

## Gina Paolini

---

**From:** Renee Gurza  
**Sent:** Tuesday, August 04, 2015 3:07 PM  
**To:** Gina Paolini  
**Subject:** RE: RDCS Zoning Consistency Review

Hello -- Thank you for your message, Gina. My understanding is that you are seeking a legal opinion to be made public as a part of a City staff report.

Your summary of the Municipal Code requirements is correct. Here is an explanation related to why the information set forth in your message below complies with the Morgan Hill Municipal Code requirements:

Municipal Code Provision. Section 18.78.190.A (Evaluation - Standards and Criteria) of Chapter 18.78 (Residential Development Control System) of Title 18 (Zoning Code) of the Morgan Hill Municipal Code provides, in part, as follows:

In addition, the planning officer shall review each application for conformance with the following: City street, parking, and site development standards as set forth in Chapter 17.34 and Title 18 of the Morgan Hill Municipal Code. If the PO determines that a proposed development does not conform to the city codes as cited above, the application **shall be rejected** (emphasis added).

Zoning Code Conformance. Title 18 referred to in Section 18.78.190.A above sets forth all of the various zoning districts within the City and enumerates the permitted, accessory and conditional uses that may be allowed on lands located within those districts. Additionally, each zoning district has site development standards applicable to and within that particular district, which standards include elements such as minimum lot area and dimensions (such as width and depth), maximum building coverages, minimum setbacks and maximum heights.

Mandatory Duty. The provisions of Section 18.78.190.A explicitly require a planning officer to reject an RDCS application that does not comport with Title 18 (and Title 18, as noted in the previous paragraph, includes zoning districts and their related development standards). Unfortunately, the provisions of Section 18.78.190.A do not provide for any discretion by the planning official to evaluate an application that does not conform to City's Zoning Code -- please note that the pertinent language of this Municipal Code Section is mandatory, not permissive. That is, the provisions of Section 18.78.190.A provide that the PO "**shall**" reject the application -- it does not provide that a PO "may" reject the application. More particular to your inquiry below, this section does not provide that a PO may nevertheless proceed to evaluate an RDCS application even if it does not conform with the Zoning Code because a future rezoning is or may be filed for consideration by City Council that could bring an application into conformance with the Zoning Code. Such an evaluation despite a lack of Zoning Code compliance would not be appropriate because the PO has no control over whether such a rezoning is ever filed, and, if a rezoning is filed, the PO has no control over the City Council's decision on such rezoning application (the Council could choose to not adopt a proposed rezoning).

The language of Section 18.78.190.A is clear and unambiguous that an application that does not conform with the Zoning Code must be rejected by the PO.

I hope I have answered your inquiry. Please let me know if you need additional information.  
Thank you,  
Renee Gurza



CITY OF MORGAN HILL  
**Renee A. Gurza**  
**City Attorney**  
**City of Morgan Hill**  
**(408) 779-7271**

---

ATTORNEY-CLIENT PRIVILEGED  
CONFIDENTIAL COMMUNICATION

This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone. Thank you.

---

**From:** Gina Paolini  
**Sent:** Tuesday, August 04, 2015 2:17 PM  
**To:** Renee Gurza  
**Subject:** RDCS Zoning Consistency Review

Renee- Each year, the Planning Officer is required to evaluate each RDCS application to determine whether they are consistent with Sections 18.78.100 and 18.78.190 of the Municipal Code. Section 18.78.100 of the Municipal Code requires that each proposed development conform to the City's General Plan. Section 18.78.190 of the Municipal Code requires that each proposed development conform to the city street, parking and site development standards of Chapter 17.34 (Standards for Residential and Private Streets) and Title 18 (Zoning). If projects do not comply with these standards they are to be rejected. The Planning Commission has requested a legal opinion regarding this provision of the Municipal Code from the City Attorney because for the past many years applicants have indicated on their RDCS application that they would be applying for PD zoning and therefore would not need to conform with zoning. Could you please provide a legal opinion. Thank you

**Gina Paolini**  
Senior Planner  
**CITY OF MORGAN HILL**  
17575 Peak Avenue  
Morgan Hill, CA 95037  
(P)408-778-6480 (D)408-310-4676  
Gina.Paolini@morganhill.ca.gov