

**FOR IMMEDIATE DISTRIBUTION TO THE  
MAYOR AND CITY COUNCIL MEMBERS**

February 15, 2022

From,  
Morris J. Baller  
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155 Grand Avenue, Suite 900  
Oakland, CA 94612

**Via E-Mail Only**

To,  
Michelle Bigelow  
City Clerk  
City of Morgan Hill  
17575 Peak Avenue  
Morgan Hill, CA 9503

Michelle.Bigelow@morganhill.ca.gov

Re: City Council Redistricting

Dear Mayor Constantine and Members of the City Council:

I write to you from the perspective of a voting rights attorney who was personally involved in, and largely responsible for, the City of Morgan Hill's decision to change its election system from at-large to by-district elections in 2017, in order to comply with the California Voting Rights Act. As you may know, and can confirm from a review of the demand letter that I sent to the City at that time and the public records regarding the City's response to my letter, the underlying basis of the demand for Morgan Hill to change its election system was the historically nearly-complete absence of Latino/a Council members and the inability of Morgan Hill's large population of Latino voters to elect candidates of their choice under the at-large system given the presence of racially polarized voting patterns that existed in Morgan Hill as they do in most California municipalities. Those facts exposed the City to a lawsuit by Latino voters under the CVRA, which I and my firm, Goldstein Borgen Dardarian & Ho, were prepared to bring if necessary at that time. To both its own credit and the benefit of its residents, the City quickly and "voluntarily" changed its election system, avoiding the necessity of litigation. The resulting change in both election outcomes and governance in the City within the few brief years since then has been remarkable, and, I firmly believe, beneficial to all portions of the community from a democratic and representational standpoint.

Now, however, it's my understanding that the City is considering the adoption of a decennial redistricting map that would to a significant extent undo the gains and advantages achieved by the City's change in its election system, to the detriment particularly but not exclusively of the Latino and lower-income communities whose voting strength had been diluted under the at-large election system and could once again be diluted should the City disregard or subordinate the community of interest among Latinos and lower-income residents – and other

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residents of both current District B and current District D without regard to their ethnic or income level profile – in adopting a new district map.

In order to avoid that outcome, and to remain faithful to the underlying goal of eliminating racial discrimination in elections, I strongly urge you to adopt a map that preserves intact the areas now within Districts B and D, to the extent possible consistent with the necessity to preserve population equality, and to reject any map plan that divides each of those areas and rearranges them into two new districts oriented along a west-to-east axis crossing the current natural dividing line of Highway 101. Avoiding those evils would protect the City from potentially divisive and costly litigation: the current hybrid election system, with its at-large mayor election, remains an “at large election system” under the definition of the CVRA’s section 14026(c), and any districting plan that has the *effect* of discriminating against Latino voters would also be subject to legal challenge under Section 2 of the federal Voting Rights Act. But more importantly, a map retaining the basic configuration of the current districts B and D would promote the fair representational goals of the Fair and Inclusive Redistricting for Municipalities and Political Subdivisions (FAIR MAPS) Act of 2018, the principle of respecting communities of interest, and good governance and political responsiveness of the City Council in relation to all of Morgan Hill’s residents. Such a map has been presented to the Council and is available for consideration for adoption with whatever further small adjustments may be necessary to preserve population equality and other legitimate factors – Map 103. The City should adopt and use that map for its elections over the next decade.

The legal principles governing redistricting under Elections Code section 21601(c) and their application to Morgan Hill – with its unusual geography including a “hole” consisting of County land between the northern and southern sections of what is now District D – have been fully and appropriately described and analyzed by an active group of your citizens coordinated, and articulated in a series of letters and petitions, by Armando Benavides with the participation and support of many other Morgan Hill voters. I am very familiar with those communications and with the preliminary opinions of the City Attorney on this matter. I sincerely believe that Mr. Benavides’ arguments are correct, and respectfully suggest that the City Attorney’s position is based on an unnecessarily and incorrectly rigid interpretation of the “contiguity” requirement of section 21601(c)(1), and on a concomitantly incorrect disregard of the other districting factors spelled out in subsections (c) (2), (3), and (4), especially the community of interest factor embodied in subsection (c)(2). As has been pointed out, the legislative purpose underlying the 2018 Act was to prevent gerrymandering via “cracking” or “packing” that would diminish minority communities’ voting strength; the requirement to achieve contiguity “to the extent practicable” and consistent with the other districting factors – including, most importantly, keeping COIs together - was intended to protect minority and COI voting strength, not to diminish it by a wooden interpretation that effectively makes a narrowly defined contiguity factor eliminate all other considerations. It would be not just ironic, but tragic, if Morgan Hill were to cancel out the most practically significant gains of its recent election system change in

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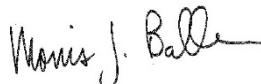
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the mistaken belief that it is thereby bowing to the Legislature's actual intention, when that intention was to empower – not disenfranchise – minority voters.

I could elaborate on these points, but I don't believe it is necessary or would be productive to add another "lawyer letter" or legal analysis to the ones that Mr. Benavides has so ably presented. Instead, I appeal to you, in the interest of both the City and its Latino *and other* residents, and in the interest of the quite different communities of residents in Districts B and D as currently configured, to enact Map 103 or another map that preserves the present configuration of those areas of the City without "cracking" them in a way that would have adverse effects both racially and politically.

The history of voting rights in California, unlike many parts of our country, has been one of steady progress toward greater democracy *and* racial fairness. Morgan Hill made an important and praiseworthy advance that served both of those interests in 2017, and better and more responsive governance has resulted. It would be a disservice to those goals and a huge step back from their achievement to enact a districting plan that divides not just one but *two* communities of interest, one of which includes a strong plurality or majority of lower-income and racial-minority residents concentrated in the central corridor area. The City has much to gain, and nothing to lose, by "doing the right thing."<sup>1</sup> Morgan Hill should opt to continue moving forward, and not regress politically backward, in its revision of the district maps.

Sincerely yours,



Morris J. Baller

Cc: Official list serve: [citycouncil@morganhill.ca.gov](mailto:citycouncil@morganhill.ca.gov)  
Armando Benavides, Esq.

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<sup>1</sup> It is wildly improbable that the State Attorney General – the author of the FAIR ACT and a strong advocate for minority voting rights – would even consider suing Morgan Hill for adopting a map based on the kind of holistic and flexible interpretation of section 21601 (c)(3) that Mr. Benavides correctly urges the City to utilize. It is far more likely that minority voting rights advocates would sue the City for discrimination in districting if it were to split or crack the District B area.