

City of Hercules

*111 Civic Drive
Hercules, CA 94547*



Meeting Agenda

Tuesday, October 24, 2017

**Closed Session - None.
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*

I. CLOSED SESSION – NONE**II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS - NONE****III. CONVENE INTO CLOSED SESSION - NONE****IV. REGULAR MEETING – 7:00 P.M. CALL TO ORDER - ROLL CALL****V. REPORT ON ACTION TAKEN IN CLOSED SESSION - NONE****VI. PLEDGE OF ALLEGIANCE****VII. MOMENT OF SILENCE****VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS**

1. Fire Department Update and Fire Preparedness by Fire Chief Bryan Craig
2. Proclamation Recognizing November 1, 2017 as "Shelter In Place Education Day"

Attachments: [Proclamation](#)

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 - None.

XII. CONSENT CALENDAR

1. **Approve the Regular Meeting Minutes of October 10, 2017**
Recommendation: Adopt Minutes
Attachments: [Minutes - 101017](#)
2. **Ordinance Enacting Additional Local Restrictions on the Use, Sale, Cultivation and Delivery of Marijuana**
Recommendation: Waive second reading and adopt 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: [Staff Report - AUMA \(recreational marijuana\) 102417](#)
[Attachment 1 - Marijuana Restrictions draft ordinance 171024](#)
[Attachment 2 - 10-10-17 Staff Report AUMA \(recreational marijuana\)1 - 171010](#)
3. **Contract Amendment No. 1 to Contra Costa County Building and Planning Contract**
Recommendation: Approve Contract Amendment No. 1 with Contra Costa County for Building and Planning Services
Attachments: [Staff Report - First Amendment to Contra Costa County Contract](#)
[Att 1- Reso for Amend 1 to CCC Contract 14008 for building-planning services](#)
[Att 2 - Contra Costa County Building-Planning Services Contract](#)
[Att 3 - Amend 1 to CCC-Hercules Bldg Inspec Agmt - 092817](#)
[Att 3 - Exh A to Amend 1 to CCC-Hercules Bldg Inspec Agmt - 092817](#)

XIII. DISCUSSION AND/OR ACTION ITEMS

1. **Landscape Waste Blown Into Storm Drains**
Recommendation: Receive a Report on Landscape Waste Blown Into Storm Drains.
Attachments: [Staff Report - Lawn & Landscape Debris Report 10242017](#)
[Attach 1 - Stormwater Municipal Code](#)

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, November 14, 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 19, 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 #: 17-451 **Version:** 1 **Name:**

Type: Introductions/Presentation **Status:** Agenda Ready

File created: 10/18/2017 **In control:** City Council

On agenda: 10/24/2017 **Final action:**

Title: Fire Department Update and Fire Preparedness by Fire Chief Bryan Craig

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Fire Department Update and Fire Preparedness by Fire Chief Bryan Craig



Legislation Details (With Text)

File #: 17-444 **Version:** 1 **Name:**

Type: Introductions/Presentation **Status:** Agenda Ready

File created: 10/17/2017 **In control:** City Council

On agenda: 10/24/2017 **Final action:**

Title: Proclamation Recognizing November 1, 2017 as "Shelter In Place Education Day"

Sponsors:

Indexes:

Code sections:

Attachments: [Proclamation](#)

Date	Ver.	Action By	Action	Result
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Proclamation Recognizing November 1, 2017 as "Shelter In Place Education Day"

**PROCLAMATION RECOGNIZING NOVEMBER 1, 2017 AS “SHELTER IN PLACE
EDUCATION DAY” IN THE CITY OF HERCULES, CA**

WHEREAS, public and private schools and childcare centers throughout Contra Costa County will be participating in the Shelter-in-Place Drill on November 1st, 2017; and

WHEREAS, Contra Costa Community Awareness Emergency Response Group “CAER” is sponsoring the 16th Annual Shelter-in-Place Drill and assisting schools and childcare centers with their emergency preparedness; and

WHEREAS, emergency response agencies including fire, sheriff and health officials all recommend Shelter-in-Place as the immediate action to take in case of a hazardous release; and

WHEREAS, the Shelter-in-place Drill increases public awareness about Shelter-in-Place as a protective action and gives students and teachers practice in implementing this important procedure; and

WHEREAS, the County Office of Education has endorsed the Shelter-in-Place Drill and encourages all sites to participate; and

NOW, THEREFORE, BE IT PROCLAIMED that I, Myrna L. de Vera, Mayor of the City of Hercules, on behalf of the entire City Council and the Hercules community, recognize the importance of preparing for emergencies and encourage participation in the Contra Costa Community Awareness Emergency Response Group’s public education efforts. In support of the parents, teachers, students and staff that will be participating with hundreds of other schools and childcare centers in the Shelter-in-Place Drill, I proclaim November 1, 2017, as “Shelter-in-Place Education Day.

In witness whereof, I hereunto set my hand and cause the Seal of the City of Hercules to be affixed this 24th day of October 2017.

Myrna L. de Vera, Mayor



Legislation Details (With Text)

File #: 17-450 **Version:** 1 **Name:**
Type: Consent **Status:** Agenda Ready
File created: 10/17/2017 **In control:** City Council
On agenda: 10/24/2017 **Final action:**
Title: Approve the Regular Meeting Minutes of October 10, 2017
Recommendation: Adopt Minutes
Sponsors:
Indexes:
Code sections:
Attachments: [Minutes - 101017](#)

Date	Ver.	Action By	Action	Result
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Approve the Regular Meeting Minutes of October 10, 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, October 10, 2017

Council Chambers

Closed Session - 6:00 p.m.

Regular Session - 7:00 p.m.

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

Mayor de Vera called the meeting to order at 6:00 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 6:01 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

Mayor de Vera stated that the Council completed the public employee evaluation of City Attorney and shared that City Council has agreed that City Attorney Tang's performance is exceptional and he generally exceeds City Council expectations.

VI. PLEDGE OF ALLEGIANCE**VII. MOMENT OF SILENCE**

Mayor de Vera called for a moment of silence for all the souls who passed away due to the recent Las Vegas shooting and the Napa, Sonoma and Santa Rosa fires.

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

None.

IX. AGENDA ADDITIONS/DELETIONS

City Manager Biggs identified the supplemental material handed out prior to the meeting including communication received from a resident in regards to Item XI.1 Proposed Ordinance to Regulate Local Marijuana Activities. City Manager Biggs requested that City Council continue Item XIII.4 to the next meeting as staff would like to make some adjustments to the report and bring back at the next meeting.

X. PUBLIC COMMUNICATIONS

Speakers: Bill Shea, Giorgio Cosentino, Glenna Phillips.

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.

Mayor de Vera introduced the item. City Attorney Tang gave a staff report. Commander Koepp spoke in support of the proposed Ordinance and spoke about several marijuana related incidents which have occurred in the City of Hercules.

Mayor de Vera opened the Public Hearing at 7:26 p.m.

Mr. Frank Grimsley asked questions in regards to enforcement and penalties of the Ordinance.

Mr. Giorgio Consentino provided comments and concerns in regards to marijuana.

Mayor de Vera closed the public hearing at 7:29 p.m.

City Attorney Tang addressed questions in regards to the code enforcement process related to violations of the Adult Use of Marijuana Ordinance.

Mayor de Vera brought the item back to Council for discussion.

Vice Mayor Kelley stated she would not support the Ordinance unless Sections 10 and 11 are removed.

Mayor de Vera polled the remaining Council Members regarding their desire in regards to Sections 10 and 11.

Mayor de Vera received input from a majority of Council expressing a desire to leave Sections 10 and 11 and to monitor and review the Ordinance again after the first of the year and after the State finalizes their regulations and consider amendments if needed at that time.

MOTION: A motion was made by Council Member Romero, seconded by Council Member Boulanger, to approve the Introduction and First Reading of Ordinance 504. The motion carried by the following vote:

Aye: 4 - Mayor M. de Vera, Council Member D. Romero, Council Member G. Boulanger, and Council Member R. Esquivias

Nay: 1 - Vice Mayor C. Kelley

XII. CONSENT CALENDAR

Vice Mayor Kelley pulled Item 4 from the Consent Calendar and provided comments and asked staff for clarification on where the SB1 funds would be applied.

Staff addressed questions related to Item 4.

Mayor de Vera added Item 4 back to the Consent Calendar and brought the Consent Calendar back to Council for a vote.

MOTION: A motion was made by Vice Mayor Kelley, seconded by Council Member Esquivias, to adopt the Consent Calendar. 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

1. Approve Special Meeting Minutes of September 26, 2017

Recommendation: Adopt Minutes

Adopted.

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

Adopted.
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.

Adopted.
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.

Approved.
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.

Approved.

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.

City Manager Biggs introduced the item and gave a staff report.

City Council provided comments. City Council requested that Article 5.1 of the Maintenance and Reimbursement Agreement include clarifying language in regards to the repayment source to come from the ROPS.

City Manager Biggs stated that he would recommend an amendment be added to Article 5.1 to further clarify where the source of repayment would come from. City Manager Biggs recommended the addition of the following language to Article 5.1 of the agreement: "The repayment source shall be limited to Redevelopment Agency revenues provided through the

ROPS or other means".

MOTION: A motion was made by Council Member Romero, seconded by Vice Mayor Kelley, to adopt Resolution 17-076 as amended. 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. **Update on Code Compliance**

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

City Manager Biggs introduced the item and gave a staff report.

City Council asked questions and provided comments.

Glenna Phillips, resident of Hercules addressed Council requesting an extra review the code related to the parking of cars on the street and to review the intent of the code and enforcement of it.

Mayor de Vera asked staff to provide a response to Ms. Phillips questions. City Manager Biggs explained the 72 hour street parking regulation. Police Commander Koeppe provided additional information in regards to parking enforcement. City Council recommended that Ms. Phillips contact the City Manager in the morning to discuss her situation further.

3. **Cable Televisions Options**

Recommendation: Receive report, discuss options, and provide direction if appropriate.

City Manager Biggs introduced the item and gave a staff report.

City Council discussed the item and considered the options provided in the staff report. The consensus of City Council was to move forward with Option D to embark on a six month pilot program to live stream the City Council and Planning Commission meetings to the internet while exploring other options to provide cable broadcasting service directly from the City of Hercules.

MOTION: A motion was made by Council Member Romero, seconded by Vice Mayor Kelley, to approve a six month pilot program to live stream the City Council and Planning Commission meetings to the internet while exploring other options to provide cable broadcasting services. 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

4. Long Term Financial Projection for the General Fund

Recommendation: Review and discuss the long term financial projection of the general fund.

This item was tabled to the October 24, 2017 City Council meeting.

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 9:51 p.m.

Myrna de Vera, Mayor

Attest:

Lori Martin, MMC
Administrative Services Director/City Clerk



Legislation Details (With Text)

File #: 17-447 **Version:** 1 **Name:**

Type: Consent **Status:** Agenda Ready

File created: 10/17/2017 **In control:** City Council

On agenda: 10/24/2017 **Final action:**

Title: Ordinance Enacting Additional Local Restrictions on the Use, Sale, Cultivation and Delivery of Marijuana
Recommendation: Waive second reading and adopt 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: [Staff Report - AUMA \(recreational marijuana\) 102417](#)
[Attachment 1 - Marijuana Restrictions draft ordinance 171024](#)
[Attachment 2 - 10-10-17 Staff Report AUMA \(recreational marijuana\)1 - 171010](#)

Date	Ver.	Action By	Action	Result
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Ordinance Enacting Additional Local Restrictions on the Use, Sale, Cultivation and Delivery of Marijuana

Recommendation: Waive second reading and adopt 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 24, 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:

Waive the Second Reading, and Adopt 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:

The City Council previously discussed regulating local marijuana activities at the prior council meetings of August 8, September 12, and September 26, 2017. At the Regular Council Meeting of October 10, 2017, an ordinance to regulate local marijuana activities was introduced, and upon convening a public hearing and upon review of the draft provided by staff, the City Council by a 4-1 vote waived the first reading and approved introduction of the draft ordinance.

The draft ordinance in final form is provided as Attachment 1. The staff report from the prior meeting of October 10, 2017 is provided for your reference as Attachment 2.

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 impose local health and safety requirements on the indoor cultivation of six plants or less for personal use.

ATTACHMENTS:

Attachment 1 – Final Revised Draft Ordinance.

Attachment 2- Staff report from Council Meeting of October 10, 2017

Note: This is a clean copy of the draft ordinance that was approved by the City Council on first reading at the council meeting of October 10, 2017.

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 associated with cannabis commercial activity and other use of cannabis and cannabis products.

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. 4-18.02 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. 4-18.03 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 4-18.02.

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.
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. 4-18.04 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 if indoor personal use marijuana cultivation is to continue.

Sec. 4-18.05 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. 4-18.06 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. 4-18.07 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 City 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 October 24, 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 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 report and 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).

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, CEQA exemption, and 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 ~~strike through~~ 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.



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.

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Legislation Details (With Text)

File #: 17-448 **Version:** 1 **Name:**
Type: Consent **Status:** Agenda Ready
File created: 10/17/2017 **In control:** City Council
On agenda: 10/24/2017 **Final action:**
Title: Contract Amendment No. 1 to Contra Costa County Building and Planning Contract
Recommendation: Approve Contract Amendment No. 1 with Contra Costa County for Building and Planning Services

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - First Amendment to Contra Costa County Contract](#)
[Att 1- Reso for Amend 1 to CCC Contract 14008 for building-planning services](#)
[Att 2 - Contra Costa County Building-Planning Services Contract](#)
[Att 3 - Amend 1 to CCC-Hercules Bldg Inspec Agmt - 092817](#)
[Att 3 - Exh A to Amend 1 to CCC-Hercules Bldg Inspec Agmt - 092817](#)

Date	Ver.	Action By	Action	Result
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Contract Amendment No. 1 to Contra Costa County Building and Planning Contract

Recommendation: Approve Contract Amendment No. 1 with Contra Costa County for Building and Planning Services



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 24, 2017

TO: The Mayor and Members of the City Council

SUBMITTED BY: Holly Smyth, AICP Planning Director

SUBJECT: First Amendment to Contract #14008 with Contract Costa County for Building Inspection and Planning Services

RECOMMENDATION:

1. Approve the First Amendment to the Existing Agreement between the City and Contra Costa County (Contract #14008) in order to update the Building Inspector, Engineer, Planning, and IT hourly billing rates for FY 2017/18, FY 2018/19, and FY 2019/20.

FISCAL IMPACT OF RECOMMENDATION:

The fees charged by the County only affect specially requested work by the City and do not affect the regular building permit inspections which are paid for directly from collected building permit fees. A portion of administrative fees collected by the County will continue to be returned to the City to assist with offsetting some of these charge and other direct City costs associated with front counter coverage by our Building Technician, occasional building inspection services of part-time or contract employees, and a portion of oversight of the building inspection function by the Planning Director.

DISCUSSION:

In February 2014 the City entered into an agreement with Contra Costa County for Building Plan Check and Inspection Services, Code Enforcement Services, and Planning Services with Hourly Billing Rates set for FY 2013-2014. The agreement does not have an expiration date but can be terminated by either party with a 30-day notice. The hourly billing rates have not been revised since that time.

Concurrently with execution of the 2014 Agreement, the City updated its Master User Fee Schedule Building Inspection Division section to state that "The City of Hercules adopted the Contra Costa County Conservation & Development Dept. Fee Schedule" for purposes of issuing Building Permits through the County system. City Building permit fees remained the same in the Master User Fee Schedule for permits directly issued and inspected by the City.

Almost all building permit fees are taken in at the City Building Division Counter, issued through the County's computer system and then plan checked and inspected by the County. Fees for these services are paid directly to Contra Costa County. The City still calculates and collects various impact fees as they are applied to new construction projects; the hourly billing rates do not apply to these services.

On occasion, the City issues some minor tenant improvements and plan checks and inspections on small structures by issuing permits through the City's internal system that may only utilize minor services of the County. This type of work would be subject to the hourly billing rates.

In regards to Code Enforcement, the county can conduct inspections and investigations at the request of the City, but will not take any enforcement action, pursue various remedies or issue any notices. In the past this service has only been used in egregious cases that occur during regular business hours of the County Monday through Friday (stop work permits, red-tagging marijuana grow houses, inspections of illegal garage conversions, grading inspections at the Carson site).

County Planning Services can also be utilized if needed, but have not been utilized since the execution of the original contract because the cost of the County's service far exceeds the cost of contract services by firms such as Municipal Resources Group, use of Part-Time personnel, or use of volunteers.

ATTACHMENTS:

1. Resolution and Exhibit A
2. Original 2014 Agreement for Building Inspection and Planning Services (Contract #14008)
3. First Amendment to the Agreement for Services with Contra Costa County
-Exhibit A to Att 3 - Revised DCD Hourly Billing Rates for FY 2017/18, FY 2018/19, & FY 2019/20

RESOLUTION NO. 17-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES
AUTHORIZING A FIRST AMENDMENT TO AN EXISTING CONTRACT WITH
CONTRA COSTA COUNTY FOR BUILDING INSPECTION AND PLANNING
SERVICES TO UPDATE THE HOURLY BILLING RATES FOR FISCAL YEARS
2017/18, 2018/19, & 2019/20**

WHEREAS, on January 28, 2014 the Council approved Resolution 14-008 authorizing the Interim City Manager to negotiate and execute an agreement with Contra Costa County to provide building inspection and planning services to the City of Hercules; and

WHEREAS, on February 11, 2014 the Council approved modifications to its Master User Fee Schedule to incorporate by reference the County's Building Permit fees (which are amended by the County from time to time), and approved a Contract for Services with the County for building inspection and planning services with hourly billing rates set at FY 2013/14 fees as stated in Exhibit A of the existing Contract; and

WHEREAS, the agreement generally provides for compensation through building inspection fees but on occasion hourly rates are charged for services outside a regular building permit; and

WHEREAS, the County has raised its hourly billing rate and is requiring the amendment to reflect their rates over the next three fiscal years; and

WHEREAS, adoption of the first Amendment and the new Exhibit A to the Contract would increase hourly fees in a few circumstances outside regular building plan check and inspection services; and

WHEREAS, a portion of administrative fees collected by the County will continue to be returned to the City to assist with offsetting costs associated with front counter coverage of our Building Technician, occasional building inspection services of part-time or contract employees, and oversight of the building inspection function by the Planning Director; and

WHEREAS, the billing rates are based on a contract for services and does not affect the City's Master User Fee schedule and therefore no public hearing is required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hercules that the City Council hereby authorizes the execution of the First Amendment to the existing Contract with Contra Costa County for hourly services specified therein with updated Exhibit A to reflect the new billing rates for FY 2017/18, 2018/19, and 2019/20.

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

AYES:
NOES:
ABSTAIN:
ABSENT:

Myrna L. de Vera, Mayor

ATTEST:

Lori Martin, Administrative Services Director &
City Clerk

AGREEMENT

FOR BUILDING INSPECTION AND PLANNING SERVICES

This Agreement is entered into between the City of Hercules ("City") and Contra Costa County ("County") for Building Inspection and Planning services to be provided by the County to the City.

RECITALS:

- A. The City desires to utilize County Department of Conservation and Development (DCD) staff to provide Building Inspection and Planning services to the City, including building plan checking, construction inspection and processing of planning applications, as set forth in Attachment A to this Agreement.
- B. The purpose of this Agreement is to set forth the terms and fees for providing Building Inspection and Planning services to the City's Planning Department.

NOW, THEREFORE, the parties, for valuable consideration, agree as follows:

Section 1. SERVICES TO BE RENDERED

The City agrees to hire DCD staff to provide Building Inspection and Planning services to the City's Planning Department, as set forth in Attachment A, which is incorporated by reference herein. The City will furnish direction to the DCD staff as needed through its Planning Director ("Director"), in order to accomplish the services listed in this Agreement. The County will provide vehicles and communication equipment as deemed necessary by the County. County staff shall remain employees of the County. City shall not be responsible for worker's compensation or any employee benefits, other than provided in this Agreement and attached Attachment A.

Section 2. TERM

This Agreement is effective January 29, 2014 and shall remain in effect until terminated as set forth in this Agreement.

Section 3. PAYMENT OF FEES AND REIMBURSEMENT OF COSTS

A. Plan Check and Inspection Services.

1. Beginning on January 29, 2014, and continuing until the City adopts the County's DCD fee schedule, as compensation for providing Plan Check and Inspection Services to the City, the City shall pay the County monthly for all Plan Check and Inspection Services provided to the public under Section I.A. in Attachment A. The amount of the City's payments to the County during this period shall be calculated by multiplying the amount of time County staff performed Plan Check and Inspection Services specified

in Section I.A. in Attachment A, by the applicable billing rates in Exhibit A to this Agreement.

2. After the City adopts the County's DCD fee schedule, as compensation for providing Plan Check and Inspection Services to the City, the County will collect and retain all City fees paid by the public for Plan Check and Inspection Services provided to the public under Section I.A. in Attachment A, except the City's 40% land development surcharge. On or before the 15th day of each month, the County will remit payment to the City in the amount of the City's 40% land development surcharge revenue collected by the County during the preceding month.
- B. Code Enforcement and Planning Services. The City shall pay the County monthly for all Code Enforcement and Planning Services performed by the County during each month under Sections I.B. and II. in Attachment A. The amount of each of City's monthly payments to the County shall be calculated by multiplying the amount of time County staff performed Code Enforcement and Planning Services specified in Sections I.B. and II. in Attachment A, by the applicable billing rates in Exhibit A to this Agreement.
- C. DCD will invoice the City for Code Enforcement and Planning Services for each month on the 10th day of the following month.
- D. The City shall pay DCD within 30 days of receipt of an invoice from DCD.
- E. DCD will provide the City monthly reports showing permit activity within the City, and the amount of land development surcharge fees collected by DCD and returned to the City.

Section 4. HOLD HARMLESS AND INDEMNITY

County agrees to indemnify and hold harmless City from County's share of liability for damages caused by negligence or willful misconduct of the County, its officers, agents or employees in the County's performance under this Agreement. County's obligations under this section shall not apply to any claim, cost or liability caused in whole or in part by the negligence or willful misconduct of the City. Under no circumstances shall County have any liability to City or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to County's performance under this Agreement. City shall defend, indemnify and save harmless County, its officers and employees from all claims, suits or actions of every name, kind and description brought by or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by City, its officers, agents or employees under or in connection with this agreement or with any work, authority or jurisdiction of City.

Section 5. NOTICES

All correspondence regarding this agreement, including invoices, payments, and notices, shall be directed to the following persons at the following addresses and telephone numbers:

COUNTY: Jason Crapo
Deputy Director
Department of Conservation and Development
Contra Costa County
30 Muir Road, Martinez, CA 94553
(925) 674-7722

CITY: Phil Batchelor
City Manager
City of Hercules
111 Civic Drive, Hercules, CA 94547
(510) 799-8200

Section 6. TERMINATION

- A. This Agreement may be terminated by either the City or the County, giving at least 30 days written notice thereof to the other party.
- B. Should either party be in default of the terms of this Agreement, the non-defaulting party may give written notice of such default and should such default not be cured within thirty days after the mailing of said notice, this Agreement may then be terminated by the non-defaulting party by giving ten days written notice thereof.

The parties, by the Deputy Director of the County's Department of Conservation and Development, as authorized by the County Board of Supervisors, and by the City Manager of the City, as authorized by the City Council, each hereunto duly authorized, have executed this Agreement on the date appearing below.

[Remainder of page intentionally left blank – Signatures on next page.]

CONTRA COSTA COUNTY

By: Jason Crapo
Jason Crapo
Deputy Director
Conservation and Development

Dated: 2/26/14

Approved as to form:

By: [Signature]
Deputy County Counsel

Dated: 3/4/14

CITY OF HERCULES

Phil Batchelor
Phil Batchelor
City Manager
City of Hercules

Dated: 2/18/2014

Approved as to form:

Patrick Tany
City Attorney

Dated: 2.13.14

ATTACHMENT A

SERVICES TO BE PROVIDED BY THE COUNTY'S CONSERVATION AND DEVELOPMENT DEPARTMENT TO THE CITY'S PLANNING DEPARTMENT

I. BUILDING INSPECTION SERVICES

A. Plan Check and Inspection Services

1. Building and grading plan check services to determine compliance with applicable State and City codes.
2. Building and grading inspection services for permits issued.
3. Supervise building and grading plan check and inspection operations and function in the capacity of Building Official as defined in applicable State and City codes.

B. Code Enforcement

1. At the request of, and as directed by the City, through the Director, DCD staff will investigate complaints regarding zoning and/or building code violations.
2. Investigations, inspections and other code enforcement actions will follow the requirements of the current building code, as adopted by the City, and applicable provisions of the City's Municipal Code.
3. The cost of code enforcement services will be billed to the City at the hourly billing rates specified in Exhibit A.
4. The role of County Building Inspection staff is limited to code enforcement inspections and investigations. The City will be responsible for issuing any notices, including notices of code violations or other notices, that the City may deem necessary for seeking compliance with its municipal code. The City will be responsible for taking any enforcement action, including pursuing judicial or administrative remedies that the City may deem necessary for seeking compliance with its municipal code.

II. PLANNING SERVICES

- A. At the request of, and as directed by the City, through the Director, DCD staff will review planning applications consistent with the requirements of the City's Municipal Code, General Plan and other applicable laws and regulations.**
- B. At the request of, and as directed by the City, through the Director, DCD staff will supervise the activities of consultants hired by the City in connection with land development projects.**
- C. The cost of all planning services will be billed to the City at the hourly billing rates specified in Exhibit A.**

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EXHIBIT A

DCD Hourly Billing Rates For FY 2013-2014

Position/Title	Hourly Rate
Building Inspector II	130.00
Senior Building Inspector	145.00
Plan Checker II	105.00
Senior Plan Checker	120.00
Senior Structural Engineer	190.00
Principal Structural Engineer	210.00
Planner I	110.00
Planner II	135.00
Planner III	175.00
Principal Planner	195.00
IT Support	165.00

FIRST AMENDMENT TO THE
AGREEMENT FOR BUILDING INSPECTION SERVICES BETWEEN THE CITY OF
HERCULES AND CONTRA COSTA COUNTY

This First Amendment to the Agreement for Building Inspection Services ("Agreement") is entered into between the City of Hercules ("City") and Contra Costa County ("County") for building inspection and code enforcement services to be provided by the County for the City.

Amendment

1. Effective July 1, 2017, "Exhibit A, DCD Hourly Billing Rates for FY 2013-2014" attached to the Agreement is hereby deleted and replaced with the "Exhibit A, DCD Hourly Billing Rates for FY 2017-18, 2018-19, 2019-20," attached hereto.
2. All remaining terms of the Agreement not amended by this Amendment shall remain in full force and effect.

CONTRA COSTA COUNTY

CITY OF HERCULES

By: _____

Jason Crapo
Deputy Director,
Building Inspection

David Biggs
City Manager
City of Hercules

Dated: _____

Dated: _____

Approved as to form:
Sharon L. Anderson, County Counsel

Approved as to form:

By: _____

Deputy County Counsel

City Attorney

Dated: _____

Dated: _____

EXHIBIT A
DCD Hourly Billing Rates
For FY 2017-18, 2018-19, 2019-20

Position/Title	Hourly Rate FY 2017-2018 ¹	Hourly Rate FY 2018-2019 ²	Hourly Rate FY 2019-2020 ³
Building Inspector II	150.00	158.00	166.00
Senior Building Inspector	168.00	176.00	185.00
Principal Building Inspector	186.00	195.00	205.00
Grading Inspector I	131.00	137.00	144.00
Senior Grading Inspector	173.00	182.00	191.00
Plan Checker II	122.00	128.00	134.00
Senior Plan Checker	139.00	146.00	153.00
Senior Structural Engineer	221.00	232.00	244.00
Principal Structural Engineer	244.00	256.00	269.00
Planner I	127.00	133.00	140.00
Planner II	156.00	164.00	172.00
Planner III	203.00	213.00	224.00
Principal Planner	226.00	237.00	249.00
IT Support	191.00	201.00	211.00

¹ These fees shall be charged to the City of Hercules for services that County provides under this Agreement during the period July 1, 2017 through June 30, 2018.

² These fees shall be charged to the City of Hercules for services that County provides under this Agreement during the period July 1, 2018 through June 30, 2019.

³ These fees shall be charged to the City of Hercules for services that County provides under this Agreement during the period July 1, 2019 through June 30, 2020.



Legislation Details (With Text)

File #: 17-449 **Version:** 1 **Name:**

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

File created: 10/17/2017 **In control:** City Council

On agenda: 10/24/2017 **Final action:**

Title: Landscape Waste Blown Into Storm Drains
Recommendation: Receive a Report on Landscape Waste Blown Into Storm Drains.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Lawn & Landscape Debris Report 10242017](#)
[Attach 1 - Stormwater Municipal Code](#)

Date	Ver.	Action By	Action	Result
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Landscape Waste Blown Into Storm Drains

Recommendation: Receive a Report on Landscape Waste Blown Into Storm Drains.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 24, 2017

TO: Members of the City Council

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

SUBJECT: Stormwater Program – Landscaping Waste Blown Down Storm Drains

RECOMMENDED ACTIONS:

City Council receive a staff report, discuss, and provide direction if needed regarding utilizing the administrative citation program to enforce the prohibition against depositing landscaping waste such as grass clippings and leaves into the storm drain.

FISCAL IMPACT OF RECOMMENDATION:

This is an introductory item and has no direct fiscal impact.

DISCUSSION:

Earlier this year Council directed staff to provide information about options to restrict the use of leaf blowers to blow leaves and lawn clippings into storm drain inlets. Lawn clippings and leaves can have residue from fertilizers, herbicides, and pesticides and as organic materials can negatively impact the aquatic health of water bodies downstream of the City's stormwater collection system. Accumulated landscaping waste can also cause blockages in the City's stormdrain system and cause flooding. To prevent this from occurring, public tax dollars are expended each year to remove accumulated vegetation from the storm drain system before the rainy season begins. Commercial landscapers who engage in this practice gain a competitive advantage over competitors who expend resources to properly dispose of landscaping waste through on site composting, use of a green waste trash bin, or hauling the waste to a green waste facility.

Depositing yard waste including lawn clippings and leaves into the storm drain is in fact currently prohibited under the Hercules Municipal Code. Per HMC Chapter 8, Section 5-8.010(c) "It is the purpose of the City Council in enacting this Chapter to protect the health, safety and general welfare of Hercules' citizens by: (3) Controlling the discharge to the City's stormwater system from spills, dumping or disposal of materials other than stormwater." Additionally, Section 5-8.060(a) states "The release of non-stormwater discharges to the City stormwater system is prohibited."

Given this practice could proliferate if unaddressed and is a code violation, staff is recommending compliance be gained by enforcement through the Administrative Citation Program that is currently being implemented. As was discussed at the last Council meeting of October 10, the Administrative Citation Program is an effective way to gain code compliance when staffing is limited and carries a first citation amount of \$100, a second amount of \$250, and third offense of \$500. Staff is also recommending an informational e-mail be sent to the homeowner associations in Hercules and landscaping companies known to be working in the City alerting them that depositing landscaping waste in the storm drain is a prohibited activity.

ATTACHMENTS:

1. Municipal Code

Chapter 8. Stormwater Management and Discharge Control

Sec. 5-8.010 Intent and Purpose.

(a) The intent of this Chapter is to protect and enhance the water quality in the City of Hercules' s watercourses pursuant to and consistent with the Porter-Cologne Water Quality Control Act (Water Code Section 13000 et seq.) and the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.).

(b) This Chapter also carries out the conditions in the City's National Pollutant Discharge Elimination System (NPDES) permit that require effective February 15, 2005 implementation of appropriate source control and site design measures and stormwater treatment measures for projects that create or replace one (1) acre or more of impervious surface, and that effective August 15, 2006 reduce the threshold to projects that create or replace ten thousand (10,000) square feet or more of impervious surface.

(c) It is the purpose of the City Council in enacting this Chapter to protect the health, safety and general welfare of Hercules' citizens by:

- (1) Minimizing non- stormwater discharges, whose pollutants would otherwise degrade the water quality of local streams, to the stormwater system.
- (2) Minimizing increases in non-point source pollution caused by stormwater runoff from development that would otherwise degrade local water quality.
- (3) Controlling the discharge to the City's stormwater system from spills, dumping or disposal of materials other than stormwater.
- (4) Reducing stormwater run-off rates and volumes and non-point source pollution whenever possible, through stormwater management controls and ensuring that these management controls are properly maintained and pose no threat to public safety. (Ord. 404 § 1 (part), 2005; Ord. 332 § 1 (part), 1996)

Sec. 5-8.020 Definitions.

The following words and phrases when used in this Chapter shall be as defined herein. Words and phrases in this Chapter and not otherwise defined shall be interpreted as defined in the regulations issued by the U.S. Environmental Protection Agency to implement the provisions of the Federal Clean Water Act, and as defined by the State Water Resources Control Board to implement the Porter-Cologne Act:

(a) "Best management practices or BMP" are structural devices, measures, stormwater management facilities or activities that help to meet development runoff requirements at the premises. BMP also include schedules of activities, prohibitions or practices, general good

housekeeping, pollution prevention practices, maintenance procedures and other management practices, to prevent or reduce the discharge of pollutants directly or indirectly to watercourses, water bodies, and wetlands.

(b) "City's NPDES permit" shall mean the NPDES permit issued to the City of Hercules, Permit No. CAS0029912, and any subsequent amendment, reissuance or successor to this NPDES permit.

(c) "Development runoff requirements" shall mean the provisions in the City's NPDES permit that contain performance standards to address both the construction and post-construction phase impacts of new projects and redeveloped projects on stormwater quality. In the City's 1999 NPDES permit these requirements are in Section C.3.

(d) "Director" shall mean the Director of Public Works of the City of Hercules or his or her designee.

(e) "Enforcement officer or Officer" shall mean those individuals designated by the director to act as authorized enforcement officers.

(f) "Guidebook" shall mean the most recent version of the Contra Costa Clean Water Program Stormwater C.3. Guidebook.

(g) "Non-stormwater discharge" means any addition of any pollutant to the City's stormwater system, except discharges pursuant to a NPDES permit, or discharges further exempted in Section 5-8.060(c) and (d) of this Chapter.

(h) "Pollutant" shall mean any material other than stormwater including, but not limited to, petroleum products or by-products, solid waste, incinerator residue, sewage, sewage sludge, heat, chemical waste, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, soil and industrial, municipal or agricultural waste discharged into the water or stormwater system.

(i) "Premises" shall mean any building, structure, facility, or installation, (including a building's grounds or other appurtenances), and adjacent sidewalks and parking strips.

(j) "Responsible person" shall mean the owner or occupant of any premises or who engages in any activity from which there is or may be a non-stormwater discharge or any person who releases pollutants to the City's stormwater system.

(k) "Stormwater" shall mean flow on the surface of the ground resulting from precipitation.

(l) "Stormwater management facility" shall mean any device designated to detain, retain, filter, or infiltrate stormwater.

(m) "Stormwater control plan" shall mean a plan that meets those criteria contained in the most recent version of the Contra Costa Clean Water Program Stormwater C.3. Guidebook.

(n) "Stormwater system" means that system of facilities by which stormwater may be conveyed to any stream, watercourse, other body of water or wetlands, including flood control channels, any roads with drainage systems, City streets, catch basins, curbs, gutters, ditches, improved channels, storm drains or storm drain system, which are not part of a Publicly Owned Treatment Works ("POTW") as that term is defined in 40 CFR Section 122.2. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.030 Responsibility for Administration.

The director or his designee shall administer this Chapter for the City. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.040 Construction and Application.

This Chapter shall be construed consistent with the requirements of the Federal Clean Water Act and amendments thereto or applicable implementing regulations and the City's NPDES permit. (Ord. 404 § 1 (part), 2005; Ord. 332 § 1 (part), 1996)

Sec. 5-8.050 Stormwater Control Plan Required.

(a) Every application for a development project, including but not limited to a rezoning, tentative map, parcel map, conditional use permit, variance, site development permit, design review, or building permit that is subject to the development runoff requirements in the City's NPDES permit shall be accompanied by a stormwater control plan that meets the criteria in the most recent version of the Contra Costa Clean Water Program Stormwater C.3. Guidebook.

(1) Effective February 15, 2005 this requirement shall apply to:

A. All developments that create one (1) acre (forty-three thousand five hundred sixty (43,560) square feet) or more of impervious surface. Excluded from this category is the construction of one (1) single-family home, which is not part of a larger plan of development, with appropriate pollutant source control and site design measures, and using landscaping to appropriately treat runoff from roof and house-associated impervious surfaces.

B. Streets and road projects that create one (1) acre (forty-three thousand five hundred sixty (43,560) square feet) or more of new impervious surface. Excluded from this category are sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features.

C. Projects on previously developed sites that result in the addition or replacement of a combined total of one (1) acre (forty-three thousand five hundred sixty (43,560) square feet) or more of impervious surface. Excluded from this category are interior remodels and routine maintenance or repair. Excluded routine maintenance and repair includes roof or exterior surface replacement, pavement resurfacing, repaving and road pavement structural section rehabilitation within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed.

(2) Effective August 15, 2006 this requirement shall apply to:

A. All developments that create ten thousand (10,000) square feet or more of impervious surface. Excluded from this category is the construction of one (1) single-family home, which is not part of a larger plan of development, with appropriate pollutant source control and site design measures, and using landscaping to appropriate treat runoff from roof and house-associated impervious surfaces.

B. Streets and road projects that create ten thousand (10,000) square feet or more of new impervious surface. Excluded from this category are sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features.

C. Projects on previously developed sites that result in the addition or replacement of a combined total of ten thousand (10,000) square feet or more of impervious surface. Excluded from this category are interior remodels and routine maintenance or repair. Excluded routine maintenance and repair includes roof or exterior surface replacement, pavement resurfacing, repaving and road pavement structural section rehabilitation within the existing footprint, and any other reconstruction work within a public street or road right-of-way where both sides of that right-of-way are developed.

(3) Subsections (a)(1) and (a)(2) shall be interpreted in a manner that is consistent with the development runoff requirements and exclusions in the City's NPDES permit.

(b) Implementation of an approved storm-water control plan and submittal of an approved stormwater control operation and maintenance plan by the applicant shall be a condition precedent to the issuance of a certificate of occupancy for a project subject to this Section.

(c) All stormwater management facilities shall be designed in a manner to minimize the need for maintenance and reduce the chances of failure. Design guidelines are outlined in the guidebook.

(d) All stormwater management facilities shall be maintained according to the guidebook and the approved stormwater control operation and maintenance plan. The person(s) or organization(s) responsible for maintenance shall be designated in the plan. Unless a different time period is provided for in the plan, those responsible for maintenance shall inspect the stormwater management facility at least annually. The plan shall also describe how the maintenance costs will be funded. Upon the failure of a responsible person to maintain a stormwater management facility in accordance with this Chapter or the plan, the City may perform the maintenance and recover its costs from the responsible person as provided in Sections 5-8.170 and 5-8.180 of this Chapter.

(e) For access to stormwater management facilities for inspections and maintenance, recorded covenants or easements shall be provided by the property owner for access by the City, the Contra Costa Mosquito and Vector Control District, and the Regional Water Quality Control Board. (Ord. 404 § 1 (part), 2005; Ord. 332 § 1 (part), 1996)

Sec. 5-8.060. Prohibited Discharges.

(a) The release of non-stormwater discharges to the City stormwater system is prohibited.

(b) The discharge of stormwater from premises or an activity that causes or contributes to a violation of receiving water limitations in the City's NPDES permit is prohibited.

(c) The following discharges are exempt from the prohibition set forth in subsection (a) of this Section:

(1) Any discharge in compliance with an NPDES permit issued to the discharger;

(2) Flows from riparian habitats and wetlands, diverted stream flows, springs, rising groundwater and uncontaminated groundwater infiltration.

(d) The following discharges are exempt from the prohibitions set forth in subsection (a) of this Section if the Regional Water Quality Control Board approves the exempted category under Section C.11. of the City's NPDES permit: uncontaminated pumped groundwater, foundation drains, water from crawl space pumps, footing drains, air conditioning condensate, irrigation water, landscape irrigation, lawn or garden watering, planned and unplanned discharges from potable water sources, water line and hydrant flushing, individual residential car washing, discharges or flows from emergency fire fighting activities, and dechlorinated swimming pool discharges. (Ord. 404 § 1 (part), 2005; Ord. 332 § 1 (part), 1996)

Sec. 5-8.070. Discharge in Violation of NPDES Permit.

Any discharge that would result in or contribute to a violation of the City's NPDES permit either separately considered or when combined with other discharges, is prohibited. Liability for any such discharge shall be the responsibility of the person causing or responsible for the discharge, and such person shall defend, indemnify and hold harmless the City in any administrative or judicial enforcement action relating to such discharge. (Ord. 404 § 1 (part), 2005; Ord. 332 § 1 (part), 1996)

Sec. 5-8.080. Unlawful Discharge and Unlawful Connections.

(a) It is unlawful to establish, use, maintain or continue unauthorized drainage connections to the City's stormwater system, and to commence or continue any unauthorized discharges to the City's stormwater system.

(b) No discharge shall cause the following conditions, create a nuisance or adversely affect beneficial uses of waters of the State:

- (1) Floating, suspended or deposited macroscopic matter or foam;
 - (2) Bottom deposits or aquatic growth;
 - (3) Alterations of temperature, sediment load, nutrient load, or dissolved oxygen, which cause significant adverse impacts to native aquatic biota;
 - (4) Visible, floating, suspended or deposited oil or products of petroleum origin; or,
 - (5) Substances present in concentrations or quantities which cause deleterious effects on aquatic biota, wildlife or waterfowl, or which render any of these unfit for human consumption.
- (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.090 Best Management Practices and Standards.

(a) Generally. Any person owning or operating premises that may contribute pollutants to the City's stormwater system shall undertake all practicable best management practices to reduce the potential for pollutants entering the system. Examples of such premises include, but are not limited to, parking lots, gasoline stations, industrial facilities, and other commercial enterprises.

(b) Litter. No person shall throw, deposit, leave, keep or permit to be thrown, deposited, placed, left or maintained, any refuse, rubbish, garbage or other discarded or abandoned objects, articles or other litter in or upon any street, alley, sidewalk, business place, creek, stormwater system, fountain, pool, lake, stream, river or any other body of water, or upon any public or private parcel of land so that the same might become a pollutant, except in containers or in lawfully established waste disposal facilities.

(c) Sidewalks. The occupant or tenant, or in the absence of occupant or tenant, the owner or proprietor of any real property in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. Sweepings from the sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in receptacles maintained as required for the disposal of solid waste.

(d) Parking Lots, Paved Areas and Related Stormwater Systems. Persons owning, operating or maintaining a paved parking lot, the paved areas of a gasoline station, a paved private street or road, and related stormwater systems shall clean those premises as frequently and thoroughly as practicable in a manner that does not result in the discharge of pollutants to the City's stormwater system.

(e) Construction Activities. All construction shall conform to the requirements of the CASQA Stormwater Best Management Practices Handbooks for Construction Activities and New Development and Redevelopment, the ABAG Manual of Standards for Erosion and Sediment Control Measures, the City's grading and erosion control ordinance and other generally accepted engineering practices for erosion control as required by the director when undertaking construction activities. The director may establish controls on the rate of stormwater runoff from new developments and redevelopment as may be appropriate to minimize the discharge and transport of pollutants.

(f) Notification of Intent and Compliance with General Permits. Each discharger associated with construction activity or other discharger described in any general stormwater permit addressing discharges, as may be adopted by the United States Environmental Protection Agency, the State Water Resources Control Board, or the California Regional Water Quality Control Board, San Francisco Bay Region, shall provide the director with the notice of intent, comply with and undertake all other activities required by any general stormwater permit applicable to such

dischargers. Each discharger identified in an individual NPDES permit relating to stormwater discharges shall comply with and undertake all activities required by the permit.

(g) Development Runoff Requirements. For each new development and redevelopment project subject to the development runoff requirements, every applicant will submit a stormwater control plan and implement conditions of approval that reduce stormwater pollutant discharges through the construction, operation and maintenance of treatment measures and other appropriate source control and site design measures. Similarly, increases in runoff volume and flows shall be managed in accordance with the development runoff requirements.

(h) Compliance with Best Management Practices. Where best management practices guidelines or requirements have been adopted by any federal, state, regional, City or county agency, for any activity, or operation of premises which may cause or contribute to nonstormwater discharges, every person undertaking such activity, operation or owning and operating such premises shall comply with such guidelines or requirements.

(i) Stormwater Pollution Prevention Plan. The director may require any business or utility in the City that is engaged in activities that may result in non-stormwater discharges or runoff pollutants to develop and implement a stormwater pollution prevention plan, which must include an employee training program. Business activities which may require a stormwater pollution prevention plan include maintenance, storage, manufacturing, assembly, equipment operations, vehicle loading, fueling, vehicle maintenance, food handling or processing, or cleanup procedures which is carried out partially or wholly out of doors.

(j) Coordination with Hazardous Material Release Response and Inventory Plans. Any business subject to the Hazardous Material Release Response and Inventory Plan, Division 20, Chapter 6.95 of the California Health and Safety Code (commencing with Section 25500), shall include, in that plan, provision for compliance with this Chapter, including the prohibitions of non-stormwater discharges and the requirement to reduce release of pollutants to the maximum extent practicable. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.100 Compliance Certificates for Stormwater Management Facilities.

(a) Every person who owns, leases or operates any premises containing a stormwater management facility or facilities is required to obtain annually a valid operation and maintenance Certificate of Compliance certifying to the inspection of and the proper operation and maintenance of the treatment measures and other appropriate source control and site design measures. Each responsible person subject to this requirement shall request an inspection from the City every twelve (12) months. Upon the filing of such request, and the payment of a fee covering the cost of inspection, the City shall inspect the property and shall either issue such certificate upon a determination by the inspector that all treatment measures and other appropriate source control and site design measures have been properly maintained and are in good condition, or shall issue a conditional certificate noting deficiencies that must be corrected within a time indicated on the certificate, or shall deny the certificate. A certificate shall be valid for one (1) year from the date of issuance. The City Council may by resolution establish the fee for the inspection and certificate.

(b) In lieu of a City inspection, such person may arrange for an inspection from a private company authorized to conduct inspections by the City. Such company shall use a City-approved inspection form that shall be executed under penalty of perjury. Should such inspection form establish that the treatment measures and other appropriate source control and site design measures have been properly maintained and are in good condition, the City may issue an operation and maintenance certificate of compliance or the City may at its cost re-inspect the property and proceed as described in subsection (a) of this Section. The filing of a false inspection report shall be a misdemeanor. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.110 Authority to Inspect.

(a) Generally. Routine or scheduled inspections shall be based upon as reasonable a selection process as may be deemed necessary to carry out the intent of this Chapter, including, but not limited to, random sampling or sampling in areas with evidence of stormwater contamination, evidence of the discharge of non-stormwater to the stormwater system, or similar activities. Inspections may also be conducted in conjunction with routine or scheduled inspections conducted by other public agencies or special district, including but not limited to the Central Contra Costa Sanitary District, the Contra Costa County Fire Protection District, County Environmental Health Department, the Contra Costa Mosquito and Vector Control District, or the Regional Water Quality Control Board.

(b) Authority to Sample and Establish Sampling Devices. With the consent of the owner or occupant, or pursuant to a search or inspection warrant, any officer may establish on any property such devices as are necessary to conduct sampling or metering operations. During all authorized inspections, the officer may take any sample deemed necessary to aid in the pursuit of the inquiry or in the recordation of the activities on site.

(c) Notification of Spills. All persons in charge of the premises or responsible for emergency response for the premises have a responsibility to train premises' personnel and maintain notification procedures to ensure that immediate notification is provided to the City of any suspected, confirmed or unconfirmed release of pollutants creating a risk of nonstormwater discharge into the City stormwater system.

As soon as any person in charge of the premises or responsible for emergency response for the premises has knowledge of any suspected, confirmed or unconfirmed release of non-stormwater discharge entering the City stormwater system, such person shall take all necessary steps to ensure the detection and containment and clean up of such release and shall notify the City of the occurrence by telephoning the director. This notification requirement is in addition to and not in lieu of other required notifications.

(d) Requirement to Test or Monitor. Any officer may require that any person engaged in any activity or owning or operating any premises that may cause or contribute to nonstormwater discharges, undertake such monitoring activities or analysis and furnish such reports as the officer may specify. The burden, including costs of these activities, analysis and reports shall bear a reasonable relationship to the need for the monitoring, analysis and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analysis and reports required. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.120 Violations Constituting Misdemeanors.

The violation of any provision of this Chapter, or failure to comply with any of the mandatory requirements of this Article shall constitute a misdemeanor, except that notwithstanding any other provisions of this Article, any violation constituting a misdemeanor under this Chapter may, at the discretion of the officer or City Attorney, be charged and prosecuted as an infraction. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.130 Penalty for Violation.

(a) Upon conviction of a misdemeanor, a person shall be subject to payment of a fine, or imprisonment, or both, not to exceed the limits set forth in California Government Code Section 36901.

(b) Upon conviction of an infraction, a person shall be subject to payment of a fine, not to exceed the limits set forth in California Government Code Section 36900. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.140 Continuing Violation.

Every day that any violation of this Chapter continues shall constitute a separate offense. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.150 Concealment.

Concealing, aiding or abetting a violation of any provision of this Chapter shall constitute a violation of such provision. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.160 Acts Potentially Resulting in Violation of the Federal Clean Water Act or Porter-Cologne Act.

Any person who violates any provision of this Chapter, or the provisions of any permit issued pursuant to this Chapter, or who releases a non-stormwater discharge, or who violates any cease and desist order, prohibition or effluent limitation, may also be in violation of the Federal Clean Water Act or the Porter-Cologne Act and may be subject to the enforcement provisions of those acts, including civil and criminal penalties. Any enforcement actions authorized pursuant to this Chapter may also include notice to the violator of such potential liability pursuant to federal or state law. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.170 Violations Deemed a Nuisance.

In addition to the penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare. Such condition is hereby declared and deemed to be a nuisance, which may be abated as provided in Chapter 10 of Title 4 (commencing with Section 0.01) of this Code including the assessment of the costs of abatement which may be collected at the same time and in the same manner as ordinary municipal taxes as provided by Government Code Section 38773.5, and by civil action to abate, enjoin or otherwise compel the cessation of such nuisance by the City Attorney. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.180. Civil Actions.

(a) In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, as appropriate, any and all of the following remedies:

- (1) A temporary restraining order, preliminary injunction and permanent injunction;
- (2) An action for an unlawful business practice pursuant to Business and Professions Code Section 17206;

(b) In addition any person violating this Chapter shall be liable for:

- (1) Reimbursement for the costs of any investigation, inspection or monitoring which led to the discovery of the violation;
- (2) Costs incurred in removing, correcting, or terminating the adverse effect(s) resulting from the violation;
- (3) Compensatory damages for the loss of, or destruction to, water quality, wildlife, fish or aquatic life. Costs and damages under this subsection shall be paid to the City and shall be used exclusively for costs associated with monitoring and establishing a stormwater discharge pollution control system and implementing or enforcing the provisions of this Chapter;
- (4) The cost of maintenance and repair of any BMP or stormwater management facility that is not maintained in accordance with the guidebook or the stormwater control plan;
- (5) The reasonable costs of preparing and bringing administrative action under this Chapter.
(Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.190. Remedies Not Exclusive.

The remedies identified in this Chapter are in addition to, and do not supersede or limit, any and all other remedies, administrative, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.200. Notice of Violation.

Any person required to perform monitoring, analysis, reporting or corrective activity by any officer may be informed of such decision, in writing, by a notice of violation. Any person aggrieved by the decision of the officer, may file a written appeal of the notice of violation to the director within ten (10) days following the date of the notice of violation. Upon receipt of such request, the director shall request a report and recommendation from the officer and shall set the matter for hearing at the earliest practical date. At said hearing, the director may hear additional evidence, and may reject, affirm or modify the officer's decision. The decisions of the director shall be final. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Sec. 5-8.210. Judicial Review.

The provisions of Code of Civil Procedure Section 1094.5 are applicable to judicial review of determinations made by the director pursuant to this Chapter. (Ord. 404 § 1 (part), 2005: Ord. 332 § 1 (part), 1996)

Mobile Version