, inability to pay for housing and increased childcare costs as a result of school closures and other necessities could become an immediate problem for certain grocery workers if they are not given relief.
- F. To protect the food supply chain and the public health and safety, the City of Oakland must take steps to guard against turnover and ensure that large grocery stores in Oakland have well-trained, consistent and stable staffing.

SECTION 3. Effective Date. This Ordinance shall take effect immediately if adopted in accordance with Section 216 of the Oakland City Charter.

SECTION 4. Emergency Grocery Worker Hazard Pay Sunset. Section 5 of this Ordinance shall remain in effect during any period the City of Oakland is within a Widespread

(purple), Substantial (red) or Moderate (orange) Risk Level and shall become ineffective during any period when the Risk Level in the City of Oakland returns to Minimal (yellow) under State of California Health Orders.

SECTION 5. Emergency Grocery Worker Hazard Pay. A new Chapter 5.96 is added to the Oakland Municipal Code as follows:

5.96.010. Title.

This Chapter shall be known as the "Grocery Worker Hazard Pay Emergency Ordinance."

5.96.020 – Authority.

This Chapter is adopted pursuant to the powers vested in the City of Oakland under the laws of the State of California, including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution, California Labor Code section 1205 (b), and the Charter of the City of Oakland.

5.96.030. Definitions.

The definitions set forth in this Section shall govern the construction and meaning of the terms used in this Chapter:

- A. "Base Wage" means the hourly wage paid to Covered Employees as of the effective date of this Chapter less Hazard Pay owed under this Ordinance or any other premium hourly rate already paid to compensate Covered Employees for working during the pandemic (referred to herein as "employer-initiated hazard pay").
- B. "City" means the City of Oakland.
- C. "Covered Employee" means any individual who qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, and who works in a Large Grocery Store on either a full-time or part-time basis.
- D. "Covered Employer" means any Person who (a) directly or indirectly or through an agent or any other Person owns or operates a Large Grocery Store and employs or exercises control over the wages, hours or working conditions of any Covered Employee; and (b) employs 500 or more employees nationwide regardless of where those employees are employed, or is a Franchisee associated with a Franchisor or a network of Franchises with Franchisees that employ more than 500 employees in the aggregate, regardless of where those employees are employed. To determine the

- number of employees employed by a Large Grocery Store, the calculation shall be based upon:
- a. The actual number of employees who worked for compensation during the two workweeks preceding the effective date of this Chapter; and
 - b. All employees who worked for compensation shall be counted, including but not limited to:
 - i. Employees who are not covered by this Chapter;
 - ii. Employees who worked within the geographic limits of the City;
 - iii. Employees who worked outside the geographic limits of the City; and
 - iv. Employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.
- E. "Employer-Initiated Hazard Pay" means a premium hourly rate to compensate Covered Employees for the hardships and/or risks associated with working during the COVID-19 pandemic. If a Covered Employer pays such Employer-Initiated Hazard pay on a flat rate basis, the premium hourly rate is derived by dividing the flat rate payment for a workweek by the number of hours worked in the workweek.
- F. "Franchise" means a written agreement by which:
1. A Person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliates; and
 2. The operation of the business is substantially associated with a trademark, service mark, tradename, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and
 3. The Person pays, agrees to pay, or is required to pay, directly or indirectly, a Franchise fee.
- G. "Franchisee" means a Person to whom a Franchise is offered or granted.
- H. "Franchisor" means a Person who grants a franchise to another Person.
- I. "Hazard Pay" means an additional \$5.00 per hour wage bonus in addition to each Covered Employee's Base Wage or Holiday Premium wage for each hour worked within the City.

- J. "Holiday Premium" means the hourly wage paid to Covered Employees for performing work during a holiday or holiday season.
- K. "Hours Worked" means the time during which a Covered Employee is subject to the control of a Covered Employer, including all the time the employee is suffered or permitted to work, and on-call.
- L. "Large Grocery Store" means a retail or wholesale store that is over 15,000 square feet in size, that is located within the geographic limits of the City, and that sells primarily household foodstuffs for offsite consumption, including the sale of fresh produce, meats, poultry, fish, deli products, dairy products, canned foods, dry foods, beverages, baked foods, or prepared foods. Other household supplies or other products shall be secondary to the primary purpose of food sales.
- M. "Person" means any individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.
- N. "Retaliatory Action" shall have the same meaning as "Retaliation" as defined in Section 5.92.050 of the Oakland Municipal Code.

5.96.040. Payment of Hazard Pay to Covered Employees.

- A. Hazard Pay. Covered Employers shall pay Covered Employees a wage of no less than the premium hourly rate set under the authority of this Chapter. The premium hourly rate for each Covered Employee shall be an additional five dollars (\$5.00) per hour for all hours worked at a Large Grocery Store on top of the Covered Employee's Base Wage or Holiday Premium, whichever applicable at the time of hours worked. The Hazard Pay rate shall not include compensation already owed to Covered Employees, Holiday Premium rates, gratuities, service charge distributions, or other bonuses.
- B. Credits. Covered Employers providing employer-initiated hazard pay will be credited for doing so in accordance with Section 5.96.050.
- C. Duration of Hazard Pay. Covered Employers shall pay Hazard Pay to all Covered Employees for any pay period during which the City of Oakland is within a Widespread (purple), Substantial (red) or Moderate (orange) Risk Level, and until such time as Risk Levels return to Minimal (yellow) under State Health Orders.

5.96.050. Credit for Employer-Initiated Hazard Pay.

- A. Employer-Initiated Hazard Pay shall be credited against the five dollars (\$5.00) per hour for the hourly amount paid to each Covered Employee (e.g., A Covered Employer offering two dollars (\$2.00) per hour in Employer-Initiated Hazard Pay owes an additional three dollars (\$3.00) per hour in Hazard Pay per this Chapter.) To receive credit for paying a Covered Employee Employer-Initiated Hazard Pay, a

- Covered Employer must demonstrate that, as of the effective date of this Chapter and in any subsequent covered workweeks, the Covered Employer paid such Employer-Initiated Hazard Pay to the Covered Employee. No Covered Employer shall be credited prospectively for any past payments. No Covered Employer shall be credited for any hourly premiums already owed to Covered Employees, such as but not limited to, Holiday Premiums. Nothing herein shall be interpreted to prohibit any employer from paying more than five dollars (\$5.00) per hour in Hazard Pay.
- B. Covered Employers must, upon request, immediately provide the following to the Department of Workplace and Employment Standards to receive credit for Employer-Initiated Hazard Pay:
1. A copy of the Employer's Hazard Pay policy; and
 2. A statement, provided under penalty of perjury, explaining Covered Employees' hourly Base Wages, hourly Holiday Premiums, hourly employer-initiated hazard pay, and any other wage bonuses received during the last twelve (12) all months; and
 3. For any Covered Employee(s) as to whom a Covered Employer seeks credit for Employer-Initiated Hazard Pay, documentation reflecting that such payments were made, for each hour claimed; and
 4. Documentation that allows the City to review for compliance by assessing wages for the past twelve (12) months and that is itemized in such a way that the City can understand a Covered Employee's Base Wage distinguished from Holiday Premiums and other bonuses or pay increases that are separate and distinct from employer-initiated hazard pay.
 - a. The following constitutes acceptable evidence of employer-initiated hazard pay described in Subsection (B)(4): A spreadsheet, of all Covered Employees and their wages for each pay period for the last twelve (12) months, that allows the City to distinguish Base Wage from Holiday Pay and other bonuses or pay increases that are separate and distinct from employer-initiated hazard pay.
 - b. Production of the evidence described in Subsection (B)(4)(a) does not exempt any Covered Employer from maintaining, and providing access to, the underlying payroll records described in this Section and in Oakland Municipal Code Section 5.92.050(C).
- C. Any offer of proof under subsection shall be accompanied by a written acknowledgment that it was submitted under penalty of perjury.

5.96.060. Waiver

The provisions of this chapter may not be waived by agreement between an individual Covered Employee and a Covered Employer. All the provisions of this Chapter, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

5.96.070. Prohibitions.

It shall be unlawful for a Covered Employer or any other Person to interfere with, restrain or deny the existence of, or the attempt to exercise, any rights protected under this Chapter.

- A. Employers shall not take Retaliatory Action or discriminate against any employee or former employee because the individual has exercised rights protected under this Chapter. Such rights include, but are not limited to, the right to request Hazard Pay pursuant to this Chapter; the right to file a complaint with the City or inform any person about an employer's alleged violation of this Chapter; the right to participate in an investigation, hearing or proceeding or cooperate with or assist the City in its investigations of alleged violations of this Chapter, and the right to inform any person of their rights under this Chapter. Protections of this Chapter shall apply to any employee who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against an employee, including lowering an employee's Base Wage or Holiday Premium Wages or reducing work hours, within 90 days of the employee's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

5.96.080. Enforcement

The provisions related to enforcement set forth in the Oakland Municipal Code Section 5.92.050 (A), (C), and (E)-(K) shall apply equally to the enforcement of this Chapter and individuals and entities afforded rights and protections under those Sections are hereby granted those same rights and protections in connection with the enforcement of any provision of this Chapter. Covered Employers shall have all obligations of "Employers" and "employers" under Section 5.92.050. The terms "Employer," "Employ," and "Employee," when used in Section 5.92.050 for purposes of enforcing provisions of this Chapter, shall have the meanings set forth in Section 5.94.020 of this Chapter. The provisions of this Chapter do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an Employee.

5.96.090. Regulations.

The Department of Workplace and Employment Standards may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter. Such rules and regulations, determinations, and interpretations shall have the force of law and may be relied upon by employers, employees, and other persons to determine their rights and responsibilities under this Chapter.

5.96.100. Conflict.

Nothing in this article shall be interpreted or applied to create any power or duty in conflict with any federal or state law. The term "Conflict," means a conflict that is preemptive under federal or state law.

5.96.110. Notice.

- A. The City shall, as expeditiously as possible, publish and make available on its website a notice suitable for Covered Employers to inform employees of their rights under this emergency Chapter. Such notice shall be translated into Spanish, Chinese, and Vietnamese.
- B. Every Covered Employer shall, within three days after the City has published and made available the notice described in Subsection A of this Section, provide the notice to employees in a manner calculated to reach all employees, including, but not limited to, posting in a conspicuous place at the workplace; via electronic communication; or posting in a conspicuous place in a Covered Employer's web-based or app-based platform. The Covered Employer's notification shall be provided in all languages spoken by more than ten percent (10%) of Employees.
- C. Every Covered Employer shall, within three days after the City has published and made available the notice described in Subsection A of this Section or at the time of hire, whichever is later, provide each Covered Employee the Covered Employer and owner or manager's name; address; telephone number; and whether it is part of a franchise associated with a franchisor or network of franchises. If the information the Covered Employer provided to the Covered Employee changes, the Covered Employer shall provide the updated information in writing within ten days of the change.
- D. Every Covered Employer shall provide notice to employees when the Risk Level in the City either moves from Widespread (purple), Substantial (red) or Moderate (orange) to Minimal (yellow), or from Minimal (yellow) to Widespread (purple), Substantial (red) or Moderate (orange) under a State of California Health Order. Notice shall be given in a manner calculated to reach all employees, including, but not limited to, posting in a conspicuous place at the workplace; via electronic communication; or posting in a conspicuous place in a Covered Employer's web-based or app-based platform. The Covered Employer's notification shall be provided in all languages spoken by more than ten percent (10%) of Employees

5.96.120. No Preemption of Higher Standards.

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City.

5.96.130. Severability.

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter, which shall remain in full force and effect. The City Council hereby declares that it would have passed this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

SECTION 6. Oakland Municipal Code Chapter 2.44, which established the Department of Workplace and Employment Standards, is hereby amended to modify sections as set forth below; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the Chapter not cited or not shown in underscoring or strike-through type are not changed:

2.44.010. Department of Workplace and Employment Standards

There is hereby created under the jurisdiction of the City Administrator a Department of Workplace and Employment Standards. Effective July 1, 2020, the Department of Workplace and Employment Standards shall enforce Chapter 2.28 ("Living Wage Ordinance"); Chapter 2.36 ("Worker Retention at Large-Scale Hospitality Business Ordinance"); Chapter 5.92 ("City Minimum Wage, Sick Leave, and Other Employment Standards"); Chapter 5.93 ("Hotel Minimum Wage and Working Conditions"); Prevailing Wage Resolution (Resolution No. 57103 C.M.S.), Local Employment Program (Part IV of the Local and Small Business Enterprise Program, Resolution No. 69687 C.M.S., as amended and codified by Ordinance No. 12389 C.M.S., and as subsequently amended), Fifteen (15) Percent Apprenticeship Program (Resolution No. 74762 C.M.S.), Chapter 5.94 ("Protecting Workers and Communities During the Pandemic – COVID-19 Emergency Paid Sick Leave Ordinance"), Chapter 5.95 ("Hospitality and Travel Worker Right to Recall"), and Chapter 5.96 ("Grocery Worker Hazard Pay Emergency Ordinance"), and shall carry out such additional duties and functions as assigned by the City Administrator, or by Charter, ordinance, or City Council resolution. The Department of Workplace and Employment Standards may impose penalties and take any and all appropriate action to enforce the requirements of such provisions. The Department of Workplace and Employment Standards shall have authority to adopt rules and regulations consistent with and necessary for the implementation of the foregoing laws. Such rules and regulations shall have

the force and effect of law, and may be relied upon by employers, employees and other persons to determine their rights and responsibilities. The Department of Workplace and Employment Standards may enforce the provisions of the California labor Code to the extent permitted by State law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____

ASHA REED
Acting City Clerk and Clerk of the
Council of the City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

EMERGENCY ORDINANCE (1) ADDING CHAPTER 5.96 TO THE OAKLAND MUNICIPAL CODE TO REQUIRE LARGE GROCERY STORES IN OAKLAND TO PAY EMPLOYEES AN ADDITIONAL FIVE DOLLARS (\$5.00) PER HOUR IN HAZARD PAY DURING THE NOVEL CORONAVIRUS (COVID-19) PANDEMIC AND (2) AMENDING CHAPTER 2.44 OF THE OAKLAND MUNICIPAL CODE TO INCLUDE ENFORCEMENT OF EMERGENCY HAZARD PAY TO GROCERY EMPLOYEES AS PART OF THE DUTIES OF THE DEPARTMENT OF WORKPLACE AND EMPLOYMENT STANDARDS

This Emergency Ordinance adds Chapter 5.96 to the Oakland Municipal Code to establish emergency hazard pay for grocery workers during the Coronavirus (COVID–19) pandemic and amends Chapter 2.44 of the Oakland Municipal Code to include enforcement of the Grocery Worker Hazard Pay Emergency Ordinance as part of the duties of the Department of Workplace and Employment Standards.

This Emergency Ordinance is necessary for preserving the public peace, health, or safety during the COVID–19 health emergency. Pursuant to section 213 of the City Charter, upon final adoption on first reading this Ordinance will become effective immediately if it receives six or more affirmative votes.



3/12/2021

ATTN: Morgan Hill City Councilmembers

Mayor Rich Constantine

Councilmembers: John McKay, Gino Borgioli, Rene Spring and Yvonne Martinez Beltran

The Morgan Hill Chamber of Commerce has been representing business and building community since 1958. Being an advocate of the business and workforce communities, our organization supports actions that satisfy the following measures: SMART Growth, Economic Sustainability, Quality Jobs and Tax Revenue, while keeping the character of our community intact.

Last month, Santa Clara County Supervisors received, reviewed and declined a County-wide Hazard Pay Proposal. The Morgan Hill Chamber of Commerce, alongside the Silicon Valley Chamber Coalition, opposed the proposal on the grounds that it would inflict an undue burden on business owners and could cause devastating unintended consequences to the workforce. The Morgan Hill Chamber of Commerce supports fair and equal wages but does not feel that a wage increase (on top of the recent minimum wage increase that already took effect earlier this year) is supportive of the business community, especially during a pandemic. A Mandatory Hazard Pay would increase the suffering of our businesses who are still trying to staunch the flow of financial bleeding and would also lead to a reduction in jobs, especially in the restaurant and retail industries, which would disproportionately effect minority and low-income workers citywide. Mandatory Hazard Pay is a short-term band-aid for a long-term problem, imposed at a time when the businesses hardest hit by the pandemic cannot afford it.

Approving and enforcing a Mandatory Hazard Pay on Morgan Hill businesses in the midst of a pandemic will cause more harm than good and could actually result in making income insecurity and food insecurity worse. In attempting to address one systemic inequity, you may be creating new disparities instead. We urge you to instead focus your energies on increasing the quantity and accelerating the timeline of available vaccinations and developing a Recovery Campaign for our business community.

Sincerely,

Brittney Sherman

Brittney Sherman
CEO/President

155 East Main Ave, #170, Morgan Hill, CA 95037 * (408) 779-9444* www.morganhillchamber.org

Attachment: Hazard Pay- MH Chamber Letter of Opposition (3028 : Consider Hazard Pay)



CITY COUNCIL STAFF REPORT

MEETING DATE: March 17, 2021

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

CONSIDER COUNCIL INITIATED AGENDA ITEM FOR DOWNTOWN TRAFFIC CALMING REPORT

RECOMMENDATION(S)

Consider whether to direct staff to return with a Council Agenda Item on Downtown traffic calming, including the Monterey Road Complete Streets/Lane Reduction Program and various other alternatives.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety

2020-2021 Strategic Priorities

Economic Development

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan
Economic Blueprint
Vision Zero

REPORT NARRATIVE:

On March 3, 2021, two councilmembers requested an item return to the Council to discuss Downtown traffic calming. Per Council Policy 96-01, when a request is made by a Councilmember to bring a report to the Council, it requires Council approval before staff can initiate work.

The Council previously received a similar report on June 3, 2020. During this meeting, the Council received a report that focused on strategies to utilize public space to support the outdoor needs of the Downtown businesses during the Covid-19 pandemic. Several options were discussed, including:

- Implementation of the Complete Streets/Lane Reduction Program
- Use of public spaces by businesses
- Weekend or limited term closures of Monterey Road Downtown

At this meeting, the Council chose not to move forward with the Complete Streets/Lane Reduction Program and only move forward with closing side streets, parking areas, and use of other public spaces to support businesses recovery efforts. A streamlined permitting process was developed for use of space and the City deployed the needed

traffic safety devices for the closures. This effort has been very successful and allowed many businesses to continue to operate when indoor activities were prohibited.

In recent months, staff has been holding regular meetings with Downtown restaurants, businesses, and property owners to discuss business recovery efforts. Both City staff and the Council continue to hear requests from Downtown businesses to address concerns related to the need for additional outdoor space, pedestrian and bicyclist safety, traffic calming, vehicle noise, proximity of vehicles to those dining outdoors and the creation of an environment that encourages people to visit Downtown.

While it is anticipated that restrictions on business operations will continue to ease over the coming months, the need for support of our local businesses and create a safer, more walkable Downtown with more space for community to continue to dine outdoors and safely social distance continues.

Should the Council approve moving forward with this item, staff will prepare a report on design options to implement traffic calming in Downtown. Additionally, staff would engage with Downtown businesses to further clarify goals and needs.

COMMUNITY ENGAGEMENT: Involve

While this item has been requested by the Council, the request has been a result of the City's engagement with the Downtown businesses and property owners. Dozens of meetings, both formal and informal, have occurred supporting continued review of this request. Should the Council direct staff to move forward on this item, broader engagement to the general community will occur prior to the item returning to the Council.

ALTERNATIVE ACTIONS:

The Council can approve or deny this request and provide further input.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On June 3, 2020, the City Council provided direction on the Monterey Road Complete Streets/Lane Reduction Program and business use of Downtown spaces. The Council did not elect to move forward with the Complete Streets/Lane Reduction Program.

On July 22, 2020, the Council received an update on Downtown business use of public space.

The Council previously took action on the Monterey Road Complete Streets/Lane Reduction Program on August 5, 2015. The City Council directed the re-establishment of two travel lanes in each direction following the trial of the Program. The Council did request the item be revisited at a later date, should circumstances change. Prior to August 2015, the Council made several actions leading to the trial.

FISCAL AND RESOURCE IMPACT:

It is anticipated significant staff time for the Engineering Division will be necessary to prepare the report for the City Council. This may result in slight delays in other projects

of lesser priority. Additionally, staff support from the Economic Development Division on the outreach and engagement will be required.

The fiscal impacts of alternative options will be developed and presented in the next staff report should the Council choose to move forward.

CEQA (California Environmental Quality Act): Not a Project

The Council direction in this matter is administrative and will not result in a change to the physical environment, this action is not a project under the California Environmental Quality Act.

LINKS/ATTACHMENTS:

1. June 3, 2020 City Council Staff Report (weblink)
2. July 22, 2021 City Council Staff Report (weblink)

Since the spread of the coronavirus pandemic 12 months ago, across the United States, Americans of Asian ancestry have reported a significant increase in hate crimes, harassment and discrimination. While most of the first incidents were simple discrimination or verbal insults, in recent months, violent encounters have occurred with some Asians Americans killed and mutilated

Most people usually think of racism the South as a result of slavery and Americans were discriminated against, promoting "Jim Crow" social and suppression. But if we are honest with Californians have also long showed discrimination against members of the

During the pioneer days of the Gold the newly formed state of California this precious metal in rugged



Asian American children salute the American Flag

Whites who saw them as competitors for the search for gold. The discrimination was even made official when President Chester Arthur signed the Chinese Exclusion Act on May 6, 1882, prohibiting all immigration of Chinese laborers to our shores. It is the only law to have been implemented on a federal level keeping all members of a specific ethnic or national group from immigrating. The act was repealed during World War II when China became an ally of the U.S. and Americans needed to portray an image of fairness and justice. During that war, from an executive order by President Franklin D. Roosevelt, about 120,000 Americans of Japanese heritage were placed without due process of law in internment camps.

in the U.S. as something that happened in the aftermath of the Civil War. Black for decades in southern states with laws economic segregation and voter our history, we have to acknowledge this ugly side of human nature with Asian American community.

Rush, thousands of Chinese men sailed to in the 1850s to try their luck in finding mountains. Many faced violence from

Following World War II, racism against Asian-Americans citizens still continued. Consider the family story of Morgan Hill resident Nancy Lowe. Her grandfather, Albert Lowe Sr., faced discrimination as a young man when he worked at a bank. Despite his skills, he was never promoted to a managerial position. The reason why, he was bluntly told, was due to his Chinese ethnicity. Albert and his wife moved the family to Pasadena where he started a new career as a furniture store owner. He was so successful that in the mid-1940s he purchased property to build a home in the southern California city. The neighbors brought him a petition requesting that the family not move onto their street and resell the property to a Caucasian. They believed that the property title allowed only White people to dwell there.

"My grandfather didn't give in and he still purchased (the property) and built a home," Lowe said. "We got along fine with the neighbors once they got to know us."

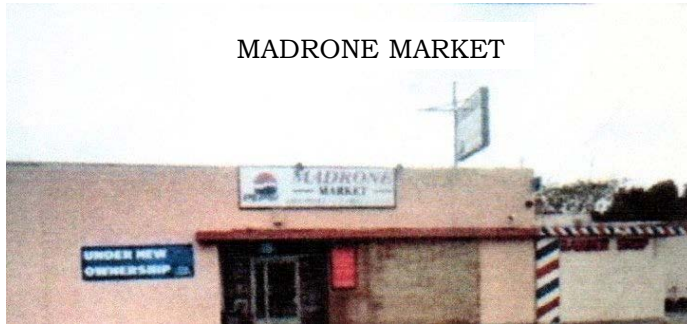
Subtle racism and discrimination against people of Asian heritage have continued on for decades in the United States. But with the COVID-19 pandemic and prejudiced comments from some politicians in the news and social media (such as referring to the "China virus" and "Kung flu), the level of racism has encouraged violent encounters. President Joe Biden in January of this year, issued an executive order condemning the attacks and the scapegoating of Chinese people for the pandemic. The order also calls for improved data collection about hateful incidents. "The federal government must recognize that it has played a role in furthering these xenophobic sentiments through the actions of political leaders, including references to the COVID-19 pandemic by the geographic location of its origin," Biden said in his order. "Such statements have stoked unfounded fears and perpetuated stigma about Asian Americans and Pacific Islanders and have contributed to increasing rates of bullying, harassment, and hate crimes against AAPI persons."

The recent rise of hate crimes and discrimination against Asian American citizens inspired one South Valley man to promote a project showing the patriotism in members of this community. Recently retired dentist, Jon Hatakeyama, is working with the city of Morgan Hill to place a plaque in the community, honoring the more than 12,000 Japanese-American men who fought fascism in Europe during World War II as soldiers of the famed 442nd Infantry Regiment of the U.S. Army. At a time when many of them had friends and families of Japanese ancestry imprisoned in internment camps, they patriotically marched into combat driven by the motto "Go for Broke!" Many who survived the war found their way back to the South Valley region of Santa Clara County.

We encourage our readers to stand up against all forms of discrimination – and especially the recent rise of hate crimes against Asian American citizens. One way to do this is to support Hatakeyama's project recognizing the sacrifices of the men of the 442nd to save democracy, the greatest gift America ever gave to the world.

FROM FRESNO BUT SPENDING MY SUMMERS IN MADRONE

MADRONE MARKET



MADRONE BARBER SHOP



While in Madrone, my cousin, Howard and I would get our haircuts at the Madrone Barbershop. What our parents didn't know was that the barbershop had "Girly Magazines". This barbershop also had a brass plated cash register. (I always coveted this cash register) Many years later I purchased and brought this heavy antique back to my future home in Morgan Hill.

After getting our haircuts, we would go next store to the Madrone Market to purchase candy and snacks. The owners, John and Mike Bonfonte would later establish Nob Hill Grocers.



This photograph was taken in 1948. It shows Kaz Sato leaving Madrone Market with her purchases. Note the bread delivery boxes to the far right. Above the boxes a window sign featuring wine at 72 cents a bottle. The Madrone Market, owned by John and Mike Bonfonte, welcomed Japanese families to shop in their store. This was not always the case with other local merchants. Mike later sold his ownership share to his brother John. Mike, then formed the *Bonfonte Gardens* located in Gilroy



My extended family enjoying our summer in the Madrone District of Morgan Hill. Some of whom are pictured are my grandparents, Sueki and Hatsume Hayashi, my parents, Yoneo and Betsy Hatakeyama, and my siblings. Later my own children, Evan, Vanessa, Brent and Vincent would be the 4th generation of my family to have lived in Morgan Hill.



3/17/2021

City of Morgan Hill
Attn: Morgan Hill City Council
17575 Peak Avenue
Morgan Hill, CA. 95037

Members of the City Council,

Later this year, the United States Postal Service will be issuing a postage stamp entitled, "Go for Broke", honoring the Japanese American Soldiers of World War II. The motto, "Go for Broke", was that of the 442nd Regimental Combat Team. It was composed entirely of Japanese Americans. The 442nd RTC became the most highly decorated unit of its size in United States Military History. In less than two years of combat, this unit earned more than 18,000 military awards, including 9,486 Purple Hearts which were provided to those who were killed or



wounded, 4,000 Bronze Stars which were given to the many who had provided heroic service in a combat zone, and 21 Medals of Honor, awarded to those whom had distinguished themselves conspicuously by gallantry at risk of their life above and beyond the call of duty. This award is typically bestowed by the President of the United States. It is the highest military award a service member can earn.

Initially, Americans of Japanese descent, were not allowed to enter military service during the initial phases of World War II. However, as the need for soldiers increase, their value as interpreters, and their dedication to their country proved invaluable.

The irony for these Japanese American soldiers was, as they were giving their lives fighting their country, their government had placed the families of these soldiers into internment camps. These families, who were American Citizens, were placed in these internment camps without any due legal process. These internment camps were often located in deserts, and other inhospitable areas, sometimes on lands taken away from our Native Americans



Lawson Sakai was one of several members of the 442nd who lived in Morgan Hill. He was a humble gentleman, who represented the best in Americans. He passed away on June 16, 2020 at the age of 97. He would often share his stories serving as a soldier and a member of the 442nd Regimental Combat Team, fighting fascism in Europe during World War II. He was wounded several times. His efforts earned him a Bronze Star, Purple Heart and a Combat Infantryman Badge.



Symbol of the 442nd RCT



Members of the 442nd Regimental Combat Team receiving the Congressional Gold Medal in October, 2010 from then President. Barack Obama

THIS PROPOSAL WILL HELP STEM THE TIDE OF HATRED TOWARDS ALL ASIAN AMERICANS

It was noted after former President, Donald Trump, stated about the Covid 19 Pandemic virus, "It came from China", that an alarming rise throughout California, and especially in the San Francisco Bay Area, of hate crimes directed against Asian Americans became evident. One only had to listen to the news or read the newspapers.

In some bay area communities, extra law enforcement officers were assigned to patrol Asian American Communities, in others, Asian American Community members led such patrols to help insure the safety of its residents, especially its elderly.

SAN JOSE Residents, leaders saddened by vandalism of monument



Graffiti is visible on the fossil Pioneer Stone monument on Monday in the Japantown region of San Jose. Japan Community Congress co-president Ryan Kawamoto said the act of vandalism will not deter the community's efforts to preserve the site.

The granite structure in Japantown is a tribute to the region's immigrants.

Chen Valley more than a century ago. The 13,000-pound granite rock was brought over from Inosima Island and given to San Jose as a gift from its sister city, Okazaki, Japan.

facing, Japantown has seen a rise in petty crime in recent years with thieves breaking into a dozen businesses. "I think everyone's afraid," said Kawamoto.

Oakland Chinatown on edge after rash of attacks, robberies



Merchants hire armed guards, community police officer returns, volunteer escorts are on hand.

Vaccine bypass some 7 and old

Inoculations: Contra County is best in Bay Area getting the shots to its elderly.

By Emily Oakley and Hunter Blair Brown, Staff Writers

For older Bay Area residents, the thought of a coronavirus vaccine agent is a great deal, as where you live can be a factor in how you get it. In Contra Costa County, there is a significant variation by county in who is getting the shots.

In Contra Costa County, where the population is 1.2 million and older adults are at least one-third of the senior population, the county is one of the best in the Bay Area for getting the shots. But in Santa Clara and San Mateo counties, where the population is 1.2 million and older adults are at least one-third of the senior population, the county is one of the worst in the Bay Area for getting the shots.

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Rally to halt hate crimes, violence against Asians draws hundreds



Attacks on elders in Bay Area have spawned outpouring of anguish and demands for change.

Asian So. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

By Prerna Kallikot

Asian Americans in the San Jose area gathered for a rally to demand an end to hate crimes and violence against Asians. The rally was held in front of the San Jose City Hall.

Christina Leung was riding Muni last year near San Francisco's Chinatown when she heard the bus driver talking loudly with a White passenger.

A group of Asian American residents had just boarded, and the conductor was complaining about the behavior of "Chinese" customers, thinking they couldn't understand her, said Leung, a self-described activist who has lived in the San Jose district for more than 30 years.

Caroline Chung, daughter of Clara and son Thomas, 4, attend a rally and march against hate crimes targeting Asians at Central Park in San Mateo on Saturday. The San Mateo middle schooler decided to organize the rally after recent attacks on Asian elders.



In 2014, Lawson Sakai served as the Grand Marshal in Morgan Hill's Freedom Fest Parade



Among those attending the public opening of the Morgan Hill's San Pedro Ponds Walking Trails were County Supervisor Sig Sanchez, Mayor Dennis Kennedy, City Council members Hedy Chang and Steve Tate, Event Chairman Jon Hatakeyama, and Santa Clara Valley Water District Board Member Rosemary Kamei



The Morgan Hill Haru Matsuri Festival is Santa Clara County's longest continuous cultural festival.

Rather than counter this racism with such less than effective measures, as mentioned in these news releases, being active in one's Community would be the basis of generating pride, fellowship and the understanding needed to counter the racial intolerance towards Asian Americans in our community. Thus there is a need for city governments to lessen restrictions on local cultural events



The Civic Center near the entrance to the library is a proposed location for this plaque. There, one will find a dedicated parking lot, and ample room for a family of five to read the inscribed messages on the plaque. This location provides safety from traffic, in addition with no traffic noise. A library is an institution of learning. It is frequented by youth and young adults who come to learn. This plaque will provide them with pertinent information of relevant local and national history.

Information which will more fully explain the need for this project can be found on YouTube. This documentary can be accessed on Utube by entering: "Racism Virus"

REQUIREMENTS FOR THE CONCRETE BASE USED FOR THE BRONZE 442ND MEMORIAL PLAQUE



Clear Acrylic document holder containing the names of the plaque donors. This will require the bronze plaque concrete base to have a forward slant for good visibility.



The names on the document protected by the clear acrylic document holder should be done in last name alphabetical order with the donor’s first name placed ahead of the last name.

If the Morgan Hill Community Foundation donates their 5% fee, I would like this organization’s name centered on top above the start of the donor’s column. Maybe the “City of Morgan Hill” below the Foundation’s name.

As previous mentioned or in another document, I would prefer the location of this plaque with its concrete base be placed near the entrance to our Morgan Hill Library



I would like as shown the icon for the 442nd RCT placed to the left or right of the document holder

Can this be done for the estimated budget of \$3,000

PAMELA MEADOR

Pamala serves as the Chairwoman of the 442nd Regimental Combat Team Memorial Project Fund Raising Committee.

1. Presently, she's a board member of the Morgan Hill Community Foundation.
2. Formerly, she served as the past president of the Morgan Hill Community Foundation.
3. Key organizer of Morgan Hill Community Foundation's "Philanthropy Night".
4. Served as a member of the committee which organized "Celebrate Morgan Hill".
5. Her family is the fourth generation to have lived in Morgan Hill.

JON HATAKEYAMA, DDS

Jon serves as the overall Chairman of the 442nd Regimental Combat Team Memorial Project.

1. He was a former Morgan Hill Chamber of Commerce Man of the year in 2009
2. He was the recipient of Gavilan College Community Spirit Award in 2006
3. Established the Santa Clara Valley Wine Trail in 2014
4. Founder of the Morgan Hill Teachers Aid Coalition in 1999
5. Founder of the Morgan Hill South Valley Wine Auction in 2002
6. His family is the fourth generation to have lived in Morgan Hill.

MARTY CHEEK

Marty serves as the Publicist of the 442nd Regimental Combat Team Memorial Project

1. He serves as the Publisher of the Morgan Hill Life.
2. Morgan Hill Life received the Morgan Hill Chamber of Commerce Small Business Award 2019
3. He received the Golden Quill Award in 2019.
4. Recipient of Gavilan College Community Spirit Award in 2018

From: [Christina Turner](#)
To: [Michelle Bigelow](#); [Angie Gonzalez](#)
Cc: [Chris Ghione](#); [Anthony Eulo](#)
Subject: FW: comment City Council Meeting April 07, 2021 Item #8: CRC Battery Backup Grant
Date: Monday, April 5, 2021 5:43:10 PM

Please supplement. Answers in ALL CAPS.

From: "D. Muirhead" <doug.muirhead@stanfordalumni.org>
Date: April 4, 2021 at 9:15:37 PM PDT
To: CC Public Comment <CCPublicComment@morganhill.ca.gov>
Subject: comment City Council Meeting April 07, 2021 Item #8: CRC Battery Backup Grant

Dear Morgan Hill City Council,
A comment for your
Meeting April 07, 2021
Item #8: CRC Battery Backup Grant

This staff report omits the critical capacity/duration information and fails to put this site in the context of city-wide resilience.

The staff report says that the proposed project will outfit the CRC with a bank of commercial battery powerpacks (providing 0.8 MWh/800 KWh of stored electricity). It also says that the battery storage project will enable the CRC to remain functional during power outages and potentially serve as an emergency shelter.

What we need to know is how long the power packs can provide power. And what is the definition of "CRC to remain functional"?

And if the batteries are to be recharged from solar panels at the CRC, how much of their capacity can be recharged during a sun-filled day? THESE ARE ALL GOOD QUESTIONS THAT REMAIN UNANSWERED. WE ARE JUST STARTING THE DESIGN OF THE PROJECT AND INTEND TO PRESENT THE COUNCIL WITH OPTIONS THAT BALANCE BATTERY SIZE AND COST. IN TERMS OF HOW FUNCTIONAL THE BUILDING WOULD BE, WE WOULD CERTAINLY ENVISION TURNING OFF NONESSENTIAL EQUIPMENT DURING A POWER OUTAGE LIKE POOL PUMPS, SOME LIGHTING, AND EXERCISE EQUIPMENT.

While this Battery Backup is primarily in response to power outage events (generally known as Public Safety Power Shut-off aka PSPS events), with a duration of less than a week, we also must be prepared for longer outages caused by earthquakes and loss of imported power due to wildfires,

especially since the South County Power Connect project to increase the redundancy of the transmission system was put on hold back in 2017. WE CERTAINLY AGREE THAT MAXIMIZING OUR ABILITY TO REMAIN OPERATIONAL DURING POWER OUTAGES IS A GOAL. HOWEVER, IT IS NOT THE ONLY GOAL OF THIS PROJECT. ALLOWING THE BUILDING TO RUN OFF OF BATTERY POWER EVERY DAY DURING THE PEAK EVENING HOURS IS DEFINITELY OF EQUAL IMPORTANCE. THIS WILL BOTH ENABLE US TO REDUCE ENERGY EXPENSES AND WILL SUPPORT GRID OPERATIONS ON A DAILY BASIS. OUR SOLAR SYSTEM AT THE CRC HAS BENEFITTED FROM EARNING ENERGY CREDITS AT A HIGH RATE DURING THE TRADITIONAL AFTERNOON PEAK HOURS. THIS TIME IS SHIFTING NEXT YEAR AND WE WILL NO LONGER BENEFIT NEARLY AS MUCH WHICH WILL RESULT IN INCREASED ENERGY BILLS. THE BATTERIES WILL ENABLE US TO BANK SOLAR POWER DURING THE DAY AND THEN USE IT DURING THE EVENING PEAK HOURS TO REDUCE OUR COSTS.

The staff report says that staff determined installation of the diesel generator would be old technology and be far less desirable from an operational cost perspective. There is a bias in the grant in that priority funding would be allocated to cities that illustrate the acquisition/use of low or no emissions power solutions.

But I question the claim that operational cost is better with batteries.

Crossing over to the context of city-wide resilience, many <how many?>

City water supply wells have stand-by generators. And what are the back-up

systems and durations for significant City operations such as server farms and Police operations? The infrastructure to inspect and maintain diesel generators is in place and will remain for some time. WHILE WE DO HAVE A CONTRACT FOR GENERATOR MAINTENANCE, THAT CONTRACT COMES WITH ASSOCIATED COSTS FOR EACH AND EVERY GENERATOR. WE HAVE NUMEROUS STAND-BY GENERATORS AT UTILITY AND BUILDING SITES. SOME ARE PERMANENT INSTALLATIONS AND SOME ARE MOBILE. THE DIFFERENCE AT THE CRC IS THAT WE HAVE A SUBSTANTIAL SOLAR ENERGY SYSTEM IN PLACE THAT CAN RECHARGE THE BATTERIES ON A DAILY BASIS. IF THIS WERE ALSO TRUE AT UTILITY SITES, WE MAY BE HAVING THE SAME CONVERSATION THERE.

Note also that the Morgan Hill Community Librarian Heather Geddes said to me on December 22, 2020:

"The City of Morgan Hill and the Library District did enter into a contract with PGE to act as a resource center in the case of a PSPS event. PGE has attached a generator and the appropriate electrical connections to our building so that they can operate a resource center out of our public meeting room."

Finally, I would like to see the numbers that support the claim that batteries will allow the CRC to reduce its use of power during the expensive evening hours which will
** add to overall power grid stability **. AS I STATED ABOVE, WE DON'T YET HAVE SYSTEM DESIGN SO IT IS PREMATURE TO ASK FOR EXACT NUMBERS TO SUPPORT THIS CLAIM. I'M NOT SURE, HOWEVER, THAT THERE IS ANY QUESTION THAT ADDING BATTERIES OF ANY SIZE TO OUR POWER MIX OFFSETS THE USE OF ELECTRICITY DURING THE "NEW PEAK" EVENING HOURS WHEN SOLAR ENERGY WANES. THE ENTIRE STATE IS RUSHING TO ADD BATTERIES AS FAST AS WE CAN PRECISELY FOR THIS PURPOSE. (IF YOU HAVEN'T ALREADY LOOKED AT THIS ISSUE, THERE IS A QUICK READ ON THE "DUCK CURVE" AT <https://www.nuscalepower.com/environment/renewables/the-duck-curve>) THESE GRANTS GIVE US AN OPPORTUNITY TO USE GRANT DOLLARS TO REDUCE OPERATIONAL EXPENSES IN THE GENERAL FUND WHILE ALSO CREATING A BUILDING THAT CAN FUNCTION AS A SHELTER DURING EMERGENCIES.

FINALLY, WHILE YOU DIDN'T SPECIFICALLY ASK, PLEASE NOTE THAT THE SVCE FUNDING FOR THIS PROJECT CANNOT BE USED ON A DIESEL GENERATOR AND IS LIMITED TO GREEN INFRASTRUCTURE. WE ALREADY KNOW, FROM A PREVIOUS FAILED ATTEMPT, THAT THE STATE GRANT IS INADEQUATE TO PAY FOR A FULL GENERATOR PURCHASE AND INSTALLATION.

Thank you for your consideration, Doug Muirhead, Morgan Hill

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City Council Meeting Item #11: Resolution Establishing Fees for Ambulance and Emergency Medical Services



March 17, 2021

Background



- Emergency Medical Services (EMS) Agency of the County of Santa Clara is responsible for regulating advanced life support (ALS) and ambulance providers
- Morgan Hill Fire Department, via an agreement with the County, provides 911 emergency medical services
- Rural Metro/AMR has been the County's primary ambulance service provider since 2011

Background (Cont'd)



- In early 2019 – Rural Metro/AMR renegotiated agreement with County which required changes to service levels and lowered response time performance
- In July 2019, City Council accepted donation of a surplus ambulance from the Monterey County Regional Fire District
- City's ambulance is an additional resource to transport the public in the City as needed, under approved County guidelines, during high demand of 9-1-1 ambulance resources

Billing and Fees



- Medical billing is complex but a key component of providing transport services
- City has contracted with R1 RCM, also known as Digitech, to provide billing services as they possess the needed expertise and experience
- Per County agreement, City is authorized to provide ambulance transport services but billing for these costs of services is sole responsibility of the City and can only bill at rates established by the County

Proposed Fees

Table 1: User Fees

Service Levels	<i>County's Established Rate</i>	<i>City's Proposed Rate</i>
ALS - 1	\$ 1,885.41	\$ 1,885.41
ALS - 2	1,885.41	1,885.41
Mileage	61.10	61.10
Hourly Ambulance Standby	238.60	238.60
Hourly Paramedic - Individual	119.30	65.93
Hourly EMT - Individual	79.53	-

Proposed Fees (Cont'd)

Table 2. User Fee Schedule for Disposable Supplies and Medications

Equipment/Supplies	
AIRWAY/NASAL	\$36.66
AIRWAY/ORAL	\$20.00
BAG VALVE MASK	\$121.65
BANDAGE, ELASTIC	\$9.83
BANDAGES TRIANGULAR	\$16.66
BED PAN	\$16.66
BLANKET, DISPOSABLE	\$39.99
BLOOD GLUCOSE TEST	\$33.33
BURN SHEET	\$61.66

Please see Table 2 of Resolution for complete itemized list

Recommendation



1. Open/Close public hearing; and
2. Adopt resolution establishing fees for ambulance transport and emergency medical services.

Item # 12

AGENDA DATE: 03/17/2021
SUPPLEMENT # 1

From: [Kristin King](#)
To: [CC Public Comment](#)
Subject: MHCC: Consent Calendar, Other Business; item #12
Date: Wednesday, March 17, 2021 8:43:23 PM

My message relates to the 3/17/21 Consent Calendar, under Other Business, specifically item #12. It states:

12. ADOPT RESOLUTION CONDEMNING ALL FORMS OF HATE AND VIOLENCE INCLUDING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL BUILDING IN WASHINGTON D.C
Recommendation: Adopt resolution condemning all forms of hate and violence including the January 6, 2021 riots at the United States Capitol Building in Washington D.C.

This resolution has come to the Morgan Hill City Council for consideration. The recommendation, "Adopt a resolution to condemn all forms of hate and violence including the January 6, 2021 riots at the United States Capitol Building in Washington D.C."

The first portion of this statement is fine, and I have no issues here. But that is where this proposed resolution request should end. I take issue with the latter portion of the recommendation, as this portion speaks to a specific event outside the purview of the Morgan Hill City Council.

Secondly the inclusion of this violent event implies there's an association with Morgan Hill, where there is no association. Therefore, this second part of the statement, "including the January 6, 2021 riots at the United States Capitol Building in Washington D.C." should be stricken from the proposed resolution as it serves no purpose other than projecting an ugly narrative. This type of political reference needs to be left out of city resolutions.

Please remove this portion PRIOR to voting on this resolution.

Respectfully,
Kristin Lunsford
Morgan Hill resident since 2007

--

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March 16, 2021

The Honorable Rich Constantine
Mayor, City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037



Item # 14
AGENDA DATE: 03/17/2021
SUPPLEMENT # 1

RE: Grocery Worker Pay

Dear Mayor Constantine,

On behalf of Morgan Hill grocers, I write to ask the Council to not move forward with the proposed grocery worker premium pay ordinance given the numerous negative consequences to grocery workers, neighborhoods and the grocery industry. Based on the consequences experienced in other jurisdictions with similar ordinances, we must oppose the ordinance for both policy and legal reasons.

We agree that grocery workers serve a vital and essential role during the pandemic. They have worked tirelessly to keep stores open for consumers, allowing our communities to have uninterrupted access to food and medications. To protect our employees, grocery stores were among the first to implement numerous safety protocols, including providing PPE and masks, performing wellness checks, enhancing sanitation and cleaning, limiting store capacity, and instituting social distance requirements, among other actions.

On top of increased safety measures, grocery employees have also received unprecedented amounts of supplemental paid leave to care for themselves and their families in addition to already existing leave benefits. Grocers have also provided employees additional pay and benefits throughout the pandemic in various forms, including hourly and bonus pay, along with significant discounts and complimentary groceries. All of these safety efforts and additional benefits clearly demonstrate grocers' dedication and appreciation for their employees. Most importantly the industry has been fierce advocates for grocery workers to be prioritized for vaccinations. This is evident now that your county is now considering grocery workers a priority and they are currently receiving the vaccine.

Unfortunately, the Grocery Worker Premium Pay ordinance would mandate grocery stores provide additional pay beyond what is economically feasible, which would severely impact store viability and result in increased prices for groceries, limited operating hours, reduced hours for workers, fewer workers per store, and most concerning, possible store closures. These negative impacts from the ordinance would be felt most acutely by independent grocers, ethnic format stores, and stores serving low-income neighborhoods. The Cities of Los Angeles, Long Beach and Seattle, who have passed a similar ordinance, have already suffered the permanent loss of several full-service grocery stores as direct result.

We request the City of Morgan Hill perform an economic impact report to understand the true impacts of this policy. If you choose not to understand specific impacts for Morgan Hill, then we refer you to the economic impact report from the City of Los Angeles Legislative Analyst Office. This report makes it clear that the impact of this policy will severely impact workers, consumers, and grocery stores.

In its own words the Los Angeles City Legislative Analyst clearly states that grocery "companies would be required to take action to reduce costs or increase revenue as the labor increase will eliminate all current profit margin." The report recognizes that "affected companies could raise prices to counteract the additional wage cost." This type of ordinance would put "more pressure on struggling stores (especially independent grocers) which could lead to store closures" and that "the closure of stores could lead to an increase in 'food deserts' that lack access to fresh groceries." These are all scenarios we know everyone in the city wants to avoid, especially during a pandemic. This is why we are asking the Council to not move forward with this policy and, instead, focus on making sure all grocery workers are provided the vaccine.

March 16, 2021
PAGE 2



Specific to ordinance language, there are numerous policy and legal issues which unnecessarily single out the grocery industry and create significant burdens. The ordinance fails to recognize the current efforts grocers are making to support their employees and requires grocers add significant costs on to existing employee benefit programs.

Furthermore, passing this ordinance improperly inserts the city into employee-employer contractual relationships. The ordinance also ignores other essential workers, including city employees, that have similar interaction with the public. Taken in whole, this ordinance is clearly intended to impact only specific stores within a single industry and fails to recognize the contributions of all essential workers. Based on language specifics, this ordinance misses a genuine effort to promote the health, safety and welfare of the public.

Emergency passage of the ordinance also ignores any reasonable effort for compliance by impacted stores, as several grocery stores will be operating at the time of passage. By implementing the ordinance immediately there is literally no time to communicate to employees, post notices, adjust payroll processes, and other necessary steps as required by California law. Coupled with the varied enforcement mechanisms and significant remedies outlined, the passage of this ordinance would put stores into immediate jeopardy. This scenario is yet another negative consequence resulting from the lack of outreach to grocers and the grocery industry to understand real world impacts.

Grocery workers have demonstrated exemplary effort to keep grocery stores open for Morgan Hill. This why the grocery industry has provided significant safety measures and historic levels of benefits that include additional pay and bonuses. It is also why vaccinating grocery workers has been our first priority. Unfortunately, this ordinance is a significant overreach of policy and jurisdictional control. This will result in negative consequences for workers and consumers that will only be compounded by the pandemic.

We respectfully implore the Council to not move forward with the grocery worker pay ordinance at this time. We encourage you to recognize and understand the impacts of this ordinance on workers and the community by accepting our invitation to work cooperatively with Morgan Hill grocers. If Council must bring the ordinance forward for a vote at this time we ask you to oppose its passage. CGA is submitting additional information from our legal counsel for your consideration.

Thank you for your consideration and we look forward to being able to combat the pandemic in partnership with the City of Morgan Hill.

Sincerely,

Timothy James
California Grocers Association

CC: Members, Morgan Hill City Council
 City Clerk, City of Morgan Hill

Item # 14

**AGENDA DATE: 03/17/2021
SUPPLEMENT # 2**

March 16, 2021

Writer's Direct Contact
+1 (415) 268.6358
WTarantino@mofo.com

Via Email

The Honorable Rich Constantine
City Hall
17575 Peak Avenue
Morgan Hill, California 95037

Re: Hazard Pay for Grocery Workers Ordinance

Dear Council Members:

We write on behalf of our client, the California Grocers Association (the "CGA"), regarding the proposal on the City Council's March 17, 2021 agenda to implement a "hazard pay" ordinance for grocery workers in Morgan Hill. Any hazard pay ordinance will compel grocers in Morgan Hill to spend less on worker and public health protections in order to avoid losses that could lead to closures. In addition, an ordinance would interfere with the collective-bargaining process protected by the National Labor Relations Act (the "NLRA"), and unduly targets certain grocers in violation of their constitutional equal protection rights. We respectfully request that the City Council take a careful and considered look at these issues before making any decision on a hazard pay ordinance.

Hazard pay ordinances do not address frontline workers' health and safety. The purported purpose of these ordinances are to protect the public health and safety, but these ordinances as proposed in every city have been devoid of any requirements related to the health and safety of frontline workers or the general public and instead impose costly burdens on certain grocers by requiring them to provide mandatory wage increases of up to \$5.00 per hour for all hours worked. A wage increase does not play any role in mitigating the risks of exposure to COVID-19, nor is there any evidence that grocery store workers are exposed to higher risks than other essential workers. If anything, an ordinance could increase those risks, as it may divert funds that otherwise would have been available for grocers to continue their investments in public health measures recognized to be effective: enhancing sanitation and cleaning protocols, limiting store capacity, expanding online orders and curbside pickup service, and increasing spacing and social distancing requirements.

These ordinances choose winners and losers among frontline workers in mandating wage increases. Other retail and health care workers are ignored, despite the fact that those same workers have been reporting to work since March.

Hazard pay ordinances are unconstitutional. By mandating hazard pay, the City would improperly insert itself into the middle of the collective bargaining process protected by the National Labor Relations Act. Grocers have continued to operate, providing food and household items to protect public health and safety. In light of the widespread decrease in economic activity, there is also no reason to believe that grocery workers are at any particular risk of leaving their jobs, but even if there were such a risk, grocers would have every incentive to increase the workers' compensation or otherwise bargain with them to improve retention. A hazard pay ordinance would interfere with this process, which Congress intended to be left to be controlled by the free-play of economic forces. *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976).

For example, in *Chamber of Commerce of U.S. v. Bragdon*, the Ninth Circuit Court of Appeals held as preempted an ordinance mandating employers to pay a predetermined wage scale to employees on certain private industrial construction projects. 64 F.3d 497 (9th Cir. 1995). The ordinance's purported goals included "promot[ing] safety and higher quality of construction in large industrial projects" and "maintain[ing] and improv[ing] the standard of living of construction workers, and thereby improv[ing] the economy as a whole." *Id.* at 503. The Ninth Circuit recognized that this ordinance "differ[ed] from the [a locality's] usual exercise of police power, which normally seeks to assure that a minimum wage is paid to all employees within the county to avoid unduly imposing on public services such as welfare or health services." *Id.* at 503. Instead, the ordinance was an "economic weapon" meant to influence the terms of the employers' and their workers' contract. *Id.* at 501-04. The Ninth Circuit explained that the ordinance would "redirect efforts of employees not to bargain with employers, but instead, to seek to set specialized minimum wage and benefit packages with political bodies," thereby substituting a "free-play of economic forces that was intended by the NLRA" with a "free-play of political forces." *Id.* at 504.

While the City has the power to enact ordinances to further the health and safety of its citizens, it is prohibited from interfering directly in employers' and their employees' bargaining process by arbitrarily forcing grocers to provide wages that are unrelated to minimum labor standards, or the health and safety of the workers and the general public. While minimum labor standards that provide a mere backdrop for collective bargaining are consistent with the NLRA, local laws such as a hazard pay ordinance, which effectively dictate the outcome of the collective bargaining process, are preempted. An ordinance such as the one proposed here imposes unusually strict terms on a narrow band of businesses without any allowance for further bargaining. By enacting an ordinance such as this, the City would end any negotiations by rewriting contracts.

Hazard pay ordinances also violate the U.S. Constitution and California Constitution's Equal Protection Clauses (the "Equal Protection Clauses"). The Equal Protection Clauses provide

for “equal protections of the laws.” U.S. Const. amend. XIV, § 1; Cal. Const. art I, § 7(a). This guarantee is “essentially a direction that all persons similarly situated should be treated alike” and “secure[s] every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 439 (1985); *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000). No law may draw classifications that do not “rationally further a legitimate state interest.” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). By requiring that any classification “bear a rational relationship to an independent and legitimate legislative end, [courts] ensure that classifications are not drawn for the purpose of disadvantaging the group burdened by law.” *Romer v. Evans*, 517 U.S. 620, 633 (1996).

As discussed above, these ordinances unfairly target traditional grocery companies and ignore other generic retailers and other business that employ frontline workers. *See Fowler Packing Co., Inc. v. Lanier*, 844 F.3d 809, 815 (9th Cir. 2016) (“[L]egislatures may not draw lines for the purpose of arbitrarily excluding individuals,” even to “protect” those favored groups’ “expectations.”); *Hays v. Wood*, 25 Cal. 3d 772, 786-87 (1979) (“[N]othing opens the door to arbitrary action so effectively as to allow [state] officials to pick and choose only a few to whom they will apply legislation and thus to escape the political retribution that might be visited upon them if larger numbers were affected.”). Moreover, as an ordinance that would impinge on fundamental rights to be free of legislative impairment of existing contractual agreements, this ordinance would be subject to heightened scrutiny by courts. *See, e.g., Plyler v. Doe*, 457 U.S. 202, 216 (1982); *Hydrick v. Hunter*, 449 F.3d 978, 1002 (9th Cir. 2006); *Long Beach City Employees Ass’n v. City of Long Beach*, 41 Cal.3d 937, 948 (1986). The City’s unilateral modification of contractual terms governing wages and hours of grocery employees would go to the very heart of bargained-for agreements.

For the reasons discussed above, we respectfully request that the City Council reject any proposal for a hazard pay ordinance.

Sincerely,



William F. Tarantino

Cc: Morgan Hill City Council
John McKay
Gino Borgioli
Yvonne Martinez Beltran
Rene Spring

Consumer and Community Impacts of Hazard Pay Mandates

January 2021

Prepared for:

California Grocers Association

Prepared by:

Brad Williams, Chief Economist

Michael C. Genest, Founder and Chairman

Capitol Matrix Consulting

About the Authors

The authors are partners with Capitol Matrix Consulting (CMC), a firm that provides consulting services on a wide range of economic, taxation, and state-and-local government budget issues. Together, they have over 80 years of combined experience in economic and public policy analysis.

Mike Genest founded Capitol Matrix Consulting (originally Genest Consulting) in 2010 after concluding a 32-year career in state government, which culminated as Director of the California Department of Finance (DOF) under Governor Arnold Schwarzenegger. Prior to his four-year stint as the Governor's chief fiscal policy advisor, Mr. Genest held top analytical and leadership positions in both the executive and legislative branches of government. These included Undersecretary of the Health and Human Services Agency, Staff Director of the Senate Republican Fiscal Office, Chief of Administration of the California Department of Corrections and Rehabilitation, and Director of the Social Services section of California's Legislative Analyst's Office.

Brad Williams joined Capitol Matrix Consulting in 2011, after having served in various positions in state government for 33 years. Mr. Williams served for over a decade as the chief economist for the Legislative Analyst's Office, where he was considered one of the state's top experts on the tax system, the California economy, and government revenues. He was recognized by the Wall Street Journal as the most accurate forecaster of the California economy in the 1990s, and has authored numerous studies related to taxation and the economic impacts of policy proposals. Immediately prior to joining CMC, Mr. Williams served as a consultant to the Assembly Appropriations Committee, where he advised leadership of the majority party on proposed legislation relating to taxation, local government, labor, and banking.

Table of Contents

EXECUTIVE SUMMARY 4

INTRODUCTION..... 6

BACKGROUND — GROCERY IS A LOW-MARGIN, HIGH-LABOR COST BUSINESS 6

 COVID-19 TEMPORARILY BOOSTED PROFITS 6

 BUT THE INCREASES ARE SUBSIDING 7

 MANY STORES INCUR LOSSES IN NORMAL YEARS 8

 MANDATED WAGE INCREASES WOULD PUSH MOST STORES INTO DEFICITS..... 8

POTENTIAL IMPACTS ON CONSUMERS, WORKERS AND COMMUNITIES 8

 HIGHER COSTS PASSED ALONG TO CONSUMERS 9

 HIGHER COSTS ARE OFFSET BY JOB AND HOURS WORKED REDUCTIONS 9

 SOME COMMUNITIES WOULD LIKELY BECOME FOOD DESERTS 10

CONCLUSION 11

Executive Summary

Hazard-pay mandates passed in the City of Long Beach and under consideration in the City of Los Angeles and in other local jurisdictions would raise pay for grocery workers by as much as \$5.00 per hour. Since the average pay for grocery workers in California is currently about \$18.00 per hour, a \$5.00 increase would raise store labor costs by 28 percent, and have major negative impacts on grocery stores, their employees and their customers. Specifically:

- Average profit margins in the grocery industry were 1.4% in 2019, with a significant number of stores operating with net losses. While profits increased temporarily to 2.2% during early to mid 2020, quarterly data indicates that profit margins were subsiding to historical levels as 2020 drew to a close.
- Wage-related labor expenses account for about 16 percent of total sales in the grocery industry. As a result, a 28 percent increase in wages would boost overall costs 4.5 percent under the City of Los Angeles proposal of \$5.00 per hour. *This increase would be twice the size of the 2020 industry profit margin and three times historical grocery profit margins.*
- In order to survive such an increase, grocers would need to raise prices to consumers and/or find substantial offsetting cuts to their controllable operating expenses, which would mean workforce reductions. As an illustration of the potential magnitude of each of these impacts, we considered two extremes:
 - 1) All of the higher wage costs (assuming the \$5.00/hour proposal) are passed through to consumers in the form of higher retail prices:
 - This would result in a \$400 per year increase in grocery costs for a typical family of four, an increase of 4.5 percent.
 - If implemented in the City of Los Angeles, its residents would pay \$450 million more for groceries over a year.
 - The increase would hit low- and moderate-income families hard, particularly those struggling with job losses and income reductions due to COVID-19.
 - If implemented statewide, additional grocery costs would be \$4.5 billion per year in California.
 - 2) Retail prices to consumers are not raised and all the additional costs are offset through a reduction in store expenses:
 - Given that labor costs are by far the largest controllable expense for stores, it is highly likely that the wage mandates will translate into fewer store hours, fewer employee hours, and fewer jobs.
 - For a store with 50 full-time equivalent employees, it would take a reduction of 11 employees to offset the increased wage costs, or a 22% decrease in staff.
 - If the mandate were imposed statewide at \$5.00 per hour, the job loss would be 66,000 workers.

Consumer and Community Impacts of Hazard Pay Mandates

- If imposed in the City of Los Angeles, the job loss would be 7,000 workers.
- And in the City of Long Beach, the job impact of its \$4.00 per hour mandate would be 775 jobs.
- Stores could alternatively avoid job reductions by cutting hours worked by 22 percent.
- For the significant share of stores already operating with net losses, a massive government-mandated wage increase would likely result in store closures, thereby expanding the number of “food deserts” (i.e. communities with no fresh-food options).

Introduction

The Long Beach City Council has passed an ordinance that mandates grocers to provide a \$4.00 per hour pay increase – “hazard pay” – to grocery workers. The mandate expires in 120 days. Two members of the Los Angeles City have introduced a similar measure for a \$5.00 per hour increase for companies that employ more than 300 workers nationwide. Grocery workers in California currently earn about \$18.00 per hour.¹ Therefore, the Los Angeles proposal would increase average hourly pay to \$23.00 per hour, an increase of 28 percent. Several other cities in California have discussed \$5.00/hour proposals similar to Los Angeles.

This report focuses on the impact of hazard pay mandates on grocery store profitability and on the sustainability of an industry with traditionally low profit margins. It also assesses the potential impact of the proposed wage increases on consumers, especially lower-income consumers (a cohort already hit hard by the COVID lockdowns and business closures).

Background — Grocery is a Low-Margin, High-Labor Cost Business

The grocery business is a high-volume, low-margin industry. According to an annual database of public companies maintained by Professor Damodaran of New York University (NYU),² net profit margins as a percent of sales in the grocery industry are among the lowest of any major sector of the economy. Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) averaged 4.6 percent of sales in 2019, and the net profit margin (which accounts for other unavoidable expenses such as rent and depreciation) was just 1.4 percent during the year. This compares to the non-financial, economy-wide average of 16.6 percent for EBITDA and 6.4 percent for the net profit margin. The NYU estimate for public companies in the grocery industry is similar to the 1.1 percent margin reported by the Independent Grocers Association for the same year.³

COVID-19 temporarily boosted profits

In the beginning of the COVID-19 pandemic, sales and profit margins spiked as people stocked up on household items and shifted spending from eating establishments to food at home. According to data compiled by NYU, net profit margins in the grocery industry increased to 2.2 percent in early to mid 2020.⁴ Although representing a substantial year-to-year increase in profits, the 2.2 percent margin remains quite small relative to most other industries. This implies that even with the historically high rates of profits in 2020, there is little financial room to absorb a major wage increase.

¹ \$18.00 per hour is consistent with the responses we received to our informal survey. It is also consistent with published contract agreements we reviewed. See, for example, the “Retail Food, Meat, Bakery, Candy and General Merchandise Agreement, March 4, 2019 - March 6, 2022 between UFCW Union Locals 135, 324, 770, 1167, 1428, 1442 & 8 - GS and Ralphs Grocery Company.” In this contract, hourly pay rates starting March 2, 2021 for food clerks range from \$14.40 per hour (for first 1,000 hours) up to \$22.00 per hour (for workers with more than 9,800 hours). The department head is paid \$23.00 per hour. Meat cutter pay rates range from \$14.20 (for the first six months) to \$23.28 per hour (for those with more than 2 years on the job). The department manager is paid \$24.78 per hour. <https://ufcw770.org/wp-content/uploads/2020/08/Ralphs-Contract-2020.pdf>

² Source: Professor Aswath Damodaran, Stern School of Business, New York University. <http://pages.stern.nyu.edu/~adamodar/>

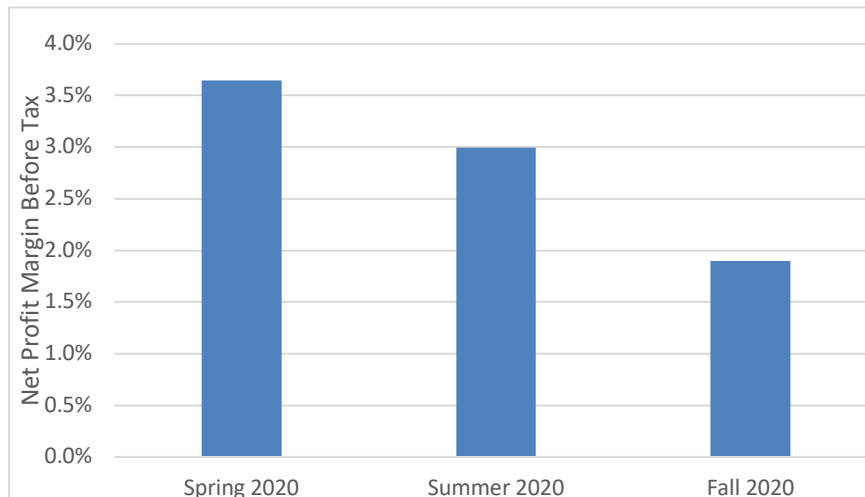
³ Source: “2020 Independent Grocer Financial Survey.” Sponsored by the National Grocer’s Association and FMS Solutions Holding, LLC

⁴ Supra 2.

But the increases are subsiding

Moreover, quarterly data indicates that the sales and profit increases experienced in early 2020 were transitory and were settling back toward pre-COVID trends as 2020 drew to a close. This quarterly trend is evident in quarterly financial reports filed by California's two largest publicly traded companies in the grocery business: The Kroger Company (which includes Ralphs, Food for Less, and Fred Meyers, among others) and Albertsons (which includes Safeway, Albertsons, and Vons, among others). Figure 1 shows that the average profit margin for these two companies was 3.6 percent of sales in the Spring of 2020, declining to 1.9 percent by the fourth quarter of the year.⁵ Monthly sales data contained in the 2020 Independent Grocer's Financial Survey showed a similar pattern, with year-over-year sales peaking at 68 percent in mid-March 2020, but then subsiding to 12 percent as of the first three weeks of June (the latest period covered by the survey).⁶

Figure 1
Combined Net Profit Margins During 2020
Albertsons and The Kroger Companies



While grocers continued to benefit from higher food and related sales during the second half of 2020, they also faced higher wholesale costs for food and housing supplies, as well as considerable new COVID-19 related expenses. These include expenses for paid leave and overtime needed to cover shifts of workers affected by COVID-19, both those that contracted the virus and (primarily) those that were exposed and needed to quarantine. Other COVID-19 costs include those for intense in-store cleaning, masks for employees, new plastic barriers at check-outs and service counters, and additional staffing and capital costs for scaling up of e-commerce, curbside and home delivery.

⁵ In their SEC 10-Q quarterly report for the four-month period ending in June 2020, Albertsons reported that consolidated sales were up 21.4 percent from the same period of 2019 and before-tax profits were 3.5 percent of total sales. In the three-month period ending in mid-September, the company reported year-over-year sales growth of 11.2 percent and before-tax profits equal to 2.5 percent of sales. In their 10-Q report filed for the three-month period ending in early December, Albertsons showed year-over-year sales growth of 9.3 percent, and profits as a percent of sales of just 1.0 percent. Data for the Kroger Company indicates that year-over-year sales growth subsided from 11.5 percent for the three-month period ending in May 2020 to 8.2 percent for the three-month period ending in August, and further to 6.3 percent for the three-month period ending in November. Profits as a percent of sales fell from 3.8 percent to 3.5 percent, and further to 2.8 percent during the same three quarterly periods. (Source: EDGAR Company Filings, U.S. Securities and Exchange Commission. <https://www.sec.gov/edgar/searchedgar/companysearch.html>).

⁶ Supra 3

Many stores incur losses in normal years

The 1- to 2-percent net profit levels cited above reflect industry averages. There is considerable variation around these averages among individual stores, with some doing better and some doing worse. As one indication of this variation, the 2020 Independent Grocer Financial Survey found that, while the nationwide average profit before tax for all stores was 1.1 percent of sales in 2019, about 35 percent of the respondents reported negative net profits during the year.⁷ This national result is consistent with feedback we received from California grocers, which reported that even in profitable years, anywhere from one-sixth to one-third of their stores show negative earnings. While chain operations can subsidize some store losses with earnings from other stores, a major mandated wage increase would eliminate earnings for even the most profitable stores, making cross-subsidies within supermarket chains much less feasible. As discussed below, the consequence would likely be a closure of some unprofitable stores.

Mandated wage increases would push most stores into deficits

The grocery business is very labor intensive. Labor is the industry's second largest cost, trailing only the wholesale cost of the food and other items they sell. According to a benchmark study by Baker-Tilly, labor expenses account for 13.2 percent of gross sales of grocers nationally.⁸ The Independent Grocer Survey, cited above, found that labor costs account for 15 percent of sales nationally and 18.4 percent for independent grocers in the Western region of the U.S.⁹

Respondents to our survey of California grocers reported that labor costs equate to 14 percent to 18 percent of sales revenues. For purposes of this analysis, we are assuming that the wage base potentially affected by the mandated hourly pay increase is about 16 percent of annual sales.¹⁰

A mandatory \$4-\$5 per hour increase, applied to an average \$18.00 per hour wage base, would increase labor costs by between 22 percent and 28 percent. This would, in turn, raise the share of sales devoted to labor costs from the current average of 16 percent up to between 19 percent and 20.5 percent of annual sales. The up-to-4.5 percent increase would be double the 2020 profit margin reported by the industry, and three times the historical margins in the grocery industry.

Potential Impacts on Consumers, Workers and Communities

In order to survive such an increase, grocers would need to raise prices to consumers and/or find substantial offsetting cuts to their operating expenses. As an illustration of the potential magnitude of each of these impacts, we considered two extremes: (1) all of the higher wage costs are passed through to consumers in the form of higher retail prices; and (2) prices are not passed forward and all the additional costs are offset through a reduction of jobs or hours worked.

⁷ Supra 3

⁸ White Paper, "Grocery Benchmarks Report", November 5, 2019, Baker Tilly Virchow Krause LLP.

⁹ Supra 3

¹⁰ This recognizes that not all labor costs would be affected by the hazard pay proposal. Grocers report that both in-store and warehouse staff would receive the increase, as would supervisors and managers, although some executive and administrative staff may not. In addition, costs for health coverage would probably not be affected, at least not immediately, but payroll taxes and some other benefit costs would be.

Higher costs passed along to consumers

Aggregate impacts. If a \$5.00 per hour wage increase were imposed statewide and all of the increase were passed along to customers in the form of higher product prices, Californians would face a rise in food costs of \$4.5 billion annually. If imposed locally, the City of Los Angeles's \$5 per hour proposal would raise costs to its residents by \$450 million annually, and the \$4.00 per hour increase in Long Beach would raise grocery costs to its residents by about \$40 million annually.¹¹

Impact on household budgets. The wage increase would add about \$400 to the annual cost of food and housing supplies for the typical family of four in California.¹² While such an increase may be absorbable in higher income households, it would hit low- and moderate-income households especially hard. The impact would be particularly harsh for those who have experienced losses of income and jobs due to the pandemic, or for those living on a fixed retirement income including many seniors. For these households, the additional grocery-related expenses will make it much more difficult to cover costs for other necessities such as rent, transportation, utilities, and healthcare.

According to the BLS Consumer Expenditure Survey, California households with annual incomes of up to \$45,000 already spend virtually all of their income on necessities, such as food, housing, healthcare, transportation and clothing.¹³ For many of these households, a \$33 per month increase in food costs would push them into a deficit.

These increases would add to the severe economic losses that many Californians have experienced as a result of government-mandated shutdowns in response to COVID-19. According to a recent survey by the Public Policy Institute of California, 44 percent of households with incomes under \$20,000 per year and 40 percent with incomes between \$20,000 and \$40,000 have reduced meals or cut back on food to save money.¹⁴ Clearly, imposing a \$4.5 billion increase in grocery prices would make matters worse, especially for these lower-income Californians.

Higher costs are offset by job and hours-worked reductions

If grocers were not able to pass along the higher costs resulting from the additional \$5/hour wage requirement, they would be forced to cut other costs to avoid incurring financial losses.¹⁵ Given

¹¹ Our estimates start with national U.S. Census Bureau estimates from the Annual Retail Trade Survey for 2018 (the most current data available), which indicates that nationwide sales by grocers (excluding convenience stores) was \$634 billion in 2018. We then apportioned this national data to California as well as the cities of Los Angeles and Long Beach based on relative populations and per-household expenditure data from the Consumer Expenditure Survey. We then updated the 2018 estimate to 2021 based on actual increases in grocery-related spending between 2018 and 2020, as reported by the U.S. Department of Commerce, and a projection of modest growth in 2021. Our estimate is consistent with the industry estimate of \$82.9 billion for 2019 that was by IBISWorld, as adjusted for industry growth in 2020 and 2021. (See IBISWORLD Industry Report, Supermarkets & Grocery Stores in California, Tanvi Kumar, February 2019.)

¹² Capitol Matrix Consulting estimate based on U.S. Bureau of Labor Statistics, Consumer Expenditure Report, 2019. <https://www.bls.gov/opub/reports/consumer-expenditures/2019/home.htm>

¹³ U.S. Bureau of Labor Statistics, Consumer Expenditure Survey, State-Level Expenditure Tables by Income. <https://www.bls.gov/cex/csxresearchtables.htm#stateincome>.

¹⁴ "Californians and Their Well-Being", a survey by the Public Policy Institute of California. December 2020. <https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-economic-well-being-december-2020/>

¹⁵ Circumstances where stores would not be able to pass forward high costs include communities where customers are financially squeezed by pandemic-related losses in jobs or wages, or where the increased is imposed locally and customers are able to avoid higher prices by shifting purchases to cross-border stores.

that labor costs are by far the largest controllable expense for stores, it is highly likely that the wage mandates will translate into fewer store hours, fewer employee hours, and fewer jobs. For a store with 50 full-time equivalent employees, it would take a reduction of 11 employees to offset the increased wages, which is about a 22 percent decrease in staff/hours.

Aggregate impacts. As an illustration, if the full California grocery industry were to respond to a statewide \$5.00 wage mandate by reducing its workforce, we estimate that up to 66,000 industry jobs would be eliminated. This is about 22 percent of the 306,000 workers in the grocery industry in the second quarter of 2020 (the most recent quarter for which we have detailed job totals).¹⁶ If the mandate were imposed locally in the City of Los Angeles, the impact would be about 7,000 workers, and in the City of Long Beach (at \$4.00 per hour), the impact would be about 775 jobs. Stores could alternatively avoid job reductions by cutting hours worked by 22 percent across-the-board.

Under these circumstances, some workers receiving the wage increases would be better off, but many others would be worse off because of reduced hours or layoffs. Customers would also be worse off because of reduced store hours, and fewer food choices and services.

Without any external constraints imposed by the local ordinances, it is likely some combination of higher prices and job and hour reductions would occur. Stores within some jurisdictions imposing the mandatory wage increase might be able to raise retail prices sufficiently to cover a significant portion of the mandated wage increase, thereby shifting the burden onto customers. However, the degree to which this would occur would vary from jurisdiction to jurisdiction, depending on the price-sensitivity of their customers and (if the mandate is imposed locally) the availability of shopping alternatives in neighboring communities that have not imposed the wage mandate.

Of course, if the local ordinances contain provisions prohibiting stores from cutting hours, then stores would be forced to pass costs on to consumers in the form of higher prices, or to close stores in those jurisdictions.

Some communities would become food deserts

Many of the up-to one third of stores already incurring losses may find it impossible to raise prices or achieve savings that are sufficient to offset the higher wage costs. For these stores, the only option would be store closure. Indeed, a consistent theme of feedback we received from California grocer representatives is that it would be extremely difficult, if not impossible, to justify continued operation of a significant portion of their stores following a government-mandated 28-percent increase in wages. This would leave some communities with fewer fresh food options.

According to the Propel LA: “The United States Department of Agriculture (USDA) defines a food desert as ‘a low-income census tract where either a substantial number or share of residents has low access to a supermarket or large grocery store.’ There are a large number of census tracts in Los Angeles County, including Antelope Valley and San Fernando Valley, that are considered to be food deserts. The population of food deserts is predominantly Hispanic or Latino, followed by Black and White, respectively.”¹⁷ The map also shows several food deserts in and around the City of Long Beach. The hazard pay proposal would exacerbate this problem.

¹⁶ Employment Development Department. Labor Market Information Division. Quarterly Census of Employment and Wages. <https://www.labormarketinfo.edd.ca.gov/qcew/qcew-select.asp>

¹⁷ “Food deserts in LA, an Interactive Map.” Propel LA, <https://www.propel.la/portfolio-item/food-deserts-in-los-angeles-county/>

Closing even one supermarket in many neighborhoods would result in residents having to commute significantly farther to find fresh and healthy food at reasonable prices. Tulane University studied the impact of food deserts and concluded that while the majority of items at smaller stores are priced higher than at supermarkets, price is a consideration in deciding where to purchase staple foods, and transportation from a food desert to a supermarket ranges from \$5 to \$7 per trip.¹⁸

Thus, mandating hazard pay would likely impose significant hardships on some communities, especially in lower-income areas. The loss of a grocery store means both fewer jobs for members of the community and higher costs for all residents in the community, who must pay higher local prices or incur additional time and expense to shop.

Conclusion

Hazard pay initiatives like those passed in the City of Long Beach, and proposed in the City of Los Angeles and in other local jurisdictions, would have far-reaching and negative consequences for businesses, employees and customers of grocery stores in the jurisdictions where levied. They would impose an up-to-28 percent increase in labor costs on an industry that is labor-intensive and operates on very thin profit margins. The increases would be more than double the average profit margins for the grocery industry in 2020, and triple the margins occurring in normal years, and thus would inevitably result in either retail price increases or major employment cutbacks by grocery stores, or a combination of both. If the increased costs were passed forward to consumers, a typical family of four in California would face increased food costs of \$400 per year. This would intensify financial pressures already being felt by millions of low- and moderate-income families, many of whom are already cutting back on basic necessities like food due to COVID-19-related losses in jobs and income. Establishments not able to recoup the costs by raising prices would be forced to reduce store hours and associated jobs and hours worked by employees. For a significant number of stores that are already struggling, the only option may be to shutter the store. This would be a “lose-lose” for the community. It would mean fewer jobs with benefits, less local access to reasonably-priced food, and more time and expense spent by customers that would have to travel greater distance to find grocery shopping alternatives.

¹⁸ “Food Deserts in America (Infographic),” Tulane University, School of Social Work, May 10, 2018. <https://socialwork.tulane.edu/blog/food-deserts-in-america>

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February 2, 2021

Re: Grocery Worker Hazard Pay Ordinances

To Whom It May Concern,

Our law firm represents UFCW Local 324. Local 324 has asked us to present our legal opinion on hazard pay ordinances that require large grocery stores to pay front-line workers a wage premium to reflect the hazardous conditions in which they work during the COVID-19 pandemic. Local 324 has asked us for our opinion because we have litigated many of the major cases on the constitutionality of municipal wage protections, including *Livadas v. Bradshaw*, 512 U.S. 107 (1994); *American Hotel & Lodging Association v. City of Los Angeles*, 834 F.3d 958 (9th Cir. 2016); *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137 (9th Cir. 2004); *Fortuna Enterprises, L.P. v. City of Los Angeles*, 673 F. Supp. 2d 1000 (C.D. Cal. 2008); and *Garcia v. Four Points Sheraton LAX*, 188 Cal. App. 4th 364 (2010).

Grocery worker hazard pay ordinances are fully consistent with the municipal living-wage and other premium-pay ordinances that federal and California courts have consistently upheld. They pose no constitutional problems whatsoever.

Hazard pay ordinances require that large grocery stores, superstores, and pharmacies pay their frontline workers an additional hourly wage premium—on top of their base wages and benefits—to compensate workers for the hazards that they face during the COVID-19 pandemic. Many grocery store chains and pharmacies introduced hazard, or “hero,” pay at the beginning of the pandemic, but phased out this premium pay in the Spring or Summer of 2020. So while major grocery and pharmacy companies like Kroger, Albertsons, and Walgreens have enjoyed substantial increases in revenues and profits during the pandemic, front-line workers who face the most significant risk from COVID-19 have not shared in this bounty.¹ Long Beach, Seattle, and Santa Monica have already passed hazard-pay ordinances, and San Jose, Berkeley, Santa Ana, Los

¹ See Molly Kinder, Laura Stateler and Julia Du, “Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic” BROOKINGS INSTITUTE (November 2020), at <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

Grocery Worker Hazard Pay Ordinances

February 2, 2021

Page 2 of 5

Angeles, West Hollywood, Santa Clara, and San Mateo are considering them as well.

Shortly after the City of Long Beach passed its ordinance, the California Grocers Association (“CGA”) filed a lawsuit in federal court, claiming that the ordinance is unconstitutional. The federal judge assigned to the case has already denied CGA’s request to enjoin the ordinance from going into effect. We are certain that the judge will dismiss the lawsuit at the earliest opportunity.

CGA raises three legal theories in its lawsuit, all of which have been decisively rejected by the Supreme Court and by lower federal and state courts.

Equal Protection

First, CGA claims that by targeting large grocery stores, the Long Beach ordinance violates the constitutional Equal Protection Clause. But legislative classifications in economic regulation like Long Beach’s ordinance are subject to highly deferential rational-basis review under the Equal Protection Clause. *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488–489 (1955); *Hodel v. Indiana*, 452 U.S. 314, 331–332 (1981); *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 426 (2010). Rational basis review is met if a court determines that there is “any reasonably conceivable state of facts that could provide a rational basis for the classification.” *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993).

The Long Beach ordinance’s application to large grocery stores easily passes rational basis scrutiny. It targets businesses that employ workers deemed essential by California who face particular risks of COVID-19 infection, but excludes smaller businesses that may be less able to afford the mandated pay. Classifications targeting particular businesses like those in the Long Beach ordinance are perfectly constitutional. *See, e.g., International Franchise Ass’n, Inc. v. City of Seattle*, 803 F.3d 389, 407 (9th Cir. 2015) (upholding higher municipal minimum-wage ordinance that applied to national franchises: “The district court properly cited the rational-basis standard. . . . It is legitimate and rational for the City to set a minimum wage based on economic factors, such as the ability of employers to pay those wages.”); *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir. 2004) (upholding over equal-protection challenge a municipal living-wage ordinance that applied only to a small number of businesses located in the Berkeley Marina); *California Grocers Assn. v. City of Los Angeles*, 52 Cal.4th 177, 211 (2011) (upholding municipal job retention requirement targeting large grocery stores in Los Angeles); *Associated Builders and Contractors of California Cooperation Committee, Inc. v. Becerra*, 231 F.Supp.3d 810, 827 (S.D. Cal. 2017) (applying rational basis review to prevailing wage law modification); *Fortuna Enterprises, L.P. v. City of Los Angeles*, 673 F. Supp. 2d 1000, 1013 (C.D. Cal. 2008) (upholding municipal minimum-wage law that applied only to hotels with more than 50 rooms located near Los Angeles International Airport).

In its lawsuit, CGA has argued that the Long Beach ordinances violates its “fundamental right” to contract with its employees on whatever basis it wants, including the wages that it will pay them. It claims that the ordinance should therefore be reviewed under the “strict scrutiny” test, which applies to the denial of fundamental rights like the right to speak, the right to be free

Grocery Worker Hazard Pay Ordinances

February 2, 2021

Page 3 of 5

of discrimination, and the right to vote. Of course, if this legal argument were correct, then the government could never mandate minimum wages, overtime, rest breaks, or safety protections that “interfered” with a private employer’s contract with its employees to provide something inferior. That has not been the law for nearly 100 years, since the United States Supreme Court upheld New Deal economic legislation and brought an end to the so-called *Lochner* era of jurisprudence. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 392-93 (1937) (upholding Washington State minimum-wage law over equal protection challenged based on alleged “fundamental right” to freedom of contract). CGA’s attempt to revive a legal theory that has been dead since the 1930s and contradicts decades of intervening Supreme Court and federal court precedent is bizarre and will not succeed.

Contracts Clause

CGA also argues that laws mandating that it pay an additional premium wage to grocery workers violates the Contracts Clause in the U.S. Constitution. The Contracts Clause provides that “[n]o state shall ... pass any ... Law impairing the Obligation of Contracts,” U.S. Const. art. I, § 10, cl. 1, thereby “restrict[ing] the power of States to disrupt contractual arrangements.” *Sveen v. Melin*, 138 S.Ct. 1815, 1821 (2018). But while this text is “facially absolute,” the Supreme Court has long held that “its prohibition must be accommodated to the inherent police power of the State ‘to safeguard the vital interests of its people.’ ” *Energy Reserves Group, Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983) (quoting *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 434 (1934)).

Whether a regulation violates the Contract Clause is governed by a three-step inquiry: “The threshold inquiry is ‘whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.’ ” *Energy Reserves*, 459 U.S. at 411 (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978)). If this threshold inquiry is met, the court must inquire whether “the State, in justification, [has] a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem.” *Energy Reserves*, 459 U.S. at 411–12 (citation omitted). Finally, the court must inquire “whether the adjustment of ‘the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation’s adoption.’ ” *Id.* at 412–13 (quoting *United States Trust Co. v. New Jersey*, 431 U.S. 1, 22 (1977)).

The premium-pay mandated by the Long Beach ordinance does not “substantially impair” any retailer’s employment contracts under the Contracts Clause. Even if the Ordinance impaired grocery stores’ contractual ability to deny their workers hazard pay, any impairment would not be “substantial” in light of the extensive regulation of employee wages that already exist. *Energy Reserves*, 459 U.S. at 411 (“In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past.”). For this reason, courts regularly reject Contracts Clause challenges to economic regulation of the employment relationship. See *RUI One*, 371 F.3d at 1150 (upholding municipal living-wage ordinance over Contracts Clause challenge); *Olson v. California*, No. CV1910956DMGRAOX,

Grocery Worker Hazard Pay Ordinances

February 2, 2021

Page 4 of 5

2020 WL 6439166, at *11 (C.D. Cal. Sept. 18, 2020) (rejecting contracts-clause challenge to AB5’s classification of rideshare drivers as employees “[b]ecause “[s]tates possess broad authority under their police powers to regulate the employment relationship to protect workers within the State[.]””) (internal citation omitted).

Businesses in California are already heavily regulated in the wages that they may pay, through state and local minimum-wage laws, overtime laws, paid meal period requirements, and sick pay requirements to name a few. No modern court has held that an employer may avoid a statutory minimum- or premium-pay regulation by pointing to its private employment contracts.

Moreover, even if CGA could show that the hazard-pay ordinance “substantially impaired” its employment contracts to pay something less, “[u]nless the State itself is a contracting party, ‘as is customary in reviewing economic and social regulation, . . . courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.’ ” *Energy Reserves*, 459 U.S. at 412–13 (quoting *United States Trust Co.*, 431 U.S. at 22–23); *Keystone Bituminous Coal Ass’n v. DeBenedictis*, 480 U.S. 470, 506 (1987); *RUI One Corp.*, 371 F.3d at 1150 (upholding a municipal living wage ordinance that altered contractual expectations because “[t]he power to regulate wages and employment conditions lies clearly within a state’s or a municipality’s police power.”); *Lyon v. Agusta S.P.A.*, 252 F.3d 1078, 1086 (9th Cir. 2001) (“[T]he Supreme Court has not blanched when settled *economic expectations* were upset, as long as the legislature was pursuing a rational policy.”).

As with CGA’s equal protection challenge, Long Beach’s hazard-pay requirement meets the rational-basis test that applies to economic regulation affecting purely private contracts.

Federal Labor Preemption

Finally, CGA argues in its lawsuit that the Long Beach ordinance is preempted by the National Labor Relations Act because it allegedly conflicts with unionized grocery stores’ collective bargaining with unions over pay. This argument misunderstands the relationship between federal labor law and substantive employment rights like those bestowed by hazard-pay ordinances.

Under the *Machinists* doctrine of NLRA preemption, “[s]tates are . . . prohibited from imposing additional restrictions on economic weapons of self-help, such as strikes and lockouts, unless such restrictions presumably were contemplated by Congress.” *Golden State Transit Corp. v. City of Los Angeles*, 475 U.S. 608, 614-615 (1986) (emphasis added, citations omitted). The Supreme Court has repeatedly rejected the notion that state substantive employment standards—like minimum wages, overtime, severance pay, and other wage premiums—violate this doctrine because they give unionized workers something that they might otherwise have to bargain for. The NLRA regulates the *process* of collective bargaining, not the substantive outcomes of that bargaining. Both employers and unions come to the bargaining table against a backdrop of state employment regulation, both favorable to employers (the at-will employment presumption) and to workers (minimum-wage laws). *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 753-758 (1985) (“Minimum state labor standards affect union and

Grocery Worker Hazard Pay Ordinances

February 2, 2021

Page 5 of 5

nonunion employees equally, and neither encourage nor discourage the collective-bargaining processes that are the subject of the NLRA. . . . Rather, they are minimum standards ‘independent of the collective-bargaining process [that] devolve on [employees] as individual workers, not as members of a collective organization.’”); *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 21 (1987) (fact “that a state statute pertains to matters over which the parties are free to bargain cannot support a claim of pre-emption”). State and local substantive employment standards do not interfere with collective bargaining and are not preempted.

Based on this Supreme Court precedent, federal courts have repeatedly rejected claims that the NLRA preempts minimum-wage laws and other employment standards. *American Hotel & Lodging Association v. City of Los Angeles*, 834 F.3d 958, 965 (9th Cir. 2016) (“It is no surprise, then, that ‘state minimum benefit protections have repeatedly survived Machinists preemption challenges,’ because they do not alter the process of collective bargaining”); *Associated Builders & Contractors of So. Calif. v. Nunn*, 356 F.3d 979, 990 (9th Cir. 2004) (minimum wages and benefits for state-registered apprentices on public and private construction projects not preempted; “‘state minimum benefit protections have repeatedly survived Machinists preemption challenges’”); *National Broadcasting Co., Inc. v. Bradshaw*, 70 F.3d 69, 71 (9th Cir. 1995) (state overtime protection that applied in broadcast industry not preempted under *Machinists*); *Viceroy Gold Corp. v. Aubry*, 75 F.3d 482, 489 (9th Cir. 1996) (overtime regulation that applied only to miners was not preempted); *Fortuna Enters.*, 673 F.Supp.2d at 1006-12 (living-wage law not preempted under *Machinists*).

CGA’s constitutional claims against the Long Beach ordinance are baseless and will soon be dismissed. The fact that this employer association filed a meritless lawsuit should not be a reason to delay providing grocery workers fair compensation for the risks they are taking on our behalf.

Sincerely,



Paul L. More

Item # 14

AGENDA DATE: 03/17/2021

SUPPLEMENT # 5

From: [christine sullivan](#)
To: [CC Public Comment](#)
Subject: Grocery workers pay
Date: Wednesday, March 17, 2021 5:30:00 PM

Hello I work at a grocery store, here in Morgan Hill. We have worked through the hoarding and even now with the pandemic still a threat. I worry the I will take the curse home to a husband with heart problems and a son with disabilities. I feel while others shelter in place I work to stock the shelves to help our customer's get the Essentials that they need. It would be a great help to have that extra money and show that we are important to our community too. thank you
Christine S

Sent from my iPhone

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.

From: [Teresa Brozic](#)
To: [CC Public Comment](#)
Subject: The hazard raise
Date: Wednesday, March 17, 2021 6:36:15 PM

I don't have a choice to work from home. My dad lost his job months ago and my family is struggling. I expose myself to hundreds of people everyday and I put myself at risk. I think we deserve this raise because of how much we are sacrificing our health just to make minimum wage which is not enough to survive in this area.

Sincerely,
Teresa Brozic

Sent from my iPhone

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Item # 15
AGENDA DATE: 03/17/2021
SUPPLEMENT # 1

From: [Rosy Bergin](#)
To: [CC Public Comment](#)
Subject: Traffic Calming in Downtown
Date: Wednesday, March 17, 2021 2:37:05 PM

Dear Council,

As the Downtown continues to grow and thrive, I encourage the Council to revisit the need for implementing Traffic Calming measures.

Much work was completed by consultants and city staff that showed the need and solutions for Traffic Calming.

Please revisit this issue as it becomes increasingly relevant to the safety and success of our Downtown.

Sincerely,

Rosy Bergin
Rosy's at the Beach

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.

live+love+léal

Item # 15

AGENDA DATE: 03/17/2021

SUPPLEMENT # 2

March 17, 2021

Morgan Hill City Council
17575 Peak Avenue
Morgan Hill, CA 95037

RE: Agenda Item #15 – Downtown Traffic Calming

Dear City Council,

I would like to sincerely thank the city administration for placing this item on the City Council meeting agenda for the regular council meeting to be held on Wednesday, March 17, 2021.

As you know, MOHI Social at Granada Theatre is an experienced-based hospitality venue. We have struggled during this pandemic to pivot, evolve, and keep our doors open and our employees employed. We have managed to create an atmosphere that is attracting visitors and locals to the downtown Morgan Hill area. However, our biggest challenge is the loud traffic, speeding vehicles and, vehicle exhaust within feet of our patrons who are trying to enjoy their dining experience.

I appreciate that we have seen a noticeably increased police presence downtown. We have received positive comments from our customers who have noticed an increase in police patrolling the area in recent weeks. However, we are greatly concerned that the public, pedestrians, and our patrons at MOHI Social are at great risk unless traffic calming measures are implemented. Without additional measures being taken in terms of traffic calming, I fear we are an accident waiting to happen.

I strongly urge the City Council to implement immediate traffic calming measures in the downtown Morgan Hill area. Thank you for your consideration.

Sincerely,

Frank P. Leal
Owner

Item # 15

AGENDA DATE: 03/17/2021

SUPPLEMENT # 3

From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: City Council Item 15 Request: March 17th , 2021
Date: Wednesday, March 17, 2021 6:19:17 PM

From: Nick Gaich <[REDACTED]>

Sent: Wednesday, March 17, 2021 5:49 PM

To: Michelle Bigelow <Michelle.Bigelow@morganhill.ca.gov>; Nick Gaich <[REDACTED]>
>

Subject: City Council Item 15 Request: March 17th , 2021

I respectfully request that Item 15, CONSIDER COUNCIL INITIATED AGENDA ITEM FOR DOWNTOWN TRAFFIC CALMING REPORT be agendize, as downtown and city-wide economic factors, business development and resident considerations must be clearly vetted and socialized based upon evidence-based information and community insights.

I would also like to acknowledge Chief Palsgrove for establishing the Downtown Police Presence Pilot. The pilot has demonstrated an immediate positive effect on our business and customers. I am hopeful that the pilot when completed can be transitioned to permanent status, as the benefits for all our downtown businesses, residents and extended community will be recognized as a pivotal component of the City of Morgan Hill's commitment to create a vibrant downtown environment.

Thanks for your consideration.

Nick Gaich
Co-Owner
Craft Roots-Vegan Bar and Grill

--

Nick Gaich
Co-Owner Craft Roots

WARNING: This message is from an external user. Confidential information such as social security numbers, credit card numbers, bank routing numbers, gift card numbers, wire transfer information and other personally identifiable information should not be transmitted to this user. For question, please contact the Morgan Hill IT Department by opening a new helpdesk request online or call 408-909-0055.



Regular Meeting Agenda

City Council

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

Wednesday, March 17, 2021 7:00 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>](mailto:ccpubliccomment@morganhill.ca.gov)

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

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

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2

City Clerk Michelle Bigelow

PRESENTATIONS

YAC presentation- Asset # 3- Other Adult Relationships

PROCLAMATIONS

Proclaiming March 31, 2021 as Cesar Chavez Day

Proclaiming the month of March 2021 as American Red Cross Month

Proclaiming the month of March 2021 as Women's History Month

CITY COUNCIL REPORTS

Council Member Borgioli

CITY MANAGER'S REPORT

City Manager Christina Turner

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin

OTHER REPORTS

PUBLIC COMMENT

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

ADOPTION OF AGENDA

CONSENT CALENDAR

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

Time Estimate for Consent Calendar: 1 - 10 Minutes

1. APPOINT EMERGENCY STANDBY COUNCIL

Recommendation:

Appoint the updated Emergency Standby Council membership.

2. APPROVE INSTALLATION OF COMMEMORATIVE PLAQUE AT THE CIVIC CENTER

Recommendation:

1. Approve the installation of a commemorative plaque honoring Japanese American World War II veterans;
2. Authorize the City Manager or designee to determine final location within the Civic Center; and
3. Authorize the City Manager to accept donation of the plaque.

3. APPROVE THE FINAL MAP AND SUBDIVISION IMPROVEMENTS AGREEMENT FOR JASPER - TRACT NO. 10545

Recommendation:

1. Approve the Final Map;
2. Approve and authorize the City Manager to execute and administer the Subdivision Improvements Agreement with City Ventures Homebuilding, LLC; and
3. Authorize the recordation of the Final Map and Subdivision Improvements Agreement.

4. ADOPT RESOLUTION APPROVING MEMORANDUM OF UNDERSTANDING ACCEPTING PROPOSITION 56 TOBACCO GRANT FROM STATE OF CALIFORNIA DEPARTMENT OF JUSTICE

Recommendation:

Adopt resolution authorizing the City Manager to execute and administer the Memorandum of Understanding (MOU) with the California Department of Justice to accept grant funds for the Proposition 56 Tobacco Grant for a total amount of \$431,728 over two fiscal years.

5. APPROVE THE FEBRUARY 24, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE MARCH 3, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

7. AUTHORIZE THE CITY MANAGER TO EXECUTE AND ADMINISTER A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT IN THE AMOUNT OF \$350,121 AND AWARD OF BRITTON MIDDLE SCHOOL PEDESTRIAN ENHANCEMENT PROJECT IN THE AMOUNT OF \$748,729 TO REDGWICK CONSTRUCTION CO

Recommendation:

1. Authorize the City Manager to execute and administer a Community Development Block Grant agreement in the amount of \$350,121 for the Britton Middle School Pedestrian Enhancement Project;
2. Approve Britton Middle School Pedestrian Enhancement Project plans and specifications;
3. Award contract to Redgwick Construction Co. for the Britton Middle School Pedestrian Enhancement Project in the amount of \$748,729;
4. Authorize expenditure of construction contingency funds not to exceed \$112,310; and
5. Authorize the City Manager to execute and administer the construction contract with Redgwick Construction Co.

8. EXTEND TERMS OF FOUR (4) MEMBERS ON THE LIBRARY, CULTURE & ARTS COMMISSION

Recommendation:

Extend the terms of four commissioners to April 21, 2021.

9. RATIFY CITY POSITION ON PENDING LEGISLATION SENATE BILL 9 - REQUIRING A LOCAL GOVERNMENT TO MINISTERIALLY APPROVE A HOUSING DEVELOPMENT CONTAINING TWO RESIDENTIAL UNITS IN SINGLE-FAMILY RESIDENTIAL ZONES.

Recommendation:

Ratify City's position on pending State Legislation Senate Bill 9.

10. RATIFY CITY POSITION ON PENDING LEGISLATION SENATE BILL 278 - PUBLIC EMPLOYEES' RETIREMENT SYSTEM. DISALLOWED COMPENSATION. BENEFIT ADJUSTMENTS

Recommendation:

Ratify City's position on pending State Legislation Senate Bill 278 - Public Employees' Retirement System. Disallowed compensation. Benefit adjustments.

PUBLIC HEARING

11. ADOPT A RESOLUTION ESTABLISHING FEES FOR AMBULANCE AND EMERGENCY MEDICAL SERVICES

Recommendation:

1. Open/Close public hearing; and
2. Adopt resolution establishing fees for ambulance and emergency medical services.

Estimated Time: 15 Minutes

OTHER BUSINESS

12. ADOPT RESOLUTION CONDEMNING ALL FORMS OF HATE AND VIOLENCE INCLUDING THE JANUARY 6, 2021 RIOTS AT THE UNITED STATES CAPITOL BUILDING IN WASHINGTON D.C

Recommendation:

Adopt resolution condemning all forms of hate and violence including the January 6, 2021 riots at the United States Capitol Building in Washington D.C.

Estimated Time: 30 Minutes

13. PROVIDE INPUT ON POLICY OPTIONS RELATING TO TREE PROTECTION

Recommendation:

Provide guidance to staff on the type and scope of policy changes the City Council is interested in considering relating to the protection of trees in the community.

Estimated Time: 30 Minutes

14. CONSIDER COUNCIL INITIATED AGENDA ITEM FOR POTENTIAL HAZARD PAY ORDINANCE

Recommendation:

Consider whether to direct the City Attorney to return with a Council Agenda Item with a potential ordinance regulating hazard pay for grocery workers in the City of Morgan Hill.

Estimated Time: 15 Minutes

15. CONSIDER COUNCIL INITIATED AGENDA ITEM FOR DOWNTOWN TRAFFIC CALMING REPORT

Recommendation:

Consider whether to direct staff to return with a Council Agenda Item on Downtown traffic calming, including the Monterey Road Complete Streets/Lane Reduction Program and various other alternatives.

Estimated Time: 15 Minutes

FUTURE COUNCIL INITIATED AGENDA ITEMS

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

ADJOURNMENT

NOTICE

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

PUBLIC COMMENT

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

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

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

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

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

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

SUSTAINABLE MORGAN HILL



VISION

To sustain a safe, 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.





March

Developmental Asset #3

Other Adult Relationships

Young person receives support from
three or more non-parent adults.



March

Complementary Asset #4

Caring Neighborhood

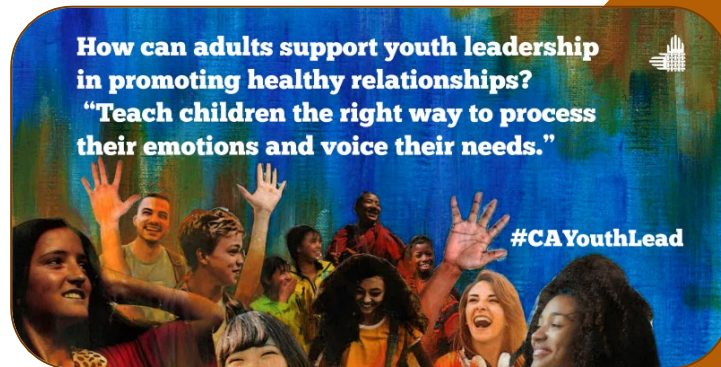
Young person experiences caring neighbors.

Elizabeth Joseph, Active Member



→ Why do I feel as though adult relationships are important?

- ◆ Sense of support
- ◆ Healthy social and emotional development
- ◆ Advice, wisdom, guidance during tough times



Alida Watkins, Record Keeper



- How do other adult relationships influence me?
- ◆ A different perspective
 - ◆ Building bonds for the future

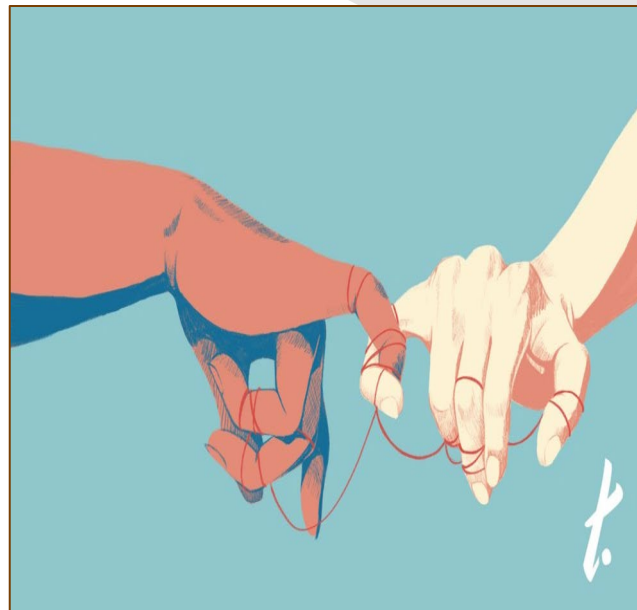


Kalena Santillanes, Active Member



→ How do I maintain a healthy relationship with non-parent adults?

- ◆ Communication
- ◆ Honesty
- ◆ Be dependable
- ◆ Mutual respect



Maintaining a Healthy Relationship with Youth



- ❖ Transparency
- ❖ Encouragement
- ❖ Trust





Questions to Council:



- What do you do as adults to stay connected with the youth?
- Why do you feel that it is important for youth to have relationships outside the family?





City Council Meeting Item #11: Resolution Establishing Fees for Ambulance and Emergency Medical Services



March 17, 2021

Background



- Emergency Medical Services (EMS) Agency of the County of Santa Clara is responsible for regulating advanced life support (ALS) and ambulance providers
- Morgan Hill Fire Department, via an agreement with the County, provides 911 emergency medical services
- Rural Metro/AMR has been the County's primary ambulance service provider since 2011

Background (Cont'd)



- In early 2019 – Rural Metro/AMR renegotiated agreement with County which required changes to service levels and lowered response time performance
- In July 2019, City Council accepted donation of a surplus ambulance from the Monterey County Regional Fire District
- City's ambulance is an additional resource to transport the public in the City as needed, under approved County guidelines, during high demand of 9-1-1 ambulance resources

Billing and Fees



- Medical billing is complex but a key component of providing transport services
- City has contracted with R1 RCM, also known as Digitech, to provide billing services as they possess the needed expertise and experience
- Per County agreement, City is authorized to provide ambulance transport services but billing for these costs of services is sole responsibility of the City and can only bill at rates established by the County

Proposed Fees

Table 1: User Fees

Service Levels	<i>County's Established Rate</i>	<i>City's Proposed Rate</i>
ALS - 1	\$ 1,885.41	\$ 1,885.41
ALS - 2	1,885.41	1,885.41
Mileage	61.10	61.10
Hourly Ambulance Standby	238.60	238.60
Hourly Paramedic - Individual	119.30	65.93
Hourly EMT - Individual	79.53	-

Proposed Fees (Cont'd)

Table 2. User Fee Schedule for Disposable Supplies and Medications

Equipment/Supplies	
AIRWAY/NASAL	\$36.66
AIRWAY/ORAL	\$20.00
BAG VALVE MASK	\$121.65
BANDAGE, ELASTIC	\$9.83
BANDAGES TRIANGULAR	\$16.66
BED PAN	\$16.66
BLANKET, DISPOSABLE	\$39.99
BLOOD GLUCOSE TEST	\$33.33
BURN SHEET	\$61.66

Please see Table 2 of Resolution for complete itemized list

Recommendation



1. Open/Close public hearing; and
2. Adopt resolution establishing fees for ambulance transport and emergency medical services.

Supplement & Presentation List

March 17, 2021

City Council Meeting

Supplements

Item 02- Updated Attachment –Plaque – Updated letter

Item 02- Supplement 1 – Plaque - Editorial

Item 14- Supplement 1 – Hazardous Pay – Letter from Californian Grocers Association

Item 14- Supplement 2 – Hazardous Pay – Letter from William F. Tarantino

Item 14- Supplement 3 – Hazardous Pay –Consumer and Community Impacts of Hazard Pay Mandates

Item 14- Supplement 4 – Hazardous Pay – Letter from Paul L. Moore

Item 14- Supplement 5 – Hazardous Pay – Email from Christine Sullivan

Item 14- Supplement 6 – Hazardous Pay – Email from Teresa Brozic

Item 15- Supplement 1 – Street Calming- Email from Rosy Bergin

Item 15- Supplement 2 – Street Calming – Letter from Frank Leal

Item 15- Supplement 2 – Street Calming – Email from Nick Gaich

Presentations

YAC Presentation

Item 11- Ambulance Fees- Staff Presentation



March

Developmental Asset #3

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Young person receives support from
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March

Complementary Asset #4

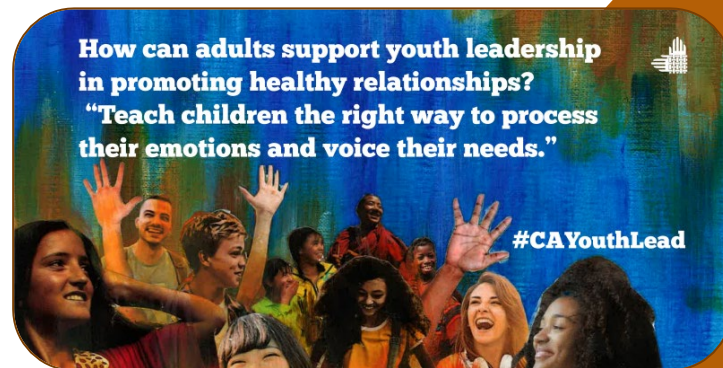
Caring Neighborhood

Young person experiences caring neighbors.

Elizabeth Joseph, Active Member



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Alida Watkins, Record Keeper



- How do other adult relationships influence me?
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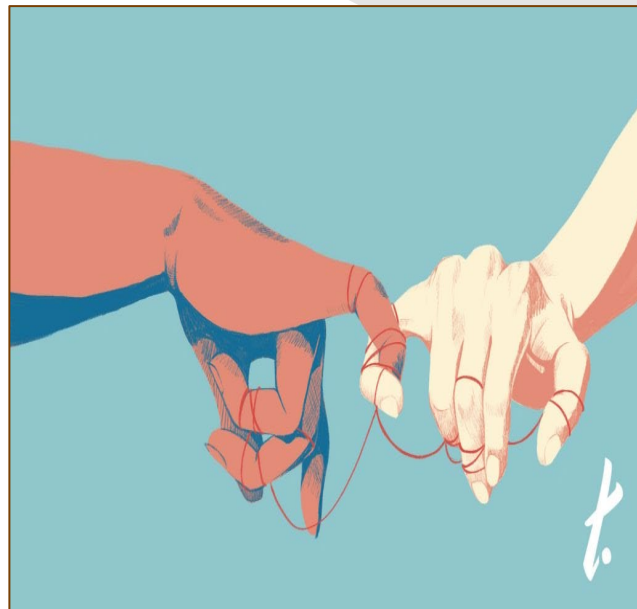


Kalena Santillanes, Active Member



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- ❖ Trust





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- What do you do as adults to stay connected with the youth?
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