

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CITY OF MORGAN HILL,
Plaintiff and Respondent,
v.
SHANNON BUSHEY, AS REGISTRAR
OF VOTERS, etc., et al.,
Defendants and Respondents;

RIVER PARK HOSPITALITY,
Real Party in Interest and
Petitioner;
MORGAN HILL HOTEL COALITION,
Real Party in Interest and
Respondent.

Case No. S243042
Sixth Dist. No. H043426
Santa Clara Super. Ct. No. 16-
CV-292595

SUPREME COURT
FILED

DEC 12 2017

Jorge Navarrete Clerk

Deputy

**PLAINTIFF AND RESPONDENT CITY OF MORGAN HILL'S
REQUEST FOR JUDICIAL NOTICE ON REPLY; DECLARATION
OF SHERRI S. KAISER; MEMORANDUM OF POINTS AND
AUTHORITIES**

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE; THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT; AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to California Evidence Code sections 450 et seq., and California Rules of Court, Rules 8.252 and 8.520, Plaintiff and Respondent City of Morgan Hill (“the City”) respectfully requests this Court to take judicial notice of the document listed below. The document is relevant to determining the intent of the referendum at issue in this matter for the purposes of the City’s compliance with Elections Code section 9241. The document was not presented to the trial court, and it does not relate to proceedings occurring after the order that is the subject of the appeal.

Dated: December 11, 2017

LEONE & ALBERTS



KATHERINE A. ALBERTS

Attorneys for Plaintiff and Respondent
CITY OF MORGAN HILL

**DECLARATION OF SHERRI S. KAISER IN SUPPORT OF
PLAINTIFF AND RESPONDENT CITY OF MORGAN HILL'S
REQUEST FOR JUDICIAL NOTICE ON REPLY**

I, Sherri S. Kaiser, declare as follows:

1. I represent the City of Morgan Hill in this matter, and if called as a witness, I could and would provide the information set forth below on the basis of my own personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of the Hotel Coalition presentation, dated March 18, 2015, which I obtained from the City of Morgan Hill's Official Website, as attachment No.5 to Staff Report File No. 16-071, Version 1, created on February 9, 2016. The document is available at, and I retrieved it from, <https://morgan-hill.legislatr.com/LegislationDetail.aspx?ID=2570675&GUID=6AEF1D12-14F9-4962-A325-E3379BDE3D46>.

I declare under penalty of perjury of the State of California that the information above is true and correct. Executed this 11th day of December, 2017, in Walnut Creek, California.



SHERRI S. KAISER



**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF PLAINTIFF AND RESPONDENT CITY OF MORGAN HILL'S
REQUEST FOR JUDICIAL NOTICE ON REPLY**

Evidence Code section 459 provides reviewing courts the same power to take judicial notice of documents as trial courts under Evidence Code sections 450 et seq. (Evid. Code § 459.) In tandem, Rules 8.252 and 8.520 of the California Rules of Court provide that a court may take judicial notice of documents relevant to the issues under review. (Cal. Rules of Court, rules 8.252(a)(2)(A), 8.520(g).)

Exhibit A, attached to the declaration of Sherri S. Kaiser, is a presentation that Appellant Hotel Coalition made to the Morgan Hill City Council while it was deliberating over whether to adopt Ordinance No. 2131 (New Series), which is the ordinance that is the subject of the referendum at issue in this matter. Exhibit A is judicially noticeable as material considered by the City's legislative body in its decisionmaking process. (*Porter v. Board of Retirement of Orange County Employees Retirement System* (2013) 222 Cal.App.4th 335, 338, 344-345 [taking judicial notice of legislative committee and Department of Finance analyses of proposed bill, prior bill drafts, and letter from bill proponent to member of the Legislature]).

Dated: December 11, 2017

LEONE & ALBERTS



KATHERINE A. ALBERTS

Attorneys for Plaintiff and Respondent
CITY OF MORGAN HILL

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Meeting Archives prior to June 2015

[Details](#) [Reports](#)

File #: 16-071 Version: 1 Name:

Type: Staff Report Status: Other Business

File created: 2/9/2016 In control: [City Council](#)

On agenda: 2/17/2016 Final action: 4/1/2016

Title: CITY ACTION IN RESPONSE TO REFERENDUM ON ZA-14-26: LIGHTPOST-RIVERPARK HOSPITALITY

Attachments: [1. 2-17-16 Resolution City Council Lightpost Riverpark Hotel.pdf](#), [2. May 20, 2015 Staff Report #21A](#), [3. March 18, 2015 Staff Report #10](#), [4. March 18, 2015 #10 Staff Presentation.pdf](#), [5. March 18, 2015 #10 Hotel Coalition presentation.pdf](#), [6. November 19, 2014 Staff Report #14](#)

[History \(1\)](#) [Staff Report Text](#)

1 record		Group	Export				
Version	Ver.	Action By	Action	Result	Action Details	Meeting Details	Video
2/17/2016	1	City Council	accepted	Pass	Action details	Meeting details	Video

March 18th, 2015

**RE: ZA-14-26
Lightpost – Riverpark
Hospitality**

Zoning Amendment from
Light Industrial to
Commercial for Hotel Use

Morgan Hill
Hotel Coalition
Presentation to
City Council

By: Holiday Inn Express MH
Courtyard Marriott MH
Residence Inn MH
Hampton Inn MH
Comfort Inn MH
Quality Inn MH
Microtel MH

Morgan Hill Hotel Coalition

Current Morgan Hill Supply of Hotel Rooms – Upper Midscale Segment

Hotel Name	Number of Rooms
Courtyard by Marriott	90
Comfort Inn	53
Hampton Inn	106
Holiday Inn Express	85
Quality Inn	83
Residence Inn by Marriott	<u>20</u>
Total Rooms:	507
Proposed Hotel – StonePark Capital	104
% Increase in Room Supply	20.5%
+ 2 Hilton Hotels – River Park Hospitality	190
% Increase in Room Supply	37.5%
TOTAL % INCREASE ROOM SUPPLY	58%

Corporate Room Demand Generators in Morgan Hill

> 300 Nights per Year*	< 300 Night per Year*
Anritsu	Anaerobe Systems
Specialized Bicycles	Infineon
IBM (in San Jose)	Sakata Seeds
	In N Out
	ITT Corporation
	Paramit
	Tencate
	Flextronics
	Construction companies

Notable decrease in demand as they open offices in Milpitas

Conclusion: There are not sufficient large corporate demand generators in Morgan Hill to fill its existing supply. Our hotels are busy because of **San Jose overflow**.

*Note: Room demand differs between hotels. Data is based on Holiday Inn Express

Employers that have left Morgan Hill in past 5 Years

- Hospira
 - Replaced by Shoe Palace
 - No room demand
- Comcast
- Custom Chrome
- Fox Racing
- Sunseed

New Large Employers entering Morgan Hill (150+ Employees) in past 5 years



- On positive note, Morgan Hill's existing businesses are expanding
- No new major employers are entering market
- Shifting demand closer to San Jose / Milpitas

Morgan Hill Hotel Coalition

% Breakdown of the Final (office) Destination of Morgan Hill Hotel Guests on Weekdays

Hotel	San Jose	North (Peninsula)	South (Gilroy)	Other	Morgan Hill
Holiday Inn Express	50%	5%	2%	13%	30%
Courtyard	50%	0%	0%	1%	49%
Residence Inn	45%	0%	0%	0%	55%
Comfort Inn	65%	5%	10%	5%	15%
Quality Inn	55%	5%	0%	5%	35%
Hampton Inn	40%	0%	10%	10%	40%

Source: These are only estimates and each hotel individually provided this information
 Note: Hotels not included in this survey: Extended Stay of America (99), Microtel (60), Executive Inn (30)

San Jose Hotel Room Supply Explosion

January 2014

Pipeline			
Market: San Jose/Santa Cruz, CA			
Under Construction		Planning	
Properties	Rooms	Properties	Rooms
8	991	12	1534

15 properties and over 2,000 rooms added to pipeline in 1 year

January 2015

Pipeline			
Market: San Jose/Santa Cruz, CA			
Under Construction		Planning	
Properties	Rooms	Properties	Rooms
8	1063	27	3456

- San Jose is expected to have an increase supply of 4,519 rooms in next 2 Years (1,063 + 3,456)
- Total mid-scale rooms in San Jose / Santa Cruz Tract: 29,076. Total room supply: 34,000
- **% Increase: 15.5%**

Source: Star Report dated February 17th, 2014 & February 16th, 2015

San Jose Room Supply Impact on Morgan Hill Hotel Occupancy

	# Rooms:	Estimated				AFTER SJ Supply Increase				2017 fwd. Occupancy
		Annual Room Supply	% Occupancy	Annual Room Nights Sold	% of Rooms From San Jose	Room nights in Morgan Hill, not SJ From San Jose	% Deciding to Stay	Room nights in Morgan Hill, not SJ From San Jose	Total Room Nights Sold	
HI Express	85	31,025	70%	21,718	50%	10,859	60%	4,344	17,374	55%
Courtyard	90	32,850	70%	22,995	50%	11,498	60%	4,599	18,396	56%
Residence Inn	90	32,850	70%	22,995	50%	11,498	60%	4,599	18,396	56%
Hampton Inn	106	38,690	70%	27,083	50%	13,542	60%	5,417	21,666	56%
Comfort Inn	53	19,345	70%	13,542	50%	6,771	60%	2,708	10,833	56%
Quality Inn	83	30,295	70%	21,207	50%	10,603	60%	4,241	16,965	55%
	507	185,055		129,539		64,769		25,908		

	New Supply of:	Total Annual Room Nights	Morgan Hill Contribution	% Occupancy
San Jose	4,519	1,649,435	25,908	1.6%

Assumptions:

- After San Jose room supply increase, Morgan Hill hotels are still able to capture 60% the San Jose traffic
 - Lose only 40% (quite optimistic)
- Morgan Hill hotels occupancy drops to 56% from 70%
- Average Daily Rate (ADR) drops by 15% per hotel

Morgan Hill Hotel Coalition

What is the Fiscal Impact to Morgan Hill from a TOT perspective?

	# Rooms:	Estimated				New Average		2017 fwdl.	
		Annual Room Nights Supply	% Occupancy	Average Daily Rate:	Room Revenue:	TOT Tax: 10%	New Occupancy After Supply Increase:		Daily Rate -15%
HI Express	85	31,025	70%	\$ 120	\$ 2,606,100	\$ 260,610	56%	\$ 102	177,215
Courtyard	90	32,850	70%	\$ 130	\$ 2,989,350	\$ 298,935	56%	\$ 111	203,276
Residence Inn	90	32,850	70%	\$ 130	\$ 2,989,350	\$ 298,935	56%	\$ 111	203,276
Hampton Inn	106	38,690	70%	\$ 125	\$ 3,385,375	\$ 338,538	56%	\$ 106	230,206
Comfort Inn	53	19,345	70%	\$ 110	\$ 1,489,565	\$ 148,957	56%	\$ 94	101,290
Quality Inn	83	30,295	70%	\$ 100	\$ 2,120,650	\$ 212,065	56%	\$ 85	144,204
	507	185,055			\$15,580,390	\$1,558,039			\$1,059,467

TOT Collection Change: -\$ 498,572
-32.0%

Will adding additional rooms to Morgan Hill alleviate the situation?

- NO!!
- Hotel rooms do not create demand
- Rate war between Morgan Hill hotels
- Rates further depressed
- TOT collection is reduced because of rate and occupancy contraction (32% reduction)
- Hotel industry is entering the top of a 7 year cycle, which began in 2009
- The market condition in 2017 when hotels open - ??

What happens to the Morgan Hill Hotel economy when San Jose's supply comes on line?

- San Jose corporations stop sending their travelers to Morgan Hill because there is adequate room supply in San Jose at attractive rates, and Morgan Hill hotels occupancy drops by 14-25%
- **With 58% increase in room supply in Morgan Hill, occupancy will drop by 30-40%**
- Average Daily Rate Decreases by 15-40% to attract those corporate clients back to Morgan Hill
- City's TOT Revenue drops by **at least 32%**

Result:

- Lower end clientele entering Morgan Hill
 - More criminal activity, disturbances, car thefts, etc...
 - Increased burden Morgan Hill Police and Fire Department
- Deferred maintenance and overall quality of existing room supply
 - Morgan Hill gains reputation of "hospitality ghost-town" and poor quality hotels

Facts:

- Hotel room supply does **NOI** create hotel room demand
- Most of Morgan Hill's weekday guest travel OUTSIDE of Morgan Hill for business
 - High concentration traveling to San Jose
- Morgan Hill is an overflow market for San Jose and the Bay Area
 - Conventions
- Morgan Hill does not have the corporate base to fill its **existing** supply of hotel rooms on weekdays
- Morgan Hill's new hotels: Marriott properties, Comfort Inn and Holiday Inn Express were constructed in anticipation of Coyote Creek's development during the Dot Com Boom, but that never materialized
 - Oversupply of hotel rooms
- Weekend business: A hotel cannot survive on weekend business alone: tourism and sports tournaments create demand 7-8 months of the year only
- Downtown boutique hotel cannot be support with additional supply
- **Conclusion:** The market **cannot** absorb an additional **190 rooms**

Key Takeaways

- Morgan Hill Hotel Coalition is **NOT** anti-growth
 - Advocate sustainable growth
 - Allow 1 hotel only and observe the rate and occupancy trends
- Morgan Hill's economy should not be tied to San Jose's fate, so we need our own strong employment base before expanding the hospitality sector
 - Attract higher wage jobs
- Expand the Morgan Hill room supply in proportion to actual demand, not speculation
 - The market needs more demand generators
 - Industrial users and or larger corporations
 - Tourism alone cannot support increased supply
- Rezoning from Industrial to Commercial gives unfair advantage to user
 - Sets wrong example for existing commercial space users
 - Changes risk profile for future developers and existing hotels
 - Office or industrial complex with Fortunate 500 tenant is ideal
- History has taught us important lessons in overbuilding and oversupply in the past 15 years – Let's not make the same mistakes again

Recommended Next Steps

- Allow 1 hotel development until there are additional corporate demand generators
- Understand the occupancy and rate impact of San Jose Room supply increase and StonePark Capital's proposed hotel
 - 7 Year cycle
- The Morgan Hill Hotel Coalition intends to form a TBID ASAP to promote tourism within Morgan Hill
 - Increase TOT tax collections for city
 - Dedicated marketing budget to promote local businesses and events
 - Details to be discussed with Edith Ramirez, Economic Development Manager
- Request for Continuance for this proposal

Appendix A

Scenario Analysis #2

- After San Jose supply increase, Morgan Hill captures 50% of San Jose travelers
- Average Daily Rate drops 20%
- Morgan Hill TOT collections falls by 40%

	# Rooms:	Estimated				AFTER SJ Supply Increase				2017 fwd.	
		Annual Room Supply	% Occupancy	Annual Room Nights Sold	% of Rooms From San Jose	Room nights From San Jose	% Deciding to Stay in Morgan Hill, not SJ	Room nights From San Jose	Total Room Nights Sold	New % Occupancy	
HI Express	85	31,025	70%	21,718	50%	10,859	50%	5,429	16,288	53%	
Courtyard	90	32,850	70%	22,995	50%	11,498	50%	5,749	17,246	53%	
Residence Inn	90	32,850	70%	22,995	50%	11,498	50%	5,749	17,246	53%	
Hampton Inn	106	38,690	70%	27,083	50%	13,542	50%	6,771	20,312	53%	
Comfort Inn	53	19,345	70%	13,542	50%	6,771	50%	3,385	10,156	53%	
Quality Inn	83	30,295	70%	21,207	50%	10,603	50%	5,302	15,905	53%	
	507	185,055		129,539		64,759		32,385			

	# Rooms:	Estimated			New Average			2017 fwd.	
		Annual Room Supply	% Occupancy	Average Daily Rate	Room Revenue	TOT Tax: 10%	New Occupancy After Supply Increase:	Daily Rate -20%	New TOT Tax Collections:
HI Express	85	31,025	70%	\$ 120	\$ 2,606,100	\$ 260,610	53%	\$ 96	156,366
Courtyard	90	32,850	70%	\$ 130	\$ 2,989,350	\$ 298,935	53%	\$ 104	179,361
Residence Inn	90	32,850	70%	\$ 130	\$ 2,989,350	\$ 298,935	53%	\$ 104	179,361
Hampton Inn	106	38,690	70%	\$ 125	\$ 3,385,375	\$ 338,538	53%	\$ 100	203,123
Comfort Inn	53	19,345	70%	\$ 110	\$ 1,489,565	\$ 148,957	53%	\$ 88	89,374
Quality Inn	83	30,295	70%	\$ 100	\$ 2,120,650	\$ 212,065	53%	\$ 80	127,239
	507	185,055			\$15,580,390	\$ 1,558,039			\$ 934,823

TOT Collection Change: **-\$ 623,216**
-40.0%

Scenario Analysis #3

- After San Jose supply increase, Morgan Hill captures 40% of San Jose travelers
- Average Daily Rate drops 25%
- Morgan Hill TOT collections falls by 47.5%

# Rooms:	Estimated				AFTER SJ Supply Increase				2017 fwd.	
	Annual Room Nights Supply	% Occupancy	Annual Room Nights Sold	% of Rooms From San Jose	Room nights From San Jose	% Deciding to Stay in Morgan Hill, not SJ From San Jose	Room nights From San Jose	Total Room Nights Sold	New % Occupancy	
HI Express	85	70%	21,718	50%	10,859	40%	6,515	15,202	49%	
Courtyard	90	70%	22,995	50%	11,498	40%	6,899	16,097	49%	
Residence Inn	90	70%	22,995	50%	11,498	40%	6,899	16,097	49%	
Hampton Inn	106	70%	27,083	50%	13,542	40%	8,125	18,958	49%	
Comfort Inn	53	70%	13,542	50%	6,771	40%	4,062	9,479	49%	
Quality Inn	83	70%	21,207	50%	10,603	40%	5,362	14,845	49%	
	507		129,539		64,769		38,862			

# Rooms:	Estimated				New Average 2017 fwd.			
	Annual Room Nights Supply	% Occupancy	Average Daily Rate	Room Revenue	TOT Tax: 10%	New Occupancy After Supply Increase:	Daily Rate -25%	New TOT Tax Collections:
HI Express	85	70%	\$ 120	\$ 2,606,100	\$ 260,610	49%	\$ 90	\$ 136,820
Courtyard	90	70%	\$ 130	\$ 2,989,350	\$ 298,935	49%	\$ 98	\$ 156,941
Residence Inn	90	70%	\$ 130	\$ 2,989,350	\$ 298,935	49%	\$ 98	\$ 156,941
Hampton Inn	106	70%	\$ 125	\$ 3,385,375	\$ 338,538	49%	\$ 94	\$ 177,732
Comfort Inn	53	70%	\$ 110	\$ 1,489,565	\$ 148,957	49%	\$ 83	\$ 78,202
Quality Inn	83	70%	\$ 100	\$ 2,120,650	\$ 212,065	49%	\$ 75	\$ 111,334
	507			\$15,580,390	\$ 1,558,039			\$ 817,970

TOT Collection Change: **-\$ 740,069**
-47.5%

Contact Information

• For further information, please contact:

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Re: City of Morgan Hill v. Shannon Bushey, et al.
California Supreme Court Case No.:S243042
Court of Appeal Case No.: H043426

PROOF OF SERVICE

I, the undersigned, declare that I am employed in the City of Walnut Creek, State of California. I am over the age of 18 years and not a party to the within cause; my business address is 2175 N. California Blvd., Suite 900, Walnut Creek, California.

On December 11, 2017, I served the following documents:

PLAINTIFF AND RESPONDENT CITY OF MORGAN HILL'S REQUEST FOR JUDICIAL NOTICE ON REPLY; DECLARATION OF SHERRI S. KAISER; MEMORANDUM OF POINTS AND AUTHORITIES

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Clerk of the Court
Santa Clara County Superior Court
The Honorable Theodore Zayner
191 N. First Street
San Jose, CA 95113

VIA MAIL

- By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above and placing each for collection and mailing on that date following ordinary business practices. I am readily familiar with my firm's business practice of collection and processing of correspondence for mailing with the United States Postal Service and correspondence placed for collection and mailing would be deposited with the United States Postal Service at Walnut Creek, California, with postage thereon fully prepaid, that same day in the ordinary course of business.
- By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and depositing each envelope(s), with postage thereon fully prepaid, in the mail at Walnut Creek, California.

VIA OVERNIGHT MAIL/COURIER

- By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and placing each for collection by overnight mail service, or overnight courier service. I am readily familiar with my firm's business practice of collection and processing of correspondence/documents for overnight mail or overnight courier service, and that it is to be delivered to an authorized courier or driver authorized by the overnight mail carrier to receive documents, with delivery fees paid or provided for, that same day, for delivery on the following business day.

VIA FACSIMILE

- By arranging for facsimile transmission from facsimile number 925-974-8601 to the above listed facsimile number(s) prior to 5:00 p.m. I am readily familiar with my firm's business practice of collection and processing of correspondence via facsimile transmission(s) and any such correspondence would be transmitted via facsimile to the designated numbers in the ordinary course of business. The facsimile transmission(s) was reported as complete and without error.

VIA HAND-DELIVERY

- By placing a true copy thereof enclosed in a sealed envelope(s), addressed as above, and causing each envelope(s) to be hand-served on that day by D&T SERVICES in the ordinary course of my firm's business practice.

VIA ELECTRONIC SERVICE – California Rules of Court, Rule 8.212(c)(a)

- By electronically filing the document through TrueFiling, per California Rules of Court, Rule 8.212(c)(a), all requirements are satisfied.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 11, 2017, at Walnut Creek, California.


KIMBERLY N. SUTTON