

**Item # 12**  
**AGENDA DATE: 4/6/2022**  
**SUPPLEMENT # 5**

**From:** Christina Turner

**To:** Michelle Bigelow; Kim Mancera

**Subject:** April 6, 2022 City Council Meeting Questions  
Supplement for Item 12 - RECONSIDER ACTION TO ADOPT CITY COUNCIL DISTRICT MAP 103 - FROM  
MARCH 2, 2022 CITY COUNCIL ACTION

**Date:** Tuesday, April 5, 2022

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**Question:** Over the past 20 years, were there Morgan Hill city council decisions made that got overturned by courts or via settlements? If so, how many? If so, did the city attorney at that time call such Council decisions “illegal” as well?

**Response:** While there have been more than a few challenges to City Council decisions, we are aware of only two times in the last 20 years that a City Council decision was overturned by a court. Please note, this is based on a limited review of available court records and files. The City Attorney was appointed in July 2016 and is not familiar with every legal action against the City.

In *Tichinin v. City of Morgan Hill*, the 6<sup>th</sup> District Court of Appeal found that the Council's resolution condemning Mr. Tichinin for hiring a private investigator to investigate an alleged affair between the city attorney and city manager was retaliatory, and thus illegal. The Interim City Attorney did not believe the Council's action was improper at the time, but in hindsight we now know that the Council's action was illegal.

In *Hotel Coalition v. City of Morgan Hill*, the Hotel Coalition challenged the City Council's decision not to place a referendum on the ballot. Refusing to place the referendum on the ballot was not the proper procedure for challenging whether the referendum should be able to move forward. Instead, the City was required to petition the court to remove the referendum from the ballot. *City of Morgan Hill v. Bushey*, the Supreme Court overturned existing precedent and held that the voters have a right to referendum even if overturning a city council decision would result in zoning that is inconsistent with the general plan. In this case, the Council's action to petition for removal of the referendum was not illegal at the time it was made--the Council was following existing law--but the law was changed and the council's decision to remove the referendum from the ballot was overturned.

We are not aware of any settlements in which the City admitted wrongdoing, though we have settled cases where there is a conflict between City regulations and state law.

We are also not aware of any decisions where a majority of the City Council has chosen to take an action that the city attorney has advised would be a violation of law.

**Question:** Are council decisions generally called “illegal” when made by a city council that later on then get challenged in court that end up a court overturning a city council decision? This is not a Morgan Hill specific question.

**Response:** If a court finds that a city council action violated the law, that decision would properly be called illegal.

**Question:** If a court, hypothetically, would decide that there’s nothing “illegal” with map 103, how would the city attorney correct any pre-court decision made statements and reports made re: legality of such a map?

**Response:** Yes. In the unlikely event that a court finds that Map 103 complies with the FAIR MAPS Act, we would make an official statement correcting the record.

**Question:** What specific negative impact on Morgan Hill voters and residents would be caused by map 103 (which pretty much is the status quo map)?

**Response:** We are not aware of any specific negative impact on Morgan Hill voters from Map 103 itself. However, Map 103 does not comply with the FAIR MAPS Act, and is therefore subject to challenge. We are aware of at least one group that plans to sue if Map 103 remains the adopted map for Morgan Hill. Defending a lawsuit could cost hundreds of thousands of dollars, and the City is unlikely to be successful. Assuming the court finds Map 103 to not be contiguous, the City would be required to pay the plaintiffs' attorneys' fees as well as our own. In addition, the City Council would lose the ability to choose an alternative map--the final map would instead be chosen by the court.