

1 ballot propositions after an election, rather than disrupt the electoral process by disallowing the
2 voters to weigh in on a measure. However, the parties do not appear to dispute that judicial review
3 and action may be appropriate in the presence of a clear showing of invalidity of the proposed
4 measure.

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

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

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

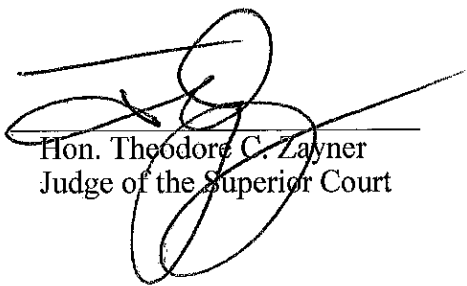
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2 The Court therefore issues a Peremptory Writ of Mandate, as set forth below.

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

- 6
7 1. To immediately cease and desist from preparing the Referendum concerning Morgan
8 Hill Ordinance No. 2131, New Series for the June 7, 2016 election; To remove the
9 Referendum concerning Morgan Hill Ordinance No. 2131, New Series from the ballot
10 of the June 7, 2016 election; and To cancel the Special Municipal Election called by
11 the City of Morgan Hill for June 7, 2016 regarding the Referendum; and
12 2. Irma Torrez, City Clerk of the City of Morgan Hill, is ordered to certify Morgan Hill
13 Ordinance No. 2131, New Series as duly adopted and effective immediately upon the
14 date of issuance of this Writ.

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17 **IT IS SO ORDERED.**

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19 DATED: 3/28, 2016


20 Hon. Theodore C. Zayner
21 Judge of the Superior Court
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