



Special - Regular Meeting Agenda
City Council

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

Wednesday, April 7, 2021 5:00 p.m.

Virtual Meeting

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

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

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

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
 - In order to speak, please be sure that your version of Zoom is up to date.
- 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.

SPECIAL/REGULAR MEETING

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

5:00 p.m. Workshop
7:00 p.m. Regular Meeting

SPECIAL MEETING

5:00 p.m. Workshop

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
City Clerk Michelle Bigelow

WORKSHOP

City Council Workshop to discuss the Morgan Hill Responsible Growth Coalition's (MHRGC) Initiative Petition, which was certified for sufficiency on March 3, 2021 by the City Council, review Initiative's impact report and a new collaborative ordinance that could replace the MHRGC Initiative and further protect Morgan Hill from potential large truck/high traffic uses. The collaborative ordinance could eventually substitute for the MHRGC Initiative on the November 2022 ballot.

REGULAR MEETING

7:00 p.m.

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

CITY COUNCIL REPORTS

Council Member Martinez Beltran

CITY MANAGER'S REPORT

City Manager Christina Turner

TEAMMATE RECOGNITIONS

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. ACCEPT 2020 PAVEMENT RESURFACING PROJECT

Recommendation:

1. Accept as complete, the 2020 Pavement Resurfacing Project, in the final amount of \$1,955,908;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

2. ACCEPT UPDATE REGARDING PAVEMENT REHABILITATION PLANNING

Recommendation:

Receive update on pavement rehabilitation planning.

3. APPROVE URBAN FOREST MANAGEMENT PLAN

Recommendation:

Approve the Urban Forest Management Plan.

4. APPROVE PURCHASE OF UTILITIES REPLACEMENT VEHICLES AND EQUIPMENT

Recommendation:

1. Approve the purchase of four (4) Utility Division trucks from National Auto Fleet Group in the amount of \$218,411 through a Sourcewell cooperative bid contract;
2. Approve the purchase of a trash pump from Thompson Pump in the amount of \$46,027 through a Sourcewell cooperative bid contract;
3. Authorize City Manager to approve a purchase order in the amount of \$218,411 with National Auto Fleet Group and a separate purchase order in the amount of \$46,027 to Thompson Pump;
4. Declare vehicles U07114, U07137, W07115, W08115, and equipment W97335 to be surplus; and
5. Authorize the disposal of the surplus vehicles and equipment in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

5. APPROVE THE MARCH 17, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE MARCH 24, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

7. AWARD AQUATICS CENTER POOL DECK RESURFACING AND REPAIR PROJECT TO FLEXGROUND SURFACES, INC.

Recommendation:

1. Award contract to Flexground Surfaces, Inc. in the amount of \$69,360; and authorize the expenditure of contingency funds not to exceed \$6,936 for a total authorization of \$76,296; and
2. Authorize the City Manager to approve the sole source selection of Flexground Surfaces, Inc., and execute and administer that certain contract with Flexground Surfaces, Inc.

8. RATIFY COMMUNITY POWER RESILIENCY GRANT ACCEPTANCE IN THE AMOUNT OF \$300,000 FROM STATE OF CALIFORNIA OFFICE OF EMERGENCY SERVICES FOR THE CENTENNIAL RECREATION CENTER BATTERY BACKUP PROJECT

Recommendation:

1. Ratify acceptance of Community Power Resiliency Grant from the State of California Office of Emergency Services (CalOES) in the amount of \$300,000; and
2. Authorize the City Manager to execute and administer all related documents.

PUBLIC HEARING

9. APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2021

Recommendation:

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2021.

Estimated Time: 10 Minutes

OTHER BUSINESS

10. ADOPT RESOLUTION PLACING THE MORGAN HILL RESPONSIBLE GROWTH COALITION INITIATIVE PETITION ON THE NOVEMBER 2022 BALLOT AND ADOPT URGENCY ORDINANCE REGULATING DOCK-HIGH-DOORS ON BUILDINGS WITH OVER 75,000 SQUARE FEET OF FLOOR AREA AND CEILING HEIGHT GREATER THAN 34 FEET

Recommendation:

1. Adopt resolution placing 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 on the November 2022 ballot;
2. Adopt the alternative ordinance as an urgency ordinance; and
3. Direct the Planning Commission to make recommendations for permanent ordinance regulating large building design, including maximum dock-door-ratios for certain buildings, and consider placement of the alternative ordinance on the November 2022 ballot.

Estimated Time: 90 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.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

REAL PROPERTY NEGOTIATIONS

Pursuant to:	Government Code Section 54956.8
Property:	APN 726-13-052
Agency Negotiators:	Christina Turner, Chris Ghione, and John Lang
Negotiating Parties:	Compass Management
Under Negotiation:	Price and Terms of Sale or Lease

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 Manager's Recognition Report



Communication: Teammate Recognitions (CITY MANAGER'S REPORT)

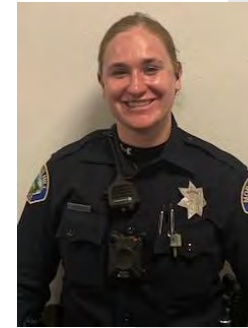
New Hires



Jessica Dundic
Public Safety Dispatcher



Vanesa Fernandez
Police Records Specialist



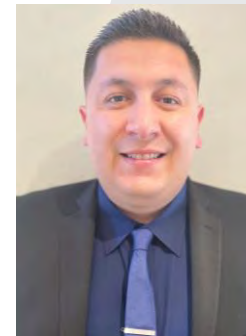
Charlotte Siboldi
Police Officer



Brandon Grimes
Police Officer



Tony Lee
Police Officer



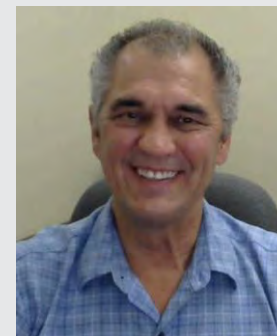
Martin Rocha
Police Officer



James Son
Plan Check Engineer



James Sylvain
Deputy Director for Utilities Services



Anthony Karl
Utility Supervisor

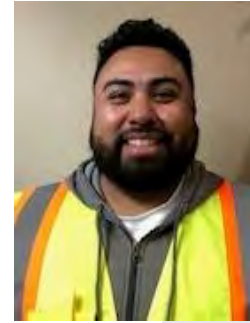
New Hires



Mathew Schreiber
Utility Worker I



Ruben Gonzales
Utility Worker I



Louis Matuk
Utility Worker I

New Promotions



Edith Ramirez
Assistant City Manager for
Development Services



Mariah Dabel
Financial & Policy Analyst



Michelle Bigelow
City Clerk



Ericka Davis
Accountant I



Robert Romo
Senior Utility Worker



Victor Vasquez
Utility Worker II

New Promotions



Mario Ramirez
Police Captain



Ray Ramos
Police Captain

Retirements



Emil Kokesh
Police Captain



Leslie Little
Assistant City Manager For Development
Services



Maureen Tobin
Communications & Engagement
Director



Judy Viegas
Financial & Policy Analyst



CITY COUNCIL STAFF REPORT

MEETING DATE: April 7, 2021

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

ACCEPT 2020 PAVEMENT RESURFACING PROJECT

RECOMMENDATION(S)

1. Accept as complete, the 2020 Pavement Resurfacing Project, in the final amount of \$1,955,908;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability
Transportation

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan
Morgan Hill 2035 General Plan

REPORT NARRATIVE:

On June 3, 2020, City Council awarded a construction contract to MCK Services, Inc. in the amount of \$2,473,669 for the 2020 Pavement Resurfacing Project. The project scope included pavement milling and micro-milling, cold-in-place recycling (CIR) pavement rehabilitation, hot mix asphalt concrete (AC) overlay, full depth AC pavement repairs, slurry sealing, crack sealing, replacement of all existing traffic delineation and markings, utility adjustments, traffic signal loop restorations, and all related work on various streets within the City (Attachment 1).

The base contract with MCK Services, Inc. included rehabilitation work on East Dunne Avenue between Laurel Road and Condit Road which is owned by Caltrans. Due to delays in receiving Caltrans approval for overlaying this section of roadway it was necessary to reschedule this work to be completed with the 2022 Pavement Resurfacing Project. The balance of the project was completed in accordance with the project plans and specifications. Therefore, staff recommends accepting the project as complete.

COMMUNITY ENGAGEMENT: Inform

Prior to commencement of work, the contractor notified residents and businesses adjacent to the construction work zone with written notifications and changeable message boards on the project streets. Staff also provided notifications and weekly project updates through citywide emails, social media posts and routine updates on the City's website.

ALTERNATIVE ACTIONS:

Accepting the project in accordance with the contract documents is a required process (Attachment 2) and enables the City to release any retained funds owed to the contractor per the California Public Contract Code Section 7107.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

- On June 3, 2020, City Council awarded a construction contract to MCK Services, Inc. for the 2020 Pavement Resurfacing Project for \$2,473,669.
- On April 15, 2020, City Council adopted a Resolution approving the FY 2020-21 list of street rehabilitation projects funded by SB 1: The Road Repair and Accountability Act; the adopted project list included East Dunne Avenue (between the intersections of Monterey Road and Condit Road), Tennant Avenue (between the intersections of Vineyard Boulevard and Ant Court), Encino Drive, and Roble Drive.
- On April 3, 2019, City Council approved a funding agreement with the Santa Clara Valley Transportation Authority (VTA) for the 2016 Measure B Local Streets and Roads Program.

FISCAL AND RESOURCE IMPACT:

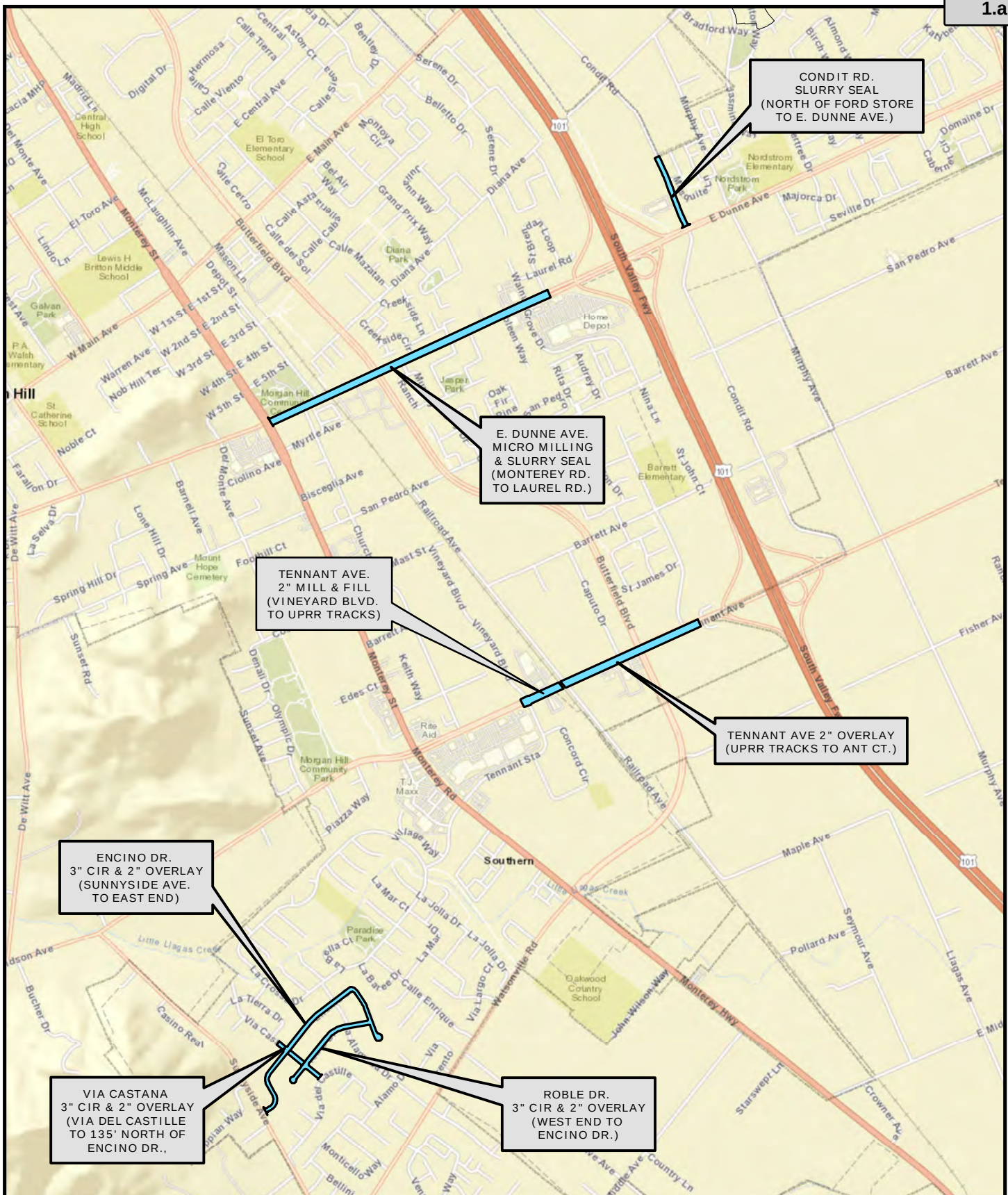
The final contract amount for the 2020 Pavement Resurfacing Project is \$1,955,908. The project was awarded to MCK Services, Inc. for \$2,473,669 with a 15% contingency of \$371,050, totaling \$2,844,719 authorized for construction. Out of the original base contract, \$1,955,908 was spent and is the final contract cost. The remaining balance of \$888,811 will be returned to the Pavement Rehabilitation Project #519000 (Attachment 3). The project was funded by the Street CIP Fund (Fund 308) with allocations from the State SB 1 RMRA, budgeted reimbursements from the County's 2016 Measure B Local Streets and Roads (LSR) Program, and a portion of the annual allocation from the County's Vehicle Registration Fee (VRF).

CEQA (California Environmental Quality Act): Categorical Exemption

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

LINKS/ATTACHMENTS:

1. Project Location Map
2. Notice of Completion 2020 Pavement Resurfacing 04-07-21
3. Funding Closeout Statement 2020 Pavement Resurfacing 04-07-21



Engineering and Utilities Department
CIP Engineering Division

G:\IR-14\Proj\GIS\John\Lynette_2020PvmntProj\DiagUpdated.mxd

2020 PAVEMENT RESURFACING PROJECT



0 625 1,250 2,500 3,750 5,000
Feet

Record at the Request of
and When Recorded Mail to:

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

Record at No Fee Pursuant to
Government Code Section 27383

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN, pursuant to Civil Code Section 9204, that:

1) On June 3, 2020, the City of Morgan Hill, a Municipal Corporation, entered to a contract with MCK Services, Inc. for the 2020 Pavement Resurfacing Project located along East Dunne Ave. from Laurel Rd. to Monterey Rd, Tennant Ave. from Ant Ct. to Vineyard Blvd., Encino Dr. from Sunnyside Ave. to the eastern end, Roble Dr. from the western end to Encino Dr., and Via Castana from Via del Castille to 135' north of Encino Dr. in Morgan Hill, CA.

2) The owner of said property is the City of Morgan Hill, a Municipal Corporation, located at 17575 Peak Avenue, Morgan Hill, CA 95037, and is the owner of said property in fee simple.

3) The contractor is MCK Services, Inc. located at 865 Howe Road, Martinez, CA 94553.

4) The surety is "Fidelity and Deposit Company of Maryland".

5) The project was completed on November 20, 2020 and accepted by the City Council of the City of Morgan Hill on April 7, 2021.

CITY OF MORGAN HILL, a Municipal Corporation

By _____
Scott Creer
City Engineer

I, the undersigned, declare that I am the City Engineer for the City of Morgan Hill. I have read the forgoing Notice of Completion and know and understand the contents thereof and that the facts stated therein are true and correct. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at Morgan Hill, California.

Scott Creer
City Engineer

CIP Contract Acceptance Funding Closeout Statement

Project:	2020 Pavement Resurfacing		
Project No:	519000		
Date of Project Award:	3-Jun-20	Project Award Amount:	\$2,473,669
Funding Source:	f308	Contingency Authorized:	\$371,050
Date of Project Acceptance:	7-Apr-21	Total Authorized:	\$2,844,719
		Actual Base Contract Spent:	\$1,955,908

Change Orders		
Description	Date	Council Approval Req'd? (Y/N)
No Change Orders		
Total C.O.:		\$0

Additional Appropriations		
Source	Amount	Date
None		

Construction Fund Balance:	\$888,811	Total Construction Amount (Base Contract plus CO's):	\$1,955,908
----------------------------	-----------	--	-------------



CITY COUNCIL STAFF REPORT

MEETING DATE: April 7, 2021

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

ACCEPT UPDATE REGARDING PAVEMENT REHABILITATION PLANNING

RECOMMENDATION(S)

Receive update on pavement rehabilitation planning.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure
Preserving and Cultivating Public Trust

2020-2021 Strategic Priorities

Fiscal Sustainability
Transportation

REPORT NARRATIVE:

City staff are in the process of finalizing the design and bidding the 2021 Pavement Rehabilitation Project. As planned, the project prioritizes the repair of the City's arterial and collector roadways, while allocating some of the available funds to the resurfacing of residential streets.

With annual funding from State Senate Bill 1 (Road Repair and Accountability Act of 2017), and Measure B (2016 voter approved countywide half-cent tax to enhance transportation), the City will again resurface a significant number of roadways in 2021. During the prior budget process the City Council reduced the annual contribution of General Fund dollars to pavement rehabilitation from \$1 million annually to \$250,000. Therefore, funding is slightly limited when compared to previous years.

This update is provided now to provide the Council with an outline of future pavement rehabilitation planning. The current plan for rehabilitation for roadways is outlined below:

2021 Pavement Rehabilitation Project

- Tennant Avenue from Vineyard Avenue to Monterey Road
- Peak Avenue from Dunne Avenue to Wright Avenue
- DeWitt Avenue from Alkire Avenue to Main Avenue
- Main Avenue from DeWitt Avenue to Peak Avenue
- Wright Avenue from Peak Avenue to Monterey Road
- Farallon Avenue from Alkire Avenue to Peak Avenue
- Alkire Avenue from DeWitt Avenue to Peak Avenue
- Torrey Court

2022 Planned Pavement Rehabilitation

- Dunne Avenue Overpass from Condit Road to Laurel Road*
- East Dunne Avenue from Hill Road to City limit (Grant Funded)
- Jackson Oaks Drive
- Hill Road from Tennant south to City limit
- Murphy Road from San Pedro to the City limit
- Portions of Jackson Oaks and Jackson Meadows Neighborhoods

** Note: This work was carried forward from the 2020 Project, as it was not completed due to Caltrans permitting requirements.*

Post 2022 Near Term Planned Pavement Rehabilitation

- West Central Avenue and adjacent streets, including Park Way, Lindo Lane, El Toro Court
- East Central from Monterey to McLaughlin
- Portions of La Crosse Neighborhood
- Other Areas to be determined

The plan is consistent with the City's past practice of prioritizing arterial streets, while beginning the process of repairing the worst residential streets in the City. The City has successfully maintained its weighted pavement condition index (between 71-74) over the last 5 years through investment of General Fund dollars and the addition of the SB1 and Measure B funding. The Council will receive a more comprehensive infrastructure update, including pavement management, as part of the upcoming mid-cycle budget process.

Currently staff believes there is a very positive bidding climate for pavement projects and is expediting getting the 2021 Project out to bid. Staff have aggressively targeted the number of roadways to rehab in response to the opportunity to obtain favorable pricing. Should the bid results come back higher than budget, the Council will have an opportunity to appropriate additional funds or reduce the project size.

COMMUNITY ENGAGEMENT: Inform

City staff are working on a significant communication planning effort to be implemented ahead of the work, which is planned to occur during the summer months.

ALTERNATIVE ACTIONS:

The City Council could provide staff with additional direction or feedback as deemed appropriate.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has taken significant actions related to funding pavement rehabilitation. Current appropriations for the 2021 Pavement Rehabilitation Project were funded through the Fiscal Year 2020/21 and 2021/22 Budget.

FISCAL AND RESOURCE IMPACT:

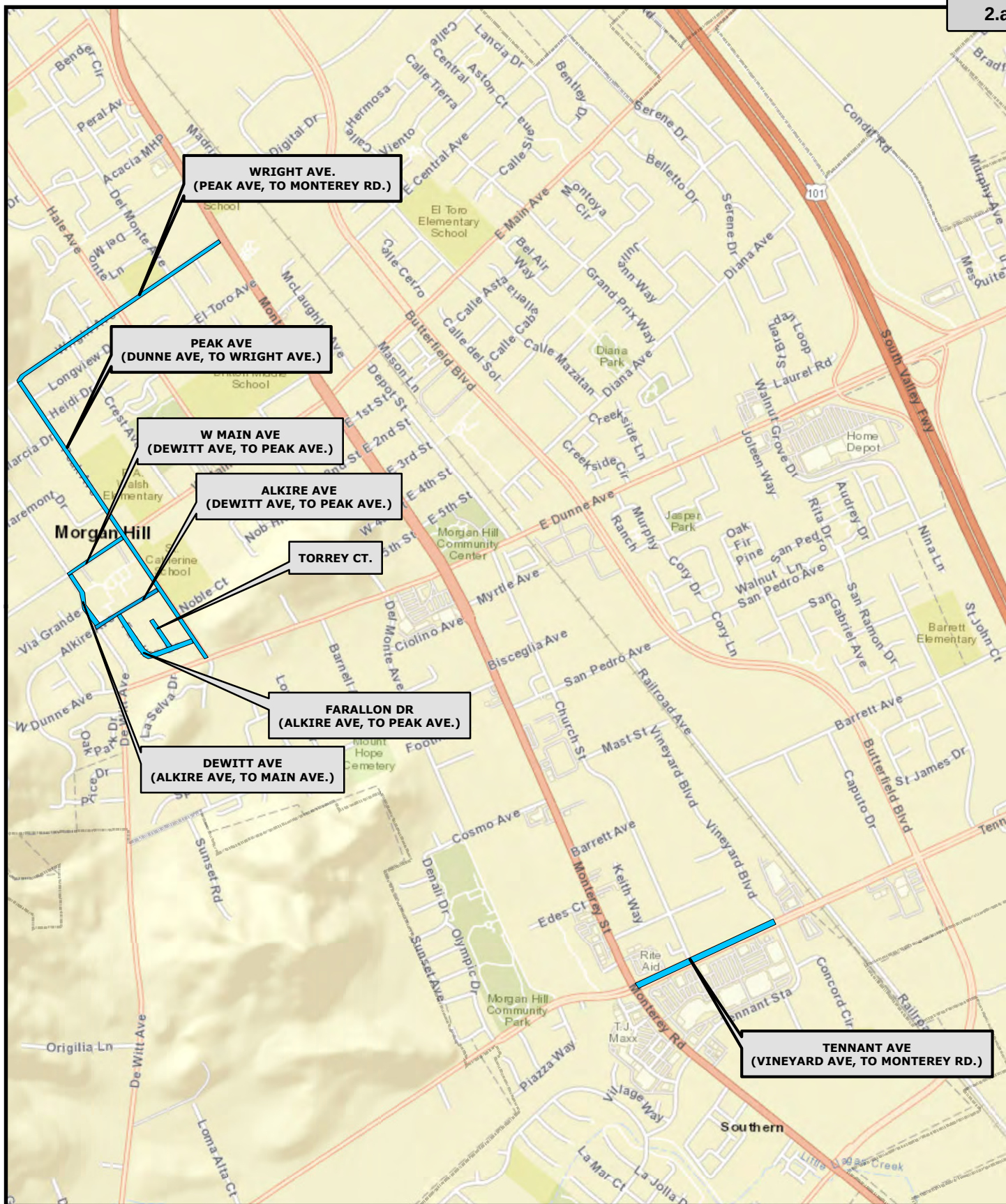
There is no fiscal impact associated with receiving the report. Award of the project and final costs for the 2021 Pavement Rehabilitation project will return to the Council for approval.

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. 2021PvmntProjDiag



Attachment: 2021PvmntProjDiag [Revision 1] (3038 : Pavement Rehab Planning)



**Engineering and Utilities Department
CIP Engineering Division**

G:\R-14\Proj\GIS\John\2021PvmntProjDiag.mxd

2021 PAVEMENT RESURFACING PROJECT



0 495 990 1,980 2,970 3,960
Feet



CITY COUNCIL STAFF REPORT

MEETING DATE: April 7, 2021

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

APPROVE URBAN FOREST MANAGEMENT PLAN

RECOMMENDATION(S)

Approve the Urban Forest Management Plan.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Maintaining Infrastructure

REPORT NARRATIVE:

The purpose of this report is to present the Urban Forest Management Plan (UFMP) to the Council for consideration and approval.

The City received a grant from CAL FIRE in 2017 to develop an UFMP along with the planting of 473 trees. While the tree planting has been completed, the UFMP is just now being presented to the City Council for adoption.

The UFMP identifies the current status of the City's canopy cover and the role that trees play in the Morgan Hill environment. Preparing the UFMP opened up many productive conversations within the City regarding tree maintenance procedures, planting plans, and spacing in new development. In addition, it resulted in three tangible outcomes:

1. Development and adoption of Street Tree Master Plan. (completed 2019)
2. Consideration of additional tree protection measures for privately-owned trees. (underway)
3. Planning to recruit volunteer tree interns on an ongoing basis to support urban forestry in Morgan Hill.

The UFMP identifies additional activities the City may consider in the future using grant funds or other funding sources to further enhance Morgan Hill's urban forest.

COMMUNITY ENGAGEMENT: Consult

As noted in the UFMP, an Advisory Committee was formed to guide the UFMP development and met extensively in 2018.

ALTERNATIVE ACTIONS:

The Council could direct staff to make changes to the UFMP and bring the UFMP back to the Council for adoption at a later date.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council approved the original grant submission and approved the Street Tree Master Plan that was developed as a part of this effort in 2019. In addition, the Council recently provided initial guidance on the City's tree protection ordinance that is related to this overall plan.

FISCAL AND RESOURCE IMPACT:

There are not direct fiscal impacts associated with adopting the UFMP. While the UFMP identifies many additional activities that could be done to support urban forestry if the resources were available to do so, adding these activities is something that would need to be done as a component of the City's budget process when the Council is considering the full range of budgetary priorities.

CEQA (California Environmental Quality Act):

Categorical Exemption

The activities envisioned by the UFMP constitute minor alterations to land and are categorically exempt per Section 15304 of the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Draft Final Urban Forest Management Plan (weblink)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 7, 2021

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

APPROVE PURCHASE OF UTILITIES REPLACEMENT VEHICLES AND EQUIPMENT

RECOMMENDATION(S)

1. Approve the purchase of four (4) Utility Division trucks from National Auto Fleet Group in the amount of \$218,411 through a Sourcewell cooperative bid contract;
2. Approve the purchase of a trash pump from Thompson Pump in the amount of \$46,027 through a Sourcewell cooperative bid contract;
3. Authorize City Manager to approve a purchase order in the amount of \$218,411 with National Auto Fleet Group and a separate purchase order in the amount of \$46,027 to Thompson Pump;
4. Declare vehicles U07114, U07137, W07115, W08115, and equipment W97335 to be surplus; and
5. Authorize the disposal of the surplus vehicles and equipment in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

The Utilities Division is proposing to purchase four (4) new vehicles and a trailer mounted trash pump to replace vehicles equipment in the current fleet which are all several years past their scheduled service life. (Table provided in Attachment 1).

Staff prepared detailed specifications for each of the vehicles scheduled for replacement in Fiscal Year (FY) 2020-21 based on division needs and requested quotes from the National Auto Fleet Group using a Sourcewell cooperative purchasing agreement. National Auto Fleet Group provided detailed quotes (attachment 3 [weblink]) for each vehicle which staff reviewed and concluded met all the required specifications. Staff is therefore recommending the purchase of the four vehicles described herein be awarded to the National Auto Fleet Group and that the purchase be completed using the Sourcewell purchasing cooperative contract #120716-NAF.

Staff also prepared detailed specifications for the replacement of a 1997 trailer mounted trash pump scheduled for replacement in FY 2020-21 and requested a quote from

Thompson Pump using a Sourcewell cooperative purchasing agreement. Thompson Pump provided a detailed quote (Attachment 2) with two different options for purchase. Staff reviewed the quote and concluded that Option #1 met all the required specifications. Staff is therefore recommending the purchase of the trailer mounted trash pump be awarded to Thompson Pump and that the purchase be completed using Sourcewell purchasing cooperative contract #012418-TPM.

The Sourcewell cooperative purchasing arrangement is consistent with Section 3.04.180 of the Morgan Hill Municipal Code, which allows the purchasing officer the authority to join with other public jurisdictions in cooperative purchasing plans or programs, including, but not limited to California Communities Purchasing Program (CCPP), the California Department of General Services (CADGS), the California Multiple Award Schedule (CMAS), the National Association of Counties (NACo), or similar arrangements or plans, as determined by the purchasing officer to be in the City's best interest. The City has previously attempted to purchase vehicles locally at equivalent prices and local vendors have not been able to match pricing or have been non-responsive.

Staff is also recommending that the vehicles being replaced be declared as surplus to be disposed via auction, to obtain the highest possible revenue from the surplus sale.

COMMUNITY ENGAGEMENT:

The replacement of equipment and vehicles are necessary functions to support basic operations within the Utilities Division and therefore no community engagement was necessary.

ALTERNATIVE ACTIONS:

1. The Council could choose to not approve the recommended purchase. However, continued use of outdated equipment may impact operations.
2. Do not approve the procurement method and direct staff to solicit quotes through a formal bid process. This would cause a more lengthy process and there is not a guaranty that the City would receive better pricing.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

There have been no previous actions relating to the purchase of these specific vehicles and equipment outlined in the report. The City purchases replacement vehicles and equipment annually and funding for the purchase was appropriated with adoption of the Fiscal Year 2020-21 and 2021-21 Biennial Budget.

FISCAL AND RESOURCE IMPACT:

The vehicle and equipment replacement purchases are included in the FY 2020-21 budget within the Equipment Replacement Fund (790), in which adequate funds are set aside for these replacements. Although there was an additional vehicle scheduled for replacement this year, a 2009 Ford Ranger SuperCab (vehicle W09154), the replacement of a like vehicle would have put Utilities over budget within the appropriation in the Equipment Replacement Fund for the fiscal year. Utilities will defer the purchase of this replacement to next fiscal year and reassess the needs and budget

of this vehicle.

The revenue received from the surplus sales of vehicles and equipment will be deposited into the Equipment Replacement Fund, to credit towards future replacement vehicles.

CEQA (California Environmental Quality Act): Not a Project

Vehicle replacement is an administrative program that 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. Attachment 1-Vehicle and Equipment Purchases and Replacements
2. Attachment 2-Thompson Pump Quote
3. FY 2020-21 Sourcewell Quotes (weblink)

Attachment 1. Utilities Vehicle and Equipment Purchases and Replacements

Vehicle Type	Quantity	Quotes	Replacing Vehicle #	Division
2021 Ford Explorer XLT 4WD with Knaheide upfit	2	\$99,959	U07114 2007 Ford Expedition, U07137 2007 Ford Escape	Wastewater 50% / Water 50%
2021 Ford F-150 XL 2WD SuperCab 6.5' Box 145" WB with Knapheide upfit	1	\$44,518	W07115 2007 Ford F-150 with upfit	Water
2022 Ford F-350 Super Duty F-350 DRW XL 2WD SuperCab 168" WB with Scelzi utility body upfit	1	\$73,933	W08155 2008 Ford F-350 with upfit	Water
Vehicle Total Purchase Price	4	\$218,411		
Equipment Type	Quantity	Quotes	Replacing Vehicle #	Division
Thompson trash pump Model 6JSCEE-DDST-2.9-M equipped with a 67HPDeutz engine trailer mounted with DOT trailer lights.	1	\$46,027	W97335 1997 Godwin Pump	Water
Total Purchase Price	1	\$46,027		

Attachment: Attachment 1-Vehicle and Equipment Purchases and Replacements [Revision 1] (3037 : Approve Purchase of Utilities



57 Saxony Road
Johnstown, CO 80534
Phone: (386) 281-7904
Website: www.thompsonpump.com

Date: 3/8/2021

Quote #: Q-19445

Inga Alonzo
City of Morgan Hill
100 Edes Court
Corporation Yard
Morgan Hill, CA 95037
(408) 310-4182
inga.alonzo@morganhill.ca.gov

Re: City of Morgan Hill CD150M Equivalent 3/5/2021

Inga,

Dear Ms. Alonzo,

On behalf of Thompson Pump and Manufacturing I would like to thank you for the opportunity to present this quotation. I have prepared two options for your consideration. Option #1 our Model 6JSCEE-DDST-2.9-M is equipped with a 67HP Deutz engine and produces 2600gpm max and 150' head max. Option #2 our Model 6JSCE-DCUST-2.8T-M is equipped with a 74HP Cummins engine and produces 2680gpm max and 190' head max. Both options are trailer mounted with DOT trailer lights and our Recon 2000 AutoStart/Stop Control Panel with floats.

I have included your discounted pricing in accordance with our Sourcwell Contract #012418-TPM. Please review and let me know if you have any questions and or concerns.

Thank you again for the opportunity to present this quotation and for your interest in Thompson Pump and Manufacturing.

Regards,
Chris Taylor
Southwest Territory Manager
Thompson Pump & Manufacturing
(386) 281-7904
ctaylor@thompsonpump.com

Attachment: Attachment 2-Thompson Pump Quote (3037 : Approve Purchase of Utilities Replacement Vehicles and Equipment)



57 Saxony Road
Johnstown, CO 80534
Phone: (386) 281-7904
www.thompsonpump.com

Sale Quotation

Quote #:
Date:
Expires On:
Lead Time:

Q-19445-3
3/8/2021
4/4/2021
8 To 10 Weeks or
sooner (pending
receipt of PO)

Bill To

City of Morgan Hill
100 Edes Court
Corporation Yard
Morgan Hill, CA 95037

Ship To

Contact: Inga Alonzo
Phone: (408) 310-4182

OPTION #1

Thompson Pump Model 6JSCEE-DDST-2.9-M

QTY	PART #	DESCRIPTION	NET PRICE	EXTENDED
1	6JSCEE-DDST-2.9-M	6" Trailer Mounted, Air Compressor Assisted Enviroprime Dry Priming Solids Handling Pump, Designed for Flows To 2600 gpm and Heads to 150 Feet Powered By a 67 HP Final Tier 4 Deutz Diesel Engine and Mounted on a 100 Gallon Modular Fuel Frame. Equipped with Recon 2000 Auto Start/Stop control panel for electronically governed engines with floats and a float storage box. This panel supports pressure or level transducers. Pricing includes DOT trailer lights.	\$39,474.00	\$39,474.00
1	SL-FRT TPM	FREIGHT estimate from Port Orange, FL to Final destination in Morgan Hill, CA. Freight is an estimate only and is subject to change.	\$3,000.00	\$3,000.00
1	MISC	Sales Tax 9%	\$3,552.66	\$3,552.66
OPTION #1 TOTAL:				\$46,026.66

OPTION #2

Thompson Pump Model 6JSCE-DCUST-2.8T-M

QTY	PART #	DESCRIPTION	NET PRICE	EXTENDED
1	6JSCE-DCUST-2.8T-M	6" Trailer Mounted, Air Compressor Assisted Enviroprime Dry Priming Solids Handling Pump, Designed for Flows To 2680 gpm and Heads to 190 Feet Powered By a 74 HP Final Tier 4 Cummins Diesel Engine and Mounted on a 114 Gallon Modular Fuel Frame. Equipped with Recon 2000 Auto Start/Stop control panel for electronically governed engines with floats and a float storage box. This panel supports pressure or level transducers. Pricing includes DOT trailer lights.	\$42,465.00	\$42,465.00

Attachment: Attachment 2-Thompson Pump Quote (3037 : Approve Purchase of Utilities Replacement Vehicles and Equipment)

QTY	PART #	DESCRIPTION	NET PRICE	EXTENDED
1	SL-FRT TPM	FREIGHT estimate from Port Orange, FL to Final destination in Morgan Hill, CA. Freight is an estimate only and is subject to change.	\$3,000.00	\$3,000.00
1	MISC	Sales Tax 9%	\$3,821.85	\$3,821.85
OPTION #2 TOTAL:				\$49,286.85

Job Requirements:

FREIGHT:

Signature:

Date:

____/____/____

Name (Print):

Title:

- All pumps are tested utilizing Hydraulic Institute standards. Thompson Pump is a member in good standing with the Contractor's Pump Bureau, the governing association of U.S. pump manufacturer standards. ISO 9001:2008 certified.
- **FOB:** Port Orange, FL.
- **TERMS:** - pending credit approval. A processing fee of 2% will be added when payment is made by credit or debit card.
- **WARRANTY:** One (1) year limited on new equipment. 30 day limited on used equipment.
- **DELIVERY:** The customer is responsible for any and all taxes, tariffs or associate fees in the sale and transport of equipment purchased or rented. Thompson Pump to arrange freight.
- **FREIGHT RATES:** Any & all freight rates that may be quoted are for budgetary purposes only. All freight rates are an estimate only and are not binding to Thompson Pump. Please provide a tax exemption certificate at time of order if applicable. No penalties or liquidated damage are acceptable. Cancellation of the order or return of any equipment purchased may result in re-stocking fees.
- **Quote validity:** 30 days unless otherwise noted.
- All prices shown in Net US Dollars. Prices quoted do not include any applicable sales tax or fees.

Attachment: Attachment 2-Thompson Pump Quote (3037 : Approve Purchase of Utilities Replacement Vehicles and Equipment)

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 17, 2021 7:00 pm

Virtual Meeting

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

CALL TO ORDER

Mayor Constantine called the meeting to order at 7:00 p.m.

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	Late	
Rene Spring	Council Member	Remote	

DECLARATION OF POSTING AGENDA

City Clerk Michelle Bigelow declared the posting of the agenda.

Minutes Acceptance: Minutes of Mar 17, 2021 7:00 PM (CONSENT CALENDAR)

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 announced that the committees he is a part of have not yet ramped up for the year. He will provide an update at his next scheduled time.

CITY MANAGER'S REPORT

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

2021 Morgan Hill Emergency Preparedness- Do One Thing Videos

The Office of Emergency Services (OES) is putting out one instructional video per month to help the community be more prepared for the next impactful emergency event. Each month, the Do One Thing Emergency Preparedness videos will be posted on the City's YouTube channel as well as the City website. We have posted videos on making a plan, water, and shelter.

COVID Update

Vaccine allocations are not meeting the County's capacity, there are very few first dose appointments available. Dr. Cody stated that there are ongoing concerns regarding Blue Shield's role and timing on taking over the distribution of vaccinations. The State has directed 40 % of the vaccines be provided to 400 zip codes. Out of all those zip codes, not one is in Santa Clara County. By doing that, our allocations in Santa Clara County were reduced. As a result of this, vaccination appointments have been cancelled. Equity efforts are jeopardized with insufficient vaccinations.

The City had a Safeway/Nor Cal pharmacy operation in partnership with the School District at Sobrato High School on March 10th through 13th to provide vaccines to over 1,200 educators, childcare workers, and food workers.

Also, on March 16th and 17th the County operated a vaccination clinic at the Community and Cultural Center.

The State has rolled out Phases 1A and 1B of the vaccine framework. Eligible people under 1A are healthcare workers and long-term care residents. Eligible people under 1B are individuals who are 65 and older, people in certain sectors including agricultural and food workers, education and childcare, and emergency services. The State recently added a new group, ages 16-64 that are deemed to be in the very highest risk for morbidity and mortality, those with pre-existing medical conditions. If you go to the State's website, you can see what those medical conditions are. Due to the limited supply in the county, the County has not been able to provide vaccination for this group yet.

Update on other County Efforts

The County is increasing their door to door canvassing efforts to provide vaccination education and scheduling. Their efforts are focused on communities of color, essential workers at high risk, as well as sectors with hard-to-reach workers.

The Public Health Department and the County Office of Education announced that all K-12 education and school employees in the County have now been offered the opportunity to get the vaccination.

Leadership Morgan Hill Webinar

Their next webinar, COVID-19 Vaccination, Logistics, and Local Updates, will be tomorrow night, March

18th, at 5:30 p.m. This webinar is with South County Healthcare Leaders and will include Paul Lorenz, who is the CEO of Valley Medical, Dave Hensley, who is a psychiatrist with Kaiser, as well as Dr. Robert Shorey, who is a dentist in town and specialist in care during Covid. Go to leadershipmorganhill.org to register.

Cal Cities Update for Council

The Cal Cities Peninsula Division is having an event on Friday March 19th with Bay Area legislators featuring Assembly Member David Chiu. From 11:50-1:05 p.m. they will provide an update about housing policy as well as Covid-19 relief. The update will include remarks from Senator Dave Cortese, Assembly Member Robert Rivas, and Assembly Member Alex Lee.

CITY ATTORNEY'S REPORT

City Attorney Donald Larkin announced that there was no reportable action from the closed session item that was continued to the end of the March 3, 2021 City Council meeting.

OTHER REPORTS

Council Member Martinez Beltran shared her excitement with the Women's History Proclamation and highlighted Virginia Mae Days for her lifetime achievements.

PUBLIC COMMENT

Public comment opened at 7:32 p.m. The following people were called to speak:

Dave Mathews

Suman Ganapathy

Rob Bezanson

There being no further requests, public comment closed.

ADOPTION OF AGENDA

MOTION:

Adopting the agenda removing item 1 from the agenda.

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

CONSENT CALENDAR

Approving consent calendar items 3 through 7, 9, and 10

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

1. **ITEM REMOVED FROM AGENDA**
2. **ITEM PULLED FOR DISCUSSION**
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. ITEM PULLED FOR DISCUSSION**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.

ITEM REMOVED FROM AGENDA**1. EMERGENCY STANDBY COUNCIL**

Recommendation:

Appoint the updated Emergency Standby Council membership.

RESULT:	CONTINUED TO A FUTURE MEETING
----------------	--------------------------------------

ITEMS PULLED FOR DISCUSSION**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.

Public Comment opened at 7:45 p.m. The following people were called to speak:

Pamala Meador

Roberto Aguirrez

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

MOTION:

Approving the recommended actions.

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

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

Recommendation:

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

Public comment opened at 7:57 p.m. There being no requests to speak, public comment closed.

MOTION:

Re-appointing Katie Khera, Suman Ganapathy, and Poonam Chabra to the Library, Culture, and Arts Commission for a term ending April 1, 2024 and continuing with the recruitment efforts and scheduled interview for one remaining seat.

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

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.

Assistant to the City Manager Harjot Sangha provided a presentation and report.

The public hearing opened at 8:20 p.m.

Joe Baranowski was called to speak, Miguel Jimenez ceded his time

There being no further requests, 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

The meeting recessed at 8:28 p.m. and reconvened at 8:35 p.m.

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.

City Manager Christina Turner provided the report.

Public comment opened at 8:40 p.m. The following people were called to speak:

Elizabeth Mandel
 Rob Bezanson
 Dave Mathews
 Armando Benavides
 Nikki Carpendale
 Robin Wheatfall
 Robyn Carrillo
 Jenny Redfern
 Suman Ganapathy

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

MOTION:

Adopting the resolution striking the last whereas from the resolution.

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

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.

Program Administrator Anthony Eulo, along with Environment Projects Specialist Shannon Keener provided a presentation and report.

Public comment opened at 9:59 p.m. There being no requests to speak, public comment closed.

RESULT:	DIRECTION PROVIDED TO STAFF
----------------	------------------------------------

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.

City Attorney Donald Larkin provided the report.

Public comment opened at 10:15 p.m. The following people were called to speak:

John Gomez
 Hector Moreno

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

MOTION:

Directing staff to return with a Council agenda item regulating hazard pay for grocery workers in Morgan Hill.

RESULT: DIRECTED [4 TO 1]
MOVER: Rene Spring, Council Member
SECONDER: Yvonne Martinez Beltran, Council Member
AYES: Constantine, McKay, Martinez Beltran, Spring
NAYS: Borgioli

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.

Community Services Director Chris Ghione provided the report.

Public comment opened at 10:38 p.m. The following people were called to speak:

Joe Baranowski

Nick Gaich

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

MOTION:

Directing 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.

RESULT: DIRECTED [4 TO 1]
MOVER: Yvonne Martinez Beltran, Council Member
SECONDER: John McKay, Mayor Pro Tem
AYES: Constantine, McKay, Borgioli, Martinez Beltran
NAYS: Spring

FUTURE COUNCIL INITIATED AGENDA ITEMS

Council Member Spring requested an item to honor those that have lost their lives to COVID-19 by placing a white flag somewhere on the City Hall campus for each life lost.

Council Member Spring asked that we revisit the cannabis discussion in Morgan Hill.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:49 p.m.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk

DRAFT



Meeting Minutes City Council

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

Wednesday, March 24, 2021 7:00 pm

Virtual Meeting

SPECIAL MEETING

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

CALL TO ORDER

Mayor Constantine 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.

ADOPTION OF AGENDA

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

MOTION:

Adopting the agenda as posted.

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

COMMUNITY-CITY COUNCIL WORKSHOP

The City is aware that broadband service in Morgan Hill does not meet the Community's expectations, nor in many cases does it meet the Community's actual needs. The Morgan Hill Broadband Community Workshop Series provides an opportunity to share information, ask questions, and better understand the challenges we face as a community. Topics for the second workshop will include:

1. Introduction & Recap of First Workshop
2. Review highlights and Q&A from First Workshop
3. Discussion of Broadband in Morgan Hill
4. Additional Information Related to Charter Outage
 - a. Charter Presentation
 - b. Verizon Wireless
5. Presentation from Other Providers
 - a. Wave
 - b. South Valley Internet
6. Public Input
7. Council Input

Mayor Constantine and City Manager Christina Turner introduced the workshop. Program Administrator Anthony Eulo and Economic Development Manager John Lang provided a presentation and report.

Lisa Ludovici and Keri Askew Bailey with Charter provided an update on the outage that took place on February 3, 2021 and shared what they are doing to improve service moving forward.

Economic Development Manager John Lang shared a statement from Verizon Wireless.

Elise Brentnall spoke on behalf of South Valley Internet.

Dave Eller spoke on behalf of Wave.

Public comment opened at 7:40 pm. The following people were called to speak:

Nancie Barker

Sean Mulligan

Craig Kennedy

Art Cohen

Sean Parent

Mercedes Brown

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

FEBRUARY 24, 2021 COMMUNITY-CITY COUNCIL WORKSHOP MATERIALS

BROADBAND WORKSHOP 2 PRESENTATION

WORKSHOP SUPPLEMENT 1

ADJOURNMENT

There being no further business, the meeting adjourned at 9:00 pm.

MINUTES PREPARED BY:

Michelle Bigelow, City Clerk

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



CITY COUNCIL STAFF REPORT

MEETING DATE: April 7, 2021

PREPARED BY: Cynthia Iwanaga, Management Analyst
APPROVED BY: City Manager

AWARD AQUATICS CENTER POOL DECK RESURFACING AND REPAIR PROJECT TO FLEXGROUND SURFACES, INC.

RECOMMENDATION(S)

1. Award contract to Flexground Surfaces, Inc. in the amount of \$69,360; and authorize the expenditure of contingency funds not to exceed \$6,936 for a total authorization of \$76,296; and
2. Authorize the City Manager to approve the sole source selection of Flexground Surfaces, Inc., and execute and administer that certain contract with Flexground Surfaces, Inc.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Maintaining Infrastructure

GUIDING DOCUMENTS

Bikeways
Trails
Parks
and Recreation Masterplan

REPORT NARRATIVE:

The purpose of this item is to provide the City Council with an opportunity to consider the award of a contract to Flexground Surfaces, Inc. ("Flexground") in the amount of \$69,360 with a 10% contingency amount of \$6,936 for a total authorization of \$76,296. The scope of work for this Aquatics Center (AC) Pool Deck Sealing and Repair project ("Project") includes all labor and material necessary to clean and seal the existing 27,300 square feet of Koolflex pool decking as well as the installation of an addition of 562 square feet of new Koolflex pool decking. Per Flexground, the sealing is expected to extend the life of the pool deck and is recommended to be performed every two years. Most importantly, regular sealing is expected to substantially reduce the slipperiness of the deck to enhance public safety.

The pool deck was originally resurfaced per a competitively-bid contract awarded by Council on March 1, 2017. The original resurfacing contract was awarded to STB Stone, Inc, who sub-contracted with Flexground to remove and replace the existing pool deck with Koolflex, a proprietary poured-in-place material manufactured by Flexground. Under this original contract, 22,000 square feet of Koolflex decking was installed around

the perimeter of the competition pool, instructional pool, recreational pool, and splash pad. The original work was completed on May 5, 2017 and the final project amount was \$305,410. In May 2019, the City contracted directly with Flexground to install an additional 5,000 square feet of Kooflex at the entrance to the main locker rooms, food concession area and the landing area for the competition pool stairs. The cost for this second contract was \$59,129, a contract approved per the City Manager's authority.

Per Municipal Code Sections 3.04.130;140;150 the Council may accept sole source vendors and dispense with the informal price checking process when the purchase is so unique or specialized there is no other source. Since the Kooflex decking is proprietary to Flexground, City staff is recommending that this sealing and repair contract be awarded based on a sole source determination. It is recommended that the City Council make this finding and approve the sole source selection of Flexground Surfaces, Inc.

City staff is also recommending that the Council award the contract to Flexground Surfaces, Inc. and authorize the City Manager to execute and administer the agreement (Attachment 1).

COMMUNITY ENGAGEMENT: Inform

This project is scheduled to take place from Monday, April 12, 2021 through Monday, April 26, 2021. Before and during the pool deck sealing and repairs, signs will be posted at the Aquatics Center informing customers of the upcoming project and partial pool closures. Welcome Desk staff will be kept fully informed of the construction schedule so that they can keep AC customers up to date on the progress of the project. The progress of the project will also be posted each week on the City's website and Nextdoor Morgan Hill.

ALTERNATIVE ACTIONS:

The City Council could decide not to approve this project and direct staff to pursue an alternative approach to sealing, repairing, and installing additional pool decking. Postponing this work is not recommended for the safety component associated with this work.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On March 1, 2017, the Council approved a contract with STB Stone, Inc. with Flexground Surfaces, Inc. as its subcontractor to resurface portions of the Aquatics Center deck.

On May 5, 2017, the Council accepted the completed project in the amount of \$305,410.

FISCAL AND RESOURCE IMPACT:

If approved, the total funding authorization for this agreement will be \$76,296, which includes the contract amount of \$69,360 and a 10% contingency. The contingency will support completing the project within the anticipated project schedule ensuring the best customer service. Adequate funding is available in the FY 2020-21 Fund 740 budget for the Aquatics Center. The project cost is slightly higher than anticipated, but significant

savings have been achieved in other Aquatics Center Facility Maintenance line items and as a result the Division has sufficient funds for this project.

CEQA (California Environmental Quality Act): Categorical Exemption.

The activities described in this staff report are categorically exempt under CEQA, specifically pursuant to Section 15301 (c) 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. Flexground Surfaces_New_AC_Repairs

**CITY OF MORGAN HILL
FLEXGROUND SURFACES, INC.
AQUATIC CENTER KOOLFLEX MAINTENANCE & REPAIRS**

This public works contract ("Contract") is entered into by and between the City of Morgan Hill ("City") and Flexground Surfaces, Inc. ("Contractor") for work on the Aquatic Center Koolflex Maintenance and Repairs Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Informal Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on March 3, 2021, (Contract Date) City authorized award of this Contract to Contractor for the amount of Contractor's bid.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the following:
 - 2.1 Notice Inviting Informal Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Drawings and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Award;
 - 2.12 Notice to Proceed;
 - 2.13 And the following:

"No other documents"
3. **Contractor's Obligations.** Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Sixty-Nine Thousand Three Hundred Fifty-Nine Dollars and Eighty-Three Cents (\$69,359.83) (the "Contract Price"), in accordance with the payment provisions in the General Conditions. The Contract Price includes all applicable federal, state, and local taxes.
5. **Time for Completion.** Contractor will fully complete the Work for the Project within Nineteen (19) calendar days from the commencement date given in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** If Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of Five Hundred Dollars (\$500.00) for each day of unexcused delay in completion, and the Contract Price will be reduced accordingly.
7. **Labor Code Compliance.**
 - 7.1 **General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.
 - 7.2 **Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
 - 7.3 **DIR Registration.** City will not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations ("DIR") to perform public work under Labor Code Section 1725.5, subject to limited legal exceptions.
8. **Workers' Compensation Certification.** Under Labor Code Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

- 9. Notice.** Any notice required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

City:

City of Morgan Hill
 17575 Peak Avenue
 Morgan Hill, CA 95037
 Phone: (409) 779-7259
 Attn: City Clerk
 Email: michelle.bigelow@morganhill.ca.gov
 Copy to: keri.russell@morganhill.ca.gov

Contractor:

Name: FLEXGROUND SURFACES, INC.
 Address: 2029 OPPORTUNITY DRIVE, SUITE 3
 City/State/Zip: ROSEVILLE, CA 95678
 Phone: 916-474-5431
 Attn: SANDI WALSH
 Email: swalsh@flexground.com
 Copy to: _____

10. General Provisions.

- 10.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns.
- 10.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.
- 10.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the Superior Court of Santa Clara County, and no other place.
- 10.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

- 10.5 Integration; Severability.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.
- 10.6 Authorization.** Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two (2) officers of the corporation are required pursuant to California Corporation Code Section 313.

[Signatures are on the following page.]

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

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

The parties agree to this Contract as witnessed by the signatures below:

CITY OF MORGAN HILL:

 Christina J. Turner
 City Manager

Date: _____

Attest:

 Michelle Bigelow
 Deputy City Clerk

Date: _____

Approved as to Form:

 Donald A. Larkin
 City Attorney

Date: _____



CONTRACTOR:

FLEXGROUND SURFACES, INC.

 Signature

Bill Stafford, President

Name/Title [print]

Date: 2/10/21

Corporate entities must provide a second signature

 Signature

Corey Hague, Member

Name/Title [print]

Date: 2/10/21

1003439 C61/D12/D34

Contractor's License Number(s)

5/31/21

Expiration Date(s)

Seal:

1000021294

Contractor's DIR Registration Number(s)

6/30/23

Expiration Date

END OF CONTRACT

PAYMENT BOND

The City of Morgan Hill ("City") and Flexground Surfaces, Inc. ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Aquatics Center Koolflex Maintenance and Repair Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than _____ Dollars (\$_____) ("Bond Sum"), under California Civil Code Sections 9550, et seq.
2. **Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay any of the persons named in California Civil Code Section 9100 amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors, under California Unemployment Insurance Code Section 13020, with respect to the work and labor, then Surety will pay for the same.
3. **Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code Section 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
4. **Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
5. **Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845. City waives requirement of a new bond for any supplemental contract under Civil Code Section 9550. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

- 6. Law and Venue.** 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.
- 7. Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____.

SURETY:

CONTRACTOR:

s/ _____

s/ _____

Name: _____

Name: _____

Title: _____

Title: _____

(Attach Acknowledgment with Notary
 Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
 Donald A. Larkin, City Attorney

Date: _____

END OF PAYMENT BOND

PERFORMANCE BOND

The City of Morgan Hill ("City") and Flexground Surfaces, Inc. ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Aquatics Center Koolflex Maintenance and Repair Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as Principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than _____ Dollars (\$_____) (the "Bond Sum"). By executing this Bond, Contractor and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, to the provisions of this Bond.

2. **Surety's Obligations; Waiver.** If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void upon recordation of the notice of completion, provided Contractor has timely provided a warranty bond as required under the Contract. Otherwise Surety's obligations will remain in full force and effect until expiration of the one (1) year warranty period under the Contract. Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code Sections 2819 and 2845.

3. **Application of Contract Balance.** Upon making a demand on this Bond, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.

4. **Contractor Default.** Upon written notification from City that Contractor is in default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 4.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;

4.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or

4.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.

- 5. Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.
- 6. Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____

- 7. Law and Venue.** 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.
- 8. Effective Date; Execution.** This Bond is entered into and is effective on _____, 20____.

[Signatures are on the following page.]

SURETY:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary
Seal and Power of Attorney)

CONTRACTOR:

s/ _____

Name: _____

Title: _____

APPROVED AS TO FORM:By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF PERFORMANCE BOND

WARRANTY BOND

The City of Morgan Hill ("City") and Flexground Surfaces, Inc. ("Contractor") have entered into a contract, dated _____, 20____ ("Contract") for work on the Aquatics Center Koolflex Maintenance and Repair Project ("Project"). The Contract is incorporated by reference into this Warranty Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in the maximum amount of _____ Dollars (\$_____) or 50% of the final Contract Price, whichever is greater ("Bond Sum").
2. **Warranty Period.** The Contract requires Contractor to guarantee its work and that of its Subcontractors on the Project, against defects in materials or workmanship which are discovered during the one (1) year period commencing with recordation of the Notice of Completion (the "Warranty Period").
3. **Surety's Obligations.** If Contractor faithfully carries out and performs its guarantee under the Contract, 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 Contractor promptly reimburses City for all loss and damage that City sustains because of Contractor's failure to makes such repairs in accordance with the Contract requirements, then Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
4. **Waiver.** Surety waives the provisions of Civil Code Sections 2819 and 2845.
5. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

 Attn: _____
 Address: _____
 City/State/Zip: _____
 Phone: _____
 Fax: _____
 Email: _____
6. **Law and Venue.** 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.

7. Effective Date; Execution. This Bond is entered into and is effective on _____, 20____.

SURETY:

s/ _____

Name: _____

Title: _____

CONTRACTOR:

s/ _____

Name: _____

Title: _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

APPROVED AS TO FORM:

By: _____
Donald A. Larkin, City Attorney

Date: _____

END OF WARRANTY BOND

GENERAL CONDITIONS

Table of Contents:

Article 1 – Definitions	1
Article 2 – Roles and Responsibilities	5
Article 3 – Contract Documents	9
Article 4 – Bonds, Indemnity and Insurance	11
Article 5 – Contract Time	16
Article 6 – Contract Modification	21
Article 7 – General Construction Provisions	24
Article 8 – Payment	32
Article 9 – Labor Provisions	37
Article 10 – Safety Provisions	39
Article 11 – Completion and Warranty Provisions	40
Article 12 – Dispute Resolution	43
Article 13 – Suspension and Termination	48
Article 14 – Miscellaneous Provisions	50

Article 1 Definitions

1.1 Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the words “day,” “furnish,” “including,” “install,” “work day” or “working day.”

Allowance means an amount included in the Bid Proposal for Work that may or may not be included in the Project, depending on conditions that will not become known until after bids are opened. If the Contract Price includes an Allowance and the cost of performing the Work covered by that Allowance is greater or less than the Allowance, the Contract Price will be increased or decreased accordingly.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the City of Morgan Hill, acting through its City Council, officers, employees, and authorized representatives.

City Engineer means the City Engineer for the City and his or her authorized delegate(s) designated to oversee and manage the Project on City’s behalf.

Claim means a separate demand by Contractor for change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Informal Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal, and attachments thereto; the Contract; the notice of award and notice to proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Drawings and Specifications; any Change Orders; and any other documents expressly made part of the Contract Documents.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, or equipment following submission of the Bid Proposal. The Contract Price is deemed to include all applicable federal, state, and local taxes

Contract Time means the number of calendar days for performance of the Work, as set forth in the Contract and as amended by Change Order.

Contractor means the individual, partnership, corporation, or joint-venture who has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural or engineering services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

Drawings means City-provided plans and graphical depictions of the Project requirements, and does not include Shop Drawings.

Engineer means the City Engineer for the City of Morgan Hill and his or her authorized delegee(s).

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents, including all punch list items, any required commissioning, and has provided all required submittals, including the warranty bond, instructions and manuals, and as-built drawings to City's satisfaction.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld pursuant to the Contract Documents, including liquidated damages, up to one hundred twenty five percent (125%) of the amount of any unreleased stop notice, amounts subject to setoff, up to one hundred fifty percent (150%) of any unresolved third-party claim for which Contractor is required to indemnify City, and up to one hundred fifty percent (150%) of any amount in dispute as authorized by Public Contract Code Section 7107.

Furnish means to purchase and deliver to the Worksite designated for installation.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or cleanup.

Including, whether or not capitalized, means “including, but not limited to,” unless the context requires otherwise.

Inspector means the individual(s) or firm(s) retained by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all applicable codes, regulations, and permits.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Project means the public works project referenced in the Contract.

Project Manager means the individual designated by City to oversee and manage the Project on City’s behalf and may include his or her authorized delegee(s) when Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

RFI means a written request from Contractor for information from City or Design Professional.

Section as used in these General Conditions, means a numbered Section of the General Conditions, unless otherwise indicated by the context.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City approval, which are

intended to provide details for fabrication, installation, and the like, of items required by or shown in the Drawings and Specifications.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into this Project by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint-venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors, suppliers, fabricators, and equipment lessors of all tiers, unless otherwise indicated by the context.

Technical Specifications means Specifications.

Work means all of the construction and services necessary or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday which is not a holiday observed by City.

Worksite means the place or places where the Work is performed.

Article 2 Roles and Responsibilities

2.1 Design Professional.

(A) **General.** Design Professional, as City's representative, is responsible for the overall design of the Project, and to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Contract Documents.

(B) **Interpretation.** Design Professional will decide all questions pertaining to interpretation of the Drawings or Specifications. Design Professional's decision regarding interpretation of the Drawings or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, equipment and services necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economic and efficient manner in the best interests of City.

(B) **Responsibility for the Work.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for, and required to exercise full control over, construction means, methods, techniques, sequences, procedures, and coordination of all portions of the Work with that of all other Contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including phone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent, acceptable to City, and assistants, as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of

Contract Time, until the superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards; Compliance.** Contractor must, at all times, ensure that the Work is performed in a good workmanlike manner following best practices and in full compliance with the Contract Documents and all applicable laws, regulations, codes, standards, and permits.

(F) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or its Subcontractors. If any person employed by Contractor fails or refuses to comply with the Engineer's directions regarding the performance of the Work, or is determined by the Engineer to be incompetent to perform the Work, or acts in a disorderly or improper manner at the Worksite, that person may be permanently dismissed from the Project at the request of the Engineer.

(G) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City, Project Manager, or the Inspector to be deficient or defective in workmanship, materials, and equipment.

(H) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos and electronic records. Project records subject to this provision include, but are not limited to, Project cost records and records relating to preparation of Contractor's bid.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as extra work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project records in an organized manner for a period of four (4) years after City's

acceptance of the Project or following termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's Project records relating to the Project or to investigate Contractor's plant or equipment during Contractor's normal business hours.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work.

(B) **Contractual Obligations.** Contractor must require every Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, and to likewise bind their subcontractors or suppliers. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

Copies of subcontracts must be available to the Engineer upon request. Before a Subcontractor commences Work on the Project, Contractor must provide the Engineer a written statement with the name of the Subcontractor, a description of each portion of the Work performed by the Subcontractor, and the percentage of the overall Work to be performed by the Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, provided that City accepts the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code Section 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform or to have performed other work on or adjacent to the Project site while the Work is being performed. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, and must avoid hindering, delaying, or interfering with the work of other contractors

and subcontractors. To the full extent permitted by law, Contractor must hold harmless and indemnify City, Design Professional, and Project Manager against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of another contractor or subcontractor.

(B) **Defects.** Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any such known defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work.

2.5 Submittals. Unless otherwise specified, Contractor must submit to Project Manager for review and approval, all schedules, Shop Drawings, samples, product data and similar submittals required by the Contract Documents, or upon request by Project Manager. Unless otherwise specified, all submittals, including Requests for Information ("RFIs") are subject to the provisions of this Section.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current approved schedule for the Work and within the applicable time specified elsewhere in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections in full conformance with the requirements of this Section.

(E) **Effect of Review and Approval.** Review and approval of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or approval of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or material used without prior approval of a required submittal will be performed at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work, and the cost of additional time or services required of the Design Professional, Project Manager, or Inspector.

(G) **Excessive RFIs.** RFIs will be considered excessive or unnecessary if the Engineer determines that the explanation or response to the RFI is clearly and unambiguously discernable in the Contract Documents. City's costs to review and respond to excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

Article 3 Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Drawings and Specifications.** The Drawings and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Drawings and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Drawings and Specifications, the Specifications will control.

(B) **Duty to Notify.** If Contractor becomes aware of any ambiguity, discrepancy, omission, or error in the Drawings or Specifications, Contractor must immediately notify the Design Professional and request clarification of such, by submitting a written request for information (RFI) in the manner specified by City. The Design Professional's clarifications or interpretations will be final and binding.

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements at the Worksite before ordering any material or performing any Work, and will be responsible for the correctness of those measurements.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Notice of Award;
- (F) Special Conditions;
- (G) General Conditions;
- (H) Payment and Performance Bonds;
- (I) Specifications;
- (J) Drawings;
- (K) Contractor's Bid Proposal and attachments;
- (L) Notice Inviting Informal Bids;
- (M) Instructions to Bidders; and
- (N) Any documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, e.g., Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation ("Caltrans"), including "Standard Specifications," "Caltrans Specifications," "State Specifications," or "CSS," means the most current edition of Caltrans' Standard Specifications, unless otherwise specified ("Standard Specifications"), including the most current amendments as of the date that Contractor's bid was submitted for this Project. The following provisions apply to use of or reference to the Standard Specifications:

(A) **Limitations.** None of the "General Provisions" of the Standard Specifications, i.e., Sections 1 through 9, applies to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Standard Specifications and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Standard Specifications are to be interpreted as follows:

- (1) Any reference to the "Engineer" is deemed to mean the City Engineer.
- (2) Any reference to the "Special Provisions" is deemed to mean the Special Conditions.
- (3) Any reference to the "Department" or "State" is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report appended to the Contract Documents solely for informational purposes and identified as "For Reference Only." Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. However, Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Contractor must promptly notify City of any perceived or actual conflict between the Contract Documents and any document provided "For Reference Only."

Article 4

Bonds, Indemnity, and Insurance

- 4.1 Payment and Performance Bonds.** Within ten (10) days following issuance of the notice of award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than one hundred percent (100%) of the Contract Price, using the bond forms included with the Contract Documents. Each bond must be issued by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.
- 4.2 Indemnity.** To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its agents and consultants, and Design Professional (individually, an "Indemnatee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, expenses (including, without limitation, attorney fees, expert witness fees,

paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or its failure to comply with any of its obligations under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this provision will be deemed a material breach of this Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code Section 9201.

- 4.3 Insurance.** No later than ten (10) days following issuance of the notice of award, Contractor 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 Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract until the date of recordation of the notice of completion. 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. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate the Contract for default. Contractor further understands that City reserves the right to modify the insurance requirements set forth herein, with thirty (30) days' notice provided to Contractor, at any time as deemed necessary to protect the interests of City.

(A) **Policies and Limits.** The following insurance policies and limits are required for this Contract unless otherwise specified in the Special Conditions:

- (1) **Commercial General Liability Insurance ("CGL").**
Contractor shall maintain CGL and shall include coverage for liability arising from Contractor's or its Subcontractor's acts or

omissions in the performance of the Work against claims and liabilities for personal injury, death, or property damage providing protection in the minimum amount of: (i) two million dollars (\$2,000,000.00) combined single limit each occurrence and either a general aggregate limit of four million dollars (\$4,000,000.00) or a general aggregate limit of two million dollars (\$2,000,000.00) as applied on a “per project” or “per location” basis, or (ii) the maximum amount of such insurance available to Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater.

- a. CGL policy may not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.
- b. CGL policy must include contractor’s protected coverage, blanket contractual, and completed operations.

(2) **Builder’s Risk Insurance:** The Builder’s Risk Insurance policy must be issued on occurrence basis, for all-risk coverage (including Flood and Earthquake) on a one hundred percent (100%) completed value basis on the insurable portion of the Project for the benefit of City.

(3) **Workers’ Compensation Insurance and Employer’s Liability:** Contractor 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 Contractor under Contractor’s combined insurance policies (including any excess or “umbrella” policies), whichever is greater. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the Department of Industrial Relations.

(4) **Automobile Liability:** Contractor shall maintain Automobile Liability covering all owned, non-owned and hired automobiles (if Contractor does not own automobiles, then Contractor 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 Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

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

(6) **Professional Liability:**

- a. If the performance of Contractor's work or service under this Contract involves professional and/or technical services (examples include, but are not limited to, architects, engineers, land surveyors, legal services, and appraisers), Contractor shall procure and maintain either a claims made or occurrence Errors and Omission liability insurance in the minimum amount of: (i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater. Further, if Contractor maintains a claims-made policy, Contractor shall provide written evidence of such insurance to City for at least five (5) years after the completion of work performed under this Contract.
- b. If the performance of Contractor's work or service under this Contract relates to Information Technology or related services (examples include, but are not limited to computer programmers, hardware engineers, or other systems consultants), Contractor shall procure and maintain a claims made Errors and Omission liability insurance, including Cyber Liability and Data Breach, in the minimum amount of:

(i) One Million Dollars (\$1,000,000.00) each claim, or (ii) the maximum amount of such insurance available to Contractor under Contractor's combined insurance policies (including any excess or "umbrella" policies), whichever is greater.

(B) **Required Endorsements.** Contractor must provide proof of the following endorsements, listed for each policy for which endorsements are required, as outlined below:

- (1) For all Policies except Builder's Risk and Professional Liability:
 - a. "Waiver of Subrogation" endorsements providing that the carrier agrees to waive any right of subrogation it may have against the City of Morgan Hill and City's elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers.
- (2) General Liability, Automobile, and Pollution Liability:
 - a. "Additionally Insured" endorsements naming the City of Morgan Hill, its elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers as additional insureds;
 - b. "Primary and Non-Contributing" endorsements stating that the policy is primary non-contributing;
- (3) General Liability:
 - a. "Separation of Insureds" endorsements stating that the inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.

(C) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the additional insureds and waiver of subrogation.

(D) **Certificates.** Contractor must 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 Contractor's Contract with City may 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 as follows:

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

- 4.4 Warranty Bond.** As a condition precedent to Final Completion, Contractor must submit a warranty bond, using the form provided by City, to guarantee its Work as specified in Article 11, Completion and Warranty Procedures. The warranty bond must be issued by a surety admitted in California for fifty percent (50%) of the final Contract Price or as otherwise specified in the Contract Documents. If an issuing surety cancels the bond or becomes insolvent, within seven (7) days following written notice from City, Contractor must substitute a surety acceptable to City.

Article 5 Contract Time

- 5.1 Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the notice to proceed, and must fully complete the Work, in strict compliance with all requirements of the Contract Documents, and within the Contract Time.

(B) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. All schedules must be prepared using standard scheduling software acceptable to City, and must provide schedules in electronic and paper form as requested.

(A) ***As-Planned (Baseline) Schedule.*** Within fifteen (15) calendar days following issuance of the notice of award (or as otherwise specified in the Special Conditions), Contractor must submit to City for review and approval an as-planned (baseline) schedule showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time using critical path methodology. The as-planned schedule must include the work of all trades required for the Work, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the as-planned schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates, and the duration.

(B) ***Progress Schedules.*** Contractor must submit an updated progress schedule and three (3) week look-ahead schedule, in the format specified by City, for review and approval with each application for a progress payment. The progress schedule must show how the actual progress of the Work to date compared to the as-planned schedule, and must identify any actual or potential impacts to the critical path.

(C) ***Recovery Schedule.*** If City determines that the Work is more than one (1) week behind schedule, within seven (7) days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(D) ***Effect of Approval.*** Contractor and its Subcontractors must perform the Work in accordance with the most current approved schedule unless otherwise directed by City. City approval of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(E) ***Posting.*** Contractor must at all times maintain a copy of the most current approved progress or recovery schedule posted prominently in its on-site office.

(F) ***Reservation of Rights.*** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City

or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(G) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding City of Morgan Hill-observed holidays, during City's normal business hours, except as expressly provided in the Special Conditions, or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in these Contract Documents, including reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Excusable Delay.** The Contract Time may be extended if Contractor encounters an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through planning, foresight, and diligence ("Excusable Delay"). Grounds for Excusable Delay may include fire, earthquake, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, suspension for convenience under Article 13, or unusually severe weather.

(B) **Non-Excusable Delay.** Excusable Delay does not include delay that is concurrent with non-Excusable Delay, and does not include delay caused by:

- (1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten (10) years;
- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for timely completion of the Work;
- (3) Contractor's failure to provide adequate notification to utility companies for connections or services necessary for the timely performance and completion of the Work;
- (4) foreseeable conditions Contractor could have ascertained from reasonably diligent inspection of the Worksite or review of the Contract Documents; or

(5) Contractor's financial inability to perform the Work, including insufficient funds to pay its Subcontractors or suppliers.

(C) ***Request for Extension of Contract Time.*** A request for an extension of time and associated delay costs must be submitted in writing to City within ten (10) calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6, below. Strict compliance with these requirements is necessary to ensure that any delay or delay costs may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of time or delay costs that does not strictly comply with the requirements of Article 5 and Article 6 will be deemed waived.

(1) ***Required Contents.*** The request must include a detailed description of the cause(s) of the delay, and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, e.g., by workforce management, change in sequencing, etc. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) ***Delay Days and Costs.*** The request must specify the number of days of Excusable Delay claimed, or provide a realistic estimate if the duration of the delay is not yet known. The request must specify the amount of any delay-related costs that are claimed, or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known.

(3) ***Supporting Documentation.*** The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including schedule and cost impacts, including a time impact analysis using critical path methodology, and demonstrating unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) ***Burden of Proof.*** Contractor has the burden of proving 1) that the delay was an Excusable Delay, as defined above, 2) that

Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts, 3) that the delay will unavoidably result in delaying Final Completion, and 4) that any delay costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Recoverable Costs.* If Contractor is granted an extension of time for Excusable Delay, recompense for delay costs will be limited to actual, direct, reasonable, and substantiated costs, and will not include home office overhead, or markup for overhead and profit.

(6) *Legal Compliance.* Nothing in this provision is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code Section 7102.

(7) *No Waiver.* Any grant of an extension of time or delay costs due to an Excusable Delay will not operate as a waiver of City's right to assess liquidated damages for unexcused delay.

(8) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of time or delay costs, Contractor may not stop working pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of time or delay costs is to comply with the Dispute Resolution provisions set forth in Article 12, below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages which are difficult to determine and accurately specify. Pursuant to Public Contract Code section 7203, if Contractor fails to achieve Final Completion within the Contract Time, City may charge Contractor in the amount specified in the Contract for each day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay, as set forth above.

(B) **Milestones.** Liquidated damages will also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to set off the amount of liquidated damages assessed against any payments otherwise due to Contractor, including setoff against release of retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's unexcused delay in achieving Final Completion.

Article 6 Contract Modification

6.1 Changes in Work. City reserves the right to make changes in the Work without invalidating the Contract. City may direct or Contractor may request changes in the Work, and any such changes will be formalized in a Change Order, which may include commensurate changes in the Contract Price or Contract Time as applicable. Contractor must promptly comply with City-directed changes in the Work in accordance with the intent of the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time.

(A) **City-Directed Change.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change, Contractor must perform the Work as directed and may not delay its work or cease work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(B) **Contractor's Obligations.** In the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents as opposed to changed or extra Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute.

(C) **Remedy for Non-Compliance.** Contractor's failure to promptly comply with an City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or use its own forces to

complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

(D) **Dispute Resolution.** Contractor's sole recourse for an unresolved dispute related to changes in the Work is to comply with the dispute resolution provisions set forth in Article 12, below.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price must be submitted in writing to Project Manager within ten (10) calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, and subcontract amounts. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete, and agrees that any costs, expenses, or time extension request not included herein is deemed waived. Contractor understands that submission of claims which have no basis in fact or which Contractor knows to be false may violate the False Claims Act, as set forth in Government Code Sections 12650 et seq."

6.3 Adjustments to Contract Price. The amount of any increase or decrease to the Contract Price will be determined based on one (1) of the following methods in the order provided:

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or schedule of values, will apply if unit pricing has previously been provided in Contractor's accepted bid schedule or schedule of values for the affected Work;

(B) **Lump Sum.** A mutually agreed upon lump sum;

(C) **Time and Materials.** On a time and materials basis, which may include a not-to-exceed limit, calculated as the total of the following sums:

- (1) All direct labor costs plus fifteen percent (15%) for overhead and profit;
- (2) All direct material costs, including sales tax, plus fifteen percent (15%) for overhead and profit;
- (3) All direct plant and equipment rental costs, plus fifteen percent (15%) for overhead and profit;
- (4) All direct subcontract costs plus ten percent (10%) for overhead and profit; and
- (5) Increased bond or insurance premium costs computed at one and one half percent (1½%) of total of the previous four (4) sums.

6.4 Unilateral Change Order. If City disagrees with the amount of compensation or extension of time that Contractor has requested, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time in the amount City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to full comply with the provisions of this Article. Contractor will not be paid for unauthorized extra work.

Article 7 General Construction Provisions

7.1 Permits and Taxes.

- (A) **General.** Contractor must obtain and pay for any and all permits, fees, or licenses required to perform the Work, unless otherwise indicated in the Contract Documents. Contractor must cooperate with and provide notifications to government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all notices, permits, licenses, and renewals required for the Work.
- (B) **Federal Excise Tax.** Contractor must pay for all taxes on labor, material and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.
- 7.2 Temporary Facilities.** Contractor must provide, at Contractor's sole expense, any and all temporary facilities, including onsite office, sanitary facilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any utility services incidental thereto.
- (A) **Standards.** Such structures must be safe and adequate for the intended use, and installed and maintained in accordance with all applicable federal, state, and local laws, codes, and regulations.
- (B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.
- (C) **Additional Requirements.** Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.
- 7.3 Signs.** No signs may be displayed on or about City's property, except signage which is required by law or by the Contract Documents, without City's prior written approval as to content, size, design, and location.
- 7.4 Protection of Work and Property.**
- (A) **General.** Contractor is responsible at all times for protecting the Work and materials and equipment to be incorporated into the Work from damage until the Notice of Completion has been recorded. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Drawings. Contractor is liable for any damage caused to City's real or personal property, the real or

personal property of adjacent property owners, or the work or personal property of other contractors working for City.

(B) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Drawings or apparent from inspection of the Project site, Contractor must promptly notify Project Manager, and must avoid taking any action which could cause damage to the facilities or utilities pending further direction from Project Manager. If Project Manager's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6, above.

(C) **Support; Adjacent Properties.** Contractor must provide, install, and maintain all shoring, bracing, underpinning, etc., necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by law.

7.5 Noninterference. Contractor must take reasonable measures to avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures.

7.6 Materials and Equipment.

(A) **General.** Unless otherwise specified, all materials and equipment required for the Work must be new and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation, and must be installed in accordance with the manufacturer's recommendation. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work, and is responsible for protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City accepts the Project.

(B) **City-Provided.** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation of such items in accordance with the Contract Documents. Contractor must promptly notify City of any defects discovered in City-provided materials or equipment. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and

control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) **Intellectual Property Rights.** Contractor must, at its sole expense, obtain any authorization required for use of patented or copyright protected materials, equipment, devices or processes that are incorporated into the Work. Contractor's indemnity obligation in Article 4, applies to any claimed violation of intellectual property rights in violation of this provision.

7.7 Substitutions.

(A) **"Or Equal."** Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and Contractor may request use of any equal material, product, thing, or service.

(B) **Request for Substitution.** A request for substitution must be submitted to Project Manager for approval within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within thirty five (35) days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** All data substantiating the proposed substitute as an "equal" item must be submitted with the written request for substitution. Contractor's failure to timely provide necessary substantiation is ground for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution. City has sole discretion to determine whether a proposed substitution is "equal," and City's determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs associated with the substituted item(s). If the proposed substitution is rejected, Contractor must, without delay, install the item specified.

(F) **Contractor's Obligations.** City's review of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection by Inspector at all times and locations during construction and/or fabrication. All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application or installation. Contractor must, at all times, make the Work available for inspection.

(B) **Scheduling and Notification.** Contractor must schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must provide timely notice to all necessary parties as specified in the Contract Documents.

(C) **Responsibility for Costs.** City will bear the initial cost of testing to be performed by independent testing consultants retained by City, subject to the following exceptions:

(1) Contractor will be responsible for the costs of any subsequent tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.

(2) Contractor will be responsible for inspection costs, at City's established rates, for inspection time lost because the Work is not ready or Contractor fails to appear for a scheduled inspection.

(3) In addition, if any portion of the Work which is subject to testing is covered or concealed by Contractor prior to testing, Contractor will bear the cost of making that portion of the Work available for the testing required by the Contract Documents, and any associated repair or remediation costs.

(D) **Contractor's Obligations.** Any Work that fails to comply with the requirements of the Contract Documents must be promptly repaired, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work was previously inspected or included in a progress payment. Contractor is solely responsible for any delay occasioned by remediation of noncompliant Work. Inspection of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Clean up. Contractor must regularly remove debris and waste materials and maintain the Worksite in clean and neat condition.

(A) **General.** Prior to discontinuing work in an area, Contractor must clean the area and remove all rubbish along with its construction equipment, tools, machinery, waste and surplus materials. Contractor must, at all times, minimize and confine dust and debris resulting from construction activities.

(B) **Completion.** At the completion of the Work, Contractor must remove from the Worksite all of its equipment, tools, surplus materials, waste materials and debris. Before demobilizing from the Worksite, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas.

(C) **Non-Compliance.** If Contractor fails to commence compliance with its cleanup obligations within two (2) business days following written notification from City or its representative, City may undertake appropriate cleanup measures without further notice and the cost will be deducted from any amounts due or to become due Contractor.

7.10 Instructions and Manuals. Contractor must provide three (3) copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** All manufacturers' application or installation instructions must be provided to the Inspector at least ten (10) days prior to the first such application. The instructions and manuals, along with any required guarantees, must be delivered to City for review.

(B) **Instruction of Personnel.** Contractor or its Subcontractors must instruct City's personnel in the operation and maintenance of any complex equipment as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must maintain on the Worksite a separate complete set of the Drawings which will be used

solely for the purpose of recording changes made in any portion of the Work in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. Progress payments may be delayed, in whole or in part, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities, etc., installed underground, in walls, floors, or otherwise concealed. Deviations from the original Drawings must be shown in detail. The location of all main runs, whether piping, conduit, ductwork, drain lines, etc., must be shown by dimension and elevation.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to City for review and approval as a condition precedent to Final Completion.

7.12 Existing Utilities. As required by Government Code Section 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site, if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent such delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Government Code Section 4216.2, requires that except in an emergency, Contractor must contact the appropriate regional notification center, or Underground Services Alert at 800-642-2444 (for Northern California), at least two (2) working days, but not more than fourteen (14) calendar days before starting any excavation if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations, and if practical, Contractor must delineate with white paint or other suitable markings the area to be excavated.

7.14 Trenching and Excavations.

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

- (1) Material that Contractor believes may be a hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law;
- (2) Subsurface or latent physical conditions at the Worksite differing from those indicated by information about the Worksite made available to bidders prior to the deadline for submitting bids; or
- (3) Unknown physical conditions at the Worksite of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions do materially differ or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (A) above, Contractor will not be excused from any scheduled completion date provided for in the Contract Documents, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code Section 6705, if the Contract Price exceeds Twenty Five Thousand Dollars (\$25,000.00) and the Work includes the excavation of any trench or trenches of five (5) feet or more in depth, a detailed plan must be submitted to City or its civil or structural engineer, for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it must be prepared by a registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 New Utility Connections. City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 Lines and Grades. Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work.

7.18 Historic or Archeological Items.

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an eighty five (85) foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, any such assistance to be compensated as extra work on a time and materials basis under Article 6, Contract Modification. Any suspension of Work required due to discovery of Historic or Archeological Items will be treated as a suspension for convenience under Article 13.

7.19 Environmental Control. Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor and its Subcontractors must at all times in the performance of the Work comply with all applicable federal, state, and local laws and regulations concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and

Contractor must comply with the same without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit, Contractor must comply with all other applicable state, municipal or regional laws, ordinances, rules or regulations governing discharge of stormwater, including applicable municipal stormwater management programs.

Article 8 Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to Project Manager a schedule of values apportioned to the various divisions and phases of the Work. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Worksite, as well as authorized and approved Change Orders. Each pay application must be supported by Contractor's schedule of values and any other substantiating data required by the Contract Documents.

Each application for payment shall be accompanied by completed "Contract Balance Form," a copy of which is provided at the end of Article 8.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due, as certified the Design Professional, within thirty (30) days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code Section 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject a payment application, including application for Final Payment, in whole or in part, based upon any of the circumstances listed below. Contractor will be notified in writing of the basis for the adjustment, and will be promptly paid once the basis for that adjustment has been remedied and no longer exists.

(A) Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items;

(B) Loss or damage caused by Contractor or its Subcontractor(s) arising out of or relating to performance of the Work;

(C) Contractor's failure to pay its Subcontractors and suppliers when payment is due;

(D) Failure to timely correct rejected, nonconforming, or defective Work;

(E) Unexcused delay in performance of the Work;

(F) Any unreleased stop notice, retained as one hundred twenty five percent (125%) of the amount claimed;

(G) Failure to submit any required schedule or schedule update in the manner and within the time specified in the Contract Documents;

(H) Failure to maintain or submit as-built documents in the manner and within the time specified in the Contract Documents;

(I) Work performed without approved Shop Drawings, when approved Shop Drawings are required before proceeding with the Work;

(J) Contractor's payroll records are delinquent or inadequate; and

(K) Any other costs or charges that may be offset against payments due, as provided in the Contract Documents, including liquidated damages.

8.4 Acceptance of Work. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 Retention. City will retain five percent (5%) of the amount due on each progress payment, or the percentage stated in the Notice Inviting Informal

Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work.

(A) **Substitution of Securities.** As provided by Public Contract Code Section 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code Section 22300, and will be subject to approval as to form by City's legal counsel.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld under Section 8.3 or 8.6 will be released as Final Payment to Contractor no sooner than thirty five (35) days following recordation of the notice of completion, and no later than sixty (60) days following acceptance of the Project by City's governing body or authorized designee, or, if the Project has not been accepted, no later than sixty (60) days after the Project is otherwise considered complete under Public Contract Code Section 7107(c).

8.6 Setoff. City is entitled to set off any amounts due from Contractor against any payments due to Contractor. City's entitlement to setoff includes progress payments as well as Final Payment and release of retention.

8.7 Payment to Subcontractors and Suppliers. Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Worksite by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of the law, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** City will withhold one hundred twenty five percent (125%) of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right to issue joint checks made payable to Contractor and its Subcontractors or suppliers. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by City. The joint check payees will be jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a

contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

- 8.8 Final Payment.** Final Completion, acceptance of the Work by City, and recordation of the Notice of Completion, and any release required by the Contract Documents are conditions precedent to Final Payment and release of undisputed retention, as set forth above. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. The date of Final Payment is deemed to be effective on the date that City acts to release retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.
- 8.9 Release of Claims.** City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts. Any disputed amounts may be specifically excluded from the release.
- 8.10 Warranty of Title.** Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

CONTRACT BALANCE FORM

Project Name: Aquatics Center Koolflex Maintenance & Repairs

Note: A detailed invoice MUST be attached to this Contract Balance Form.

CONTRACTOR NAME: _____	DATE: _____
MAILING ADDRESS: _____	TELEPHONE NO.: _____
_____	FAX NO.: _____
_____	PROJECT NO.: _____
	INVOICE NO.: _____

- | | |
|--|----------------|
| 1. ORIGINAL CONTRACT AMOUNT: | \$ _____ |
| 2. APPROVED CHANGE ORDERS TOTAL: | \$ _____ |
| 3. REVISED CONTRACT AMOUNT: | (1+2) \$ _____ |
| 4. PREVIOUS BALANCE PAID: | \$ _____ |
| 5. REMAINING BALANCE: | (3-4) \$ _____ |
| 6. CURRENT PROGRESS PAYMENT DUE:
(before retention) | \$ _____ |
| 7. 5% RETENTION FROM WORK DONE: | (-)\$ _____ |
| 8. CURRENT BALANCE DUE: | (6-7) \$ _____ |
| 9. REMAINING BALANCE OF REVISED
CONTRACT AMOUNT:
(including retention) | (5-8) \$ _____ |

Article 9 Labor Provisions

- 9.1 Discrimination Prohibited.** Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Federal and California laws including the California Fair Employment and Housing Act (Government Code Sections 12900 et seq.), Government Code Section 11135, and Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.
- 9.2 Labor Code Requirements.**
- (A) ***Eight Hour Day.*** Under Labor Code Section 1810, eight (8) hours of labor constitute a legal day's work under this Contract.
- (B) ***Penalty.*** Under Labor Code Section 1813, Contractor will forfeit to City as a penalty, the sum of Twenty Five Dollars (\$25.00) for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight (8) hours in any one (1) calendar day or more than forty (40) hours per calendar week, except if such workers are paid overtime under Labor Code Section 1815.
- (C) ***Apprentices.*** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code Section 1777.5, which is fully incorporated by reference.
- (D) ***Notices.*** Under Labor Code Section 1771.4, Contractor is required to post all job site notices prescribed by law or regulation.
- 9.3 Prevailing Wages.** Each worker performing Work under this Contract that is covered under Labor Code Section 1720, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in Sections 1771 and 1774 of the Labor Code. The prevailing wage rates are available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Worksite.
- (A) ***Penalties.*** Under Labor Code Section 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to Two Hundred Dollars (\$200.00) for each calendar day, or portion a day, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to Federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the current applicable prevailing wage rates under federal law, available online at <http://www.access.gpo.gov/davisbacon/ca.html>.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code Sections 1776 and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for electronic submission of payroll records.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct.
- (2) Contractor or Subcontractor has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, or to the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations, and as further provided by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code Section 1776, Contractor or Subcontractor has ten (10) days in which to comply with requirements of this section. If Contractor or Subcontractor fails to do so within the ten (10) day period, Contractor or Subcontractor will forfeit a penalty of One Hundred Dollars (\$100.00) per day, or portion a day, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from progress payments then due.

9.5 Labor Compliance. Under Labor Code section 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations.

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

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

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

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

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

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

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

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

Article 10 Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must comply with all applicable safety laws, rules and regulations and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored on or off site, and property at or adjacent to the Worksite.

(A) **Reporting Requirements.** Contractor must immediately provide a written report to City of all recordable accidents and injuries occurring at the Worksite. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by law or regulation.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Worksite is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective

measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Worksite that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor must maintain Material Safety Data Sheets ("MSDS") at the Worksite, as required by law, for materials or substances used or consumed in the performance of the Work. The MSDS will be accessible and available to Contractor's employees, Subcontractors, and City.

(A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Worksite and/or used in the performance of the Work.

(B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Worksite so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

Article 11 Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection.** When the Work required by this Contract is fully performed, Contractor must provide written notification to Project Manager requesting final inspection. Based on this inspection, the Design Professional will prepare a punch list of items that are incomplete, incorrectly installed, or not operating as required by the Contract Documents. The omission of any such item from this punch list will not

relieve Contractor from fulfilling all requirements of the Contract Documents.

(B) **Punch List.** City will promptly deliver the punch list to Contractor and will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time.

(C) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents, and submission of all final submittals, including a warranty bond as required under Section 4.4, instructions and manuals as required under Section 7.10, and as-built drawings as required under Section 7.11, all to City's satisfaction. Once Final Completion is achieved, and the Project has been formally accepted by City, City will file a notice of completion with the County Recorder.

(D) **Final Payment.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than thirty five (35) days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may elect to accept the Project and record the notice of completion, and withhold up to one hundred fifty percent (150%) of City's estimated cost to complete the remaining items from Final Payment.

11.2 Warranty.

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one (1) year from the date of recordation of the notice of completion (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors,

suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to acceptance, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor expressly agrees to act as co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period.

(F) **City's Remedies.** If Contractor and/or its responsible Subcontractor fails to correct defective Work within ten (10) days following notice by City, or sooner, if required by the circumstances, Contractor expressly agrees that City may correct the defects to conform with Contract Documents at Contractor's sole expense, and Contractor agrees to reimburse City for its costs within thirty (30) days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor is solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein in addition to any and all costs incurred by City to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion. City will notify Contractor in writing of its intent to occupy or make use of the Project or any portions of the Project, pursuant to this provision.

(A) **Non-Waiver.** Occupation or use prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these

Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) **City's Responsibility.** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before final completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to perform the Work.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to recordation of the Notice of Completion, except for warranty work performed under this Article.

Article 12 Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) **Definition.** "Claim" means a separate demand by Contractor, submitted in writing, for change in the Contract Time or Contract Price that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part.

(B) **Limitations.** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(C) **Scope of Article.** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount, and applies in addition to the provisions of Public Contract Code Section 9204 and Sections 20104, et seq.

(D) **No Work Delay.** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of the Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) **Substantiation.** The Claim must be submitted to City in writing, clearly identified as a “Claim” submitted pursuant to this Article 12, and must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City’s written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of the relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each claimed cost. Any Claim for an extension of time or delay costs must be substantiated with schedule analysis and narrative depicting and explaining claimed time impacts.

(B) **Claim Format.** A Claim must be submitted in the following format:

- (1) General introduction, specifically identifying the submission as a “Claim” submitted under this Article 12.
- (2) Relevant background information, including identification of the specific demand at issue, and the date of City's rejection of that demand.
- (3) Detailed explanation of the issue(s) in dispute. For multiple issues, separately number and identify each issue and include the following for each separate issue:
 - (a) The background of the issue, including references to relevant provisions of the Contract Documents;
 - (b) A succinct statement of the matter in dispute, including Contractor’s position and the basis for that position;
 - (c) A chronology of relevant events;

(d) The identification and attachment of all supporting documents (see subsection (A), above, on Substantiation); and

(e) Use of a separate page for each issue.

(4) Summary of issues and damages.

(5) The following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim are true and correct. Contractor warrants that this Claim is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay claim not included herein are deemed waived. Contractor understands that submission of a Claim which has no basis in fact or which Contractor knows to be false may violate the False Claims Act (Government Code Section 12650 et seq.)."

(C) ***Submission Deadlines.***

(1) A Claim must be submitted within fifteen (15) days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part.

(2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment, or will be deemed waived.

(3) A Claim disputing the amount of Final Payment must be submitted within fifteen (15) days of the effective date of Final Payment, under Section 8.8, above.

(4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.

12.3 City's Response. City will respond within forty-five (45) days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the forty-five (45) day period is extended by mutual agreement of City and Contractor. However, the City may first request, in

writing, within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against Contractor. If Contractor fails to submit the additional documentation to City within fifteen (15) days of receipt of City's request, the Claim will be deemed waived.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor.

(B) **City's Response.** City's written response to the Claim, as further documented, will be submitted to Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by Contractor in producing the additional information, whichever is greater.

(C) **Non-Waiver.** Any failure by City to respond within the times specified above may not be construed as acceptance of the Claim in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, Contractor must notify City in writing, either within fifteen (15) days of receipt of City's response, or within fifteen (15) days of City's failure to respond within the specified time, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to dispute City's response, in writing, within the specified times, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within thirty (30) days, or later if needed to ensure the mutual availability of all of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten (10) working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days

after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the disputed portion(s) will be submitted for mediation as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Mediation under this Article will be scheduled within sixty (60) days following conclusion of the meet and confer process, with a mediator that the parties mutually agreed upon. The mediation itself may take place more than sixty (60) days following conclusion of the meet and confer process to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. The parties must share the costs of mediation equally, except costs incurred by each party for representation by legal counsel or any other consultant.

(B) Government Code Claims.

(1) Timely presentment of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied as a result of the meet and confer process, including any period of time used by the meet and confer process. If the parties agree to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under California Code of Civil Procedure Section 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Damages. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to recovery of any alleged home office overhead. The Eichleay Formula or similar formula may not be used for any recovery

under the Contract. Contractor is not entitled to consequential damages, including home office overhead or any form of overhead not directly incurred at the Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract.

- 12.9 Other Disputes.** The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 Suspension and Termination

- 13.1 Suspension for Cause.** In addition to all other remedies available to City, if Contractor fails to perform or correct work in accordance with the Contract Documents, City may immediately order the Work, or any portion of it, suspended until the cause for the suspension has been eliminated to City's satisfaction.
- (A) ***Failure to Comply.*** Contractor will not be entitled to an increase in Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.
- (B) ***No Duty to Suspend.*** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.
- 13.2 Suspension for Convenience.** City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience, and not due to any act or omission by Contractor or its Subcontractors. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work as directed by City. The Contract Price and the Contract Time will be equitably adjusted by Change Order to reflect the cost and delay impact occasioned by such suspension for convenience.
- 13.3 Termination for Default.** Contractor may be deemed in default for a material breach of or inability to perform the Contract, including Contractor's refusal or failure to supply sufficient skilled workers, proper

materials, or equipment to perform the Work within the Contract Time; refusal or failure to make prompt payment to its employees, Subcontractors, or suppliers or to correct rejected work; disregard of laws, regulations, ordinances, rules, or orders of any public agency with jurisdiction over the Project; or if Contractor lacks financial capacity to complete the Work within the Contract Time; or is otherwise responsible for a material breach of the Contract requirements.

(A) **Notice.** Upon City's determination that Contractor is in default, City may provide Contractor and its surety written notice of default and intent to terminate the Contract.

(B) **Termination.** Within seven (7) calendar days after notice of intent to terminate for default has been given, unless the default is cured or arrangements to cure the default have been made and memorialized in writing, to City's satisfaction, City may terminate the Contract by written notice to Contractor with a copy to Contractor's surety.

(C) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond, within seven (7) calendar days from the date of the notice of termination, Contractor's surety will be deemed to have waived its right to complete the Work under the Contract, and City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination. In addition, City will have the right to use any materials, supplies, and equipment belonging to Contractor and located at the Worksite for the purposes of completing the remaining Work.

(D) **Wrongful Termination.** If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience, in Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including consequential damages, lost opportunity costs or lost profits.

13.4 Termination for Convenience. City reserves the right to terminate all or part of the Contract for convenience upon written notice to Contractor. Upon receipt of such notice, Contractor must immediately stop the Work, comply with City's instructions to protect the completed Work and materials, and use its best efforts to minimize further costs. In the event of termination for convenience, the parties agree that the following will

constitute full and fair compensation to Contractor, and that Contractor will not be entitled to any additional compensation:

- (A) **Completed Work.** The value of its Work satisfactorily performed to date, including Project overhead and profit based on Contractor's schedule of values;
- (B) **Demobilization.** Actual and substantiated demobilization costs; and
- (C) **Markup.** Five percent (5%) of the total value of the Work performed as of the date of notice of termination or five percent (5%) of the value of the Work yet to be completed, whichever is less.

- 13.5 Provisions Remaining in Effect.** Upon termination pursuant to this Article, the provisions of the Contract Documents remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, or other such rights and obligations arising prior to the termination date.

Article 14 Miscellaneous Provisions

- 14.1 Assignment of Unfair Business Practice Claims.** Under Public Contract Code Section 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.
- 14.2 Provisions Deemed Inserted.** Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be amended accordingly.
- 14.3 Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will be effective unless it is in writing and signed by the party

waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by the waiving party.

- 14.4 Titles, Headings, and Groupings.** The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.
- 14.5 Statutory and Regulatory References.** With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that that bids were due.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

1. **Emergency Contact.** Prior to the commencement of Work on the Project, Contractor must provide contact information to the City Project for the person designated by Contractor to respond to any emergency that arises on the Worksite during the course of the Project. That person will be responsible for responding to the Worksite within thirty (30) minutes following notification of an emergency by City's Police or Fire Department, regardless of the time of day.

2. **Weather Delays.** This provision is intended to supplement the requirements of General Conditions Section 5.2 on Schedule Requirements and Section 5.3 on Delays and Extensions of Contract Time.

(A) **Weather Delay Day.** A Weather Delay Day is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than forty percent (40%) of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Worksite clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule.

(B) **Normal Weather Delay Days.** Based on historic records for the Project location, Contractor's schedule should assume the following number of normal Weather Delay Days for each month:

Month	# Normal Weather Delay Days
March	5
April	3
May	1
June	0

(C) **Extension of Time.** Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month, as set forth in Section (B) above, subject to the following limitations:

- (1) Contractor must fully comply with the applicable procedures in Article 5 and 6 of the General Conditions regarding requests to modify the Contract Time.
- (2) Normal Weather Delay Days which do not occur during a given month do not carry over to another month.

- (3) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.

END OF SPECIAL CONDITIONS



CITY COUNCIL STAFF REPORT

MEETING DATE: April 7, 2021

PREPARED BY: Harjot Sangha, Assistant to the City Manager
APPROVED BY: City Manager

RATIFY COMMUNITY POWER RESILIENCY GRANT ACCEPTANCE IN THE AMOUNT OF \$300,000 FROM STATE OF CALIFORNIA OFFICE OF EMERGENCY SERVICES FOR THE CENTENNIAL RECREATION CENTER BATTERY BACKUP PROJECT

RECOMMENDATION(S)

1. Ratify acceptance of Community Power Resiliency Grant from the State of California Office of Emergency Services (CalOES) in the amount of \$300,000; and
2. Authorize the City Manager to execute and administer all related documents.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Enhancing Public Safety
Protecting the Environment and Preserving
Open Space and Agricultural Land
Maintaining Infrastructure
Supporting Our Youth
Seniors
and Entire Community

2020-2021 Strategic Priorities

Fiscal Sustainability

REPORT NARRATIVE:

Purpose

In October 2020, California Office of Emergency Services (CalOES) issued a Request for Proposal (RFP) for Communities Power Resiliency Allocation to Cities Program. The purpose of the program is to support California incorporated cities with additional preparedness measures in response to power outage events, widely known as Public Safety Power Shut-off (PSPS) events. The maximum available under this grant is \$300,000.

Background

In 2019, the City accepted a separate Hazard Mitigation Grant from CalOES to outfit the Centennial Recreation Center (CRC) with a backup generator. After further review of the project, staff determined installation of the diesel generator would be old technology and be far less desirable from an operational cost perspective. Instead, staff explored the use of battery backup in lieu of a diesel generator. While the battery backup concept is in its infancy stages, battery backup power may yield a final product with less overall future maintenance costs and the technology is advancing rapidly. Staff discussed with

CalOES regarding the generator grant dollars being transferred to the battery backup alternative. Due to various constraints, such as timing, we were unable to move forward and the grant was ultimately forfeited, and the bids were rejected.

Recommended Action

In October 2020, City staff applied for the maximum \$300,000 available under the Communities Power Resiliency Allocation to Cities Program, with a proposed project to outfit the CRC with a bank of commercial battery powerpacks (providing 0.8 MWh/800 KWh of stored electricity) with the estimated total project cost of \$600,000. Under the grant, priority funding would be allocated to cities that illustrate the acquisition/use of low or no emissions power solutions. On March 12, 2021, CalOES notified the City of the approved allocation for the full amount of \$300,000, and that City must accept and sign within 20 calendar days (Attachment 1). Staff recommend ratification of the acceptance of the CalOES Communities Power Resiliency Allocation to Cities Program grant, and direct staff to put pursue the CRC battery backup project. The battery storage project will enable the CRC to remain functional during power outages and potentially serve as an emergency shelter. It will also allow the facility to reduce its use of power during the expensive evening hours to both reduce operational costs and add to overall power grid stability.

Next Steps

Staff will put together a formal scope of the project and return to the City Council to award the project at a future date. It is anticipated the City will have to fund a portion of the project. Once the final scope is prepared, staff will determine the best funding source for the City portion. Rebates for the battery technology may be available to the City to reduce or eliminate capital costs.

COMMUNITY ENGAGEMENT: Inform

The staff report serves to inform the Community of the grant funding awarded to the City and the potential for the CRC to serve as a resource during PSPS or other emergency events. Once the project scope is finalized, and awarded, staff will communicate project updates via social media, emails, and the website. The final product itself will not impact the use of the CRC during normal operations and will be transparent to CRC members.

ALTERNATIVE ACTIONS:

City Council could elect to not accept the grant and forgo the opportunity to outfit the CRC with alternative backup power option.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On December 19, 2018, City Council accepted Hazard Mitigation Grant funds for an emergency backup generator for the CRC and authorized the purchase and installation of the generator.

On December 4, 2019, City Council rejected bids for the CRC generator project.

FISCAL AND RESOURCE IMPACT:

The City will receive \$300,000 through the CalOES Communities Power Resiliency Allocation to Cities Program for outfitting the CRC with battery storage powerpacks. Silicon Valley Clean Energy has also awarded the City \$200,000 that can be applied to this project.

It is anticipated that the City will have to fund a portion of the project. As the ultimate project gets defined and the total project costs are known, staff will determine the best funding source for the City portion and return to City Council for the additional appropriation and related budgetary actions. Additional rebates for the battery technology may be available to the City to reduce or eliminate capital costs. Staff will firm up the available funding options prior to finalizing of the scope and award of the project.

CEQA (California Environmental Quality Act):

Categorically Exempt. The associated project will be a physical improvement that is subject to CEQA. Minor changes to existing facilities like this project, however, are categorically exempt per Section 15301 of the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Morgan Hill Award Letter - Signed

GAVIN NEWSOM
GOVERNOR

MARK S. GHILARDUCCI
DIRECTOR



March 12, 2021

Christina Turner
City Manager
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037-4128

SUBJECT: **NOTIFICATION OF SUBRECIPIENT ALLOCATION**
Fiscal Year (FY) 2020 Community Power Resiliency Allocation to
Cities Program
Period of Performance: July 1, 2020, to October 31, 2021

Dear Ms. Turner:

The California Governor's Office of Emergency Services (Cal OES) approved your FY 2020-21 Community Power Resiliency allocation in the amount of \$300,000. Cities are encouraged to support one or more of the Community Power Resiliency areas: schools, food storage reserves, and/or COVID-19 testing sites. Eligible activities under this allocation are limited to:

- Equipment-
Funds may be used for the procurement of:
 - Generators and generator connections for essential facilities, with an emphasis on clean energy and green solutions where possible or other alternative backup power sources;
 - Generator fuel and fuel storage;
 - Redundant emergency communications (e.g., battery-powered radios);
 - Portable vehicle-mounted charging stations;
 - Portable battery-powered and rechargeable radio repeater and transmission equipment.



3650 SCHRIEVER AVENUE, MATHER, CA 95655
(916) 845-8859 TELEPHONE (916) 845-8511 FAX
www.CalOES.ca.gov

Attachment: Morgan Hill Award Letter - Signed (3042 : PSPS Resiliency Grant)

- Plans-
 Funds may be used for the development/update of:
 - Continuity plans;
 - Contingency plans for electrical disruptions that include considerations such as protecting individuals with access and functional needs, medical baseline and socially vulnerable populations, transportation, emergency public information, and preservation of essential functions;
 - Risk assessments for critical infrastructure and lifelines;
 - Post-event reports that identify lessons learned and corrective actions.
- Public education materials or supplies focused on individual family preparedness for electric disruptions.
- One-time costs associated with identifying and equipping resource centers for the public to access during electrical disruptions.

The following activities are **not allowed**:

- These funds shall not be used to secure, compensate, or backfill professional services contracts.
- Response costs associated with electric disruption events including any staffing or new positions, Emergency Operations Center staffing, security, law or fire response, or other overtime charges.

All activities funded with this allocation must be completed within the Grant Subaward period of performance. Additionally, the Subrecipient is subject to the following requirements:

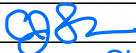
- As a condition of receiving funding, cities will be required to collaborate with their counties within their jurisdiction to support critical infrastructure and resiliency county-wide with a particular focus on public safety, vulnerable communities, and individuals with access and functional needs.
- Must ensure they and their principals are not presently debarred, suspended, proposed for debarment, or declared ineligible.
- Must provide a Progress Report on the expenditures of the funds. The Progress Report is due no later than **November 30, 2021**. This Progress Report shall identify how the funds have been used, including identifying each project or activity undertaken, local entity that undertook the project or activity, the amount of funding provided to the project or activity, and a description of each project or activity. The report shall also

City of Morgan Hill
 March 12, 2021
 Page 3 of 3

identify the specific outcomes achieved by each project or activity, including whether the project or activity was completed and whether it was used during power outages.

- Must coordinate with their city or county planning agency to ensure that the project is in compliance with the California Environmental Quality Act (CEQA) Public Resource Code, Section 21000 *et seq.*
- Comply with the California Public Records Act, Government Code Section 6250 *et seq.*
- Must procure goods and services in compliance with applicable state and local laws, ordinances, rules, regulations, and policies.

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant.

Subrecipient: City of Morgan Hill
 Signature of Authorized Agent: 
 Printed Name of Authorized Agent: Christina Turner
 Title: City Manager Date: March 16, 2021

Your dated signature and above fillable information is required on this Notification of Subrecipient Allocation. Please sign and return requested information to PSPS@CalOES.ca.gov within 20 calendar days upon receipt and keep a copy for your records. For further assistance, please email Cindy Logan at PSPS@CalOES.ca.gov.

Sincerely,



MARK S. GHILARDUCCI
 Director

Attachment: Morgan Hill Award Letter - Signed (3042 : PSPS Resiliency Grant)



CITY COUNCIL STAFF REPORT

MEETING DATE: April 7, 2021

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

APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2021

RECOMMENDATION(S)

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2021.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Protecting the Environment and Preserving
Open Space and Agricultural Land

REPORT NARRATIVE:

The purpose of this report is to present Recology South Valley's (Recology) request for an adjustment in the maximum allowable solid waste rates charged within the City for City Council consideration and action.

One of the provisions of Recology's franchise agreement has historically been that service rate increases are based upon changes in the Consumer Price Index. With the amendment to the franchise agreement approved in 2014, rate amendments are now based on changes in both the Consumer Price Index and the price of compressed natural gas. The calculated rate adjustment requested this year for these factors is a 0.77% increase.

In accordance with their franchise agreement with the City, Recology submitted the attached timely request for a rate adjustment (Attachment 1) and staff has determined that Recology's rate application follows the formula prescribed in the amended franchise agreement. For residential customers, this 0.77% adjustment applied to the current, basic residential service rate of \$34.06 is \$0.26 per month. With the approval of this adjustment, the maximum permitted monthly charge for flatland customers will be \$34.32 and the maximum permitted monthly charge for hillside customers will be \$37.34. For a business getting a 3-yard dumpster serviced once per week, the maximum allowable monthly rate will rise from \$374.68 to \$377.57.

As many customers are facing economic hardships currently due to the COVID-19 virus, it is worth noting that Recology is cooperating with requests from businesses to downsize or temporarily discontinue services and is not charging late fees, nor discontinuing service, for residential customers. As always, customers eligible for lower

rates on their PG&E bill can also obtain discounted solid waste services by simply showing Recology their discounted PG&E bill.

One might ask if staff considered asking Recology to delay this rate adjustment. This idea was considered and rejected for the following reasons:

1. It is a very small increase. No one is going to be able to truthfully say that a 26 cent a month increase impacted their ability to pay their bill.
2. Since Recology certainly experienced a serious reduction in revenue collection during the pandemic, it doesn't seem appropriate for the City to suggest that they take an additional revenue reduction at this time. Importantly, this adjustment is based on cost increases recorded last year and Recology has already paid these increased costs for a year.
3. If Recology was to defer the increase, all of the customers that don't have a reduction in their income will benefit equally with those that do. These "free riders" unnecessarily weaken Recology's financial position and their ability to accommodate people who do have reduced incomes and are unable to pay their bill.
4. Deferring the increase to a future year will require us to establish and monitor a "make-up" element in the future rates. This will generate a larger percentage increase in the future which will be objectionable to a larger number of people – even though it would be revenue neutral over time. This future higher increase is likely to be in on top of additional rate increases the City will need to introduce in 2022 to pay for the new organics recycling requirements mandated by the State.

It is recommended that the Council adopt the resolution (Attachment 2) increasing the maximum allowed rates for solid waste management services starting July 1, 2021.

COMMUNITY ENGAGEMENT: Inform

The community will be informed about the rate amendment via notices in the bills they receive from Recology.

ALTERNATIVE ACTIONS:

Not applicable as the City is contractually obligated to approve this amendment to the maximum rates for the normal annual adjustment.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

The City Council has evaluated solid waste rate adjustments annually for decades. In 2014, the City Council approved an amendment to the franchise agreement which changed the formula for the annual process.

FISCAL AND RESOURCE IMPACT:

The City's annual franchise fee revenues will increase by approximately \$10,000 under the proposed rate adjustments. This increase will be incorporated into the City's budget and financial forecast. Franchise fee is a revenue source of the General Fund (010). Processing this application is an anticipated and included activity in the work program of the Community Services Department.

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

This action will not result in physical changes to the environment, and it is not a project under the CEQA Guidelines.

LINKS/ATTACHMENTS:

1. Attachment 1: 2021 MH rate application
2. Attachment 2: Recology Rate Resolution 2021



February 22, 2021

Mr. Anthony Eulo
Program Administrator
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037

Re: July 2021 Rate Adjustment

Dear Anthony:

As outlined in section 6 of the Amended and Restated franchise agreement, we submit our request for a 0.77% adjustment to the collection rates effective July 1, 2021.

Section 6 (B) in the First Amendment describes using November to November index values for both the Consumer Price Index (CPI) for all Urban Consumers for the San Francisco/Oakland Metropolitan Area and the Department of Energy's Clean Cities Alternative Fuel Price Report.

The Bureau of Labor Statistics publishes the CPI index every other month; therefore, the CPI index is not published in November. Additionally, the Department of Energy publishes the Alternative Fuel Price Report in October and January, therefore November is not available. Both indices are available in October.

For consistency purposes, and to most closely match the original Franchise Agreement we have used the October 2019 to October 2020 indexes in both cases as we did last year.

Attached are the following exhibits:

Exhibit 1 - CPI Calculation

CPI calculation using the formula described section 6 of the Amendment and Restated franchise agreement. Using October 2019 to October 2020 indexes.

Exhibit 2 – CPI Documentation

A Copy of the printout from the U.S. Department of Labor - Bureau of Labor Statistics web site displaying the required values of the CPI calculation.

Exhibit 3 – Clean Cities Alternative Fuel Price Report Documentation

Table 6 compressed Natural Gas (relative to Diesel) West Coast report

Exhibit 4 – Rate Schedule

This table applies the CPI factor and Fuel index to the current rates and calculates the adjusted new rates for July 1, 2021.

Should you have any questions or need additional information, please call me at (408) 846-1395.

Sincerely,



Phil Couchee
General Manager
Recology South Valley

**RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATE ADJUSTMENT
EFFECTIVE JULY 1, 2021**

CPI RATE ADJUSTMENT

Formula outlined in Section 6 (B) First Amendment of
December 13, 2005 Franchise Agreement.

$$\frac{X (I) - X (I-2)}{X (I-2)}$$

Consumer Price Index Values

X (I) = October, 2020 = 301.736

X (I-2) = October, 2019 = 298.443

$$\text{CPI} = \frac{301.736 - 298.443}{298.443}$$

CPI = 1.10%

70% of CPI = 0.77%

Clean Cities Alternative Fuel Price Report

CNG \$/DGE X (I) October 2020 2.82

X (I-2) October 2019 2.82

$$\text{MFI} = \frac{2.82 - 2.82}{2.82}$$

MFI = 0.00%

10% of MFI = 0.00%

Total rate adjustment

0.77%

Attachment: Attachment 1: 2021 MH rate application [Revision 1] (3035 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2021

DESCRIPTION	Current Rates	Add Current 0.77%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	34.06	0.26	34.32
SGL FAM - NO STREET SWEEPING	33.64	0.26	33.90
HILLSIDE RESIDENTIAL	37.05	0.29	37.34
HILLSIDE RESIDENTIAL - NO SWEEPING	36.53	0.28	36.81
LOW INCOME	27.37	0.21	27.58
LOW INCOME - NO ST SWEEPING	27.03	0.21	27.24
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	45.35	0.35	45.70
BULKY MATERIAL (EACH EXTRA ITEM)	18.12	0.14	18.26
SIDE/BACKYARD SERV	13.60	0.10	13.70
GARBAGE TOTES RENTAL	5.76	0.04	5.80
RETURNED TRIP COLLECTION	35.49	0.27	35.76
<u>Commercial Rates</u>			
1 CAN COMM (32 GALLON)	20.84	0.16	21.00
2 CANS COMM (64 GALLON)	34.15	0.26	34.41
3 CANS COMM (96 GALLON)	47.54	0.37	47.91
4 CANS COMM (128 GALLON)	60.94	0.47	61.41
5 CANS COMM (160 GALLON)	74.32	0.57	74.89
6 CANS COMM (192 GALLON)	87.72	0.68	88.40
7 CANS COMM (224 GALLON)	101.05	0.78	101.83
8 CANS COMM (256 GALLON)	114.41	0.88	115.29
9 CANS COMM (288 GALLON)	127.80	0.98	128.78
10 CANS COMM (320 GALLON)	141.17	1.09	142.26
<u>ORGANICS</u>			
1 CAN COMM (32 GALLON)	16.67	0.13	16.80
2 CANS COMM (64 GALLON)	27.32	0.21	27.53
3 CANS COMM (96 GALLON)	38.03	0.29	38.32
4 CANS COMM (128 GALLON)	48.75	0.38	49.13
5 CANS COMM (160 GALLON)	59.46	0.46	59.92
6 CANS COMM (192 GALLON)	70.17	0.54	70.71
7 CANS COMM (224 GALLON)	80.84	0.62	81.46
8 CANS COMM (256 GALLON)	91.53	0.70	92.23
9 CANS COMM (288 GALLON)	102.23	0.79	103.02
10 CANS COMM (320 GALLON)	112.94	0.87	113.81
2 YD 1 X WEEK	258.67	1.99	260.66
2 YD 2 X WEEK	490.44	3.78	494.22
2 YD 3 X WEEK	722.19	5.56	727.75
2 YD 4 X WEEK	953.96	7.35	961.31
2 YD 5 X WEEK	1,185.68	9.13	1,194.81
2 YD 6 X WEEK	1,415.75	10.90	1,426.65
1/2 3 YD 1 X WEEK	187.34	1.44	188.78
3 YD 1 X WEEK	374.68	2.89	377.57
3 YD 2 X WEEK	713.52	5.49	719.01
3 YD 3 X WEEK	1,052.44	8.10	1,060.54
3 YD 4 X WEEK	1,391.23	10.71	1,401.94
3 YD 5 X WEEK	1,730.08	13.32	1,743.40
3 YD 6 X WEEK	2,068.92	15.93	2,084.85
4 YD 1 X WEEK	484.82	3.73	488.55
4 YD 2 X WEEK	921.37	7.09	928.46
4 YD 3 X WEEK	1,357.95	10.46	1,368.41
4 YD 4 X WEEK	1,794.55	13.82	1,808.37
4 YD 5 X WEEK	2,231.10	17.18	2,248.28
4 YD 6 X WEEK	2,667.68	20.54	2,688.22
6 YD 1 X WEEK	724.38	5.58	729.96
6 YD 2 X WEEK	1,386.30	10.67	1,396.97
6 YD 3 X WEEK	2,048.21	15.77	2,063.98
6 YD 4 X WEEK	2,710.15	20.87	2,731.02
6 YD 5 X WEEK	3,372.09	25.97	3,398.06
6 YD 6 X WEEK	4,034.01	31.06	4,065.07
SPECIAL COLLECTION	29.77	0.23	30.00
<u>ORGANICS</u>			
1 YD 1 X WEEK	142.78	1.10	143.88
1 YD 2 X WEEK	270.72	2.08	272.80
1 YD 3 X WEEK	398.64	3.07	401.71

Attachment: Attachment 1: 2021 MH rate application [Revision 1] (3035 : Recology Rate Adjustment)

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2021

DESCRIPTION	Current Rates	Add Current 0.77%	New Rates
1 YD 4 X WEEK	526.59	4.05	530.64
1 YD 5 X WEEK	654.50	5.04	659.54
1 YD 6 X WEEK	781.49	6.02	787.51
2 YD 1 X WEEK	206.94	1.59	208.53
2 YD 2 X WEEK	392.35	3.02	395.37
2 YD 3 X WEEK	577.75	4.45	582.20
2 YD 4 X WEEK	763.17	5.88	769.05
2 YD 5 X WEEK	948.55	7.30	955.85
2 YD 6 X WEEK	1,132.60	8.72	1,141.32
1/2 3 YD 1 X WEEK	149.87	1.15	151.02
3 YD 1 X WEEK	299.75	2.31	302.06
3 YD 2 X WEEK	570.82	4.40	575.22
3 YD 3 X WEEK	841.95	6.48	848.43
3 YD 4 X WEEK	1,112.99	8.57	1,121.56
3 YD 5 X WEEK	1,384.06	10.66	1,394.72
3 YD 6 X WEEK	1,655.13	12.74	1,667.87
4 YD 1 X WEEK	387.86	2.99	390.85
4 YD 2 X WEEK	737.10	5.68	742.78
4 YD 3 X WEEK	1,086.36	8.36	1,094.72
4 YD 4 X WEEK	1,435.64	11.05	1,446.69
4 YD 5 X WEEK	1,784.88	13.74	1,798.62
4 YD 6 X WEEK	2,134.15	16.43	2,150.58
6 YD 1 X WEEK	579.51	4.46	583.97
6 YD 2 X WEEK	1,109.03	8.54	1,117.57
6 YD 3 X WEEK	1,638.57	12.62	1,651.19
6 YD 4 X WEEK	2,168.12	16.69	2,184.81
6 YD 5 X WEEK	2,697.67	20.77	2,718.44
6 YD 6 X WEEK	3,227.21	24.85	3,252.06
SPECIAL COLLECTION	23.81	0.18	23.99
REGULAR COMPACTOR (PER YARD)	47.03	0.36	47.39
RECYCLE COMPACTOR (PER YARD)	27.80	0.21	28.01
SUPER COMPACTOR (PER YARD)	94.02	0.72	94.74
20 YARD DEBRIS BOX	517.53	3.98	521.51
35 YARD DEBRIS BOX	739.34	5.69	745.03
40 YARD DEBRIS BOX	862.61	6.64	869.25
ORGANICS			
20 YARD DEBRIS BOX	414.02	3.19	417.21
35 YARD DEBRIS BOX	591.47	4.55	596.02
40 YARD DEBRIS BOX	690.09	5.31	695.40
PERM RENTAL	274.19	2.11	276.30
PERM DISPOSAL (PER YARD)	25.79	0.20	25.99
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	264.53	2.04	266.57
40 YARD OTHER RECYCLABLES	440.93	3.40	444.33
20 YARD DEBRIS BOX HILLSIDE	645.27	4.97	650.24
40 YARD DEBRIS BOX HILLSIDE	989.87	7.62	997.49
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	407.54	3.14	410.68
2 YARD COMPACTOR 2 X WEEK	815.07	6.28	821.35
2 YARD COMPACTOR 3 X WEEK	1,222.62	9.41	1,232.03
3 YARD COMPACTOR 1 X WEEK	611.32	4.71	616.03
3 YARD COMPACTOR 2 X WEEK	1,222.62	9.41	1,232.03
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	814.90	6.27	821.17
2 YARD COMPACTOR 2 X WEEK	1,629.78	12.55	1,642.33
2 YARD COMPACTOR 3 X WEEK	2,444.68	18.82	2,463.50
3 YARD COMPACTOR 1 X WEEK	1,222.33	9.41	1,231.74
3 YARD COMPACTOR 2 X WEEK	2,444.68	18.82	2,463.50
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00

Attachment: Attachment 1: 2021 MH rate application [Revision 1] (3035 : Recology Rate Adjustment)

<https://data.bls.gov/pdq/SurveyOutputServlet>

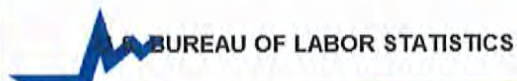
Bureau of Labor Statistics D...

File Edit View Favorites Tools Help

SJ Login 360 L&B BLS Series Report CEO Log On - KPMG, LLP Qlik Sense RivalHealth ROGR Serengeti Tracker Signon Sug

An official website of the United States government [Here is how you know](#)

United States Depart



Databases, Tables & Calculators by Subject

Change Output Options: From: 2010 To: 2020 GO
[More Formatting Options](#)

☐ Include graphs ☐ Include annual averages

Data extracted on: February 12, 2021 (5:42:28 PM)

CPI for All Urban Consumers (CPI-U)

Series Id: CUURS49BSA0
Not Seasonally Adjusted
Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted
Area: San Francisco-Oakland-Hayward, CA
Item: All items
Base Period: 1982-84=100

Download: [xls](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2010		226.145		227.697		228.110		227.954		228.107		227.658	227.469	226.994	227.944
2011		229.981		234.121		233.646		234.608		235.331		234.327	233.390	232.082	234.698
2012		236.880		238.985		239.806		241.170		242.834		239.533	239.650	238.099	241.201
2013		242.677		244.675		245.935		246.072		246.617		245.711	245.023	243.894	246.152
2014		248.615		251.495		253.317		253.354		254.503		252.273	251.985	250.507	253.463
2015		254.910		257.622		259.117		259.917		261.019		260.289	258.572	256.723	260.421
2016		262.600		264.565		266.041		267.853		270.306		269.483	266.344	263.911	268.777
2017		271.626		274.589		275.304		275.893		277.570		277.414	274.924	273.306	276.542
2018		281.308		283.422		286.062		287.664		289.673		289.896	285.550	282.666	288.435
2019		291.227		294.801		295.259		295.490		298.443		297.007	295.004	293.150	296.859
2020		299.690		298.074		300.032		300.182		301.736		302.948	300.084	299.109	301.059

Compressed Natural Gas (CNG) Relative to Diesel

TABLE 6
Compressed Natural Gas (CNG) and Diesel
Average Retail Prices by Region

Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$2.95	\$2.60	\$0.35
Central Atlantic	\$2.66	\$2.61	\$0.05
Lower Atlantic	\$2.08	\$2.30	-\$0.22
Midwest	\$2.26	\$2.25	\$0.01
Gulf Coast	\$2.36	\$2.02	\$0.34
Rocky Mountain	\$2.33	\$2.19	\$0.14
West Coast	\$2.82	\$3.24	-\$0.42
NATIONAL AVERAGE	\$2.46	\$2.40	\$0.06

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$/DGE basis.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis between October 1 and October 15, 2020.

Compressed Natural Gas (CNG) Relative to Diesel

Region	CNG Prices (\$/DGE*)	Diesel Prices (\$/gal)	Price Difference**
New England	\$3.03	\$3.14	-\$0.11
Central Atlantic	\$2.53	\$2.89	-\$0.36
Lower Atlantic	\$2.37	\$2.93	-\$0.56
Midwest	\$2.33	\$2.95	-\$0.62
Gulf Coast	\$2.42	\$2.69	-\$0.27
Rocky Mountain	\$2.21	\$2.91	-\$0.70
West Coast	\$2.82	\$3.89	-\$1.07
NATIONAL AVERAGE	\$2.49	\$3.08	-\$0.59

*DGE = diesel gallon equivalent

** Negative numbers represent average CNG prices that are lower than diesel, on a \$/DGE basis.

Natural Gas



The prices shown in Table 6 were submitted by Clean Cities coordinators, fuel providers, and other stakeholders on a voluntary basis between October 1 and October 15, 2019.

RESOLUTION NO. 21-XXX**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN ADJUSTMENT IN SOLID WASTE COLLECTION RATES FOR 2021**

WHEREAS, the City of Morgan Hill (the "City") has approved a franchise agreement with Recology South Valley ("Recology") that establishes a methodology for regulating the maximum rates that Recology can charge to Morgan Hill customers; and

WHEREAS, Recology has submitted an application for a rate adjustment that substantially complies with the methodology in the Agreement; and

WHEREAS, the cost of living, as indicated by the consumer price index, and the cost of motor fuels have changed during the past year causing an increase in the cost of providing service; and

WHEREAS, Recology has agreed to provide notice in their next garbage billing explaining the rate adjustment process; and

WHEREAS, further reasons supporting the rate adjustment described in, and that is the subject of, this Resolution are set forth in detail in that certain City Council Staff Report entitled "Approve Solid Waste Management Rate Adjustment for 2021" submitted for City Council consideration at its meeting of April 7, 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 activities allowed under this Resolution do not constitute a project under the provisions of California Environmental Quality Act of 1970; and

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

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

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

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

City of Morgan Hill
 Resolution No. 21-0XX
 Page 2 of 4

Section 2. Approval and Authorization. The City Council does further resolve, order and/or direct that Recology South Valley is hereby authorized to adjust their rates up to the maximum levels listed on the rate schedule attached hereto as Exhibit A.

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

PASSED, APPROVED AND ADOPTED by the City Council of the City of Morgan Hill at its meeting held on this 7th day of April 2021 by the following vote:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ **CERTIFICATION** ∞

I, Michelle Bigelow, City Clerk of the City of Morgan Hill, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 21-0XX adopted by the City Council at the meeting held on the 7th day of April 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

Attachment: Attachment 2: Recology Rate Resolution 2021 [Revision 1] (3035 : Recology Rate Adjustment)

EXHIBIT A

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2021

DESCRIPTION	Current Rates	Add Current 0.77%	New Rates
<u>Residential Rates</u>			
BASIC SINGLE FAMILY	34.06	0.26	34.32
SGL FAM - NO STREET SWEEPING	33.64	0.26	33.90
HILLSIDE RESIDENTIAL	37.05	0.29	37.34
HILLSIDE RESIDENTIAL - NO SWEEPING	36.53	0.28	36.81
LOW INCOME	27.37	0.21	27.58
LOW INCOME - NO ST SWEEPING	27.03	0.21	27.24
EX YW CONTAINER RENT			
BULKY MATERIAL (1-3 ITEMS)	45.35	0.35	45.70
BULKY MATERIAL (EACH EXTRA ITEM)	18.12	0.14	18.26
SIDE/BACKYARD SERV	13.60	0.10	13.70
GARBAGE TOTES RENTAL	5.76	0.04	5.80
RETURNED TRIP COLLECTION	35.49	0.27	35.76
<u>Commercial Rates</u>			
1 CAN COMM (32 GALLON)	20.84	0.16	21.00
2 CANS COMM (64 GALLON)	34.15	0.26	34.41
3 CANS COMM (96 GALLON)	47.54	0.37	47.91
4 CANS COMM (128 GALLON)	60.94	0.47	61.41
5 CANS COMM (160 GALLON)	74.32	0.57	74.89
6 CANS COMM (192 GALLON)	87.72	0.68	88.40
7 CANS COMM (224 GALLON)	101.05	0.78	101.83
8 CANS COMM (256 GALLON)	114.41	0.88	115.29
9 CANS COMM (288 GALLON)	127.80	0.98	128.78
10 CANS COMM (320 GALLON)	141.17	1.09	142.26
<u>ORGANICS</u>			
1 CAN COMM (32 GALLON)	16.67	0.13	16.80
2 CANS COMM (64 GALLON)	27.32	0.21	27.53
3 CANS COMM (96 GALLON)	38.03	0.29	38.32
4 CANS COMM (128 GALLON)	48.75	0.38	49.13
5 CANS COMM (160 GALLON)	59.46	0.46	59.92
6 CANS COMM (192 GALLON)	70.17	0.54	70.71
7 CANS COMM (224 GALLON)	80.84	0.62	81.46
8 CANS COMM (256 GALLON)	91.53	0.70	92.23
9 CANS COMM (288 GALLON)	102.23	0.79	103.02
10 CANS COMM (320 GALLON)	112.94	0.87	113.81
2 YD 1 X WEEK	258.67	1.99	260.66
2 YD 2 X WEEK	490.44	3.78	494.22
2 YD 3 X WEEK	722.19	5.56	727.75
2 YD 4 X WEEK	953.96	7.35	961.31
2 YD 5 X WEEK	1,185.68	9.13	1,194.81
2 YD 6 X WEEK	1,415.75	10.90	1,426.65
1/2 3 YD 1 X WEEK	187.34	1.44	188.78
3 YD 1 X WEEK	374.68	2.89	377.57
3 YD 2 X WEEK	713.52	5.49	719.01
3 YD 3 X WEEK	1,052.44	8.10	1,060.54
3 YD 4 X WEEK	1,391.23	10.71	1,401.94
3 YD 5 X WEEK	1,730.08	13.32	1,743.40
3 YD 6 X WEEK	2,068.92	15.93	2,084.85
4 YD 1 X WEEK	484.82	3.73	488.55
4 YD 2 X WEEK	921.37	7.09	928.46
4 YD 3 X WEEK	1,357.95	10.46	1,368.41
4 YD 4 X WEEK	1,794.55	13.82	1,808.37
4 YD 5 X WEEK	2,231.10	17.18	2,248.28
4 YD 6 X WEEK	2,667.68	20.54	2,688.22
6 YD 1 X WEEK	724.38	5.58	729.96
6 YD 2 X WEEK	1,386.30	10.67	1,396.97
6 YD 3 X WEEK	2,048.21	15.77	2,063.98
6 YD 4 X WEEK	2,710.15	20.87	2,731.02
6 YD 5 X WEEK	3,372.09	25.97	3,398.06
6 YD 6 X WEEK	4,034.01	31.06	4,065.07
SPECIAL COLLECTION	29.77	0.23	30.00
<u>ORGANICS</u>			
1 YD 1 X WEEK	142.78	1.10	143.88
1 YD 2 X WEEK	270.72	2.08	272.80
1 YD 3 X WEEK	398.64	3.07	401.71

RECOLOGY SOUTH VALLEY
CITY OF MORGAN HILL
RATES EFFECTIVE JULY 1, 2021

DESCRIPTION	Current Rates	Add Current 0.77%	New Rates
1 YD 4 X WEEK	526.59	4.05	530.64
1 YD 5 X WEEK	654.50	5.04	659.54
1 YD 6 X WEEK	781.49	6.02	787.51
2 YD 1 X WEEK	206.94	1.59	208.53
2 YD 2 X WEEK	392.35	3.02	395.37
2 YD 3 X WEEK	577.75	4.45	582.20
2 YD 4 X WEEK	763.17	5.88	769.05
2 YD 5 X WEEK	948.55	7.30	955.85
2 YD 6 X WEEK	1,132.60	8.72	1,141.32
1/2 3 YD 1 X WEEK	149.87	1.15	151.02
3 YD 1 X WEEK	299.75	2.31	302.06
3 YD 2 X WEEK	570.82	4.40	575.22
3 YD 3 X WEEK	841.95	6.48	848.43
3 YD 4 X WEEK	1,112.99	8.57	1,121.56
3 YD 5 X WEEK	1,384.06	10.66	1,394.72
3 YD 6 X WEEK	1,655.13	12.74	1,667.87
4 YD 1 X WEEK	387.86	2.99	390.85
4 YD 2 X WEEK	737.10	5.68	742.78
4 YD 3 X WEEK	1,086.36	8.36	1,094.72
4 YD 4 X WEEK	1,435.64	11.05	1,446.69
4 YD 5 X WEEK	1,784.88	13.74	1,798.62
4 YD 6 X WEEK	2,134.15	16.43	2,150.58
6 YD 1 X WEEK	579.51	4.46	583.97
6 YD 2 X WEEK	1,109.03	8.54	1,117.57
6 YD 3 X WEEK	1,638.57	12.62	1,651.19
6 YD 4 X WEEK	2,168.12	16.69	2,184.81
6 YD 5 X WEEK	2,697.67	20.77	2,718.44
6 YD 6 X WEEK	3,227.21	24.85	3,252.06
SPECIAL COLLECTION	23.81	0.18	23.99
REGULAR COMPACTOR (PER YARD)	47.03	0.36	47.39
RECYCLE COMPACTOR (PER YARD)	27.80	0.21	28.01
SUPER COMPACTOR (PER YARD)	94.02	0.72	94.74
20 YARD DEBRIS BOX	517.53	3.98	521.51
35 YARD DEBRIS BOX	739.34	5.69	745.03
40 YARD DEBRIS BOX	862.61	6.64	869.25
ORGANICS			
20 YARD DEBRIS BOX	414.02	3.19	417.21
35 YARD DEBRIS BOX	591.47	4.55	596.02
40 YARD DEBRIS BOX	690.09	5.31	695.40
PERM RENTAL	274.19	2.11	276.30
PERM DISPOSAL (PER YARD)	25.79	0.20	25.99
CARDBOARD COMPACTOR	FREE	FREE	FREE
20 YARD CARDBOARD	FREE	FREE	FREE
40 YARD CARDBOARD	FREE	FREE	FREE
20 YARD OTHER RECYCLABLES	264.53	2.04	266.57
40 YARD OTHER RECYCLABLES	440.93	3.40	444.33
20 YARD DEBRIS BOX HILLSIDE	645.27	4.97	650.24
40 YARD DEBRIS BOX HILLSIDE	989.87	7.62	997.49
<u>Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	407.54	3.14	410.68
2 YARD COMPACTOR 2 X WEEK	815.07	6.28	821.35
2 YARD COMPACTOR 3 X WEEK	1,222.62	9.41	1,232.03
3 YARD COMPACTOR 1 X WEEK	611.32	4.71	616.03
3 YARD COMPACTOR 2 X WEEK	1,222.62	9.41	1,232.03
<u>Super Compactor Front Loader Service</u>			
2 YARD COMPACTOR 1 X WEEK	814.90	6.27	821.17
2 YARD COMPACTOR 2 X WEEK	1,629.78	12.55	1,642.33
2 YARD COMPACTOR 3 X WEEK	2,444.68	18.82	2,463.50
3 YARD COMPACTOR 1 X WEEK	1,222.33	9.41	1,231.74
3 YARD COMPACTOR 2 X WEEK	2,444.68	18.82	2,463.50
<u>Special Street Sweeping</u>			
M-F 8:00AM-5:00PM (PER HOUR)	75.00	-	75.00
ALL OTHER HOURS (MINIMUM + HOURLY)	500.00	-	500.00



CITY COUNCIL STAFF REPORT

MEETING DATE: April 7, 2021

PREPARED BY: Jennifer Carman, Community Development Director
APPROVED BY: City Manager

ADOPT RESOLUTION PLACING THE MORGAN HILL RESPONSIBLE GROWTH COALITION INITIATIVE PETITION ON THE NOVEMBER 2022 BALLOT AND ADOPT URGENCY ORDINANCE REGULATING DOCK-HIGH-DOORS ON BUILDINGS WITH OVER 75,000 SQUARE FEET OF FLOOR AREA AND CEILING HEIGHT GREATER THAN 34 FEET

RECOMMENDATION(S)

1. Adopt resolution placing 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 on the November 2022 ballot;
2. Adopt the alternative ordinance as an urgency ordinance; and
3. Direct the Planning Commission to make recommendations for permanent ordinance regulating large building design, including maximum dock-door-ratios for certain buildings, and consider placement of the alternative ordinance on the November 2022 ballot.

COUNCIL PRIORITIES, GOALS & STRATEGIES

Ongoing Priorities

Preserving and Cultivating Public Trust

REPORT NARRATIVE:

On March 3, 2021, the City Council certified the sufficiency of the Morgan Hill Responsible Growth Coalition's (RG4MH) Initiative Petition. They also directed staff to generate an impact report per Elections Code section 9212, work with the Morgan Hill Responsible Growth Coalition (MHRGC) to clarify language and develop an ordinance that meets the Initiative's intent while reducing impacts to existing businesses. Since the March 3rd meeting, City staff and the MHRGC have collaborated to bring forward an ordinance that further protects Morgan Hill from potential large truck/high traffic uses. Both the impact report and proposed collaborative ordinance are included as attachments.

There are four main components of the collaborative solution developed between the City and the MHRGC.

1. Staff will update the in-process "Industrial Use Preservation Policy" to explicitly note that all forms of distribution as a primary business are prohibited in Morgan Hill.

2. Further bolster the existing City Ordinance prohibiting distribution as a primary use by clarifying definitions for ceiling height, dock-high-doors, and Light Manufacturing uses.
3. The RG4MH Initiative would be replaced with a new City ordinance that prevents future developments from being constructed with all the physical characteristics of a Distribution Center.
4. A new Measure that mirrors the new City ordinance would be placed on the next general election (November 2022). A future City Council will not be able to change or rescind the building restrictions if approved by the Citizens of Morgan Hill.

Under Government Code section 65090, the City Council may adopt the collaborative ordinance as an urgency ordinance on the finding that the adoption of an urgency ordinance is necessary to protect the public safety, health, and welfare and to prevent the development of uses that may conflict with a contemplated general plan or zoning proposal that the legislative body, planning commission, or the planning department is considering or studying or intends to study within a reasonable time. An urgency ordinance requires four affirmative votes of the City Council. If the City Council adopts the collaborative ordinance as an urgency ordinance, it will take effect immediately, but staff will notice a public hearing no later than May 19 for Council to ratify the urgency ordinance. The Planning Commission would have up to a year to consider any permanent ordinance.

Staff recommends the City Council:

1. Place RG4MH Initiative on the ballot;
2. Adopt the collaborative ordinance as an “urgency ordinance”;
3. Direct Planning Commission to review collaborative ordinance as a permanent ordinance, and consider placement on ballot; and
4. Place collaborative ordinance, as may be recommended by the Planning Commission, on ballot upon future adoption.

COMMUNITY ENGAGEMENT: Involve

As a General Law City, Morgan Hill is governed by Government and Election Codes to elect municipal officers (e.g., mayor, council members, and city treasurer), for ballot measures, and for initiative and referendum processes.

ALTERNATIVE ACTIONS:

The City Council could choose to place the measure on the ballot for the November 2022 general municipal election and choose not to adopt the urgency ordinance. Under this alternative, the City Council could direct staff to forward a draft ordinance to the Planning Commission for standard ordinance processing. This would delay the new language from going into effect for 3-4 months.

PRIOR CITY COUNCIL AND COMMISSION ACTIONS:

On September 22, 2020, the Planning Commission recommended changes to the Zoning Ordinance that included language implementing provisions of the Initiative

related to the review of large projects. The September 22 recommendation also prohibited all large-scale e-commerce distribution uses but would have allowed some local delivery.

On October 28, 2020, the City Council introduced a Zoning Ordinance amendment adopting the Planning Commission's recommendations and prohibiting local e-commerce delivery uses. This ordinance was adopted on November 18, 2020.

FISCAL AND RESOURCE IMPACT:

Election Cost: If Council elects to place the Initiative on the ballot, it will be placed on the next regular municipal election scheduled for November 2022. The cost for the November 2022 ballot measure is unknown at this time. In November 2020, the estimated cost for placing a ballot measure was approximately \$60,000. It is safe to assume the additional ballot measure cost in November 2022 would likely be more, if not similar. Ballot measure costs are in addition to the regularly scheduled election costs of two Council members and one Mayor, estimated to be \$150,000 or more.

Resource Impact: Thus far, staff has been able to accommodate the additional work due to the initiative petition within its existing workplan.

Ordinance Impact: At Council's direction, staff focused efforts on collaborating with the Morgan Hill Responsible Growth Coalition rather than spending resources on an impact analysis. The attached impact analysis is reflective of the collaborative ordinance rather than the RG4MH Initiative petition.

CEQA (California Environmental Quality Act):

Certification of an initiative petition is not a project under CEQA.

LINKS/ATTACHMENTS:

1. Urgency Ordinance
2. Resolution Placing Initiative Petition on the November 2022 Ballot
3. City of Morgan Hill 9212 Report and Fiscal Analysis
4. Letter 1
5. Letter 2
6. Letter 3
7. Chamber of Commerce Letters

URGENCY ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY OF MORGAN HILL ADDING SECTION 18.76.140 (“MAXIMUM DOCK HIGH DOOR RATIO”) TO CHAPTER 18.76 (“PERFORMANCE STANDARDS”) AND AMENDING SECTIONS 18.124.050 (“INDUSTRIAL USES”) OF CHAPTER 18.124 (“LAND USE DEFINITIONS”) AND 18.128.020 (“DEFINITIONS”) OF CHAPTER 18.128 (“GENERAL TERMS”) OF TITLE 18 (“ZONING”) OF THE MORGAN HILL MUNICIPAL CODE TO CREATE A MAXIMUM DOCK-HIGH-DOOR RATIO FOR CERTAIN STRUCTURES AND TO ADD DEFINITIONS

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

Section 1. The Council finds and declares that this urgency ordinance is necessary to protect the public safety, health, and welfare, and to prevent the development of uses that may be in conflict with a contemplated general plan or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.

Section 2. Section 18.76.140 (“Maximum Dock High Door Ratio”) of Chapter 18.76 (“Performance Standard”) of Title 18 (“Zoning”) is hereby added to read as follows (additions in underline, deletions in strikeout):

18.76.140 – Maximum Dock High Door Ratio

The maximum Dock High Door to Square Foot Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1:25,000.

Section 3. Subsection (D) (“Manufacturing, Light”) of Section 18.124.050 (“Industrial Uses”) of Chapter 18.124 (“Land Use Definitions”) of Title 18 (“Zoning”) is hereby amended to read as follows:

D. Manufacturing, Light. The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mill sand manufacturing uses involving primary production of wood, metal or chemical products from raw materials. For purpose of this definition, the term “Assembly” includes creation of a component or end item made from a number of parts and subassemblies. Assembly does not include the putting together of kits, gift baskets, or packaging items produced elsewhere for purposes of e-commerce or wholesale trading.

Section 4. Subsection (C) (“C’ Terms”) of Section 18.128.020 (“Definitions”) of Chapter 18.128 (“General Terms”) of Title 18 (“Zoning”) is hereby amended to read as follows:

C. "C" Terms.

1. California Room. A room or space in a building where one or more sides is open and exposed (without a wall or windows) to adjacent outdoor space.
2. Ceiling Height. The clear vertical distance from the finished floor to the finished ceiling. If the ceiling is unfinished, the ceiling height is the distance from the floor to the lowest projecting beams, joists, or truss work.
3. Cessation of Use. The discontinuation of a use, either temporarily or permanently, whether with the intent to abandon such use or not.
4. City Geologist. A registered professional geologist certified by the state of California in the specialty of engineering geology (C.E.G.) who is either a city staff member or a consultant retained by the city.
5. Clear Triangle. A triangular area bounded by the street right-of-way lines of a corner lot and a line joining points along said street lines 20 feet from the point of intersection.
6. Commercial. Any activity on or use of land which involves the buying, selling, processing or improving of things not produced on the land, and having financial gain as the primary aim of the activity or use, whether or not such activity or use is for hire or on account of the buyer, seller, processor or improver.
7. Conditional Use. A use that requires approval of a conditional use permit or an administrative use permit.
8. Condominium. Individual ownership of a dwelling unit within a multiple-unit structure exclusive of the land underlying such structure.
9. Condominium Development. A structure and appurtenant premises divided in ownership by the existence of the condominiums as defined in Section 783 of the California Civil Code. Includes instances where ownership is divided following prior single ownership of the entire structure and premises, as well as new structures divided in ownership.

Section 5. Subsection (D) (“D’ Terms”) of Section 18.128.020 (“Definitions”) of Chapter 18.128 (“General Terms”) of Title 18 (“Zoning”) is hereby amended to read as follows:

D. "D" Terms.

1. Deck. A platform, either freestanding or attached to a building, that is supported by piers,

pillars or posts.

2. Dock-High-Door. An opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more.
3. Dock-High-Door-to-Square-Foot Ratio. The ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.
4. Driveway. A permanently surfaced area on a lot designed and required to provide direct access for vehicles between a street and a private garage, carport or other parking space, parking area, or loading area.
5. Driveway Aisle, Major. A driveway providing principal access to the parking area or the driveway providing principal circulation throughout the parking areas or premises.
6. Driveway Apron. A paved area providing principal access from a drive aisle or street right-of-way to a garage or other covered parking space.
7. Dwelling. A building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons. Excludes tents, cabins, trailers and trailer coaches.
8. Dwelling Unit. A room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, occupied or intended for occupancy by one family on a non-transient (less than thirty-day stay) basis and having not more than one kitchen.
9. Density. The number of dwelling units permitted per net lot area.

Section 6. **Severability.** Should any provision of this ordinance be deemed unconstitutional or unenforceable by a court of competent jurisdiction, such provision shall be severed from the ordinance, and such severance shall not affect the remainder of the ordinance.

Section 7. **Effective Date; Posting.** This Ordinance shall take effect on immediately upon adoption. The City Clerk is hereby directed to publish this Ordinance or a summary thereof in the manner required by law.

THE FORGOING ORDINANCE WAS DULY ADOPTED AT A MEETING HELD ON THE _____ DAY OF _____, 2021, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

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

APPROVED:

ATTEST:

RICH CONSTANTINE, Mayor

MICHELLE BIGELOW, City Clerk

∞ CERTIFICATE OF THE CITY CLERK ∞

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 Ordinance No. _____, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the _____ day of _____, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

RESOLUTION NO. 21-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL, CALIFORNIA SUBMITTING TO THE VOTERS OF THE CITY AN INITIATIVE ORDINANCE 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

WHEREAS, pursuant to authority provided by Division 9, Chapter 3, Article 1 (commencing at S 9200) of the Elections Code of the State of California, a petition has been filed with the City Council of the City of Morgan Hill signed by more than ten percent (10%) of the registered voters of the City, according to the Santa Clara County Registrar of Voters last official report of registration to the Secretary of State, to submit a proposed ordinance to the voters 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

WHEREAS, the City Clerk, though the Santa Clara County Registrar of Voters, has examined the records of voter registration and ascertained that, pursuant to California Elections Code section 9215, the petition was signed by the requisite number of voters, and has so certified; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MORGAN HILL AS FOLLOWS:

Section 1. Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Election. The City Council hereby calls a General Municipal Election for Tuesday, November 8, 2022 (the “Election”) and orders, pursuant to Section 9222 of the Elections Code, that the Initiative Petition ordinance 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 be submitted to the voters at that election.

Section 3. Ballot Question. The question submitted under Section 3 of this Resolution shall appear on the ballot as follows:

Shall the Initiative ordinance, 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 be adopted?	YES	
	NO	

Section 4. Approval. Pursuant to Article XIII C of the Constitution, this measure requires approval by a majority (50% plus 1) of those casting ballots on the measure.

Section 5. Consolidation. Pursuant Section 10400 et seq. of the Elections Code, the Board of Supervisors of Santa Clara County (Board of Supervisors) is requested to consolidate the Election with other elections held on the same day in the same territory or in the territory that is in part the same.

Section 6. Canvass. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.

Section 7. Conduct of Election. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the Santa Clara County Registrar of Voter's Office to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.

Section 8. Filing with County. The City Clerk shall file a certified copy of this Resolution with the Board of Supervisors.

Section 9. Analysis and Argument. The City Council authorizes all members of the City Council to file written argument(s) In Favor of, or Against the measure described in Section 3 above, not exceeding 300 words, accompanied by the printed name(s) and signature(s) of the author(s) submitting it, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California. The arguments may be changed or withdrawn until and including the date fixed by the City Clerk after which no arguments for or against the ballot measure may be submitted to the City Clerk.

The City Attorney shall prepare an impartial analysis of the measure. Any person or persons may file an argument either for or against the ballot measure. An argument for or against the measure shall not exceed 300 words in length. If more than one argument is submitted for the measure, or more than one argument against the measure, the City Clerk shall select the argument to be included with the ballot materials. Rebuttal arguments shall be permitted pursuant to applicable law.

Section 10. In accordance with Elections Code section 9280, the entire text of the measure referenced in Section 3 above, shall not be placed in the voter information sample ballot and instead there shall be printed immediately below the impartial analysis, in no less than 10-point type, the following: "The above statement is an impartial analysis of the Ordinance of The City of Morgan Hill, California Adding Chapter 5.06 (Cannabis Business Tax) to Title 5 of the

Morgan Hill Municipal Code. If you desire a copy of the measure, please visit <http://www.morgan-hill.ca.gov>, email the City Clerk at clerk@morganhill.ca.gov, or call the City Clerk at (408)779-7271 and a copy will be mailed or e-mailed at no cost to you.”

Section 11. The primary arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 16, 2022 to meet the deadline established by the Santa Clara County Registrar of Voters for primary arguments. The arguments shall be filed with the City Clerk, signed, with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument. The arguments shall be accompanied by the Form of Statement to Be Filed by Author(s) of Argument to be provided by the City Clerk.

Section 12. In accordance with Elections Code section 9285(b), the City of Morgan Hill hereby authorizes the filing of rebuttal arguments as set forth below and in accordance with state law.

The elections official shall send a copy of an argument in favor of the proposition to the authors of any argument against the measure and a copy of an argument against the measure to the authors in any argument in favor of the measure immediately upon receiving the arguments.

The author, or a majority of the authors, of any argument relating to the measure may prepare and submit a rebuttal argument not exceeding 250 words or may authorize in writing any other person or persons to prepare, submit, or sign the rebuttal argument.

A rebuttal argument may not be signed by more than five authors.

The rebuttal arguments shall be filed with the City Clerk, signed with the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization and the printed name and signature of at least one of its principal officers, not more than 10 days after the final date for filing direct arguments. The rebuttal arguments shall be accompanied by the Form of Statement to be provided by the City Clerk and to be filed by the author(s) of the argument.

Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Rebuttal arguments for and against the measure shall be submitted to the City Clerk by five o'clock p.m. on August 23, 2022 to meet the deadline established by the Santa Clara County Registrar of Voters for rebuttals.

Section 13. Effective Date. This Resolution shall be effective immediately upon adoption.

Section 14. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law.

City of Morgan Hill
 Resolution No. 18-057
 Page 4 of 4

PASSED AND ADOPTED by the City Council of Morgan Hill at the meeting held on this 7th day of April 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, 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. 21-0xx, adopted by the City Council at the meeting held on April 7, 2021.

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

DATE: _____

MICHELLE BIGELOW, City Clerk

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

TITLE: 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.

SUMMARY OF MEASURE: The measure is proposed to prohibit new uses that meet the definition of a "fulfillment center" in all areas of Morgan Hill and to require Planning Commission review of all discretionary permits for large-scale development projects.

If approved, the measure would define the term "fulfillment center" to include any structure with greater than 75,000 square feet of floor area that has more than 1 dock-high-door per 25,000 square feet and a clear ceiling height of more than twenty-four (24) feet over more than 25 percent of its floor area. Any such structure would be classified as a fulfillment center regardless of actual use.

The measure would prohibit uses and structures that meet the definition of a fulfillment center in all zones within the City. Existing uses and structures would be allowed to continue as legal-nonconforming. Legal-nonconforming uses would be unable to expand their current use. Property owners would not be allowed to make substantial modifications to legal-nonconforming buildings.

The measure would define the term "dock-high-door" to mean an opening to the outside of a building with a raised elevation of twenty-four (24) inches or more to allow for the loading and unloading of trucks. "Clear ceiling height" would be defined as the distance from the floor to the lowest-hanging ceiling object, beam, joist, or truss.

In addition, the measure would make changes to the development review process. Specifically, the measure would require all discretionary development permits for large-scale development projects to be approved by the Planning Commission. A large development project would be defined as a project that includes more than 75,000 square feet of new floor area, or is a new building or an addition to an existing building that is more than 35 feet in height, regardless of use.

NOTICE OF INTENTION TO CIRCULATE INITIATIVE PETITION AND STATEMENT OF REASONS

Notice is hereby given by the persons whose names appear hereon of their intention to circulate a petition within the City of Morgan Hill for the purpose of amending the Zoning Code (Article 18) of the City of Morgan Hill Municipal Code. A statement of the reasons of the proposed action as contemplated in the petition is as follows:

The purpose of this ordinance is to preserve the small-town feel and family-friendly character of Morgan Hill, to protect the health and safety of its residents, and to support the viability of local businesses by enacting legislation that will enable our city to remain distinctive in the midst of the rapidly changing logistics and distribution industry.

This ordinance safeguards our General Plan and land use entitlement process, allowing it to evolve in a sustainable manner that encourages high quality job growth and meets the needs of our residents and visitors.

This ordinance updates the Morgan Hill Zoning Code to include Fulfillment Center (commonly known as Distribution Center) as a defined land use, and to distinguish this use from traditional Warehouse & Distribution associated with manufacturing or static storage buildings that already exist in Morgan Hill. This ordinance will strictly prohibit Fulfillment Centers as a permitted land use anywhere within the City limits of Morgan Hill.

The proposed ordinance also changes the review and decision-making authority for administering the Zoning Code to allow Morgan Hill residents, through their elected officials and appointed planning commissioners, to have a voice in deciding whether large-scale development projects are permitted in the City.

The intent of this ordinance is to allow responsible growth for job-generating land use in our City, consistent with the General Plan, Zoning Code and Economic Blueprint while preserving public health and safety and Morgan Hill's special character and unique quality of life for generations to come.

Signed: /s/ Joseph Baranowski 16600 Monterey ST #67 Morgan Hill CA 95037, /s/ Andrew Plant 7660 Fay Ave Suite N, La Jolla, CA 92037, and /s/ Rick Kent 18735 Madrone Parkway Morgan Hill CA 95037.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

TEXT OF PROPOSED INITIATIVE

The people of the City of Morgan Hill, California, do hereby ordain and enact as follows:

ARTICLE I: FINDINGS, PURPOSE, AND INTENT OF INITIATIVE

Section 1.1. Findings. The People of the City of Morgan Hill ("City") find and declare as follows:

A. The Morgan Hill General Plan represents the collective vision of the community and serves as the primary policy document governing land use in the City. The MORGAN HILL 2035 GENERAL PLAN ("General Plan") represents countless hours of collaborative work by City staff and residents to develop a collective vision for what Morgan Hill will look and feel like through the year 2035. The overarching goal of the General Plan is to "maintain Morgan Hill's family-friendly character and strong sense of community while the community grows and prospers." In accordance with Government Code Section 65032, the General Plan defines a framework of detailed goals and policies intended to provide clear guidance for decision makers in the areas of land use, circulation, housing, conservation, open space, noise, and safety. Residents want the City to respect and follow the principles of the General Plan.

i. Preserve the City's unique character and quality of life: Often called the "hidden gem" of Silicon Valley, Morgan Hill has long been known for its pastoral valley and hillsides, quaint downtown, and family-friendly atmosphere. These qualities are eloquently expressed in the General Plan as: "strong connections between Morgan Hill's developed neighborhoods, natural setting, and agricultural surroundings establish the feeling of a traditional, family-oriented, high quality, progressive, and active small town removed, although easily accessible, from the crowded, fast-paced Silicon Valley communities to the north."

ii. Adhere to principles for responsible growth in all land use decisions. Incorporated in 1906, Morgan Hill has slowly evolved from an agrarian area into a small suburban community; yet its small-town charm has not been lost, even as the population has grown to over 45,000 residents. This ideology is further affirmed by the General Plan: "Morgan Hill is proud of its small town character, strong sense of community, abundant access to open space and recreational amenities and ever growing participation in the Silicon Valley economy, and seeks to promote these desirable qualities through thoughtful land use planning." As we go forward, "the City seeks to build upon its previous success by maintaining a steady, well-defined, and responsible rate of growth."

iii. Protect environmental resources for future generations. The residents of Morgan Hill declare that irresponsible development cannot easily be undone. The General Plan has "safety, services, and infrastructure" policies intended to "protect people from detrimental impacts associated with development". Residents want the City to make the most conscientious land use decisions based on these elements to protect the pastoral

landscape and family-friendly atmosphere for years to come, as these qualities make Morgan Hill a beautiful place to visit and an extraordinary place to live.

B. The Morgan Hill Zoning Code regulates land use in the City by implementing policies of the General Plan to protect public health, safety, and welfare. Codified as Title 18 in the Morgan Hill Municipal Code, the Zoning Code of the City of Morgan Hill (the "Zoning Code") implements the General Plan through detailed land use and development regulations. The Zoning Code establishes a Zoning Map with zoning districts that apply to all property in Morgan Hill. The Zoning Code identifies which specific land uses are permitted in each zoning district and establishes development standards for each zoning district. As set forth in Section 18.04.040 of the Morgan Hill Municipal Code, the City's Zoning Code aims to achieve each of the following purposes:

- i. "Preserve and enhance Morgan Hill's small-town feel and family friendly character."
- ii. "Protect and enhance the quality of life in residential neighborhoods."
- iii. "Support a vibrant, diverse, and dynamic local economy."
- iv. "Protect environmental resources and promote a sustainable development pattern."

C. Morgan Hill Zoning Code contains outdated definitions related to land use for Warehousing and Distribution. Revisions to the Zoning Code have not kept pace with the evolution of e-commerce and fails to adequately distinguish characteristics of traditional "warehouse and distribution" from modern-day Fulfillment Centers. Many industry and government organizations recognize and clearly define the differences between traditional warehouses and Fulfillment Centers and this initiative updates the Zoning Code to do the same.

i. Current Zoning Code describes a traditional warehouse facility only. The Zoning Code describes Warehousing and Distribution under Industrial Land Uses (18.124.050) as "a use engaged in storage, wholesale and distribution of manufactured products, supplies, and equipment to retailers; to industrial, commercial, institutional, farm, or professional business users; or to other wholesalers; or acting as agents or brokers in buying merchandise for or selling merchandise to such persons or companies." This description characterizes a traditional warehouse facility but not a modern Fulfillment Center.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

ii. **Current Zoning Code does not presently include a definition for Fulfillment Center.** Fulfillment Centers and Distribution Centers have revolutionized the way e-commerce companies meet the demands of their customers. The most common term for these facilities is "Distribution Center", also labeled as Fulfillment Center, Ecommerce Center, Logistics Center, Parcel Hub, Cold Storage Facility, High Cube Warehouse, Last-Mile Distribution Facility, and many other names that describe these specialized facilities in the logistics and distribution industry. The term "Fulfillment Center" was selected for the purpose of this ordinance, rather than "Distribution Center", because the Morgan Hill Zoning Code already contains the defined term "Warehouse and Distribution Facility" to refer to traditional uses associated with manufacturing, wholesaling, and other business-to-business commerce, none of which are affected by this proposed ordinance. It was determined that allowing "Distribution Facility" and "Distribution Center" to refer to two different types of land uses in the Zoning Code, would create unnecessary confusion. Therefore, "Fulfillment Center" is used to represent all related facilities.

iii. **The function of a Fulfillment Center is vastly different from a traditional warehouse.** Driven primarily by the massive growth in e-commerce over the past decade, the role of warehousing has been radically transformed in the supply chain and logistics industry. While many different types of Fulfillment Centers have evolved to meet the demands of e-commerce, they share each of the following characteristics which differentiate them from traditional warehouses.

a. **Primary role:** While traditional warehouses are used for more static long-term storage of manufactured goods, Fulfillment Centers are used for short-term storage, fast intake and rapid shipment of goods driven by customer demand.

b. **Operations:** A typical warehouse has fairly simple everyday operations that include organizing stored goods, shipping pallets of goods, and replenishing stock at periodic intervals. Fulfillment Centers usually ship individual products directly to customers making operations much more complex when they are managing tens of thousands of unique products, or stock keeping units (SKUs). To meet customer demand, product flow, volume and velocity are also much greater in Fulfillment Centers.

c. **Technology:** Technology is an integral part of the order fulfillment process for all e-commerce companies. Unlike traditional warehouses, in order to handle the high volume and rapid movement of products, Fulfillment Centers use advanced technology for functions such as warehouse management, transportation management, package identification, sorting, picking, packaging, labeling, etc. many of which are becoming fully automated using robots and computer-controlled automated systems. These value-added services are designed to reduce inventory carrying costs and act as a bridge between a supplier and its customers.

iv. **Design specifications for a Fulfillment Center differ from those for a traditional warehouse.** Because of the dynamic

nature of its operations, modern Fulfillment Centers have different building requirements than traditional warehouse and distribution facilities in order to optimize the high-volume product flow. While there are many types of Fulfillment Centers being built across the country, they share each of the following physical characteristics which distinguish them from a traditional warehouse:

a. **Floor area and ceiling heights:** Fulfillment Centers usually require more square footage of available floor area (75,000 square feet or more) and higher clear ceiling heights (greater than 24 feet) that are geared for high volume and velocity of modern e-commerce distribution.

b. **Service Doors and Docks:** A dock-high door is a loading dock that is not at ground level but rather is elevated in order to align with the standard tractor-trailer height for loading or unloading goods without a change in elevation. The number of dock-high doors is a key characteristic of modern Fulfillment Centers. The Dock-High-Door-to-Square-Foot Ratio (DHDSFR) is the ratio of the total number of dock-high doors to the building's total square feet of floor area. Fulfillment Centers have a higher ratio of DHDSFR >1:25,000 (i.e. more than one dock-high door for every 25,000 square feet of available floor area) than traditional warehouses. The number of dock-high doors is an indicator of the anticipated truck traffic that will be generated by a Fulfillment Center.

c. **Located for convenient highway access:** Whereas traditional warehouses are typically located in urban industrial areas, Fulfillment Centers are located along interstate highways in rural or urban periphery areas. With explosive e-commerce growth and competition to offer shorter delivery times (same-day and even one-hour delivery are becoming common), many Fulfillment Centers are moving into urban and suburban areas located along major highways where available land offers convenient highway access.

D. **Fulfillment Centers are unsuitable for land use in our city due to the relatively few quality jobs generated.** The General Plan establishes that land use should "support the development of office and industrial facilities to meet local demand, compete for regional growth opportunities, and create high-quality jobs." City leaders and residents recognize the need to diversify and expand employment opportunities in Morgan Hill. The City's Economic Blueprint states that "attracting high-quality jobs that are well-suited to the skills and preferences of local workers, may increase the number of people who can both live and work in Morgan Hill." However, permitting Fulfillment Centers on parcels allocated for "vibrant job centers" is not consistent with the General Plan or Economic Blueprint, and does not ensure the long-term economic strength of the City.

i. **Residents want City planners to be mindful of the limited supply of commercial and industrial land available for development in Morgan Hill.** But, with little or no public input, City staff approved a 503,400 square foot Fulfillment Center for the Shoe Palace Expansion project. City staff was also asked to review and recommend approval of a proposal for General Plan and Zoning Code amendments to permit the development of the

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

Morgan Hill Technology Center, designed as a 1,040,000 square foot Fulfillment Center. The City has also submitted documents to organizations collectively known as Bay Area Metro, identifying 797 acres of land to be classified as a Priority Production Area (PPA) with “last mile production and distribution” as the key industry envisioned for expansion within the PPA area.

ii. Fulfillment Centers do not provide an influx of quality jobs. Studies show that the number of jobs created per square foot of building or per acre of land, called the ‘employment density’, differs depending on the land use. In 2020, Kent, Washington, which has a substantial number of Fulfillment Centers and advanced manufacturing, flex, and engineering buildings, reported the number of jobs created per square foot of development is almost five times higher for advanced manufacturing than for Fulfillment Centers. They stated, “with market forces strongly favoring storage and pass-through operations for goods produced elsewhere, there is a need for a deliberate, proactive approach to preserve and grow the manufacturing sectors in Kent’s industrial lands.” Fulfillment Center jobs also generally have a lower pay scale than manufacturing jobs. Fulfillment Center jobs are highly repetitive and workers experience both physical and psychological stress with the demands of the work environment - bending, twisting, running, and lifting boxes in a high-pressure setting that prioritizes line speed over employee health.

iii. Automation is displacing Fulfillment Center jobs. Most jobs at Fulfillment Centers involve repetitive tasks, so to increase efficiency and reduce costs, many e-commerce companies have begun to reduce their human work force by deploying automation technology. Sorting, picking, labeling and even janitorial work can be done by robots. Experts in automation at Cornell University and University of Redlands predict this trend will accelerate and 75% to 90% of Fulfillment Center jobs will be displaced in the near future. As automation increases, so too will the disparity in the number of jobs created per square foot of land use. If the predicted number of job displacements does occur, land developments for advanced manufacturing and research & development are forecast to support 20 to 50 times more jobs per square foot than Fulfillment Centers.

E. Fulfillment Centers generate intense truck activity around the clock, increasing both highway and surface street traffic, and causing significant damage to roadways. The City General Plan establishes the importance of an effective Transportation System and recognizes that “congestion in Morgan Hill can be substantially affected by regional traffic if Highway 101 capacity does not meet demand, as regional travelers attempt to decrease travel times by using local roads”. The most recent 10th Edition of the Institute of Transportation Engineers Trip Generation manual, a compilation of traffic generation studies, shows that Fulfillment Centers are likely to generate significantly more peak hour and overall more traffic on a daily or weekly basis than traditional warehouses. A 2016 study by the Institute of Transportation Engineers (High-Cube Warehouse Vehicle Trip Generation Analysis) found that Fulfillment Centers of four different types generate between

forty-five (45) and four hundred (400) daily truck trips per 100,000 gross square feet of building area. Residents of Morgan Hill are concerned how traffic could intensify at the Cochrane Road interchange, known as the “choke point” of South County, if Fulfillment Centers are built in that area. As Morgan Hill residents have declared, “Traffic on Hwy 101 is barely tolerable now, it would become absolute gridlock for anyone traveling through this region of the Bay Area.” It is likely that intense trucking activity from Fulfillment Centers would cause significantly more wear and tear on our roadways. Relevant news articles and government documents describe unexpected economic repercussions of Fulfillment Centers, including effects on roadways and other infrastructure. The *American Association of State Highway and Transportation Officials* estimate that one big-rig truck results in street maintenance costs that are equivalent to approximately seven thousand (7,000) passenger cars. In Kent, Washington, the city’s long-range planning manager, in her report to the city council stated, “One truck is equal to about eight thousand (8,000) cars when it comes to impact on our pavement. And those costs are borne by the city, which puts us in a difficult fiscal situation to keep that infrastructure maintained.” The City of Morgan Hill already struggles to fund these repairs to infrastructure as evident by more than \$2.0 million in general fund needs for pavement rehabilitation and street maintenance that are unfunded as of year-end 2019.

F. Fulfillment Centers can produce a significant amount of pollution that would have a detrimental impact on the health and safety of residents. The General Plan establishes that “protecting environmental resources for future generations” and making development decisions that “contribute to the overall health and well-being of Morgan Hill Residents” should be priorities. The General Plan also defines policies for “safety, services, and infrastructure” that “intends to protect people from detrimental impacts associated with development, including noise impacts.” Fulfillment Centers in Morgan Hill would result in neighborhoods congested with trucks queued up for loading docks while polluting the air with diesel emissions. Onsite equipment like forklifts, and large numbers of robots inside open dock doors, produce continuous sounds that travel a considerable distance, especially at night. There are many articles in the news that describe air pollution, noise pollution, and serious health effects from fulfillment centers developed too close to schools and residential areas. The Union of Concerned Scientists, stated in a 2017 report: “Driven by the fast-paced e-commerce industry, warehousing construction has grown dramatically over the past 10 years in the US and bringing with it, big negatives like air pollution, noise, traffic safety and road damage. Developers are searching for locations with low land rent, low-wage labor pool, weak political power, and favorable public policies. The exposure of residents, especially, the young and elderly, to truck emissions, like NOx and particulate matter, causes asthma and other serious respiratory issues.” Another article, by Carlos De La Cruz of Sierra Club’s My Generation campaign states: “Trucks generate more than three-fourths the nitrogen oxides emissions statewide. These contribute to ozone, which damages the lungs, lowers resistance to diseases and causes wheezing and chest pain. For such a small segment (of the overall number of vehicles), they present a big health risk.”

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

G. Fulfillment Centers will negatively impact the General Plan Goals for Retail and Tourism. It is widely reported by industrial real estate firms that rapid e-commerce growth is expected to continue, driving the insatiable demand for Fulfillment Centers for the foreseeable future. This is true for all types of Fulfillment Centers and especially last-mile Fulfillment Centers where developers and investors are expanding their search for available land to secondary and tertiary markets near population centers. Space for last-mile distribution has become so valuable that, in cities which have allowed it, office buildings are being torn down and the land repurposed as Fulfillment Centers. Not only is a high percentage of Morgan Hill's vacant land located adjacent to Highway 101, but such land is less expensive than comparable properties in other Bay Area cities. The land that is now associated with the proposed Morgan Hill Technology Center was purchased in 2019 at a significant discount on a per acre basis compared to land in Fremont which was purchased in 2018 for a large Fulfillment Center development. If allowed, developers will almost certainly build more Fulfillment Centers in Morgan Hill and they will target areas adjacent to highway exits. They are likely to request zoning amendments to convert parcels currently zoned for Commercial uses as is the case for the proposed Morgan Hill Technology Center. Given the large footprint, high building heights and number of dock-high doors with resulting trucking activity, the Morgan Hill General Plan goals to "support the development of regional retail facilities that are visible and accessible from the City's freeway exits, to provide easy access by local residents as well as shoppers traveling from the City" and to support "a vibrant, enhanced, visible, and well-promoted tourist industry that draws on Morgan Hill's unique character and variety of amenities" will certainly not be met.

H. This Initiative encourages development of advanced manufacturing, research and development, and engineering facilities on industrial land. Other jurisdictions who sought to bring more advanced manufacturing into their industrial employment areas, such as robotics and industrial R&D, recognize that limiting dock-high doors for truck loading to a ratio of one dock-high door per 25,000 square feet of building area discourages trucking-intensive uses such as Fulfillment Centers while providing the flexibility that modern advanced manufacturing facilities need. Because some, albeit a low percentage, of advanced manufacturing operations require more grade-level truck docks or service doors, no limitations are put on grade-level doors which are understood not to facilitate trucking intensive operations.

I. This initiative promotes democracy in land use planning, ensuring that citizens have a voice in deciding whether large development projects should be permitted. Despite the protections in our General Plan, our community is facing new, imminent threats. Residents have noticed that City planners, under the sway of developers and under the pressure of an ongoing budget crisis, are taking steps to radically change our town and open it up to development that is not consistent with the General Plan. Allowing large-scale development projects to be approved by one person, without review oversight and approval (voting) by the Planning Commission and City Council is not responsible land use planning. Morgan Hill residents, through their elected officials and appointed planning commissioners, should have a voice in deciding whether large development projects, that could radically alter the character of our community and have significant long term fiscal impacts, are approved.

J. This initiative proposes Fulfillment Centers not be permitted as a land use in the City of Morgan Hill. Fulfillment Centers should not be permitted due to their adverse impacts on the health and safety of residents, detrimental effect to existing and future retail businesses and tourism, inability to generate high-quality jobs, and impact on regional traffic and transportation. Fulfillment Centers would erode the small-town character of Morgan Hill and forever change our quality of life here.

K. This Initiative proposes regulations that will prevent new Fulfillment Centers from being established in Morgan Hill that are also consistent with the Morgan Hill General Plan, Zoning Code, and Economic Blueprint.

i. The proposed amendments to the Morgan Hill Municipal Code will implement the goals, objectives, and policies of the General Plan.

ii. The proposed amendments are consistent with the purposes of the Zoning Ordinance.

iii. The proposed amendments to the Morgan Hill Municipal Code are reasonably related to the public interest, and that public necessity, convenience and general welfare require the proposed amendments.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

Section 1.2. Statement of Purpose. In establishing this Act, the people of the City do hereby declare it is their purpose and intent to:

- A. Preserve our community's unique small-town character and protect the safety and health of our residents and the environment by adopting provisions that will ensure our city remains unique in the midst of a rapidly changing logistics and distribution industry, while at the same time ensuring the City's land use entitlement process continues to evolve in a sustainable manner that encourages high quality job growth and meets the needs of our residents and visitors.
- B. Update the City of Morgan Hill Municipal Code to identify and prohibit proposed developments that exceed threshold Dock-High-Doors-to-Square-Foot Ratios (DHDSFR) and are therefore indicative of Fulfillment Centers.
- C. Update the City of Morgan Hill Municipal Code to distinguish between traditional Warehouse & Distribution facilities and modern Fulfillment Centers.
- D. Prevent new Fulfillment Centers from being built anywhere in the City.
- E. Ensure thoughtful accountable long-term planning by requiring Planning Commission review and approval for large-scale developments.
- F. Ensure that no member of City staff, whose compensation is funded, in whole or in part, by the payment of fees by the applicants whose applications are requiring approval, has discretionary authority to grant land use entitlements for a proposed Large-Scale Development within the City.

ARTICLE II: AMENDMENT OF CITY OF MORGAN HILL ZONING CODE

Section 2.1. Amendments to City of Morgan Hill Land Use Regulations. Title 18 – ZONING, Division I. – Zoning Code, of the City of Morgan Hill Municipal Code, is amended as follows:

Section 2.1.1. Definition of Dock-High Door and Dock-High-Door-to-Square-Foot-Ratio. Chapter 18.12 (“Rules of Measurement”) of Part 1 (“General Provisions”) of Division 1 (“Zoning Code”) of Title 18 (“Zoning”) of the City of Morgan Hill Municipal Code is amended to insert a new Section 18.12.045 (“Dock-High-Door-and-Dock-High-Door-to-Square-Foot-Ratio”), which reads, in its entirety, as follows (language in bold double underline text is inserted, language in ~~strikeout text~~ is deleted):

§18.12.045 - Dock-High-Door-and-Dock-High-Door-to-Square-Foot-Ratio.

A. Dock-High-Door means an opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more. Dock-High-Doors are used so that the bed of a truck and/or shipping container will match the building slab elevation at

the opening. The typical configuration allows a semi-truck to back up to a building and directly align the back doors of the truck with a loading dock door. The elevation of the dock apron, the approach pavement area, is lower than the building slab elevation so that the bed of the truck will match the building slab elevation. The typical offset is forty-eight (48) inches and the typical loading dock door is nine (9) feet wide by ten (10) feet tall. (Dock-High-Doors are also sometimes known as loading dock doors.)

B. Dock-High-Door-to-Square-Foot Ratio (DHDSFR) means the ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.

Section 2.1.2. Definition of Clear Ceiling Height. Section 18.12.060 (“Height”) of Chapter 18.12 (“Rules of Measurement”) of Part 1 (“General Provisions”) of Division 1 (“Zoning Code”) of Title 18 (“Zoning”) of the City of Morgan Hill Municipal Code is amended to insert a new Paragraph B (“Clear Ceiling Height”),

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

which reads, in its entirety, as follows (language in bold double underline text is inserted, language in ~~strikeout text~~ is deleted):

A. Building Height.

B. Clear Ceiling Height. Distance from the floor to the lowest-hanging ceiling member or hanging objects, beams, joists or truss work descending down into a substantial portion of the area. This measure of the interior height of an industrial building defines the minimum height of usable space within the structure. Also known as clear height, clear headway, or clearance.

B. C. Number of Stories.

Section 2.1.3. Definition of Large-Scale Development.

Chapter 18.12 ("Rules of Measurement") of Part 1 ("General Provisions") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code is amended to insert a new Section 18.12.065 ("Large-Scale Development"), which reads, in its entirety, as follows (language in bold double underline text is inserted, language in ~~strikeout text~~ is deleted):

§18.12.065 – Large-Scale Development. Large-Scale Development means any development which proposes the construction and/or addition of more than seventy-five thousand (75,000) square feet of new floor area, or a new building or addition to an existing building which is more than thirty-five (35) feet in height.

Section 2.1.4. Amendment of Chapter 18.92 ("Supplemental Standards"). Chapter 18.92 of Part 3 ("CITYWIDE STANDARDS") of Division 1 ("Zoning Code") of Title 18 ("ZONING") of the City of Morgan Hill Municipal Code is amended to include a new Section 18.92.105 ("Fulfillment Centers"), which reads, in its entirety, as follows (language in bold double underline text is inserted):

Chapter 18.92 – Supplemental Standards.

§18.92.100 – Mini-Storage

§18.92.105 – Fulfillment Centers

Fulfillment Centers, as defined in Section 18.124.050, are prohibited uses in all Zoning Districts and Overlay Zones in the City of Morgan Hill. Fulfillment Centers lawfully existing prior to the effective date shall not be affected by this section.

Section 2.1.5. Amendment of Section 18.124.050 ("Industrial Uses"). Section 18.124.050 "Industrial Uses" of Chapter 18.124 ("LAND USE DEFINITIONS") of Part 5 ("GLOSSARY") of Division 1 ("Zoning Code") of Title 18 ("ZONING") of the City of Morgan Hill Municipal Code is amended to insert a new Paragraph H ("Fulfillment Center"), which reads in its entirety, as follows (language in bold double underline text is inserted):

§18.124.050 – Industrial Uses

G. Warehousing and Distribution

H. Fulfillment Center. Any structure, building or other facility that has all of the following three attributes: (1) a floor area of seventy-five thousand (75,000) square feet or greater, and (2) a clear ceiling height of twenty-four (24) feet or greater over more than twenty-five (25) percent of the floor area, and (3) more than one dock-high door per 25,000 square feet of floor area (i.e., a proposed or as built DHDSER greater than 1:25,000). For purposes of this section, "Fulfillment Center" shall include, but not be limited to, the following structures, buildings, and facilities: distribution center, sortable fulfillment center, e-commerce center, non-sort fulfillment center, transload facility, parcel hub, cold storage facility, short-term storage facility, high-cube warehouse, cross-dock facility, bulk break center, package handling center, order fulfillment center, logistics center or facility, receive center, sortation center, delivery station, specialty facility, last-touch facility, last-mile facility, last-mile distribution facility, city distribution facility, multi-market distribution facility, gateway facility, warehousing center; or any building, structure, or other facility, provided it has all three attributes listed above.

Section 2.1.6. Amendment of Table 18.26-2 INDUSTRIAL ZONING DISTRICT DEVELOPMENT STANDARDS.

Table 18.26-2, which is set forth in Section 18.26.030 "Development Standards" of Chapter 18.26 ("INDUSTRIAL ZONING DISTRICTS") of Part 2 ("ZONING DISTRICTS") of Division 1 ("Zoning Code") of Title 18 ("ZONING") of the City of Morgan Hill Municipal Code is amended to insert a reference ("2") to the "Structure Requirements" table cell and a Note ("2"), which read in their entirety, as follows (language in bold double underline text is inserted):

Table 18.26-2: INDUSTRIAL ZONING DISTRICT DEVELOPMENT STANDARDS.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

Structure
Requirements [2]

Notes:

[1] An FAR of 0.6 is allowed for industrial uses. An FAR of 0.5 is allowed for non-industrial uses.

[2] Fulfillment Center structures, as defined in Section 18.124.050, are prohibited per Section 18.92.105.

Section 2.2. Amendments to Specific Permit Requirements. Title 18 – ZONING, Division I. – Zoning Code, Part 1 – GENERAL PROVISIONS, Chapter 18.08 – INTERPRETATION OF ZONING CODE, and Part 4 - PERMITS AND ADMINISTRATION, Chapter 18.100 – ADMINISTRATION RESPONSIBILITY, and Chapter 18.108 - SPECIFIC PERMIT REQUIREMENTS, of the Zoning Code of the City of Morgan Hill Municipal Code are amended as follows:

Section 2.2.1. **Amendment of Review Authority and Notice Requirements for Administrative Use Permits.** Paragraph C (“Review Authority”) and Paragraph D (“Public Notice and Hearing”) of Section 18.108.020 (“Administrative Use Permits”) of Chapter 18.108 (“Specific Permit Requirements”) of Part 4 (“Permits and Administration”) of Division I (“Zoning Code”) of Title 18 (“Zoning”) of the City of Morgan Hill Municipal Code are amended to read, in their entireties, as follows (language in **bold double underline text** is inserted, language in ~~strikeout text~~ is deleted):

18.108.020 - Administrative Use Permits.

C. **Review Authority.** The Community Development Director takes action on **shall review and act on all** Administrative Use Permit applications. ~~The Community Development Director may refer any Administrative Use Permit application to the Planning Commission for review and final decision other than applications relating to Large-Scale Developments; provided, however, that the Community Development Director may refer any Administrative Use Permit application to the Planning Commission for review and final decision. The Planning Commission shall review and act on all Administrative Use Permit applications, which: (1) relate to Large-Scale Developments; and/or (2) are otherwise referred to the Planning Commission by the Community Development Director pursuant to this paragraph~~

D. **Public Notice and Hearing.** Public notice of a pending action on an Administrative Use Permit application ~~other than applications relating to Large-Scale Developments~~ shall be provided in compliance with Section 18.104.100 (Notice of Pending Action). The Community Development Director shall hold a public hearing for a minor use permit application only upon

receiving a written request for a public hearing as provided in Section 18.104.090. **The Planning Commission shall review and act on an Administrative Use Permit application related to Large-Scale Developments or an application otherwise referred to the Planning Commission at a noticed public hearing in compliance with Chapter 18.104 (Common Permit Requirements).**

Section 2.2.2. Amendment of Definitions, Review Authority, and Notice Requirements for Design Permits. Paragraphs B (“Review Authority”), C. (“When Required”), D (“Significant Projects”), E (“Sensitive Sites”), and G (“Public Notice and Hearing”) of Section 18.108.040 (“Design Permit”) of Part 4 (“Permits and Administration”) of Division I (“Zoning Code”) of Title 18 (“Zoning”) of the City of Morgan Hill Municipal Code are amended as follows (language in **bold double underline text** is inserted, language in ~~strikeout text~~ is deleted):

18.108.040 – Design Permit

B. Review Authority:

1. The Community Development Director shall review and act on all Design Permit applications ~~other than applications relating to Large-Scale Developments; provided, however, that the Community Development Director may refer any Design Permit application to the Planning Commission for review and final decision. The Planning Commission shall review and act on all Design Permit applications, which: (1) relate to Large-Scale Developments; and/or (2) are otherwise referred to the Planning Commission by the Community Development Director pursuant to this paragraph.~~

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

2. ~~The Community Development Director may refer any Design Permit application to the Planning Commission for review and final decision.~~

3. The City Council shall review and act on all Design Permit applications for new City projects (e.g., new municipal buildings, parks) determined by the Community Development Director to be significant in accordance with Subsection D below.

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

* * *

12. Other projects determined by the Community Development Director to be significant in accordance with Paragraph D below, or which may adversely affect the environment or adjacent development or otherwise be considered a sensitive site in accordance with Paragraph E below.

D. Significant Projects.

* * *

2. The Community Development Director's determination that a project is or is not significant may be appealed to the Planning Commission in accordance with Chapter 18.112 (Appeals).

E. Sensitive Sites

* * *

2. The Community Development Director's determination that a site is or is not sensitive and that a Design Permit is required may be appealed to the Planning Commission in accordance with Chapter 18.112 (Appeals).

Section 2.2.3. Blanket Prohibition of City Staff Authority to Grant Discretionary Land Use Approvals. Section 18.08.020 ("Authority") of Chapter 18.08 ("Interpretation of the Zoning Code") of Part 1 ("General Provisions") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code is amended to read, in its entirety, as follows (language in bold double underline text is inserted, language in ~~strikeout text~~ is deleted):

18.08.020 - Authority.

The City Council delegates to the Community Development Director and the director's designees the authority to interpret the meaning and applicability of all provisions in the Zoning Code; provided, however that, notwithstanding any other provision of this code, in no event shall any staff employee of the City of Morgan Hill have authority to approve a land use application for a Large-Scale Development project which requires environmental review under the California Environmental Quality Act (Public Resources Code Section 21000, et seq., as amended), including without limitation, any application for a "project" (as defined in 14 CCR §15378) requiring discretionary approval (as defined in 14 CCR §15357). All such authority having been vested in the City Council of the City of Morgan Hill and/or the Planning Commission of the City of Morgan Hill, as appropriate.

Section 2.2.4. Amendment of Table 18.100-1 - Review and decision-making authority. Table 18.100-1, which is set forth in Section 18.100.030 ("Review and Decision-Making Authority.") of Part 4 ("Permits and Administration") of Division 1 ("Zoning Code") of Title 18 ("Zoning") of the City of Morgan Hill Municipal Code shall be amended as necessary to update the information presented in Table 18.100-1 consistent with the terms and conditions of the various provisions of this Act.

ARTICLE III: MISCELLANEOUS

Section 3.1. Effective Date. As used herein, "effective date" shall mean the date on which this initiative measure has been adopted by the City Council of the City of Morgan Hill or the date upon which it shall have been approved by the voters of the City of Morgan Hill in accordance with applicable laws, whichever shall occur first.

Section 3.2. Exemptions for Certain Projects. This initiative shall not be construed to apply to any application or development, property, or contemplated use that, under state or federal law, is beyond the power of the local voters to affect by the initiative power reserved to the people via the California Constitution.

Section 3.3. No Interference with State Law Housing Obligations. Nothing in this initiative shall be construed or

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

applied to prevent the City from complying with its housing obligations under state law. The City Council may, without voter ratification, approve a change to the amendments of the General Plan or Zoning Ordinance set forth in this initiative for the sole purpose of complying with the City's housing obligations if it (1) makes a finding that such change is necessary to comply with the City's housing obligation under the laws of the United States of America or the State of California and there is no suitable land available elsewhere in the City that may be used to satisfy the obligation; and (2) makes such a change or approves a project only to the extent necessary to comply with the applicable state law housing obligation.

Section 3.4. Liberal Construction. The provisions of this Act shall be liberally construed to effectuate its purposes. Nothing herein shall be construed to make illegal any lawful use being made of any land in compliance with all required permits in force before the effective date of this Act. This Act shall be interpreted and applied in as far as is possible in a manner that is consistent with all federal, state, and local laws, rules, and regulations. If any provision of this Act or any portion thereof, or any application thereof, is, for any reason held to be invalid or unconstitutional or otherwise unenforceable, the remaining sections and applications shall not be affected but shall remain in full force and effect, and

to this end, the provisions of this Act are severable.

Section 3.5. Interpretation. If this initiative measure and another measure on the same subject matter should appear on the same ballot, and a majority of the voters vote in favor of both measures but this measure receives more votes than the other measure, this measure alone shall become valid in its entirety. If a majority of the voters vote in favor of both measures but this measure receives less votes than the other measure, only those provisions of the other measure that are in direct and irreconcilable conflict with the provisions of this measure shall control, and all other provisions of this measure shall become valid, binding, and adopted. The voters expressly declare this to be their intent, regardless of any contrary language in any other ballot measure.

Section 3.6. Amendment. This Act may be amended only by a vote of the People at a future municipal election conducted in accordance with laws governing initiative measures then in effect.

Section 3.7. Judicial Enforcement. Any aggrieved person or City of Morgan Hill registered voter shall have the right to maintain an action for equitable relief to restrain any violation of this Act, or to enforce the duties imposed on the City by this Act.



**Morgan Hill Responsible Growth Coalition
Initiative Petition Impact Report
Pursuant to Election Code 9212**

INTRODUCTION

On August 4, 2020, proponents representing the Morgan Hill Responsible Growth Coalition (MHRGC) submitted a Notice of Intent to Circulate a petition for an Initiative titled “Citizen’s Initiative Changing the 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,” also known as the RG4MH Initiative. This Initiative would amend the City of Morgan Hill’s Municipal Code to regulate e-commerce facilities and large development projects and modify the administrative authority to approve discretionary permits.

Pursuant to state law, an initiative petition must contain at least 10% of the City of Morgan Hill’s registered voters. The Santa Clara County Registrar of Voters (ROV) reviewed and examined the initiative petition’s signatures. After signature verification, on February 12, 2021, the City of Morgan Hill was notified that 3,038 signatures were valid; therefore, the Initiative met the sufficient threshold of 10% of the 26,240 registered voters in Morgan Hill.

On March 3, 2021, the City Council accepted the Certificate of Sufficiency after the petitioned qualified with 3,038 valid signatures and directed staff to return with a report pursuant to Elections Code 9212 reporting on the effect of the proposed Initiative. Per the Elections Code, the report should analyze:

1. The fiscal impact of the measure;
2. The effect of the measure on consistency with the City’s general and specific plans, including the Economic Blueprint;
3. Its impact on funding for infrastructure;
4. Its impact on the community’s ability to attract and retain business and employment;
5. Its impact on vacant parcels of land;
6. Its impact on traffic congestion, existing business districts, and developed areas designated for revitalization; and
7. Any other matters the City Council would like to be in the report.

This report aims to provide the City Council with information to assist in deciding to adopt the Initiative or adopt a resolution calling for an election on the measure.

THE INITIATIVE

The RG4MH Initiative intends to regulate use by building features rather than by use. One of the core tenants of the Initiative is that a building would be prohibited if it met all three building features:

1. A building with a floor area of 75,000 square feet or greater, and
2. More than one dock-high door per 25,000 square feet of floor area, and
3. A clear ceiling height of 24 feet or greater over more than 25% of the floor area



The RG4MH Initiative also attempts to modify the administrative authority to approve discretionary permits by removing the Community Development Director's approval authority and requiring Planning Commission review for large-scale projects. Finally, the Initiative created new definitions for things like ceiling heights and dock-high-doors.

FISCAL IMPACT

SUMMARY IMPACTS (SEE EXHIBIT 1: FISCAL ANALYSIS REPORT FOR BREAKDOWN)

Below is a summary of the Fiscal Impact of the Citizen's Initiative on existing buildings should the Initiative's adoption result in the loss of the following five tenants relocating out of Morgan Hill.

	Sun Baskets/Talamo Foods	Specialized	Young's Market	NXEdge	Shoe Palace
General Use	Manufacturing	R&D/Office	Warehouse/Distribution	R&D/Manufacturing	Office/Warehouse/Distribution
Total General Fund Revenues	\$38,261	\$129,185	\$91,300	\$35,564	\$56,175
Total General Fund Expenditures	(\$60,617)	(\$58,177)	(\$21,055)	(\$16,563)	(\$29,316)
Net General Fund	(\$22,356)	\$71,008	\$70,245	\$19,001	\$26,859

Summary of Fiscal Impact of Citizen’s Initiative if existing businesses were to leave the City of Morgan Hill and be replaced with similar or related use cases (Manufacturing, Warehouse, Manufacturing/Warehouse blend, office). The findings suggest the loss of the existing tenants, perhaps Sun Basket and Talamo Foods being the lone exception, would result in less net fiscal benefit to the City.

	Sun Baskets/Talamo Foods	Specialized	Young’s Market	NXEdge	Shoe Palace
	Manufacturing	R&D/Office	Warehouse/ Distribution	R&D/Manuf acturing	Office/Warehou se/Distribution
Total General Fund Revenues	\$38,261	\$129,185	\$91,300	\$35,564	\$56,175
Total General Fund Expenditures	(\$60,617)	(\$58,177)	(\$21,055)	(\$16,563)	(\$29,316)
Net General Fund	(\$22,356)	\$71,008	\$70,245	\$19,001	\$26,859

Modeled Reuses for Each Building- NET GENERAL FUND IMPACT BY TYPE

Manufacturing	\$3,914	(\$965)	(\$93,233)	(\$38,101)	(\$219,304)
Warehouse	\$10,038	\$6,365	(\$11,294)	\$13,918	(\$83,925)
Manufacturing/ Warehouse Blended	\$7,385	\$16,767	(\$11,161)	\$6,529	(\$92,433)
Office	(\$17,353)	(\$52,846)	(\$201,951)	(\$118,682)	(\$457,727)

For a more in-depth analysis of these figures and analysis, please reference the Fiscal Impact Analysis of the Citizen’s Initiative on existing buildings report in Exhibit 1.

CONSISTENCY WITH GENERAL PLAN, SPECIFIC PLANS, AND ECONOMIC BLUEPRINT

GENERAL PLAN & ECONOMIC BLUEPRINT

The language in the RG4MH Initiative has significant effects on the ideas of flexibility and business retention. While the Initiative has the “three-pronged” requirements, the limited “clear height” of 24 feet created situations where existing businesses would be considered “legal non-conforming.” This would limit certain existing business’ ability to expand their buildings should the RG4MH Initiative go into effect. These businesses would be unable to modify or expand their

facilities to meet future needs, potentially driving them out of Morgan Hill. Other businesses would be prohibited from converting existing drive-through doors or punch-outs to dock-high-doors. This translated into significant concerns about business retention and the lack of flexibility for future and existing businesses.

Below are the 2035 General Plan and Economic Blueprint policies related to business retention, a good mix of land uses, and flexibility pertaining to the collaborative solution on the RG4MH Initiative.

GENERAL PLAN POLICIES

Policy CNF-18.1 **Vibrant Job Centers.** Encourage land with a Commercial/Industrial designation to develop with job-generating uses with amenities that support workers and businesses, such as restaurants, lodging, fitness centers, and hair salons.

Policy ED-1.1 **Local Wage Levels.** Focus business retention, expansion, and recruitment efforts on businesses that will increase the average wage paid in local businesses and minimize the need for Morgan Hill residents to commute out of Morgan Hill for higher-paying jobs.

Policy ED-1.2 **Jobs/Housing Balance.** Balance jobs and housing supplies to minimize traffic congestion and commute times and optimize economic diversity and capacity to provide services. (South County Joint Area Plan 3.00)

Policy ED-2.1 **Robust Mix of Land Uses.** Maintain sufficient areas of land to promote the development of a balanced community containing adequate jobs, retail services, and commercial activity. Preserve an adequate supply of industrial and commercial lands to support local jobs and City's fiscal sustainability.

Policy ED-3.1 **Business Retention, Expansion, and Attraction Efforts.** Encourage retention and expansion of existing businesses, and attract new businesses, that:

- ☐ generate revenue to the City General Fund (such as retail and point-of-sale manufacturing);
- ☐ help provide greater financial strength and stability to the City;
- ☐ add industry diversity to the local economy;
- ☐ stimulate other businesses to develop in the city;
- ☐ augment or provide a service/amenity presently needed or lacking in the community, including higher education and medical services opportunities; and
- ☐ offer higher-paying, quality jobs for residents.

Policy ED-3.2 **Employment Land Supply.** Preserve the City’s supply of industrial and commercial lands to support the City’s goals and policies related to economic development and jobs-housing balance.

Policy ED-3.6 **Business Friendly Environment.** Support and align policies and fee structures around a business-first culture that welcomes a range of sectors that employ people across various wage levels.

Policy ED-3.7 **Flexible Business District Zoning.** Maintain flexibility within industrial, business park, and office zoning districts that support modern industry uses integrated appropriately with other land uses and attract a broad range of users.

Policy ED-8.1 **Office and Industrial Development.** Support the development of office and industrial facilities to meet local demand, compete for regional growth opportunities, and create high-quality jobs that match local housing opportunities.

Policy ED-9.2 **Roadway Capacity to Support Business.** Use the City’s Capital Improvement Program to ensure that road improvement programs provide adequate, convenient access to commercial, industrial, and service areas.

ECONOMIC BLUEPRINT POLICIES

Innovation and Advanced Manufacturing: Grow existing companies, attract new industry, and grow professional jobs.

PRESERVE INDUSTRIAL LANDS

Adopt an Employment (Industrial) Land Preservation Policy (Action #1)

Strengthen General Plan Language to Prevent Conversion of Industrial Lands (Action #2)

ATTRACT DEVELOPMENT

Allow for New Hybrid of Developments that are Considered “Class A Industrial” or “Flex Space” (Action #4)

Allow Greater Intensification (FAR) and Taller Buildings to Increase Value of Employment Lands (Action #6)

FOSTER AN ENVIRONMENT THAT SUPPORTS BUSINESS GROWTH

Market Economic Blueprint Vision, Process & Incentives to Attract Business Investment (Action #10)

The City’s General Plan and Economic Blueprint clearly state the community’s goals to attract and retain companies and grow Morgan Hill jobs. The Initiative is trying to limit the large truck/heavy traffic uses such as distribution centers from taking up valuable industrial land in

Morgan Hill. However, restricting building features creates unintended consequences that would threaten certain existing companies' ability to grow and expand in Morgan Hill. These companies fit the building features defined in the Initiative. Besides impacting exiting companies, building type regulation could prohibit large R&D or Advance Manufacturing companies from locating in Morgan Hill if their footprint meets the Initiative's building features. Additionally, regulating uses or buildings by Initiative could be perceived as business-unfriendly. Developers, investors, real estate brokers, and companies need certainty and require precise, fast, and consistent permitting processes. An initiative to regulate development could damage the business-friendly identity the City has been working to create.

IMPACT ON INFRASTRUCTURE

An analysis was conducted of the remaining industrial zoned vacant lands that could accommodate a single building structure of at least 75,000 square feet to determine the amount of development impact fees that could be collected to further build out Morgan Hill infrastructure, including roads, water, and sewer. The analysis concludes that the amount of impact fees directly to the City is a little over \$18.3 million should these projects develop to their maximum potential under the General Plan Floor Area Ratio (FAR)

When all sites build out to the maximum .6 FAR:

	Acres	3.39	5.03	10	7	5.92	3.27	3.05	12.34	9.79	8.89
Building	Building SF	88,601	131,464	209,088	182,952	154,725	85,465	79,715	322,518	255,871	232,349
City	City of Morgan Hill Impact Fees (inc. Laterals)	\$892,085	\$1,310,976	\$2,308,079	\$1,848,526	\$1,627,286		\$805,289	\$3,592,666	\$2,599,714	\$2,371,018
City	Ag Mitigation (Preservation Program)	\$50,850	\$75,450	\$150,000	\$0	\$0	\$0	\$0	\$0	\$146,850	\$133,350
Partner	HCP Fees (not including Nitrogen)	\$48,138	\$26,034	\$58,630	\$15,043	\$88,754	\$15,043	\$16,626	\$0	\$130,874	\$61,676
Partner	MHUSD Impact Fees (\$2020)	\$61,135	\$90,710	\$144,271	\$126,237	\$106,760	\$58,971	\$55,003	\$222,538	\$176,551	\$160,321
	Total	\$1,052,208	\$1,503,170	\$2,660,979	\$1,989,806	\$1,822,800	\$1,071,982	\$876,918	\$3,815,204	\$3,053,989	\$2,726,365
Used 1/15/2021 Fee Schedule											
City Impact fees for all projects DO NOT include Meter Fees and E&I. All estimates assumed industrial w/up to 20% office											
All sites are subject to Nitrogen Deposition fees as part of HCP, those fees NOT calculated above. ONLY Land cover is estimated above											

If the project sites develop at a lower FAR, closer to historical averages in Morgan Hill, the amount of impact fees directly to the City will be a little over \$12.9 million.

When all sites build out to historical figures of .37 FAR:

	Acres	3.39	5.03	10	7	5.92	3.27	3.05	12.34	9.79	8.89
Building	Building SF	54,637	81,070	108,900	112,820	95,414	52,703	49,157	198,886	157,787	143,282
City	City of Morgan Hill Impact Fees (inc. Laterals)	\$624,550	\$914,013	\$1,518,888	\$1,296,092	\$1,160,085	\$739,903	\$564,586	\$2,618,804	\$1,827,096	\$1,669,427
City	Ag Mitigation (Preservation Program)	\$50,850	\$75,450	\$150,000	\$0	\$0	\$0	\$0	\$0	\$146,850	\$133,350
Partner	HCP Fees (not including Nitrogen)	\$48,138	\$26,034	\$58,630	\$15,043	\$88,754	\$15,043	\$16,626	\$0	\$130,874	\$61,676
Partner	MHUSD Impact Fees (\$2020)	\$37,700	\$55,938	\$75,141	\$77,846	\$65,836	\$36,365	\$33,919	\$137,232	\$108,873	\$98,865
	Total	\$761,237	\$1,071,435	\$1,802,659	\$1,388,981	\$1,314,675	\$791,311	\$615,130	\$2,756,036	\$2,213,693	\$1,963,318
Used 1/15/2021 Fee Schedule											
City Impact fees for all projects DO NOT include Meter Fees and E&I. All estimates assumed industrial w/up to 20% office											
All sites are subject to Nitrogen Deposition fees as part of HCP, those fees NOT calculated above. ONLY Land cover is estimated above											

IMPACT ON VACANT PARCELS OF LAND

City Staff identified 10 locations in Morgan Hill that are industrially zoned that could accommodate a single large 75,000 square foot building if the site were built to the maximum Floor Area Ratio (FAR) for the General Plan.

Additionally, staff analyzed if the sites were developed to more historical standards throughout Morgan Hill at a lower FAR. The following tables highlight the net fiscal benefit to the City declines when land is utilized less intense (Higher FAR to lower FAR). These tables are also included in Part 3 of the Fiscal Impact Report (Exhibit 1)

	Madrone/Lightpost	Madrone/Woodview	Cochrane/ Butterfield (1008 House included)	Jarvis	San Pedro	Barrett	Church (Multiple Parcels)
Address	850 Lightpost Way	18635 Madrone Parkway	225 Cochrane Road	Jarvis Site	965A San Pedro	Barrett Avenue	965A San Pedro 81702055 (Multiple)
APN	72633026	72633025	72634006	72625026	81711073	81757009	
Acres	3.39	5.03	10	7	5.92	3.27	3.05
FAR (Industrial)	0.6	0.6	0.6	0.6	0.6	0.6	0.6
FAR (Office)	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Historic FAR (Industrial)	0.37	0.37	0.37	0.37	0.37	0.37	0.37
Historic FAR (Office)	0.36	0.36	0.36	0.36	0.36	0.36	0.36
Maximum FAR Build							
Building Size							
Manufacturing/Warehouse/Multitenant	88,600	131,460	209,090	182,950	154,730	85,460	79,710
Commercial Office	73,830	109,550	185,570	152,460	128,940	71,220	66,430
Employment Impact							
Multitenant/Manufacturing/Warehouse	90-177	131-263	209-418	183-366	155-309	85-171	80-159
Commercial Office 100%	270	400	670	550	470	260	240
General Fund Impact							
(Manufacturing/Warehouse/ Multitenant)							
General Fund Revenues (average across 3 product types)	\$63,760	\$94,600	\$150,450	\$131,760	\$111,060	\$61,550	\$57,410
General Fund Expenses (average across 3 product types)	(\$49,150)	(\$72,920)	(\$115,980)	(\$101,480)	(\$85,830)	(\$47,410)	(\$44,220)
Net General Fund Impact	\$14,610	\$21,680	\$34,470	\$30,280	\$25,230	\$14,140	\$13,190
General Fund Impact (Office Only)							
General Fund Revenues (Office Only)	\$84,540	\$125,430	\$212,460	\$174,680	\$147,330	\$81,600	\$76,110
General Fund Expenses (Office Only)	(\$103,110)	(\$152,990)	(\$259,130)	(\$212,900)	(\$180,050)	(\$99,460)	(\$92,760)
Net General Fund Impact	(\$18,570)	(\$27,560)	(\$46,670)	(\$38,220)	(\$32,720)	(\$17,860)	(\$16,650)
General FAR Build							
(Average Historical FAR)							
Building Size							
Manufacturing/Warehouse/Multitenant	54,640	81,070	128,940	112,820	95,410	52,700	49,160
Commercial Office	53,160	78,880	125,450	109,770	92,840	51,280	47,830
Employment Impact							
Multi-Tenant/Manufacturing/Warehouse	55-109	81-162	129-258	113-226	95-191	53-105	49-98
Office 100%	190	290	460	400	340	190	170
General Fund Impact Not Maximizing FAR							
(Manufacturing/Warehouse/Multitenant)							
General Fund Revenues (average across 3 product types)	\$39,320	\$58,340	\$78,360	\$81,250	\$68,490	\$37,960	\$35,400

General Fund Expenses (average across 3 product types)	(\$30,310)	(\$44,970)	(\$60,410)	(\$62,580)	(\$52,930)	(\$29,230)	(\$27,270)
Net General Fund Impact	\$9,010	\$13,370	\$17,950	\$18,670	\$15,560	\$8,730	\$8,130
General Fund Impact Not Maximizing FAR (Office Only)							
General Fund Revenues (Office Only)	\$62,030	\$92,030	\$126,250	\$128,160	\$108,100	\$59,870	\$55,840
General Fund Expenses (Office Only)	(\$76,300)	(\$113,210)	(\$152,070)	(\$157,550)	(\$133,240)	(\$73,600)	(\$68,650)
Net General Fund Impact	(\$14,270)	(\$21,180)	(\$25,820)	(\$29,390)	(\$25,140)	(\$13,730)	(\$12,810)

	Church (Multiple Parcels)	Tennant/Railroad	Monterey 1	Monterey 2 (Small house included)
Address	965A San Pedro 81702055 (Multiple)	425 Tennant Avenue	Monterey Site 1	15570 Monterey Road
APN	81702055 (Multiple)	81729028	81706006	81706060
Acres	3.05	12.34	9.79	8.89
FAR (Industrial)	0.6	0.6	0.6	0.6
FAR (Office)	0.5	0.5	0.5	0.5
Historic FAR (Industrial)	0.37	0.37	0.37	0.37
Historic FAR (Office)	0.36	0.36	0.36	0.36

Maximum FAR Build**Building Size**

Manufacturing/Warehouse/Multitenant	79,710	322,520	255,870	232,350
Commercial Office	66,430	268,770	213,230	193,620

Employment Impact

Multi-Tenant/Manufacturing/Warehouse	80-159	323-645	256-512	232-465
Office 100%	240	980	780	700

General Fund Impact**(Manufacturing/Warehouse/Multi-tenant)**

General Fund Revenues (average across 3 product types)	\$57,410	\$231,490	\$184,430	\$167,470
General Fund Expenses (average across 3 product types)	(\$44,220)	(\$178,900)	(\$141,930)	(\$128,880)

Net General Fund Impact

\$13,190 \$52,590 \$42,500 \$38,590

General Fund Impact (Office Only)

General Fund Revenues (Office Only)	\$76,110	\$307,110	\$244,460	\$221,990
General Fund Expenses (Office Only)	(\$92,760)	(\$344,440)	(\$297,760)	(\$270,390)

Net General Fund Impact

(\$16,650) (\$37,330) (\$53,300) (\$48,400)

General FAR Build (Average Historical FAR)**Building Size**

Manufacturing/Warehouse/Multitenant	49,160	198,890	157,790	143,280
Commercial Office	47,830	193,510	153,520	139,410

Employment Impact

Multi-Tenant/Manufacturing/Warehouse	49-98	199-398	158-316	143-287
Office 100%	170	700	560	510

General Fund Impact Not Maximizing FAR (Manufacturing/Warehouse/Multi-tenant)

General Fund Revenues (average across 3 product types)	\$35,400	\$142,750	\$113,730	\$103,270
General Fund Expenses (average across 3 product types)	(\$27,270)	(\$110,320)	(\$87,520)	(\$79,480)

Net General Fund Impact

\$8,130 \$32,430 \$26,210 \$23,790

General Fund Impact Not Maximizing FAR (Office Only)

General Fund Revenues (Office Only)	\$55,840	\$225,340	\$179,360	\$162,870
General Fund Expenses (Office Only)	(\$68,650)	(\$277,730)	(\$220,340)	(\$200,090)

Net General Fund Impact

(\$12,810) (\$52,390) (\$40,980) (\$37,220)

OUTREACH

The City of Morgan Hill has held several public hearings with the Planning Commission and City Council and held a Community Town Hall to engage the community on this topic. Notifications to the community are sent via the City's email lists and the City's 411-Newsletter, and the City's Notify me tool. Staff reports are posted on the City's project webpage. Public hearings included the Planning Commission meetings on September 22, October 21, and October 28, 2020, and City Council Meetings on November 18, 2020 and March 3, 2021.

CONCLUSION

To address the concerns expressed in the RG4MH Initiative, at the October 21, 2020 meeting, the City Council voted to prohibit all forms of standalone distribution uses (which was reaffirmed that prohibition for last-mile delivery in February 2021). The City Council also modified the administrative authority to approve discretionary permits and created new thresholds of significance for projects required to have a public hearing in front of the Planning Commission.

While the City took immediate action to address the critical goals of the RG4MH Initiative, the MHRGC continued to gather signatures for their petition for the City Council to adopt the Initiative. A voter-approved ordinance would provide long-term confidence to the community that distribution uses would not be built in Morgan Hill.

The City agrees that distribution centers are not the best and highest use of the City's limited industrial lands. The October 21, 2020 Council action to amend the City's Industrial Ordinance prohibiting any form of distribution use reflects the City's alignment with the community. However, the RG4MH Initiative, as initially written, has negative financial impacts on the City and is not aligned with the City's General Plan and Economic Blueprint.

City staff and the MHRGC have developed a "collaborative solution" that would consist of the City adopting an Urgency Ordinance that regulates building type as described by the Initiative but replacing "clear height" requirements of 24 feet with a "ceiling height" measurement of 34 feet. This new measurement remains part of the "three-pronged" requirements but no longer encompasses the existing businesses concerned for future expansion or modification. The collaborative solution provides more flexibility for future and existing businesses and does not have the same impact on these policies as the original RG4MH Initiative.

The collaborative solution developed by the Growth Coalition and the City staff creates clear definitions for defining building features such as "dock high doors" and "ceiling height." Also, it modifies the definition of "Manufacturing, Light" to be clear that assembly uses of finished products do not qualify as part of that definition.

Exhibit 1: Fiscal Impact of Citizen’s Initiative on Existing Facilities located in Morgan Hill

On March 3, 2021, the Morgan Hill City Council accepted the Certificate of Sufficiency of Petition issued by the County of Santa Clara Registrar of Voters regarding the “Citizens’ Initiative Changing the 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 Initiative” and directed staff to return with a fiscal report pursuant to Elections Code 9212 reporting on the effect of the proposed initiative. Per the Elections Code and Council direction, said report should be impartial and include the following specific to this report:

1. The fiscal impact of the measure;
2. Its impact on funding for infrastructure;
3. Its impact on vacant parcels of land;

The goal of this report is to provide City Council with impartial information to aide in making a decision to either adopt the Initiative or to adopt a resolution calling for an election on the measure.

The Citizen’s Initiative defines a building, structure, or facility within the City limits of Morgan Hill as a fulfillment Center with it matchings three characteristics:

1. a floor area of seventy-five thousand (75,000) square feet or greater; and
2. A clear ceiling height of twenty-four (24) feet or greater over more than twenty-five (25) percent of the floor area; and
3. One dock-high door per 25,000 square feet of floor area

Within the City of Morgan Hill there are five known buildings that meet the three criteria of the Citizen’s Initiative.¹

	Sunbaskets/Talamo Foods	Specialized Bicycle Components	Youngs Market	NXEdge	Shoe Palace
APN	72635017	81706047	72644004	72635014	72630015
Acres	7.24	5.25	16.3	9.21	23.35
Building Size	126,378	151,650	285,877	155,353	503,000
Address	18675 Madrone Parkway	15130 Concord Circle	850 Jarvis Drive	925 Lightpost Way	745 Jarvis Drive

An approval of the Citizen’s Initiative will make the above buildings legal non-conforming and defined as fulfillment. The current tenants will have the ability to maintain operations in Morgan Hill under a legal non-conforming status. However, changes to existing buildings that result in greater square footage, additional dock doors or height would not be allowed under legal non-conformance. To make building changes, tenants would need to bring the building into conformance by modifying one of those three elements.

A fiscal analysis was completed on the five sites using a specific use case scenario in which the existing tenant would leave Morgan Hill resulting from non-conformance. Please note that non-conformance by itself does not mean companies will be forced to leave or will leave. This only becomes an issue should future improvements

¹ The buildings were identified through a range of sources including: City of Morgan Hill Building Department Plans, CoStar, County of Santa Clara Assessor Data, visual inspection by City staff and company interviews.

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

to the buildings require an increase in size without addressing the three criteria causing the building to be in non-conformance.

Background

The analysis is broken down into three parts.

Part 1. A baseline fiscal analysis that shows the net impact of each building (and associated tenant) on the City of Morgan Hill. The analysis focuses only on the General Fund impact. No analysis was conducted on any multiplier effects resulting from their operations (for example, spillover effects on Hotel Room nights from hosting meetings and business clients) or qualitative impacts (business tourism, name brand recognition, headquarter locations).

Part 2. A modeled fiscal analysis that compares the four most likely re-use scenarios should the buildings become vacant resulting from the adoption of the Citizen's Initiative.

The four building re-use scenarios are:

1. Manufacturing Advanced/R&D
2. Warehouse
3. Manufacturing/Warehouse blend
4. Office

When looking a CoStar data for the City of San Jose on buildings over 75,000 square feet with a clear height of 24 feet or higher and dock high doors, there were 185 properties identified. Analysis of the data should the uses of those building fell into the following categories:

- Single occupancy large manufacturer
- Warehouse/Distribution single user
- Multiple tenants predominately smaller manufacturing combined with a warehouse or storage use
- Industrial building converted to an office use

Part 3. A modeled fiscal analysis on the remaining 10 properties in Morgan Hill that have a single land ownership that could accommodate a single building greater than 75,000 square feet based upon the City's General Plan Industrial Zoning Floor Area Ratio (FAR) of .6. This analysis identifies the maximum single building that could be accommodated on the parcel and analyzes the fiscal impact to the City along with identifying the development impact fees that would accrue to the City for future infrastructure should the build out to FAR capacity.

Methodology

The fiscal impact analysis measures the impact of building re-use on the City's General Fund on an annual basis. The fiscal impact is calculated by estimating the increases in revenues and expenditures from employees. New employees create demand for city services (such as public safety), but also provide increased sales tax, property taxes, other local taxes, and other revenues. The fiscal impact analysis calculates the net revenues (revenues minus costs) that the development is expected to generate.

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Parts 1 and 2 of the analysis also excludes impacts on special districts, enterprise funds and other agencies that are funded independently of the General Fund, such as utility districts. Part 3 does evaluate Development Impact Fees from modeled projects.

The analysis relies heavily on assumptions and analysis developed for a [fiscal impact report](#) conducted by Strategic Economics for the City of Morgan Hill in July 2020 for a future development Project.

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Part 1.**Fiscal Analysis of Existing Business Operations of Morgan Hill Budget**

Below is a summary of the fiscal impact associated with all five buildings. The City's General Fund revenue analysis lacks specific detail because of confidentiality stipulations on a couple revenue sources. Actual General Fund revenue figures related to Sales Tax, Property Tax, Property Tax in Lieu and Business License were used in determining General Fund Revenues for each business. No additional analysis was done on any multiplier or spillover effects from other spending to support the General Fund revenue.

On the expenditure side, a more complete analysis was done utilizing the number of employees reported at each location and the per employee impact of Police Services, Parks Services, Community services and other expenses. Information on the methodology for the calculations can be found in Appendix 1 for more detailed breakdown of General Fund Expenditures for the Table 1 below.

All uses have a positive fiscal impact to the City's General Fund except Sun Baskets/Talamo Foods. This is because there are limited sales tax revenues associated with manufacturing of food goods.

Table 1. Summary of Fiscal Impact of Citizen's Initiative on Existing Buildings

	Sun Baskets/ Talamo Foods	Specialized	Young's Market	NXEdge	Shoe Palace
General Use	Manufacturing	R&D/Office	Warehouse/ Distribution	R&D/ Manufacturing	Office/Warehouse/ Distribution
Total General Fund Revenues	\$38,261	\$129,185	\$91,300	\$35,564	\$56,175
Total General Fund Expenditures	(\$60,617)	(\$58,177)	(\$21,055)	(\$16,563)	(\$29,316)
Net General Fund	(\$22,356)	\$71,008	\$70,245	\$19,001	\$26,859

A more detailed breakdown on the expenditures of this table can be seen in Appendix 2.

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Part 2.**Summary Comparison of All Five Buildings and the Four Use Cases.**

Table 2 highlights that the current uses located within each of these five buildings (except Sun Baskets/Talamo Foods) all provide a bigger net positive impact than a modeled future use.

Table 2

	Sun Baskets/Talamo Foods	Specialized	Young's Market	NXEdge	Shoe Palace Office/Warehouse/Distribution
	Manufacturing	R&D/Office	Warehouse/Distribution	R&D/Manufacturing	
Total General Fund Revenues	\$38,261	\$129,185	\$91,300	\$35,564	\$56,175
Total General Fund Expenditures	(\$60,617)	(\$58,177)	(\$21,055)	(\$16,563)	(\$29,316)
Net General Fund	(\$22,356)	\$71,008	\$70,245	\$19,001	\$26,859

Modeled Re-Uses for Each Building- NET GENERAL FUND IMPACT BY TYPE

Manufacturing	\$3,914	(\$965)	(\$93,233)	(\$38,101)	(\$219,304)
Warehouse	\$10,038	\$6,365	(\$11,294)	\$13,918	(\$83,925)
Manufacturing/Warehouse	\$7,385	\$16,767	(\$11,161)	\$6,529	(\$92,433)
Office	(\$17,353)	(\$52,846)	(\$201,951)	(\$118,682)	(\$457,727)

The next set of tables show in greater detail the net the calculations determining the Net General Fund Impact for each building by a re-use of manufacturing, warehouse, manufacturing/warehouse, office.

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Fiscal Analysis of Existing Facilities being Reused with Four Different User Types

In Table 3, an analysis of the Sun Baskets/Talamo Foods suggests that a more revenue neutral re-use of the building is better aligned away from Food manufacturing to R&D with storage. A re-use of the building for Office purposes does not result in a fiscal positive for the City.

Table 3. Reuse Case of Sun Baskets/Talamo Foods

		Manufacturing	Warehouse	Manufacturing/ Warehouse	Office
General Fund Revenue	Coefficient				
Property Valuation		\$15,252,166	\$13,318,583	\$13,508,150	\$16,503,308
Santa Clara County Tax	0.01	\$152,522	\$133,186	\$135,081	\$165,033
Morgan Hill General Fund Portion	(variable~ 10%)	\$15,603	\$13,625	\$13,819	\$16,883
Property Transfer Tax					
Property Transfer Tax Rate	0.055	\$567.38	\$495.45	\$502.50	\$613.92
Morgan Hill General Fund					
Property Tax in Lieu of VLF					
VLF Property Tax in lieu per \$1 assessed value	.000406777				
Morgan Hill General Fund		\$6,204	\$5,418	\$5,495	\$6,713
Sales Tax					
Business to Business Sales	\$45.92	\$11,607	\$0	\$7,738	\$21,104
Employee (Per Capita Sales)	\$3,811	\$963,253	\$481,627	\$642,169	\$1,751,369
Morgan Hill General Fund	0.01	\$9,749	\$4,816	\$6,499	\$17,725
Other Recurring Revenue					
RDA Pass Through	\$3.94	\$995	\$498	\$663	\$1,809
Transient Occupancy Taxes	\$0.00	\$0	\$0	\$0	\$0
Franchise	\$20.77	\$5,250	\$2,625	\$3,500	\$9,546
Public Safety Sales Tax	\$3.45	\$871	\$436	\$581	\$1,584
Business License	\$0.00	\$0	\$0	\$0	\$0
Other Permits	\$0.34	\$86	\$43	\$57	\$156
Parking Enforcement	\$0.16	\$41	\$21	\$28	\$75
City Code Enforcement	\$0.66	\$167	\$83	\$111	\$303
Motor Vehicle In-Lieu	\$0.22	\$56	\$28	\$37	\$101
Other Rev. Other Agencies	\$0.00	\$0	\$0	\$0	\$0
Gen Admin Overhead	\$16.08	\$4,063	\$2,032	\$2,709	\$7,388
Other Charges for Current Services	\$5.82	\$1,470	\$735	\$980	\$2,673

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Other Interest	\$0.00	\$0	\$0	\$0	\$0
Other Rentals	\$0.00	\$0	\$0	\$0	\$0
Misc.	\$0.00	\$0	\$0	\$0	\$0
Fire Fees	\$0.00	\$0	\$0	\$0	\$0
Morgan Hill General Fund		\$13,000	\$6,500	\$8,667	\$23,636
Total General Fund Revenues		\$44,556	\$30,359	\$34,479	\$64,957
General Fund Expenditure	Coefficient				
Other Recurring Cost Assumptions					
City Council	\$0.00	\$0	\$0	\$0	\$0
City Attorney	(\$6.84)	(\$1,729)	(\$864)	(\$1,152)	(\$3,143)
City Manager	(\$5.20)	(\$1,313)	(\$657)	(\$875)	(\$2,388)
Human Resources	(\$6.73)	(\$1,702)	(\$851)	(\$1,135)	(\$3,094)
Finance	(\$14.53)	(\$3,674)	(\$1,837)	(\$2,449)	(\$6,679)
Fire	(\$62.34)	(\$15,757)	(\$7,878)	(\$10,504)	(\$28,649)
Code Compliance	(\$1.44)	(\$364)	(\$182)	(\$243)	(\$662)
Council Services and Records Management	(\$5.39)	(\$1,362)	(\$681)	(\$908)	(\$2,476)
Elections	\$0.00	\$0	\$0	\$0	\$0
Economic Development	\$0.00	\$0	\$0	\$0	\$0
Morgan Hill General Fund Expense Subtotal		(\$25,900)	(\$12,950)	(\$17,267)	(\$47,091)
Field Operation (Police)	1.36	\$0	\$0	\$0	(\$8,417)
Non Field Operations (Police)					
Calls Per Employee	9%	23	11	15	41
Cost of New Calls	(\$227)	(\$5,163)	(\$2,582)	(\$3,442)	(\$9,388)
Morgan Hill Police Expenditures Subtotal		(\$5,163)	(\$2,582)	(\$3,442)	(\$17,804)
Recreation and Community Services					
Net General Fund Expenditures Per Employee	(\$12.96)	(\$3,277)	(\$1,638)	(\$2,185)	(\$5,958)
Downtown Maintenance/Street Maintenance	(\$13.55)	(\$3,426)	(\$1,713)	(\$2,284)	(\$6,228)
Environmental Programs	(\$2.58)	(\$653)	(\$326)	(\$435)	(\$1,187)
Community Services Expenditures Subtotal		(7,355)	(3,678)	(4,903)	(13,373)
Park Maintenance					
Employee Service Population	0.5	126	63	84	230
Parks Service Ratio Per 1000 service Population	0.00118	0.149	0.075	0.099	0.271

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Park Maintenance Cost Per Acre	(\$14,908)	(\$2,223)	(\$1,112)	(\$1,482)	(\$4,042)
Total General Fund Expenditures		(\$40,641)	(\$20,321)	(\$27,094)	(\$82,310)
Net General Fund		\$3,914	\$10,038	\$7,385	(\$17,353)

In Table 3, an analysis of the Sun Baskets/Talamo Foods suggests that a more revenue neutral re-use of the building is better aligned away from Food manufacturing to R&D with storage. A re-use of the building for Office purposes does not result in a net fiscal positive for the City.

Please note that Field operations for Police services only takes effect if the new use results in net incremental employees beyond the current facility today. If there was not an increase in employment over the current use than no new patrol officer was needed.

Reuse Case of Specialized Bicycles Building

In Table 4, an analysis showing the repurposing of the Specialized building for manufacturing or warehouse, while positive does not generate the same amount of return as the current use today.

Table 4. Reuse Case of Specialized Bicycles Building

		Manufacturing	Warehouse	Manufacturing/ Warehouse	Office
General Fund Revenue	Coefficient				
Property Valuation		\$14,262,261	\$11,942,016	\$21,617,286	\$15,763,596
Santa Clara County Tax	0.01	\$142,623	\$119,420	\$216,173	\$157,636
Morgan Hill General Fund Portion	(variable~10%)	\$14,704	\$12,312	\$22,287	\$16,252
Property Transfer Tax					
Property Transfer Tax Rate	0.055	\$534.71	\$447.72	\$810.45	\$590.99
Morgan Hill General Fund					
Property Tax in Lieu of VLF					
VLF Property Tax in lieu Per \$1 assessed value	.000406777				
Morgan Hill General Fund		\$5,802	\$4,858	\$8,793	\$6,412
Sales Tax					
Business to Business Sales	\$ 45.92	\$13,928	\$0	\$9,285	\$25,324
Employee (Per Capita Sales)	\$3,811	\$1,155,876	\$577,938	\$770,584	\$2,101,593
Morgan Hill General Fund	0.01	\$11,698	\$5,779	\$7,799	\$21,269
Other Recurring Revenue					

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

RDA Pass Through	\$3.94	\$1,194	\$597	\$796	\$2,171
Transient Occupancy Taxes	\$0.00	\$0	\$0	\$0	\$0
Franchise	\$20.77	\$6,300	\$3,150	\$4,200	\$11,455
Public Safety Sales Tax	\$3.45	\$1,046	\$523	\$697	\$1,901
Business License	\$0.00	\$0	\$0	\$0	\$0
Other Permits	\$0.34	\$103	\$52	\$69	\$187
Parking Enforcement	\$0.16	\$50	\$25	\$33	\$90
City Code Enforcement	\$0.66	\$200	\$100	\$133	\$364
Motor Vehicle In-Lieu	\$0.22	\$67	\$33	\$45	\$122
Other Rev. Other Agencies	\$0.00	\$0	\$0	\$0	\$0
Gen Admin Overhead	\$16.08	\$4,876	\$2,438	\$3,251	\$8,865
Other Charges for Current Services	\$5.82	\$1,764	\$882	\$1,176	\$3,208
Other Interest	\$0.00	\$0	\$0	\$0	\$0
Other Rentals	\$0.00	\$0	\$0	\$0	\$0
Misc.	\$0.00	\$0	\$0	\$0	\$0
Fire Fees	\$0.00	\$0	\$0	\$0	\$0
Morgan Hill General Fund		\$15,600	\$7,800	\$10,400	\$28,363
Total General Fund Revenues		\$47,804	\$30,749	\$49,279	\$72,297
General Fund Expenditure	Coefficient				
Other Recurring Cost Assumptions					
City Council	\$0.00	\$0	\$0	\$0	\$0
City Attorney	(\$6.84)	(\$2,074)	(\$1,037)	(\$1,383)	(\$3,771)
City Manager	(\$5.20)	(\$1,576)	(\$788)	(\$1,051)	(\$2,865)
Human Resources	(\$6.73)	(\$2,042)	(\$1,021)	(\$1,361)	(\$3,713)
Finance	(\$14.53)	(\$4,408)	(\$2,204)	(\$2,939)	(\$8,015)
Fire	(\$62.34)	(\$18,908)	(\$9,454)	(\$12,605)	(\$34,377)
Code Compliance	(\$1.44)	(\$437)	(\$219)	(\$291)	(\$795)
Council Services and Records Management	(\$5.39)	(\$1,634)	(\$817)	(\$1,089)	(\$2,971)
Elections	\$0.00	\$0	\$0	\$0	\$0
Economic Development	\$0.00	\$0	\$0	\$0	\$0
Morgan Hill General Fund Expense Subtotal		(\$31,079)	(\$15,540)	(\$20,719)	(\$56,508)
Field Operation (Police)	1.36	\$0	\$0	\$0	(\$36,473)

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Non Field Operations (Police)					
Calls Per Employee	9%	27	14	18	50
Cost of New Calls	(\$227)	(\$6,196)	(\$3,098)	(\$4,130)	(\$11,265)
Morgan Hill Police Expenditures Subtotal		(\$6,196)	(\$3,098)	(\$4,130)	(\$47,738)
Recreation and Community Services					
Net General Fund Expenditures					
Per Employee	(\$12.96)	(\$3,932)	(\$1,966)	(\$2,621)	(\$7,149)
Downtown					
Maintenance/Street					
Maintenance	(\$13.55)	(\$4,111)	(\$2,055)	(\$2,740)	(\$7,474)
Environmental Programs	(\$2.58)	(\$783)	(\$392)	(\$522)	(\$1,424)
Community Services Expenditures Subtotal		(8,826)	(4,413)	(5,884)	(16,047)
Park Maintenance					
Employee Service Population	0.5	152	76	101	276
Parks Service Ratio Per 1000					
service Population	0.00118	0.179	0.089	0.119	0.325
Park Maintenance Cost Per					
Acre	(\$14,908)	(\$2,668)	(\$1,334)	(\$1,778)	(\$4,850)
Total General Fund Expenditures		(\$48,769)	(\$24,384)	(\$32,512)	(\$125,143)
Net General Fund		(\$965)	\$6,365	\$16,767	(\$52,846)

In Table 4, an analysis of the Specialized Bikes Building, the current use has a large net positive impact on the City of Morgan Hill than a future use that is either similar or different (office).

Reuse Case of Young's Market Building

In Table 5, the reuse of the Young's Market Building for a less intense warehouse operation or pivoting to another use does not result in net positive fiscal impact to the City.

Table 5: Reuse Case of Young's Market Building

Manufacturing	Warehouse	Manufacturing/Warehouse	Office
---------------	-----------	-------------------------	--------

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

General Fund Revenue	Coefficient				
Property Valuation		\$38,299,809	\$30,543,370	\$52,164,843	\$41,129,991
Santa Clara County Tax	0.01	\$382,998	\$305,434	\$521,648	\$411,300
Morgan Hill General Fund Portion	(variable~10%)	\$39,296	\$31,337	\$53,521	\$42,199
Property Transfer Tax					
Property Transfer Tax Rate	0.055	\$1,428.93	\$1,139.55	\$1,946.22	\$1,534.52
Morgan Hill General Fund					
Property Tax in Lieu of VLF					
VLF Property Tax in lieu Per \$1 assessed value	.000406777				
Morgan Hill General Fund		\$15,579	\$12,424	\$21,219	\$16,731
Sales Tax					
Business to Business Sales	\$45.92	\$26,256	\$0	\$17,504	\$47,738
Employee (Per Capita Sales)	\$3,811	\$2,178,954	\$1,089,477	\$1,452,636	\$3,961,735
Morgan Hill General Fund	0.01	\$22,052	\$10,895	\$14,701	\$40,095
Other Recurring Revenue					
RDA Pass Through	\$3.94	\$2,251	\$1,125	\$1,501	\$4,093
Transient Occupancy Taxes	\$0.00	\$0	\$0	\$0	\$0
Franchise	\$20.77	\$11,876	\$5,938	\$7,918	\$21,593
Public Safety Sales Tax	\$3.45	\$1,971	\$986	\$1,314	\$3,584
Business License	\$0.00	\$0	\$0	\$0	\$0
Other Permits	\$0.34	\$194	\$97	\$130	\$353
Parking Enforcement	\$0.16	\$94	\$47	\$62	\$170
City Code Enforcement	\$0.66	\$377	\$189	\$251	\$686
Motor Vehicle In-Lieu	\$0.22	\$126	\$63	\$84	\$229
Other Rev. Other Agencies	\$0.00	\$0	\$0	\$0	\$0
Gen Admin Overhead	\$16.08	\$9,192	\$4,596	\$6,128	\$16,712
Other Charges for Current Services	\$5.82	\$3,326	\$1,663	\$2,217	\$6,047
Other Interest	\$0.00	\$0	\$0	\$0	\$0
Other Rentals	\$0.00	\$0	\$0	\$0	\$0
Misc.	\$0.00	\$0	\$0	\$0	\$0
Fire Fees	\$0.00	\$0	\$0	\$0	\$0
Morgan Hill General Fund		\$29,407	\$14,703	\$19,605	\$53,467

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Total General Fund Revenues		\$106,334	\$69,360	\$109,047	\$152,492
General Fund Expenditure	Coefficient				
Other Recurring Cost Assumptions					
City Council	\$0.00	\$0	\$0	\$0	\$0
City Attorney	(\$6.84)	(\$3,910)	(\$1,955)	(\$2,607)	(\$7,109)
City Manager	(\$5.20)	(\$2,971)	(\$1,485)	(\$1,980)	(\$5,401)
Human Resources	(\$6.73)	(\$3,850)	(\$1,925)	(\$2,567)	(\$7,000)
Finance	(\$14.53)	(\$8,310)	(\$4,155)	(\$5,540)	(\$15,109)
Fire	(\$62.34)	(\$35,643)	(\$17,821)	(\$23,762)	(\$64,805)
Code Compliance	(\$1.44)	(\$824)	(\$412)	(\$549)	(\$1,498)
Council Services and Records Management	(\$5.39)	(\$3,080)	(\$1,540)	(\$2,053)	(\$5,600)
Elections	\$0.00	\$0	\$0	\$0	\$0
Economic Development	\$0.00	\$0	\$0	\$0	\$0
Morgan Hill General Fund Expense Subtotal		(\$58,588)	(\$29,294)	(\$39,058)	(\$106,523)
Field Operation (Police)	1.36	(\$107,633)	(\$34,687)	(\$58,918)	(\$187,290)
Non Field Operations (Police)					
Calls Per Employee	9%	51	26	34	94
Cost of New Calls	(\$227)	(\$11,679)	(\$5,840)	(\$7,786)	(\$21,235)
Morgan Hill Police Expenditures Subtotal		(\$119,313)	(\$40,527)	(\$66,704)	(\$208,525)
Recreation and Community Services					
Net General Fund Expenditures Per Employee	(\$12.96)	(\$7,412)	(\$3,706)	(\$4,942)	(\$13,477)
Downtown Maintenance/Street Maintenance	(\$13.55)	(\$7,749)	(\$3,874)	(\$5,166)	(\$14,089)
Environmental Programs	(\$2.58)	(\$1,477)	(\$738)	(\$984)	(\$2,685)
Community Services Expenditures Subtotal		(16,638)	(8,319)	(11,092)	(30,251)
Park Maintenance					
Employee Service Population	0.5	286	143	191	520
Parks Service Ratio Per 1000 service Population	0.00118	0.337	0.169	0.225	0.613

Attachment: City of Morgan Hill 9212 Report and Fiscal Analysis [Revision 12] (3043 : RG4MH Initiative to Nov 22 Ballot and Urgency

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Park Maintenance Cost Per Acre	(\$14,908)	(\$5,029)	(\$2,514)	(\$3,353)	(\$9,144)
Total General Fund Expenditures		(\$199,567)	(\$80,655)	(\$120,207)	(\$354,443)
Net General Fund		(\$93,233)	(\$11,294)	(\$11,161)	(\$201,951)

Reuse Case of NXEdge Market Building

The reuse case for the NXEdge building to another advanced manufacturer results in a negative impact. However, if the reuse were a blended operation manufacturing and warehousing it would create a net positive fiscal impact. NXEdge currently provides a better net fiscal impact to the City than the model analysis.

Table 6: Reuse Case of NXEdge Building

General Fund Revenue	Coefficient	Manufacturing	Warehouse	Manufacturing /Warehouse	Office
Property Valuation		\$23,164,171	\$24,076,474	\$30,698,791	\$24,702,165
Santa Clara County Tax	0.01	\$231,642	\$240,765	\$306,988	\$247,022
Morgan Hill General Fund Portion	(variable~ 10%)	\$23,697	\$24,630	\$31,405	\$25,270
Property Transfer Tax					
Property Transfer Tax Rate	0.055	\$861.71	\$895.64	\$1,142.00	\$918.92
Morgan Hill General Fund					
Property Tax in Lieu of VLF					
VLF Property Tax in lieu Per \$1 assessed value	.000406777				
Morgan Hill General Fund		\$9,423	\$9,794	\$12,488	\$10,048
Sales Tax					
Business to Business Sales	\$ 45.92	\$14,268	\$0	\$9,512	\$25,942
Employee (Per Capita Sales)	\$ 3,811	\$1,184,101	\$592,050	\$789,400	\$2,152,910
Morgan Hill General Fund	0.01	\$11,984	\$5,921	\$7,989	\$21,789
Other Recurring Revenue					
RDA Pass Through	\$3.94	\$1,223	\$612	\$815	\$2,224

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Transient Occupancy Taxes	\$0.00	\$0	\$0	\$0	\$0
Franchise	\$20.77	\$6,454	\$3,227	\$4,303	\$11,734
Public Safety Sales Tax	\$3.45	\$1,071	\$536	\$714	\$1,948
Business License	\$0.00	\$0	\$0	\$0	\$0
Other Permits	\$0.34	\$106	\$53	\$70	\$192
Parking Enforcement	\$0.16	\$51	\$25	\$34	\$93
City Code Enforcement	\$0.66	\$205	\$102	\$137	\$373
Motor Vehicle In-Lieu	\$0.22	\$69	\$34	\$46	\$125
Other Rev. Other Agencies	\$0.00	\$0	\$0	\$0	\$0
Gen Admin Overhead	\$16.08	\$4,995	\$2,497	\$3,330	\$9,082
Other Charges for Current Services	\$5.82	\$1,807	\$904	\$1,205	\$3,286
Other Interest	\$0.00	\$0	\$0	\$0	\$0
Other Rentals	\$0.00	\$0	\$0	\$0	\$0
Misc.	\$0.00	\$0	\$0	\$0	\$0
Fire Fees	\$0.00	\$0	\$0	\$0	\$0
Morgan Hill General Fund		\$15,980	\$7,990	\$10,654	\$29,055
Total General Fund Revenues		\$61,084	\$48,335	\$62,535	\$86,163

General Fund Expenditure	Coefficient				
Other Recurring Cost Assumptions					
City Council	\$0.00	\$0	\$0	\$0	\$0
City Attorney	(\$6.84)	(\$2,125)	(\$1,062)	(\$1,417)	(\$3,863)
City Manager	(\$5.20)	(\$1,614)	(\$807)	(\$1,076)	(\$2,935)
Human Resources	(\$6.73)	(\$2,092)	(\$1,046)	(\$1,395)	(\$3,804)
Finance	(\$14.53)	(\$4,516)	(\$2,258)	(\$3,011)	(\$8,211)
Fire	(\$62.34)	(\$19,369)	(\$9,685)	(\$12,913)	(\$35,217)
Code Compliance	(\$1.44)	(\$448)	(\$224)	(\$299)	(\$814)
Council Services and Records Management	(\$5.39)	(\$1,674)	(\$837)	(\$1,116)	(\$3,043)
Elections	\$0.00	\$0	\$0	\$0	\$0
Economic Development	\$0.00	\$0	\$0	\$0	\$0
Morgan Hill General Fund Expense Subtotal		(\$31,838)	(\$15,919)	(\$21,225)	(\$57,887)
Field Operation (Police)	1.36	(\$49,226)	(\$9,437)	(\$22,700)	(\$114,009)

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Non Field Operations (Police)					
Calls Per Employee	9%	28	14	19	51
Cost of New Calls	(\$227)	(\$6,347)	(\$3,173)	(\$4,231)	(\$11,540)
Morgan Hill Police Expenditures Subtotal		(\$55,572)	(\$12,610)	(\$26,931)	(\$125,549)
Recreation and Community Services					
Net General Fund					
Expenditures Per Employee	(\$12.96)	(\$4,028)	(\$2,014)	(\$2,685)	(\$7,324)
Downtown Maintenance/Street Maintenance	(\$13.55)	(\$4,211)	(\$2,105)	(\$2,807)	(\$7,656)
Environmental Programs	(\$2.58)	(\$802)	(\$401)	(\$535)	(\$1,459)
Community Services Expenditures Subtotal		(9,042)	(4,521)	(6,028)	(16,439)
Park Maintenance					
Employee Service Population	0.5	155	78	104	282
Parks Service Ratio Per 1000 service Population	0.00118	0.183	0.092	0.122	0.333
Park Maintenance Cost Per Acre	(\$14,908)	(\$2,733)	(\$1,366)	(\$1,822)	(\$4,969)
Total General Fund Expenditures		(\$99,185)	(\$34,417)	(\$56,006)	(\$204,845)
Net General Fund		(\$38,101)	\$13,918	\$6,529	(\$118,682)

Reuse Case of Shoe Palace Building

Table 7: Reuse Case of Shoe Palace Building

General Fund Revenue	Coefficient	Manufacturing/Warehouse			
		Manufacturing	Warehouse	Office	
Property Valuation		\$27,360,852	\$19,664,952	\$51,756,352	\$32,340
Santa Clara County Tax	0.01	\$273,609	\$196,650	\$517,564	\$323

Attachment: City of Morgan Hill 9212 Report and Fiscal Analysis [Revision 12] (3043 : RG4MH Initiative to Nov 22 Ballot and Urgency

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Morgan Hill General Fund Portion	(variable~ 10%)	\$28,072	\$20,176	\$53,102	\$33
Property Transfer Tax					
Property Transfer Tax Rate	0.055	\$1,020.81	\$733.68	\$1,930.98	\$1,20
Morgan Hill General Fund					
Property Tax in Lieu of VLF					
VLF Property Tax in lieu Per \$1 assessed value	.000406777				
Morgan Hill General Fund		\$11,130	\$7,999	\$21,053	\$13
Sales Tax					
Business to Business Sales	\$45.92	\$46,197	\$0	\$30,798	\$83
Employee (Per Capita Sales)	\$3,811	\$3,833,866	\$1,916,933	\$2,555,911	\$6,970
Morgan Hill General Fund	0.01	\$38,801	\$19,169	\$25,867	\$70
Other Recurring Revenue					
RDA Pass Through	\$3.94	\$3,960	\$1,980	\$2,640	\$7
Transient Occupancy Taxes	\$0.00	\$0	\$0	\$0	
Franchise	\$20.77	\$20,896	\$10,448	\$13,931	\$37
Public Safety Sales Tax	\$3.45	\$3,468	\$1,734	\$2,312	\$6
Business License	\$0.00	\$0	\$0	\$0	
Other Permits	\$0.34	\$342	\$171	\$228	\$
Parking Enforcement	\$0.16	\$165	\$82	\$110	\$
City Code Enforcement	\$0.66	\$663	\$332	\$442	\$1
Motor Vehicle In-Lieu	\$0.22	\$222	\$111	\$148	\$
Other Rev. Other Agencies	\$0.00	\$0	\$0	\$0	
Gen Admin Overhead	\$16.08	\$16,173	\$8,086	\$10,782	\$29
Other Charges for Current Services	\$5.82	\$5,852	\$2,926	\$3,901	\$10
Other Interest	\$0.00	\$0	\$0	\$0	
Other Rentals	\$0.00	\$0	\$0	\$0	
Misc.	\$0.00	\$0	\$0	\$0	
Fire Fees	\$0.00	\$0	\$0	\$0	
Morgan Hill General Fund		\$51,741	\$25,871	\$34,494	\$94
Total General Fund Revenues		\$129,744	\$73,216	\$134,517	\$210

Attachment: City of Morgan Hill 9212 Report and Fiscal Analysis [Revision 12] (3043 : RG4MH Initiative to Nov 22 Ballot and Urgency

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

General Fund Expenditure	Coefficient				
Other Recurring Cost Assumptions					
City Council	\$0.00	\$0	\$0	\$0	
City Attorney	(\$6.84)	(\$6,880)	(\$3,440)	(\$4,587)	(\$12,
City Manager	(\$5.20)	(\$5,227)	(\$2,613)	(\$3,484)	(\$9,
Human Resources	(\$6.73)	(\$6,774)	(\$3,387)	(\$4,516)	(\$12,
Finance	(\$14.53)	(\$14,622)	(\$7,311)	(\$9,748)	(\$26,
Fire	(\$62.34)	(\$62,714)	(\$31,357)	(\$41,809)	(\$114,
Code Compliance	(\$1.44)	(\$1,450)	(\$725)	(\$967)	(\$2,
Council Services and Records Management	(\$5.39)	(\$5,419)	(\$2,710)	(\$3,613)	(\$9,
Elections	\$0.00	\$0	\$0	\$0	
Economic Development	\$0.00	\$0	\$0	\$0	
Morgan Hill General Fund Expense Subtotal		(\$103,085)	(\$51,542)	(\$68,723)	(\$187,
Field Operation (Police)	1.36	(\$187,290)	(\$76,261)	(\$119,111)	(\$374,
Non Field Operations (Police)					
Calls Per Employee	9%	91	45	60	
Cost of New Calls	(\$227)	(\$20,550)	(\$10,275)	(\$13,700)	(\$37,
Morgan Hill Police Expenditures Subtotal		(\$207,840)	(\$86,536)	(\$132,811)	(\$411,
Recreation and Community Services Net General Fund Expenditures Per Employee	(\$12.96)	(\$13,042)	(\$6,521)	(\$8,695)	(\$23,
Downtown Maintenance/Street Maintenance	(\$13.55)	(\$13,634)	(\$6,817)	(\$9,089)	(\$24,
Environmental Programs	(\$2.58)	(\$2,598)	(\$1,299)	(\$1,732)	(\$4,
Community Services Expenditures Subtotal		(29,275)	(14,637)	(19,516)	(53,
Park Maintenance					
Employee Service Population	0.5	503	252	335	
Parks Service Ratio Per 1000 service Population	0.00118	0.594	0.297	0.396	1
Park Maintenance Cost Per Acre	(\$14,908)	(\$8,848)	(\$4,424)	(\$5,899)	(\$16,

Attachment: City of Morgan Hill 9212 Report and Fiscal Analysis [Revision 12] (3043 : RG4MH Initiative to Nov 22 Ballot and Urgency

Fiscal Impact of Citizen’s Initiative on Existing Facilities located in Morgan Hill

Total General Fund Expenditures	(\$349,048)	(\$157,140)	(\$226,949)	(\$668,
Net General Fund	(\$219,304)	(\$83,925)	(\$92,433)	(\$457,

Attachment: City of Morgan Hill 9212 Report and Fiscal Analysis [Revision 12] (3043 : RG4MH Initiative to Nov 22 Ballot and Urgency

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Part 3

Part 3 of the analysis looked at remaining vacant lands in Morgan Hill today that could potentially accommodate a building size of at least 75,000 square feet. City Staff identified 10 locations in Morgan Hill that are industrially zoned that could accommodate a single large building if the site were built to the maximum Floor Area Ratio (FAR) for the General Plan.

Additional, staff analyzed if the sites were developed to more historical standards throughout Morgan Hill at a lower FAR. Table 8 highlights the net fiscal benefit to the City declines when land is utilized less intense (Higher FAR to lower FAR).

Table 8

	Madrone/Lightpost	Madrone/Woodview	Cochrane/ Butterfield (1008 House included)	Jarvis	San Pedro	Barrett	Church (Multiple Parcels)	Tennant/R ailroad	Monterey 1	Monterey 2 (Small house included)
Address	850 Lightpost Way	18635 Madrone Parkway	225 Cochrane Road	Jarvis Site	965A San Pedro	Barrett Avenue	965A San Pedro 81702055 (Multiple)	425 Tennant Avenue	Monterey Site 1	15570 Monterey Road
APN	72633026	72633025	72634006	72625026	81711073	81757009		81729028	81706006	81706060
Acres	3.39	5.03	10	7	5.92	3.27	3.05	12.34	9.79	8.89
FAR (Industrial)	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6
FAR (Office)	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
Historic FAR (Industrial)	0.37	0.37	0.37	0.37	0.37	0.37	0.37	0.37	0.37	0.37
Historic FAR (Office)	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36	0.36
Maximum FAR Build										
Building Size										
Manufacturing/Warehouse/Multitenant	88,600	131,460	209,090	182,950	154,730	85,460	79,710	322,520	255,870	232,350
Commercial Office	73,830	109,550	185,570	152,460	128,940	71,220	66,430	268,770	213,230	193,620
Employment Impact										
Multitenant/Manufacturing/Warehouse	90-177	131-263	209-418	183-366	155-309	85-171	80-159	323-645	256-512	232-465
Commercial Office 100%	270	400	670	550	470	260	240	980	780	700
General Fund Impact										
(Manufacturing/Warehouse/ Multitenant)										

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

General Fund Revenues (average across 3 product types)	\$63,760	\$94,600	\$150,450	\$131,760	\$111,060	\$61,550	\$57,410	\$231,490	\$184,430	\$167,470
General Fund Expenses (average across 3 product types)	(\$49,150)	(\$72,920)	(\$115,980)	(\$101,480)	(\$85,830)	(\$47,410)	(\$44,220)	(\$178,900)	(\$141,930)	(\$128,880)
Net General Fund Impact	\$14,610	\$21,680	\$34,470	\$30,280	\$25,230	\$14,140	\$13,190	\$52,590	\$42,500	\$38,590
General Fund Impact (Office Only)										
General Fund Revenues (Office Only)	\$84,540	\$125,430	\$212,460	\$174,680	\$147,330	\$81,600	\$76,110	\$307,110	\$244,460	\$221,990
General Fund Expenses (Office Only)	(\$103,110)	(\$152,990)	(\$259,130)	(\$212,900)	(\$180,050)	(\$99,460)	(\$92,760)	(\$344,440)	(\$297,760)	(\$270,390)
Net General Fund Impact	(\$18,570)	(\$27,560)	(\$46,670)	(\$38,220)	(\$32,720)	(\$17,860)	(\$16,650)	(\$37,330)	(\$53,300)	(\$48,400)
General FAR Build (Average Historical FAR)										
Building Size										
Manufacturing/Warehouse/Multitenant	54,640	81,070	128,940	112,820	95,410	52,700	49,160	198,890	157,790	143,280
Commercial Office	53,160	78,880	125,450	109,770	92,840	51,280	47,830	193,510	153,520	139,410
Employment Impact										
Multi-Tenant/Manufacturing/Warehouse	55-109	81-162	129-258	113-226	95-191	53-105	49-98	199-398	158-316	143-287
Office 100%	190	290	460	400	340	190	170	700	560	510
General Fund Impact Not Maximizing FAR (Manufacturing/Warehouse/Multitenant)										
General Fund Revenues (average across 3 product types)	\$39,320	\$58,340	\$78,360	\$81,250	\$68,490	\$37,960	\$35,400	\$142,750	\$113,730	\$103,270
General Fund Expenses (average across 3 product types)	(\$30,310)	(\$44,970)	(\$60,410)	(\$62,580)	(\$52,930)	(\$29,230)	(\$27,270)	(\$110,320)	(\$87,520)	(\$79,480)
Net General Fund Impact	\$9,010	\$13,370	\$17,950	\$18,670	\$15,560	\$8,730	\$8,130	\$32,430	\$26,210	\$23,790
General Fund Impact Not Maximizing FAR (Office Only)										
General Fund Revenues (Office Only)	\$62,030	\$92,030	\$126,250	\$128,160	\$108,100	\$59,870	\$55,840	\$225,340	\$179,360	\$162,870
General Fund Expenses (Office Only)	(\$76,300)	(\$113,210)	(\$152,070)	(\$157,550)	(\$133,240)	(\$73,600)	(\$68,650)	(\$277,730)	(\$220,340)	(\$200,090)
Net General Fund Impact	(\$14,270)	(\$21,180)	(\$25,820)	(\$29,390)	(\$25,140)	(\$13,730)	(\$12,810)	(\$52,390)	(\$40,980)	(\$37,220)

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

In addition, City staff analyzed the 10 sites to determine the amount of future infrastructure funding for development impact fees could be generated from their development. The analysis follows the same pattern as Table 8. The analysis assumed a maximum FAR and a more traditional FAR.

The first is evaluated each site being built at the General Plan Maximum FAR of .6 for Industrial. However, Morgan Hill has a more historical growth pattern in industrial closer to an FAR of .37

Table 9 is when all sites build out to the maximum .6 FAR.

	Acres	3.39	5.03	10	7	5.92	3.27	3.05	12.34	9.79	8.89
Building	Building SF	88,601	131,464	209,088	182,952	154,725	85,465	79,715	322,518	255,871	232,349
City	City of Morgan Hill Impact Fees (inc. Laterals)	\$892,085	\$1,310,976	\$2,308,079	\$1,848,526	\$1,627,286	\$997,968	\$805,289	\$3,592,666	\$2,599,714	\$2,371,018
City	Ag Mitigation (Preservation Program)	\$50,850	\$75,450	\$150,000	\$0	\$0	\$0	\$0	\$0	\$146,850	\$133,350
Partner	HCP Fees (not including Nitrogen)	\$48,138	\$26,034	\$58,630	\$15,043	\$88,754	\$15,043	\$16,626	\$0	\$130,874	\$61,676
Partner	MHUSD Impact Fees (\$2020)	\$61,135	\$90,710	\$144,271	\$126,237	\$106,760	\$58,971	\$55,003	\$222,538	\$176,551	\$160,321
	Total	\$1,052,208	\$1,503,170	\$2,660,979	\$1,989,806	\$1,822,800	\$1,071,982	\$876,918	\$3,815,204	\$3,053,989	\$2,726,365
Used 1/15/2021 Fee Schedule											
City Impact fees for all projects DO NOT include Meter Fees and E&I. All estimates assumed industrial w/up to 20% office											
All sites are subject to Nitrogen Deposition fees as part of HCP, those fees NOT calculated above. ONLY Land cover is estimated above											

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Table 10 is when all sites build out to historical figures of .37 FAR

	Acres	3.39	5.03	10	7	5.92	3.27	3.05	12.34	9.79	8.89
Building	Building SF	54,637	81,070	108,900	112,820	95,414	52,703	49,157	198,886	157,787	143,282
City	City of Morgan Hill Impact Fees (inc. Laterals)	\$624,550	\$914,013	\$1,518,888	\$1,296,092	\$1,160,085	\$739,903	\$564,586	\$2,618,804	\$1,827,096	\$1,669,427
City	Ag Mitigation (Preservation Program)	\$50,850	\$75,450	\$150,000	\$0	\$0	\$0	\$0	\$0	\$146,850	\$133,350
Partner	HCP Fees (not including Nitrogen)	\$48,138	\$26,034	\$58,630	\$15,043	\$88,754	\$15,043	\$16,626	\$0	\$130,874	\$61,676
Partner	MHUSD Impact Fees (\$2020)	\$37,700	\$55,938	\$75,141	\$77,846	\$65,836	\$36,365	\$33,919	\$137,232	\$108,873	\$98,865
	Total	\$761,237	\$1,071,435	\$1,802,659	\$1,388,981	\$1,314,675	\$791,311	\$615,130	\$2,756,036	\$2,213,693	\$1,963,318
Used 1/15/2021 Fee Schedule											
City Impact fees for all projects DO NOT include Meter Fees and E&I. All estimates assumed industrial w/up to 20% office											
All sites are subject to Nitrogen Deposition fees as part of HCP, those fees NOT calculated above. ONLY Land cover is estimated above											

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Appendix 1: Technical Appendix**Service Population (source Strategic Economic July 2020 Report-Updated Figures)**

To calculate certain costs and revenues on a per capita basis, an existing service population – or “daytime population” of residents and workers – must be established. Morgan Hill had an estimated residential population of 46,454 and 18,761 workers according to the California Department of Finance (January 1, 2020) and the Quarterly Census of Employment and Wages (1st quarter of 2020), respectively.

In conformity with industry-standard practices the service population was developed using the existing residential and worker population in Morgan Hill. Each worker is counted as producing 0.50 of the impacts of a resident for analytical purposes, since workers generally spend less time in the city, and consume fewer services compared to residents (library, parks, recreation, etc.).

Table 11.

Service Population	
Residents	46,454
Employees	18,761
Employment Factor	0.5
Service Population	55,835

Sources: State of California, Department of Finance, E-4 Population Estimates for Cities, Counties, and the State, 2011-2020, with 2010 Census Benchmark. Sacramento, California, May 2020., State of California, QCEW 1st Qrt 2020 - Morgan Hill, Strategic Economics July 2020 Report

Employee Density by Building Type (source Strategic Economic July 2020 Report-Updated Figures)

The square feet per employee assumptions which were used to calculate the workers associated with R&D, manufacturing and assembly, warehouse and distribution, and office buildings. The analysis relies on industry-accepted standards and, where available, employee density data specific to the local market to develop these assumptions.

SQUARE FEET PER EMPLOYEE BY BUILDING TYPE

Table 12.

Manufacturing/R&D Jobs Ratio	500
Warehouse Jobs Ratio	1,000
Manufacturing/Warehouse Jobs Ratio <i>(This is an average between Manufacturing and Warehouse)</i>	750
Office Jobs Ratio <i>(This is an average between Office Admin and R&D Office)</i>	275

Source: Strategic Economics July 2020 Report

Square footage per employee ratios only applies to the re-use of buildings calculations. Actual employment figures were used for the current uses when determining revenues and costs.

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

REVENUE ASSUMPTIONS**Property Tax**

For the existing uses, actual assessed values for property tax were used for each property. Below are the County's tax rate areas share of local tax per the County of Santa Clara Assessor's Office.

Table 13.

Address	18675 Madrone Parkway	15130 Concord Circle	850 Jarvis Drive	925 Lightpost Way	745 Jarvis Drive
Tax Rate Area (TRA)	004-100	004-013	004-101	004-100	004-101
Morgan Hill Rate	10.23%	10.31%	10.26%	10.23%	10.26%

Source: <https://www.sccassessor.org/index.php/all-situs-search?SFrom=all&SType=all&STab=address&addValue=>

For the re-use of the buildings, it was assumed that the property would receive some tenant improvements if it were changing use and vacated. A Tenant Improvement value was determined using International Code Council, Valuation Data 2020 to determine an average valuation per square foot. The tenant improvement value was then calculated using square footage of facility times valuation figure to determine a new assessed value and therefore a new property tax assessment.

Table 14.

Address	18675 Madrone Parkway	15130 Concord Circle	850 Jarvis Drive	925 Lightpost Way	745 Jarvis Drive
TRA	004-100	004-013	004-101	004-100	004-101
Morgan Hill Rate	10.23%	10.31%	10.26%	10.23%	10.26%
Manufacturing (TI cost per sq ft)	\$40.5	\$40.5	\$40.5	\$40.5	\$40.5
Warehouse (TI cost per sq foot)	\$25.2	\$25.2	\$25.2	\$25.2	\$25.2
Manufacturing/Warehouse Industrial (TI cost per sq ft)	\$26.7	\$89	\$89	\$89	\$89
Office (TI cost per sq ft)	\$50.4	\$50.4	\$50.4	\$50.4	\$50.4
Valuation (Manufacturing)	\$5,118,309	\$6,141,825	\$11,578,019	\$6,291,797	\$20,371,500
Valuation (Warehouse)	\$3,184,726	\$3,821,580	\$7,204,100	\$3,914,896	\$12,675,600
Valuation (Manufacturing/Warehouse)	\$3,374,293	\$13,496,850	\$25,443,053	\$13,826,417	\$44,767,000
Valuation (office)	\$6,369,451	\$7,643,160	\$14,408,201	\$7,829,791	\$25,351,200
Manufacturing Jobs Ratio	500	500	500	500	500
Warehouse Jobs Ratio	1,000	1,000	1,000	1,000	1,000
Manufacturing/Warehouse Jobs Ratio	750	750	750	750	750
Office Jobs Ratio	275	275	275	275	275

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Employees- Manufacturing	253	303	572	311	1,006
Employees- Warehouse	126	152	286	155	503
Employees- Manufacturing/Warehouse	169	202	381	207	671
Employees-Office	460	551	1,040	565	1,829

Sources: City of Morgan Hill, Santa Clara County Assessor's Office, International Code Council, Valuation Data 2020, Strategic Economics July 2020 Report

Property Transfer Tax (source Strategy Economics July 2020 Report)

As a General Law city, Morgan Hill receives 0.055 percent of the assessed value of properties sold in the city. Annual property transfer tax revenue was calculated by multiplying the assessed value by the average turnover rate (to estimate the value of property sold annually), and then by the transfer tax rate.

No property transfer tax was estimated for the existing uses (Part 1 exercise). Property transfer tax only applies to the reuse of buildings calculations (Part 2 and Part 3 exercise).

Property tax in-lieu of Vehicle License Fees (VLF) (source Strategy Economics July 2020 Report-Updated figures)

Since 2004, the State of California has swapped city and county vehicle license fee revenues for additional property tax revenues. The property tax payment provided in-lieu of the VLF grows proportionally to a city's assessed value. The table below shows the calculation of property tax in-lieu of VLF revenue per dollar of assessed value, based on Morgan Hill's total estimated assessed value in FY 2019-2020 and the in-lieu payment from the State for the FY 2019-2020.

This analysis was done for both the existing and reuse scenarios (Part 1, Part 2 and Part 3).

Table 15.

Total Estimate Citywide Assessed Value (FY 2019-2020)	\$9,821,698,357
Citywide VLF Property Tax in-lieu Revenue (FY 2019-2020)	\$3,995,237
VLF Property Tax In-lieu Per \$1 Assessed Value	0.000406777

Sources: [https://www.morgan-hill.ca.gov/DocumentCenter/View/37500/2020-Comprehensive-Annual-Financial-Report-6-30-20-?bidId=19-20 CAFR](https://www.morgan-hill.ca.gov/DocumentCenter/View/37500/2020-Comprehensive-Annual-Financial-Report-6-30-20-?bidId=19-20%20CAFR), Page 193 and <https://www.morgan-hill.ca.gov/DocumentCenter/View/37106/FY-2021-2122-ADOPTED-OPERATING-AND-FY-2021-2526-CIP-BUDGETS>, 19-20 Amended category- 2021/2122 Adopted Operating Budget, Page 83

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Taxable Sales Assumptions (source Strategy Economics July 2020 Report-Updated figures)

The taxable sales assumptions used to estimate sales tax revenues for the re-use opportunities are described below (Part 2 and Part 3).

Table 16.

SALES TAX ALLOCATION SUMMARY (BUSINESS TO BUSINESS)		
Business and Industry, Local 1% received		\$2,489,994
Gross Sales for Category 19/20 Year	100	\$248,999,400
Gross Building Square Footage		5,422,265
Taxable Sales Per Square Foot		\$45.92
SALES TAX ALLOCATION SUMMARY (EMPLOYEE SPENDING)		
Employee Spending (Per Capita Sales)		\$3,811

Sources: HDL Report FY 19-20, Colliers Market Report Morgan Hill 4Q2020 and Strategic Economics Memo July 2020

- Employee per capita sales: Based on 2018 taxable retail sales revenues in Morgan Hill, Strategic Economics estimated the per capita taxable sales generated per resident. Based on a review of available data from the International Council of Shopping Centers, Strategic Economics estimated that worker spending would be approximately 25 percent of resident spending, or \$3,811 annually per worker.
- Business-to-business sales: Manufacturing, assembly, R&D, and office-based firms generate sales tax when they sell products to other businesses. In order to estimate business-to-business taxable sales, City staff divided the value of the City's Business-to-Business taxable sales (Business and Industry, Other Outlets) by the number of square feet of R&D, office, and industrial inventory (excluding warehouse buildings) in 2020 to develop an estimate of approximately \$46 in taxable sales per building square foot.

Calculating sales tax revenue: Morgan Hill receives approximately one percent of taxable sales made in the city. The sales tax revenues generated by each scenario were calculated as follows:

- Employee per capita sales were calculated by multiplying the number of new retail square feet in each scenario by the per capita taxable sales value of \$3,811, and then by one percent.
- Business-to-business sales tax revenues were calculated by multiplying the square feet of R&D/Office and Manufacturing/Assembly in each development scenario by the business-to-business per-square-foot assumption, and then by one percent.

OTHER RECURRING REVENUES**Calculating other revenue per capita (source Strategy Economics July 2020 Report-Updated figures)**

City staff updated Strategic Economics initial work by updating the fiscal year figures only. Other assumptions remain consistent with their July 2020 analysis which follows: Strategic Economics worked with the City's Finance Department to determine which remaining General Fund revenues are variable (i.e., would increase on a per capita basis as new employees are added). For the variable revenue sources, Strategic Economics applied a service population factor to each revenue category, representing the relative proportion of revenues attributable to new employees (0.50). These revenue categories include transient occupancy taxes, the public

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

safety sales tax, franchise fees, licenses and permits, fines and penalties, intergovernmental revenues and transfers, rental and interest income, and charges for services. The table shows the per capita, variable revenue generated by employees, which totals \$51.43 per employee annually.

The analysis below applies to Part 1, Part 2 and Part 3.

Table 17

Other Recurring Revenue	Revenue (2019-20)	Percent Variable	Variable Revenues	Service Population	Revenue Per Employee
RDA Pass Through	\$439,620	100%	439,620	0.5	\$3.94
Transient Occupancy Taxes	\$3,080,880	0%	0	0.5	\$0.00
Franchise	\$2,319,566	100%	2,319,566	0.5	\$20.77
Public Safety Sales Tax	\$385,000	100%	385,000	0.5	\$3.45
Business License	\$202,000	0%	0	1	\$0.00
Other Permits	\$37,940	100%	37,940	0.5	\$0.34
Parking Enforcement	\$18,285	100%	18,285	0.5	\$0.16
City Code Enforcement	\$73,645	100%	73,645	0.5	\$0.66
Motor Vehicle In-Lieu	\$24,652	100%	24,652	0.5	\$0.22
Other Rev. Other Agencies	\$417,789	0%	0	0.5	\$0.00
Gen Admin Overhead	\$1,795,198	100%	1,795,198	0.5	\$16.08
Other Charges for Current Services	\$649,544	100%	649,544	0.5	\$5.82
Interest Earnings	\$290,148	0%	0	0.5	\$0.00
Other Rentals	\$227,752	0%	0	0.5	\$0.00
Misc.	\$421,151	0%	0	0.5	\$0.00
Fire Fees	\$304,712	0%	0	0.5	\$0.00
Total					\$51.43

Source: <https://www.morgan-hill.ca.gov/DocumentCenter/View/37106/FY-2021-2122-ADOPTED-OPERATING-AND-FY-2021-2526-CIP-BUDGETS>, 19-20 Amended category- 2021/2122 Adopted Operating Budget, Page 83

EXPENDITURE ESTIMATES

POLICE DEPARTMENT (source Strategy Economics July 2020 Report-Updated figures)

The July 2020 Strategic Economics report was focused on a specific use case resulting in the development of over one million square feet of new development. Strategic Economics interviewed the Police Department to determine certain costs associated with commercial development. Based upon the size and scope of the initial project, the analysis assumed a new officer would be needed to maintain existing service levels (New employment of over 800 employees would require a new officer). Since this analysis is on existing uses (Part 1) with potential reuses, the calculations are slightly different. Under the existing use scenario (Part 1), it is assumed no new officer is need and this is the base condition. Most of the operations have been in existence for several years and police staffing is adequately addressing the need. An analysis was done using publicly available crime report data to determine the number of service calls by existing businesses (Part 1). For the reuse case (Part 2 and Part 3), Strategic Economics' original analysis for determining call volumes are used. If

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

the reuse of an existing building results in net new employees from the existing use, the per capita cost of a new officer is applied. Under the reuse scenarios (Part 2), there are three occasions where the reuse of a building as an office or 100% manufacturing facility would exceed a net new 839 employees resulting in the need for a new officer (per the original Strategic Economics Report). In this case the full cost of an officer was applied to the project (Parts 2 and 3, when triggered)

From the July 2020 Strategic Economic memorandum, the [Police] department estimates that one new full-time equivalent (FTE) police officer would be needed to handle additional service needs (839 new employees). As of FY 2018-2019 the full cost of a new FTE was \$187,290 including salaries and benefits.

For other Police Department divisions, Staff estimated additional police expenses on the basis of maintaining funding per call for service, a common means of estimating additional police department expenses incurred as a result of service population increases.

Variable expense assumption: Expenditures in all police divisions are variable, meaning that they are likely to increase as calls for service increase.

Offsetting program revenues: Upon consultation with the Police and Finance Departments, Strategic Economics subtracted offsetting revenues from the state of California's Supplemental Law Enforcement Grant to arrive at the Police Department's net variable general fund expenditure in FY 2019-2020.

Cost per call assumption: Morgan Hill's Police Department reported that it received approximately 36,094 calls for service in FY 2018-19. Upon consultation with the Department, Strategic Economics divided the number of calls for service into the net variable general fund expenditure to calculate the cost of each call of service per employee (\$208). Based on the current service population, Strategic Economics estimated that the Police Department receives approximately 0.09 calls per employee, which were multiplied by the number of new employees estimated for each scenario.

Table 18.

Police Department Expense	Cost	Percent Variable	Variable Cost
General Fund Expenditures			
PD Administration	\$1,300,288	100	\$1,300,288
PD Support Services	\$2,318,572	100	\$2,318,572
PD Emergency Services	\$210,041	100	\$210,041
PD Special Operations	\$2,747,543	100	\$2,747,543
Dispatch Services	\$1,716,002	100	\$1,716,002
Offsetting Program Revenues			
Supplemental Law Enforcement	\$100,135	100	\$100,135
Net Variable Expenditures			\$8,192,311

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Annual Estimate Calls			36,094
Average Net GF Cost per call			\$226.97
Current Resident Population			46,454
Current Employee Population			18,761
Employee Factor			0.50
Total Service Population			55,835
Field Operations Division Expenditure Assumptions			
Cost per FTE Field Officer			\$187,290
Number of Officers			41.00
Per 1,000 Service Population			1.36

Sources: <https://www.morgan-hill.ca.gov/DocumentCenter/View/37106/FY-2021-2122-ADOPTED-OPERATING-AND-FY-2021-2526-CIP-BUDGETS>, 19-20 Amended category- 2021/2122 Adopted Operating Budget, Pages 87, 105, 208, Strategic Economics July 2020, <https://www.crimemapping.com/map/agency/565>

COMMUNITY SERVICES (source Strategy Economics July 2020 Report-Updated figures)

Community Services Department's functions include recreation programs, street and congestion management, environmental programs, and cable television customer service support.

Variable expense assumptions: Based on discussions with the Community Services and Finance Departments, all expenditures except the Cable TV program were assumed to be variable, meaning that they are likely to increase as the service population increases. (The Cable TV program is funded by payments from the franchised cable provider and the city's site licenses with cell phone companies.)

Offsetting program revenues: The Community Services Department has historically operated many of its programs, particularly its recreation programs, under a cost recovery model where costs are offset by user fees and other revenues. In order to reflect these offsets, program revenues, grants, and transfers were subtracted from the department's general fund expenditures to arrive at net General Fund expenditure estimates for each function.

Per capita methodology: The net variable General Fund expenditures are assumed to increase on a per capita basis as new residents and employees are added in the development scenarios. The "per capita" method determines the cost per additional employee by dividing relevant total costs by the City's current service population, resulting in a cost per capita for each cost item. Each employee is equivalent to 0.5 resident in terms of the service impacts. It should be noted that while these cost estimates are based on the FY 2019-2020 budget

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Calculation of new expenses: The net variable General Fund expenditures costs per capita are multiplied by the number of new employees in each scenario to determine the total new costs incurred by the growing service population

PARKS (source Strategy Economics July 2020 Report)

The Park Maintenance Division of Morgan Hill's Community Services Department is responsible for maintaining approximately 65 acres of maintained parks, including city parks, bicycle trails, and the Civic Center.

Park maintenance cost per acre assumption: The total cost per acre for park maintenance in FY 2018 - 2019 was \$14,908. Parks service ratio assumption. Morgan Hill's 65 acres of maintained parks serve a service population of 54,830, at a ratio of 1.18 acres per 1,000 service population. This same service ratio would be maintained as new employees are added to the service population.

Table 19

Community Services	Revenue/ Expenditure (2019-20)	Variable	Variable Revenues/ Expenditures	Service Population	Revenue/ Expenditure Per Employee
Recreation and Community Services					
General Fund Expenditures					
Members and Program Services	\$6,371,297	100%	\$6,371,297	0.5	\$57.06
Facility Services	\$1,356,318	100%	\$1,356,318	0.5	\$12.15
Community Services	\$648,407	100%	\$648,407	0.5	\$5.81
Total GF Expenditures	\$8,376,022	100%	\$8,376,022	0.5	\$75.01
Offsetting Revenues					
RCS D Programs	\$6,470,631	100%	\$6,470,631	0.5	\$57.94
Facility Rentals	\$915,330	50%	\$457,665	0.5	\$4.10
Total Offsetting Revenues	\$7,385,961		\$6,928,296	0.5	\$62.04
Net Variable General Fund Expenditures	\$990,061		\$1,447,726		\$12.96
Downtown/Street/Congest Maint./Mgmt					
GF Expenditures					
Street Maintenances	\$2,386,836	50%	\$1,193,418	0.5	\$10.69
Downtown Maintenance	\$321,475	50%	\$160,738	0.5	\$1.44
Congestion Management	\$318,537	50%	\$159,269	0.5	\$1.43
Total General Fund Expenditures	\$3,026,848		\$1,513,424	0.5	\$13.55
Offsetting Revenues					
Street Maintenance	\$738,968	0%	\$0	0.5	\$0.00
Sewer/Water	\$703,690	0%	\$0	0.5	\$0.00
Total Offsetting Revenues	\$1,442,658	0%	\$0	0.5	\$0.00
Net Variable General Fund Expenditures	\$1,584,190		\$1,513,424	0.5	\$13.55

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Environmental Programs					
General Fund Expenditures	\$293,918	100%	\$293,918	0.5	\$2.63
Offsetting Revenues					
Waste Tipping Fees	\$95,000	0%	\$0	0.5	\$0.00
Recycling (State of CA)	\$11,000	50%	\$5,500	0.5	\$0.05
Service Contract (Gilroy)	\$34,000	0	\$0	0.5	\$0.00
Total Offsetting Revenues	\$140,000		\$5,500		\$0.05
Net Variable General Fund Expenditures	\$153,918		\$288,418		\$2.58
Cable TV					
General Fund Expenditures	\$22,594	0%	\$0	0.5	\$0.00
Total					
General Fund Expenditures			\$10,183,364		\$91.19
Offsetting Revenues			\$6,933,796		\$62.09
Net Community Services Expenditures			\$3,249,568		\$29.10

Sources: <https://www.morgan-hill.ca.gov/DocumentCenter/View/37106/FY-2021-2122-ADOPTED-OPERATING-AND-FY-2021-2526-CIP-BUDGETS> 19-20 Amended category- 2021/2122 Adopted Operating Budget, Page 85, 87, 172

Other Recurring Costs (source Strategy Economics July 2020 Report)

Strategic Economics applied a per capita model to estimate other departmental General Fund expenditures. As with the per capita revenues, staff applied a percent variable factor to each expense category, representing the relative proportion of expenses attributable to new employees. The value of the variable costs was multiplied by this service population factor (0.5 for employees), and then divided by the current total employee population in order to generate an estimate of the current total costs per capita by expense category. Finally, these per capita factors were multiplied by the respective new service population in Morgan Hill to arrive at additional costs associated with worker growth.

Table 20.

Other Recurring Costs	Expenditure (2019-20)	Percent Variable	Variable Cost	Service Population	Cost Per Employee
City Council	\$336,684	0%	\$0	0.5	\$0.00
City Attorney	\$763,698	100%	\$763,698	0.5	\$6.84
City Manager	\$580,167	100%	\$580,167	0.5	\$5.20
Human Resources	\$751,908	100%	\$751,908	0.5	\$6.73
Finance	\$1,623,059	100%	\$1,623,059	0.5	\$14.53
Fire	\$6,961,396	100%	\$6,961,396	0.5	\$62.34
Code Compliance	\$160,943	100%	\$160,943	0.5	\$1.44
Council Services and Records Management	\$601,560	100%	\$601,560	0.5	\$5.39
Elections	\$178,037	0%	\$0	0.5	\$0.00
Economic Development	\$809,102	0%	\$0	0.5	\$0.00

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Source: Sources: <https://www.morgan-hill.ca.gov/DocumentCenter/View/37106/FY-2021-2122-ADOPTED-OPERATING-AND-FY-2021-2526-CIP-BUDGETS> 19-20 Amended category- 2021/2122 Adopted Operating Budget, Page 87

Fire Department costs (source Strategy Economics July 2020 Report)

The City of Morgan Hill maintains a contract with CAL FIRE, the state agency that is responsible for staffing the City's Fire Department. While the terms of the contract do not directly link growth in the service population to growth in expenditures for fire protection, the Finance Department has indicated that recent growth in the number of calls for service has resulted in an unmet funding need to staff Morgan Hill's Fire Department at the level needed to achieve desired standards of coverage. Further growth of the service population at the proposed Morgan Hill Technology Park site is likely to result in a gradual increase in calls for service, which would contribute to existing service needs that would eventually be reflected in the cost of the City's contract with CAL FIRE.

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Appendix 2: Detailed Analysis of Current Use Case

		Sun Baskets/Talamo Foods	Specialized	Young's Market	NXEdge	Shoe Palace
		Manufacturing	R&D/Office	Warehouse/ Distribution	R&D/Manu facturing	Office/ Warehouse/ Distribution
Total General Fund Revenues		\$38,261	\$129,185	\$91,300	\$35,564	\$56,175
General Fund Expenditure	Coefficient					
Other Recurring Cost Assumptions						
City Council	\$0.00	\$0	\$0	\$0	\$0	\$0
City Attorney	(\$6.84)	(\$2,920)	(\$2,790)	(\$1,026)	(\$807)	(\$1,395)
City Manager	(\$5.20)	(\$2,218)	(\$2,120)	(\$779)	(\$613)	(\$1,060)
Human Resources	(\$6.73)	(\$2,875)	(\$2,747)	(\$1,010)	(\$795)	(\$1,374)
Finance	(\$14.53)	(\$6,206)	(\$5,930)	(\$2,180)	(\$1,715)	(\$2,965)
Fire	(\$62.34)	(\$26,619)	(\$25,435)	(\$9,351)	(\$7,356)	(\$12,717)
Code Compliance	(\$1.44)	(\$615)	(\$588)	(\$216)	(\$170)	(\$294)
Council Services and Records Management	(\$5.39)	(\$2,300)	(\$2,198)	(\$808)	(\$636)	(\$1,099)
Elections	\$0.00	\$0	\$0	\$0	\$0	\$0
Economic Development	\$0.00	\$0	\$0	\$0	\$0	\$0
Morgan Hill General Fund Expense Subtotal		(\$43,755)	(\$41,808)	(\$15,371)	(\$12,091)	(\$20,904)
Field Operation (Police)	1.36	\$0	\$0	\$0	\$0	\$0
Non Field Operations (Police)						
Calls Per Employee	9%	3	4	0	0	3
Cost of New Calls	(\$227)	(\$681)	(\$908)	\$0	\$0	(\$681)
Morgan Hill Police Expenditures Subtotal		(\$681)	(\$908)	\$0	\$0	(\$681)
Recreation and Community Services						
Net General Fund Expenditures Per Employee	(\$12.96)	(5,536)	(5,289)	(1,945)	(1,530)	(2,645)
Downtown Maintenance/Street Maintenance	(\$13.55)	(5,787)	(5,530)	(2,033)	(1,599)	(2,765)

Fiscal Impact of Citizen's Initiative on Existing Facilities located in Morgan Hill

Environmental Programs	(\$2.58)	(1,103)	(1,054)	(387)	(305)	(527)
Community Services Expenditures						
Subtotal		(12,426)	(11,873)	(4,365)	(3,434)	(5,936)
Park Maintenance						
Employee Service Population	0.5	214	204	75	59	102
Parks Service Ratio Per 1000 service Population	0.00118	0.252	0.241	0.089	0.070	0.120
Park Maintenance Cost Per Acre	(\$14,908)	(\$3,756)	(\$3,589)	(\$1,319)	(\$1,038)	(\$1,794)
Total General Fund Expenditures		(\$60,617)	(\$58,177)	(\$21,055)	(\$16,563)	(\$29,316)
Net General Fund		(\$22,356)	\$71,008	\$70,245	\$19,001	\$26,859

From: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: MHRGC Initiative and the Inability to express my concerns.
Date: Thursday, March 11, 2021 9:31:46 AM

From: Tadon Christopher <[REDACTED]>

Date: March 9, 2021 at 12:11:09 AM PST

To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>, John McKay
 <john.mckay@morganhill.ca.gov>, Gino Borgioli <Gino.Borgioli@morganhill.ca.gov>,
 Yvonne Martinez Beltran <yvonne.martinezbeltran@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>

Subject: MHRGC Initiative and the Inability to express my concerns.

Good day council members and mayor,

I know your time is valuable and often in little supply. My name is Tadon Christopher and I've spoken at two of the many meetings dealing with the current developments in Morgan Hill. I have not able to adequately express myself in the 2 minutes allotted at meetings (as I'm usually cramming tens-of-minutes into single thoughts) so I ask if you could indulge me a few moments of your time, even if just to glance through. I will try to be brief and not reiterate what others have said so eloquently.

I've lived in a lot of locations in my short 35 years on Earth. I grew up here in Morgan Hill back when the mushroom farms littered every corner, horses were visible from most streets, and Butterflied was mostly ignored by drivers. I watched Morgan Hill turn a dead downtown into a diamond in the rough and finally into a beautiful gem. Morgan Hill really has a beautiful small town but lively feel, and that is not something you get to keep if you don't protect it.

To the locations I've lived: Coachella, Las Vegas, LA, Gilroy, Fresno, the fields that surround Fresno is every direction for two hours, Palm Springs, Santa Cruz, and San Jose. I've never felt the same in any of those towns and cities as I have here. The reasons for that are too many to explore, but generally its cement, garbage, and manicured fakeness.

I love it here. That's why I came back.

In the effort of time - Insert arguments about Shoe Palace and Trammel Crow and how their buildings are horrifyingly gross in a cement wasteland kind of way. You've heard these.

I would like to focus on what an economic report, or any report for that matter, won't tell you. The community wants high tech, which requires new infrastructure (internet) to attract. We are close enough to San Francisco to really warrant that being a successful direction, plus tech people LOVE small town feels. Docking bays will repulse that kind of industry. I still believe Morgan Hill needs to better support our artists and creators. We need workshop space for those who utilize their talents to make (not just four walls but an inspiring creative building). Property prices are very prohibitive, so a city effort would be necessary. Docking bays will take away that space as no one wants to work in a truck dump. Towns are going green, like 100% green! We could easily build any number of green power facilities or green tech manufacturing. Docking bays add to soil and air pollution that creates massive contamination issues. Green will not move next to giant sources of pollution. These mentioned developments also blend well with Morgan Hill's current agricultural business, as their contribution to environmental hazards is rather insignificant.

A further possibility is lab tech for our already huge agricultural business and neighboring cities huge agricultural business. With people becoming more and more crazy about things like naturally occurring heavy metals, the need for soil testing, soil improvement, natural/non-toxic insecticides, and the tirade of other EPA nightmares looming in the future, we will need space for these companies to become local. The expense of commuting will be very prohibitive for these industries.

If we allow these fulfillment centers and their ilk into our city, we can say goodbye to any other possibilities. None of the above industries will move into a town, much less next to, a huge docking facility that generates every known type of pollution (air, litter and plastics, oil/lubricant run-off, water aquifer contamination, noise, traffic, dead dreams, etc.). The economic study that caused a vote to extend the adoption of the MHRGC initiative is not going to include this loss of potential business. There usually is no economic evidence of the mentioned losses because it's not an economic issue but a sociological problem. It's probably going to show a high initial wave of income with little loss outside of environmental damage and tourism. Nothing could be further from the truth, as allowing a second distribution center will guarantee the current direction of our town; Being that other industries will not want to move in. It will make our town a distribution center, and a dump forevermore.

The quick cash grab will look nice, but it will devastate any form desirable long-term development. Long after you've retired and are visiting your great-grandchildren in Cambria or Morrow-Bay, my kids will be either flourishing in an

alluring small town or locked in a grime covered, ashy-skied, cement graveyard based on your decision. We are at a cross-road. Please adopt the initiative. Please be a member of the team trying to save our town from predatory developers. There is so much greed and lax morality outside our little town, I don't want to have to deal with it in my backyard anymore.

I've also read a number of environmental reports on projects from housing to industrial development recently. I have to say the level of bold-faced lies and non-sense is rather ridiculous, so please use your common sense. Trucks mean soil contamination, water contamination, air contamination, and noise contamination. Did I mention the contamination from garbage? That is a lot of contamination... Pollinators will disappear and our soil and aquifers will suffer. Morgan Hill has a lot of agricultural business that cannot survive the long-term effects brought on by this. We are not as spacious as Salinas.

To sum up - Distribution centers = current and future opportunities dead.

Thank you for your time and efforts and thank you for affording me the chance to voice in words what I can't seem to voice well in speech.

Tadon Christopher: Retired Teacher, Farmer, Father

My wife and in-laws were overjoyed when I purchased our home in Morgan Hill. They are from San Jose, the "dump" of the bay area. My wife asked me yesterday, March 7th, if we should start looking at moving. That's how sure non-economic people are that the current direction of MH is a death sentence for our small-lovely town.

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: [Angie Gonzalez](#)
To: [Angie Gonzalez](#)
Subject: FW: Support Initiative from Morgan Hill Responsible Growth Coalition
Date: Thursday, March 11, 2021 9:34:11 AM

From: HUANG WEI <[REDACTED]>

Date: March 9, 2021 at 4:56:36 PM PST

To: Rich.Costantine@morganhill.ca.gov, yvonne.martinezbeltran@morganhill.ca.gov,
 John McKay <john.mckay@morganhill.ca.gov>, Rene Spring
 <Rene.Spring@morganhill.ca.gov>, gino.borgionli@morganhill.ca.gov

Subject: Support Initiative from Morgan Hill Responsible Growth Coalition

Dear Sir and Madam,

Our family moved to Morgan Hill about four years ago because we liked this beautiful, quiet, and friendly city.

But recently, we find that, unfortunately, this city is on the way toward unsustainable development to damage all of these things.

The built Shoe Palace Extension project, which is a distribution center and there is a school nearby, has not EIR (Environment Impact Report). The approved Butterfield Technology Park project, which there are a lot of residential buildings nearby, has EIR, but they were 1980 or 2000 and has not been updated. The pending Redwood Tech @101 project, which there are also a school, a senior living center, and a lot of residential buildings nearby, has EIR, which is from the former Morgan Hill Technology Center project, which a lot of citizens opposed.

With my common sense, I do a simple analysis. Without considering other vehicles, Shoe Palace Extension has 56 truck docks, Butterfield Technology Park has 38 truck docks, Redwood Tech @101 has 50 truck docks, plus additional truck traffic from other companies or factories along the Cochrane road. Even if these trucks would not run simultaneously, we need to consider the worst situation. How worst the impact on traffic and pollution would be?

I understand that city need to develop in economy, but how about other factors? we all wish that Morgan Hill will develop sustainably.

I think that the projects of Butterfield Technology Park and Redwood Tech @101

should hear more opinions of citizens in our city.

I strongly support the Initiative from Morgan Hill Responsible Growth Coalition.

Thank you for listening to my opinion!

Willa Huang

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: [Michelle Bigelow](#)
To: [Michelle Bigelow](#)
Subject: FW: City Ordinance/Initiative in response to the MHRGC Initiative
Date: Friday, April 2, 2021 11:22:40 AM

From: Rick Kent [REDACTED] >
Sent: Thursday, April 1, 2021 5:36 PM
To: Rich Constantine <Rich.Constantine@morganhill.ca.gov>; John McKay
 <john.mckay@morganhill.ca.gov>; Yvonne Martinez Beltran
 <yvonne.martinezbeltran@morganhill.ca.gov>; Rene Spring <Rene.Spring@morganhill.ca.gov>; Gino
 Borgioli <Gino.Borgioli@morganhill.ca.gov>
Cc: Christina Turner <Christina.Turner@morganhill.ca.gov>; Jennifer Carman
 <Jennifer.Carman@morganhill.ca.gov>; Edith Ramirez <Edith.Ramirez@morganhill.ca.gov>; Joe
 Baranowski <[REDACTED]>; Miguel Jimenez <[REDACTED]>;
 [REDACTED]
Subject: City Ordinance/Initiative in response to the MHRGC Initiative

Hello Mr. Mayor, City Council Members and City Staff,

I am going to be out of town for the April 7th City Council meeting so I thought I would e-mail you instead of making a public comment.

First, I would like to thank the Morgan Hill Responsible Growth Coalition for pursuing this issue. I know there was a ton of time put in to research the issue, understand what other cities had done to address similar issues, draft the Initiative and spend countless days collecting signatures.

Second, I would like to thank the City staff who listened to the residents of the City, worked on regulations to prohibit various distribution activities and collaborated with the Morgan Hill Responsible Growth Coalition to come up with a solution that most everyone agrees with.

Third, I would like to thank the Mayor and the City Council for adopting the measures to prohibit distribution, parcel hubs and last mile distribution uses in the City.

I think the Ordinance is a reasonable solution that allows the City and its residents to move on from a contentious issue.

I would encourage the Mayor and the City Council to adopt the Emergency Ordinance on April 7th and place that Ordinance on the ballot in November 2022.

It is then time to move forward as a team and market the City's Economic Blue Print to attract businesses and good jobs to help the City build fiscal sustainability. The Economic Blueprint does this through attracting Innovation and Advance Manufacturing, Retail, Tourism and

Healthcare while maintaining the Quality of Life in Morgan Hill.

Let's go do it.

Thank you,

Rick

Rick Kent CPA, CGMA

Chief Financial Officer

408-782-5606 (Office)

[REDACTED] (Cell)

18735 Madrone Parkway, Morgan Hill, CA 95037

www.paramit.com



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.



4/2/2021

ATTN: Morgan Hill City Councilmembers

Mayor Rich Constantine

Councilmembers: John McKay, Gino Borgioli, Rene Spring and Yvonne Martinez Beltran

First, we would like to thank and congratulate the Morgan Hill Responsible Growth Coalition (MHRGC) for bringing the discussion of Distribution Centers to the Morgan Hill Community and City Council. Their efforts sparked much discussion throughout the community on what businesses are ideal in Morgan Hill and ultimately resulted in the City Council passing Ordinance 2317 in November 2020, effectively prohibiting Distribution Centers as a use citywide. Further, the MHRGC led the community discussion around the Shoe Palace Expansion which revealed the need to update a decades old special ordinance allowing projects under specific zoning to move forward without public review. Updates to that Ordinance now require any projects over 75,000 sq/ft to go through a public hearing. The Morgan Hill Business and Residential Community, Chamber of Commerce and MHRGC all share this same common ground- We DO NOT want to see Morgan Hill become the distribution capital of Northern California nor do we want to discourage future business and job growth.

On Wednesday March 17th, the MHCoC convened a meeting of Morgan Hill's existing mid to large business owners to discuss their awareness and business impact considerations of the recent Initiative proposed by the MHRGC which aims to establish a 3-pronged restriction to future building designs. We learned that existing large businesses such as Airtronics, Specialized Bicycle, NX Edge, TROPOS Technology, PRISM Electronics and Sunbasket are extremely concerned about the building restrictions outlined in the Initiative, as it could prevent their future plans for expansion within Morgan Hill. The group deepened our learning of their viewpoint by specifically addressing the following concerns and exposures to the current Initiative:

- Decreased appetite for business expansion/relocation.
- Reduction of property value for existing buildings due to limitations on building design and modification.
- Diminution of future investment
- Reinforcing the stigma of being a "business unfriendly" city.



The central theme resonating from the Morgan Hill business owners is best summed up by the following quote from one business owner and shared by all participants: “Last Mile Distribution is best controlled through “use” not through building design”. Business Operators want to be good citizens and take the responsibility of providing community benefits and needs seriously. In return, they presume to receive support for themselves, their families and their businesses from the community. None of the businesses in attendance, including those that could not attend the meeting but emailed their thoughts on the Initiative separately, had been contacted by the MHRGC. How can you create and present an ordinance restricting future citywide building design without first consulting existing business owners to understand their building needs both now and in the future?

What are the short term and long-term effects to the city, business community and residents of implementing the Initiative? Decreased business investment, which leads to decreased sales tax revenue, which leads to an even greater citywide financial shortfall, ending in the reduction of Police Officers, Road Maintenance, Support for Education and Parks and Recreation Programs. The Morgan Hill Chamber of Commerce, alongside the businesses whom have added their signatures below, urge you to consider the long-term impact of imposing a grossly restrictive building design ordinance on our existing businesses, future development opportunities and residential well-being. We would like to point out that the MHRGC Initiative DOES NOT even fully prohibit distribution centers, as buildings can move forward meeting any combination of the criteria as long as they do not satisfy all three consecutively. The real ban and message from this Initiative are around building size and aesthetics. Distribution Centers are already banned by “use” citywide and projects over 75,000 square feet are now subject to public review. Please do not take the additional step to impose “building restrictions” citywide as the results could be devastating on a financial, economic development and residential front.

Sincerely,

Brittney Sherman

Brittney Sherman
CEO/President

155 East Main Ave, #170, Morgan Hill, CA 95037 * (408) 779-9444* www.morganhillchamber.org



3/31/2021

ATTN: Morgan Hill City Councilmembers

Mayor Rich Constantine

Councilmembers: John McKay, Gino Borgioli, Rene Spring and Yvonne Martinez Beltran

First, we would like to thank and congratulate the Morgan Hill Responsible Growth Coalition (MHRGC) for bringing the discussion of Distribution Centers to the Morgan Hill Community and City Council. Their efforts sparked much discussion throughout the community on what businesses are ideal in Morgan Hill and ultimately resulted in the City Council passing Ordinance 2317 in November 2020, effectively prohibiting Distribution Centers as a use citywide. Further, the MHRGC led the community discussion around the Shoe Palace Expansion which revealed the need to update a decades old special ordinance allowing projects under specific zoning to move forward without public review. Updates to that Ordinance now require any projects over 75,000 sq/ft to go through a public hearing. The Morgan Hill Business and Residential Community, Chamber of Commerce and MHRGC all share this same common ground- We DO NOT want to see Morgan Hill become the distribution capital of Northern California nor do we want to discourage future business and job growth.

On Wednesday March 17th, the MHCoC convened a meeting of Morgan Hill's existing mid to large business owners to discuss their awareness and business impact considerations of the recent Initiative proposed by the MHRGC which aims to establish a 3-pronged restriction to future building designs. We learned that existing large businesses such as Airtronics, Specialized Bicycle, NX Edge, TROPOS Technology, PRISM Electronics and Sunbasket are extremely concerned about the building restrictions outlined in the Initiative, as it could prevent their future plans for expansion within Morgan Hill. The group deepened our learning of their viewpoint by specifically addressing the following concerns and exposures to the current Initiative:

- Decreased appetite for business expansion/relocation.
- Reduction of property value for existing buildings due to limitations on building design and modification.
- Diminution of future investment
- Reinforcing the stigma of being a "business unfriendly" city.



The central theme resonating from the Morgan Hill business owners is best summed up by the following quote from one business owner and shared by all participants: "Last Mile Distribution is best controlled through "use" not through building design". Business Operators want to be good citizens and take the responsibility of providing community benefits and needs seriously. In return, they presume to receive support for themselves, their families and their businesses from the community. None of the businesses in attendance, including those that could not attend the meeting but emailed their thoughts on the Initiative separately, had been contacted by the MHRGC. How can you create and present an ordinance restricting future citywide building design without first consulting existing business owners to understand their building needs both now and in the future?

What are the short term and long-term effects to the city, business community and residents of implementing the Initiative? Decreased business investment, which leads to decreased sales tax revenue, which leads to an even greater citywide financial shortfall, ending in the reduction of Police Officers, Road Maintenance, Support for Education and Parks and Recreation Programs. The Morgan Hill Chamber of Commerce, alongside the businesses whom have added their signatures below, urge you to consider the long-term impact of imposing a grossly restrictive building design ordinance on our existing businesses, future development opportunities and residential well-being. We would like to point out that the MHRGC Initiative DOES NOT even fully prohibit distribution centers, as buildings can move forward meeting any combination of the criteria as long as they do not satisfy all three consecutively. The real ban and message from this Initiative are around building size and aesthetics. Distribution Centers are already banned by "use" citywide and projects over 75,000 square feet are now subject to public review. Please do not take the additional step to impose "building restrictions" citywide as the results could be devastating on a financial, economic development and residential front.

Sincerely,

Brittney Sherman

Brittney Sherman
CEO/President

Business Name

Airtronics Metal Products

Signature

Jeffrey Burke
President/CEO

155 East Main Ave, #170, Morgan Hill, CA 95037 * (408) 779-9444* www.morganhillchamber.org



3/26/2021

ATTN: Morgan Hill City Councilmembers

Mayor Rich Constantine

Councilmembers: John McKay, Gino Borgioli, Rene Spring and Yvonne Martinez Beltran

First, we would like to thank and congratulate the Morgan Hill Responsible Growth Coalition (MHRGC) for bringing the discussion of Distribution Centers to the Morgan Hill Community and City Council. Their efforts sparked much discussion throughout the community on what businesses are ideal in Morgan Hill and ultimately resulted in the City Council passing Ordinance 2317 in November 2020, effectively prohibiting Distribution Centers as a use citywide. Further, the MHRGC led the community discussion around the Shoe Palace Expansion which revealed the need to update a decades old special ordinance allowing projects under specific zoning to move forward without public review. Updates to that Ordinance now require any projects over 75,000 sq/ft to go through a public hearing. The Morgan Hill Business and Residential Community, Chamber of Commerce and MHRGC all share this same common ground- We DO NOT want to see Morgan Hill become the distribution capital of Northern California nor do we want to discourage future business and job growth.

On Wednesday March 17th, the MHCoC convened a meeting of Morgan Hill's existing mid to large business owners to discuss their awareness and business impact considerations of the recent Initiative proposed by the MHRGC which aims to establish a 3-pronged restriction to future building designs. We learned that existing large businesses such as Airtronics, Specialized Bicycle, NX Edge, TROPOS Technology, PRISM Electronics and Sunbasket are extremely concerned about the building restrictions outlined in the Initiative, as it could prevent their future plans for expansion within Morgan Hill. The group deepened our learning of their viewpoint by specifically addressing the following concerns and exposures to the current Initiative:

- Decreased appetite for business expansion/relocation.
- Reduction of property value for existing buildings due to limitations on building design and modification.
- Diminution of future investment
- Reinforcing the stigma of being a "business unfriendly" city.



The central theme resonating from the Morgan Hill business owners is best summed up by the following quote from one business owner and shared by all participants: "Last Mile Distribution is best controlled through "use" not through building design". Business Operators want to be good citizens and take the responsibility of providing community benefits and needs seriously. In return, they presume to receive support for themselves, their families and their businesses from the community. None of the businesses in attendance, including those that could not attend the meeting but emailed their thoughts on the Initiative separately, had been contacted by the MHRGC. How can you create and present an ordinance restricting future citywide building design without first consulting existing business owners to understand their building needs both now and in the future?

What are the short term and long-term effects to the city, business community and residents of implementing the Initiative? Decreased business investment, which leads to decreased sales tax revenue, which leads to an even greater citywide financial shortfall, ending in the reduction of Police Officers, Road Maintenance, Support for Education and Parks and Recreation Programs. The Morgan Hill Chamber of Commerce, alongside the businesses whom have added their signatures below, urge you to consider the long-term impact of imposing a grossly restrictive building design ordinance on our existing businesses, future development opportunities and residential well-being. We would like to point out that the MHRGC Initiative DOES NOT even fully prohibit distribution centers, as buildings can move forward meeting any combination of the criteria as long as they do not satisfy all three consecutively. The real ban and message from this Initiative are around building size and aesthetics. Distribution Centers are already banned by "use" citywide and projects over 75,000 square feet are now subject to public review. Please do not take the additional step to impose "building restrictions" citywide as the results could be devastating on a financial, economic development and residential front.

Sincerely,

Brittney Sherman

Brittney Sherman
CEO/President

Business Name

Signature

SunBasket

Mike Wargoeki

155 East Main Ave, #170, Morgan Hill, CA 95037 * (408) 779-9444* www.morganhillchamber.org



3/26/2021

ATTN: Morgan Hill City Councilmembers

Mayor Rich Constantine

Councilmembers: John McKay, Gino Borgioli, Rene Spring and Yvonne Martinez Beltran

First, we would like to thank and congratulate the Morgan Hill Responsible Growth Coalition (MHRGC) for bringing the discussion of Distribution Centers to the Morgan Hill Community and City Council. Their efforts sparked much discussion throughout the community on what businesses are ideal in Morgan Hill and ultimately resulted in the City Council passing Ordinance 2317 in November 2020, effectively prohibiting Distribution Centers as a use citywide. Further, the MHRGC led the community discussion around the Shoe Palace Expansion which revealed the need to update a decades old special ordinance allowing projects under specific zoning to move forward without public review. Updates to that Ordinance now require any projects over 75,000 sq/ft to go through a public hearing. The Morgan Hill Business and Residential Community, Chamber of Commerce and MHRGC all share this same common ground- We DO NOT want to see Morgan Hill become the distribution capital of Northern California nor do we want to discourage future business and job growth.

On Wednesday March 17th, the MHCoC convened a meeting of Morgan Hill's existing mid to large business owners to discuss their awareness and business impact considerations of the recent Initiative proposed by the MHRGC which aims to establish a 3-pronged restriction to future building designs. We learned that existing large businesses such as Airtronics, Specialized Bicycle, NX Edge, TROPOS Technology, PRISM Electronics and Sunbasket are extremely concerned about the building restrictions outlined in the Initiative, as it could prevent their future plans for expansion within Morgan Hill. The group deepened our learning of their viewpoint by specifically addressing the following concerns and exposures to the current Initiative:

- Decreased appetite for business expansion/relocation.
- Reduction of property value for existing buildings due to limitations on building design and modification.
- Diminution of future investment
- Reinforcing the stigma of being a "business unfriendly" city.



The central theme resonating from the Morgan Hill business owners is best summed up by the following quote from one business owner and shared by all participants: "Last Mile Distribution is best controlled through "use" not through building design". Business Operators want to be good citizens and take the responsibility of providing community benefits and needs seriously. In return, they presume to receive support for themselves, their families and their businesses from the community. None of the businesses in attendance, including those that could not attend the meeting but emailed their thoughts on the Initiative separately, had been contacted by the MHRGC. How can you create and present an ordinance restricting future citywide building design without first consulting existing business owners to understand their building needs both now and in the future?

What are the short term and long-term effects to the city, business community and residents of implementing the Initiative? Decreased business investment, which leads to decreased sales tax revenue, which leads to an even greater citywide financial shortfall, ending in the reduction of Police Officers, Road Maintenance, Support for Education and Parks and Recreation Programs. The Morgan Hill Chamber of Commerce, alongside the businesses whom have added their signatures below, urge you to consider the long-term impact of imposing a grossly restrictive building design ordinance on our existing businesses, future development opportunities and residential well-being. We would like to point out that the MHRGC Initiative DOES NOT even fully prohibit distribution centers, as buildings can move forward meeting any combination of the criteria as long as they do not satisfy all three consecutively. The real ban and message from this Initiative are around building size and aesthetics. Distribution Centers are already banned by "use" citywide and projects over 75,000 square feet are now subject to public review. Please do not take the additional step to impose "building restrictions" citywide as the results could be devastating on a financial, economic development and residential front.

Sincerely,

Brittney Sherman

Brittney Sherman
CEO/President

Business Name

Prism Electronics

Signature

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" <[REDACTED]>
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

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.



City Council Meeting Item #10 Consideration of Resolution on Citizen's Initiative and Urgency Ordinance



April 7, 2021

Recommendation



Adopt a Resolution Placing the Morgan Hill
Responsible Growth Coalition Initiative (RG4MH)
Petition on the November 2022 Ballot

and

Adopt Urgency Ordinance Regulating Dock-High-Doors
on Buildings with over 75,000 square feet of floor area
and ceiling height greater than 34 feet

JOINT RECOMMENDATION



The key differences between the Initiative and the recommended ordinance are:

1. Increase ceiling height from “**clear** ceiling height” of 24 feet to “**ceiling** height” of >34 feet for 25% or more of floor area
2. Change definitions for
 - a. Dock-High-Door
 - b. Dock-High-Door to Square Foot Ratio
 - c. Ceiling Height
 - d. Light Manufacturing



Primary Goals of Collaborative Approach



Respond to and address the concerns of the MHRGC

Create regulations that will not impact existing R&D and manufacturing businesses

Allow flexibility to attract the types of businesses that the City and Community agree we want in Morgan Hill

Ensure that new regulations are clear and enforceable



Four components

1. Staff will update the in-process “Industrial Use Preservation Policy” to explicitly note that all forms of distribution as a primary business are prohibited in Morgan Hill.
2. Further bolster the existing City Ordinance prohibiting distribution as a primary use by clarifying definitions for ceiling height, dock-high-doors, and Light Manufacturing uses.
3. The RG4MH Initiative would be replaced with a new City ordinance that prevents future developments from being constructed with all the physical characteristics of a Distribution Center.
4. A new Measure that mirrors the new City ordinance would be placed on the next general election (November 2022). A future City Council will not be able to change or rescind the building restrictions if approved by the Citizens of Morgan Hill.

What is an Urgency Ordinance?



1. Government Code section 65090, the City Council may adopt “as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.”
2. Requires four affirmative votes of the City Council
3. If the City Council adopts an urgency ordinance, it will take effect immediately
4. Ratification of the urgency ordinance is required within 45 days and would appear before Council no later than May 19
5. The Planning Commission and City Council would have up to a year to consider any permanent ordinance.

Contents of Urgency Ordinance

1. Adds Section 18.76.140 – Maximum Dock High Door Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1:25,000 square feet
2. Change/create definitions for
 - Dock-High-Door
 - Dock-High-Door to Square Foot Ratio
 - Ceiling Height
 - Light Manufacturing



Recommendation



1. Place RG4MH Initiative on the ballot;
2. Adopt the collaborative ordinance as an “urgency ordinance”;
3. Direct Planning Commission to review collaborative ordinance as a permanent ordinance, and consider placement on ballot;

NEXT STEPS



1. Ratification of the urgency ordinance is required within 45 days and would appear before Council no later than May 19
2. Planning Commission to make recommendations for permanent ordinance regulating large building design, including maximum dock-door-ratios for certain buildings
3. City Council will consider adoption of alternative ordinance and placement of the alternative ordinance on the November 2022 ballot
4. RG4MH Initiative will be withdrawn by the Coalition when replaced with new Initiative

QUESTIONS?



CITY OF MORGAN HILL



City Council Meeting Item #10 Consideration of Resolution on Citizen's Initiative and Urgency Ordinance



April 7, 2021

Recommendation



Adopt a Resolution Placing the Morgan Hill
Responsible Growth Coalition Initiative (RG4MH)
Petition on the November 2022 Ballot

and

Adopt Urgency Ordinance Regulating Dock-High-Doors
on Buildings with over 75,000 square feet of floor area
and ceiling height greater than 34 feet

JOINT RECOMMENDATION



The key differences between the Initiative and the recommended ordinance are:

1. Increase ceiling height from “**clear** ceiling height” of 24 feet to “**ceiling** height” of >34 feet for 25% or more of floor area
2. Change definitions for
 - a. Dock-High-Door
 - b. Dock-High-Door to Square Foot Ratio
 - c. Ceiling Height
 - d. Light Manufacturing



Primary Goals of Collaborative Approach



Respond to and address the concerns of the MHRGC

Create regulations that will not impact existing R&D and manufacturing businesses

Allow flexibility to attract the types of businesses that the City and Community agree we want in Morgan Hill

Ensure that new regulations are clear and enforceable



Four components



1. Staff will update the in-process “Industrial Use Preservation Policy” to explicitly note that all forms of distribution as a primary business are prohibited in Morgan Hill.
2. Further bolster the existing City Ordinance prohibiting distribution as a primary use by clarifying definitions for ceiling height, dock-high-doors, and Light Manufacturing uses.
3. The RG4MH Initiative would be replaced with a new City ordinance that prevents future developments from being constructed with all the physical characteristics of a Distribution Center.
4. A new Measure that mirrors the new City ordinance would be placed on the next general election (November 2022). A future City Council will not be able to change or rescind the building restrictions if approved by the Citizens of Morgan Hill.

What is an Urgency Ordinance?



1. Government Code section 65090, the City Council may adopt “as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time.”
2. Requires four affirmative votes of the City Council
3. If the City Council adopts an urgency ordinance, it will take effect immediately
4. Ratification of the urgency ordinance is required within 45 days and would appear before Council no later than May 19
5. The Planning Commission and City Council would have up to a year to consider any permanent ordinance.

Contents of Urgency Ordinance

1. Adds Section 18.76.140 – Maximum Dock High Door Ratio for a facility that has a floor area of seventy-five thousand (75,000) square feet or greater and a ceiling height of more than thirty-four (34) feet over more than twenty-five (25) percent of the floor area is 1:25,000 square feet
2. Change/create definitions for
 - Dock-High-Door
 - Dock-High-Door to Square Foot Ratio
 - Ceiling Height
 - Light Manufacturing



Recommendation

1. Place RG4MH Initiative on the ballot;
2. Adopt the collaborative ordinance as an “urgency ordinance”;
3. Direct Planning Commission to review collaborative ordinance as a permanent ordinance, and consider placement on ballot;

NEXT STEPS



1. Ratification of the urgency ordinance is required within 45 days and would appear before Council no later than May 19
2. Planning Commission to make recommendations for permanent ordinance regulating large building design, including maximum dock-door-ratios for certain buildings
3. City Council will consider adoption of alternative ordinance and placement of the alternative ordinance on the November 2022 ballot
4. RG4MH Initiative will be withdrawn by the Coalition when replaced with new Initiative

QUESTIONS?



CITY OF MORGAN HILL



Special - Regular Meeting Agenda

City Council

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

Wednesday, April 7, 2021 5:00 p.m.

Virtual Meeting

VIRTUAL MEETING GUIDELINES AND PUBLIC COMMENT

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

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

Public comment may be provided in the following ways:

- Join the virtual City Council meeting via the link above, when public comment is opened, raise your virtual hand and be called upon to speak for up to 3 minutes
 - In order to speak, please be sure that your version of Zoom is up to date.
- 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.

SPECIAL/REGULAR MEETING

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

5:00 p.m. Workshop
7:00 p.m. Regular Meeting

SPECIAL MEETING

5:00 p.m. Workshop

CALL TO ORDER

Mayor Constantine

ROLL CALL ATTENDANCE

City Clerk Michelle Bigelow

DECLARATION OF POSTING AGENDA

Per Government Code Section 54954.2
City Clerk Michelle Bigelow

WORKSHOP

City Council Workshop to discuss the Morgan Hill Responsible Growth Coalition's (MHRGC) Initiative Petition, which was certified for sufficiency on March 3, 2021 by the City Council, review Initiative's impact report and a new collaborative ordinance that could replace the MHRGC Initiative and further protect Morgan Hill from potential large truck/high traffic uses. The collaborative ordinance could eventually substitute for the MHRGC Initiative on the November 2022 ballot.

REGULAR MEETING

7:00 p.m.

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

CITY COUNCIL REPORTS

Council Member Martinez Beltran

CITY MANAGER'S REPORT

City Manager Christina Turner

TEAMMATE RECOGNITIONS

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. ACCEPT 2020 PAVEMENT RESURFACING PROJECT

Recommendation:

1. Accept as complete, the 2020 Pavement Resurfacing Project, in the final amount of \$1,955,908;
2. Authorize the City Engineer to sign the Notice of Completion; and
3. Direct the City Clerk to file the Notice of Completion with the County Recorder's Office.

2. ACCEPT UPDATE REGARDING PAVEMENT REHABILITATION PLANNING

Recommendation:

Receive update on pavement rehabilitation planning.

3. APPROVE URBAN FOREST MANAGEMENT PLAN

Recommendation:

Approve the Urban Forest Management Plan.

4. APPROVE PURCHASE OF UTILITIES REPLACEMENT VEHICLES AND EQUIPMENT

Recommendation:

1. Approve the purchase of four (4) Utility Division trucks from National Auto Fleet Group in the amount of \$218,411 through a Sourcewell cooperative bid contract;
2. Approve the purchase of a trash pump from Thompson Pump in the amount of \$46,027 through a Sourcewell cooperative bid contract;
3. Authorize City Manager to approve a purchase order in the amount of \$218,411 with National Auto Fleet Group and a separate purchase order in the amount of \$46,027 to Thompson Pump;
4. Declare vehicles U07114, U07137, W07115, W08115, and equipment W97335 to be surplus; and
5. Authorize the disposal of the surplus vehicles and equipment in accordance with Section 3.04.400 of the City of Morgan Hill Municipal Code.

5. APPROVE THE MARCH 17, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

6. APPROVE THE MARCH 24, 2021 MEETING MINUTES

Recommendation:

Approve Minutes.

7. AWARD AQUATICS CENTER POOL DECK RESURFACING AND REPAIR PROJECT TO FLEXGROUND SURFACES, INC.

Recommendation:

1. Award contract to Flexground Surfaces, Inc. in the amount of \$69,360; and authorize the expenditure of contingency funds not to exceed \$6,936 for a total authorization of \$76,296; and
2. Authorize the City Manager to approve the sole source selection of Flexground Surfaces, Inc., and execute and administer that certain contract with Flexground Surfaces, Inc.

8. RATIFY COMMUNITY POWER RESILIENCY GRANT ACCEPTANCE IN THE AMOUNT OF \$300,000 FROM STATE OF CALIFORNIA OFFICE OF EMERGENCY SERVICES FOR THE CENTENNIAL RECREATION CENTER BATTERY BACKUP PROJECT

Recommendation:

1. Ratify acceptance of Community Power Resiliency Grant from the State of California Office of Emergency Services (CalOES) in the amount of \$300,000; and
2. Authorize the City Manager to execute and administer all related documents.

PUBLIC HEARING

9. APPROVE SOLID WASTE MANAGEMENT RATE ADJUSTMENT FOR 2021

Recommendation:

Adopt resolution approving an adjustment in the maximum allowable solid waste charges effective July 1, 2021.

Estimated Time: 10 Minutes

OTHER BUSINESS

10. ADOPT RESOLUTION PLACING THE MORGAN HILL RESPONSIBLE GROWTH COALITION INITIATIVE PETITION ON THE NOVEMBER 2022 BALLOT AND ADOPT URGENCY ORDINANCE REGULATING DOCK-HIGH-DOORS ON BUILDINGS WITH OVER 75,000 SQUARE FEET OF FLOOR AREA AND CEILING HEIGHT GREATER THAN 34 FEET

Recommendation:

1. Adopt resolution placing 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 on the November 2022 ballot;
2. Adopt the alternative ordinance as an urgency ordinance; and
3. Direct the Planning Commission to make recommendations for permanent ordinance regulating large building design, including maximum dock-door-ratios for certain buildings, and consider placement of the alternative ordinance on the November 2022 ballot.

Estimated Time: 90 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.

CLOSED SESSION

OPPORTUNITY FOR PUBLIC COMMENT

ADJOURN TO CLOSED SESSION

REAL PROPERTY NEGOTIATIONS

Pursuant to:	Government Code Section 54956.8
Property:	APN 726-13-052
Agency Negotiators:	Christina Turner, Chris Ghione, and John Lang
Negotiating Parties:	Compass Management
Under Negotiation:	Price and Terms of Sale or Lease

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.



Re: Draft Plan Ready for Public Review!

From: Joseph P Thompson [REDACTED]

To: nvtatransportationplan@publicinput.com; sbcsuper@supervisor.co.san-benito.ca.us; sbcsuper@cosb.us; sbcedc@hollinet.com; supervisordelacruz@cosb.us; supervisorhernandez@cosb.us; supervisormedina@cosb.us; supervisors@cosb.us; supervisorokosmicki@cosb.us; askmike@garlic.com; info@sanbenitocog.org; allcouncilmembers@ci.gilroy.ca.us; john.lang@morganhill.ca.gov; rich.constantine@morganhill.ca.gov; president@gilroyedc.org; jon@hjta.org; generalplan@hollister.ca.gov; cityclerk@hollister.ca.gov; jim.gillio@hollister.ca.gov; echalhoub@weeklys.com; sscully@napanews.com

Date: Saturday, March 27, 2021, 10:55 AM PDT

Dear Sirs,

Thank you for your notice. Thank you for allowing senior citizens to make public comment. Napa and San Benito County have much in common, as I've said numerous times from public comments made in SBC over the past 25 years.

My views are my personal opinion, not made on behalf of any organization or client, but merely the expression of my personal observations of transport policy failures I've seen here in California since 1963.

Observing the policy errors by SBC repeated by Napa, and other California Counties, has shown that our policy for transport in our Counties is endemic, systemic failure that causes much more harm than good.

I never had an opportunity to appear before your Napa equivalent to SBC's COG. My probono meter was exhausted on Hollister, Gilroy, Monterey, Santa Cruz, i.e., South Bay Area.

So, in short, the transport policy errors I observed there, during a lifetime in the transportation field, rail and highway, including 16 years working for SPRR and UPRR (pre-merger), and the past 41 years of practice of transport law, squeezing in post-doctoral study of transportation law and policy at Norman Y. Mineta International Institute for Surface Transportation Study, SJSU, Transportation Research Board, Georgetown U., and Library of Congress, leads me to conclude that California transport policy is detrimental to the people and the State economy.

If I could I would send you my personal comments about Napa's mistakes in its transport policy, which would be comparable to the personal comments that I made to SBCCOG over 21 years, especially while serving on their Citizens Transit Task Force and Citizens Rail Advisory Committee. For example, the reports of your farebox recovery rate, and my personal observation of your empty seat transport in Napa by "Vine," would state the obvious: your transport policy is just as sick as SBC (and other Counties). You reward fraud, waste and abuse in the same manner as SBC.

I'll attach my previous public comments about this bad transport policy, and while directed at SBC, goes for your bad transport policy. And for all of California's bad transport policy.

For an example of my personal view on bad transport policy in our radical socialist State, see my public comment on You Tube in support of legislation to defund the CAHSRA's "Bullet Train," given at the Capitol before the Assembly Transportation Committee some years ago.

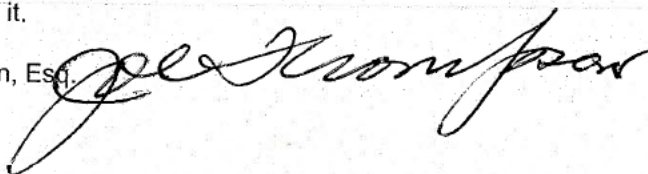
State and County governance of transport policy has us on the Road to Serfdom, but the unelected (appointed) directors of the transit agencies refuse to consider private sector options, falsify their financial reports, and govern transport without the consent of the governed. This applies to all Counties, including Napa.

My white paper on our National Transportation Policy was published by **Transportation Law Journal**, and may be found by searching "ISTEA Reauthorization and the National Transportation Policy: Overlooked Externalities and Forgotten Felt Necessities," 25 **Trans.L.J.** at pp. 85-et seq. (1997). It was also republished in shortened version by **Transportation Lawyer**. Reported peer review was overall positive for my effort. I am attaching a copy and request that these be included in the official record of your proceedings so that future generations will know that you were warned.

If I had another lifetime to donate to the probono effort to correct California's sick transport policy I'd gladly give it.

Caveat viator.

Joseph P. Thompson, Esq.



Past-Chair, Legislation Committee, Transportation Lawyers Assn.
Past-President (2x), Gilroy-Morgan Hill Bar Assn.
Charter Member, SBCCOG Citizens Transit Task Force
Charter Member, SBCCOG Citizens Rail Advisory Committee
Member, Transportation Lawyers Assn.
(408) 848-5506
e-Mail: TransLaw@PacBell.Net

cc: PUBLIC COMMENT: REAL OR VIRTUAL; REGULAR OR SPECIAL; PUBLIC WORKSHOP
OR PRIVATE RETREAT; -- SBCBOS; CITY COUNCILS OF HOLLISTER, GILROY AND MORGAN
HILL; EDC HOLLISTER, GILROY AND MORGAN HILL; ALL DIRECTORS SBCCOG; AND
THE NON-BROWN ACT COMPLIANT "MOBILITY PARTNERSHIP" SBCCOG & VTA
cc: Jon Coupal, Esq., HJTA
cc: Sean and Erik: OKAY to publish this as my Guest Editorial rebuttal to the government's
war against the automobile. jpt

On Friday, March 26, 2021, 07:59:18 PM PDT, Napa Valley Transportation Authority
<nvtatransportationplan@publicinput.com> wrote:



Dear community,

Since late 2019 the Napa Valley Transportation Authority (NVTa) has worked with the community and local cities to update Napa's Countywide Transportation Plan. This plan covers the 25-year period from 2020 to 2045 and is important because it will help the County adapt to current transportation needs and future trends. It will also position the County to compete for important Local, Regional, State and Federal funding.

The draft plan is now ready for public review! Please review the plan and share your feedback.

Visit www.NVTatransporationplan.org to

- Watch a video overview of the draft Plan
- RSVP for a live online Q&A on April 8 (English) or April 7 (Spanish)
- Give comments on the draft Plan by April 23, 2021

Thank you,
The Napa Valley Transportation Authority

Sent on behalf of Napa Valley Transportation Authority, CA by PublicInput.com
16 West Martin St, Raleigh, NC 27601
[Unsubscribe](#) | [My Subscriptions](#) | [Support](#)
[View this email in a browser](#)

L51.COGsPOLICYFLAWS.wpd
27.7kB



L167.BiggestPolicyFlaw.wpd
15kB



L172.COG051108CancerGrows.wpd
23.4kB



ATLLP97.V2.pdf
122.9kB

PUBLIC
COMMENT -
NEXT MTG.
JPT

JOSEPH P. THOMPSON

Attorney at Law
8339 Church Street, Suite 210, Gilroy, CA 95020
Post Office Box 154, Gilroy, CA 95021-0154
Telephone (408) 848-5506; Fax (408) 848-4246
E-mail: TransLaw@PacBell.Net

January 17, 2002

JANE
ERRORS
ALMOST
20 YEARS
LATER

FAX (831) 636-4160
Honorable Rita Bowling, Chairwoman
San Benito County Council of Government
481 Fourth Street
Hollister, CA 95023

FAX (831) 636-4310
Mr. George Lewis, Executive Director
San Benito County Council of Government
375 Fifth Street
Hollister, CA 95023

Re: Public Comment on EIR for SBC 2001 RTP

Dear Mrs. Bowling and Mr. Lewis,

Thank you for inviting public comment on the Environmental Impact Report (EIR) for the San Benito County (SBC) 2001 Regional Transportation Plan.

Please add this letter to the responses to the EIR that form the public record of your proceedings, and instruct your staff to include copies of the 50 letters regarding SBC's transportation policy that I sent to COG's Directors between Jan. 21, 1999 and Dec. 29, 2001, together with the documents that I presented to you and the COG Directors and staff at the hearing.

1. Author: I am a member of the Association for Transportation Law, Logistics & Policy (formerly Interstate Commerce Commission Practitioners Association), Citizens for Reliable and Safe Highways (CRASH), Transportation Lawyers Association, Citizens Rail Advisory Committee, Safe Kids Coalition, SBC Citizens Transit Task Force, Conference of Freight Counsel, and other professional organizations. These remarks are personal and not made on behalf of a client or any professional or governmental organization to which I belong or for which I serve my community. I have done post-doctoral study of transportation law and policy at the Norman Y. Mineta International Institute for Surface Transportation Policy Studies.

2. Background Materials Supplementing These Remarks: The background for these remarks may be found in my paper "ISTEA Reauthorization and the National Transportation Policy," 25 *Transportation Law Journal* pp. 87-*et seq.* (1997). Additional background for these remarks is found in my paper that I wrote while serving on the Government Review Council of two local chambers of commerce in response to Valley Transportation Authority's invitation for public response to the widening of U.S. 101 between San Jose and Morgan Hill, entitled, "**El Camino Real 2000: A Transportation Business and Logistics Perspective on the Proposed Widening of U.S. Highway 101.**"

Response to EIR for SBC's 2001 RTP

I previously gave copies of these two papers to each Director of COG, and will you please direct your staff to add them to these remarks for the formal record of these proceedings. Additionally, as you know I wrote an extensive paper while serving on the SBC Citizens Rail Advisory Committee, entitled, "**INTERMODAL FACILITY for HOLLISTER BRANCH LINE: A Private Sector, Sustainable, User-Fees Funded Transportation Solution for the 21st Century.**"

I respectfully request that you direct your staff to add that paper, too, to the formal record of these proceedings.

3. Major Flaws to EIR for SBC's 2001 RTP: I have identified 22 major flaws in the EIR which justify your rejecting it, sending it back to TAC for revision, or else subjecting the County to substantial litigation expenses by a likely challenge to it for violation of the applicable law, e.g., California Environmental Quality Act (CEQA). Rather than approve a defective EIR and RTP, I urge you to see that these flaws are eliminated by further revision of the EIR and RTP.

1. The EIR is premised, like the RTP, on unstated assumptions, which are similar to those I pointed out to COG's Directors in my second reply to the COG's consultants' Caltrain extension working paper and my letter to you dated Feb. 20, 1999 (see copies in materials I handed to you at the public hearing).

2. The EIR and RTP do not mention private sector transportation alternatives based on presently-existing technology.

3. The EIR and RTP would impose an urban transit model on a rural, ag-based economy.

4. The EIR and RTP presume tax and population bases which do not exist here to support urban mass transit solutions based on taxpayer-funded public transit that history has shown do not work in the long run.

5. The EIR and RTP make no mention of international law, i.e., North American Free Trade Agreement (NAFTA) and its adverse consequences for SBC's residents.

6. The EIR and RTP make no mention of the High Speed Rail Authority's Bullet Train, which is proposed to run through this County (either over Panoche Pass or Pacheco Pass) and the tax burdens that it will impose on our residents.

7. The EIR and RTP make no mention of passenger stage corporations (PSC's) or transportation charter parties (TCP's), which are authorized by the California Public Utilities Code to perform for-hire carriage of people, nor does it mention private-sector shuttles.

8. The EIR and RTP make inadequate mention of the adverse effects that public-

sector transportation has on local small businesses, and the adverse effect it has on affordable housing by imposition of additional "traffic impact fees" on house prices to support public-sector transit.

9. The EIR and RTP fail to distinguish between transportation infrastructure and transportation business operating on the infrastructure, i.e., for-hire carriage of property and people.

10. The EIR and RTP fail to mention restoration of intermodal facilities for this Region has recommended by Transportation Secretary Mineta, the Director of Caltrans Highway Programs, as I recommended to the California Transportation Commission (with positive response by the CTC's Chairman) at the CTC's meeting in December 2001 at the PUC in San Francisco.

11. The EIR and RTP propose an unfeasible transportation alternative in high-density apartments and condominiums (4,000 units in ten years) built around two railroad stations on the Hollister Branch Line north of Hollister, and fails to mention the cost of \$20-\$40 million that the taxpayers would be forced to absorb to refurbish the track to passenger-carrying condition, nor does it mention the massive annual operating subsidies required to operate the passenger service.

12. The EIR and RTP make no mention of viable alternatives available by reliance upon members of the American Shortline Railroad Association.

13. The EIR and RTP make no mention of the decision of the Amtrak Review Council to liquidate Amtrak, and the remarks of Senator John McCain of Arizona who said that Amtrak is a failed experiment, and that Caltrain is equally flawed as Amtrak, and doomed as is all socialist transportation in the long-run.

14. The EIR and RTP make no mention of the massive financial losses sustained each year by SBC's County Transit, and fails to disclose that in Year 1999-2000 County Express provided heavily-subsidized passenger service for only 101.6 people/day, nor does it reveal the fully-amortized cost of such public-sector transit, or that it would be cheaper to buy ever rider their own automobile, and that the government monopoly is anti-competitive, discriminatory, and prone to massive waste, especially if the operation is unionized (like BART, VTA, etc.). It does not disclose that the riders enjoy nearly free (99% fully-amortized costs paid by taxpayers, not fares) rides while forcing motorists to pay for all of their own transportation expenses, too.

15. The EIR and RTP make no mention of the \$24 billion losses sustained by Amtrak, nor reveals the losses sustained by Caltrain (**Mercury News'** Mr. Roadshow Gary Richards reported that only 11% of operating costs for Caltrain are paid for by fares--the percentage would be much lower of capital costs were included), yet it irrationally contains an alternative transportation plan to extend Caltrain to this relatively poor agricultural County.

16. There is no mention of the \$20-\$40 million estimated cost to refurbish the UP's Hollister Branch Line being imposed on taxpayers and given to the 154th largest corporation in America, which would be a disgraceful form of corporate welfare that would bankrupt every homeowner and small business owner in the County.

17. There is inadequate discussion of freight movement in SBC and on the Central California Coast Region, which is unacceptable to the public because axle weight is the single largest factor in road maintenance expenses.

18. There is no mention of the adverse effects from the federal government's decision to allow entry of Mexican trucks onto our highways, and US101 is a "NAFTA route" under TEA-21. Those big rigs from Mexico will use Highways 25 and 156 to travel between the Salinas and San Joaquin Valleys, right through our County.

19. There is no mention of the U.S. Supreme Court's decisions supporting the federal governments preemption of commerce on our highways, e.g., (1) NAFTA-harmonized gross vehicle weights (GVW), and (2) long combination vehicles (LCVs), three 27-ft. trailers, or two 53-ft. trailers, pulled by one tractor.

20. There is no mention of the increase of GVW to Canadian or Mexican GVW, which is likely when TEA-21 is reauthorized (*Traffic World* is already reporting on "TEA-3"), effective in three years from now, and which will pulverize the inadequate new concrete being poured on the new lanes of US 101 north of Morgan Hill.

21. There is no mention of the adverse effects on ag-related business in the County or Region and what introduction of Mexican trucks with NAFTA-harmonized GVW and LCVs will have on local truckers, who will be driven into bankruptcy.

22. There is more attention given to endangered species of flora and fauna than to the adverse consequences for the human beings, e.g., SBC's gets only 11 cents back from Sacramento, similar to all rural counties, whose money is diverted to LA, SF, San Jose, Oakland, and other urban areas where their transit riders get about \$500,000 annual subsidies courtesy of the rural counties' taxpayers.

When I get a chance I will send you the additional minor flaws that I see in the EIR and RTP, e.g., "without bankrupting the family" should read "without bankrupting all the families in the County" (page 4 of RTP).

Very truly yours,

JOSEPH P. THOMPSON

cc: COG Board of Directors
cc: Citizens Rail Advisory Committee
cc: SBC Board of Supervisors

Response to EIR for SBC's 2001 RTP

CANCER is now
STAGE 4
in LOCAL
GOVERNMENT

JOSEPH P. THOMPSON
Attorney at Law
8339 Church Street, Suite 112, Gilroy, CA 95020
Post Office Box 154, Gilroy, CA 95021-0154
Telephone (408) 848-5506; Fax (408) 848-4246
E-mail: TransLaw@PacBell.Net

May 11, 2008

FAX (831) 636-4160
Honorable Brad Pike, Chairman
San Benito County Council of Government
481 Fourth Street
Hollister, CA 95023

Re: COG Meeting Agenda May 15, 2008-Public Comment

Dear Mr. Pike,

Referring to the fraud, misrepresentation and deceit recently appearing in reports about the radical socialist LTA government bus service in our County, please include these remarks in the next regular COG<A&Etc., Etc., meeting agenda, public comment.

Summary. A cancer is growing in our County, and it is metastasizing right under your nose, but you are chairman of an unelected, unaccountable joint powers authority (JPA) that shuns transparency to conceal the massive losses that you place on the backs of our County's taxpayers to deliver the political pork to subsidy recipients and bus system managers, employees, and the shareholders of MV Transportation, Inc. Before this cancer grows to inoperable proportions and kills our County, destroys its livability worse than it already is, drives business away, jacks-up unemployment, you need to act to protect us. The cries of the galley slaves are drowning-out the cheers of the subsidy recipients, and you refuse to alter course, just like the Capt. Of S.S. Titanic-San Benito.

Identity. I saw this coming in 2000, and in 2001 convinced COG's Directors to appoint a transit task force, on which I served until I complained about the illegal conflict of interest on the task force members. When I was terminated from it I said that you can kill the messenger, but the message will be laying there in his blood on the floor. Well, it is.

What if? What if 154,000 people used County Transit last year? Based on the data supplied by COG for 2001 operating only performance, it would cost our County's taxpayers $1540 \times = \$13,349,509.00 = \$20,482,000,000.00$. In other words, for one year's transport service for the 154,000 people using County Transit, you would have to sell all real and personal property in our

Public Comment on COG/LTA's May 2008 Agenda: Lies and Deception about County Transit; the rape of the County's taxpayers; a more accurate description of us is "Betrayed" taxpayers-betrayed by COG/LTA leadership-who we didn't elect-and who spend tax dollars that we never voted to allow

County four times. Capital & fixed costs, e.g., additional buses, terminals, etc., would be extra on top of that.

What if ridership on County Transit was 154,000 boardings last year? In 2001 County Transit counted 296,099 boardings, which costs the County's taxpayers \$13,349,509.00. Farebox recovery rate was 14.69, i.e., passengers paid less than 15% of the operating costs only. Motorists paid about 99% of County Transit riders' total costs; riders paid only about 1% of total costs. Far less air pollution could have been suffered by County residents, and far less tax burden subsidies imposed, if we had furnished limousine, shuttle and taxi service for those transit riders instead of sending \$1,721,317.61 to an out-of-county one-half billion annual revenue corporation that drives competitors in private-sector for-hire carriage of passenger business into bankruptcy. So, if COG's costs have increased dramatically since 2001, e.g., fuel, then the County's taxpayers are being raped by unelected, unaccountable JPA to give fewer rides at greater cost, while concealing the growing losses with Enron-style "off-book" accounting which is illegal for business under Corporations Code Section 114.

What if COG's Directors required COG to answer the questions I posed in the Public Records Act request last year, which COG did not answer, and still has not answered?

If you did stick-up for the taxpayers, rather than help COG's deceitfulness about County Transit losses, you'd see, for example, that your load factor (percentage of revenue-paying customers) is only about 2%, which means that COG is transporting empty seats about 98% of the time at taxpayers' expense to the extent of 99% of total costs.

Conclusion. I strongly disagree with your abusing taxpayers to grow the malignant cancer in our County. You are Chairman of an unconstitutional, unfair, blighting, illegally taxing, unaccountable and non-transparent Joint Powers Authority (JPA) in our County, and you don't even realize just how greatly the taxpayers here are self-sufficient. Thanks to your JPA's sick policy, over which you preside, and which you refuse to reform, the "self help" taxpayers in SBC are paying 99% of the costs (all, not only operating costs) of your socialist transit system. The tax burdens you are imposing on us are making our County the small business killing fields, and you kill jobs that we vitally need. The residents of our County pay for their own transportation—measured in annual trips it is 99.6% according to your JPA, and 99% of the total costs of the transit system's riders—less than one-half percent of total County trips.

Furthermore, your JPA is undermining our taxpayers' self-sufficiency by gouging the Hell out of us so that you can deliver pork to the subsidy recipients and JPA managers and employees. In my opinion you have a policy taking us to the same fate as that suffered by the USSR. The expansion of your JPA's unconstitutional activities into housing and medical care tells me that your JPA is taking over our County's government and doing so without the consent of the voters. Your JPA is like the Soviet Planners brilliant committees who engineered their country into chaos and revolution. Every JPA meeting I've attended shows the JPA mimicking Soviet geniuses—yesterday you even said "Five Year Plan" just like the Soviet Planners did. Your taxpayers, Mr. Chairman,

Public Comment on COG/LTA's May 2008 Agenda: Lies and Deception about County Transit; the rape of the County's taxpayers; a more accurate description of us is "Betrayed" taxpayers—betrayed by COG/LTA leadership—who we didn't elect—and who spend tax dollars that we never voted to allow

are betrayed by you and our leaders, who are helping themselves to our hard-earned dollars to re-distribute to your favorites. And you do this with about 10% of the taxes we send to Sacramento, where our taxes help those radical socialists re-distribute about 90% of our money to their favorites. For example, your fellow JPA in San Francisco hands out an annual subsidy to their transit patrons of more than \$422,000.00, most of which is the taxpayers' money from rural Counties like ours, or money borrowed from our children and grandchildren through bond funding. Instead of preaching to us about "self help," why don't you get us some more of the taxes we already pay? Why don't you sit down in the Governor's Office and say you're not leaving until Sacramento stops gang raping your County's taxpayers? It is an unforgivable insult to your County's taxpayers to accuse us of not being self-sufficient, when in fact after we are raped by Sacramento and Washington, we still end up paying 100% of our expenses and 99% of the expenses of your JPA's socialist bus system. If you are the JPA Chairman then why not use your power to demand reform? If you refuse to reduce the losses (even by 15% as previously voted and approved by COG/LTA), then who will help your "self-help" taxpayers? If you won't help, then the taxpayers are going to have to do some real "self help" and terminate you and your JPA.

Please include this on your official COG/LTA meeting agenda for May 2008. If you won't put it on your agenda, then I am asking your fellow JPA leaders that one of them put it on the agenda. If none of you will put this on the agenda, then I want to know why the voters should not seek to remove COG/LTA through a referendum ballot. Please tell me. Give me an answer. Unlike the AMBAG Chairman's opinion that this does not merit a response, my opinion is that this is the vital issue facing our County and more than any other "unmet need" it is what your JPA is pretending does not exist. Emperor Transit First is stark naked, and your JPA won't even do a damn thing to admit and correct it, even though it was previously voted that an overall reduction of 15% of the bleeding at COG/LTA would be done under the current contract provision with M. V. Transportation, Inc. How dare you lecture your taxpayers about "self help" when you double-cross us with falsehoods like that?

On behalf of our County's taxpayers, I ask that you as the JPA Chairman get the taxpayers answers to the questions that I posed last September, and to which no answers were given by COG/LTA's Executive Director. I ask that you compel answers to these vital questions for your JPA's spending our "self help" dollars, and get us truth in transportation for a change. I hereby renew my public records request, and I don't consider the "refuse to state" or "we don't know" answers that were previously given. If COG/LTA is so incompetent that it doesn't know the load factor (empty seat percentage), then it certainly is not competent to replace our duly elected Board of Supervisors.

Caveat viator!

cc: COG Directors
cc: SBC County Supervisors
Encl.

Respectfully yours,
JOSEPH P. THOMPSON

Public Comment on COG/LTA's May 2008 Agenda: Lies and Deception about County Transit; the rape of the County's taxpayers; a more accurate description of us is "Betrayed" taxpayers—betrayed by COG/LTA leadership—who we didn't elect—and who spend tax dollars that we never voted to allow

Public Comment on COG/LTA's May 2008 Agenda: Lies and Deception about County Transit; the rape of the County's taxpayers; a more accurate description of us is "Betrayed" taxpayers—betrayed by COG/LTA leadership—who we didn't elect—and who spend tax dollars that we never voted to allow

JOSEPH P. THOMPSON
Attorney at Law
8339 Church Street, Suite 114, Gilroy, CA 95020
Post Office Box 154, Gilroy, CA 95021-0154
Telephone (408) 848-5506; Fax (408) 848-4246
E-mail: TransLaw@PacBell.Net

August 23, 2009

FAX (831) 636-4160
Honorable Anthony Botelho, Chairman
San Benito County Council of Government
481 Fourth Street
Hollister, CA 95023

GOVERNANCE
ABUSE
CONTINUES TO
THIS DAY

Re: **SBCCOG Meeting Agenda 8/20/09: SBC Highway Route Selection Jurisdiction:
Public Comment: COG Illegal Usurpation of Lawful Authority of SBCBOS**

Dear Mr. Botelho,

Referring to the SBCCOG meeting agenda 8/20/09 Item No. 7, please include this for the formal record of the proceedings for public comment. Also, please include this for public comment on Item No. 5 when you restore it to your agenda (please not on consent because it's about taking more of our taxes to waste on your boondoggle wastefulness).

1. Identity: See previous letters.

2. Background: Read the County Code, which you swore an oath to protect and defend. Read the Brown Act, which you violate with COG and with the "Mobility Partnership" with VTA. Read your own deceptive financial reports, which show how badly you're raping the taxpayers every month, over and over again.

3. Comment: Thank you for placing this item on the agenda because it proves, once again, that COG is violating the constitutional rights of three County Districts' citizens. You violate your oath of office each time you preside at COG. Your questions from chair of COG prove the point I've made to you numerous times, your denials notwithstanding. Who has the lawful authority to make decisions about highway construction in our County? Not COG. Only the BOS have a mandate from all five County Districts' citizens. COG lacks representation from three Districts, but COG purports to act on behalf of all five Districts' citizens. Since no voters ever voted to grant COG this power, COG's imposition of tax burdens, i.e., highway construction taxes, mass transit tax subsidies, COG acts illegally by denying the franchise rights of three County Districts' citizens. By does so it violates the due process and equal protection rights of those citizens. Bluntly, COG taxes without representation by increasing our tax burdens on all SBC's taxpayers but denying lawful representatives to taxpayers of three Districts.

Concealing tax increase proposals by failing to disclose the subject of tax increases when the COG "agenda" (non-disclosure, no transparency "agenda") contains a topic of debate for the purpose

Response to COG's Proposed 2009 Revision to County's Regional Transportation Plan—A Sick Plan being made worse by the Radical Socialists that our Leaders Tolerate. Another Plea for Reform, or ouster of COG's Directors.

of deciding whether or not to increase tax burdens on the County's taxpayers is despicable, and illegal. The Brown Act requires COG to make a full disclosure of the items to be discussed on the agendas, but COG's practice has been, and still is on your watch, to conceal the truth about the content of agenda items. For example, item #5 (consent) contained a tax increase of more than \$31,000 to be imposed on SBC's taxpayers, but the description of the item on your agenda, over which you preside as Chairman, did not disclose this. Concealment of the truth is the opposite of transparency in government, and shows you to be condoning and tolerating and encouraging the unelected COG staff to deprive the taxpayers of knowledge that the law requires be given.

Moreover, Item #5, which you pulled even after having given notice, such as it was, that it would be considered, and even after I had submitted a "public comment" request, shows you what hypocrites you are. While claiming to be prudent with our tax dollars, you would have the taxpayers' money subsidies to County Transit boondoggle increased by more than \$31,000 even though you loose millions of our tax dollars operating your bus boondoggle at the present level of operating. Since you don't have remunerative fares (fares that cover your costs), each time you increase "ridership" you increase losses for taxpayers, who are paying about 99% of the total costs of County Transit and JDA riders' rides.

You are living in a fools paradise of deception, trying to deceive the taxpayers, but failing in that too.

You don't even know basics things about transportation, and yet you rely on untrained, unprofessional staff advice. For example, while the Court of Appeal in this Sixth District has held that property owners are responsible for sidewalk maintenance, not municipalities, you discuss spending tax dollars to make sidewalk repairs. Your ignorance hurts us every time you preside at COG. Worse, your arrogance proves that you are unworthy to govern us. The federal "stimulus" money that has been wasted on more transit buses is like you pouring salt in taxpayers' wounds. Those buses sit idle in the yard off Southside Road, or are out polluting the air moving a few passengers per hour while racking-up huge operating costs. But you refuse to do anything about it. COG Directors voted to privatize transit, but you refuse to do it. COG Directors voted to reduce waste of tax money on County Transit, but you refuse to do it. Instead, you kow-tow to COG staff recommendations, which are merely turf protection at the expense of taxpayers.

We cannot tolerate your conduct—you must be removed from office, and COG terminated ASAP to stem the hemorrhaging of our tax dollars on your boondoggle, unconstitutional, illegal COG. Until you are removed from office, may God have mercy on your soul for the suffering that you have, and are causing us. *Caveat Viator!*

Very truly yours,
JOSEPH P. THOMPSON

cc: COG Board of Directors
cc: SBC Board of Supervisors
cc: SBC GPU Citizens Advisory Committee

Response to COG's Proposed 2009 Revision to County's Regional Transportation Plan—A Sick Plan being made worse by the Radical Socialists that our Leaders Tolerate. Another Plea for Reform, or ouster of COG's Directors.

COG's Lies and Deceit to the People—Just Like the Soviet Union's Planners
[Here's an Example—You Can Find Many Others When You Ignore the Lies]

This goes double for COG's 20-year RTP

2005 San Benito County Regional Transportation Plan –Baloney & B.S. from COG
Big Brother DoubleSpeak: You Don't Have Economic Vitality with Socialism—Catastrophic
Disaster is What You get from COG's Socialism-Communism

Proposed Changes from 2001 RTP

General Goals and Policies

Goal 1 To support the economic vitality of the region, especially by enabling global competitiveness, productivity, and efficiency. San Benito County jurisdictions:

Policy 1.1 Shall promote improvements in all modes of transportation to respond to growing demand for commuter and commodity travel. They shall give funding priority to major road improvements that address critical safety concerns and provide increased capacity for commuter and commodity travel. They shall also give funding priority to commuter rail transit improvements that facilitate movement between Hollister and the San Francisco Bay Area.

Goal 2 To increase the safety and security of the transportation system for motorized and non-motorized users. San Benito County jurisdictions:

Policy 2.1 (In conjunction with the safety improvements specified in Policy ~~1.1~~ ~~A1.1~~ above) shall give next funding priority to minor road improvements that affect the safety of the greatest number of users ~~and projects that increase safety for school children or the elderly.~~

Policy 2.2 Shall ensure that the integrity of inter-regional transportation facilities, including road, rail, and aviation facilities, can be maintained during and after major natural disasters.

Goal 3 To increase the accessibility and mobility options available to people and freight. San Benito County jurisdictions:

Policy 3.1 Shall promote alternative modes of transportation, including rail and bus transit, rail freight, and pedestrian and bicyclist travel.

Policy 3.2 Shall ensure that pedestrian and public transit facilities are accessible to all persons, regardless of physical capabilities.

Goal 4 To protect and enhance the environment, promote energy conservation, and improve quality of life. San Benito County jurisdictions:

- Policy 4.1 Shall develop a street and highway system that promotes compact urban development and preserves prime agricultural land.
- Policy 4.2 Shall design transportation improvements to conserve protected habitats and species.
- Policy 4.3 Shall operate transportation facilities in a way that provides a high level of air quality and energy efficiency.
- Policy 4.4 Shall design urban streets and public transit systems to protect residential and business districts from degradation due to large traffic volumes and or speeding vehicles.

Goal 5 To enhance the integration and connectivity of the transportation system, across and between modes, for people and freight. San Benito County jurisdictions:

- Policy 5.1 Shall construct an intermodal station facility connecting the future commuter rail system to bus transit systems, pedestrian and bicycle facilities, and park-and-ride lots.
- Policy 5.2 Shall accommodate connections between truck and/or rail freight ~~as demand presents itself~~.
- Policy 5.3 Shall promote park-and-ride lots and bicycle parking facilities at key locations to facilitate ridesharing and public transit use.

Goal 6 To promote efficient system management and operation. San Benito County jurisdictions:

- Policy 6.1 Shall promote and incorporate intelligent transportation system (ITS) technology into the regional transportation improvement program as new systems become available.
- Policy 6.2 Shall actively promote ridesharing and public transit to increase the average persons per vehicle during peak hour periods.

Goal 7 ~~To emphasize the preservation~~ Maintenance of the existing transportation system shall be a priority. San Benito County jurisdictions:

- Policy 7.1 Shall conduct regular maintenance of all transportation facilities ~~to forestall premature degradation of such facilities~~.
- Policy 7.2 Shall work to secure the Hollister Branch Rail Line for use as a commuter rail and/or freight rail facility.

Streets and Highways

Goal 8 To construct and maintain a street and highway system that is safe, accommodates well-managed demand from existing and future development, and is well maintained. San Benito County jurisdictions:

Policy 8.1 Shall give priority, among all street and highway projects, to the improvement of roadways and intersections that experience the worst safety records. The next highest priority shall be given to projects that reduce weekday congestion and that serve to maintain the existing roadway system.

Policy 8.2 Shall give priority, among all street and highway maintenance projects, to maintenance projects that improve safety for the greatest number of persons and to maintenance projects required for fire and police equipment to respond quickly and safely to emergencies throughout the county.

Goal 9 To design, construct, and maintain the integrity of streets and highways to serve their designated purpose and be compatible with the land use to which they are adjacent. San Benito County jurisdictions:

Policy 9.1 Shall construct (or cause to be constructed if private), roads, highways, and selected urban arterial streets for regional or interregional travel. Such facilities shall be designed to the minimum standard of the local jurisdiction within which they are located. Such standards shall emphasize safe and efficient *automobile, motorcycle, truck, and transit* operation. Where appropriate, the jurisdiction shall accommodate the safe movement of agricultural equipment on the facility.

Policy 9.2 Shall construct (or cause to be constructed if private), urban collector and local streets primarily for intra-city travel. ~~Such facilities shall be designed to the minimum standard of the local jurisdiction within which they are located. Such standards shall accommodate vehicular travel but shall emphasize safe and efficient pedestrian and bicycle travel.~~

Policy 9.3 Shall construct (or cause to be constructed, if private), streets in downtown areas primarily to serve business activity. ~~Such facilities shall be designed to the minimum standard of the local jurisdiction within which they are located. Such standards shall include wide sidewalks and encourage diagonal parking where feasible to increase the number of parking spaces close to businesses and to facilitate the calming of traffic on major downtown streets.~~

Goal 10 ~~To~~ New transportation facilities shall be planned to promote compact urban development, prevent urban sprawl, and prevent the premature conversion of prime farmland caused by new transportation facilities. San Benito County jurisdictions:

Policy 10.1 Shall provide transportation incentives to developers of compact, infill development in existing urbanized areas to minimize the premature construction of new streets and highways.

Policy 10.2 Shall locate and design new transportation facilities to minimize the conversion of prime agricultural land outside existing urban/rural boundaries.

Goal 11 To promote the development of "livable" streets in urbanized areas that accommodates multiple modes of transportation. San Benito County jurisdictions:

Policy 11.1 Shall include bike lanes on arterial and collector streets where feasible, and sidewalks on all streets in developed areas. They should also require street trees designed to form canopies over streets and green strips between sidewalks and streets in new development.

Policy 11.2 Shall protect urban streets from through traffic by constructing bypass routes around Hollister and San Juan Bautista.

Policy 11.3 Shall designate appropriate routes for large trucks and establish ordinances that prohibit large trucks from traveling on non-designated streets.

Policy 11.4 Shall adopt alternative street standards, consistent with standards for fire protection that accommodate traffic-calming measures for existing urban streets. Where appropriate, jurisdictions should install traffic-calming devices to protect local residential streets from speeding traffic.

Rail and Bus Transit

Goal 12 To provide an alternative mode of transportation to commuters traveling from San Benito County to Santa Clara County. San Benito County jurisdictions:

Policy 12.1 Shall give priority, among all transit operations, to intercity commuter rail service and/or improved express bus service connecting Hollister with Gilroy. The next priority shall be the provision of intra-city bus service in Hollister.

Goal 13 To provide a transportation system that is responsive to the needs of the elderly, disabled, and transit dependent. San Benito County jurisdictions:

Policy 13.1 Shall continue to provide on-demand general public and paratransit services in Northern San Benito County (Dial-A-Ride Service Areas A and B).

Policy 13.2 Shall manage the demand for, and cost of, transit services by accommodating the development of housing for the elderly and disabled in existing urban areas close to stores and health services.

Goal 14 To promote transit-oriented development and encourage the use of public transportation to reduce energy consumption and congestion. San Benito County jurisdictions:

Policy 14.1 Shall provide incentives to developers who give priority to development projects that construct residential and commercial projects in proximity to existing and planned rail and bus transit stations. Jurisdictions shall review these projects and

possibly require the provision of transit facilities in conjunction with and financed by the developer.

- Policy 14.2 Shall encourage automobile and bicycle parking facilities at major rail and bus transit stations.

Non-Motorized (Pedestrian and Bicycle) Travel

Goal 15 To encourage pedestrian and bicycle travel within urbanized areas. San Benito County jurisdictions:

- Policy 15.1 Shall require bicycle-parking facilities at major rail and bus transit stations and in downtown business districts.
- Policy 15.2 Shall ensure that urban streets are safe for bicyclists through regular cleaning and maintenance.
- Policy 15.3 Shall ensure that existing sidewalks are safe, free of obstruction, and accessible to all persons.
- Policy 15.4 Shall plan, design, and construct bicycle facilities in conformance with state standards, as outlined in "Planning and Design Criteria for Bikeways in California" (Caltrans).
- Policy 15.5 Shall construct pedestrian walkways in high-density areas that currently lack adequate pedestrian facilities.

Goal 16 To facilitate pedestrian and bicycle travel within new development and between new development and existing urban areas. San Benito County jurisdictions:

- Policy 16.1 Shall require sidewalk facilities in all new development in or adjacent to urban areas. ~~Such facilities shall include sidewalks on both sides of the street that are a minimum five (5) feet wide, if separated from the street by a planter strip, or six (6) feet wide if located next to the curb.~~
- Policy 16.2 Shall require all new multi-family residential and large commercial development to provide easily identified pedestrian facilities connecting all parts of the development and providing access through parking areas and across driveways.
- Policy 16.3 Shall design and construct all new bridge structures with sufficient width to accommodate pedestrians and bicyclists.

Goal 17 To create a new pedestrian and bicyclist facility connecting urban areas with major recreational areas. San Benito County jurisdictions:

- Policy 17.1 Shall plan and construct a combined pedestrian and bicycle path along the San Benito River ~~from San Juan Bautista to the Pinnacles National Monument.~~

Goal 18 To promote pedestrian and bicycle safety. San Benito County jurisdictions:

~~Policy 18.1 Shall encourage bicycle rider training programs for school children in San Benito County.~~

Policy 18.2 Shall work with school districts to identify and make improvements as necessary to provide safe routes to school.

Aviation

Goal 19 To promote a safe and efficient air transportation system that serves general aviation and air commerce needs. San Benito County jurisdictions:

Policy 19.1 (City of Hollister and County of San Benito) shall protect airport operations at Hollister Municipal Airport and Frazier Lake Airpark from incompatible land uses and maintain the facilities for general aviation and airfreight purposes.

Policy 19.2 (City of Hollister and County of San Benito) shall plan for facility expansions at Hollister Municipal Airport, including additional hangar space as demand presents itself, a runway expansion to 7,000 feet, and Instrument Landing System (ILS).

Policy 19.3 (City of Hollister and County of San Benito) shall plan for new industrial uses in designated areas of the airport property as demand for space presents itself.

Policy 19.4 Shall support the continued operation of a general aviation airport at ~~Frazer Lake Air Park~~ Frazier Lake Airpark.

Commodity Movement

Goal 20 To facilitate the safe and efficient movement of commodities in ways that are compatible with existing and planned land uses. San Benito County jurisdictions:

Policy 20.1 Shall accommodate large truck traffic on designated routes throughout San Benito County.

Policy 20.2 Shall, where viable alternatives exist, direct large truck traffic away from narrow rural roads, residential districts, and pedestrian-oriented streets in downtown business districts.

Policy 20.3 Shall accommodate the development of connections between truck and rail transportation facilities as demand for such intermodal facilities presents itself.

Special Events

~~**Goal 21** To plan for efficient and safe movement of visitors and residents during special events. San Benito County jurisdictions:~~

~~Shall work with special event sponsors to ensure that adequate provisions are made for heavy traffic and parking demand during special events.~~

OBJECTIVES AND PERFORMANCE MEASURES

The Council of San Benito County Governments has adopted short- and long-term objectives that are designed to guide the agency's work program until the next update of the Regional Transportation Plan. Also, in accordance with the new Regional Transportation Guidelines, the Council of San Benito County Governments has also adopted performance measures by which the Regional Transportation Improvement Plan will be judged during adoption of that document.

Short-Term Objectives (by 2010)

- Objective S.1 To increase the capacity of the street and highway system to accommodate projected short-term growth.
- Objective S.2 To serve 350 commuter round trips per weekday of service with commuter rail and express bus service connecting Hollister to Gilroy.
- Objective S.3 To reduce the rate of fatal vehicular accidents throughout San Benito County
- Objective S.4 To develop a recreational trail for pedestrians and bicyclists along the San Benito River from San Juan Bautista to Hollister.
- Objective S.5 To develop a transportation emergency preparedness and response plan that identifies emergency transportation systems, including emergency corridors and reliever routes.
- Objective S.6 To convert the old Highway 25 corridor in Hollister from use as a state highway to use as a business-oriented main street that includes increased parking, pedestrian, and bicyclist opportunities.
- Objective S.7 To develop a plan for commodities transportation that designates appropriate routes for large trucks throughout San Benito County and protects rural roads and residential and downtown business districts from degradation caused by large trucks.
- Objective S.8 To increase rideshare and intra-county transit operations by 10 percent over current (2000) levels.
- Objective S.9 To develop and initiate implementation of a comprehensive bike and pedestrian plan.
- Objective S.10 To improve Hollister Municipal Airport operations by lengthening the main runway, installing an Instrument Landing System, and constructing additional hangars for general aviation use.

Long-Term Objectives (by 2020)

- Objective L.1 To increase the capacity of the street and highway system to accommodate projected long-term growth.
- Objective L.2 To serve 1,000 commuter round trips per weekday of service with commuter rail and express bus service connecting Hollister to Gilroy; also, to begin plans to electrify the commuter rail corridor between Hollister and Gilroy.
- Objective L.3 To reduce the rate of fatal vehicular accidents throughout San Benito County.
- Objective L.4 To extend the recreational trail for pedestrians and bicyclists along the San Benito River from Hollister to the Pinnacles National Monument.
- Objective L.5 To increase rideshare and intra-county transit operations by 10 percent over (2010) levels.

Performance Measures

Is the proposed Regional Transportation Improvement Plan superior to alternative plans in the following ways?

Performance Measure No.	Performance Measure Criteria	Measurement
Measure 1	Does the RTIP improve mobility and accessibility for persons traveling in San Benito County by investing in improvements that allow travelers to reach their destination with relative ease and within a reasonable time?	Travel time for commuters on Routes 25 and 156
Measure 2	Does the RTIP improve safety and security by investing in street and highway facilities with the highest rates of mortality?	Rate of fatal accidents on Routes 25 and 156
Measure 3	Does the RTIP improve transportation system choices by investing in improvements to non-automobile modes of travel?	Transit level of service, including commuter rail; number of bike lane miles

UN SOUND AND UNSUSTAINABLE
TRANSPORT POLICY IN ALL
JOSEPH P. THOMPSON

Attorney at Law

8339 Church Street, Suite 114, Gilroy, CA 95020

Post Office Box 154, Gilroy, CA 95021-0154

Telephone (408) 848-5506; Fax (408) 848-4246

E-mail: TransLaw@PacBell.Net

October 5, 2011

FAX (831) 636-4160

Honorable Margie Barrios, Chairwoman
San Benito County Board of Supervisors
Hollister, CA 95023

FAX (831) 636-4310

Hon. Jaime DelaCruz, Chairman
San Benito County Council of Government
Hollister, CA 95023

Re: Public Comment BOS Oct. 2011 & COG Meeting Agendas - Volunteering Once Again
to Assist Local Government to Establish Sound, Sustainable Transport Policy to Replace the Failure
of Your Current Regime COG-VTA Insanity

Dear Madam and Sir,

Thank you for inviting public comment on the miasma, mess and Hell Hole that you've dug
for the citizens and taxpayers of our County, you lovers of VTA ultra-radical socialism (see why I
told you not to go to bed with VTA?)?! You've fallen into VTA's "BART-to-San Jose Boondoggle
Trap" with your illegal, unconstitutional "Mobility Partnership," by doing just what that 800-Pound
Gorilla tells you to do. You've earned the condemnation of the taxpayers, again. I warned you time
and again, but you refuse to listen, and we suffer for your arrogance and ignorance in transport
policy.

Please add this to the "public comment" for your next meeting agenda.

1. Author: See previous letters, legal memoranda, lawsuits, emails, etc. I have 48 years of
transport industry (rail and highway) experience on the Central California Coast Region, 31 years
of practice of transportation law, 35 years of doctoral and post-doctoral study of transportation law
and policy, at Santa Clara University School of Law, Norman Y. Mineta International Institute for
Surface Transportation Policy Studies, San Jose State University; Transportation Research Board,
Georgetown University; and at the Library of Congress. I'm a member of the Association for
Transportation Law & Logistics (formerly the Association of Interstate Commerce Commission
Practitioners (charter member of the Santa Clara Valley Chapter), Transportation Lawyers
Association (committees on Legislation (Past-Chair), Freight Claims, Bankruptcy, and Intermodal
Transport), and a candidate for the American Society of Transportation & Logistics. I am licensed
to practice before the California Supreme Court, the United States Supreme Court, the U.S. Court
of Appeals for the Ninth Circuit, and all U.S. District Courts in California.

2. Background Materials: See my hundreds of letters, faxes, legal memoranda and three

**Policy Advisory Committee Application-On One Condition: That You Honor the First
Amendment Right of Free Speech, and Not Punish Those Who Voice a Dissenting Point of
View, That You Not Betray the Citizens of Our County by Chilling the Exercise of First
Amendment Rights as You Did the Last Time I Volunteered to Serve Pro Bono on TTF**

lawsuits I filed on behalf of the taxpayers of our County, all given *pro bono* to you, and to Rail Advisory Committee, Transit Task Force, Technical Advisory Committee, SBCBOS, etc., all of which you've totally ignored to the damage and betrayal of the citizens and taxpayers of our County. Give yourselves another "A" in arrogance and stupidity and ignorance. I respectfully request that you direct your staff to add this application, too, to the formal record of these proceedings. I ask that you adhere to your oath of office, and democratic principles of the Founders.¹

3. One Condition to My Application. I have one condition to this application. You must agree that you will not terminate me from the Policy Committee, as you did from the Citizens Transit Task Force, for voicing my opinion, falsely calling it "harassing." You brought everlasting shame on the government of this County by acting in direct violation of the principle of Freedom of Speech, and showed just how much you've betrayed the citizens of our County by selling us out to your special interests "friends," who are really our enemies. By terminating my membership on the Transit Task Force for having the unacceptable courage to speak truth-in-transportation, which you called "harassment," you showed the people of our County that COG is exacting like the Communist Party was in the Soviet Union, where, as Mr. Justice Douglas said in *The Right of the People* (1953), they had "freedom of speech" so long as nobody questioned communism. On the Citizens Rail Advisory Committee I was out-voted 8-1 on the RAC's final report to COG, but the COG Directors voted 5-0 against RAC's conclusion to extend Caltrain from Gilroy to Hollister. So, hypocrisy reared its ugly head in our County's government: RAC allowed dissent (which became the majority view), while TTF would not tolerate dissent, and we suffer the economic damage here ever since deriving from

1

John Stuart Mill*

But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

*Cited in appreciation to your former Chairwoman, Honorable Pat Loe, for defending SBC's residents' First Amendment rights at the COG Meeting when I was terminated from the Transit Task Force. Joseph P. Thompson, Esq., December 8, 2006

Policy Advisory Committee Application-On One Condition: That You Honor the First Amendment Right of Free Speech, and Not Punish Those Who Voice a Dissenting Point of View, That You Not Betray the Citizens of Our County by Chilling the Exercise of First Amendment Rights as You Did the Last Time I Volunteered to Serve Pro Bono on TTF

their unconstitutional conduct. I won't serve hypocrites in local government, so if you cannot abide this condition, then do not accept my application, and do not appoint me to hypocrisy-filled government. Worse than any other thing, Lincoln held "base hypocrisy" intolerable. I agree with that transportation attorney, our 16th President. Its your base hypocrisy that has brought us to the ruinous position, i.e., 5th worst County (economically) in the USA. Perhaps, if you had listened to me, rather than muzzle me, opened your ears when I brought you the UP's Industrial Development Department's "open check book" for local rail-oriented economic development on the Hollister Branch Line, our County's citizens and taxpayers would not be prostrate, broke, busted, and bankrupt today. But you'll never turn around our local economy if you cling to your Sovietization, VTA-poster child mentality of statist, socialist, communist, Marxist, Stalinist policy of screwing the taxpayers so you can reward your special interest monopolists and public-sector union employees. If you have the same closed-minded hypocrisy today as you did then, I won't waste my time and be subjected to more of your "base hypocrisy." So, if you're still hypocrites, please disregard my application. If you've got an open mind to alternative, pro-business, free enterprise, private-sector transport solutions, like you did when you adopted my dissent on your Caltrain extension vote ten years ago, then please consider my application. There's no middle ground: you either are hypocrites still, or you reject your "base hypocrisy."

4. Abolish COG: With motorists paying 102+% of their transport costs, including all highway and street construction and maintenance, and our elected leaders stealing from those gas tax revenues to give our money away to special interests at COG, VTA, TAMC, etc., to keep their bankrupt transit operations moving, the time is "high noon" to abolish COG. Gas taxes from motorists and truckers are used by COG to subsidize COG's unconstitutional, unsound and unsustainable transit boondoggles, yet COG's Directors refuse to protect the taxpayers from this disrespect, this abuse, and this unconstitutional violation of our rights. In COG's long history of abuse, the level of the damage being inflicted on local motorists and truckers has never been so high as it is now. Like the Bell, California City Council, we need to turn the COG rascals out of office ASAP. The longer we delay, the greater the harm that they will inflict on us, our economy, our lives, our families and our community. The only possible conclusion for the Policy Advisory Committee is to demand real social justice: immediately abolish COG. If appointed, I will work tirelessly, as God grants me the strength, to accomplish the goal of returning us to our American roots in transport policy, as I have tried, unsuccessfully, for ten years of COG, RAC, TAC, & TTF meetings, special meetings, workshops, etc., to convince the unconstitutional COG Directors, kingdom-makers, waste-rewarders, Marxist, Leninist, Stalinist betrayers in our local government. *Caveat viator.*

Very truly yours,
JOSEPH P. THOMPSON

cc: COG Board of Directors
cc: SBCBOS

Policy Advisory Committee Application-On One Condition: That You Honor the First Amendment Right of Free Speech, and Not Punish Those Who Voice a Dissenting Point of View, That You Not Betray the Citizens of Our County by Chilling the Exercise of First Amendment Rights as You Did the Last Time I Volunteered to Serve Pro Bono on TTF

ISTEA Reauthorization and the National Transportation Policy

A paper presented to the 68th Annual Meeting of the
Association for Transportation Law, Logistics & Policy
Santa Fe, New Mexico
June 25, 1997

by

Joseph P. Thompson, Esq.

Member:

Association for Transportation Law, Logistics & Policy
Transportation Lawyers Association

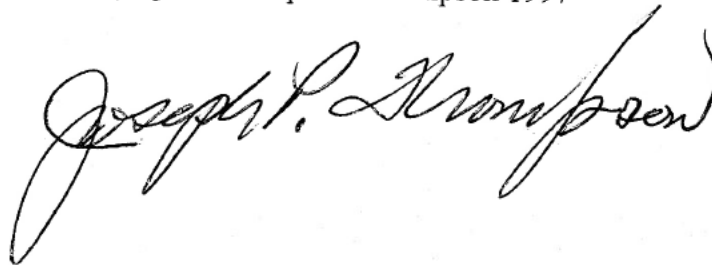
Candidate:

American Society of Transportation & Logistics

In memory of the late

Dr. Martin T. Farris, Certified Emeritus Member, AST&L
Professor of Transportation, Arizona State University

copyright © Joseph P. Thompson 1997

A handwritten signature in cursive script, reading "Joseph P. Thompson". The signature is written in dark ink and is positioned below the copyright notice.

ISTEA Reauthorization and the National Transportation Policy

Near the end of a long and distinguished career of public service, shortly before his retirement from Congress, the Honorable Norman Y. Mineta, then Chairman of the Surface Transportation Subcommittee, said at the 1995 Annual Dinner of the International Institute for Surface Transportation Policy Studies at San Jose State University, "The crucial question in transportation today is: What should government do? And what should it leave to others?" Mr. Mineta thus framed the paramount transportation policy issue facing us as we begin a new century. The answer we give to Mr. Mineta's "**Crucial Question**" will undoubtedly affect the course that the Nation pursues well into the future. Soon, reauthorization of the Intermodal Surface Transportation Efficiency Act of 1991, Pub.L. 102-240 ("ISTEA"), either by enactment of the Administration's bill, the National Economic Crossroads Transportation Efficiency Act of 1997 ("NEXTEA"), or one of the other proposals now before the Congress, will reveal how we embark upon the new century answering the Crucial Question. This paper will explore how the answer we give to the Crucial Question with ISTEA reauthorization legislation comports with the national transportation policy.

The Past as Prologue

Mr. Justice Holmes' conclusion toward the end of the last century in *The Common Law* that, "The life of the law has not been logic; it has been experience," has new meaning in the field of transportation law and policy. What Mr. Justice Holmes called the "felt necessities of the time" may be seen in each generation's framing and answering of what they perceive to be the crucial questions of their time. Does Abraham Lincoln's analogy of "A House Divided" have renewed application today when we find ourselves half slave to publicly owned transportation and half free enterprise? Will this generation's answer to the Crucial Question propel us toward the former or return us to the latter? Indeed finding ourselves at a "crossroads," will we opt for traditional capitalism, or something else?

The National Transportation Policy

It is said that physicists are searching for the Grand Unified Theory (GUT) to explain all the laws of the universe. I believe that we in transportation ought to be seeking the Grand Unified Transportation Theory (GUTT) to heal the artificial division that exists in American transportation policy today and to return us to our free enterprise roots. Saying that we have a National Transportation Policy (NTP) is like saying we have a Rule Against Hearsay. In Title 49 there are currently five transportation policies: Rail Transportation Policy, §10101; National Transportation Policy, §13101; Air Commerce and Safety Policy, §40101; National Mass Transportation Policy, §5301; and National Intermodal Transportation System Policy, §5501. Additionally, the U.S. Dept. of Transportation (USDOT) published its National Freight Transportation Policy in the Federal Register on Jan. 6, 1997.¹

History of the National Transportation Policy

Professor Farris traced our NTP to the Treaty of Paris in 1763 and the passage of the Northwest Ordinance in 1787.² Free enterprise capitalism was the key to our transportation industry growth, with Adam Smith's "Invisible Hand" receiving occasional support from the taxpayers for turnpikes, canals and railroads. When the excesses of human nature grew unacceptable, during the age of the Robber Barons, regulation by government was the response of generations to those "felt necessities of the time." Private ownership of industry, however, was retained, except for those natural monopolies like water, sewer and power. Uniquely, America rejected the notion that the government would own our transportation

¹49 U.S.C. §§5301 (mass transit), 5501 (intermodal), 10101 (rail), 13101 (truck), and 40101 (air). The "findings and purposes" for promoting commercial space transportation read like policy-making. 49 U.S.C. §70101(a),(b).

²Martin T. Farris & Paul T. McElhiney, eds., *Modern Transportation Selected Readings* (Houghton Mifflin Co., 2d ed.; 1973), "National Transportation Policy: Fact or Fiction?" p. 425 (hereafter FARRIS).

industries.³ Although the railroads were nationalized during WWI, even one of our most gifted orators, William Jennings Bryan, could not convince the American people that the "Plumb Plan" of joint federal-state ownership was preferable to privatization.⁴ Despite its many faults, the American people chose capitalism rather than switching to statism or socialism. The Transportation Act of 1940 was the first express transportation policy by Congress. However, almost each session of Congress since has added to or altered transportation policy, yielding a result that one should expect when political decision-making seeks solutions pleasing every transportation need of a diverse, growing population. Consequently, the NTP is taught to transportation students as "somewhat vague" and containing "numerous conflicting provisions."⁵ As Professors Coyle, Bardi and Novack conclude in their transportation textbook:

The federal government's policy toward transportation is a composite of these federal laws, rules, funding programs, and regulatory agencies; however, there is no unified federal transportation policy statement or goal that guides the federal government's actions.

In addition to the Congress and the president, there are more than 60 federal agencies and 30 congressional committees involved in setting transportation policy. There are two independent regulatory agencies that interpret transport law, establish operating rules, and set policy. Lastly, the Justice Department interprets statutes involving transportation and reconciles differences between the carriers and the public. Each of these groups has made decisions that have affected the development of transportation.⁶

Whether in war or peace, the NTP reflected rising concern with transportation problems in the United States and in other developed nations.⁷

³ See, generally, Harvey A. Levine, *National Transportation Policy: A Study of Studies* (Lexington: Lexington Books, 1978), especially, Ch. 1 "National Transportation Policy;" and Ch. 4 "Policy Overview," and "Nature of Transportation Subsidies," and Ch. 5, "Research/Policy Connection;" Philip D. Locklin, *Economics of Transportation* (5th ed., Homewood: Richard D. Irwin, Inc., 1960), Ch. 2 "The Transportation System of the United States;" Dudley F. Pegrum, *Transportation Economics and Public Policy* (Homewood: Richard D. Irwin, Inc., 1963), Ch. 3 "Development of Transportation in the United States;" and Ch. 16 "Transportation as a National Problem;" and Ch. 20 "Regulation and Administration in Transport Policy;" Roy J. Sampson and Martin T. Farris *Domestic Transportation: Practice, Theory and Policy* (3d ed., Boston: Houghton Mifflin, 1975); George W. Wilson *Economic Analysis of Intercity Freight Transportation* (Bloomington: Indiana U. Press, 1980); Donald F. Wood and James C. Johnson, *Contemporary Transportation* (Tulsa: PPC Books, 1980), Ch. 1 "Transportation and the Economy;" Ch. 2 "Government as a Provider of Transportation Services and Facilities;"

⁴Robert W. Cherny, *A Righteous Cause, The Life of William Jennings Bryan* (Norman, Ok: University of Oklahoma Press, 1994), p. 159.

⁵John J. Coyle, et al., *Transportation* (West Pub.Co., St. Paul: 4th ed. 1994), Ch.4, "Transportation Policy," p. 104, 108 (hereafter COYLE).

⁶COYLE, p. 104.

⁷David Banister and Peter Hall, *Transport and Public Policy Planning* (London: Mansell Pub., Ltd., 1981); Joseph Berechman *Public Transit Economics and Deregulation Policy* (Amsterdam: Elsevier Science Pub., B.V., 1993); K.J. Button and D. Gillingwater, *Future Transport Policy* (London: Croom Helm, Ltd., 1986); Paul W. Devore *Introduction to Transportation* (Worcester: Davis Pub. 1983); George M. Guess, ed., *Public Policy and Transit System Management* (NY: Greenwood Press, 1990) (hereafter GUESS); David W. Jones, Jr., *Urban Transit Policy: An Economic and Political History* (Englewood Cliffs, NJ: Prentice-Hall, 1985) (hereafter JONES); John B. Lansing *Transportation and Economic Policy* (New York: Free Press, 1966); Aurelio Menendez *Estimating Capital and Operating Costs in Urban Transportation Planning* (Westport,

Evolving Transportation Policy

Of the many commentators, Professor James C. Nelson has given us enlightening perspective on the NTP's evolution.⁸ Writing during the Kennedy administration, Professor Nelson said "recent studies of regulatory agencies and public policy in transportation attest eloquently to the continuing public interest in the long-standing issue of the appropriate role for government in the transportation sector of the economy." At that point in time he saw "little legislative action," but that was quickly changed as Congress tackled mass transit problems. However, Professor Nelson did raise the "Crucial Question" by saying, "[t]he question of the proper role of the government in the allocation of traffic and resources in transport" was worthy of "a general review and evaluation." He saw two roles for government in transportation, promotion and regulation.

In the United States, government shares with private enterprise the risks and costs of providing transport in a mixed system of public and private enterprise. Government usually participates by furnishing the basic ways (and some terminals) while private enterprise conducts carrier operations over public facilities. Mixed enterprise is characteristic of air, highway and water transport but not of pipeline and railway transport. As most countries operate railway under public enterprise, this country's mix of private and public enterprise is unique.

The Crucial Question presented itself time and again in the post-war era, and so many studies were made that studies of the studies appeared.⁹ Every aspect of transportation has been examined and re-examined. Reflecting its importance to the economy and society, commissions and committees have devoted forests of paper and vast resources to this endeavor. Regardless of the report or study, they all recognize the role of federal tax dollars on our transportation systems.¹⁰

Transportation Subsidies and Policy

Call it aid, grants, assistance, tax breaks, or subsidies, there is little difference from a policy perspective. However, since "subsidy" has become a dirty word, we seldom see it used. Instead, "private-public partnership" has emerged as a popular buzzword to make. How do transportation subsidies distort our

Ct.: Praeger, 1993); A.W.J. Thompson & L.C. Hunter, *The Nationalized Transport Industries* (Heinemann Educational Books, London, 1973).

⁸James C. Nelson, "Government's Role Toward Transportation," *Transportation Journal* (Summer 1962), reprinted in Martin T. Farris & Paul T. McElhiney, eds., *Modern Transportation Selected Readings* (Houghton Mifflin Co., Boston: 2d ed. 1973), p. 416-424 (hereafter NELSON).

⁹Harvey A. Levine, *National Transportation Policy: A Study of Studies* (Lexington: Lexington Books, 1978), Ch. 2 "Chronology of Research Studies" (hereafter LEVINE).

¹⁰GUESS, pp. 1-2. Professor Guess concludes that "federal aid remains the dominant force in shaping activities by state and local transit agencies" but "the incentives provided are often irrational from the perspectives of efficiency and effectiveness." Id. See, also, David W. Jones, Jr., *Urban Transit Policy: An Economic and Political History* (Englewood Cliffs, NJ: Prentice-Hall, 1985). Professor Jones concludes that federal subsidies have "not stabilized the industry and that compound changes in transit's basic way of doing business are necessary if mass transit is to play a significant role in the future of urban transportation. . . . Subsidy for transit is necessary and appropriate, but endlessly increasing subsidy is both inappropriate and unrealistic. It is time, in short, to consider the reorganization alternative--as difficult and painful as it may be."

transportation systems? First, however, can we agree on a definition of "subsidy"? It has been authoritatively said about subsidies:¹¹

One remarkable attribute of Government subsidies is the capacity of the very words themselves to conjure up marvelously diverse images in different minds. To most economists the subsidy is a useful fiscal instrument whose major purpose is to improve the private sector's allocation of resources among their alternative uses. To many laymen, on the other hand, subsidies are an elusive and worrisome phenomenon, frequently hidden from the general view and often suspected of being used more for private gain than for the public good. These widely divergent viewpoints appear to come mainly from differing perceptions of the efficiency with which private markets function. To the laissez-faire enthusiast there is little or no legitimate role for subsidies since, as he sees the world, free markets do the best job of organizing production to satisfy present and future consumer demands. Others, worried about the lack of strong competitive pressures for efficiency in concentrated markets and perceiving pervasive externalities, both beneficial and harmful, which are not taken into account by private business, actively support extensive Government intervention, through subsidies and other means, in the operation of private markets.

And, another highly respected economist said in the same study:¹²

Congress is not always adequately equipped to evaluate expenditure programs; the device of holding hearings is far from being a complete substitute for objective evaluation. **All too often hearings are dominated by the special interests who expect to benefit from them rather than by those who have to pay for them;** thus representatives of nonfarm sectors are rarely heard by the congressional committees on agriculture. . . . Another reason why special benefit programs need particular attention is the inertia in our political system, which tends to preserve such programs long after their initial justification (if indeed there was one) has disappeared. These **programs tend to create vested interests, whose anguished cries of ruin at the slightest suggestion of reform are usually loud enough to drown out the voice of reason.** Even if a program is widely conceded to be unsatisfactory, Congress is likely to let sleeping dogs lie by extending it unchanged rather than reforming it; the recent extension of the Sugar Act is one example. The laxity of our rules concerning political contributions may well aggravate the problem of inertia. [emphasis added]

The Taxpayers' Ideal Subsidy

These definitions of "subsidy" are as sound today as they were when those economists testified to the Joint Economic Committee of the Congress. Inducing private sector behavior with transportation subsidies has long been a feature of American politics and government. For the individual a particular subsidy may be "good" or "bad," depending on whether he pays for it or receives it. But for the Nation, a particular subsidy may diminish an "inherent advantage" of one mode of transportation to the advantage of a competing mode. We need to ask: Who actually benefits from the subsidy? The Grandfather of all transportation subsidies may have been the land grants to the railroads. In this case it was we taxpayers who enjoyed profits. Professor Nelson described the fiscal ramifications of the land grants to the railroads, and other subsidies, in exchange for reduced freight rates (under former Section 22 of the Interstate Commerce Act) for government freight and military passengers. By June 30, 1943, the rail rate breaks for the taxpayers were estimated to be \$580 million, "a sum several times the value of the granted land at the

¹¹U.S. Congress, Joint Economic Committee, *The Economics of Federal Subsidy Programs* (Wash., D.C.: USGPO, 1972), p. 1, George F. Break (Prof.Econ., U.C.-Berkeley), "Subsidies as an Instrument for Achieving Public Economy Goals."

¹²Id., Hendrick S. Houthakker (Prof. Economics, Harvard), "The Control of Special Benefit Programs," p. 8.

time land grants were awarded and in excess of the sums derived by the railroads from the grants."¹³ Thus, this precedent-setting transportation subsidy proved that the taxpayers could actually profit from a Congressional deal to promote transportation, viz., infrastructure improvements. In other words, with private sector profit motives allowed to control, the promoters and the taxpayers (investors) both made huge profits. Have we learned from our history? Did subsequent Congressmen make equally advantageous agreements for later generations of taxpayers?

Subsidies Distort Transportation Industry Results

Before the railroad land grant subsidies, canals had been constructed by state agencies and operated with tolls recovering capital and operating costs. But just as highway subsidies would later affect the railroads' profitability, since about 1880, by which time the railroads had largely superseded the canals, the federal and state governments have provided improved waterways entirely free of user charges except on the St. Lawrence Seaway. Like a house of cards, tinkering with one card inevitably affects the whole transportation structure.

Even earlier, private turnpikes furnished main highways on a commercial basis; but, since 1850, highways have been provided by state and local governments, with ever-increasing federal aid (since 1916) for construction of limited federal-aid systems and with user fee support in the modern period.¹⁴ Finally, the federal government early undertook to provide the civil airways and facilities, with the synergistic benefits accruing to the airlines. As he concluded, "Over the years, tremendous sums have been spent by government in making way and terminal facilities available for use by private carriers; in giving direct subsidies to certain classes of carriers; and in engaging in expensive scientific research, and development for national security, making as a by-product much valuable technology available to the air carriers without charge to them."¹⁵

The national purposes for giving financial assistance to transport development are relevant to evaluation. Clearly, railroad grants had the unique national objective of stimulating initial settlement of undeveloped lands in the West by rapid development of a new transport technique, greatly reducing long-distance costs and increasing service speeds. Air transport aids sought improved postal communication, rapid introduction of a new technology, adequate equipment, aircraft manufacturing facilities and skilled personnel for national defense. Federal highway aid had improvement of rural postal services and stimulation of interstate commerce as its principal purposes; in addition, an underlying national defense interest has existed in a highly developed system of interstate highways adequate for the needs of commerce and the military. State highway investment largely has been in response to the way-service demands of a rapidly multiplying ownership of motor vehicles. The principal objectives for inland waterway improvement, including the no-toll policy, have been to give landlocked areas lower freight rates and to furnish additional competition for the railroads. The overall historical record indicates that perhaps the strongest motive for federal transport subsidies has been to bring about, more rapidly than otherwise would occur, the economic and social benefits of improvements in transport service and of lowered transport costs when entirely new transport technology became available. This was true of federal aids for highway and air transport development. That motive also stimulated the land grants to railroads, but with the significant difference that a century ago far greater emphasis was necessarily placed on land settlement and resource development in pioneering areas. The introduction of modern

¹³NELSON, p. 423, fn. 3.

¹⁴Federal transportation outlays for all modes increased from \$23.961 billion in 1980 to \$39.064 billion in 1994, measured in current dollars. Bureau of Transportation Statistics, National Transportation Statistics 1997 (Wash., D.C.: USDOT/BTS Dec. 1996), p. 98.

¹⁵NELSON, p. 418.

air, highway and waterway transport came long after the railroads had already opened up most of the remote and under-developed regions of this country. The grant of subsidies to those modes was intended to exploit their technologies at a faster rate than market demand could accomplish so that the economy might earlier have the new types of services and competitive transport.¹⁶

Professor Nelson also concluded that as a broad generalization, the American system of mixed enterprise in transport has worked tolerably well. He said that it has produced a fully-developed, large-scale, multiservice and essentially competitive transport system that is the envy of most countries. Of course, when he wrote the United States was not the world's largest debtor nation!

In general, he stated, the promotional policies accomplished their purposes and the government has made a truly important contribution to the American transport system. But as government promotion also has created excess facilities and inefficient transport, this by no means implies that the best and most efficient system has resulted. Nor does it mean that past policies necessarily should be continued indefinitely.¹⁷

But, looking objectively at the justification for continuing subsidies to domestic transport, it seems clear that most historical reasons for subsidies have disappeared long ago. There is, he said, no present need for land grants to stimulate initial development of railways. Also, motor transport is now a mature and thriving industry, operating over highways with high-type surfaces throughout the land. Although expanding traffic and urban congestion obviously require highway expansion, plainly there is no longer any need for public subsidies to introduce the advantages of motor transport to the American economy! He believed that most needed highway development would come as rapidly as can be economically justified in response to effective demand on the basis of appropriate user fees and tolls. The quick additions of modern highways in congested areas by state-owned toll road authorities suggest that the required facilities would come sooner on a full commercial basis than under existing so-called free-road policies.

Air transport, he said, should no longer be regarded as an infant industry in need of developmental subsidies, except for non-economic subsidization of local and metropolitan airlines to give rural and urban communities more advantages of the air age. The rapid introduction of airline technology did not cease, nor even slacken, with cessation of air-mail subsidies to the trunk lines. He predicted that placing user fees on the civil airways over a period of time would not seriously impede beneficial innovations.

The traffic growth experienced by barge lines on well-located waterways suggests that free channel and lock services are no longer essential to intensive use of inland waterways. Since the traffic on marginal waterways does not rise to efficient levels without user fees, serious questions can be asked concerning the economic justification of continued investment in such waterways.¹⁸

Professor Nelson believed that the beneficial general results of this country's policy of stimulating economic development through encouraging adequate, efficient and competitive transport with subsidies have long ago been achieved. Today, he said, the problem of transport policy is radically different than during the 1830-1930 period. He also said, "Insufficient attention has been given to this fact in formulating transport policies in recent years."

The transport problem today, and in the foreseeable future, is to promote the right economic development of each of the five contending agencies, including coordinated services by two or more modes. The primary aim of policy can no longer be to foster initial economic development of the western regions, nor even to hasten the introduction of new transport industries by means of subsidies. This is not

¹⁶NELSON, p. 418.

¹⁷NELSON, p. 418.

¹⁸Id.

to say that transport modes now not visualized will never be invented. Rather, present-day policymakers face well-defined and critical questions growing out of the existing relations among carriers, the current promotional and regulatory policies, and the competitive structure of transport. Thus, it would seem wholly unreasonable to leave the question of what subsidies may be desirable for promoting rapid development of a new transport mode until someone invents it and operations appear to be practicable.¹⁹

The Past Government Role: Regulation

The remaining general problem of government relations to transport is how best to promote adequate and efficient transport by self-sustaining modes, all paying appropriately adjusted user fees or providing their own way.²⁰ The concept of "self-sustaining modes" of transportation has, however, come to mean two completely different things, depending on whether the carrier is in the public or private sector. In the corporate form a carrier can seek out a variety of sources of income in the marketplace, whereas the public sector carrier lacks the freedom to engage in commercial activities. So, since farebox revenues are usually a small portion of total costs of operation (and a smaller portion of overall expenses), taxpayers subsidies are thought to be the only way to keep the operation moving. However, as recent calls for freight revenue for Amtrak reveal, if the public sector carriers were returned to the private sector, and enough other revenue attracted, e.g., freight revenues, then the need for taxpayers subsidies would diminish or cease altogether.

It is when we answer the Crucial Question by saying that transportation must solve social problems (e.g., Welfare to Work; Spare the Air; Rebuilding America) that we justify continued taxpayer subsidies.²¹

Professor Nelson asked: "How, then, can the role of government in transport be adjusted to serve a more economic purpose?" And he answered the Crucial Question in this way:

Is it assumed that government's role is ideal when it encourages provision of essential transport at the least total costs, including social costs.

Over the long run, the role of government can become more economic only to the extent that promotional and regulatory policies are designed to be fully consistent with achieving maximum overall economy in transport and high standards of efficiency in each of the several modes. The national transport problem of today is not to stimulate an initial supply of efficient techniques of transport nor to encourage development of vast underdeveloped land resources, but rather it consists of facilitating the right economic development of each mode of transport, including the essential public way and terminal facilities. Consequently, in the promotional sphere government should not continue subsidy after its economically valid purposes have been accomplished. And so much of the nation's capital is involved in public transport investments that they should be limited by fully economic investment criteria and by universal user fees, properly adjusted to the conditions of utilization and to require all transport alternatives and resource costs involved to be considered in expanding public transport facilities.²²

¹⁹NELSON, p. 419.

²⁰Id. For an overall, in depth discussion of the implications of deregulation of the transportation industry, see, Paul S. Dempsey, *The Social and Economic Consequences of Deregulation: The Transportation Industry in Transition* (New York: Quorum Books, 1989).

²¹ According to an excellent study by Professor Don H. Pickrell, Harvard University, and Transportation Systems Center, U.S. Department of Transportation, Cambridge, Mass., transit subsidies are rapidly increasing to cover growing transit systems' operating losses all across the Nation. Don H. Pickrell, "Rising Deficits and the Uses of Transit Subsidies in the United States," *Journal of Transport Economics and Policy* (Sept., 1985), pp. 281-298.

²²NELSON, p. 422.

After WWII a series of detailed government reports analyzed how we failed in practice to attain the goals of the NTP.²³ Professor Farris identified two types of NTP: "informal institutional policy" and "formal statutory policy."²⁴ In a detailed analysis which is equally valid today, he concluded that the NTP is incomplete and inconsistent and contains indefinable terms.²⁵ He concluded:

Undoubtedly the national transportation policy is a fiction. As stated in the declaration, it has many shortcomings. It is incomplete, inconsistent, and indefinable. From the point of view of containing generally acceptable ideas, the declaration of national transportation policy is a fact. It does contain acceptable goals and it does establish ideals to be sought. Although one may be critical of the goals and ideals, it is a fact that they are indeed present in the declaration. In a word, national transportation policy is both a fact and a fiction.²⁶

Written when the USDOT was new, Professor Farris accurately predicted that "the executive branch will assume a larger and more forceful role than in the past."²⁷ Since then, the Crucial Question has been answered time and again by increasing the federal government's role in transportation.²⁸ For example, the President's Executive Order No. 12893, Jan 26, 1994,²⁹ requires the agencies to "seek private sector

²³The "Sawyer Report" of the U.S. Dept. of Commerce, Issues Involved in a Unified and Coordinated Federal Program for Transportation (Wash., D.C.: USGPO 1949); the "Weeks Report" (sometimes called the Cabinet Committee Report), Presidential Advisory Committee on Transportation Policy and Organization, A Report to the President on Revision of Federal Transportation Policy (Wash, D.C.: USGPO 1955); the "Mueller Report," U.S. Dept. of Commerce, Federal Transportation Policy and Program (March 1960); and the "Doyle Report," prepared for the U.S. Senate, Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess., by the Special Study Group on Transportation Policies in the United States, National Transportation Policy (Wash, D.C.: USGPO 1961).

²⁴FARRIS, p. 425.

²⁵Id., p. 427-431.

²⁶Id., p. 432.

²⁷Id., p. 425.

²⁸Federal preemption by Congressional action (e.g., Airline Deregulation Act of 1978, Pub.L. No. 91-504, 92 Stat. 1705, Trucking Industry Regulatory Reform Act of 1994, Pub.L. No. 103-311, 108 Stat. 1683, Federal Aviation Administration Authorization Act of 1994, Pub.L. No. 103-305, 108 Stat. 1604, and the Interstate Commerce Commission Termination Act of 1995, Pub.L. No. 104-88, 109 Stat. 803), and Supreme Court construction of the Commerce Clause, the Supremacy Clause, and the Tenth Amendment, have exploded the myth of "private-public partnerships" and "state-federal partnerships" in transportation today. 49 U.S.C. §§14501, 41713; *Morales v. Trans World Airlines*, 504 U.S. 374 (1992), *American Airlines v. Wolens*, 513 U.S. 219 (1995), *Kelley v. U.S.*, 69 F.3d 1503 (10th Cir. 1995), cert. denied, ___ U.S. ___, 116 S.Ct. 1566, 134 L.Ed.2d 665 (1996); see, generally, Robert E. McFarland, "Section 601 Redux," 4 The Transportation Lawyer 23 (1995), and "The Preemption of Tort and Other Common Causes of Action Against Air, Motor, and Rail Carriers," 24 Transportation Law Journal 155 (1997); "Federal Preemption of State Consumer Fraud Regulations: *American Airlines, Inc. v. Wolens*," 115 S.Ct. 817 (1995), 18 Harvard Journal of Law & Public Policy 903 (1996).

²⁹Executive Order No. 12893, Jan. 26, 1994, "Principles of Federal Infrastructure Investments," §2(c): Private Sector Participation. "Agencies shall seek private sector participation in infrastructure investment and management. Innovative public-private initiatives can bring about greater private sector participation in the ownership, financing, construction, and

participation in infrastructure investment and management," but reliance on taxes, rather than user fees, e.g., farebox revenues (the passengers' "co-pay" in current parlance) is the choice our elected representatives make as they promise to satisfy everyone's transportation needs. Meanwhile, these criticisms of the NTP remain accurate.³⁰ There are so many exceptions made to the NTP in the demands of our political process that we honor it more in the breach than the observance.³¹ We give lip service to the goal, but reveal our selfish selves by our conduct. Our elected representatives summon us to attack the "federal pot of funds." Ironically, we demand unlimited transportation services at the same time that we demand that government balance its budget. How can we have both? Are we in effect a society "trapped in a preoccupation with the public rather than the private" in seeking transportation problem solutions?³²

Intermodal Surface Transportation Efficiency Act

ISTEA "broke new ground" in how America's States and metropolitan regions approach transportation planning and investment decision-making, according to the USDOT.³³ According to President George Bush, it was a "jobs" bill, as he said at the ISTEA signing ceremony.³⁴ ISTEA's hallmarks may be found in its "Declaration of Policy," the very first paragraph of which states:

It is the policy of the United States Government to develop a National Intermodal Transportation System that is economically efficient, environmentally sound, provides the foundation for the Nation to compete in the global economy, and will move people and goods in an energy efficient manner.³⁵

As Professor Farris recognized, the internal inconsistency of the NTP of trying to be economically efficient while satisfying all of the transportation expectations of every person in the Nation continues to make impossible an acceptable answer to Mr. Mineta's Crucial Question. Advocates of competing modes and needs want the available funds spent on their "felt necessities" and not those of someone else.

operation of the infrastructure programs referred to in section 1 of this order. Consistent with the public interest, agencies should work with State and local entities to minimize legal and regulatory barriers to private sector participation in the provision of infrastructure facilities and services." No definition of "public-private initiatives" is found, or how they may differ from "private-public partnerships."

³⁰George Eads, "Economists versus Regulators," Perspectives on Federal Transportation Policy (Wash, D.C.: American Enterprise Institute for Public Policy Research, 1975), pp. 101-109. Professor Eads' "conviction" is that "the market, though imperfect, works better than the sort of regulation society is likely to get, barring commissions composed of omnipotent, omniscient, benevolent dictators." Id., p. 108. See, also, Thomas A. Till, "National Transportation Policy: The Need for a Clear Concept," Proceedings: Fifteenth Annual Meeting Transportation Research Forum (Oxford, Ind.: Richard B. Cross Co., 1974), pp. 18-22; and Herman Mertins, Jr., National Transportation Policy in Transition (Lexington, Mass.: D.C. Heath & Co., 1972), Ch. 8 "Perspective on National Transportation Policy."

³¹Donald L. Barlett and James B. Steele, America: What Went Wrong? (Kansas City: Andrews & McMeel, 1992), Ch. 6 "The High Cost of Deregulation," p. 105.

³²Robin Paul Malloy, Planning for Serfdom: Legal Economic Discourse and Downtown Development (Philadelphia, Pa.: U. Penn. Press, 1991), p. 1 (hereafter MALLOY).

³³USDOT, Report on the U.S. Dept. of Transportation's Outreach on Reauthorization of the Intermodal Surface Transportation Efficiency Act, How to Keep America Moving: ISTEA-Transportation for the 21st Century, Jan. 20, 1997, p. 1.

³⁴Traffic World, Dec. 9, 1991, p. 4.

³⁵49 U.S.C. §5501(a).

Transportation thus becomes a means to an end, e.g., urban redevelopment, air pollution mitigation, unemployment reduction, infrastructure improvement, etc. Transferring "social costs" to transportation systems to solve myriad social problems and achieve non-transport goals distorts the reality of transportation.³⁶ Taxpayers want to know what the government is doing taking over the responsibility for unprofitable transportation systems when a free enterprise solution exists in an equitable division of freight revenues between the various modes.³⁷

"ISTEA, NEXTEA, BESTEA, HOTTEA, or Jim Jones' Koolaid"

NEXTEA seeks to "continue the successful federal role in developing a national intermodal surface transportation system through programs that ensure the safe and efficient movement of people and goods, improve economic productivity, preserve the environment, and strengthen partnerships among all levels of the government and the private sector."³⁸ Of course, if by "success" you mean increasing tax burdens to finance nationalized industry, then NEXTEA could become a "successful" successor to ISTEA. The public debate on ISTEA reauthorization curiously omits mention of the Crucial Question. The "web of alliances and interests"³⁹ clash with coalitions in what Traffic World describes as a "titanic struggle" over the federal Pot 'o Funds to be appropriated in the "mother of all transportation bills."⁴⁰ Each coalition accuses the other of being "self-serving," while touting their own proposal as best for the public. However, all of them urge greater government subsidies, and therefore, higher tax burdens. Underlying this struggle lies the Crucial Question and the internal inconsistencies in the NTP. The "Divided House" of transportation policy continues to worsen as ever larger taxpayer subsidies (ISTEA-type "investments") are required to fund what would otherwise be bankrupt businesses. It seems as if an "Iron Curtain" has been erected by those advocates of taxpayer funded transportation, creating an artificial barrier between nationalized transportation and free enterprise transportation. While a privatization revolution is occurring around the world, private sector transportation in the United States is being consumed by politically fueled notions of public ownership which history has shown are not sustainable over the long haul.⁴¹ Metropolitan Planning Organization (MPO) transportation planners say that they are prohibited from even considering private transportation options. Why argue the "Question of Money"⁴² when we should be focusing on a sustainable NTP? How can we justify our NTP if we fail to debate Mr. Mineta's Crucial Question? Mr. Justice Douglas said, "there is no free speech in the full meaning of the term unless there is freedom to challenge

³⁶Patrick O'Sullivan, *Transport Policy: Geographic, Economic and Planning Aspects* (Totawa, NJ: Barnes & Noble Books, 1980), Ch. 4 "Transport Problems and Policies," pp. 82-107. The author calls nationalization a form of "constitutional intervention" and a "widely anathematized fate worse than death for private enterprise." It has, however, often been seen as a solution "sought eagerly by owners anxious to convert the failing yield of an ailing enterprise into the secure return of government bonds offered in compensation for their ancient property." *Id.*, p. 108.

³⁷Robert Heilbroner & Lester Thurow, *Economics Explained* (New York: Simon & Schuster rev. 1994), Ch. 8 "The Economics of the Public Sector," and "Private v. Public Debts," p. 114.

³⁸S. 468, 105th Cong., 1st Sess., March 18, 1997, p. 1. The full text is found on the Internet at <http://ftp.loc.gov/pub/thomas/c105/s468.rcs.txt>. A section-by-section analysis is also available. One coalition, the Surface Transportation Policy Project has written at Website at <http://www.istea.org>.

³⁹Congressional Quarterly, March 8, 1997, p. 583.

⁴⁰Traffic World, March 24, 1997, p. 6-7.

⁴¹John D. Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, 1989).

⁴²Traffic World, May 19, 1997, p. 11.

the very postulates on which the existing regime rests."⁴³ Some say that we cannot question public ownership of transportation, and any mention of it is "off limits." Artificial barriers to truth, insulating the "untouchables" of their adherents, precludes our ability to attain our goals, warps the notion of the "public interest" to something short of it, deflects tax dollars for private gain, and traps us behind a politicized Iron Curtain and in a "House Divided" against ourselves. Mr. Justice Douglas reminds us of John Stuart Mill's famous logic:

But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.⁴⁴

Our debate on ISTEA reauthorization, and the NTP, must first answer the Crucial Question because until we decide if we want the public sector or the private sector to handle our transportation needs we are going to suffer the ills of fundamentally inconsistent policy and conflicting goals, and all the adverse financial consequences which follow from them.⁴⁵ If we fail to have a sound foundation upon which to erect our transportation systems, why should our fate not be the same as that of the Soviet Union? A debate which does not address the primary issue, which skirts the Crucial Question, is not what we should expect in America.⁴⁶

To those who say they refuse to discuss the Crucial Question, we should reply in President Jefferson's philosophy, stoutly maintained by generations of Americans over the years that "Truth is the proper and sufficient antagonist to error." On January 16, 1787, he wrote:

I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors; and even their errors will tend to keep them to the true principles of the institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people, is to give them full information of their affairs through the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter.⁴⁷

We debate everything else in the NTP, e.g., how to raise the taxes, where the subsidies will go, what demonstration projects will each Congressman win for his district, but we won't touch Mr. Mineta's Crucial Question. NEXTEA proposes to encourage "private sector participation" in accomplishing

⁴³William O. Douglas, *The Right of the People* (1958), Ch. 1, "The Philosophy of the First Amendment," p. 9 (hereafter DOUGLAS).

⁴⁴DOUGLAS, p. 14.

⁴⁵See, e.g., *Suburban Trails, Inc. v. New Jersey Transit Corp.*, 620 F.Supp. 1383 (D.N.J. 1985), and also *Westport Taxi Service, Inc. v. Adams*, 571 F.2d 697 (2d Cir. 1978), cert. denied, 439 U.S. 829 (1978)(cited by Paul Stephen Dempsey and William E. Thoms, *Law and Economic Regulation in Transportation* (New York: Quorum Books 1986), p. 322-327.

⁴⁶DOUGLAS, p. 9.

⁴⁷DOUGLAS, p. 11.

ISTEA's goals.⁴⁸ While the world is experiencing a privatization revolution,⁴⁹ we torture ourselves about balancing the federal budget while we encumber ourselves with nationalized transportation.

"Ask Not What You Can Do For Your Country; What Can Your Country Do for You"

As a philosophy of government, ISTEA is diametrically opposite to that contained in President Kennedy's Inaugural Address, Jan. 20, 1961. Our democratic split personality, legislative hypocrisy, akin to subsidizing tobacco farmers while financing lung cancer research, appears to be a primary philosophy underlying ISTEA. We raise a double standard, saying as we deregulate transportation that only market conditions will set prices, while subsidies to public sector carriers continually increase. Each of the currently pending proposals include the unstated presumption that publicly-owned transportation industries are acceptable. These are (1) the Administration's National Economic Crossroads Transportation Efficiency Act (NEXTEA), S.468, H.R.1268; (2) the Streamlined Transportation Efficiency Program for the 21st Century (STEP 21) by Sen. John W. Warner, R-Va., and Rep. Tom DeLay, R-Tex., S.335, H.R.674; (3) the Surface Transportation Authorization and Regulatory Streamlining Act (STARS 2000), by Sen. Max Baucus, D-Mont., S.532; and (4) the ISTEA Reauthorization Act, by Sen. John H. Chafee, R-R.I., S.586. According to the Federal Highway Administration estimates, the following sums are the average yearly federal subsidies that we will spend under these four proposals, compared with ISTEA⁵⁰:

<u>ISTEA</u>	\$18,221,367,000
<u>NEXTEA</u>	\$20,063,973,000
<u>STEP 21</u>	\$25,516,563,000
<u>STARS 2000</u>	\$25,895,529,000
<u>S.586</u>	\$24,327,204,000

A late entry is "BESTEA," the "Building Efficient Surface Transportation and Equity Act," proposed by House Transportation Infrastructure Committee Chairman Bud Shuster (R-Pa.). Which portions, if any, of these competing bills passes and then emerges unscathed from Conference Committee remains in doubt as this is written. The simultaneous outcry is that America must invest in its infrastructure and balance its budget. If we default to a nationalized industry platform, premised upon tax revenues to fund operations, how can we do both? If nationalized housing did not succeed, why should we expect nationalized transportation to be successful? There are, of course, many proper things that government should do for transportation.⁵¹ But, "what should it leave to others?"

⁴⁸49 U.S.C. §5303; S. 468, p. 81. See, Letter from Transportation Secretary Rodney Slater to Speaker of the House Newt Gingrich, March 12, 1997, transmitting the Administration's bill to the Congress, found at the Internet site for NEXTEA (see footnote 37).

⁴⁹Wall Street Journal, Oct. 2, 1995, pp. R1-4. See, generally, José A. Gómez-Ibáñez and John R. Meyer, *Going Private: The International Experience with Transport Privatization* (Wash, D.C.: Brookings Institution, 1993), Ch. 2, "The Privatization-Regulation Cycle" (hereafter GOING PRIVATE).

⁵⁰Congressional Quarterly, May 10, 1997, p. 1067.

⁵¹General Accounting Office, Report to Congressional Committees, *Surface Transportation: Research Funding, Federal Role, and Emerging Issues* (Sept. 1996), p. 3. The GAO found that the USDOT provided \$2.9 billion for surface transportation research programs from fiscal 1992 through fiscal 1996, which was about 2% of the Department's total budget for surface transportation programs. About \$2.1 billion went to FHWA, which allocated nearly half of the funds for the Intelligent Transportation Systems program's projects. The GAO has also reported to Congress on the benefits of attracting investment funds from the private sector. GAO Report

Rickshaws, Lunar Escalator and Bullet Trains

Recent history has shown that planning by Big Brother, with the adhesion of the federal government, and even with the support of a totalitarian dictatorship, is not sustainable over the long run. Only Adam Smith's "Invisible Hand" has emerged as the supreme, although imperfect, platform for successful social structure.⁵² Transportation policy as a vehicle for accomplishing other social goals distorts transportation efficiency, yielding problems which the Invisible Hand would have avoided.⁵³ If transportation is used to achieve our Manifest Destiny, or to promote national security, then you will have trains through buffalo grazing lands and Defense Highways to move MX Missiles. Solving inner city decay, air pollution, unemployment, infrastructure entropy, poverty, discrimination, or tax iniquities are all admirable social goals, but adding the cost of doing so to passenger and freight fares distorts the truth about transportation. There is a difference between what we can do and what we ought to do. If we gave rickshaws to the unemployed we might get some people out of their cars and reduce the welfare rolls, but would that be acceptable in a democracy? If we ignored the cost and built a lunar escalator for sightseers and vacationers, we might please builders, engineers and the tourist industry but what offset would there be in terms of increased tax burdens on small business? If the rider's "co-pay" (farebox contribution) covers only 2% of the fully amortized costs of his trip on the Bullet Train, then 98% must be coming from the rest of us. The rider may think he has transportation freedom, but it is only at the price of enslaving his society.

Political Means Transportation Policy vs. Marketplace

Professor Robin Paul Malloy has suggested a result of such policy. In defense of liberty, human dignity, and freedom, Professor Malloy has set forth a theory of law, economics, and the state which applies as well as to transportation as it does to urban development.⁵⁴ Focusing on social distortions in urban planning when citizens face wrestling with The 800 Pound Gorilla called City Hall, Professor Malloy shows us what can happen whenever public ownership prevails over private ownership of property.

Just as monopolies can be bad for consumers of gasoline or cameras, so too can they be bad for individuals when a coercive power is a person (a parent over a child for instance), a group (the mafia or a collusion of chemical companies), or the state itself. A capitalist system of private ownership is, therefore, an essential element of a free society, because it is the only context in which the necessary balance between public and private can be maintained.⁵⁵

According to Professor Malloy, competing sources of power are essential for the preservation of an environment favorable to creativity, freedom, and spontaneous social order. He identifies marketplace competition as the essential element and the adverse affects upon it made by public ownership.

When the product is government, competition means protecting the individual from the tyranny of the state while providing an institutional means, via government, for protecting the individual from private coercion. But as a competitive construct this model tells us something more. It says that there will be constant conflict between the competitive roles or boundaries of the private versus the public domain. Concepts such as public/private partnerships tend to break down and destroy these boundaries. The breakdown of such boundaries is detrimental because tension can produce positive

to Congressional Requesters, State Infrastructure Banks: A Mechanism to Expand Federal Transportation Financing (Oct. 1996).

⁵²GOING PRIVATE, p. 281. The case studies "provide strong evidence of private sector cost reductions in labor-intensive services."

⁵³"Nationalizing of Railroads: A Mistake America Cannot Afford to Make," Traffic World, March 31, 1975, pp. 71-72 (Part I), and June 30, 1975, pp. 72-74 (Part II).

⁵⁴MALLOY, p. 39.

⁵⁵MALLOY, p. 32.

externalities. As in the commercial marketplace, however, losing the will or means to compete can leave one increasingly at the mercy of other, more powerful players.⁵⁶

He concludes that in the Nation today we have witnessed a loss of both will and means in the private sector because our values have changed or are being changed as we look to political means and the "expansion of the state" to accomplish goals like urban development.⁵⁷ We are witnessing, he concludes, "the inevitable progression toward statism."

Without a commitment to a strong private sector as a counterbalance to the public sector, the power of the state is unlikely to be adequately restrained. Thus, the impersonal and spontaneous social order of the marketplace will give way to the pervasive intrusion of state planning and increasing reliance on the political rather than the economic means for the allocation of rights and resources in our society. Such a process of setting the political means over the economic means results in the elevation of personal status over impersonal market outcomes and leads to a new age of serfdom in which individual rights are subservient to the group, institutional, and organizational claims of the state.⁵⁸

ISTEA Goals v. Marketplace

Accepted learning for graduate business students holds that too much expenditure on nonwealth creating activities by government may lower the capacity of a nation to create wealth out of which the former activities are financed.⁵⁹ Thus, our push toward statism and nationalized transportation undermines our ISTEA goal of enabling the United States to "compete in the global economy."⁶⁰ So, if we opt for public sector solutions, i.e., nationalization, we fall into the trap of mortgaging our children's future so that we can have "cheap" transportation now. What is likely to follow from such a policy? Professors Gómez-Ibáñez and Meyer have shown that in both developed and developing countries, a "fairly similar cycle of private and public involvement" was found to occur in stages identified as follows:

1. Entrepreneurial
2. Consolidation
3. Regulation of fares and franchises
4. Decline in profitability
5. Withdrawal of capital and services
6. Public takeover
7. Public subsidies
8. Declining efficiency
9. Dilemma of subsidy cuts, fare increases, and service cuts
10. Privatization

A House Divided Against Itself Cannot Stand

⁵⁶MALLOY at p. 34.

⁵⁷MALLOY, p. 35.

⁵⁸MALLOY, p. 37.

⁵⁹Dunning, *Multinational Enterprises and the Global Economy* (Addison-Wesley Pub., 1993). Professor Dunning concludes, "The fact of the globalization of business and the implications this has for the competitiveness of countries, may then force some societies to reappraise their orders of priorities of resource allocation--particularly between wealth-creating and other activities." *Id.*, at p. 529.

⁶⁰49 U.S.C. §5501(a).

The double standard we have accepted for transportation in the United States has created a "House Divided." We tell the private sector that they must be deregulated; no more government "Nanny" to protect carriers. Let insolvency reap its grisly toll. Bankruptcy Court waits with open doors. Laissez faire and caveat viator! Concurrently, no subsidy is spared for the public sector carriers. Transportation "entitlements" mean that the taxpayers will give everyone a "free" ride (or nearly so). Can we exist with both? Massive numbers of bankruptcies are acceptable in the private sector, while the taxpayers offer passengers "free" transit, e.g., "Free Light Rail Shuttle." Taxpayers as "investors" in transportation "industry" accept systems that are insolvent from conception. Have we defeated the Soviet Union only to adopt their mistakes?

Where Are We Heading?

Executive Order No. 12893 directs the agencies to carefully examine all of the factors that our infrastructure investments cause in the economy and society. Section 2(a)(5) states:

(5) Analyses should consider not only quantifiable measures of benefits and costs, but also qualitative measures reflecting values that are not readily quantified.

Economists and planners urge decisions based upon concrete results of past operations, or sound predictions of future events based upon scientific analyses. Planned urban development has become the entrenched model form of government. But we need to ask what "values that are not readily quantified" by economists and planners are being ignored as we plunge ahead with statism and nationalization of transportation systems in the United States. We need to re-think our policies in terms of our capitalistic roots. A new unit of measurement designated as the equivalent of our heritage of freedom, which we may call the "Jefferson," ought to be required of our infrastructure investment decision-makers under the President's Executive Order. The significance of this precious "not readily quantified" value is seen in Abraham Lincoln's tale of his first transportation enterprise. The institution of private property is the paramount characteristic of capitalism. This vital fact is the most crucial element of our successful economic philosophy, and has had immeasurable impact on our historical survival as a democracy. Lincoln certainly thought so.

For the rest of his life, Lincoln remembered the day he earned his first dollar. It opened up for him the possibilities of heading out on his own, not just to survive but to succeed.

"You never heard, did you, how I earned my first dollar? I was about eighteen years of age. I was contemplating my new flatboat, when two men came down to the shore in carriages with trunks. "Will you," said one of them, "take us and our trunks out to the steamer?" I was very glad to have the chance of earning something. I supposed that each of them would give me two or three bits. I sculled them out to the steamboat.

Each of them took from his pocket a silver half-dollar, and threw it on the floor of my boat. I could scarcely believe my eyes as I picked up the money. You may think it was a very little thing, but it was a most important incident in my life. I could scarcely believe that I, a poor boy, had earned a dollar in less than a day--that by honest work I had earned a dollar. The world seemed wider and fairer before me. I was a more hopeful and confident being from that time."⁶¹

Conclusion

⁶¹Phillip B. Kundhardt, Jr., et al., *Lincoln: An Illustrated Biography* (New York: Knopf, 1992), p. 43. What did free enterprise transportation teach the President about free government? See, Honore Morrow, *Great Captain* (New York: Wm. Morrow & Co., 1927), pp. 392-94.

How many "flatboatmen," transportation "Horatio Algers," future free enterprise transportation leaders, and private sector transportation entrepreneurs among the living, and in future generations of Americans, will we deny ourselves by accepting statism and nationalization of our transportation industries? What value should we place upon each one of them? Yes, difficult to quantify, but can we afford to ignore it as we formulate our NTP? How would the President have answered Mr. Mineta's Crucial Question? The American people must insist that our government adhere to both the letter and to the spirit of the President's Executive Order in our NTP for the next century. Let's put the "Jefferson" into our cost-benefit analysis for infrastructure investments at all three levels of our government so that we may achieve the correct answer to the **Crucial Question**.

City of Morgan Hill City Council Workshop

April 7, 2021



Agenda

1. Purpose of Workshop
2. Distribution Uses and Community Concerns
3. What has been done to address concerns?
4. Impact Report
5. Collaborative Approach
6. Urgency Ordinance
7. Questions



Community Concerns

What is a distribution center?

- Distribution facilities distribute goods to consumers
- Distribution facilities include Fulfillment Centers, Sorting Centers, and Last Mile (local) Delivery Centers
- Buildings can range from 40,000 square feet to millions of square feet
- Providers include Amazon, UPS, or other online retailers or delivery services

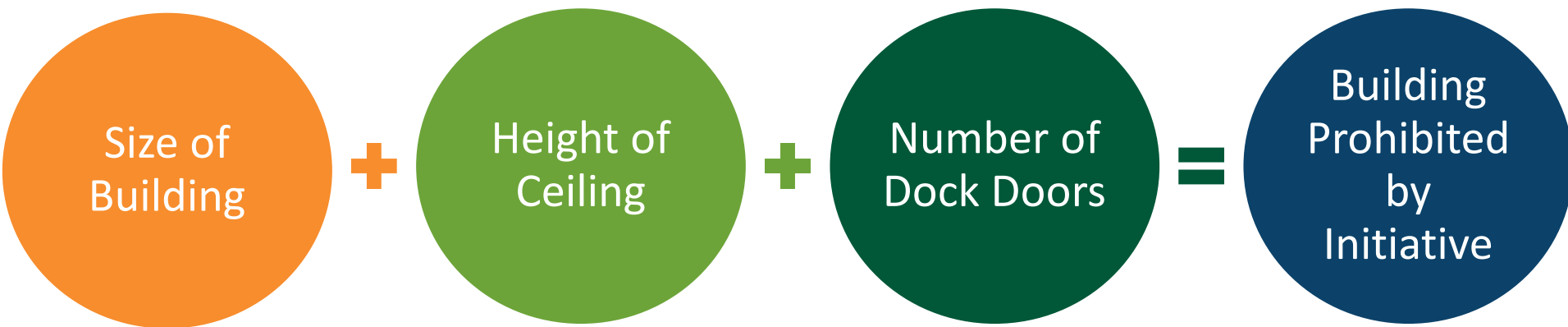


What does the Initiative intend to do?



The Initiative intends to prevent large truck/high traffic that comes with heavy distribution uses by regulating the type and size of buildings.

The Initiative would **prevent** buildings that are 75,000 square feet or larger, have heights of 24 feet for 25% or more of their floor area, and have more than one dock door per 25,000 square feet.



What else does the Initiative try to accomplish?

- Prohibit Fulfillment Centers
- Defines a “Large-Scale Development”
- Moves approval authority from Development Services Director to Planning Commission

What actions has City taken?



In November 2020, the City Council amended the City's Industrial Zoning Ordinance prohibiting fulfillment centers, defining Large Scale Projects, and moving review/approval authority from City staff to Planning Commission.

- ✓ Fulfillment Centers Prohibited
- ✓ Sorting Centers Prohibited
- ✓ Last-mile (local) distribution Prohibited
- ✓ Large projects defined
- ✓ Large projects now require public hearing
- ✓ Review & Approval authority for large projects moved to Planning Commission

Timeline

August
2020

- Council directed staff to amend **Industrial Ordinance**

August
2020

- Responsible Growth Coalition **Initiative**-
Notice of Intent

October
2020

- Council Adopts Industrial Ordinance **prohibiting** fulfillment, sorting & distribution centers

February
2021

- Council **affirms NO distribution** centers policy

3 Main Concerns with the Initiative



#1 Large parcel hubs and last-mile distribution centers could still be allowed.



#2 Impacts existing businesses regardless of their use.



#3 City's future ability to attract Advanced Manufacturing and Research and Development (R&D).

Some existing businesses impacted by Initiative

Specialized Headquarters



- 312,000 sq. ft.
- 24 feet ceiling height
- Dock doors: 15 (13 dock high)

NxEdge



- 155,520 sq ft
- 24 ft ceiling height
- 12 dock doors (8 dock high)

SunBasket



- 126,370 sq ft
- 28-32 ft ceiling heights
- 16 dock doors (12 dock high)

Young's Market



- 286,000 sq ft
- 32 feet ceiling height
- 40 dock doors (40 dock high)

Impact Analysis



1. Alignment with City's General Plan and Economic Blueprint
2. Impact on existing companies
3. Impact on future development
4. Fiscal impact to the City

Existing Facilities and Users

- Five (5) existing buildings/companies impacted
- The five (5) companies combined employ 1,300 people (7% of **all** jobs in Morgan Hill)
- Four (4) of the five companies are within the top 20 employers in Morgan Hill
- Four (4) of the five facilities are owner-occupied
- All generate sales, property and business taxes
- Four (4) companies are net fiscal positive for the City
- If companies left and were replaced with other industrial users, it would result in lower net fiscal return to City for four (4) of the five facilities

Vacant Industrial Lands

- 10 vacant sites can accommodate a 75,000+ SF building
- If **all** develop to maximum FAR:
 - ❖ 1.7 MSF
 - ❖ 1,700- 3,400 jobs
 - ❖ Approximately \$405,000 in new net revenue
- If **all** develop at historical FAR:
 - ❖ 1 MSF
 - ❖ 1,000- 2,100 jobs
 - ❖ Approximately \$245,000 in new net revenue
- Total Development Impact Fees would range from \$12.9 - \$18.3 million, supporting future infrastructure investments

Economic Blueprint/General Plan Alignment



Policy ED-3.6 **Business Friendly Environment.** Support and align policies and fee structures around a business-first culture that welcomes a range of sectors that employ people across various wage levels.

Innovation and Advanced Manufacturing: Grow existing companies, attract new industry, and grow professional jobs.

ATTRACT DEVELOPMENT

Allow for New Hybrid of Developments that are Considered “Class A Industrial” or “Flex Space” (Action #4)

Allow Greater Intensification (FAR) and Taller Buildings to Increase Value of Employment Lands (Action #6)

FOSTER AN ENVIRONMENT THAT SUPPORTS BUSINESS GROWTH

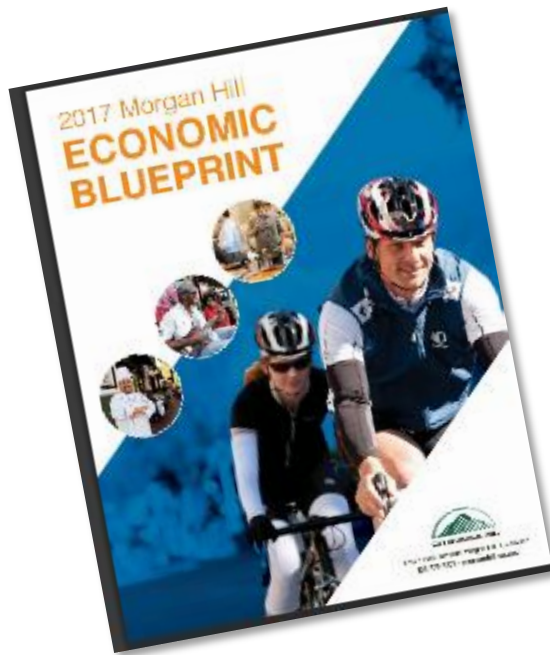
Market Economic Blueprint Vision, Process & Incentives to Attract Business Investment (Action #10)

Economic Blueprint/General Plan Alignment

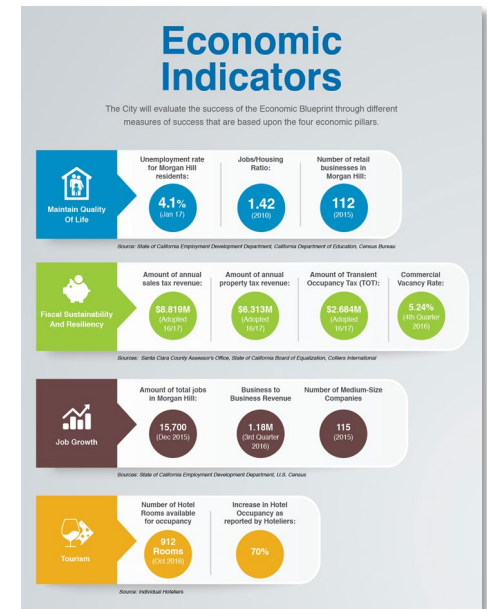


Policy ED-3.1 Business Retention, Expansion, and Attraction Efforts. Encourage retention and expansion of existing businesses, and attract new businesses, that:

- ✓ generate revenue to the City General Fund (such as retail and point-of-sale manufacturing)
- ✓ help provide greater financial strength and stability to the City
- ✓ add industry diversity to the local economy
- ✓ stimulate other businesses to develop in the city



Economic Blueprint



Four Industry Areas

Innovation and Advanced Manufacturing
Grow existing companies, attract new industry and grow professional jobs.

Retail
Grow retail offerings and strengthen commercial nodes.

Tourism
Grow leisure, agriculture, wine country and recreational tourism.

Healthcare
Grow and foster the medical service and diagnostics industry by attracting services and facilities.

Primary Goals of Collaborative Approach



Respond to and address the concerns of the MHRGC

Create regulations that will not impact existing R&D and manufacturing businesses

Allow flexibility to attract the types of businesses that the City and Community agree we want in Morgan Hill

Ensure that new regulations are clear and enforceable



JOINT RECOMMENDATION



The key differences between the Initiative and the recommended ordinance are:

1. Increase ceiling height from “**clear** ceiling height” of 24 feet to “**ceiling** height” of >34 feet for 25% or more of floor area
2. Change definitions for
 - a. Dock-High-Door
 - b. Dock-High-Door to Square Foot Ratio
 - c. Ceiling Height
 - d. Light Manufacturing



Dock-High-Door



An opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise, or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more

Simplified Definition

Enforceable Language

Dock-High-Door-to-Square-Foot Ratio



The ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.

Simplified Definition

Enforceable Language

Ceiling Height



The clear vertical distance from the finished floor to the finished ceiling. If the ceiling is unfinished, the ceiling height is the distance from the floor to the lowest projecting beams, joists, or truss work.

Simplified Definition

Enforceable Language

Manufacturing Light



D. Manufacturing, Light. The manufacture, predominantly from previously prepared materials, of finished products, or parts, including processing, fabrication, **assembly**, treatment, and packaging of such products, and incidental storage, sales, and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mills and manufacturing uses involving primary production of wood, metal, or chemical products from raw materials. For purpose of this definition, the term “Assembly” includes creation of a component or end item made from a number of parts and subassemblies. Assembly does not include the putting together of kits, gift baskets, or packaging items produced elsewhere for purposes of e-commerce or wholesale trading.

Expanding what ‘assembly’ means in Manufacturing

Collaborative Ordinance

Current approach solves concerns with existing buildings

Increasing height allows a greater range of companies

New agreed upon language is clearer and enforceable

Collaborative ordinance will help build trust in the community



Recommendation



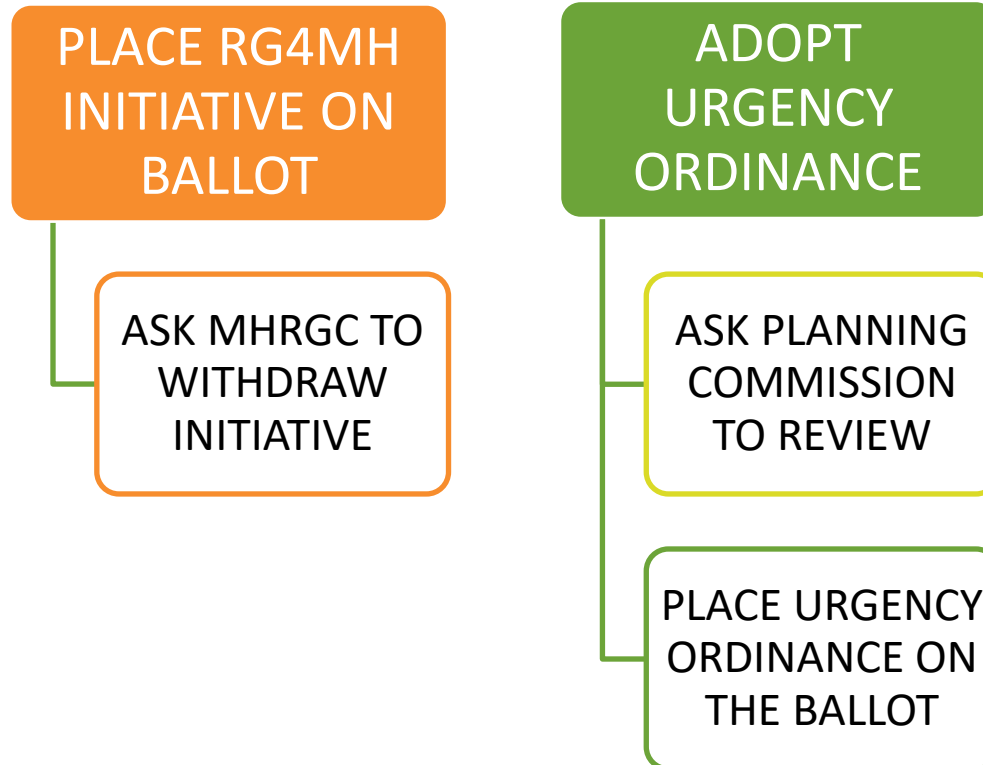
1. Adopt resolution placing Initiative Petition Titled: Citizens' initiative changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large[1]scale development projects on the November 2022 ballot;
2. Adopt the alternative ordinance as an urgency ordinance; and
3. Direct the Planning Commission to make recommendations for permanent ordinance regulating large building design, including maximum dock-door-ratios for certain buildings, and consider placement of the alternative ordinance on the November 2022 ballot.

NEXT STEPS



1. Direct Planning Commission to review urgency ordinance for placement on ballot
2. Council to place urgency ordinance on ballot and RG4MH Initiative to be withdrawn

NEXT STEPS



QUESTIONS?



CITY OF MORGAN HILL

City of Morgan Hill City Council Workshop

April 7, 2021



Agenda

1. Purpose of Workshop
2. Distribution Uses and Community Concerns
3. What has been done to address concerns?
4. Impact Report
5. Collaborative Approach
6. Urgency Ordinance
7. Questions



Community Concerns

What is a distribution center?

- Distribution facilities distribute goods to consumers
- Distribution facilities include Fulfillment Centers, Sorting Centers, and Last Mile (local) Delivery Centers
- Buildings can range from 40,000 square feet to millions of square feet
- Providers include Amazon, UPS, or other online retailers or delivery services

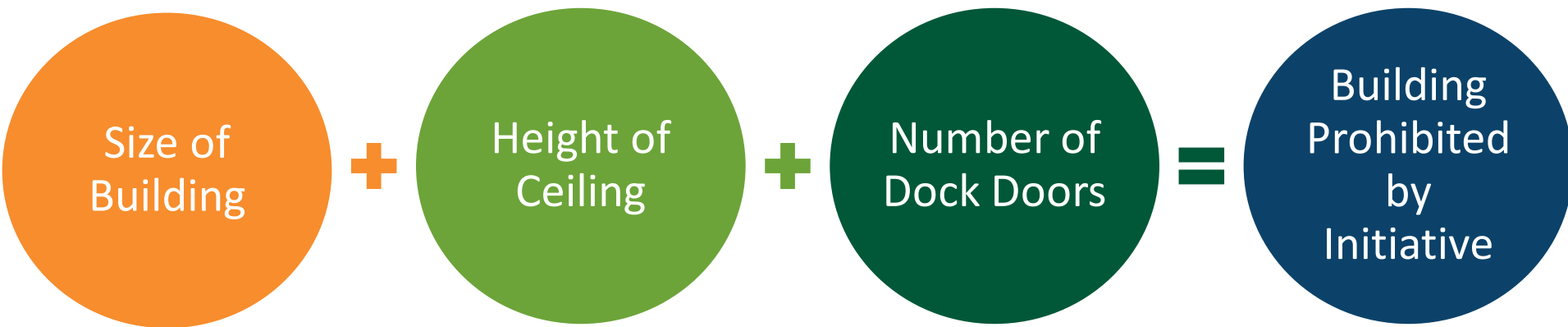


What does the Initiative intend to do?



The Initiative intends to prevent large truck/high traffic that comes with heavy distribution uses by regulating the type and size of buildings.

The Initiative would **prevent** buildings that are 75,000 square feet or larger, have heights of 24 feet for 25% or more of their floor area, and have more than one dock door per 25,000 square feet.



What else does the Initiative try to accomplish?

- Prohibit Fulfillment Centers
- Defines a “Large-Scale Development”
- Moves approval authority from Development Services Director to Planning Commission

What actions has City taken?



In November 2020, the City Council amended the City's Industrial Zoning Ordinance prohibiting fulfillment centers, defining Large Scale Projects, and moving review/approval authority from City staff to Planning Commission.

- ✓ Fulfillment Centers Prohibited
- ✓ Sorting Centers Prohibited
- ✓ Last-mile (local) distribution Prohibited
- ✓ Large projects defined
- ✓ Large projects now require public hearing
- ✓ Review & Approval authority for large projects moved to Planning Commission

Timeline

August
2020

- Council directed staff to amend **Industrial Ordinance**

August
2020

- Responsible Growth Coalition **Initiative**-
Notice of Intent

October
2020

- Council Adopts Industrial Ordinance **prohibiting** fulfillment, sorting & distribution centers

February
2021

- Council **affirms NO distribution** centers policy

3 Main Concerns with the Initiative



#1 Large parcel hubs and last-mile distribution centers could still be allowed.



#2 Impacts existing businesses regardless of their use.



#3 City's future ability to attract Advanced Manufacturing and Research and Development (R&D).

Some existing businesses impacted by Initiative

Specialized Headquarters



- 312,000 sq. ft.
- 24 feet ceiling height
- Dock doors: 15 (13 dock high)

NxEdge



- 155,520 sq ft
- 24 ft ceiling height
- 12 dock doors (8 dock high)

SunBasket



- 126,370 sq ft
- 28-32 ft ceiling heights
- 16 dock doors (12 dock high)

Young's Market



- 286,000 sq ft
- 32 feet ceiling height
- 40 dock doors (40 dock high)

Impact Analysis



1. Alignment with City's General Plan and Economic Blueprint
2. Impact on existing companies
3. Impact on future development
4. Fiscal impact to the City

Existing Facilities and Users

- Five (5) existing buildings/companies impacted
- The five (5) companies combined employ 1,300 people (7% of **all** jobs in Morgan Hill)
- Four (4) of the five companies are within the top 20 employers in Morgan Hill
- Four (4) of the five facilities are owner-occupied
- All generate sales, property and business taxes
- Four (4) companies are net fiscal positive for the City
- If companies left and were replaced with other industrial users, it would result in lower net fiscal return to City for four (4) of the five facilities

Vacant Industrial Lands

- 10 vacant sites can accommodate a 75,000+ SF building
- If **all** develop to maximum FAR:
 - ❖ 1.7 MSF
 - ❖ 1,700- 3,400 jobs
 - ❖ Approximately \$405,000 in new net revenue
- If **all** develop at historical FAR:
 - ❖ 1 MSF
 - ❖ 1,000- 2,100 jobs
 - ❖ Approximately \$245,000 in new net revenue
- Total Development Impact Fees would range from \$12.9 - \$18.3 million, supporting future infrastructure investments

Economic Blueprint/General Plan Alignment



Policy ED-3.6 **Business Friendly Environment.** Support and align policies and fee structures around a business-first culture that welcomes a range of sectors that employ people across various wage levels.

Innovation and Advanced Manufacturing: Grow existing companies, attract new industry, and grow professional jobs.

ATTRACT DEVELOPMENT

Allow for New Hybrid of Developments that are Considered “Class A Industrial” or “Flex Space” (Action #4)

Allow Greater Intensification (FAR) and Taller Buildings to Increase Value of Employment Lands (Action #6)

FOSTER AN ENVIRONMENT THAT SUPPORTS BUSINESS GROWTH

Market Economic Blueprint Vision, Process & Incentives to Attract Business Investment (Action #10)

Economic Blueprint/General Plan Alignment



Policy ED-3.1 Business Retention, Expansion, and Attraction Efforts. Encourage retention and expansion of existing businesses, and attract new businesses, that:

- ✓ generate revenue to the City General Fund (such as retail and point-of-sale manufacturing)
- ✓ help provide greater financial strength and stability to the City
- ✓ add industry diversity to the local economy
- ✓ stimulate other businesses to develop in the city



Economic Blueprint

Four Industry Areas

Innovation and Advanced Manufacturing
Grow existing companies, attract new industry and grow professional jobs.

Retail
Grow retail offerings and strengthen commercial nodes.

Tourism
Grow leisure, agriculture, wine country and recreational tourism.

Healthcare
Grow and foster the medical service and diagnostics industry by attracting services and facilities.

Economic Indicators

The City will evaluate the success of the Economic Blueprint through different measures of success that are based upon the four economic pillars.



Primary Goals of Collaborative Approach



Respond to and address the concerns of the MHRGC

Create regulations that will not impact existing R&D and manufacturing businesses

Allow flexibility to attract the types of businesses that the City and Community agree we want in Morgan Hill

Ensure that new regulations are clear and enforceable



JOINT RECOMMENDATION



The key differences between the Initiative and the recommended ordinance are:

1. Increase ceiling height from “**clear** ceiling height” of 24 feet to “**ceiling** height” of >34 feet for 25% or more of floor area
2. Change definitions for
 - a. Dock-High-Door
 - b. Dock-High-Door to Square Foot Ratio
 - c. Ceiling Height
 - d. Light Manufacturing



Dock-High-Door



An opening to the outside of a building used to interface with trucks for the loading and/or unloading of goods, products, merchandise, or wares of any type and where the bottom of the opening is not at ground level but rather elevated by twenty-four (24) inches or more

Simplified Definition

Enforceable Language

Dock-High-Door-to-Square-Foot Ratio



The ratio of the total number of Dock-High-Doors that a building has to the total square feet of building floor area.

Simplified Definition

Enforceable Language

Ceiling Height



The clear vertical distance from the finished floor to the finished ceiling. If the ceiling is unfinished, the ceiling height is the distance from the floor to the lowest projecting beams, joists, or truss work.

Simplified Definition

Enforceable Language

Manufacturing Light



D. Manufacturing, Light. The manufacture, predominantly from previously prepared materials, of finished products, or parts, including processing, fabrication, **assembly**, treatment, and packaging of such products, and incidental storage, sales, and distribution of such products, but excluding basic industrial processing and custom manufacturing. Includes manufacture of electric and electronic instruments and devices. Excludes saw and planing mills and manufacturing uses involving primary production of wood, metal, or chemical products from raw materials. For purpose of this definition, the term “Assembly” includes creation of a component or end item made from a number of parts and subassemblies. Assembly does not include the putting together of kits, gift baskets, or packaging items produced elsewhere for purposes of e-commerce or wholesale trading.

Expanding what ‘assembly’ means in Manufacturing

Collaborative Ordinance

Current approach solves concerns with existing buildings

Increasing height allows a greater range of companies

New agreed upon language is clearer and enforceable

Collaborative ordinance will help build trust in the community



Recommendation



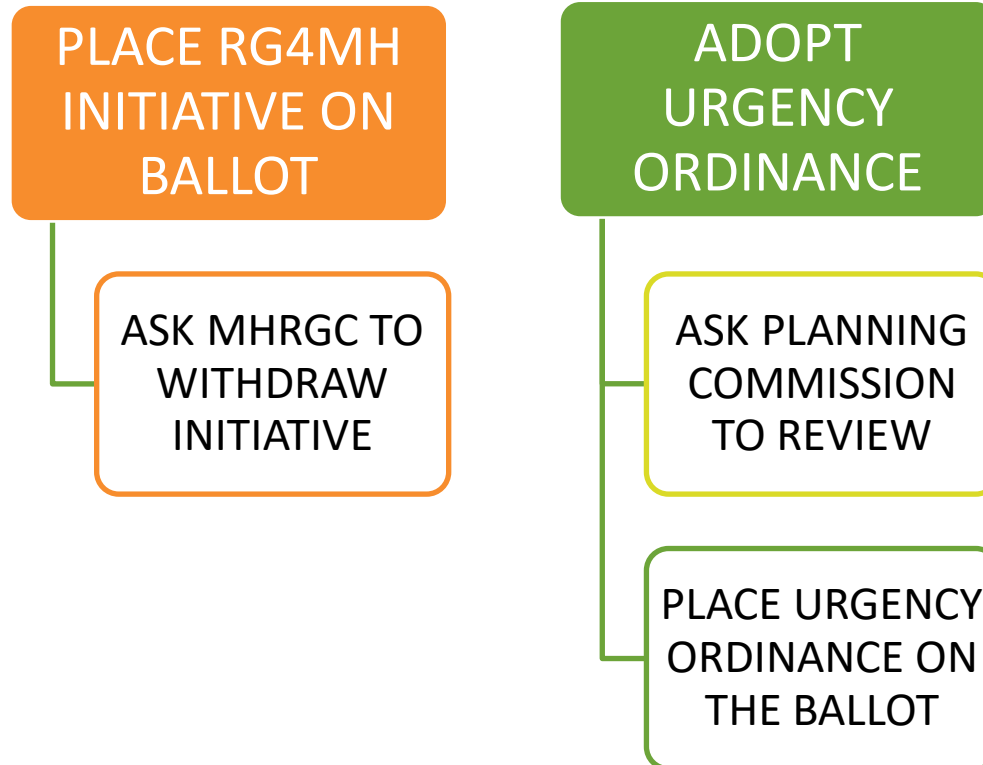
1. Adopt resolution placing Initiative Petition Titled: Citizens' initiative changing zoning regulations throughout the city of Morgan Hill to prohibit certain new storage and distribution uses in all areas of the City and amending the review process for large[1]scale development projects on the November 2022 ballot;
2. Adopt the alternative ordinance as an urgency ordinance; and
3. Direct the Planning Commission to make recommendations for permanent ordinance regulating large building design, including maximum dock-door-ratios for certain buildings, and consider placement of the alternative ordinance on the November 2022 ballot.

NEXT STEPS



1. Direct Planning Commission to review urgency ordinance for placement on ballot
2. Council to place urgency ordinance on ballot and RG4MH Initiative to be withdrawn

NEXT STEPS



QUESTIONS?



CITY OF MORGAN HILL

A Collaborative Solution

Morgan Hill City Leaders and residents working in partnership



This joint proposal will achieve our common goals to:

- ✓ Preserve our limited industrial land for uses that create sustainable jobs
- ✓ Encourage businesses more likely to generate a fiscal benefit to the City's general fund
- ✓ Promote the retention and expansion of existing businesses
- ✓ Minimize environmental impacts to protect the health and safety of residents

Four Components of the joint proposal:

1. The **Industrial Use Preservation Policy** will be updated to note that all forms of distribution as a primary business are prohibited in Morgan Hill.
2. The existing City Ordinance prohibiting distribution as a primary use will be bolstered.
 - The Zoning Code definition of Manufacturing will be updated to clarify that "assembly" cannot be interpreted as allowing for distribution.

A Collaborative Solution

Morgan Hill City Leaders and residents working in partnership



3. A **New City Ordinance** will replace the RG4MH Initiative

- Similar to the RG4MH Initiative, this ordinance will prevent future developments from being constructed that have all the physical characteristics of a Distribution Center.

<i>Differences between the RG4MH Initiative and the New Ordinance (to be prohibited ALL 3 conditions must be met)</i>		
RG4MH Initiative	New Ordinance	Reason for the Change
1. Building with floor area of 75,000 square feet or greater AND	No difference	NA
2. More than one dock-high door per 25,000 square feet of floor area AND	No difference	NA
3. A clear ceiling height of 24 feet or greater over more than 25% of the floor area	Internal ceiling height of greater than 34 feet over more than 25% of the floor area	A. Easier to validate, monitor and enforce. B. Effectively limits the internal clear ceiling height to approximately 28 feet which is below what developers target when constructing modern distribution centers. C. The effect of the RG4MH Initiative remains intact to prohibit large buildings optimized by design for distribution uses, while giving operational flexibility to other industries.

4. A **New Initiative** that includes the same building restrictions captured in the New Ordinance would be placed on a future ballot. A future City Council would not be able to change or rescind the changes made by the new ordinance if the **New Initiative** is approved by the voters of Morgan Hill.

Appendix 1

To address members of the public that commented
building restrictions aren't necessary

A use restriction *alone* is not sufficient

- Preventing distribution centers in Morgan Hill by not allowing them to be built in the first place is an efficient and proactive approach.
 - Alleviates the burden on City Staff to monitor and enforce use.
- The use restriction passed in November 2020 was not meant to be the final solution as noted in the Town Hall last month.
- A future City Council could change or remove the existing ban on distribution as a primary use.

The joint proposal's multi-prong approach is the optimal solution

- Policy clarifications, along with **use restrictions** *and* **physical building development standards**, is a truly comprehensive solution to prevent distribution centers in Morgan Hill.
- If this new Initiative is approved by the voters of Morgan Hill, then a future City Council would not be able to change or rescind the building restrictions in the new ordinance.
 - This step guarantees that the residents of Morgan Hill have a voice in our City's future.

Use Restriction *Only* – A Real Case Study

Trammell Crow Development - RedwoodTech@101

The application was submitted after the ban on distribution as a primary use.
While this development is not subject to the proposed changes being discussed, it can
provide some insight on a 'Use only' restriction.

Morgan Hill Chamber of Commerce

March 2021 Economic Development Meeting

A Chamber of Commerce member asked the Trammell Crow representative:

"The City has, if I understand it, the city has passed an ordinance banning all distribution large all the way through last-mile. Is there any way any of these buildings could be occupied by any kind of distribution if the city has already banned it as a use?"

The Response from Trammell Crow:

*"Uh that's not a challenge I want to take on currently. Uh, no is the answer. I guess, I **guess technically there's a conditional use permit process if you want to seek variances of any sort of beyond what's allowed** but no, I think November was a very important milestone for the City and the amendment of the zoning ordinance to preclude heavy industrial, fulfillment large fulfillment centers, parcel hubs, last-mile ecommerce couldn't be more clear so those things are not part of our thinking."*

Morgan Hill Chamber of Comm...
25d



Learn more about Trammell Crow Company's Projects and newly opened business
Morgan Hill Orthopedic Sports!

RedwoodTech @101

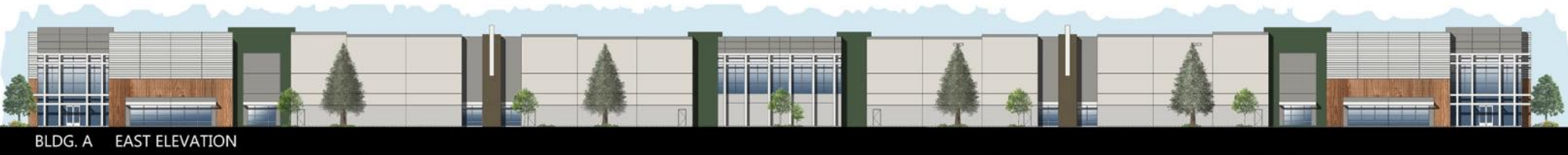
5 buildings. Total of 501,314 square feet and 76 dock doors ⁽¹⁾

Below: **Building A – 138,698 Square Feet**

- 14 dock doors & 14 ‘knock panels’ for up to 28 total (2.5 to 5.1 times the allowed amount)
- Internal ceiling height of approximately 37 feet (see page 19)

Building A exceeds limits on all three restrictions

BLDG.A SITE	
BLDG.A	
SITE AREA	
In s.f.	299,382
In acres	6.87
BUILDING AREA	
Office	8,000
Warehouse	100,000
Manufacturing	30,698
TOTAL	138,698



Sources:

<http://www.morgan-hill.ca.gov/2128/Redwood-Tech-at-101>
<https://www.morgan-hill.ca.gov/DocumentCenter/View/37864/Architectural-Plans> - Tabulation for building area - page 3
<https://www.morgan-hill.ca.gov/DocumentCenter/View/37858/Building-Elevations---Lot-A> Building Elevations - Lot A - Trammell Crow - ‘RedwoodTech@101’ - page 1

(1) 50 dock high doors in the elevation drawings but 26 more spaces noted as ‘knock out panels’ in the architectural drawings (see page 20)

RedwoodTech @101

5 buildings. Total of 501,314 square feet and 76 dock doors ⁽¹⁾

Below: **Building B - 92,841 square feet**

- 9 dock doors & 2 'knock panels' for up to 11 total (2.4 to 3.0 times the allowed amount)
- Internal ceiling height of approximately 37 feet (see page 19)

Building B exceeds limits on all three restrictions

BLDG.B SITE	
BLDG.B	
SITE AREA	
In s.f.	180,639
In acres	4.15
BUILDING AREA	
Office	5,500
Warehouse	80,000
Manufacturing	7,341
TOTAL	92,841



BLDG. B NORTH ELEVATION



BLDG. B WEST ELEVATION



BLDG. B SOUTH ELEVATION



BLDG. B EAST ELEVATION

Sources:

<http://www.morgan-hill.ca.gov/2128/Redwood-Tech-at-101>

<https://www.morgan-hill.ca.gov/DocumentCenter/View/37864/Architectural-Plans> - Tabulation for building area - page 3

<https://www.morgan-hill.ca.gov/DocumentCenter/View/37859/Building-Elevations---Lot-B> Building Elevations - Lot B - Trammell Crow - 'RedwoodTech@101' – Page 1

(1) 50 dock high doors in the elevation drawings but 26 more spaces noted as 'knock out panels' in the architectural drawings (see page 20)

Trammell Crow Press Release

Trammell Crow Company >> Trammell Crow Company Announces New Plans for Class A Business Park in Morgan Hill, California

Trammell Crow Company Announces New Plans for Class A Business Park in Morgan Hill, California

Morgan Hill, California | February 22, 2021

Redwood Tech @ 101 Sits on the East Side of Highway 101 and Will Offer 500K SF of Light Industrial Space Across Five Buildings

Trammell Crow Company (TCC), one of the largest commercial real estate developers in the United States, has announced plans for a new business park in Morgan Hill, California called Redwood Tech @ 101. The development will include approximately 500,000 square feet of light industrial space across five Class A buildings on the southern portion of the undeveloped land, which is located east of Highway 101 between Cochrane and Half Roads.

Redwood Tech @ 101 will sit on the southern 30 acres of the site that TCC acquired late in 2018 and will be comprised of five buildings spanning approximately 139,000 square feet; 122,000 square feet; 93,000 square feet; 74,000 square feet; and 73,000 square feet. Each building is ideal for single tenant occupancy but is designed to be divisible and accommodate multiple users.

The buildings are designed for prospective occupants as headquarters facilities, regional manufacturing and assembly/distribution facilities, and expansion space for existing Morgan Hill employers. Redwood Tech offers direct access off Highway 101 at Cochrane Road and is only 20 minutes from San Jose.

"With vacancy rates for this type of product at historic lows in Silicon Valley, the Morgan Hill developments will provide much needed capacity for growth for regional and Morgan Hill employers," said Don Little, Senior Vice President of TCC's Northern California Business Unit.

Redwood Tech @ 101 is so-named for the mature 35- to 40-foot redwood trees TCC will be incorporating as part of its lush landscaping plans for the park, which also features enhanced architectural elements and materials for the buildings.

The northern portion of the site, situated at the corner of Cochrane Road and DePaul Avenue, will be constructed at a later date. Preliminary plans will comply with existing zoning and include a mix of office/employment facilities and commercial space. Plans are expected to be submitted later in 2021.

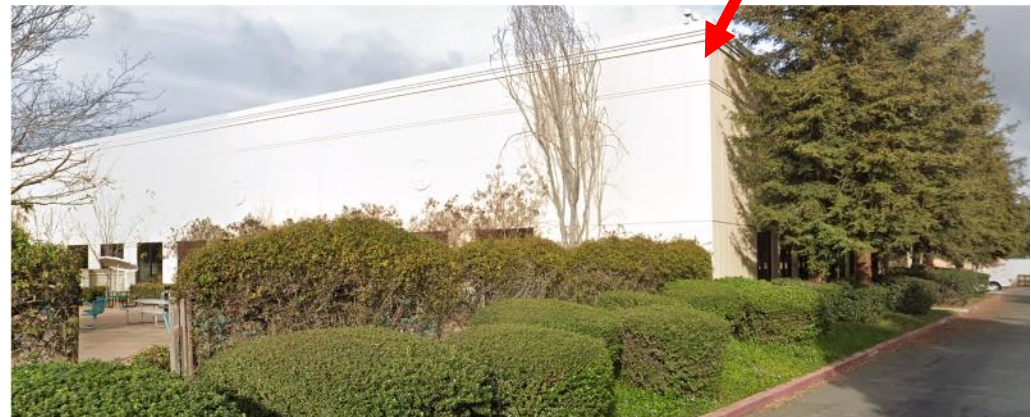


The buildings are designed for prospective occupants as headquarters facilities, regional manufacturing and **assembly/distribution facilities**, and expansion space for existing Morgan Hill employers.

Use Restriction *Only* – A Real Case Study
Existing Business in Morgan Hill

NxEdge

925 Lightpost Way, Morgan Hill, CA 95037



Source: Google Maps – street view

Specialized

15130 Concord Cir, Morgan Hill, CA 95037



Source: Google Maps – street view

Paramit

18735 Madrone Pkwy, Morgan Hill, CA 95037

View from Madrone Pkwy



View from Monterey Rd



Source: Google Maps – street view

AirTronics

140 San Pedro Ave, Morgan Hill, CA 95037

View from Madrone Pkwy



Source: Google Maps – street view

Prism Electronics

Corporate Headquarters: 900 Lightpost Way, Morgan Hill, CA 95037



Asset Recovery: 18305 Sutter Blvd. Morgan Hill, CA 95037



Source: Google Maps – street view and Prism’s website: <http://prismelectronics.net/index.php/contacts>

Sun Basket

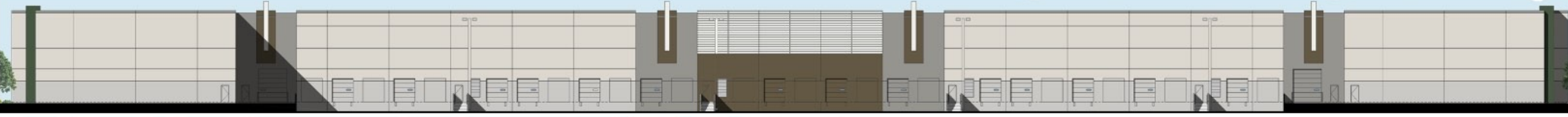
18675 Madrone Pkwy, Morgan Hill, CA 95037



Source: Google Maps – street view

Trammell Crow buildings off of Cochrane Rd look similar to previously constructed distribution center facilities

Cochrane Rd - RedwoodTech@101 - building A



Amazon Fulfillment Center



FedEx Distribution Center



Vitamin Shoppe Distribution Center



Compare to examples of buildings occupied by businesses in Morgan Hill

NxEdge



Specialized



Despite the existing ban on distribution as a primary use, the Trammell Crow proposed buildings in the RedwoodTech@101 development:

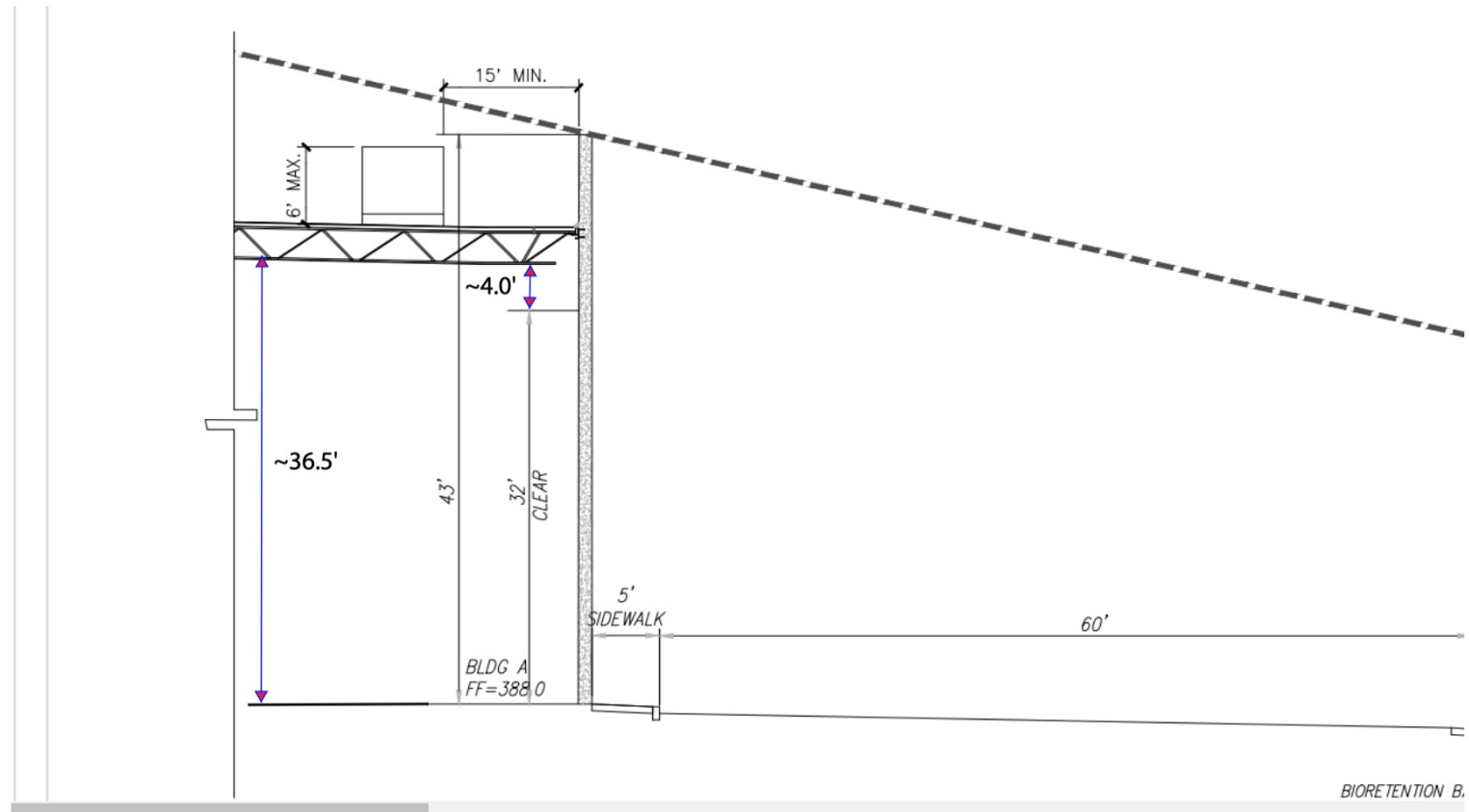
- Look very similar to distribution facilities Trammell Crow previously developed
 - Large tilt up concrete buildings
 - Very few windows
 - High number of dock doors
- Look nothing like the buildings that existing companies in Morgan Hill occupy
 - NxEdge, Specialized, Sun Basket (Tomalo Foods), AirTronics, Prism Electronics, Paramit
 - Numerous windows
 - Architectural details
 - Lower profile
- 46% percent of the square footage is noted for 'warehouse' per the architectural drawings

These large buildings optimized for 'warehouse' activities will:

- Crowd out investment from other industries that the community and our City Council desire, such as R&D, life sciences and advanced manufacturing.
- Less industrial land will be available for existing companies in Morgan Hill to expand.

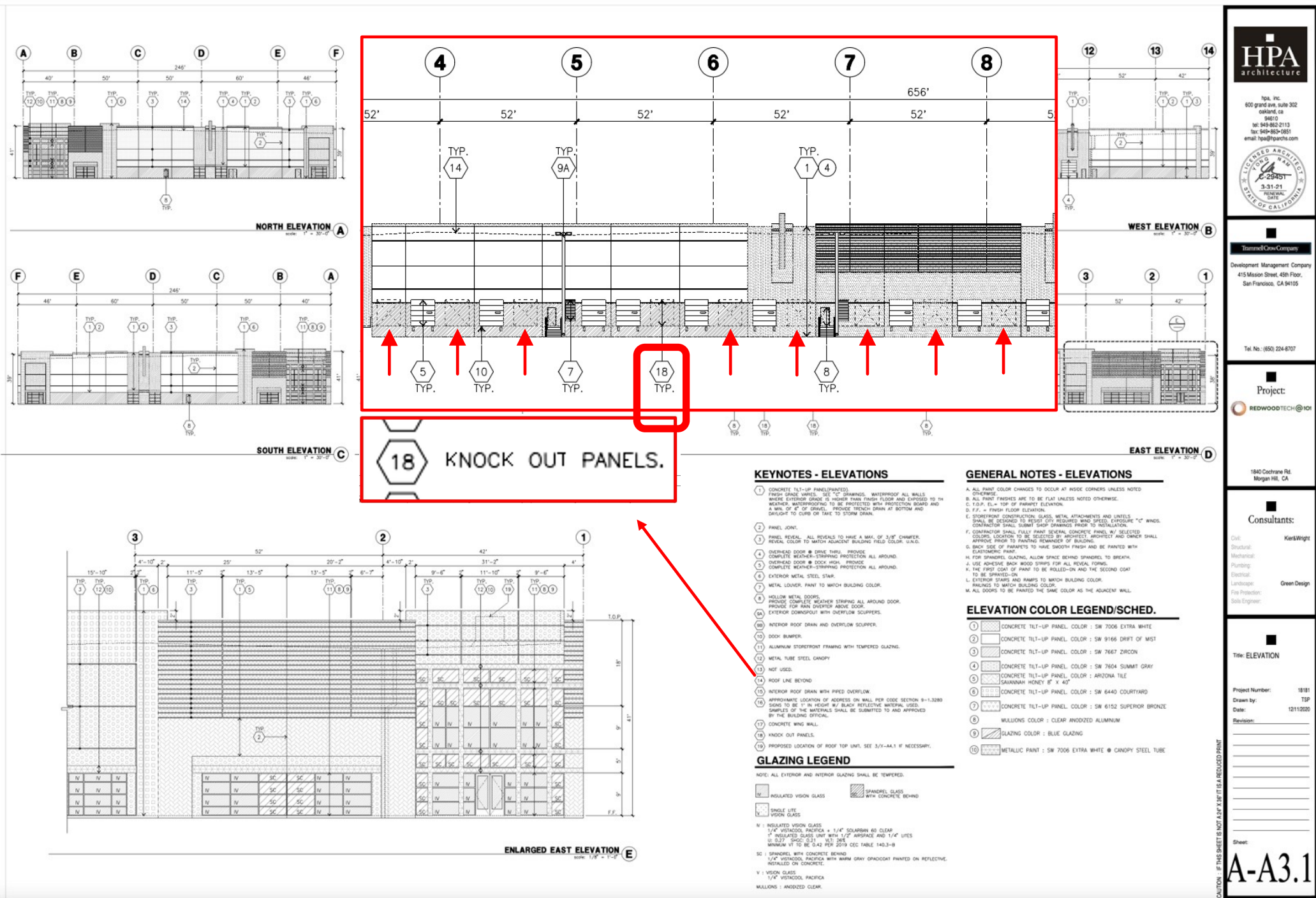
**This is why we need the comprehensive,
multi-prong approach in the joint proposal!**

Estimate of Ceiling height for Redwood Tech @101 using the architectural plans



Source: <http://www.morgan-hill.ca.gov/DocumentCenter/View/37864/Architectural-Plans>

Architectural Plans – Trammell Crow - 'RedwoodTech@101' - page 23



PROJECT DATA

	BLDG.A SITE	BLDG.B SITE	BLDG.C SITE	BLDG.D & E SITE			
	BLDG.A	BLDG.B	BLDG.C	BLDG.D	BLDG.E	TOTAL OF BLDG.D & E	TOTAL
SITE AREA							
In s.f.	299,382	180,639	392,817			400,411	1,273,249 s.f.
In acres	6.87	4.15	9.02			9.19	29.23 acre
BUILDING AREA							
Office	8,000	5,500	30,000	10,000	10,000		63,500 s.f.
Warehouse	100,000	80,000	0	0	52,000		232,000 sf
Manufacturing	30,698	7,341	92,101	63,668	12,006		205,814 sf
TOTAL	138,698	92,841	122,101	73,668	74,006		501,314 s.f.
COVERAGE	46.3%	51.4%	31.1%			36.9%	39.4%
AUTO PARKING REQUIRED							
Office: 1/300 s.f.	27	18	100	33	33		212 stalls
Warehouse: 1/1,000 s.f.	100	80	0	0	52		232 stalls
Manufacturing: 1/500 s.f.	61	15	184	127	24		412 stalls
TOTAL	188	113	284	161	109		855 stalls
AUTO PARKING PROVIDED							
Standard (9' x 18')	101	53	279	112	55		600 stalls
Compact (8' x 16')	65	45	66	39	40		255 stalls
Accessible parking (9' x 18')	2	2	4	2	2		12 stalls
Accessible Van (12' x 18')	4	3	5	4	3		19 stalls
EV/Clean Air/Vanpool	4	3	8	4	3		22 stalls
Future EV Charging Station (6% Req'd)	10	5	22	8	4		49 stalls
Future EVCS (Standard Accessible)	1	1	1	1	1		5 stalls
Future EVCS (Van)	1	1	1	1	1		5 stalls
TOTAL	188	113	386	171	109		967 stalls
Provided Parking Ratio	1 / 734	1 / 822	1 / 307	1 / 422	1 / 713		1 / 513
Actual EV Charging Station (*)	6	4	12	6	4		32 stalls
*Note: Actual EV charging station per MHMC 18.72.040 C will be provided Under Separate Application for Future Tenant Improvement.							
BIKE RACKS REQUIRED							
Long term(1 per 20 required automobile spa	10	6	15	9	6		46
Short term(10% of required automobile spa	19	12	29	17	11		88
BIKE RACKS PROVIDED							
Long term	10	6	15	9	6		46
Short term	19	12	29	17	11		88
ZONING ORDINANCE FOR CITY							
Zoning Destination - PUD (IL)							
General Plan Designation - Industrial							
IL (LIGHT INDUSTRIAL) ZONING REQUIREMENTS							
Area: 54.9 - 29.6 acres							
Maximum Building Coverage - 60%							
Maximum Height Allowed - 50'							
Building Setback							
Front - 30'							
Rear - 20'							
Street Side - 15'							
Side - 10'							
Abuts R Zone - 30'							
Landscape Setback							
101 Freeway - 30'							
Depaul Drive - 25'							
Half Road - 20'							
*Note: 3' - 6' high berms, fence or combination to avoid car headlight. (per Design Guideline)							

232,000 represents
46% of the total
square footage

Source: <http://www.morgan-hill.ca.gov/DocumentCenter/View/37864/Architectural-Plans>

Architectural Plans – Trammell Crow - 'RedwoodTech@101' - page 2

Trammell Crow Company (TCC)
Coldwater Depot Logistics Center - Phase III

The Vitamin Shoppe, Inc. - Western Region distribution center, serving customers within the western half of the US from Texas to Washington

Coldwater Depot Logistics Center Phase III is a Class A industrial building featuring a **cross-dock design with dock-high and grade-level loading, 30-foot ceiling clear heights**, trailer parking and secured truck courts. The project is located on 11.4 acres at the northeast corner of Van Buren and 127th Avenue in Avondale, Arizona.



Source: <https://www.trammellcrow.com/en/projects/coldwater-depot-logistics-center-phase-iii>

Trammell Crow Company (TCC)
I-215 Logistics Center

Amazon Fulfillment center in Moreno Valley, CA



Source: <https://www.trammellcrow.com/en/projects/i-215-logistics-center-amazon-fulfillment>

Trammell Crow Company (TCC)
FedEx Distribution Center, Austin TX



Sources:

<https://rebusinessonline.com/trammell-crow-clarion-complete-85000-sf-distribution-center-for-fedex-in-austin/>

<https://www.trammellcrow.com/en/about/media-center/tcc-announces-completion-of-85k-sf-austin-distribution-facility-for-fedex>

Appendix 2

To address members of the public that suggested
the building restrictions can be circumvented

A building that exceeds all three of the attributes in the joint proposal is optimized for distribution

- ‘Simply’ reducing the dock door ratio, ceiling height or square footage so all three thresholds are not exceeded would make a facility much less ideal for distribution activities now and especially in the future.
- Given the large amount of capital to construct a building, a developer would have a strong financial incentive to find another location, other than Morgan Hill, where these restrictions would not hinder their ability to maximize their return on investment.
 - 10.6 billion online parcel deliveries in 2020 and projected to grow to more than 19 billion in 2025*
 - Ceiling heights continue to increase to accommodate the surge in volume throughput (see next slide)

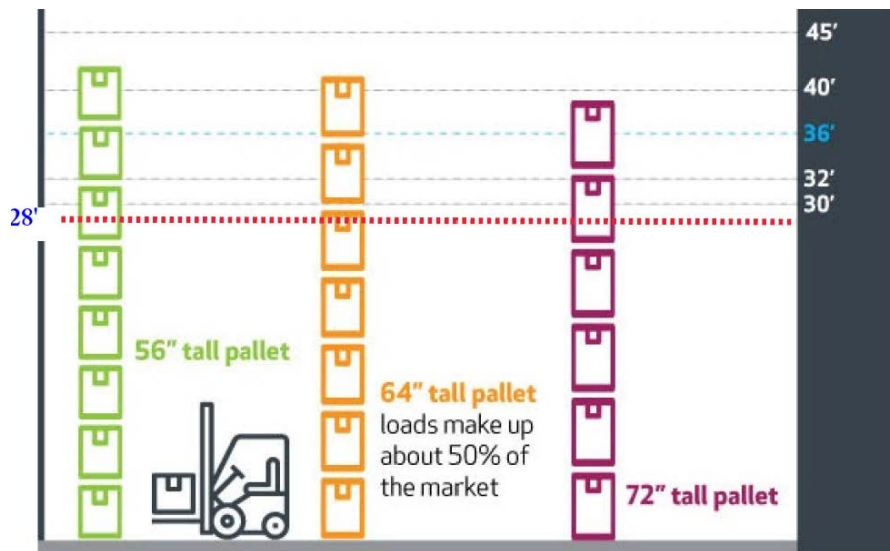
***Source:**

<https://www.digitalcommerce360.com/2020/05/26/amazon-is-the-fourth%E2%80%91largest-us-delivery-service-and-growing-fast/#:~:text=Amazon%20is%20approaching%20a%20truly,delivery%20companies%20in%20the%20world.&text=1%20in%20the%202020%20Digital,in%202019%2C%20the%20report%20says>

What is driving taller Clear Ceiling Heights ?



- Modern high-volume distribution tenants demand more 'cubic' space especially when facility is targeted to support a large geographic area
- More 'cubic' space allows more product and a higher number of unique items (SKU's) to be handled in the same facility



- Fueled by e-commerce capital investments, technology advances in lifts, robotic arms, and advanced sorting systems have made it less expensive to go 'up' rather than 'out'. Developments targeted for distribution uses want high ceilings.
- 32 foot clear-height in distribution facilities has become commonplace. By limiting clear height to ~28 feet, buildings targeting distribution tenants will be limited, preserving industrial land for uses and businesses that meet community goals.