

City of Hercules

*111 Civic Drive
Hercules, CA 94547*



Meeting Agenda

Tuesday, October 10, 2017

**Closed Session - 6:00 p.m.
Regular Session - 7:00 p.m.**

Council Chambers

City Council

*Mayor Myrna de Vera
Vice Mayor Chris Kelley
Council Member Dan Romero
Council Member Gerard Boulanger
Council Member Roland Esquivias*

*David Biggs, City Manager
Patrick Tang, City Attorney
Lori Martin, City Clerk*

*Cablecast live on Comcast Channel 28, AT&T Channel 99 and webcast live via the City's website at
www.ci.hercules.ca.us*

I. CLOSED SESSION – 6:00 P.M. CALL TO ORDER - ROLL CALL

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

III. CONVENE INTO CLOSED SESSION

The Hercules City Council will meet in Closed Session regarding the following:

1. Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney

IV. REGULAR MEETING – 7:00 P.M. CALL TO ORDER - ROLL CALL

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

VI. PLEDGE OF ALLEGIANCE

VII. MOMENT OF SILENCE

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

IX. AGENDA ADDITIONS/DELETIONS

X. PUBLIC COMMUNICATIONS

This time is reserved for members of the public to address issues not included in the agenda. In accordance with the Brown Act, Council will refer to staff any matters brought before them at this time, and those matters may be placed on a future agenda.

Individuals wishing to address the City Council are asked to complete a form indicating the name and address of the speaker and the general topic to be addressed. Speakers must make their comments from the podium and will be allowed 3 minutes to discuss their concerns. All public comments are recorded and become part of the public record. A limit of 30 minutes will be devoted to taking public comment at this point in the agenda. If any speakers remain at the conclusion of the initial 30 minute period, time will be reserved at the conclusion of the meeting to take the remaining comments.

XI. PUBLIC HEARINGS

1. Proposed Ordinance to Regulate Local Marijuana Activities
RECOMMENDATION: Conduct a Public Hearing, Waive the First Reading, and Introduce an Ordinance Amending Title 4, Chapter 18 of the Hercules Municipal Code to Enact Additional Local Restrictions on the Use, Sale, Cultivation, and Delivery of Marijuana within City Limits

Attachments: [Draft Staff Report AUMA \(recreational marijuana\) - 171010](#)
 [Attachment 1 - Marijuana Restrictions draft ordinance 171010](#)
 [Attachment 2 - 080817-091217 Staff Reports and 092617 Staff Report with attachments](#)

XII. CONSENT CALENDAR

1. **Approve Special Meeting Minutes of September 26, 2017**
 Recommendation: Adopt Minutes

 Attachments: [Meeting Minutes - 092617 - Special](#)

2. **Approve Regular Meeting Minutes of September 26, 2017**
 Recommendation: Adopt Minutes

 Attachments: [Meeting Minutes 092617 - Regular](#)

3. **Second Reading of Ordinance 503 Adopting Zoning Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01 related to the Safeway Center Project**
 Recommendation: Adopt Ordinance.

 Attachments: [Staff Report - 2nd Reading of Ord 503 - Safeway Center Project](#)
 [Ordinance 503 - Safeway Zoning Ordinance](#)

4. **Budget Amendment to Incorporate SB1 "The Road Repair and Accountability Act" Funding for the 2017 Annual Street Maintenance Project**
 Recommendation: Adopt a resolution amending the adopted Fiscal Year 2017-18 Budget to incorporate SB 1 funding for the 2017 Annual Street Maintenance project and expanding the description of said projects in the budget to meet the requirements of the Act.

 Attachments: [Staff Report - SB1](#)
 [Attach 1 - Resolution - SB1](#)
 [Attach 2 - 2017 Pavement Maintenance Project - Location Map](#)

5. **Amendment to the Children's Program Leader I/II Job Description**
 Recommendation: Approve minor amendments to the Children's Program Leader I/II job description.

 Attachments: [Staff Report - Childcare Job Description Amendment - 171010](#)
 [Attachment 1 - Amendment to Children's Program Leader I-II Job Description 171010](#)

XIII. DISCUSSION AND/OR ACTION ITEMS

1. **Maintenance and Reimbursement Agreement between the City, BART and WestCat for the Hercules Transit Center**
Recommendation: Adopt a Resolution approving a Maintenance and Reimbursement Agreement between the City, BART, and WestCat for the Hercules Transit Center.
Attachments: [Staff Report - BART Agreement 10102017 alt version](#)
 [Attach 1 BART Maint Reimbursement](#)
 [Attachment 2 - Resolution](#)
2. **Update on Code Compliance**
Recommendation: Receive Report, Discuss, and Provide Direction, if any.

Attachments: [Staff Report - Code Compliance Update 10102017](#)
 [Attach 1 - Hercules Code Compliance Initiative Updated 10022017](#)
3. **Cable Televisions Options**
Recommendation: Receive report, discuss options, and provide direction if appropriate.

Attachments: [Staff Report - Cable Options 101017](#)
 [Attach 1 - Current Contract](#)
 [Attach 2 - Proposed Contract - FY 2017-18](#)
4. **Long Term Financial Projection for the General Fund**
Recommendation: Review and discuss the long term financial projection of the general fund.

Attachments: [Staff Report - Long Term Financial Projection - General Fund](#)
 [Attach 1 - General Fund LT Projection from FY2018-19 to FY2022-2023](#)
 [Attach 2 - Assumptions Used for Long-Term Projection](#)

XIV. PUBLIC COMMUNICATIONS

This time is reserved for members of the public who were unavailable to attend the Public Communications period during Section X of the meeting, or were unable to speak due to lack of time. The public speaker requirements specified in Section X of this Agenda apply to this Section.

XV. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY ANNOUNCEMENTS, COMMITTEE, SUB-COMMITTEE AND INTERGOVERNMENTAL COMMITTEE REPORTS AND FUTURE AGENDA ITEMS

This is the time for brief announcements on issues of interest to the community. In accordance with the provisions of the Brown Act, matters which do not appear on this agenda but require City Council discussion may be either (a) referred to staff or other resources for factual information or (b) placed on a future meeting agenda.

XVI. ADJOURNMENT

The next Regular Meeting of the City Council will be held on Tuesday, October 24, 2017 at 7:00p.m. in the Council Chambers.

Agendas are posted in accordance with Government Code Section 54954.2(a) or Section 54956. Members of the public can view electronic agendas and staff reports by accessing the City website at www.ci.hercules.ca.us and can receive e-mail notification of agenda and staff report postings by signing up to receive an enotice from the City's homepage. Agendas and staff reports may also be obtained by contacting the Administrative Services Department at (510) 799-8215

(Posted: October 5, 2017)

THE HERCULES CITY COUNCIL ADHERES TO THE FOLLOWING POLICIES, PROCEDURES AND REGULATIONS REGARDING CITY COUNCIL MEETINGS

1. SPECIAL ACCOMMODATIONS: In compliance with the Americans with Disabilities Act, if you require special accommodations to participate at a City Council meeting, please contact the City Clerk at 510-799-8215 at least 48 hours prior to the meeting.

2. AGENDA ITEMS: Persons wishing to add an item to an agenda must submit the final written documentation 12 calendar days prior to the meeting. The City retains the discretion whether to add items to the agenda. Persons wishing to address the City Council otherwise may make comments during the Public Communication period of the meeting.

3. AGENDA POSTING: Agendas of regular City Council meetings are posted at least 72 hours prior to the meeting at City Hall, the Hercules Swim Center, Ohlone Child Care Center, Hercules Post Office, and on the City's website (www.ci.hercules.ca.us),

4. PUBLIC COMMUNICATION: Persons who wish to address the City Council should complete the speaker form prior to the Council's consideration of the item on the agenda.

Anyone who wishes to address the Council on a topic that is not on the agenda and is relevant to the Council should complete the speaker form prior to the start of the meeting. Speakers will be called upon during the Public Communication portion of the meeting. In accordance with the Brown Act, the City Council may not take action on items not listed on the agenda. The Council may refer to staff any matters brought before them at this time and those matters may be placed on a future agenda.

In the interests of conducting an orderly and efficient meeting, speakers will be limited to three (3) minutes. Anyone may also submit written comments at any time before or during the meeting.

5. CONSENT CALENDAR: All matters listed under Consent Calendar are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items unless requested by a member of the Council or a member of the public prior to the time the City Council votes on the motion to adopt.

6. LEGAL CHALLENGES: If you challenge a decision of the City Council in court, you may be limited to raising only those issues you or someone else raised at the meeting or in written correspondence delivered at, or prior to, the meeting. Actions challenging City Council decisions shall be subject to the time limitations contained in Code of Civil Procedure Section 1094.6.



Legislation Details (With Text)

File #: 17-414 **Version:** 1 **Name:**

Type: Closed Session **Status:** Agenda Ready

File created: 10/4/2017 **In control:** City Council

On agenda: 10/10/2017 **Final action:**

Title: Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney



Legislation Details (With Text)

File #:	17-417	Version:	1	Name:	
Type:	Public Hearing	Status:		Agenda Ready	
File created:	10/4/2017	In control:		City Council	
On agenda:	10/10/2017	Final action:			
Title:	Proposed Ordinance to Regulate Local Marijuana Activities RECOMMENDATION: Conduct a Public Hearing, Waive the First Reading, and Introduce an Ordinance Amending Title 4, Chapter 18 of the Hercules Municipal Code to Enact Additional Local Restrictions on the Use, Sale, Cultivation, and Delivery of Marijuana within City Limits				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Draft Staff Report AUMA (recreational marijuana) - 171010 Attachment 1 - Marijuana Restrictions draft ordinance 171010 Attachment 2 - 080817-091217 Staff Reports and 092617 Staff Report with attachments				

Date	Ver.	Action By	Action	Result
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Proposed Ordinance to Regulate Local Marijuana Activities

RECOMMENDATION: Conduct a Public Hearing, Waive the First Reading, and Introduce an Ordinance Amending Title 4, Chapter 18 of the Hercules Municipal Code to Enact Additional Local Restrictions on the Use, Sale, Cultivation, and Delivery of Marijuana within City Limits



REPORT TO THE CITY COUNCIL

DATE: Meeting of October 10, 2017

TO: Mayor de Vera and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
J. Patrick Tang, City Attorney

SUBJECT: **Proposed Ordinance to Regulate Local Marijuana Activities.**

RECOMMENDED ACTION:

Conduct a Public Hearing, Waive the First Reading, and Introduce an Ordinance Amending Title 4, Chapter 18 of the Hercules Municipal Code to Enact Additional Local Restrictions on the Use, Sale, Cultivation, and Delivery of Marijuana within City Limits

BACKGROUND:

Discussion of a proposed ordinance to regulate local marijuana activities took place at the prior council meetings of August 8, September 12, and September 26, 2017. This report addresses some of the additional issues raised by Council at the most recent meeting of September 26th, and includes a revised draft ordinance for the Council's further consideration, provided as Attachment 1 to this report (separate "redline" and "clean" copies are not provided, as there were only minor changes to two sections as a result of Council's review on September 26; these minor changes are reflected in Attachment 1 in redline and strikethrough).

As previously reported to the Council, with the November 2016 passage of statewide Proposition 64, the Adult Use of Marijuana Act ("AUMA"), there is a potential for the state to issue licenses for cannabis businesses to operate in the City beginning in January 2018.

While nothing in the AUMA requires a city to enact an ordinance or regulation by a certain date, if a city does not have a ban or regulatory scheme in place at the time a permit is processed by the state, the City would have no ability to impose local conditions on a permit thus issued. For this reason, staff recommends that any local restrictions be adopted and effective before the state begins to issue licenses.

Copies of the several staff reports from prior meetings are provided as Attachment 2 to this report.

DISCUSSION:

At the September 26, 2017 Council meeting, staff was directed to respond to several follow up questions and to make the following additional changes to the draft ordinance:

- How do the proposed state regulations define “marijuana plant” for the purpose of imposing a six plant cultivation limit?

Unknown at the time this report was drafted. Should information become available prior to the Council meeting of October 10 that information will be made available to the Council as a Supplement to this report.

- Provide state law definition of “primary caregiver.”

Health and Safety Code Section 11362.7. For purposes of this article, the following definitions shall apply.....

(d) “Primary caregiver” means the individual, designated by a qualified patient, who has consistently assumed responsibility for the housing, health, or safety of that patient, and may include any of the following:

(1) In a case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Section 6922, 7002, 7050, or 7120 of the Family Code.

- Accept the proposed changes to the draft ordinance as presented to Council at the meeting of September 26th, to include exceptions to allow deliveries of medical marijuana by primary caregivers and to require persons who cultivate marijuana indoors for personal use to sign an acknowledgment and Consent Form that they will comply with local regulatory requirements and consent to inspection on a complaint only basis.
- Make the following additional minor changes to the draft Ordinance:
 - Sec. 4-18.03(F)(6)- Edit this subsection to read, “6. Manufacture concentrated cannabis using a volatile solvent ~~unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.~~”
 - Amend Section 4-18.04 Title to read, “Personal ~~Indoor~~ Marijuana Cultivation.”

Additional Comments:

- Staff has added to the draft Ordinance additional findings and new sections identifying the effective date, publication requirements, and CEQA exemption, including a severability clause; these changes are indicated in *italics*.
- Staff has identified additional language in the draft that relates to the inspection and permit program that has been determined to be infeasible at this time, and recommends deletion of that language, indicated in ~~striketrough~~ below:

Sec. 4-18.04(b)(11). The Acknowledgment and Consent Form will expire after twelve months and must be renewed annually ~~with approval from the building department~~ if indoor personal use marijuana cultivation is to continue.

- At the September 26th meeting, Council discussed whether a draft of the Acknowledgment and Consent Form should be provided with the agenda materials for this meeting. After discussion, Council decided to defer that matter to staff for future development, as the form and content has not yet been determined by the City Manager, and the relevant forms can be promulgated administratively upon final passage of the Ordinance.
- Consistent with other provisions of the municipal code, the Definitions section has been relocated within the draft Ordinance to precede the other substantive ordinance provisions. This has resulted in the need to adjust the section numbers.
- Should the draft Ordinance be approved for final passage, based on information obtained by our City Clerk, Lori Martin, the Ordinance must be transmitted to the state as follows:

Where Local Governments Should Submit Their Ordinances

1. Per AB 133, the latest cannabis trailer bill, all cities and counties are required to submit their ordinances directly to the **Bureau of Cannabis Control** within the Department of Consumer Affairs. The Bureau is then required to disseminate the information on local ordinances to the relevant state licensing entities.
 2. Cities are also required to designate a specific individual as the point person to interact with state agencies on questions pertaining to local regulations. If cities fail to designate someone, then AB 133 provides that the state will by default treat the city clerk as the designated point person.
 3. All ordinances should be emailed to the Bureau at: bcc.localgov.submit@dca.ca.gov
 4. It is not required, but it is strongly recommended that each ordinance submitted be accompanied by a brief summary explaining in plain English what activities are and are not authorized within a specific city. Otherwise state agencies may be forced to start *interpreting* local ordinances, with unpredictable results.
 5. Any questions should be directed to Tim Cromartie at tcromartie@cacities.org
- Given the number of references in the draft Ordinance to provisions of the AUMA and the several questions posed by the Council at prior meetings regarding AUMA provisions, a link to the [full text of the AUMA](#) is being provided:

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf)
 - Staff was directed to return to Council in the first quarter of the next calendar year with a staff report making recommendations regarding updates to the City's current smoking ordinance. This matter has been placed on staff's Pending Items List.

CONCLUSION:

Adoption of the proposed Ordinance would put in place local regulations of marijuana as expressly authorized under state law. The proposed Ordinance would ban marijuana related activities that otherwise might be permitted by the state in the absence of local regulations, including a ban on commercial sales of cannabis, a ban on the delivery of cannabis (except delivery of medical cannabis by primary caregivers), a ban on outdoor cultivation of cannabis, and imposing local health and safety requirements on the indoor cultivation of six plants or less for personal use.

ATTACHMENTS:

Attachment 1 – Revised Draft Ordinance.

Attachment 2 – Related Staff reports from prior council meetings.

Draft Ordinance for Council Meeting of October 10, 2017

Note: Changes in response to comments from the City Council Members at the September 26, 2017 meeting are indicated in ~~strike through~~ and **redline**.

Staff has added additional findings and new sections identifying the effective date, publication requirements, and including a severability clause; these changes are indicated in *italics*.

ORDINANCE NO. 17-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES AMENDING TITLE 4, CHAPTER 18 OF THE HERCULES MUNICIPAL CODE TO ENACT ADDITIONAL LOCAL RESTRICTIONS ON THE USE, SALE, CULTIVATION, AND DELIVERY OF MARIJUANA WITHIN CITY LIMITS

***WHEREAS,** The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5_et seq., “The Compassionate Use Act of 1996”); the intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to obtain and use it without fear of State criminal prosecution; and*

***WHEREAS,** On October 9, 2015, Governor Brown approved a series of bills commonly referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), effective on January 1, 2016, which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of medical cannabis; and*

***WHEREAS,** in November 2016, the voters of the State of California approved Proposition 64, known as the “Adult Use of Marijuana Act” (“AUMA”), which establishes a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of recreational cannabis, also known as marijuana; and which recognizes the authority of local jurisdictions to either impose additional restrictions or prohibit certain*

activities related to the cultivation, manufacture, transportation, storage, distribution, delivery, and sale of recreational cannabis; and

***WHEREAS,** The City Council of the City of Hercules has recognized, and continues to recognize, the adverse impacts on the health, safety, and welfare of its residents and businesses from secondary effects associated with commercial cannabis activity, which potentially might include: offensive odors, trespassing, theft, violent encounters between growers and persons attempting to steal plants, fire hazards, increased crime in and about marijuana businesses, robberies of customers, negative impacts on nearby unrelated businesses, nuisance problems, and increased DUI incidents; and*

***WHEREAS,** there is a need to adopt health, safety, and welfare regulations to avoid adverse impacts on the community which may arise from commercial cannabis activity; and*

***WHEREAS,** the MCRSA and AUMA set forth a comprehensive framework to regulate cannabis and cannabis products from seed to ingestion by a consumer, which includes uniform health and safety standards, which mitigates against some of the potential adverse impacts that have been identified by the City Council; and*

***WHEREAS,** an effective regulatory system governing cannabis in the City of Hercules, as provided in this chapter, will address potential adverse impacts to the public health, welfare, and safety, thereby allowing commercial cannabis activity and other use of cannabis and cannabis products consistent with Federal law as applicable to the State of California and State law.*

Now, therefore, the City Council of the City of Hercules does ordain as follows:

***SECTION 1.** Title 4, Chapter 18 of the Hercules Municipal Code is amended to read as follows:*

Chapter 18. Marijuana Dispensaries, Cultivation, Processing, Usage, Sales, and Delivery

4-18.01 Purpose and Intent

4-18.02 Definitions

4-18.03 Prohibited Uses.

4-18.04 Personal Marijuana Cultivation

4-18.05 Penalties

4-18.06 Public Nuisance

4-18.07 Future Amendments and Preservation of Local Control

Sec. 4-18.01 Purpose and Intent.

It is the purpose and intent of this chapter for the City Council to exercise its police powers derived from Section 7 of Article XI of the California Constitution and State law to promote the health, safety, and general welfare of the residents and businesses of the City of Hercules by regulating cannabis within the City's jurisdictional limits, unless preempted by Federal or State law. The City Council finds that prohibitions on marijuana cultivation, marijuana processing, marijuana usage, marijuana sales, marijuana commercial delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare of the City and its community, and that such local prohibitions are specifically authorized under state law pursuant to Sections 11362.2 and 26200 of the California Health and Safety Code, and the Adult Use of Marijuana Act ("AUMA"), Section 3. "Purpose and Intent", subsections (c) and (d). Notwithstanding any provision of this Code to the contrary, any land use that cannot be conducted or carried out without being in violation of State or Federal law or this Code, expressly including, but not limited to, marijuana dispensaries, marijuana commercial deliveries, and marijuana cultivation, shall be prohibited in all planning areas and zoning districts within the City.

Sec. 4-18.032 Definitions.

"Accessory Structure" shall mean an enclosed structure either attached to and having a common wall with the main structure or may be freestanding enclosure, as defined in Section 35.210 of the Hercules Zoning Ordinance.

"Adult Use of Marijuana Act" or "AUMA" shall mean Proposition 64 now contained in Health and Safety Code Sections 11108, and 11362.

"Cannabis" shall have the same meaning as set forth in Business and Professions Code Section 19300.5(f) as the same may be amended from time to time, and means any or all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana.

"Caregiver" or "primary caregiver" shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in Business and Professions Code Section 19300.5(k) as the same may be amended from time to time.

“Cooperative/collective” shall mean two or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

“Cultivation” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(l) as the same may be amended from time to time.

“Cultivation site” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(x) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(m) as the same may be amended from time to time. “Delivery” shall not include the carriage of medical marijuana or medical marijuana products on public roads when otherwise in compliance with California Business and Professions Code Section 19340, and shall not include the noncommercial delivery of medical marijuana or medical marijuana products by primary caregivers as defined in Section 11362.7 of the California Health and Safety Code.

“Dispensary” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(n) as the same may be amended from time to time. For purposes of this chapter, “dispensary” shall also include a cooperative/collective.

“Dispensing” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(y) as the same may be amended from time to time.

“Marijuana” see “Cannabis.”

“Medical marijuana cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis, regardless of whether there is an intent to produce, distribute, or sell the resulting product commercially.

“Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products, either individually or in any combination, are offered, carried, transported, transmitted, manufactured, stored, placed, cultivated, sold, traded, exchanged, bartered, made available to and/or distributed, expressly including an establishment that delivers marijuana or marijuana products as part of a retail sale.

“Medical marijuana processing” means any method used to prepare marijuana or its byproduct for commercial retail and/or wholesale distribution, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

“Medical marijuana,” “medical marijuana product,” or “marijuana product” shall have the same meanings as set forth in Business and Professions Code Section 19300.5(ag) as the same may be amended from time to time and shall also include “medical marijuana” as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Nursery” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(ah) as the same may be amended from time to time.

“Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(z) as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(aa) as the same may be amended from time to time.

Sec. 4-18.023 Prohibited Uses.

A. Notwithstanding any provision of this Section or Chapter, no person shall transact, perform, engage in and carry on in the City any business, trade, profession, calling, use or occupation that cannot be, or is not, conducted or carried out without being in violation of State or Federal law, or this Code, and no license will be issued for any such business, trade, profession, calling, use, or occupation, including but not limited to a marijuana dispensary, marijuana commercial sales, marijuana delivery, or marijuana cultivation as defined in Section 4-18.032.

B. Commercial and non-personal use marijuana activities of all types are expressly prohibited in all planning areas and zoning districts within the City. No person shall establish, operate, conduct or allow any commercial or non-personal use marijuana activity anywhere within the city.

C. To the extent not already covered by subsection B above, and except for the noncommercial delivery of medical marijuana or medical marijuana products by primary caregivers, all deliveries of medical or non-medical marijuana are expressly prohibited within the city of Hercules. No person shall conduct any deliveries that either originate or terminate within the city.

D. This section is meant to prohibit all activities for which a state license is required. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a state license is required under the Medical Marijuana Regulation and Safety Act (“MMRSA”) or the Adult Use of Marijuana Act (“AUMA”).

E. Cultivation of marijuana for non-commercial purposes including, but not limited to, cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones, planned developments, and all specific and master plan areas in the city of Hercules, except in residential zones as described in Section 4-18.034.

F. As specified by California Health and Safety Code Section 11362.3 the following are prohibited:

1. Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code.

2. Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited, pursuant to Section 11362.3(a)(2) of the Business and Professions Code, and the City’s Smoking Ordinance, Title 5, Chapter 6 of this Code.

3. Smoke marijuana or marijuana products within one thousand feet of a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of the Business and Professions Code or Chapter 3.5

of Division 8 of the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center.

4. Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

5. Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.

6. Manufacture concentrated cannabis using a volatile solvent, ~~unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.~~

7. Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

8. Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of twenty-one years are present.

Sec. 4-18.034 Indoor Personal Marijuana Cultivation.

A. Outdoor cultivation of marijuana is prohibited within the city limits of the city of Hercules.

B. Indoor personal use cultivation of marijuana is authorized by Health and Safety Code Section 11362.1(a)(3), and in accordance with the following local requirements

1. A person twenty-one years and older must plant, cultivate, harvest, dry, or process plants in accordance with this chapter.

2. The marijuana plants and anything produced by the plants must be kept within the person's private residence, fully enclosed and secure, and not visible by normal unaided vision from a public place.

3. Not more than six living plants may be planted, cultivated, harvested, dried, or processed at one time, but outdoor cultivation, harvesting, or processing will continue to be prohibited at all times.

4. A person engaging in indoor cultivation pursuant to this Section shall obtain written and signed consent of the property owner where the indoor cultivation of marijuana is located.

5. The property used for indoor cultivation of marijuana shall be a residential unit located upon the grounds of a private residence that is fully enclosed and secure, and not visible by normal unaided vision from a public place.

6. The property used for indoor cultivation of marijuana shall be locked and inaccessible to minors, and if inside an accessory structure to a private residence located upon the grounds of a private residence that it is fully enclosed, secure, and not visible by normal unaided vision from a public place. An accessory structure used for the cultivation of marijuana pursuant to Section 11362.2(b)(2) of the California Health and Safety Code must meet the permitting and setback requirements for accessory structures provided for in the Hercules Zoning Ordinance.

7. Odors shall be contained on the property on which the cultivation is located. If the City receives complaints of odors, the City may cause the inspection and abatement of the nuisance pursuant to subsection 4-18.034(B)(10) below, or any other remedy available at law.

8. Generators or gas products used to power electrical or lighting fixtures or equipment for indoor cultivation shall be prohibited.

9. Use of volatile solvents for indoor cultivation shall be prohibited, including, but not limited to: (a) explosive gases, such as butane, propane, xylene, styrene, gasoline, kerosene, O₂ or H₂; and (b) dangerous poisons, toxins, or carcinogens, such as methanol, isopropyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloroethylene.

10. A person engaging in indoor cultivation pursuant to this Section shall first provide a signed Acknowledgment and Consent Form to the City of Hercules on a form prescribed by the City Manager confirming compliance with state law and the conditions contained in this Section, and granting the building inspector and/or code enforcement officer access with twenty-four-hour notice upon receipt by the City of a complaint regarding the person's cultivation activity. If the inspection is denied, an enforcement and/or abatement action shall be commenced to abate the nuisance conditions.

11. The Acknowledgment and Consent Form will expire after twelve months and must be renewed annually ~~with approval from the building department~~ if indoor personal use marijuana cultivation is to continue.

Sec. 4-18.04 Penalties.

A person who violates this Chapter is subject to all abatement and civil penalty provisions of the Hercules Municipal Code, including but not limited to the public nuisance provisions of Chapter 4-10, and any and all applicable laws and regulations without limitation. In addition to any other administrative enforcement action authorized pursuant to the Hercules Municipal Code, the city attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter.

Sec. 4-18.05 Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the city pursuant to Code of Civil Procedure Section 731 or any other remedy available to the city.

Sec. 4-18.06 Future Amendments and Preservation of Local Control.

The City expressly reserves the right to adopt and enforce local ordinances to regulate and control all local marijuana related activities in a manner consistent with state law, including but not limited to regulation of use, possession, use for medical purposes, licensing, retail and distribution, cultivation, transportation, delivery, manufacturing, packaging, advertising, marketing, records keeping, fees, taxation, permits, and inspections.

Section 2. Effective Date. This ordinance becomes effective thirty (30) days after its final passage and adoption.

Section 3. Publication. The City of Hercules shall cause this Ordinance to be published pursuant to the requirements specified in California Government Code Section 36932.

Section 4. CEQA Exemption. The Town Council finds pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment.

Section 5. Severability. If any provision of the Ordinance or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. The City Council of the City of Hercules hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

The foregoing Ordinance was introduced at a regular meeting of the Hercules City Council held on October 10, 2017, and was adopted and ordered published at a regular meeting of the City Council on _____, 2017, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Myrna de Vera, Mayor

Attest:

Lori Martin, City Clerk



REPORT TO THE CITY COUNCIL

DATE: Meeting of August 8, 2017

TO: Mayor de Vera and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
J. Patrick Tang, City Attorney

SUBJECT: Discussion of Local Regulation of Recreational Cannabis Uses

RECOMMENDED ACTION: Receive staff report regarding California law legalizing recreational nonmedical cannabis and provide staff with direction regarding options for local regulation of cannabis-related activities for future consideration.

Absent a local ordinance specifically addressing nonmedical cannabis business uses, there is a potential for the state to issue licenses for cannabis businesses to operate in the City. Staff recommends that any local regulations be adopted and effective before the state begins to issue licenses on January 1, 2018.

BACKGROUND:

Federal Law.

Cannabis is currently illegal under federal law. Federal law classifies cannabis as a Schedule I controlled substance, like LSD and heroin.¹ A bill has been introduced in the House of Representatives that could remove cannabis from the controlled substance list.² A bill is also pending with the California legislature to request the United States Congress and President to reschedule cannabis.³ Until federal law classifying cannabis as a Schedule I drug changes, cannabis businesses will remain essentially “cash-only,” because federally regulated banks consider it an illegal activity. This makes it difficult to collect taxes (difficult to track income and there are security considerations for cash tax payments), and increases the risk of violent crime (due to large

¹ 21 United States Code Section 812

² H.R. 1227 Ending Federal Marijuana Prohibition Act of 2017 (2017-2018) <https://www.congress.gov/bill/115thcongress/house-bill/1227/text>

³ Senate Joint Resolution 5 (2016-2017)

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SJR5

amounts of cash on hand).⁴ The City of Oakland is considering establishing a public bank to provide banking services to their cannabis businesses.⁵

State Medical Cannabis Laws.

In 1996, voters approved Proposition 215, which legalized the use of medical cannabis in California. The City of Hercules voters supported Proposition 215 with a vote of 3,694 for and 2,288 against the measure.⁶ In 2015, the state enacted three bills known as the Medical Cannabis Regulation and Safety Act (MCRSA)⁷ that established a regulatory framework for state licensing and enforcement of cultivation, manufacturing, retail sale, transportation, storage, delivery, and testing of medical cannabis in California. On February 3, 2016, the Governor signed AB-21 (Wood) which deleted a provision of the MCRSA that required jurisdictions to adopt any regulations by March 1, 2016, or lose the right to exercise their police power to regulate the uses. The MCRSA requires City authorization before a business can apply for a state medical cannabis business license.⁸ In 2016, Hercules passed Ordinance No. 492, prohibiting medical marijuana dispensaries, deliveries, and cultivation. See Attachment 1.

State Recreational Cannabis.

In November 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA). Contra Costa County voters supported the AUMA with 60.72% voting in favor and 39.28% voting against the measure.⁹ The AUMA sets state standards for both personal nonmedical cultivation and use of marijuana, and commercial cultivation and sale of marijuana. The state can begin issuing licenses for the commercial cultivation and sale of marijuana beginning January 1, 2018.

Personal Nonmedical Use.

Under Proposition 64, adults 21 years of age or older can legally grow, possess, and use cannabis for non-medical purposes, with certain restrictions.¹⁰ The law prohibits the following: (1) smoking or ingesting cannabis in any public place, except if the City authorizes use at a licensed retail location; (2) Smoking cannabis in a location where smoking tobacco is prohibited; (3) Smoking cannabis on or within 1,000 feet of a school, day care center, or youth center while children are present, except in or upon the grounds of a private residence or at a permitted retailer and only if such smoking is not detectable by others on the grounds of the school, day care center, or youth center while children are present; (4) Possessing an open container or open package of cannabis while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation; (5) smoking or ingesting cannabis while driving or as a passenger in a car. (Health & Safety Code, § 11362.3).

⁴ John Chiang, California State Treasurer, December 1, 2016, letter to president elect Trump and Cannabis Banking

⁵ Oakland City Council Resolution, November 29, 2016,

<https://oakland.legistar.com/LegislationDetail.aspx?ID=2862923&GUID=62098AA0-7030-4165-A111-EEF012C58038&Options=ID|Text|&Search=bank>, which also has other reasons for establishing the public bank.

⁶ November 5, 1996, election results provided by the Contra Costa County Elections Office, Candidate Services Department

⁷ AB 243 (Wood, Chapter 688); AB 266 (Bonta, Chapter 689); and SB 643 (McGuire, Chapter 719)

⁸ California Business and Professions Code Section 19322(a)

⁹ http://www.cocovote.us/wp-content/uploads/110816_Summary_RS.pdf

¹⁰ California Health and Safety Code Section 11362.1

Local governments may prohibit possession or smoking of cannabis in public buildings. In addition, private and public employers may maintain a drug and alcohol free workplace by prohibiting the use, consumption, possession, sale, display, or cultivation of cannabis in the workplace.¹¹

Commercial Use and State Licensing.

Beginning on January 1, 2018, the AUMA makes it legal to cultivate, process, manufacture, distribute, and test, nonmedical cannabis and cannabis products intended to be sold to adults 21 years and older, with a license from the state and subject to state taxes. The state is expected to begin issuing licenses for cannabis businesses on January 1, 2018.

For commercial nonmedical cannabis activities, the AUMA establishes a regulatory and licensing system involving three state agencies, and tasks each agency with licensing and enforcement responsibilities. The details of the duties of the state agencies is beyond the scope of this report, but staff can provide more detail if the Council requests additional information.

The AUMA provides that the state will not approve an application for a state license if approval will violate the provisions of any local ordinance or regulation adopted to regulate nonmedical cannabis businesses, including those that completely prohibit the businesses.¹² However, unlike the MCRSA, under the AUMA applicants for nonmedical/recreational cannabis licenses do not need local jurisdiction authorization to apply for a license.¹³ The AUMA essentially requires the state licensing agencies to know all of the cannabis ordinances and regulations for all 58 counties and 482 towns/cities. A budget trailer bill is currently pending that would clarify the issues regarding local cannabis regulations and implementation of the AUMA.¹⁴ The proposed bill specifies that the state cannabis regulations would not supersede or limit enforcement of local zoning requirements or local ordinances.¹⁵ The bill would allow an applicant for a state cannabis license to voluntarily provide proof of local authorization. The bill would require all local jurisdictions to provide the state with, “a copy of any ordinance or regulation related to commercial cannabis activity and the name and contact information for the person who will serve as the contact for state licensing authorities regarding commercial cannabis activity within the jurisdiction.”¹⁶ However, until the proposed bill becomes law, it will be up to the state to determine which regulations apply in each jurisdiction. The League of California Cities advises that “Cities that wish to regulate or prohibit nonmedical cannabis businesses will need to do so before the State begins issuing licenses by enacting a nonmedical cannabis ordinance/regulation...”¹⁷ In other words, the AUMA appears to require local jurisdictions to explicitly regulate nonmedical cannabis by adopting local ordinances.

¹¹ California Health & Safety. Code § 11362.45(f)-(g))

¹² California Business and Professions Code Sections 26055(e) and 26200

¹³ CA Bus. & Prof. Code Section 26056

¹⁴ Draft Cannabis Regulation Trailer Bill 200, April 4, 2017,
http://www.dof.ca.gov/Budget/Trailer_Bill_Language/documents/200CannabisRegulationDraft.pdf

¹⁵ Ibid. at page 28, proposed amendment to Business and Professions Code Section 26036

¹⁶ Ibid. at page 36, proposed amendment to Bus. & Prof. §26055 (f and g)

¹⁷ League of California Cities Memo to City Managers, September 26, 2016, at page 4

Delivery.

The AUMA allows for deliveries of nonmedical cannabis by state-licensed retailers, micro businesses, or nonprofits, unless a local ordinance prohibits delivery.¹⁸ Although local laws can ban deliveries, the ordinance cannot prevent a delivery service from using public roads to pass through the jurisdiction in route to another location outside its limits.¹⁹

Personal Cultivation.

The AUMA specifies that cities can permit, regulate, or prohibit outdoor cultivation of six plants on private property for personal consumption; however, cities may not prohibit indoor cultivation of up to six plants inside a residence or accessory structure on private property.²⁰ The law goes on to state that personal cultivation is subject to restrictions, including the following: “The living plants and any marijuana produced by the plants in excess of 28.5 grams are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.”²¹ The AUMA permits local governments to “reasonably regulate” indoor personal cultivation of six or fewer plants, but it may not ban this type of cultivation.²²

Current City Regulation.

Medical cannabis uses are not allowed in Hercules. In 2016, the City Council adopted Ordinance No. 492, prohibiting cultivation, processing, dispensing, and commercial delivery of medical marijuana. While there are no express prohibitions on non-medical cannabis, most cannabis businesses arguably cannot lawfully operate since they are not listed in the Land Use Table as a specifically allowed or permitted use.²³ The Land Use Regulations Table permits “Home Occupations” in every zoning district and the code contains limitations on what types of businesses can be considered a “home occupation.” The Home Occupation definition does not appear to expressly allow for cannabis businesses in residential neighborhoods, and just defines home occupations as “an art, profession, offering of service, conduct of businesses or handicrafts conducted solely in the dwelling unit, a portion of a garage (*so long as it doesn't use more than required for the main house*) or an accessory building, by an inhabitant in a manner incidental to the residential occupancy”:

The two pages of Section 35.270 of the Hercules Zoning Ordinance delineates all the provisions, prohibitions, and limitation within Home Occupations. Provisions related to this topic include “no home occupation shall create noise, odor, electrical disturbances, dust vibrations, fumes, or smoke readily discernible at the exterior boundaries of the parcel on which it is situated.” and “No exterior operation of any home occupation is permitted” and “the home occupation shall be compatible with and secondary to the use of the premises as a residential dwelling unit.”

¹⁸ California Business & Professions Code Section 26090(a)

¹⁹ CA Bus. & Prof. §26090(c)

²⁰ Health & Saf. Code §§ 11362.1((a)(3); 11362.2.

²¹ Health & Saf. Code, § 11362.2(a)(2)

²² Health & Saf. Code § 11362.2(b)(1)

²³ See Full Set of Zoning Regulations at Section 35.270

DISCUSSION:

The City Council has not discussed cannabis regulations since California voters approved the AUMA in November, 2016. The AUMA allows the City to permit, regulate, or prohibit the commercial cultivation and/or commercial sales/distribution of nonmedical cannabis. The League of California Cities has recommended that local regulations should be adopted before January 1, 2018, at which time the State can begin issuing licenses to local commercial cannabis operations. If the City does not enact local regulations the State standards will be the basis upon which permit applications will be evaluated.

Staff would like direction from the Council regarding prohibiting or allowing nonmedical cannabis business uses. Staff will present more information on issues and options, including if the Council is interested, more information on fees and taxation, at a future Council meeting. Staff has provided a list detailing options available to the Council as Attachment 2. Although County voters have supported legalization of cannabis, it is unknown at this time if Hercules residents would support cannabis businesses in the City.

Commercial Sale of Cannabis.

The City has the option to:

1. Regulate and ban recreational marijuana businesses. Absent an ordinance specifically prohibiting cannabis business uses, there is a potential for the state to issue licenses for businesses to operate in the City. If the Council would like to prohibit cannabis related businesses, staff recommends the Council direct staff to draft an ordinance to expressly prohibit the uses, to take effect prior to January 1, 2018. Council should be aware that banning cultivation and dispensaries will make the City ineligible for some grants from the state excise tax on cannabis.
2. Permit recreational marijuana businesses and subject them to sales tax and business license tax. Prop. 64 imposes a state excise tax of 15 percent on recreational marijuana, so new local taxes should take the cumulative tax rate into account. Any pre-existing local sales taxes would apply to all recreational marijuana sales. Any business license taxes would also apply. A cumulative tax rate that is too high might stimulate black market activity. Examples of tax rates being considered in other jurisdictions is provided in Attachment 1. Note that unlike recreational marijuana sales, medical marijuana sales are not subject to taxation under Prop. 64. If the Council would like to consider allowing recreational cannabis businesses, staff recommends that any local regulations, fees and taxes be adopted and be in effect before the state begins to issue licenses on January 1, 2018.

Any city thinking about adopting regulatory ordinances to allow for marijuana businesses should consider a numerical limit on how many dispensaries it will ultimately have – in his Western Cities article published in February 2017, Tim Cromartie suggested allowing no more than one per 15,000

residents. Limiting the number of such businesses would make it easier for the city to regulate them. See Cromartie article, Attachment 3.

Cash Payments a Security Issue.

Marijuana sales are predicted to be a largely cash only business, and there are legitimate concerns with having cannabis related businesses within the City, as the large amounts of cash can attract criminal activity. There is some discussion of migrating to bitcoin and other crypto-currencies, but there are issues with this alternative as well.²⁴ Cities that opt to regulate medical or recreational marijuana businesses should have a secure procedure in place for receiving and depositing large all-cash tax and license payments. This must include making appropriate security arrangements for payment of annual business license fees and tax payments. It may also include surveying local financial institutions to see which ones are willing to accept money from marijuana businesses. Credit unions may be more receptive than banks, but they too are regulated by a federal entity, the National Credit Union Administration, and may be reluctant to take any action that could be perceived as violating federal law or regulations. (For more information, read “Why Banks Don’t Serve Marijuana Businesses” at www.westerncity.com.)

Cannabis Delivery.

The Council may expressly prohibit or allow medical cannabis deliveries by businesses located outside of the City. The Council should consider if it would like to allow recreational cannabis deliveries.

Personal Cultivation.

Under the AUMA, the personal cannabis cultivation limit is six plants. Patients with a doctor's recommendation can grow more plants under the MCRSA. While the smoking of marijuana would be subject to the same limitations for tobacco smoking under the City’s current smoking ordinance, no existing City regulation would help neighbors bothered by the smell of outdoor (or indoor) cannabis cultivation. The Council may wish to consider regulations that staff may enforce on a complaint-basis. There are additional options for regulating personal cultivation in the League of California Cities article (Attachment 3).

Home Occupations.

Due to potential criminal activity, the visual appearance of security measures (window and door bars, lights, and cameras), and potential smell in close proximity to neighbors, cannabis related businesses may be inappropriate for residential neighborhoods. Additionally, if it were allowed in accessory structures as the Waterford example shows, units under 120 square feet would be difficult to get the contracted County Building Inspections as normally building permits are not needed for structure not on a foundation and less than 120 square feet in size.

CONCLUSION:

²⁴ <https://www.forbes.com/sites/kashmirhill/2014/02/10/irony-alert-major-bitcoin-processor-rejects-pot-shop-as-too-legally-dubious/#4fb19855613d>

Staff seeks direction regarding options for local regulation of cannabis-related activities for future consideration.

ATTACHMENTS:

Attachment 1 – Hercules Ordinance 492.

Attachment 2 – Summary of Cannabis Options

Attachment 3 – “What Cities Should Know About the Adult Use of Marijuana Act Proposition 64” by Tim Cromartie, Western City, February 2017

Attachment 4 – Memo and Frequently Asked Questions about AUMA Proposition 64 by League of California Cities, September 26, 2016 and January 9, 2017



REPORT TO THE CITY COUNCIL

DATE: Meeting of September 12, 2017

TO: Mayor de Vera and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
J. Patrick Tang, City Attorney

SUBJECT: Local Regulation of Recreational Cannabis Uses

RECOMMENDED ACTION: Receive and discuss staff report and draft legislation, and provide further direction to staff and the City Attorney.

BACKGROUND:

On November 8, 2016, Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), was approved by California voters and became effective on November 9, 2016.

The AUMA has legalized the nonmedical use of marijuana by persons 21 years of age and older, and allows for the personal cultivation of up to six marijuana plants. It makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without compensation, 28.5 grams of marijuana, or 8 grams of concentrated marijuana; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use.

Although persons 21 years of age or older may use and possess nonmedical marijuana under AUMA, their ability to engage in these activities is not unfettered. The law prohibits the smoking of marijuana in certain places. Individuals cannot possess marijuana on school grounds and daycare centers, or in youth centers while children are present, or possess an open container of marijuana or marijuana products while driving, operating or riding in any vehicle used for transportation.

AUMA further provides that cities may prohibit possession and smoking in buildings owned, leased or occupied by the city, and that employers, including cities, may maintain a drug and alcohol-free work place by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the work place.

Additionally, while outdoor cultivation may continue to be prohibited, indoor cultivation for personal use cannot be prohibited by the City, but it can be regulated.

As reported to you at the Council meeting of August 8, 2017, absent a local ordinance specifically addressing nonmedical cannabis business uses, there is a potential for the state to issue licenses for cannabis businesses to operate in the City beginning in January 2018. Unless the City has adopted local regulations at the time a permit is processed by the state, the state regulations would apply, essentially pre-empting the City from objecting to the terms of a permit thus issued. Staff recommends that any local restrictions be adopted and effective before the state begins to issue licenses. A copy of the staff report from the August 8, 2017 meeting is provided as Attachment 1 to this report.

DISCUSSION:

At the August 8, 2017 Council meeting, staff was directed to bring back draft legislation for Council consideration that would establish the following restrictions in Hercules:

- Not allow outdoor cultivation.
- Not allow accessory structure cultivation (including greenhouses).
- Retain medical cannabis dispensary ban.
- Not allow retail sales of cannabis for recreational purposes.
- Not allow deliveries of medical or recreational cannabis within Hercules.

A draft ordinance is provided for Council consideration as Attachment 2 that would accomplish the above goals set out by the Council at the August 8, 2017 meeting. If the draft measure were to be enacted by the City Council, the Council could always modify the regulations at a future date should a decision be made to adjust the City's policy in order to allow for some of the activities prohibited by the draft ordinance.

At the August 8th meeting, Council also requested additional clarifying information as follows:

- Provide a comparison of current medical cannabis regulations and proposed recreational cannabis regulations.

The draft ordinance would amend existing medical marijuana restrictions to include restrictions on recreational cannabis activities. Staff is recommending one cultivation standard, applicable to both medical cannabis and recreational cannabis, so that a comparison chart or diagram is not necessary.

- Provide the breakdown of Hercules votes for and against Proposition 64 from the November 2016 election.

The voting breakdown for Proposition 64 is as follows:

Statewide:	57.13% in favor; 42.87% opposed.
County of Contra Costa:	60.72% in favor; 39.28% opposed.
City of Hercules:	70.76% in favor; 29.24% opposed.

- Provide that the restrictions on tobacco, medical cannabis, and recreational cannabis uses be equally as stringent, and similarly applicable, in or about public facilities, offices, and open spaces.

A review of the existing smoking regulations and the prior restrictions on medical cannabis activities enacted in 2015 suggests that these regulations do not conflict with the terms of the proposed ordinance restricting recreational cannabis activities, and in fact would provide comparable restrictions, at least as to their uses in public buildings and in and around public spaces within the City. It is important to note that under the AUMA, the smoking of cannabis is subject to the same limitations as tobacco smoking. In the case of Hercules, restrictions on smoking in public areas were enacted in 1992, and are codified in the Hercules Municipal Code at Sec. 5-6. A copy of the City's smoking regulations is provided as Attachment 3 to this report.

Additional Comments:

Ordinance No. 492. The Council passed Ordinance No. 492 in February 2016, imposing restrictions on medical marijuana (attached to the staff report from the meeting of August 8th). Ordinance No. 492 has been codified within the Hercules Municipal Code as Sec. 4-18. There was discussion at the meeting of August 8th whether additional restrictions on recreational cannabis should be adopted by amending Sec. 4-18, or in the alternative, whether a separate amendment to the municipal code addressing recreational cannabis should be prepared instead. Since Sec. 4-18 would need to be amended in order to harmonize some of the language, references, and definitions with the newly proposed regulation of recreational cannabis, it was decided to amend Sec. 4-18 to include the recreational cannabis regulations, so that the City's cannabis regulations would be located within the same code section.

Personal Cultivation. For enforcement purposes, it would be difficult to distinguish between cultivation of cannabis for a qualified patient, and personal cultivation for recreational purposes. Staff thus recommends one cultivation standard. Personal cultivation under the proposed ordinance must be in compliance with, among other requirements: A person must be 21 years or older. The marijuana plants and anything produced by the plants must be kept within the person's private residence, fully enclosed and secure, and not visible by normal unaided vision from a public place. Not more than six plants may be planted or cultivated at one time. Outdoor cultivation is prohibited at all times. Building permits must be obtained. And, accessory structures cannot be used for cultivation.

Permit and Inspection Option. An unresolved question at this stage is whether the City as a matter of policy finds it is in the public interest to develop a permit and inspection program that would apply to the indoor cultivation of cannabis. Of course such a program would impact staffing, and would require extensive training as well as active monitoring and follow up. If Council considers it a priority to implement a permit and inspection program, this function might have to be contracted out. The draft ordinance, provided as Attachment 2 to this report, contains for your consideration a permit and inspection requirement, which is identified in red text. The safety and security standards contained within the draft ordinance cannot be proactively enforced without a robust permit and inspection program.

CONCLUSION:

Staff seeks further direction regarding options for local regulation of recreational cannabis-related activities.

ATTACHMENTS:

Attachment 1 – August 8, 2017 Staff Report and Attachments.

Attachment 2 – Draft Ordinance Restricting Recreational Cannabis Within the City of Hercules.

Attachment 3 – Current Hercules Smoking Regulations



STAFF REPORT TO THE CITY COUNCIL

DATE: Meeting of September 26, 2017

TO: Mayor de Vera and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
J. Patrick Tang, City Attorney

SUBJECT: Local Regulation of Cannabis Uses Pursuant to Proposition 64

RECOMMENDED ACTION:

Receive and discuss staff report and revised draft legislation, and provide further direction to staff and the City Attorney.

BACKGROUND:

At the council meeting of September 12, 2017, the City Council discussed staff recommendations regarding a proposed ordinance that would impose restrictions on local marijuana activities. This report addresses some of the issues raised by Council at the September 12th meeting. A redline draft ordinance containing changes directed by Council is provided for as Attachment 1. A clean copy of the revised draft ordinance is provided as Attachment 2 to this report.

As previously reported to the Council, with the November 2016 passage of statewide Proposition 64, the Adult Use of Marijuana Act ("AUMA"), there is a potential for the state to issue licenses for cannabis businesses to operate in the City beginning in January 2018.

While nothing in the AUMA requires a city to enact an ordinance or regulation by a certain date, if a city does not have a ban or regulatory scheme in place at the time a permit is processed by the state, the City would have no ability to impose local conditions on a permit thus issued. For this reason, staff recommends that any local restrictions be adopted and effective before the state begins to issue licenses.

A copy of the staff report from July 12th is provided as Attachment 3 to this report.

DISCUSSION:

At the September 12, 2017 Council meeting, staff was directed to make the following changes to the draft ordinance:

- Reference the City's Smoking Ordinance.

See Attachment 1, Sec. 4-18.02(F)(2).

- Propose amendments to the City's Smoking Ordinance.

The City's Smoking Ordinance was adopted in 1992 and is out of date. Included as Attachment 4 to this report is a draft Model Smoking Ordinance that includes express restrictions on vaping and marijuana smoke. The City Attorney is reviewing other model ordinances and if directed to do so will bring back a report with recommendations to Council. It is important to note that under the AUMA, the smoking of cannabis is subject to the same limitations as tobacco smoking.

- Reserve the right to enact further restrictions on marijuana related activities in the city.

See Attachment 1, Sec. 4-18.06.

- Include provisions to address objectionable smells from cultivation activities (Emeryville model).

See Attachment 1, Sec. 4-18.03(B)(7).

- Include Vaping.

Vaping is not specifically included in the draft marijuana ordinance, but the definition of "smoking" in the City's Smoking Ordinance appears to be broad enough to cover vaping. It is recommended that a revised Smoking Ordinance should expressly include vaping.

- Prohibit outdoor cultivation.

See Attachment 1, Sec. 4-18.03(A).

- Prohibit accessory structure cultivation (including greenhouses).

Originally included as a prohibition in the September 12th draft ordinance; further research indicates that the AUMA does not allow cities to completely prohibit marijuana cultivation for personal use in accessory structures (Cal. Health and Safety Code Sec. 11362.2(b)(2)). Revised language requires compliance with the

City's setback and permitting requirements for accessory structures, see Attachment 1, Sec. 4-18.03(B)(6).

- Prohibit retail sales of cannabis for recreational purposes.

See Attachment 1, Sec. 4-18.02(B).

- Prohibit deliveries of cannabis within Hercules.

See Attachment 1, Sec. 4-18.02(C). Note: In light of the Council's discussion on September 12th, staff is offering for Council consideration modified language that would make an exception for noncommercial delivery of medical marijuana by primary caregivers only, consistent with Ordinance 492, adopted in 2016. This is a policy issue; legally the City has the discretion to ban all deliveries, or allow an exception for deliveries by primary caregivers of noncommercial medical marijuana to patients residing in Hercules.

- Remove the indoor cultivation permit and inspection provisions from Sec. 18.03, but retain the health and safety requirements that would apply to indoor cultivation for personal use.

Council discussed during the September 12th meeting whether a permit and inspection program should be adopted. Council determined that at this time, such a program is infeasible. However, Council requested that staff retain as many of the health and safety requirements as possible in the revised draft, without requiring inspection and permitting. Staff is offering a hybrid approach with new subsections 10 and 11 that would require a person engaging in indoor cultivation to sign an Acknowledgment and Consent Form to verify compliance with local cultivation requirements and provide consent to an inspection, with 24 hours notice, when a complaint has been filed. See Attachment 1, Sec. 4-18.03(B)(1)-(11).

Additional Comments:

Given the number of references in the draft ordinance to provisions of the AUMA and the several questions posed by the Council at the September 12th meeting regarding AUMA provisions, a link to the [full text of the AUMA](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf) is being provided for your reference:

[https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20\(Marijuana\)_1.pdf](https://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20(Marijuana)_1.pdf)

CONCLUSION:

Staff seeks further direction regarding options for local regulation of cannabis related activities. A public hearing notice for October 10, 2017 has been prepared and submitted to the newspaper in anticipation that the Council may direct staff to proceed with introduction of a final ordinance.

ATTACHMENTS:

Attachment 1 – Redline version of Revised Draft Ordinance.

Attachment 2 – Clean version of Revised Draft Ordinance.

Attachment 3 – Staff report from September 12, 2017.

Attachment 4 – ANR Model Smoking Ordinance.

NOTES:

- 1) Text in Underline identifies proposed amendments to Ordinance No. 492, reviewed by the City Council at the September 12, 2017 meeting.
- 2) Text in **RED** identifies changes recommended by staff in response to comments received from the City Council at the September 12, 2017 meeting, and pursuant to additional research regarding Proposition 64 requirements.
- 3) Text in ~~Strikethrough~~ identifies language reviewed by the City Council on September 12th that is now proposed to be deleted.
- 4) Text in ~~Double-Strikethrough~~ identifies permit, licensing, and inspection language that was presented on September 12, and by consensus of the Council, directed to be left out of this draft and deferred for later consideration.
- 5) Text in parentheses on the right margin are September 12th comments from council members, with staff responses.

Chapter 18. ~~Medical~~ Marijuana Dispensaries, Cultivation, Processing, **Usage, Sales, and Commercial Delivery**

Sec. 4-18.01 Purpose.

~~Medical~~ Marijuana Dispensaries and Other Uses. The City Council finds that prohibitions on marijuana cultivation, marijuana processing, **marijuana usage, marijuana sales,** marijuana commercial delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare of the City and its community, **and that such local prohibitions are specifically authorized under state law pursuant to Sections 11362.2 and 26200 of the California Health and Safety Code, and the Adult Use of Marijuana Act ("AUMA"), Section 3. "Purpose and Intent", subsections (c) and (d).** Notwithstanding any provision of this Code to the contrary, any land use that cannot be conducted or carried out without being in violation of State or Federal law or this Code, expressly including, but not limited to, ~~medical~~ marijuana dispensaries, marijuana commercial deliveries, and ~~medical~~ marijuana cultivation, shall be prohibited in all planning areas and zoning districts within the City.

[GB: Where is the authority in the AUMA for allowing local regulation? Response: the draft ordinance Sec. 4-18.01 has been amended to

*include express references to state law allowance
for local control and regulation]*

Sec. 4-18.02 Prohibited Uses.

A. Notwithstanding any provision of this Section or Chapter, no person shall transact, perform, engage in and carry on in the City any business, trade, profession, calling, use or occupation that cannot be, or is not, conducted or carried out without being in violation of State or Federal law, or this Code, and no license will be issued for any such business, trade, profession, calling, use, or occupation, including but not limited to a ~~medical~~ marijuana dispensary, ~~medical~~ **marijuana commercial sales**, marijuana delivery, or ~~medical~~ marijuana cultivation as defined in Section 4-18.03. ~~In the event of any future amendments to this Code, including amendments to allowable medical marijuana uses, the City hereby expressly reserves the right to develop, implement, and conduct local licensing of medical marijuana cultivation under Health and Safety Code Section 11362.777(c).~~

B. Commercial and non-personal use marijuana activities of all types are expressly prohibited in all planning areas and zoning districts within the City. No person shall establish, operate, conduct or allow any commercial or non-personal use marijuana activity anywhere within the city.

C. To the extent not already covered by subsection B above, **and except for the noncommercial delivery of medical marijuana or medical marijuana products by primary caregivers**, all deliveries of medical or non-medical marijuana are expressly prohibited within the city of Hercules. No person shall conduct any deliveries that either originate or terminate within the city.

[Staff is offering for further consideration the optional language above that would allow for delivery of medical marijuana by primary caregivers only, in response to concerns raised by the Council on September 12th, and consistent with the previously adopted Ordinance No. 492]

D. This section is meant to prohibit all activities for which a state license is required. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a state license is required under the Medical Marijuana Regulation and Safety Act ("MMRSA") or the Adult Use of Marijuana Act ("AUMA").

E. Cultivation of marijuana for non-commercial purposes including, but not limited to, cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones, planned developments, and all specific and master plan areas in the city of Hercules, ~~except by permit~~ in residential zones as described in

~~Section 4-18.03. No person including, but not limited to, a qualified patient or primary caregiver, shall cultivate any amount of marijuana for personal use in the city, without said permit.~~

F. As specified by California Health and Safety Code Section 11362.3 the following are prohibited:

1. Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code.

2. Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited, pursuant to Section 11362.3(a)(2) of the Business and Professions Code, and the City's Smoking Ordinance, Title 5, Chapter 6 of this Code.

[Per MDV; cross reference the Smoking Ordinance? Response: This subsection simply restates the language contained in the AUMA; the section has been amended to include a cross reference to the Smoking Ordinance]

3. Smoke marijuana or marijuana products within one thousand feet of a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of the Business and Professions Code or Chapter 3.5 of Division 8 of the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center.

4. Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

5. Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.

6. Manufacture concentrated cannabis using a volatile solvent, unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.

*[MDV: Why does this subsection reference a licensing scheme, since the City will not issue permits? Response: This is a restatement of the language from the state code. State law allows permitting for the manufacture of concentrated cannabis, **but also allows for the City to ban manufacturing, which is provided for in the draft ordinance at Sec. 4-18.02(D).**]*

7. Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

[MDV: Suggested re-grouping similar topics so that 3 and 5 (schools) are together, and 4 and 7 (driving) are together. Response: While this is a sensible suggestion, the language in our draft restates the language of the AUMA, B&P Code 11362.3, in the order it appears in the state law. Yes, the subsections can be reordered, but this

may cause confusion when the provisions are cross-referenced]

8. Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200 of the Business and Professions Code and while no persons under the age of twenty-one years are present.

Sec. 4-18.03 Indoor Marijuana Cultivation-Permit.

A. Outdoor cultivation of marijuana is prohibited within the city limits of the city of Hercules.

B. Indoor personal use cultivation of marijuana is ~~allowed pursuant to an approved indoor marijuana cultivation permit~~ authorized by Health and Safety Code Section 11362.1(a)(3), **and in accordance with the following local requirements:** ~~The permit shall be submitted to the building department for approval, and appealed to the administrative hearing board as necessary.~~

1. A person twenty-one years and older must plant, cultivate, harvest, dry, or process plants in accordance with this chapter.

2. The marijuana plants and anything produced by the plants must be kept within the person's private residence, fully enclosed and secure, and not visible by normal unaided vision from a public place. **Cultivation, harvesting, or processing of plants in accessory structures is prohibited at all times.**

[Further research indicates that the AUMA disallows a complete local prohibition on cultivation inside accessory structures. H&S Code Sec. 11362.2(b)(2). Staff recommends requiring accessory structures used for cultivation to meet the requirements for accessory structures as listed in the city's Zoning Ordinance, see subsection 4-18.03(B)(6) below.]

3. Not more than six living plants may be planted, cultivated, harvested, dried, or processed at one time, but outdoor cultivation, harvesting, or processing will continue to be prohibited at all times.

4. ~~Permit applicant~~ **A person engaging in indoor cultivation pursuant to this Section** shall obtain written and signed consent of the property owner where the indoor cultivation of marijuana is located. ~~and evidence that the applicant resides full time on the premises and as reflected by utility accounts. The residence shall remain occupied, and required to maintain a functioning kitchen and bathroom(s) and the use of primary bedrooms for their intended purposes.~~

5. The property used for indoor cultivation of marijuana shall be a residential unit located upon the grounds of a private residence that is fully enclosed and secure, and not visible by normal unaided vision from a public place ~~located in a residential or commercial zone.~~

~~6. The application must include verification that Hercules police services will confirm, that the property owner, legal tenant, and/or operator of the indoor cultivation has not been convicted of an offense including, but not be limited to, the following:~~

~~a. A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.~~

~~b. A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.~~

~~c. A felony conviction involving fraud, deceit, or embezzlement.~~

~~d. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.~~

~~e. A felony conviction for drug trafficking with enhancements.~~

~~7. The applicant must submit plans prepared by licensed professionals reflecting the cultivation area including:~~

~~a. Ventilation and filtration systems as prepared by a licensed mechanical engineer;~~

~~b. Electrical plans with load calculations as prepared by a licensed electrical engineer;~~

~~c. Building plans for building alterations as prepared by a licensed engineer;~~

~~d. Plans reflecting how the cultivation area is locked and inaccessible to minors, and if inside an accessory structure to a private residence located upon the grounds of a private residence that it is fully enclosed, secure, and not visible by normal unaided vision from a public place.~~

6. The property used for indoor cultivation of marijuana shall be locked and inaccessible to minors, and if inside an accessory structure located upon the grounds of a private residence that it is fully enclosed, secure, and not visible by normal unaided vision from a public place. An accessory structure used for the cultivation of marijuana pursuant to Section 11362.2(b)(2) of the California Health and Safety Code must meet the permitting and setback requirements for accessory structures provided for in the Hercules Zoning Ordinance.

7. Odors shall be contained on the property on which the cultivation is located. If the City receives complaints of odors, the City may cause the inspection and abatement of the nuisance pursuant to subsection 4-18.03(b)(10) below, or any other remedy available at law.

[DR requested adding a provision regarding control of odor from usage and cultivation, citing the Emeryville draft ordinance. This new

provision is modelled on the Emeryville odor control provision]

8. Generators or gas products used to power electrical or lighting fixtures or equipment for indoor cultivation shall be prohibited.

9. Use of volatile solvents for indoor cultivation shall be prohibited, including, but not limited to: (a) explosive gases, such as butane, propane, xylene, styrene, gasoline, kerosene, O₂ or H₂; and (b) dangerous poisons, toxins, or carcinogens, such as methanol, isopropyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloroethylene, unless evidence of a current license to operate such solvents is provided.

~~10. The application shall include proposed indoor signage identifying the secured space where cultivation is occurring, including identification of any chemicals, fertilizers and pesticides located in the space or in the operation of the cultivation to aid public safety officials in times of emergency response to the location.~~

~~11. Initiation of a permit application will trigger a pre inspection by the building inspector to ensure that the building and/or accessory structure fully complies with the Uniform Building Code, California Building Code, and applicable municipal codes. Upon issuance of the permit, another inspection will be made by the building inspector to ensure approved plans were followed. Additional inspections will be performed over the term of the permit and~~

10. A person engaging in indoor cultivation pursuant to this Section shall first provide a signed Acknowledgment and Consent Form to the City of Hercules on a form prescribed by the City Manager confirming compliance with state law and the conditions contained in this Section, and granting the building inspector and/or code enforcement officer access with twenty-four-hour notice upon receipt by the City of a complaint regarding the person's cultivation activity. If the inspection is denied, an enforcement and/or abatement action shall be commenced to abate the nuisance conditions.

11. The Acknowledgment and Consent form ~~permit~~ will expire after twelve months and must be renewed annually with approval from the building department to be in compliance if indoor personal use marijuana cultivation is to continue.

[Council directed that the inspection and permit requirements in the September 12th draft be deferred for future consideration, but requested that the health and safety requirements for indoor cultivation be retained to the extent possible. Revised sections 1-11 above establish certain safety requirements and require that an Acknowledgment and Consent Form be provided the City to allow inspections on a complaint basis]

Sec. 4-18.03 Definitions.

"Accessory Structure" shall mean an enclosed structure either attached to and having a common wall with the main structure or may be freestanding enclosure, as defined in Section 35.210 of the Hercules Zoning Ordinance.

"Adult Use of Marijuana Act" or "AUMA" shall mean Proposition 64 now contained in Health and Safety Code Sections 11108, and 11362.

“Cannabis” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(f) as the same may be amended from time to time, and means any or all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana. The term “marijuana” shall also include “medical marijuana” as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

“Caregiver” or “primary caregiver” shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in Business and Professions Code Section 19300.5(k) as the same may be amended from time to time.

“Cooperative/collective” shall mean two or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

“Cultivation” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(l) as the same may be amended from time to time.

“Cultivation site” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(x) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(m) as the same may be amended from time to time. “Delivery” shall not include the carriage of medical marijuana or medical marijuana products on public roads when otherwise in compliance with California Business and Professions Code Section 19340, and shall not include the noncommercial delivery of medical marijuana or medical marijuana products by primary caregivers as defined in Section 11362.7 of the California Health and Safety Code.

[Staff is providing the additional language above that would allow for delivery of medical marijuana by primary caregivers in response to concerns raised by the Council on September 12th, and consistent with the previously adopted Ordinance No. 492]

“Dispensary” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(n) as the same may be amended from time to time. For purposes of this chapter, “dispensary” shall also include a cooperative/collective.

“Dispensing” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(y) as the same may be amended from time to time.

“Marijuana” see “Cannabis.”

“Medical marijuana cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis, regardless of whether there is an intent to produce, distribute, or sell the resulting product commercially.

~~“Medical marijuana delivery” means the commercial transfer of medical marijuana or medical marijuana products from a medical marijuana dispensary to a primary caregiver or qualified patient as defined in California Health and Safety Code Section 11362.7, or to a testing laboratory, and including the use of any technology platform owned or controlled by a dispensary to arrange or facilitate the transfer of medical marijuana or medical marijuana products within the City. “Medical marijuana delivery” shall not include the carriage of medical marijuana or medical marijuana products on public roads when otherwise in compliance with California Business and Professions Code Section 19340, and shall not include the noncommercial delivery of medical marijuana or medical marijuana products by caregivers.~~

[Staff recommends deleting this definition because it repeats the state code definition for “delivery” that is referenced in the definitions section above]

“Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products, either individually or in any combination, are offered, carried, transported, transmitted, manufactured, stored, placed, cultivated, sold, traded, exchanged, bartered, made available to and/or distributed, expressly including an establishment that delivers marijuana or marijuana products as part of a retail sale.

“Medical marijuana processing” means any method used to prepare marijuana or its byproduct for commercial retail and/or wholesale distribution, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

“Medical marijuana,” “medical marijuana product,” or “marijuana product” shall have the same meanings as set forth in Business and Professions Code Section 19300.5(ag) as the same may be amended from time to time and shall also include “medical marijuana” as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to

time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Nursery” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(ah) as the same may be amended from time to time.

“Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(z) as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(aa) as the same may be amended from time to time.

Sec. 4-18.04 Penalties.

A person who violates this Chapter is subject to all abatement and civil penalty provisions of the Hercules Municipal Code, including but not limited to the public nuisance provisions of Chapter 4-10, and any and all applicable laws and regulations without limitation. In addition to any other administrative enforcement action authorized pursuant to the Hercules Municipal Code, the city attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter.

Sec. 4-18.05 Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the city pursuant to Code of Civil Procedure Section 731 or any other remedy available to the city.

Sec. 4-18.06 Future Amendments and Preservation of Local Control.

The City expressly reserves the right to adopt and enforce local ordinances to regulate and control all local marijuana related activities in a manner consistent with state law, including but not limited to regulation of use, possession, use for medical purposes, licensing, retail and distribution, cultivation, transportation, delivery, manufacturing, packaging, advertising, marketing, records keeping, fees, taxation, permits, and inspections.

[This section has been added based on comments made by the Council and staff at the September 12th meeting]

Chapter 18. Marijuana Dispensaries, Cultivation, Processing, Usage, Sales, and Commercial Delivery

Sec. 4-18.01 Purpose.

Marijuana Dispensaries and Other Uses. The City Council finds that prohibitions on marijuana cultivation, marijuana processing, marijuana usage, marijuana sales, marijuana commercial delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare of the City and its community, and that such local prohibitions are specifically authorized under state law pursuant to Sections 11362.2 and 26200 of the California Health and Safety Code, and the Adult Use of Marijuana Act (“AUMA”), Section 3. “Purpose and Intent”, subsections (c) and (d). Notwithstanding any provision of this Code to the contrary, any land use that cannot be conducted or carried out without being in violation of State or Federal law or this Code, expressly including, but not limited to, marijuana dispensaries, marijuana commercial deliveries, and marijuana cultivation, shall be prohibited in all planning areas and zoning districts within the City.

Sec. 4-18.02 Prohibited Uses.

A. Notwithstanding any provision of this Section or Chapter, no person shall transact, perform, engage in and carry on in the City any business, trade, profession, calling, use or occupation that cannot be, or is not, conducted or carried out without being in violation of State or Federal law, or this Code, and no license will be issued for any such business, trade, profession, calling, use, or occupation, including but not limited to a marijuana dispensary, marijuana commercial sales, marijuana delivery, or marijuana cultivation as defined in Section 4-18.03.

B. Commercial and non-personal use marijuana activities of all types are expressly prohibited in all planning areas and zoning districts within the City. No person shall establish, operate, conduct or allow any commercial or non-personal use marijuana activity anywhere within the city.

C. To the extent not already covered by subsection B above, and except for the noncommercial delivery of medical marijuana or medical marijuana products by primary caregivers, all deliveries of medical or non-medical marijuana are expressly prohibited within the city of Hercules. No person shall conduct any deliveries that either originate or terminate within the city.

D. This section is meant to prohibit all activities for which a state license is required. Accordingly, the city shall not issue any permit, license or other entitlement for any activity for which a state license is required under the Medical Marijuana Regulation and Safety Act (“MMRSA”) or the Adult Use of Marijuana Act (“AUMA”).

E. Cultivation of marijuana for non-commercial purposes including, but not limited to, cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones, planned developments, and all specific and master plan areas in the city of Hercules, except in residential zones as described in Section 4-18.03.

F. As specified by California Health and Safety Code Section 11362.3 the following are prohibited:

1. Smoke or ingest marijuana or marijuana products in any public place, except in accordance with Section 26200 of the Business and Professions Code.

2. Smoke marijuana or marijuana products in a location where smoking tobacco is prohibited, pursuant to Section 11362.3(a)(2) of the Business and Professions Code, and the City’s Smoking Ordinance, Title 5, Chapter 6 of this Code.

3. Smoke marijuana or marijuana products within one thousand feet of a school, day care center, or youth center, except in or upon the grounds of a private residence or in accordance with Section 26200 of the Business and Professions Code or Chapter 3.5 of Division 8 of the Business and Professions Code and only if such smoking is not detectable by others on the grounds of such a school, day care center, or youth center.

4. Possess an open container or open package of marijuana or marijuana products while driving, operating, or riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

5. Possess, smoke or ingest marijuana or marijuana products in or upon the grounds of a school, day care center, or youth center while children are present.

6. Manufacture concentrated cannabis using a volatile solvent, unless done in accordance with a license under Chapter 3.5 of Division 8 or Division 10 of the Business and Professions Code.

7. Smoke or ingest marijuana or marijuana products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

8. Smoke or ingest marijuana or marijuana products while riding in the passenger seat or compartment of a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation except as permitted on a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation that is operated in accordance with Section 26200

of the Business and Professions Code and while no persons under the age of twenty-one years are present.

Sec. 4-18.03 Indoor Marijuana Cultivation.

A. Outdoor cultivation of marijuana is prohibited within the city limits of the city of Hercules.

B. Indoor personal use cultivation of marijuana is authorized by Health and Safety Code Section 11362.1(a)(3), and in accordance with the following local requirements:

1. A person twenty-one years and older must plant, cultivate, harvest, dry, or process plants in accordance with this chapter.

2. The marijuana plants and anything produced by the plants must be kept within the person's private residence, fully enclosed and secure, and not visible by normal unaided vision from a public place.

3. Not more than six living plants may be planted, cultivated, harvested, dried, or processed at one time, but outdoor cultivation, harvesting, or processing will continue to be prohibited at all times.

4. A person engaging in indoor cultivation pursuant to this Section shall obtain written and signed consent of the property owner where the indoor cultivation of marijuana is located.

5. The property used for indoor cultivation of marijuana shall be a residential unit located upon the grounds of a private residence that is fully enclosed and secure, and not visible by normal unaided vision from a public place.

6. The property used for indoor cultivation of marijuana shall be locked and inaccessible to minors, and if inside an accessory structure to a private residence located upon the grounds of a private residence that it is fully enclosed, secure, and not visible by normal unaided vision from a public place. An accessory structure used for the cultivation of marijuana pursuant to Section 11362.2(b)(2) of the California Health and Safety Code must meet the permitting and setback requirements for accessory structures provided for in the Hercules Zoning Ordinance.

7. Odors shall be contained on the property on which the cultivation is located. If the City receives complaints of odors, the City may cause the inspection and abatement of the nuisance pursuant to subsection 4-18.03(b)(10) below, or any other remedy available at law.

8. Generators or gas products used to power electrical or lighting fixtures or equipment for indoor cultivation shall be prohibited.

9. Use of volatile solvents for indoor cultivation shall be prohibited, including, but not limited to: (a) explosive gases, such as butane, propane, xylene, styrene, gasoline, kerosene, O₂ or H₂; and (b) dangerous poisons, toxins, or carcinogens, such as methanol, isopropyl alcohol, methylene chloride, acetone, benzene, toluene, and trichloroethylene.

10. A person engaging in indoor cultivation pursuant to this Section shall first provide a signed Acknowledgment and Consent Form to the City of Hercules on a form prescribed by the City Manager confirming compliance with state law and the conditions contained in this Section, and granting the building inspector and/or code enforcement officer access with twenty-four-hour notice upon receipt by the City of a complaint regarding the person's cultivation activity. If the inspection is denied, an enforcement and/or abatement action shall be commenced to abate the nuisance conditions.

11. The Acknowledgment and Consent form will expire after twelve months and must be renewed annually with approval from the building department if indoor personal use marijuana cultivation is to continue.

Sec. 4-18.03 Definitions.

"Accessory Structure" shall mean an enclosed structure either attached to and having a common wall with the main structure or may be freestanding enclosure, as defined in Section 35.210 of the Hercules Zoning Ordinance.

"Adult Use of Marijuana Act" or "AUMA" shall mean Proposition 64 now contained in Health and Safety Code Sections 11108, and 11362.

"Cannabis" shall have the same meaning as set forth in Business and Professions Code Section 19300.5(f) as the same may be amended from time to time, and means any or all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin or separated resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin, including marijuana infused in foodstuff or any other ingestible or consumable product containing marijuana.

"Caregiver" or "primary caregiver" shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

“Commercial cannabis activity” shall have the same meaning as that set forth in Business and Professions Code Section 19300.5(k) as the same may be amended from time to time.

“Cooperative/collective” shall mean two or more persons collectively or cooperatively cultivating, distributing, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.

“Cultivation” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(l) as the same may be amended from time to time.

“Cultivation site” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(x) as the same may be amended from time to time.

“Delivery” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(m) as the same may be amended from time to time. “Delivery” shall not include the carriage of medical marijuana or medical marijuana products on public roads when otherwise in compliance with California Business and Professions Code Section 19340, and shall not include the noncommercial delivery of medical marijuana or medical marijuana products by primary caregivers as defined in Section 11362.7 of the California Health and Safety Code.

“Dispensary” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(n) as the same may be amended from time to time. For purposes of this chapter, “dispensary” shall also include a cooperative/collective.

“Dispensing” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(o) as the same may be amended from time to time.

“Distribution” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(p) as the same may be amended from time to time.

“Distributor” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(q) as the same may be amended from time to time.

“Manufacturer” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(y) as the same may be amended from time to time.

“Marijuana” see “Cannabis.”

“Medical marijuana cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of any form of cannabis, regardless of whether there is an intent to produce, distribute, or sell the resulting product commercially.

“Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where marijuana, marijuana products, or devices for the use of marijuana or marijuana products, either individually or in any combination, are offered, carried, transported, transmitted, manufactured, stored, placed, cultivated, sold, traded, exchanged, bartered, made available to and/or distributed, expressly including an establishment that delivers marijuana or marijuana products as part of a retail sale.

“Medical marijuana processing” means any method used to prepare marijuana or its byproduct for commercial retail and/or wholesale distribution, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create marijuana related products and concentrates.

“Medical marijuana,” “medical marijuana product,” or “marijuana product” shall have the same meanings as set forth in Business and Professions Code Section 19300.5(ag) as the same may be amended from time to time and shall also include “medical marijuana” as such phrase is used in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the State of California or subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996) or California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).

“Medical Marijuana Regulation and Safety Act” or “MMRSA” shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.

“Nursery” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(ah) as the same may be amended from time to time.

“Qualifying patient” or “qualified patient” shall have the same meaning as set forth in Health and Safety Code Section 11362.7 as the same may be amended from time to time.

“Testing laboratory” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(z) as the same may be amended from time to time.

“Transport” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(am) as the same may be amended from time to time.

“Transporter” shall have the same meaning as set forth in Business and Professions Code Section 19300.5(aa) as the same may be amended from time to time.

Sec. 4-18.04 Penalties.

A person who violates this Chapter is subject to all abatement and civil penalty provisions of the Hercules Municipal Code, including but not limited to the public nuisance provisions of Chapter 4-10, and any and all applicable laws and regulations without limitation. In addition to any other administrative enforcement action authorized pursuant to the Hercules Municipal Code, the city attorney may bring a civil action for injunctive relief and civil penalties against any person or entity that violates this chapter.

Sec. 4-18.05 Public Nuisance.

Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the city pursuant to Code of Civil Procedure Section 731 or any other remedy available to the city.

Sec. 4-18.06 Future Amendments and Preservation of Local Control.

The City expressly reserves the right to adopt and enforce local ordinances to regulate and control all local marijuana related activities in a manner consistent with state law, including but not limited to regulation of use, possession, use for medical purposes, licensing, retail and distribution, cultivation, transportation, delivery, manufacturing, packaging, advertising, marketing, records keeping, fees, taxation, permits, and inspections.



REPORT TO THE CITY COUNCIL

DATE: Meeting of September 12, 2017

TO: Mayor de Vera and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
J. Patrick Tang, City Attorney

SUBJECT: Local Regulation of Recreational Cannabis Uses

RECOMMENDED ACTION: Receive and discuss staff report and draft legislation, and provide further direction to staff and the City Attorney.

BACKGROUND:

On November 8, 2016, Proposition 64, the Control, Regulate, and Tax Adult Use of Marijuana Act ("AUMA"), was approved by California voters and became effective on November 9, 2016.

The AUMA has legalized the nonmedical use of marijuana by persons 21 years of age and older, and allows for the personal cultivation of up to six marijuana plants. It makes it legal for persons 21 years of age or older to: (1) smoke or ingest marijuana or marijuana products; (2) possess, process, transport, purchase, obtain, or give away to persons 21 years of age or older, without compensation, 28.5 grams of marijuana, or 8 grams of concentrated marijuana; and (3) possess, plant, cultivate, harvest, dry or process up to six living marijuana plants for personal use.

Although persons 21 years of age or older may use and possess nonmedical marijuana under AUMA, their ability to engage in these activities is not unfettered. The law prohibits the smoking of marijuana in certain places. Individuals cannot possess marijuana on school grounds and daycare centers, or in youth centers while children are present, or possess an open container of marijuana or marijuana products while driving, operating or riding in any vehicle used for transportation.

AUMA further provides that cities may prohibit possession and smoking in buildings owned, leased or occupied by the city, and that employers, including cities, may maintain a drug and alcohol-free work place by prohibiting the use, consumption, possession, transfer, transportation, sale, display or growth of marijuana in the work place.

Additionally, while outdoor cultivation may continue to be prohibited, indoor cultivation for personal use cannot be prohibited by the City, but it can be regulated.

As reported to you at the Council meeting of August 8, 2017, absent a local ordinance specifically addressing nonmedical cannabis business uses, there is a potential for the state to issue licenses for cannabis businesses to operate in the City beginning in January 2018. Unless the City has adopted local regulations at the time a permit is processed by the state, the state regulations would apply, essentially pre-empting the City from objecting to the terms of a permit thus issued. Staff recommends that any local restrictions be adopted and effective before the state begins to issue licenses. A copy of the staff report from the August 8, 2017 meeting is provided as Attachment 1 to this report.

DISCUSSION:

At the August 8, 2017 Council meeting, staff was directed to bring back draft legislation for Council consideration that would establish the following restrictions in Hercules:

- Not allow outdoor cultivation.
- Not allow accessory structure cultivation (including greenhouses).
- Retain medical cannabis dispensary ban.
- Not allow retail sales of cannabis for recreational purposes.
- Not allow deliveries of medical or recreational cannabis within Hercules.

A draft ordinance is provided for Council consideration as Attachment 2 that would accomplish the above goals set out by the Council at the August 8, 2017 meeting. If the draft measure were to be enacted by the City Council, the Council could always modify the regulations at a future date should a decision be made to adjust the City's policy in order to allow for some of the activities prohibited by the draft ordinance.

At the August 8th meeting, Council also requested additional clarifying information as follows:

- Provide a comparison of current medical cannabis regulations and proposed recreational cannabis regulations.

The draft ordinance would amend existing medical marijuana restrictions to include restrictions on recreational cannabis activities. Staff is recommending one cultivation standard, applicable to both medical cannabis and recreational cannabis, so that a comparison chart or diagram is not necessary.

- Provide the breakdown of Hercules votes for and against Proposition 64 from the November 2016 election.

The voting breakdown for Proposition 64 is as follows:

Statewide:	57.13% in favor; 42.87% opposed.
County of Contra Costa:	60.72% in favor; 39.28% opposed.
City of Hercules:	70.76% in favor; 29.24% opposed.

- Provide that the restrictions on tobacco, medical cannabis, and recreational cannabis uses be equally as stringent, and similarly applicable, in or about public facilities, offices, and open spaces.

A review of the existing smoking regulations and the prior restrictions on medical cannabis activities enacted in 2015 suggests that these regulations do not conflict with the terms of the proposed ordinance restricting recreational cannabis activities, and in fact would provide comparable restrictions, at least as to their uses in public buildings and in and around public spaces within the City. It is important to note that under the AUMA, the smoking of cannabis is subject to the same limitations as tobacco smoking. In the case of Hercules, restrictions on smoking in public areas were enacted in 1992, and are codified in the Hercules Municipal Code at Sec. 5-6. A copy of the City's smoking regulations is provided as Attachment 3 to this report.

Additional Comments:

Ordinance No. 492. The Council passed Ordinance No. 492 in February 2016, imposing restrictions on medical marijuana (attached to the staff report from the meeting of August 8th). Ordinance No. 492 has been codified within the Hercules Municipal Code as Sec. 4-18. There was discussion at the meeting of August 8th whether additional restrictions on recreational cannabis should be adopted by amending Sec. 4-18, or in the alternative, whether a separate amendment to the municipal code addressing recreational cannabis should be prepared instead. Since Sec. 4-18 would need to be amended in order to harmonize some of the language, references, and definitions with the newly proposed regulation of recreational cannabis, it was decided to amend Sec. 4-18 to include the recreational cannabis regulations, so that the City's cannabis regulations would be located within the same code section.

Personal Cultivation. For enforcement purposes, it would be difficult to distinguish between cultivation of cannabis for a qualified patient, and personal cultivation for recreational purposes. Staff thus recommends one cultivation standard. Personal cultivation under the proposed ordinance must be in compliance with, among other requirements: A person must be 21 years or older. The marijuana plants and anything produced by the plants must be kept within the person's private residence, fully enclosed and secure, and not visible by normal unaided vision from a public place. Not more than six plants may be planted or cultivated at one time. Outdoor cultivation is prohibited at all times. Building permits must be obtained. And, accessory structures cannot be used for cultivation.

Permit and Inspection Option. An unresolved question at this stage is whether the City as a matter of policy finds it is in the public interest to develop a permit and inspection program that would apply to the indoor cultivation of cannabis. Of course such a program would impact staffing, and would require extensive training as well as active monitoring and follow up. If Council considers it a priority to implement a permit and inspection program, this function might have to be contracted out. The draft ordinance, provided as Attachment 2 to this report, contains for your consideration a permit and inspection requirement, which is identified in red text. The safety and security standards contained within the draft ordinance cannot be proactively enforced without a robust permit and inspection program.

CONCLUSION:

Staff seeks further direction regarding options for local regulation of recreational cannabis-related activities.

ATTACHMENTS:

Attachment 1 – August 8, 2017 Staff Report and Attachments.

Attachment 2 – Draft Ordinance Restricting Recreational Cannabis Within the City of Hercules.

Attachment 3 – Current Hercules Smoking Regulations

**Model Ordinance Prohibiting Smoking in
All Workplaces and Public Places
(100% Smokefree)**

Sec. 1000. Title

This Article shall be known as the _____ [name of City or County] Smokefree Air Ordinance of _____ [year].

Sec. 1001. Findings and Intent

The _____ [City or County Governing Body] does hereby find that:

The 2006 U.S. Surgeon General's Report, *The Health Consequences of Involuntary Exposure to Tobacco Smoke*, has concluded that (1) secondhand smoke exposure causes disease and premature death in children and adults who do not smoke; (2) children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children; (3) exposure of adults to secondhand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer; (4) there is no risk-free level of exposure to secondhand smoke; (5) establishing smokefree workplaces is the only effective way to ensure that secondhand smoke exposure does not occur in the workplace, because ventilation and other air cleaning technologies cannot completely control for exposure of nonsmokers to secondhand smoke; and (6) evidence from peer-reviewed studies shows that smokefree policies and laws do not have an adverse economic impact on the hospitality industry.¹ According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.² According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.³

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.⁴

The Public Health Service's National Toxicology Program (NTP) has listed secondhand smoke as a known carcinogen.⁵

Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in

children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.⁶

There is indisputable evidence that implementing 100% smoke-free environments is the only effective way to protect the population from the harmful effects of exposure to secondhand smoke.⁷

In reviewing 11 studies concluding that communities see an immediate reduction in heart attack admissions after the implementation of comprehensive smokefree laws, the Institute of Medicine of the National Academies concluded that data consistently demonstrate that secondhand smoke exposure increases the risk of coronary heart disease and heart attacks and that smokefree laws reduce heart attacks.⁸

A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.⁹

Studies measuring cotinine (metabolized nicotine) and NNAL (metabolized nitrosamine NNK, a tobacco-specific carcinogen linked to lung cancer) in hospitality workers find dramatic reductions in the levels of these biomarkers after a smokefree law takes effect. Average cotinine levels of New York City restaurant and bar workers decreased by 85% after the city's smokefree law went into effect.¹⁰ After the implementation of Ontario, Canada's Smokefree Indoor Air Law, levels of NNAL were reduced by 52% in nonsmoking casino employees and cotinine levels fell by 98%.¹¹

Smokefree indoor air laws result in a significant reduction in fine particulate matter and improved air quality. A Grand Rapids, Michigan study that monitored six restaurants before and after implementation of the state's smokefree air law found that PM2.5 fine particulate matter was reduced by 92 percent after the law went into effect, indicating that the vast majority of indoor air pollution in all six venues was due to secondhand smoke. The results in Grand Rapids were consistent with results in Wilmington, Delaware; Boston, Massachusetts; and Western New York.¹²

Following a Health Hazard Evaluation of Las Vegas casino employees' secondhand smoke exposure in the workplace, which included indoor air quality tests and biomarker assessments, the National Institute of Occupational Safety & Health (NIOSH) concluded that the casino employees are exposed to dangerous levels of secondhand smoke at work and that their bodies absorb high levels of tobacco-specific chemicals NNK and cotinine during work shifts. NIOSH also concluded that the "best means of eliminating workplace exposure to [secondhand smoke] is to ban all smoking in the casinos."¹³ A subsequent study in Nevada, whose Clean Indoor Air Act permits smoking in designated areas of casinos, bars, and taverns, indicates that strong 100% smokefree laws are the only effective way to protect indoor air quality. The study sampled the air quality in 15 casino gaming areas and corresponding nonsmoking areas, and the results indicated that the Clean Indoor Air Act failed to protect air quality in the nonsmoking areas, including children-friendly areas.¹⁴

Secondhand smoke is particularly hazardous to elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease.¹⁵ The Americans With Disabilities Act, which requires that disabled persons have access to public places and workplaces, deems impaired respiratory function to be a disability.¹⁶

The U.S. Centers for Disease Control and Prevention has determined that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is non-linear at low doses, increasing rapidly with relatively small doses such as those received from secondhand smoke or actively smoking one or two cigarettes a day, and has warned that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking.¹⁷

Given the fact that there is no safe level of exposure to secondhand smoke, the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) bases its ventilation standards on totally smokefree environments. ASHRAE has determined that there is currently no air filtration or other ventilation technology that can completely eliminate all the carcinogenic components in secondhand smoke and the health risks caused by secondhand smoke exposure, and recommends that indoor environments be smokefree in their entirety.¹⁸

During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.¹⁹ Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area.²⁰

Residual tobacco contamination, or "thirdhand smoke," from cigarettes, cigars, and other tobacco products is left behind after smoking occurs and builds up on surfaces and furnishings. This residue can linger in spaces long after smoking has ceased and continue to expose people to tobacco toxins. Sticky, highly toxic particulate matter, including nicotine, can cling to walls and ceilings. Gases can be absorbed into carpets, draperies, and other upholsteries, and then be reemitted (off-gassed) back into the air and recombine to form harmful compounds.²¹ Tobacco residue is noticeably present in dust throughout places where smoking has occurred.²² Given the rapid sorption and persistence of high levels of residual nicotine from tobacco smoke on indoor surfaces, including clothing and human skin, this recently identified process represents an unappreciated health hazard through dermal exposure, dust inhalation, and ingestion.²³ The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and air 3EP are elevated in nonsmoking and smoking rooms of hotels that allow smoking. Air nicotine levels in smoking rooms are significantly higher than those in nonsmoking rooms of hotels that do and do not completely prohibit smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.²⁴

Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. After testing a number of electronic cigarettes from two leading manufacturers, the Food and Drug Administration (FDA) determined that various samples tested contained not only nicotine but also detectable levels of known carcinogens and toxic chemicals, including tobacco-specific nitrosamines and diethylene glycol, a toxic chemical used in antifreeze. The FDA's testing also suggested that "quality control processes used to manufacture these products are inconsistent or non-existent."²⁵ According to a more recent study, electronic cigarette emissions are made up of a high concentration of ultrafine particles, and the particle concentration is higher than in conventional tobacco cigarette smoke.²⁶ Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. Their use in workplaces and public places where

smoking of traditional tobacco products is prohibited creates concern and confusion and leads to difficulties in enforcing the smoking prohibitions. The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.²⁷

The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly \$10 billion a year: \$5 billion in estimated medical costs associated with secondhand smoke exposure and \$4.6 billion in lost productivity.²⁸

Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree. Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.²⁹

There is no legal or constitutional "right to smoke."³⁰ Business owners have no legal or constitutional right to expose their employees and customers to the toxic chemicals in secondhand smoke. On the contrary, employers have a common law duty to provide their workers with a workplace that is not unreasonably dangerous.³¹

Smoking is a potential cause of fires; cigarette and cigar burns and ash stains on merchandise and fixtures causes economic damage to businesses.³²

The smoking of tobacco, hookahs, or marijuana and the use of electronic cigarettes are forms of air pollution and constitute both a danger to health and a material public nuisance.

Accordingly, the _____ [City or County Governing Body] finds and declares that the purposes of this ordinance are (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment; and (2) to guarantee the right of nonsmokers to breathe smokefree air, and to recognize that the need to breathe smokefree air shall have priority over the desire to smoke.

Sec. 1002. Definitions

The following words and phrases, whenever used in this Article, shall be construed as defined in this Section:

- A. "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- B. "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
- C. "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes

any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

- D. "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- E. "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- F. "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- G. "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- H. "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- I. "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
- J. "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on [City or County] grounds.
- K. "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- L. "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets,

festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

- M. "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- N. "Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.
- O. "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- P. "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.
- Q. "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- R. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article.
- S. "Sports Arena" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 1003. Application of Article to [City-Owned or County-Owned] Facilities and Property

All enclosed areas, including buildings and vehicles owned, leased, or operated by the _____ [City or County] of _____, as well as all outdoor property adjacent to such buildings and under the control of the _____ [City or County], shall be subject to the provisions of this Article.

Sec. 1004. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the _____ [City or County] of _____, including but not limited to, the following places:

- A. Aquariums, galleries, libraries, and museums.
- B. Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.
- C. Bars.
- D. Bingo facilities.
- E. Child care and adult day care facilities.
- F. Convention facilities.
- G. Educational facilities, both public and private.
- H. Elevators.
- I. Gambling facilities.
- J. Health care facilities.
- K. Hotels and motels.
- L. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
- M. Parking structures.
- N. Polling places.
- O. Public transportation vehicles, including buses and taxicabs, under the authority of the _____ [City or County], and ticket, boarding, and waiting areas of public transportation facilities, including bus, train, and airport facilities.
- P. Restaurants.
- Q. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
- R. Retail stores.
- S. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee or council of the

_____ [City or County] or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the _____ [City or County].

T. Service lines.

U. Shopping malls.

V. Sports arenas, including enclosed places in outdoor arenas.

W. Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 1005. Prohibition of Smoking in Enclosed Places of Employment

A. Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 1006. Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

A. All private and semi-private rooms in nursing homes.

B. All hotel and motel guest rooms.

Sec. 1008. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

A. Within a reasonable distance of _____ [recommended 15-25] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent tobacco smoke from entering those areas.

B. On all outdoor property that is adjacent to buildings owned, leased, or operated by the _____ [City or County] of _____ and that is under the control of the _____ [City or County].

- C. In, and within _____ [*recommended 15-25*] feet of, outdoor seating or serving areas of restaurants and bars.
- D. In outdoor shopping malls, including parking structures.
- E. In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within _____ [*recommended 15-25*] feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- F. In outdoor recreational areas, including parking lots.
- G. In, and within _____ [*recommended 15-25*] feet of, all outdoor playgrounds.
- H. In, and within _____ [*recommended 15-25*] feet of, all outdoor public events.
- I. In, and within _____ [*recommended 15-25*] feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the _____ [*City or County*].
- J. In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within _____ [*recommended 15-25*] feet of the point of service.
- K. In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least _____ [*recommended 15-25*] feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 1009. Prohibition of Smoking in Outdoor Places of Employment

- A. Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, temporary offices such as trailers, restroom facilities, and vehicles.
- B. This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 1010. Where Smoking Not Regulated

Notwithstanding any other provision of this Article to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility.

Sec. 1011. Declaration of Establishment or Outdoor Area as Nonsmoking

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 1012(A) is posted.

Sec. 1012. Posting of Signs and Removal of Ashtrays

The owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Article shall:

- A. Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.
- B. Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post "No Smoking" signs in appropriate locations as determined by the _____ [Department of Health or City Manager or County Administrator] or an authorized designee.
- C. Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.
- D. Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 1013. Nonretaliation; Nonwaiver of Rights

- A. No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article. Notwithstanding Section 1015, violation of this Subsection shall be a misdemeanor, punishable by a fine not to exceed \$1000 for each violation.
- B. An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 1014. Enforcement

- A. This Article shall be enforced by the _____ [Department of Health or City Manager or County Administrator] or an authorized designee.
- B. Notice of the provisions of this Article shall be given to all applicants for a business license in the _____ [City or County] of _____.

- C. Any citizen who desires to register a complaint under this Article may initiate enforcement with the _____ [Department of Health or City Manager or County Administrator].
- D. The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.
- E. An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- F. Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- G. In addition to the remedies provided by the provisions of this Section, the _____ [Department of Health or City Manager or County Administrator] or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 1015. Violations and Penalties

- A. A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be guilty of an infraction, punishable by a fine not exceeding fifty dollars (\$50).
- B. Except as otherwise provided in Section 1013(A), a person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be guilty of an infraction, punishable by:
 - 1. A fine not exceeding one hundred dollars (\$100) for a first violation.
 - 2. A fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year.
 - 3. A fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year.
- C. In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- D. Violation of this Article is hereby declared to be a public nuisance, which may be abated by the _____ [Department of Health or City Manager or County Administrator] by restraining order, preliminary and permanent injunction, or other means provided for by

law, and the _____ [City or County] may take action to recover the costs of the nuisance abatement.

- E. Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 1016. Public Education

The _____ [Department of Health or City Manager or County Administrator] shall engage in a continuing program to explain and clarify the purposes and requirements of this Article to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

Sec. 1017. Governmental Agency Cooperation

The _____ [City Manager or County Administrator] shall annually request other governmental and educational agencies having facilities within the _____ [City or County] to establish local operating procedures in cooperation and compliance with this Article. This includes urging all Federal, State, _____ [County or City], and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

Sec. 1018. Other Applicable Laws

This Article shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

Sec. 1019. Liberal Construction

This Article shall be liberally construed so as to further its purposes.

Sec. 1020. Severability

If any provision, clause, sentence, or paragraph of this Article or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Article which can be given effect without the invalid provision or application, and to this end the provisions of this Article are declared to be severable.

Sec. 1021. Effective Date

This Article shall be effective thirty (30) days from and after the date of its adoption.

REFERENCES

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Legislation Details (With Text)

File #: 17-406 **Version:** 1 **Name:**
Type: Consent **Status:** Agenda Ready
File created: 10/3/2017 **In control:** City Council
On agenda: 10/10/2017 **Final action:**
Title: Approve Special Meeting Minutes of September 26, 2017
Recommendation: Adopt Minutes
Sponsors:
Indexes:
Code sections:
Attachments: [Meeting Minutes - 092617 - Special](#)

Date	Ver.	Action By	Action	Result
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Approve Special Meeting Minutes of September 26, 2017
Recommendation: Adopt Minutes

**CITY OF HERCULES
CITY COUNCIL MINUTES**

**September 26, 2017
6:00 p.m. – Special Meeting**

I. ROLL CALL – CALL TO ORDER – 6:00 P.M.

Present: Council Members Gerard Boulanger, Roland Esquivias, Dan Romero, Vice Mayor Chris Kelley and Mayor Myrna de Vera

Absent: None

II. PUBLIC COMMUNICATION

There were no comments from members of the public.

III. CONDUCT INTERVIEWS FOR THE COMMUNITY AND LIBRARY SERVICES COMMISSION – STUDENT MEMBER

Action: The Council interviewed the applicant.

IV. ADJOURNMENT

The meeting adjourned at 6:09 p.m.

Myrna de Vera, Mayor

ATTEST:

Lori Martin
Administrative Services Director/City Clerk



Legislation Details (With Text)

File #: 17-407 **Version:** 1 **Name:**
Type: Consent **Status:** Agenda Ready
File created: 10/3/2017 **In control:** City Council
On agenda: 10/10/2017 **Final action:**
Title: Approve Regular Meeting Minutes of September 26, 2017
Recommendation: Adopt Minutes
Sponsors:
Indexes:
Code sections:
Attachments: [Meeting Minutes 092617 - Regular](#)

Date	Ver.	Action By	Action	Result
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Approve Regular Meeting Minutes of September 26, 2017
Recommendation: Adopt Minutes



City of Hercules

111 Civic Drive
Hercules, CA 94547

Meeting Minutes

City Council

Mayor Myrna de Vera
Vice Mayor Chris Kelley
Council Member Dan Romero
Council Member Gerard Boulanger
Council Member Roland Esquivias

David Biggs, City Manager
Patrick Tang, City Attorney
Lori Martin, City Clerk

Tuesday, September 26, 2017

Council Chambers

Closed Session - 6:15 p.m.

Regular Session - 7:00 p.m.

I. SPECIAL MEETING - CLOSED SESSION – 6:15 P.M. CALL TO ORDER - ROLL CALL

Mayor de Vera called the meeting to order at 6:15 p.m.

Present: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

None.

III. CONVENE INTO CLOSED SESSION

City Attorney Tang announced the closed session item.

Mayor de Vera recessed the meeting at 6:16 p.m.

1. Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney

IV. REGULAR MEETING – 7:00 P.M. CALL TO ORDER - ROLL CALL

Mayor de Vera called the meeting to order at 7:05 p.m.

Present: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

City Attorney Tang reported that there were no final or reportable actions taken in closed session.

VI. PLEDGE OF ALLEGIANCE

VII. MOMENT OF SILENCE

Mayor de Vera called for a moment of silence for the victims of several natural disasters that have occurred in Puerto Rico and the Caribbean Islands and for the recent earthquake in Mexico City.

VIII. INTRODUCTIONS/PRESENTATIONS

None.

IX. AGENDA ADDITIONS/DELETIONS

City Manager Biggs identified the supplemental material distributed prior to the meeting.

X. PUBLIC COMMUNICATIONS

Speakers: Bill Shea, Pil Orbison, Sylvia Villa-Serrano.

XI. PUBLIC HEARINGS

1. **“Safeway Center” entitlements and environmental initial study/addendum to allow the construction of a shopping center with a 57,100-sq.-ft. Safeway grocery store, a 20-pump fueling center, a 2,500-sq.-ft. kiosk/mini-mart, a 6,000-sq.-ft. pad with two drive-thrus for a bank and a coffee shop, and sign ordinance modifications to allow for up to 90-foot tall pylon signs in General Commercial (CG) zone districts within 100 feet of Interstate 80, and a conditional use permit to allow for: grocery and liquor sales; restaurant with liquor service; drive-through sales and services; retail uses more than 2,000 sq. ft.; and outdoor retail sales.**
Recommendation:
 1. Adopt Resolution No. 17-069 approving CEQA Addendum IS #17-01;
 2. Adopt Resolution No. 17-070 approving General Plan Amendment #17-01;
 3. Introduce Ordinance No. 503 incorporating Zone Amendment RZ #17-01 and Zone Text Amendment #17-01;
 4. Adopt Resolution 17-071 approving Initial/Final Planned Development Plan #17-01, Design Review Permit #17-02, Conditional Use Permit #17-01, and Minor Exception #17-01, subject to Conditions of Approval and the full drawings contained therein with any modification agreed to by the majority of the Council.

City Manager Biggs introduced the item. Planning Director Smyth gave a staff report and introduced the project team members.

Mayor de Vera opened the public hearing at 7:33 p.m.

Mr. John McNellis, Project Developer gave a presentation of the project.

Public Speakers who spoke in favor of the project: Joseph Lubas, Paty O'Day, Pil Orbison.

Public Speakers who spoke in opposition of the project: None.

Mayor de Vera and Members of the City Council conducted a question/answer period with the project applicant.

Mr. Ray Pendrum from MIG provided information in regards to the fuel station traffic flow.

Police Chief Goswick provided information in regards to security for the 24 hour operation. A representative from Safeway provided additional information in regards to security.

Debbie Kartiganer, Safeway Attorney addressed questions related to the letter received today from Adams Broadwell.

Mr. Dan Daporto, special counsel to the City for CEQA answered questions related to the EIR.

Mayor de Vera closed the public hearing at 8:30 p.m.

Mayor de Vera brought the discussion back to the Council for comments prior to any motions and voting on this item.

MOTION: A motion was made by Vice Mayor Kelley, seconded by Council Member Boulanger, to adopt Resolution 17-069. The motion carried by the following vote:

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

MOTION: A motion was made by Council Member Esquivias, seconded by Council Member Boulanger, to adopt Resolution 17-070. The motion carried by the following vote:

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

MOTION: A motion was made by Council Member Boulanger, seconded by Vice Mayor Kelley, to approve the Introduction and First Reading of Ordinance 503. The motion carried by the following vote:

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

MOTION: A motion was made by Council Member Romero, seconded by Vice Mayor Kelley, to adopt Resolution 17-071. The motion carried by the following vote:

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

Mayor de Vera called for a 5 minute recess at 8:43 p.m.

Mayor de Vera reconvened the meeting at 8:50 p.m.

XII. CONSENT CALENDAR

Council Member Romero made a request to pull Item 2 from the consent calendar for a separate discussion.

Mayor de Vera recommended voting separately on both Items 1 and 2 of the consent calendar.

1. City Council Regular Meeting Minutes of September 12, 2017

Recommendation: Adopt Minutes

Adopted.

MOTION: A motion was made by Council Member Romero, seconded by Vice Mayor Kelley, to adopt the meeting minutes of September 26, 2017. The motion carried by the following vote:

Aye: 4 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, and Council Member R. Esquivias

Abstain: 1 - Council Member G. Boulanger

2. City Council Rules of Procedure

Recommendation: Adopt a Resolution approving the updated City Council Rules of Procedure and rescinding all previous versions of the document.

Council Member Romero recommended that Commission Reports be added to the Rules of Procedure to allow 5 minutes for Commission reports. The consensus of City Council was in agreement to the amendment suggested by Council Member Romero.

City Manager Biggs clarified that Commission Reports would be added to the title of Item VIII which would reflect,
"Introductions/Presentations/Commission Reports.

MOTION: A motion was made by Council Member Romero, seconded by Council Member Boulanger to adopt the City Council Rules of Procedure as amended.

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

XIII. DISCUSSION AND/OR ACTION ITEMS

1. **Appointment to the Community and Library Services Commission**
Recommendation: Consider making an appointment to the Community and Library Services Commission for the vacant Student Advisor Commissioner seat.

MOTION: A motion was made by Vice Mayor Kelley, seconded by Council Member Esquivias, to approve the appointment of Nina Nguyen to the Student Commissioner seat on the Community and Library Services Commission. The motion carried by the following vote:

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

2. **PARS Post-Employment Benefits Section 115 Trust Program to Pre-Fund Pension Benefits**

Recommendation: Authorize participation in the Public Agencies Post-Employment Benefits Section 115 Trust Program administered by Public Agency Retirement Services (PARS) to pre-fund Pension Benefits and authorize the City Manager to execute contract documents.

Mayor de Vera recused herself from this item due to a conflict of interest with her profession. Mayor de Vera left the room during the discussion and vote of this item.

City Manager Biggs provided a staff report. City Manager Biggs introduced the PARS representative, Mitch Barker. Mr. Barker answered questions from the City Council in regards to the investments in equities.

MOTION: A motion was made by Council Member Boulanger, seconded by Council Member Romero, to adopt Resolution 17-072. The motion carried by the following vote:

Aye: 4 - Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

Recused: 1 - Mayor M. de Vera

3. **2017 Speed Survey and Speed Limit Change**

Recommendation: Receive a Report on the Draft 2017 Speed Survey, discuss recommended Speed Limit Changes, and provide direction to staff.

City Manager Biggs introduced the item. Public Works Director Roberts gave a staff report.

City Council presented questions and comments and directed staff to provide additional information in regards to the exemption for doing a speed survey on local residential roads when the speed ordinance comes before Council for consideration of an amendment.

4. Agreement for Construction Management Services on Bay Trail West Project

Recommendation: Adopt a Resolution authorizing the City Manager to execute an Agreement with Parisi CSW Design Group in an amount not to exceed \$135,992 for Construction Management Services on the Bay Trail West Project.

City Manager Biggs introduced the item. Public Works Director Roberts gave a staff report.

Public Works Director Roberts introduced Mr. Robert Stevens, Resident Engineer with Parisi CSW Design Group. Mr. Stevens provided a brief biography and was available to answer questions.

MOTION: A motion was made by Council Member Romero, seconded by Council Member Esquivias, to adopt Resolution 17-073. The motion carried by the following vote:

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

5. Contract Amendment for Staff Augmentation for Wastewater Program

Recommendation: Adopt a resolution authorizing the City Manager to execute Contract Amendment No.2 with West Yost Associates for \$160,798, for a total contract amount not to exceed \$210,788, for staff augmentation to advance the Hercules wastewater program.

City Manager Biggs introduced the item. Public Works Director Roberts gave a staff report. Public Works Director Roberts stated that Mr. Dakari Barksdale was selected as the project engineer from West Yost and Associates who will serve as staff augmentation 2 days a week for a 1 year period.

Public Works Director Roberts introduced Ms. Lani Good, Senior Engineer of West Yost & Associates. Ms. Good. Ms. Good will provide expertise as needed. Ms. Lani Good introduced herself and gave a brief biography and answered questions from the City Council.

MOTION: A motion was made by Vice Mayor Kelley, seconded by Council Member Esquivias, to adopt Resolution 17-074. The motion carried by the following vote:

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

6. Local Regulation of Cannabis Uses

Recommendation: Receive and Discuss Staff Report and Revised Draft Legislation, and Provide Further Direction to Staff and the City Attorney.

CM Biggs introduced the item. City Attorney Tang gave a staff report.

City Council reviewed the draft ordinance and provided direction to staff to make some minor changes to the ordinance. City Council agreed to hold off on amending the smoking ordinance until the first quarter of 2018.

City Manager Biggs explained that City Council will have an opportunity to make amendments and/or revisions to the Ordinance during the Introduction and First Reading of the Ordinance and/or prior to final adoption of the Ordinance.

7. Update on Code Compliance

Recommendation: Receive report, discuss, and provide direction, if any.

Council Member Romero made a recommendation that this item be tabled to the next meeting.

MOTION: A motion was made by Council Member Romero, seconded by Vice Mayor Kelley, to table Item XIII.7 to the October 10, 2017 City Council meeting. The motion carried by the following vote:

Aye: 5 - Mayor M. de Vera, Vice Mayor C. Kelley, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

XIV. PUBLIC COMMUNICATIONS

None.

XV. CITY COUNCIL/CITY MANAGER/CITY ATTORNEY ANNOUNCEMENTS, COMMITTEE, SUB-COMMITTEE AND INTERGOVERNMENTAL COMMITTEE REPORTS AND FUTURE AGENDA ITEMS

Members of the City Council and staff reported on events and attendance at community meetings.

XVI. ADJOURNMENT

Mayor de Vera adjourned the meeting at 11:16 p.m.

Myrna de Vera, Mayor

Attest:

Lori Martin, MMC
Administrative Services Director/City Clerk



Legislation Details (With Text)

File #: 17-409 **Version:** 1 **Name:**
Type: Consent **Status:** Agenda Ready
File created: 10/3/2017 **In control:** City Council
On agenda: 10/10/2017 **Final action:**
Title: Second Reading of Ordinance 503 Adopting Zoning Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01 related to the Safeway Center Project
Recommendation: Adopt Ordinance.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - 2nd Reading of Ord 503 - Safeway Center Project](#)
[Ordinance 503 - Safeway Zoning Ordinance](#)

Date	Ver.	Action By	Action	Result
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Second Reading of Ordinance 503 Adopting Zoning Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01 related to the Safeway Center Project
Recommendation: Adopt Ordinance.



STAFF REPORT TO THE CITY COUNCIL

DATE: October 10, 2017

TO: Mayor de Vera and Members of the City Council

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: Second Reading of an Ordinance Adopting Zoning Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01 related to the Safeway Center Project

RECOMMENDED ACTION:

Second reading and adoption of the attached Ordinance of the City Council of the City of Hercules approving Zoning Designation Amendment #RZ 17-01 to rezone the 6.75-acre site known as the Safeway Center located at the northeast corner of the intersection of Sycamore Avenue and San Pablo Avenue (Assessor's Parcel Number 404-040-040) from "New Town Center" (NTC) to "General Commercial" (CG) and approving Zoning Text Amendment #ZTA 17-01 to amend Section 34.400.H of the Zoning Ordinance related to pylon signs, as stated therein.

FISCAL IMPACT OF RECOMMENDATION:

None.

DISCUSSION:

At the September 26, 2017 City Council meeting, after holding a public hearing, Council waived the first reading and introduced the draft ordinance changing the zoning designation for the project site from "New Town Center" to "General Commercial" (consistent with City Council Resolution 17-070, which similarly changed the site's zoning designation) and revising the Hercules Zoning Ordinance, Chapter 34, Section 34.400.H to allow through approval of Master Sign Programs new pylon signs within 100 feet of Interstate 80 on properties designated "General Commercial," up to 90 feet tall and with up to 25 square feet of changeable electronic display.

Once approved, the City staff will post the entire Ordinance in at least three (3) public places within fifteen (15) days after its passage and adoption.

ATTACHMENTS:

1. Ordinance Adopting Zoning Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01

**ORDINANCE NO. 503
ZONE DESIGNATION AMENDMENT #RZ 17-01 &
ZONING TEXT AMENDMENT #ZTA 17-01
SAFEWAY CENTER**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING ZONING DESIGNATION AMENDMENT #RZ 17-01 TO REZONE THE 6.75-ACRE PROJECT SITE, KNOWN AS SAFEWAY CENTER LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF SYCAMORE AVENUE AND SAN PABLO AVENUE (EXISTING APN 404-040-040), FROM “NEW TOWN CENTER” (NTC) TO “GENERAL COMMERCIAL” (CG) AND APPROVING ZONING TEXT AMENDMENT #ZTA 17-01 TO AMEND SECTION 34.400.H OF THE ZONING ORDINANCE RELATED TO PYLON SIGNS.

WHEREAS, in accordance with Chapter 52 (Zoning Amendments) of the City of Hercules Zoning Ordinance, the City Council has received and considered an application from McNellis Partners (“Applicant”) for Zone Designation Amendment #RZ 17-01 for the Project known as Safeway Center, located at the northeast corner of the intersection of Sycamore Avenue and San Pablo Avenue; and

WHEREAS, the City Council has also received an application for Zoning Text Amendment #ZTA 17-01 that requests an amendment to Section 34.400.H, “Signs Subject to Review,” to allow the installation of new freestanding, freeway-oriented pylon signs up to 90-feet-tall in CG Districts adjacent to Highway 80; and

WHEREAS, the Project Site includes one Assessor parcel (APN 404-040-040) totaling approximately 6.75 acres (“Project Site”); and

WHEREAS, the Project Site in its current state generally is vacant/undeveloped, with the southern two-thirds primarily paved asphalt with vestiges (e.g., bus bays and striped parking spaces) of the former bus terminal and parking facility for the BART (Bay Rapid Transit) Park-and-Ride (PNR), plus a few remnants (e.g., monument signage and outdoor fireplace) from Market Hall, a former temporary “pop-up” commercial use of the site; and

WHEREAS, the proposed Safeway Center project is located within the Central Quarter of the Plan for Central Hercules; and

WHEREAS, in addition to the applications referenced above, the following applications related to the Safeway Center project also have been filed concurrently and collectively define the “Project”:

- Initial Study/Addendum (#IS 17-01) to the Hercules New Town Center (HNTC) Environmental Impact Report (State Clearinghouse No. 2007062002, certified 2009) (the HNTC EIR), pursuant to the California Environmental Quality Act (CEQA);

- General Plan Amendment (#GPA 17-01) to change the land use designation of the Project site from New Town Center (NTC) to General Commercial (GC); and amend the Circulation Element text of the General Plan, Section B.2.b, “Land Use Assumptions,” to “require that all future project proposals in the New Town Center Designated Areas be evaluated under CEQA criteria for potential transportation and traffic impacts to help ensure that overall trip generation and traffic operations remain below the levels that were evaluated in the HNTC EIR for the Hercules New Town Center Project and any Addendums thereto.”
- Initial and Final Planned Development Plan (#FPDP 17-01) for approximately 65,600 square feet of commercial space within three structures, including a 57,100-square-foot supermarket, a 6,000-square-foot commercial pad with potential for two (2) drive-thru uses anticipated to be a bank and a coffee shop, and a 2,500-square foot convenience store/fueling kiosk with 20 fuel pump stations and an 85-ft-tall conceptual freestanding pylon sign, with common areas for parking, landscaping, and pedestrian access on an approximately 6.75-acre project site;
- Design Review Permit (#DRP 17-02), as required by Chapter 42 of the Zoning Ordinance including (but not limited to) the review of property lines, existing onsite features and offsite features within 50 feet of the boundaries, orientation & location of buildings, site layout, proposed roads/walks/paths, existing and proposed grading onsite and at adjoining sites in comparison with existing grade, pedestrian/vehicular/service ingress & egress and driveway widths, open space use & landscape areas, lighting for wall surfaces/walkways/parking/cast by building interior, all identification and directional exterior signage, setbacks, street dedications and improvements, location/height/design of all fences or walls, parking layout, architectural relationship with the site and other buildings, quality of design based on proposed exterior building elevations/colors/materials, perspective drawings to show relationship after development of the building to off-site features, refuse design/pickup area, exterior mechanical equipment screening, loading docks, downspouts, and awnings;
- Conditional Use Permit (#CUP 17-01) required for each of the following uses under the General Commercial (CG) zoning: auto fuel and mini-mart; shopping center; grocery and/or liquor sales; restaurant with liquor service (to be determined); drive-through sales and services; retail stores more than 2,000 square feet; and outdoor retail sales (if needed);
- Minor Exception (#ME 17-01) to allow grocery store building height 10% in excess of the 35-ft height limit in General Commercial zones and to allow a 10% reduction in the 262 minimum required parking spaces [based on 4 parking spaces per 1,000 square feet of gross building area in shopping centers less than 100,000 square feet total (per Table 32-1 of the Zoning Ordinance)] to 236 parking spaces; and

WHEREAS, the Project Site was within the development area evaluated in the HNTC EIR , which evaluated, among other things, the potential environmental effects on the subject parcel and six other parcels; and;

WHEREAS, in accordance with CEQA requirements, an Initial Study/Addendum, dated August 23, 2017, was prepared for the proposed Project and posted to the City's website and distributed to the Planning Commission, City Council, and interested parties on August 24, 2017; and

WHEREAS, on September 5, 2017, the Planning Commission held a duly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard and the Commission reviewed staff reports from July 17, 2017, August 7, and September 5, 2017 (which are incorporated herein by this reference) that described and analyzed the entirety of the Project in addition to reviewing the Initial Study/Addendum and the HNTC EIR; and

WHEREAS, on September 5, 2017, the Planning Commission adopted Resolution No. 17-03 recommending that the City Council approve the Initial Study/Addendum #IS 17-01, dated August 23 2017, based on the determination, pursuant to Sections 15063, 15162, 15164, and 15168 of the CEQA Guidelines, that the proposed Safeway Center project is within the scope of the development program evaluated previously and that none of the conditions described in Section 15162 calling for further environmental review have occurred; and

WHEREAS, on September 5, 2017, the Planning Commission adopted Resolution No. 17-04 recommending that the City Council approve General Plan Amendment #GPA 17-01 changing the land use designation of the Project Site from New Town Center (NTC) to General Commercial (GC) and amending the Circulation Element text of the General Plan regarding future transportation and traffic studies within the New Town Center Project area; and

WHEREAS, on September 5, 2017, the Planning Commission adopted Resolution No. 17-05 recommending that the City Council approve Zone Designation Amendment #RZ 17-01, Zoning Text Amendment #ZTA 17-01, and the related applications listed above, including Initial Study/Addendum #IS 17-01, and recommended that the City Council approve the Zoning-related modifications and other related Project applications; and

WHEREAS, the City Council has received oral and written comments from the general public, property owners, and interested parties, and has thoroughly considered all above referenced information, reports, recommendations, and testimony before taking any action on the Project; and

WHEREAS, on September 26, 2017, the City Council held a duly noticed public hearing on the Project, at which time all interested parties had the opportunity to be heard and the City Council reviewed the staff report for September 26, 2017 (which is incorporated herein by this reference) that described and analyzed the entirety of the Project in addition to reviewing the Initial Study/Addendum and the HNTC EIR; and

WHEREAS, on September 26, 2017, the City Council adopted Resolution No. 17-069 approving Initial Study/Addendum #IS 17-01 for the Safeway Project; reconfirming and readopting the applicable mitigation measures listed therein; and reconfirming and readopting the Statement of Overriding Considerations for the Hercules New Town Center Project as amended; and

WHEREAS, on September 26, 2017, the City Council held a duly noticed public hearing on the Project and adopted Resolution No. 17-070 approving General Plan Amendment #GPA 17-01 for the Safeway Project; and

WHEREAS, approval of the Project would amend corresponding maps, text, tables, and figures related to the Zone Amendment #RZ 17-01 and Zoning Text Amendment #ZA 17-01; and

WHEREAS, the City Council heard and used its independent judgment and considered all such information, reports, recommendations, and testimony described herein; and.

WHEREAS, the City Council finds, after due study, deliberation, and public hearing for the proposed Zone Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01, that:

- a. Zone Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01 are consistent with the General Commercial (CG) General Plan designation contingent upon its adoption.
- b. Potential uses for the Project Site allowed by the proposed Zone Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01 are compatible with the objectives, policies, general land uses, and programs specified and allowed by the General Commercial (GC) General Plan land use designation.
- c. Zone Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01, as proposed, would not be detrimental to the health, safety, welfare, and public interest of the City.
- d. Zone Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01, as proposed, are internally consistent and do not conflict with the purposes, regulations, and required findings of the Zoning Ordinance.
- e. All elements, requirements, and conditions of Zone Designation Amendment #RZ 17-01 and Zoning Text Amendment #ZTA 17-01 are a reasonable and appropriate manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work, visit, or live near this development in particular; and

WHEREAS, attached hereto and by this reference incorporated herein sets forth Findings with Facts for this project.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES DOES
HEREBY ORDAIN AS FOLLOWS:**

SECTION 1.

- A.** Zone Designation Amendment #RZ 17-01 is hereby approved thereby changing the zoning district for the 6.75-acre project site known as Safeway Center from “New Town Center” (NTC) to “General Commercial” (CG), per Exhibit A attached hereto, based on the Findings with Facts, contingent upon the adoption of the aforementioned CEQA Initial Study/Addendum #IS 17-01, and General Plan Amendment #GPA 17-01, and related project applications, including Design Review Permit #DRP 17-02, and Initial/Final Planned Development Plan #FPDP 17-01, Conditional Use Permit #CUP 17-01, and Minor Exception #ME 17-01; and
- B.** Zone Text Amendment #ZTA 17-01 is approved to amend Section 34.400.H of the Zoning Ordinance, per Exhibit B attached hereto, to allow the installation of new freestanding, freeway-oriented pylon signs up to 90-feet-tall in CG Districts adjacent to Highway 80.

SECTION 2. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be deleted.

SECTION 3. Publication and Effective Date.

- A.** This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:
 - 1. Posting the entire Ordinance in at least three (3) public places in the City of Hercules, within fifteen (15) days after its passage and adoption; or
 - 2. Publishing the entire Ordinance at least once in the West County Times, a newspaper of general circulation published in the County of Contra Costa and circulated in the City of Hercules, within fifteen (15) days after its passage and adoption; or
 - 3. Publishing a summary of the Ordinance in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Council members voting for and against the Ordinance.
- B.** This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 26th day of September, 2017, and was passed and adopted at a regular meeting of the Hercules City Council on the _____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Myrna L. de Vera, Mayor

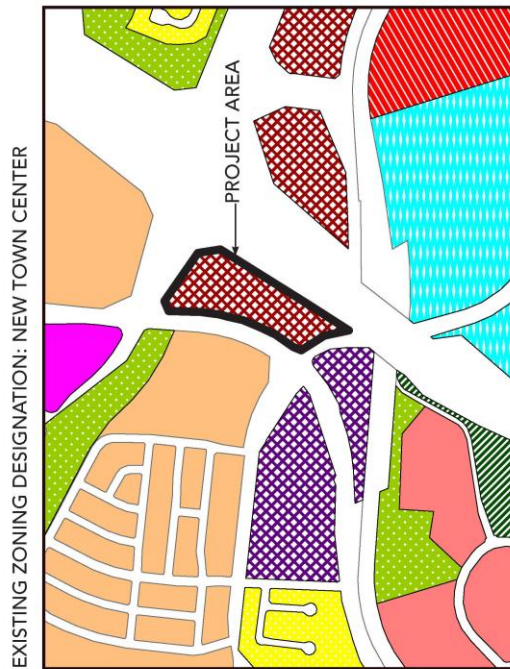
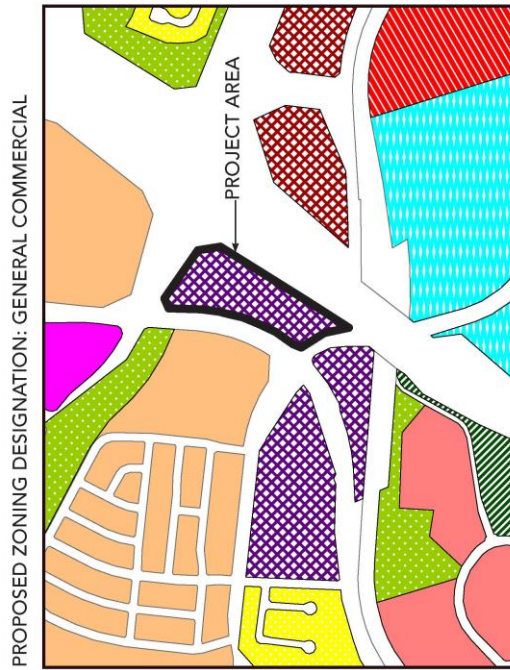
Lori Martin, Administrative Services Director &
City Clerk

Exhibit A – Zone Designation Amendment Map (#RZ 17-01)

Exhibit B – Zoning Text Amendment for Pylon Signs (#ZTA 17-01)

Exhibit C – Findings with Facts

Exhibit A **Safeway Center: Zoning Designation Amendment Map (#RZ 17-01)**



LEGEND: **ZONING DESIGNATION**

	Franklin Canyon Area
	Public Open Space
	Public Park
	Planned Commercial Residential
	Single Family Estate
	Residential Multi Family Low Density
	Community Commercial
	New Pacific Properties Specific Plan
	General Commercial
	Planned Office Research and Development
	Residential Single Family Low Density
	Waterfront Commercial
	Historic Town Center
	Public City
	New Town Center
	Residential Multi Family Medium Density
	Hercules Industrial
	Hercules Public School

ZONING DIAGRAM 09-01-2017

Exhibit B
Zone Text Amendment for Pylon Signs (#ZTA 17-01)

34.400 SIGNS SUBJECT TO REVIEW

The following signs, as defined, require review by the Community Development Director in accordance with the provisions of this chapter. Signs associated with projects subject to design review permits shall be reviewed as part of that process; however, such signs also require a sign permit from the Community Development Director. The Community Development Director may not waive any provisions of this *chapter*. Signs proposed for properties within the Central Hercules Plan shall be subject to the provisions of the Central Hercules Plan Regulating Code, as well as the provisions of this chapter.

- A. Permits for signs subject to review under Section 34.301 and 34.302 shall be acted upon within thirty (30) days of the submission of a complete Sign Permit application. Applications for sign permits must contain a scale drawing indicating the dimensions, materials, coloring, graphic content, lighting source, mounting hardware and site location. In addition, such application shall include photographs of signs found on properties located on each side of the structure.
- B. The Community Development Director may approve, deny or approve with conditions the any permit application for signs under Sections 34.301 and 34.302 of this chapter.
- C. All reviewing authorities shall review all signs and their locations within a site and placement on a structure in accordance with Sections 34.302 of this chapter.
- D. No sign shall exceed 100 square feet in sign area, except for wall signs on structures greater than 30,000 square feet in floor area. Structures greater than 30,000 square feet in floor area may not exceed 250 square feet in sign area.
- E. Awning Signs. An awning sign is a covering which is (or appears to be) made of cloth or canvas that is either permanently attached to a building or can be raised or retracted or fixed to a position against the building when not in use. Awnings on structures in the Central Hercules Plan shall be reviewed in accordance with all provisions of the Central Hercules Plan Regulating Code. The sign face of an awning sign may not exceed 25% of the area of the plane of the awning on which the sign face appears. No material or signage may hang from an awning.
- F. Marquee Signs. A marquee is a sign used for the advertisement of a movie or theatrical event. Marquee signs are permitted for theaters only and must be wall signs, subject to the requirements for wall signs.
- G. Monument Sign. A monument sign is mounted directly on the ground. The size of the face of a monument sign shall not exceed 32 square feet. The maximum height of the sign shall not exceed 6 feet. Only one monument sign per six-hundred feet of lot frontage is permitted.

H. Freestanding Pylon Sign. A freestanding pylon sign is a sign ~~in which is~~ attached to columns erected directly into the ground. Only one freestanding pylon sign per one-thousand feet of lot frontage is permitted. The height of a pylon sign is measured from the top of the sign to the ground.

1. New freestanding pylon signs are prohibited to be constructed in the City of Hercules ~~unless previously approved through a development agreement (The effective date passage of this ordinance by City Council)~~ except where all of the following conditions are met:
 - a. The property on which the pylon sign is to be constructed must be zoned as General Commercial (CG).
 - b. The pylon sign must be constructed on-site and within 100 feet of the Interstate 80 right-of-way or easement.
 - c. The pylon sign must be approved as part of a Master Sign Program ~~Planned Development Plan~~ and shall be subject to environmental review under the California Environmental Quality Act.
- ~~2. A legally installed freestanding pylon sign may continue to be used and ordinary maintenance and repairs may be made to the legally conforming sign provided the structure is not moved, enlarged, or structurally altered. Existing freestanding pylon signs will not be permitted to be enlarged, expanded or allowed any additional sign panels or tenants to be constructed within their existing sign area. Existing sign panels on legally constructed and permitted freestanding pylon signs are permitted to be replaced when new businesses replace existing businesses shown on current signage panels provided the Planning Commission determines that the new business is a major tenant.~~
2. ~~If a freestanding pylon sign is proposed to be constructed,~~ The pylon sign must be for on-site commercial developments intended to serve a market area that extends beyond the City limits of Hercules (as determined by the Planning Commission) ~~freestanding pylon signs may be permitted to be constructed provided, that all of the following conditions are met:~~
 - a. The sign shall be supported by a minimum of two enclosed supports, located at or near the exterior edge of the sign face, or ~~the sign shall be~~ constructed as a monolith (with no open area between the message area and the ground upon which the sign is located). Signs supported by a single pole, ~~column, or pylon~~ shall not be permitted.
 - b. At signs which contain open area below the message area (i.e., between the supports), the height of the open area shall be at least equal to the height of the message area.
 - c. ~~The width of the sign, measured across the maximum width of the sign structure, shall be no less than 25% of the maximum height of the sign structure.~~
 - d. The colors and/or materials of the sign and the supporting structure shall be compatible with the exterior of the shopping center or buildings for which the sign provides identification. The design of the freestanding sign should reflect the architectural design of the buildings within the shopping center.
 - e. The sign may identify the shopping center or businesses (where a single business is not part of a larger center or development) and the name of the shopping center or business shall be prominently displayed in the sign

message area. Individual tenants/owners may be identified on the sign providing the name of the center shall be clearly legible to the “target” audience, as determined by the Planning Commission. The freestanding pylon sign shall be limited to a maximum of three (3) ~~major~~ on-site tenants ~~as determined by the Planning Commission.~~

- f. Where the center/business adjoins a public street, the sign and the supporting structure shall be located no less than a distance equal to the maximum sign height from the nearest edge of the public street sidewalk (or curb, if there is no sidewalk), and the sign and supporting structure shall be located no closer than 10 feet from any other property line at the perimeter of the center/business site. This distance shall be measured from the closest point on the property line to the portion of the sign or sign structure that is closest to the property line.
- g. The maximum height of the sign shall not exceed ~~35~~ 90 feet.
- h. ~~Only one freestanding sign shall be allowed at any shopping center.~~ Notwithstanding Section 34.400.N, pylon signs may include a digital display, so long as such digital display occupies no more than twenty five (25) square feet on each sign face.
- i. ~~Substantial landscaping shall be installed at the base of the sign to reduce the apparent sign height. In particular, the full grown height of the planting adjoining the sign shall be about one third (1/3) of the sign height. The minimum required landscape area shall be equal to the square footage of all visible sides of the sign faces including and counting the sign panels, and the outside edges of the borders around the sign panels. Both sides of the sign faces shall be used to calculate the square footage of the sign.~~ As of the effective date of this ordinance, a legally installed freestanding pylon sign may continue to be used and ordinary maintenance and repairs may be made to the legally conforming sign provided the structure is not moved, enlarged, or structurally altered. Existing freestanding pylon signs will not be permitted to be enlarged, expanded, or allowed any additional sign panels to be constructed within their existing sign area. Existing sign panels on legally-constructed and permitted freestanding pylon signs are permitted to be replaced when new businesses replace one or more of the existing on-site businesses shown on existing sign panels.

Exhibit C Findings with Facts

Safeway Center Zone Amendment (#RZ 17-01) and Zoning Text Amendment (#ZTA 17-01)

Section 52.400 of the City of Hercules Zoning Ordinance requires all of the following findings to be made for granting an amendment to the Zoning Map or Zoning Ordinance:

FINDING NO 1: The proposed amendment is consistent with the General Plan.

FACT: The proposed General Commercial (CG) zoning classification would be consistent with the applicable General Plan Land Use designation as the applicant proposes to amend the current Land Use designation of the project site from “New Town Center” (NTC) to “General Commercial” (GC). The proposed Zoning Classification and Land Use designation would be consistent as both allow for the development of various types of commercial uses provided that applicable regulations are satisfied and certain performance standards are met. The GC land use designation of the General Plan and CG zoning allow for a wide variety of commercial uses within a floor-to-area ratio (FAR) of 0.20 to 1.00. The Safeway Center commercial development, as currently designed and proposed, will be developed at an FAR of approximately 24% and thus will be consistent with the General Commercial FAR requirements.

The proposed Zone Designation Amendment #RZ 17-01 to change the zoning designation from New Town Center (NTC) to General Commercial (CG) is consistent with the General Plan and includes a Planned Development Plan as required by Chapter 8.200 of the Hercules Zoning Ordinance.

In addition, the Zoning Text Amendment #ZTA 17-01 would also be consistent with the General Plan as it will assist in promoting an attractively designed and economically feasible development, as outlined in Objective 9 of the Hercules Land Use Element.

FINDING NO 2: The proposed RZ 17-01 and ZTA 17-01 would not be detrimental to the health, safety, welfare, and public interest of the City.

FACT: Staff has determined that development of the Project will result in a public benefit, including the provision of a commercial shopping center which will provide additional commercial services to the community of Hercules, including a Safeway supermarket, and will be located within close proximity to existing single- and multi-family residential developments to the west and southwest of the project site and located within close proximity to I-80 and Highway 4.

In addition, the Project will contribute to the City's General Plan policies, goals, and vision in terms of increasing the City's sales and property tax revenues.

Public improvements to current circulation infrastructure (including bus stop facility and multi-use path for bicyclists and pedestrians) along San Pablo and Sycamore Avenues will also occur as part of the Project and will overall increase pedestrian accessibility to the site by providing alternative forms of transportation. The proposed commercial buildings will be developed to current building safety and fire codes, which promote development concepts of the Hercules General Plan.

In addition, the proposed Zoning Text Amendment (ZTA 17-01) to amend Section 34.400.H, 'Signs Subject to Review,' would not impact or be detrimental to the health, safety, welfare, or public interest. The Sign Amendment would impose strict limitations on the number, size, and location of freeway-oriented signage in order to minimize their visual impact. Potentially allowable pylon signs would not impact or impair views or line-of-sight for vehicles traveling near the potential sites for which the regulation would be applicable. Moreover, any pylon sign would be subject to review and approval of a Master Sign Program application that provides the City discretion to require additional restrictions on the location, design, and other aspects necessary to minimize impacts on the public health, safety, or welfare.

FINDING NO. 3: The proposed RZ 17-01 and ZTA 17-01 are internally consistent and do not conflict with the purposes, regulations, and required findings of the Zoning Ordinance.

FACT: The proposed Zone Designation Amendment #RZ 17-01 is consistent with the proposed General Plan Amendment #GPA 17-01 and would allow for the development of the 6.75-acre Safeway Center commercial development, which would consist of a 57,100-square-foot Safeway supermarket, a 6,000-square-foot commercial pad with potential for two (2) drive-through based uses anticipated to be a bank and a coffee shop, and a 2,500-square-foot convenience store and fueling kiosk with common areas intended for parking, landscaping, and pedestrian access.

The proposed Zone Designation Amendment #RZ 17-01, in addition to the proposed Zoning Text Amendment #ZTA 17-01, would be internally consistent and would not conflict with the purposes, regulations, and required findings of the Zoning Ordinance for the General Commercial (CG) zoning district in that approvals are being considered under the Planned Development Plan. The accompanying Planned Development Plan, pursuant to Chapter 48 of the Hercules Zoning Ordinance, would establish the Development Regulations applicable to the proposed Project.



Legislation Details (With Text)

File #: 17-410 **Version:** 1 **Name:**
Type: Consent **Status:** Agenda Ready
File created: 10/4/2017 **In control:** City Council
On agenda: 10/10/2017 **Final action:**
Title: Budget Amendment to Incorporate SB1 "The Road Repair and Accountability Act" Funding for the 2017 Annual Street Maintenance Project
Recommendation: Adopt a resolution amending the adopted Fiscal Year 2017-18 Budget to incorporate SB 1 funding for the 2017 Annual Street Maintenance project and expanding the description of said projects in the budget to meet the requirements of the Act.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - SB1](#)
[Attach 1 - Resolution - SB1](#)
[Attach 2 - 2017 Pavement Maintenance Project - Location Map](#)

Date	Ver.	Action By	Action	Result
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Budget Amendment to Incorporate SB1 "The Road Repair and Accountability Act" Funding for the 2017 Annual Street Maintenance Project

Recommendation: Adopt a resolution amending the adopted Fiscal Year 2017-18 Budget to incorporate SB 1 funding for the 2017 Annual Street Maintenance project and expanding the description of said projects in the budget to meet the requirements of the Act.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 10, 2017

TO: Members of the City Council

SUBMITTED BY: Michael Roberts, Public Works Director/City Engineer

SUBJECT: Budget Amendment to Incorporate SB 1 “The Road Repair and Accountability Act” Funding for the 2017 Annual Street Maintenance Project

RECOMMENDED ACTION:

Adopt a resolution amending the adopted Fiscal Year (FY) 2017-18 Budget to incorporate SB 1 “The Road Repair and Accountability Act” funding for the 2017 Annual Street Maintenance Project and expanding the description of said Projects in the Budget to meet to the requirements of the Act.

FISCAL IMPACT OF RECOMMENDATION:

It is estimated the City will receive \$140,000 in SB 1 funding in FY 2017-18. For FY 2018-19, SB 1 funding is anticipated to increase to \$420,000.

DISCUSSION:

Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017, was passed by the Legislature and signed into law by the Governor in April 2017 in order to address transportation funding shortfalls statewide.

SB 1 includes accountability and transparency provisions to ensure interested residents are aware of the projects proposed for funding in Hercules. Specifically, the City is required under the Act to include a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, in the City budget. In addition to the project name, the project list must include a description and the location of each proposed project, a proposed schedule for the project’s completion, and the estimated useful life of the improvement.

Given SB 1 is being implemented during FY 2017-18, after the City’s budget has been formally adopted, the budget needs to be amended to incorporate the new funding and project list. The California Transportation Commission, which is providing oversight for SB 1, has indicated that projects begun in FY 2017-18 qualify for the list.

It is therefore proposed the 2017 Annual Street Maintenance Project currently under construction be the sole project on Hercules’ SB 1 project list for FY 2017-18 since the project cost well exceeds the \$140,000 the Act will generate this year. In addition to the inclusion of this funding, the FY 2017-18

Budget would be expanded in accordance with the requirements of the Act to include the following project information:

Project Title: 2017 Annual Street Maintenance Project

Project Description: Slurry seal including deep lift repairs, crack sealing, and striping

Project Locations: Lupine Road - 2105 Lupine to Violet; Dogwood Court; Cottonwood Court; Turquoise - 605 to 777 Turquoise; Mandalay Avenue - Grenadine to Refugio; Redwood Road - Pepperwood to 1955 Redwood; Violet Road - Lupine to Iris; Manzanita Place - Sequoia to Lupine; Nutmeg Court; Grenadine Way - Mandalay to Bonaire; Alfred Nobel Drive - Linus Pauling to traffic circle; and James Watson Drive - Linus Pauling to traffic circle

Project Duration: Began in August 2018 and scheduled for completion in October 2018.

Useful Life: 7-10 years

A budget modification incorporating the SB 1 funding into the existing construction contract with OC Jones, the general contractor, for the 2017 Annual Street Maintenance Project will be brought to Council at the time of project acceptance.

ATTACHMENTS:

1. Resolution
2. Street Maintenance Location Map

<i>Financial Impact</i>		
Description: Revenue and Expenditure increase in \$140,000		
Funding Source:		
Gas Tax Fund		\$140,000
Account 262-0000-313-09-00 (Revenue)		
Account 262-5432-642.05-20 (Expenditure)		
Budget Recap:		
Total Estimated cost:	\$140,000	New Revenue: \$140,000
Amount Budgeted:	\$0	Lost Revenue: \$
New funding required:	\$	New Personnel: \$
Council Policy Change:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

RESOLUTION NO. _____

RESOLUTION AMENDING THE ADOPTED FISCAL YEAR (FY) 2017-18 BUDGET TO INCORPORATE SB 1 “THE ROAD REPAIR AND ACCOUNTABILITY ACT” FUNDING FOR THE 2017 ANNUAL STREET MAINTENANCE PROJECT AND EXPANDING THE DESCRIPTION OF SAID PROJECT IN THE BUDGET TO MEET TO THE REQUIREMENTS OF THE ACT

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must include a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, in the City budget, which must include a description and the location of each proposed project, a proposed schedule for the project’s completion, and the estimated useful life of the improvement; and

WHEREAS, the City will receive an estimated \$140,000 in RMRA funding in Fiscal Year 2017-18 from SB 1; and

WHEREAS, the City is undergoing a robust public process to ensure public input into our community’s transportation priorities/the project list as part of the update of the Transportation Element of the General Plan; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the communities priorities for transportation investment; and

WHEREAS, funding from SB 1 will help the City maintain and rehabilitate 58 centerline miles of streets throughout the City; and

WHEREAS, the 2016 California Statewide Local Streets and Roads Needs Assessment found that the City’s residential streets and roads are in good condition and this revenue will help us prevent deterioration; and

WHEREAS, if the Legislature and Governor failed to act, city streets and county roads would have continued to deteriorate, having many and varied negative impacts on our community; and

WHEREAS, cities and counties own and operate more than 81 percent of streets and roads in California, and from the moment we open our front door to drive to work, bike to school, or walk to the bus station, people are dependent upon a safe, reliable local transportation network; and

WHEREAS, modernizing the local street and road system provides well-paying construction jobs and boosts local economies; and

WHEREAS, the local street and road system is also critical for farm to market needs, interconnectivity, multimodal needs, and commerce; and

WHEREAS, police, fire, and emergency medical services all need safe reliable roads to react quickly to emergency calls and a few minutes of delay can be a matter of life and death; and

WHEREAS, maintaining and preserving the local street and road system in good condition will reduce drive times and traffic congestion, improve bicycle safety, and make the pedestrian experience safer and more appealing, which leads to reduce vehicle emissions helping the State achieve its air quality and greenhouse gas emissions reductions goals; and

WHEREAS, restoring roads before they fail also reduces construction time which results in less air pollution from heavy equipment and less water pollution from site run-off; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

NOW, THEREFORE IT IS HEREBY RESOLVED, ORDERED AND FOUND by the City Council of the City of Hercules, State of California, as follows:

1. The City Budget for fiscal year 2017-18 is amended to incorporate the following project planned to be funded with Road Maintenance and Rehabilitation Account revenues:

Annual Street Maintenance Project consisting of a slurry seal including deep lift repair, crack sealing, and striping at the following locations: Lupine Road - 2105 Lupine to Violet; Dogwood Court; Cottonwood Court; Turquoise - 605 to 777 Turquoise; Mandalay Avenue - Grenadine to Refugio; Redwood Road - Pepperwood to 1955 Redwood; Violet Road - Lupine to Iris; Manzanita Place - Sequoia to Lupine; Nutmeg

Court; Grenadine Way - Mandalay to Bonaire; Alfred Nobel Drive - Linus Pauling to traffic circle; James Watson Drive - Linus Pauling to traffic circle. The useful life of the slurry seal is 7-10 years and the project is being completed fall in 2017.

2. The City Budget for fiscal year 2017-18 is amended as follows:

\$140,000 in new SB 1 (Road Maintenance and Rehabilitation) Funding into the Gas Tax Fund

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the tenth day of October, 2017, by the following vote of the Council:

AYES:

NOES:

ABSENT:

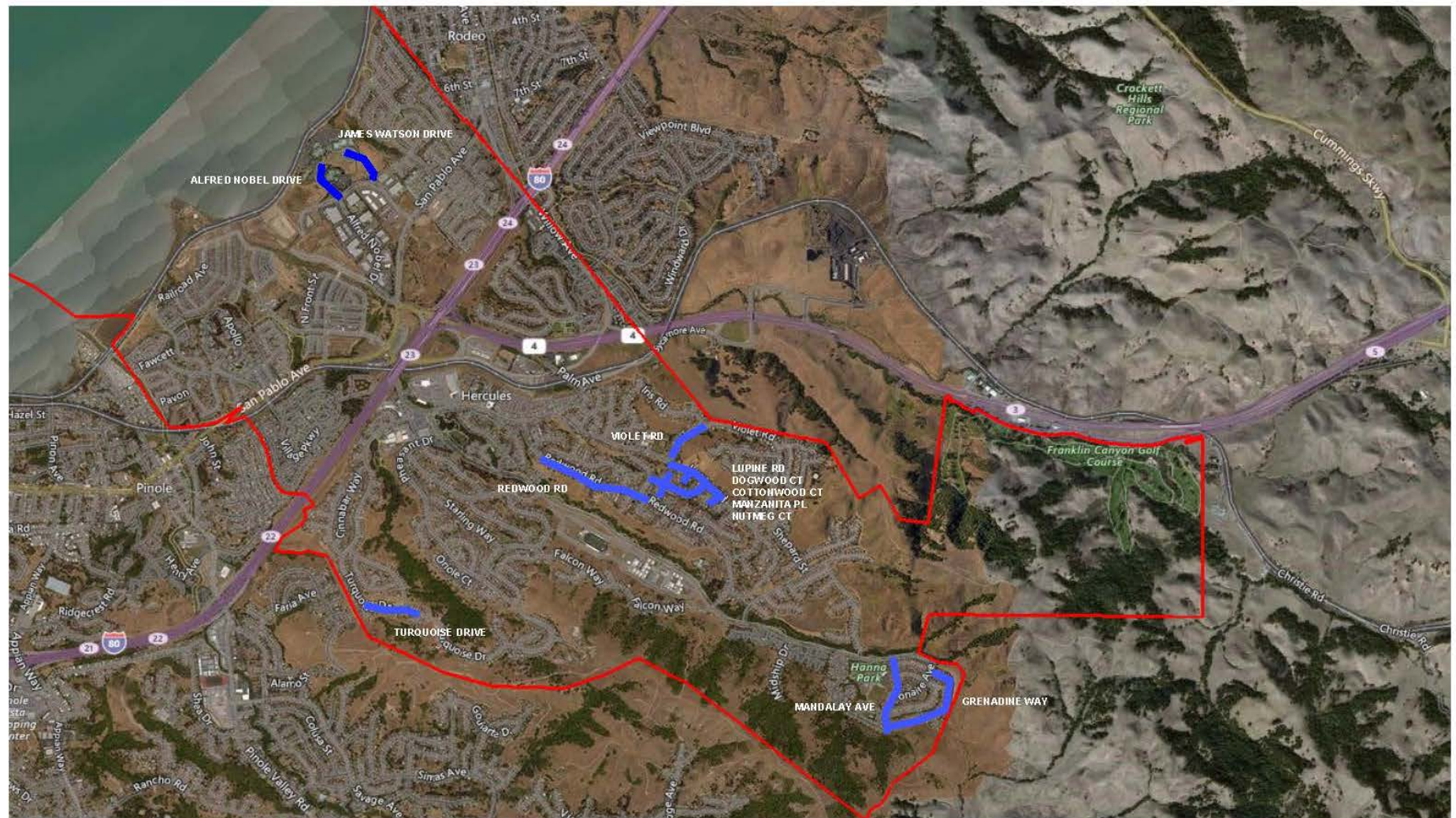
ABSTAIN:

Myrna de Vera, Mayor

ATTEST:

Lori Martin, MMC
Administrative Services Director/City Clerk

CITY OF HERCULES 2017 PAVEMENT MAINTENANCE PROJECT



LOCATION MAP



Legislation Details (With Text)

File #: 17-415 **Version:** 1 **Name:**

Type: Consent **Status:** Agenda Ready

File created: 10/4/2017 **In control:** City Council

On agenda: 10/10/2017 **Final action:**

Title: Amendment to the Children's Program Leader I/II Job Description
Recommendation: Approve minor amendments to the Children's Program Leader I/II job description.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Childcare Job Description Amendment - 171010](#)
[Attachment 1 - Amendment to Children's Program Leader I-II Job Description 171010](#)

Date	Ver.	Action By	Action	Result
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Amendment to the Children's Program Leader I/II Job Description

Recommendation: Approve minor amendments to the Children's Program Leader I/II job description.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 10, 2017

TO: Members of the City Council

SUBMITTED BY: Christopher Roke, Parks and Recreation Director

SUBJECT: Amendment to the Children's Program Leader I/II Job Description

RECOMMENDED ACTION:

Approve minor modifications to the Children's Program Leader I/II Job Description to help attract more staff to work in the newly rebranded before and after school programs.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: N/A

None.

FISCAL IMPACT OF RECOMMENDATION:

There is no fiscal impact from this recommendation.

DISCUSSION:

This fall the Child Care programs were rebranded. The morning program is now offered at the Teen Center, and it is called the Breakfast Club. The after school program is now the Kaleidoscope Kidz, a Recreational Afterschool Program (RAP). The Breakfast Club was also transitioned to the Teen Center which allowed us to expand the program from K-5 to K-8, and to open earlier in the morning to better serve the families in our community.

Because of these changes the job description is no longer current. Thus staff proposes making the following changes to the existing job description in order to attract more potential candidates. The changes as set forth in the attachment would focus on experience and make Early Childhood Education units desirable but not required as we are now operating the programs on a License Exempt basis. Staffing levels continues to be our biggest challenge. Without making these minor modifications to the existing Children's Program Leader I/II Job Description the program is in jeopardy of reducing numbers and/or closing because we are not able to attract enough qualified staff to keep the program going. These changes allow for more people to be eligible.

ATTACHMENTS:

Attachment 1: Proposed changes to Children's Program Leader I/II Job Description

Class Title: Children's Program Leader I/II
Bargaining Unit: Non-Union Employees
Class Code: 612
Salary: \$11.96 - \$17.81 Hourly

The Children's Program Leader I and II are responsible for the supervision of all children in the child care program. The Leader must demonstrate leadership skills, a positive role model to the children and effective communication and interpersonal skills in working with children, parents, and supervisors. The Leader must be organized, creative with class projects and have a genuine interest in working with child and the public. The Leader must demonstrate a clear understanding of child care problem solving techniques when dealing with any discipline situation involving the children. The Leader must read and understand all policies and procedures in the staff handbook.

SUPERVISION RECEIVED AND EXERCISED

The Children's Program Leader I/II receives direction from the Recreation Manager, Recreation Coordinator, Recreation Leader III, and/or Children's Program Director. Children's Program Leader II may supervise Children's Program Leader I and/or Children's Program Aide.

Essential Functions:

Responsibilities and duties may include, but are not limited to, the following:

- Ensures that children are in a safe environment at all times (supervises area effectively).
- Plan and implement projects with children.
- Anticipates problems among the children and prevents harmful situations before they happen or escalate.
- Responsible for calling parents for various reasons (e.g. sick child, absent) throughout the day.
- Communicates child care information to parents through signs, notes, or in person.
- Asks questions and has an interest to learn more. Takes direction in a positive way. Maintains and submits necessary attendance records and accident/incident reports.
- Utilizes available materials and supplies well.
- Supervises, directs and assists Children's Program Aide with classroom activity assignments.
- Assists with cleaning duties (e.g. dishes, vacuums, empty trash, sweep).
- Attends monthly staff meetings.
- Attends all local/off-site field trips. May be required to participate (in the water) with children in aquatic activities at the Community Swim Center (Summer Program only).
- Other duties as assigned.

Minimum Qualifications:

- Ability to prepare adequate lesson plans in advance of the scheduled activity.
- Ability to handle all disciplinary situations in the classroom.
- Ability to work cooperatively and communicate with public and employees in an enthusiastic and constructive manner.
- Ability to respond to children.
- Flexibility (ability to work with varying personalities, age groups and work schedules).
- Acknowledges child when he/she has a problem and respects the concerns that are shared with you.
- Good communication skills.
- Must be a positive role model for the children (e.g. appearance, attitude, speech).
- Ability to stay calm during an emergency.

- Ability to lead and interact with large groups of children on a daily basis with various activities such as organized games, art projects, homework, outdoor play, etc.
- Must have problem solving skills and the ability to demonstrate them in the classroom.
- Must be physically capable of total interaction with children through sports, physical education, swimming (optional), aerobics dance and other activities.
- Must interact with children through their daily play by running, jumping, stooping, hopping and other forms of gross motor skill movements.
- Must be able to stand for designated periods of time in the classrooms and on the yard.
- Must be able to bend, pick up chairs, playground equipment and children when they fall.
- Must be able and willing to walk to local parks and community points of interest.
- Must be able to assist with all daily chores, including mopping spills, sweeping, vacuuming, carry out the trash, wash dishes and tables as needed.
- Must be competent to write, spell and relate accurate information on behavior, discipline, incident and accident reports, as needed.
- Must be willing and able to wear proper attire which includes uniform, badge, comfortable shoes (no flip flops or open-toe sandals) at all times.

Experience and Training Guidelines: *Any combination of experience and training that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:*

Education/Training: ~~Must be at least eighteen (18) years of age. Equivalent to the completion of the twelfth (12th) grade supplemented by completion of twelve (12) units in early childhood education, child development, recreation, elementary education, or related field OR six (6) units completed and enrolled in at least three (3) qualifying units per semester until twelve (12) units are completed.~~

Any combination of training and experience, which demonstrates an ability to perform the duties of the position. A typical qualifying background includes college or university level work with emphasis in Recreation or Early Childhood/School-Age. Must be at least (18) years of age. Equivalent to the completion of the twelfth (12th) grade. See above qualifications.

Experience:

~~Leader I: At least six (6) months of work experience at a licensed child care facility or similar program. Prior experience working effectively with youth is highly desirable. Previous work experience in a recreational environment is also highly desirable.~~

Responsible for implementing and participating in a variety of educational, recreational, sport and socialization activities for the City of Hercules Recreational Afterschool program (RAP). Prior work experience working effectively with youth in a licensed child care facility or recreation program is highly desirable.

~~Leader II: At least one (1) year experience working at a licensed child care facility or similar program. Prior experience working effectively with youth is highly desirable. Previous work experience in a recreational environment is also highly desirable.~~

At least one (1) year in a paid position at a licensed child care or recreational facility or similar program.

License and Certificate

- Must possess or have ability to obtain Pediatric First Aid and Infant/Child/Adult Cardiopulmonary Resuscitation (CPR) Certification as issued by the American Red Cross.
- Children's Program Leader II must possess a valid California driver's license by date of appointment.

Additional Information:

CONDITIONS OF EMPLOYMENT: Employees must be available to work Monday through Friday. **Normal work week could be up to 6 hours per day** ~~Normal work week should average 4-6 hours per day~~ - hours and days subject to change depending on program needs. Specific hours will be arranged at the time of interview. Must pass a pre-employment physical, drug screening and criminal background check prior to employment.

THE CITY OF HERCULES IS AN EQUAL OPPORTUNITY EMPLOYER.



Legislation Details (With Text)

File #: 17-347 **Version:** 1 **Name:**

Type: Discussion/Action Item **Status:** Agenda Ready

File created: 8/15/2017 **In control:** City Council

On agenda: 10/10/2017 **Final action:**

Title: Maintenance and Reimbursement Agreement between the City, BART and WestCat for the Hercules Transit Center
Recommendation: Adopt a Resolution approving a Maintenance and Reimbursement Agreement between the City, BART, and WestCat for the Hercules Transit Center.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - BART Agreement 10102017 alt version](#)
[Attach 1 BART Maint Reimbursement](#)
[Attachment 2 - Resolution](#)

Date	Ver.	Action By	Action	Result
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Maintenance and Reimbursement Agreement between the City, BART and WestCat for the Hercules Transit Center

Recommendation: Adopt a Resolution approving a Maintenance and Reimbursement Agreement between the City, BART, and WestCat for the Hercules Transit Center.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 10, 2017

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager

SUBJECT: Maintenance and Reimbursement Agreement between the City, BART and WestCat for the Hercules Transit Center

RECOMMENDATION: Adopt a Resolution Approving a Maintenance and Reimbursement Agreement between the City, BART, and WestCat for the Hercules Transit Center.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: Not Applicable

FISCAL IMPACT OF RECOMMENDATION: The subject agreement replaces the City for the former Redevelopment Agency in this contract. A reconciliation of the finances for the Hercules Transit Center has been done through June 30, 2017, as agreed to by the three parties, with \$307,812.70 being owed to BART from the operating income less expenses over that period. This amount is proposed to be added to the Successor Agency's Recognized Obligation Payment Schedule (ROPS), which if approved by the State Department of Finance, would allow BART to be repaid at some time in the future from former Redevelopment Agency tax increment. On a forward going basis, the revenues and expenses will be accounted for in the City Budget under the Facilities Maintenance Internal Service Fund through a project account to more easily facilitate an annual reconciliation. Annual parking revenues from the lot are sufficient to fund the operating expenses and some needed capital improvements.

DISCUSSION: In 2009, the Hercules Redevelopment Agency, BART, and WestCat entered into an agreement for the operation of the Hercules Transit Center located on Willow Avenue which is used as a BART Park & Ride lot. This agreement has continued to be the basis for the operation of the lot though it has expired. In addition, redevelopment agencies were dissolved by a State action in 2011, and as such, it is appropriate for the City to replace the Successor Agency in an updated agreement.

The Hercules Transit Center is owned by BART, and the existing three party agreement assigns responsibilities for the operation of the facility to the three entities. Staff from the City, BART, and WestCat have met and agreed upon an updated agreement which also includes a reconciliation of the operating expenses and revenues which had not been done. This reconciliation is through June 30,

2017, after which the revenues and expenses will be accounted for in the City's budget. The base agreement and assignment of responsibilities remains substantially the same as in the prior agreement with the City assuming the responsibilities of the now dissolved redevelopment agency. The initial term of the new agreement shall be four years, with up to six annual automatic extensions for a total of ten (10) years. In addition, quarterly meetings of the three parties have been modified to be an annual meeting at which time an annual budget shall be agreed to.

In addition, there are necessary or desirable capital improvements needed for the facility. The new agreement provides for those to be identified and funded as part of the annual budget process and that any of the three parties may, upon agreement of the others, may implement the agreed upon improvements with the costs to be reimbursed from the budget for the facility. Through experience, the parties have learned that depending upon the improvements, one party may be able to better perform in a more timely and effective basis than the others.

A budget amendment will be needed to appropriate the FY 2017/18 revenues and expenses in the City Budget. These revenues and costs will be incorporated in the Facilities Internal Service Fund as a Project (#) in order to allow for future ease of tracking and reconciliation. After the new Agreement is approved by BART and WestCAT, we will return to the City Council for the necessary appropriations per the amounts set forth below in draft form:

City of Hercules -Revenue and Expenditures for the BART Parking Lot		
Fund 470 - Facility Maintenance Fund		
		Proposed FY17-18
Revenues from Parking Lot		\$ 200,000
Personnel	Maintenance Worker II	\$ 2,885
Personnel	Superintendent	\$ 2,215
Personnel	Public Works Director	\$ 590
SUBTOTAL Personnel		\$ 5,690
Operating & Maintenance	Onsite Maintenance	\$ 7,500
Operating & Maintenance	Landscaping and stormwater	\$ 15,000
Operating & Maintenance	Street Light Maintenance	\$ 15,000
Operating & Maintenance	Water - EBMUD	\$ 3,600
Operating & Maintenance	Electricity - PG&E	\$ 18,000
Operating & Maintenance	Capital Upgrade & Infrastructure Allowance	\$ -
Operating & Maintenance	Equipment -Annual Porta Pottie Maint	\$ 3,600
Operating & Maintenance	Equipment -Annual Bike Locker Maint	\$ 2,500
Operating & Maintenance	Internal Service Fund - Admin	\$ 3,600
Operating & Maintenance	Internal Service Fund - IT	\$ 2,400
Operating & Maintenance	Internal Service Fund - Facilities	\$ 4,800
Operating & Maintenance	Internal Service Fund - Vehicle Replacement	\$ 4,800
Operating & Maintenance	Police Services	\$ -
Operating & Maintenance	WestCat for Permits	\$ 29,000
SUBTOTAL Operating & Maintenance		\$ 109,800
TOTAL OPERATING & MAINTENANCE BASE BUDGET		\$ 115,490
Net of Revenues and Expenditures		\$ 84,510
Capital Improvements		\$ 53,000
	Parking Kiosk(s) - \$20,000	
	Landscape Enhancements - \$8,000	
	LED Parking Lot Light Conversion - \$20,000	
	Contract Assistance for Capital Projects - \$5,000	
Net of Capital Improvements		\$ 31,510

The City of Hercules is the first of three agency to consider the proposed agreement. BART and WestCAT will be considering the new agreements at meetings alter this month. As such, the subject resolution approves the agreement subject to non-substantive changes as approved by the City Manager and City Attorney.

Upon the approval of the new agreement and the future formal approval of the budget amendment, the operation of the Hercules Transit Center will become a City rather than a Successor Agency obligation which is sustainable on a longer term basis and is appropriate given the dissolution of Redevelopment Agencies.

ATTACHMENTS:

1. Resolution
2. Maintenance & Reimbursement Agreement

MAINTENANCE AND REIMBURSEMENT AGREEMENT
HERCULES TRANSIT CENTER
BART REPLACEMENT PARKING FACILITY
HERCULES, CALIFORNIA

This Maintenance and Reimbursement Agreement ("Agreement") is made and entered into this ____ day of August 2017 (the "Effective Date"), by and between the City of Hercules, a municipal corporation ("Hercules"), the San Francisco Bay Area Rapid Transit District ("BART"), and the Western Contra Costa Transit Authority ("WCCTA") on the following terms and conditions. Hercules, BART and WCCTA may be referred to individually as a "Party" or collectively the "Parties".

RECITALS

A. Effective April 10, 2006, BART and Hercules entered into an Exchange Option Agreement (the "EOA") whereby BART agreed to exchange its 6.25 acre site 15 which includes its Park and Ride Lot ("Hercules Transit Center") and several undeveloped acres of land located at the corner of Sycamore and San Pablo Avenues (the "PNR Site") for an unimproved 8.69 acre parcel of land owned by Hercules, commonly described as Contra Costa County Assessor's Parcel #406-070-043 (the "C-1 Parcel") with the intent that a Replacement Parking Facility ("RPF") be constructed on the C-1 Parcel. A C-1 parcel map and site plan drawing of the RPF is attached hereto as Exhibit A and incorporated herein by this reference.

B. BART now owns the C-1 Parcel and the RPF and the Hercules Transit Center operation has been relocated from the PNR site to the RPF.

C. On September 25, 2005, the BART Board of Directors adopted Resolution No. 4965 authorizing the General Manager to implement a parking fee program including new parking rates and charges for the Hercules Park and Ride lot. The authorized fees have been applied to the Hercules Transit Center operation at the Replacement Parking Facility.

D. The RPF, sited upon the C-1 Parcel, is located within the boundaries of the City of Hercules.

E. Proper operation, maintenance, and repair of the RPF are in the best interests of and will benefit the Parties to this Agreement as well as the entire region.

F. In July 2009, BART, WCCTA, and the Redevelopment Agency of the City of Hercules entered into a one year Maintenance and Reimbursement Agreement (the "Original Agreement") intended to determine the primary responsibilities of the parties regarding maintenance and operation of the parking program at the RPF.

G. The terms of the July 2009 Original Agreement were never continued by written agreement of the Parties as required by Section 1.03 of the Original Agreement.

H. The Parties have agreed to a means to reconcile the paid parking revenues and operating expenses since the inception of the Original Agreement through June 30th 2017 and have agreed to the amount owed by the Hercules Successor Agency to BART.

I. Since the Original Agreement became effective, redevelopment agencies across California have been dissolved, so that any new agreement should designate the City of Hercules, and not the Redevelopment Agency, as the appropriate Party to represent the City's interests.

J. For the above reasons, the Parties agree that the Original Agreement has effectively expired, and wish to enter into a New Agreement that properly identifies the current participating Parties, and the primary responsibilities of the respective Parties.

The Parties intend hereby to enter this Agreement whereby the City of Hercules will assume primary responsibility for keeping the RPF in good maintenance, condition and repair, and operating the paid parking program at the RPF, which is expected to generate the funds necessary for its proper maintenance and repair.

NOW, THEREFORE, in consideration of the mutual promises and covenants of this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article 1. Term of this Agreement

1.1 Term. The term of this Agreement is 4 years, from August 1, 2017 until July 31, 2021. Upon expiration of the 4-year term, the Agreement shall automatically be extended for six successive 1-year terms, unless a Party provides notice to the other two Parties to terminate the automatic extension. Notice to terminate the automatic extension is to be in writing and received at least sixty (60) days before the automatic extension would become effective on August 1.

1.2 Termination. This Agreement may be terminated at any time by written mutual agreement of the Parties. Such written agreement shall include provisions for wind-down of operations and final settlement of all financial matters.

1.3 Extension. This Agreement may be extended beyond its term for an additional length of time by written mutual agreement of the Parties.

Article 2. Operation of the BART Paid Parking Program

2.1 Commencement. BART commenced its paid parking program at the new location of the Hercules Transit Center, which is the Replacement Parking Facility ("RPF"), upon the opening date of the RPF.

2.2 Operation by Hercules. BART agrees that the paid parking program at the RPF be operated by Hercules, as BART's agent, according to the roles and responsibilities more particularly described in Exhibits B and C, attached hereto and incorporated by reference. Hercules agrees to require its paid parking program contractor to include BART and WCCTA as additional insured parties for liability resulting from acts or omissions of said contractor in connection with operation of the paid parking program.

2.3 Transit Revenue. BART agrees that WCCTA shall receive the revenue for transit fares when such fares are included in parking rates charged to the public under the paid parking program,

and WCCTA agrees to receive such revenue as full payment for fares charged to BART patrons between the Hercules Transit Center and BART's El Cerrito del Norte station.

2.4 Self-Funding of RPF Maintenance. BART agrees that the costs of maintaining the RPF are to be funded by revenues obtained from the paid parking program at the RPF. The parties agree that if the revenues obtained from said parking program are insufficient to cover maintenance and repair, as described in Article 3.4 below, and/or operation of the paid parking program, as described in this Article 2, the Parties shall meet and confer to determine the means to pay for such maintenance and repair costs.

Article 3. Maintenance and Repair of the Replacement Parking Facility

3.1 Maintenance and Repair by Hercules. BART and Hercules agree that Hercules will prepare an annual operating budget which includes maintenance and repair, and then maintain and repair both the RPF and BART's C-1 parcel (for maintenance, repair and operation purposes hereinafter collectively referred to as the "RPF") on behalf of BART as described in this Article. Hercules agrees to require its maintenance and repair contractor to include BART and WCCTA as additional insured parties for liability resulting from the acts or omissions of said contractor in connection with maintenance and repair of the RPF.

3.2 Budgeting of Maintenance and Repair. At least once each fiscal year, Hercules shall prepare and submit to the Parties for their consideration a budget for anticipated RPF maintenance and repair costs for the current or ensuing fiscal year. The Parties shall thereafter negotiate any proposed changes to the submitted budget and shall adopt a mutually agreed budget upon commencement of operations and prior to the start of each ensuing fiscal year.

3.3 Hercules Implementation of Budgeted Maintenance and Repair. Once a budget is adopted, and except for damage repair as provided in (d) below, Hercules shall coordinate, procure, implement, incur costs within budget and account for all normal, typical and usual maintenance and repair of the RPF. Hercules shall then claim all such costs, including reasonable administrative, supervision and overhead costs, against the revenues generated from the paid parking program.

3.4 Parties' Responsibilities for Maintenance and Repair.

- (a) Hercules Responsibilities. Hercules shall initially expend funds, to be reimbursed from revenues generated from the paid parking program to accomplish maintenance and repair tasks including without limitation:
 - (i) Emptying all trash receptacles not less than three times per week and more frequently as needed; and
 - (ii) Keeping the RPF pavement and pavement markings in good order, condition and repair; and
 - (iii) Maintain in good order the restroom, bus shelters and lighting fixtures; and
 - (iv) Provide or pay for water, power and wastewater services; and

- (v) Providing for landscape maintenance services including, but not limited to, plant, tree and shrub and sprinkler system maintenance and repair; and
 - (vi) Remove trash and graffiti from all surfaces as needed; and
 - (vii) Repairing fencing, benches and signs as required; and
 - (viii) Monitoring the RPF on a weekly basis to determine other operating, maintenance and repair needs; and
 - (ix) Planning, coordinating and conducting an annual meeting of the Parties.
- (b) BART Responsibilities. BART shall, at its sole cost and expense:
- (i) Attend, and cause a representative of its police force to attend, an annual meeting of the Parties; and
 - (ii) Promptly notify Hercules of any maintenance and repair needs of which it becomes aware at the RPF.
- (c) WCCTA Responsibilities. WCCTA shall, at its sole cost and expense:
- (i) Reimburse Hercules for cleaning, maintenance and supplies in the restroom, to which WCCTA shall control and limit access to only its employees; and
 - (ii) Reimburse Hercules for maintenance and repair costs for unusual pavement or striping wear due to bus traffic in the areas traveled by WCCTA buses; and
 - (iii) Attend the annual meeting of the Parties; and
 - (iv) Promptly notify Hercules of any maintenance and repair needs of which it becomes aware at the RPF.
- (d) Notwithstanding anything to the contrary in this Agreement, if a Party or any person acting under the authority of that Party, including any licensee, invitee, agent, employee, tenant, guest or family member thereof, damages the RPF, the responsible Party shall pay all costs to repair or replace the damaged portion of the RPF.

3.5 Emergency Repairs. Notwithstanding anything in this Agreement to the contrary, any Party may make such emergency repairs as that Party, in the exercise of its reasonable business judgment, considers necessary in order to render the RPF safe for its intended use (the "Repairing Party"). The Repairing Party shall immediately notify the other Parties (the "Non-Repairing Parties") in writing of the reason for and the cost of the emergency repairs, together with such supporting documentation as may be reasonably requested by the Non-Repairing Parties. The emergency repair costs shall be charged against parking revenues, or, if such charges cause more than a ten per cent deviation from the budgeted amount remaining in the current fiscal year, the Parties shall meet and confer to determine the means to pay for such deviation.

3.6

3.7

3.6 Budgeting of Capital Improvements. Concurrently with the preparation of an annual

operating budget, Hercules will prepare a Capital Improvement Budget which proposes improvements to the RPF and immediate area and which will identify which of the Parties shall undertake and implement the Capital Improvements.

3.8

3.9

3.7 Implementation of Capital Improvement Budget. Once a Capital Improvement Budget is adopted, any of the Parties may coordinate, procure, implement, incur improvement costs within budget and shall be reimbursed all such costs, including reasonable administrative, supervision and overhead costs, against the revenues generated from the paid parking program.

3.8 Insurance. BART shall, at its sole cost and expense, cause its general liability insurance or self-insurance policies to include full coverage for liability arising from the ownership, use, maintenance and repair of the RPF, to the extent that such liability is not a result of the acts or omissions of Hercules' contractors for the paid parking program or maintenance and repair, and to the extent that such liability is not a result of the active negligence or willful misconduct of an Indemnitee (other than BART) as defined in Section 5.07 below.

Article 4. Alternative Dispute Resolution Procedures

4.1 Resolution Notice. If any dispute arises between Parties regarding the rights or duties of the Parties under this Agreement, any Party may submit a written request to the other Parties to have the dispute resolved in accordance with the provisions of this Article 4 (the "Resolution Notice"). The Resolution Notice shall specify the nature of and basis for the dispute for which resolution is sought

4.2 Resolution Meeting. No later than 20 business days following the receipt of the Resolution Notice by the other Parties, duly authorized representatives of all Parties shall meet and negotiate in good faith in an effort to resolve the dispute. Each representative shall be duly authorized to bind the Party it represents to a resolution of the dispute and shall be prepared to devote a full day to the negotiations. If a Party refuses or fails to meet for any reason or if the dispute cannot be resolved as a result of the meeting, the Parties shall in good faith attempt to resolve the dispute in accordance with the procedures described in Section 4.03.

4.3 Mediation. Any dispute that remains unresolved after the Resolution Meeting described in Section 4.2 above shall immediately be submitted to non-binding, neutral mediation before a mutually acceptable, neutral retired judge or justice at the Walnut Creek or San Francisco Offices of the Judicial Arbitration and Mediation Services ("JAMS"). If within five (5) days after the Resolution Meeting the Parties are unable to agree upon the selection of a neutral mediator, then the first available retired judge or justice at JAMS shall serve as the neutral mediator. The Parties agree to dedicate at least one full day (8 hours) to the mediation process. Each primary contact, or the duly authorized person acting in their absence, shall attend the mediation and shall have full authority to resolve the dispute. Additionally, to expedite the resolution of any dispute that is not resolved by mediation, the Parties agree to each bring to the neutral mediation a list of at least five (5) neutral arbitrators, including their resumes, whose availability for an arbitration hearing within fifteen (15) days after the mediation has been confirmed.

The mediation shall be held in Contra Costa County or such other county mutually agreed upon by the Parties. The mediation shall be subject to the provisions of California Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the Parties may agree otherwise in writing or orally in accordance with the requirements of California Evidence Code section 1118. There shall be no stenographic record of the mediation process. The expenses of person participating in the mediation at the request of any Party shall be paid by that Party. The expenses of the mediator shall be borne equally by the Parties unless they agree otherwise.

If mediation is unsuccessful, the parties may pursue their respective remedies at law or equity.

Article 5 Miscellaneous

5.1 Amounts Owed to BART by Hercules Successor Agency. The Parties agree that the City shall use its best efforts to have the amount owed to BART as established on Exhibit D added to the Successor Agency Recognized Obligation Payment Schedule (ROPS) and to secure approval of the addition from the State Department of Finance for the repayment to BART by the Hercules Successor Agency.

5.2 No Joint Venture; No Public Rights. No provision of this Agreement shall be deemed to constitute the Parties as partners or joint venturers of one another, or in any way to obligate any Party for the performance of any obligation of the other Party not expressly assumed in this Agreement.

5.3 Binding Effect. All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Any person accepting a deed or other instrument conveying, granting or assigning any property affected or benefited by this Agreement or any portion thereof or interest therein shall take title subject to this Agreement and such person shall be deemed to have assumed all of the applicable obligations imposed on the Parties with regard to such property regardless of whether this Agreement is mentioned in such deed or other instrument.

5.4 Amendments. This Agreement may be amended only by a written instrument which is executed by the Parties. No other method of amendment or termination of this Agreement will be effective for any purpose.

5.5 No Waiver. No waiver of, acquiescence in or consent to any breach of any term, covenant or condition hereof shall be construed as, or constitute a waiver of, acquiescence in or consent to, any other, further or succeeding breach of the same or any other term, covenant or condition.

5.6 Interpretation. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this Agreement shall not be affected, and each such remaining term and provision shall be valid and enforced to the fullest extent permitted by applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

5.7 Notices. All notices and payments required under the terms of this Agreement shall

be sent to the Parties at the addresses set forth below:

Hercules: City of Hercules
111 Civic Drive
Hercules, California 94547
Attention: City Manager

BART: San Francisco Bay Area Rapid Transit District
Real Estate and Property Development Department
300 Lakeside Drive, 22nd Floor
Oakland, California 94612
Attention: Department Manager

With a Copy to: San Francisco Bay Area Rapid Transit District
Office of the General Counsel
300 Lakeside Drive, 23rd Floor
Oakland, California 94612

WCCTA: General Manager
Western Contra Costa Transit Authority
601 Walter Avenue
Pinole, California 94564

Any notice or payment shall be deemed given and received when personally delivered or seventy-two (72) hours after deposit into the United States mail, certified or registered, return receipt requested, addressed to the appropriate foregoing address, or to such other address as a Party may specify by written notice delivered as provided in this paragraph.

5.8 Indemnification. Each of the Parties here to (each, an "Indemnitor") agrees to defend, indemnify, and hold harmless each of the other Parties hereto, their directors, officers, agents, and employees (each, an "Indemnitee"), from all claims, demands, suits, loss, damages, injury, and liability, direct or indirect (including any and all costs and expenses in connection therewith), to the extent incurred by reason of any act or failure to act, of Indemnitor, its directors, officers, agents, or employees and contractors, under or in connection with this Agreement. Each Indemnitor agrees at its own cost, expense, and risk to defend any and all claims, action, suits or other legal proceedings brought or instituted against Indemnitees, their directors, officers, agents and employees, arising out of or resulting from any activity related to this Agreement, and to pay and satisfy any resulting judgments. The foregoing indemnification shall be applicable regardless of BART's appointment of Hercules as its Agent for the paid parking program. The foregoing indemnification obligation shall not apply to liability arising solely from active negligence or willful misconduct of an Indemnitee, its directors, officers, agents, or employees.

The Parties have executed, acknowledged and delivered this Agreement as of the date first above written.

City of Hercules

By: _____

Its: _____

Date: _____

Approved as to Form:

City Attorney

San Francisco Bay Area Rapid Transit District

By: _____

Its: _____

Date: _____

Approved as to Form:

Office of General Counsel

West Contra Costa Transit Authority

By: _____

Its: _____

Date: _____

EXHIBIT A
REPLACEMENT PARKING FACILITY

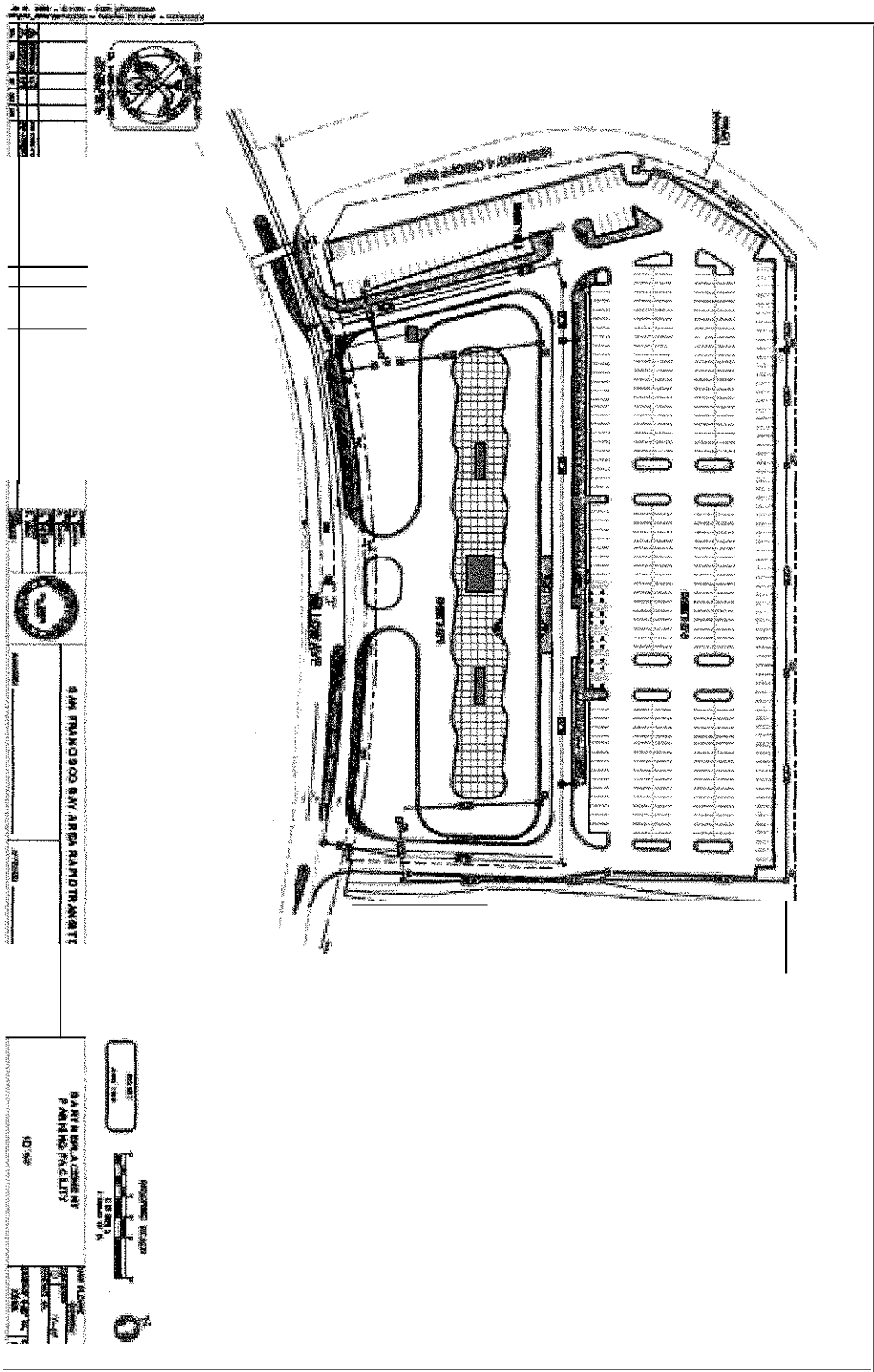


EXHIBIT B
HERCULES TRANSIT CENTER
PAID PARKING PROGRAM

Names of Facilities and Operations

BART is the owner and operator of the Hercules Park and Ride Lot, and will be the owner and operator of the Replacement Parking Facility. The program of operation, regardless of which facility is used, has been identified and branded to the public as "Hercules Transit Center."

BART's Paid parking Program

BART has implemented a system-wide program of paid automobile parking at its parking facilities, including at its property in Hercules. The purposes of the paid parking program are to encourage the use of transit properties for transit purposes, and to generate revenue to support transit.

Hercules Appointed BART's Agent; Scope of Agency

BART hereby appoints the City of Hercules ("Hercules") as its Administrative and Fiscal Agent ("Agent") for the paid parking program at the Hercules Transit Center.

Hercules shall consult with BART in identifying the manner in which a paid parking program is to be introduced and operated at the RPF, including the vendor, equipment, placement of equipment and operation of the program (the "Program Parameters"). BART shall have final approval of the Program Parameters and shall designate its approval in writing to the City.

Duties of Hercules and BART

As Agent, Hercules shall perform the following duties:

- H1. Inform the public, via signage and other means, of the rates and charges applicable for automobile parking at the RPF.
- H2. Issue daily and monthly permits ("Permits") for automobile parking at the RPF by selling Permits to the public; and providing related information and services to the public by telephone and other means.
- H3. Enforce compliance with permit conditions by patrol and issuance of notices of violations ("Tickets").
- H4. Collect and account for revenue from Permits ("Permit Revenue") and from Tickets ("Ticket Revenue")
- H5. Select and contract a vendor to perform some or all of duties (H1) through (H4).
- H6. Remit a sum to WCCTA, monthly, equal to the portion of Permit Revenue collected for transit fares.

- H7. Remit a sum to BART, monthly, equal to the amount of Operating Income to BART as computed under the heading "Distribution of Operating Income" below.
- H8. Appoint a single BART Program Manager for routine communication and decisions about the day-to-day operation of the paid parking program.
- H9. Perform other related acts, and assume other responsibilities, necessary and reasonably related to the businesslike performance of duties (H1) through (H7); such other acts and responsibilities subject to prior written notice and approval of BART.

As Owner and Operator, BART shall perform the following duties:

- B1. Establish rates and charges for daily and monthly automobile parking at the RPF. The initial rates and charges shall be as set forth in Exhibit C.
- B2. Provide signage and other equipment as needed to announce the paid parking program to the public; such media to identify the paid parking program as a policy of BART and not Hercules.
- B3. Appoint a Customer Access Manager to assist and direct Hercules in the day-to-day operation of the paid parking program.

Distribution of Operating Income

Hercules shall, on behalf of BART, collect Permit Revenue from the public. Each month, the following amounts shall be deducted from Permit Revenue, in the following order:

- 1. Transit Revenue to WCCTA.
- 2. Costs of collecting Ticket Revenue, including vendor costs and allocations of staff costs for accounting and other administrative services related to issuing permits, serving the public, and revenue accounting and distribution.
- 3. Maintenance and Repair Costs for the RPF, as agreed by the Parties in the body of this Agreement, and pursuant to the annual adopted Operating Budget.
- 4. Capital Improvements Costs for the RPF, as agreed by the Parties each year.

The amount remaining, if any, after deductions (1) through (4) in the order listed, is the "Operating Income" of the paid parking program and shall be paid annually from Hercules to BART.

Ticket Revenue

Hercules shall also collect Ticket Revenue. The amount of Ticket Revenue remaining after paying the costs of collecting Ticket Revenue shall be remitted to Hercules for the purpose of partially reimbursing public safety costs incurred by the City of Hercules Police Department on BART property in the City of Hercules.

EXHIBIT C
INITIAL PARKING RATES AND CHARGES
FOR THE
PAID PARKING PROGRAM
AT THE
HERCULES TRANSIT CENTER

Daily Paid Parking

A \$3.00 daily parking fee will be charged which includes two one-way dated WCCTA bus tickets valid to and from the BART El Cerrito del Norte Station.

Reserved Parking

The monthly fee for the Monthly Reserved Parking permit is \$63.00. The monthly fee for the discounted monthly reserved parking permit with a 31-day unlimited-use pass for WCCTA is \$80.00.

Adjustments To The Parking Rates And Charges

BART shall be responsible for any adjustments in the daily parking fee and the monthly reserved permit fee. The Customer Access Manager shall notify the Agency in writing of any fee adjustments and when they are to become effective. Unless modified by an action of the BART Board of Directors, the daily parking fee may be adjusted within a range of \$3.00 to \$8.00 and the monthly reserved permit fee may be adjusted within a range of \$42.00 to \$105.00 based on the utilization of the RPF, if such adjustment is necessary to ensure that priority in use is provided to BART patrons using WCCTA access from the lot to the El Cerrito del Norte BART Station.

RESOLUTION NO. 17-

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A
MAINTENANCE AND REIMBURSEMENT AGREEMENT WITH BART AND WCCTA
FOR THE BART REPLACEMENT PARKING FACILITY**

WHEREAS, BART, WCCTA, and the Redevelopment Agency of the City of Hercules entered into a Maintenance and Reimbursement Agreement (Original Agreement) for the BART Replacement Parking Facility; and

WHEREAS, redevelopment agencies were dissolved by action of the State of California in 2011 and BART, WCCTA, and the City of Hercules have continued to operate the BART Replacement Facility under the terms of the Original Agreement; and

WHEREAS, the parties have completed a financial reconciliation as required under the terms of the agreement and now desire to enter into a new Maintenance and Reimbursement Agreement (New Agreement) with the City of Hercules in replacement for the Hercules Successor Agency; and

WHEREAS, the New Agreement provides for the continued operation and investment in a vital facility in the regional transportation and transit network on terms agreeable to the three parties.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hercules hereby authorizes the City Manager to execute a Maintenance and Reimbursement Agreement with BART and WCCTA in substantially the final form as attached with non-substantive changes as approved by the City Manager and City Attorney.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the tenth day of October 2017, by the following vote of the Council:

AYES:

NOES:

RECUSED:

Myrna de Vera, Mayor

ATTEST:

Lori Martin, MMC
Administrative Services Director/City Clerk



Legislation Details (With Text)

File #: 17-405 **Version:** 1 **Name:**

Type: Discussion/Action Item **Status:** Agenda Ready

File created: 10/3/2017 **In control:** City Council

On agenda: 10/10/2017 **Final action:**

Title: Update on Code Compliance
Recommendation: Receive Report, Discuss, and Provide Direction, if any.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Code Compliance Update 10102017](#)
[Attach 1 - Hercules Code Compliance Initiative Updated 10022017](#)

Date	Ver.	Action By	Action	Result
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Update on Code Compliance

Recommendation: Receive Report, Discuss, and Provide Direction, if any.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 10, 2017

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Patrick Tang, City Attorney
Holly Smyth, Planning Director
William Goswick, Police Chief

SUBJECT: Update on Code Compliance

RECOMMENDATION: Receive Report, Discuss, and Provide Direction, if any.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: Not applicable

FISCAL IMPACT OF RECOMMENDATION: Reinstatement of a level of code compliance activities if structured properly can have minimal costs and a high level of effectiveness. Typically, full cost recovery is not possible in a traditional code enforcement program. The proposed program outlined in this staff report is designed on this basis. Alternate Decision Package #17-5 approved as part of the FY 2016/17 for \$50,000 in funding for contract services in support of this effort remains available.

DISCUSSION: This item was continued from the September 26th City Council meeting and has been updated.

With the adoption of the FY 2016/17 budget, staff embarked on the development and implementation of a new approach to code compliance as prior code enforcement efforts were dramatically reduced due to lack of financial resources in prior years. The program which the staff is proposing to implement is outlined in the attached document entitled Hercules Code Compliance Initiative (Attachment 1) as updated.

The current status of key elements of the Code Compliance Initiative are provided below:

Volunteer Recruitment & Training

Volunteers for the Code Compliance Initiative are primarily being recruited from those who participate in the Police Department Citizens Police Academy. A draft training program has been developed and is being refined. In addition, a Planning volunteer has agreed to take the lead in the training and development of the other tools to get volunteers actively engaged. An initial effort at securing voluntary compliance has been underway. However, this has been tempered by the need to get the other components of the program in place.

Administrative Citation Program

The City is working to enter into a contract with Data Ticket, the firm which does the Police Department's citation processing, to provide all elements of an Administrative Citation program, including the third party hearing officers. Police Chief William Goswick has taken the lead on the securing of these services.

Contract Code Compliance Services

This element has not yet been put into place given competing work load demands. A RFQ for code compliance services has been sent out with responses due on October 12th. It is anticipated that a firm will be in place before the end of the year.

Once all elements of the program are in place, it will take a period of time to get through a considerable backlog of non-urgent code compliance issues. As such, this will be an effective way to train a cadre of volunteers and to fine tune the proposed program to ensure long-term sustainability.

ATTACHMENTS:

1. Hercules Code Compliance Initiative

Hercules Code Compliance Initiative

As part of reductions in services in prior years, the City of Hercules has no staff dedicated to code compliance. Code compliance, or enforcement, efforts have been limited to responses to complaints or to only the most severe health and welfare types of matters which come to staff's attention. The City has recently made some forays back into the code compliance arena with initial efforts centered on using volunteers through the Police Department to try to gain voluntary compliance through the identification of code issues and contact with offending property owners.

In addition, Alternate Decision Package 17-5 – Reinstatement of Minimal Code Enforcement Program, in the amount of \$50,000, was included in the FY 2016/17 budget by the City Council. The use of this funding for contract code compliance services has not yet been implemented as staff is awaiting the Administrative Citation process to become operational. In anticipation, Staff has issued a Request for Proposals from firms which may be able to provide these services based on our planned approach to code compliance outlined in the next section.

City Council's consideration and approval of an Administrative Citation program was key to ensuring a more effective approach to code compliance. The City Council approved an Administrative Citation program with the second reading and adoption of Ordinance No. 499 on November 9, 2016, which became effective 30 days later on December 8, 2016. Ordinance No. 499 also contained amendments to streamline other code enforcement procedures. City staff is now working to implement the Administrative Citation program by securing a contract citation processor, procuring the citation forms, and establishing the appropriate hearing process with a third-party hearing officer, which may be sourced from the citation processor.

Planned Approach to Code Compliance

Tier One: Pre-Code Compliance

Most code compliance matters can be resolved with voluntary compliance following outreach and contact with the offending property owner or party. High levels of resolution usually result from these efforts. The City would like to expand its use of volunteers for this pre-code compliance tier. These volunteers would identify and address the most common code issues, would contact the property owners via mail requesting compliance in order to ensure an attractive and safe community.

The most common code compliance issues are:

- Excessive Garage Sales
- Parked vehicles on lawn areas
- Commercial and oversized vehicles parked in residential neighborhoods
- Excessive accumulations of trash and debris in visible areas
- Auto repair and unapproved business activities in the neighborhoods
- Lack of property maintenance or landscaping
- Weeds or overgrown vegetation, which are both health and fire hazards
- Unpermitted storage containers, portable toilets, and dumpsters
- Unauthorized posting of signs on street signs, utility poles, etc
- Trash cans improperly stored.

The letters sent would use plain language and would not cite punitive code provisions. A log would be kept of the contacts made, the follow-up and the results. These efforts would not be entered into the City's formal code enforcement system unless they defaulted to a Tier Two or Tier Three case.

Staff is currently working to develop a training program for Code Compliance Volunteers. In addition, the other tools needed to give life to this component will be developed including form letters and a tracking system/log. We do not anticipate using the efforts of our Code Compliance volunteers as the basis for initiating actions under Tiers Two and Three; and would in effect, restart the process if having to default to these two tiers.

Tier Two: Administrative Citation Program

The Administrative Citation program is a supplement to traditional abatement procedures. Administrative Citation Programs have proven effective in gaining compliance from code violators, while using less city staff resources. An Administrative Citation Program allows for staff or a contract code compliance officer to issue citations for minor code violations that, if not paid, can become special assessment liens against the property. As with parking tickets, an administrative citation can be appealed before a hearing officer. Multiple citations can be issued over time when a violation has not been corrected. The Hercules Ordinance provides for a first Administrative Citation amount of \$100, with the second offense being \$250, and a third or subsequent offense being \$500.

An unpaid citation is lienied against the property and if not paid within the time provided, the county can add the penalty to the tax roll as a special assessment, and the penalty will be collected by the county along with delinquent taxes. In the alternative, especially in the case where the offending party does not own the blighted property or the violation is not tied to a property blight, the city could seek recovery of unpaid citation amounts in small claims court.

There is no requirement for setting a hearing; a hearing on the issuance of a citation is provided only at the request of the citation recipient. Furthermore, unlike the current abatement processes provided in the Hercules Municipal Code, there is no appeal to council for administrative citations. An appeal of an administrative hearing officer's determination would have to go to court, and not the City Council.

This streamlined alternative process to address blighted conditions without requiring a formal public hearing and/or appeal before the Council is expected to be more cost effective and less burdensome on staff, and will result in a greater level of compliance. Also, administrative citation programs fully comply with due process requirements by allowing a hearing upon request, giving the recipient the opportunity to be heard before a neutral examiner.

Tier Three: Abatement and Court Proceedings Appropriate for More Serious Cases

Although recently streamlined, this is a more time consuming and costly approach to code compliance than administrative citations, in many cases requiring city attorney involvement, and should be reserved for the most egregious cases, or where we have been unsuccessful in securing compliance through the first two tiers. Hercules code enforcement procedures for abating blighted conditions were determined to be overly burdensome and outdated, and an impediment to resolving code violations. Staff and the city attorney made recommendations to the Council in 2016 to amend certain of these outdated provisions,

which were adopted with passage of Ordinance No. 499 in 2016. To summarize, our current municipal code options after passage of Ordinance No. 499 include:

Prior Option 1: Abatement by Enforcement Officer. (HMC 4-10.06, amended in 2016)

Prior to its amendment in 2016, this provision required that the responding party be scheduled to appear before the City Council at a public hearing to determine whether the property should be declared a public nuisance subject to abatement. There were multiple procedural steps involved including:

- Proper service;
- noticing of the public hearing;
- a resolution confirming a public nuisance and ordering abatement;
- service of the resolution ordering abatement;
- report to Council regarding cost of abatement;
- hearing by council on the report of the cost of abatement;
- passage of a resolution confirming the cost of abatement;
- placement of special assessment liens on the subject property to recover costs of abatement.

This was a procedurally cumbersome process that required considerable time and expense for both the City and the responding party.

In 2016, the Council approved changes allowing for a more streamlined abatement procedure that eliminates the appeal to Council, as well as the onerous procedural, noticing, and legislative steps previously required. However, adequate due process is of course still required; the new procedure provides for sufficient notice and reasonable time allowed to abate the nuisance. Under the revised provisions, there is no appeal to Council or to the City Manager. The responsible party does have the right to take the city to court via a writ of mandate, pursuant to state law. However, in a writ proceeding the petitioner would have the burden to prove that the hearing officer committed an error or abused his discretion, in order to prevail. Unpaid abatement costs are recoverable via a special assessment lien.

Current Option 2: An injunction in court. (HMC 4-10.14(b), adopted in 1987, amended in 2000 and 2016)

This option bypasses the administrative process to seek a court order. This is a costly approach that should be reserved for complex cases requiring immediate resolution, but that do not meet the “imminent hazard” threshold discussed in Option 3 below.

Current Option 3: An emergency abatement based on imminent hazard. (HMC 4-10.14(c), adopted in 1987, amended in 2005 and 2016)

This process is applicable only when there is an imminent hazard to public health and welfare. It would allow entry onto private property without a warrant to abate an imminent hazard even without notice to the property owner, such as when there is a gas or sewer leak. This option would only be appropriate in cases of extreme emergency.

Fire District Role

The City involves the Fire District as appropriate in code compliance efforts. The Fire District takes the lead in the inspection of commercial property from a health and safety perspective. In addition, the Fire

District is responsible for weed abatement on private property with the City taking the lead on weed abatement on public property.

Contract Code Compliance Services Update

As noted earlier in this report, an RFP for these services is out and responses are due October 12, 2017. It is anticipated that the Contract Code Compliance firm would support our tiered approach as follows:

- May be utilized to training and support of volunteers;
- Will be able to issue Administrative Citations;
- Will be used for more egregious code violations and for non-compliance after Tiers One and Tier Two efforts including seeking inspection warrants and managing the traditional abatement process up to and including working with the City Attorney's Office to initiate appropriate court proceedings.

The proposed scope of services will allow for a level of flexibility for the contract service provider to work independently and to allow serve as an extension of staff.



Legislation Details (With Text)

File #: 17-413 **Version:** 1 **Name:**

Type: Discussion/Action Item **Status:** Agenda Ready

File created: 10/4/2017 **In control:** City Council

On agenda: 10/10/2017 **Final action:**

Title: Cable Televisions Options
Recommendation: Receive report, discuss options, and provide direction if appropriate.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Cable Options 101017](#)
[Attach 1 - Current Contract](#)
[Attach 2 - Proposed Contract - FY 2017-18](#)

Date	Ver.	Action By	Action	Result
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Cable Televisions Options

Recommendation: Receive report, discuss options, and provide direction if appropriate.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 10, 2017

TO: Honorable Mayor & Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Lori Martin, Director of Administrative Services

SUBJECT: Cable Television Options

RECOMMENDATION: Receive report, discuss options, and provide direction if appropriate.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: Not applicable.

FISCAL IMPACT OF RECOMMENDATION: In FY2017/18, the City has budgeted \$25,000 as the annual cost for cable broadcast services with the City of Pinole which was based on historical levels of cost. After the FY 2017/18 budget was adopted, the City of Pinole advised that the costs under a new contract would increase to \$43,815, which would exceed the budgeted amount by \$18,815.

DISCUSSION: The City of Hercules has relied on the City of Pinole for many years to provide services which allow for the broadcast of the City Council and other meetings on the Public Education and Governmental Access channels offered through cable, which for Hercules is Channel 28 with Comcast and Channel 99 with AT&T. While the City does elements of the broadcast and other services including live streaming through the web, the relationship with Pinole arises out of the fact that Hercules does not have the required access point to the cable system here in that Comcast provided only one access point in Pinole to be shared by Pinole and Hercules which dates back to the initiation of local cable services.

The current version of the contract between Hercules and Pinole dates back to 2008 (Attachment A). As discussed under Fiscal Impact above, the City of Pinole has proposed a substantial increase for the 2017/18 fiscal year and a new contract. The proposed new contract is attached (Attachment 2). The City of Hercules has advised Pinole that we view ourselves in a holdover period under the existing contract pending our ability to evaluate and respond to the proposed new terms of service.

During the past few months, we have been evaluating information provided by the City of Pinole. Pinole has approached this as a fee for service contract, as they do provide cable broadcasting services for other entities on a fee for service basis including the City of Benicia which has its own studio and

broadcast facilities. However, the City of Hercules is not in the same fee for service relationship because the shared access to the Comcast network hinders our ability to solicit and consider alternative service providers.

Evaluation of Pinole Proposal and Costs

The City of Pinole contacted Hercules after the adoption of our FY 2017/18 budget with a proposal for a new cable contract at a much higher amount as the rate had not been adjusted for many years. Since that time, staff has been consulting with Pinole as to how they determined the costs proposed for Hercules. Since the contract amount had not been changed for a number of years, Hercules staff looked back to understand the basis for the current costs of the cable operation. The Pinole methodology establishes an hourly rate for the cost of our cable broadcast and the operation of the master mixer in Pinole.

The main increases in the Pinole cable budget operation over the past few years were:

- An increase in staffing in FY 2014/15 from 2.24 staff members to 2.75 staff members;
- An increase in FY 2015/16 in the Information Systems charges from \$11,000 to \$22,000.

Other expenses remain relatively stable and reflect cost increases in keeping with inflation and wage and benefit changes.

Pinole has used the same methodology to establish rates for the other agencies for which they provide services. The main differences are the hourly rates of the employees assigned. The calculation of an hourly rate for Hercules reflects generally accepted methodology and starts with the current hourly rate for the assigned employees. There are three factors used to build a final rate after that starting point:

- A “productive” factor adjustment which endeavors to account for leave time.
- A factor which reflects employee related costs other than pay and benefits such as workers comp, insurance, etc.
- A 15% overhead and administration factor.

Of the three factors above, Hercules staff explored the productive factor and its intended application. At this point, we do not believe it is the best means to capture what is intended. In a conversation with the Pinole staff, they indicated that they understood our concerns and that perhaps an annual true-up would be the best way to address the concerns. Also, they indicated that modifying the approach for Hercules would also require them to modify the rates for their other agencies.

Our analysis of both revenues and expenses, assuming the rate methodology is appropriate, indicates that what is proposed is generally in scale with what could be described as a proportionate share of costs. However, increased costs at any level are an unbudgeted expense.

As previously noted, cable is just one of the ways our residents can access the broadcast of City meetings. The other is through the internet and the City’s own web streaming of the meetings. More and more households across the US are cutting the cable cord and turning to non-traditional means to

access television programming including the internet through devices such as Roku. According to one article in September:

“The company (eMarketer) forecasts that there will be 22.2 million cord-cutters over the age of 18 this year, more than the 15.4 million the company had previously predicted. This figure is up 33.2% over 2016. The number of US adult cord-nevers is expected to grow 5.8% this year to 34.4 million.” <http://www.businessinsider.com/report-people-are-ditching-cable-at-a-faster-than-previously-thought-2017-9>

Connecting with our residents is a high priority for the City and as technology changes we may need to adapt.

Given the significant increase in cost, and the current lack of an ability to consider more cost effective alternatives, and changing technology, staff has identified a number of options as to how to proceed:

- A. Continue under the holdover concept and negotiate with Pinole for a cost structure that is more reasonable and reflects our “captive” status which Pinole may or may not be willing to do for a longer period than what has already taken place; or
- B. Seek some on-going financial assistance from Comcast to support the cost increase proposed by Pinole as the original decision by Comcast to provide just one access point to the two cities is the primary factor for the need to utilize Pinole and this has benefited Comcast since the inception of the PEG operation; or
- C. Conceptually agree to the changes in terms of the service contract with Pinole and bring back a final contract for consideration; or
- D. Embark on a pilot under which we just live stream the City Council and other meetings for a period of six months, this would end the current contract with Pinole, and during this time staff would:
 - Explore having Comcast provide Hercules with its own access to the cable system which would allow us to either provide the services directly or which would allow for proposals for a variety of possible service providers to provide cable broadcast support.
 - Continue to negotiate with Pinole on a new contract with terms agreeable to both parties;
 - Educate residents as to alternatives to cable and consider making the pilot project permanent.

ATTACHMENTS:

1. Current Contract w/ Pinole
2. Contract proposed by Pinole

City of Pinole
AGREEMENT FOR VIDEO PRODUCTION SERVICES
FOR THE CITY OF HERCULES

THIS AGREEMENT is made and entered into this ^{10th} day of ^{dsu} March, 200^{dsu}~~8~~ by and between the City of Pinole, (hereinafter referred to as "the City") and the City of Hercules, (hereinafter referred to as "Hercules").

RECITALS

1. The City of Pinole organization currently includes a department entitled Pinole Community Television that is charged with operating the City's government and public access channels on cable television.
2. The City of Pinole currently provides financial support to Pinole Community Television in order to employ staff that is assigned to manage the public access channel system. Included is all efforts at programming, production, live coverage, videotape, and editing services of certain city oriented events such as City Council and Planning Commission meetings, recreational activities and special events in the community, public hearings and ceremonies, as well as general public information.
3. The City of Pinole is committed to provide enhanced dissemination of public information and therefore utilizes Channel 26 and Channel 28 for such purposes in order to reach a broad spectrum of the community with news and information about these events and meetings.
4. The City of Hercules also has the ability to broadcast public information on their public access Channel 28, but limited equipment and none of the staffing required to provide the level of production that Hercules desires.
5. The City of Hercules has expressed an interest in the City of Pinole providing certain video and programming services as those being provided in Pinole and as such, the City of Pinole has been providing video production services to Hercules on a regular basis since 2000.
6. The City of Hercules has expressed an interest to the City of Pinole in readdressing a service agreement for long-term video production services including management of Hercules Channel 28.
7. The City of Hercules and the City of Pinole agree that it would be mutually beneficial to work jointly towards maximizing the amount of quality programming and public information on both broadcast systems to and for both communities.

NOW, THEREFORE, in consideration of the mutual covenants and the conditions herein,
IT IS HEREBY AGREED:

A. GENERAL PROVISIONS

1. Cable Access Coordinator as Manager and Producer of Stations.

The City of Pinole operates its public access channel as an enterprise entitled Pinole Community Television (PCTV). The enterprise is managed through a full time Cable Access Coordinator who is responsible for managing the complete operations and maintenance of the station. The Cable Access Coordinator will also be responsible for managing and operating the City of Hercules public /government access Channel 28 in the same manner.

The Cable Access Coordinator will serve as Manager and Producer for Hercules productions and will provide technical expertise and oversight for both channels. This includes responsibility for staffing, program scheduling and deployment of equipment owned by the City of Pinole and/or the City of Hercules, to be used for public access purposes. In addition, the Cable Access Coordinator reserves the right to manage all broadcast scheduling and to determine the feasibility of each request.

The City of Hercules will designate a Staff Liaison to provide all communication and instructions to Pinole Television Staff as needed. The Liaison will maintain an updated calendar for all regularly scheduled meetings, special meetings, and special remote productions. The Liaison will also be responsible for all special requests, notification of canceled meetings, and general communication with the Cable Access Coordinator. An annual schedule will be agreed upon by both the City and Hercules at the beginning of each calendar year.

2. Employees and Staff Supervision.

All employees are assigned to work under the Cable Access Coordinator for the City of Pinole Community Television. All volunteers from both cities will report to and receive supervision from the Cable Access Coordinator. The Cable Access Coordinator has all responsibility and authority to manage staff and volunteers, including hiring, training, discipline and termination.

Utilizing the full automation of the City of Hercules Council Chambers, the standard production crew will be one PCTV staff person for the basic Council Chambers productions. As needed PCTV Staff will be increased for the purposes of cross training.

It is agreed that the City of Hercules will not solicit the employment or offer employment to any other employee(s) for said purposes during the term of this agreement. Should the City of Hercules terminate this agreement, it is understood that the City of Hercules will not offer employment to any of the Pinole Community Television staff or volunteers for a period of one year following the termination of the agreement.

3. Federal Communications Commission (FCC) Regulations.

The City of Pinole takes authority to run programs in accordance with the Federal Communications Commission (FCC) and responsibility for content. The Cable Access Coordinator reserves the right to edit all broadcasts and sponsor acknowledgements and to manage content in order to maintain FCC standards.

B. SERVICES AND SCHEDULING

1. Scheduling.

The City of Pinole is committed to providing the Basic Level of Service as outlined in Section E and in the attached Exhibit A "Schedule of Fees". In the event that the City of Hercules requests an additional production and a scheduling conflict arises between the City of Hercules and the City of Pinole, the City of Pinole will take precedence.

The Cable Access Coordinator reserves the right to manage all broadcast scheduling and to determine the feasibility of each request. Every effort will be made by the City of Pinole to accommodate reasonable requests. Any additional requests must be made in writing to the Cable Access Coordinator no less than forty-eight (48) hours in advance. A minimum of twenty-four (24) hours advanced notice is required for all cancellations. Fees will be charged for cancellations or additional requests made without adequate notice, per Exhibit A "Schedule of Fees"

If inadequate notice is made for additional requests, City of Pinole staff will still make every effort to provide a camera operator to videotape highlights of the meeting or event. This tape will be unedited and will require editing prior to public view on the system. If additional video production is requested for any unedited production, a minimum of three-hours of production time will be billed to the City of Hercules as outlined in Section C and in the attached Exhibit A "Schedule of Fees".

2. Basic Services.

The City of Pinole through its Pinole Community Television, will provide at minimum, a basic service including live broadcasts and video taped productions as outlined below:

- Two meetings per month of the City of Hercules City Council.
- Two meetings per month of the City of Hercules Planning Commission.

By this agreement, Pinole Community Television will provide a minimum of forty eight (48) broadcasts or two hundred forty (240) hours of production time or whichever comes first in a fiscal year for City of Hercules initiated meetings held at the City of Hercules City Council Chambers. In the event that the City of Hercules does not hold a regularly scheduled meeting as described above, the City of Pinole shall credit the broadcast of said meeting to the next invoice.

Generally, each live production is calculated at a minimum of five (5) hours. Included is one hour for set up and take down of video production equipment, plus actual meeting time. In the event that this annual amount of hours is exceeded, additional fees may be charged as outlined in Section C and in the attached Exhibit A "Schedule of Fees".

All City Council and Planning Commission productions will be broadcast and recorded live to tape and or DVD and unedited. By the end of each meeting, the Cable Access Coordinator will provide to the City of Hercules, an unedited tape or DVD of all-live meetings that was aired and recorded for the official records and archives of the City of Hercules. Pinole Community Television will program all replays as requested by the City of Hercules and permitted by the television schedule.

3. Additional Productions.

The City of Hercules may request video production of additional meetings, events, or activities such as Special Council Meetings, Study Sessions, Press Conferences, Community Events and other ceremonial presentations or meetings hosted in the City of Hercules City Council Chambers. All special remote production events will be produced live when possible and recorded unedited. An additional fee will be charged for these services as outlined in Section C and in the attached Exhibit A "Schedule of Fees".

This agreement also provides an option for broadcasts of events taking place at Hercules High School. This includes live recording of an event by Pinole Community Television.

4. Sponsorships

All remote productions may be sponsored by local or area businesses as per Federal Communication Commission (FCC) requirements. All sponsors will be recognized and clearly identified with either audible and or visual acknowledgements. It is the responsibility of the City of Hercules to solicit their own sponsors, acquire the scripted acknowledgments, as well as bill, collect, and manage all sponsor efforts. The Cable Access Coordinator reserves the right to edit all acknowledgments in order to maintain FCC standards.

5. Public Access, Educational, and Government Access (PEG) Programming.

The Cable Access Coordinator will have the sole discretion to program airtime with various programming in accordance with the guidelines governing Public Access, Educational, and Government Access (PEG) standards. It is the intent to air programs to and from both cities to develop a better community television serving both cities.

C. FEES FOR SERVICES

1. Fees and Payment for Services Provided.

The City of Hercules, in exchange for services and programming from the Pinole Community Television, and as outlined in this agreement, agrees to pay the City of Pinole a minimum of \$25,750 per fiscal year for basic services and special live remote productions as outlined in Section C of this agreement.

Payment is due in four quarterly payments of \$6,438 timed with the City of Pinole's fiscal year that starts on July 1.

A minimum of twenty-four (24) hours advanced notice is required for all cancellations and a minimum of forty-eight (48) hours advanced notice is required for additional requests. Fees will be charged for cancellations or additional requests made without adequate notice, per Exhibit A "Schedule of Fees" and at a rate of \$150 per request or cancellation. The fee will be applied to the next invoice. If an event that was previously scheduled as part of the basic services is cancelled by the City of Hercules without the minimum required 24-hour notice, then a fee will be incurred and a replacement event will be mutually scheduled. If it cannot be rescheduled within that fiscal quarter, the meeting cost will be deducted from the next quarterly invoice at a rate of \$325 per cancelled meeting, minus the \$150 cancellation fee.

2. Additional Fees.

In the event that additional production hours for meetings not included under Basic Services are required, a fee of \$150 per hour will be charged. Further, if editing or any postproduction work is required, a charge of \$150 an hour will be incurred. In the event that the City of Hercules requests a live remote productions, such as community events, a flat fee of \$2,000 per event will be charged for a maximum of six (6) event hours. This fee includes a production truck with a minimum of five (5) PVTC staff up to a ten-hour shift. Total shift time includes preload, setup, event coverage, tear down, and truck unloading. Events will be produced live to recording format for broadcast.

3. Contract Rollover Fee Adjustment

In the event that this agreement continues to remain in effect for three (3) subsequent years and every three (3) subsequent years following, the rates will re-calculated annually by the Cable Access Coordinator or his/her designee. The new operation rates will be offered as an amendment side letter for the Hercules Liaison's review. The new rates will be effective for the first quarter following the signing of the side letter. This rate increase will be consistent with a reasonable cost of living increase for PCTV staff.

D. EQUIPMENT

The City of Pinole, through its enterprise, "Pinole Community Television", will operate equipment necessary to produce live coverage and video tapings of monthly City Council, and Planning Commission meetings to the City of Hercules. The City may also provide coverage and tapings of other Hercules meetings and community events upon request and as agreed by both parties.

The City of Hercules shall provide a Production Control Room and other video equipment plus all needed office supplies, small equipment videocassette tapes and DVDs for use by Pinole Community Television when providing video services to the City of Hercules.

All video production equipment will remain in the ownership of each respective city. The video production equipment will be utilized as a centralized system for both communities and will be stored, utilized, distributed and released from inventory as deemed necessary by the Cable Access Coordinator.

1. Equipment Replacement.

The City of Pinole will continue to work with the City of Hercules to identify worn, antiquated, and unusable video equipment owned by the City of Hercules. Upon contract signing, the Cable Access Coordinator will provide a one-time assessment of the existing equipment and operations, including the physical layout of the video production room. The recommendation, Exhibit B, focuses on improving the efficiency and utility of the current system in order to maximize the video production effort.

Within reason, the City of Hercules will make every effort to repair or replace any of the existing video production equipment that is impairing video production capabilities including, but not limited to: cameras, switchers, audio systems, video tape recorders, and computers that are owned by the City of Hercules, and deemed to be antiquated and unusable by the Cable Access Coordinator. See Schedule of Equipment Needs for Video Production Services, Exhibit B.

2. Production Control Room.

The City of Hercules will maintain a suitable Production Control Room to be used for all live broadcasts from the City of Hercules City Council Chambers. The Hercules Production Control Room should be of a size that can accommodate at least three production staff and the associated equipment required to maintain production. As of October 2007, the lack of adequate air conditioning and temperature control within the Production Control room has caused equipment failure. Within the first five (5) months of this agreement, the Production Control room will be renovated by the City of Hercules to provide adequate heating and air-conditioning.

3. Master Control Function.

The City of Pinole will maintain a combined Master Control (MC) capability for both cities at the Pinole Community Television Studio in Pinole. The Combined MC will automate the replays of all programs for the City of Hercules and the City of Pinole.

E. TERMINATION OF AGREEMENT

Either party may terminate this agreement with a minimum of 60 days written notice. Unless otherwise noted in writing by either party, this contract shall remain in effect for three years with automatic renewals for one-year terms. Payment in full for the current fiscal quarter of this agreement will be required.

F. ADMINISTRATIVE CHANGES/MODIFICATIONS TO CONTRACT

This Agreement may be amended, modified or changed by the parties provided that modification or change is in writing and approved by the authorized representatives of the parties.

Administrative changes and or modifications to this contract may be addressed through mutual agreement by the City Managers of both the City of Hercules and the City of Pinole, provided the financial impact or cost is valued at less than \$10,000. All other changes or modifications exceeding this amount must be approved by the city councils of both cities.

G. INSURANCE

The City of Pinole carries insurance coverage in at least the following minimums:

General Liability:	\$1 million occurrence/\$2 million aggregate
Automobile:	\$50,000 property damage/\$100,000 bodily injury to any one person/\$300,000 bodily injury to all persons arising from a single accident.

Employees of the City of Pinole shall not be considered employees of the City of Hercules for purposes of workers compensation coverage while performing services under this agreement.

H. INDEMNIFICATION

Hercules shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action of any nature related to or arising from the use of the City of Hercules-owned facilities and equipment or the broadcasting of live or taped meetings or other City of Hercules events pursuant to this agreement, unless resulting directly from the negligent actions of the City of Pinole, Pinole Community Television employees.

I. NOTIFICATION

All notices and correspondence should be addressed to:

City of Pinole
City Manager
2131 Pear Street
Pinole, California 94564

City of Hercules
City Manager
111 Civic Drive
Hercules, California 94547

J. APPLICABLE LAW AND ATTORNEY'S FEES

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provisions of the Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, court costs or any other costs as may be fixed by the court. Any action arising out of this Agreement shall be venued in the Superior Court of the State of California in and for the County of Contra Costa.

K. MISCELLANEOUS PROVISIONS

- A. If any one of more of the covenants and agreements or portions thereof shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant, or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed severable from the remaining covenants and agreements or portions thereof, and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.
- B. This agreement constitutes the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed in said document. It is not the intent of the parties to this agreement to form a partnership or joint venture.
- C. Where the terms and conditions of this Agreement and any attachments or exhibits hereto conflict, the parties expressly agree that the terms and conditions of this Agreement shall prevail and preside.

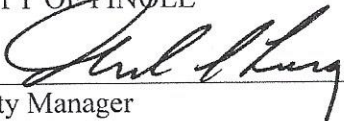
21. ATTACHMENTS

Exhibit A—Schedule of Fees for Video Production Services

Exhibit B—Schedule of Equipment needs for Video Production Services

IN WITNESS WHEREOF, the City of Hercules and the City of Pinole have caused their authorized representatives to execute this Agreement on the ____ day of ____, 2007.

CITY OF PINOLE



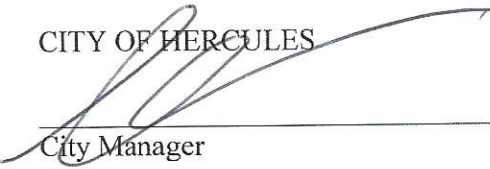
City Manager

2/1/08
Date

Approved as to Form:

General Counsel, City of Pinole

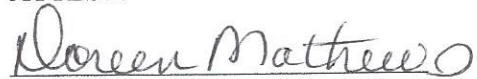
CITY OF HERCULES



City Manager

3-10-08
Date

ATTEST:



City Clerk, City of ~~Pinole~~ Hercules

Approved as to form:



City Attorney

**City of Pinole
Exhibit A
Schedule of Fees for Video Production Services**

I. Provision of Basic Services

• Basic Services \$25,750 per fiscal year

- ☐ Two meetings per month of the City of Hercules City Council meetings.
- ☐ Two meeting per month of the City of Hercules Planning Commission.
- ☐ Automated Broadcasting and Replay

Basic Services Total	\$25,750 per fiscal year
----------------------	---------------------------------

II. Optional Services

• Optional Broadcasting at Hercules High School Negotiated per Amendment

- ☐ Hercules High School events will be produced Live to Tape or broadcast Live when the equipment and hardware is installed. The intent of this option is to begin broadcasts of sporting events. At the direction of the Hercules City Manager, these productions could be used for other events at the Hercules High School.

• Optional Broadcasting With Remote Truck \$2,000 per event

- ☐ Flat fee of \$2,000 includes a maximum of Six (6) hours of event time. Truck rates include a minimum of 5 PVTC staff up to a ten-hour shift. Total shift time includes preload, setup, event coverage, tear down, and truck unloading. Events will be produced live to recording format for broadcast. Subject to PCTV Coordinator's discretion.
- ☐ Additional production time and crew must be negotiated.
- ☐ The Cable Access Coordinator will determine the feasibility of scheduling such requests.

• Additional Hours for Live Coverage of Meetings \$150 per hour

- ☐ Held at the City of Hercules City Council Chambers.
- ☐ A three (3) hour minimum will be charged, including set up and take down.

• Editing Services \$150 per hour

• B-Roll Coverage of Events \$150 per hour

- ☐ B-Roll coverage consists of one (1) camera coverage with the intent of editing at a later date. Editing services charged separately.

• Cancellation and Inadequate Notice Fee \$150 per event

**City of Pinole
Exhibit B
Schedule of Equipment needs for Video Production Services**

As of October 20, 2007, there are a number of elements in the Hercules Production Control Room that have out lived their useful life expectancy and are in need of replacement.

- Live Broadcast Router
- Production Switcher
- Computer Graphics
- VTR's
- Chairs
- Program and Preview Monitor
- DA's (distribution amps) for both audio and video

**City of Pinole
AGREEMENT FOR VIDEO PRODUCTION SERVICES
FOR THE CITY OF HERCULES**

THIS AGREEMENT is made and entered into this day of _____, 2017 by and between the City of Pinole, (hereinafter referred to as "the City") and the City of Hercules, (hereinafter referred to as "Hercules").

RECITALS

1. The City of Pinole organization currently includes a department entitled Pinole Community Television that is charged with operating the City's government and public access channels on cable television.
2. The City of Pinole currently provides financial support to Pinole Community Television in order to employ staff that is assigned to manage the public access channel system.
3. The City of Pinole is committed to provide enhanced dissemination of public information and therefore utilizes Channel 26 and Channel 28 for such purposes in order to reach a broad spectrum of the community with news and information about these events and meetings.
4. The City of Hercules also has the ability to broadcast public information on their public access Channel 28, but limited staffing to do so as Hercules desires.
5. The City of Hercules has maintained an interest in the City of Pinole providing certain video and programming services as those being provided in Pinole and as such, the City of Pinole has been providing video production services to Hercules on a regular basis since 2001.
6. The City of Hercules has expressed an interest to the City of Pinole in readdressing a service agreement for long-term video production services including management of Hercules Channel 28.

NOW, THEREFORE, in consideration of the mutual covenants and the conditions herein,
IT IS HEREBY AGREED:

A. GENERAL PROVISIONS

1. Cable Access Coordinator as Manager and Producer of Stations.

The City of Pinole operates its public access channel as an enterprise entitled Pinole Community Television (PCTV). The enterprise is managed through a full time Cable Access Coordinator who is responsible for managing the complete operations and maintenance of the station. The Cable Access Coordinator and/or his/her designee will also be responsible for managing and operating the City of Hercules public /government access Channel 28 in the same manner.

The Cable Access Coordinator will serve as Manager and Producer for Hercules productions and will provide technical expertise and oversight for both channels. This includes responsibility for all staffing.

The City of Hercules will designate a Staff Liaison to provide all communication and instructions to Pinole Television Staff as needed. The Liaison will maintain an updated calendar for all regularly scheduled meetings, special meetings, and special remote productions. The Liaison will also be responsible for all special requests, notification of canceled meetings, and general communication with the Cable Access Coordinator. An annual schedule will be agreed upon by both the City and Hercules at the beginning of each calendar year.

2. Employees and Staff Supervision.

All employees are assigned to work under the Cable Access Coordinator for the City of Pinole Community Television. All volunteers from both cities will report to and receive direction from the Cable Access Coordinator. The Cable Access Coordinator has all responsibility and authority to manage City of Pinole's staff and volunteers, including hiring, training, and discipline.

Utilizing the full automation of the City of Hercules Council Chambers, the standard production crew will be one on site and one Master Control PCTV staff persons for the basic Council Chambers productions. As needed PCTV Staff will be increased for the purposes of cross training. Under extreme conditions of multiple client demand and limited PCTV staff availabilities, PCTV may on occasion staff a City of Hercules meeting with a single trained operator familiar with the City of Hercules's equipment.

It is agreed that the City of Hercules will not solicit the employment or offer employment to any other employee(s) for said purposes during the term of this agreement. Should the City of Hercules terminate this agreement, it is understood that the City of Hercules will not offer employment to any of the Pinole Community Television staff or volunteers for a period of one year following the termination of the agreement.

3. Federal Communications Commission (FCC) Regulations.

The City of Pinole takes authority to run programs in accordance with the Federal Communications Commission (FCC) and responsibility for content. The Cable Access Coordinator reserves the right to edit all broadcasts and sponsor acknowledgements and to manage content in order to maintain FCC standards.

B. SERVICES AND SCHEDULING

1. Scheduling.

The City of Pinole is committed to providing the Basic Level of Service as outlined in Section B2 and in the attached Exhibit A "Schedule of Fees". In the event that the City of Hercules requests an additional production and a scheduling conflict arises between the City of Hercules and the City of Pinole, the City of Pinole will take precedence.

The Cable Access Coordinator reserves the right to manage all broadcast scheduling and to determine the feasibility of each request. Every effort will be made by the City of Pinole to accommodate reasonable requests. Any additional requests must be made in writing to the Cable Access Coordinator no less than forty-eight (48) hours in advance. DSnell@ci.pinole.ca.us. A minimum of twenty-four (24) hours advanced notice is required for all cancellations. Cancellation fees will be charged for meeting cancelled without adequate notice. Additional requests without adequate notice will incur late notice fees, per Exhibit A "Schedule of Fees"

If inadequate notice is made for additional requests, City of Pinole staff will make an effort to provide a camera operator to record highlights of the meeting or event. This recording will be unedited and will require editing prior to public view on the system. If additional video production is requested for any unedited production, a minimum of three-hours of production time will be billed to the City of Hercules as outlined in Section C and in the attached Exhibit A "Schedule of Fees".

2. Basic Services.

The City of Pinole through its Pinole Community Television, will provide at minimum, a basic service including live broadcasts and video taped productions as outlined below:

- Two meetings per month of the City of Hercules City Council.
- Two meetings per month of the City of Hercules Planning Commission.

By this agreement, Pinole Community Television will provide a minimum of forty Eight (48) broadcasts equal to two hundred and forty (240) hours of production time for City of Hercules initiated meetings held at the City of Hercules City Council Chambers. In the event that the City of Hercules does not hold a regularly scheduled meeting as described above, the City of Pinole will reduce the total contract hours by five hours, and will not charge, other than a cancellation fee and/or a late cancellation fee, if applicable.

Generally, each live production is calculated at a minimum of five (5) hours. Included is one hour for set up and take down of video production equipment, plus actual meeting time. In the event that this annual amount of hours is exceeded, additional fees may be charged as outlined in Section C and in the attached Exhibit A "Schedule of Fees".

All productions will be broadcast and recorded live to DVD and unedited. By the end of each meeting, the Cable Access Coordinator or designee will provide to the City of Hercules, an unedited recordings of all-live meetings that were aired and recorded for the official records and archives of the City of Hercules.

3. Additional Productions.

The City of Hercules may request video production of additional meetings, events, or activities such as Special Council Meetings, Study Sessions, Press Conferences, Community Events and other ceremonial presentations or meetings hosted in the City of Hercules City Council Chambers. All special remote production events will be produced live when possible and recorded unedited. An additional fee will be charged for these services as outlined in Section C and in the attached Exhibit A "Schedule of Fees".

This agreement also provides an option for remote broadcasts of events taking place outside Hercules City Council Chambers. This includes live recording of an event(s) by Pinole Community Television.

4. Sponsorships

All remote productions may be sponsored by local or area businesses as per Federal Communication Commission (FCC) requirements. All sponsors will be recognized and clearly identified with either audible and or visual acknowledgements. It is the responsibility of the City of Hercules to solicit their own sponsors, acquire the scripted acknowledgments, as well as bill, collect, and manage all sponsor efforts. The Cable Access Coordinator reserves the right to edit all acknowledgments in order to maintain FCC standards.

C. FEES FOR SERVICES

1. Fees and Payment for Services Provided.

The City of Hercules, in exchange for services from the Pinole Community Television, and as outlined in this agreement, agrees to pay the City of Pinole a minimum of \$43,815 per fiscal year for basic services and special live remote productions as outlined in Section C of this agreement.

Payment is due upon invoicing timed with the City of Pinole's fiscal year that starts on July 1.

A minimum of twenty-four (24) hours advanced notice is required for all cancellations and a minimum of forty-eight (48) hours advanced notice is required for additional requests. Fees will be charged for cancellations or additional requests made without adequate notice, per Exhibit A "Schedule of Fees" and at a rate of \$195 per request or cancellation. The fee will be applied to the next invoice. In the event that a regular scheduled meeting is cancelled in a timely manner, no meeting charges will be incurred other than a \$100 cancellation fee. If the event is cancelled without adequate notice, a \$195 late cancellation fee will be applied to the next invoice.

2. Additional Fees.

In the event that additional production hours for meetings not included under Basic Services are required, a fee of \$200 per hour will be charged. Further, if editing or any postproduction work is required, a charge of \$195 an hour will be incurred.

D. EQUIPMENT

The City of Pinole, through its enterprise, "Pinole Community Television", will operate equipment necessary to produce live coverage and video tapings of monthly City Council, and Planning Commission meetings for the City of Hercules. The City may also provide coverage and recordings of other Hercules meetings and community events upon request and as agreed by both parties.

The City of Hercules shall provide a Production Control Room and other video equipment plus all needed office supplies, small equipment, batteries and DVDs for use by Pinole Community Television when providing video services to the City of Hercules.

1. Equipment Replacement.

The City of Pinole will continue to work with the City of Hercules to identify worn, antiquated, and unusable video equipment owned by the City of Hercules. Upon contract signing, the Cable Access Coordinator will provide a one-time assessment of the existing equipment and operations, including the physical layout of the video production room. The recommendation, Exhibit B, focuses on improving the efficiency and utility of the current system in order to maximize the video production effort.

Within reason, the City of Hercules will make every effort to repair or replace any of the existing video production equipment that is impairing video production capabilities including, but not limited to: cameras, switchers, audio systems, video tape recorders, and computers that are owned by the City of Hercules, and deemed to be antiquated and unusable by the Cable Access Coordinator. See Schedule of Equipment Needs for Video Production Services, Exhibit B.

2. Production Control Room.

The City of Hercules will maintain a suitable Production Control Room to be used for all live broadcasts from the City of Hercules City Council Chambers. The Hercules Production Control Room should be of a size that can accommodate at least three production staff and the associated equipment required to maintain production.

3. Master Control Function.

The City of Pinole will maintain a combined Maser Control (MC) capability for both cities at the Pinole Community Television Studio in Pinole. The Combined MC will automate the replays of all programs for the City of Hercules and the City of Pinole.

E. TERM

Unless otherwise agreed to in writing, the term of this Agreement shall be from July 1, 2017 through June 30, 2018.

F. EARLY TERMINATION OF AGREEMENT

Either party may terminate this agreement with a minimum of 180 days written notice. Unless otherwise noted in writing by either party, this contract shall remain in effect as referenced in Section E.

G. ADMINISTRATIVE CHANGES/MODIFICATIONS TO CONTRACT

This Agreement may be amended, modified or changed by the parties provided that modification or change is in writing and approved by the authorized representatives of the parties.

Administrative changes and or modifications to this contract may be addressed through mutual agreement by the City Managers of both the City of Hercules and the City of Pinole, provided the financial impact or cost is valued at less than \$10,000. All other changes or modifications exceeding this amount must be approved by the city councils of both cities.

H. INSURANCE

The City of Pinole carries insurance coverage in at least the following minimums:

General Liability:	\$1 million occurrence/\$2 million aggregate
Automobile:	\$50,000 property damage/\$100,000 bodily injury to any one person/\$300,000 bodily injury to all persons arising from a single accident.

Employees of the City of Pinole shall not be considered employees of the City of Hercules for purposes of workers compensation coverage while performing services under this agreement.

I. INDEMNIFICATION

Hercules shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action Hercules of any nature related to or arising from the use of the City of Hercules-owned facilities and equipment or the broadcasting of live or taped meetings or other City of Hercules events pursuant to this agreement, unless resulting directly from the negligent actions of the City of Pinole, Pinole Community Television employees.

J. NOTIFICATION

All notices and correspondence should be addressed to:

City of Pinole
City Manager
2131 Pear Street
Pinole, California 94564

City of Hercules
City Manager
111 civic Dr,
Hercules, California 94547

K. APPLICABLE LAW AND ATTORNEY'S FEES

This Agreement shall be construed and enforced in accordance with the laws of the State of California. Should any legal action be brought by a party for breach of this Agreement or to enforce any provisions of the Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, court costs or any other costs as may be fixed by the court. Any action arising out of this Agreement shall be venued in the Superior Court of the State of California in and for the County of Contra Costa.

L. MISCELLANEOUS PROVISIONS

1. If any one of more of the covenants and agreements or portions thereof shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such covenant, or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed severable from the remaining covenants and agreements or portions thereof, and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.
2. This agreement constitutes the entire agreement between the parties and there are no conditions, agreements or representations between the parties except as expressed in said document. It is not the intent of the parties to this agreement to form a partnership or joint venture.
3. Where the terms and conditions of this Agreement and any attachments or exhibits hereto conflict, the parties expressly agree that the terms and conditions of this Agreement shall prevail and preside.

21. ATTACHMENTS

Exhibit A—Schedule of Fees for Video Production Services

Exhibit B—Schedule of Equipment needs for Video Production Services

IN WITNESS WHEREOF, the City of Hercules and the City of Pinole have caused their authorized representatives to execute this Agreement on the _____ day of _____, 2017.

CITY OF PINOLE

CITY OF HERCULES

City Manager

City Manager

Date

Date

Approved as to Form:

ATTEST:

General Counsel, City of Pinole

City Clerk, City of Pinole

City of Pinole

**Exhibit A
Schedule of Fees for Video Production Services**

I. Provision of Basic Services

- **Basic Services** **\$43,815 per fiscal year**
 - ☐ Two meetings per month of the City of Hercules City Council meetings.
 - ☐ Two meetings per month of the City of Hercules Planning Commission.
 - ☐ Master Control Services automated scheduling and playback of live and replays of meetings and other programs as requested.

Basic Services Total	\$43,815 per fiscal year
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II. Optional Services

- **Optional Broadcasting With Remote Truck** **Request Pricing**
- **Additional Hours for Live Coverage of Meetings** **\$200 per hour**
 - ☐ Held at the City of Hercules City Council Chambers.
 - ☐ A three (3) hour minimum will be charged; including set up and take down.
- **Editing Services** **\$195 per hour**
- **B-Roll Coverage of Events** **\$260 per hour**
 - ☐ B-Roll coverage consists of one (1) camera coverage with the intent of editing at a later date. Editing services charged separately.
- **Cancellation Fee** **\$100 per event**
- **Inadequate Notice Fee** **\$195 per event**
- **Annual Fee Adjustment** **5% per year**

**• City of Pinole
Exhibit B
Schedule of Equipment needs for Video Production Services**

As of March 23, 2017, there are a number of elements in the Hercules Production Control Room that have out lived their useful life expectancy and are in need of replacement. A recent proposal was approved however, at this time I have no formal information regarding this proposal and I am unable to comment.

- Recommend overhauling the audio system. To the best of my knowledge the audio gear is well over twenty years old and due for replacement. This would include the mixer, wireless mic, wires etc. This system has served Hercules well and out lived its useful life. The mixing controls are out dated and do not afford the standard operation or access of a modern computer accessible system. As more meetings are taking place in an arrangement on the floor, a second audio Input and Output (IO) station is also recommended. An Assisted Listening (ADA required) may be required with updates to this system.
- The camera systems installed in Hercules are over fifteen years old and have out lived their useful life. Due to advances in technology maintaining these systems will be increasing difficult. Modern Pan Tilt and Zoom (PTZ) cameras are designed with digital signals (SDI or HDMI) and provide a higher standard image. Recommend replacing the current cameras and PTZ controller.
- Currently there is only one copy of the recordings in Hercules; it is our standard to record to two devices as blank DVD's are not 100% reliable. A second recording system is recommended.
- Confidence monitors are needed in the control room (Comcast feeds) and it is our recommendation for a confidence monitor (control room feed) within the chambers for your Council.
- The lighting is in poor balance and in need of matching the light levels and Kelvin color temperatures. Waveform/Vector monitor system with a Proc Amp for maintaining proper and legal video levels for broadcast would assist with balancing the video levels to the broadcast system.
- An uninterruptable power supply system (UPS) is needed to balance and condition the power fed into the digital equipment. Minor power fluctuations cause digital equipment to fail or behave oddly. Unfortunately this has already caused unwanted effects with current Hercules gear.
- Audio monitors in the control room are inadequate to accurately monitor and correct for audio system needs. Recommend installing new monitors.
- A Skype interface has been requested to assist Council, Boards, and Committees with an ability to join the meeting from remote locations.
- There are a number of very dated switches and interfaces that hold this gear together, much of these units are over twenty years old and in need of replacement.



Legislation Details (With Text)

File #: 17-411 **Version:** 1 **Name:**
Type: Discussion/Action Item **Status:** Agenda Ready
File created: 10/4/2017 **In control:** City Council
On agenda: 10/10/2017 **Final action:**
Title: Long Term Financial Projection for the General Fund
Recommendation: Review and discuss the long term financial projection of the general fund.
Sponsors:
Indexes:
Code sections:

Attachments: [Staff Report - Long Term Financial Projection - General Fund](#)
[Attach 1 - General Fund LT Projection from FY2018-19 to FY2022-2023](#)
[Attach 2 - Assumptions Used for Long-Term Projection](#)

Date	Ver.	Action By	Action	Result
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Long Term Financial Projection for the General Fund

Recommendation: Review and discuss the long term financial projection of the general fund.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 10, 2017

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Annie To, Finance Director

SUBJECT: Long-Term Financial Projection for the General Fund

RECOMMENDATION: Review and discuss the long-term financial projection for the General Fund.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: The report will be presented to the Finance Commission at their Special meeting on Thursday, October 19, 2017.

FISCAL IMPACT OF RECOMMENDATION: There is no direct impact from the preparation and review of an updated long-term forecast. It is a planning tool that can be used to guide future fiscal decisions.

DISCUSSION: The City's finances are managed through four major efforts each year. The development and adoption of a budget for each fiscal which starts July 1st is generally considered the first point in the annual cycle. This is generally followed by the completion and the acceptance of the audit for the prior fiscal year with the goal of having that completed by December 31st or earlier. The completion of the annual audit typically sets the stage for the mid-year budget review in February or March and can include some adjustments or additional appropriations or designations of reserves. The preparation of an update to the long-term forecast would also be done in the March/April timeframe to set the stage for the development of the budget for the next fiscal year. Given transitions in staffing and other high priority work, the annual update of the long-range forecast has just now been completed.

It is anticipated that this version of the long-term forecast will be updated in March or April based upon any new or changed assumptions and in part based upon the feedback from this initial review.

A long-term forecast was prepared for the General Fund for the time period from FY 2017-18 through FY 2022-23 using assumptions as shown in Attachment 2.

REVENUE PROJECTION AND ASSUPTIONS USED:

A 2% revenue increase from year-to-year except for the Franchise Fee Revenue, Utility Users tax revenue, Vehicle License Fee revenue, and Sales and Use Tax revenue. Please refer to Attachment 1 for additional information regarding the assumptions used in projecting the long-term revenues.

EXPENDITURE PROJECTION AND ASSUMPTIONS USED:

1. Salaries & Benefit – Cost of living (COLA) increase by 3% per year.
2. PERS Miscellaneous and Public Safety Normal Cost – Increase by 2.3% per year
3. PERS Unfunded Accrued Liability (UAL) contribution increase for Miscellaneous - Employees and Public Safety employees – The projected rate increases are based on PERS Circular letter dated January 13, 2017. It is calculated by using a weighted average mid-range rate increase for the following years:
 - 17.5% in FY18-19
 - 22.5% in FY19-20
 - 27.5% in FY20-21
 - 35.0% in FY21-22
 - 40.0% in FY22-23
2. The CalHFA loans repayment per agreed upon payment plan by the City Council on November 12, 2013 is as follows:
 - HELP Loan: \$1,907,987 - \$100,000 due from 4/11/18 to 4/11/26
Balance \$807,987 due on 4/11/27
 - RDLP Loan \$4,190,759 - \$100,000 due from 8/15/17 to 8/15/25
Balance \$3,090,759 due on 8/15/26

DISCUSSION: The result of the Long-Term Financial Forecast using the above assumptions is that there will be forecasted deficits starting in FY 2018-19. Please refer to Attachment 1.

A summary of the forecasted deficits are as follows:

FORECAST	FORECAST FY 2018-19	FORECAST FY 2019-20	FORECAST FY 2020-21	FORECAST FY 2021-22	FORECAST FY 2022-23
PROJECTED DEFICIT	(360,211)	(294,784)	(76,909)	(86,845)	(162,958)

The most significant increases in personnel benefits is the PERS Unfunded Accrued Liability (UAL) rate increases starting in FY18-19. The weighted average rate will increase from 17.5% in FY18-19 to 40% in FY22-23. Medical, dental, vision costs are projected to increase 3% per year but it could be more. These projected deficits for the next five (5) fiscal years are manageable as there is approximately \$2.2 million in the Fiscal Neutrality Funds to cover the projected deficits if needed.

ATTACHMENTS:

1. City of Hercules – General Fund Long-Term Financial Forecast
2. Assumptions Used for the General Fund Long-Term Financial Forecast

ATTACHMENT 1

CITY OF HERCULES - REVENUE & EXPENDITURE LONG-TERM OPERATING FINANCIAL FORECAST FOR GENERAL FUND												
Fund Description		GENERAL FUND						1	2	3	4	5
TYPE	Activity Basic Account Description	Activity Sub Account Description	FY 2015-16 BUDGET	FY 2015-16 ACTUAL	FY 2016-17 BUDGET	ESTIMATED FY 2016-17 ACTUAL	BUDGET FY 2017-18	FORECAST FY 2018-19	FORECAST FY 2019-20	FORECAST FY 2020-21	FORECAST FY 2021-22	FORECAST FY 2022-23
REVENUE	TAXES	TRANSIENT OCCUPANCY TAX	500	7,723	8,000	8,128	9,000	9,180	9,364	9,551	9,742	9,937
		Sycamore Crossing 100 hotel rooms					0	0	0	160,000	320,000	448,000
		PROPERTY TAXES	1,172,785	1,225,483	1,319,791	1,278,659	1,377,367	1,404,914	1,433,013	1,461,673	1,490,906	1,520,724
		SALES AND USE TAX	2,678,849	3,211,109	3,687,450	3,324,807	3,223,701	3,288,175	3,353,939	3,421,017	3,489,438	3,559,226
		Additional Revenue from Bay Front					0	0	0	0	10,000	10,200
		Additional Sales Tax - Safeway					0	0	150,000	313,000	319,260	325,645
		Additional Sales Tax - Sycamore Crossing					0	0	0	40,000	66,398	67,726
		Additional Sales Tax - Willow Auto Site					0	0	0	11,813	22,500	22,950
		Additional Sales Tax - Willow Auto Site Self Storage In-Lieu					0	0	0	66,000	132,000	200,000
		Additional Sales Tax - General					0	3,340	15,520	18,141	19,683	20,077
		Additional Measure O					0	1,621	7,532	8,804	9,552	9,743
		DOCU TRANSFER TAX	80,000	112,580	131,990	136,467	118,208	120,572	122,984	125,443	127,952	130,511
		BUSINESS LICENSE FEES	135,000	187,378	154,475	131,240	187,377	191,125	194,947	198,846	202,823	206,879
		FRANCHISE	756,610	960,125	777,257	878,574	788,114	803,876	819,954	836,353	853,080	870,142
		Additional Gas Revenue					0	209	971	1,135	1,231	1,256
		Additional Electric Revenue					0	412	1,914	2,237	2,427	2,476
		Additional Cable Revenue					0	2,384	11,076	12,946	14,046	14,327
		Additional Garbage Revenue					0	1,809	8,405	9,824	10,659	10,872
		UTILITY USERS TAX	3,192,000	3,515,565	3,851,323	3,709,130	3,538,197	3,608,961	3,681,140	3,754,763	3,829,858	3,906,455
		Additional Gas Revenue					0	2,212	10,276	12,011	13,032	13,293
		Additional Electric Revenue					0	7,888	36,650	42,839	46,480	47,410
		Additional Telephone Revenue					0	6,176	28,694	33,540	36,390	37,118
		Additional Cable Revenue					0	3,128	14,534	16,988	18,432	18,801
		Additional Water Revenue					0	3,516	16,334	19,092	20,715	21,129
	INTERGOVERNMENTAL	STATE/COUNTY	1,723,148	1,707,099	1,772,534	1,858,474	1,791,105	1,826,927	1,863,466	1,900,735	1,938,750	1,977,525
		Additional VLF Revenue					0	11,194	52,010	60,793	65,960	67,279
	LICENSES & PERMITS	BUILDING FEES	369,166	144,784	429,642	362,215	410,200	418,404	426,772	435,308	444,014	452,894
		ENGINEERING FEES	10,400	12,212	19,757	2,899	12,269	12,514	12,765	13,020	13,280	13,546
	FINES & FORFEITURES	VEHICLE CODE FINES	20,000	60,434	40,000	47,824	20,000	20,400	20,808	21,224	21,649	22,082
	USE OF MONEY & PROPERTY	INTEREST INCOME	264,982	181,500	210,638	68,749	181,500	185,130	188,833	192,609	196,461	200,391
		CELL TOWER	80,000	125,955	118,625	132,817	106,500	108,630	110,803	113,019	115,279	117,585
		LEASE PAYMENT	730,303	29,384	65,500	31,825	37,500	38,250	39,015	39,795	40,591	41,403
	CHARGES FOR SERVICES	POLICE SERVICES	366,500	429,143	437,500	403,221	420,887	429,305	437,891	446,649	455,582	464,693
		PLANNING SERVICES	18,000	32,029	18,000	21,847	19,166	19,549	19,940	20,339	20,746	21,161
		RECREATION SERVICES	1,615,700	1,538,555	1,564,942	1,510,263	1,497,500	1,527,450	1,557,999	1,589,159	1,620,942	1,653,361
	MISCELLANEOUS REVENUE	MISCELLANEOUS REVENUE	242,812	168,195	808,756	842,939	172,349	175,796	179,312	182,898	186,556	190,287
		MISC REIMBURSEMENTS	303,923	322,040	303,923	322,388	331,698	338,332	345,099	352,001	359,041	366,221
	TRANSFERS IN	TRANSFERS IN	100,000	100,000	94,192	121,899	100,000	100,000	100,000	100,000	100,000	100,000
TOTAL OPERATING REVENUE			13,860,678	14,071,292	15,814,295	15,194,367	14,342,638	14,671,380	15,271,957	16,043,564	16,645,454	17,163,324
EXPENDITURE	SALARIES AND BENEFITS	SALARIES AND WAGES	4,551,311	4,813,251	5,206,422	5,022,279	5,392,022	5,553,783	5,720,396	5,892,008	6,068,768	6,250,831
		SALARIES AND BENEFITS	2,303,413	2,165,383	2,557,055	2,125,248	2,662,483	2,742,357	2,824,628	2,909,367	2,996,648	3,086,548
		Additional PERS Normal Cost Increase for Misc. & Safety Plans (2.3% per year x \$1,423,146)					0	32,732	33,485	34,255	35,043	35,849
		Additional PERS UAL Payment Misc. & Safety Plan (17.5%, 22.5%, 27.5%, 35%, 40%)					0	249,051	329,814	415,199	544,289	640,705
	SERVICES	PROFESSIONAL SERVICES	1,538,129	967,875	1,565,479	1,084,670	1,749,961	1,813,275	1,878,812	1,946,650	2,016,868	2,089,546
		REPAIR & MAINT	249,413	200,263	264,051	211,642	229,491	236,376	243,467	250,771	258,294	266,043
		UTILITY SERVICES	230,881	213,254	251,131	246,749	277,022	285,333	293,893	302,709	311,791	321,144
		ADMINISTRATIVE SERVICES	146,402	128,571	124,705	84,717	136,672	140,772	144,995	149,345	153,826	158,440
		RENTS	1,828,461	907,062	1,826,404	340,988	1,011,820	1,042,175	1,073,440	1,105,643	1,138,812	1,172,977
		INSURANCE SERVICES	644,167	455,386	714,300	608,472	624,148	642,872	662,159	682,023	702,484	723,559
		MISCELLANEOUS SERVICES	711,958	631,633	783,850	780,334	783,850	807,366	831,586	856,534	882,230	908,697
	OFFICE EXPENSES	MAINTENANCE SUPPLIES	152,200	82,191	111,630	98,705	107,880	111,116	114,450	117,883	121,420	125,062
		OPERATING SUPPLIES	151,743	136,768	130,855	127,596	136,805	140,909	145,136	149,491	153,975	158,594
		OFFICE	43,308	27,058	41,124	33,909	41,814	43,068	44,360	45,691	47,062	48,474
	OTHER EXPENSES	OTHER MISCELLANEOUS EXP	257,352	106,656	972,782	647,647	257,352	265,073	273,025	281,215	289,652	298,342
	CAPITAL OUTLAY	IMPROVEMENTS			250,000	0	0	0	0	0	0	0
	INTERFUND/ALLOC/TRANSFERS	ALLOCATED COSTS	875,078	823,507	872,237	874,559	898,382	925,333	953,093	981,686	1,011,137	1,041,471
	TRANSFERS OUT	TRANSFERS OUT TO	264,907	1,266,206	0	50,000	0	0	0	0	0	0
TOTAL OPERATING EXPENDITURE			13,948,723	12,925,065	15,672,025	12,337,515	14,309,702	15,031,591	15,566,740	16,120,473	16,732,299	17,326,282
PROJECTED EXCESS (DEFICIENCY OF REVENUES OVER EXPENDITURES)			(88,045)	1,146,227	142,270	2,856,852	32,936	(360,211)	(294,784)	(76,909)	(86,845)	(162,958)

ATTACHMENT 2

CITY OF HERCULES - Assumptions used for the Long-Term Financial Projection for General Fund (FY 2018-19 to FY 2024-25)

Revenue Assumptions for the General Fund								
2.0% revenue increase from year-to-year for revenues except for the following revenues:								
				1	2	3	4	5
				Forecast	Forecast	Forecast	Forecast	Forecast
				FY18-19	FY19-20	FY20-21	FY21-22	FY22-23
Residential Unit Impact - Average 2.5 people per unit				25,086				
		FY 17-18	Per Capita	65	237	51	30	
		Budget	Average					
Franchise Fee	Gas	\$32,257	\$1.29	\$209	\$762	\$164	\$96	\$0
	Electric	\$63,590	\$2.53	\$412	\$1,502	\$323	\$190	\$0
	Cable	\$368,022	\$14.67	\$2,384	\$8,692	\$1,870	\$1,100	\$0
	Garbage	\$279,268	\$11.13	\$1,809	\$6,596	\$1,419	\$835	\$0
Total Franchise Fee		\$743,137	\$29.62	\$4,814	\$17,552	\$3,777	\$2,222	\$0
UUT	Gas	\$341,416	\$13.61	\$2,212	\$8,064	\$1,735	\$1,021	\$0
	Electric	\$1,217,746	\$48.54	\$7,888	\$28,762	\$6,189	\$3,641	\$0
	Telephone	\$953,400	\$38.01	\$6,176	\$22,518	\$4,846	\$2,850	\$0
	Cable	\$482,910	\$19.25	\$3,128	\$11,406	\$2,454	\$1,444	\$0
	Water	\$542,725	\$21.63	\$3,516	\$12,818	\$2,758	\$1,623	\$0
Total UUT Fee		\$3,538,197	\$141.04	\$22,919	\$83,568	\$17,983	\$10,578	\$0
Total VLF		\$1,728,138	\$68.89	\$11,194	\$40,816	\$8,783	\$5,167	\$0
Sales & Use Tax	Sales Tax	\$2,062,711	\$82.23	\$3,340	\$12,180	\$2,621	\$1,542	\$0
(25% Indirect)	Measure O	\$1,001,061	\$39.91	\$1,621	\$5,911	\$1,272	\$748	\$0
Total Sales & Use Tax		\$3,063,772	\$122.13	\$4,962	\$18,091	\$3,893	\$2,290	\$0
Muir Pointe	144 units			65 units	65 units	14 units		
Bayfront - 1st Phase	172 units				172 units			
	6,000 sq feet retail	\$10,000 sales tax				\$10,000		
Safeway	65,775 sq feet retail and fueling	\$313,000 sales tax			\$150,000	\$163,000		
Sycamore Crossing	67 units					37 units	30 units	
	28,000 sq feet retail	\$66,398 sales tax				\$40,000	\$26,398	
	100 hotel rooms	\$448,000 in TOT				\$160,000	\$160,000	\$128,000
Willow Auto Site	28,000 sq feet commercial	\$22,500 sales tax				\$11,250	\$11,250	
	Self Storage In-Lieu	\$200,000				\$66,000	\$66,000	\$68,000

ATTACHMENT 2

	1	2	3	4	5
	Forecast	Forecast	Forecast	Forecast	Forecast
	FY18-19	FY19-20	FY20-21	FY21-22	FY22-23
Residential Unit Impact - Average 2.5 people per unit					
25,086					
PERS Rate Increases Per Circular Letter dated 01-13-17					
Normal Cost Misc. Plan	2.0%	2.0%	2.0%	2.0%	2.0%
Normal Cost Safety Plan	2.5%	2.5%	2.5%	2.5%	2.5%
Unfunded Accrued Liability (UAL) Payment Misc. Plan	17.5%	22.5%	27.5%	35.0%	40.0%
Unfunded Accrued Liability (UAL) Payment Safety Plan	17.5%	22.5%	27.5%	35.0%	40.0%
Average Rate of Increase for Normal Costs	2.3%	2.3%	2.3%	2.3%	2.3%
Average Rate of Increase for UAL Payments	17.5%	22.5%	27.5%	35.0%	40.0%
Normal Cost Misc. Plan and Safety Plan	1,423,146	1,465,840	1,509,816	1,555,110	1,601,763
Normal Cost Misc. Plan and Safety Plan x Average Rate of Increase for Normal Costs	32,732	33,714	34,726	35,768	36,841
UAL For Misc. Plan and Public Safety Plan	1,423,146	1,465,840	1,509,816	1,555,110	1,601,763
UAL x Average Rate of Increase for Misc. Plan and Public Safety Plan (17.5%, 22.5%, 27.5%, 35%, 40%, 45%)	249,051	329,814	415,199	544,289	640,705
Other Factors for Consideration:					
	1	2	3	4	5
	Forecast	Forecast	Forecast	Forecast	Forecast
	FY18-19	FY19-20	FY20-21	FY21-22	FY22-23
Description					
Sales Tax Forecast is based on MuniServices projection	1,987,000	1,998,922	2,010,916	2,024,992	2,039,167
% Change	0.5%	0.6%	0.6%	0.7%	0.7%
Prop 12	135,700	137,057	138,428	139,673	140,930
% Change	1.0%	1.0%	1.0%	0.9%	0.9%

10/4/2017 6pm