

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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CITY OF MORGAN HILL

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Attorneys for Plaintiff and Petitioner  
CITY OF MORGAN HILL

**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 11<sup>th</sup> 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				
Date	Ver.	Action By	Action	Result	Action Details	Meeting Details	Video
2/17/2016	1	City Council	accepted	Pass	<a href="#">Action details</a>	<a href="#">Meeting details</a>	<a href="#">Video</a>

March 18<sup>th</sup>, 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>
<b>Total Rooms:</b>	<b>507</b>
Proposed Hotel – StonePark Capital	104
<b>% Increase in Room Supply</b>	<b>20.5%</b>
+ 2 Hilton Hotels – River Park Hospitality	190
<b>% Increase in Room Supply</b>	<b>37.5%</b>
<b>TOTAL % INCREASE ROOM SUPPLY</b>	<b>58%</b>

## 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 17<sup>th</sup>, 2014 & February 16<sup>th</sup>, 2015