

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

CITY OF MORGAN HILL,	) Case No.: 16CV292595 )
Petitioner,	) ) PEREMPTORY WRIT OF MANDATE
vs.	) Hearing: March 24, 2016
SHANNON BUSHEY, et al.	<ul><li>) Department 6</li><li>) Hon. Theodore C. Zayner</li></ul>
Respondents.	)
	)

Following the hearing on the Alternative Writ of Mandate and Order to Show Cause, attended by counsel for all parties and for Real Parties in Interest, the Court took this matter under submission. Having heard and considered the arguments of counsel and having reviewed and considered the pleadings and the authorities cited – the Court now issues its ruling.

The Peremptory Writ of Mandate is GRANTED.

In so ruling, the Court acknowledges the argument of Real Party in Interest Morgan Hill Hotel Coalition, that it is usually more appropriate to review constitutional and other challenges to ballot propositions after an election, rather than disrupt the electoral process by disallowing the voters to weigh in on a measure. However, the parties do not appear to dispute that judicial review and action may be appropriate in the presence of a clear showing of invalidity of the proposed measure.

The Court finds that such a showing of invalidity has clearly been made by Petitioner, and has not been rebutted by Real Party in Interest. It is not disputed that the current zoning in question is inconsistent with the City's General Plan – and therefore presumptively invalid. Were the voters to consider and approve Morgan Hill Ordinance No. 2131, previously passed by the City Council, there would be no conflict as the proposed zoning would be consistent with the General Plan. However, were the voters to reject the ordinance, that would leave in place an inconsistent – and legally invalid – zoning designation. This result would be the same as if the measure to be submitted to the voters asked whether to "enact" inconsistent, legally invalid zoning, and it is precisely the result urged by Real Party in Interest.

As counsel for the City correctly points out, the situation in this case is essentially the same as faced by the court in *deBottari v. City Council* (1985) 171 Cal.App.3d 1204. Quoting from *deBottari*: "State law prohibits enactment of a zoning ordinance that is not consistent with the general plan. (Gov. Code, § 65860.) Were the voters to repeal the zoning amendment at issue here, the result unquestionably would be a zoning ordinance inconsistent with the amended general plan. Hence the council contends that it has made the requisite 'compelling showing that the substantive provisions of the [referendum] are clearly invalid.' [citations omitted] We agree." (*Id.*, at p.1210.)

The Court finds that Petitioner City of Morgan Hill has made the requisite "compelling showing" that the result of the voters' rejection of the proposed – and consistent – ordinance would be a zoning ordinance inconsistent with the City's General Plan – and thus clearly invalid. The Court finds the reasoning and holding of *deBottari* persuasive, and controlling, on this issue.

The Court therefore issues a Peremptory Writ of Mandate, as set forth below.

Good cause appearing, a Peremptory Writ of Mandate is issued, and named Respondents, in their official capacities, are compelled by Order of this Court:

- 1. To immediately cease and desist from preparing the Referendum concerning Morgan Hill Ordinance No. 2131, New Series for the June 7, 2016 election; To remove the Referendum concerning Morgan Hill Ordinance No. 2131, New Series from the ballot of the June 7, 2016 election; and To cancel the Special Municipal Election called by the City of Morgan Hill for June 7, 2016 regarding the Referendum; and
- Irma Torrez, City Clerk of the City of Morgan Hill, is ordered to certify Morgan Hill
  Ordinance No. 2131, New Series as duly adopted and effective immediately upon the
  date of issuance of this Writ.

IT IS SO ORDERED.

DATED: 3/2-8, 2016

Hon. Theodore C. Zayner
Judge of the Superior Court

## SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA CLARA Plaintiff: City of Morgan Hill MAR\29 2016 Defendant: Shannon Bushey, et al Maggie Castellon PROOF OF SERVICE OF: Peremptory Writ of Case Number: 16CV292595 Mandate

CLERK'S CERTIFICATE OF SERVICE: I certify that I am not a party to this case and that a true copy of this document was served as follows:

- By personal service on the parties and on the date shown below.
- By first class mail, postage prepaid, addressed as shown below and mailed on the date [X] shown below.

**DATED: 3/29/16** 

David H. Yamasaki, Chiefi Executive Officer/Clerk

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