From: Toni Tryforos
To: CityCouncil
Cc: Donald.Larkin@morganhill
Subject: [EXTERNAL] Redistricting Map 103
Date: Saturday, February 12, 2022 6:04:55 PM

Dear Mayor Constantine and Council Members,

In 2017, the Morgan Hill Council switched to district elections in response to community leaders' concerns about the lack of representation in the Council of historically marginalized minority communities. District B was drawn to encompass its unique community of interest and, because the demographic features along the Monterey Road corridor boundaries would best realize the objective to have a member elected to the Council from such marginalized minority communities. In 2018, District B voters elected a Latina, which diversified the Council.

The 2019-2021 amendment to section Election Code 21601 (c) (1-4), intended to protect minority communities, provides a list of requirements for redistricting according to guidelines in the VRA. In order of priority "contiguity" is first in the list followed by "communities of interest". Each factor on the list is qualified with "To the extent practicable" and "shall".

The city attorney opinions the meaning of "priority" and "to the extent practicable" requires Districts to have 100% contiguous boundaries solely because contiguous is listed first on the list. He opinion that the words "to the extent practicable" mean impossible based on the application of similar words "frequently" used in environmental statutes. The standard for interpreting the meaning of words in a statute is the "plain meaning" of the words. So, if ANY contiguity is possible, he reasons it must be 100% achieved regardless of what happens to the communities of interests. His opinion, if applied to Morgan Hill, basically forces a break-up and severance of District B and D and greatly reduces the chance that members of historically marginalized minority communities will be elected to serve on the Council. The result is that only District maps can be drawn which divide current Districts B and D and rejoin the pieces into two dissimilar halves.

DISTRICT D CAN BE DECLARED 100% CONTIGUOUS IN TWO WAYS. The two areas of District D are separated by county land, which makes it impossible to achieve 100% contiguity, a jurisdictional barrier. We are interpreting the words in the statute to mean that where there are jurisdictional barriers, the city can declare a district boundary as contiguous "to the extent practicable". Such an interpretation, based on the plain meaning of the words, would serve well to protect the community of interest of District B and D as they currently exist. The statute provides "Areas Separated by water connected by a bridge, tunnel, or regular ferry service are contiguous". We read that as a principle that so long as there is the ability for people to freely travel between separated areas, the boundary is contiguous. In District D, the two areas are connected by a vast network of county roads and highway 101 so people can easily travel to and from the areas.

THE CITY ATTORNEY DID NOT CORRECTLY INSTRUCT THE CITY COUNCIL. No court has issued a ruling as to the precise meaning of the word's "priority" and to the "extent practicable". Our position is that the meaning of the words are ambiguous, inconclusive, and open to interpretation depending on whether one renders a narrow or a broad interpretation to the plain meaning of words within the context of the intent of the legislature. The City Attorney's opinion relies on the "frequent" application of the words to environmental statutes and not on the plain meaning of the words. However, the attorney went beyond just rendering his opinion as to words meaning. He declared that Public Map 103 is "illegal". After declaring the map "illegal" he then declared that if the council were to approve Public Map 103 that the "city would probably be sued by the California Attorney General or somebody else looking to get attorney's fees on a pretty easy case".

It is quite apparent that the intent/outcome of the City Attorney's extraneous declarations was to detrimentally chill (intimidate) the Council to not consider or select Public Map 103. In fact, after he made the comments one council member declared that the City Attorney has an excellent reputation and that other city attorneys seek his advice. Another commented that in fact the CA Attorney General would sue "a small town like Morgan Hill".

The City Attorney has an obligation to render opinions that are fair, objective, and impartial. We believe it was wrong for the City Attorney to declare Map 103 "illegal" and that if the Council selects it that the California Attorney General will sue Morgan Hill. He has not instructed the City Council that his advice/opinion of the meaning of the words in the statute serve only as advice and that the council can consider it along with any other interpretations of the words submitted by the public and may fairly consider all maps from the perspective of the legislative intent to protect minority communities. The Attorney's opinion appears to suggest to the council and the community that his interpretation of the statute has the force of law and therefore the council is not free to consider any other interpretations or risk being sued (speculation). He has failed to instruct the City Council that they can, and indeed have a legal duty to, consider all interpretations of the meaning of the words of the statute submitted for its considerations and may evaluate Public Map 103 fairly, along with the other maps, without fear that they are going to select an illegal map or fear that the California Attorney General is going to sue the city.

The words "priority" and "to the extent practicable" are ambiguous and inconclusive and subject to differing interpretation depending on whether one seeks to prioritize 100% contiguous boundaries, even when there are jurisdictional barriers that prevent that, or one wants to prioritize communities of interests and to increase the chances that those historically marginalized minority communities have a representative in the city council.

I anticipate that the City Council will select a map on February 16, 2022. I believe Public Map 103 should be fairly considered along with the other maps without the stigma of being labeled "illegal" and speculations that the California Attorney General is going to sue Morgan Hill if the council selects that map for its 2020 districts. I request Mayor Constantine act to ensure that the City Attorney takes corrective action to remove the stigma to Public Map 103 and the fear that he created by his extraneous comments, I request Mayor Constantine to ensure that the City Attorney provides proper instructions to the Council regarding its oversight role and responsibility to fairly consider all reasonable interpretations as to the plain meaning of the words in the statute offered by the public and to fairly consider all maps submitted, including Public Map 103.

I request Mayor Constantine to assure the public and the Council that the City Attorney is obligated to forcefully defend any interpretation of the meaning of the words of the statute that three of you chose to adopt and the map that three of you select, including Public Map 103. The burden of proof in litigation brought by anyone to challenge your decision just requires that your decision was not arbitrary, capricious, or not supported by any evidence. With such low burden of proof, I am confident that our City Attorney will have an easy case to win if you select the best map for Morgan Hill, Public Map 103. (https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.morganhill.ca.gov%2F2182%2FDraft-Maps&data=04%7C01%7CMichelle.Bigelow%40morganhill.ca.gov%7Cbf7deb0e95ce428267fd08d9ec9538cf%7Ce11e3e269c8f4968a58a8c3e515ebe87%7C0%7C0%7C637803146944852118%7CUnknown%7CTWFpbGZsb3dfeyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzEiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=Nq1hEwVEY7hihzZH2YPMQxqdX6PAIxFESmKcL9KgOKP%3D&reserved=0)

In closing, I sincerely hope and urge you to really pay attention to what's truly in the best interests of the community and not for your political gains. The voters hold your future political aspirations, so hopefully you make the right decision and prove you deserve my vote along with my family and community.

Regards,
Toni Tryforos

Sent from my iPhone

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