

City of Hercules

111 Civic Drive
Hercules, CA 94547



Meeting Agenda

Tuesday, May 8, 2018

Closed Session - 6:00 p.m.

Regular Session - 7:00 p.m.

Council Chambers

City Council

Mayor Chris Kelley

Vice Mayor Dan Romero

Council Member Roland Esquivias

Council Member Myrna de Vera

Council Member Gerard Boulanger

David Biggs, City Manager

Patrick Tang, City Attorney

Lori Martin, City Clerk

To view webcast of meetings, live or on demand, go to the City's website at www.ci.hercules.ca.us

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

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

III. CONVENE INTO CLOSED SESSION

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

1. [18-145](#) Pursuant to Government Code Section 54957.6 CONFERENCE WITH LABOR NEGOTIATORS - City Negotiators: David Biggs, City Manager; Annie To, Director of Finance; Lori Martin, Director of Administrative Services relative to the following employee groups:
 - a. Teamsters Local 315 Employee Organizations
 - b. Hercules Police Officers Association
 - c. Hercules Senior Manager Employee Group
 - d. Confidential Unrepresented Employee Group
 - e. Mid Management Employee Group
2. [18-148](#) Conference with Legal Counsel - Anticipated Litigation Pursuant to Government Code Section 54956.9(d)(2): In one (1) matter: Hercules Development Partners, LP / Ledcor Corporation

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

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

VI. PLEDGE OF ALLEGIANCE

VII. MOMENT OF SILENCE

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. [18-136](#) Police Memorial Week Proclamation

Attachments: [PROCLAMATION - Police Memorial 2018_ac](#)
2. [18-143](#) Union Pacific Railroad Presentation on Refugio Creek Bridge Replacement

IX. AGENDA ADDITIONS/DELETIONS

X. PUBLIC COMMUNICATIONS

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

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

XI. PUBLIC HEARINGS

1. [18-134](#) **Safeway Master Sign Program & Zoning Amendment to the Sign OrdinanceText Amendment No. 18-03 (ZTA #18-03) to update the Hercules Zoning Ordinance, Chapter 34, Sign Regulations, and Design Review Permit No. 18-01**
Recommendation: Receive report, open public hearing, discuss potential changes to #ZTA 18-03 and Design Review Permit #DRP 18-01 and consider waiving the First Reading and introducing an Ordinance with the proposed Zone Text Amendment #ZTA 18-03 for revisions to Chapter 34 of the Zoning Ordinance of the Sign Regulations and adopting a resolution approving DRP #18-01 for the Safeway Center Master Sign Program.

Attachments: [Staff Report - Safeway Master Sign Program - ZTA 18-03 + DRP 18-01](#)
[Attach 1 - ZTA 18-03 - Sign Ordinance Amendments - CC Ordinance](#)
[Attach 2 - DRP 18-01 - Master Sign Program - Safeway Center - CC Resolution](#)
[Exhibit A - Safeway Master Sign Program](#)
[Attach 3 - Safeway Master Sign Program - 2018-4-16 PC Staff report & resolutions](#)

2. [18-142](#) **Consider Approving an Ordinance to Adopt Proposed Zone Text Amendment #ZTA 18-02 Related to Establishing Restrictions on Paving of Residential Lots**
Recommendation: Receive report, open public hearing, discuss potential changes to #ZTA 18-02, and waive first reading and introduce an Ordinance with the proposed Zone Text Amendment related to Paving on residential lots.

Attachments: [Staff Report - Paving Residential Lots - 5-8-2018 CC](#)
[Att 1-Draft Ordinance for Paving](#)
[Att 2 -Approved PC Reso 18-08](#)
[Att 3 - Planning Commission Reports, attachments and powerpoints](#)
[Att 4 - Paving Discussion at 012318 City Council](#)

XII. CONSENT CALENDAR

1. [18-141](#) **Meeting Minutes**
Recommendation: Approve the Regular City Council Meeting Minutes of April 24, 2018.

Attachments: [Minutes - 042418 - Regular](#)
2. [18-140](#) **Ordinance to Approve Amendments to the Hilltown Development Agreement to Remove the Redevelopment Agency as a Party to the Agreement, Conditionally Extend the Term of the Agreement, and Clarify the Developer's Obligations Regarding Affordable Housing, Stormwater and Clean Water Requirements, and the In-Lieu Sports Facility Fee**
Recommendation: Waive reading and adopt Ordinance 509.

Attachments: [Staff Report - Hilltown Development Agreement Amendment 180508 JPT](#)
[Attach 1 - City Council Ordinance Amend Hilltown DA 180508 - 2nd Reading](#)
[Attach. 2 - Hilltown Development Agreement Amendment as approved first reading](#)
[Attach 3 - Development Agreement Amendment 04242018 SR](#)
3. [18-139](#) **Ordinance to Amend Hercules Municipal Code by Repealing and Replacing Article 5, Section 6 Related to Smoking in Workplaces and Public Places, and Finding that this Ordinance is Exempt from CEQA**
Recommendation: Waive the Reading, and adopt Ordinance 508.

Attachments: [Staff Report - Smoking Ordinance Update 180508 - JPT](#)
[Attach 1 - SR Smoking Ordinance Update 180424 - JPT](#)
[Attach 2 - Smoking Ord Proposed Amendments 180508](#)
[Attach 3 - Hookah Fact Sheet](#)

XIII. DISCUSSION AND/OR ACTION ITEMS

1. [18-138](#) **November 6, 2018 General Municipal Election**
Recommendation: Staff recommends that City Council consider and take action on the following:
 1. Adopt a Resolution Calling for the Holding of a General Municipal Election to be held on Tuesday, November 6, 2018 for the Election of Two (2) Members of the City Council for the Full Term of Four (4) Years.
 2. Adopt a Resolution Requesting the Contra Costa Board of Supervisors to Consolidate a General Municipal Election to be held on Tuesday, November 6, 2018 with the Statewide General Election to be held on the same date.
 3. Adopt a Resolution Adopting Regulations for Candidates for Elective Office Pertaining to Candidate Statements Submitted to the Voters at an Election to be held on Tuesday, November 6, 2018.

Attachments: [Staff Report - City Election - 110618](#)
[Attach 1 - Resolution Calling the Election](#)
[Attach 2 - Resolution Requesting Consolidation](#)
[Attach 3 - Resolution - Candidate Statement Regulations](#)
[Attach 4 - Notice of Election](#)

2. [18-147](#) **Hercules Point Update and Approve Letter to East Bay Regional Parks District Board**

Recommendation:

- 1) Receive report, discuss, and provide direction, if any.
- 2) Approve and authorize the Mayor to sign a letter to the President and Board Members of the East Bay Regional Parks District.

Attachments: [Staff Report - Hercules Point 05082018](#)
[Attach 1 - East Bay Regional Parks District Letter](#)
[Attach 2 - Hercules Properties Deed Restriction - DTSC](#)
[Attach 3 - Bayfront Implementing DA - Exh J2 - Purchase Sale Agreement - Hercules..](#)

3. [18-133](#) **2017 Strategic Plan Status Report**

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

Attachments: [Staff Report - Strategic Plan 05082018](#)
[Attach 1 - Strategic Plan Annual Review SR 03272018](#)
[Attach 2 - 2017 Strategic Plan Review May 2018](#)

4. [18-135](#) **Pre-Qualified Vendors for Planning-Related Services**

Recommendation: Adopt a Resolution approving a list of qualified vendors for planning, environmental and technical planning, transportation planning, architecture & urban design, landscape architecture, historic preservation, and fiscal analysis services.

Attachments: [Staff Report - 2018 RFQ - Planning Services 050818](#)
[Attach 1 - 2018 RFQ - Planning Services - Resolution](#)
[Attach 2 - 2018 RFQ - Planning Services - List of Recommended Vendors](#)
[Attach 3 - 2018 RFQ - Planning Services - Summary of Responses to RFQ](#)

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, May 22, 2018 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: May 3, 2018)

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

1. SPECIAL ACCOMODATIONS: 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 #: 18-145 **Version:** 1 **Name:**

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

File created: 5/2/2018 **In control:** City Council

On agenda: 5/8/2018 **Final action:**

Title: Pursuant to Government Code Section 54957.6 CONFERENCE WITH LABOR NEGOTIATORS - City Negotiators: David Biggs, City Manager; Annie To, Director of Finance; Lori Martin, Director of Administrative Services relative to the following employee groups:

- a. Teamsters Local 315 Employee Organizations
- b. Hercules Police Officers Association
- c. Hercules Senior Manager Employee Group
- d. Confidential Unrepresented Employee Group
- e. Mid Management Employee Group

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Pursuant to Government Code Section 54957.6 CONFERENCE WITH LABOR NEGOTIATORS - City Negotiators: David Biggs, City Manager; Annie To, Director of Finance; Lori Martin, Director of Administrative Services relative to the following employee groups:

- a. Teamsters Local 315 Employee Organizations
- b. Hercules Police Officers Association
- c. Hercules Senior Manager Employee Group
- d. Confidential Unrepresented Employee Group
- e. Mid Management Employee Group



Legislation Details (With Text)

File #: 18-148 **Version:** 1 **Name:**

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

File created: 5/3/2018 **In control:** City Council

On agenda: 5/8/2018 **Final action:**

Title: Conference with Legal Counsel - Anticipated Litigation Pursuant to Government Code Section 54956.9(d)(2): In one (1) matter: Hercules Development Partners, LP / Ledcor Corporation

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Conference with Legal Counsel - Anticipated Litigation Pursuant to Government Code Section 54956.9(d)(2): In one (1) matter: Hercules Development Partners, LP / Ledcor Corporation



Legislation Details (With Text)

File #: 18-136 **Version:** 1 **Name:**
Type: Introductions/Presentation **Status:** Agenda Ready
File created: 5/1/2018 **In control:** City Council
On agenda: 5/8/2018 **Final action:**
Title: Police Memorial Week Proclamation
Sponsors:
Indexes:
Code sections:
Attachments: [PROCLAMATION - Police Memorial 2018_ac](#)

Date	Ver.	Action By	Action	Result
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Police Memorial Week Proclamation

**PROCLAMATION AFFIRMING THE WEEK OF MAY 15, 2018 AS NATIONAL POLICE WEEK AND
RECOGNIZING THE CONTRIBUTION OF OFFICERS WHO HAVE BEEN KILLED IN THE LINE OF
DUTY**

WHEREAS, in 1962, President Kennedy proclaimed May 15th as National Peace Officers Memorial Day and the calendar week in which May 15th falls, as National Police Week; and

WHEREAS, established by a joint resolution of Congress, National Police Week pays special recognition to those law enforcement officers who have lost their lives in the line of duty for the safety and protection of others; and

WHEREAS, across the United States, one hundred and thirty five peace officers were killed in the line of duty in 2017; and

WHEREAS, 8 California peace officers and 1 Police K-9 were killed in the line of duty in 2017; and

WHEREAS, the members of the Hercules Police Department play an essential role in safeguarding the rights and freedoms of the Hercules community; and

WHEREAS, it is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of our law enforcement agencies, and that members of our law enforcement agencies recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; and

WHEREAS, the men and women of the Hercules Police Department unceasingly provide a vital public service.

NOW, THEREFORE BE IT PROCLAIMED that I, Chris Kelley, Mayor of the City of Hercules, on behalf of the entire City Council, call upon all citizens of Hercules and upon all patriotic, civic, and educational organizations to observe the week of May 13th through the 19th of 2018, as Police Memorial Week and commemorate law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their communities and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

I further call upon all citizens of Hercules to observe May 15, 2018 as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes.

In witness thereof, I have hereunto set my hand and cause the Seal of the City of Hercules to be affixed this 8th day of May, 2018

Chris Kelley, Mayor



Legislation Details (With Text)

File #: 18-143 **Version:** 1 **Name:**

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

File created: 5/2/2018 **In control:** City Council

On agenda: 5/8/2018 **Final action:**

Title: Union Pacific Railroad Presentation on Refugio Creek Bridge Replacement

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
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Union Pacific Railroad Presentation on Refugio Creek Bridge Replacement



Legislation Details (With Text)

File #: 18-134 **Version:** 2 **Name:**
Type: Public Hearing **Status:** Agenda Ready
File created: 4/24/2018 **In control:** City Council
On agenda: 5/8/2018 **Final action:**
Title: Safeway Master Sign Program & Zoning Amendment to the Sign OrdinanceText Amendment No. 18-03 (ZTA #18-03) to update the Hercules Zoning Ordinance, Chapter 34, Sign Regulations, and Design Review Permit No. 18-01
Recommendation: Receive report, open public hearing, discuss potential changes to #ZTA 18-03 and Design Review Permit #DRP 18-01 and consider waiving the First Reading and introducing an Ordinance with the proposed Zone Text Amendment #ZTA 18-03 for revisions to Chapter 34 of the Zoning Ordinance of the Sign Regulations and adopting a resolution approving DRP #18-01 for the Safeway Center Master Sign Program.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Safeway Master Sign Program - ZTA 18-03 + DRP 18-01](#)
[Attach 1 - ZTA 18-03 - Sign Ordinance Amendments - CC Ordinance](#)
[Attach 2 - DRP 18-01 - Master Sign Program - Safeway Center - CC Resolution](#)
[Exhibit A - Safeway Master Sign Program](#)
[Attach 3 - Safeway Master Sign Program - 2018-4-16 PC Staff report & resolutions](#)

Date	Ver.	Action By	Action	Result
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Safeway Master Sign Program & Zoning Amendment to the Sign OrdinanceText Amendment No. 18-03 (ZTA #18-03) to update the Hercules Zoning Ordinance, Chapter 34, Sign Regulations, and Design Review Permit No. 18-01

Recommendation: Receive report, open public hearing, discuss potential changes to #ZTA 18-03 and Design Review Permit #DRP 18-01 and consider waiving the First Reading and introducing an Ordinance with the proposed Zone Text Amendment #ZTA 18-03 for revisions to Chapter 34 of the Zoning Ordinance of the Sign Regulations and adopting a resolution approving DRP #18-01 for the Safeway Center Master Sign Program.



CITY COUNCIL STAFF REPORT

MEETING DATE: May 8, 2018

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, AICP, Planning Director
Robert Reber, AICP, Adjunct Planner

SUBJECT: Safeway Master Sign Program & Zoning Amendment to the Sign Ordinance

APPLICANT: Mike Powers, representing McNellis Partners

RECOMMENDATION:

Receive report, open public hearing, discuss potential changes to #ZTA 18-03 and Design Review Permit #DRP 18-01 and consider waiving the First Reading and introducing an Ordinance with the proposed Zone Text Amendment #ZTA 18-03 for revisions to Chapter 34 of the Zoning Ordinance of the Sign Regulations and adopting a resolution approving DRP #18-01 for the Safeway Center Master Sign Program.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

At its regular meeting on April 16, 2018, the Planning Commission unanimously approved Resolutions #18-06 and #18-07 recommending that the City Council (a) approve Zoning Text Amendment #18-03 to revise the Zoning Ordinance sign regulations, and (b) approve Design Review Permit #18-01 for the Safeway Center Master Sign Program. The Conditions of Approval were modified during their meeting to be contingent upon the approval of the Zoning Ordinance modifications and require that LED signs include dimmers to automatically adjust brightness as appropriate based on ambient light conditions.

FISCAL IMPACT OF RECOMMENDATION:

No fiscal impact.

DISCUSSION:

Applicant's Request for a Master Sign Program (MSP): The Safeway project approved by the Council on September 26, 2017 included a condition of approval requiring a Master Sign Program (MSP) be submitted for all signage within the center. The submitted signage plan includes an 85' freeway-oriented pylon sign, two fuel pricing monument signs, and various retail tenant signs. Because the project conditions of approval also require that the fuel center include signs to direct vehicles to the fuel pumps in a one-way directional flow, the MSP shows "Do Not Enter—Exit

Only” signage along the exit bollards at each fuel aisle of the fueling station. The proposed Safeway Center MSP expressly forbids signs using flashers, scintillating/chasing bulbs, or moving elements; blimps, balloons, or other tethered aerial devices; painted signs, including advertising painted on walls; signs extending above building fascia; “Box” signs; changeable letter boards; LED screens with changeable graphics/copy on buildings or visible through glazing; and A-frame signs.

Though not expressly covered in the proposed Master Sign Programs (MSP), window signs at the Shopping Center would be subject to Section 34.500, “Signs Not Requiring a Permit,” which stipulates (34.500.L) that “[w]indow signs are allowed provided that they are placed on the inside of the window, and occupy no more than 25% of the glassed area of all windows, and [are] at least 3 feet from the window frame of an exterior window and the majority of the interior is visible from the outside of the building.”

As shown in Table 1 of the Planning Commission staff report, several of the proposed signs were not within the City’s Zoning Ordinance Sign Code criteria. Staff and the Planning Commission believe the proposed signage is appropriate for the center with the exception of which is included in the conditions of approval. Planning Commission’s recommending Resolution #18-06 captures the specific conditions that they believe should go with the MSP design drawings.

Staff Recommendations to Amend “Sign Regulations” through ZTA #18-01:

Currently a Master Sign Program must be consistent with the Zoning Ordinance. Exceptions such as these can sometimes be granted through approval of either minor exceptions (per Chapter 45 of the Zoning Ordinance) or variances (per Chapter 51 of the Zoning Ordinance). However, the Zoning Ordinance’s “Binding Effect” provision for Master Sign Programs states, “In case of any conflict between the provisions of such a [Master Sign] plan with any provisions herein, this Section [i.e., the Zoning Ordinance sign regulations] shall prevail” (Zoning Ordinance, Section 34.400.R.8). To better resolve potential conflict between provisions of this and other MSPs and the Zoning Ordinance, staff recommends the changes listed below, as the public review process required for MSPs can better achieve nuanced, high-quality, contextually appropriate signage, rather than strict adherence to Zoning Ordinance limitations:

- Clarify that MSPs require Planning Commission approval;
- Require that MSPs substantially (but not necessarily completely) conform to the Zoning Ordinance; and
- Allow certain exceptions to standard signage regulations—including maximum allowed signage, monument sign size, and fuel canopy signs—through approval of MSPs.

Zoning Ordinance Consistency with First Amendment Protections:

Though not expressly related to the proposed MSP for the Safeway Center, staff recommends—given recent case law—certain other revisions to the Zoning Ordinance’s Sign Regulations. In *Reed vs. Town of Gilbert*, 576 US (2015), the U.S. Supreme Court clarified when municipalities may impose content-based restrictions on signage. The case also clarified the level of constitutional scrutiny that should be applied to content-based restrictions on speech. In light of the Court’s decision, staff recommends making these additional changes to the Zoning Ordinance:

- Delete requirements specific to religious institution signs;
- Remove content-specific limitation on changeable copy signs;
- Delete provisions specific to advertising messages incorporated into signs;
- Eliminate content-specific bulletin board limitations;
- Delete fast food, automobile, and other content-specific exceptions for banners.

ENVIRONMENTAL DETERMINATION

The Zoning Ordinance amendments are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines. The Design Review Permit/Master Sign Program is within the scope of the development programs evaluated in the Hercules New Town Center Environmental Impact Report (State Clearinghouse No. 2007062002, certified 2009) and its addendum (Initial Study/Addendum #17-01) which the City Council approved on September 26, 2017, at a duly held public hearing, through adoption of Resolution No. 17-069, which also reconfirmed and readopted the applicable mitigation measures and the Statement of Overriding Considerations for the Hercules New Town Center Project, as amended. No new significant environmental effects could occur as a result of the proposed project, no new mitigation measures are required for the proposed project, and the proposed project does not require further environmental review under CEQA.

CONCLUSIONS / RECOMMENDATIONS

The Safeway Center project will advance goals, objectives, policies, and programs of the Hercules General Plan by expanding and enhancing commercial opportunities and services in the central Hercules area. The project also responds to the current market demand for those services as well as providing community, pedestrian, and open space amenities. The proposed Master Sign Program supports those goals of commercial success by specifying a comprehensive, cohesive, and consistent approach for the shopping center collectively and its tenants individually to identify and advertise their businesses to potential patrons. The proposed Zoning Ordinance amendments support this and future Master Sign Programs by eliminating potential confusion and conflict between approved MSPs and the Zoning Ordinance, and by helping ensure legally appropriate, content-neutral review of signage.

ATTACHMENTS

- Attachment 1 – Draft Ordinance adopting Zoning Text Amendment #ZTA 18-03
- Attachment 2 – Draft Resolution approving Design Review Permit #DRP 18-01, Master Sign Program for Safeway Hercules Center with Conditions of Approval
 - Exhibit A – Master Sign Program for Safeway Hercules Center
 - Exhibit B – Facts with Findings
- Attachment 3 – Planning Commission staff reports and adopted Resolutions

Attachment 1

Draft Ordinance adopting Zoning Text Amendment No. 18-03

Attachment 2

**Draft Resolution approving Design Review Permit No. 18-01,
Master Sign Program for Safeway Hercules Center, with Conditions of Approval**

Exhibit A to Attachment 2
Master Sign Program for Safeway Hercules Center

Exhibit B to Attachment 2

Facts with Findings

Attachment 3

4/16/2018 Planning Commission Staff Report and Approving Resolutions

ORDINANCE NO. ____
ZONING TEXT AMENDMENT #ZTA 18-03
SIGN ORDINANCE ADMENDMENTS

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING ZONING TEXT AMENDMENT #18-03 TO AMEND CHAPTER 34 OF THE CITY'S ZONING ORDINANCE RELATED TO MASTER SIGN PROGRAMS AND CERTAIN CONTENT-SPECIFIC REQUIREMENTS, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM CEQA.

WHEREAS, on September 26, 2017, at a duly held public hearing, the City Council approved Resolution No. 17-071, approving Initial/Final Planned Development Plan (PDP) #17-01, Design Review Permit (DRP) #17-02, Conditional Use Permit (CUP) #17-01, and Minor Exception (ME) #17-01 for the Safeway Center Project, located at the northeast corner of the intersection of Sycamore Avenue and San Pablo Avenue; and

WHEREAS, the aforementioned Safeway Center project approvals included a set of Conditions of Approval (COAs; Exhibit A to Resolution No. 17-071), including COA #17, requiring that the project applicant submit a Master Sign Program (MSP) for Planning Commission approval of all on-site signage, consistent with the provisions of Section 34.400.R of the Zoning Ordinance; and

WHEREAS, the project applicant, McNellis Partners, submitted to the City on April 10, 2018, an application for a Master Sign Program, deemed complete by City staff; and

WHEREAS, for clarity and consistency, both internally and with the proposed and other potential Master Sign Programs, City staff recommend certain revisions to the existing Zoning Ordinance sign regulations; and

WHEREAS, City staff recommend additional concurrent revisions to the existing Zoning Ordinance sign regulations for consistency with legal precedence, especially in consideration of the U.S. Supreme Court decision in *Reed vs. Town of Gilbert, Arizona* (135 S. Court 2218 – 2015), which clarified when municipalities may impose content-based restrictions on signage; and

WHEREAS, on April 16, 2018, the Planning Commission held a duly noticed public hearing and unanimously adopted Planning Commission Resolution #18-06 recommending that the City Council adopt Zoning Text Amendment #18-03; and

WHEREAS, the City Council finds that the Zoning Ordinance amendments are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) (the “general rule exemption”) as it can be seen with certainty that there is no possibility the project will have a significant effect on the environment and thus is not subject to CEQA; and

WHEREAS, Section 52.400 of the City of Hercules Zoning Ordinance allows for amendments of the Zoning Ordinance whenever the City Council determines that the proposed amendment is: consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and is internally consistent and does not conflict with the purposes, regulations, and required findings of the Zoning Ordinance; and

WHEREAS, in accordance with Chapter 52 (Zoning Amendments) of the City of Hercules Zoning Ordinance, the City Council received and considered the Zoning Text Amendment at a properly noticed public hearing on May 8, 2018 to consider the Zoning Text Amendment and related environmental review and did hear and use its independent judgment to consider all reports, recommendations, and testimony before taking any action on this Zoning Text Amendment.

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

After due study and deliberation, and after convening a public hearing for the proposed Zoning Text Amendment #ZTA 18-03 in accordance with Section 52.400 of the Zoning Ordinance of the Hercules Municipal Code, the City Council finds that #ZTA 18-03 is consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and that it is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance.

SECTION 1. Recitals. The City Council incorporates the above recitals into this Ordinance by the reference.

SECTION 2. Amendment. Chapter 34 of the Hercules Zoning Ordinance (Title 10, Chapter 1 of the Hercules Municipal Code) is hereby amended to read as follows (with red text in **strikeout** format indicating deletion and **underlined** red text indicating addition):

CHAPTER 34 SIGN REGULATIONS

34.100 PURPOSE AND APPLICABILITY

The purpose of this Chapter is to:

- A. Provide for the orderly construction, location, placement, size and maintenance of signs, outdoor advertising structures, and displays of any character, and to safeguard the general public from the hazards caused by dangerously and improperly located and maintained signs.
- B. Promote and protect the public health, safety and welfare by regulating outdoor signs of all types. The specific goals are to protect property values; enhance and protect the physical appearance of the community; to reduce sign or advertising distractions and obstructions, and to ensure that new signs are compatible in design and scale with their surroundings.

Except as otherwise provided in this chapter, it is unlawful for any person to construct, erect, enlarge, alter, or relocate within the city any sign as defined in this chapter, without first obtaining a sign permit for a sign or planned sign program, subject to design review approval, and a building permit.

34.101 GENERAL PROVISIONS

34.102 DIRECTOR APPROVAL REQUIRED

The Director of Community Development is authorized to approve, conditionally approve, or deny Sign Permits and Sign Programs, except where Planning Commission action is required, or when a referral to the Planning Commission is made in accordance with applicable sections of the Zoning Ordinance. Any application for a Sign Permit or Sign Program approval requiring action by the Director shall be acted upon within 30 days of submittal.

34.103 PLANNING COMMISSION APPROVAL REQUIRED

The Planning Commission shall hold a public hearing as specified in the Zoning Ordinance, review the application based on the criteria of this chapter, and take action under the following circumstances:

- A. The sign(s) does not conform to an established design policy adopted by the Planning Commission and/or City Council in accordance with this section.
- B. The sign is a freeway-oriented, freestanding pylon sign.
- C. The approval of ~~Sign Permit or~~ Master Sign Programs or ~~requires approval of a~~ Sign Variances.

34.200 LEGAL CONFORMING SIGNS

Any sign that legally exists as of the effective date of this ordinance shall be considered a legal conforming sign.

- A. Any legal conforming sign may be altered to reflect a change in use or occupancy advertised on the sign, provided that sign has the same fixtures, similar materials, similar colors, and similarly styled lettering and provided the sign face is not enlarged as determined by the Community Development Director.
- B. New signage may be proposed for a site that contains legal conforming signage, provided that all new signage is in compliance with this chapter. The Planning Commission may approve waivers to signage for a site that contains legal conforming signage, if such waivers are consistent with this chapter. Such waivers may be made only if the signage plan for the entire site furthers the purpose of this chapter by reducing visual clutter or otherwise improves the aesthetic appearance of the signage on the site by bringing the overall site into

closer compliance with the requirements of this chapter. A legally installed sign which does not comply with this chapter may continue to be used and ordinary maintenance and repairs may be made to the legally conforming sign provided the structure is not moved, enlarged, or structurally altered. A legal conforming sign may not be replaced with one which is nonconforming.

34.204 TERMINATION OF BUSINESS/REMOVAL OF SIGN

Any sign face that identifies or advertises a business must be removed within 30 days after the termination of that business from that site. After a period of ninety (90) days of the termination of the business if the sign is not reused by another business occupying the same site, all mountings, brackets, poles, sign faces and other signage material must be removed.

34.205 NOTICE, REMOVAL, LIENS, AND SINKING FUND

A. Notice and Removal. The Chief Building Official shall remove or cause to be removed any abandoned, dangerous, defective, illegal, prohibited, not maintained, or nonconforming sign subject to removal under the provisions of this chapter, which has not been removed within the time period specified in this chapter, or any other sign maintained in violation of the provisions of this chapter. The Chief Building Official shall prepare a notice which shall describe the sign and specify the violation involved and shall state that if the sign is not removed or the violation is not corrected within 30 days, the sign shall be removed in accordance with the provisions of this section.

For signs described under provisions of this chapter, the notice shall be mailed or given to the occupant of the property or other employee or, the owner of the sign, or representative upon which the sign is located. If known, the notice may also be mailed or delivered to the owner of the sign and the occupant of the property.

B. Emergency Removal. Notwithstanding the above provisions of this section, in cases of emergency, the Chief Building Official may cause the immediate removal of a hazardous, dangerous or defective sign, without notice.

C. Cost of Lien. Any sign removed by the Chief Building Official pursuant to the provisions of this section shall become the property of the City of Hercules, and may be disposed of in any manner deemed appropriate by the City. The cost of removal of the sign shall be considered a debt to the City by the owner of the sign and owner of the property, and may be recovered by the City by a lien against the property or any other remedy prescribed by law.

D. Sinking Fund. The project sponsor of a proposed sign shall be required to provide proof of the establishment of a sinking fund to cover the cost of removing the sign if it is abandoned. The word “abandoned” shall mean a sign that has not been operational for a consecutive ninety (90) day period, except where non-operation is the result of maintenance or renovation activity pursuant to valid city permits. The sinking fund shall be established within a two-

year period, at a financial institution approved by the city's Finance Department. The sinking fund payment shall be determined by the Finance Director and shall be adequate to defray expenses associated with the removal of the sign. The minimum amount for a sinking fund for any type of sign shall be three-hundred dollars (\$300.00). The maximum amount for a sinking fund for a sign shall be three-thousand dollars (\$3,000.00)

34.206 LIABILITY FOR DAMAGES

The provisions of this chapter shall not be construed as relieving or limiting in any way the responsibility or liability of any person erecting or owning any sign, for personal injury or property damage resulting from the placement of such sign, or resulting from the negligence or willful acts of such person, its agents, employees, or workmen, in the construction, maintenance, repair, or removal of any sign erected in accordance with a permit issued under this chapter; nor shall it be construed as imposing upon the City or its officers or employees any responsibility or liability by reason of the approval of any signs, materials, or devices under the provisions of this chapter.

34.207 ENFORCEMENT

- A. Permit Revocation. The Planning Commission is authorized and empowered to revoke any sign permit issued by the Community Development Director upon failure of the holder thereof to comply with any provisions of this chapter. The City Council is authorized and empowered to revoke any sign permit issued by the Planning Commission upon failure of the holder thereof to comply with any provisions of this chapter.
- B. Public Nuisance. In the event any person should erect, alter, relocate or maintain a sign in violation of the provisions of this chapter, the same is declared a public nuisance and, in addition to any other remedies available, including but not limited to administrative citations and civil penalties, the City Attorney is authorized to bring and prosecute an action in a court of competent jurisdiction to enjoin such person from continuing such violation.

34.208 CALCULATION OF SIZE OF SIGN, SIGN AREA, AND HEIGHT

- A. Within or on Structures. When the graphic representation of the sign occurs on a sign board, the size of the sign shall be calculated by the square footage of the sign board. For illuminated signs, all portions of the sign which are illuminated shall be included in the square footage. In other cases where lettering is attached to a structure and no sign board is utilized, the square footage of the sign shall be calculated by drawing a rectangle around all portions of the lettering; the square footage of the sign shall be the area of the rectangle.
- B. The sign area of wall-mounted and freestanding pylon and ground-mounted monument type signs shall be calculated as follows:
 - 1. The area of a wall sign comprised of individual channel-type letters, numerals, symbols, or other similar components painted on or attached flat against the wall of a building, where such individual components are without integrated background definitions and are

not within a circumscribed frame area, the total area of the sign shall be measured by the area enclosed by four (4) vertical and horizontal straight lines containing each word or symbol.

2. Where a freestanding, monument, or pylon-supported sign has two (2) faces, the area of both faces shall be included in determining the area of the sign. Sign height shall be measured as the vertical distance from grade adjacent to the sign footing, to the top of the sign, including the support structure and any design elements.

C. The regulations and limitations of this Section are intended to be maximum dimensions permitted. The Community Development Director or Planning Commission may require a sign or sign program be reduced to less than the maximum area or height allowable if such a requirement is found to be necessary to comply with the purposes of this chapter.

34.300 DISTRICT SIGN REGULATIONS

The following subsections set forth sign regulations according to zoning district classifications. Signage within a specific zoning district shall conform to the sign requirements for that zoning district.

34.301 RESIDENTIAL DISTRICT SIGN REGULATIONS

The maximum area, height, and location of signs allowed in residential districts and for residential uses shall be as follows:

1. One nameplate not to exceed 2 square feet in area indicating the name of the occupant of a single family dwelling. The nameplate shall be located not closer than 10 feet to any property line, and shall not exceed 6 feet in height.
2. One nameplate not to exceed one square foot in area pertaining to a home occupation. Such nameplate shall be non-illuminated and shall be located flat against the wall of the dwelling.
3. One identification sign pertaining to a multi-family dwelling with an area not to exceed 2 square feet for each dwelling unit or 20 square feet, whichever is less. The sign shall be located on the site of the multi-family dwelling, shall not be located in or face into any interior side yard or any rear yard, and if attached to a building shall not project more than 6 inches into a required front yard or a required side yard adjoining a street. A detached sign located not closer than 5 feet to any portion of a building, or to any property line adjoining a street, shall be located not closer than 20 feet to any other property line and shall not exceed 4 feet in height.
4. Identification signs pertaining to a conditional use with an aggregate area not to exceed one square foot for each 8 feet of frontage of the site. Such signs shall be located on the site of the conditional use, shall not be located in or face into any interior side yard or any rear yard, and if attached to a building shall not project more than 6 inches into a required

front yard or a required side yard adjoining a street. Detached signs located in any front yard or any side yard adjoining a street shall be located not closer than 5 feet to any portion of a building, and shall not exceed 6 feet in height.

5. No sign attached to a building shall project above the eave line or parapet line. No sign shall have any moving parts or be constructed of any reflective material. No illuminated sign shall be directly lighted, or flash on or off, but may be indirectly lighted or may have semi-direct or diffused lighting.

34.302 NON-RESIDENTIAL DISTRICTS SIGN REGULATIONS

The non-residential zoning districts include the following:

- A. All commercial districts including the General Commercial, Community Commercial, Recreational Commercial, and the Commercial Public Mixed Use District.
- B. All industrial districts including the Planned Commercial Industrial Mixed-Use District and the Planned Office/Research and Development District.
 1. All non-residential zoning district signs are required to be calculated with the following formula, unless stated otherwise
 2. Wall-Mounted Signs: 1 square foot of sign face for every lineal foot of storefront space leased, owned or rented by the business tenant.
 3. Ground-Mounted Monument Sign: 1 square foot of sign face for every 4 lineal feet of street frontage. Maximum height: 6 Feet.
- C. The Commercial-Residential and the Industrial-Residential Mixed Use Districts shall comply with the following:
 1. Live Work-Restricted Use Signs: Only non-illuminated blade, awning, canopy or wall-mounted signs are permitted. 1 square foot for every 10 lineal feet of building storefront space leased, owned or rented by the business tenant.
 2. Live Work-Limited Use Signs: Only non-illuminated blade, awning, canopy or wall-mounted signs are permitted. 1 square foot of sign for every 8 lineal feet of building storefront space leased, owned or rented by the business tenant.
 3. Live Work-Open Use Signs: Only non-illuminated blade, awning, canopy or wall-mounted signs are permitted. 1 square foot of sign for every 6 lineal feet of building storefront space leased, owned or rented by the business tenant.
 4. Mixed Use Signs: Only non-illuminated blade, awning, canopy or wall-mounted signs are permitted. 1 square foot of sign for every 5 lineal feet of building storefront space leased, owned or rented by the business tenant.
- D. Only businesses within the boundaries of the property shall be permitted to advertise on any freestanding pylon, ground-mounted monument or wall-mounted sign.
- E. No sign attached to a building shall project above the eave line or parapet line. No illuminated sign shall be directly lighted, or flash on or off, but may be indirectly lighted or may have semi-direct or diffused lighting.

34.400 SIGNS SUBJECT TO REVIEW

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

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

- H. Freestanding Pylon Sign. A freestanding pylon sign is a sign attached to columns erected directly into the ground. Only one freestanding pylon sign per one-thousand feet of lot frontage is permitted. The height of a pylon sign is measured from the top of the sign to the ground.
1. New freestanding pylon signs are prohibited to be constructed in the City of Hercules except where all of the following conditions are met:
 - a. The property on which the pylon sign is to be constructed must be zoned as General Commercial (CG).
 - b. The pylon sign must be constructed on-site and within 100 feet of the Interstate 80 right-of-way or easement.
 - c. The pylon sign must be approved as part of a Master Sign Program and shall be subject to environmental review under the California Environmental Quality Act.
 2. The pylon sign must be for on-site commercial developments intended to serve a market area that extends beyond the City limits of Hercules (as determined by the Planning Commission).
 - a. The sign shall be supported by a minimum of two enclosed supports, located at or near the exterior edge of the sign face, or constructed as a monolith (with no open area between the message area and the ground upon which the sign is located). Signs supported by a single pole shall not be permitted.
 - b. At signs which contain open area below the message area (i.e., between the supports), the height of the open area shall be at least equal to the height of the message area.
 - c. The colors and/or materials of the sign and the supporting structure shall be compatible with the exterior of the shopping center or buildings for which the sign provides identification. The design of the freestanding sign should reflect the architectural design of the buildings within the shopping center.
 - d. The sign may identify the shopping center or businesses (where a single business is not part of a larger center or development) and the name of the shopping center or business shall be prominently displayed in the sign message area. Individual tenants/owners may be identified on the sign providing the name of the center shall be clearly legible to the “target” audience, as determined by the Planning Commission. The freestanding pylon sign shall be limited to a maximum of three (3) on-site tenants.
 - e. Where the center/business adjoins a public street, the sign and the supporting structure shall be located no less than a distance equal to the maximum sign height from the nearest edge of the public street sidewalk (or curb, if there is no sidewalk), and the sign and supporting structure shall be located no closer than 10 feet from any other property line at the perimeter of the center/business site. This distance shall be measured from the closest point on the property line to the portion of the sign or sign structure that is closest to the property line.
 - f. The maximum height of the sign shall not exceed 90 feet.
 - g. Notwithstanding Section 34.400.N, pylon signs may include a digital display, so long as such digital display occupies no more than twenty five (25) square feet on each sign face.
 - h. As of the effective date of this ordinance, a legally installed freestanding pylon sign may continue to be used and ordinary maintenance and repairs may be made to the

legally conforming sign provided the structure is not moved, enlarged, or structurally altered. Existing freestanding pylon signs will not be permitted to be enlarged, expanded, or allowed any additional sign panels to be constructed within their existing sign area. Existing sign panels on legally-constructed and permitted freestanding pylon signs are permitted to be replaced when new businesses replace one or more of the existing on-site businesses shown on existing sign panels.

- I. Projecting Signs/Blade Signs. A projecting or blade sign is one which is attached to a wall at an angle. Where a projecting sign projects over a sidewalk, it must clear the ground by at least eight (8) feet. Any use which contains a projecting sign may not contain a freestanding pylon sign. Projecting signs may not be placed above the first story of a structure unless it is advertising a use that occurs above the first floor. In cases where a projecting sign occurs above the first story of a structure, it may not be placed higher than the midpoint of the second story.
- J. Subdivision Sales Signs, On-Site. On-site subdivision sales signs shall comply with the following regulations:
 - a. A maximum of two advertising signs, with a maximum area of 24 square feet and a maximum height of 6 feet for each sign; or
 - b. A maximum of four directional signs, with a maximum area of 16 square feet and a maximum height of 6 feet for each sign; or
 - c. One sign for each model in the project, with a maximum area of 8 square feet and a maximum height of 4 feet for each sign.
- K. Subdivision Sales Signs, Off-Site. Off-site subdivision sales signs shall comply with the following regulations:
 - a. The maximum number of signs shall be four per project.
 - b. The maximum height shall be 6 feet.
 - c. Setbacks shall be provided as follows: 15 feet from property line, 300 feet from other authorized off-site subdivision sales signs, and 100 feet from occupied residential structures.
 - d. All sign bases and support structures shall be boxed or enclosed in a decorative base.
- L. Wall Signs. A wall sign is one which is applied, painted or affixed flush to the exterior of a structure. No wall sign shall protrude beyond the roof line or cornice structure of a building, and shall not cover windows, doors or architectural detailing of the building to which it is affixed.
- M. ~~Religious Institution Sign. A religious institution sign must be for the use of a religious institution, must occur on the same parcel as the religious institution, and may have a changeable copy sign. A religious institution sign shall be either a wall or monument sign in accordance with the requirements for those signs.~~
 - . Changeable Copy Signs. Changeable copy signs are prohibited except ~~for religious institutions, bulletin boards, and community signs~~ as approved through a Master Sign Program.

N. Directory Signs. A Directory Sign is one which advertises more than one use or establishment. A directory sign may be mounted to the ground, one or more poles, walls, or may project from a wall at an angle. A directory sign may advertise or identify only uses which exist within the same lot or uses which exist in any group of structures which share a common point of access from the public way. Only one directory sign per five-hundred feet of lot frontage is permitted. Directory Signs are permitted only in subsection 1, 2, or 3 below:

1. Community Commercial zoning district along Sycamore Avenue.
2. General Commercial zoning district along San Pablo Avenue.
3. General Commercial zoning district along Willow Avenue.

~~P. Advertising Messages Incorporated Into Approved Signage. Permanent advertising messages or business information (such as signage indicating business hours, signage which indicates which types of bank machine cards are accepted, or other similar message) shall be considered a sign subject to review, unless that message is in a sign not subject to a permit. When reviewing such signage, other signs on the site shall also be considered.~~

~~Q.O.~~ Gasoline Sales Canopy Signs. Except as allowed through an approved Master Sign Program, Gas station canopy signs shall not extend beyond the edges of the canopy and shall comply with one of the two following alternative provisions:

1. No sign shall exceed 15% of the square footage of the side of the canopy upon which it is located. No side shall contain more than one sign.
2. The total area of signs on a gas station canopy shall not exceed 9% of the total square footage of all ~~signs~~ sides of the canopy. No canopy shall have more than two signs located on it. Both signs may be located on the same side of the canopy.

~~R.P.~~ Master Sign Programs.

1. General Requirements. A Master Sign Program is required when a sign(s) is requested for:
 - a. A building or grouping of buildings which contains six (6) or more business or office uses, or
 - b. Community uses that request more than two identification signs. No permit shall be issued for an individual sign requiring a permit on a site with six (6) or more existing or proposed business spaces unless, and until, a master sign program for the property on which the sign will be erected has been approved by the Design Review Committee.
2. Required Information. A Master Sign Program shall contain the following information:
 - a. An accurate plot plan of the lot, at such a scale as the Planning Division may require.
 - b. Location of buildings, parking lots, driveways and landscaped areas on the lot.

- c. Computation of the maximum total sign area, the maximum area for individual signs, the height of signs and the number of freestanding signs allowed on the lot included in the plan.
 - d. An accurate indication of the plot plan of the proposed location of each present and future sign of any type, whether requiring a permit or not.
 - e. Color scheme.
 - f. Lettering or graphic style.
 - g. Materials.
 - h. Sign dimensions.
 - i. Provisions for leasing information.
3. Window Signs. A Master Sign Program including window signs shall indicate the areas of the windows to be covered by window signs and the general type of the window signs permitted (e.g. paper affixed to window, painted, neon, etched on glass). (See 34.500J for permitted coverage.)
 4. Freestanding Pylon Signs. The Master Sign Program shall address shared or common usage of freestanding pylon signs.
 5. Other Provisions. Master Sign Programs may contain regulations as the Design Review Committee may reasonably determine are necessary to assure the Program's compliance with the requirements of this Chapter.
 6. Procedures. A Master Sign Program shall be a condition of approval of any planned development, design review, use permit or other application required by the City, and shall be processed prior to installation of any signs. Any sign which conforms to an approved sign program may be approved by the Director of Community Development. Approval of a Master Sign Program does not waive the permit requirements for individual signs.
 7. Amendment. A Master Sign Program may be amended by filing a new Master Sign Program that substantially conforms to ~~all~~ requirements of this Chapter.
 8. Binding Effect. After approval of a Master Sign Program, no signs shall be erected, placed, painted, or maintained, except in conformance with such plan, and such plan may be enforced in the same ways as any provision in this Chapter. The Master Sign Program shall be attached to the lease agreements for all leaseable space within the project. In case of any conflict between the provisions of such a plan with any other provisions herein, ~~this Section~~ the provisions of the Master Sign Program shall control.

34.500 SIGNS NOT REQUIRING A PERMIT

The following signs are permitted as indicated in the following subsections, and require no permit.

- A. **Bulletin Boards.** One bulletin board not to exceed 20 square feet in area shall be permitted, serving ~~only~~ to identify and announce ~~the~~ on-site services and activities ~~of a park, public or parochial school, library, church, community center or other similar or community facility or institution.~~ The bulletin board shall be located on the site of the community facility or institution, shall be located not closer than 5 feet to any portion of a building, shall be located not closer than 10 feet to any property line adjoining a street, shall be located not closer than 20 feet to any other property line and shall not exceed 6 feet in height.
- B. **On-Site Real Estate Sign.** An on-site real estate sign is a temporary sign advertising the lease or sale of land, space or structure. This type of sign is generally mounted to post structure embedded in the ground with signage attached. Onsite residential signage may not exceed 6 square feet for the primary sign and up to an additional 4 square feet for add-on placards. For all other types of land uses and vacant land, the sign may not exceed 24 square feet. These types of real estate signs shall not be located on City of Hercules rights-of-way, landscaped medians or parkways. On-site Real Estate Signs must be removed within ten days of the sale or lease of the property.
- C. **Off-Site Residential Real Estate Open House/Directional Signs.** An off-site residential real estate sign is a temporary, portable off-site sign within any residential zone intended to provide directional assistance for an “open house” and shall be:
1. “A-frame” in design. “Stick signs” are strictly prohibited.
 2. Allowed only for residential real estate located within the City of Hercules.
 3. Limited to a maximum total of 5 temporary double-sided off-site residential real estate signs per property provided motorist visibility is not obstructed and no more than 4 double-sided signs for different properties shall be at a single intersection.
 4. Limited to 30 inches in height and 6.25 square feet in sign face area as measured on one side.
 5. Signs may be placed on private property only after first obtaining permission from the property owner.
 6. Signs may be placed in the public right-of-way only when immediately adjacent to property lines in such a manner that does not interfere with ADA accessibility or interrupt flow of vehicle or pedestrian traffic nor obstruct vehicular visibility. However, signage is prohibited in the center divider, any landscaped center-median, and/or traffic islands of public streets, bicycle paths or public walking trails. Additionally, signs shall not be placed on fences, utility poles or walls, or attached to traffic lights or light standards.
 7. Signs may be displayed sunrise to sunset on the day of the open house or on broker’s touring day(s).

8. **Violations.** All signs in violation are subject to seizure by the City of Hercules. (Note: These signs will be removed and stored at the City of Hercules Corporation Yard for a maximum of ten (10) days. After ten (10) days, the City will dispose of the sign if not claimed. Signs may be retrieved by contacting the Public Works Department and waiving the fine for the first violation, paying \$25 for the second violation and paying \$50 for each violation thereafter for retrieval fee per sign.
9. No balloons or attachments are permitted on the A-frame real estate open house signs.
- D. **Contractor Signs.** A contractor's sign is a temporary sign erected during the construction phase of a project only, not to exceed 24 square feet. Such sign must be removed upon the issuance of a Certificate of Occupancy, where one is required. Contractor Signs may also be used during home improvement or renovation projects that are not subject to a Certificate of Occupancy, but must be removed after the work has been completed.
- E. **Signs for Garage or Yard Sales.** Lawn, yard or garage sale signs are prohibited on any state or city public property or right-of-way, or on utility poles. No sign for garage or yard sales shall be posted more than 24 hours before and after the event. Garage or yard sale signs are limited to a maximum of four (4) square feet.
- F. **Special Events or Notice Signs.** Special Events or Notice Signs are temporary signs, such as banner, pennants, wind socks, posters or flags, displayed on a non-residential property for decorative or festive purposes to announce festivals, elections, or special events. Such signs may not interfere with pedestrian or vehicular traffic. No individual building occupant may utilize the provisions of this section for more than 30 days within a calendar year. Prior to displaying any Special Event or Notice Sign or Signs, the building occupant shall submit written notification to the Community Development Director of the installation and removal dates.
- G. **Special Signs and Non-Commercial Holiday Decorations.** Non-commercial holiday decorations, signs on products or product containers, public information and safety signs, historic markers, signs required by local, state or federal law, and non-commercial messages placed on lawful signs shall be exempt from the regulations of this chapter.
- H. **Temporary Signs for Special Events.** Temporary signs and banners for promotional or seasonal events of civic, charitable, educational, religious, or service organizations are allowed when displayed on the location of the subject activity. They shall be placed no sooner than 14 days prior to the event and removed no later than seven days after the event. Such signs or banners shall not exceed 32 square feet.
- I. **Warning Signs.** "No trespassing," "no dumping," or other warning signs are allowed that do not exceed 4 square feet per sign.
- J. **Window Signs.** Window signs are allowed provided that they are placed on the inside of the window, and occupy no more than 25% of the glassed area of all windows, and is at least 3

feet from the window frame of an exterior window and the majority of the interior is visible from the outside of the building.

- K. **Household Signs.** Signs that display street numbers, last names and personal names given to residential structures shall not require a permit.

34.600 SPECIFIC REGULATIONS FOR TEMPORARY AND MISCELLANEOUS SIGNS

The following section establishes regulations for the maximum number, location, maximum area, maximum height and/or special regulations for all signs of a temporary nature that are allowed in the City of Hercules.

A. Banners.

1. Temporary (for a period of not more than 30 days per calendar year) promotional banners ~~including “grand opening”, “under new management”, and seasonal or other special event advertisements;~~ may be placed on any business, ~~excluding fast food restaurants and automobile and open lot vehicle dealers;~~ a total of 30 days per calendar year. The maximum size of all banners on-site shall not exceed 36 square feet combined. The length of the banner may not exceed 40% of the length of the building elevation on which it is displayed. No more than two banners may be used for any promotion. A banner shall only be affixed to a building, and shall not be placed on or above a roof.
- ~~2. Fast food restaurants and automobile and open lot vehicle dealers may display banners year round, in accordance with the following restrictions:~~
 - ~~a. Up to two (2) banners, with a maximum aggregate area of 36 square feet, may be displayed.~~
 - ~~b. The banner shall only be attached to and displayed below the eave of the roof line of the subject building.~~
 - ~~c. The length of the banner may not exceed 40% of the length of the building elevation on which it is displayed.~~

B. Permanent and Seasonal Decorations. Permanent and seasonal ornaments of a decorative nature shall comply with the following regulations:

1. The number of decorations allowed shall be determined at the time of Sign Permit issuance.
2. The decoration shall contain no commercial copy (e.g. business name, product, etc.)

C. Construction Signs. One “under construction” sign is allowed per construction site. The sign shall not exceed forty (40) square feet in area and ten (10) feet in height. The sign may identify the project developer, project participants, and/or future occupants.

D. On-Site Directional Signs. Where appurtenant to a permitted or conditionally permitted use, on-site directional signs may be placed subject to the following regulations:

1. Maximum area of a directional sign shall be four square feet.
2. Maximum height shall be five feet.

3. Directional signs shall have no commercial message or copy.
- E. Inflatable Signs. Inflatable balloons, objects or signs are not permitted to be displayed on any commercial or industrial or mixed use zoned building. Temporary seasonal businesses, such as Christmas tree lots may display an inflatable object associated with the holiday for one period *not to exceed 30 days*. Amusement parks and amusement destinations may be permitted to display temporary inflatable balloon objects that do not exceed the height of the project building(s) for a period of not more than 30 days per calendar year. Amusement parks and amusement destinations may display on a temporary basis two inflatable signs or characters, a maximum of 15 feet tall at each major entry to the facility. For the purposes of this subsection, a major entry is an entry from a public road providing direct public access to the site. All inflatables shall be affixed to the ground, and shall not be attached to, or displayed on or above any structure.
- F. Political Campaign Signs. Political Campaign Signs are allowed to be displayed only on prescribed locations identified and adopted through legislation by the City Council.

34.700 PROHIBITED SIGNS

The following signs are prohibited by this Section:

- A. Abandoned signs. Any sign which is unused for more than 90 consecutive days shall be deemed abandoned and shall be removed. Individual tenant signs in multi-tenant shopping centers may remain unused for a longer period provided all advertising copy is removed and a blank sign face is maintained. For the purposes of this Section, “unused” shall mean the absence of copy or advertising message, or a sign which advertising a business or activity no longer located at the subject site.
- B. Signs that simulate, by virtue of size, shape, color, lettering, or design, a traffic sign or signal, or signs with characters or graphics that interfere with, mislead, or confuse the pedestrian or motorist are prohibited.
- C. Portable signs, sandwich board, “A-frame”, or movable freestanding signs, including signs placed on parked vehicles or trailers, except where specifically authorized in the Municipal Code.
- D. Any sign erected in or extending into the public right-of-way, except signs in the commercial, industrial, planned office/research and development zoning districts, and properties in the Central Hercules Plan where mixed commercial-residential land uses are developed and improved, and where the applicant has received an encroachment permit from the Public Works Department, and publicly owned signs for directional purposes.
- E. Any roof-mounted sign that projects above the roof or parapet of a building is prohibited. The Planning Commission shall be authorized to grant approval where the sign is designed as part of the building’s architecture, such as a blade sign on a theater façade or a sign integrated into a raised building’s parapet.
- F. Any structure that advertises an off-site business or activity, product, or service (such as a billboard) is prohibited with the exception of off-site residential subdivision advertising signs that comply with the regulations established by this Section.

- G. Animated signs that use blinking lights, audible sounds, human or animal generated movements. This restriction does not apply to electronic message signs and time and temperature signs.
- H. Banners, streamers and pennants are prohibited except where specifically authorized by this chapter.
- I. Inflatable balloons, objects or signs are not permitted to be displayed on any commercial or industrial or mixed use zoned building except where specifically authorized by this chapter.

SECTION 3. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

SECTION 4. Effective Date and Publication. The City Clerk shall certify to the adoption of this Ordinance and shall publish a summary of the Ordinance in the West County Times and post a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Councilmembers voting for and against the Ordinance

This Ordinance shall be effective thirty days from date of final adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 8th day of May, 2018, and was passed and adopted at a regular meeting of the Hercules City Council on the ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Kelley, Mayor

ATTEST:

Lori Martin, Administrative Services Director &
City Clerk

RESOLUTION NO. 18-

A Resolution of the City Council of the City of Hercules Approving Design Review Permit #18-01 for the Master Sign Program for the Safeway Center at the Northeast Corner of the Intersection of San Pablo Avenue and Sycamore Avenue, Subject to Conditions of Approval Contained Herein.

WHEREAS, on September 26, 2017, at a duly held public hearing, the City Council adopted Resolution No. 17-069 which: approved the Safeway Project Initial Study/Addendum (#IS 17-01) to the Hercules New Town Center (HNTC) Environmental Impact Report (State Clearinghouse No. 2007062002, certified 2009), pursuant to the California Environmental Quality Act (CEQA); reconfirmed and readopted the applicable mitigation measures listed therein; and reconfirmed and readopted the Statement of Overriding Considerations for the Hercules New Town Center Project as amended; and

WHEREAS, on September 26, 2017, at a duly held public hearing, the City Council approved Resolution No. 17-071, approving Initial/Final Planned Development Plan (PDP) #17-01, Design Review Permit (DRP) #17-02, Conditional Use Permit (CUP) #17-01, and Minor Exception (ME) #17-01 for the Safeway Center Project, located at the northeast corner of the intersection of Sycamore Avenue and San Pablo Avenue; and

WHEREAS, on October 2, 2017, at a duly held public hearing, the City Council approved Ordinance No. 503, which included Zoning Text Amendment #17-01 to amend Section 34.400.H of the Zoning Ordinance in order to allow freeway-oriented pylon signs up to 90 feet tall on property zoned General Commercial within 100 feet of Interstate 80; and

WHEREAS, the aforementioned Safeway Center project approvals included a set of Conditions of Approval (COAs; Exhibit A to Resolution No. 17-071), including COA #17, requiring that the project applicant submit a Master Sign Program (MSP) for Planning Commission approval of all on-site signage, consistent with the provisions of Section 34.400.R of the Zoning Ordinance; and

WHEREAS, the project applicant, McNellis Partners, submitted to the City on April 10, 2018, an application for a Master Sign Program, deemed complete by City staff; and

WHEREAS, DRP #18-01 proposes a Master Sign Program for the previously approved Safeway Center at the northeast corner of Sycamore Avenue and San Pablo Avenue (Assessor Parcel Number 404-040-040-2); and

WHEREAS, on April 16, 2018, at a duly held public hearing, the Planning Commission passed Resolution 18-06 recommending that City Council adopt Zoning Text Amendment #18-03 to amend the Zoning Ordinance sign regulations; and

WHEREAS, on May 8, 2018, at a duly held public hearing, the City Council adopted an Ordinance approving Zoning Text Amendment #18-03 to amend the Zoning Ordinance for clarity and consistency regarding Master Sign Programs, both internally and with the proposed and other potential Master Sign Programs; and

WHEREAS, Chapter 42 of the Zoning Ordinance, “Design Review,” defines the purpose of and types of projects, including any exterior construction of on-site signage, subject to review and approval by the Planning Commission, based on findings of fact; and

WHEREAS, the City on April 26, 2018, mailed project hearing notices to all property owners within 300 feet of the project site and published a public hearing notice on April 27, 2018, in compliance with Section 40.700 of the Zoning Ordinance; and

WHEREAS, on May 8, 2018, the City Council held a duly noticed public hearing to consider Design Review Permit #18-01 and did hear and use its independent judgment to consider all said reports, recommendations, and various verbal and written testimony provided at or prior to the May 8, 2018, public hearing; and

WHEREAS, the applicant agrees with the necessity of and accepts all elements, requirements, and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work at or visit this development in particular.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hercules, after due study of the proposed Master Sign Program (including drawings, elevations, and written sign guidelines), Conditions of Approval, and staff report, and deliberation and public hearing, determines that the following findings of fact can be made regarding approval of DRP #18-01 so long as the conditions of approval listed further below are complied with in accordance with the approved attached drawings in Exhibit B:

- The approval of the design review plan complies with all pertinent provisions of the Zoning Ordinance, including provisions of Chapter 42, “Design Review,” and applicable zoning and land use regulations, including but not limited to the Hercules General Plan as amended and any specific plan.
- The approval of the design review plan is in the best interests of the public health, safety, and general welfare.
- General site considerations have been designed to provide a desirable environment for the development.
- General architectural considerations, including the character, scale, and quality of the design, the architectural relationship with the site and other buildings, building materials, colors, screening of exterior appurtenances, exterior lighting and signing, and similar elements have been incorporated in order to ensure the compatibility of this development with its design concept and the character of adjacent buildings.
- General landscape considerations have been considered to insure visual relief, to complement buildings and structures, and to provide an attractive environment for the enjoyment of the public.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Hercules determines that DRP #18-01 is within the scope of the development programs evaluated in the Hercules New Town Center Environmental Impact Report (EIR) and its addendum (Initial Study/Addendum #17-01), no new significant environmental effects could occur as a result of the

proposed project, no new mitigation measures are required for the proposed project, and the proposed project does not require further environmental review under CEQA.

WHEREAS, on April 16, 2018, at a duly held public hearing, the Planning Commission passed Resolution 18-07 recommending that City Council adopt Design Review Permit #DRP 18-01 to approve the proposed Safeway Center Master Sign Program; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Hercules, hereby approves Design Review Permit #18-01 with the following conditions of approval:

1. Approval of DRP #18-01 is contingent upon adoption of Zoning Text Amendment #18-03, (changes to the Zoning Ordinance sign regulations).
2. Approval of DRP #18-01 shall conform to the Master Sign Program (Exhibit A hereto).
3. All conditions of approval for the project's prior approvals, including Final Planned Development Plan #17-01, Design Review Permit #17-02, Conditional Use Permit #17-01, and Minor Exemption #17-01, continue to be in affect and shall be met.
4. The applicant shall obtain all required building permits prior to construction of on-site signage. The commencement of construction or operations shall constitute acceptance of all of the conditions and obligations imposed by the City for this project. The applicant/grantee by said acceptance waives any challenge as to the validity of these conditions.
5. All persons installing signage shall obtain a Business License from the Finance Department of the City of Hercules.
6. The Master Sign Program shall be attached to the lease agreements for all leasable space within the project.
7. The applicant agrees as a condition of approval of this permit to hold harmless and to defend, at the sole expense of applicant, any action brought against the City based upon approval or use of these permits. The applicant shall indemnify and reimburse the City for any judgement for damages, court costs and attorneys' fees that the City may be required to pay as a result of any such action. The City, at its sole discretion, may participate, which shall not relieve the permittee of its obligations under this condition.
8. All LED (light-emitting diode) signs shall have automatic dimmers to adjust brightness based on ambient light conditions and/or time of day such that signage is lit to appropriate standards, subject to City staff review and approval.

PASSED AND ADOPTED by the City Council of the City of Hercules on this 8th day of May, 2018, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Chris Kelly, Mayor

ATTEST

Lori Martin, City Clerk

- Exhibit A: Safeway Hercules — Master Sign Program
- Exhibit B: Findings with Facts

- **Exhibit A: Safeway Center Master Sign Program - Design Review Permit #18-01**

Exhibit B: Findings with Facts

Safeway Center Master Sign Program Design Review Permit #18-01

Section 42.500 of the City of Hercules Zoning Ordinance requires five findings to be made for granting a Design Review Permit; however, for Master Sign Plans for previously approved Planned Development Plans, only the Findings 1, 2, 3, and 4 apply, as follows:

Finding No. 1: The approval of the design review plan is in compliance with all provisions of Zoning Ordinance Chapter 42, “Design Review,” other pertinent provisions of the Zoning Ordinance, and applicable zoning and land use regulations, including but not limited to the Hercules General Plan as amended and any specific plan.

Fact: Approval of the Master Sign Program for the Safeway Center is consistent with both (a) Section 34.400.R of the Hercules Zoning Ordinance, which provides for Master Sign Programs for groups of commercial buildings, and (b) Condition of Approval #17 of the Safeway Center project (Exhibit A to Resolution No. 17-071), requiring that the project applicant submit a Master Sign Program (MSP) for Planning Commission approval of all on-site signage, consistent with the provisions of Section 34.400.R of the Zoning Ordinance. As stipulated in Section 34.400.R of the Zoning Ordinance, the Safety Center MSP provides all of the required information, including but not limited to: an accurate site plan, with locations of building, parking lots, driveways, and landscaped areas; computation of maximum total sign area, maximum individual sign area, the height of signs, and the number of allowed freestanding signs; an accurate indication of the site location for each sign; color scheme; lettering and graphic style; materials; sign dimensions; and shared usage of pylon sign.

Finding No. 2: The approval of the design review plan is in the best interests of the public health, safety, and general welfare.

Fact: The Master Sign Plan for the Safeway Center would not impact or be detrimental to the health, safety, welfare, or public interest. The proposed signage includes—and does not preclude—the installation of signage to ensure proper and safe flow of vehicle and pedestrian traffic in and out of and through the project site. All electrical signs must be Underwriters Laboratories (UL) compliant, i.e., certified for electrical safety.

Finding No. 3: General site considerations, including site layout, open space, and topography, orientation and location of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, public safety, and similar elements have been designed to provide a desirable environment for the development.

Fact: Given the proximity of the project to two major highways (Interstate 80 and Highway 4) and two major arterial streets (San Pablo Avenue and Sycamore

Avenue), and given the relative elevation of the project site to those thoroughfares, the Master Sign Plan for the Safeway Center appropriately includes a freeway-oriented pylon sign and two monument signs properly situated and designed to be highly visible to passing motorists without obscuring views critical for safety. Tenant identification signs are also appropriately located and scaled on buildings to make businesses readily identifiable to potential customers and other visitors.

Finding No. 4: General architectural considerations, including the character, scale, and quality of the design, the architectural relationship with the site and other buildings, building materials and colors, screening of exterior appurtenances, exterior lighting and signing, and similar elements have been incorporated in order to insure the compatibility of this development with its design concept and the character of adjacent buildings.

Fact: The Master Sign Plan for the Safeway Center designates sign areas for each individual building based on each building's key architectural elements, ensuring signage is appropriately scaled and aligned for each building. Signs cannot extend above the building fascia. The pylon and monument signs incorporate brick veneer to match the façade material approved for the commercial buildings. Signs must be built of rust-proof materials and, where applicable, painted with highest quality, smooth finish polyurethane paint. All electrical lighting must be UL certified and meet all applicable building code standards, with no visible light leaks and all electrical devices, raceways, conduit, power supplies, and fasteners concealed. The Master Sign Program also prohibits animated, inflated, tethered, and other lower quality, temporary signs that can contribute to visual clutter and distraction.

Finding No. 5: General landscape considerations, including the location, type, size, color, texture, and coverage of plant materials at the time of planting and after a 5-year growth period, provision for irrigation, maintenance and protection of landscaped areas and similar elements have been considered to insure visual relief, to complement buildings and structures, and to provide an attractive environment for the enjoyment of the public.

Fact: Master Sign Programs do not include or affect the project landscaping, which was previously approved by the City Council on September 26, 2017, through Resolution No. 17-071, which approved Initial/Final Planned Development Plan (PDP) #17-01 and Design Review Permit (DRP) #17-02 for the Safeway Center.



Safeway Hercules | Master Sign Program

Corner of San Pablo Avenue & Sycamore Avenue
Hercules, California 94547

Rev. April 24, 2018

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Project Description

"The buildings reflect an industrial style and forms that respond to the unique history of Hercules as well as providing an urban statement. The Safeway entry has a dramatic angled shed roof accentuating the facade, with a strong glass expression and includes a combination of brick, plaster, and composite siding. The other buildings respect and enhance the architectural theme. Varied landscaping and pedestrian amenities, such as the outdoor seating area at Safeway, further enhance the pedestrian experience" [Johnson Lyman Architects]

Contact List

Owner
McNellis Partners
419 Waverley Street Palo Alto, CA 94301
650.853.3904
650.853.3910 fax
John@mcnellis.com

Architect
Johnson Lyman Architects
1375 Locust Street Suite 202
Walnut Creek, CA 94596
925.930.9690
Dave@JohnsonLyman.com

Project Contact
Todd Paradis
925.226.5639
Todd.Paradis@safeway.com

Sign Consultant
Pacific Neon Company
2939 Academy Way
Sacramento, California 95815
800. 927. 4762
Howard@pacificneon.com

City of Hercules
111 Civic Drive
Hercules, CA 94547
510.799.8200
510.799.2521 fax

Introduction

The establishment of this Master Sign Program (MSP) is to compliment and enhance the appearance of the building and the integrity of the architectural design. The objective is to encourage high quality and unique signage, which is an integral part of the architecture of the building using a consistent and uniform sign standard, and to maintain the aesthetic quality of the property along with the community standards of the City of Hercules. The intent of this MSP is to insure that tenant signage on this property is designed and executed in a manner which will achieve these objectives while providing appropriate identification of Tenant’s businesses, including incorporation of corporate identification where applicable. The design of all graphics will be carefully considered in relation to the site architecture and landscaping, as well as to the specific context of the location within the project. In cases not covered by The Hercules Master Sign Program the prevailing criteria found within the City of Hercules Municipal Code shall prevail.

Submittal & Approval Process

- 1. Submittal to Landlord
Prior to sign fabrication and application for City approval of permits, each Tenant shall submit to the Landlord for approval at least three (3) complete sets of detailed design and shop drawings including the following:
 - a. Elevation of storefront illustrating the proposed sign design and all dimensions as they relate to the storefront elevation of Tenant’s premises; Fully dimensioned and scaled shop drawings. Sign elevation must be rendered in color and must specify exact dimensions (including line spacing), copy, layout, materials, colors, method of attachment, illumination, electrical and all other details pertinent to the sign construction, as well as all sign area square footage calculation(s) in compliance with this criteria.
 - b. Sign section detail through the letter and/or logo shall show the dimensioned projection of the face of the letter and/or logo and method / specification of illumination. Letters and/or logo sign details must be accurately dimensioned including line spacing.
 - c. Approval or disapproval of sign submittal shall remain the sole right of the Landlord or his chosen representative. If submittal are disapproved, then Tenants must submit revised plans until Landlord’s approval is obtained.

- 2. City Submittal
A full set of final plans must be approved and stamped by the Landlord prior to permit application or sign fabrication. Following Landlord’s approval of the proposed signage, Tenant or his agent must submit an application to the City for all permits for fabrication and installation by a licensed and bonded sign contractor.
 - a. Each Tenant shall be responsible for the fulfillment of all requirements of these Criteria and of government agencies with jurisdiction and approved specifications.
 - b. All City coordination with respect to approvals and permits for signs and their installation shall be obtained by the Tenant or his/her Representative, at his/her sole expense.
 - c. Any changes requested by the City regarding design or intent must be also cleared by Landlord before submittal to City.
 - d. The Landlord has final approval for design and content of tenant signage in accordance with the City Sign Regulations or Zoning Ordinance.
- 3. Approval and Commencement
Tenant and his sign contractor shall not be permitted to commence installation of the exterior sign unless all of the following conditions have been met:
 - a. A stamped set of final drawings reflecting the Landlord’s and the City’s approval shall be obtained from each party.
 - b. The Landlord must receive the sign installer’s and/or sign company’s Certificate of Insurance and Business License.
 - c. The Landlord must receive and approve the sign installer’s and/or sign company’s schedule for installation of signage.
- 4. Modifications
In the event Tenant wishes to change its exterior sign anytime during the term of its lease, then Tenant must comply with the requirements set forth herein and any future modifications, revisions or changes which have been made to the criteria for the property after the execution of its lease agreement.

Sign Construction Conditions

1. All electrical signs shall be UL compliant and carry the certified and registered UL label affixed to sign cabinet in a place where it is visible at pedestrian level.
2. The sign contractor shall be responsible for the fulfillment of all the requirements and specifications, completing the installation in a workman-like manner, and cleaning up, patching and painting any surfaces damaged by the installation to original building specifications.
3. All sign fabrication work shall be of excellent quality. All logo images and type styles shall be accurately reproduced. Lettering that approximates type styles shall not be acceptable. Landlord reserves the right to reject any fabrication work deemed to be below standard or misrepresents approved drawing designs.
4. Signs must be made of durable rust-inhibited materials that are appropriate and complimentary to the building.
5. Finished surfaces of metal shall be free from oil canning and warping. All sign finishes shall be free of dust, ripples, weld marks, orange peel, drips and runs, and shall have uniform surfaces conforming to the highest standards of the industry.
6. All signage with concealed lighting shall be appropriately sealed with no visible light leaks.
7. All electrical devices, raceways and conduits must be concealed and/or located within the Tenant's space.
8. Mounting pins and brackets must be as streamlined and painted to match the adjacent building or sign, where applicable.
9. Fasteners and attachment connection must be concealed.
10. Manufacturers' identification labels and UL labels should be in a inconspicuous location.
11. All metals to be painted with the highest quality automotive polyurethane paint, unless otherwise specified. Tenant's sign contractor is required to specify and execute a sign painting application that yields the longest life with the least likelihood of paint fading and peeling. Paint must withstand exterior weather conditions, and be sprayed to a smooth finish, not brushed on.
12. Landlord reserves the right to disapprove designs which are deemed offensive by community standards, are non-conforming to sign standards as outlined in this document, or deemed not demonstrating adequate design proficiency by landlord.
13. Upon termination of the Lease, the tenant shall leave the facade wall, awning, glazing or hanging sign in good condition. Without limitation, the tenant shall be specifically required in a workman like manner to all remove installed signage, fill all holes, and terminate all electrical wiring per prevailing codes. At the Landlord discretion, the tenant is required to restore a consistent look and color to match the surrounding facade. The tenant is required at its sole cost and expense to replace all store frontage glass areas that can not be fully restored.

Approved Sign Types & Definitions

Approved sign types are outlined here to provide guidance and expectations to tenant exterior building signage. Approved types may be combined with each other as a method of design and creativity is strongly encouraged. Design approval by Landlord/City is conditional and is based on merit of design, workmanship/materials, size and placement.

1. Illuminated Pan Channel Letters/Logos
Pan channel construction is defined as fabricated dimensional signs that have translucent backs. Signs are internally illuminated with LEDs.
2. Halo Illuminated Reverse Pan Channel Letters/Logos
Reverse pan channel construction is defined as fabricated dimensional signs with solid, opaque faces and returns, typically fabricated aluminum. Signs are pegged off of wall with metal standoffs creating space between sign back and fascia surface. Signs are internally illuminated, typically with shielded LEDs which emanates from sign backs onto wall surface, creating a silhouetted graphic with halo lighting reflecting onto the wall surface behind it.
3. Window Signs
Tenants are allowed vinyl film window graphics on lower windows, doors and sidelight glass glazing, but are limited to up to 25% of the specific window area for graphics. Window graphics are not allowed on the upper windows, above the transom structure. Window graphics should only contain business name, secondary copy pertaining to business services, hours of operation or just graphics. Business name / logo may be allowed to span across adjacent windows as necessary. No sales events or messages not pertaining to business name or services will be allowed. Landlord reserves the right to review content and design prior to application.
4. Temporary / Promotional Sign / Contactor Sign
A contractor's sign is a temporary sign erected during the construction phase of a project only and shall comply as follows.
 - a. Maximum Number 4 per project.
 - b. Maximum height 8ft.
 - c. Maximum Area 32 SF.
 - d. 15ft. Setback from property line; 300 ft from other authorized Temporary Contractor signs.

Prohibited Sign Types

1. Signs using flashers, scintillating / chasing bulbs or moving elements.
2. Blimps or Balloons. Tethered aerial devices for advertising.
3. Painted Signs. Signs or advertising painted on any exterior tenant wall.
4. Signs Extending Above Fascia. Signs that extend past the top edge of tenant's designated fascia area.
5. "Box" signs with the tenants name as the prominent feature.
6. Changeable Letter Boards.
7. Signs displaying LED screens with changeable graphics / copy are not allowed on the tenant frontage or visible through the exterior window glazing.
8. A-frame type signs, flags, banners, and ground-mounted signs, except as otherwise expressly provided for in the master sign program.



Face Illuminated Pan Channel Letters / Logo



Halo Illuminated Reverse Pan Channel Letters / Logo



Window Signs

Major 1 Sign Specifications

Total Allowable Sign Area 1:1

1. 1 SF of sign area per 1 lineal foot of tenant leased width, per elevation.
2. Overall sign length and height not to exceed 85% of the designated sign area. The designated sign area to be determined by key architectural elements or as indicated on the elevations.
3. The sign area is calculated by measuring the simple-most geometric box that can be placed around the sign design.
4. Ascenders or descenders not applicable to letter height and area calculations
5. Power supplies / transformers to be located inside hidden raceway
6. Construction methods to comply with U.L. Electrical and local/state building code standards.
7. Safeway (S1)

a. Halo Illuminated letters. 3" Deep fabricated aluminum returns and aluminum faces painted black, satin finish. Offset 1/8" aluminum "backer" panel painted white, satin finish. Clear lexan letters backs. White LED illumination.

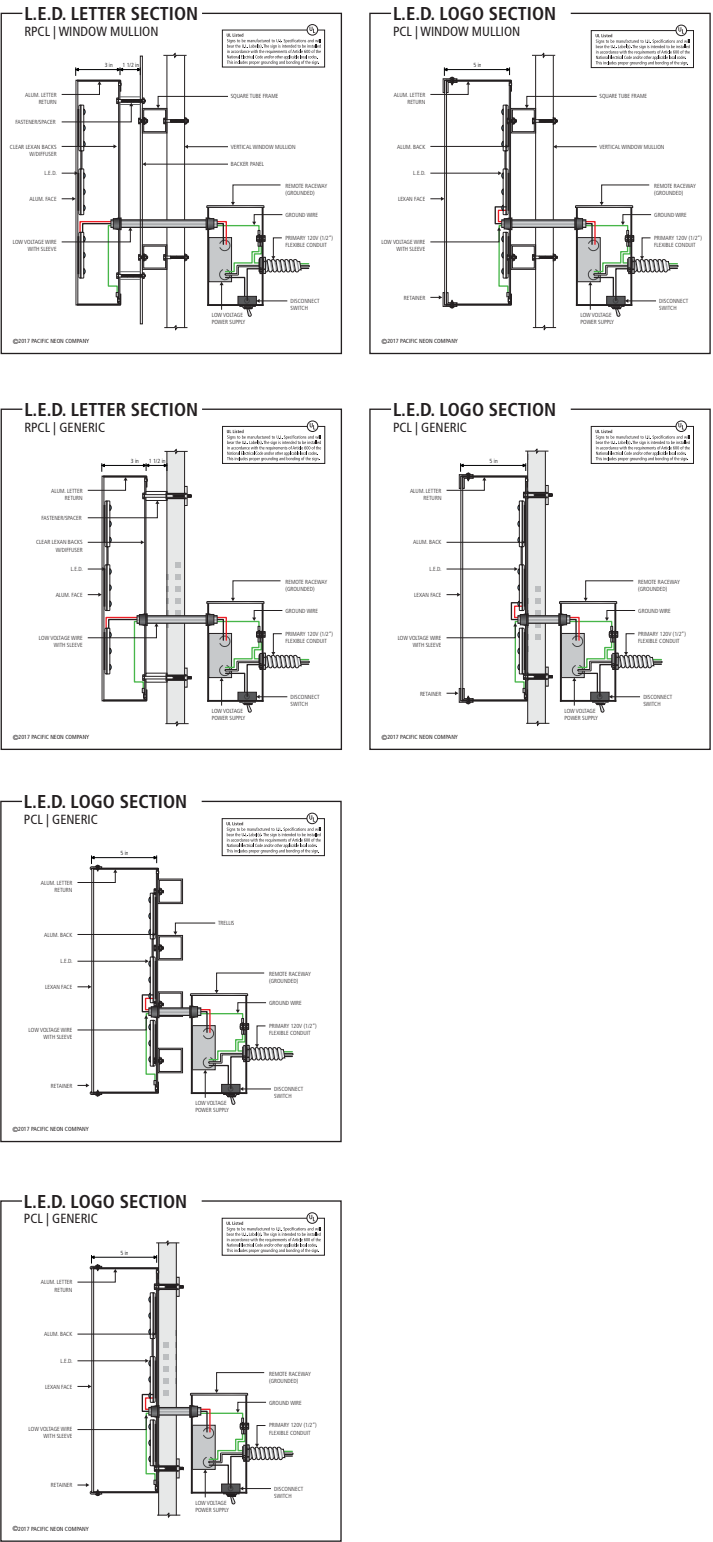
b. Face Illuminated logo. 5" Deep fabricated aluminum returns with aluminum retainers painted red, satin finish. White lexan face with applied 3M 3630-53 Cardinal Red vinyl film. White LED illumination.
8. Safeway (S2, S3, S4)

a. Halo Illuminated letters. 3" Deep fabricated aluminum returns and aluminum faces painted black, satin finish. Clear lexan letters backs. White LED illumination.

b. Face Illuminated logo. 5" Deep fabricated aluminum returns with aluminum retainers painted red, satin finish. White lexan face with applied 3M 3630-53 Cardinal Red vinyl film. White LED illumination.
9. Pharmacy

a. Face Illuminated letters. 5" Deep fabricated aluminum returns with 3/4" trimcap painted white, satin finish. White acrylic faces. White LED illumination.
10. Starbucks

a. Face Illuminated letters. 5" Deep fabricated aluminum returns. Trimcap acrylic faces with applied vinyl film. White LED illumination.



Junior 1 “Chase” Sign Specifications

Total Allowable Sign Area 1:1

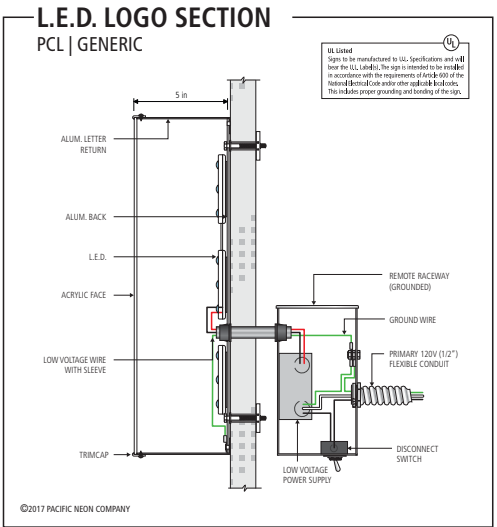
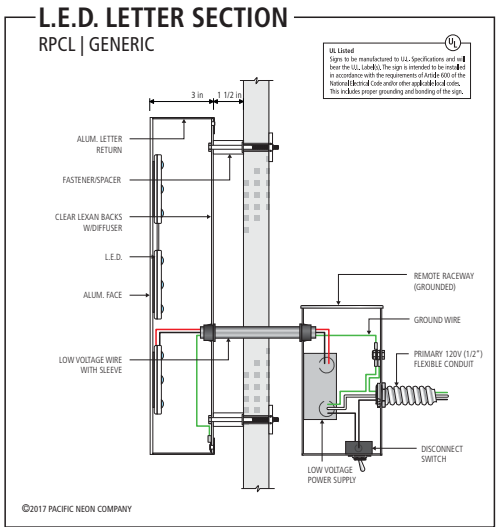
- 1. 1 SF of sign area per 1 lineal foot of tenant leased width, per elevation.
- 2. Overall sign length and height not to exceed 85% of the designated sign area. The designated sign area to be determined by key architectural elements or as indicated on the elevations.
- 3. The sign area is calculated by measuring the simple-most geometric box that can be placed around the sign design.
- 4. Ascenders or descenders not applicable to letter height and area calculations
- 5. Power supplies / transformers to be located inside hidden raceway
- 6. Construction methods to comply with U.L. Electrical and local/state building code standards.
- 7. Chase
 - a. Halo Illuminated letters. 3” Deep fabricated aluminum returns and aluminum faces painted black, satin finish. Clear lexan letters backs. White LED illumination.
 - b. Face Illuminated logo. 5” Deep fabricated aluminum returns with trimcap painted blue, satin finish. Acrylic faces with applied vinyl film. LED illumination.



Halo Illuminated Letters. Face illuminated logo.

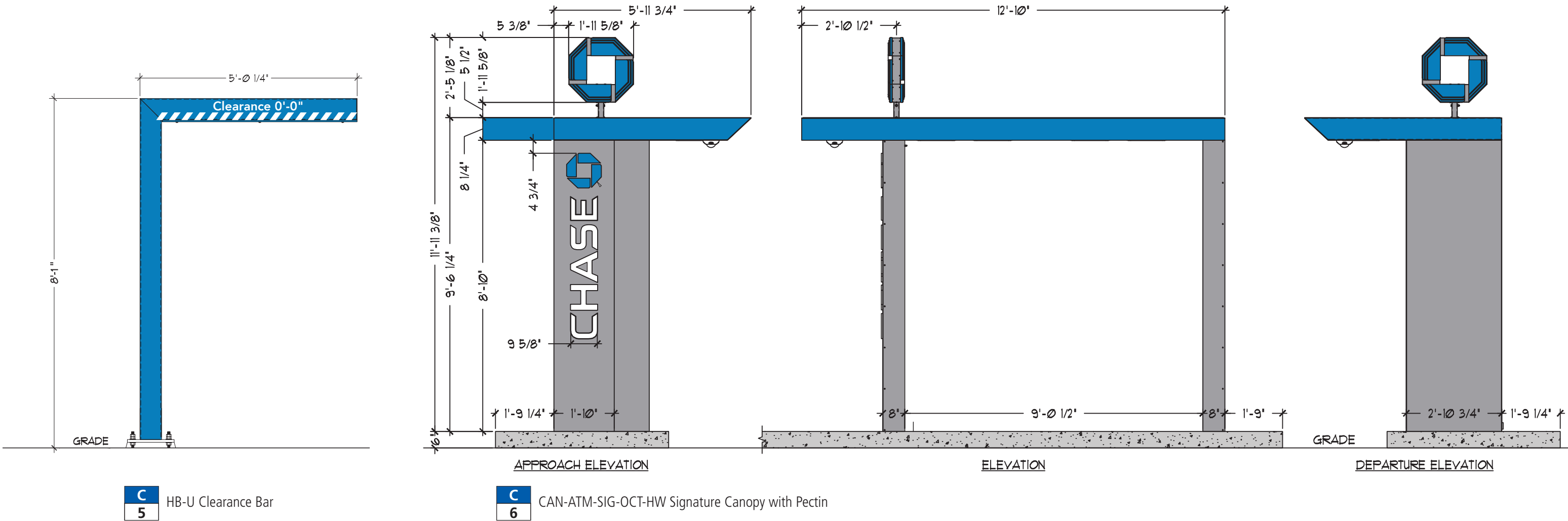


Halo Illuminated Letters. Face illuminated logo.



Junior 1 "Chase" Clearance Bar and Drive Thru Canopy

- 1. Freestanding Clearance Bar per corporate specifications.
- 2. Freestanding canopy with illuminated pectin, letters and logo.



Junior 2 Sign “Peet’s Coffee” Specifications

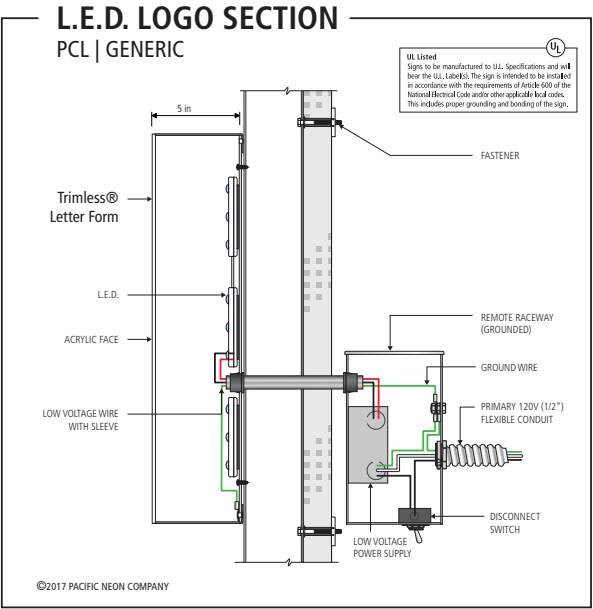
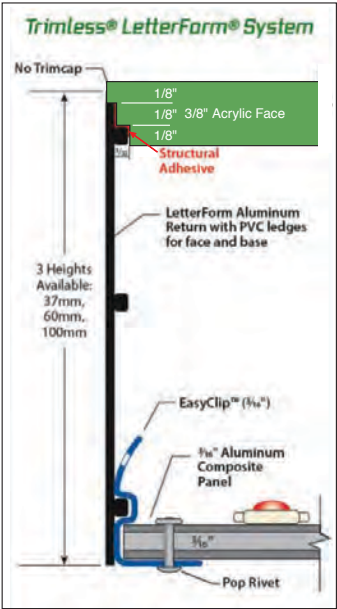
Total Allowable Sign Area 1:1
Proposed Sign Area 47.98 SF

- 1. 1 SF of sign area per 1 lineal foot of tenant leased width, per elevation.
- 2. Overall sign length and height not to exceed 85% of the designated sign area. The designated sign area to be determined by key architectural elements or as indicated on the elevations.
- 3. The sign area is calculated by measuring the simple-most geometric box that can be placed around the sign design.
- 4. Tenants guaranteed a minimum of 25 SF of sign area.
- 5. Ascenders or descenders not applicable to letter height and area calculations
- 6. Power supplies / transformers to be located inside hidden raceway
- 7. Construction methods to comply with U.L. Electrical and local/state building code standards.
- 8. Tenant Sign
 - a. Letters: 2 3/8" Deep aluminum Trimless® channel letters with returns painted to match Pantone Black C, satin finish. Faces to be matte white acrylic. Logo to have applied vinyl film accent pieces to match Pantone Black C. Illuminate with Agilite Pro 160 3000K Warm White LED’s.
 - b. Background: 3M Exterior grade DI-NOC FW-625EX Laminate on all exposed surfaces.



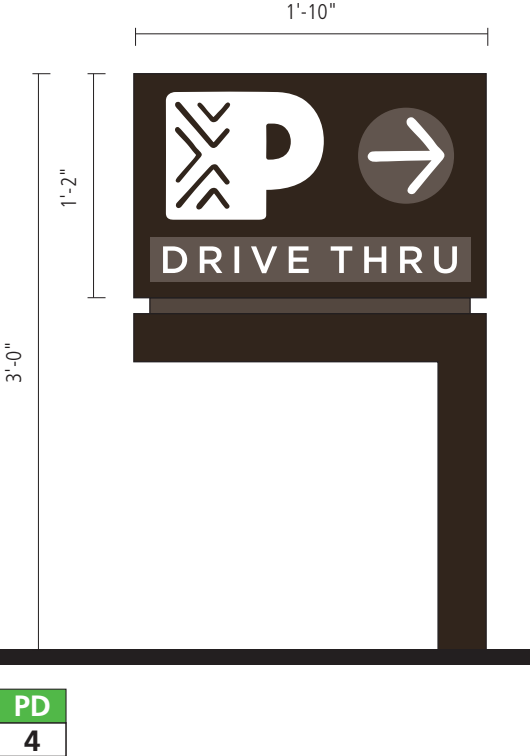
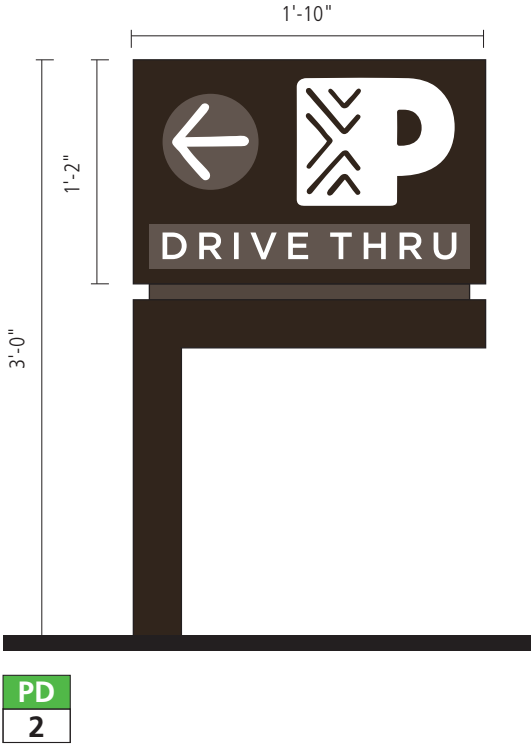
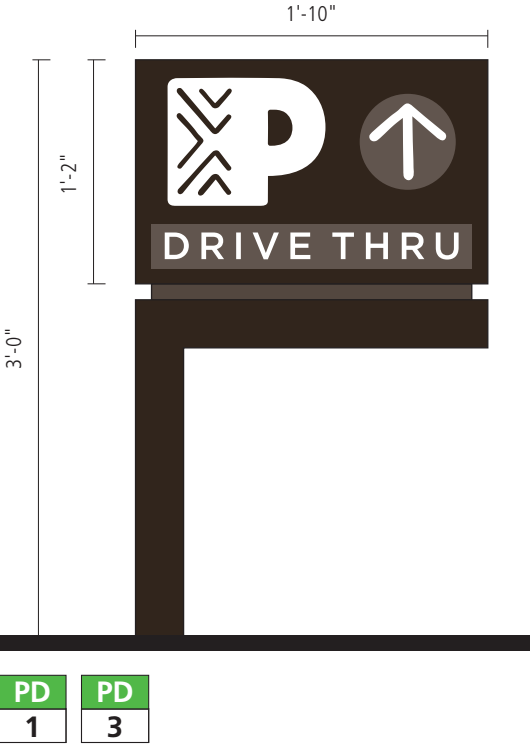
P	P	P
1	2	3

Face Illuminated Letters with non-illuminated backer panel.

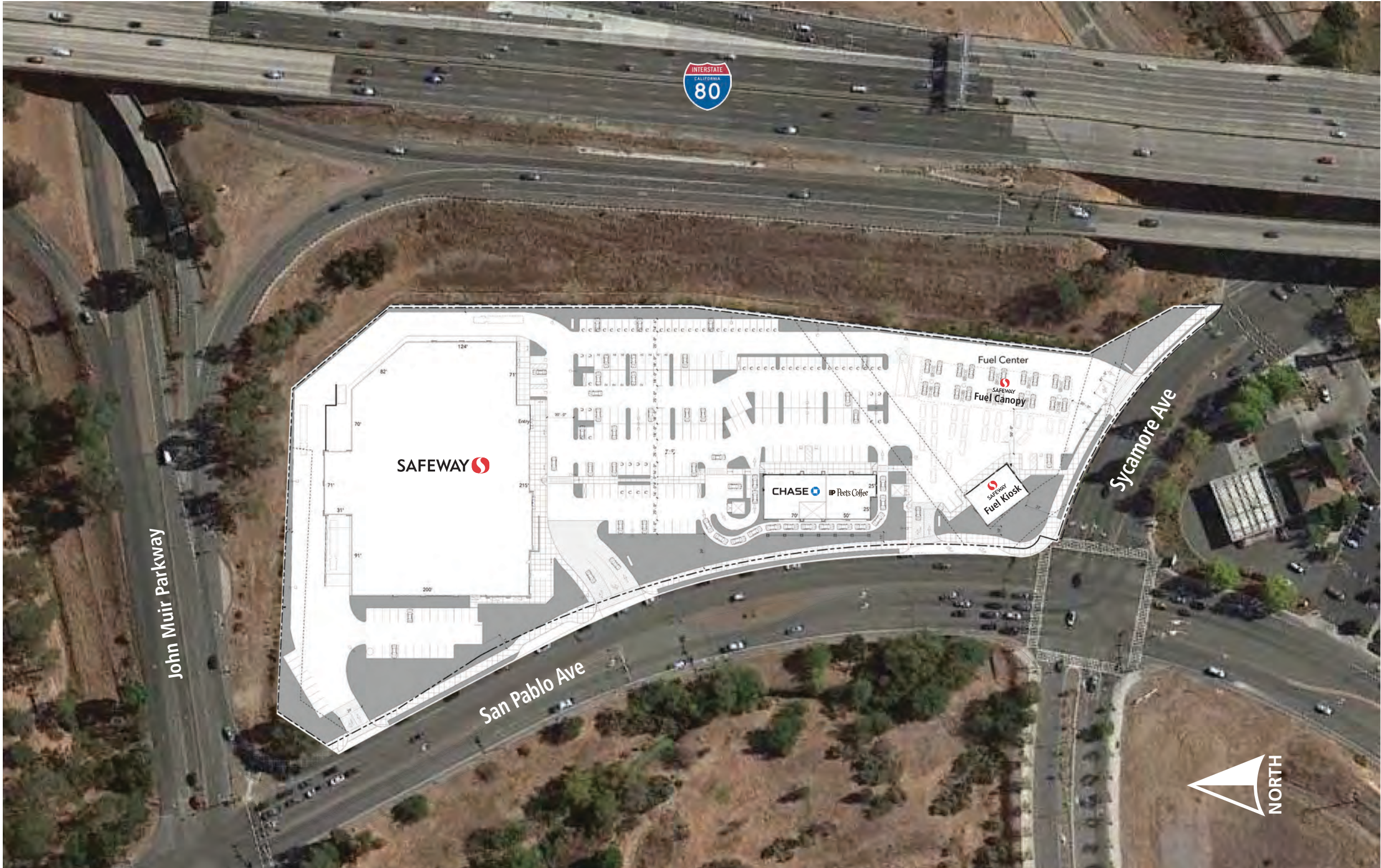


Peets Directionals | Sign Specifications
Sign Area 2.1 SF

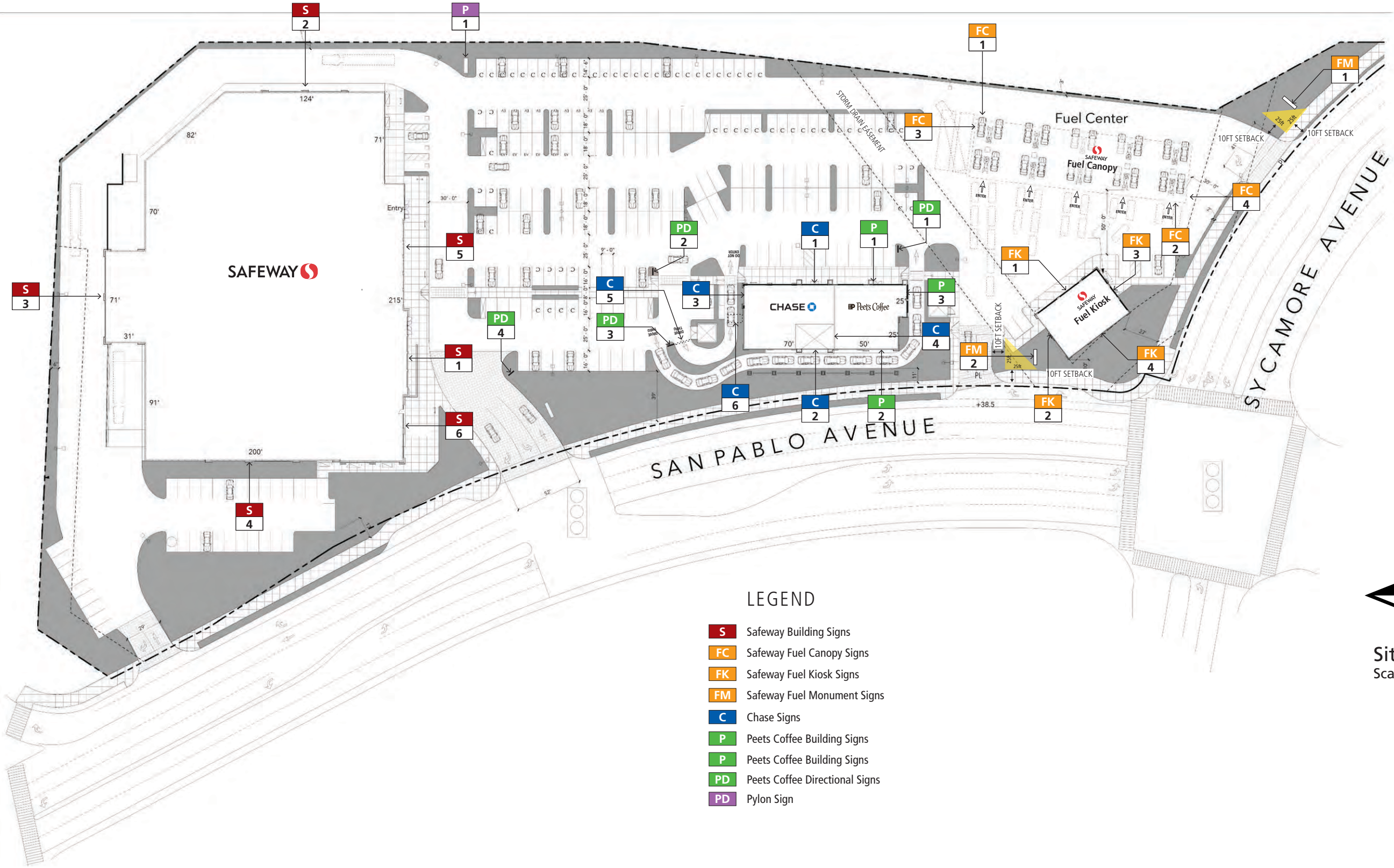
- 1. Aluminum cabinet painted to match Pantone Black 4C.
- 2. Accent field and arrow painted to match 75% Pantone Black 4C.
- 3. Copy routed out and backed with white acrylic.
- 4. Internally LED Illuminated.



Vicinity Map

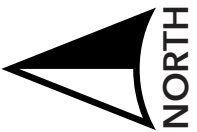


Site Map



LEGEND

- S Safeway Building Signs
- FC Safeway Fuel Canopy Signs
- FK Safeway Fuel Kiosk Signs
- FM Safeway Fuel Monument Signs
- C Chase Signs
- P Peets Coffee Building Signs
- PD Peets Coffee Directional Signs
- P Pylon Sign



Site Map
Scale 1"=80'-0"

Safeway | Elevations



South Elevation
Scale 1"=20'-0"



East Elevation
Scale 1"=20'-0"

Safeway | Elevations



North Elevation
Scale 1"=20'-0"



West Elevation
Scale 1"=20'-0"

Chase & Shop | Elevations



South Elevation
Scale 1/16"=1'-0"



East Elevation
Scale 1/16"=1'-0"



West Elevation
Scale 1/16"=1'-0"

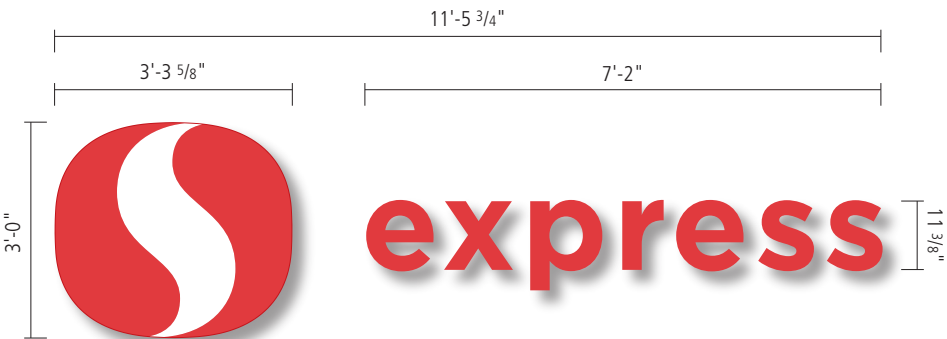


North Elevation
Scale 1/16"=1'-0"

Safeway Fuel Kiosk | Sign Specifications

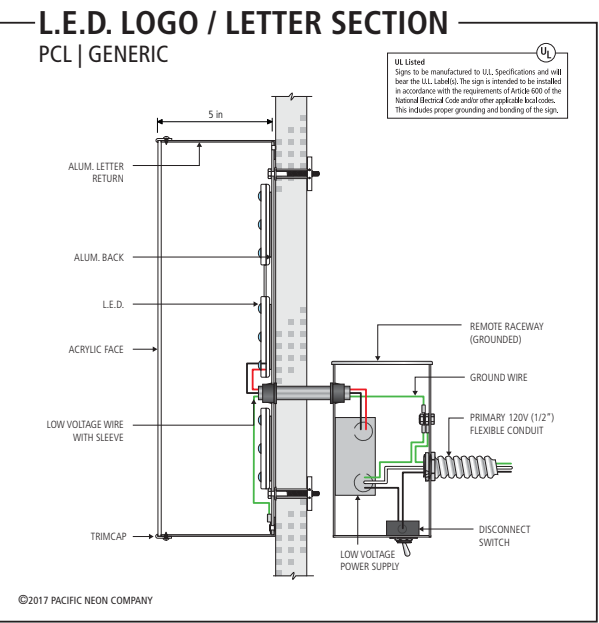
Total Allowable Sign Area 1:1

- 1. 1 SF of sign area per 1 lineal foot of tenant leased width, per elevation.
- 2. Overall sign length and height not to exceed 85% of the designated sign area. The designated sign area to be determined by key architectural elements or as indicated on the elevations.
- 3. The sign area is calculated by measuring the simple-most geometric box that can be placed around the sign design.
- 4. Ascenders or descenders not applicable to letter height and area calculations
- 5. Power supplies / transformers to be located inside hidden raceway
- 6. Construction methods to comply with U.L. Electrical and local/state building code standards.
- 7. Safeway
 - a. Face Illuminated letters. 5" Deep fabricated aluminum red returns. #278 Red acrylic faces with red trimcap. Red LED illumination.
 - b. Face Illuminated logo. 5" Deep fabricated aluminum returns with aluminum retainers painted red, satin finish. White lexan face with applied 3M 3630-53 Cardinal Red vinyl film. White LED illumination.

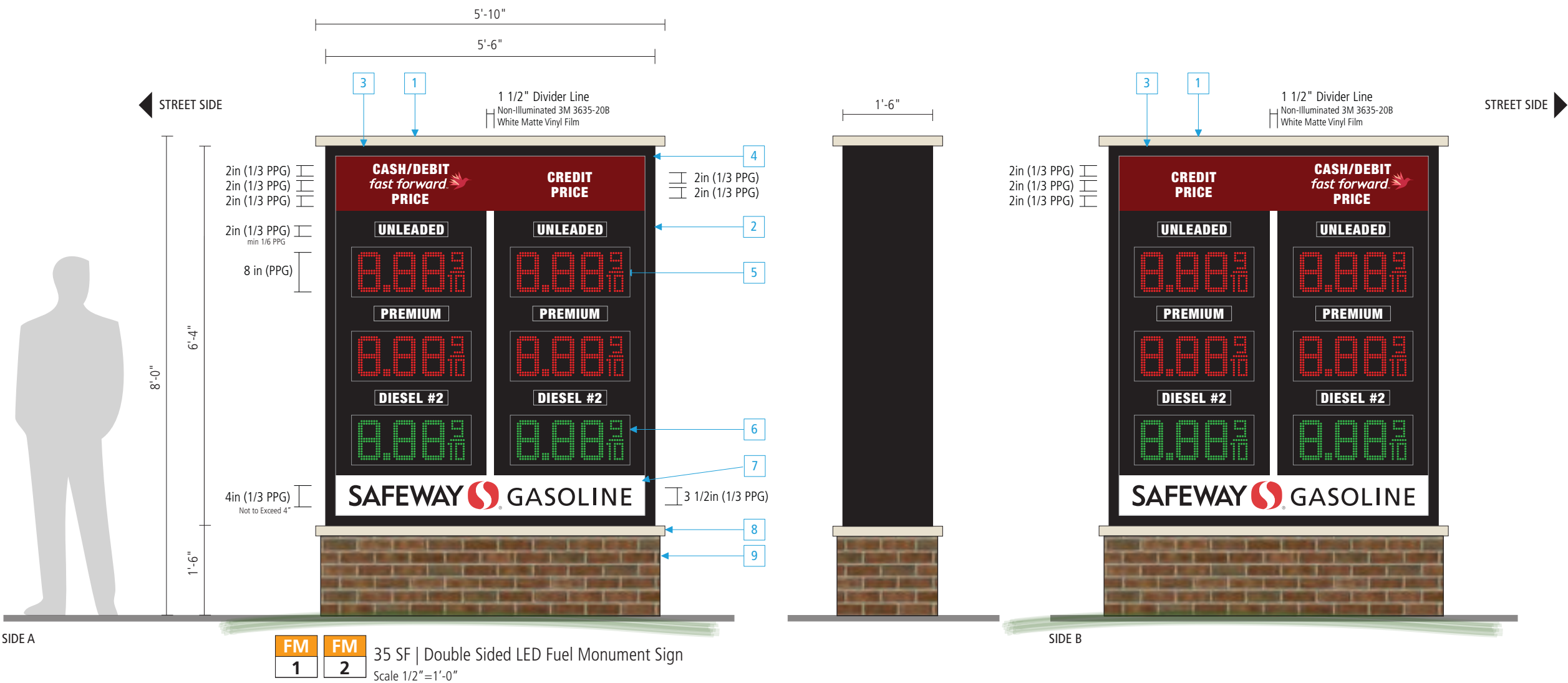


FK	FK	FK	FK
1	2	3	4
FC	FC	FC	FC
1	2	3	4

17 SF | Face Illuminated Letters. Face illuminated logo.



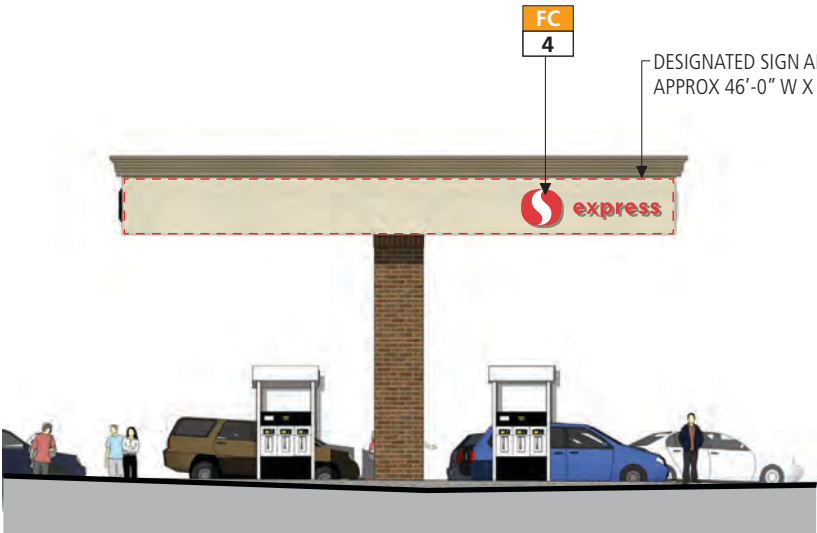
Safeway Fuel Monument | Sign Specifications



Material Schedule

- | | | | | | |
|---|--|---|--|---|--|
| 1 | Cabinet and retainer paint Black, satin finish. | 4 | White acrylic with 3M 3630-22 Black vinyl film overlay. Copy reverse weed white. | 8 | Fabricated aluminum paint to match DE DEC763 Oatmeal Cookie, satin finish. |
| 2 | 1/8" aluminum face rout for LED units and graphics areas. Paint Black satin finish. | 5 | 8" Red LED fuel display. | 9 | Brick veneer. Belden flashed sorrel blend. |
| 3 | Removable Header panel (back lit). White acrylic with 3M 3630- 49 Burgundy vinyl film overlay. Copy reverse weed white. Fast Forward logo to be graphic print. | 6 | 8" Green LED fuel display. | | |
| | | 7 | Removable Footer panel (back lit). White acrylic with 3M 3630-22 Black and 3M 3630-53 Cardinal Red vinyl film overlay. | | |

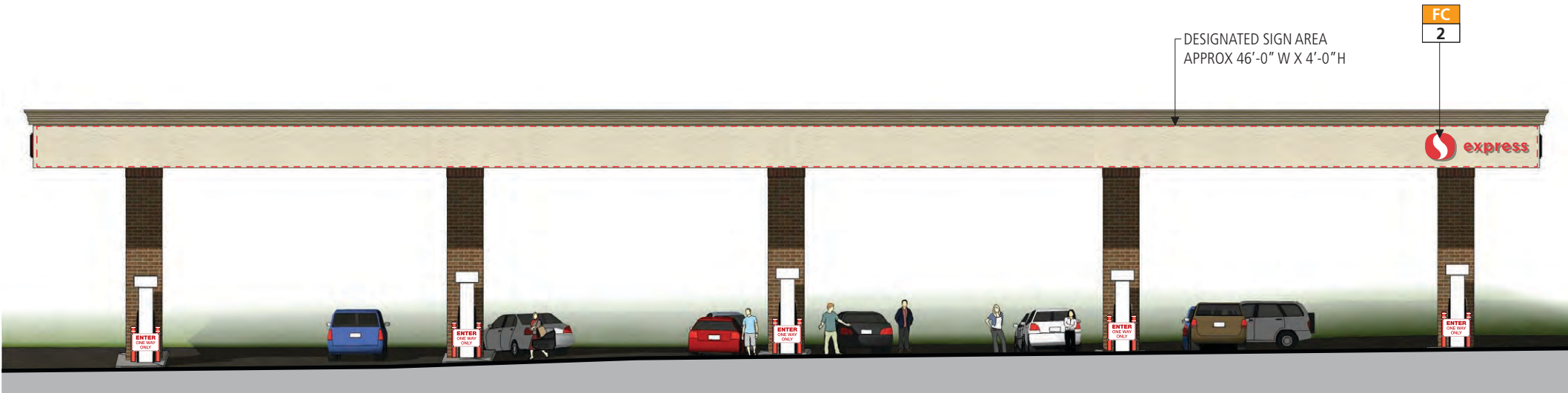
Safeway Fuel Canopy | Elevations



South Elevation
Scale 1/16"=1'-0"



East "Exit" Elevation
Scale 1/16"=1'-0"



West "Entry" Elevation
Scale 1/16"=1'-0"



North Elevation
Scale 1/16"=1'-0"

Safeway Fuel Directionals | Sign Specifications

Sign Area 6 SF

FINAL DIRECTIONAL DESIGN, COLOR & CONTENT TO
BE PROVIDE BY SAFEWAY.

- 1. Non-Illuminated directional signs attached to fuel pump bollards.



Safeway Fuel Kiosk | Elevations



East Elevation
Scale 1/16"=1'-0"



South Elevation
Scale 1/16"=1'-0"

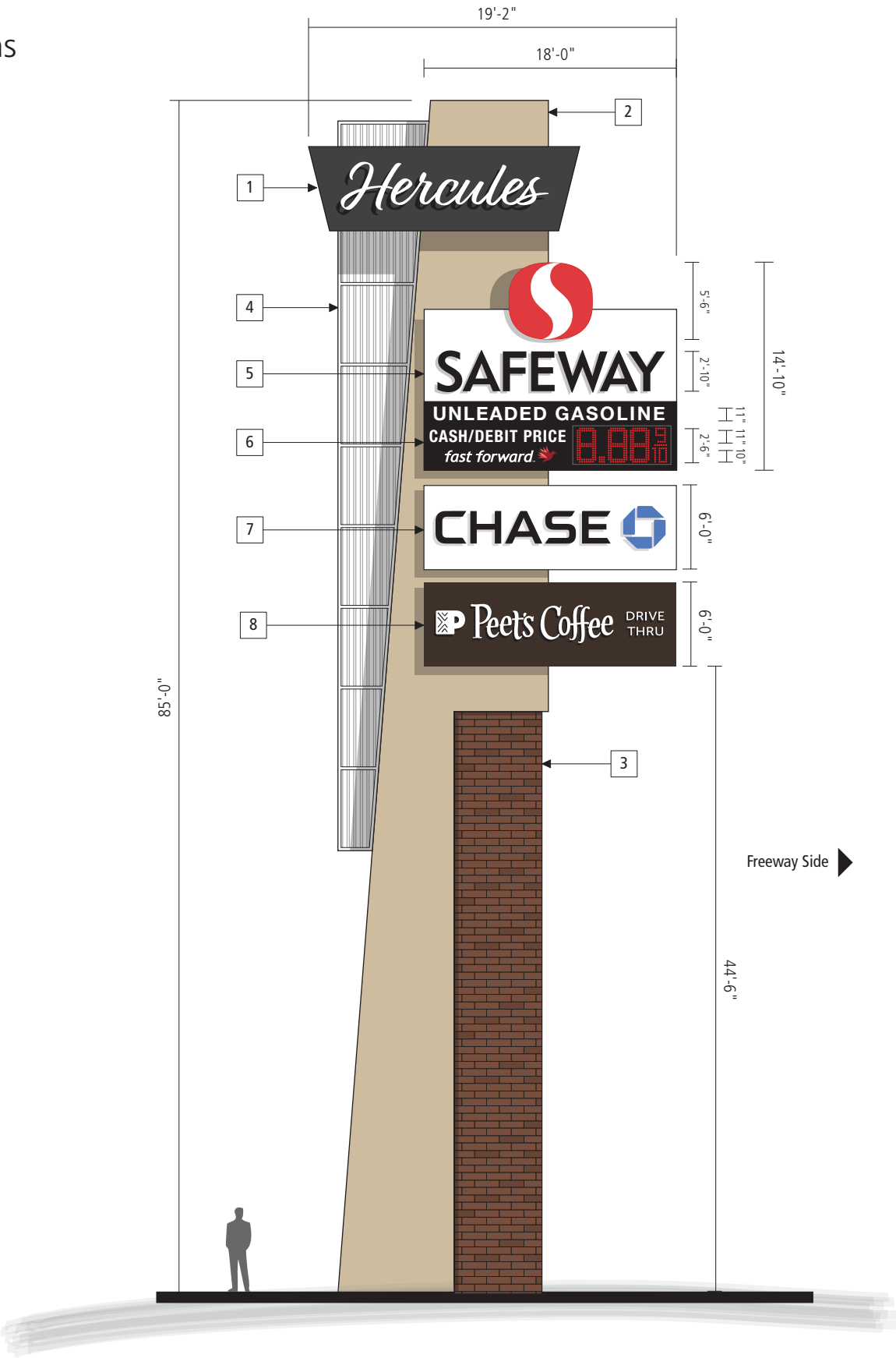


West Elevation
Scale 1/16"=1'-0"



North Elevation
Scale 1/16"=1'-0"

Safeway Pylon | Sign Specifications



P
1

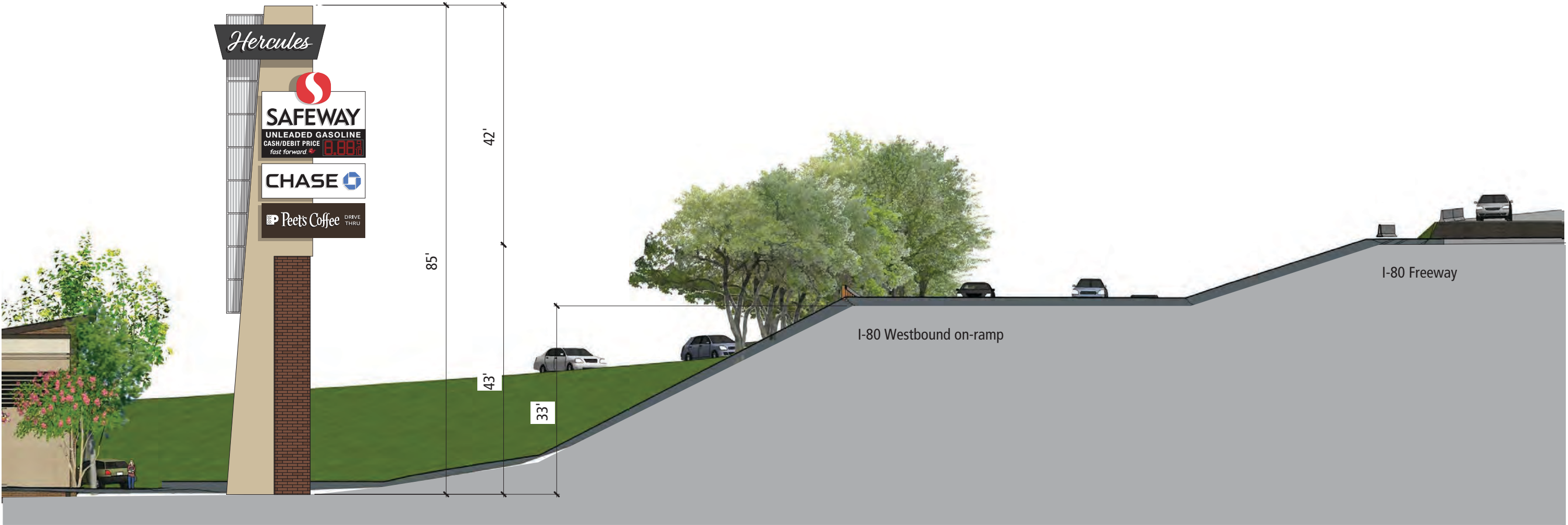
442 SF | Double Sided Freeway Pylon

Scale 3/32"=1'-0"

Material Schedule

- 1 Fabricated aluminum cabinet paint dark grey, satin finish. Illuminated channel letters with White acrylic faces and trimcap. Black aluminum returns. White LED illumination.
- 2 Fabricated structure painted Dunn Edwards DE6172 Bungalow Taupe, texcote finish.
- 3 Brick veneer; Belden Flashed Sorrel blend.
- 4 Lighting feature with formed ribbed faces. White LED illumination.
- 5 Safeway- Fabricated aluminum background with Face illuminated logo and halo illuminated letters.
- 6 30" Red LED fuel numerals. All copy to be rout out illuminated letters. Aluminum background painted white / black.
- 7 Face / Halo Illuminated letters / Logo per Chase Bank specifications. Aluminum background painted white.
- 8 Face / Halo Illuminated letters per Peet's Coffee specifications. Aluminum background painted brown.

Safeway Pylon | Elevations





PLANNING COMMISSION STAFF REPORT

MEETING DATE: April 16, 2018

TO: Members of the Planning Commission

SUBMITTED BY: Holly Smyth, AICP, Planning Director
Robert Reber, AICP, Adjunct Planner

SUBJECT: Zoning Text Amendment No. 18-03 (ZTA #18-03) to update the Hercules Zoning Ordinance, Chapter 34, Sign Regulations, and Design Review Permit No. 18-01 (DRP #18-01), Master Sign Program for the approved Safeway Shopping Center to be constructed at the northeast corner of the intersection of San Pablo Avenue and Sycamore Avenue (Assessor's Parcel Number 404-040-040-2).

APPLICANT: Mike Powers, representing McNellis Partners

1. RECOMMENDATION:

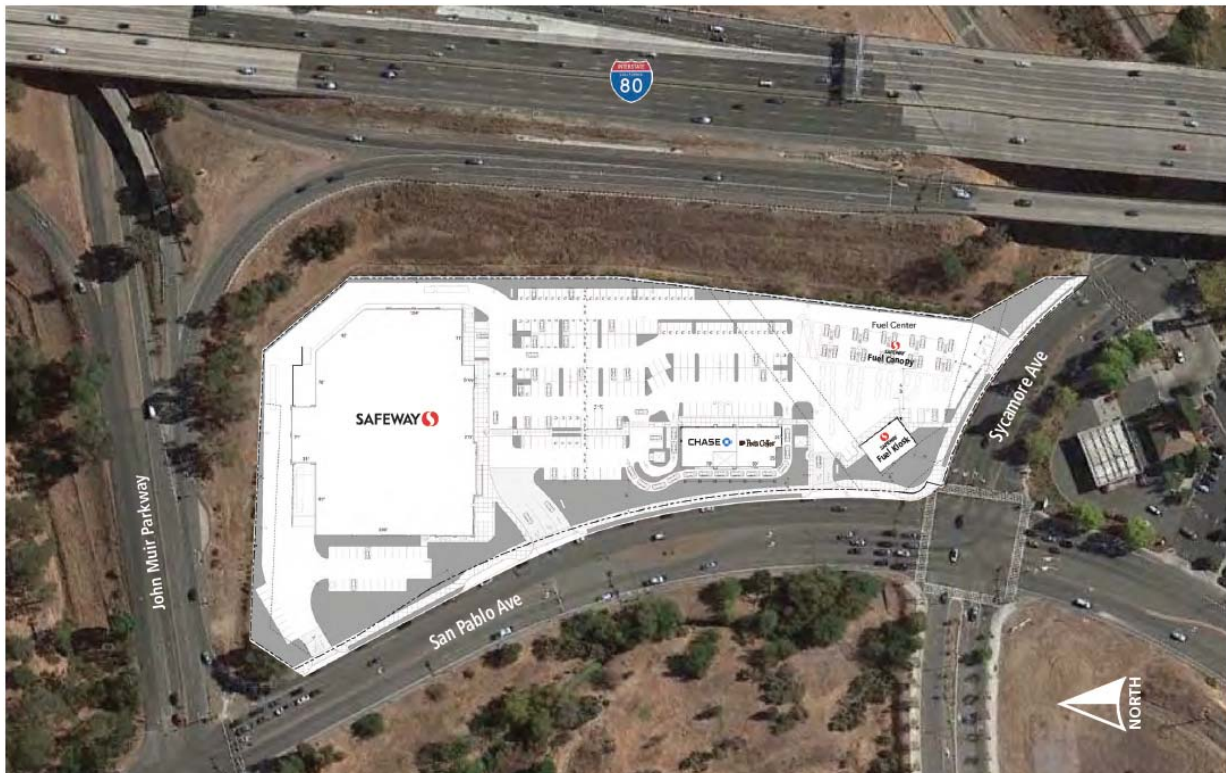
- a. Request City staff present the staff report.
- b. Open, conduct, and close the public hearing to receive testimony.
- c. Request clarification from staff and/or the applicant's representative(s) on issues related to Zoning Text Amendment No. 18-03 and Design Review Permit No. 18-01.
- d. Adopt resolution recommending that City Council approve ZTA #18-03.
- e. Adopt resolution recommending that City Council approve DRP #18-01 for the Safeway Center Master Sign Program.

2. BACKGROUND:

At its regular meeting on September 26, 2017, the City of Hercules City Council approved a set of resolutions for a proposed Safeway Center at the northeast corner of the intersection of San Pablo Avenue and Sycamore Avenue on a 6.75-acre site within the City of Hercules (see Figure 1 below for Project Vicinity Map). The set of project approvals allow the construction of a shopping center with a 57,100-sq.-ft. Safeway grocery store, a 20-pump fueling center, a 2,500-sq.-ft. kiosk/mini-mart, a 6,000-sq.-ft. pad with two drive-thrus to accommodate a bank and a coffee shop, and sign ordinance modifications to allow for up to 90-foot tall pylon signs in General Commercial (CG) zone districts within 100 feet of Interstate 80. Included in the project's Conditions of Approval is a requirement that the applicant "submit a Master Sign Program (MSP) for Planning Commission approval of all signage for the site" (City Council Resolution 17-071, Condition of Approval No. 17, Signage). On April 10, 2018, Mike Powers of McNellis Partners, the property owner and project developer, submitted an application for a Design Review Permit to approve a comprehensive Master Sign Program for the Safeway

Center (see Attachment C), construction of which is anticipated to begin in early 2019. The Master Sign Program includes a freeway-oriented pylon sign, two fuel pricing monument signs, and retail tenant signs. Because the project conditions of approval also require that the fuel center include signs to direct vehicles to the fuel pumps in a one-way directional flow (City Council Resolution 17-071, Condition of Approval No. 41, Fuel Center), the Master Sign Program shows “Do Not Enter—Exit Only” signage along the exit bollards at each fuel aisle of the fueling station.

Figure 1 – Safeway Center Site Plan & Vicinity Map



3. DISCUSSION

Master Sign Program for Safeway Center (Applicant's Request)

A Master Sign Program (MSP) is used to create standard sign design guidelines for projects with multiple buildings or tenants, ensuring continuity of quality and aesthetics throughout the project for the mutual benefit of all owners and tenants. The intent of the Safeway Center MSP is to encourage high quality and unique signage for identifying individual businesses while still complementing and enhancing the overall appearance of the previously approved site design and architecture.

Once the City approves an MSP, tenants receive approval for their individual signs at staff level instead of having to go through the Design Review public hearing process each time. Approval of a Master Sign Program does not waive the permit requirements for individual signs. The Planning Director can issue individual sign permits subject to the provisions of an approved MSP. Additionally, prior to the issuance of a building permit, the final location of any monument signs shall be coordinated with the Director of Public Works to ensure unobstructed traffic visibility and substantial conformity with the approved MSP. Signs shall also be placed within the shopping center to direct delivery trucks to the loading dock areas and help traffic maneuver and park properly within the project site.

Chapter 34, "Sign Regulations," of the Zoning Ordinance, subsection 34.400.R requires Master Sign Programs for buildings or groupings of buildings containing six (6) or more business or office uses. Among other required information, Master Sign Programs must include:

- An accurate plot plan of the lot, including location of buildings, parking lots, driveways, and landscaped areas on the lot;
- Computation of the maximum total sign area, the maximum area for individual signs, the height of signs, and the number of freestanding signs allowed on the lot included in the plan;
- An accurate indication on the plot plan of the proposed location of each present and future sign of any type, whether requiring a permit or not;
- Color scheme;
- Lettering or graphic style;
- Materials;
- Sign dimensions;
- Shared usage of pylon signs.

Table 1 below lists proposed signs included in the Safeway Center MSP, and compares them to the City's standard sign regulations (Chapter 34 of the Zoning Ordinance).

Table 1: Individual signs allowed under proposed Master Sign Program*

Sign Type	Number of Signs	Size Limits	Size	City Standard (per Zoning Ordinance)	Notes
Pylon Sign	1	85 ft. tall	442 sf per side	90 ft. tall; 250 sf max.; General Commercial zones within 100 ft. of I-80	Double-sided; Includes approximately 15 sf of LED changeable copy per side for real-time fuel pricing
Major Sign (Safeway)	6	1 sf of sign/1 linear ft. of tenant leased width, per elevation/side (not to exceed 85% of designated sign area)	37–97 sf	100 sf max.	Combination of halo- and face-illumination
Junior 1 Sign (Chase Bank)	4	1 sf of sign/1 linear ft. of tenant leased width, per elevation/side (not to exceed 85% of designated sign area)	Approx. 49–97 sf	100 sf max.	Halo-illuminated letters; Face-illuminated logo
Junior 2 Sign (Peet's Coffee)	3	1 sf of sign/1 linear ft. of tenant leased width, per elevation/side (not to exceed 85% of designated sign area)	Approx. 32 sf	100 sf max.	Face-illuminated letters on non-illuminated backer panel
Junior 1 Drive-Thru Clearance Bar & Canopy (Chase Bank)	1		Approx. 9 sf	None defined	
Junior 2 Drive-Thru Directionals (Peet's Coffee)	4		Approx. 2 sf each	None defined	Double-sided; Stand-alone/ground-mounted
Fuel Canopy Sign	4	1 sf of sign/1 linear ft. of tenant leased width, per elevation/side (not to exceed 85% of designated sign area)	17 sf	<15% of canopy fascia; 1 sign per side	Face-illuminated
Fuel Kiosk Sign	4	1 sf of sign/1 linear ft. of tenant leased width, per elevation/side (not to exceed 85% of designated sign area)	17 sf	100 sf max	Face-illuminated
Fuel Monument Sign	2	9 ft. tall	41 sf	6 ft. tall; 32 sf max; 1 per 600 ft. of lot frontage	Double-sided; Each side includes approx. 6 sf of LED changeable copy for real-time fuel pricing
Temporary Construction Signs	4	Max. size 32 sf ; Max. height: 8 ft. Min. setback: 15 from property line; 300 ft. from other temporary signs		1 sign; 24 sf max	

**Items in bold red indicate exceedance of City Standard without approval of an MSP.*

The proposed Safeway Center MSP expressly forbids:

- Signs using flashers, scintillating/chasing bulbs, or moving elements;
- Blimps, balloons, or other tethered aerial devices;
- Painted signs, including advertising painted on walls;
- Signs extending above building fascia;
- “Box” signs;
- Changeable letter boards;
- LED screens with changeable graphics/copy on buildings or visible through glazing;
- A-frame signs.

Though not expressly covered in the proposed Master Sign Programs, window signs at the Shopping Center would be subject to Section 34.500, “Signs Not Requiring a Permit,” which stipulates (34.500.L) that “[w]indow signs are allowed provided that they are placed on the inside of the window, and occupy no more than 25% of the glassed area of all windows, and [are] at least 3 feet from the window frame of an exterior window and the majority of the interior is visible from the outside of the building.”

In cases not covered by the MSP, the prevailing criteria of the City of Hercules Municipal Code would prevail.

Zoning Text Amendment #18-01 (Staff Recommendations to Amend Chapter 34 of the Zoning Ordinance, “Sign Regulations”)

Master Sign Programs’ Consistency with Zoning Ordinance

As indicated in Table 1 below, the Safeway Center MSP includes several design specifications that exceed the standard sign regulations of the Zoning Ordinance. These exceptions include:

- The 442 sf of signage on the pylon sign, which exceeds the standard maximum of 250 sf of sign area for structures over 30,000 sf in floor area (Zoning Ordinance, Section 34.400.D);
- The 9-ft height and 41 sf of sign area of the two monument fuel signs, which exceeds the standard limits of 6-ft height and 32 sf sign area for monument signs (Zoning Ordinance, Section 34.400.G);
- The fuel center canopy signs up to 85% of each canopy side of canopy fascia, which exceeds the standard limit of signage covering up to 15% of canopy fascia (Zoning Ordinance, Section 34.400.Q);
- The four proposed temporary construction signs up to 32 sf in sign area each, which exceeds the standard limit of one construction sign of 24 sf in sign area per project (Zoning Ordinance, Section 34.500.C).

Exceptions such as these can sometimes be granted through approval of either minor exceptions (per Chapter 45 of the Zoning Ordinance) or variances (per Chapter 51 of the Zoning Ordinance). However, the Zoning Ordinance’s “Binding Effect” provision for Master Sign Programs states, “In case of any conflict between the provisions of such a [Master Sign] plan with any provisions herein, this Section [i.e., the Zoning Ordinance sign regulations] shall prevail.” (Zoning Ordinance, Section 34.400.R.8). To better resolve potential conflict between provisions of this and other MSPs and the Zoning Ordinance, staff recommends the changes listed below, as the public review process required for MSPs can better achieve nuanced, high-quality, contextually appropriate signage, rather than strict adherence to Zoning Ordinance limitations:

- Clarify that MSPs require Planning Commission approval;
- Require that MSPs substantially (but not necessarily completely) conform to the Zoning Ordinance; and
- Allow certain exceptions to standard signage regulations—including maximum allowed signage, monument sign size, and fuel canopy signs—through approval of MSPs.

Zoning Ordinance Consistency with First Amendment Protections

Though not expressly related to the proposed MSP for the Safeway Center, staff recommends—given recent case law—certain other revisions to the Zoning Ordinance’s Sign Regulations. In *Reed vs. Town of Gilbert*, 576 US (2015), the U.S. Supreme Court clarified when municipalities may impose content-based restrictions on signage. The case also clarified the level of constitutional scrutiny that should be applied to content-based restrictions on speech. In light of the Court’s decision, staff recommends making these additional changes to the Zoning Ordinance:

- Delete requirements specific to religious institution signs;
- Remove content-specific limitation on changeable copy signs;
- Delete provisions specific to advertising messages incorporated into signs;
- Eliminate content-specific bulletin board limitations;
- Delete fast food, automobile, and other content-specific exceptions for banners.

4. ENVIRONMENTAL DETERMINATION

The Zoning Ordinance amendments are Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines. The Design Review Permit/Master Sign Program is within the scope of the development programs evaluated in the Hercules New Town Center Environmental Impact Report (State Clearinghouse No. 2007062002, certified 2009) and its addendum (Initial Study/Addendum #17-01), which the City Council approved on September 26, 2017, at a duly held public hearing, through adoption of Resolution No. 17-069, which also reconfirmed and readopted the applicable mitigation measures and the Statement of Overriding Considerations for the

Hercules New Town Center Project, as amended. No new significant environmental effects could occur as a result of the proposed project, no new mitigation measures are required for the proposed project, and the proposed project does not require further environmental review under CEQA.

5. CONCLUSIONS / RECOMMENDATIONS

The Safeway Center project will advance goals, objectives, policies, and programs of the Hercules General Plan by expanding and enhancing commercial opportunities and services in the central Hercules area; the project also responds to the current market demand for those services as well as providing community, pedestrian, and open space amenities. The proposed Master Sign Program supports those goals of commercial success by specifying a comprehensive, cohesive, and consistent approach for the shopping center collectively and its tenants individually to identify and advertise their businesses to potential patrons. The proposed Zoning Ordinance amendments support this and future Master Sign Programs by eliminating potential confusion and conflict between approved MSPs and the Zoning Ordinance, and by helping ensure legally appropriate, content-neutral review of signage.

6. ATTACHMENTS

- Attachment 1 – Draft Resolution recommending City Council adopt Zoning Text Amendment No. 18-03
- Attachment 2 – Draft Resolution recommending City Council approve Design Review Permit No. 18-01, Master Sign Program for Safeway Hercules Center, with Conditions of Approval
- Attachment 3 – Master Sign Program for Safeway Hercules Center

Attachment 1

Draft Resolution recommending City Council adopt Zoning Text Amendment No. 18-03

Attachment 2

**Draft Resolution recommending City Council approve Design Review Permit No. 18-01,
Master Sign Program for Safeway Hercules Center, with Conditions of Approval**

Attachment 3
Master Sign Program for Safeway Hercules Center

**PLANNING COMMISSION RESOLUTION NO. 18-06
ZONING TEXT AMENDMENT #18-03
SIGN ORDINANCE ADMENDMENTS**

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE APPROVING ZONING TEXT AMENDMENT #18-03 TO AMEND CHAPTER 34 OF THE CITY'S ZONING ORDINANCE RELATED TO MASTER SIGN PROGRAMS AND CERTAIN CONTENT-SPECIFIC REQUIREMENTS AND FINDING THAT THESE CHANGES ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) UNDER SECTION 15061(B)(3) OF THE CEQA GUIDELINES.

WHEREAS, on September 26, 2017, at a duly held public hearing, the City Council approved Resolution No. 17-071, approving Initial/Final Planned Development Plan (PDP) #17-01, Design Review Permit (DRP) #17-02, Conditional Use Permit (CUP) #17-01, and Minor Exception (ME) #17-01 for the Safeway Center Project, located at the northeast corner of the intersection of Sycamore Avenue and San Pablo Avenue; and

WHEREAS, the aforementioned Safeway Center project approvals included a set of Conditions of Approval (COAs; Exhibit A to Resolution No. 17-071), including COA #17, requiring that the project applicant submit a Master Sign Program (MSP) for Planning Commission approval of all on-site signage, consistent with the provisions of Section 34.400.R of the Zoning Ordinance; and

WHEREAS, the project applicant, McNellis Partners, submitted to the City on April 10, 2018, an application for a Master Sign Program, deemed complete by City staff; and

WHEREAS, for clarity and consistency, both internally and with the proposed and other potential Master Sign Programs, City staff recommend certain revisions to the existing Zoning Ordinance sign regulations; and

WHEREAS, City staff recommend additional concurrent revisions to the existing Zoning Ordinance sign regulations for consistency with legal precedence, especially in consideration of the U.S. Supreme Court decision in *Reed vs. Town of Gilbert, Arizona (135 S. Court 2218 – 2015)*, which clarified when municipalities may impose content-based restrictions on signage; and

WHEREAS, Section 52.400 of the City of Hercules Zoning Ordinance allows for amendments of the Zoning Ordinance whenever the City Council determines that the proposed amendment is: consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and is internally consistent and does not conflict with the purposes, regulations, and required findings of the Zoning Ordinance; and

WHEREAS, on April 16, 2018, the Planning Commission held a duly noticed public hearing to consider these amendments and did hear and use its independent judgment to consider all said reports, recommendations, and testimony hereinabove set forth.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF HERCULES DOES HEREBY RESOLVE AS FOLLOWS:

After due study, deliberation, and public hearing for the proposed Zoning Text Amendment #18-03, in accordance with Section 52.400 of the Zoning Ordinance of the Hercules Municipal Code, the Planning Commission finds that ZTA #18-03 is consistent with the General Plan, would not be detrimental to the health, safety, welfare, and public interest of the City, and is internally consistent and does not conflict with the purposes, regulations, and required findings of the Zoning Ordinance.

SECTION 1. ENVIRONMENTAL FINDING

Compliance with California Environmental Quality Act ("CEQA"): The Planning Commission finds that the Zoning Ordinance amendments are Categorically Exempt from CEQA pursuant to Section 15061(b)(3) (the "general rule exemption") as it can be seen with certainty that there is no possibility the project will have a significant effect on the environment and thus is not subject to CEQA.

SECTION 2. AMENDMENTS

The Planning Commission recommends that the City Council amend the Hercules Municipal Code and its Zoning Ordinance by modifying Chapter 34, Sign Regulations, of the Hercules Zoning Ordinance as noted by the additions and deletions shown in Exhibit A hereto.

PASSED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES on this 16th day of April 2018, by the following votes:

AYES: **Bailey, Galieva, Morrison, Rubio, Tolley**

NOES:

ABSENT:

ABSTAIN:



Dion Bailey, Chairperson

ATTEST:



Holly P. Smyth, Planning Director & Secretary

Exhibit A – Zoning Text Amendment for Sign Regulations (#ZTA 18-03)

Exhibit B – Findings with Facts

Exhibit A

Zoning Text Amendments for Chapter 34, "Sign Regulations" (ZTA #18-03)

34.100 PURPOSE AND APPLICABILITY

The purpose of this Chapter is to:

- A. Provide for the orderly construction, location, placement, size and maintenance of signs, outdoor advertising structures, and displays of any character, and to safeguard the general public from the hazards caused by dangerously and improperly located and maintained signs.
- B. Promote and protect the public health, safety and welfare by regulating outdoor signs of all types. The specific goals are to protect property values; enhance and protect the physical appearance of the community; to reduce sign or advertising distractions and obstructions, and to ensure that new signs are compatible in design and scale with their surroundings.

Except as otherwise provided in this chapter, it is unlawful for any person to construct, erect, enlarge, alter, or relocate within the city any sign as defined in this chapter, without first obtaining a sign permit for a sign or planned sign program, subject to design review approval, and a building permit.

34.101 GENERAL PROVISIONS

34.102 DIRECTOR APPROVAL REQUIRED

The Director of Community Development is authorized to approve, conditionally approve, or deny Sign Permits and Sign Programs, except where Planning Commission action is required, or when a referral to the Planning Commission is made in accordance with applicable sections of the Zoning Ordinance. Any application for a Sign Permit or Sign Program approval requiring action by the Director shall be acted upon within 30 days of submittal.

34.103 PLANNING COMMISSION APPROVAL REQUIRED

The Planning Commission shall hold a public hearing as specified in the Zoning Ordinance, review the application based on the criteria of this chapter, and take action under the following circumstances:

- A. The sign(s) does not conform to an established design policy adopted by the Planning Commission and/or City Council in accordance with this section.
- B. The sign is a freeway-oriented, freestanding pylon sign.
- C. The approval of ~~Sign Permit or~~ Master Sign Programs ~~or requires approval of a~~ Sign Variances.

34.200 LEGAL CONFORMING SIGNS

Any sign that legally exists as of the effective date of this ordinance shall be considered a legal conforming sign.

- A. Any legal conforming sign may be altered to reflect a change in use or occupancy advertised on the sign, provided that sign has the same fixtures, similar materials, similar colors, and similarly styled lettering and provided the sign face is not enlarged as determined by the Community Development Director.
- B. New signage may be proposed for a site that contains legal conforming signage, provided that all new signage is in compliance with this chapter. The Planning Commission may approve waivers to signage for a site that contains legal conforming signage, if such waivers are consistent with this chapter. Such waivers may be made only if the signage plan for the entire site furthers the purpose of this chapter by reducing visual clutter or otherwise improves the aesthetic appearance of the signage on the site by bringing the overall site into closer compliance with the requirements of this chapter. A legally installed sign which does not comply with this chapter may continue to be used and ordinary maintenance and repairs may be made to the legally conforming sign provided the structure is not moved, enlarged, or structurally altered. A legal conforming sign may not be replaced with one which is nonconforming.

34.204 TERMINATION OF BUSINESS/REMOVAL OF SIGN

Any sign face that identifies or advertises a business must be removed within 30 days after the termination of that business from that site. After a period of ninety (90) days of the termination of the business if the sign is not reused by another business occupying the same site, all mountings, brackets, poles, sign faces and other signage material must be removed.

34.205 NOTICE, REMOVAL, LIENS, AND SINKING FUND

- A. Notice and Removal. The Chief Building Official shall remove or cause to be removed any abandoned, dangerous, defective, illegal, prohibited, not maintained, or nonconforming sign subject to removal under the provisions of this chapter, which has not been removed within the time period specified in this chapter, or any other sign maintained in violation of the provisions of this chapter. The Chief Building Official shall prepare a notice which shall describe the sign and specify the violation involved and shall state that if the sign is not removed or the violation is not corrected within 30 days, the sign shall be removed in accordance with the provisions of this section.

For signs described under provisions of this chapter, the notice shall be mailed or given to the occupant of the property or other employee or, the owner of the sign, or representative upon

which the sign is located. If known, the notice may also be mailed or delivered to the owner of the sign and the occupant of the property.

- B. Emergency Removal. Notwithstanding the above provisions of this section, in cases of emergency, the Chief Building Official may cause the immediate removal of a hazardous, dangerous or defective sign, without notice.
- C. Cost of Lien. Any sign removed by the Chief Building Official pursuant to the provisions of this section shall become the property of the City of Hercules, and may be disposed of in any manner deemed appropriate by the City. The cost of removal of the sign shall be considered a debt to the City by the owner of the sign and owner of the property, and may be recovered by the City by a lien against the property or any other remedy prescribed by law.
- D. Sinking Fund. The project sponsor of a proposed sign shall be required to provide proof of the establishment of a sinking fund to cover the cost of removing the sign if it is abandoned. The word "abandoned" shall mean a sign that has not been operational for a consecutive ninety (90) day period, except where non-operation is the result of maintenance or renovation activity pursuant to valid city permits. The sinking fund shall be established within a two-year period, at a financial institution approved by the city's Finance Department. The sinking fund payment shall be determined by the Finance Director and shall be adequate to defray expenses associated with the removal of the sign. The minimum amount for a sinking fund for any type of sign shall be three-hundred dollars (\$300.00). The maximum amount for a sinking fund for a sign shall be three-thousand dollars (\$3,000.00)

34.206 LIABILITY FOR DAMAGES

The provisions of this chapter shall not be construed as relieving or limiting in any way the responsibility or liability of any person erecting or owning any sign, for personal injury or property damage resulting from the placement of such sign, or resulting from the negligence or willful acts of such person, its agents, employees, or workmen, in the construction, maintenance, repair, or removal of any sign erected in accordance with a permit issued under this chapter; nor shall it be construed as imposing upon the City or its officers or employees any responsibility or liability by reason of the approval of any signs, materials, or devices under the provisions of this chapter.

34.207 ENFORCEMENT

- A. Permit Revocation. The Planning Commission is authorized and empowered to revoke any sign permit issued by the Community Development Director upon failure of the holder thereof to comply with any provisions of this chapter. The City Council is authorized and empowered to revoke any sign permit issued by the Planning Commission upon failure of the holder thereof to comply with any provisions of this chapter.
- B. Public Nuisance. In the event any person should erect, alter, relocate or maintain a sign in violation of the provisions of this chapter, the same is declared a public nuisance and, in addition to any other remedies available, including but not limited to administrative citations

and civil penalties, the City Attorney is authorized to bring and prosecute an action in a court of competent jurisdiction to enjoin such person from continuing such violation.

34.208 CALCULATION OF SIZE OF SIGN, SIGN AREA, AND HEIGHT

- A. Within or on Structures. When the graphic representation of the sign occurs on a sign board, the size of the sign shall be calculated by the square footage of the sign board. For illuminated signs, all portions of the sign which are illuminated shall be included in the square footage. In other cases where lettering is attached to a structure and no sign board is utilized, the square footage of the sign shall be calculated by drawing a rectangle around all portions of the lettering; the square footage of the sign shall be the area of the rectangle.
- B. The sign area of wall-mounted and freestanding pylon and ground-mounted monument type signs shall be calculated as follows:
 - 1. The area of a wall sign comprised of individual channel-type letters, numerals, symbols, or other similar components painted on or attached flat against the wall of a building, where such individual components are without integrated background definitions and are not within a circumscribed frame area, the total area of the sign shall be measured by the area enclosed by four (4) vertical and horizontal straight lines containing each word or symbol.
 - 2. Where a freestanding, monument, or pylon-supported sign has two (2) faces, the area of both faces shall be included in determining the area of the sign. Sign height shall be measured as the vertical distance from grade adjacent to the sign footing, to the top of the sign, including the support structure and any design elements.
- C. The regulations and limitations of this Section are intended to be maximum dimensions permitted. The Community Development Director or Planning Commission may require a sign or sign program be reduced to less than the maximum area or height allowable if such a requirement is found to be necessary to comply with the purposes of this chapter.

34.300 DISTRICT SIGN REGULATIONS

The following subsections set forth sign regulations according to zoning district classifications. Signage within a specific zoning district shall conform to the sign requirements for that zoning district.

34.301 RESIDENTIAL DISTRICT SIGN REGULATIONS

The maximum area, height, and location of signs allowed in residential districts and for residential uses shall be as follows:

- 1. One nameplate not to exceed 2 square feet in area indicating the name of the occupant of a single family dwelling. The nameplate shall be located not closer than 10 feet to any property line, and shall not exceed 6 feet in height.

2. One nameplate not to exceed one square foot in area pertaining to a home occupation. Such nameplate shall be non-illuminated and shall be located flat against the wall of the dwelling.
3. One identification sign pertaining to a multi-family dwelling with an area not to exceed 2 square feet for each dwelling unit or 20 square feet, whichever is less. The sign shall be located on the site of the multi-family dwelling, shall not be located in or face into any interior side yard or any rear yard, and if attached to a building shall not project more than 6 inches into a required front yard or a required side yard adjoining a street. A detached sign located not closer than 5 feet to any portion of a building, or to any property line adjoining a street, shall be located not closer than 20 feet to any other property line and shall not exceed 4 feet in height.
4. Identification signs pertaining to a conditional use with an aggregate area not to exceed one square foot for each 8 feet of frontage of the site. Such signs shall be located on the site of the conditional use, shall not be located in or face into any interior side yard or any rear yard, and if attached to a building shall not project more than 6 inches into a required front yard or a required side yard adjoining a street. Detached signs located in any front yard or any side yard adjoining a street shall be located not closer than 5 feet to any portion of a building, and shall not exceed 6 feet in height.
5. No sign attached to a building shall project above the eave line or parapet line. No sign shall have any moving parts or be constructed of any reflective material. No illuminated sign shall be directly lighted, or flash on or off, but may be indirectly lighted or may have semi-direct or diffused lighting.

34.302 NON-RESIDENTIAL DISTRICTS SIGN REGULATIONS

The non-residential zoning districts include the following:

- A. All commercial districts including the General Commercial, Community Commercial, Recreational Commercial, and the Commercial Public Mixed Use District.
- B. All industrial districts including the Planned Commercial Industrial Mixed-Use District and the Planned Office/Research and Development District.
 1. All non-residential zoning district signs are required to be calculated with the following formula, unless stated otherwise
 2. Wall-Mounted Signs: 1 square foot of sign face for every lineal foot of storefront space leased, owned or rented by the business tenant.
 3. Ground-Mounted Monument Sign: 1 square foot of sign face for every 4 lineal feet of street frontage. Maximum height: 6 Feet.
- C. The Commercial-Residential and the Industrial-Residential Mixed Use Districts shall comply with the following:

1. Live Work-Restricted Use Signs: Only non-illuminated blade, awning, canopy or wall-mounted signs are permitted. 1 square foot for every 10 lineal feet of building storefront space leased, owned or rented by the business tenant.
 2. Live Work-Limited Use Signs: Only non-illuminated blade, awning, canopy or wall-mounted signs are permitted. 1 square foot of sign for every 8 lineal feet of building storefront space leased, owned or rented by the business tenant.
 3. Live Work-Open Use Signs: Only non-illuminated blade, awning, canopy or wall-mounted signs are permitted. 1 square foot of sign for every 6 lineal feet of building storefront space leased, owned or rented by the business tenant.
 4. Mixed Use Signs: Only non-illuminated blade, awning, canopy or wall-mounted signs are permitted. 1 square foot of sign for every 5 lineal feet of building storefront space leased, owned or rented by the business tenant.
- D. Only businesses within the boundaries of the property shall be permitted to advertise on any freestanding pylon, ground-mounted monument or wall-mounted sign.
- E. No sign attached to a building shall project above the eave line or parapet line. No illuminated sign shall be directly lighted, or flash on or off, but may be indirectly lighted or may have semi-direct or diffused lighting.

34.400 SIGNS SUBJECT TO REVIEW

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

- A. Permits for signs subject to review under Section 34.301 and 34.302 shall be acted upon within thirty (30) days of the submission of a complete Sign Permit application. Applications for sign permits must contain a scale drawing indicating the dimensions, materials, coloring, graphic content, lighting source, mounting hardware and site location. In addition, such application shall include photographs of signs found on properties located on each side of the structure.
- B. The Community Development Director may approve, deny or approve with conditions the any permit application for signs under Sections 34.301 and 34.302 of this chapter.
- C. All reviewing authorities shall review all signs and their locations within a site and placement on a structure in accordance with Sections 34.302 of this chapter.

- D. Except as allowed through an approved Master Sign Program, no individual ~~No~~ sign shall exceed 100 square feet in sign area, except for ~~wall~~ signs on structures greater than 30,000 square feet ~~in floor area~~ which may not exceed 250 square feet in sign area.
- E. **Awning Signs.** An awning sign is a covering which is (or appears to be) made of cloth or canvas that is either permanently attached to a building or can be raised or retracted or fixed to a position against the building when not in use. Awnings on structures in the Central Hercules Plan shall be reviewed in accordance with all provisions of the Central Hercules Plan Regulating Code. The sign face of an awning sign may not exceed 25% of the area of the plane of the awning on which the sign face appears. No material or signage may hang from an awning.
- F. **Marquee Signs.** A marquee is a sign used for the advertisement of a movie or theatrical event. Marquee signs are permitted for theaters only and must be wall signs, subject to the requirements for wall signs.
- G. **Monument Sign.** A monument sign is mounted directly on the ground. Except as allowed through an approved Master Sign Program, the size of the face of a monument sign shall not exceed 32 square feet. ~~The, the~~ maximum height of the sign shall not exceed 6 feet. ~~Only, and only~~ one monument sign per six-hundred feet of lot frontage is permitted.
- H. **Freestanding Pylon Sign.** A freestanding pylon sign is a sign attached to columns erected directly into the ground. Only one freestanding pylon sign per one-thousand feet of lot frontage is permitted. The height of a pylon sign is measured from the top of the sign to the ground.
1. New freestanding pylon signs are prohibited to be constructed in the City of Hercules except where all of the following conditions are met:
 - a. The property on which the pylon sign is to be constructed must be zoned as General Commercial (CG).
 - b. The pylon sign must be constructed on-site and within 100 feet of the Interstate 80 right-of-way or easement.
 - c. The pylon sign must be approved as part of a Master Sign Program and shall be subject to environmental review under the California Environmental Quality Act.
 2. The pylon sign must be for on-site commercial developments intended to serve a market area that extends beyond the City limits of Hercules (as determined by the Planning Commission).
 - a. The sign shall be supported by a minimum of two enclosed supports, located at or near the exterior edge of the sign face, or constructed as a monolith (with no open area between the message area and the ground upon which the sign is located). Signs supported by a single pole shall not be permitted.
 - b. At signs which contain open area below the message area (i.e., between the supports), the height of the open area shall be at least equal to the height of the message area.
 - c. The colors and/or materials of the sign and the supporting structure shall be compatible with the exterior of the shopping center or buildings for which the sign

- provides identification. The design of the freestanding sign should reflect the architectural design of the buildings within the shopping center.
- d. The sign may identify the shopping center or businesses (where a single business is not part of a larger center or development) and the name of the shopping center or business shall be prominently displayed in the sign message area. Individual tenants/owners may be identified on the sign providing the name of the center shall be clearly legible to the "target" audience, as determined by the Planning Commission. The freestanding pylon sign shall be limited to a maximum of three (3) on-site tenants.
 - e. Where the center/business adjoins a public street, the sign and the supporting structure shall be located no less than a distance equal to the maximum sign height from the nearest edge of the public street sidewalk (or curb, if there is no sidewalk), and the sign and supporting structure shall be located no closer than 10 feet from any other property line at the perimeter of the center/business site. This distance shall be measured from the closest point on the property line to the portion of the sign or sign structure that is closest to the property line.
 - f. The maximum height of the sign shall not exceed 90 feet.
 - g. Notwithstanding Section 34.400.N, pylon signs may include a digital display, so long as such digital display occupies no more than twenty five (25) square feet on each sign face.
 - h. As of the effective date of this ordinance, a legally installed freestanding pylon sign may continue to be used and ordinary maintenance and repairs may be made to the legally conforming sign provided the structure is not moved, enlarged, or structurally altered. Existing freestanding pylon signs will not be permitted to be enlarged, expanded, or allowed any additional sign panels to be constructed within their existing sign area. Existing sign panels on legally-constructed and permitted freestanding pylon signs are permitted to be replaced when new businesses replace one or more of the existing on-site businesses shown on existing sign panels.
- I. **Projecting Signs/Blade Signs.** A projecting or blade sign is one which is attached to a wall at an angle. Where a projecting sign projects over a sidewalk, it must clear the ground by at least eight (8) feet. Any use which contains a projecting sign may not contain a freestanding pylon sign. Projecting signs may not be placed above the first story of a structure unless it is advertising a use that occurs above the first floor. In cases where a projecting sign occurs above the first story of a structure, it may not be placed higher than the midpoint of the second story.
- J. **Subdivision Sales Signs, On-Site.** On-site subdivision sales signs shall comply with the following regulations:
- a. A maximum of two advertising signs, with a maximum area of 24 square feet and a maximum height of 6 feet for each sign; or
 - b. A maximum of four directional signs, with a maximum area of 16 square feet and a maximum height of 6 feet for each sign; or
 - c. One sign for each model in the project, with a maximum area of 8 square feet and a maximum height of 4 feet for each sign.

K. Subdivision Sales Signs, Off-Site. Off-site subdivision sales signs shall comply with the following regulations:

- a. The maximum number of signs shall be four per project.
- b. The maximum height shall be 6 feet.
- c. Setbacks shall be provided as follows: 15 feet from property line, 300 feet from other authorized off-site subdivision sales signs, and 100 feet from occupied residential structures.
- d. All sign bases and support structures shall be boxed or enclosed in a decorative base.

L. Wall Signs. A wall sign is one which is applied, painted or affixed flush to the exterior of a structure. No wall sign shall protrude beyond the roof line or cornice structure of a building, and shall not cover windows, doors or architectural detailing of the building to which it is affixed.

M. ~~Religious Institution Sign. A religious institution sign must be for the use of a religious institution, must occur on the same parcel as the religious institution, and may have a changeable copy sign. A religious institution sign shall be either a wall or monument sign in accordance with the requirements for those signs.~~

N. ~~Changeable Copy Signs. Changeable copy signs are prohibited except for religious institutions, bulletin boards, and community signs as approved through a Master Sign Program.~~

O. Directory Signs. A Directory Sign is one which advertises more than one use or establishment. A directory sign may be mounted to the ground, one or more poles, walls, or may project from a wall at an angle. A directory sign may advertise or identify only uses which exist within the same lot or uses which exist in any group of structures which share a common point of access from the public way. Only one directory sign per five-hundred feet of lot frontage is permitted. Directory Signs are permitted only in subsection 1, 2, or 3 below:

1. Community Commercial zoning district along Sycamore Avenue.
2. General Commercial zoning district along San Pablo Avenue.
3. General Commercial zoning district along Willow Avenue.

~~P. Advertising Messages Incorporated Into Approved Signage. Permanent advertising messages or business information (such as signage indicating business hours, signage which indicates which types of bank machine cards are accepted, or other similar message) shall be considered a sign subject to review, unless that message is in a sign not subject to a permit. When reviewing such signage, other signs on the site shall also be considered.~~

~~Q.P.~~ Gasoline Sales Canopy Signs. Except as allowed through an approved Master Sign Program, Gas station canopy signs shall not extend beyond the edges of the canopy and shall comply with one of the two following alternative provisions:

1. No sign shall exceed 15% of the square footage of the side of the canopy upon which it is located. No side shall contain more than one sign.

2. The total area of signs on a gas station canopy shall not exceed 9% of the total square footage of all **signs-sides** of the canopy. No canopy shall have more than two signs located on it. Both signs may be located on the same side of the canopy.

R.Q. Master Sign Programs.

1. General Requirements. A Master Sign Program is required when a sign(s) is requested for:
 - a. A building or grouping of buildings which contains six (6) or more business or office uses, or
 - b. Community uses that request more than two identification signs. No permit shall be issued for an individual sign requiring a permit on a site with six (6) or more existing or proposed business spaces unless, and until, a master sign program for the property on which the sign will be erected has been approved by the Design Review Committee.
2. Required Information. A Master Sign Program shall contain the following information:
 - a. An accurate plot plan of the lot, at such a scale as the Planning Division may require.
 - b. Location of buildings, parking lots, driveways and landscaped areas on the lot.
 - c. Computation of the maximum total sign area, the maximum area for individual signs, the height of signs and the number of freestanding signs allowed on the lot included in the plan.
 - d. An accurate indication of the plot plan of the proposed location of each present and future sign of any type, whether requiring a permit or not.
 - e. Color scheme.
 - f. Lettering or graphic style.
 - g. Materials.
 - h. Sign dimensions.
 - i. Provisions for leasing information.
3. Window Signs. A Master Sign Program including window signs shall indicate the areas of the windows to be covered by window signs and the general type of the window signs permitted (e.g. paper affixed to window, painted, neon, etched on glass). (See 34.500J for permitted coverage.)
4. Freestanding Pylon Signs. The Master Sign Program shall address shared or common usage of freestanding pylon signs.
5. Other Provisions. Master Sign Programs may contain regulations as the Design Review Committee may reasonably determine are necessary to assure the Program's compliance with the requirements of this Chapter.
6. Procedures. A Master Sign Program shall be a condition of approval of any planned development, design review, use permit or other application required by

the City, and shall be processed prior to installation of any signs. Any sign which conforms to an approved sign program may be approved by the Director of Community Development. Approval of a Master Sign Program does not waive the permit requirements for individual signs.

7. **Amendment.** A Master Sign Program may be amended by filing a new Master Sign Program that substantially conforms to ~~all~~ requirements of this Chapter.
8. **Binding Effect.** After approval of a Master Sign Program, no signs shall be erected, placed, painted, or maintained, except in conformance with such plan, and such plan may be enforced in the same ways as any provision in this Chapter. The Master Sign Program shall be attached to the lease agreements for all leaseable space within the project. In case of any conflict between the provisions of such a plan with any other provisions herein, ~~this Section~~ the provisions of the Master Sign Program shall control.

34.500 SIGNS NOT REQUIRING A PERMIT

The following signs are permitted as indicated in the following subsections, and require no permit.

- A. **Bulletin Boards.** One bulletin board not to exceed 20 square feet in area shall be permitted, serving ~~only~~ to identify and announce ~~the on-site services and activities of a park, public or parochial school, library, church, community center or other similar or community facility or institution.~~ The bulletin board shall be located on the site of the community facility or institution, shall be located not closer than 5 feet to any portion of a building, shall be located not closer than 10 feet to any property line adjoining a street, shall be located not closer than 20 feet to any other property line and shall not exceed 6 feet in height.
- B. **On-Site Real Estate Sign.** An on-site real estate sign is a temporary sign advertising the lease or sale of land, space or structure. This type of sign is generally mounted to post structure embedded in the ground with signage attached. Onsite residential signage may not exceed 6 square feet for the primary sign and up to an additional 4 square feet for add-on placards. For all other types of land uses and vacant land, the sign may not exceed 24 square feet. These types of real estate signs shall not be located on City of Hercules rights-of-way, landscaped medians or parkways. On-site Real Estate Signs must be removed within ten days of the sale or lease of the property.
- C. **Off-Site Residential Real Estate Open House/Directional Signs.** An off-site residential real estate sign is a temporary, portable off-site sign within any residential zone intended to provide directional assistance for an “open house” and shall be:
 1. “A-frame” in design. “Stick signs” are strictly prohibited.
 2. Allowed only for residential real estate located within the City of Hercules.

3. Limited to a maximum total of 5 temporary double-sided off-site residential real estate signs per property provided motorist visibility is not obstructed and no more than 4 double-sided signs for different properties shall be at a single intersection.
 4. Limited to 30 inches in height and 6.25 square feet in sign face area as measured on one side.
 5. Signs may be placed on private property only after first obtaining permission from the property owner.
 6. Signs may be placed in the public right-of-way only when immediately adjacent to property lines in such a manner that does not interfere with ADA accessibility or interrupt flow of vehicle or pedestrian traffic nor obstruct vehicular visibility. However, signage is prohibited in the center divider, any landscaped center-median, and/or traffic islands of public streets, bicycle paths or public walking trails. Additionally, signs shall not be placed on fences, utility poles or walls, or attached to traffic lights or light standards.
 7. Signs may be displayed sunrise to sunset on the day of the open house or on broker's touring day(s).
 8. Violations. All signs in violation are subject to seizure by the City of Hercules. (Note: These signs will be removed and stored at the City of Hercules Corporation Yard for a maximum of ten (10) days. After ten (10) days, the City will dispose of the sign if not claimed. Signs may be retrieved by contacting the Public Works Department and waiving the fine for the first violation, paying \$25 for the second violation and paying \$50 for each violation thereafter for retrieval fee per sign.
 9. No balloons or attachments are permitted on the A-frame real estate open house signs.
- D. **Contractor Signs.** A contractor's sign is a temporary sign erected during the construction phase of a project only, not to exceed 24 square feet. Such sign must be removed upon the issuance of a Certificate of Occupancy, where one is required. Contractor Signs may also be used during home improvement or renovation projects that are not subject to a Certificate of Occupancy, but must be removed after the work has been completed.
- E. **Signs for Garage or Yard Sales.** Lawn, yard or garage sale signs are prohibited on any state or city public property or right-of-way, or on utility poles. No sign for garage or yard sales shall be posted more than 24 hours before and after the event. Garage or yard sale signs are limited to a maximum of four (4) square feet.
- F. **Special Events or Notice Signs.** Special Events or Notice Signs are temporary signs, such as banner, pennants, wind socks, posters or flags, displayed on a non-residential property for decorative or festive purposes to announce festivals, elections, or special events. Such signs may not interfere with pedestrian or vehicular traffic. No individual building occupant may utilize the provisions of this section for more than 30 days within a calendar year. Prior to

displaying any Special Event or Notice Sign or Signs, the building occupant shall submit written notification to the Community Development Director of the installation and removal dates.

- G. **Special Signs and Non-Commercial Holiday Decorations.** Non-commercial holiday decorations, signs on products or product containers, public information and safety signs, historic markers, signs required by local, state or federal law, and non-commercial messages placed on lawful signs shall be exempt from the regulations of this chapter.
- H. **Temporary Signs for Special Events.** Temporary signs and banners for promotional or seasonal events of civic, charitable, educational, religious, or service organizations are allowed when displayed on the location of the subject activity. They shall be placed no sooner than 14 days prior to the event and removed no later than seven days after the event. Such signs or banners shall not exceed 32 square feet.
- I. **Warning Signs.** "No trespassing," "no dumping," or other warning signs are allowed that do not exceed 4 square feet per sign.
- J. **Window Signs.** Window signs are allowed provided that they are placed on the inside of the window, and occupy no more than 25% of the glassed area of all windows, and is at least 3 feet from the window frame of an exterior window and the majority of the interior is visible from the outside of the building.
- K. **Household Signs.** Signs that display street numbers, last names and personal names given to residential structures shall not require a permit.

34.600 SPECIFIC REGULATIONS FOR TEMPORARY AND MISCELLANEOUS SIGNS

The following section establishes regulations for the maximum number, location, maximum area, maximum height and/or special regulations for all signs of a temporary nature that are allowed in the City of Hercules.

A. Banners.

1. Temporary (for a period of not more than 30 days per calendar year) promotional banners ~~including "grand opening", "under new management", and seasonal or other special event advertisements,~~ may be placed on any business, ~~excluding fast food restaurants and automobile and open lot vehicle dealers,~~ a total of 30 days per calendar year. The maximum size of all banners on-site shall not exceed 36 square feet combined. The length of the banner may not exceed 40% of the length of the building elevation on which it is displayed. No more than two banners may be used for any promotion. A banner shall only be affixed to a building, and shall not be placed on or above a roof.
2. ~~Fast food restaurants and automobile and open lot vehicle dealers may display banners year round, in accordance with the following restrictions:~~

- ~~a. Up to two (2) banners, with a maximum aggregate area of 36 square feet, may be displayed.~~
 - ~~b. The banner shall only be attached to and displayed below the eave of the roof line of the subject building.~~
 - ~~c. The length of the banner may not exceed 40% of the length of the building elevation on which it is displayed.~~
- B. Permanent and Seasonal Decorations. Permanent and seasonal ornaments of a decorative nature shall comply with the following regulations:
 - 1. The number of decorations allowed shall be determined at the time of Sign Permit issuance.
 - 2. The decoration shall contain no commercial copy (e.g. business name, product, etc.)
- C. Construction Signs. One “under construction” sign is allowed per construction site. The sign shall not exceed forty (40) square feet in area and ten (10) feet in height. The sign may identify the project developer, project participants, and/or future occupants.
- D. On-Site Directional Signs. Where appurtenant to a permitted or conditionally permitted use, on-site directional signs may be placed subject to the following regulations:
 - 1. Maximum area of a directional sign shall be four square feet.
 - 2. Maximum height shall be five feet.
 - 3. Directional signs shall have no commercial message or copy.
- E. Inflatable Signs. Inflatable balloons, objects or signs are not permitted to be displayed on any commercial or industrial or mixed use zoned building. Temporary seasonal businesses, such as Christmas tree lots may display an inflatable object associated with the holiday for one period *not to exceed 30 days*. Amusement parks and amusement destinations may be permitted to display temporary inflatable balloon objects that do not exceed the height of the project building(s) for a period of not more than 30 days per calendar year. Amusement parks and amusement destinations may display on a temporary basis two inflatable signs or characters, a maximum of 15 feet tall at each major entry to the facility. For the purposes of this subsection, a major entry is an entry from a public road providing direct public access to the site. All inflatables shall be affixed to the ground, and shall not be attached to, or displayed on or above any structure.
- F. Political Campaign Signs. Political Campaign Signs are allowed to be displayed only on prescribed locations identified and adopted through legislation by the City Council.

34.700 PROHIBITED SIGNS

The following signs are prohibited by this Section:

- A. Abandoned signs. Any sign which is unused for more than 90 consecutive days shall be deemed abandoned and shall be removed. Individual tenant signs in multi-tenant shopping centers may remain unused for a longer period provided all advertising copy is

removed and a blank sign face is maintained. For the purposes of this Section, "unused" shall mean the absence of copy or advertising message, or a sign which advertising a business or activity no longer located at the subject site.

- B. Signs that simulate, by virtue of size, shape, color, lettering, or design, a traffic sign or signal, or signs with characters or graphics that interfere with, mislead, or confuse the pedestrian or motorist are prohibited.
- C. Portable signs, sandwich board, "A-frame", or movable freestanding signs, including signs placed on parked vehicles or trailers, except where specifically authorized in the Municipal Code.
- D. Any sign erected in or extending into the public right-of-way, except signs in the commercial, industrial, planned office/research and development zoning districts, and properties in the Central Hercules Plan where mixed commercial-residential land uses are developed and improved, and where the applicant has received an encroachment permit from the Public Works Department, and publicly owned signs for directional purposes.
- E. Any roof-mounted sign that projects above the roof or parapet of a building is prohibited. The Planning Commission shall be authorized to grant approval where the sign is designed as part of the building's architecture, such as a blade sign on a theater façade or a sign integrated into a raised building's parapet.
- F. Any structure that advertises an off-site business or activity, product, or service (such as a billboard) is prohibited with the exception of off-site residential subdivision advertising signs that comply with the regulations established by this Section.
- G. Animated signs that use blinking lights, audible sounds, human or animal generated movements. This restriction does not apply to electronic message signs and time and temperature signs.
- H. Banners, streamers and pennants are prohibited except where specifically authorized by this chapter.
- I. Inflatable balloons, objects or signs are not permitted to be displayed on any commercial or industrial or mixed use zoned building except where specifically authorized by this chapter.

Exhibit B: Findings with Facts

Sign Regulations Zoning Text Amendment #18-03

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

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

FACT: Zoning Text Amendment #18-03 is consistent with the General Plan as it will help ensure legally defensible and proper review of comprehensive sign programs to assist in promoting an attractively designed and economically feasible development, as outlined in Objective 9 of the Land Use Element of the Hercules General Plan.

FINDING NO 2: The proposed amendment would not be detrimental to the health, safety, welfare, and public interest of the City.

FACT: The proposed Zoning Text Amendment #18-03 to amend Chapter 34, "Sign Regulations," would not impact or be detrimental to the health, safety, welfare, or public interest. The sign regulation amendments would help protect certain free speech rights by eliminating several content-based sign regulations. The sign regulation amendments also ensure proper review and implementation of Master Sign Programs, which provide the City discretion through a public hearing process to impose appropriate, legal, and strict restrictions on the location, number, size, design, and other aspects of signs as necessary to minimize impacts on the public health, safety, and welfare.

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

FACT: The proposed Zoning Text Amendment #18-03 would be internally consistent and would not conflict with the purposes, regulations, and required findings of the Zoning Ordinance, as the amendments clarify and reinforce the Planning Commission's authority to approve Master Sign Programs, provided that each approved Master Sign Program substantially conforms to the requirements of the Zoning Ordinance and that the City make the same findings as required for Design Review Permits, as stipulated in Section 42.500 of the Zoning Ordinance.

RESOLUTION NO. 18-07

A Resolution of the Planning Commission of the City of Hercules Recommending City Council Approval of Design Review Permit #DRP 18-01 for the Master Sign Program for the Safeway Center at the Northeast Corner of the Intersection of San Pablo Avenue and Sycamore Avenue, Subject to Conditions of Approval Contained Herein.

WHEREAS, on September 26, 2017, at a duly held public hearing, the City Council adopted Resolution No. 17-069 which: approved the Safeway Project Initial Study/Addendum (#IS 17-01) to the Hercules New Town Center (HNTC) Environmental Impact Report (State Clearinghouse No. 2007062002, certified 2009), pursuant to the California Environmental Quality Act (CEQA); reconfirmed and readopted the applicable mitigation measures listed therein; and reconfirmed and readopted the Statement of Overriding Considerations for the Hercules New Town Center Project as amended; and

WHEREAS, on September 26, 2017, at a duly held public hearing, the City Council approved Resolution No. 17-071, approving Initial/Final Planned Development Plan (PDP) #17-01, Design Review Permit (DRP) #17-02, Conditional Use Permit (CUP) #17-01, and Minor Exception (ME) #17-01 for the Safeway Center Project, located at the northeast corner of the intersection of Sycamore Avenue and San Pablo Avenue; and

WHEREAS, on October 2, 2017, at a duly held public hearing, the City Council approved Ordinance No. 503, which included Zoning Text Amendment #17-01 to amend Section 34.400.H of the Zoning Ordinance in order to allow freeway-oriented pylon signs up to 90 feet tall on property within 100 feet of Interstate 80 and zoned General Commercial; and

WHEREAS, the aforementioned Safeway Center project approvals included a set of Conditions of Approval (COAs; Exhibit A to Resolution No. 17-071), including COA #17, requiring that the project applicant submit a Master Sign Program (MSP) for Planning Commission approval of all on-site signage, consistent with the provisions of Section 34.400.R of the Zoning Ordinance; and

WHEREAS, the project applicant, McNellis Partners, submitted to the City on April 10, 2018, an application for a Master Sign Program, deemed complete by City staff; and

WHEREAS, DRP #18-01 proposes a Master Sign Program for the previously approved Safeway Center at the northeast corner of Sycamore Avenue and San Pablo Avenue (Assessor Parcel Number 404-040-040-2); and

WHEREAS, on April 16, 2018, at a duly held public hearing, the Planning Commission passed Resolution 18-06 recommending that City Council adopt Zoning Text Amendment #18-03 to amend the Zoning Ordinance for clarity and consistency regarding Master Sign Programs, both internally and with the proposed and other potential Master Sign Programs; and

WHEREAS, Chapter 42 of the Zoning Ordinance, "Design Review," defines the purpose of and types of projects, including any exterior construction of on-site signage, subject to review and approval by the Planning Commission, based on findings of fact; and

WHEREAS, the City on April 5, 2018, mailed project hearing notices to all property owners within 300 feet of the project site and published a public hearing notice on April 6, 2018, in compliance with Section 40.700 of the Zoning Ordinance; and

WHEREAS, on April 16, 2018, the Planning Commission held a duly noticed public hearing to consider Design Review Permit #18-01 and did hear and use its independent judgment to consider all said reports, recommendations, and various verbal and written testimony provided at or prior to the April 16, 2018, public hearing; and

WHEREAS, the applicant agrees with the necessity of and accepts all elements, requirements and conditions of this resolution as being a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the citizenry in general and the persons who work at or visit this development in particular.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Hercules, after due study of the proposed Master Sign Program (including drawings, elevations, and written sign guidelines), Conditions of Approval, and staff report, and deliberation and public hearing, determines that the following findings of fact can be made regarding approval of DRP #18-01 so long as the conditions of approval listed further below are complied with in accordance with the approved attached drawings in Exhibit B:

- The approval of the design review plan complies with all pertinent provisions of the Zoning Ordinance, including provisions of Chapter 42, "Design Review," and applicable zoning and land use regulations, including but not limited to the Hercules General Plan as amended and any specific plan.
- The approval of the design review plan is in the best interests of the public health, safety, and general welfare.
- General site considerations have been designed to provide a desirable environment for the development.
- General architectural considerations, including the character, scale, and quality of the design, the architectural relationship with the site and other buildings, building materials colors, screening of exterior appurtenances, exterior lighting and signing, and similar elements have been incorporated in order to ensure the compatibility of this development with its design concept and the character of adjacent buildings.
- General landscape considerations have been considered to insure visual relief, to complement buildings and structures, and to provide an attractive environment for the enjoyment of the public.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Hercules determines that DRP #18-01 is within the scope of the development programs evaluated in the Hercules New Town Center Environmental Impact Report (EIR) and its addendum (Initial Study/Addendum #17-01), no new significant environmental effects could occur as a result of the proposed project, no new mitigation measures are required for the proposed project, and the proposed project does not require further environmental review under CEQA; and

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Hercules, hereby recommends the City Council approve Design Review Permit #18-01 with the following conditions of approval:

1. Approval of DRP #18-01 is contingent upon adoption of Zoning Text Amendment #18-03, (changes to the Zoning Ordinance sign regulations).
- 1.2. Approval of DRP #18-01 shall conform to the Master Sign Program (Exhibit A hereto).
- 2.3. All conditions of approval for the project's prior approvals, including Final Planned Development Plan #17-01, Design Review Permit #17-02, Conditional Use Permit #17-01, and Minor Exemption #17-01, continue to be in affect and shall be met.
- 3.4. The applicant shall obtain all required building permits prior to construction of on-site signage. The commencement of construction or operations shall constitute acceptance of all of the conditions and obligations imposed by the City for this project. The applicant/grantee by said acceptance waives any challenge as to the validity of these conditions.
- 4.5. All persons installing signage shall obtain a Business License from the Finance Department of the City of Hercules.
- 5.6. The Master Sign Program shall be attached to the lease agreements for all leasable space within the project.
- 6.7. The applicant agrees as a condition of approval of this permit to hold harmless and to defend, at the sole expense of applicant, any action brought against the City based upon approval or use of these permits. The applicant shall indemnify and reimburse the City for any judgement for damages, court costs and attorneys' fees that the City may be required to pay as a result of any such action. The City, at its sole discretion, may participate, which shall not relieve the permittee of its obligations under this condition.
- 7.8. All LED (light-emitting diode) signs shall have automatic dimmers to adjust brightness based on ambient light conditions and/or time of day such that signage is lit to appropriate standards, subject to City staff review and approval.

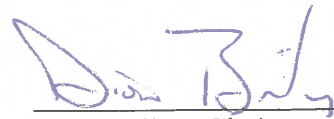
PASSED AND ADOPTED by the Planning Commission of the City of Hercules on this sixteenth day of April 2018, by the following vote:

AYES: Bailey, Galieva, Morrison, Rubio, Tolley

NOES:

ABSENT:

ABSTAIN:


Dion Bailey, Chairperson


Holly Smyth, AICP, Planning Director & Secretary

- Exhibit A: Safeway Hercules — Master Sign Program
- Exhibit B: Findings with Facts

Exhibit B: Findings with Facts

Safeway Center Master Sign Program Design Review Permit #18-01

Section 42.500 of the City of Hercules Zoning Ordinance requires five findings to be made for granting a Design Review Permit; however, for Master Sign Plans for previously approved Planned Development Plans, only the Findings 1, 2, 3, and 4 apply, as follows:

Finding No. 1: The approval of the design review plan is in compliance with all provisions of Zoning Ordinance Chapter 42, "Design Review," other pertinent provisions of the Zoning Ordinance, and applicable zoning and land use regulations, including but not limited to the Hercules General Plan as amended and any specific plan.

Fact: Approval of the Master Sign Program for the Safeway Center is consistent with both (a) Section 34.400.R of the Hercules Zoning Ordinance, which provides for Master Sign Programs for groups of commercial buildings, and (b) Condition of Approval #17 of the Safeway Center project (Exhibit A to Resolution No. 17-071), requiring that the project applicant submit a Master Sign Program (MSP) for Planning Commission approval of all on-site signage, consistent with the provisions of Section 34.400.R of the Zoning Ordinance. As stipulated in Section 34.400.R of the Zoning Ordinance, the Safety Center MSP provides all of the required information, including but not limited to: an accurate site plan, with locations of building, parking lots, driveways, and landscaped areas; computation of maximum total sign area, maximum individual sign area, the height of signs, and the number of allowed freestanding signs; an accurate indication of the site location for each sign; color scheme; lettering and graphic style; materials; sign dimensions; and shared usage of pylon sign.

Finding No. 2: The approval of the design review plan is in the best interests of the public health, safety, and general welfare.

Fact: The Master Sign Plan for the Safeway Center would not impact or be detrimental to the health, safety, welfare, or public interest. The proposed signage includes—and does not preclude—the installation of signage to ensure proper and safe flow of vehicle and pedestrian traffic in and out of and through the project site. All electrical signs must be Underwriters Laboratories (UL) compliant, i.e., certified for electrical safety.

Finding No. 3: General site considerations, including site layout, open space, and topography, orientation and location of buildings, vehicular access, circulation and parking, setbacks, height, walls, fences, public safety, and similar elements have been designed to provide a desirable environment for the development.

Fact: Given the proximity of the project to two major highways (Interstate 80 and Highway 4) and two major arterial streets (San Pablo Avenue and Sycamore

Avenue), and given the relative elevation of the project site to those thoroughfares, the Master Sign Plan for the Safeway Center appropriately includes a freeway-oriented pylon sign and two monument signs properly situated and designed to be highly visible to passing motorists without obscuring views critical for safety. Tenant identification signs are also appropriately located and scaled on buildings to make businesses readily identifiable to potential customers and other visitors.

Finding No. 4: General architectural considerations, including the character, scale, and quality of the design, the architectural relationship with the site and other buildings, building materials and colors, screening of exterior appurtenances, exterior lighting and signing, and similar elements have been incorporated in order to insure the compatibility of this development with its design concept and the character of adjacent buildings.

Fact: The Master Sign Plan for the Safeway Center designates sign areas for each individual building based on each building's key architectural elements, ensuring signage is appropriately scaled and aligned for each building. Signs cannot extend above the building fascia. The pylon and monument signs incorporate brick veneer to match the façade material approved for the commercial buildings. Signs must be built of rust-proof materials and, where applicable, painted with highest quality, smooth finish polyurethane paint. All electrical lighting must be UL certified and meet all applicable building code standards, with no visible light leaks and all electrical devices, raceways, conduit, power supplies, and fasteners concealed. The Master Sign Program also prohibits animated, inflated, tethered, and other lower quality, temporary signs that can contribute to visual clutter and distraction.

Finding No. 5: General landscape considerations, including the location, type, size, color, texture, and coverage of plant materials at the time of planting and after a 5-year growth period, provision for irrigation, maintenance and protection of landscaped areas and similar elements have been considered to insure visual relief, to complement buildings and structures, and to provide an attractive environment for the enjoyment of the public.

Fact: Master Sign Programs do not include or affect the project landscaping, which was previously approved by the City Council on September 26, 2017, through Resolution No. 17-071, which approved Initial/Final Planned Development Plan (PDP) #17-01 and Design Review Permit (DRP) #17-02 for the Safeway Center.





Legislation Details (With Text)

File #:	18-142	Version:	1	Name:	
Type:	Public Hearing	Status:		Agenda Ready	
File created:	5/2/2018	In control:		City Council	
On agenda:	5/8/2018	Final action:			
Title:	Consider Approving an Ordinance to Adopt Proposed Zone Text Amendment #ZTA 18-02 Related to Establishing Restrictions on Paving of Residential Lots Recommendation: Receive report, open public hearing, discuss potential changes to #ZTA 18-02, and waive first reading and introduce an Ordinance with the proposed Zone Text Amendment related to Paving on residential lots.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Staff Report - Paving Residential Lots - 5-8-2018 CC Att 1-Draft Ordinance for Paving Att 2 -Approved PC Reso 18-08 Att 3 - Planning Commission Reports, attachments and powerpoints Att 4 - Paving Discussion at 012318 City Council				

Date	Ver.	Action By	Action	Result
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Consider Approving an Ordinance to Adopt Proposed Zone Text Amendment #ZTA 18-02 Related to Establishing Restrictions on Paving of Residential Lots

Recommendation: Receive report, open public hearing, discuss potential changes to #ZTA 18-02, and waive first reading and introduce an Ordinance with the proposed Zone Text Amendment related to Paving on residential lots.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of May 8, 2018

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, AICP, Planning Director
Elaine Hsieh, Planning Intern
Patrick Tang, City Attorney

SUBJECT: Consider Approving an Ordinance to Adopt Proposed Zone Text Amendment #ZTA 18-02 Related to Establishing Restrictions on Paving of Residential Lots

RECOMMENDATION:

Receive report, open public hearing, discuss potential changes to #ZTA 18-02, and consider waiving the First Reading and introducing an Ordinance with the proposed Zone Text Amendment #ZTA 18-02 related to Paving on residential lots.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

The Planning Commission held two public hearings at their February 20, 2018 and April 16, 2018 meetings based on initial direction provided by the City Council to address concerns about excessive paving of yard areas occurring in the City. Resolution 18-08 was approved by the Planning Commission recommending the Council consider modifications to the City's Zoning Ordinance through #ZTA 18-2 to implement a new paving restriction policy contained in Attachment 2.

FISCAL IMPACT OF RECOMMENDATION:

No fiscal impact.

DISCUSSION:

On January 23, 2018, the City Council of the City of Hercules had an initial discussion regarding excessive paving in yard areas of residential properties and directed staff to work with the Planning Commission to draft a new City policy to curb excessive paving (see Attachment 4). The Planning Commission undertook an initial discussion on February 20, 2018, and the matter was continued to April 16, 2018, to allow for some refinement.

During the April 16, 2018 Planning Commission meeting some additional modifications from the proposed resolution were requested to expand and modify the example graphics and add language suggested by City Attorney regarding promulgation of implementing administrative guidelines. It is anticipated that these guidelines would help explain the implementation of the paving policy to the public, which would most likely be in a pamphlet format and detail acceptable permeable versus impermeable

surfaces, in addition to providing more specific details for storm water runoff and impermeable surfacing coverage in zone districts other than RS-L.

An Ordinance has been drafted by staff following the recommendations of the Planning Commission which would create a new section 30.750 for the majority of the paving policy, amend Section 5.700 to require a paving permit for any hard surfacing over 120 square feet, and add new definitions to the definitions section of the Hercules Zoning Ordinance. A public hearing notice for this item was published in the newspaper on April 27, 2018 as required for Zoning Ordinance Amendments for the May 8, 2018 City Council meeting.

Attachments:

- 1** Draft Ordinance on Paving
- 2** Approved Planning Commission Recommending Resolution #18-08
- 3** Planning Commission Staff Reports with Attachments from 4/16/18, 3/19/18 (cancelled meeting), and 2/20/18 meetings
- 4** City Council staff report with attachment from 1/23/2018

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING ZONING TEXT AMENDMENT #ZTA 18-02 AS RELATED TO PAVING STANDARDS IN RESIDENTIAL ZONES WITH THE CREATION OF A NEW SECTION 30.750 AND AMENDING SECTION 5.700 AND SECTION 60.200 OF THE HERCULES ZONING ORDINANCE.

WHEREAS, the City Council of the City of Hercules recognizes the potentially adverse impacts to the environment, public safety, and neighborhood character caused by excessive paving of residential properties for parking and other secondary purposes; and

WHEREAS, there is a need to adopt regulations to avoid adverse impacts of excessive paving, including affecting property values, creating problems with run-off and storm water, and visual blight and safety hazards, and to ensure minimum landscaping standards in single-family residential neighborhoods; and

WHEREAS, Zoning Text Amendment #ZTA 18-02 (also known as the “Project”) would amend sections of the Hercules Zoning Ordinance, in substantially the same form as attached herewith; and

WHEREAS, it can be seen with certainty that there is no possibility that the Project may have a significant effect on the environment and is thus categorically exempt from the California Environmental Quality Act (“CEQA”) [State CEQA Guidelines Section 15061(b)(3)]; and

WHEREAS, the City Council at its regular meetings on January 23, 2018 directed staff to prepare and present for Planning Commission consideration and recommendation a set of zoning regulations to address Council’s concerns related to residential paving and parking; and

WHEREAS, the Planning Commission did hold properly noticed public hearings on February 20, 2018 and April 16, 2018 to consider staff’s suggested Zone Text Amendment, and did hear and use its independent judgment to consider all said reports, recommendations, and testimony hereinabove set forth;

WHEREAS, the Planning Commission on its April 16, 2018 meeting passed Resolution #18-08 recommending City Council to adopt an ordinance modifying the Hercules Zoning Ordinance as proposed in Zoning Text Amendment #ZTA 18-02 in regards to Paving in order to preserve, protect, provide for, and foster the health, safety, and welfare of the City; and

WHEREAS, the City Council held a properly noticed public hearing on May 8, 2018, and did hear and use its independent judgment to consider all said reports, recommendations, and testimony hereinabove set forth.

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

After due study and deliberation, and after convening the public hearings for the proposed Zoning Text Amendment #ZTA 18-02 in accordance with Section 52.400 of the Zoning Ordinance of the Hercules Municipal Code, the City Council finds that #ZTA 18-02 is consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and that it is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance.

SECTION 1. Compliance with California Environmental Quality Act (“CEQA”): The City Council determines that the Zoning Text Amendment is categorically exempt from CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the Zoning Text Amendment will not have a significant effect on the environment.

SECTION 2. Title 10 of the Hercules Municipal Code Zoning Ordinance shall include the creation of a new Section 30.750 – Paving Within Residential Front, Rear, and Side Yard Areas as follows:

30.750 Paving Within Residential Front, Rear, and Side Yard Areas

The requirements specified in this Section are intended to preserve the residential character of streetscapes in the city’s neighborhoods and minimize excess storm water runoff. The unregulated expansion of paved parking areas in front, rear, and side yards interferes with the pattern of building and open areas within neighborhoods, and can increase vehicle clutter by creating small parking lots in yard areas which are intended to remain as open areas.

Excessive paving of yard areas can negatively impact the character and appearance of residential areas. Paving yard areas to add additional parking can result in the proliferation of curb cuts that can have the effect of reducing the number of on-street parking spaces available.

1. The paving requirements in this section shall apply to all residential properties and lots.
2. New paving and hardscape areas (e.g., walkways, patios, etc.) that exceed 120 square feet in total area shall require a Paving Permit issued in compliance with Chapter 5.700 (Zoning Clearance Procedure).
3. The Planning Director shall hear and decide requests for reasonable accommodation as well as unique circumstances of flag lots, cul de sacs, or corner lots which make strict compliance with the requirements of this section impractical.
4. Within six months of final passage of this ordinance, staff shall promulgate administrative guidelines and regulations further defining what types of surfaces and materials are permissible for landscaping, paving, driveways, and walkways consistent with this Article.

A. Front Yards.

- 1) Driveways. The amount of allowable paving for driveways shall not exceed 35 percent of the total front yard area. "Front yard" is defined as the yard area forward of the primary structure as illustrated in Figure 35.751 (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).
- 2) Walkways and other Hardscape. The amount of paved walkways and hardscape shall not exceed 25 percent of the front yard area. See Figure 35.751 (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).
- 3) Landscaping minimums. For all residential properties, a minimum of 40 percent of the front yard area shall consist of a permeable landscaped area, excluding pavers, bricks, and other hard surfaces, even if permeable.

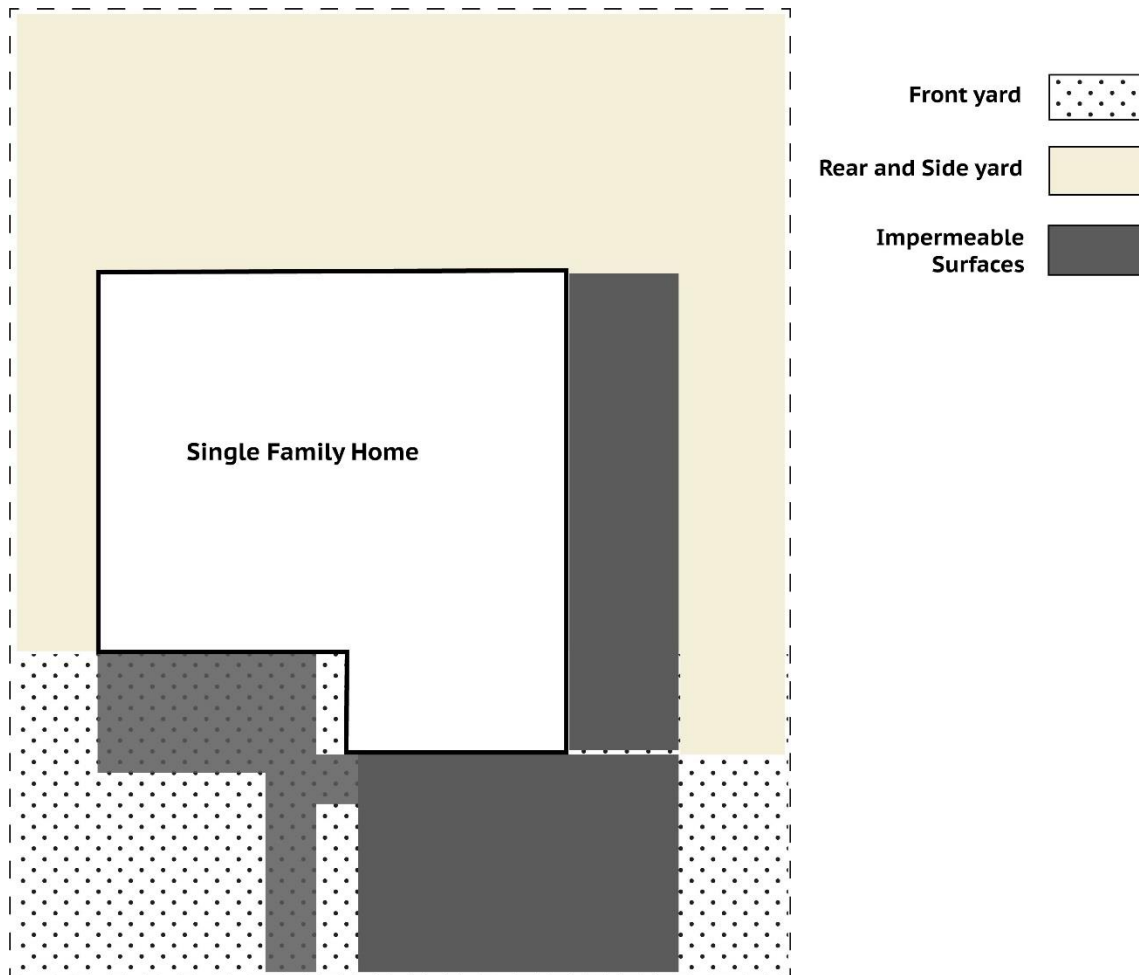
B. Rear and Side Yards.

- 1) The total amount of paved surface in the rear and side yard for driveways, walkways, and hardscape combined shall not exceed 60 percent of the total rear yard area. "Rear and Side yard" are defined as the yard area behind the front portion of the primary structure as illustrated in Figure 35.751 (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).
- 2) Landscaping minimums. For all residential properties and lots, a minimum of 40 percent of the required rear and side yard combined area shall consist of a permeable landscaped area, excluding pavers, bricks, and other hard surfaces, even if permeable.

4) Storm Water Runoff Limitations.

Impermeable surfacing may not exceed the storm water runoff design for the parcel or lot, and must not cause runoff to affect adjacent property. Applicants in the RS-L Residential Zone shall be required to submit to the City Engineer calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval when the impermeable surfacing, including all structures, would be greater than 47% of the entire lot. For all other residential zones, the City Engineer shall require applicants to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval based on administrative regulations promulgated by staff to address storm water runoff in zones other than RS-L. The administrative regulations required to be promulgated pursuant to this subsection shall be established within one year of final passage of this ordinance and updated thereafter as circumstances require.

Figure 35.751 (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards)



SECTION 3. Title 10 of the Hercules Municipal Code Zoning Ordinance Section 5.700 – Zoning Clearance Procedure is hereby amended with the following text:

5.700 Zoning Clearance Procedure

Zoning clearance shall be implemented through use permit application, development plan and design review. The primary goal of the administrative use permit is to provide a review and record keeping mechanism for development and uses within the City in addition to setting forth time periods and minor conditions of approval. Where a particular kind of development does not require a use permit of any kind such as limited accessory structures in some districts, zoning clearance will be met through review of any required building or paving permits. All building permits will be reviewed by the Community Development Director or Chief Building Official to verify that appropriate property regulations, performance standards and conditions of approval are met. A certificate of occupancy is not to be issued until such verification is recorded following the final building permit site inspection.

SECTION 4. Title 10 of the Hercules Municipal Code Zoning Ordinance Section 60.200 – Definitions portion of Chapter 60 of the Hercules Zoning Ordinance shall add the following definitions:

60.200 Definitions.

Front yard area: The yard area forward of the primary structure. See Figure 35.751.

Rear and Side yard areas: The yard area behind the front portion of the primary structure. See Figure 35.751.

Landscaped area: A permeable area that is permanently devoted to and maintained for the growing of shrubbery, grass, trees, and other plant material or by the use of such material as bark, crushed stone, lava rock, or similar materials to present an attractive, well-kept appearance (with permeable weed barrier); does not include hard surfaces such as brick, pavers, concrete, asphalt, or similar materials, regardless of permeability.

Hardscape Area: Includes semi-permeable and permeable surfaces such as pavers or concrete, but does not allow for asphalt paving (single family residential lots have maximum standards in Section 30.750).

SECTION 5. SEVERABILITY.

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

SECTION 6. Publication and Effective Date. The City Clerk shall certify to the adoption of this Ordinance and shall publish a summary of the Ordinance in the West County Times and post a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Councilmembers voting for and against the Ordinance

This Ordinance shall be effective thirty days from date of final adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 8th day of May, 2018, and was passed and adopted at a regular meeting of the Hercules City Council on the ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Kelley, Mayor

Lori Martin, Administrative Services Director &
City Clerk

RESOLUTION NO. 18-08

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE FOR ZONE TEXT AMENDMENT #ZTA 18-02, UPDATING THE ZONING ORDINANCE AS RELATED TO CERTAIN PAVING STANDARDS IN RESIDENTIAL ZONES.

WHEREAS, the City Council of the City of Hercules recognizes the potentially adverse impacts to the environment, public safety, and neighborhood character caused by excessive paving of residential properties for parking and other secondary purposes; and

WHEREAS, there is a need to adopt regulations to avoid adverse impacts of excessive paving, including affecting property values, creating problems with run-off and storm water, and visual blight and safety hazards, and to ensure minimum landscaping standards in single-family residential neighborhoods; and

WHEREAS, the Project would amend sections of the Hercules Zoning Ordinance, in substantially the same form as attached herewith; and

WHEREAS, it can be seen with certainty that there is no possibility that the Project may have a significant effect on the environment and is thus categorically exempt from the California Environmental Quality Act ("CEQA") [State CEQA Guidelines Section 15061(b)(3)]; and

WHEREAS, the City Council at its regular meetings on January 23 and February 13, 2018, directed staff to prepare and present for Planning Commission consideration and recommendation a set of zoning regulations to address Council's concerns related to residential paving and parking; and

WHEREAS, the Planning Commission did hold on February 20, 2018 and on April 16, 2018, properly noticed public hearings to consider staff's suggested Zoning Text Amendments, and did hear and use its independent judgment to consider all said reports, recommendations, and testimony hereinabove set forth;

NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The Planning Commission, based on its independent judgment and analysis, finds that there is no substantial evidence that the project will have no significant effect on the environment based on the whole record before it.
3. After due study, deliberation, and public hearing, the Planning Commission finds and determines that the Project is in the public interest and that the Zoning Ordinance as so amended (per Exhibit A) will remain internally consistent and will maintain the integrity and compatibility of its policy statements.
4. The Planning Commission finds these new policies to be a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the City.
5. The Planning Commission recommends that the City Council approve an Ordinance approving and adopting Zone Text Amendment ZTA 18-02 updating the Zoning Ordinance related to residential paving per the attached document (Exhibit A).

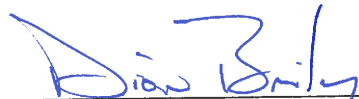
PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES on this 16th day of April 2018, by the following votes:

AYES: Tolley, Galieva, Morrison, Rubio, Bailey

NOES: None

ABSENT: None

ABSTAIN: None


Dion Bailey, Chairperson

ATTEST:

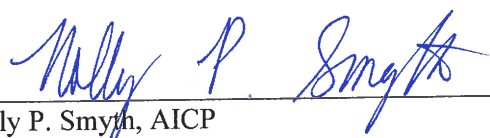

Holly P. Smyth, AICP
Planning Director & Planning Commission Secretary

Exhibit A - Proposed Modification to Hercules Municipal Code (Zone Text Amendment 18-02)

Exhibit A

Proposed Modifications to Hercules Municipal Code (Zone Text Amendment 18-02)

In addition to creating a new section to contain paving requirements, it is recommended that several existing sections of the Zoning Regulations be amended to conform to or otherwise clarify the new paving requirements as follows:

Section 1: Creation of new Zoning Ordinance Section 30.750 to establish paving regulations.

Section 2: Amend existing Section 5.700 to reference paving permits (See highlighted portion).

Section 3: Add New Figure X-X to illustrate paving and hardscape requirements.

Section 4: Add new definitions to Zoning Ordinance.

Section 1: Creation of new Zoning Ordinance Section 30.750 to establish paving regulations:

30.750 Paving Within Residential Front, Rear, and Side Yard Areas

The requirements specified in this Section are intended to preserve the residential character of streetscapes in the city's neighborhoods and minimize excess storm water runoff. The unregulated expansion of paved parking areas in front, rear, and side yards interferes with the pattern of building and open areas within neighborhoods, and can increase vehicle clutter by creating small parking lots in yard areas which are intended to remain as open areas.

Excessive paving of yard areas can negatively impact the character and appearance of residential areas. Paving yard areas to add additional parking can result in the proliferation of curb cuts that can have the effect of reducing the number of on-street parking spaces available.

1. The paving requirements in this section shall apply to all residential properties and lots.
2. New paving and hardscape areas (e.g., walkways, patios, etc.) that exceed 120 square feet in total area shall require a Paving Permit issued in compliance with Chapter 5.700 (Zoning Clearance Procedure).
3. The Planning Director shall hear and decide requests for reasonable accommodation as well as unique circumstances of flag lots, cul de sacs, or corner lots which make strict compliance with the requirements of this section impractical.
4. Within six months of final passage of this ordinance, staff shall promulgate administrative guidelines and regulations further defining what types of surfaces and materials are permissible for landscaping, paving, driveways, and walkways consistent with this Article.

A. Front Yards.

- 1) Driveways. The amount of allowable paving for driveways shall not exceed 35 percent of the total front yard area. "Front yard" is defined as the yard area forward of the primary structure as illustrated in Figure X-X (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).

2) Walkways and other Hardscape. The amount of paved walkways and hardscape shall not exceed 25 percent of the front yard area. See Figure 35.751 (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).

3) Landscaping minimums. For all residential properties, a minimum of 40 percent of the front yard area shall consist of a permeable landscaped area, excluding pavers, bricks, and other hard surfaces, even if permeable.

B. Rear and Side Yards.

1) The total amount of paved surface in the rear and side yard combined for driveways, walkways, and hardscape combined shall not exceed 60 percent of the total rear yard area. "Rear and Side yard" are defined as the yard area behind the front portion of the primary structure as illustrated in Figure 35.751 (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).

2) Landscaping minimums. For all residential properties and lots, a minimum of 40 percent of the required rear and side yard combined area shall consist of a permeable landscaped area, excluding pavers, bricks, and other hard surfaces, even if permeable.

4) Storm Water Runoff Limitations.

Impermeable surfacing may not exceed the storm water runoff design for the parcel or lot, and must not cause runoff to affect adjacent property. Applicants in the RS-L Residential Zone shall be required to submit to the City Engineer calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval when the impermeable surfacing, including all structures, would be greater than 47% of the entire lot. For all other residential zones, the City Engineer shall require applicants to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval based on administrative regulations promulgated by staff to address storm water runoff in zones other than RS-L. The administrative regulations required to be promulgated pursuant to this subsection shall be established within one year of final passage of this ordinance and updated thereafter as circumstances require.

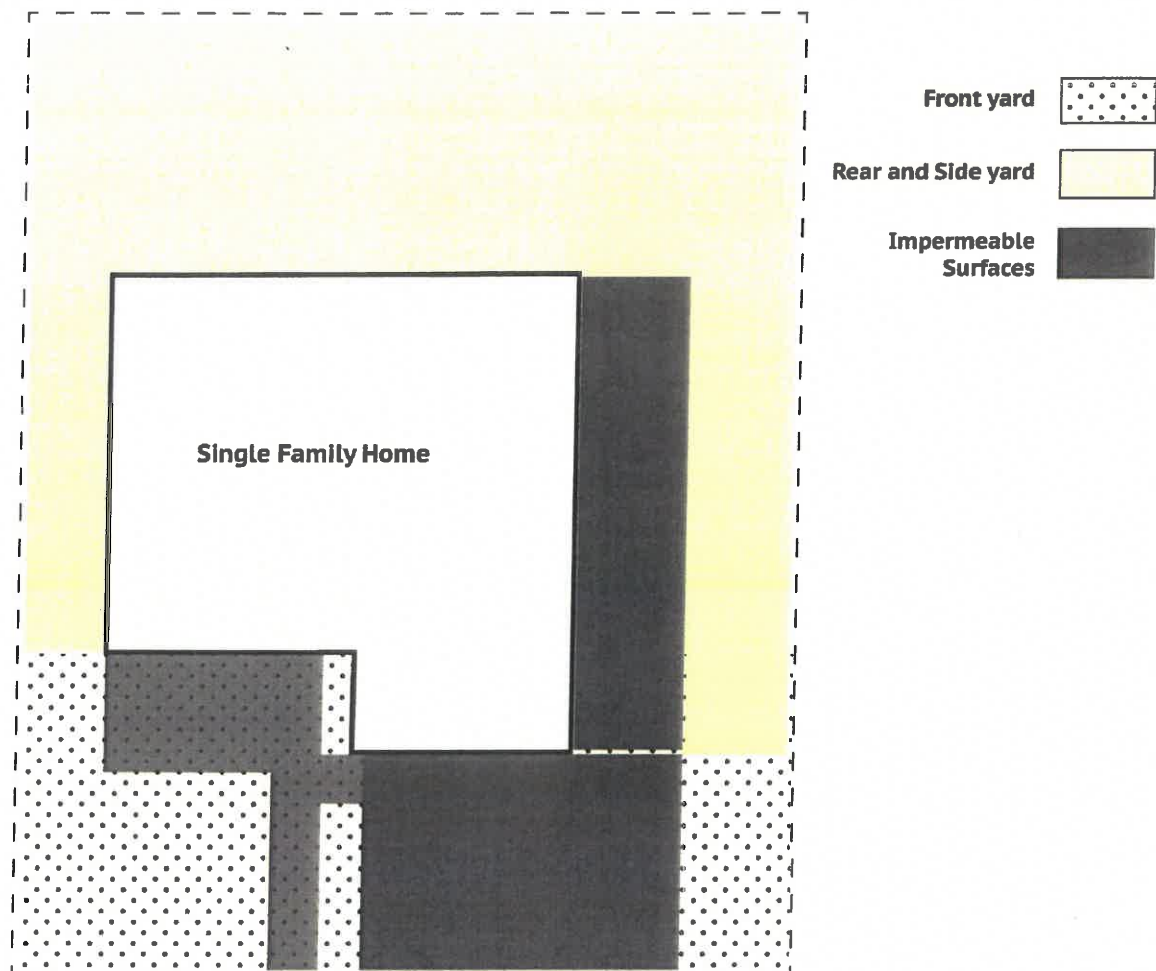
Section 2: Amend existing Section 5.700 to reference paving permits (See highlighted portion):

5.700 Zoning Clearance Procedure

Zoning clearance shall be implemented through use permit application, development plan and design review. The primary goal of the administrative use permit is to provide a review and record keeping mechanism for development and uses within the City in addition to setting forth time periods and minor conditions of approval. Where a particular kind of development does not require a use permit of any kind such as limited accessory structures in some districts, zoning clearance will be met through review of any required building or paving permits. All building permits will be reviewed by the Community Development Director or Chief Building Official to verify that appropriate property regulations, performance standards and conditions of approval are met. A certificate of occupancy is not to be issued until such verification is recorded following the final building permit site inspection.

Section 3. Add New Figure 35.751 to illustrate paving and hardscape requirements:

Figure 35.751 (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards)



Section 4. Add new definitions to Zoning Ordinance.

60.200 Definitions

Front yard area: The yard area forward of the primary structure. See Figure 35.751.

Rear and Side yard areas: The yard area behind the front portion of the primary structure. See Figure 35.751.

Landscaped area: A permeable area that is permanently devoted to and maintained for the growing of shrubbery, grass, trees, and other plant material or by the use of such material as bark, crushed stone, lava rock, or similar materials to present an attractive, well-kept appearance (with permeable weed barrier); does not include hard surfaces such as brick, pavers, concrete, asphalt, or similar materials, regardless of permeability.

Hardscape Area: Includes semi-permeable and permeable surfaces such as pavers or concrete, but does not allow for asphalt paving (single family residential lots have maximum standards in Section 30.750).





STAFF REPORT TO THE PLANNING COMMISSION

April 16, 2018

TO: Members of the Planning Commission

SUBMITTED BY: Holly Smyth, AICP Planning Director
Elaine Hsieh, Planning Intern
Robert Reber, Adjunct Planner
Patrick Tang, City Attorney

SUBJECT: Consider Approving Resolution #18-08 Recommending the City Council Adopt an Ordinance for proposed Zone Text Amendment #ZTA 18-02 Related to Establishing Restrictions on Paving of Residential Lots

RECOMMENDATION:

Receive report, open public hearing, discuss potential changes to #ZTA 18-02, and consider approving Resolution #18-08 recommending that the City Council adopt an Ordinance with the proposed Zone Text Amendment #ZTA 18-02.

DISCUSSION:

At its regular meeting on December 12, 2017, the City Council directed staff to schedule for discussion concerns regarding the paving of yards on residential lots, as solid surfaces in place of landscaping can affect property values, create excess run-off, and lead to visual blight and safety hazards. At its January 23, 2018 regular meeting, City staff reported to the City Council that the Hercules Zoning Ordinance does not have specific requirements regulating the paving of yards on residential lots and recommended the adoption of regulations to more specifically address the paving of yards. At the regular City Council meeting of February 13, 2018, the City Council directed staff to prepare draft regulations regarding the paving of yards on residential lots to be considered by the Planning Commission at its February 20, 2018 meeting.

At the Planning Commission meeting of February 20, 2018, the discussion revolved around defining terms such as “permeable” and “hardscape,” placing a percentage limitation on the rear yard area, and the effects of runoff on adjacent property. The Commission directed that further discussion of this topic be continued to the March 19, 2018 meeting. Planning Commission meeting on March 19, 2018 was cancelled due to improper upload of meeting agenda to public.

The attached zone text amendment would revise the Hercules Zoning Ordinance in response to City Council and Planning Commission concerns about the potential damaging effects paving large portions of properties has on runoff and neighborhood character within residential neighborhoods.

In summary, the proposed attached modifications would:

- 1) Amend Section 5.700 Zoning Clearance Procedure, to add reference to paving permits.
- 2) Add proposed Section 30.750 “Paving Within Residential Front, Rear and Side Yard Areas” to clarify the maximum paved areas allowed on residential property for driveways, walkways and other hardscapes, including landscape minimums.
- 3) Add figure X-X to illustrate front yard areas and rear and side yard areas, and impermeable surfaces.
- 4) Add performance standards related to runoff control, subject to City Engineer evaluation and approval.
- 5) Amend the Zoning Ordinance definitions Section 60.200 to include definitions for “Front yard area”, “Rear and Side yard areas”, “Landscaped Area” and “Hardscape Area.”

ATTACHMENTS:

Attachment 1: Draft Resolution # 18-08 recommending that City Council adopt Zone Text Amendment #ZTA 18-02 Paving Policy

Exhibit A: Proposed Modifications to HMC – Zone Text Amendment #ZTA 18-02

RESOLUTION NO. 18-08

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE FOR ZONE TEXT AMENDMENT #ZTA 18-02, UPDATING THE ZONING ORDINANCE AS RELATED TO CERTAIN PAVING STANDARDS IN RESIDENTIAL ZONES.

WHEREAS, the City Council of the City of Hercules recognizes the potentially adverse impacts to the environment, public safety, and neighborhood character caused by excessive paving of residential properties for parking and other secondary purposes; and

WHEREAS, there is a need to adopt regulations to avoid adverse impacts of excessive paving, including affecting property values, creating problems with run-off and storm water, and visual blight and safety hazards, and to ensure minimum landscaping standards in single-family residential neighborhoods; and

WHEREAS, the Project would amend sections of the Hercules Zoning Ordinance, in substantially the same form as attached herewith; and

WHEREAS, it can be seen with certainty that there is no possibility that the Project may have a significant effect on the environment and is thus categorically exempt from the California Environmental Quality Act ("CEQA") [State CEQA Guidelines Section 15061(b)(3)]; and

WHEREAS, the City Council at its regular meetings on January 23 and February 13, 2018, directed staff to prepare and present for Planning Commission consideration and recommendation a set of zoning regulations to address Council's concerns related to residential paving and parking; and

WHEREAS, the Planning Commission did hold on February 20, 2018 and on April 16, 2018, properly noticed public hearings to consider staff's suggested Zoning Text Amendments, and did hear and use its independent judgment to consider all said reports, recommendations, and testimony hereinabove set forth;

NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The Planning Commission, based on its independent judgment and analysis, finds that there is no substantial evidence that the project will have no significant effect on the environment based on the whole record before it.
3. After due study, deliberation, and public hearing, the Planning Commission finds and determines that the Project is in the public interest and that the Zoning Ordinance as so amended (per Exhibit A) will remain internally consistent and will maintain the integrity and compatibility of its policy statements.
4. The Planning Commission finds these new policies to be a reasonable manner of preserving, protecting, providing for, and fostering the health, safety, and welfare of the City.
5. The Planning Commission recommends that the City Council approve an Ordinance approving and adopting Zone Text Amendment ZTA 18-02 updating the Zoning Ordinance related to residential paving per the attached document (Exhibit A).

PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES on this 16th day of April 2018, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

Dion Bailey, Chairperson

ATTEST:

Holly P. Smyth, AICP
Planning Director & Planning Commission Secretary

Exhibit A - Proposed Modification to Hercules Municipal Code (Zone Text Amendment 18-02)

Exhibit A

Proposed Modifications to Hercules Municipal Code (Zone Text Amendment 18-02)

In addition to creating a new section to contain paving requirements, it is recommended that several existing sections of the Zoning Regulations be amended to conform to or otherwise clarify the new paving requirements as follows:

- Section 1: Creation of new Zoning Ordinance Section 30.750 to establish paving regulations.
- Section 2: Amend existing Section 5.700 to reference paving permits (See highlighted portion).
- Section 3. Add New Figure X-X to illustrate paving and hardscape requirements.
- Section 4. Add new definitions to Zoning Ordinance.

Section 1: Creation of new Zoning Ordinance Section 30.750 to establish paving regulations:

30.750 Paving Within Residential Front, Rear, and Side Yard Areas

The requirements specified in this Section are intended to preserve the residential character of streetscapes in the city's neighborhoods and minimize excess storm water runoff. The unregulated expansion of paved parking areas in front, rear, and side yards interferes with the pattern of building and open areas within neighborhoods, and can increase vehicle clutter by creating small parking lots in yard areas which are intended to remain as open areas.

Excessive paving of yard areas can negatively impact the character and appearance of residential areas. Paving yard areas to add additional parking can result in the proliferation of curb cuts that can have the effect of reducing the number of on-street parking spaces available.

1. The paving requirements in this section shall apply to all residential properties and lots.
2. New paving and hardscape areas (e.g., walkways, patios, etc.) that exceed 120 square feet in total area shall require a Paving Permit issued in compliance with Chapter 5.700 (Zoning Clearance Procedure).
3. The Planning Director shall hear and decide requests for reasonable accommodation as well as unique circumstances of flag lots, cul de sacs, or corner lots which make strict compliance with the requirements of this section impractical.

A. Front Yards.

- 1) Driveways. The amount of allowable paving for driveways shall not exceed 35 percent of the total front yard area. "Front yard" is defined as the yard area forward of the primary structure as illustrated in Figure X-X (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).
- 2) Walkways and other Hardscape. The amount of paved walkways and hardscape shall not exceed 25 percent of the front yard area. See Figure X-X (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).

- 3) Landscaping minimums. For all residential properties, a minimum of 40 percent of the front yard area shall consist of a permeable landscaped area, excluding pavers, bricks, and other hard surfaces, even if permeable.

B. Rear and Side Yards.

- 1) The total amount of paved surface in the rear and side yard combined for driveways, walkways, and hardscape combined shall not exceed 60 percent of the total rear yard area. "Rear and Side yard" are defined as the yard area behind the front portion of the primary structure as illustrated in Figure X-X (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards).
- 2) Landscaping minimums. For all residential properties and lots, a minimum of 40 percent of the required rear and side yard combined area shall consist of a permeable landscaped area, excluding pavers, bricks, and other hard surfaces, even if permeable.

4. Storm Water Runoff Limitations.

Impermeable surfacing may not exceed the storm water runoff design for the parcel or lot, and must not cause runoff to affect adjacent property. Applicants in the RS-L Residential Zone shall be required to submit to the City Engineer calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval when the impermeable surfacing, including all structures, would be greater than 47% of the entire lot. For all other residential zones, the City Engineer shall have the discretion to require applicants to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval

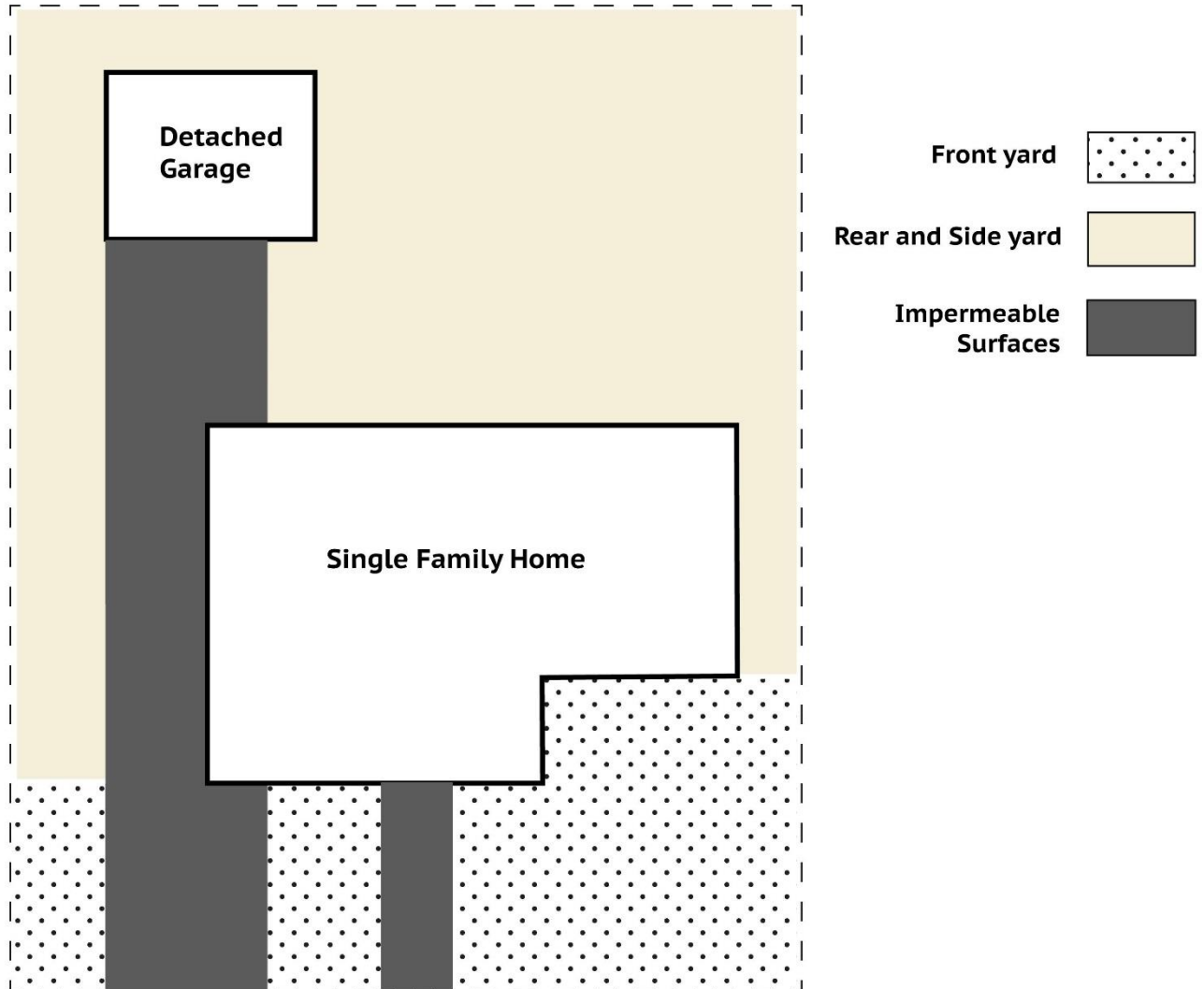
Section 2: Amend existing Section 5.700 to reference paving permits (See **highlighted** portion):

5.700 Zoning Clearance Procedure

Zoning clearance shall be implemented through use permit application, development plan and design review. The primary goal of the administrative use permit is to provide a review and record keeping mechanism for development and uses within the City in addition to setting forth time periods and minor conditions of approval. Where a particular kind of development does not require a use permit of any kind such as limited accessory structures in some districts, zoning clearance will be met through review of any required building **or paving** permits. All building permits will be reviewed by the Community Development Director or Chief Building Official to verify that appropriate property regulations, performance standards and conditions of approval are met. A certificate of occupancy is not to be issued until such verification is recorded following the final building permit site inspection.

Section 3. Add New Figure X-X to illustrate paving and hardscape requirements:

Figure X-X (Limits on Paving and Hardscaping for Residential Front, Rear, and Side Yards)



Section 4. Add new definitions to Zoning Ordinance.

60.200 Definitions

Front yard area: The yard area forward of the primary structure. See Figure X-X.

Rear and Side yard areas: The yard area behind the front portion of the primary structure. See Figure X-X.

Landscaped area: A permeable area that is permanently devoted to and maintained for the growing of shrubbery, grass, trees, and other plant material or by the use of such material as bark, crushed stone, lava rock, or similar materials to present an attractive, well-kept appearance (with permeable weed barrier); does not include hard surfaces such as brick, pavers, concrete, asphalt, or similar materials, regardless of permeability.

Hardscape Area: Includes semi-permeable and permeable surfaces such as pavers or concrete, but does not allow for asphalt paving (single family residential lots have maximum standards in Section 30.750).

Paving Ordinance

30.750 Paving Within Residential Front, Rear, and Side Yard Areas



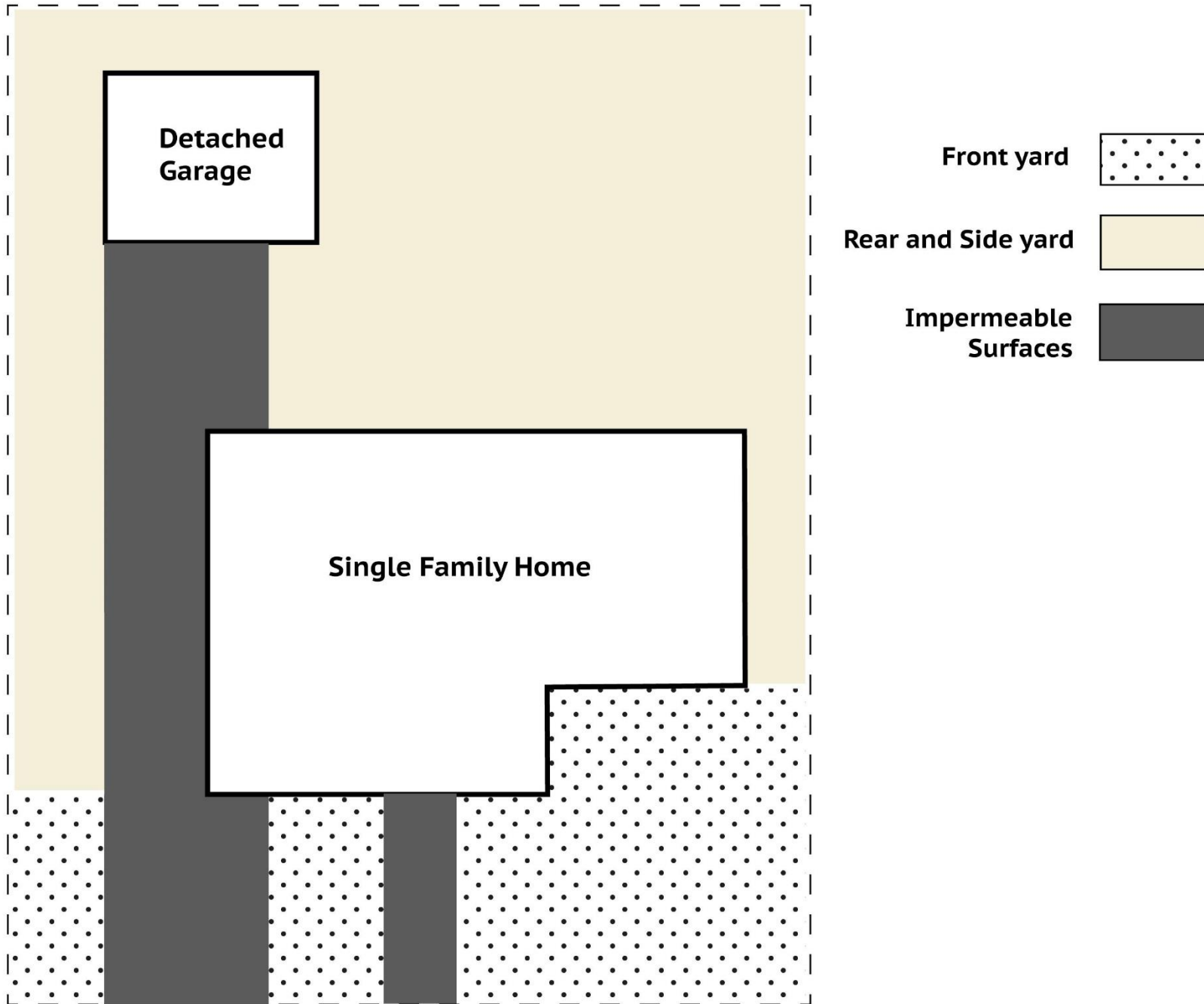


Cul de sacs











STAFF REPORT TO THE PLANNING COMMISSION

March 19, 2018

TO: Members of the Planning Commission

SUBMITTED BY: Holly Smyth, AICP Planning Director
Elaine Hsieh, Planning Intern
Robert Reber, Adjunct Planner

SUBJECT: Consider Approving Resolution #18-04 Recommending the City Council Adopt an Ordinance for proposed Zone Text Amendment #ZTA 18-02 Related to Establishing Restrictions on Paving of Front and Rear Yards of Residential Lots

RECOMMENDATION:

Receive report, open public hearing, discuss potential changes to #ZTA 18-02, and consider approving Resolution #18-04 recommending that the City Council adopt an Ordinance with the proposed Zone Text Amendment #ZTA 18-02.

DISCUSSION:

At its regular meeting on December 12, 2017, the City Council directed staff to schedule for discussion concerns regarding the paving of yards on residential lots, as solid surfaces in place of landscaping can affect property values, create excess run-off, and lead to visual blight and safety hazards.

At its January 23, 2018 regular meeting, City staff reported to the City Council that the Hercules Zoning Ordinance does not have specific requirements regulating the paving of yards on residential lots and recommended the adoption of regulations to more specifically address the paving of yards. Council directed staff to prepare an ordinance for Planning Commission and Council consideration to regulate the paving of yards on residential lots.

At the regular City Council meeting of February 13, 2018, the City Council directed staff to prepare draft regulations to be considered by the Planning Commission at its February 20, 2018 meeting.

At the Planning Commission meeting of February 20, 2018, the discussion revolved around defining terms such as "permeable" and "hardscape," placing a percentage limitation on the rear yard area, and the effects of runoff on adjacent property. The Commission directed that further discussion of this topic be continued to the March 19, 2018 meeting.

The attached zone text amendment would revise the Hercules Zoning Ordinance in response to City Council and Planning Commission concerns about the potential damaging effects paving large portions of properties has on runoff and neighborhood character within residential neighborhoods.

In summary, the proposed attached modifications would:

- 1) Amend Section 5.700 Zoning Clearance Procedure, to add reference to paving permits.
- 2) Add proposed Section 30.750 “Paving Within Residential Front and Rear Yard Areas” to clarify the maximum paved areas allowed on residential property for driveways, walkways and other hardscapes, including landscape minimums.
- 3) Amend Residential District Development Tables 6.2 and 15.2 to reference the paving restrictions in section 30.750.
- 4) Add figure X-X to illustrate front yard areas and rear yard areas, and non-permeable surfaces.
- 5) Add performance standards related to runoff control, subject to City Engineer evaluation and approval.
- 6) Amend the Zoning Ordinance definitions Section 60.200 to include definitions for “Front yard area”, “Rear yard area”, “Landscaped Area” and “Hardscape Area.”

ATTACHMENTS:

- Attachment 1: Draft Resolution # 18-04 recommending that City Council adopt Zone Text Amendment 18-02 Paving Policy
- Attachment 2: Exhibit A to Resolution #18-04 – Zone Text Amendment #ZTA 18-02

Exhibit A

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Proposed Modifications to Hercules Municipal Code (Zone Text Amendment 18-02)

In addition to creating a new section to contain paving requirements, it is recommended that several existing sections of the Zoning Regulations be amended to conform to or otherwise clarify the new paving requirements as follows:

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Section 1: Creation of new Zoning Ordinance Section 30.750 to establish paving regulations.

Section 2: Amend existing Section 5.700 to reference paving permits (See highlighted portion).

Section 3: Amend Residential District Development Tables 6.2 and 15.2 (see highlighted portions).

Section 4: Add New Figure X-X to illustrate paving and hardscape requirements.

Section 5: Add new definitions to Zoning Ordinance.

Section 1: Creation of new Zoning Ordinance Section 30.750 to establish paving regulations:

5.700 Zoning Clearance Procedure

Zoning clearance shall be implemented through use permit application, development plan and design review. The primary goal of the administrative use permit is to provide a review and record keeping mechanism for development and uses within the City in addition to setting forth time periods and minor conditions of approval. Where a particular kind of development does not require a use permit of any kind such as limited accessory structures in some districts, zoning clearance will be met through review of any required building permits or paving permits.

All building permits will be reviewed by the Community Development Director or Chief Building Official to verify that appropriate property regulations, performance standards and conditions of approval are met. A certificate of occupancy is not to be issued until such verification is recorded following the final building permit site inspection.

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Table 6.2 Property Development Regulations: Residential District

~~RS-E RS-L RM-L RM-MRM-H~~ See Also

Site Area (acres)

3 5 15

Density (Units/Acre)					
Range	1 to 2 ⁽¹⁾	2 to 7	up to 12	12 to 30	30 to 55
Midrange		9	20	42	
Lot Size (sq ft)	1/2 acre ⁽¹⁾	6,000 ⁽²⁾	3,000 ^(2,3)	3,000 ⁽²⁾	3,000 ⁽²⁾
Lot Frontage (ft)	45	30	[200 for multi-family, 30 for other]		
Lot Depth (ft)	200 ⁽⁴⁾	100	[200 for multi-family, 80 for other]		
Lot Width (ft)	100	60 ⁽⁵⁾	[200 for multi-family, 35 ⁽⁵⁾ for other]		
Setbacks					
Front (ft)	20	20	15	15	15
Rear (ft)	25	15	15	15	15
Side (ft)	15	5	15 ⁽⁶⁾	15 ⁽⁶⁾	15 ⁽⁶⁾
Corner Side (ft)	20	15	15	15	15
Maximum	20%	50%	60%	60%	60%
Section 30.750					
Site Coverage (excludes outdoor uncovered paved areas, see Section 30.750 ⁽⁸⁾)					
Usable Open Space		1,000	300	300	Section 30.800
Per Dwelling Unit (sq ft)					
Building Height (ft)	35	35	45 ⁽⁷⁾	60	90
Parking					
Chapter 32					

Key to Land Use Regulations

- ⁽¹⁾ Maximum density and minimum lot size as designated on zoning map for 1 or 2 units per acre density and corresponding 1 acre or 0.5 acre minimum lot size.
- ⁽²⁾ Minimum lot size unless a smaller lot size is allowed by an approved Planned Development Plan.
- ⁽³⁾ Minimum lot size for single family housing is 4,000 sq. ft. unless a smaller lot size is allowed by an approved Planned Development Plan.
- ⁽⁴⁾ Minimum lot depth unless area is designated for 2 units per acre, then 150 ft minimum depth applies.
- ⁽⁵⁾ Minimum lot width for corner lots, add 10 feet.
- ⁽⁶⁾ Minimum side setback unless smaller setback is allowed by an approved Planned Development Plan.
- ⁽⁷⁾ Maximum height for single family housing and duets/duplexes is 35 feet

Commented [PT1]: Why are these numbers here?

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(8)

Impervious surfacing may not exceed the storm water runoff design for the parcel or lot. For single family residential lots greater than 6,000 sq ft, the impervious surfacing shall not exceed 47% of the total lot size. Other land use designations may, at the discretion of the City Engineer, be required to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval.

Commented [PT2]: Why would the 47% requirement be limited to lots greater than 6,000 sq ft? And, why limited to single-family residential? What about a duplex or other multi-unit residential? I thought PC wanted this to apply to multi-unit residential also?

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Table 15.2 — Property Development Regulations: PC-R Planned Commercial Residential Mixed Use District

PC-R See Also

Site Area (sf)

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Density (FAR)⁽⁴⁾

Range 0.20 to 4.0

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Typical 2.0

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Density (du/ac) 40⁽⁵⁾

Lot Size (sq ft) (PDP)

Lot Frontage (ft) (PDP)

Lot Depth (ft) (PDP)

Setbacks

Front (ft) 10⁽²⁾

Rear (ft) 10⁽²⁾

Side (ft) 0⁽²⁾

Corner Side (ft) 10⁽²⁾

Maximum Site Coverage⁽⁶⁾ (PDP)
(excludes outdoor uncovered paved areas, see Section 30.750)

Usable Open Space (sq ft/unit) 50/100 Section 15.300

Building Height (ft) 40/50/65⁽⁴⁾

Parking (PDP) Chapter 32

Signage (PDP) Chapter 34

Key to Land Use Regulations

⁽¹⁾ FAR does not apply to residential development.

⁽²⁾ Lesser setbacks may be accepted in an approved Planned Development Plan.

⁽³⁾ 50 square feet/unit for live work, 100 square feet/unit for residential

⁽⁴⁾ 50 feet height allowed for combined commercial and residential uses within a structure; for major frontages along Sycamore Avenue and San Pablo Avenue, a maximum height of 65 feet is allowed only if approved in a PDP adopted pursuant to Chapter 48.

⁽⁵⁾ A maximum density of 80 units per acre is permitted for the Town Centrale project on Sycamore Avenue as an approved Planned Development Plan.

⁽⁶⁾ Impervious surfacing may not exceed the storm water runoff design for the parcel or lot. For single-family residential lots greater than 6,000 sf, the impervious surfacing shall not exceed 47% of the total lot size. Other land use designations may, at the discretion of the City Engineer, be required to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval.

(PDP) As per an approved Planned Development Plan.

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Commented [PT3]: Why would the 47% requirement be limited to lots greater than 6,000 sq ft? And, why limited to single-family residential? What about a duplex or other multi-unit residential? I thought PC wanted this to apply to multi-unit residential also?

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30.750 Paving Within Residential Front and Rear Yard Areas

The ~~purpose of these guidelines requirements specified in this Section are intended~~ is to preserve the residential character of streetscapes in the city's neighborhoods and minimize ~~excess~~ storm water runoff. The ~~unregulated~~ expansion of ~~paved~~ parking ~~areas~~ in front ~~and rear yards~~ ~~yard areas off driveways~~ interferes with the pattern of building and open areas within neighborhoods, and can increase vehicle clutter by creating small parking lots in ~~front~~ yard areas which are intended to remain as open areas ~~within neighborhoods~~.

~~Excessive Ppaving of yard areas can result in the proliferation of curb cuts that can have the directly effect of reducing the number of on street parking spaces available and negatively retention, reduce the amount of curb cut alterations (possibly feeding into ADA Standards), and mail pickup. Particular exceptions that may need overlooking are the following lot styles: flag lots, cul da sacs, and corner lots. can negatively impact the character and appearance of residential areas. Paving yard areas to add additional parking can result in the proliferation of curb cuts that can have the effect of reducing the number of on-street parking spaces available.~~

- ~~1. The paving requirements in this section shall apply to all residential properties and lots.~~
- ~~2. New paving and hardscape features (e.g., walkways, patios, etc.) that exceed 120 square feet in total area shall require a Paving Permit issued in compliance with Chapter 5.700 (Zoning Clearance Procedure).~~
- ~~3. Applicant may, at the discretion of the City Engineer, be required to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval. The pPlanning Ddirector shall hear and decide requests for reasonable accommodation to address or uniquely circumstances in specific cases, for example when a flag lot, cul de sac, or corner lot makes strict compliance with the requirements of this section impractical.~~

A. Front Yards.

- ~~1.1) Driveways. The amount of allowable paving for driveways shall not exceed 35 percent of the required total front yard area. "Front yard" being is defined as that of the yard area forward of the primary structure as illustrated in See Figure X-X (Limits on Paving and Hardscaping for Residential Front and Rear Yards).~~
- ~~2.2) Walkways and other Hardscape. The amount of paved walkways and hardscape shall not exceed 25 percent of the required front yard area. See Figure X-X (Limits on Paving and Hardscaping for Residential Front and Rear Yards).~~
- ~~3.3) Landscaping minimums. For all residential propertiessingle family zoning districts, a minimum of 40 percent of the required front yard area shall consist of a pervious~~

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permeable landscaped area, excluding pavers, bricks, and other hard surfaces, even if permeable.

B. Rear Yards.

4.1) The total amount of paved surface in a rear yard for driveways, walkways, and hardscape combined shall not exceed 60 percent of the ~~required~~ total rear yard area. "Rear yard" ~~being is~~ defined as ~~that of the yard area behind the front cut off line of the primary structure as illustrated in -See~~ Figure X-X (Limits on Paving and Hardscaping for Residential Front and Rear Yards).

2.2) Landscaping minimums. For ~~all single residential family zoning properties and lots districts~~, a minimum of 40 percent of the required ~~front-back~~ yard area shall consist of a ~~previous permeable landscaped area, excluding pavers, bricks, and other hard surfaces, even if permeable.~~

4. Storm ~~W~~ater Runoff Limitations. -

~~Impervious-Impermeable~~ surfacing may not exceed the storm water runoff design for the parcel or lot, and ~~must not cause runoff to affect adjacent property. For residential lots the impervious surfacing shall not exceed 47% of the total lot size. Applicants in the RS-L Residential Zone shall be required to submit to the City Engineer calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval. For all other residential zones, the City Engineer shall have the discretion to require applicants to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval~~

~~The City Engineer shall have the discretion to require an Applicant to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval.~~

~~For single family residential lots as determined by a qualified licensed engineer. Impermeable surface materials must not cause runoff to affect adjacent property. The City Engineer shall have the discretion to require an Applicant to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval.~~

Section 2: Amend existing Section 5.700 to reference paving permits (See highlighted portion):

5.700 Zoning Clearance Procedure

Zoning clearance shall be implemented through use permit application, development plan and design review. The primary goal of the administrative use permit is to provide a review and record keeping mechanism for development and uses within the City in addition to setting forth time periods and minor conditions of approval. Where a particular kind of development does not require a use permit of any kind such as limited accessory structures in some districts, zoning clearance will be met through review of any required building or paving permits. All building permits will be reviewed by the Community Development Director or Chief Building Official to verify that appropriate property regulations, performance standards and conditions of

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approval are met. A certificate of occupancy is not to be issued until such verification is recorded following the final building permit site inspection.

Section 3: Amend Residential District Development Tables 6.2 and 15.2 (see highlighted portions):

Table 6.2 Property Development Regulations: Residential District

	RS-E	RS-L	RM-L	RM-M	RM-H	See Also
Site Area (acres)	-	-	3	5	15	
Density (Units/Acre)						
Range	1 to 2 ⁽¹⁾	2 to 7	up to 12	12 to 30	30 to 55	
Midrange	-	-	9	20	42	
Lot Size (sq ft)	1/2 acre ⁽¹⁾	6,000 ⁽²⁾	3,000 ^(2, 3)	3,000 ⁽²⁾	3,000 ⁽²⁾	
Lot Frontage (ft)	45	30	[200 for multi-family, 30 for other]			
Lot Depth (ft)	200 ⁽⁴⁾	100	[200 for multi-family, 80 for other]			
Lot Width (ft)	100	60 ⁽⁵⁾	[200 for multi-family, 35 ⁽⁵⁾ for other]			
Setbacks						
Front (ft)	20	20	15	15	15	
Rear (ft)	25	15	15	15	15	
Side (ft)	15	5	15 ⁽⁶⁾	15 ⁽⁶⁾	15 ⁽⁶⁾	
Corner Side (ft)	20	15	15	15	15	
Maximum	20%	50%	60%	60%	60%	
Site Coverage ⁽⁸⁾						
Usable Open Space	-	-	1,000	300	300	Section 30.800
Per Dwelling Unit (sq ft)						
Building Height (ft)	35	35	45 ⁽⁷⁾	60	90	
Parking						Chapter 32
Key to Land Use Regulations						
⁽¹⁾ Maximum density and minimum lot size as designated on zoning map for 1 or 2 units per acre density and corresponding 1 acre or 0.5 acre minimum lot size.						
⁽²⁾ Minimum lot size unless a smaller lot size is allowed by an approved Planned Development Plan.						

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- (3) Minimum lot size for single family housing is 4,000 sq. ft. unless a smaller lot size is allowed by an approved Planned Development Plan.
- (4) Minimum lot depth unless area is designated for 2 units per acre, then 150 ft. minimum depth applies.
- (5) Minimum lot width for corner lots, add 10 feet.
- (6) Minimum side setback unless smaller setback is allowed by an approved Planned Development Plan.
- (7) Maximum height for single family housing and duets/duplexes is 35 feet
- (8) Site Coverage is the total horizontal area included covered by developed structures, excluding outdoor uncovered paved areas, divided by the site area.

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Table 15.2 Property Development Regulations: PC-R Planned Commercial Residential Mixed Use District

	PC-R	See Also
Site Area (sf)	-	
Density (FAR) ⁽¹⁾		
Range	0.20 to 4.0	
Typical	2.0	
Density (du/ac)	40 ⁽⁵⁾	
Lot Size (sq ft)	(PDP)	
Lot Frontage (ft)	(PDP)	
Lot Depth (ft)	(PDP)	
Setbacks		
Front (ft)	10 ⁽²⁾	
Rear (ft)	10 ⁽²⁾	
Side (ft)	0 ⁽²⁾	
Corner Side (ft)	10 ⁽²⁾	
Maximum Site Coverage	(PDP)	
Site Coverage is the total horizontal area included covered by developed structures, excluding outdoor uncovered paved areas, divided by the site area.		
Usable Open Space (sq ft/unit)	50/100	Section 15.300
Building Height (ft)	40/50/65 ⁽⁴⁾	
Parking	(PDP)	Chapter 32
Signage	(PDP)	Chapter 34

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Key to Land Use Regulations	
(1)	FAR does not apply to residential development.
(2)	Lesser setbacks may be accepted in an approved Planned Development Plan.
(3)	50 square feet/unit for live-work, 100 square feet/unit for residential

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Section 4. Add New Figure X-X to illustrate paving and hardscape requirements:

NOTE: A REVISED FIGURE X-X WILL
BE DISTRIBUTED PRIOR TO THE
MARCH 19 PLANNING COMMISSION MEETING

Figure X-X (Limits on Paving and Hardscaping for Residential Front and Rear Yards)
~~Change to total overall covered surfaces.~~

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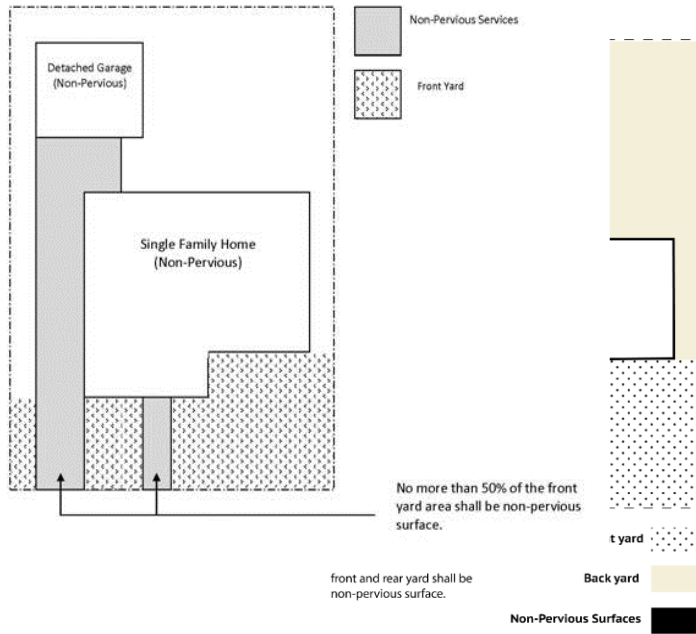
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Section 5. Add new definitions to Zoning Ordinance.

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60.200 Definitions

Front yard area: The yard area forward of the primary structure. See Figure X-X.

Rear yard area: The yard area behind the primary structure. See Figure X-X.

Landscaped area: A pervious-permeable area that is permanently devoted to and evoted and maintained for the growing of shrubbery, grass, trees, and other plant material or by the use of such material as bark, crushed stone, lava rock, or similar materials to present an attractive, well-kept appearance (with permeable weed barrier); does not include hard surfaces such as brick, pavers, concrete, asphalt, or similar materials, regardless of permeability.

Hard Surfacing-Hardscape Area: Includes semi-perviouspermeable and pervious permeable surfaces such as pavers or concrete, but does not allow for asphalt paving (single family residential lots have maximum standards in Section 30.750 stated in each zone distriet).

Overall Site Coverage: The total area covered by developed structures, including outdoor uncovered paved areas, divided by the site area. Includes main structure/garage and front yard and back yard areas.



Residential Paving Policies

City of Hercules

- Planning Commission
- February 20, 2018

Examples of Residential Paving



Examples of Residential Paving



Examples of Residential Paving

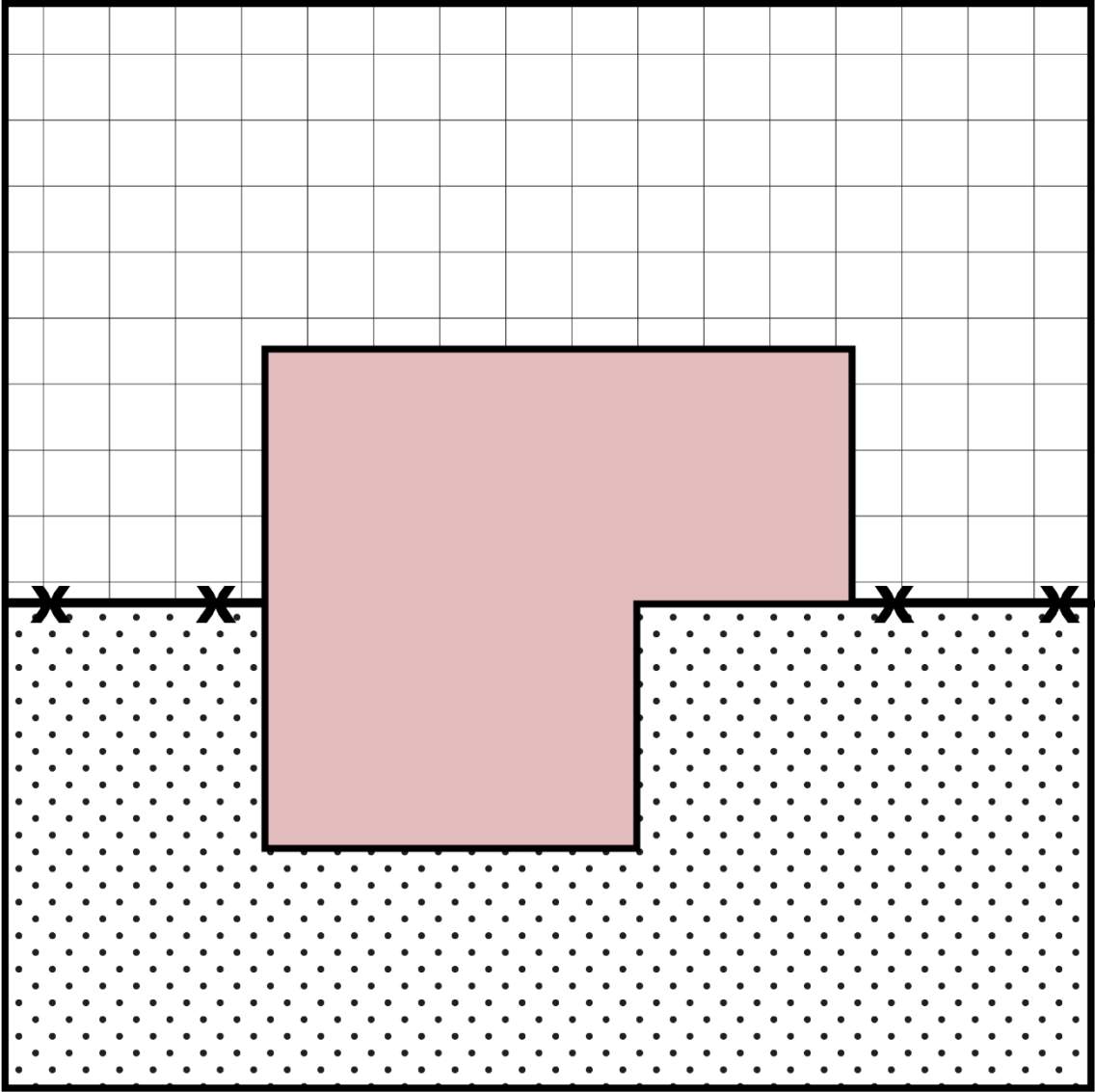



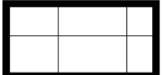

Examples of Residential Paving



Coronado St.

Sample Front & Back Yard Diagram



- Front yard 
- Back yard 
- Main structure /garage 



STAFF REPORT TO THE PLANNING COMMISSION

February 20, 2018

TO: Members of the Planning Commission

SUBMITTED BY: Holly Smyth, AICP Planning Director
Elaine Hsieh, Planning Intern
Robert Reber, Adjunct Planner

SUBJECT: Consider Approving Resolution #18-04 Recommending the City County Adopt an Ordinance for proposed Zone Text Amendment #ZTA 18-02 Related to Paving of Front and Rear Yards of Single-Family Residences

RECOMMENDATION:

Receive report, open public hearing, discuss potential changes that should be incorporated into #ZTA 18-02 based on input, and consider approving Resolution #18-04 recommending that the City Council adopt an Ordinance with the proposed Zone Text Amendment #ZTA 18-02.

DISCUSSION:

At its regular meeting on December 12, 2017, the City Council directed staff to schedule for discussion concerns regarding the paving of front yards on single-family lots, as solid surfaces in place of landscaping on household lots can affect property values, create problems with run-off, and lead to visual blight and safety hazards.

At its January 23, 2018 regular meeting, City staff reported to City Council Staff that the Hercules Zoning Ordinance does not have specific requirements regulating the paving of yards on single-family lots. Staff recommended the adoption of regulations to more specifically address the paving of yards on single-family lots.

Council directed staff to prepare an ordinance for Planning Commission and Council consideration to regulate the paving of yards on single-family lots (without limitation to front lawns) that would also address the related concern of parking on front lawns, and asked the City Attorney to report on the feasibility of adopting an interim paving moratorium for Council consideration if the drafting of appropriate regulations would require significant staff time.

At the regular City Council meeting on February 13, 2018, City Council accepted the City Attorney's and City Manager's recommendation that Council defer imposing a moratorium on yard paving and instead consider adopting a set of regulations to be considered for recommendation by the Planning Commission at its February 20, 2018 meeting.

The Planning Director coordinated with the City Attorney Tang, City Engineer Roberts, Planning intern Hsieh, and Adjunct Planner Reber to review other City's policies on the topic and technical best practices that might be best applied to the City of Hercules. The result is the attached zone text

amendment that would revise the Hercules' Zoning Ordinance in response to what appears to be Council's concerns about the potential damaging effects paving large portions of properties has on runoff and neighborhood character within single-family neighborhoods. Most single family residential areas that have front yard paving opportunities are located east of San Pablo Avenue within the Residential Single Family Estate (RS-E), Residential Single Family Low Density (RS-L), and the Planned Commercial Residential (PC-R) zone districts within non-Homeowner's Association areas. It is unclear if the Historic Town Center or the New Pacific Properties Specific Zone areas would be impacted much if applying changes in the policies given existing residences have homeowner associations which may further limit paving on properties.

In summary, the proposed attached modifications would:

- 1) Add standards for site coverage maximums for front yard and back yard areas (not just the entire lot) within the RS-E, RS-L and PC-R districts and modify the RS-L Overall site coverage from 50% to 47% based on our soils/slopes/engineering runoff standards
- 2) Add minimum 20% landscaping percentages for RS-E and RS-L single-family residential zone districts and leave 10% landscape requirement in the PC-R district
- 3) Include performance standards related to runoff control, subject to City Engineer evaluation and approval.
- 4) Change Section 30.700.1.B from "All *new* single-family residential estate lots" to "All single-family residential estate lots" and add reference to specific landscape criteria in Section 30.700 (Landscaped Areas).
- 5) Create policy specific to paving, adding "Chapter 30.750 – Paving," to clarify the maximum paved areas allowed on residential property for sidewalks, pathways, driveways, and decks.
- 6) Amend Section 30.800, "Open Space," to clarify that usable open space (e.g., for sidewalks, pathways, driveways, decks, etc.) does not count towards landscaping minimums in RS-E and RS-L zones.
- 7) Amend the Zoning Ordinance definitions Section 60.200 to include definitions for "Landscaped Area," "Mulching," "Hard Surface Area," and "Site Coverage."
- 8) Add Zoning Ordinance definition of "Paved Areas" in Section 60.200 to clarify texture and use of solid surfaces.

ATTACHMENTS:

- Attachment 1: Draft Resolution # 18-04 recommending that City Council adopt Zone Text Amendment 18-02 Paving Policy
- Attachment 2: Exhibit A to Resolution #18-04 – Zone Text Amendment #ZTA 18-02

Table 6.2 Property Development Regulations: Residential District

	RS-E	RS-L	RM-L	RM-M	RM-H	See Also
Site Area (acres)	-	-	3	5	15	
Density (Units/Acre)						
Range	1 to 2 ⁽¹⁾	2 to 7	up to 12	12 to 30	30 to 55	
Midrange	-	-	9	20	42	
Lot Size (sq ft)	1/2 acre ⁽¹⁾	6,000 ⁽²⁾	3,000 ^(2, 3)	3,000 ⁽²⁾	3,000 ⁽²⁾	
Lot Frontage (ft)	45	30	[200 for multi-family, 30 for other]			
Lot Depth (ft)	200 ⁽⁴⁾	100	[200 for multi-family, 80 for other]			
Lot Width (ft)	100	60 ⁽⁵⁾	[200 for multi-family, 35 ⁽⁵⁾ for other]			
Setbacks						
Front (ft)	20	20	15	15	15	
Rear (ft)	25	15	15	15	15	
Side (ft)	15	5	15 ⁽⁶⁾	15 ⁽⁶⁾	15 ⁽⁶⁾	
Corner Side (ft)	20	15	15	15	15	
Maximum Overall Site Coverage ⁽⁸⁾	20%	50 47%	60%	60%	60%	
Front yard Coverage	20%	50 47%	-	-	-	
Rear yard Coverage	20%	50 47%	-	-	-	
Landscaping Minimum	20% ⁽⁹⁾	20% ⁽⁹⁾	-	-	-	
Usable Open Space Per Dwelling Unit (sq ft)	-	-	1,000	300	300	Section 30.800
Building Height (ft)	35	35	45 ⁽⁷⁾	60	90	
Parking						Chapter 32

Key to Land Use Regulations

- ⁽¹⁾ Maximum density and minimum lot size as designated on zoning map for 1 or 2 units per acre density and corresponding 1 acre or 0.5 acre minimum lot size.
- ⁽²⁾ Minimum lot size unless a smaller lot size is allowed by an approved Planned Development Plan.

- (3) Minimum lot size for single family housing is 4,000 sq. ft. unless a smaller lot size is allowed by an approved Planned Development Plan.
- (4) Minimum lot depth unless area is designated for 2 units per acre, then 150 ft minimum depth applies.
- (5) Minimum lot width for corner lots, add 10 feet.
- (6) Minimum side setback unless smaller setback is allowed by an approved Planned Development Plan.
- (7) Maximum height for single family housing and duets/duplexes is 35 feet.
- (8) Impervious surfacing may not exceed the stormwater runoff design for the parcel or lot. For single-family residential lots greater than 6,000 sf, the impervious surfacing shall not exceed 47% of the total lot size. Other land use designations may, at the discretion of the City Engineer, be required to submit calculations by a registered civil engineer demonstrating consistency with this policy as a condition of approval.
- (9) This coverage applies separately to the front yard and back yard areas.

Table 15.2 Property Development Regulations: PC-R Planned Commercial Residential Mixed Use District

	<u>PC-R</u>	<u>See Also</u>
Site Area (sf)	-	
Density (FAR) ⁽¹⁾		
Range	0.20 to 4.0	
Typical	2.0	
Density (du/ac)	40 ⁽⁵⁾	
Lot Size (sq ft)	(PDP)	
Lot Frontage (ft)	(PDP)	
Lot Depth (ft)	(PDP)	
Setbacks		
Front (ft)	10 ⁽²⁾	
Rear (ft)	10 ⁽²⁾	
Side (ft)	0 ⁽²⁾	
Corner Side (ft)	10 ⁽²⁾	
Maximum Site Coverage	(PDP)	
<u>Front (ft)</u>	<u>(PDP)⁽⁶⁾</u>	
<u>Rear (ft)</u>	<u>(PDP)⁽⁶⁾</u>	
<u>Landscaping Minimum</u>	<u>10%</u>	
Usable Open Space (sq ft/unit)	50/100	Section 15.300
Building Height (ft)	40/50/65 ⁽⁴⁾	

Parking (PDP) Chapter 32

Signage (PDP) Chapter 34

Key to Land Use Regulations

(1) FAR does not apply to residential development.

(2) Lesser setbacks may be accepted in an approved Planned Development Plan.

(3) 50 square feet/unit for live-work, 100 square feet/unit for residential

(4) 50 feet height allowed for combined commercial and residential uses within a structure; for major frontages along Sycamore Avenue and San Pablo Avenue, a maximum height of 65 feet is allowed only if approved in a PDP adopted pursuant to Chapter 48.

(5) A maximum density of 80 units per acre is permitted for the Town Centrale project on Sycamore Avenue as an approved Planned Development Plan.

(6) This coverage applies separately to the front yard and back yard areas.

(PDP) As per an approved Planned Development Plan.

30.700 Landscaped Areas

Landscaping is an essential component of the overall design and aesthetics of a project. Landscaping along major regional streets and highways should soften the appearance of traffic and parking along these routes, while allowing view corridors to retail and other businesses.

Landscaping plans should implement effective water conservation, use of drought-resistant landscaping and irrigation with reclaimed wastewater. Native plants are to be used in landscaping.

Plantings that serve to screen views of residential development, or that help to maintain a natural-appearing landscape, shall be retained to the extent feasible. Such plants could be thinned selectively if thinning would improve view corridors. If specific trees are to be removed, such as eucalyptus trees, replace with trees, preferably native species that will provide suitable screening while retaining important view corridors.

1. The landscaping and irrigation requirements listed in this section shall apply to all proposed development or construction at undeveloped parcels, or as determined by the Community Development Director, which shall include but not be limited to the following developments:
 - A. Common areas and landscape easements of all single-family subdivisions.
 - B. All ~~new~~ single-family residential ~~estate~~ lots.
 - C. Common areas at multifamily residences, including apartment and condominiums and duets.
 - D. Model homes.
 - E. Commercial, industrial and mixed use projects.
 - F. Public buildings, grounds and facilities.

- G. The reconstruction or rehabilitation of the common areas and landscape easements at residential projects and non-residential buildings, projects or developments where either:
- 1) The value of the reconstruction or rehabilitation exceeds 25% of the current assessed value of the building, project or development; or
 - 2) The area of the landscaping affected by the reconstruction or rehabilitation exceeds 25% of the landscaped area.

The requirements do not apply to that portion of a site, or to projects or development using reclaimed water or well water, or additions or modifications to existing single-family residences, nor to portions of site area irrigating edible crops, or not receiving irrigation.

30.750 Hard Surfacing/Paving

See maximum site coverages allowed in single-family residential property.

Impervious surfaces, including but not limited to all paths, driveways, and porches, shall not exceed ~~50~~ 47% of all areas in front of fencing for “front yard coverage.” Driveways, patios, porches, and other hard or impervious surfaces shall not exceed ~~50~~ 47% of backyard area.

30.800 Open Space

1. Usable Open Space

Usable open space is required within several zoning districts to serve residents, visitors and employees of a project or property. Usable open is distinct from required landscaped areas in that the open space is to be specifically designed for use rather than aesthetics. Where usable open space is required within a zoning district, it shall be in addition to any landscaping requirement and public parks requirement. Usable open space may be provided in the form of small play areas, plazas, balconies, decks, usable yard areas, open space trails, or other similar spaces. The minimum usable open space area is 50 square feet of contiguous area not less than 5 feet wide in any location. Open space trails shall not provide more than 50% of the usable open space requirement of a project.

Usable open space is considered solid surfacing coverage, and cannot be counted toward “landscaping” specific to residential properties in RS-E and RS-L zones.

31.300 Performance Standards

1. Erosion and Runoff Control

- A Runoff increase calculations are required for each proposed development project. The calculations shall identify runoff for the parcel at full build-out as measured against estimates of existing runoff in order to ensure that no flooding will result.

- B. Installation of sedimentation and grease basins in the storm drain system in parking lots in accordance with NPDES regulations (Title 5, Chapter 8 of the Municipal Code), is required to minimize pollution downstream from sedimentation. Property owners shall maintain the basins annually, or as required by NPDES regulations. Parking lots shall be swept periodically to decrease the amount of debris that could potentially contaminate the riparian or wetland habitat.
- C. Development projects shall prepare and implement a set of best management practices (BMP's) to reduce impacts to water quality. Such practices may include, but are not limited to:
- 1) stormwater retention or detention structures;
 - 2) oil and water separators; and
 - 3) sediment traps.

60.200 Definitions

Landscaped area:

An area that is permanently devoted and maintained for the growing of shrubbery, grass, trees, and other plant material or by the use of such material as bark, mulch, crushed stone, lava rock, or similar materials to present an attractive, well-kept appearance.

Mulching: The application of plant residue or other suitable materials to the land surface to conserve moisture, hold soil in place, and aid in establishing plant cover.

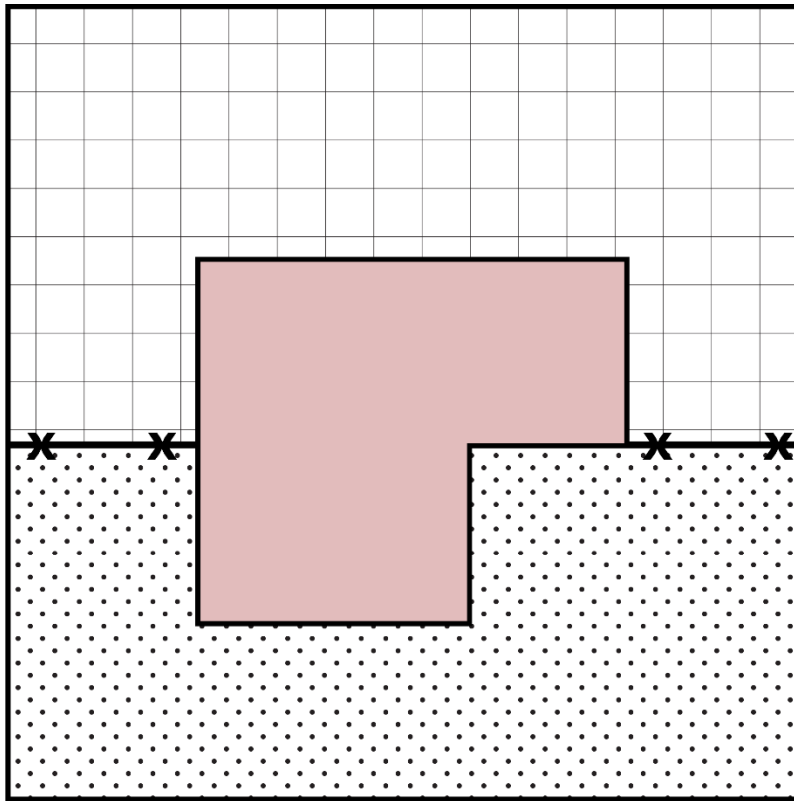
Hard Surfacing Area: Includes semi-pervious and pervious surfaces such as pavers or concrete, but do not allow for asphalt paving (single family residential lots have maximum standards stated in each zone district).

Overall Site Coverage: The total ~~horizontal~~ area ~~included~~ covered by developed structures, ~~excluding~~ including outdoor uncovered paved areas, divided by the site area. Includes main structure/garage and front yard and back yard areas.

Front yard Coverage: The space in front of fencing outside of the main structure (can include paved areas)

Back yard coverage: The space behind front yard fencing outside of the main structure (can include detached accessory structures or paved area).

Main structure/garage: The space of main structure (house) and garage (walled, roofed structure either attached or detached to the main structure.



Front yard 

Back yard 

**Main structure
/garage** 



STAFF REPORT TO THE CITY COUNCIL

DATE: January 23, 2018

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, AICP Planning Director
Elaine Hsieh, Planning Intern

SUBJECT: Paving in Front Yards

RECOMMENDED ACTION:

Receive report, discuss and provide direction, if any.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

Not applicable, though modification to the Zoning Code, if desired, would require Planning Commission review and action.

FISCAL IMPACT OF RECOMMENDATION:

None as a result of this item.

DISCUSSION:

At their December 12, 2017 meeting, the City Council directed that a concern regarding the paving of front yards on single-family lots be brought forward for discussion. Staff has determined that the Hercules Zoning Ordinance does not have specific requirements regulating the paving of yards on single-family lots. Solid surfaces in replacement of landscaping on household lots could affect property values, could create problems with run off, and tend to have an unappealing look. Staff recommends the adoption of regulations to more specifically address the paving of yards on single-family lots.

RECOMMENDATIONS:

- Amend the Zoning Ordinance definition of “Site Coverage” in Section 60.200 Single family residential developments to include outdoor uncovered paved areas. Currently Zoning Districts RS-E (Residential Single Family Estate) and RS-L (Residential Single Family Low Density), have site coverage maximums of 20% and 50% respectively, while the PC-R (Planned Commercial Residential) coverage threshold is set by the approved Planned Development Plan approval, but the definition expressly excludes paved areas.

- Identify coverage requirements in each residential zone district to separate front yard and back yard lot coverage in a maximum coverage percentage per area instead of the whole site, based on Council direction and/or best management practices.
- Specifically define if “paved areas” include semi-pervious materials such as pavers.
- Decide whether or not to allow any additional asphalt and/or concrete paving in front and/or rear yards.
- Consider storm water and run-off concerns in any future regulations.
- Review regulations in other jurisdictions and consider adopting similar policies that meet the needs of Hercules residents.

Attached are examples from other jurisdictions for Council’s review (See Attachment 1).

CONCLUSION:

After discussion, the Council can provide direction to staff that might include referring the matter to the Planning Commission, directing staff to bring the matter back to Council for further discussion/action, or taking no action.

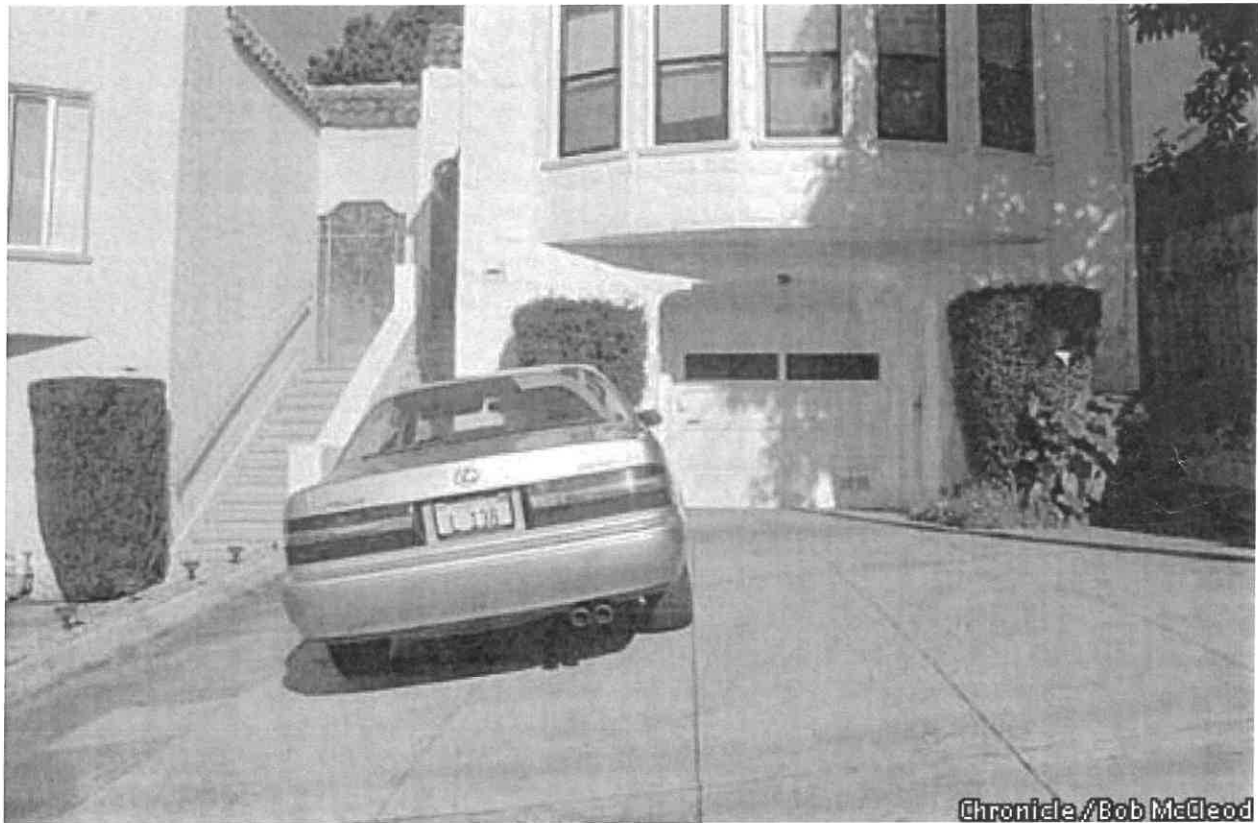
ATTACHMENTS:

Attachment 1: Articles/Brochures/Policies from SFGate News, San Jose, San Jacinto, & San Mateo

SFGATE <http://www.sfgate.com/news/article/Supervisor-takes-aim-at-paved-front-yards-More-2860384.php>

Supervisor takes aim at paved front yards / More lawns turning into parking space

Rachel Gordon, Chronicle Staff Writer Published 4:00 am, Thursday, March 28, 2002



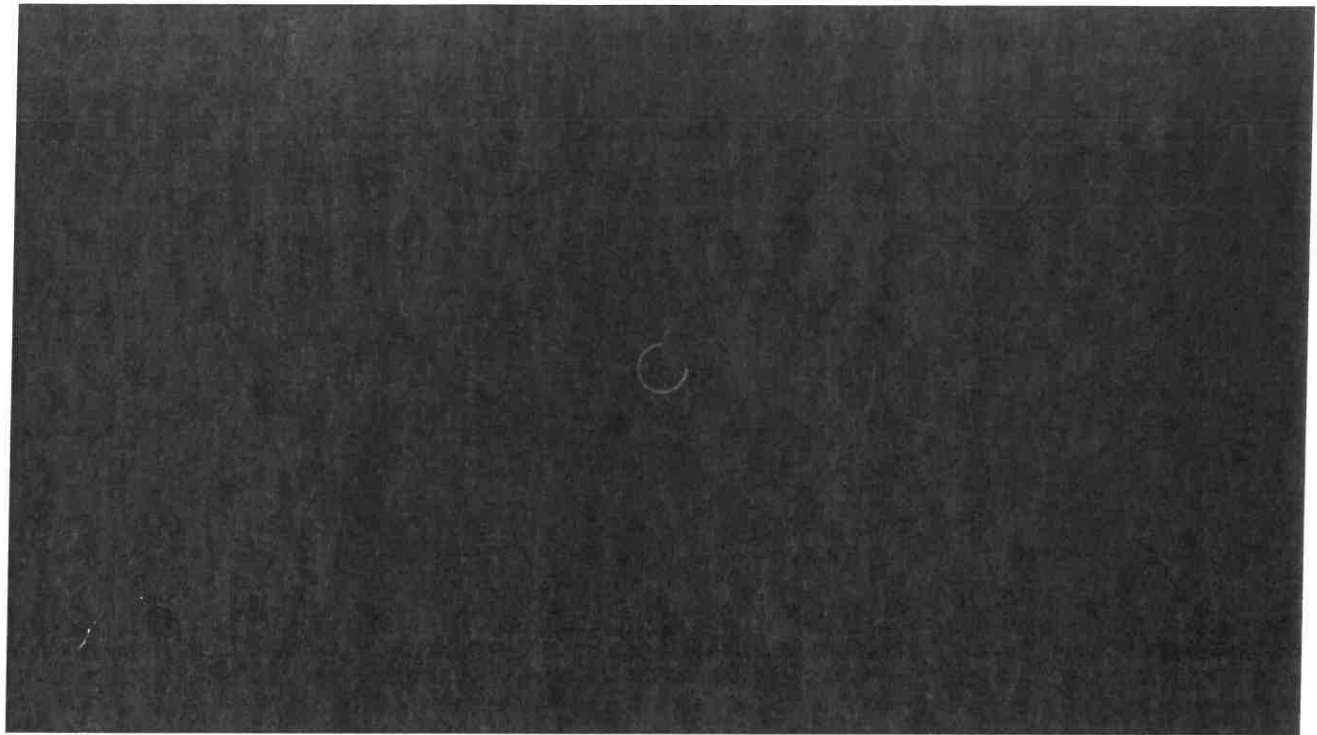
CONCRETE-C-26MAR02-MT-BM Homeowners paving over lawn to make a place to park more cars on Ralston Ave. near Garfield in San Francisco. chronicle photo by Bob McLeod

2002-03-28 04:00:00 PDT San Francisco -- San Franciscans have found a creative way to deal with the unceasing parking crunch: Pave over the front yard and turn it into a makeshift carport.

Shrub-loving neighbors are saying enough is enough, and this week persuaded Supervisor **Gerardo Sandoval** to call for a crackdown on the illegal loss of urban greenery. He wants to tighten requirements for property owners to landscape the front of their houses and keep **cars** out of the yard, and asked city officials to develop a plan.

"I just don't think it's appropriate to have a concrete jungle in our neighborhoods," he said.

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MLK march in San Francisco ...
SFGate

Lillie Simms said action from City Hall couldn't come soon enough.

"When I moved in here 40 years ago, there was grass and shrubbery in the front yards," said Simms, who lives in the Ingleside district, a middle-class neighborhood of single-family homes on the city's southwest side.

"Now, people are pulling up everything green from their front yards and putting concrete down," she said. "What had been a front yard is now a parking lot."

Simms, whose front yard on Ralston Street sports a couple of trees, bushes and ground cover, said the paving of her neighborhood lowers property values and is just plain ugly -- replacing soul-soothing flowers and greenery with cars.

"It gets so bad around here, it makes your eyes bulge," she said.

A neighbor about a block away who gave up his yard for a parking space had no apologies.

"I'm not about to spend my weekends mowing a lawn or tending roses," said the Ingleside resident, who would not give his name because he didn't want the city to come after him. "And so what if I get rid of my yard? Whose business is it, anyway?"

According to the city, it's the public's business.

The San Francisco planning code states that when properties have a front yard setback, at least 20 percent of the space "shall be appropriately landscaped . . . and devoted to plant material." Parked Toyotas, Volkswagens and Cadillacs don't count.

There is a hodgepodge of laws in the Bay Area dealing with front yards, paving and parking, with variations in each city and county. Daly City, for instance, lets people pave their front yards, "as long as it's not used for parking," said city planner **Howard Lee**. He said the law is on the books for aesthetic reasons.

Berkeley also doesn't want autos parked in the front yards, but the tenacious can jump through bureaucratic hoops and try to get a special permit.

In Pleasanton, people can asphalt their entire front yard if they want, said city planner **Tricia Maier**. But if they want to park there, they have to get permission for a curb cut.

San Jose, responding to the need of large families with multiple cars, allows residents to pave their front yards. But the city forbids people from parking on their lawns.

Larry Badiner, San Francisco's zoning administrator and the czar of sorts when it comes to planning codes, said a lot of people in the city flout the law. How many? He couldn't say but said it's prevalent in such residential neighborhoods as Ingleside and the Sunset.

One of the chief reasons is that people want to park their cars close to their homes, which can be hard to do in San Francisco when parking is at a premium. According to the **Department of Parking and Traffic**, there are about 357,000 registered cars in the city and only about 320,000 on-street parking spaces. Some people are lucky enough to have private garages; many are not.

At the request of disabled and seniors groups, parking control officers have stepped up enforcement of the law banning parking on sidewalks and issue more than 100,000 tickets for the violation a year.

But when people park on their own property, in the space that had once been their front yard, parking cops keep hands off; the jurisdiction falls to the **Planning Department**, which hasn't made enforcement of the landscaping law a top priority.

Sandoval, who represents some southwest neighborhoods, wants the city to do more -- go after new homes and old ones.

Badiner suggested that Sandoval's intent is noble. He questioned, however, how the city can go after homeowners retroactively, particularly those who bought homes with yards already paved over.

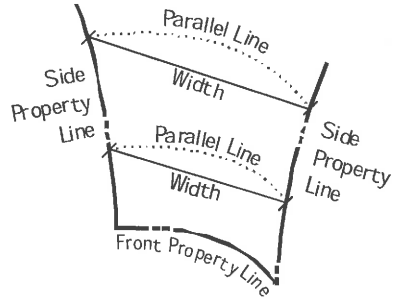
"It's going to be difficult to enforce," he said.

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HEARST

How does a property owner determine the width of the property if it is an odd shape or configuration?

The width of the property is determined by a line drawn between two points at which the line parallel to the front property line crosses the side property lines.



What happens to the properties that don't conform to the Front Setback Paving Ordinance?

If the paving was done **prior** to the effective date of the ordinance, the paving is legal. If the paving is legal, the owner of the site would not have to remove it in order to comply with the current regulations. The current regulations do apply, however, to any increases in the amount of paved area after July 1, 1999. If you have questions regarding the regulations, contact the Planning staff at (408) 535-3555.

What is the required front setback for my lot? How can I find out what the setback requirements are?

The required setback for a lot is determined by its zoning district. Zoning districts in the City of San Jose can vary from block to block. To find out the zoning district and the required setbacks for a lot, contact the Planning staff at (408) 535-3555.

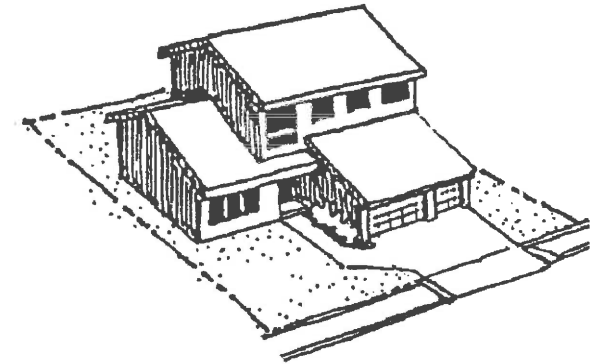
Para mas informacion,
por favor llame (408) 535-3555

For more information
call (408) 535-3555



City of San Jose
Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113-1905

Front Setback Paving Ordinance



City of San Jose
Planning, Building and Code Enforcement
www.sanjoseca.gov/planning

What does the Front Setback Paving Ordinance do?

This ordinance limits the amount of paving in the front setback of all lots with a single-family dwelling unit and all lots in **any R-1** Residence District in the City of San Jose.

When did the ordinance go into effect?

The Front Paving Ordinance went into effect on July 1, 1999.

Why did the City Council enact this Ordinance?

The Front Setback Paving Ordinance was enacted in response to community concerns about the damaging effect on neighborhood character of paving and parking in single-family front yards. Front yards paved as private parking lots are generally considered to be inconsistent with good neighborhood quality. Parking in front setback areas has increased noticeably in recent years and many neighborhoods have expressed an interest in having limits placed on the extent of such paving and parking.

Off-street parking on single-family lots is currently limited to paved areas in the front yard and corner side yard as a result of the Lawn Parking Ordinance enacted by the City Council December 1995.

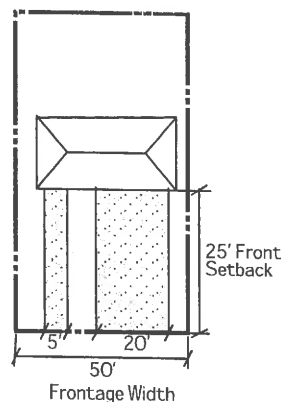
What is a "paved" surface?

A "paved" surface is one made of concrete, brick, asphalt, pavers, or other similar material. For more information regarding parking and paving, please refer to Planning brochure titled "What is the Lawn Parking Ordinance?"

What are the limitations under this Ordinance?

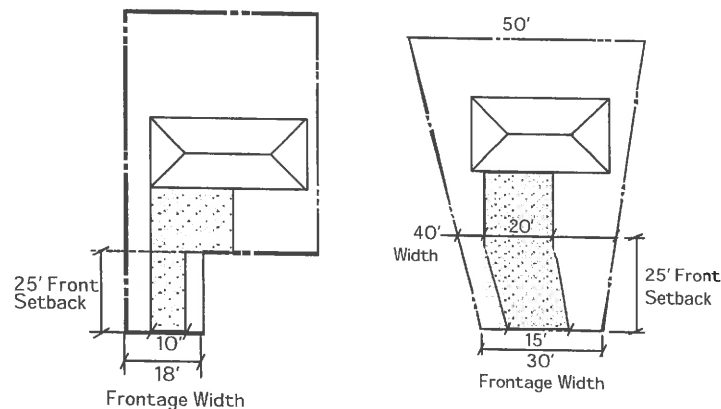
Single-Family Lots with a Frontage Width of 40 Feet or Greater:

- No more than 50% of the front setback area may be paved.



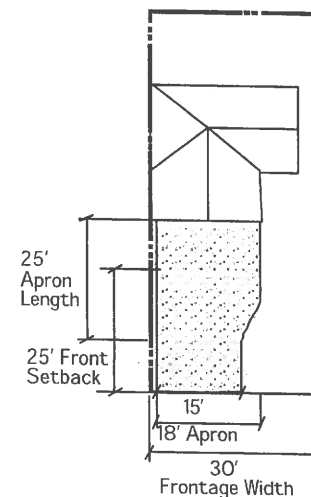
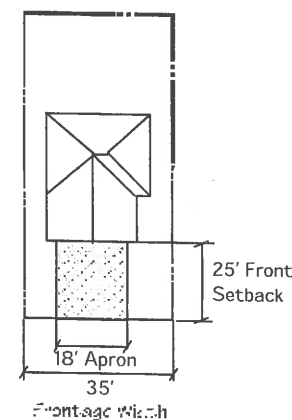
Single-Family Lots with a Frontage Width of Less Than 40 Feet:

- Paving in the front setback area is limited to 10 feet in width or 50% of the width of the lot at any given point, whichever is greater.



Also,...

- A "parking apron" is allowed as an exception to the 50% limitation for *single-family lots with a frontage width of less than 40 feet only*. To qualify as an exception, the parking apron must be located directly "in front" of, and provide primary access to, two side by side required parking spaces. In most cases, the required parking will be a garage. This apron is limited to a width of no more than 18 feet and a length of no more than 25 feet and may be located wholly or partially in the front setback area.



What will happen then?

Eventually the car may be towed, but it is a long process. The City must send a written, 30-day notice to the registered owner of the vehicle and the owner of the property. This is followed by a 10-day notice.

What if the car is pushed onto the street?

To report an inoperable vehicle on the street, call 277-5305. You will hear a recording that will ask you for the license plate number, if any, the address, cross street, color of the vehicle, and description. A Vehicle Abatement Officer will investigate the next time they are in the district.

If you would like to report a violation, please provide the following information:

- your name, address, and daytime telephone number;
- the address where the motor vehicle is parked on the lawn;
- the license plate number of the vehicle;
- the location on the lawn;
- whether the vehicle appears operable or inoperable.

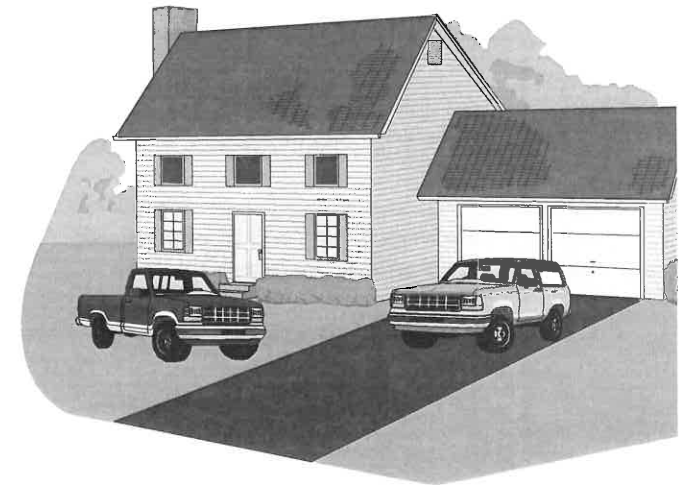
If you have more than 3 addresses to report, we ask that you supply the above-requested information by mail or by fax. Thank you for helping us keep the cost of this program low.

Para mas informacion,
por favor llame (408) 535-3555

For more information
call (408) 535-3555

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY
City of San Jose
Planning, Building and Code Enforcement
200 East Santa Clara Street
San Jose, CA 95113-1905

Lawn Parking Ordinance



City of San Jose
Dept. of Planning, Building and Code Enforcement
Code Enforcement Division
170 W. San Carlos Street
(408) 277-4528
(408) 277-3290 fax

Why did the City Council enact this Ordinance?

The City Council enacted the Lawn Parking Ordinance in response to complaints from citizens that motor vehicles parking on lawns created visual blight in the neighborhood, lowered property values, and, in some cases, created a safety concern.

What exactly does the Ordinance prohibit?

The Ordinance prohibits parking any motor vehicle (including automobiles, trucks, boats, campers, recreational vehicles, and motorcycles) on any portion of a front yard or corner lot side yard except on an area that is paved.

What is a "paved surface"?

A "paved surface" can be cement, brick, asphalt, paver, etc. It should be installed so it does not drain onto neighboring property. It is **not** a paved surface if only the areas under the tires are paved. In some areas of town there are existing strips of cement leading to a parking area - this is **ok** but will not be acceptable for new installations.

Where may I park my car?

Cars may be parked: in the garage; on the driveway or any other paved surface, except the public sidewalk; in side yards that are not adjacent to a street if no required exits from the house are blocked; in the rear yard if 60% of the yard area remains open space; and on the street as long as they are moved every 72 hours.

What about my travel trailer or my kid's bicycle?

Another ordinance, the Zoning Code, prohibits storing your trailer in the front setback of your property. The Lawn Parking Ordinance does **not** prohibit parking a bicycle or tricycle on the lawn.

How is the Ordinance enforced?

When Code Enforcement receives a complaint, a letter will be sent to the registered owner of the vehicle and, if different, the owner and occupant of the property. The letter will give the vehicle and/or property owner ten days to locate an alternative parking space for the motor vehicle.

Why should the property owner be held responsible if his tenant parks on the lawn?

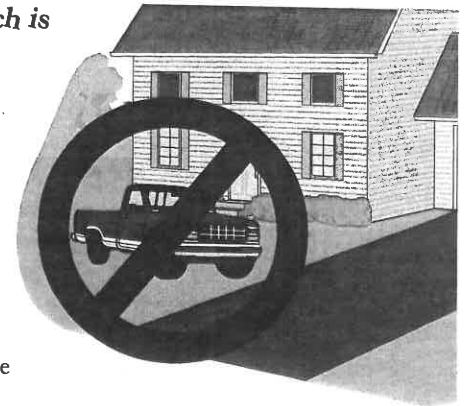
Generally, property owners **are** responsible for any code violation on their property. The property owner also is the only one who can authorize paving for any additional parking.

What happens if the vehicle is not moved?

If the vehicle is not moved, an Administrative Citation will be sent to the registered owner of the vehicle and may also be mailed to the property owner. This citation is similar to a parking ticket in that the person receiving the notice may pay the fine without going to court. This is **not** a criminal citation.

How much is the fine?

The fine is \$25.00, but a new citation may be issued every day that the vehicle is discovered parked on the lawn.



What if the citations are ignored?

If the owner ignores the citations and refuses to move the vehicle, the City could issue a Compliance Order which carries fines up to \$2500 per day, plus administrative costs.

What if I pull my car onto the lawn to wash it? Will I be cited for that?

No. Neighbors won't complain if this is just a temporary situation or infrequent occurrence. The Ordinance is designed to prohibit someone from routinely parking his or her car on the lawn.

What if my neighbor has an old junk car up on jacks but it's stored on his driveway, not his lawn?

There is another City Ordinance that prohibits storing inoperable vehicles in driveways or front yard. Call the Vehicle Abatement Unit, 277-4528. Be sure you state that the vehicle is on private property. You will need to provide the correct address, a description of the vehicle, and the license plate number, if available. **Note:** The vehicle has to be inoperable (missing essential parts like the engine, transmission, or wheels); no action can be taken if the vehicle is only unregistered, not used, or looks ugly.

C. Design criteria.

1. Structures utilizing metal sheathing shall be designed to be compatible with surrounding land uses and architecture.
2. The front of the structures shall face the street, where practical, and shall utilize materials other than metal (e.g., masonry, stone, concrete, wood, glass, etc.), either structurally or applied as a veneer.
3. The structure's design shall include an architecturally enhanced roofline (e.g., mansard roof, parapet wall, etc.).
4. Enhanced treatment shall not end at an exposed corner, but shall wrap around the side walls a distance of at least three feet.

17.305.090 — Paving Within Residential Front Yard Area

- A. **Driveways.** As specified in Section 17.330.100 (Paving Limitations for Driveways in Residential Zones), the amount of allowable paving for driveways shall not exceed 35 percent of the required total front yard area. See Figure 3-3 (Limits on Paving and Hardscaping for Residential Front Yards). The Director may approve deviations from this standard for parcels of 50 feet or less in width.
- B. **Walkway.** The amount of paved walkways and hardscape shall not exceed 25 percent of the required front yard area. See Figure 3-3 (Limits on Paving and Hardscaping for Residential Front Yards).
- C. **All of front yard area.** A minimum of 40 percent of the front yard shall consist of pervious surfaces for landscaping.
- D. **Zoning Clearance.** New driveway paving and hardscape features (e.g., walkways, patios, etc.) shall require a Zoning Clearance issued in compliance with Chapter 17.655 (Zoning Clearances).

- K. Loading/unloading areas – Abutting residential zones.** Where loading/unloading docks abut a residential zone, a 25-foot wide planting buffer area shall be provided, which shall be consistent with the City's Landscape Design Guidelines.

17.330.100 — Paving Limitations for Driveways in Residential Zones

- A. Driveways.** In compliance with Section 17.305.090 (Paving Within Residential Front Yard Area), paving for driveways in residential zones shall not exceed 35 percent of the required total front yard area. See Figure 3-3 (Limits on Paving and Hardscaping for Residential Front Yards). The Director may approve deviations from this standard for parcels of 50 feet or less in width.
- B. Zoning Clearance.** New driveway paving shall require a Zoning Clearance issued in compliance with Chapter 17.655 (Zoning Clearances).

17.330.110 — Bicycle Parking

Each multi-family residential project of five or more units and each nonresidential land use shall provide bicycle parking facilities, including bicycle racks, lockers, and other secure facilities, in compliance with this Section.

- A. Number of spaces required.**
- 1. Multi-family project.** A multi-family project of five or more units shall provide bicycle parking facilities equal to a minimum of 10 percent of the required motor vehicle spaces, unless separate secured garage space is provided for each unit. The bicycle facilities shall be distributed throughout the project.
 - 2. Nonresidential project.** A nonresidential project (e.g., retail, office, etc.) shall provide bicycle parking facilities equal to a minimum of 10 percent of the required motor vehicle spaces, distributed to serve customers and employees of the project.
- B. Types of bicycle parking facilities.** Bicycle parking facilities may consist of any of the following:
- 1. Parking racks.** Bicycle parking racks shall be designed to allow the bicycle to be securely locked in an upright position. The parking rack shall be of permanent construction (e.g., heavy gauge tubular steel) with angle bars permanently attached to the pavement. The design shall be approved by the Director.
 - 2. Lockers.** Bicycle storage lockers should be located close to building entrances, or on the first level of a parking garage and within range of security surveillance, and away from sidewalks and areas with high pedestrian traffic. Each bicycle storage locker shall be:

San Mateo City Charter and Municipal Code							
Up	Previous	Next	Main		Search	Print	No Frames
Title 27 ZONING							
Chapter 27.18 R1 DISTRICTS—ONE FAMILY DWELLINGS							

27.18.070 FRONT YARD.

(a) A front yard not less than twenty-five (25) feet in an R1-A district and not less than fifteen (15) feet in an R1-B or R1-C district shall be provided.

(b) Garage setback. A front yard not less than twenty (20) feet in an R1-B or R1-C district shall be provided for a garage.

(c) Private roads. Buildings erected or enlarged on property fronting upon a private road or easement shall maintain a front setback of at least fifty (50) feet from the centerline of such private road or easement.

(d) Limits on paving. Paving and similar impervious surfaces within a required front yard shall be limited to:

(1) that required for necessary driveway, as follows:

(A) Single car garages: 17 feet maximum or 40% of the street frontage, whichever is less, beginning at the side property line adjacent to the driveway, and including any contiguous paving (i.e. pedestrian walkways) with the following exception:

(i) For those parcels with single car garages, carports, or open parking spaces setback more than 35 feet from the front property line, no paving in addition to the driveway shall be allowed in the front setback.

(B) Two-car garages or larger: 20 feet maximum.

(C) For properties located on a cul-de-sac, a driveway at least 10 feet in width shall be permitted when providing access to two or fewer garages, carports, or open parking spaces, and 12 feet in width when providing access to three or more garage, carport, or open parking spaces;

(2) Circular driveways subject to SPAR review; and

(3) Pedestrian walkways which are five (5) feet or less in width.

Paving and similar impervious surfaces means that surface which is incapable of being penetrated by water. (Ord. 1994-14 § 1, 1994; Ord. 1993-11 § 2, 1993; Ord. 1992-16 § 10, 1992; prior code § 146.02(G) (1-4)).

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Legislation Details (With Text)

File #: 18-141 **Version:** 1 **Name:**

Type: Consent **Status:** Agenda Ready

File created: 5/1/2018 **In control:** City Council

On agenda: 5/8/2018 **Final action:**

Title: Meeting Minutes
Recommendation: Approve the Regular City Council Meeting Minutes of April 24, 2018.

Sponsors:

Indexes:

Code sections:

Attachments: [Minutes - 042418 - Regular](#)

Date	Ver.	Action By	Action	Result
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Meeting Minutes

Recommendation: Approve the Regular City Council Meeting Minutes of April 24, 2018.



City of Hercules

111 Civic Drive
Hercules, CA 94547

Meeting Minutes

City Council

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

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

Tuesday, April 24, 2018

Council Chambers

Closed Session - 5:00 p.m.
Regular Session - 7:00 p.m.

I. CLOSED SESSION – 5:00 P.M. CALL TO ORDER - ROLL CALL

Mayor Kelley called the meeting to order at 5:03 p.m.

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

None.

III. CONVENE INTO CLOSED SESSION

City Attorney Tang announced the items to be discussed in closed session.

Mayor Kelley recessed the meeting at 5:04 p.m.

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

1. [18-124](#) Pursuant to Government Code Section 54957.6 CONFERENCE WITH LABOR NEGOTIATORS - City Negotiators: David Biggs, City Manager; Annie To, Director of Finance; Lori Martin, Director of Administrative Services relative to the following employee groups:
 - a. Teamsters Local 315 Employee Organizations
 - b. Hercules Police Officers Association
 - c. Hercules Senior Manager Employee Group
 - d. Confidential Unrepresented Employee Group
 - e. Mid Management Employee Group
2. [18-127](#) Conference with Legal Counsel - Anticipated Litigation Pursuant to Government Code Section 54956.9(d)(2): In one (1) matter: Hercules Development Partners, LP / Ledcor Corporation

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

Mayor Kelley called the regular City Council meeting to order at 7:05 p.m.

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

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

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

VI. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member de Vera.

VII. MOMENT OF SILENCE

Mayor Kelley called for a moment of silence for Paul J. Velasco, a 40 year resident of Hercules who passed away recently.

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. [18-116](#) Hercules High School Music Presentation

Hercules High School string music group provided a short music performance. Hercules High School Music Director Anthony West provided information related to the music classes provided at Hercules High School.
2. [18-125](#) Supervisor Federal D. Glover to Introduce Dominic Aliano, District Representative

Supervisor Glover introduced his new District Representative Dominic Aliano. Dominic Aliano provided a brief biography and answered questions from the City Council.
3. [18-117](#) Proclamation in Special Recognition of Reserve Police Detective Van Putten as the 2018 Women of the Year in Contra Costa County

Mayor Kelly read aloud the Proclamation and presented it to Ms. Connie Van Putten.

Planning Commission Chair Dion Bailey provided an update on a recent Planning Commission meeting.

IX. AGENDA ADDITIONS/DELETIONS

City Manager Biggs reported that there was an updated version of the first look at revenues and expenditures handed out prior to the meeting and extra copies are available on the table for the public. City Manager Biggs explained the process for the joint item between the Successor Agency and City Council.

X. PUBLIC COMMUNICATIONS

Speaker: Lynne Noone

XI. PUBLIC HEARINGS

Mayor Kelley called the joint meeting of the Successor Agency and Hercules City Council to order at 7:45 p.m.

Present: 5 - Agency Member G. Boulanger, Agency Member M. de Vera, Agency Member R. Esquivias, Agency Member D. Romero, and Chair C. Kelley

1. [18-121](#)

Major Amendment to the 2008 Hilltown Development and Owner Participation Agreement ("Development Agreement") with Santa Clara Valley Housing Group (SCVHG) to: Extend the Term for Six Months with Provision for Additional Extension; Remove the Redevelopment Agency as Party to the Agreement; and Make Additional Changes to the Original Agreement Consistent with Changed Circumstances

1. Extend the Term for Six Months with Provision for Additional Extension;

2. Remove the Redevelopment Agency as Party to the Agreement;

3. Make Additional Changes to the Original Agreement Consistent with Changed Circumstances

Recommendation: Review, discuss and conduct a public hearing and consider taking the following actions:

Successor Agency:

Adopt a Resolution of the Hercules Successor Agency approving certain amendments to the 2008 Hilltown Development Agreement, including but not limited to removal of the Redevelopment Agency as a party to the agreement (Attachment 2)

City Council

Waive the first reading and introduce an Ordinance approving amendments to the Hilltown Development Agreement to remove the Redevelopment Agency as a party to the agreement, conditionally extend the term of the agreement, and to clarify the developer's obligations regarding affordable housing, stormwater and clean water requirements, and the in-lieu sports facility fee (Attachment 3).

City Manager Biggs gave a staff report. City Manager Biggs invited the Developer to speak in regards to their qualifications and to show some of the projects they are working on. Mr. Steve Schott of Santa Clara Valley Housing Group added additional information. Members of the City Council conducted a question and answer period with staff and the developer.

Mayor Kelley opened the joint public hearing of the Successor Agency and the Hercules City Council at 8:10 p.m.

Mayor Kelley closed the joint public hearing of the Successor Agency and the Hercules City Council at 8:10 .m. with no comments offered from the public.

MOTION: A motion was made by Agency Member de Vera, seconded by Agency Member Esquivias, to adopt Successor Agency Resolution 18-018. The motion carried by the following vote:

Aye: 5 - Agency Member G. Boulanger, Agency Member M. de Vera, Agency Member R. Esquivias, Agency Member D. Romero, and Chair C. Kelley

MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member Boulanger, to waive the reading and approve the introduction of Ordinance 509. The motion carried by the following vote:

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

Chair Kelley adjourned the Successor Agency meeting at 8:15 p.m.

2. [18-120](#)

Ordinance to Amend Hercules Municipal Code Title 5, Chapter 6, to update, revise, and clarify the City's Smoking Ordinance

Recommendation: Receive a presentation, open the public hearing, waive the First Reading, and introduce an Ordinance amending the City's smoking ordinance

City Attorney Tang introduced the item and provided a staff report. City Council provided comments.

Mayor Kelley open the public hearing at 8:31 p.m.

Mayor Kelley closed the public hearing at 8:31 p.m. with no comments offered from the public.

A motion was made by Council Member Boulanger to waive the reading and approve the introduction of Ordinance 508.

An amendment to the motion was made by Vice Mayor Romero to add clarifying language into the Ordinance to define the language of a minor to be someone under the age of 21.

MOTION: A motion was made by Council Member Boulanger, seconded by Vice

Mayor Romero, to waive the reading and approve the introduction of Ordinance 508 as amended. The motion carried by the following vote:

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

Nay: 1 - Council Member M. de Vera

XII. CONSENT CALENDAR

MOTION: A Motion was made by Council Member de Vera, seconded by Council Member Boulanger to adopt Items 1-4 of the Consent Calendar.

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

Council Member de Vera requested that Item 5 be pulled from the Consent Calendar and discussed separately.

City Council discussed and agreed by majority to add the location of the Northeast corner of Willet and Sycamore as an additional location for the placement of political signs.

MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member de Vera, to adopt Resolution 18-020 as amended. The motion carried by the following vote:

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

1. [18-114](#)

Meeting Minutes

Recommendation: Approve the Special Closed Session meeting minutes of April 10, 2018.

Approved.

2. [18-113](#)

Meeting Minutes

Recommendation: Approve the Special Workshop and Regular City Council Meeting Minutes of April 10, 2018.

Approved.

3. [18-115](#)

Meeting Minutes

Recommendation: Approve the Special City Council Workshop meeting minutes of April 14, 2018.

Approved.

4. [18-123](#)

Computer and Electronic Surplus

Recommendation: Adopt a Resolution declaring certain computer property and electronics as surplus and authorizing the proper disposal of said property.

Approved.

5. [18-111](#) **Approve Updated Locations for Posting of Political Signs on Public Property**
Recommendation: Adopt a Resolution approving locations for posting of political signs on public property.

This item was pulled from the Consent Calendar and approved as amended.

XIII. DISCUSSION AND/OR ACTION ITEMS

1. [18-119](#) **Second Reading of Zone Text Amendment No. ZTA 18-01 Related to Accessory Dwelling Units**
Recommendation: Waive the 2nd Reading and adopt Ordinance 506, Zoning Text Amendment #ZTA 18-01 modifying the Hercules Zoning Ordinance by repealing and replacing Section 35.320 and modifying Section 60.200 as well as Table 6.1 and Table 15.1 regarding accessory Dwelling Units (ADUs).

City Manager Biggs introduced the item. Planning Director Smyth provided a staff report. Assistant City Attorney Crawl provided additional information. City Council asked questions and provided comments. City Council provided direction to staff to make two amendments to the Ordinance. The amendments agreed upon by a consensus of the City Council was to amend the height limit to 18' and to limit detached accessory dwelling units to one (1) habitable space.

MOTION: A motion was made by Council Member de Vera, seconded by Council Member Esquivias, to waive the reading and adopt Ordinance 506, as amended. The motion carried by the following vote:

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

2. [18-126](#) **Landscaping and Lighting Assessment Districts - Approval of Preliminary Engineer's Reports and Declaring the City Council's Intention to Levy and Collect Assessments for Fiscal Year 2018-19**
Recommendation: Adopt the following Resolutions:
- a. A Resolution for the preliminary approval of the Engineer's Report and declaring the City Council's intention to levy and collect assessments for Fiscal Year 2018-19 within the City of Hercules for Landscaping and Lighting Assessment District No. 83-2 and setting a public hearing for June 26, 2018; and
 - b. A Resolution for the preliminary approval of the Preliminary Engineer's Report and declaring the City Council's intention to levy and collect assessments for Fiscal year 2018-19 within the City of Hercules Victoria by the Bay Landscaping and Lighting Assessment District No. 2002-1

(District) and setting a public hearing for June 26, 2018; and

c. A Resolution for the preliminary approval of the Preliminary Engineer's Report and declaring the City Council's intention to levy and collect assessments for Fiscal Year 2018-19 within the City of Hercules for Hercules Village Landscaping and Lighting Assessment District No. 2002-2 (District) and setting a public hearing for June 26, 2018; and

d. A Resolution for the preliminary approval of the Preliminary Engineer's Report and declaring the City Council's intention to levy and collect assessments for Fiscal Year 2018-19 within the City of Hercules for Baywood Landscaping and Lighting Assessment District No. 2004-1 (District) and setting a public hearing for June 26, 2018; and

e. A Resolution for the preliminary approval of the Preliminary Engineer's Report and declaring the City Council's intention to levy and collect assessments for Fiscal Year 2018-19 within the City of Hercules for Bayside Landscaping and Lighting Assessment District No. 2005-1 and setting a public hearing for June 26, 2018.

City Manager Biggs introduced the item and provided a staff report. City Manager Biggs introduced Ed Espinoza from Francisco & Associates. Mr. Espinoza of Francisco & Associates provided additional information. Mr. Espinoza and City Manager Biggs introduced some new information for City Council consideration to approve an additional assessment to Zone 9 of the Citywide Landscaping and Lighting Assessment District 83-2, increasing the assessment to the 8 year amortization amount. City Council discussed the options and established a consensus to increase the assessment in Zone 9 to the 8 year amortization amount.

MOTION: A motion was made by Council Member Esquivias, seconded by Vice Mayor Romero, to adopt Resolution 18-021, as amended. The motion carried by the following vote:

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

MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member Boulanger, to adopt Resolution Nos: 18-022, 18-023, 18-024 and 18-025. The motion carried by the following vote:

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

3. [18-118](#) **List of Projects for Fiscal Year 2018-19 Funded by SB 1, the Road Repair and Accountability Act of 2017**
Recommendation: Adopt a Resolution approving a list of SB 1 projects for FY 2018-19.
- Public Works Director Mike Roberts introduced the item and provided a staff report. City Manager Biggs provided additional information.
- MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member Boulanger, to adopt Resolution 18-026. The motion carried by the following vote:**
- Aye:** 5 - Council Member G. Boulanger, Council Member M. de Vera, Council Member R. Esquivias, Vice Mayor D. Romero, and Mayor C. Kelley
4. [18-91](#) **First Look at FY 2018-19 General Fund Revenues and Expenditures**
Recommendation: Discuss and provide staff with feedback on the general fund revenue and expenditure estimates being developed for the FY 2018-19 budget.
- City Manager Biggs introduced the item. Finance Director To provided a staff report and presented the first look at FY 18-19 revenues and expenditures. City Manager Biggs provided additional information. City Council asked questions and provided comments.
5. [18-112](#) **Records Retention Schedule and Records Management Program**
Recommendation: Adopt a Resolution approving a new Records Retention Schedule and rescinding Resolution No. 92-16; and adopt a Resolution approving a Records Management Program.
- City Manager Biggs introduced the item. City Clerk Martin provided a staff report. City Council asked questions and provided comments. City Council gave direction to staff to make one minor amendment to the Records Retention Schedule to modify File No. 703.07 related to Initiative Petitions from an 8 month retention period to Permanent.
- MOTION: A motion was made by Council Member de Vera, seconded by Council Member Esquivias, to adopt Resolution 18-027, as amended. The motion carried by the following vote:**
- Aye:** 5 - Council Member G. Boulanger, Council Member M. de Vera, Council Member R. Esquivias, Vice Mayor D. Romero, and Mayor C. Kelley
- MOTION: A motion was made by Council Member Boulanger, seconded by Council Member Esquivias, to adopt Resolution 18-028. The motion carried by the following vote:**
- Aye:** 5 - Council Member G. Boulanger, Council Member M. de Vera, Council Member R. Esquivias, Vice Mayor D. Romero, and Mayor C. Kelley

XIV. PUBLIC COMMUNICATIONS

None.

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

Staff and Council reported on events and attendance at community and regional meetings.

Members of the City Council requested the following future agenda items:

Smoking Ordinance for multi-family units, requested by Vice Mayor Romero.

Annual Designation of EOC Successors, requested by Vice Mayor Romero.

Annual Development Update, requested by Council Member de Vera.

Mayor Kelley polled the City Council Members and established consensus to add the three (3) items listed above.

Vice Mayor Romero requested that his colleagues call the School District Trustees in El Cerrito and request that they reject all of the options outlined in a recent report that was issued related to School Resource Officers.

XVI. ADJOURNMENT

Mayor Kelley adjourned the meeting at 10:54 p.m.

**AGENDA FOR THE SUCCESSOR AGENCY TO THE FORMER HERCULES
REDEVELOPMENT AGENCY - APRIL 24, 2018**

I. ROLL CALL - CALL TO ORDER

Chair Kelley called the joint meeting of the Successor Agency and Hercules City Council to order at 7:45 p.m.

Rollcall

Present: 5 - Agency Member G. Boulanger, Agency Member M. de Vera, Agency Member R. Esquivias, Agency Member D. Romero, and Chair C. Kelley

II. PUBLIC COMMUNICATIONS

None.

III. PUBLIC HEARING

1. [18-122](#) **Major Amendment to 2008 Hilltown Development and Owner Participation Agreement ("Development Agreement") with Santa Clara Valley Housing Group (SCVHG) to: Extend the Term for Six Months with Provision for Additional Extension; Remove the**

Redevelopment Agency as Party to the Agreement; and Make Additional changes to the Original Agreement Consistent with Changed Circumstances - Note: This item to be approved prior to Item XI.1 on the Regular City Council Agenda of 04/24/18

Recommendation: Receive staff report, open, conduct and close the public hearing and take the following action:

Successor Agency:

Adopt a Resolution of the Hercules Successor Agency approving certain amendments to the 2008 Hilltown Development Agreement, including but not limited to removal of the Redevelopment Agency as a party to the agreement (Attachment 2).

City Council:

Waive the first reading and introduce an Ordinance approving amendments to the Hilltown Development Agreement to remove the redevelopment agency as a party to the agreement, conditionally extend the term of the agreement, and to clarify the developer's obligations regarding affordable housing, stormwater and clean water requirements, and the in-lieu sports facility fee (Attachment 3).

City Manager Biggs introduced the item and provided a staff report. City Manager Biggs invited the Developer to speak in regards to their qualifications and to present slides of some of their current projects they are working on. Mr. Steve Schott of Santa Clara Valley Housing Group provided additional information. City Council conducted a question and answer period with staff and the developer.

Chair Kelley opened the joint public hearing of the Successor Agency and the Hercules City Council at 8:10 p.m.

Chair Kelley closed the public hearing of the Successor Agency and the Hercules City Council at 8:10 p.m. with no comments offered from the public.

MOTION: A Motion was made by Agency Member de Vera, seconded by Agency Member Esquivias to adopt Successor Agency Resolution 18-018.

Aye: 5 - Agency Member G. Boulanger, Agency Member M. de Vera, Agency Member R. Esquivias, Agency Member D. Romero, and Chair C. Kelley

MOTION: A Motion was made by Vice Mayor Romero, seconded by Council Member Boulanger to waive the reading and approve the introduction of Ordinance 509.

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

IV. ADJOURNMENT

Chair Kelley adjourned the Successor Agency meeting at 8:15 p.m.

Chris Kelley, Mayor

Attest:

Lori Martin, MMC
Administrative Services Director/City Clerk



Legislation Details (With Text)

File #: 18-140 **Version:** 1 **Name:**
Type: Consent **Status:** Agenda Ready
File created: 5/1/2018 **In control:** City Council
On agenda: 5/8/2018 **Final action:**
Title: Ordinance to Approve Amendments to the Hilltown Development Agreement to Remove the Redevelopment Agency as a Party to the Agreement, Conditionally Extend the Term of the Agreement, and Clarify the Developer's Obligations Regarding Affordable Housing, Stormwater and Clean Water Requirements, and the In-Lieu Sports Facility Fee
Recommendation: Waive reading and adopt Ordinance 509.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Hilltown Development Agreement Amendment 180508 JPT](#)
[Attach 1 - City Council Ordinance Amend Hilltown DA 180508 - 2nd Reading](#)
[Attach. 2 - Hilltown Development Agreement Amendment as approved first reading](#)
[Attach 3 - Development Agreement Amendment 04242018 SR](#)

Date	Ver.	Action By	Action	Result
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Ordinance to Approve Amendments to the Hilltown Development Agreement to Remove the Redevelopment Agency as a Party to the Agreement, Conditionally Extend the Term of the Agreement, and Clarify the Developer's Obligations Regarding Affordable Housing, Stormwater and Clean Water Requirements, and the In-Lieu Sports Facility Fee
Recommendation: Waive reading and adopt Ordinance 509.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of May 8, 2018

TO: Mayor Kelley and Members of the City Council

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

SUBJECT: Major Amendment to 2008 Hilltown Development and Owner Participation Agreement (“Development Agreement”) with Santa Clara Valley Housing Group (SCVHG) to: Extend the Term for Six Months with Provision for Additional Extension; Remove the Redevelopment Agency as Party to the Agreement; and Make Additional Changes to the Original Agreement Consistent with Changed Circumstances

RECOMMENDATION: Waive second reading, and adopt proposed major amendments to the 2008 Hilltown Development Agreement.

At the April 24, 2018 council meeting, the City Council and Successor Agency took action on several matters as follows:

Received the staff report, opened, conducted, and closed a Public Hearing, and took the following actions:

Successor Agency:

Adopted a Resolution of the Hercules Successor Agency approving certain amendments to the 2008 Hilltown Development Agreement, including but not limited to removal of the redevelopment agency as a party to the agreement.

City Council:

Waived the First Reading and introduced an Ordinance approving amendments to the Hilltown development agreement to remove the redevelopment agency as a party to the agreement, conditionally extend the term of the agreement, and to clarify the developer’s obligations regarding affordable housing, stormwater and clean water requirements, and the in-lieu sports facility fee.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: On April 2, 2018, the Planning Commission approved Resolution 18-04 to recommend to the City Council the approval of the proposed amendments to the Development Agreement. The Planning Commission resolution was provided to the Council as part of the agenda related materials at the April 24, 2018 regular meeting.

FISCAL IMPACT OF RECOMMENDATION: None as a result of this action.

DISCUSSION:

Please refer to staff report from April 24, 2018, provided as Attachment 3 to this Staff Report. A copy of the 2008 Development Agreement can be downloaded at this link:

[2008 Hilltown DOPA.](#)

ATTACHMENTS:

Attachment 1 –Ordinance Approving Amendments to the Hilltown Development Agreement.

Attachment 2 – Draft Major Amendments to the 2008 Hilltown Development Agreement as presented to Council at the meeting of April 24, 2018.

Attachment 3 – April 24, 2018 staff report.

ORDINANCE NO. 18-

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES
APPROVING AMENDMENTS TO THE HILLTOWN DEVELOPMENT AND OWNER
PARTICIPATION AGREEMENT TO REMOVE THE REDEVELOPMENT AGENCY
AS A PARTY TO THE AGREEMENT, CONDITIONALLY EXTEND THE TERM OF
THE AGREEMENT, AND TO CLARIFY THE DEVELOPER'S OBLIGATIONS
REGARDING AFFORDABLE HOUSING, STORMWATER AND CLEAN WATER
REQUIREMENTS, AND THE IN-LIEU SPORTS FACILITY FEE**

WHEREAS, the City of Hercules ("City"), the Redevelopment Agency ("Agency"), and the Santa Clara Valley Housing Group ("Owner") entered into a ten year Development and Owner Participation Agreement ("Development Agreement") adopted by ordinance on September 23, 2008, a memorandum of which is recorded in the Office of the Contra Costa County Recorder, State of California, on November 25, 2008, with respect to the development of approximately 44 acres of certain real property located in the City of Hercules, California; and

WHEREAS, Pursuant to the State's Redevelopment Dissolution Law (ABx1 26 and subsequent amendments; together, the "Redevelopment Dissolution Law"), the Agency was dissolved as of February 1, 2012 and the Successor Agency to the City of Hercules Redevelopment Agency ("Successor Agency") undertook the responsibility of winding up the affairs of the Agency; and

WHEREAS, consistent with those efforts, after duly noticed public hearings, the Successor Agency on April 24, 2018, adopted Resolution No. SA 18-018 approving Amendments to the Development Agreement to remove itself as a party to the Development Agreement, which resolution is incorporated herein by reference; and

WHEREAS, the Development Agreement addresses, among other things, the potential development of up to 640 residential dwelling units, a neighborhood retail facility, a series of public and private open space amenities, and a network of new roadways (the "**Project**") in accordance with all required Project Approvals; and

WHEREAS, the City and Owner desire to amend certain provisions of the Development Agreement as described in the proposed Amendment to the Development Agreement, attached hereto and incorporated by reference herein, including but not limited to conditionally extending the term of the Development Agreement and removing the Agency as a party to the Development Agreement; and

WHEREAS, the City and Owner desire to amend other provisions of the Development Agreement including:

-Clarifying that the Owner is responsible for all design, construction, and installation of required stormwater control and clean water requirements applicable to the Project at time of construction,

-Clarifying that the in-lieu sports facility fee can be used by the City for any recreational and park related purpose, and

-Clarifying Owner's obligation to provide affordable housing.

WHEREAS, the City Council finds that the provisions of the proposed amendment are consistent with the general plan and any applicable specific plan; and

WHEREAS, the City Council finds and determines that the proposed amendments to the Hilltown development agreement are Categorically Exempt from CEQA pursuant to Section 15061(b)(3) of the covered by the 'general rule', as the project will not have a significant effect on the environment. The City Council determines that the proposed amendments to the Hilltown Development Agreement are categorically exempt from CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the amendments will not have a significant effect on the environment. The City Council also determines that the proposed amendments are categorically exempt from CEQA pursuant to section 15303(a) of the CEQA Guidelines.

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

The City Council of the City of Hercules hereby approves the proposed amendments to the Hilltown Development Agreement as attached hereto and incorporated by reference herein.

BE IT FURTHER ORDAINED:

a. This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:

1. Posting the entire Ordinance in at least three (3) public places in the City of Hercules, within fifteen (15) days after its passage and adoption; or

2. Publishing the entire Ordinance at least once in the West County Times, a newspaper of general circulation published in the County of Contra Costa and circulated in the City of Hercules, within fifteen (15) days after its passage and adoption; or

3. Publishing a summary of the Ordinance in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Councilmembers voting for and against the Ordinance.

b. This Ordinance shall go into effect thirty (30) days after the date of its final passage

and adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 24TH day of April, 2018, and was passed and adopted at a regular meeting of the Hercules City Council on the 8th day of May, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Kelley, Mayor

Lori Martin, Administrative Services Director &
City Clerk

**AMENDMENT TO THE DEVELOPMENT AND OWNER
PARTICIPATION AGREEMENT
FOR THE HILL TOWN REDEVELOPMENT PROJECT
(DOPA 07-01) BY AND BETWEEN THE CITY OF
HERCULES, THE REDEVELOPMENT AGENCY OF THE
CITY OF HERCULES, AND THE SANTA CLARA VALLEY
HOUSING GROUP, INC.**

This AMENDMENT TO THE DEVELOPMENT AND OWNER PARTICIPATION AGREEMENT (this "**Amendment**") is entered into and effective as of the ____ day of _____, 2018, between the City of Hercules, a municipal corporation (the "**City**"), the Redevelopment Agency of the City of Hercules (the "**Agency**"), and Santa Clara Valley Housing Group, Inc., a California corporation, ("**Owner**"). The City, Agency, and Owner are collectively "**Parties**" to this Amendment.

RECITALS

A. The City, the Agency, and Owner are Parties to that certain Development and Owner Participation Agreement adopted by ordinance on September 23, 2008, a memorandum of which is recorded in the Office of the Contra Costa County Recorder, State of California, on November 25, 2008 as Document No. 2008-0256803-00 (the "**Development Agreement**"), with respect to the development of approximately 44 acres of certain real property located in the City of Hercules, California and described in Exhibit "A" attached to the Development Agreement (the "**Project Site**"). Unless otherwise defined in this Amendment, all capitalized terms have the meanings given to those terms in the Development Agreement.

B. Pursuant to the State's Redevelopment Dissolution Law (ABx1 26 and subsequent amendments; together, the "Redevelopment Dissolution Law"), the Agency was dissolved as of February 1, 2012 and the Successor Agency to the City of Hercules Redevelopment Agency ("**Successor Agency**") undertook the responsibility of winding up the affairs of the Agency. Consistent with those efforts, the Successor Agency desires to remove itself as a party to the Development Agreement.

C. The Development Agreement addresses, among other things, the potential development of up to 640 residential dwelling units, a neighborhood retail facility, a series of public and private open space amenities, and a network of new roadways (the "**Project**") in accordance with all required Project Approvals.

D. The City and Owner desire to amend certain provisions of the Development Agreement as described in this Amendment, including but not limited to the term of the Development Agreement and removal of the Agency as a party to the Development Agreement.

E. On April 24, 2018, after duly noticed public hearings, the Successor Agency adopted Resolution No. SA 18-018 approving this Amendment, which ordinance is incorporated herein by reference.

F. On May 8, 2018, after duly noticed public hearings, the City Council of the City of Hercules adopted Ordinance No. 509 approving this Amendment, which ordinance is incorporated herein by reference.

AGREEMENT

IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES, THE CITY, THE SUCCESSOR AGENCY, AND THE OWNER AGREE THAT THE DEVELOPMENT AGREEMENT IS AMENDED AS FOLLOWS:

1. Redevelopment Agency Withdrawal. On behalf of the Agency, the Successor Agency hereby approves the withdrawal of the Agency from the Development Agreement. All rights and obligations of the Agency under the Development Agreement are hereby terminated.
2. Agency Provision Amendments. All references to “Agency” are hereby deemed to refer to “City” unless otherwise specified in this Amendment or unless such reference would obligate the City to act or refrain from acting in a manner contradictory to federal, state, or local law. Section 5 is hereby eliminated.
3. Recital Amendments. Recitals A, B, and C are hereby amended in full to read as follows:
 - A. The Legislature enacted Government Code Section 65864 *et seq.* (“Development Agreement Statute”) in response to the lack of certainty in the approval of development projects, which can result in a waste of resources, escalate the cost of housing, and discourage investment in and commitment to planning that would maximize the efficient utilization of resources.
 - B. The Development Agreement Statute is designed to strengthen the public planning process, encourage private participation in comprehensive, long-range planning, and reduce the economic costs of development. It authorizes a city to enter into a binding agreement with any person having a legal or equitable interest in real property located in unincorporated territory within that city’s sphere of influence regarding the development of that property.
 - C. Pursuant to the Development Agreement Statute and the City of Hercules regulations governing development agreements (Chapter 8 of Title 10 of the City of Hercules Municipal Code, the “Development Agreement Ordinance”), City and Owner desire to enter into this Agreement to govern the development of that certain real property comprising the “Project Site” as described in Exhibit A and depicted on Exhibit B attached hereto. Owner and City agree that this Agreement shall henceforth be governed in accordance with such state and local regulations.
4. Definition Amendments. Section 1.20 is hereby amended in full to read as follows:

1.20 “Laws.” Laws include the constitutions and laws of the State of California, the United States, any political subdivision within the State of California, any codes, statutes, ordinances, resolutions, regulations, official policies, or rules of any of them, including but not limited to the Development Agreement Statute, effective within the City and any court decision, state or federal, thereunder.

5. Term Amendments. Section 2.2 is hereby amended in full to read as follows:

2.2 Land Use Term. The Land Use Term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until April 23, 2019 unless extended or terminated as provided in this section or sections 8.1 or 10.2.

2.2.1 The Land Use Term shall automatically extend by 4 months to August 23, 2019 if Owner submits the following to the City on or before April 23, 2019:

2.2.1.1 A complete application for a tentative map for the Project in a form acceptable to the City in its reasonable discretion; and

2.2.1.2 Payment of \$50,000 of the \$100,000 due to the City for Owner’s proportionate share of CEQA work for the Project required by section 3.6.1.7 of this Agreement.

2.2.2 If the Land Use Term is extended pursuant to section 2.2.1 above, Owner shall pay the remaining \$50,000 due to the City under section 3.6.1.7 of this Agreement on or before August 23, 2019 or prior to recordation of a final map for the Project, whichever occurs first.

6. Vested Right to Develop the Project. The first sentence only of section 3.1 is amended to read as follows:

Owner shall have the vested right to develop the Project on the Project Site and City shall have the right to regulate development of the Project and use the of the Project Site in accordance with the terms and conditions of this Agreement, the Existing Project Approvals, the Subsequent Project Approvals, the Governing Ordinances, and all Laws.

7. Park and Recreation In-Lieu fee. Section 3.6.1.3 is hereby amended in full to read as follows:

3.6.1.3 Park and Recreation In-Lieu Fee. In lieu of dedicating land on the Project Site for the construction of public park and recreation facilities, Developer shall pay to City a fee amount of \$5,000 per residential dwelling (“Park and Recreation In-

Lieu Fee”). The Park and Recreation In-Lieu Fee shall be paid upon issuance of building permits for each residential unit within the Project. The City shall use all Park and Recreation In-Lieu Fees collected from the Project for any park or recreation use consistent with the City’s General Plan.

8. Affordable Housing. Section 3.6.1.6 is hereby amended in full to read as follows:

3.6.1.6 Affordable Housing. Owner shall set aside five percent (5%) of the total number of residential units constructed on the Property for moderate income housing pursuant to the Affordable Housing Plan, Exhibit G to this Agreement.

9. C-3 Requirements. Section 3.6.3 is amended to add the following sentence at the end of the section:

Owner is responsible for all design, construction, and installation of required stormwater control and clean water requirements applicable to the Project at time of construction.

10. Successor and Assigns. This Amendment shall be binding upon and inure to the benefit of the City, the Owner, their respective successors and assigns.

11. Integration. Except as expressly provided to the contrary herein, all provisions of the initial Development Agreement, which is incorporated herein by reference, shall remain in full force and effect. The Development Agreement and this Amendment shall hereafter be collectively referred to as the Development Agreement. The Development Agreement, as amended herein, integrates all of the terms and conditions of agreement between the Parties and supersedes all previous agreements between the Parties with respect to the subject matter hereof. To the extent that the terms of the initial Development Agreement and this Amendment conflict, the terms of this Amendment shall prevail and control.

12. Authority to Execute. The person or person executing this Amendment on behalf of Owner warrant(s) and represent(s) that they have the authority to execute this Amendment, that they are the proper interest holders and/or successors in interest to the previous Parties executing the Development Agreement, and they further warrant that they have the authority to bind their respective Owner to the performance of the obligations hereunder. Signatories shall defend, indemnify, and hold harmless the City, and its agents, officers, and employees, from any challenge related to the authority of any person or person signing this Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date set forth above.

APPROVED AS TO FORM:

By: _____
Patrick Tang
City Attorney

CITY:

CITY OF HERCULES
a municipal corporation

By: _____
David Biggs
City Manager

OWNER:

SANTA CLARA VALLEY HOUSING
GROUP, INC., a California corporation

By: _____
Stephen E. Schott
Vice President



**STAFF REPORT TO THE CITY COUNCIL &
REDEVELOPMENT SUCCESSOR AGENCY**

DATE: Regular Meeting of April 24, 2018

TO: Members of the City Council & Successor Agency

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

SUBJECT: Major Amendment to 2008 Hilltown Development and Owner Participation Agreement (“Development Agreement”) with Santa Clara Valley Housing Group (SCVHG) to: Extend the Term for Six Months with Provision for Additional Extension; Remove the Redevelopment Agency as Party to the Agreement; and Make Additional Changes to the Original Agreement Consistent with Changed Circumstances

RECOMMENDATION: Receive staff report, Open, Conduct, and Close Public Hearing, and take the following actions:

Successor Agency:

Adopt a Resolution of the Hercules Successor Agency approving certain amendments to the 2008 Hilltown Development Agreement, including but not limited to removal of the redevelopment agency as a party to the agreement (Attachment 2).

City Council:

Waive the First Reading and introduce an Ordinance approving amendments to the Hilltown development agreement to remove the redevelopment agency as a party to the agreement, conditionally extend the term of the agreement, and to clarify the developer’s obligations regarding affordable housing, stormwater and clean water requirements, and the in-lieu sports facility fee (Attachment 3).

...

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: On April 2, 2018, the Planning Commission approved Resolution 18-04 to recommend to the City Council the approval of the proposed amendments to the Development Agreement (Attachment 1).

FISCAL IMPACT OF RECOMMENDATION: None as a result of this action.

DISCUSSION: Hilltown is a 44 acre undeveloped site within the city limits of Hercules, bounded by John Muir Parkway to the south, San Pablo Avenue to the west, the Victoria By The Bay development to the north, and by Interstate 80 to the east. The site was developed by PG&E in the late 1970s as an oil storage, heating and pumping station in connection with a PG&E pipeline from Richmond to eastern Contra Costa County. PG&E used these facilities to supply heavy fuel oil to power generating facilities in Pittsburg. Santa Clara Valley Housing Group (SCVHG) purchased the property from PG&E in 2005. In 2008, envisioning a project that would evoke “the Italian hill towns built centuries ago” and feature an “urban density in a highly livable, marketable, picturesque package”, the City and the Redevelopment Agency entered into a ten year Development and Owner Participation Agreement (“Development Agreement”) with SCVHG to develop the site in accordance with all required project approvals as follows:

- up to 640 residential dwelling units,
- a neighborhood retail facility,
- a series of public and private open space amenities,
- payment of an in-lieu housing fee,
- payment of a park and Recreation in-lieu fee for a sports facility, and
- a network of new roadways to provide access to the developed site.

A copy of the 2008 Development Agreement can be downloaded at this link:
[2008 Hilltown DOPA.](#)

In 2017, apparently intending to abandon the original project, SCVHG approached the City with a different plan for development of the site. Discussions between the Parties took place regarding the scope of the proposed alternate project, and initial plans for a new project were presented and discussed before the Planning Commission. Following presentation of various development options to the City Council at the meeting of February 13, 2018, SCVHG conveyed to the City that they would be willing to proceed with the original plan as specified in the 2008 Development Agreement. SCHVG has since confirmed with staff that they wish to proceed with the development as approved in the 2008 Development Agreement; however, because the agreement expires in November, SCVHG seeks an extension of the original ten-year term to allow SCVHG additional time to proceed with the project. Both Parties have identified other provisions of the Development Agreement that should be modified, as described further in this report. A copy of the proposed amendment is provided as Attachment 4 to this report.

As far as the process for amending the 2008 Development Agreement, per state law (Government Code Section 65864 et seq.) and the City’s municipal code (Title 10, Chapter 8), an amendment to the term of the original 2008 Development Agreement requires a public hearing before the Planning Commission, and a subsequent public hearing and approval by the City Council. As indicated previously, the required public hearing before the Planning Commission occurred on April 2, 2018, with the Commission recommending approval of the proposed amendments to the Development Agreement.

The main points addressed in the draft amendment to the Development Agreement are:

- **RDA:** Due to the enactment of ABx1 26 and subsequent amendments, the Hercules Redevelopment Agency was dissolved as of February 1, 2012. The parties propose removing the RDA as a party to the agreement and provide that references to the RDA throughout the document shall be construed to mean "City". Section E in the Recitals references a resolution proposed to be adopted by the Successor Agency prior to consideration and adoption of the amending ordinance that will memorialize the removal of the RDA as a party to the Development Agreement. This resolution would be presented to the Council serving in its capacity as the Successor Agency.
- **Extension of Term:** The Parties propose amending the Term in sec. 2.2 to provide for: a) a 6 month extension to April 23, 2019, and b) an additional 4 month extension if Owner submits by April 23, 2019 a complete application for a tentative map in a form acceptable to the City, and reimburses the City \$50,000 of the \$100,000 due to the City for Owner's share of CEQA work for the Project. Owner will be required to make the final payment of the remaining \$50,000 to City for CEQA work on or before August 23, 2019 or prior to recordation of a final map, whichever occurs first.
- **Park and Recreation In-Lieu Fee:** The original Development Agreement provides for payment of, in addition to existing Impact Fees including Park and Recreation Facilities Impact Fees (Sec. 3.6.1), a Sports Facility in-lieu fee in the amount of \$5,000 per residential unit. However, per the terms of the 2008 Agreement, those funds were earmarked for construction of new sports facilities. The Parties propose amending the Park and Recreation in-lieu Fee sec. 3.6.1.3 to clarify that the City can use the fee proceeds for any park or recreation use consistent with the City's General Plan.
- **Affordable Housing.** The original Development Agreement at Sec. 3.6.1.6 provides for Owner to pay a \$3,453,030 Affordable Housing In-Lieu Fee for 58 moderate income housing units. The amount provided for in the original Development Agreement is not sufficient to construct the 58 moderate housing units contemplated in 2008. The Parties propose amending the Affordable Housing provision Sec. 3.6.1.6 to require a 5% set-aside of the Project's total number of residential units for moderate income housing, instead of the \$3,453,030 Affordable Housing In-Lieu Fee. The proposed amendment references an Exhibit G, which will lay out in more detail how the affordable housing requirement will be determined. As of the date this report went to publication, the moderate income designation was determined to be 80-120% of the County of Contra Costa Area Median Income.
- **HMU.** Because the Hercules Municipal Utility (HMU) is no longer a functioning entity, having been purchased by PG&E in 2013, it would be appropriate to delete the requirement that the developer utilize HMU for electric utilities. Staff recommends including this change in the draft Amendment.

ATTACHMENTS:

Attachment 1 –Planning Commission Resolution
 Attachment 2 – Successor Agency Resolution
 Attachment 3 – City Council Ordinance
 Attachment 4 –Development Agreement Amendment



Legislation Details (With Text)

File #:	18-139	Version:	1	Name:	
Type:	Consent	Status:		Agenda Ready	
File created:	5/1/2018	In control:		City Council	
On agenda:	5/8/2018	Final action:			
Title:	Ordinance to Amend Hercules Municipal Code by Repealing and Replacing Article 5, Section 6 Related to Smoking in Workplaces and Public Places, and Finding that this Ordinance is Exempt from CEQA Recommendation: Waive the Reading, and adopt Ordinance 508.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Staff Report - Smoking Ordinance Update 180508 - JPT Attach 1 - SR Smoking Ordinance Update 180424 - JPT Attach 2 - Smoking Ord Proposed Amendments 180508 Attach 3 - Hookah Fact Sheet				

Date	Ver.	Action By	Action	Result
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Ordinance to Amend Hercules Municipal Code by Repealing and Replacing Article 5, Section 6 Related to Smoking in Workplaces and Public Places, and Finding that this Ordinance is Exempt from CEQA

Recommendation: Waive the Reading, and adopt Ordinance 508.



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of May 8, 2018

TO: Mayor Kelley and Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney

SUBJECT: Ordinance to Amend Hercules Municipal Code Title 5, Chapter 6, to update, revise, and clarify the City's Smoking Ordinance

RECOMMENDED ACTION:

Consider waiving second reading and adopting the attached Ordinance of the City Council of the City of Hercules amending the City's smoking ordinance, with additions/changes as directed at the Council meeting of April 24, 2018.

FISCAL IMPACT OF RECOMMENDATION:

There may be some expense associated with providing notice to residents and affected businesses should amendments to the current smoking ordinance be adopted. There may be some minimal cost associated with code enforcement efforts in the event enforcement is required.

DISCUSSION:

On April 24, 2018, the City Council waived first reading and approved adoption of a draft ordinance to amend the City's current smoking ordinance, with some changes and clarifications including the addition of provisions to:

- ban all smoking in hotel and motel rooms,
- allowing for the permitting of hookah use in specified outdoor locations 25 feet or more from other patrons, businesses, and residences and when such use does not create a public nuisance, and
- clarify that persons under 21 are not permitted in smoke shops (Attachment 1).

The changes discussed at the April 24th meeting are included in the redline version of the draft ordinance, Attachment 2 to this staff report.

Also provided as Attachment 3 is information that the Contra Costa Health Services Tobacco Prevention Program Manager requested be provided to you regarding the effects of hookah smoking.

ATTACHMENTS:

1. Smoking Ordinance Staff Report from April 24, 2018 Council Meeting.
2. Draft Ordinance based on the ANR model ordinance, with changes as directed by Council at the April 24, 2018 meeting.
3. Information on the effects of hookah smoking provided by Contra Costa Health Services.



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of April 24, 2018

TO: Mayor Kelley and Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney

SUBJECT: Ordinance to Amend Hercules Municipal Code Title 5, Chapter 6, to update, revise, and clarify the City's Smoking Ordinance

RECOMMENDED ACTION:

Receive a presentation, open the public hearing, waive the First Reading, and introduce an Ordinance amending the City's smoking ordinance

FISCAL IMPACT OF RECOMMENDATION:

There may be some expense associated with providing notice to residents and affected businesses should amendments to the current smoking ordinance be adopted. There may be some minimal cost associated with code enforcement efforts in the event enforcement is required.

DISCUSSION:

On March 13, 2018, the City Council discussed the need to update the City's smoking regulations, which were originally enacted in 1992 and which may be in conflict with more recent state laws regulating smoking. E-cigarettes, vaping, smoke shops, and medical and recreational cannabis uses are not expressly addressed in the 1992 ordinance. A copy of the staff report from that meeting is provided as Attachment A to this report.

Following the discussion at the March 13th meeting, Council directed the City Attorney to bring back for consideration and possible action a revised smoking ordinance using as a model the ordinance promulgated by Americans for Nonsmokers' Rights (ANR), based in Berkeley, California, which was provided as an example to the Council at the March 13th meeting. As discussed on March 13th, the ANR model ordinance for smoke free workplaces and public places has served as the basis for numerous jurisdictions in establishing local smoking regulations.

The proposed ordinance would replace in its entirety the original 1992 smoking ordinance. It includes definitions for "Electronic Smoking Device", "Hookah", and a definition of "Smoking" that expressly includes marijuana use. The following matters raised by Council on March 13th have also been addressed in the proposed draft:

- Add definition of Smoke Shop.
- Trim back and consolidate the Findings section of the ANR model ordinance.
- Set the distances for smoking near prohibited areas to 25 feet.
- Cross reference the existing penalties section in the Hercules Municipal Code.
- Re-phrase the reference to “liberal construction”.

There are several issues that were discussed by the Council where there was not a clear consensus:

- Should smoking in hotels/motels be banned or otherwise regulated?

The draft bans smoking in hotels. (Sec. 5-6.108(b)). However, Council has the discretion to allow for an exception.

- Should there be an exception for use of hookahs in limited circumstances?

The draft provides language for an exception that under limited conditions would allow hookah use in outdoor areas of restaurants or bars, but only when 25 or more feet from other establishments, residences, schools, etc. and only when such use does not create a disturbance or generate complaints. (Sec. 5-6.103(s)).

While not discussed in detail at the March 13th meeting, language is included for Council consideration that would regulate the location and operation of smoke shops. (Sec. 5-6.111).

CONCLUSION:

The proposed ordinance is intended to further the goal of a smoke free environment, and thus eliminates the outdated allowances in the 1992 ordinance for smoking accommodations in office buildings, public areas, restaurants and bars. It addresses newer forms of smoking such as vaping and e-cigarettes that did not exist when the original ordinance was adopted. It clarifies, consistent with state law, that smoking marijuana is not allowed in any place where the smoking of tobacco is prohibited. It also establishes a 25 foot distance requirement from building entrances and windows.

ATTACHMENTS:

1. Smoking Ordinance Staff Report from March 13, 2018 Council Meeting.
2. Draft Ordinance based on the ANR model ordinance, with changes as directed by Council at the March 13, 2018 meeting.

REDLINE VERSION

NOTE: Additions to the draft Ordinance as directed by Council at the meeting of April 24, 2018 are in **Yellow**.
Deletions are in ~~strike through~~.

ORDINANCE NO. 18-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES REPEALING AND REPLACING ARTICLE 5, SECTION 6 OF THE HERCULES MUNICIPAL CODE RELATED TO SMOKING IN WORKPLACES AND PUBLIC PLACES , AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM CEQA

WHEREAS, the City of Hercules in 1992 adopted by ordinance regulations regarding smoking in public places and in the workplace; and

WHEREAS, changes in State law regarding smoking render the City's 1992 Smoking Ordinance in conflict with state law; and

WHEREAS, the 1992 Smoking Ordinance does not address use of new and popular smoking technologies that were not in existence at the time the ordinance was passed; and

WHEREAS, the Council desires to enact more comprehensive smoking regulations to better protect the health and safety of the City's residents; and

WHEREAS, the Findings contained in the revised Section 5-6.102 are incorporated herein by reference and are made a part of these Recitals as if fully set forth herein; and

WHEREAS, the City Council has determined that the Amendment is categorically exempt from CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the Amendment will not have a significant effect on the environment. The City Council has also determined that the Zoning Text Amendment is categorically exempt from CEQA

pursuant to section 15303(a) of the CEQA Guidelines because it governs smoking in public workplaces and public places.

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

SECTION 1. Hercules Municipal Code Article 5, Section 6 shall be replaced in its entirety with a new Article 5, Section 6 as follows:

**“Title 5, Chapter 6 - Ordinance Prohibiting Smoking in
All Workplaces and Public Places**

Sec. 5-6.101. Title

This Article shall be known as the City of Hercules Smokefree Ordinance.

Sec. 5-6.102. Findings and Intent

The City of Hercules does hereby find that:

- (a) 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.
- (b) 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.
- (c) 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.

- (d) 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.
- (e) 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.
- (f) 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.
- (g) The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and smoke is elevated in nonsmoking rooms of hotels that allow 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.
- (h) 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. 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. 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.
- (i) 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.
- (j) 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.

- (k) Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.

Sec. 5-6.103. 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 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) “Smoke shop and tobacco store” means any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall not be defined as a “smoke shop and tobacco store” and shall not be subject to the restrictions in this chapter.
- (s) “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. “Smoking” of hookahs as defined herein may be allowed by permit on a limited basis in outdoor areas of restaurant and bar establishments when the activity occurs 25 feet or more from other patrons, residences, schools, offices, businesses, or other public places, unless such use creates a nuisance or otherwise results in creation of a disturbance.
- (t) “Sports Facility” 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. 5-6.104. Application of Article to City-Owned Facilities and Property

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

Sec. 5-6.105. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the City of Hercules, including but not limited to, the following places:

(a) Galleries, libraries, and museums.

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.

(b) Bars.

(c) Bingo facilities.

(d) Child care and adult day care facilities.

(e) Convention facilities.

(f) Educational facilities, both public and private.

(g) Elevators.

(h) Gambling facilities.

(i) Health care facilities.

(j) **Hotels and motels.**

(k) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(l) Parking structures.

(m) Polling places.

(n) Public transportation vehicles, including buses and taxicabs, under the authority of the City, and ticket, boarding, and waiting areas of public transportation facilities, including bus, carpool, ferry, and train facilities.

(o) Restaurants.

(p) Restrooms, lobbies, reception areas, hallways, and other common-use areas.

(q) Retail stores.

- (r) 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 a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.
- (s) Service lines.
- (t) Shopping malls.
- (u) Sports facilities, including enclosed places in outdoor arenas.
- (v) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 5-6.106. 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. 5-6.107. Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 5-6.108. 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. 5-6.109. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

- (a) Within a reasonable distance of 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent smoke from entering those areas.

- (b) On all outdoor property that is adjacent to buildings owned, leased, or operated by the City and that is under the control of the City.
- (c) In, and within 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 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 25 feet of, all outdoor playgrounds.
- (h) In, and within 25 feet of, all outdoor public events.
- (i) In, and within 25 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City.
- (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 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 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 5-6.110. 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, and temporary offices such as trailers, restroom facilities, and vehicles.
- (b) This prohibition on smoking shall be communicated to all existing City employees by the effective date of this Article and to all prospective City employees upon their application for employment.

Sec. 5-6.111. Regulation of Smoke Shops and Tobacco Stores

- (a) Smoke shops and tobacco stores wishing to operate within the City after the effective date of the ordinance codified in this chapter must obtain a conditional use permit (CUP). Smoke shops and tobacco stores that are legally existing on the effective date of the ordinance codified in this chapter may continue to operate as legal nonconforming uses and shall not be required to obtain a conditional use permit. However, any change or expansion of the legal nonconforming use may require compliance with this chapter and a conditional use permit.
- (b) Smoke shops and tobacco stores shall not be located within 300 feet, measured property line to property line, from a school (public or private), family day care home, child care facility, youth center, community center, recreational facility, park, church, hospital, or other similar uses where children regularly gather.
- (c) Smoke shops and tobacco stores shall not be located within 500 feet, measured property line to property line, from another smoke shop and tobacco store.
- (d) It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a ~~minor, not accompanied by his or her parent or legal guardian,~~ **person under the age of twenty-one (21)** to enter or remain within any smoke shop and tobacco store.
- (e) ~~Smoke shops and tobacco stores shall post clear signage stating that minors may not enter the premises unless accompanied by a parent or legal guardian. At least one such sign shall be placed in a conspicuous location near each public entrance to the smoke shop and tobacco store. It shall be unlawful for a smoke shop and tobacco store to fail to display and maintain, or fail to cause to be displayed or maintained, such signage.~~ **conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 21 years of age. The warning signs shall include a toll-free telephone number to the State Department of Public Health for persons to report unlawful sales of tobacco products to any person under 21 years of age.** [NOTE: The above proposed language is a restatement of state law contained in Senate Bill No. 7 which was signed into law in 2016 and which amended existing state law, the Stop Tobacco to Kids Enforcement (STAKE) Act, by raising the minimum age for tobacco purchases to 21 years; see Cal. Business and Professions Code Sec. 22952(b)]

Sec. 5-6.112. 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. 5-6.113. Posting of Signs and Removal of Ashtrays

Upon being provided notice pursuant to Section 5-6.115(b), 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 City Manager 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. 5-6.114. 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. 5-6.115. Enforcement

- (a) This Article shall be enforced by the City Manager 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.
- (c) Any citizen who desires to register a complaint under this Article may initiate enforcement with City Manager or an authorized designee. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Manager or an authorized designee.
- (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 City Manager 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. 5-6.116. Violations and Penalties

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Article 1, Chapter 4 of this Code.
- (b) 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 subject to the penalty provisions of this Code, including but not limited to

administrative citations and/or infractions as specified in Article 1, Chapter 4 of this Code.

- (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 City Attorney by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City 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. 5-6.117. Public Education

The City Manager 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. 5-6.118. Other Applicable Laws

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

Sec. 5-6.119. Liberal Construction

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

Sec. 5-7.120. 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. 5-7.121. 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 5-6.113 is posted.

SECTION 2. Publication and Effective Date.

a. This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:

1. Posting the entire Ordinance in at least three (3) public places in the City of Hercules, within fifteen (15) days after its passage and adoption; or

2. Publishing the entire Ordinance at least once in the West County Times, a newspaper of general circulation published in the County of Contra Costa and circulated in the City of Hercules, within fifteen (15) days after its passage and adoption; or

3. Publishing a summary of the Ordinance in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Councilmembers voting for and against the Ordinance.

b. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the Hercules City Council on the 24th day of April, 2018, and was passed and adopted at a regular

meeting of the Hercules City Council on the _____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Kelley, Mayor

Lori Martin, Administrative Services Director &
City Clerk

BACKGROUND

- Hookah smoking is a centuries-old form of tobacco use also known as waterpipe, narghile, shisha, goza, and hubble-bubble.¹
- The exact origin of hookah smoking is unclear, but the practice has historical roots in the Middle East, North Africa, and India.¹⁻⁴
- To smoke hookah, typically a form of moist tobacco is placed in the head of the hookah and covered with perforated aluminum foil, with charcoal placed on top of the foil to provide a heat source. Hookah users inhale through a mouthpiece, drawing air over the charcoal and through the body to heat the tobacco and create tobacco smoke. This smoke is pulled down the body of the hookah into the bowl, which is filled with water. The smoke passes through the water and is inhaled by users via the hose and mouthpiece.⁵
- Hookah is often smoked in group settings and at commercial establishments such as hookah bars.⁶⁻⁸
- Hookah is available in a variety of fruit and candy flavors.^{3,4,8}
- In May 2016, the United States Food and Drug Administration (FDA) finalized a rule that **brings hookah products under its regulatory authority** and extends many of the provisions under the Family Smoking Prevention and Tobacco Control Act to hookah.⁹

A national study found that young adults who perceived hookah to be less harmful than cigarettes at baseline were more likely to use hookah in a six-month period.



PATTERNS OF USE IN THE U.S.

Youth

- From 2011 to 2015, significant increases were observed for past 30-day hookah use. The prevalence more than doubled for **middle school students and largely high school students from 2011 to 2014**.¹⁰ (Figure 1)
- According to the National Youth Tobacco Survey (NYTS), the prevalence of past 30-day hookah use was 7.2% among all high school students and 2.0% among all middle school students in 2015.¹⁰
- Among youth, hookah use is higher among Hispanic high school and middle school students.¹⁰ (Figure 2)
- In past 30-day hookah users in 2014, the prevalence of past 30-day flavored hookah tobacco was 63.8% among all high school students and 44.3% among all middle school students.¹⁴

Figure 1. Past 30-Day Prevalence of Youth Hookah Use Among Middle and High School Students, NYTS 2011-2015¹⁰⁻¹³

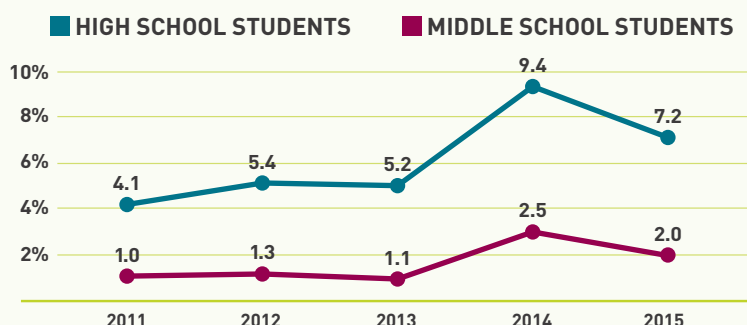
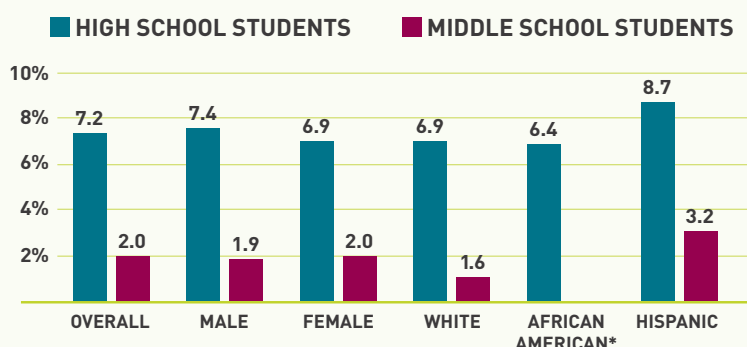


Figure 2. Past 30-Day Prevalence of Youth Hookah Use Among Middle and High School Students in 2015 by Gender and Race/Ethnicity¹⁰

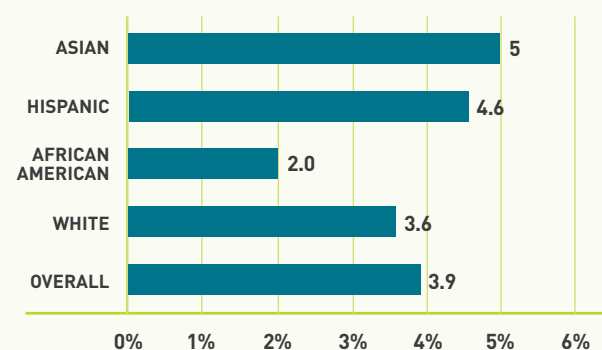


*Data not available for African American middle school students

Young Adults & Adults

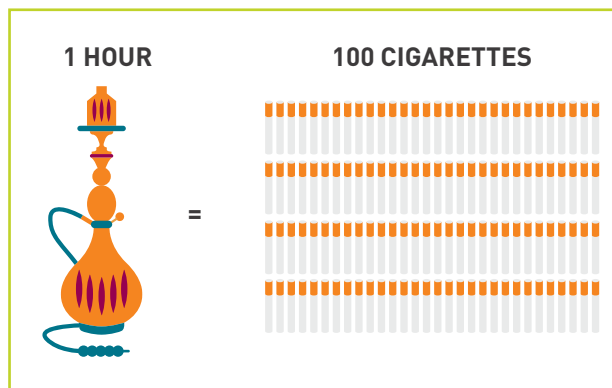
- Adult hookah use is higher among younger adults.
 - Respondents in the 2012-2013 National Adult Tobacco Survey (NATS) reported that “every day” or “someday” use of hookah was 0.5% in adults overall, but 2.5% in 18-24 year olds and 0.5% in 25-44 year olds.¹⁵
 - From 2012-2013, those who reported hookah use “every day,” “someday,” or “rarely” was 3.9% in adults, with the highest prevalence in 18-24 year olds (18.2%) and 3.9% in 25-44 year olds.¹⁵

Figure 3. Prevalence of Adult “Every day,” “Someday,” or “Rarely” Hookah Users by Race/Ethnicity in the United States from 2012-2013, NATS¹⁵

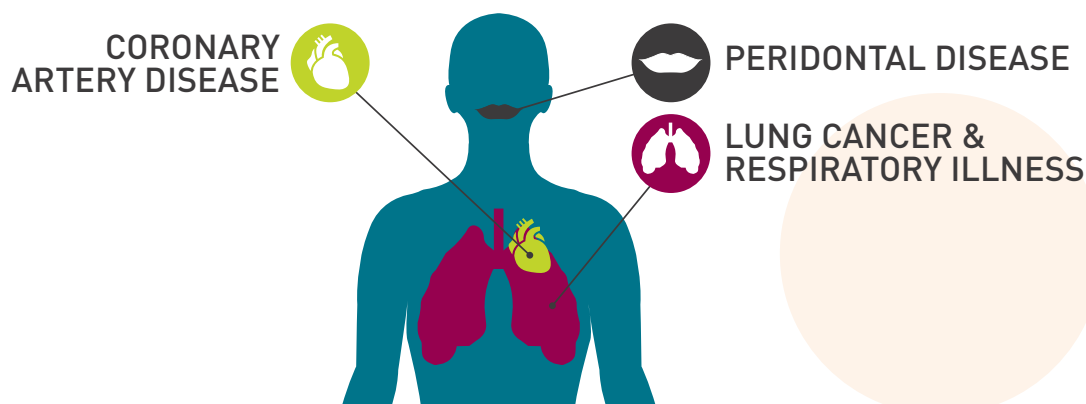


HEALTH & SAFETY

- A typical **1-hour long hookah smoking session can result in inhalation of the amount of smoke produced by 100 or more cigarettes.**⁵
- Hookah smoke exposes users to many of the same toxicants found in cigarette smoke.^{16,17} Hookah use is associated with significant nicotine and toxicant exposure including carbon monoxide, tobacco-specific nitrosamines, and polycyclic aromatic hydrocarbons.¹⁸⁻²¹ As a result of this exposure, **hookah users may be at risk for many of the same diseases as cigarette smokers.**²²⁻²⁵
- **Youth use of nicotine in any form is unsafe.** Nicotine use during adolescence can disrupt the formation of brain circuits that control attention, learning, and susceptibility to addiction.^{26,27}
- While research on the health effects of hookah use is limited, it indicates that **hookah users may have a greater risk of lung cancer and respiratory illness,**²²⁻²⁵ **periodontal disease,**²² and **coronary artery disease relative to non-hookah users.**²⁸
- Using hookah while pregnant may increase the risk of low birthweight.²²
- Current research shows that non-users are exposed to secondhand hookah smoke^{29,30} and that high levels of particulate matter are present in hookah cafes, or indoor smoking venues.^{31,32}



HOOKAH USERS FACE GREATER RISKS OF



PERCEPTIONS OF HOOKAH IN THE U.S.

Awareness

- In 2012, more than half (51.3%) of high school students and more than a quarter (28.1%) of middle school students were aware of hookah.³³

Harm Perceptions

- Individuals largely **perceive hookah as less harmful than cigarettes**³⁴ and in U.S. college and graduate students, perceptions of hookah as less harmful and less addictive relative to cigarettes are positively associated with past year and past 30-day use of hookah.³⁵⁻³⁷ Young adults who report using hookah more frequently are also more likely to indicate that hookah is less harmful than cigarettes.³⁸
- A national study found that **young adults who perceived hookah to be less harmful than cigarettes at baseline were more likely to use hookah in a six-month period.**³⁹
- Respondents from a nationally representative sample of young adults 18-34 were more likely to rate hookah (24.5%) as being less risky compared to noncombustible snus (10%) and other smokeless tobacco products (7.1%) relative to cigarettes.⁴⁰

MARKETING IN THE U.S.

- Currently the marketing of hookah is largely limited to specialized stores and the Internet.^{4,41}
- Some hookah venues offer a variety of Mediterranean and American food and even alcohol, whereas others may attract customers through belly dancers, poker nights, musical performances, or free Wi-Fi access.⁴²
- Websites advertising for hookah cafes use text, images, or audio stimuli to promote hookah smoking as a safe, fun, relaxing, and “tasty” way to socialize with friends.⁴³
- Many hookah companies offer multiple flavors in their product lineup, which may entice hookah use among young people.⁴²



* actual hookah promotions found online

POLICY IN THE U.S.

Youth Access

- **A federal minimum age of 18 for hookah sales.**⁹ Some research shows repeated failures of age verification at cafes or on websites in the United States, which may entice minors to hookah cafes, making this provision all the more important.⁴²
- **Retailers must verify age by photographic identification.**⁹ The FSPTCA required FDA to issue regulations to establish age verification requirements for the internet and other non-face-to-face purchases of tobacco products. However, FDA has yet to promulgate such regulations.⁴⁴
- Prohibits free samples of hookah and prohibits vending machine sales of hookah.⁹

Flavored Hookah Tobacco

- Currently there are **no federal laws or regulations restricting the manufacture of flavored hookah products.**
- Several localities, including Providence, RI; New York, NY; Chicago, IL; Minneapolis and St. Paul, MN; and Boston, MA have instituted some form of **ban on the sale of flavored tobacco**, which includes hookah tobacco.



Warning Labels

- FDA's final deeming regulation required the following warning to be included on all tobacco products:
 - **WARNING: This product contains nicotine. Nicotine is an addictive chemical.**
- This is the only warning label currently required on hookah products.

Taxes

- Hookah tobacco is considered to be pipe tobacco for tax purposes.⁴⁵
- The Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009 increased the federal excise taxes on pipe tobacco from \$1.10 per pound to \$2.83 per pound.⁴⁶
- At the state level, hookah would be taxed in the "other tobacco product" (OTP) category. The tax rate in the states for this category ranges from \$0 (PA does not currently have an OTP tax) to 95% of the Wholesale price in WA.⁴⁷



where we stand: hookah

Truth Initiative's mission is to achieve a culture where all youth and young adults reject tobacco. Consistent with Truth Initiative's vision of a future where tobacco is a thing of the past, we support the following policies with regard to hookah:

- Given their well-documented appeal to youth, **all flavors (including menthol) should be eliminated from hookah and related products.**
- **The marketing of hookah products should be restricted** so that it does not target or appeal to youth.
- **Sales of hookah products and entry to hookah bars and similar establishments should be limited to those 21 and older.**
- **Internet and other non-face-to-face sales of hookah products should be prohibited.**
- **Hookah use should be covered by smoke-free laws and requirements with no exceptions for "hookah bars".**
- **Hookah products should carry appropriate health warning labels.**
- **We support taxation proportional to the harms of each type of tobacco product (e.g., cigarette, hookah) to discourage use of the most harmful products.** As a highly harmful combustible tobacco product, hookah should be taxed at a significantly higher rate than less harmful tobacco products.

TRUTH INITIATIVE PUBLICATIONS ON HOOKAH

- Cohn A, Villanti A, Richardson A, et al. The association between alcohol, marijuana use, and new and emerging tobacco products in a young adult population. *Addictive Behaviors*. 2015;48(Sept):79-88.
- Villanti, A., Rath, J., Williams, V., Cohn, A., Cobb, C. Correlates of Hookah Use and Predictors of Hookah Trial in U.S. Young Adults. *American Journal of Preventive Medicine*. 2015 Jun;48(6):742-6.
- Villanti AC, Pearson JL, Cantrell J, Vallone DM, Rath JM. Patterns of combustible tobacco use in U.S. young adults and potential response to graphic cigarette health warning labels. *Addictive Behaviors*. 2015;42:119-125.
- Richardson A, Williams V, Rath J, Villanti AC, Vallone D. The Next Generation of Users: Prevalence and Longitudinal Patterns of Tobacco Use Among US Young Adults. *American Journal of Public Health*. 2014;104(8):1429-1436.
- Villanti AC, Richardson A, Vallone DM, Rath JM. Flavored tobacco product use among U.S. young adults. *American Journal of Preventive Medicine*. 2013;44(4):388-391.
- Rath JM, Villanti AC, Abrams DB, Vallone DM. Patterns of Tobacco Use and Dual Use in U.S. Young Adults: The missing link between youth prevention and adult cessation. *Journal of Environmental and Public Health*. 2012: <http://www.hindawi.com/journals/jeph/2012/679134/>



HOOKAH



2011: **APPROX. 800,000 YOUTH USERS**



2015: **1.26 MILLION YOUTH USERS**

Hookah is increasingly popular with youth. **From 2011 to 2015, the prevalence of recent hookah use among high school and middle school students rose by more than 50%.**

Flavored hookah is appealing to young people



In 2015, **7.2% of high school students and 2.0% of middle school students** said they smoked hookah in the last 30 days.

Flavors are driving hookah use. **63.8% of current hookah smokers in high school and 44.3% of current hookah smokers in middle school** said they smoked flavored hookah.

PAST 30-DAY HOOKAH USE

SMOKED HOOKAH

HOOKAH SMOKERS WHO USED FLAVORS



7.2%
HIGH SCHOOL
2.0%
MIDDLE SCHOOL

63.8%
HIGH SCHOOL
44.3%
MIDDLE SCHOOL

Young adults are misinformed about the risks. **24.5% of young adults 18-34 years old** say hookah is less risky than cigarettes.

The misperceptions of hookah as less harmful and less addictive relative to cigarettes are positively associated with smoking hookah among U.S. college and graduate students.



BUT HOOKAH IS DEADLY

A typical 1-hour long hookah smoking session can result in inhalation of the amount of smoke produced by 100 or more cigarettes.

1hr = 100+



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Legislation Details (With Text)

File #: 18-138 **Version:** 1 **Name:**

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

File created: 5/1/2018 **In control:** City Council

On agenda: 5/8/2018 **Final action:**

Title: November 6, 2018 General Municipal Election
Recommendation: Staff recommends that City Council consider and take action on the following:

1. Adopt a Resolution Calling for the Holding of a General Municipal Election to be held on Tuesday, November 6, 2018 for the Election of Two (2) Members of the City Council for the Full Term of Four (4) Years.
2. Adopt a Resolution Requesting the Contra Costa Board of Supervisors to Consolidate a General Municipal Election to be held on Tuesday, November 6, 2018 with the Statewide General Election to be held on the same date.
3. Adopt a Resolution Adopting Regulations for Candidates for Elective Office Pertaining to Candidate Statements Submitted to the Voters at an Election to be held on Tuesday, November 6, 2018.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - City Election - 110618](#)
[Attach 1 - Resolution Calling the Election](#)
[Attach 2 - Resolution Requesting Consolidation](#)
[Attach 3 - Resolution - Candidate Statement Regulations](#)
[Attach 4 - Notice of Election](#)

Date	Ver.	Action By	Action	Result
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November 6, 2018 General Municipal Election

Recommendation: Staff recommends that City Council consider and take action on the following:

1. Adopt a Resolution Calling for the Holding of a General Municipal Election to be held on Tuesday, November 6, 2018 for the Election of Two (2) Members of the City Council for the Full Term of Four (4) Years.
2. Adopt a Resolution Requesting the Contra Costa Board of Supervisors to Consolidate a General Municipal Election to be held on Tuesday, November 6, 2018 with the Statewide General Election to be held on the same date.
3. Adopt a Resolution Adopting Regulations for Candidates for Elective Office Pertaining to Candidate Statements Submitted to the Voters at an Election to be held on Tuesday, November 6, 2018.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of May 8, 2018

TO: Members of the City Council

SUBMITTED BY: Lori Martin, Administrative Services Director/City Clerk

SUBJECT: November 6, 2018 General Municipal Election

RECOMMENDED ACTION: Staff recommends adoption of the following:

1. Adopt Resolution Calling for the Holding of a General Municipal Election to be held on Tuesday, November 6, 2018 for the Election of Two Members of the City Council for the Full Term of Four Years.
2. Adopt a Resolution Requesting the Contra Costa Board of Supervisors to Consolidate a General Municipal Election to be held on Tuesday, November 6, 2018 with the Statewide General Election to be Held on the Same Date.
3. Adopt a Resolution Adopting Regulations for Candidates for Elective Office Pertaining to Candidates Statements Submitted to the Voters at an Election to be held on Tuesday, November 6, 2018.

FISCAL IMPACT OF RECOMMENDATION:

Election costs have been estimated at \$20,000 and this cost will be included in the proposed Fiscal Year 2018-19 budget.

BACKGROUND:

Section 2-1.04 of the Hercules Municipal Code provides for a General Municipal Election to be held in the City of Hercules on the date of the Statewide General Election, the first Tuesday after the first Monday in November of each even numbered year. Members of the City Council are elected to four (4) year terms. Two (2) seats on the Hercules City Council will expire in December 2018. The Members of City Council that have term expirations at the end of this year are:

1. Chris Kelley, Mayor
2. Myrna de Vera, Council Member

DISCUSSION:

The California Elections Code requires that certain resolutions be adopted preparatory to holding that election. On Tuesday, November 6, 2018 two (2) members of the City Council will be elected to full terms of four (4) years. The resolutions presented for Council's consideration this evening call for the holding of the November 6, 2018 General Municipal Election, requests election consolidation services from Contra Costa County, and adopts regulations with regard to candidate statements and reimbursement to the City for the expense of printing the candidate statements. Contra Costa County Elections staff has estimated the cost for submitting a candidate statement to the voters in the sample ballot at **\$317.00**. This is the true cost for a candidate statement not exceeding 250 words. In prior years the candidate statement amount was collected as a deposit, then a true up of the cost was done after the election and depending on the true cost, the candidate would either be billed for the difference or be issued a refund.

Resolution #1, Section 11 sets forth a procedure in the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) the City Council will determine the tie by lot. Pursuant to State law, the two options to resolve a tie vote are to draw lots, or to hold a special runoff election. In past elections City Council has opted to resolve tie votes by lot and therefore Resolution #1 was prepared with this option. If Council desires to resolve a tie vote by holding a special runoff election, adoption of provisions in Elections Code 15651(b) would need to occur prior to the conduct of the election resulting in the tie vote.

Once the election process has been initiated with the adoption of the three (3) resolutions tonight, the next steps are the public noticing of the election and the opening of the nomination filing period. The nomination filing period for the November 6, 2018 General Municipal Election is July 16, 2018 to August 10, 2018. In the event an incumbent does not file by the August 10, 2018 filing deadline, the nomination period will be extended to August 15, 2018 by 5:00 p.m.

During the nomination filing period, any registered voter residing in the City of Hercules who is not disqualified by the laws of the State of California from holding a civil office can pull and file nomination papers for candidacy. State law requires that the filing of nomination papers occur during the agency's regular business hours. Anyone wishing to pull or file papers during the filing period should make an appointment with the City Clerk during regular business hours, Monday through Thursday 8:00 a.m. – 6:00 p.m., closed on Fridays, with the exception of Friday, August 10, 2018 the last day of the filing period the regular business hours will be 8:00 a.m. – 5:00 p.m.

ATTACHMENTS:

1. Resolution
2. Resolution
3. Resolution
4. Notice of Election

Financial Impact

Description: November 2018 General Election Costs

Funding Source: 100-4420-611.90-01

Budget Recap:

Total Estimated cost:	\$20,000.00	New Revenue:	\$
Amount Budgeted:	\$20,000.00	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change:	Yes <input type="checkbox"/> No <input type="checkbox"/>		

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES, CALIFORNIA, CALLING FOR THE HOLDING OF A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018, FOR THE ELECTION OF CERTAIN OFFICERS AS REQUIRED BY THE PROVISIONS OF THE LAWS OF THE STATE OF CALIFORNIA RELATING TO GENERAL LAW CITIES

WHEREAS, under the provisions of the laws relating to general law cities in the State of California, a General Municipal Election shall be held on November 6, 2018, for the election of Municipal Officers.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities, there is called and ordered to be held in the City of Hercules, California, on Tuesday, November 6, 2018, a General Municipal Election for the purpose of electing Two (2) Members of the City Council for the full term of four (4) years.

SECTION 2. That the ballots to be used at the election shall be in form and content as required by law.

SECTION 3. That the City Clerk is authorized, instructed and directed to coordinate with the County of Contra Costa Registrar-Recorder/County Clerk to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 4. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code § 10242, except as provided in § 14401 of the Elections Code of the State of California.

SECTION 5. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 6. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form and manner as required by law.

SECTION 7. That in the event of a tie vote (if any two or more persons receive an equal and the highest number of votes for an office) as certified by the County of Contra Costa Registrar-Recorder/County Clerk, the City Council, in accordance with Election Code § 15651(a), shall set a date and time and place and summon the candidates who have received the tie votes to appear and will determine the tie by lot.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

SECTION 9. The City Council authorizes the City Clerk to administer said election and all reasonable and actual election expenses shall be paid by the City upon presentation of a properly submitted bill.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 8th day of May 2018 by the following vote of the Council:

**AYES:
NOES:
ABSTAIN:
ABSENT:**

Chris Kelley, Mayor

ATTEST:

Lori Martin, MMC
Administrative Services Director/City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES, CALIFORNIA, REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF CONTRA COSTA TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE DATE PURSUANT TO § 10403 OF THE ELECTIONS CODE.

WHEREAS, the City Council of the City of Hercules called a General Municipal Election to be held on November 6, 2018, for the purpose of the election of two (2) Members of the City Council, and;

WHEREAS, it is desirable that the General Municipal Election be consolidated with the Statewide General Election to be held on the same date and that within the city the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Contra Costa canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. That pursuant to the requirements of § 10403 of the Elections Code, the Board of Supervisors of the County of Contra Costa is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General election on Tuesday, November 6, 2018, for the purpose of the election of two (2) Members of the City Council.

SECTION 2. That the county election department is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used. The election will be held and conducted in accordance with the provisions of law regulating the statewide election.

SECTION 3. That the Board of Supervisors is requested to issue instructions to the county election department to take any and all steps necessary for the holding of the consolidated election.

SECTION 4. That the City of Hercules recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for any costs.

SECTION 5. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the County Election Department of Contra Costa County.

SECTION 6. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 8th day of May 2018 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chris Kelley, Mayor

ATTEST:

Lori Martin, MMC
Administrative Services Director/City Clerk

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES, CALIFORNIA, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE PERTAINING TO CANDIDATES STATEMENTS SUBMITTED TO THE VOTERS AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 6, 2018

WHEREAS, §13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs of the candidates statement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HERCULES, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. GENERAL PROVISIONS. That pursuant to §13307 of the Elections Code of the State of California, each candidate for elective office to be voted for at an Election to be held in the City of Hercules on November 6, 2018 may prepare a candidate's statement on an appropriate form provided by the City Clerk. The statement may include the name, age and occupation of the candidate and a brief description of no more than 250 words of the candidate's education and qualifications expressed by the candidate himself or herself. The statement shall not include party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed in typewritten form in the office of the City Clerk at the time the candidate's nomination papers are filed. The statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

SECTION 2. FOREIGN LANGUAGE POLICY.

- A. Pursuant to the Federal Voting Rights Act, candidate's statements will be translated into all languages required by the County of Contra Costa. The County is required to translate candidate's statements into the following languages: Spanish and Chinese.
- B. The County will mail separate voter information guides and candidates statements in Spanish and Chinese to only those voters who are on the county voter file as having requested a voter information guide in a particular language. The County will make the voter information guides and candidates statements in the required languages available at all polling places, on the County's website, and in the Election Official's office.

SECTION 3. PAYMENT.

- A. Translations:
 1. The candidate shall be required to pay for the cost of translating the candidates statement into any required foreign language as specified in (A) of Section 2 above pursuant to Federal and/or State law.
- B. Printing (choose one or more as appropriate):
 1. The candidate shall be required to pay for the cost of printing the candidate statement in English in the main voter pamphlet.
 2. The candidate shall be required to pay for the cost of printing the candidate statement in a foreign language required in (A) of Section 2 above, in the main voter pamphlet.
 3. The candidate shall be required to pay for the cost of printing the candidate statement in a foreign language requested by the candidate per (B) of Section 2 above, in the main voter pamphlet.
 4. The candidate shall be required to pay for the cost of printing the candidates statement in a foreign language required by (A) of Section 2 above, in the facsimile voter pamphlet.

The Contra Costa County Clerk-Recorder/Registrar of Voters shall provide the total cost of printing, handling, translating, and mailing the candidate's statements filed pursuant to this section, including costs incurred as a result of complying with the Voting Rights Act of 1965 (as amended), and require each candidate filing a statement to pay in advance to the local agency his or her pro rata share as a condition

of having his or her statement included in the voter's pamphlet.

SECTION 4. MISCELLANEOUS.

- A) All translations shall be provided by professionally-certified translators.
- B) The City Clerk shall comply with all recommendations and standards set forth by the California Secretary of State regarding occupational designations and other matters relating to elections.

SECTION 5. ADDITIONAL MATERIALS. No candidate will be permitted to include additional materials in the voter information guide.

SECTION 6. That the City Clerk shall provide each candidate or the candidate's representative a copy of this Resolution at the time nominating petitions are issued.

SECTION 7. That all previous resolutions establishing council policy on payment for candidate's statements are repealed.

SECTION 8. That this resolution shall apply only to the election to be held on November 6, 2018 and shall then be repealed.

SECTION 9. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 8th day of May 2018 by the following vote of the Council:

AYES:
NOES:
ABSTAIN:
ABSENT:

Chris Kelley, Mayor

ATTEST:

Lori Martin, MMC
Administrative Services Director/City Clerk

NOTICE OF ELECTION

NOTICE IS HEREBY GIVEN that a General Municipal Election will be held in the City of Hercules on Tuesday, November 6, 2018, for the following Elected Officials:

For (2) Members of the City Council (Full term of four (4) years)

The nomination period for these offices begins on July 16, 2018 and closes on August 10, 2018 at 5:00 p.m.

If nomination papers for an incumbent officer of the city are not filed by August 10, 2018 (the 88th day before the election) the voters shall have until the 83rd day before the election, August 15, 2018, to nominate candidates other than the person(s) who are the incumbents on the 88th day before the election, for that incumbent's elective office. This extension is not applicable where there is no incumbent eligible to be elected.

If no one or only one person is nominated for an elective office, appointment to the elective office may be made as prescribed by § 10229, Elections Code of the State of California.

The polls will be open between the hours of 7:00 a.m. and 8:00 p.m.

Lori Martin, MMC, City Clerk

Dated:



Legislation Details (With Text)

File #: 18-147 **Version:** 1 **Name:**
Type: Discussion/Action Item **Status:** Agenda Ready
File created: 5/2/2018 **In control:** City Council
On agenda: 5/8/2018 **Final action:**
Title: Hercules Point Update and Approve Letter to East Bay Regional Parks District Board
Recommendation:
1) Receive report, discuss, and provide direction, if any.
2) Approve and authorize the Mayor to sign a letter to the President and Board Members of the East Bay Regional Parks District.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Hercules Point 05082018](#)
[Attach 1 - East Bay Regional Parks District Letter](#)
[Attach 2 - Hercules Properties Deed Restriction - DTSC](#)
[Attach 3 -Bayfront Implementing DA - Exh J2 - Purchase Sale Agreement - Hercules..](#)

Date	Ver.	Action By	Action	Result
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Hercules Point Update and Approve Letter to East Bay Regional Parks District Board Recommendation:

- 1) Receive report, discuss, and provide direction, if any.
- 2) Approve and authorize the Mayor to sign a letter to the President and Board Members of the East Bay Regional Parks District.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of May 8, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Robert Reber, Planner/Project Manager

SUBJECT: Hercules Point Update and Approve Letter to East Bay Regional Parks District Board

RECOMMENDED ACTION:

- 1) Receive report, discuss, and provide direction, if any.
- 2) Approve and authorize the Mayor to sign a letter to the President and Board Members of the East Bay Regional Parks District.

FISCAL IMPACT OF RECOMMENDATION:

No actions required or recommended at this time, thus no financial impacts. Future activities leading to the development of options for Hercules Point and the cost of any improvements will have a fiscal impact.

DISCUSSION:

Background/History: Hercules Point is a 10.962-acre parcel that juts into San Pablo Bay at the western edge of Hercules, separated from the rest of the City to the east by the Union Pacific railroad tracks. Hercules Point is part of the former 1,300-acre Hercules Properties, Ltd. (HPL) property, which operated from 1879 to 1977, primarily in manufacturing chemicals for explosives and fertilizers. HPL facilities on the Point included a power house building, an evaporation pond, a fuel storage tank farm, and a large ammonia tank. As a result of the past industrial operations, site soils were impacted with metals (arsenic, lead, mercury) and total petroleum hydrocarbons.

The facility was the subject of extensive site characterization, risk assessment, and remedial activity during the 1980s and 1990s. The environmental cleanup work was conducted under the oversight of the CAL-EPA Department of Toxic Substances Control (DTSC). Remediation at the Point was conducted in 1995–96 and included both areas of drylands (uplands) and wetlands (tidal wetlands make up 35% of the 11-acre Point). Approximately 6,500 cubic yards of impacted soil was removed from the drylands, and approximately 8,500 cubic yards from the wetlands. Remnants of a historic

pier remain in place, as do the former wastewater evaporation pond and foundation slabs for the former powerhouse building and ammonia storage tank.

Although the greater HPL property was granted a remedial certification and unrestricted land use designation in 1997, a *Covenant & Agreement to Restrict Use of the Property* (Deed Restriction) was recorded for Hercules Point in June 1996 (see Attachment 2). Unless further remediation occurs, the deed restriction limits future development of the Point to commercial or industrial uses. The deed restriction also states that no significant disturbance of the soils, including grading or excavation work, shall be performed without notifying the DTSC. The deed restriction specifies that impacted soil brought to the surface by excavation shall be managed as hazardous waste unless sampling and testing demonstrates otherwise.

Ownership: The City acquired the Hercules Point parcel (Assessor Parcel Number 404-010-005-01) as one of the “waterside” properties included in the Purchase and Sale Agreement with Hercules Bayfront, LLC in 2012 [see Attachment 3, Exhibit J(2) of the Implementing Development Agreement for the Bayfront]. In exchange for the “waterside” properties, the City granted Hercules Bayfront \$493,200 in Development Impact Fee Credits for the combined 39.56 acres. The City accepted the properties in “As Is” condition, and agreed “to bear all costs and obligations in connection with the use of the land, including without limitation any environmental clean-up/remediation costs, and the costs, if any, of creating vehicular and/or pedestrian access to the land by bridge, boardwalk, or otherwise for the property.”

Zoning/Planning: Ever since 1998 when the City adopted its current General Plan, Hercules Point has been considered a key feature and future amenity of the Hercules Waterfront District. The Point has a General Plan & Land Use designation of “Public Open Space” (P/QP-O), suitable for future open space dedications along the Bay and within sensitive habitat areas such as wetlands and along the Refugio Creek corridor. Development would not typically be allowed within this area except for recreation facilities, and caretaker housing and accessory structures directly related to the use and maintenance of an open space, public park, or recreation area.

The Waterfront District Master Plan (Chapter 3, Civic Space Standards, p. 3-6) more specifically describes and regulates Hercules Point as follows:

“Hercules Point is intended to provide approximately 11 acres of important regional open space, drawing visitors not only from the community of Hercules but also the entire San Francisco Bay Area due to its connection to the Multi-Modal Transit Station. Hercules Point will provide the only opportunity within Hercules for direct access and interaction with the Bay, a vital element for the City and region. The Point will provide various spaces for both active and passive recreation. Public restroom facilities and other appropriate or necessary structures should also be included on site within well-designed ancillary buildings. The landscaping will consist of trees, lawns, paths, trails, and shrubs all naturally disposed. Seating and picnic areas should be included in designated areas. A boardwalk will connect the Point with the Multi-Modal Transit Station and at least one at-grade crossing should be provided across the railroad tracks, directly connecting the Point with Hercules’ residences and the Bayfront community.

General Character

- Lawns, trees, and shrubs naturally disposed
- Maintain views of Bay
- Extensive trail and path system
- Public ancillary structures included on site
- At-grade railroad crossing and connection to Multi-Modal Transit Station required.

Typical Uses

- Passive and Active Recreation
- Casual seating/picnicking



Figure 1: Hercules Point and Waterfront Public Parks and Plazas

(this depiction includes prior concept of ferry service directly accessible from Regional Intermodal Transit Center)

Access to Hercules Point

The Union Pacific Railroad right-of-way prevents direct access to Hercules Point from the land side. Plans for the Regional Intermodal Transit Center (RITC) have included provisions to connect the station not just to a center loading platform for rail passengers but also to extend and connect over all the tracks (via a set of causeways, stairs, ramps, and/or elevators) to Hercules Point. A second pedestrian connection (with potential also for emergency and maintenance vehicle access) could be built south of the RITC via a bridge from the Waterfront's potential hotel site and Railroad Plaza (Block D of the Bayfront Development Plan).



Depending on what facilities are to be constructed on Hercules Point, utility service connections (e.g., water, electricity, and/or gas) from the land side to Hercules Point may also need to be installed.

Trail Connections

Hercules Point is located at the nexus of a potentially seamless connection between several regional-serving trails, including:

- San Francisco Bay Trail (pedestrian & bicycle);
- Bay Area Ridge Trail (pedestrian & bicycle via a planned extension of the City's Refugio Creek Trail); and
- San Francisco Bay Area Water Trail (small watercraft, e.g., kayak, wind surf, paddleboard).

The East Bay Regional Parks District (EBRPD) has been an active supporter and funder of these trails and connections here in Hercules, including the Bay Trail phase of the Hercules Regional Intermodal Transportation Center through an allocation of Measure AA or WW funds. EBRPD also developed and operates an existing segment of the Bay Trail adjacent to the approximately 5.4-acre San Pablo Bay Regional Park site (currently undeveloped open space leased by the State of California to the EBRPD). The District also oversees a portion of the Bay Trail adjacent to Chelsea Wetlands (which the City is in the process of restoring as a tidally-influenced wetlands with Ducks Unlimited). The District is also close to completing an extension of the Bay Trail from Pinole toward Point Pinole, which together with the planned District extension of the Bay Trail from Hercules to Rodeo, will provide a continuous Bay Trail segment from Rodeo to Tara Hills. The City is exploring other opportunities in conjunction with the EBRPD to expand the trails system and recreational amenities in this part of West Contra Costa County, including Hercules Point.

An additional opportunity unique to Hercules would be to utilize Hercules Point, the Bay Trail, and the network of other recreational amenities in this area as an interpretive experience to explore the history of Hercules as a company town developed by the Hercules Powder Works and its role in the development of California and its historical contributions throughout the decades (similar to the

World War II/Rosie the Riveter markers installed along sections of the Bay Trail through the City of Richmond's waterfront area).

Environmental Review and Permitting Agencies

Though related to both the RITC and the Bayfront projects, Hercules Point and its potential use as a public open space/recreation area was not included in and analyzed as part of either project's environmental report (EIR/EIS for the Hercules Intermodal Transit Center, State Clearinghouse #2009112087; EIR for the Hercules Bayfront Project, State Clearinghouse #2009112058). Thus, any project on Hercules Point would be subject to its own review as required under the California Environmental Quality Act (CEQA).

Additionally, subsequent to the environmental review and depending on the type of project proposed, future use of Hercules Point could be subject to further review by and permits from the following agencies:

- Dept. of Toxic Substances Control (DTSC)
 - Point has been listed by the State of California as a portion of a hazardous substance release site (a "State Superfund Site");
 - Land is deed-restricted to commercial or industrial use unless a different use is approved by DTSC. The 2012 Purchase & Sale Agreement (see Attachment 3) included estimates from ENGEO and Geosyntec to conduct preliminary environmental work, including working with DTSC to modify land use restrictions to allowable park use.
 - An Operations and Maintenance program is also in place for the site.
- Bay Conservation & Development Commission (BDCD)
 - Has previously expressed general support for prior concepts for Hercules Point.
- California Dept. of Fish & Wildlife
- U.S. Army Corps of Engineers
- Coastal Commission
- State Lands Commission

Recent Activities/Efforts

The conceptual design for the Hercules Regional Intermodal Transportation Center has evolved in regard to future ferry service. At this time, the most feasible and cost effective option would be to have ferry service operating from the tip of the point. While a short and walkable distance, it is also anticipated that some type of autonomous shuttle could also operate between the rail station access point and the ferry terminal.

Staff has also engaged with the staff from the East Bay Regional Parks District in very preliminary discussions on opportunities for future collaboration. In addition, Council Member interaction with our local East Bay Regional Parks District Director identified that it may be timely to formally request that the Parks District and the City more formally engage and collaborate in a variety of ways

including in regard to Hercules Point. As such, a letter has been drafted which is attached (Attachment 1) which staff is requesting that the City Council approve.

ATTACHMENTS:

1. Draft letter to President & Board Members of the East Bay Regional Parks District regarding future collaboration opportunities in Hercules
2. Deed restriction for Hercules Point (CAL/EPA, Department of Toxic Substances Control)
3. 2012 Purchase and Sale Agreement for Hercules Point and other water-side parcels [Exhibit J(2) of the Bayfront Implementing Development Agreement]

Financial Impact

Description: No actions required or recommended at this time, thus no financial impacts.

Funding Source: N/A

Budget Recap:

Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes	<input type="checkbox"/>	No	<input type="checkbox"/>



MAYOR & CITY COUNCIL

May 8, 2018

President and Board Members
East Bay Regional Parks District
2950 Peralta Oaks Court
Oakland, California 94605

RE: COLLABORATION OPPORTUNITIES IN HERCULES

The City of Hercules is proud of its extensive network of dedicated open space and trails including new segments of the Bay Trail. Hercules is also an ideal point to connect the Bay Trail to the Bay Area Ridge Trail in furtherance of a seamless connection between these regional serving amenities. The East Bay Regional Parks District has been an active supporter and funder of some of the activities here in Hercules including the Bay Trail phase of the Hercules Regional Intermodal Transportation Center through an allocation of Measure AA or WW funds.

In addition, EBRPD developed and operates an existing segment of the Bay Trail here in Hercules. This segment is adjacent to the approximately 5.4 acre San Pablo Bay Regional Park site under lease from the State of California by the EBRPD which is currently undeveloped open space. In addition, a portion of the District operated Bay Trail is adjacent to the Chelsea Wetlands which the City is in process of restoring as a tidally influenced wetlands with Ducks Unlimited. The District is also close to completing an extension of the Bay Trail from Pinole toward Point Pinole, which together with the planned District extension of the Bay Trail from Hercules to Rodeo, will provide a continuous Bay Trail segment, both permanent and temporary, from Rodeo to Tara Hills.

With this history of collaboration, the City is interested in exploring other opportunities to expand the trails system and recreational amenities in this part of West Contra Costa County in conjunction with the EBRPD. A prime example would be the future development of the 11 acre City-owned Hercules Point as a recreational amenity. Hercules Point is a key future amenity of the Waterfront District, including the soon-to-start construction of the Bayfront community.

At buildout, this transit oriented development will feature up to 1,500 homes, retail, office, and hospitality in a compact, walkable, and bicycle friendly neighborhood linked by a series of public plazas and gathering spots, with the Hercules Regional Intermodal Transportation Center as the focal point. It will result in Hercules' first true downtown and community heart. The first phase of the private development in the Bayfront will be starting construction this summer, so this is an exciting time in the realization of the this long held community vision.

As such, it is timely to begin to explore options for the development of Hercules Point which could be improved as a regionally-appealing park with a variety of recreational amenities of interest. It could host kayak, wind surfing and other small watercraft launching facilities, among other amenities. It could even host an overnight camping facility for kayakers making their way from Fremont all the way to Discovery Bay as part of the San Francisco Bay Area Water Trail.

Hercules Point is also planned to host a future Ferry terminal and access to the point will be initially facilitated by the development of the Hercules Regional Intermodal Transportation Center when the rail station improvements are constructed. In addition, a secondary access point is to be provided to allow for emergency vehicle and maintenance access at a point adjacent to a future planned hotel site. As a former industrial site, Hercules Point has already been remediated to a commercial occupancy standard. The City is interested in partnering with the EBRPD on the development of Hercules Point and believes that the District with its expertise and diverse experiences in the development of regional serving recreational amenities would be in the best position to lead this effort from planning to buildout and operation.

An additional opportunity unique to Hercules would be to utilize the Bay Trail and network of other recreational amenities in this area as an interpretive experience which would share the history of Hercules as a company town developed by the Hercules Powder Works and its role in the development of California and its historical contributions throughout the decades. The District has demonstrated a wonderful ability to provide this type of interpretive experience as demonstrated by the Black Diamond Mines Regional Preserve and in other of your parks.

Also, given the District's expertise and experience, we are hoping you may be able to assist in closing a gap between where our Refugio Valley trail ends at the top of Refugio Valley Road and a relatively short distance where it would connect to the Bay Area Ridge Trail on East Bay MUD watershed property.

We look forward to exploring these opportunities for collaboration and would welcome your suggestions as to the best way to give life to these new partnership potentialities.

Sincerely,

Chris Kelley
Mayor

cc: Council Members

Attachments:
Illustrative Waterfront Master Plan
Holding Map

RECORDING REQUESTED BY

CAL/EPA, Department of Toxic
Substances Control (DTSC)

WHEN RECORDED MAIL TO

NAME CAL/EPA, DTSC

MAILING ADDRESS 700 Heinz Ave., Suite 200

CITY, STATE Berkeley, California
ZIP CODE 94710

JUN 28 1996

96 121913

RECORDED AT REQUEST OF

CAL/EPA

JUN 28 1996

AT 10 O'CLOCK ⁰ M
CONTRA COSTA COUNTY RECORDS
STEPHEN L. WEIR
COUNTY RECORDER

FEE:

6400

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY, APPLICABLE TO PORTION OF THE
HERCULES PROPERTIES, LTD. SITE, HERCULES, CALIFORNIA

1 COVENANT AND AGREEMENT
2 TO RESTRICT USE OF PROPERTY
3 APPLICABLE TO PORTION OF THE HERCULES PROPERTIES, LTD. SITE
4 HERCULES, CALIFORNIA

5 Recording Requested By:

6 Hercules Properties, Inc.
7 560 Railroad Avenue
8 Hercules, California 94547

9 When Recorded, Mail To:

10 Barbara J. Cook, Chief
11 Site Mitigation Branch
12 Department of Toxic Substances Control
13 700 Heinz Avenue, Suite 200
14 Berkeley, California 94710

15
16 This Covenant and Agreement ("Covenant") is made this
17 H day of June, 1996, by Hercules
18 Properties, Inc. ("HPI" or "Covenantor") which is the owner of
19 record of certain property situated in the City of Hercules,
20 County of Contra Costa, State of California, described and shown
21 in Exhibit "A" attached hereto and incorporated herein by this
22 reference (the "Subject Property"), and by the California
23 Department of Toxic Substances Control (the "Department"). A
24 portion of the Subject Property consists of wetlands. This
25
26
27

1 Covenant shall have no effect on the restrictions and
2 requirements to which wetlands are subject by law.

3
4
5 1. DEFINITIONS

6 1.1 Department. "Department" means the California
7 Department of Toxic Substances Control and shall include its
8 successor agencies, if any.

9 1.2 Improvements. "Improvements" shall mean all buildings,
10 roads, driveways, regrading, and paved parking areas, constructed
11 or placed upon any portion of the Subject Property.

12
13 1.3 Occupants. "Occupants" shall mean those persons
14 entitled by ownership, leasehold, or other legal relationship to
15 the exclusive right to occupy any portion of the Subject
16 Property.

17
18 1.4 Owner. "Owner" shall mean the Covenantor or its
19 successors in interest, including heirs, and assigns, who hold
20 title to all or any portion of the Subject Property.

21 1.5 Site. "Site" means the entire 167-acre site which is
22 divided into several operable units, one of which is Operable
23 Unit 3, in which the Subject Property is located. Operable Unit
24 3 is separated from the rest of the Site by the Southern Pacific
25 Railroad tracks.
26
27

1 1.6 RAP. "RAP" means the Remedial Action Plan for the
2 Site, including the Subject Property, dated June 1994, which has
3 been approved by the Department.
4

5
6 2. DESCRIPTION OF FACTS

7 2.1 Background. The Site, which is a small portion of an
8 original 1300-acre facility, was used for the manufacture of
9 explosives, munitions and fertilizer chemicals from 1881 to 1978.
10 Other portions of the original 1300-acre facility have been
11 developed into commercial and residential developments.
12

13 The Subject Property is within the area addressed by the RAP. A
14 power house building, evaporation pond, and fuel storage tank
15 area used during the manufacturing activities were located on the
16 Subject Property. The soil beneath the Subject Property varies
17 from clay to gravelly, sandy fill with occasional concrete and
18 brick fragments. As a result of prior manufacturing activities,
19 soil at the Subject Property contains metals (arsenic, lead and
20 mercury) and total petroleum hydrocarbons (TPH).
21
22

23 2.2 Protection of Public Health and the Environment. If
24 the Subject Property were to be used for residential or other
25 permanently occupied, non-commercial human habitation without
26 remediation to residential standards, and excavation took place
27

1 at the Subject Property without proper supervision, occupants of
2 the Subject Property could be exposed to soils impacted with
3 arsenic, lead, mercury and TPH above standards which are
4 acceptable for residential occupancy, via inhalation, dermal
5 contact or ingestion. The Department's purpose in requiring this
6 Covenant and Agreement to Restrict Use is to eliminate any
7 significant risks to human health and the environment. A
8 description of potential human health and environmental effects
9 of hazardous substances at the Subject Property is attached as
10 Exhibit B.
11
12

13 2.3 Intention of the Covenantor. Covenantor intends and
14 has entered into this Covenant so as to protect the present or
15 future public health and safety and the environment and assure
16 that the Subject Property will be used in such a manner as to
17 avoid potential harm to persons or property which may result from
18 exposure to impacted soils on the Subject Property.
19
20

21 3. GENERAL PROVISIONS
22

23 3.1 Provisions to Run with the Land. This Covenant sets
24 forth protective provisions, covenants, restrictions, and
25 conditions, (collectively referred to as "Restrictions"), upon
26 and subject to which the Subject Property and every portion
27

1 thereof shall be improved, held, used, occupied, leased, sold,
2 hypothecated, encumbered, and/or conveyed. Each and all of the
3 Restrictions shall run with the land, and pass with each and
4 every portion of the Subject Property, and shall apply to and
5 bind the respective successors in interest thereof. Each and all
6 of the Restrictions are imposed on the Subject Property unless
7 expressly stated as applicable to a specific portion of the
8 Subject Property. Each and all of the Restrictions are imposed
9 pursuant to California Health and Safety Code (HSC) sections
10 25222.1, 25355.5 and 25356.1 and run with the land pursuant to
11 HSC sections 25230 and 25355.5. Each and all of the Restrictions
12 are enforceable by the Department of Toxic Substances Control.
13

14 3.2 Concurrence of Owners Presumed. All purchasers,
15 lessees, or possessors of any portion of the Subject Property
16 shall be deemed by their purchase, leasing, or possession of such
17 Subject Property, to be in accord with the foregoing and to agree
18 for and among themselves, their heirs, successors, and assignees,
19 and the agents, employees, and lessees of such owners, heirs,
20 successors, and assignees, that the Restrictions as herein
21 established must be adhered to for the benefit of future Owners
22 and Occupants and that their interest in the Subject Property
23 shall be subject to the Restrictions contained herein.
24
25
26
27

1 3.3 Incorporation Into Deeds and Leases. Covenantor
2 desires and covenants that the Restrictions set out herein shall
3 be incorporated by reference in each and all deeds and leases of
4 any portion of the Subject Property.
5

6
7 4. RESTRICTIONS

8 4.1 Restrictions on Development and Use. Covenantor
9 promises to restrict the use of the non-wetlands portion of the
10 Subject Property as follows:
11 ;
12 ;

- 13 a. The development of the Subject Property is restricted
14 to commercial or industrial use. No other use shall be
15 allowed without the prior approval of the Department.
16
17
18 b. The Subject Property shall not be used in such a way
19 that will disturb or interfere with the integrity of
20 any containment or monitoring system, except as
21 authorized by the Department.
22
23
24 c. No significant disturbance of the soils such as
25 excavation or drilling of water wells, shall be
26 performed on the Subject Property without required
27

1 permits and notification to the Department. Any
2 impacted soil brought to the surface by excavation at
3 the Subject Property shall be managed as hazardous
4 waste unless sampling and analysis demonstrate that it
5 is not a hazardous waste.
6

7
8 d. The Department or its designated agents (including
9 successor agencies) shall have access to the Subject
10 Property for the purpose of inspection, surveillance,
11 or monitoring, or other purposes necessary to protect
12 public health or safety and the environment as provided
13 in Chapters 6.5 and 6.8 of the California Health and
14 Safety Code and Chapter 4 of Division 7 of the
15 California Water Code.
16
17
18

19 4.2 Conveyance of Property. The Owner or Owners shall,
20 upon sale or other conveyance of the Subject Property or an
21 interest in the Subject Property to a third person, provide
22 notice of such sale or other conveyance to the Department. The
23 Department shall not, by reason of the Covenant, have the
24 authority to approve, disapprove, or otherwise affect any sale,
25 lease, or other conveyance of the Subject Property except as
26
27

1 otherwise provided by law, by administrative order, or by reason
2 of this Covenant.

3 4.3 Enforcement. Failure of the Owner to comply with any
4 of the requirements, as set forth in this Covenant shall be
5 grounds for the Department to require that the Owner modify or
6 remove any Improvements constructed in violation of this
7 Covenant. Any violation of the Covenant shall be grounds for the
8 Department to take enforcement action, including the filing of
9 administrative, civil or criminal action, against the Owner as
10 provided by law.
11
12

13 4.4 Notice in Agreements. All Owners and Occupants shall
14 execute a written instrument which shall accompany all purchase,
15 lease, sublease, rental agreements, and other conveyance
16 documents relating to the Subject Property. The instrument shall
17 contain the following statement:
18
19

20 "The land described herein is subject to a Covenant and
21 Agreement to Restrict Use of Subject Property. The land or
22 the Subject Property, and the owner, lessee, or other
23 occupant of the land or Subject Property may be subject to
24 the requirements, restrictions, provisions, and liabilities
25 contained in Chapter 6.5 and Chapter 6.8 of Division 20 of
26
27

1 the California Health and Safety Code. This statement is
2 not a declaration that a hazard exists."
3

4
5 5. VARIANCE AND REMOVAL OF RESTRICTIONS

6 5.1 Variance. Any Owner or, with the Owner's consent, any
7 Occupant of the Subject Property or any portion thereof may apply
8 to the Department for a written modification from the provisions
9 of this Covenant. Such application shall be made in accordance
10 with California Health and Safety Code section 25233 or any
11 applicable provision then in effect.
12

13 5.2 Removal of Restrictions. Any Owner or, with the
14 Owner's consent, an Occupant of the Subject Property or a portion
15 thereof, may apply to the Department to remove any of the
16 Restrictions or requirements of this Covenant as they apply to
17 any portion of the Subject Property. Such application shall be
18 made in accordance with California Health and Safety Code section
19 25234 or any other applicable provision then in effect.
20

21 5.3 Term. Unless modified or removed in accordance with
22 section 5.1 or 5.2 above, this Covenant shall continue in effect
23 in perpetuity.
24
25
26
27

1 6. MISCELLANEOUS

2 6.1 No Dedication Intended. Nothing set forth herein shall
3 be construed to be a gift or dedication, or offer of a gift or
4 dedication, of the Subject Property or any portion thereof to the
5 general public or for any purposes whatsoever.
6

7 6.2 Notices. Whenever any person gives or serves any
8 notice, demand, or other communication with respect to this
9 Covenant, such notice, demand, or communication shall be in
10 writing and shall be sent simultaneously to an authorized
11 representative of the Covenantor (or Owner) and to the
12 Department, in any certified mail, with return receipt requested.
13

14 6.3 Partial Invalidity. If any portion of the Restriction
15 set forth herein or terms is determined to be invalid or
16 unenforceable for any reason, the remaining portion shall remain
17 in full force and effect.
18

19 6.4 Recordation. This instrument shall be executed by the
20 Covenantor and by the Department. This instrument shall be
21 recorded by the Covenantor in the County of Contra Costa within
22 ten (10) days of the date of execution.
23

24 6.5 References. All references to Code sections include
25 successor provisions.
26
27

1 IN WITNESS WHEREOF, the parties execute this Covenant as of the
2 date set forth below.
3
4

COVENANTOR

Hercules Properties Inc.

By: *P. J. Lacey*Title: *Pres*Date: *6/14/96*

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: *Barbara D. Cook*

Barbara D. Cook

Title: Site Mitigation Branch Chief
Region 2Date: *6/21/96*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

96 121913

No. 5907

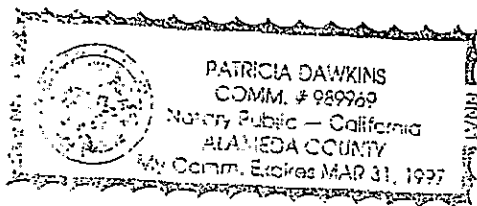
State of Calif.

County of Alameda

On 6/21/96 before me, PATRICIA Dawkins, notary public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Barbara J. Cook*
NAME(S) OF SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Patricia Dawkins
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

☒ INDIVIDUAL
☒ CORPORATE OFFICER
Site Mitigation Branch Chief Reg 2

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

36 121913

1 STATE OF CALIFORNIA)

2 COUNTY OF Kern)

3
4
5 On 6/4/96, 1996 before me, the undersigned, a
6 Notary Public in and for said state, personally appeared
7 Peter S Pankey, personally
8 known to me or proved to me on the basis of satisfactory evidence
9 to be the person whose name is subscribed to the within
10 instrument and acknowledged to me that he/she executed the same
11 in his/her authorized capacity, and that by his/her signature on
12 the instrument, the person, or the entity upon behalf of which
13 the person acted, executed the instrument.
14
15

16
17 WITNESS my hand and official seal.
18
19
20

21 Signature L. Jones

(Seal)

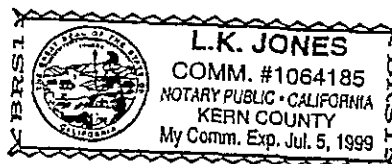


EXHIBIT A

Legal Description and Assessor's Parcel Maps

LEGAL DESCRIPTION

ASSESSOR'S PARCEL NUMBER 404-010-005-1, BEING A PORTION OF PARCEL 1 AS SHOWN ON THAT CERTAIN PARCEL MAP 477-81, RECORDED IN BOOK 99 OF PARCEL MAPS, AT PAGE 38, (99PM38), IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AS SHOWN ON ASSESSOR'S MAP, BOOK 404 PAGE 1, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT ALONG THE ARC OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIAL POINT THAT BEARS N 56°56'19" W, 1479.43 FEET THROUGH A CENTRAL ANGLE OF 08°58'08" WITH AN ARC LENGTH OF 231.58 FEET TO THE TRUE POINT OF BEGINNING;

THENCE, N 17°50' E, 92.2 FEET;
THENCE, N 10°18' W, 44.7 FEET;
THENCE, N 24°19' E, 182.2 FEET;
THENCE, N 01°37' W, 71.0 FEET;
THENCE, N 68°12' W, 70.0 FEET;
THENCE, S 82°30' W, 38.3 FEET;
THENCE, N 27°24' W, 30.4 FEET;
THENCE, N 85°36' W, 91.3 FEET;
THENCE, N 40°06' W, 24.8 FEET;
THENCE, N 03°29' W, 197.4 FEET;
THENCE, N 13°30' E, 51.4 FEET;
THENCE, N 12°14' W, 84.9 FEET;
THENCE, N 46°42' W, 53.6 FEET;
THENCE, N 36°55'15" E, 226.54 FEET;
THENCE, S 48°16' E, 49.6 FEET;
THENCE, S 85°11' E, 95.3 FEET;
THENCE, S 66°48' E, 38.1 FEET;
THENCE, N 82°37' E, 108.9 FEET;
THENCE, S 61°05' E, 76.5 FEET;
THENCE, S 26°34' E, 80.5 FEET;

THENCE, S 67°10' E, 103.1 FEET;

THENCE, S 43°31' E, 164.1 FEET;

THENCE, S 56°59' E, 47.7 FEET;

THENCE, S 49°11' E, 87.2 FEET;

THENCE, S 77°24' E, 87.1 FEET;

THENCE, N 81°00' E, 160.0 FEET;

THENCE, N 87°00' E, 114.2 FEET;

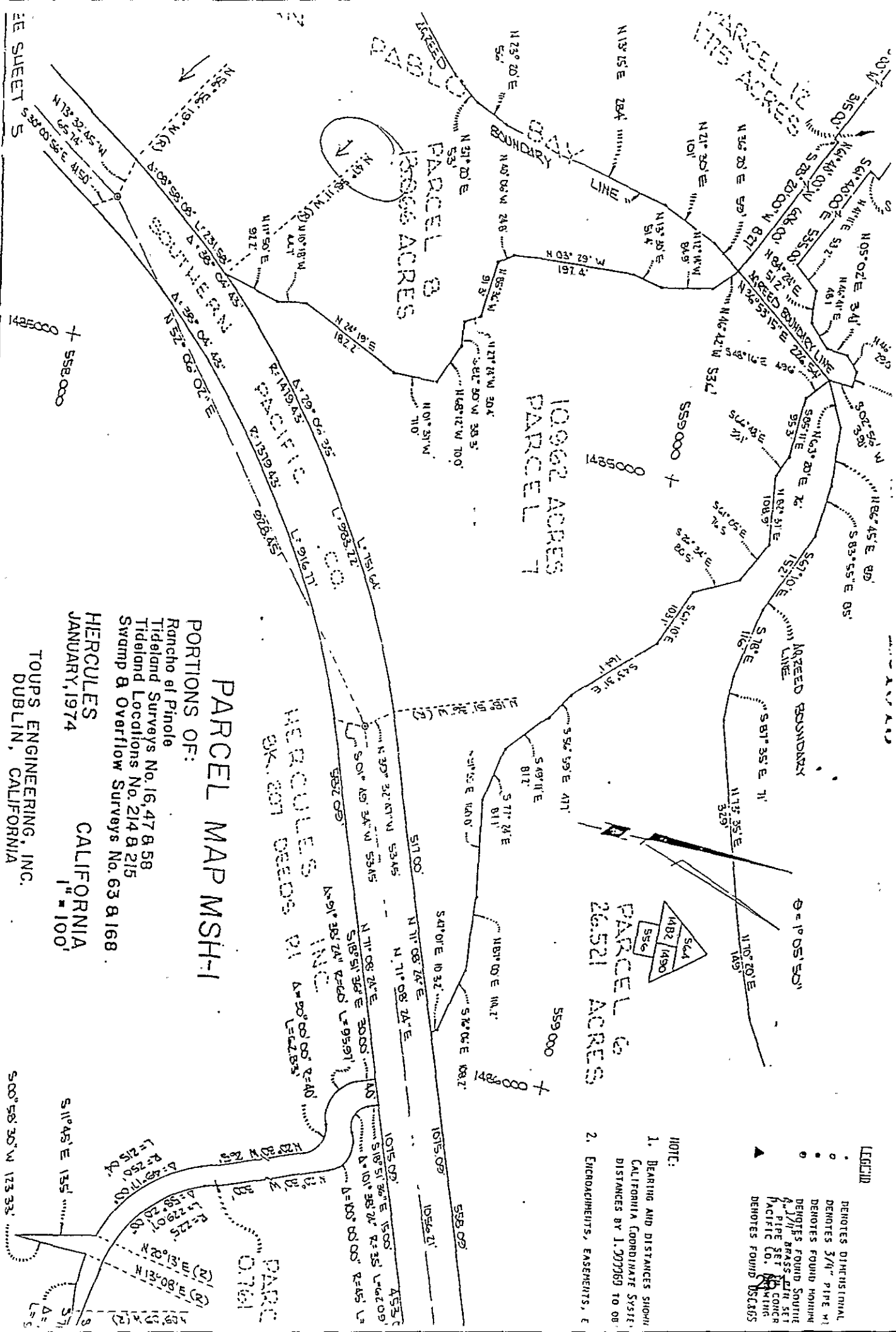
THENCE, S 76°06' E, 108.2 FEET;

THENCE, S 47°01' E, 10.32 FEET, TO THE NORTHERLY RIGHT-OF-WAY OF SOUTHERN PACIFIC RAILWAY;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY, S 71°08'24" W, 517.0 FEET;

THENCE, CONTINUING, ALONG THE ARC OF A CURVE, CONCAVE TO THE SOUTH HAVING A RADIAL POINT THAT BEARS N 18°51'36" W, 1479.43 FEET, THROUGH A CENTRAL ANGLE OF 29°06'35" WITH AN ARC LENGTH OF 751.64 FEET TO THE POINT OF BEGINNING.

THE HEREIN DESCRIBED ASSESSOR'S PARCEL CONTAINS 10.962 ACRES.



PARCEL MAP MSH-1
PORTIONS OF:
Rancho el Pinole
Tideland Surveys No. 16, 47 & 58
Tideland Locations No. 214 & 215
Swamp & Overflow Surveys No. 63 & 168
HERCULES
JANUARY, 1974
CALIFORNIA
1" = 100'

TOUPS ENGINEERING, INC.
DUBLIN, CALIFORNIA

26-521 ACRES

NOTE:

1. BEARING AND DISTANCES SHOWN CALIFORNIA COORDINATE SYSTEM DISTANCES BY 1.00000 TO 00
2. ENCLOSUREMENTS, EASEMENTS, E

EXHIBIT B

POTENTIAL HEALTH EFFECTS OF PROPERTY CONTAMINANTS

Arsenic. Prolonged exposure to high concentrations of arsenic, whether through dermal contact, ingestion, or inhalation, can cause disturbances of the digestive system, liver damage, or skin abnormalities. Short-term exposure to high concentrations of arsenic (from ingestion) can cause irritation of the stomach and intestines (Sax, N.I., 1984, Dangerous Properties of Industrial Materials, 6th edition New York: Van Nostrand Reinhold Company).

Lead. Prolonged exposure to high concentrations of lead can cause fatigue, headache, aching bones and muscles, abdominal pains, and constipation. Short-term exposure to high concentrations of lead can cause reversible kidney damage, but prolonged exposure at high concentrations can result in progressive kidney damage. Anemia is an early manifestation of lead poisoning (Sax, 1984).

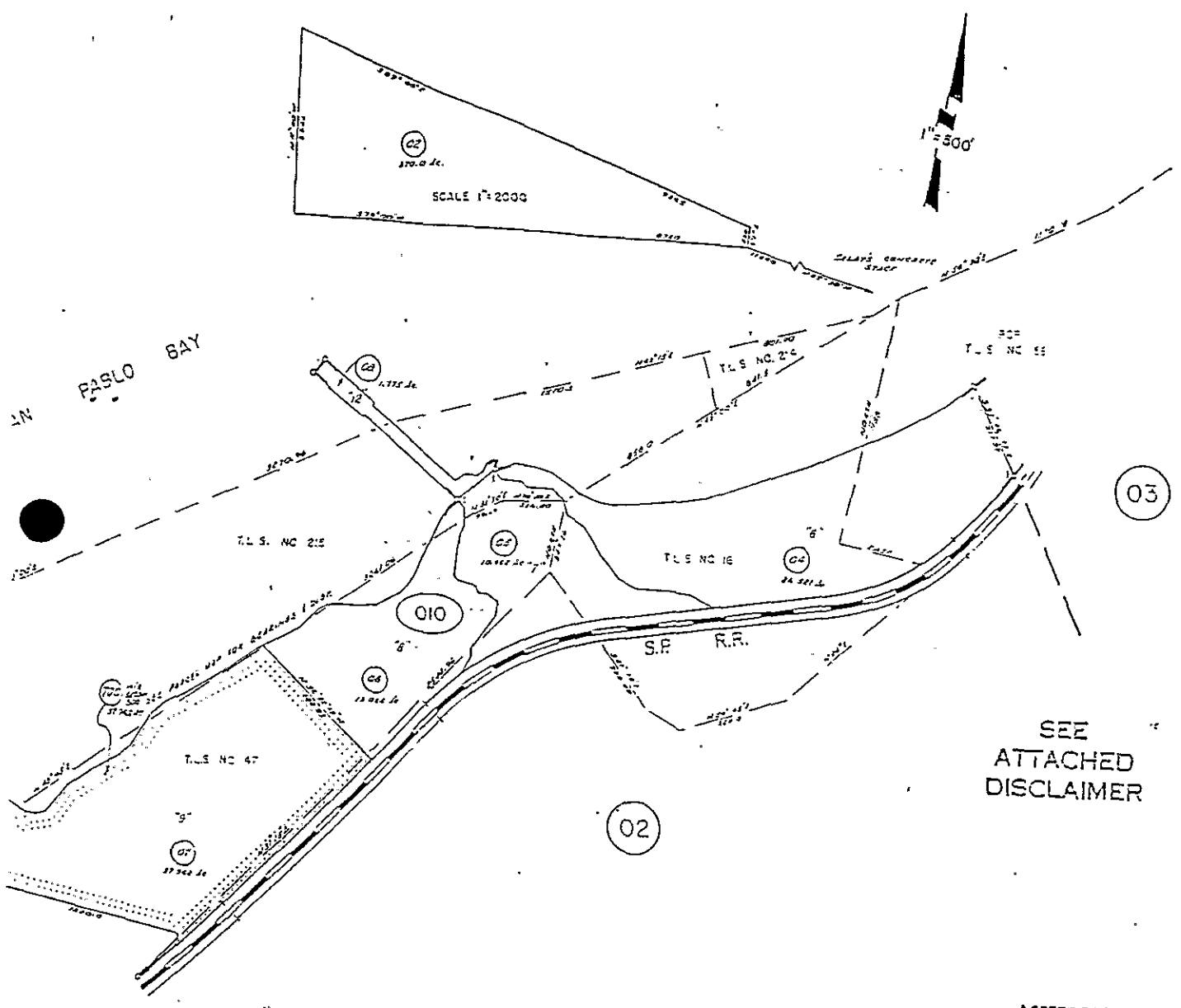
Mercury. Mercury is a primary irritant of skin and mucous membranes. Short-term exposure to high concentrations of mercury vapors can cause respiratory problems. Prolonged exposure to high concentrations of mercury can cause gingivitis, increased irritability, and muscular tremors (Sittig, M., 1981, Handbook of Toxic and Hazardous Chemicals, Park Ridge, New Jersey; Noyes Publications).

Total Petroleum Hydrocarbons (TPH). Prolonged dermal contact or inhalation of petroleum hydrocarbons, in general, may cause systemic disorders.

36 121913

96 121913

POR. SEC. 15 T2N R4W MDBM
1-33 PM. 16-21 4-22-74



ASSESSOR'S MAP
BOOK 404 PAGE 01
CONTRA COSTA COUNTY, CALIF.
5

END OF DOCUMENT

EXHIBIT J(2)

**Purchase & Sale Agreement – Hercules Point, Water Parcel North And Water Parcel
South**

**PURCHASE AND SALE AGREEMENT
AND
ESCROW INSTRUCTIONS
FOR
HERCULES POINT, WATER PARCEL NORTH AND WATER PARCEL SOUTH**

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement") is entered into effective as of March 14, 2012 (the "**Effective Date**") by and between HERCULES BAYFRONT, LLC, a Delaware limited liability company ("**Seller**" or "**HBL**"), the CITY OF HERCULES ("**Buyer**" or "**City**") with reference to the following facts:

RECITALS

A. Seller is the owner of those certain parcels of real property consisting of approximately 40.96 acres, with APN nos. 404-020-065, -083, -084, -085, -086; 404-670-016, -017, -018; 404-490-080, -100 located in the City of Hercules ("**City**"), State of California ("**Overall Property**"). The Overall Property is within the City's Waterfront District Master Plan and is approved for mixed use development pursuant to the Waterfront Master Plan Initiative ("**Project**").

B. Seller desires to convey to Buyer and Buyer desires to acquire from Seller that portion of the Overall Property consisting of approximately 50.55 acres, more or less, as legally described and depicted as follows: Parcel 7 (Hercules Point) attached as Exhibit A-1, Parcel 6 (Water Parcel North) attached as Exhibit A-2, Parcel 8 (Water Parcel South) attached as Exhibit A-3, (each a "Parcel" and collectively, the "**Parcels**"). Exhibits A-1 – A-3 are attached hereto and are incorporated herein by reference. The Parcels are generally depicted on Exhibit B-1, attached hereto and incorporated herein. The transfer of Title to the Parcels will be subject to reservations of easements for access, temporary construction, and utilities as generally described on Exhibit B-2; said easements will be created and reserved in favor of Seller prior to Closing. The Parcels, subject to the reservation of easements generally described and depicted in Exhibit B-2, is hereinafter referred to as the "**Property**." The Property is unimproved except for portions of the foundations of a former factory building located on the Land. Since the conveyance of the Property is to a public entity, the Property can be conveyed to the City through a metes and bounds description, and does not need to be legally subdivided parcels at the time of conveyance pursuant to Government Code sections 66428(a)(2) and 66426.5 and Hercules Municipal Code section 10-2.212. The Property and shall consist of the following:

(1) Real Property. The Land and all improvements and fixtures (if any) located thereon, together with all of Seller's right, title and interest in and to (i) all privileges, rights, easements and appurtenances which are appurtenant to the Land, (ii) all development rights, air rights, water, water rights and water stock, if any, relating to the Land, (iii) any streets, alleys, passages and other rights-of-way, if any, included within the Land, and (iv) all oil, gas and other mineral and related development rights, if any, appurtenant to the Land (collectively, the "**Real Property**").

(2) Intangible Property. All of Seller's right, title and interest in intangible property (the "**Intangible Property**"), if any, used in connection with the Real Property, including without limitation any licenses, permits, entitlements and other approvals, if any, issued by any federal, state or local authorities relating to the use, maintenance or operation of the Real Property.

(3) Service Contracts. All of the interest of Seller, if any, in all utility contracts, service contracts, maintenance contracts, management contracts and all other contracts utilized by Seller, if any, in connection with the Real Property which are not terminated as of the "**Closing Date**" (as defined in Section 1.2 below), all of which are collectively referred to as the "**Service Contracts**".

C Buyer and Seller intend to complete the conveyance of the Property in two independent phases. Parcel 7 (the "**Credit Property**") shall be conveyed by Buyer to Seller in exchange for four hundred ninety three thousand two hundred dollars (\$493,200) in development impact fee credits, and said conveyance shall occur on the earlier of (i) date that the "Implementing Development Agreement" between the Buyer and Seller becomes effective, and (ii) April 15, 2012 (the "**Credit Property Closing Date**"). The remainder of the Property, Parcels 6 and 8 (the "**Cash Property**") shall be conveyed by Buyer to Seller in exchange for two hundred ninety six thousand nine hundred thirty three dollars (\$296,933) in cash or cash equivalent funds, and said conveyance shall occur on December 1, 2012 (the "**Cash Property Closing Date**").

D. Buyer and Seller desire to terminate and supersede in their entirety all prior offers, counteroffers, side letters, letters of intent and other arrangements between the parties or their representatives and/or agents concerning the purchase and/or condition of the Property.

E. Buyer acknowledges and agrees that Seller retains the right of repurchase pursue development of a private marina on the Waterside North (26.5 acres) parcel. Terms of that right of repurchase are specified in the Implementing Development Agreement between Seller and City.

F. Seller and Buyer are entering into this Agreement to convey the Property to the Buyer, all as more fully set forth below.

NOW, THEREFORE, in reliance upon the foregoing Recitals and in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer and Seller agree as follows:

ARTICLE 1

AGREEMENT; TERM; SELLER TERMINATION

1.1 AGREEMENT OF SALE. Seller agrees to sell and convey the Property to Buyer and Buyer agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement.

1.2 TERM. The term of this Agreement shall commence on the Effective Date and shall continue, unless sooner terminated in accordance with the provisions hereof, until the

Property Closing Date. The Cash Property Closing Date may be extended by mutual consent of Buyer and Seller, or as provided in Section 3.1(c).

Buyer acknowledges and agrees that Buyer shall have no right or option whatsoever to extend the Credit Property Closing Date and/or the Cash Property Closing Date for any reason without the prior written consent of Seller, which consent may be withheld by Seller in Seller's sole and absolute discretion. Buyer further acknowledges and agrees that after the Credit Property Closing Date (for the Credit Property) and/or the Cash Property Closing Date (for the Cash Property) Buyer shall have no further right or option to purchase the Property and this Agreement shall be of no further force or effect in that regard.

1.3 CONDITION PRECEDENT TO SELLER TERMINATION. If not otherwise required in this Agreement, before Seller terminates pursuant to Sections 3.1(b) and 3.2(e) or any other section, Seller shall give Buyer written notice of Seller's intent to terminate. Seller and Buyer shall meet within 15 days following Buyer's receipt of such written notice, and at such meeting shall discuss and attempt to resolve Seller's concerns. If such issues are resolved, this Agreement shall remain in full force and effect.

ARTICLE 2 **PURCHASE PRICE**

2.1 PURCHASE PRICE. The purchase price for the Cash Property (the "**Cash Property Purchase Price**") shall be \$296,933.00 for 39.56 acres of land. The purchase price for the Credit Property shall be \$493,200 (the "**Credit Property Purchase Price**"), of credit against City's Development Impact Fees.

Buyer agrees that provided Seller has delivered the Non-Foreign Affidavit and required state and local affidavits required under Section 4.4(b) hereof, showing that Seller is not a foreign person and that no tax withholdings or deductions are required, Buyer shall not deduct or withhold, nor instruct First American Title Insurance Company ("**Escrow Holder**") to deduct or withhold, any part of the Cash Property Purchase Price pursuant to Section 1445 or any other provision of the Internal Revenue Code of 1986, as amended (the "**IRC**"), or pursuant to any state or local law.

2.2 PAYMENT OF PURCHASE PRICE. The Cash Property Purchase Price and the Credit Property Purchase Price shall be paid as follows:

(a) **Deposit.** Within three (3) business days of the Effective Date of this Agreement, City shall deliver Escrow Holder (as defined in Section 3.1(a), below) the sum of one hundred thousand and No/100 Dollars (\$100,000.00) (the "**Deposit**"). Escrow Holder shall invest the Deposit in a federally-insured, interest-bearing demand trust account with a national banking association reasonably acceptable to Buyer and Seller with offices in Contra Costa County, California. All interest earned on the investment of such Deposit, if any, shall accrue to the benefit of Buyer and will be treated as an additional deposit hereunder. The Deposit shall be refunded to Buyer if prior to the expiration of the Contingency Date Buyer terminates this Agreement as a result of Buyer's disapproval or deemed disapproval of due diligence matters pursuant to Section 3.3 below, Buyer terminates this Agreement as a result of Buyer's disapproval or deemed disapproval of the condition of title to the Property pursuant to Section 3.1 below, or this

Agreement is terminated by Buyer or Seller prior to the Contingency Date as otherwise provided in this Agreement. Notwithstanding the foregoing, Seller may request partial releases of the Deposit to pay Due Diligence Costs (defined in Section 3.2(a), below). To obtain funds from the Deposit, Seller shall provide invoices for Due Diligence Costs from the Approved Consultants, along with supporting documentation, to Escrow Holder and Buyer. Unless within ten (10) days following the receipt of such invoices Buyer objects that such Due Diligence Costs are not within the Scopes of Work (or were not otherwise Due Diligence Costs incurred at the request of Buyer) Escrow Holder shall release such funds to Seller. The remaining funds in Escrow after each release of funds shall be considered the "Deposit" hereunder and shall remain in Escrow. Any provision of this Agreement requiring the return of the Deposit to Buyer shall apply only to the portion of the Deposit then remaining in Escrow, and Seller shall not be required to return any amounts previously released to Seller for Due Diligence Costs. Any provision of this Agreement requiring the release of the Deposit to Seller as liquidated damages shall apply only to the portion of the Deposit then remaining in Escrow, plus Seller's retention of the amounts released to Seller as Due Diligence Costs, and Buyer shall not be required to provide any additional amounts as liquidated damages, it being acknowledged by Seller that any such remaining Deposit amount and retention of the Due Diligence Costs is a reasonable estimate of damages that would be incurred by Seller. If the Deposit is fully exhausted through the payment of Due Diligence Costs, Seller shall have no further obligation to pay for any due diligence by or through the Approved Consultants, or otherwise, or to conduct any further due diligence unless such costs are paid by Buyer prior to such work being performed. Provided the Deposit is not returned to Buyer pursuant to the terms of this Agreement, the Deposit (less any released Due Diligence Costs) will remain in Escrow until the Closing Date, and will be applied towards the Purchase Price. In the event Buyer materially defaults under this Agreement, the remaining Deposit, and the Due Diligence Cost released to Seller, shall serve as liquidated damages to Seller in accordance with the terms of Section 2.2(b), below.

Seller's Initials:



Buyer's Initials:



(b) Balance of Purchase Price. Provided that all conditions to Buyer's obligations under this Agreement have been satisfied or expressly waived by Buyer, Buyer shall deliver to Escrow Holder (i) at least two (2) business days prior to the Credit Property Closing Date a Fee Credit voucher for credits against Development Impact Fees in the amount of \$493,200.00 in the form attached hereto as Exhibit C, and (ii) at least two (2) business days prior to the Cash Property Closing Date, by wire transfer of immediately available funds, the balance of the Cash Property Purchase Price less the remaining Deposit and any interest accrued thereon, plus or minus Buyer's share of prorations and costs of Escrow hereunder.

2.3 INDEPENDENT CONTRACT CONSIDERATION. Contemporaneously with the execution of this Agreement, Buyer has delivered to Seller, and Seller hereby acknowledges the receipt from Buyer of the sum of One Hundred Dollars (\$100.00) (the "**Independent Contract Consideration**"). The Parties have bargained for such amount as consideration for Buyer's exclusive option to purchase the Property pursuant to the terms of this Agreement and for Seller's execution of this Agreement, in addition to other consideration being described in this Agreement. The Independent Contract Consideration is in addition to and independent of any other consideration or payment provided in this Agreement, is non-refundable, and shall be retained by Seller notwithstanding any other provision of this Agreement, including any termination rights of

Buyer. The Parties agree that it is their intention that the amount of the Independent Contract Consideration is sufficient consideration, as such term is defined in Steiner v. Thexton, 48 Cal. 4th 411 (2010) for Buyer's right to purchase the Property pursuant to this Agreement. Buyer and Seller hereby acknowledge and confirm that they have had an opportunity to review this provision with their respective, independent counsel.

2.4 MUTUAL AGREEMENT OF THE PARTIES FOR STAGGERED CLOSE OF PURCHASE. Buyer shall purchase the Property from Seller in two phases. Subject to the conditions and requirements of this Agreement, the Credit Property shall be conveyed from Seller to Buyer on the Credit Property Closing Date. Subject to the conditions and requirements of this Agreement, the Cash Property shall be conveyed from Buyer to Seller on June 30, 2012. The failure to close on the Cash Property shall not affect the prior closing of the Credit Property, which shall remain closed and not subject to rescission or other claims that arise from the failure, if any, to close on the Credit Property.

ARTICLE 3

TITLE REVIEW; DUE DILIGENCE; "AS IS" SALE

3.1 TITLE TO THE LAND.

(a) Promptly after the Effective Date and its receipt of a fully-executed original of this Agreement, Escrow Holder shall cause to be delivered to Buyer and to Seller a current preliminary report issued by First American Title Insurance Company, Diane Burton, 6683 Owens Drive, Pleasanton, California ("**Title Company**") setting forth the condition upon which Title Company is willing to issue its Policy of Title Insurance (ALTA Extended Coverage) to Buyer with respect to the Property and, from time to time thereafter, supplemental reports as the same become available in the course of Title Company's standard business practices (all of such preliminary reports, as supplemented, being hereinafter referred to collectively as the "**PTR**").

(b) Buyer shall have the option until the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by Title Company then for five (5) days after its receipt of any supplemental title report and copies of any additional underlying documents, to notify Seller and Title Company in writing what exceptions to title first shown thereon, if any, are unacceptable to Buyer ("**Disapproved Exceptions**"); provided, however that (i) Buyer is not required to give notice of disapproval of debts, liens to secure debts, delinquent taxes, or assessments due as of the Closing Date, or other financing or monetary encumbrances on the Property ("**Monetary Disapproved Exceptions**"), and those items shall be considered as Disapproved Exceptions hereunder and either (a) removed from the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) (either through payment such amounts or Seller obtaining from any lenders a partial release and reconveyance of the Property from any deed of trust encumbering the Overall Property) or (b) if not removed from the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), shall result in the termination of this Agreement and the Deposit shall be returned to Buyer, and (ii) Buyer agrees that the following shall not be Disapproved Exceptions: all property taxes and supplemental taxes on the Land which are not delinquent; all nondelinquent assessments and bonds on the Land arising prior or subsequent to the date hereof; all public utility easements; all building or zoning

ordinances or regulations; all building or use restrictions, including without limitation that certain document recorded on June 28, 1996 as Document No. 96-121913 with the Contra Costa County Recorder entitled "Covenant and Agreement to Restrict Use of Property Applicable to Portion of the Hercules Properties, Ltd., Site, Hercules, California," (the "Recorded Covenant"); and all matters executed by Buyer or any agency or department of the Buyer, or which arise as a result of the acts or omissions of Buyer or its agents, employees or representatives, and (iii) with respect to any supplemental title reports delivered to Buyer after the Contingency Date, Buyer further agrees that the following shall not be Disapproved Exceptions: all matters which are not monetary liens and all matters previously constituting "**Approved Title**" (as defined in the following sentence). If Buyer provides any notice of Disapproved Exceptions, Buyer shall provide notice of all Disapproved Exceptions on or before the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within five (5) days after Buyer's receipt of any supplemental title report and copies of any underlying documents; provided, however, that Buyer is not required to include in its notice of Disapproved Exceptions notice of disapproval of any Monetary Disapproved Exceptions. If Buyer provides no notice of Disapproved Exceptions on or before the date that is fifteen (15) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within five (5) days after Buyer's receipt of any supplemental title report and copies of any underlying documents, then Seller shall may, in its sole discretion, deliver a written "Request to Identify Disapproved Exceptions" to Buyer on or before the date that is ten (10) days prior to the Contingency Date, and if any supplemental title reports are issued by the Title Company then within seven (7) days after Buyer's receipt of any supplemental title report and copies of any underlying documents. Buyer shall have two business days to deliver a written response to the Request to Identify Disapproved Exceptions by identifying all Disapproved Exceptions, except Monetary Disapproved Exceptions. If Seller does not deliver a written Request to Identify Disapproved Exceptions to Buyer within the time specified in this paragraph, all matters shown on the PTR shall be conclusively deemed to be a Disapproved Exception. If Seller does deliver a written Request to Identify Disapproved Exceptions to Buyer, then only those items identified in Buyer's timely written response to the Request to Identify Disapproved Exceptions shall be Disapproved Exceptions.

(c) If Buyer gives timely notice under Section 3.1 (b) above of any Disapproved Exception, or such exceptions are deemed Disapproved Exceptions, Seller shall have five (5) days after receipt of such notice to notify Buyer and Escrow Holder in writing either (i) that Seller will cure such Disapproved Exception and will provide Buyer with evidence reasonably satisfactory to Buyer that such Disapproved Exception has been cured on or before the Closing Date or (ii) that Seller will not cure such Disapproved Exception ("**Cure/Non-Cure Notice**"). If Seller elects to cure a Disapproved Exception, it shall proceed to cure using commercially reasonable efforts, and if necessary to facilitate those efforts, Seller may extend the Cash Property Closing Date for a period, not to exceed sixty (60) days, without Buyer's written consent thereto. Seller's failure to give a Cure/Non-Cure Notice shall conclusively constitute an election not to cure a Disapproved Exception; provided, however, that Seller shall cure any Disapproved Exception which is a voluntary monetary lien encumbering the Property with Seller's consent, along with any delinquent property taxes or assessments.

(d) If Seller elects or is deemed to elect not to cure a Disapproved Exception, Buyer shall have the option at any time within three (3) business days after such election or

deemed election to terminate this Agreement by notice to Seller and Escrow Holder to that effect, in which event Escrow Holder shall return the remaining Deposit to Buyer. If Seller elects to cure any Disapproved Exception but is unable, despite Seller's commercially reasonable efforts, to do so by the Closing, Seller shall not be in default hereunder and Buyer shall have the option at any time within five (5) business days after Seller's cessation of efforts to cure a Disapproved Exception to elect to terminate this Agreement by notice to Seller and Escrow Holder to that effect. Buyer's failure to give such notice to terminate with respect to any Disapproved Exception shall conclusively constitute Buyer's waiver of all of its objections thereto, in which case Seller shall have no obligation to cure such Disapproved Exception and it shall thereafter constitute part of approved title hereunder. Notwithstanding the foregoing, or anything herein to the contrary, in no event shall Buyer be deemed to have approved any monetary lien encumbering the Property (through a partial release and reconveyance of the Property or other means acceptable to Title Company to remove such liens), along with any property taxes or assessments as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property)(the parties recognizing that such Monetary Disapproved Exceptions will either be cured by Seller or cause the termination of this Agreement in accordance with Section 3.1(b)).

(e) At the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer's title to the Credit Property and the Cash Property (as the case may be) shall be insured by an Extended Coverage Owner's Policy of Title Insurance in the amount of the Credit Purchase Price or the Cash Purchase Price (as the case may be), insuring Approved Title to the Real Property in Buyer and including such endorsements as Buyer shall request, subject only to (1) Title Company's standard exceptions and exclusions, (2) the lien of supplemental taxes assessed pursuant to California Revenue and Taxation Code Sections 75, et seq., resulting from this transaction, (3) exceptions to title approved (or deemed approved) by Buyer pursuant to this Section 3.1, and (4) such deeds of trust or other exceptions to title created by or for the benefit of Buyer (the "Title Policy"). Buyer may, at Buyer's option, direct Escrow Holder to procure an extended coverage ALTA Owner's Policy of Title Insurance which eliminates some or all of the standard exceptions or which includes endorsements which expand coverage. Buyer acknowledges and agrees that, notwithstanding Sections 4.3(a)(1) and 4.9 below, the issuance of an ALTA extended coverage policy or any particular title endorsements requested by Buyer shall not be a condition precedent to Buyer's obligation to close Escrow.

3.2 DUE DILIGENCE; MATERIAL TO BE FURNISHED BY SELLER PRIOR TO CLOSING. To facilitate Buyer's due diligence and investigation of the Property, Seller shall make available to Buyer (at a mutually agreed location) for Buyer's review during normal business hours, but without representation or warranty by Seller as to any matter, including without limitation the accuracy, reliability or completeness of any document, except as specifically represented and warranted in Sections 3.4(d) and 5.2 of this Agreement, copies of any and all of the following (to the extent such items exist and are in the possession or control of Seller or Seller's representatives): the contracts, leases, soils and geologic reports, environmental surveys, reports and related documents, grading or engineering plans, drawings, surveys, maps, permits, licenses, certificates of use and occupancy and other documents, instruments and written materials that are applicable to the Property, all as listed on Exhibit G attached hereto ("**Reports**"). Buyer shall not have the right to obtain possession of or receive copies of the Reports unless and until the Closing occurs. If and when the Closing occurs, Seller shall provide copies of all Reports to Buyer through Escrow on the Closing Date, and as of the Closing such Reports shall become the property

of the Buyer. Prior to Closing, Buyer shall have no right to obtain copies of the Reports, and with respect to information reviewed by Buyer in the Reports, Buyer shall maintain the confidentiality of all such documents, materials and information pursuant to Section 9.9 below.

Notwithstanding anything to the contrary contained in this Agreement, Buyer acknowledges that it shall have no right to examine any of the following documents (and such documents shall not be considered Reports) in connection with its review of the Property: (i) limited liability company or corporate records of Seller or Seller's members, (ii) pro formas prepared by or for Seller, (iii) internal accounting or income tax records of Seller or Seller's members, (iv) similar proprietary, confidential or privileged information, and (v) any internal memoranda of Seller relating to any of the foregoing (collectively, the "**Confidential Seller Documents**").

Buyer's due diligence shall be subject to the following conditions and requirements:

(a) Each consultant, including without limitation the primary consultant and all environmental consultants, retained to perform due diligence shall be retained by Seller. The parties have agreed that Seller shall retain Geosyntec Consultants and Engeo Incorporated ("**Approved Consultants**") to perform the scopes of work for due diligence set forth on Exhibit D attached hereto ("**Scopes of Work**"). The consultant contract costs incurred for the Scopes of Work, and all modifications thereto, are hereinafter referred to as the "**Due Diligence Costs**." Buyer, and Buyer's consultants, shall have the right to review any and all work product of the Approved Consultants related to the Property, but shall not have the right to obtain possession of or receive copies of the Approved Consultants' work product unless and until the Closing on the Cash Property occurs. If and when the Closing on the Cash Property occurs, Seller shall provide all work product of the Approved Consultants related to the Property to Buyer through Escrow on the Cash Property Closing Date, and as of the Closing on the Cash Property such work product shall become the property of the Buyer. Buyer (and Buyer's consultants) shall have the right to contact the Approved Consultants only through Seller. Seller shall provide consent to the Approved Consultants to discuss any and all due diligence matters concerning the Property with Buyer and Buyer's consultants; provided, however, that Seller shall have the right to be in attendance at all such discussions. Seller shall have the right to request and/or review any modifications to the Scopes of Work. If Seller does not approve a modification to a Scope of Work, it shall not be responsible for the incremental additional costs of the modification, and such incremental additional costs shall not be deducted from the Deposit. Upon receipt of a request from Buyer to modify the Scope(s) of Work, Seller shall have the right to either (i) request that the Approved Consultant(s) modify the Scope(s) of Work in the manner requested, (ii) continue with only the original Scope(s) of Work, or (iii) terminate this Agreement in accordance with Section 3.2(e). Seller shall use commercially reasonable efforts to cause all due diligence work within the Scopes of Work to be completed and available for Buyer's review not later than fifteen (15) days following the Effective Date hereof. In the event such Scope of Works is not completed by such date, the Contingency Date (defined in Section 3.3 below) and the Cash Property Closing Date shall be automatically extended the same number of days that it takes to complete the Scopes of Work in excess of such fifteen (15) day period.

(b) Other than the rights of Buyer (and Buyer's consultants) to review such Reports and work product as provided herein, Seller shall have the right, in the exercise of its sole

discretion, to approve the release or distribution of any of the Reports and work product of the Approved Consultants. Unless and until the Closing on the Cash Property occurs, Buyer shall not have the right to release the Reports or the information contained therein, except to the extent such release is otherwise required by applicable law, including without limitation the Public Records Act and the Ralph M. Brown Act, or court order (it being acknowledged by the Parties that Buyer shall not have possession or control of any such Reports or work product unless and until the Closing occurs).

(e) Seller shall have right to terminate if Seller develops good faith, commercially reasonable, concerns over the scope of the due diligence work, the results of the due diligence work, and/or Buyer's handling or disclosure of due diligence information. Prior to terminating on this basis, Seller shall give Buyer written notice of Seller's intent to terminate. Seller and Buyer shall meet within 15 days following Buyer's receipt of such written notice, and at such meeting shall discuss and attempt to resolve Buyer's concerns. If such issues are resolved, this Agreement shall remain in full force and effect.

3.3 CONTINGENCY DATE; INSPECTIONS; BUYER'S RIGHT TO TERMINATE.

(a) Subject to the procedures and limitations set forth in paragraph 3.2 and 3.3(b) and in the Scopes of Work (and any mutually approved modifications thereto), Buyer shall have the right from and after the Effective Date of this Agreement for a period of thirty (30) days thereafter until 5:00 p.m. P.S.T. on such date (the "**Contingency Date**") to conduct all visual inspections of the Property deemed necessary by Buyer, together with the investigations and testing of the Property identified in the Scope of Work (and any mutually approved modifications thereto), and to deliver written approval or disapproval of the due diligence matters to Seller. If Buyer fails to deliver a written notice of approval or disapproval by the Contingency Date, Seller may within two (2) business days thereafter deliver a written "Request for Confirmation of Approval/Disapproval" to Buyer, in which case Buyer may, within two (2) business days thereafter (i.e. four (4) business days after the Contingency Date) deliver to Seller a written confirmation as to whether Buyer does or does not approve the condition of the Property. If Buyer provides no initial written notice of approval or disapproval by the Contingency Date, and Seller does not timely deliver a Request for Confirmation of Approval/Disapproval, then Buyer shall be deemed to have disapproved the due diligence matters. If Seller timely delivers a Request for Confirmation of Approval/Disapproval, but Buyer does not timely respond to said Request for Confirmation of Approval/Disapproval, then Buyer shall be deemed to have approved the due diligence matters. If Buyer disapproves of (or is deemed to disapprove of) the due diligence matters this Agreement shall terminate, neither Seller nor Buyer shall have any further liability or obligation hereunder except for those provisions and obligations which expressly survive such termination, and Escrow Holder shall within five (5) business days thereafter return to Buyer the Deposit (less any appropriate deductions as specified in Section 2.2), and return to the Party entitled thereto (or, if not specified hereunder to the contrary, to the Party who deposited the same) all items and funds previously deposited with Escrow Holder in connection with this escrow.

(b) All inspections and tests on the Real Property, shall be conducted by Seller through the Approved Consultants, as set forth in Section 3.2 and 3.3(a), above.

(c) Buyer shall provide Seller at least 24 hours prior written notice of entry on the Property for visual inspection purposes, together with identification of the person or firm who will undertake the same. The written notice shall also include the general duration of the intended testing activities and the precise nature of the activities on the Property, together with evidence of the existence of public liability insurance covering all risks arising out of such entry. Such insurance shall have a combined single limit per occurrence of at least \$2,000,000 for premises liability, bodily injury, personal injury and property damages, shall name Seller as an additional insured, and shall be maintained in effect at all times during the term of this Agreement.

(d) Buyer shall fully indemnify, defend and hold Seller harmless from and against any claim, action, cause of action, demand, liability, obligation, loss, cost, damage or expense (including actual attorneys' fees and costs) which may arise or which Seller may sustain or incur by reason of or in connection with any visual inspection or entry onto the Property, provided however that Buyer shall have no responsibility, indemnity obligation or liability for (i) any act of Seller and/or Seller's agents, employees, consultants and contractors, (ii) any adverse condition or defect on or affecting the Property not caused or made worse by Buyer or its agents, employees, consultants and contractors but merely discovered during their inspections, (iii) the mere discovery of the pre-existing presence of Hazardous Materials or claims resulting from the pre-existing presence of Hazardous Materials, and/or (iv) the results or findings of any test. If Buyer makes an existing adverse condition or defect on the or affecting the property worse as a result of or in connection with Buyer's inspection or entry, Buyer shall (i) have an immediate obligation to notify Seller in writing that Buyer has made an existing adverse condition or defect on or affecting the property worse, and (ii) Buyer's shall indemnify and defend Seller only to the extent of Buyer's contribution to the adverse condition or defect on or affecting the Property. The provisions of this Section shall survive Closing or termination of this Agreement for any cause for a period of six (6) months.

(e) Notwithstanding any provision of this Agreement to the contrary, in addition to termination of this Agreement for Buyer's failure to deliver the approval notice pursuant to Section 3.3(a) above, Buyer shall have the sole and absolute right to terminate this Agreement at any time prior to the Contingency Date upon giving written notice thereof (the "**Termination Notice**") to Seller with a copy to Escrow Holder, in which event this Agreement shall automatically terminate upon Seller's receipt or deemed receipt of the Termination Notice. In the event the Close of Escrow does not occur for any reason other than Seller's or Buyer's breach of or default of its respective obligations hereunder, or if this Agreement is terminated without default by either party as otherwise set forth herein, then Escrow Holder, with no further instructions from the parties hereto, shall return to Buyer the Deposit (less appropriate deductions as specified in Section 2.2) with accrued interest and shall return any other materials previously delivered to Escrow Holder to the depositor thereof, the Escrow shall be automatically terminated and of no force and effect, Buyer and Seller shall each pay one-half of any Escrow termination fees, and except as otherwise provided herein the parties will have no further obligation to one another.

3.4 "AS IS" SALE.

(a) Except for the express representations set forth in Article 5, below, Buyer acknowledges that Buyer has entered into this Agreement in reliance solely upon Buyer's ability to

make Buyer's own investigation of the physical, environmental, economic, financial and legal conditions of the Property, and that Buyer is not relying upon any representations and warranties of Seller concerning the Property other than those expressly set forth in Section 5.2 below. Buyer further acknowledges that Buyer has not received from Seller any accounting, tax, legal, architectural, environmental, engineering or other advice with respect to the Property or the transaction contemplated by this Agreement and that Buyer is relying solely upon the advice of Buyer's own advisors, if any, in entering into this Agreement. Accordingly, Buyer's failure to terminate this Agreement under Section 3.3(e) above shall constitute an acknowledgement that Buyer has considered, inspected and reviewed to Buyer's satisfaction all physical, environmental, economic, financial and legal aspects and conditions of the Property and the existing and potential future requirements imposed by Environmental Laws, as defined in Section 3.4(d) below, and that Buyer is acquiring the Property on the basis of Buyer's own evaluation, without the benefit of any representation or warranty from Seller except as specifically set forth in Section 5.2 below.

(b) Buyer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement and the Implementing Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes all such prior or contemporaneous oral or written representations, statements, documents or understandings and will remain unaffected by any representation, statement or understanding subsequent to the date hereof not constituting a duly executed amendment to this Agreement. Buyer further acknowledges that (i) except as expressly set forth in Section 5.2 below, neither Seller nor its constituent members, nor any of their respective members, partners, affiliates, officers, directors, employees, agents or representatives, have previously or does under this Agreement make any representation or warranty of any kind whatsoever, either express or implied, with respect to the Property or any related matter (and hereby disclaims any of the same that may exist), (ii) no person acting on behalf of Seller is authorized to make, and by its execution hereof Buyer acknowledges that no person acting on behalf of Seller has made, any representation, agreement, statement, warranty, guaranty or promise regarding the Property or the transaction contemplated herein except as set forth in this Agreement, and no such representation, warranty, agreement, guaranty, statement or promise, if any, made by any person acting on behalf of Seller shall be valid or binding upon Seller unless expressly set forth in this Agreement or in the documents and instruments to be executed by Seller and delivered at the Closing on the Cash Property pursuant to the terms of this Agreement, and (iii) the Property shall be sold to Buyer hereunder in its "AS IS" condition.

(c) In particular, but without limiting the foregoing, and except as set forth in Section 5.2 below, no representations or warranties have been made or are made by Seller hereunder with respect to the condition, habitability, suitability, size, usable area, zoning, development, occupation or management of the Property, the available uses of the Property, the boundary lines of or any encroachments or easements affecting the Land, the access or lack of vehicular and pedestrian access to the Land, the presence of wetlands, the presence or availability of water or sewage disposal on or to the Real Property, the Property's compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to development, zoning, subdivision, planning, building, fire, safety, health, leasing, hazardous material or environmental matters or the Property's compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws,

codes, ordinances, regulations or requirements, including without limitation any requirements under Environmental Laws.

Buyer, by executing this Agreement, acknowledges that Buyer has made or will make Buyer's own independent investigation as deemed necessary or appropriate concerning the use, sale, development or suitability of the Property, as open space or otherwise, and the status of the land use and other approvals, licenses and/or permits concerning the Real Property, including any requirements under Environmental Laws. Such investigations may include without limitation and, as deemed necessary by Buyer, any desired investigations or analyses of present or future laws, statutes, rules, regulations, ordinances, limitations, restrictions, requirements or approvals concerning the use, density, location or suitability of the Property and the existing or proposed development or condition thereof (collectively "**Regulations**"); any governmental permits, licenses, approvals or acts (collectively, the "**Permits**"); the effect of any governmental action on the issuance or continued effectiveness of any Permits; the necessity or existence of any dedications, fees, charges, costs, exactions or assessments that may be imposed in connection with any Regulations; the creation of any districts or the obtaining of any required Permits; the size, dimensions, location or topography of the Land; the availability or adequacy of vehicular and pedestrian access to the Land, or of water, sewage or any other utilities serving the Land; the presence or adequacy of infrastructure or other improvements on, near or affecting the Land; the presence on the Real Property of any threatened or endangered species, or any archaeological or paleontological significance; the extent or condition of any grading or other site work already performed or hereafter required for the present or proposed use or development of the Land; any surface, soil, soil vapor, subsoil, geologic or groundwater conditions or other physical conditions of or affecting the Real Property, including without limitation hazardous materials and drainage; and all other matters concerning the condition, use, development, operation and sale of the Property or any portion thereof.

Buyer further acknowledges that Buyer shall be responsible for payment of all costs of owning, operating, using and/or developing the Property from and after the Closing Date, including without limitation all governmental fees, taxes and assessments, and that Seller shall not be required to pay any funds or to dedicate, donate or grant any other property owned by Seller in order to satisfy a governmental permit or condition so that Buyer will be allowed to own, operate, use and/or further develop the Property. Buyer further acknowledges and agrees that, from and after the Closing Date, Buyer shall bear all costs and obligations in connection with the use of the Land, including without limitation any environmental clean-up/remediation costs, if any, and the costs, if any, of creating vehicular and/or pedestrian access to the Land by bridge, boardwalk or otherwise for the Property.

(d) As used in this Agreement, "**hazardous materials**" includes petroleum, asbestos, radioactive materials or substances defined as "**hazardous substances**," "**hazardous materials**" or "**toxic substances**" (or words of similar import) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901, et seq.), under the applicable laws of the State of California or under any other law relating to human health or the environment. The laws described in the preceding sentence, all regulations promulgated thereunder, and all orders, judgments, decrees, licenses, permits and other governmental restrictions, covenants and

requirements relating to such laws, human health, the environment or any hazardous materials are collectively referred to herein as “**Environmental Laws.**” Buyer shall rely solely upon its own investigation, testing and inspection of the Property and (at Buyer’s option) upon the aid and advice of Buyer’s independent hazardous materials and Environmental Laws expert(s) in purchasing the Property, and shall take title to the Property without any warranty, express or implied, by Seller or any employee or agent of Seller as to hazardous materials and Environmental Laws.

Buyer expressly acknowledges that it has received a copy of the Recorded Covenant. Buyer acknowledges that the Recorded Covenant (i) restricts the use of the Parcel 7 portion of the Land to “commercial or industrial use” unless a different use is approved by the DTSC, and (ii) runs with the land described therein, which includes the Land, and passes with the land described therein and applies to and binds the respective successors in interest thereof. In accordance with the terms of the Recorded Covenant, upon the Closing and pursuant to Section 4.2 of the Recorded Covenant, Buyer and Seller must notify the DTSC of the sale of the Property to Buyer. Further, in accordance with Section 4.4 of the Recorded Covenant, the parties acknowledge the following:

- The Parcel 7 portion of “The Land described herein is subject to a Covenant and Agreement to Restrict Use of Subject Property. The Land or the Subject Property, and the owner, lessee, or other occupant of the Land or Subject Property may be subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists.”
- Hazardous materials, including without limitation hazardous materials and substances as defined in the Environmental Laws, including without limitation California Health and Safety Code Section 25316, have previously been released at the Parcel 7 portion of the Land and have come to be located on and beneath the Land. The Parcel 7 portion of the Land has been listed by the State of California as a portion of a hazardous substance release site (a “State Superfund Site”), and has been the subject of an environmental investigation, assessment and remediation. Seller represents to Buyer that Seller’s actual material knowledge relating to the release of hazardous substances, as defined in California Health and Safety Code Section 25316, is limited to the information set forth in the due diligence materials supplied to or made available to Buyer in accordance with the terms of this Agreement, as set forth in Exhibit D. Buyer acknowledges and agrees that the disclosure in this Section 3.4(d) satisfies any and all duties that Seller may have under California Health and Safety Code Section 25359.7, or any similar federal, state, local or other law regarding disclosure, investigation, remediation, notification regarding and management or control of hazardous substances and hazardous materials. To the extent permitted by law, Buyer hereby waives all rights against Seller under Health and Safety Code Section 25359.7 or any similar federal, state, local or other law (whether statute, regulation or common law) regarding disclosure, investigation, remediation, notification regarding and management or control of hazardous substances and hazardous materials under the Environmental Laws, excluding therefrom any claims resulting from or arising out of the intentional misrepresentation or fraud of Seller. Buyer acknowledges that from and after the Closing Date, Buyer shall bear all of the costs attributable to the owner of the Property of any additional clean-up or remediation required with respect to the Property arising or accruing

from and after the Closing Date, and Buyer shall defend, indemnify and hold harmless Seller and its members from any and all of such clean-up and/or remediation costs, together with all costs arising from any claim, including without limitation a claim by any third party, arising from or related, directly or indirectly, to any preexisting hazardous materials released at and/or located on or beneath the Parcel 7 portion of the Land and any alleged violation of Environmental Laws related thereto.

ARTICLE 4 **CLOSING AND ESCROW**

4.1 DEPOSIT WITH ESCROW HOLDER AND ESCROW INSTRUCTIONS.

Upon execution of this Agreement, the parties shall deposit an executed counterpart hereof with Escrow Holder and this Agreement, together with the “**General Provisions**” of Escrow Holder’s standard preprinted form of escrow instructions, shall serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby. Seller and Buyer agree to execute such additional and supplementary escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, including such General Provisions, the terms of this Agreement shall control unless such supplemental escrow instructions specifically are stated to control.

4.2 CLOSING. The closing on the Credit Property and the closing on the Cash Property hereunder (the “**Closings**”) and the execution and exchange of documents and the delivery of all items to be made at the Closings under the terms of this Agreement shall be made at the offices of Escrow Holder; provided, however, that all such actions shall be effective as of the Closing Dates, unless expressly indicated otherwise. In the case of the Credit Property, the Close of Escrow shall be the date the Grant Deed to the Credit Property is recorded in the office of the County Recorder. In the case of the Cash Property, the Close of Escrow shall be the date the Grant Deed to the Cash Property is recorded in the office of the County Recorder.

4.3 CONDITIONS PRECEDENT. Seller shall have no obligation to sell the Property to Buyer and Buyer shall have no obligation to purchase the Property from Seller unless and until the other party shall have complied with each and every condition of this Agreement applicable to it. Failure by either party to proceed to the Closings prior to the Credit Property Closing Date (for the Credit Property) or the Cash Property Closing Date (for the Cash Property), as a result of the failure by the other party to have satisfied or complied with a condition applicable to it shall not be deemed to be a breach of this Agreement.

(a) **Conditions To Buyer’s Obligation To Close.** Buyer’s obligation to close Escrow on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

(1) Title Company has committed to issue the Title Policy in the form prescribed in Section 3.1(a).

(2) Seller's representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(3) Seller shall not be in material default of any term or condition of this Agreement.

(4) Seller and Buyer shall have entered into the Implementing Agreement, and the Implementing Agreement shall have been recorded in the office of the County Recorder, and shall remain effective.

(b) Conditions To Seller's Obligation To Close. Seller's obligation to close Escrow on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent:

(1) Buyer shall not be in material default of any term or condition of this Agreement.

(2) Buyer's representations and warranties set forth in this Agreement shall be true and correct in all material respects as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(3) Seller and Buyer shall have entered into the Implementing Agreement, and the Implementing Agreement shall have been recorded in the office of the County Recorder and shall remain effective.

If any of the foregoing conditions precedent are not satisfied on or before the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), or expressly waived in writing by the party for whose benefit the condition exists, then subject to the other terms and provisions of this Agreement, such party shall have the right to terminate this Agreement in accordance with Section 7.4.

4.4 CREDIT PROPERTY CLOSING

(a) **DELIVERY BY SELLER.** On or prior to the Credit Property Closing Date, Seller shall deposit with Escrow Holder the following:

(1) A Grant Deed in the form of Exhibit E-1 attached hereto (the "**Credit Closing Deed**"), duly executed by Seller and acknowledged;

(2) A Transferor's Certificate duly executed by Seller in the form of Exhibit F attached hereto (and/or any related form required by Escrow Holder, including without limitation California Form 597W); and

(3) All other documents and instruments called for hereunder which have not previously been delivered.

(b) **DELIVERY BY BUYER.** On or prior to the Credit Property Closing Date, Buyer shall deposit with Escrow Holder the following:

(1) The Purchase Price for the Credit Property in accordance with Sections 2.1 and 2.2 above; and

(3) All other documents and instruments called for hereunder which have not previously been delivered.

4.4 CASH PROPERTY CLOSING

(a) **DELIVERY BY SELLER.** On or prior to the Cash Property Closing Date, Seller shall deposit with Escrow Holder the following:

(1) A Grant Deed in the form of Exhibit E-2 attached hereto (the “**Cash Closing Deed**”), duly executed by Seller and acknowledged;

(2) A Transferor’s Certificate duly executed by Seller in the form of Exhibit F attached hereto (and/or any related form required by Escrow Holder, including without limitation California Form 597W); and

(3) The Reports and all documents concerning the Property prepared by the Approved Consultants.

(4) All other documents and instruments called for hereunder which have not previously been delivered.

(b) **DELIVERY BY BUYER.** On or prior to the Cash Property Closing Date, Buyer shall deposit with Escrow Holder the following:

(1) The Purchase Price for the Cash Property in accordance with Sections 2.1 and 2.2 above; and

(2) All other documents and instruments called for hereunder which have not previously been delivered.

4.6 OTHER DELIVERIES. Seller and Buyer shall each deposit with Escrow Holder and Title Company such other instruments as are reasonably requested by such persons or entities or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof and to obtain the issuance of the Title Policy.

4.7 PRORATIONS AND APPORTIONMENTS. Subject to the following, all revenues (if any) and expenses of the Property shall be prorated and apportioned by Escrow Holder as of 12:01 a.m. of the Cash Property Closing Date, so that Seller shall bear all expenses and have the benefit of all income with respect to the Property through and including the period preceding that time, subject to the following:

(a) Any revenue or expense amount which cannot be ascertained with certainty as of the Cash Property Closing Date shall be prorated on the basis of the parties' reasonable estimates of such amount and shall be the subject of a final proration as soon thereafter as the precise amounts can be ascertained, but in no event later than thirty (30) days after the Cash Property Closing Date. A pre-Closing statement setting forth such agreed prorations shall be prepared by Escrow Holder and approved and executed by Seller and Buyer at the Cash Property Closing. Escrow Holder shall not make any proration except as set forth on such approved and executed pre-Closing statement.

(b) Income and expenses to be prorated shall include without limitation the following:

(i) Real Property Taxes, Bonds and Assessments. All nondelinquent general and special real property taxes, bonds and assessments with respect to the Real Property shall be prorated as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) based upon the latest available tax bills or tax information. Any bonds and assessments with respect to the Real Property, if any, shall not be paid in full by Seller, but the current installment of such bonds and assessments shall be prorated between Buyer and Seller as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), as provided above. All special taxes, supplemental taxes or assessments (including any escaped assessments) which are attributable for the period prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall be paid by the Seller. After the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) the Buyer shall be responsible for paying or cancelling, as applicable, the special taxes, property taxes, assessment and/or Mello Roos Bonds. If Seller has prepaid any taxes, assessments, or Mello-Roos bonds that are cancelled pursuant to California Revenue and Taxation Code Section 5086, Seller may seek any refunds to which it is entitled from applicable taxing agencies. Buyer will reasonably cooperate with Seller in Seller's efforts, if any, to seek such refunds. This Section 4.7 shall survive the Closing.

(ii) Supplemental Real Property Taxes. With respect to any supplemental taxes assessed against the Real Property pursuant to California Revenue and Taxation Code Sections 75, et seq., Seller shall be obligated to pay all such supplemental taxes assessed against the Real Property, if any, for any period prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), and Buyer shall be obligated to pay all such supplemental taxes assessed against the Real Property, if any, for any period from and after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(iii) Utilities. All payments with respect to any utilities servicing the Property shall be prorated as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property). Seller and Buyer shall attempt to obtain billings and meter readings as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) to aid in such prorations. Seller shall use Seller's commercially reasonable efforts to switch all utilities to Buyer's name as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash

Property) and to receive a direct bill from the providers of utilities outside of Escrow. In addition, all utility deposits posted by Seller prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall be the sole property of Seller and shall be retained by Seller, and Buyer shall be solely responsible to post any new utility deposits that are required from and after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

(c) Seller shall pay the portion of the premium for the Title Policy related to issuance of a Standard Coverage Owner's Policy of Title Insurance (without endorsements). Seller shall pay the recording cost and any documentary or other transfer taxes applicable to the Deed and the reconveyance of any deed of trust encumbering the Real Property. Buyer shall pay all premiums, costs and charges in connection with the Title Policy not required to be paid by Seller, including any additional premium for ALTA Extended Coverage. Buyer shall pay all recording costs not applicable to the Deed or any reconveyance of any deed of trust encumbering the Real Property. Buyer shall pay all costs associated with obtaining a new or updated survey of the Land.

(d) Buyer acknowledges that Seller shall terminate all of its insurance coverage with respect to the ownership and operation of the Property as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and agrees that Buyer shall be responsible for obtaining Buyer's own insurance as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and thereafter.

(e) Seller and Buyer shall share equally all escrow fees, costs and charges. All other costs and expenses not specifically provided for hereunder shall be apportioned or allocated between Buyer and Seller in the manner customary in Contra Costa County, California.

(f) Seller and Buyer shall each pay its own attorneys' fees in connection with the drafting, negotiation and execution of this Agreement and the exhibits hereto, and the Closing of the transaction contemplated hereby.

4.8 PAYMENT OF PRORATION ADJUSTMENTS. Either party owing the other party any sum based on adjustments made to prorations after the Cash Property Closing Date shall promptly pay the same to the other party within ten (10) days after delivery of a statement therefor. In the event such payment is not timely made, such sum shall accrue interest at the rate of ten percent (10%) per annum (or, if less, the maximum rate then permitted by law to be contracted for by the parties) from the date of demand until the date of payment.

4.9 CLOSE OF ESCROW.

(a) **Credit Property:** Provided that Escrow Holder has received the documents and funds related to the Credit Property described in Sections 2.2, 4.4, 4.5 and 4.6 above for the close of escrow on the Credit Property and has not received notice from any party either that an agreement of another party hereunder has not been performed, that a condition set forth herein has not been satisfied or waived or that this Agreement has terminated (by its terms or by an election duly made hereunder), and further provided that the issuance of, or an unconditional commitment

to issue, the Title Policy has been obtained, Escrow Holder is authorized and instructed on the Credit Property Closing Date to:

- (1) Record the Deed for the Credit Property with the Contra Costa County Recorder;
- (2) Deliver the DTSC Notice Letter to the DTSC; and
- (3) Deliver the Title Policy and all items deposited by Seller in Escrow with respect to the Credit Property, other than the Reports, to Buyer.

(a) **Cash Property:** Provided that Escrow Holder has received the documents and funds related to the Cash Property described in Sections 2.2, 4.4, 4.5 and 4.6 above for the close of escrow on the Cash Property and has not received notice from any party either that an agreement of another party hereunder has not been performed, that a condition set forth herein has not been satisfied or waived or that this Agreement has terminated (by its terms or by an election duly made hereunder), and further provided that the issuance of, or an unconditional commitment to issue, the Title Policy has been obtained, Escrow Holder is authorized and instructed on the Cash Property Closing Date to:

- (1) Record the Deed for the Cash Property with the Contra Costa County Recorder;
- (2) Deliver the DTSC Notice Letter to the DTSC; and
- (3) Title Policy and all items deposited by Seller in Escrow with respect to the Cash Property to Buyer.

4.10 DISBURSEMENT OF FUNDS. On the Credit Property Closing Date, Escrow Holder shall disburse to Seller fee credit voucher described in Section 2.2(b). On the Cash Property Closing Date, Escrow Holder shall disburse to Seller by wire transfer pursuant to wire instructions from Seller the Purchase Price, as adjusted to reflect Seller's share of prorations and costs of escrow hereunder.

4.11 NOTIFICATION; CLOSING STATEMENTS. In the event that Escrow Holder cannot comply with the instructions herein or to be provided, Escrow Holder is not authorized to cause the recording of the Deed, but instead shall notify Seller of such fact without delay. As soon as reasonably practicable after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Escrow Holder shall deliver to each party a true, correct and complete copy of such party's Closing Statement, in the form customarily prepared by Escrow Holder, and all other items in Escrow Holder's possession to which such party is entitled hereunder.

ARTICLE 5

REPRESENTATIONS, WARRANTIES AND ADDITIONAL COVENANTS

5.1 BUYER'S REPRESENTATIONS. In order to induce Seller to enter into this Agreement and the transaction contemplated hereunder, and in addition to Buyer's

representations, covenants and acknowledgements set forth elsewhere in this Agreement, including without limitation Section 3.4 above, Buyer hereby makes the following representations and warranties as of the date hereof and again as of the Closing Date, which representations and warranties shall survive after the Closing Date pursuant to Section 9.3 below:

(a) Buyer is duly organized and validly existing under the laws of the State of California and has full power and authority to enter into and comply with the terms of this Agreement.

(b) This Agreement and all documents executed by Buyer which are to be delivered to Seller hereunder are and will be duly authorized, executed and delivered by Buyer, are and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will be legal, valid and binding obligations of Buyer and do not and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will not violate any provisions of any governing statute, ordinance or regulation that affects Buyer, or any agreement or judicial order to which Buyer is a party or to which Buyer is subject.

(c) No authorization, consent, order, approval or license from, or filing with or other act by, any governmental authority or person or entity is or will be necessary to permit the valid execution and delivery by Buyer of this Agreement or the performance by Buyer of the obligations to be performed by Buyer under this Agreement.

5.2 SELLER'S REPRESENTATIONS. In order to induce Buyer to enter into this Agreement and the transaction contemplated hereunder, as qualified by the provisions of Section 3.4(d) above, Seller hereby makes the following representations and warranties as of the date hereof and again as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), which representations and warranties shall survive for ninety (90) days after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) pursuant to Section 9.3 below:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is registered and qualified to do business in the State of California, and has full power and authority to enter into and comply with the terms of this Agreement.

(b) This Agreement and all documents executed by Seller which are to be delivered to Buyer hereunder are and will be duly authorized, executed and delivered by Seller, are and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will be legal, valid and binding obligations of Seller and do not and as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) will not violate any provisions of any agreement or judicial order to which Seller is a party or to which it or the Property is subject. The person(s) who have executed this Agreement (and other instruments required hereunder) on behalf of Seller are duly authorized to execute the same on Seller's behalf and no other persons are required to execute this Agreement or such other instruments.

(c) To Seller's actual knowledge, no authorization, consent, order, approval or license from, filing with or other act by any governmental authority or person or entity is or will be necessary to permit the valid execution and delivery by Seller of this Agreement or the performance by Seller of the obligations to be performed by Seller under this Agreement.

(d) Neither Seller nor any member of Seller has commenced (within the meaning of any bankruptcy law) a voluntary case, consented to the entry of an order for relief against it in an involuntary case, or consented to the appointment of a custodian of it or for all or any substantial part of its property, nor has a court of competent jurisdiction entered an order or decree under any bankruptcy law that is for relief against Seller or its members in any involuntary case or appoints a custodian of Seller or its members or for all or any substantial part of Seller's property.

(e) To Seller's actual knowledge, Seller has received no written notice of and has no actual knowledge of any continuing, pending or threatened actions, suits, proceedings or governmental or administrative investigations against or affecting the Property, except that City and/or the Redevelopment Agency of the City of Hercules has previously indicated it/they may pursue condemnation proceedings to obtain all or some portion of the Property.

(f) To Seller's actual knowledge, except as specified in Section 5.2(e), Seller has received no other written notices and has no actual knowledge of any other pending or threatened proceedings for condemnation or other taking by any public authority affecting the Property or any portion thereof.

(g) Except as specified on Exhibit G, Seller has no actual knowledge of any existing oral or written leases, subleases, occupancies or tenancies, with Seller as lessor or landlord, of all or any portion of the Real Property.

(h) Except as specified on Exhibit G, Seller has no actual knowledge that there are any Service Contracts in effect as of the date of this Agreement.

(i) To Seller's actual knowledge, Seller has made available to Buyer, for Buyer's review pursuant to Section 3.2 above, all Reports within its possession or control concerning the Property.

As used in this Agreement and any Exhibit hereto, "Seller's knowledge", "Seller's actual knowledge", the "actual knowledge of Seller" or similar phrase means the actual present knowledge of James R. Anderson of AndersonPacific, LLC, the managing member of APL-Hercules, LLC, which is the manager of Seller. "Seller's knowledge", "Seller's actual knowledge", the "actual knowledge of Seller" or similar phrase expressly excludes any past, constructive, and/or imputed knowledge of James R. Anderson, and further excludes any knowledge of any other employee or agent of Seller or Seller's members or the members of such members. In connection with the foregoing, Seller has no duty of inquiry or to review files and records.

5.3 ADDITIONAL COVENANTS. The parties hereby further covenant and agree as follows:

(a) Indemnities. Buyer shall, in addition to any other indemnities set forth elsewhere in this Agreement, defend, indemnify and hold harmless Seller and its members and their respective members, officers, directors, shareholders, partners, employees, insurers, lenders, attorneys, agents and representatives, and predecessors in interest in the ownership of the Property (including but not limited to members of the Pankey family, Oso Trabuco, LLC and Hercules Properties, Inc.) from all loss, liability, damages, costs and expenses (including without limitation attorneys fees) (collectively, "Loss") arising from or related to any acts or omissions of Buyer, by and through its members, officers, directors, shareholders, partners, employees, insurers, attorneys, agents, and representatives, as owner of the Property accruing or occurring from and after the Closing Date. Seller shall defend, indemnify and hold harmless Buyer and its officers, directors, employees, insurers, agents and representatives from all Loss arising from or related to any acts or omissions of Seller, by and through its members, officers, directors, shareholders, partners, employees, insurers, attorneys, agents, and representatives, as owner of the Property accruing or occurring prior to the Closing Date. Notwithstanding the foregoing, Buyer expressly acknowledges that Seller shall not indemnify Buyer pursuant to this Section nor shall Seller be responsible in any way for any environmental clean-up, testing, investigation, management or controls, or clean-up or remediation costs that Buyer may incur due to the condition of the Property, or for any costs incurred by Buyer in order to create pedestrian or vehicular access to the Property or to obtain any necessary approval from any government agency with jurisdiction over the Property, including without limitation the DTSC, or for any costs incurred in order to use the Property for as parkland, or for any other costs of a similar nature. Notwithstanding the foregoing, or anything herein to the contrary herein, in no event shall Buyer have any indemnity obligation or liability hereunder for any Loss occurring on or related to the Overall Property that is not included within the Property acquired by Buyer, unless such Loss is directly caused by a physical act to the Property by Buyer, its employees, or its agents.

With respect to the indemnity obligations of Buyer and Seller set forth above and elsewhere in this Agreement, promptly after the receipt by any indemnified party (an "**Indemnitee**"), of notice of the commencement of any action against such Indemnitee by a third party, such Indemnitee shall, if a claim with respect thereto is or may be made against Buyer or Seller, as the case may be (an "**Indemnifying Party**"), give such Indemnifying Party prompt written notice thereof, specifying in reasonable detail the Loss claimed and the amount of liability asserted against the Indemnifying Party as a result of the action. The failure to give such notice shall not relieve any Indemnifying Party from any obligation hereunder except where, and then solely to the extent that, such failure actually prejudices the rights of such Indemnifying Party. Such Indemnifying Party shall have the absolute right after the receipt of notice of the action to defend against, negotiate, settle or otherwise deal with such action, at such Indemnifying Party's expense and with counsel of its choice, provided that the Indemnifying Party so notifies the Indemnitee that it will defend such action within thirty (30) days after receipt of such notice and commences the defense of such action (or such lesser time period if, in the reasonable judgment of the Indemnifying Party, the nature and scope of the action so requires it); provided, however, that the Indemnitee may participate in any such proceeding with counsel of its choice and at its sole cost and expense and the Indemnifying Party shall not settle any such action unless the Indemnitee is fully released without any admission of liability and without the requirement that the Indemnified Party take any action or refrain from taking any action. If the Indemnified Party does not elect to assume the defense of such action in accordance with the terms of this Section 5.3(a), the Indemnitee shall have the right to defend such action with counsel of its choice and the

Indemnifying Party will reimburse the Indemnitee for the costs thereof, including reasonable attorneys' fees and expenses incurred. The Indemnifying Party will not be liable for any judgment or settlement with respect to such action effected without its prior written consent, which consent will not be unreasonably withheld. The parties agree to cooperate fully with each other in connection with the defense, negotiation or settlement of any such indemnity claim. Notwithstanding the foregoing, the Indemnitee shall have the right to employ separate counsel at the Indemnifying Party's expense and to control its own defense of such asserted Loss if an actual and material conflict exists between the interests of the Indemnifying Party and the interests of such Indemnitee with respect to the action that would require such separate representation. For purposes hereof, "action" shall mean any claim, action, cause of action or suit (in contract, tort or otherwise), arbitration, proceeding or investigation by any person or entity, including by or before any governmental entity.

Any claim by an Indemnitee for indemnification other than indemnification against a third party action as set forth above in this Section 5.3(a) (a "**Direct Claim**") will be asserted by giving the Indemnifying Party written notice thereof, and the Indemnifying Party will have a period of thirty (30) calendar days (the "**Response Period**") within which to respond in writing to such Direct Claim. If the Indemnifying Party does not respond (or does so respond but does not agree to pay such Direct Claim in full) within the Response Period, the Indemnifying Party will be deemed to have rejected such claim, and the Indemnifying Party or the Indemnitee may refer such dispute to arbitration by notice to the other party within ten (10) days after the expiration of the Response Period (the "**Arbitration Referral Period**"). If the matter is referred to arbitration, each party shall select an arbitrator and the two so selected shall agree on a third arbitrator from a panel of arbitrators selected by the American Arbitration Association. The arbitration shall be pursuant to the Rules of the American Arbitration Association and shall be conducted in Contra Costa, California. The parties shall be entitled to discovery in accordance with Section 1283.05 of the California Code of Civil Procedure. Judgment upon any resulting arbitration award may be entered in any court of competent jurisdiction. As part of such award, the arbitrators shall establish their fees and expenses in connection therewith and allocate such fees and expenses between the parties, who shall promptly pay their allocable shares. Any award shall be a conclusive determination of the matter. If neither party properly refers the matter to arbitration prior to the expiration of the Arbitration Referral Period, then the Indemnitee will be free to pursue such remedies as may be available to the Indemnitee at law or in equity.

(b) Covenant Regarding Access Easement in Favor of Seller. Buyer and Seller acknowledge and agree that the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and in connection with the severance of Seller's present ownership of the Land and certain adjacent land, Buyer shall grant to Seller or Seller's designee a non-exclusive, perpetual easement (the "**Access Easement**") onto, over and/or across a portion of the Land, such portion to be determined by Buyer and Seller, in order to allow for ingress and egress by Seller to the waterfront from the adjacent land owned and being developed by Seller. Such Access Easement shall be recorded in the Official Records of Contra Costa County, California, with respect to both the Land and Seller's adjacent land, concurrently with such severance of such joint ownership. Seller and Buyer hereby covenant and agree that each will cooperate reasonably with respect to the grant of such Access Easement, including without limitation the exact location of the easement area on the Land and the form and content of the easement document. Buyer shall also grant in its reasonable discretion such other temporary or

permanent easements, licenses or similar rights on, over, through, under and across any needed portions of the Land for such access to the waterfront and for such other purposes as are reasonably necessary for the development, operation or maintenance of the adjacent land owned by Seller.

ARTICLE 6

CASUALTY OR CONDEMNATION

6.1 DAMAGE OR DESTRUCTION. Any improvements that may be now existing on the Property are irrelevant to this transaction. Therefore, all risk of loss with regard to such improvements shall be with the Buyer if this transaction closes, and shall remain with the Seller if this transaction does not close. In the event any such improvements are damaged or destroyed prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), the Buyer shall not be entitled to (i) terminate this Agreement, (ii) a reduction in the Purchase Price, or (iii) an assignment of any insurance proceeds payable to Seller.

6.2 CONDEMNATION.

(a) In the event a governmental entity other than the Buyer or the Redevelopment Agency of the City of Hercules commences eminent domain proceedings to take a material portion of the Property after the date hereof and prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), then either Buyer or Seller shall have the option to terminate this Agreement by written notice to the other and Escrow Holder within five (5) business days after Buyer and Seller receive notice of such commencement.

(b) In the event a governmental entity commences eminent domain proceedings to take a material portion of the Property after the date hereof and prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and this Agreement is not terminated pursuant to Section 6.2(a) above as a result thereof, then the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) shall occur as scheduled notwithstanding such proceeding.

6.3 NO DUTY TO RESTORE. Buyer acknowledges and agrees that in no event shall Seller have any obligation to repair or restore the Property or any portion thereof or any other liability hereunder as a result of any casualty or condemnation.

ARTICLE 7

DEFAULT AND TERMINATION

7.1 DEFAULT BY SELLER. In the event Seller fails to perform any of its obligations or is otherwise in default hereunder, Buyer shall have the right to give notice to Seller and Escrow Holder specifically setting forth the nature of such failure and stating that Seller shall have a period of ten (10) business days to cure such failure. If Seller has not cured such failure within such period (or, if such failure is not capable of being cured within ten (10) business days, Seller either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer shall have the right to exercise any of the following mutually exclusive remedies:

(a) Waive such failure and proceed to the Closing on the Cash Property or the Credit Property, as the case may be, with no reduction in the Purchase Price.

(b) Terminate this Agreement by notice to Seller and Escrow Holder to that effect, in which event (i) Escrow Holder shall automatically return all sums (including the Deposit, but excluding deductions from the Deposit authorized by Section 2.2) deposited by Buyer (provided that Seller shall retain the Independent Consideration), and (ii) this Agreement shall terminate and the parties shall have no further rights or obligations hereunder except for those that expressly survive termination.

(c) File an action in any court of competent jurisdiction for specific performance only, but subject to Section 9.11 below and provided that in no event shall Seller be liable for damages or monetary relief of any kind (including but not limited to general, special, punitive, or consequential damages) as the result of a default by Seller hereunder (except for attorneys fees pursuant to Section 9.6 herein).

(d) Except for matters included within Seller's representations and warranties expressly set forth herein, effective as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Buyer and anyone claiming by, through or under Buyer, hereby waives its right to recover from and fully and irrevocably releases Seller, its members, employees, officers, directors, representatives, agents, servants, attorneys, lenders, insurers, affiliates, parent and subsidiary entities, predecessors in interest, successors and assigns ("**Released Parties**") from any and all claims that Buyer may now have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to any matter affecting the Property, or any portion thereof. Except for matters included within Seller's representations and warranties expressly set forth herein, and the fraud or intentional misrepresentation(s) of Seller, effective as of the Closing, this release includes claims of which Buyer is presently unaware or which Buyer does not presently suspect to exist which, if known by Buyer, would materially affect Buyer's release to Seller. To the extent permitted by law, Buyer hereby agrees, represents and warrants, which representation and warranty shall survive the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), that Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown and unsuspected, and Buyer further agrees, represents and warrants, which representation and warranty shall survive the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which might in any way be included as a material portion of the consideration given to Seller by Buyer in exchange for Seller's performance hereunder. Buyer hereby expressly waives its rights under Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the

release, which if known by him must have materially affected his settlement with the debtor.

Seller and Buyer have each initialed this Section 7.1(d) to indicate its awareness and acceptance of each and every provision hereof.


Buyer's Initials


Seller's Initials

7.2 DEFAULT BY BUYER. In the event Buyer fails to perform any of Buyer's obligations or is otherwise in default hereunder, Seller shall have the right to give notice to Buyer and Escrow Holder specifically setting forth the nature of such failure and stating that Buyer shall have a period of two (2) business days to cure any failure either to pay money or perform by a date certain and a period of ten (10) business days to cure any other failure. If Buyer has not cured such failure within the applicable period (or, if any such other failure is not capable of being cured within ten (10) business days, Buyer either has not commenced in good faith the curing of such failure within such period or does not diligently thereafter complete such cure prior to the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall have the right to exercise any of the following mutually exclusive remedies:

(a) Waive such failure and proceed to the Credit Property Closing (for the Credit Property) and the Cash Property Closing (for the Credit Property).

(b) Terminate this Agreement by notice to Buyer and Escrow Holder to that effect, in which event (i) the liquidated damages provision in section 2.2 above shall apply, and (ii) this Agreement shall terminate and the parties shall have no further rights or obligations hereunder, except for those that expressly survive termination; provided, however, that termination of this Agreement after the close of escrow on the Credit Property will not impact the completion of the sale and conveyance of the Credit Property.

7.3 OUTSIDE CLOSING DATES. In the event either party has complied with the terms and conditions of this Agreement as of the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) and the other party is not in a position to close, and provided that all conditions precedent to Closing on the Cash Property or the Credit Property (as the case may be) in favor of such non-complying party have been satisfied or waived in writing, such non-complying party shall be in material breach of this Agreement. For a period of thirty (30) days after the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), the complying party shall have the same rights it would otherwise have under this Article 7 upon the occurrence of an uncured default on the part of the non-complying party. After that, the complying party shall be conclusively deemed hereunder to have irrevocably elected the remedy of termination under Sections 7.1(b) or 7.2(b), as applicable, and this Agreement shall be deemed to have been terminated.

7.4 EFFECT OF TERMINATION.

(a) Upon the termination of this Agreement for any reason, neither Buyer nor Seller shall have any further liability or obligation hereunder, except pursuant to Sections 3.2(a) and 5.3(a) above, this Article 7 and those provisions which survive such termination pursuant to

Section 9.3 below, and Escrow Holder shall within five (5) business days thereafter return to the party entitled thereto (or, if not specified hereunder to the contrary, to the party who deposited the same) all items previously deposited with Escrow Holder in connection with this escrow.

(b) In the event this Agreement is terminated pursuant to Section 7.1(b), 7.2(b) or 7.3 above, the party in default shall immediately upon demand from Escrow Holder pay all escrow costs and cancellation charges.

(c) In the event Buyer or Seller timely elects to terminate this Agreement in accordance with Sections 3.1(c), 3.3(e) or 6.2(a), Buyer and Seller shall split all escrow costs and cancellation charges equally and shall execute supplemental escrow instructions prepared by Escrow Holder canceling the escrow opened hereunder and unconditionally releasing each other from all past and future obligations and liabilities under this Agreement.

ARTICLE 8 MAINTENANCE OF THE PROPERTY

8.1 MAINTENANCE. Unless this Agreement is earlier terminated in accordance with its terms, from and after the date hereof through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall maintain the Cash Property and the Credit Property in its present condition, reasonable wear and tear excepted.

8.2 CONTRACTS AFFECTING THE PROPERTY. Unless this Agreement is earlier terminated in accordance with its terms, from and after the Effective Date through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), Seller shall not materially amend or modify any existing agreements, and/or enter into any new agreements or voluntary encumbrances, relating to the Property which will not be terminable upon the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property), or which would materially affect Approved Title hereunder, without first obtaining the prior written approval of Buyer, which approval shall not be unreasonably withheld or conditioned and which shall be granted or denied within five (5) days after written request is made therefor. Any such request shall include a copy or description of the proposed amendment or modification or the proposed new agreement or encumbrance. If Buyer fails to object within such five (5) day period, Buyer shall be deemed to have approved any such amendment, modification or new agreement. In the event Buyer disapproves any new agreements, amendments or modifications, such disapproval shall be in writing and shall state with particularity the reasons for the disapproval. Seller agrees to deliver to Buyer copies of any new or amended agreements or encumbrances relating to the Property whether or not Buyer was required to consent thereto.

8.3 PAYMENT OF OBLIGATIONS. Unless this Agreement is earlier terminated in accordance with its terms, from and after the date hereof through the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) Seller shall timely perform and pay when due Seller's material obligations under all agreements relating to the Property to which Seller is a party, and shall timely pay when due all taxes, assessments and utility charges affecting the Property.

8.4 IMPROVEMENTS. Notwithstanding anything herein to the contrary, Seller acknowledges that Buyer has no obligation hereunder to cause the construction of any improvements to the Property, and, except as specified in the Implementing Development Agreement, Buyer has not made, does not make and specifically negates and disclaims any representations, warranties, promises, covenants, agreements or guarantees of any kind or character whatsoever whether express or implied, oral or written, past present or future concerning the improvements, whether the improvements will be constructed, the timing of any construction or installation of the improvements, the condition of the improvements, maintenance of the improvements or any other matters whatsoever relating to the improvements.

ARTICLE 9 **MISCELLANEOUS**

9.1 NOTICES. Any notice, approval or other communication required or permitted to be given under this Agreement shall be in writing signed by the party giving such notice, and shall be deemed to have been given: (a) upon delivery by a recognized private courier company, (b) one (1) day after being deposited with Federal Express or another reliable overnight courier service, (c) upon receipt if transmitted by facsimile or e-mail, provided that an additional notice is sent pursuant to clause (a), (b) or (d) herein, or (d) three (3) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

Seller: Hercules Bayfront, LLC
c/o APL-Hercules, LLC
c/o AndersonPacific, LLC
6701 Center Drive West, Suite 710
Los Angeles, California 90045
Attention: James R. Anderson
Fax No.: (310) 689-2305
E-mail: jra@andersonpacificllc.com

With a copy to: Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1931
Attention: Dan Slater, Esq.
Fax No.: (714) 546-9035
E-mail: dslater@rutan.com

If to Buyer: City of Hercules
111 Civic Drive
Hercules, California 94547
Attention: Steve Duran, City Manager
Fax No.: (510) 799-2521
E-mail: Sduran@ci.hercules.ca.us

With a copy to: City of Hercules
111 Civic Drive
Hercules, California 94547
Attention: City Attorney

Fax No.: (510) 799-2521

If to Escrow Holder: First American Title Insurance Company
6683 Owens Drive
Pleasanton, California 94588
Attention: Diane Burton, Escrow Officer
Escrow No. _____
Fax No.: (866) 648-7806
E-mail: dburton@firstam.com

If to Title Company: First American Title Insurance Company
6683 Owens Drive
Pleasanton, California 94588
Attention: Sue Pratt, Title Officer
Order No. _____
Fax No.: (866) 648-7806
E-mail: spratt@firstam.com

or such other address as either party may from time to time specify in writing to the other in accordance with this Section 9.1.

9.2 BROKERS AND FINDERS.

(a) Buyer hereby represents and warrants that Buyer has not agreed to pay any broker's fee, finder's fee, commission or other similar compensation in connection herewith. Buyer has not acted through any broker or finder who could claim any commission or compensation. Buyer agrees to indemnify and hold Seller harmless from and against all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of any claim for any such fee or commission based upon agreement(s) by Buyer to pay a fee or commission.

(b) Seller hereby represents and warrants that Seller has not agreed to pay any broker's fee, finder's fee, commission or other similar compensation in connection herewith and Seller has not acted through any broker or finder who could claim any commission or compensation. Seller agrees to indemnify and hold Buyer harmless from and against all damages, liabilities, costs, expenses and losses (including, without limitation, reasonable attorney's fees and costs) which Buyer may sustain or incur by reason of any claim for any such fee or commission based upon agreement(s) by Seller to pay a fee or commission.

9.3 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. All representations, covenants and warranties of the parties contained herein or in any document, certificate or statement delivered pursuant hereto are intended to and shall remain true and correct at all times during the term of this Agreement and shall be deemed to be material. Each representation and warranty contained herein shall survive the Cash Property Closing Date and any other termination of this Agreement for a period of ninety (90) days only; provided, however, that Buyer's representations set forth in Section 5.1, above, shall survive without such limitation. All indemnities contained herein shall survive the Cash Property Closing Date, the Credit Property Closing Date and any other termination of this Agreement without such limitation, and Buyer's

obligations under Section 9.11 below shall survive any termination of this Agreement other than as a result of the Cash Property Closing Date without such limitation

9.4 FURTHER ACTS. Each party shall, at the request of the other, execute, acknowledge (if appropriate) and deliver whatever additional documents, and do such other acts, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

9.5 MERGER OF PRIOR AGREEMENTS; AMENDMENTS. This Agreement and the Exhibits hereto constitute the full and complete agreement and understanding, and supersede all prior and contemporaneous agreements and understandings, between the parties hereto relating to the subject matter hereof except the Implementing Development Agreement. Without limiting the foregoing, the parties acknowledge and agree that all prior offers, counteroffers, side letters, letters of intent and correspondence regarding the Property among the parties or their agents are null and void and of no further force or effect. This Agreement may be amended or modified only by a written instrument executed by the party asserted to be bound thereby.

9.6 ATTORNEYS' FEES. In the event either Buyer or Seller brings any suit or other proceeding with respect to the subject matter, or to enforce any provision, of this Agreement, the prevailing party (as determined by the court, agency or other authority which adjudicates such suit or proceeding) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually incurred (including, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings, in establishing the right to indemnification or in any action or participation in, or in connection with, any state or federal bankruptcy or debtor relief case or proceeding).

9.7 VALIDITY. In the event of any finding of invalidity, the invalid portion of this Agreement shall be renegotiated so as to give effect to the original intent of the parties to the maximum extent permissible under law. Other portions of this Agreement shall remain unaffected, except to the extent that modification is necessary for consistency with renegotiated terms.

9.8 NO WAIVER. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any waiver constitute a continuing waiver. Except as otherwise provided in this Agreement, no waiver shall be binding unless executed by the party making the waiver.

9.9 CONFIDENTIALITY. The parties agree to use their best efforts, within the requirements of applicable law including without limitation the Public Records Act and the Ralph M. Brown Act, to structure their due diligence analyses in such a manner as to establish and preserve the confidentiality of all information, studies and reports relating to the Property obtained by Buyer, either by the observations and examinations of Buyer's agents and representatives or as delivered, disclosed or made available for inspection to Buyer by Seller, shall remain confidential. Buyer shall include provisions in any and all consultant and sub-consultant contracts to ensure that data and results of analyses are maintained in a confidential manner and disclosed only to Buyer and Seller. If the transaction contemplated herein fails to close for any reason, Buyer shall deliver to Seller in accordance with Section 3.3(b) above, at no cost to Seller, all such information, reports

and studies and make no further distributions or disclosures thereof. Buyer and Seller further agree that, to the extent reasonably practical, prior to the Cash Property Closing Date they shall keep the contents of this Agreement confidential and that no publicity or press release to the general public with respect to this transaction shall be made by either party or its agents without the prior written consent of the other party hereto.

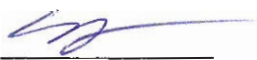
9.10 POSSESSION. Possession of the Property shall be delivered to Buyer on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property).

9.11 NO PERSONAL LIABILITY OF MEMBERS/INDIVIDUALS. The liability of Seller hereunder shall be limited solely to its interest in the Property. No member of Seller nor any officer, director, employee, broker, agent, member, lender, insurer or attorney of Seller or of Seller's members shall be personally liable with respect to any obligation or liability of Seller under this Agreement.

9.12 Liquidated Damages. If Buyer fails or refuses to complete the purchase of the Property on the Credit Property Closing Date (for the Credit Property) and the Cash Property Closing Date (for the Cash Property) account of a material default or breach hereunder by Buyer, where such default or breach is not cured by Buyer within ten (10) business days of Buyer's receipt from Seller of written notice of such default or breach, the Deposit remaining in Escrow at the time of the default shall constitute liquidated damages as follows:

LIQUIDATED DAMAGES. BUYER AND SELLER EACH AGREE THAT IN THE EVENT OF A DEFAULT OF BUYER UNDER THIS AGREEMENT CAUSED BY BUYER'S FAILURE TO PURCHASE THE PROPERTY, WHEN REQUIRED TO DO SO PURSUANT TO THE TERMS OF THIS AGREEMENT, THE DAMAGES TO SELLER WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE TO ASCERTAIN, AND THEREFORE, IN THE EVENT OF BUYER'S FAILURE TO PURCHASE THE PROPERTY ON ACCOUNT OF A MATERIAL DEFAULT OR BREACH HEREUNDER BY BUYER, WHICH DEFAULT OR BREACH IS NOT CURED WITHIN TEN (10) BUSINESS DAYS AFTER WRITTEN NOTICE IS GIVEN BY SELLER TO BUYER, THE DEPOSIT THEN IN ESCROW SHALL SERVE AS LIQUIDATED DAMAGES FOR SUCH DEFAULT BY BUYER, AS A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER, INCLUDING THE INCREMENTAL COSTS OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE, AND OTHER COSTS INCURRED IN CONNECTION HERewith. DELIVERY TO AND RETENTION OF THE DEPOSIT BY SELLER SHALL BE SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT THAT BUYER DEFAULTS UNDER THIS AGREEMENT BY NOT PURCHASING THE PROPERTY, AND SELLER WAIVES ANY AND ALL RIGHT TO SEEK OTHER RIGHTS OR REMEDIES AGAINST BUYER, INCLUDING WITHOUT LIMITATION, SPECIFIC PERFORMANCE. THE

PAYMENT AND RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677. SELLER HEREBY WAIVES THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 3389. UPON BUYER'S FAILURE TO PURCHASE THE PROPERTY ON ACCOUNT OF A MATERIAL DEFAULT OR BREACH HEREUNDER BY BUYER, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EACH TO THE OTHER, EXCEPT FOR THE RIGHT OF SELLER TO RETAIN SUCH LIQUIDATED DAMAGES.



Buyer's Initials



Seller's Initials

9.13 SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns; provided, however, that Buyer's interest hereunder may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Seller in its sole and absolute discretion. In the event of an approved assignment, Buyer shall not be released from any obligations hereunder.

9.14 INTERPRETATION. Words in the singular shall be deemed to include the plural and vice-versa and words in a particular gender shall be deemed to include the other gender. The captions and headings of the Articles and Sections of this Agreement are for convenience of reference only and shall not be deemed to define or limit the provisions hereof.

9.15 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the internal laws, and not the law of conflicts, of the State of California applicable to agreements made and to be performed in California.

9.16 COUNTERPARTS. This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one agreement.

9.17 REPORTING RESPONSIBILITY. Escrow Holder shall be deemed to be the "person responsible for closing" this transaction for purposes of Section 6045(e)(2)(A) of the IRC and shall prepare and file all returns and statements required by law, if any.

9.18 TIME OF ESSENCE. Time is of the essence of each and every provision of this Agreement in which time is an element. The agreement of Buyer and Seller that time is of the essence of each and every provision of this Agreement shall not be waived or modified by any conduct of the parties, and the agreement of Buyer and Seller that time is of the essence of each and every provision of this Agreement may only be modified or waived by the express written

agreement of Buyer and Seller that time shall not be of the essence with respect to a particular date or time period, or any modification or extension thereof, which is provided under this Agreement.

9.19 EXHIBITS. All Exhibits to this Agreement are incorporated herein by this reference as though fully set forth in the body hereof.

9.20 NO RECORDING. Neither Buyer nor Seller shall, without the consent of the other, record this Agreement or a short form or memorandum hereof, or take any other action that would materially and adversely affect the marketability of Seller's title to the Property.

9.21 AUTHORITY. Each person signing this Agreement represents and warrants that (s)he has full power and authority to execute this Agreement on behalf of the entity for whom (s)he is signing this Agreement and that the execution of this Agreement by such person is binding on such entity.

9.22 REQUIRED NOTICE TO DTSC; REQUIRED STATEMENT. In accordance with the terms of the Recorded Covenant, upon the Closing and pursuant to Section 4.2 of the Recorded Covenant, Buyer and Seller shall notify the DTSC of the sale of the Property to Buyer. Further, in accordance with Section 4.4 of the Recorded Covenant, the parties acknowledge the following:

"The Land described herein is subject to a Covenant and Agreement to Restrict Use of Subject Property. The Land or the Subject Property, and the owner, lessee, or other occupant of the Land or Subject Property may be subject to the requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

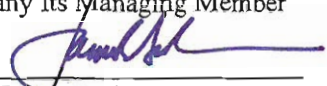
SELLER:

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company Its Managing Member

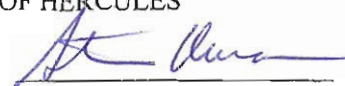
By:


James R. Anderson
Managing Member

BUYER:

CITY OF HERCULES

By:


Name: Steve Duran

Title: City Manager

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (a) accept the foregoing Agreement as its Escrow Instructions, (b) be Escrow Holder under said Agreement for its normal and customary fees, and (c) be bound by said Agreement in the performance of its duties as Escrow Holder; provided, however, that the undersigned Escrow Holder shall have no obligations, liabilities or responsibilities under this Consent or otherwise as to any amendment to said Agreement unless and until the same shall be accepted by the undersigned; and provided, further, that this Consent is conditioned upon the parties signing such separate supplemental escrow instructions as the undersigned may request in order to incorporate Escrow Holder s General Provisions, all as contemplated under Section 4.1 of this Agreement.

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
Diane Burton, Escrow Officer

Date: _____, 2012

LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
Exhibit A-1:	Legal Description of Parcel 7 (Hercules Point)
Exhibit A-1:	Legal Description of Parcel 6 (Water Parcel North)
Exhibit A-3:	Legal Description of Parcel 8 (Water Parcel South)
Exhibit B-1:	Depiction of Land
Exhibit B-2:	Easements Areas To Be Reserved In Favor of Seller
Exhibit C:	Fee Credit Voucher
Exhibit D:	Scopes of Work
Exhibit E-1	Form of Grant Deed – Credit Property
Exhibit E-1	Form of Grant Deed – Cash Property
Exhibit F:	Form of Transferor's Certificate
Exhibit G:	Due Diligence Reports

EXHIBIT A-1

LEGAL DESCRIPTION OF PARCEL 7 (HERCULES POINT)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Hercules Point:

Being that certain 10.962 acre parcel of land described and shown on page 4 of 6, as Parcel 7 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

EXHIBIT A-2

LEGAL DESCRIPTION OF PARCEL 6 (WATERSIDE PARCEL NORTH)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Water Parcel North:

Being that certain 26.521 acre parcel of land described and shown on page 4 of 6, as Parcel 6 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

EXHIBIT A-3

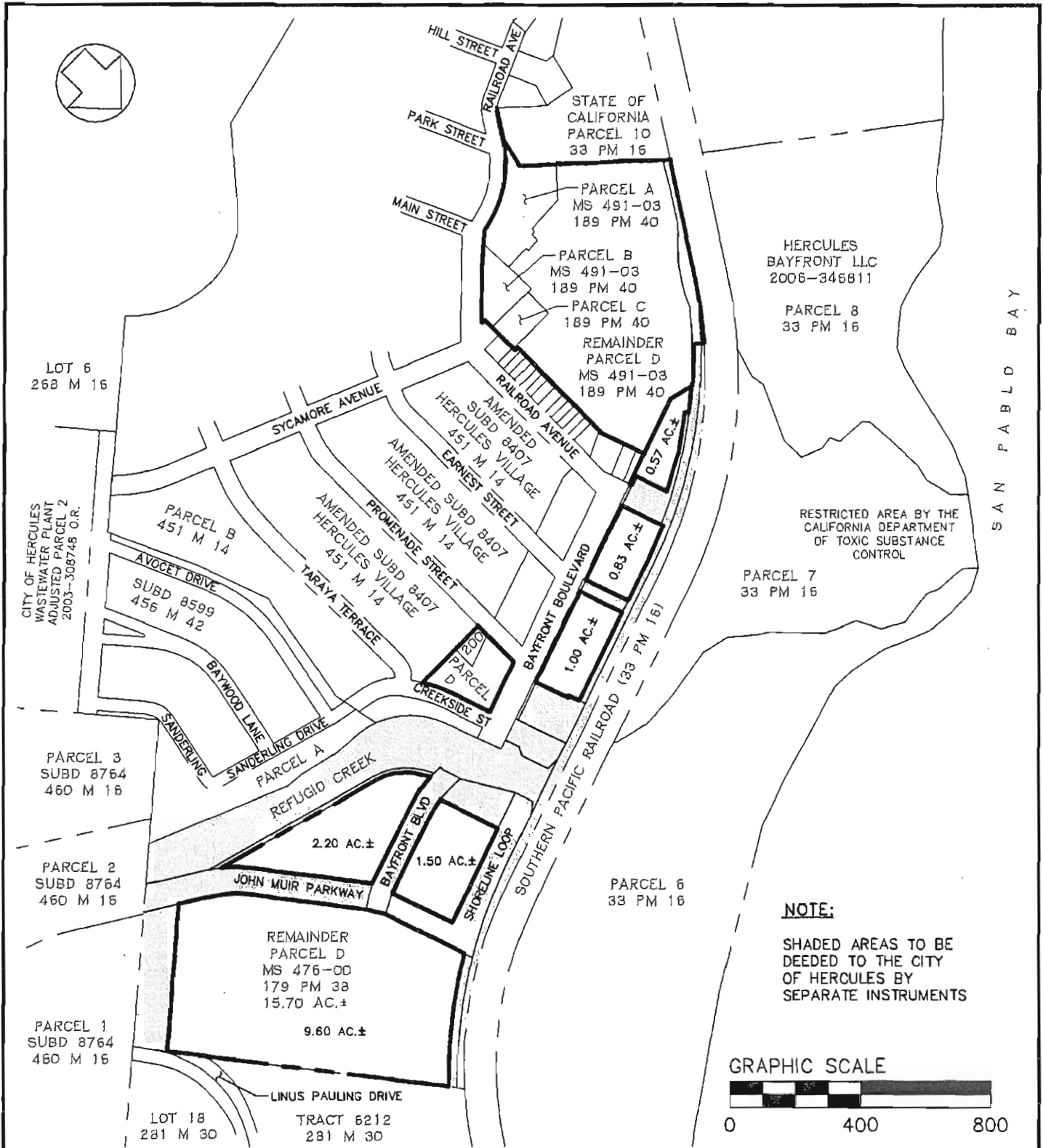
LEGAL DESCRIPTION OF PARCEL 8 (WATERSIDE PARCEL SOUTH)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Water Parcel South:

Being that certain 13.066 acre parcel of land described and shown on page 4 of 6, as Parcel 8 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

EXHIBIT "B-1"
DEPICTION OF THE PROPERTY



BKF

ENGINEERS / SURVEYORS / PLANNERS

1646 NORTH CALIFORNIA BLVD
SUITE 400
WALNUT CREEK, CA 94596
925-940-2200
925-940-2299 (FAX)

Subject EXHIBIT

Job No. 20075011-20

By MLM Date 11/15/11 Chkd.BTW

SHEET 1 OF 1

[illegible]

By MLM Date 11/15/11 Chkd. BTW
SHEET 1 OF 1

EXHIBIT "C"
FEE CREDIT VOUCHER FORM

FEE CREDIT VOUCHER FORM

The City of Hercules ("City") hereby issues to HERCULES BAYFRONT, LLC, a Delaware limited liability company ("Owner") fee credits against City imposed Development Impact Fees ("Credits") which may be imposed on the real property consisting of approximately 40.96 acres, with APN nos. 404-020-065, -083, -084, -085, -086; 404-670-016, -017, -018; 404-490-080, -100 located in the City of Hercules ("City"), State of California (the "Property") in the amount of Four Hundred Ninety Three Thousand Two Hundred Dollars (\$493,200.00) pursuant to the Purchase Agreement and Escrow Instructions For Hercules Point, Water Parcel North and Water Parcel South dated _____ (the "Agreement"), between City and Owner.

The Credits may be used by Owner, in its sole and absolute discretion, in any manner consistent with the Implementing Development Agreement for the Hercules Bayfront Project entered into by and between the City of Hercules and Hercules Bayfront LLC on _____. Among other uses, Owner may use the Credits to satisfy 100% of the Development Impact Fee obligation for each building permit, or such lesser amount as specified by Owner and City in writing, and Owner's remaining Credit balance hereunder shall be reduced by an equal amount. This Fee Credit Voucher shall not apply to, and may not be used for, any fees or charges imposed by City for the benefit of another agency.

EXHIBIT "D"
SCOPES OF WORK



GEOTECHNICAL
ENVIRONMENTAL
WATER RESOURCES
CONSTRUCTION SERVICES

Project No.
P2010.000.040

November 1, 2011

James Anderson, President
Hercules Bayfront, LLC
c/o Anderson Pacific, LLC
6701 Center Drive West, Suite 710
Los Angeles, CA 90045

Subject: Hercules Point – Waterside and Landside Properties
Hercules, California

PROPOSAL FOR ENVIRONMENTAL CONSULTATION SERVICES

Dear Mr. Anderson:

ENGEO is pleased to submit this environmental consultation services proposal for development Parcels 6, 7, 8, and Refugio Creek, also known as OU-8A, OU-3, OU-8B, and OU-7, respectively (hereafter referred to as the Site), of the proposed Hercules Bayfront development located in Hercules, California.

As currently contemplated, the ownership of the Site will be sold to the City of Hercules for development as public open space / park facility, Refugio Creek restoration, and a ferry terminal located north of Bayfront Boulevard across the Union Pacific railway in Hercules, California.

The Site is part of the former Hercules Properties, Ltd. facility (HPL), which was the subject of extensive site characterization, risk assessment and remedial activated undertaken during the 1980s and 1990s. The environmental cleanup work was conducted under the oversight of the CAL-EPA Department of Toxic Substances Control (DTSC). The greater HPL property was granted a remedial certification and unrestricted land use designation in 1997. Operable Unit OU-8A and OU-8b are the waterside parcels adjacent to the "point", which is identified as OU-3. Operable Unit OU-7 consists of a portion of Refugio Creek. Operable Unit OU-3, has an existing deed restriction limiting it to a commercial/industrial land use designation. There is also an Operations and Maintenance program in place for the Site. The other Operable Units of the HPL property have since been developed for mixed use, including residential subdivisions.

ENGEO has been closely involved in the post-certification evaluation and cleanup of specific areas of the Hercules Village development area. ENGEO also assisted in the coordination of demolition and abatement activities associated with the Site.

The purpose of our study is to support the project team, including Hercules Bayfront, LLC and Geosyntec to evaluate the status of the Site with the DTSC and determine the potential steps necessary to allow for redevelopment of a portion of the Site.

BACKGROUND

The Site is a small portion of the original 1300-acre HPL facility, which was used for the manufacturing of chemicals for explosives and fertilizer applications. A Remedial Action Plan (RAP) was developed for the HPL property in June 1994, which was approved by the DTSC. Operable Unit OU-3 included a power house building, an evaporation pond, a fuel storage tank farm, and a large ammonia tank. As a result of the past industrial operations, Site soils were impacted with metals (arsenic, lead, mercury) and total petroleum hydrocarbons (TPH).

State-approved cleanup levels were established for the HPL property in 1992 based on risk assessments conducted by McLaren/Hart Environmental. The following table summarizes the constituents of concern (COCs) and cleanup levels for OU-3. The table also provides the corresponding unrestricted land use cleanup level applied for the greater HPL property.

Hercules Properties, Ltd.
Soil Cleanup Levels (June 1995)

Chemical	Restricted Land Use (mg/kg)	Wetlands (mg/kg)	Unrestricted Land Use (mg/kg)
Arsenic	10	33	10
Lead	1000	1000	400
Mercury	4	4	1.4
Total Petroleum Hydrocarbons	1000	1000	100

Remediation in OU-3 was conducted in 1995 – 1996 and included both areas of drylands (uplands) and wetlands. Wetlands remediation work was conducted in two main areas, tidal wetlands located at the southwest of OU-3 and seasonal wetlands located along the west side of the overhead pedestrian bridge crossing.

The elevated arsenic is likely attributable to fungicides or herbicides sprayed along the rail lines. Sources of lead encountered in Site soils were believed to have resulted from fill containing brick and ceramic materials (construction rubble) and from a paint shop formerly located on the Site. The source of mercury was likely from the temperature and pressure gauges as well as fulminated mercury from explosives detonators.

The fuel tank farm, which consisted of four above-ground tanks and associated piping, was located to the east of the bridge. Soil in the vicinity of these tanks was contaminated with TPH as diesel, along with lead, arsenic and mercury.

Approximately 6,500 cubic yards of impacted soil was removed from the dryland area of OU-3. Approximately 8,500 cubic yards was removed from wetland area of the Site.

A Covenant and Agreement to Restrict Use of the Property (Deed Restriction) was recorded for OU-3 in June 1996. The deed restriction limits the development of the Site to commercial or industrial uses. The deed restriction also states that no significant disturbance of the soils, including excavation or drilling of water wells, shall be performed without notification to DTSC. The document specifies that impacted soil brought to the surface by excavation shall be managed as hazardous waste unless sampling and testing has demonstrated otherwise.

SCOPE OF SERVICES

Review and Compilation of Existing Data

An appreciable amount of exploration, laboratory testing, remediation, confirmatory sampling, and monitoring has been conducted for the Site. Our first task will be to assist Geosyntec, where appropriate, to compile and review applicable data pertaining to the Site. We anticipate agency reviews conducted by Geosyntec/ENGEO will include the following:

- U.S Environmental Protection Agency, Region IX (USEPA)
- Cal-EPA Department of Toxic Substances Control (DTSC)
- San Francisco Regional Water Quality Control Board (SFRWQCB)
- Contra Costa County Health Services Department (CCHSD)

We will also review our internal files for information related to OU-3. We will also request that you forward any other pertinent information regarding the Site, including conceptual development plans.

Summary of Existing Data and Identification of Data Gaps

Once the available data has been reviewed and compiled, we will assist the project team, as appropriate, to determine if any data gaps exist pertaining to surface/subsurface conditions and contaminant delineation. This evaluation will allow for the identification of missing parameters that would be necessary to gain an understanding of Site conditions and develop conceptual strategies for further risk evaluations, exploration, data acquisition, and mitigation.

Preliminary Site Conceptual Model

Once we have assessed and summarized the available data, we will assist Geosyntec and the project team, as appropriate, to prepare a *preliminary* site conceptual model (PSCM). The PSCM will incorporate the surface/subsurface soils and will summarize potential sensitive receptors and exposure pathways to future land users. This model is considered preliminary because it may need to be refined at a later time if data gaps have been identified and addressed. The PSCM will

provide a preliminary understanding of the extent and magnitude of environmental impacts at the Site, allowing the identification of data gaps that need to be addressed to further our understanding of Site conditions. It will also serve as a basis to provide an evaluation of potential site remediation measures, including engineering controls and potential remediation costs.

Technical Document Review/Project Team Meetings

At the request of the project team, ENGEO will provide quality control/peer review services for documents prepared by Geosyntec in support of the project. We will also provide a review of DTSC correspondence, if applicable, related to the proposed recreational development. At the request of the project team, we will also attend meetings with the City of Hercules, DTSC and the project team.

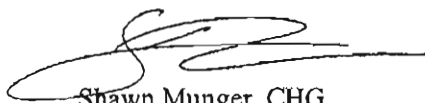
PROJECT FEE AND SCHEDULE

We propose to perform the above-described services in accordance with our current fee schedule on a time-and-expense basis for a fee of \$5,000. This fee includes the above services, along with an estimated 5 hours of meetings with City of Hercules, DTSC, and the project design team. If you are in agreement with the scope of services and fees outlined herein, please sign two copies of the attached Professional Services Agreement as authorization to proceed. A fully executed copy will be returned to you for your files. Work will not commence without prior receipt of an executed agreement.

We look forward to working with you on this project. If you have any questions on any portion of the scope of services or any other aspect of the agreement, please call and we will be glad to discuss them with you.

Very truly yours,

ENGEO Incorporated


Shawn Munger, CHG
Principal

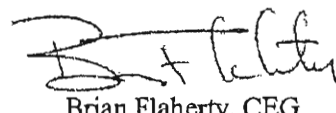

Brian Flaherty, CEG
Principal

EXHIBIT "D"
PROPOSAL

3 November 2011

Mr. James Anderson, President
Hercules Bayfront, LLC
c/o Anderson Pacific LLC
6701 Center Drive West, Suite 710
Los Angeles, California 90045

Subject: Proposal for Environmental Consulting Services
Hercules Bayfront Development, Parcel 6 (OU-8A), Parcel 7 (OU-3), Parcel 8
(OU-8B0, and Refugio Creek (OU-7)
Hercules, California

Dear Mr. Anderson:

Geosyntec appreciates the opportunity to present our proposal to provide environmental consulting services to Hercules Bayfront, LLC for Development Parcels 6, 7, 8, and Refugio Creek, also known as OU-8A, OU-3, OU-8B, and OU-7, respectively (hereafter referred to as the Site), of the proposed Hercules Bayfront development located in Hercules, California. This proposal was prepared on the basis of discussions between Mr. Randy Brandt, of Geosyntec and Mr. Jim Anderson of Hercules Bayfront, LLC on 26 January 2010, discussions and a site visit with Mr. William Silva of D'Oro Construction Management (representing Hercules Bayfront, LLC) on January 27, 2010, discussions with Hercules Bayfront, LLC representatives on 10 October 2011, and our preliminary review of some publicly available documentation regarding the Site. This proposal presents our understanding of the project, a proposed scope of services, tentative schedule, and estimate of charges.

BACKGROUND

The Site was once part of a 1300-acre manufacturing facility that was operated from 1879 to 1977. Previous operations at the facility included the manufacture of explosives and fertilizer chemicals. Manufacturing at the facility ceased in 1977 and the buildings and plant structures were demolished. As a result of the historical manufacturing activities, soil and groundwater have become contaminated with various metals and organic compounds. The former facility has undergone a significant level of investigation and remediation since the early 1980s under the auspices of the California Department of Toxic Substances Control (DTSC). For investigation

and remediation purposes, the facility was divided into six operable units, designated OU-1 through OU-6. The Site, which is the subject of this proposal, is designated as OU-7, OU-3, OU-8A and OU-8B. Based on the results of remediation at these locations, the DTSC approved no further action at OU-7, 8A, and OU-8B subject to land use restrictions and a five-year review process at OU-3. Land uses in OU-3 are restricted to commercial and/or industrial land uses. No other land uses are allowed without the prior approval of the DTSC.

For development purposes, the former manufacturing property was divided into several parcels. Parcels south of the Union Pacific Railroad (UPRR) line were designated as Parcels A through D. Parcels north of the UPRR line were designated as Parcels 4, 5, 6, 7, and 8. According to the 2006 Grant Deed, Parcels A, D and 7 were sold to Hercules Bayfront, LLC for development as the Hercules Bayfront project.

It is our understanding that Parcels 6, 7, 8, and Refugio Creek (collectively referred to as the "Site") are planned to be sold to the City of Hercules for future development as public open space/park facilities, creek restoration, and a future ferry terminal. Parcels 6 and 8 are submerged mudflats. Parcel 7 comprises approximately 11 acres of land that is currently vacant and unpaved. Refugio Creek bisects Parcels B, C, and D and discharges into San Pablo Bay at Parcel 6. Foundation slabs remain in place on Parcel 7 from the former powerhouse building and ammonia storage tank. In addition, the former wastewater evaporation pond is present in the northeastern portion of Parcel 7.

OBJECTIVES AND PROPOSED SCOPE OF SERVICES

As currently contemplated, the ownership of the Site will be sold to the City of Hercules for development as public open space/park facility, Refugio Creek restoration, and a ferry terminal. Because the current DTSC land use restrictions prohibit development of Parcel 7 as public open space/park facilities along with other land use restrictions, Hercules Bayfront, LLC has requested Geosyntec to assist in developing and executing an environmental strategy to revise the land use restrictions to allow development of the Site consistent with the proposed land uses.

Based on the above understanding, it will be Geosyntec's objective to assist in addressing environmental issues associated with the purchase and sale of the Site. To meet this objective, Geosyntec proposes a scope of services consisting of several tasks as described in the following paragraphs.

Task 1 – Phase I Environmental Site Assessment (ESA)

To support Hercules Bayfront, LLC in performing environmental due diligence of the Site in anticipation of its purchase of the Site, Geosyntec will perform a Phase I ESA. Geosyntec's objective in performing the scope of work is to prepare a Phase I ESA for the Site that assists in meeting certain requirements of U.S. EPA's All Appropriate Inquiry (AAI) rule. By satisfying this rule, the purchaser may become eligible for one or more CERCLA defense conditions, including: i) innocent land owner defense; ii) bona fide prospective purchaser defense; and iii) contiguous land owner defense designations, as defined in the Brownfield Amendments to CERCLA (see CERCLA sections 101(35), 107(b)(3), 101(40), 107(r), and 107(q)).

Geosyntec will perform the Phase I ESA in general conformance with specific guidelines contained within the American Society for Testing and Materials (ASTM) Standard E 1527-05, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." Please note that the ASTM Standard and AAI also identify certain inquiries to be conducted by the prospective property owner or "user" of the Phase I ESA, such as recorded land title records and lien records, "specialized knowledge" of the property and adjacent properties, purchase price value information, and similar information. We understand that other consultants have been engaged for other phases of work on the project. Because of the institutional knowledge of these firms, particularly Engeo, Incorporated and HDR Environmental, Geosyntec will collaborate, as directed, with Engeo, HDR Environmental, and others, to obtain the most current information on historical and existing site conditions.

Geosyntec's proposed scope of work for the Phase I ESA consists of the following activities:

- Records review;
- Site reconnaissance;
- Interviews;
- Phase I ESA Reporting.

Each of these activities is described in more detail below.

Task 1a: Records Review

The objective of the records review is to obtain and review information that will help identify Recognized Environmental Conditions (RECs) at or in the vicinity of the Site. Geosyntec will review publicly available information regarding the former manufacturing as well as other records and technical reports (if any) for the Site provided by Hercules Bayfront, LLC. Geosyntec will contract with Environmental Data Resources (EDR) to obtain database records, historical topographic maps, historical aerial photos, Sanborn fire insurance maps, and an environmental lien search report. Geosyntec will use the data from EDR to identify the sites and adjacent properties that may have potentially impacted the Site, if any. Geosyntec will also contact various regulatory agencies by telephone regarding information pertaining to the Sites depending on the results of the EDR database search. Regulatory agencies that may be contacted include the United States Environmental Protection Agency (USEPA), the DTSC, the California Regional Water Quality Control Board (RWQCB), the local Department of Environmental Health Services, local Air Pollution Control District (APCD), local Fire Department, and/or local Building Department. Visits to these agencies and review of files at agency offices are not included as part of this scope of services but can be conducted for an additional fee, if warranted, and approved by the client. We have assumed that Hercules Bayfront, LLC will perform the title search and provide the results to Geosyntec for inclusion in the Phase 1 ESA report.

Our review of documents and reports related to the investigation and remediation of the Site will be more extensive and in-depth than typically conducted to support a Phase I ESA in an effort to create a database of information that will be necessary to develop and implement a strategy to revise the current land use restrictions on the Site (See Task 2).

Task 1b: Site Reconnaissance

Geosyntec will coordinate with Hercules Bayfront LLC to visit the Site to obtain information regarding current land use and features of the Site and surrounding properties. We understand that access to Parcels 6, 7, and 8 of the Site is limited to a waterfront landing accessible only by boat during high tide. Geosyntec will work with Hercules Bayfront, LLC to ascertain the most cost effective means to access the site. The cost estimate presented below does not include rental of a boat or other craft to access the Site and we will submit a change order for boat rental, if deemed necessary. The Site and adjacent properties will be observed for visible signs or indications of potential contamination or RECs as well as potential environmental issues or areas of environmental concern. The current Site features will be photographically documented.

Geosyntec assumes that Hercules Bayfront, LLC will arrange for access agreements and any other legal documents that may be required to allow Geosyntec staff to enter the Site.

Task 1c: Interviews

Geosyntec will interview the Site owners/managers and/or key facility employees, if any, to obtain information regarding the historical and current uses and physical characteristics of the Sites. The interviews will be conducted concurrently with the Site Reconnaissance activity. It is assumed that the client will make these people available for interview at the time of the Site visit.

Task 1d: Phase I ESA Report

Geosyntec will prepare a Phase I ESA Report for the Site that describes and presents the results of the ESA, including the identified RECs, as well as data gaps, if any. The report will include: an introduction; site description; summary of the scope of work including records review, site reconnaissance, and interviews; maps and photographs; findings; and conclusions. Supporting documentation will be provided as necessary. Our Phase I ESA Report will not include identification and/or sampling of suspect asbestos-containing materials, radon, wetlands, lead-based paint, mold, or lead in drinking water, which are generally considered outside the scope of a Phase I ESA. Geosyntec will provide a draft version of the report for review and comments by Hercules Bayfront, LLC. After receiving and resolving one round of comments from Hercules Bayfront, LLC, the report may be finalized. The final report will be provided in hard copy and electronic format for the exclusive use by Hercules Bayfront, LLC.

The following language will be included in the final reports: "This Phase I ESA report is intended for use only as a complete document and was prepared in accordance with the generally accepted level of skill and care exercised by other members of Geosyntec's profession for similar services. Use of this report, and reliance thereupon, is limited to Hercules Bayfront LLC, its lenders, and the City of Hercules as a potential land purchaser whose reliance shall also be subject to all of the terms and conditions of the contract and scope of work under which this Phase I ESA Report was prepared. No other third parties are entitled to rely upon this report without the express written consent of Geosyntec Consultants."

Task 2 – Revision to Land Use Restrictions

To assist the Hercules Bayfront, LLC in obtaining approval from the DTSC to develop the Site as public open space/park, a ferry terminal, and to restore Refugio Creek, Geosyntec will

develop and implement a strategy to negotiate a revision to the existing Covenant and Agreement to Restrict Use of Property (CRUP). To meet this objective, Geosyntec will conduct the scope of work outlined in the Tasks described below.

Task 2a: DTSC Meeting

Geosyntec will update the existing conceptual site model to incorporate use of the property as public open space/park facilities, creek restoration, and future ferry terminal and prepare a preliminary mitigation plan to address new exposure pathways that may exist. Geosyntec will solicit the assistance of ENGEO and HDR Environmental in involving appropriate individuals and to provide historical reference for prior remedial efforts on the site. Upon completion of this activity, Geosyntec will facilitate a meeting between the City of Hercules, the DTSC, Hercules Bayfront, LLC, and Geosyntec to inform the DTSC of development intentions and discuss the DTSC's requirements and process to modify the current land use restrictions, based on the updated conceptual site model. Following the meeting, Geosyntec will prepare and submit to Hercules Bayfront, LLC a technical memorandum summarizing the meeting and presenting our recommendations for a path forward to revising the current land use restrictions.

Task 2b: Technical Analysis and Report

Following the meeting, Geosyntec will conduct a technical analysis of existing data and information and prepare a technical report which will be presented to the DTSC presenting the technical justification, rationale, and revised mitigation, if any, to support a change in land use. At this time, we do not anticipate that additional field investigation will be necessary, however, this depends on the nature of existing information relative to the DTSC's requirements for information necessary to support a change in land use. We do anticipate that a revision or update the human health and ecological risk assessments will likely be required. The specific scope and estimated cost of this Task will be refined following the completion of Task 2a.

Task 2c: CRUP Revisions

Following the DTSC's acceptance of the Technical Report and the determination of the conditions required for allowing a change in land use, Geosyntec will work with the DTSC and the Hercules Bayfront, LLC to document and record the revised land use restrictions. Depending on the significance of the requirements, this may involve a public notice and possible a public information meeting. The specific scope and estimated cost of this Task will be refined following completion of Tasks 2a and 2b.

Task 3: Remediation Design Support

Geosyntec will work with Hercules Bayfront, LLC and its contractors and engineering consultants to provide support in designing the components of the remediation that are required by the DTSC to allow the change in land use. Our preferred approach for this Task is to provide the comprehensive design of the remediation components and provide them to the City's design engineer for incorporation into the project construction documents. As with Tasks 1 and 2, Geosyntec will collaborate with Enggeo and other consultants familiar with the land (as and if necessary) to gain insights on the geotechnical condition of the site as well as the nature and condition of the civil infrastructure at the Site.

Alternatively, Geosyntec can provide a designated design engineer with a design basis for the remediation components. Upon completion of the draft design by the engineer, Geosyntec would provide review and comment of the construction document package to verify that the designs comply with the DTSC requirements. Because the nature of remediation elements are not known at this time, it is not possible to estimate the level of effort or cost to produce the design documents.

Task 4: Construction Management and Quality Assurance

During construction of the remediation components, Geosyntec will work on behalf of Hercules Bayfront, LLC and in collaboration with the geotechnical and civil engineers to manage the construction activity, assure the quality of the construction meets the design specifications, and provide appropriate documentation to the DTSC that the remediation components have been installed as approved. If a construction contractor is retained directly by Hercules Bayfront, LLC, Geosyntec will provide independent oversight and quality assurance monitoring. However, if desired, Geosyntec can provide turnkey construction, construction management, and quality assurance monitoring. Because the nature of remediation elements are not known at this time, it is not possible to estimate the level of effort or cost to manage the construction efforts and produce the regulatory documents.

PROJECT MANAGEMENT

Throughout the course of the project, we will conduct Project Management activities which will include:

- Monitoring the progress of scope, schedule, and budget expenditures;

- Managing subcontractor services, including contracting and invoicing;
- Preparing monthly invoices for the client;
- Meeting with and communicating with the client as part of the project team to discuss progress of the project, changes in scope and maintain an overall perspective of the development project progress as it pertains to Geosyntec's scope of services. This will include an initial project kickoff meeting with the client.

SCHEDULE

Geosyntec is prepared to initiate our services within five days of your authorization to proceed. We anticipate that Task 1 and Task 2a will be conducted concurrently. It will be our objective to obtain information from the DTSC regarding their requirements and process to modify the land use restrictions so that this information can be incorporated into the Task 1 activities. We anticipate that a draft of the Phase I ESA Report can be delivered to Hercules Bayfront, LLC within 5 weeks of the initiation of our services. Upon your authorization, we will produce a tentative project schedule.

We understand that this effort is part of a larger entitlement process and the information obtained from the Phase I ESA will be used as a component of the purchase and sale transaction as well as other aspects of the entitlement process. The estimated schedule for Tasks 2b through Task 4 will be developed as new information is obtained from Tasks 1 and 2a.

BUDGET, ASSUMPTIONS, AND CONDITIONS

We propose to provide our services on a time and expense basis in accordance with our 2011 Rate Schedule and mutually negotiated contract terms and conditions. For your consideration, we have included a copy of our rate 2011 Rate Schedule and Professional Services Agreement as Attachment A.

Due to the current uncertainty in the elements and process that the DTSC will require to modify the land use restrictions, it is not possible to provide a budget estimate for Tasks 2b through 4.

We recommend establishing an initial not to exceed budget of \$15,000 for conducting Tasks 1 and 2a. Once we complete Tasks 1 and 2a, we will provide Hercules Bayfront, LLC with an update of the schedule and budget estimate to proceed with Tasks 2b through 2c. Upon DTSC's

concurrence with the proposed remediation components presented in Tasks 2b and 2c, we will provide you with our schedule and budget estimate to proceed with Tasks 3 and 4.

PROPOSED PROJECT TEAM

Geosyntec's project team will be lead by Mr. Randy Brandt, P.G., Principal. Mr. Brandt has over 24 years' experience in the field of hydrogeology with special emphasis on environmental and hazardous waste issues. Mr. Brandt has focused on development and implementation of site characterization programs for hazardous waste sites ranging in size from gasoline service stations to closed military bases. He is adept at developing creative and cost effective remediation strategies to meet objectives of project stakeholders, including responsible parties, regulatory agencies, and the public. He has particular experience with devising strategies to integrate site remediation with land development activities, supporting an end-state vision of land developers and municipalities.

Mr. Brandt has provided strategic consultation and technical direction for sites falling under the jurisdiction of the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Clean Water Act (CWA), National Environmental Policy Act (NEPA) and numerous state lead programs in California, Washington, and Oregon. A copy of Mr. Brandt's resume is included as Attachment B.

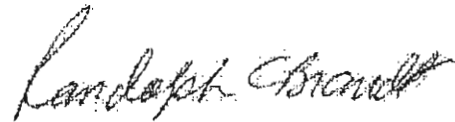
Mr. Brandt will be supported by other scientists and technical experts, as necessary to complete the Tasks outlined above.

CLOSING

We appreciate the opportunity to present this proposal to you and we look forward to the opportunity to work with you on this challenging project. Please indicate your acceptance of this proposal by executing the attached Professional Services Agreement or by sending us a copy of your preferred contract terms for consideration.

If you have any questions regarding our proposal or our proposed approach, please feel free to call me at 510-285-2736. I will call you in the next few days to follow up on the next steps in this process.

Sincerely,

A handwritten signature in dark ink, appearing to read "Randolph C. Brandt". The signature is fluid and cursive, with a large initial "R" and a stylized "B".

Randolph C. Brandt
Principal

Attachments: Attachment A – **2011** Rate Schedule and Professional Service Agreement
Attachment B -- Resume

Attachment "A"
2011 Rate Schedule

CONFIDENTIAL

GEOSYNTEC CONSULTANTS
2011 RATE SCHEDULE

<u>Engineer/Scientist</u>	<u>Rate/Hour</u>
Staff Professional	\$105
Senior Staff Professional	\$122
Professional	\$140
Project Professional	\$158
Senior Professional	\$178
Associate	\$198
Principal	\$215
 <u>Construction Services</u>	
Engineering Technician I	\$ 54
Engineering Technician II	\$ 60
Senior Engineering Technician I	\$ 65
Senior Engineering Technician II	\$ 70
Site Manager I	\$ 79
Site Manager II	\$ 87
Construction Manager	\$ 98
 <u>Design, Graphical, and Administrative Services</u>	
Designer	\$114
Senior Drafter/Senior CADD Operator	\$ 100
Drafter/CADD Operator/Artist	\$ 88
Admin Assistant/Tech Word Processor	\$ 56
Clerical	\$ 46
 <u>General</u>	
Direct Expenses	Cost plus 12%
Subcontract Services	Cost plus 12%
Communications Fee	3% of Professional Fees
Specialized Computer Applications (per hour)	\$ 15
Personal Automobile (per mile)	Current IRS Rate
Photocopies (per page)	\$.09

Rates are provided on a confidential basis and are client and project specific.
Unless otherwise agreed, rates will be adjusted annually based on a minimum of the US Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers.
Rates for field equipment, health and safety equipment, and graphical supplies presented upon request.

Attachment "B"
Resume

Geosyntec[®]
consultants

RANDOLPH C. BRANDT

**hydrogeology
program management
operations management**

EDUCATION

B.S., Geology/Oceanography, Humboldt State University, 1984

REGISTRATION

Professional Geologist (PG), California, No. 6105

CAREER SUMMARY

Mr. Brandt has over 25 years' experience in hydrogeology with special emphasis on environmental and hazardous waste issues. He has focused on development and implementation of site characterization and remediation programs for hazardous waste sites, ranging in size from gasoline service stations to closed military installations. He is adept at developing creative and cost effective remediation strategies to meet objectives of project stakeholders, including responsible parties, regulatory agencies, and the public. He has particular experience with devising strategies to integrate site remediation with land development activities, supporting an end-state vision which emphasizes reduced overall life-cycle cost and liability exposure.

Mr. Brandt has provided strategic consultation and technical direction for sites falling under the jurisdiction of the Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response Compensation and Liability Act (CERCLA), Clean Water Act (CWA), National Environmental Policy Act (NEPA) and numerous state environmental programs in California, Washington, and Oregon. He has provided consulting services at oil refineries, military installations (active and closed), chemical manufacturing plants, hard rock and aggregate mines, landfills, hazardous waste land treatment units, surface impoundments, waste piles, underground storage tanks, and non-point source areas of contamination.

Mr. Brandt's relevant project experience, organized by industry sector, is presented below:

Military Base Redevelopment

- ***Early Transfer Negotiation Support, California.*** Mr. Brandt was the Program Manager and Lead Consultant for performing environmental due diligence and negotiation the terms of the early transfer on behalf of various Local Reuse Authorities (LRA) and Master Developers at ten active and closed military installations. Work

under his direction was performed under the framework of the Department of Defense (DOD Base Realignment and Closure Act (BRAC) and Enhanced Use Leasing program. Work performed under his leadership included conducting environmental due diligence and critical review of Environmental Baseline Surveys, developing environmental closure strategies, preparing environmental remediation cost estimates for various closure scenarios, and preparing a financial assessment of the environmental liabilities remaining at the site. In consideration of the future impacts of the DOD's ongoing work, Mr. Brandt worked with the Master Developers to formulate plans to integrate remediation activities with development activities. Mr. Brandt provided oversight for the data review, developed an overall base-wide remediation program, and lead the discussions and negotiations between the DOD, local regulatory agencies, US EPA, Master Developers and LRAs to establish base-wide closure objectives. Work was performed at the following closed military bases:

- Alameda Naval Air Station, Alameda, California
 - Hunters Point Naval Shipyard, San Francisco, California
 - Treasure Island Naval Station, San Francisco, California
 - Presidio of San Francisco, California
 - Point Molate Naval Fuel Depot, Richmond, California
 - Onizuka Air Force Base, Sunnyvale, California
 - Fort Ord Army Base, Marina, California
 - South Weymouth Naval Air Station, South Weymouth, Massachusetts
 - Castle Air Force Base, Modesto, California
 - Beale Air Force Base, Marysville, California
- **Fort Ord Army Base, Marina, California.** Mr. Brandt served as the Program Manager for a CERCLA remediation of Munitions and Explosives of Concern (MEC) at 4,000 acres of the former Fort Ord Army Base. In this role, Mr. Brandt managed a dedicated project team of over 20 Prime and Subcontracted staff to conduct environmental due diligence, prepare regulatory documentation, implement approved workplans, perform data analysis and interpretation, prepare reporting, and provide stakeholder interaction. Work was performed in anticipation of future commercial development under a guaranteed fixed-price contracting mechanism that was underwritten by environmental insurance policies through AIG Environmental Insurance. Mr. Brandt negotiated and prepared contract terms with the Army, Fort Ord Reuse Authority, and teaming partners. Through his leadership, he facilitated conflict resolution between the technical

team, the Army, and various stakeholders, and developed closure strategies and associated cost estimates. Mr. Brandt managed all aspects of the negotiation, policy development, and compliance with the environmental insurance policies.

- ***Hunters Point Shipyard Development***, Lennar Urban, San Francisco, California. Mr. Brandt was the Program Manager and Lead Consultant for performing environmental due diligence and supporting the client in the negotiation the terms of the early transfer from the U.S. Navy. Mr. Brandt provided consultation to the client to establish a program that included a guaranteed fixed-price remediation (GFPR) program and served as the client representative to provide peer review and management direction to the selected GFPR contractor. Mr. Brandt provided valuable consultation with regard to integrating development and environmental remediation activities as well as procuring cost cap and pollution legal liability environmental insurance for the program.

Brownfield Redevelopment

- ***Environmental Due Diligence and Development Consultation, Proposed Campus at NASA Ames Research Center, Carnegie Mellon University, Mountain View, California***. Mr. Brandt served as the Principal Consultant for performing environmental due diligence at Carnegie Mellon University's (CMU's) proposed campus at NASA Ames Research Center. Because the proposed site is located within the area of influence of a federal Superfund site and on a closed military base, CMU wanted to document current environmental conditions; identify potential long-term environmental liabilities from contaminated soil, groundwater, and indoor air; and develop mitigation measures to minimize and manage potential liabilities. Under Mr. Brandt's direction, the technical team conducted a review of documents pertaining to the military base closure and the Superfund site; interviewed representatives of NASA; conducted a site walkthrough; sampled indoor and atmospheric air; interpreted and evaluated the data collected; assessed human health risk; and participated in design review team meetings. Mr. Brandt was instrumental at helping CMU understand the potential risks from environmental conditions to their proposed campus development and incorporated cost effective mitigation measures into the lease and building retrofit design to mitigate and manage those risks in a manner that cost effectively supported the campus development program.
- ***Third Party Review of Remedial Actions at Former Paper and Pulp Mill, Paul Hastings Janofsky & Walker, Antioch, California***. Performed third party review of remedial actions completed at a former paper and pulp mill to provide an opinion on the appropriateness and cost effectiveness of the services completed. Mr. Brandt prepared an opinion letter and advised the client on alternative approaches to develop an exit strategy for the closure activities. The alternative approaches included

recommendations to minimize costs for future work, which included alternative contracting mechanisms.

- ***Uptown Development Project, Forest City Residential West Developments Oakland, California.*** Mr. Brandt was the Principal in Charge and Project Manager for implementing the Remedial Action Plan/Risk Management Plan (RAP/RMP) at two large city blocks targeted for a residential brownfield redevelopment project. Work was conducted under a guaranteed fixed price contracting mechanism that was underwritten by environmental insurance policies through AIG Environmental Insurance. Under Mr. Brandt's direction, the project team assessed, quantified, and negotiated the transfer of environmental risk through the structure and implementation of a guaranteed fixed price remediation contract with the City of Oakland, Forest City, and AIG. Mr. Brandt was instrumental in developing the closure strategy in compliance with the RAP/RMP, negotiating the contract terms with the client and subcontractors, executing the project on time, under budget, and with no claims against the insurance policies.
- ***Proposed Auto Mall Development, City of Long Beach, Long Beach Redevelopment Agency, Long Beach, California.*** Mr. Brandt was the Project Manager for a multidisciplinary RI/FS and remediation project for crude oil and chlorinated solvent contaminated soils and groundwater at a proposed 80-acre auto mall in Long Beach, California. The project site encompassed three unproductive and abandoned oil production fields. With the Redevelopment Agency as his client, Mr. Brandt managed a team of staff representing various technical disciplines to conduct a site assessment, preliminary site characterization, remedial alternative technical and cost evaluation, remediation, and design and planning consultation to the Project civil and architectural engineers. As a key member of the project team, Mr. Brandt participated in crafting a strategic development phasing plan to incorporate the Auto Mall development project with the environmental remediation program.
- ***On-call Environmental Services, City of Oakland, Oakland, California.*** Mr. Brandt served as the Principal-in-Charge and Program Manager responsible for consultation with the City to establish scopes of work and work directives, contract management and compliance, and overall technical quality control. Mr. Brandt's technical team assisted the City with environmental (soil and groundwater quality) investigations of City-owned properties. Individual task orders included Phase I and II environmental assessments, brownfield site assessments, and third party review of other consultant work products.
- ***Environmental Due Diligence Consultation,*** various clients in California, Oregon, and Arizona. Mr. Brandt has provided consultation to numerous clients seeking to develop Brownfield and other contaminated properties. His consultation work has included

performing numerous Phase I and II Environmental Site Assessments, developing strategies for obtaining Bonafied Prospective Purchaser indemnities, procuring environmental insurance, navigating through regulatory requirements and regulations, and developing strategies to incorporate engineering and institutional controls into development concepts.

Industrial Facilities

- **Groundwater Remediation**, Whittaker Corporation, Hollister, California. Mr. Brandt serves as the Principal in Charge of a team of experts focused at remediation of groundwater conditions impacted by perchlorate, trichloroethylene, and chrome VI at a former ordnance manufacturing facility. The work is being conducted pursuant to a Cleanup and Abatement Order from the Central Coast Regional Water Quality Control Board. The work involves bench scale testing of various treatment technologies, system design and construction, long term operation and maintenance, groundwater monitoring and compliance with various documentation requirements of the Order.
- **Residential Development Environmental Assessment**, William Lyon Homes, West Covina, California. Mr. Brandt was the Principal Investigator and Lead Consultant to evaluate the potential human health impact of contaminated groundwater and landfill gas originating from the BKK Landfill on a nearby residential development project. The analysis was a critical component in the design and permitting of the mitigation system and resolving legal disputes with the owners of the neighboring properties.
- **RI/FS, Confidential Client, Ontario, California**. Mr. Brandt served as the Project Manager for a Remedial Investigation/Feasibility Study under a RCRA Consent Order with the State Department of Toxic Substances Control. The investigation was aimed at characterizing and remediating solvent contamination in soil and groundwater at a jet engine manufacturing facility in Ontario, California. Mr. Brandt negotiated terms of the Consent Order with the Department of Health Services and the Santa Ana Water Quality Control Board and managed implementation of a multidisciplinary RI/FS/RAP.
- **Chevron Refinery, Richmond, California**. Mr. Brandt was the Program Manager for a long-term CERCLA project involving hydrogeologic investigation and remediation services. Mr. Brandt managed a dedicated project team of technical and administrative staff to conduct investigations and remediation in response to state and federal orders. The agencies identified 55 sites requiring action including tank farms, process facilities, land farms, landfills, surface impoundments, and subsurface piping. Under Mr. Brandt's leadership, the technical team developed technical approaches to agency directives, worked with the client to integrate the refinery's position with respect to regulatory

directives, provided technical quality assurance, cost estimating and cost control, and coordinated all aspects of scheduling.

- ***Chevron Refinery, El Segundo, California.*** Mr. Brandt served as the Project Manager and Lead Consultant for a long-term CERCLA project involving hydrogeologic investigation and remediation services in response to state and federal clean-up orders. The orders encompassed numerous refinery operating units including tank farms, process facilities, landfills, surface impoundments, and subsurface piping. Under Mr. Brandt's leadership, the project team developed technical approaches to field investigations and feasibility studies, implemented and evaluated pilot test activities for various remediation technologies, worked with the client to integrate the refinery's position with respect to regulatory directives, provided cost estimating and control, and coordinated all aspects of scheduling.
- ***Chevron Refinery, Pascagoula, Mississippi.*** Mr. Brandt was the Project Manager and Lead Consultant for development of a hydrogeologic conceptual site model to support Chevron in preparation of a strategy to comply with complex regulatory directives regarding site assessment and remediation. Under Mr. Brandt's direction, the project team assessed the concerns and objectives of the stakeholders involved, developed a technical study and data analysis to compile the conceptual site model, and participated in presentation of the model to the various stakeholders.
- ***Remediation System Optimization Evaluation, Rijeka Refinery, Ecoina Engineers/Croatian National Government, Rijeka, Croatia.*** Mr. Brandt was the Project Manager and Lead Consultant responsible for evaluating the technical and economic effectiveness of an existing refinery-wide remediation system at a major government-owned oil refinery. Under Mr. Brandt's leadership, the technical team assisted the refinery operator in complying with new environmental regulations and reduced the operation and maintenance costs of the remediation system. Mr. Brandt's team conducted an audit of the refinery's operation and historical record of environmental incidents, assessed the adequacy of the site investigations completed to-date, and evaluated the adequacy and effectiveness of the remediation system operated by a local consultant.
- ***Chevron Chemical Company, Richmond, California.*** Mr. Brandt was the Project Manager for the development of a revised large-scale groundwater monitoring program at a pesticide manufacturing facility in Richmond, California. The plan was being revised in response to changing state environmental regulations and facility operating conditions. Under his direction, Mr. Brandt's technical team reviewed over ten years of hydrogeologic information; five years of comprehensive groundwater chemical data; provided review and explanation of revised environmental regulations; and prepared a

revised monitoring plan to justify a reduction in scope of services. To complete the assignment, Mr. Brandt coordinated geologists, environmental engineers, regulatory experts, and statisticians to develop and present a revised plan. Development of the plan included evaluation of natural degradation of ammonia and nitrates in soil through the upward migration of groundwater through affected soil. Mr. Brandt coordinated groundwater modeling and contaminant fate efforts with a team of hydrogeologists and mathematical modeling experts.

Power Industry

- *Preliminary Endangerment Assessments, 3 former Manufactured Gas Plant Sites, Southern California Edison, Los Angeles Area, California.* Mr. Brandt was the Project Manager and lead field investigator to collect soil and groundwater information to conduct a comprehensive characterization of each of the sites in support of a Preliminary Endangerment Assessment. His work included data collection, data quality assurance, data interpretation, and report writing.
- *Environmental Due Diligence of a 50-mile electric transmission pipeline, Confidential Client, Tehachapi to Lancaster, California.* Mr. Brandt was the Principal-in-Charge for conducting an environmental due diligence of a 50-mile electric transmission pipeline connecting a proposed wind turbine electricity generating station with a primary connection point to the main grid. Work involved extensive field reconnaissance, focused subsurface investigation, and strategic analysis of various transmission route configurations.
- *RI/FS of a former MGP plant, PG&E, Oakland, California.* Mr. Brandt was the Principal-in-Charge to conduct a remedial investigation and feasibility study of a former MGP plant which had been converted to maritime shipping container port uses. Due to the varied history of land uses at the site, Mr. Brandt and his team was tasked with discerning what elements of site contamination was due to former MGP operations and what elements were the cause of other historical land uses. The feasibility study focused at supporting risk-based remediation scenarios. Mr. Brandt lead the discussion and negotiation with the California Department of Toxic Substances Control to arrive at a cost effective remediation solution that was protective of human health and the ecological receptors.

Mining Industry

- *Groundwater Quality Assessment, Limestone Quarry, Mitsubishi Cement Corporation, San Bernardino County, California.* Mr. Brandt was the Principal Consultant to design a groundwater monitoring program to evaluate water

RANDOLPH C. BRANDT

Geosyntec[®]
consultants

quality and wastewater discharge issues associated with the operations at a major limestone quarry in San Bernardino County. Mr. Brandt's efforts included review of existing data, designing a comprehensive groundwater monitoring network, preparing a groundwater monitoring plan, providing consultation and negotiating with regulatory agencies.

- *Water Quality Assessment, Proposed Apperson Quarry, DeSilva Gates Corporation, Alameda County, California.* Mr. Brandt was the Principal Consultant to design a surfacewater quality monitoring program to establish pre-mining operations surfacewater quality conditions in support of an Environmental Impact Report for the proposed Apperson Quarry. The operator planned to mine construction materials (sand, gravel, rock, etc.) from the quarry to support local construction activities. Mr. Brandt's efforts included review of existing data, designing a comprehensive surfacewater monitoring network, preparing a surfacewater monitoring plan, providing consultation and negotiating with regulatory agencies.
- *Groundwater Quality and Slope Stability Assessment, Richmond Quarry, Chevron Corporation, Richmond, California.* Chevron Corporation retained Mr. Brandt to conduct an assessment of groundwater quality impacts at a quarry being operated under lease from Chevron on land adjacent to the Richmond Refinery. Mr. Brandt was the Principal-in-Charge to develop and implement a groundwater quality investigation to assess the nature and source of impacts to groundwater from the quarry operations and nearby refinery.

Construction/Project Management

- Mr. Brandt served as the Construction/Program Manager for a major oil company RCRA remediation site involving the construction, start-up, and operation/maintenance of a 5-mile long perimeter groundwater protection system. The project spanned ten years; he served as Construction Program Manager for eight years. Project costs were \$3,000,000 to \$5,000,000 per year.
- Mr. Brandt served as the Construction and/or Project Manager for various commercial tenant improvement projects ranging in size from \$10,000 to \$1,200,000. Responsibilities included initial project scoping; assembling the team members including the architect, engineers, general contractor, and subcontractors; contract negotiation and management; construction administration; and construction quality assurance.

PROFESSIONAL HISTORY

Geosyntec Consultants, Oakland, California, Principal, 2008 to present

RANDOLPH C. BRANDT

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consultants

LFR Levine Fricke (now Arcadis), Senior Vice President/NW Regional Manager, 2002-2008
Paradigm General Contractors, Vice President/Director of Business Operations, 2000-2002
Dames & Moore Consultants (now URS Corporation), Principal, 1985-1999

PUBLICATIONS

- 5-2008 "Integrating Environmental Remediation with Site Development Activities".
Proceedings, Battelle Institute. Chlorinated Solvents and Recalcitrant Compounds
Conference, Monterey, California.
- 1-1994 "Establishing Clean-up Goals using Statistically-based Analysis." *Proceedings,*
Chlorinated Solvents Conference, Monterey, California.
- 1-1990 "Redevelopment of Oilfield Property: An Environmental Perspective." *Proceedings,*
HazMat West, Long Beach, California.

EXHIBIT "B"
PROJECT SITE

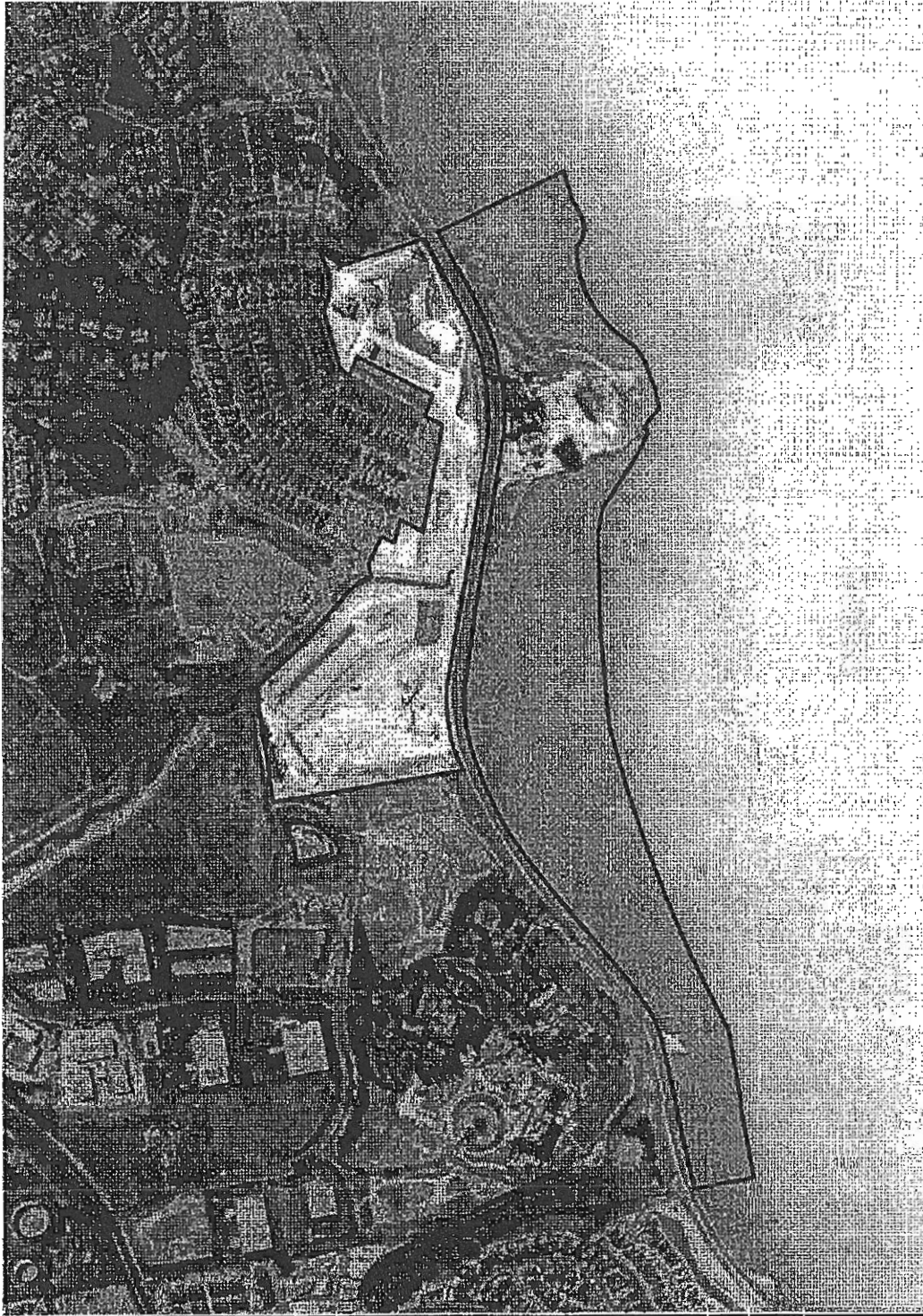


EXHIBIT A-1

LEGAL DESCRIPTION OF PARCEL 7 (HERCULES POINT)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Hercules Point:

Being that certain 10.962 acre parcel of land described and shown on page 4 of 6, as Parcel 7 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

SEPARATE STATEMENT
OF
DOCUMENTARY TRANSFER TAX

Contra Costa County Recorder

Dear Sir/Madam:

In accordance with Section 11932 of the California Revenue and Taxation Code, it is requested that this Statement of Documentary Transfer Tax not be recorded with the attached deed, but be affixed to the deed after recordation thereof and before return as directed thereon.

The deed names HERCULES BAYFRONT, LLC, a Delaware limited liability company, as Grantor, and CITY OF HERCULES, as Grantee. The property being transferred is located in or about the City of Hercules, Contra Costa County, California. The amount of documentary transfer tax due on the attached deed is _____ Dollars (\$ _____), computed on the full value of the property (less the value of any liens and encumbrances remaining on the property at the time of the sale).

HERCULES BAYFRONT, LLC, a Delaware limited liability
company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability
company Its Managing Member

By: _____
James R. Anderson
Managing Member

EXHIBIT A-2

LEGAL DESCRIPTION OF PARCEL 6 (WATERSIDE PARCEL NORTH)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Water Parcel North:

Being that certain 26.521 acre parcel of land described and shown on page 4 of 6, as Parcel 6 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

EXHIBIT A-3

LEGAL DESCRIPTION OF PARCEL 8 (WATERSIDE PARCEL SOUTH)

All of those certain parcels of land located within the City of Hercules, California and being more particularly described as follows:

Water Parcel South:

Being that certain 13.066 acre parcel of land described and shown on page 4 of 6, as Parcel 8 on that certain Parcel Map MSH-1, recorded on April 22, 1974 in Book 33 of Parcel Maps at Page 16, records of Contra Costa County.

SEPARATE STATEMENT
OF
DOCUMENTARY TRANSFER TAX

Contra Costa County Recorder

Dear Sir/Madam:

In accordance with Section 11932 of the California Revenue and Taxation Code, it is requested that this Statement of Documentary Transfer Tax not be recorded with the attached deed, but be affixed to the deed after recordation thereof and before return as directed thereon.

The deed names HERCULES BAYFRONT, LLC, a Delaware limited liability company, as Grantor, and CITY OF HERCULES, as Grantee. The property being transferred is located in or about the City of Hercules, Contra Costa County, California. The amount of documentary transfer tax due on the attached deed is _____ Dollars (\$_____), computed on the full value of the property (less the value of any liens and encumbrances remaining on the property at the time of the sale).

HERCULES BAYFRONT, LLC, a Delaware limited liability
company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability
company Its Managing Member

By: _____
James R. Anderson
Managing Member

EXHIBIT F
FORM OF TRANSFEROR'S CERTIFICATE

NON-FOREIGN AFFIDAVIT
(SECTION 1445 CERTIFICATE)

Section 1445 of the Internal Revenue Code provides that a transferee of an interest in real property located within the United States must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon a disposition of an interest in real property located within the United States by Hercules Bayfront, LLC ("Transferor"), the undersigned hereby certifies the following:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's U.S. Employer Identification Number is _____; and
3. Transferor's office address is do AndersonPacific, LLC, 6701 Center Drive West, Suite 710, Los Angeles, California 90045.

The undersigned acknowledges that this Certificate may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could result in punishment by fine, imprisonment or both. Under penalty of perjury the undersigned declares that it has examined this Certificate and to the best of its knowledge and belief it is true, correct and complete.

DATED: _____, 2012

HERCULES BAYFRONT, LLC, a Delaware limited liability company

By: APL-Hercules, LLC, a Delaware limited liability company
Its Manager

By: AndersonPacific, LLC, a Delaware limited liability company
Its Managing Member

By: _____

James R. Anderson
Managing Member

EXHIBIT G
DUE DILIGENCE MATERIALS

- 2009-10-06 - Engeo - Topo (Railroad Plaza and Village)
- 1999-03-15 - Enviro Group - Hercules Properties - ACM & Lead Surveys
- 1999-05-28 - Engeo - Environmental Site Assessment
- 2000-05-01 - WRA - CRLF Survey
- 2003-06-10 - Engeo - Previous Grading Activities
- 2003-11-20 - Engeo - Her Railway + Station Improvements
- 2006-10-16 - Balance - Refugio Discharge Summary
- 2009-07-30 - Balance - Bayfront Bridge Flood Elevations
- 2009-08-25 - Engeo - RR Plaza Supp Geotech Surcharge
- 2010-09-01 - Engeo - Coverage Area Map
- 2010-10-25 - Engeo - Summary Published Geotech Reports
- 2010-12-06 - Engeo - Site Plan-Young Bay Mud Contours



Legislation Details (With Text)

File #: 18-133 **Version:** 1 **Name:**

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

File created: 4/23/2018 **In control:** City Council

On agenda: 5/8/2018 **Final action:**

Title: 2017 Strategic Plan Status Report
Recommendation: Receive Report, discuss, and provide direction, if any.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report - Strategic Plan 05082018](#)
[Attach 1 - Strategic Plan Annual Review SR 03272018](#)
[Attach 2 - 2017 Strategic Plan Review May 2018](#)

Date	Ver.	Action By	Action	Result
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2017 Strategic Plan Status Report

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



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of May 8, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager

SUBJECT: 2017 Strategic Plan Status Report

RECOMMENDATION: Receive Report, discuss, and provide direction, if any.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: Not applicable.

FISCAL IMPACT OF RECOMMENDATION: None as a result of this item, though elements of the Strategic Plan have fiscal impacts.

DISCUSSION: On March 27, 2018, the City Council reviewed the 2017 Strategic Plan as an initial touchstone prior to the development and consideration of a FY 2018/19 Budget. The staff report from that meeting is attached as additional background (Attachment 1). At that time, the City Council requested a written update on the status of each of the Strategic Plan objectives.

Attached is a current status report on the objectives set forth in the 2017 Strategic Plan (Attachment 2). As the City looks towards the preparation of the FY 2018/19 budget, it is timely to consider if any objectives should be modified or added.

ATTACHMENTS:

Attachment 1 – March 27, 2018 Staff Report

Attachment 2 – 2017 Strategic Plan Review



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 27, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager

SUBJECT: Annual Review of 2017 Strategic Plan

RECOMMENDATION: Receive Report, Review 2017 Strategic Plan, and Update Objectives as appropriate.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: Not Applicable

FISCAL IMPACT OF RECOMMENDATION: None as result of this action. The Strategic Plan is designed to guide future budget decisions and some of the individual Goals, Strategies, and Objectives, may have a fiscal impact.

DISCUSSION: In the spring to early summer of 2017, the City Council and staff worked to update the 2012 version of the City's Strategic Plan. On July 11, 2017, the City Council adopted the Strategic Plan update which resulted from these efforts. The staff report for July 11, 2017, is provided as Attachment 1 and the 2017 Strategic Plan as adopted is provided as Attachment 2.

As indicated in the July 11, 2017, staff report, it was intended that the Strategic Plan would be reviewed each year as the City heads into the preparation and consideration of the budget for the next fiscal year. With the completion of the FY 2016/17 audit, and the FY 2017/18 mid -year review, and the review of the Long-Term Forecast taking place on the same agenda as this item, it is timely to have the City Council review the 2017 Strategic Plan. The purpose of this review is to possibly update objectives if needed to the extent they would impact the FY 2018/19 Budget which will be proposed in May.

The City is making good progress in achieving the Strategic Plan objectives in most areas. Since just over 7 months has passed since the 2017 Strategic Plan was adopted, it is anticipated that most of the objectives would remain and that possibly some fine-tuning or changed circumstances types of modifications may be desirable as part of this first review since adoption.

ATTACHMENTS:

1. July 11, 2017 Staff Report

2. 2017 Strategic Plan



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of July 11, 2017

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager

SUBJECT: Report on Strategic Planning Workshop and Hercules Strategic Plan 2017

RECOMMENDATION: Receive and File Report on Strategic Planning Workshop and Adopt the Hercules Strategic Plan 2017

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: Not Applicable

FISCAL IMPACT OF RECOMMENDATION: There is no direct fiscal impact from the recommended actions, though many components of the proposed Hercules Strategic Plan 2017 would have a positive fiscal impact if the strategies and objectives were to be accomplished.

DISCUSSION: The City of Hercules last developed a Strategic Plan on an internal basis in 2012 and this Strategic Plan was adopted by the City Council on April 24, 2012. An update of the Strategic Plan was initiated in late 2016, and an outside facilitator was selected to assist in this effort in early 2017. The firm of Management Partners facilitated the update process including a day-long workshop on April 22, 2017. Part of the update process included a community survey and an employee survey which was developed by staff and Management Partners and administered through Survey Monkey. The results these surveys were reviewed and utilized as part of the workshop. The Mayor and City Council, together with the City's Executive Management Team, worked together to update and enhance the Strategic Plan in the Workshop. Attached is the final report from the Workshop as prepared by Management Partners.

The final report on the day-long workshop prepared by Management Partners serves as the basis for the proposed Hercules Strategic Plan 2017 which has been developed for City Council consideration. The community and employee surveys were utilized in updating the Strengths Weaknesses Opportunities and Threats section which were refined by staff. The City Council reviewed the Vision and Mission, with the Mission modified as reflected in the Report and Hercules Strategic Plan 2017. The Goals, Strategies and Objectives reflect the outcomes from the workshop.

If adopted, the Hercules Strategic Plan 2017 Goals and Strategies will cover the next three to five year period, subject to occasional review and adjustment. The objectives are of a more immediate nature and are generally designed to be accomplished in a year or less. The objectives will be updated at least annually prior to the preparation of the budget for each fiscal year. This will allow the City's

spending plan to be focused towards the achievement of the overall Goals, Strategies, and Objectives set forth in the Strategic Plan.

ATTACHMENTS:

1. Management Partners Report from April 22, 2017, Workshop
2. Hercules Strategic Plan 2017



HERCULES STRATEGIC PLAN 2017



Initial Adoption: July 11, 2017

Background

The City of Hercules last developed a Strategic Plan on an internal basis in 2012 and this Strategic Plan was adopted by the City Council on April 24, 2012. An update of the Strategic Plan was initiated in late 2016, and an outside facilitator was selected to assist in this effort in early 2017. The firm of Management Partners facilitated the update process including a day-long workshop on April 22, 2017. The Mayor and City Council, together with the City's Executive Management Team, worked together to update and enhance the Strategic Plan.

Part of the update process included a community survey and an employee survey which was developed by staff and Management Partners and administered through Survey Monkey. The results these surveys were reviewed and utilized as part of the workshop and in the development of the update.

The final report on the day-long workshop prepared by Management Partners serves as the basis for the Hercules Strategic Plan 2017.

Vision

The vision of the City of Hercules is as follows:

The City of Hercules is a richly diverse community, serving as a major transportation hub and a prime destination for the Bay Area. It is built on a sound economic and physical infrastructure, and its residents enjoy public safety, security, well-maintained parks, streets and public facilities. We conduct our work in an atmosphere of trust and respect. We constantly look for better ways to deliver services and always strive for excellence.

Mission

The current mission of the City of Hercules is as follows.

Our mission is to lead our diverse community and enhance the quality of life in the City of Hercules, now and in the future. We do this by providing effective, efficient, responsive, and innovative services with integrity and a culture of transparency.

Organizational Values

The organizational values for the City of Hercules are as follow:

Value	Definition
Integrity	Honesty, transparency, fair dealing
Professionalism	Exemplary conduct, competence, continuous improvement, respect
Service	Customer orientation, courtesy, hard work, striving for excellence
Collaboration	Teamwork, communication, community interaction and outreach
Creativity	Thinking, innovating, encouraging critical analysis
Tenacity	Setting priorities, staying focused, not getting discouraged
Responsibility	Taking ownership of one's work, accountability, going the extra mile

SWOT Analysis

(Strengths, Weaknesses, Opportunities, Threats)

An assessment and understanding of the environment in which the City operates is helpful in shaping the Goals, Strategies, and Objectives.

Strengths	Weaknesses
<ul style="list-style-type: none">• Location• Low Crime Rate/Safe Community• High median incomes• Bay/Waterfront Community• Well Maintained• Parks & Open Space• Strong Sense of Community• Diverse• Quality Housing Stock/Affordable• Access to Employment• Transportation options	<ul style="list-style-type: none">• Weak revenue base• Past mismanagement• Residential doesn't pay its way• Limited staffing/resources• Staff turnover• Limited retail/dining/commercial• Not well branded• Attractiveness to businesses limited• Few remaining development sites• Access somewhat limited• Quality of schools
Opportunities	Threats
<ul style="list-style-type: none">• Economic development• Hotel development interest• Sycamore Crossing, Market Hall, Bayfront, and Hillcrest developments proceeding• Dedicated City Council and staff• Regional Intermodal Transportation Center• Community supported local revenue measures• Linkages to regional trails• Employee concessions ended• Grant funding	<ul style="list-style-type: none">• Weakening revenues• Redevelopment issues• Next economic downturn• Ignoring capacity constraints• Increasing demand on and expansion of service pressures• Limited institutional knowledge• State/Federal unfunded mandates/revenue impacts• Need to renew local UUT measure in future

Goals Strategies, and Objectives

The City strategic plan contains a series of goals. Each goal has strategies that divide the goal into sub areas, and detailed objectives, or action items that implement each strategy. The following graphic shows this relationship.



The Goals and Strategies are intended to be operative for a three to five year period, subject to occasional review and adjustment. The objectives are of a more immediate nature and are generally designed to be accomplished in a year or less. The objectives will be updated at least annually prior to the preparation of the budget for each fiscal year. This will allow the City's spending plan to be focused towards the achievement of the overall Goals, Strategies, and Objectives set forth in the Strategic Plan.

Goals

The goals for the City's 2017 strategic plan are as follows:

2017 Strategic Plan Goals

- Goal A: Strengthen Financial Stability
- Goal B: Continue to Provide Excellent Police Services to the Community
- Goal C: Enhance Economic Development Efforts
- Goal D: Enhance Transportation Access and Options
- Goal E: Complete the Vision of the City's Development
- Goal F: Provide Outstanding Cultural and Recreational Services
- Goal G: Invest in and Enhance Maintenance of Public Infrastructure and Facilities
- Goal H: Continue to Provide Exemplary Governance and City Administration

Strategies and Objectives

Each of the goals, with the revised strategies and objectives are shown as follow:

Goal A: Strengthen Financial Stability

Strategy 1(a): Maintain a balanced budget.

Objectives

- Ensure ongoing revenues support ongoing costs.
- Ensure one-time revenues fund one-time expenditures.
- Restructure debt where possible to reduce near term debt payments.
- Continue a formal volunteer program to help various departments.
- Consider new ways to deliver municipal services in more cost-effective ways.
- Consider service-sharing with other communities when mutually beneficial.

Strategy 1(b): Balance the budget and increase revenues.

Objectives

- Review all Parks and Recreation fees before mid-year budget review.
- Consider cost effectiveness of increasing code enforcement activities.
- Consider annual fee review.
- Partner with other entities when beneficial for grant and cost-sharing opportunities.
- Take advantage of telecommunications and broadband opportunities.
- Push County and State elected officials to increase Hercules' share of each dollar of property taxes that is collected in Hercules.

Goal B: Continue to Provide Excellent Police Services to the Community

Strategy 1: Protect life and property.

Objectives

- Maintain core services, including police patrols and traffic enforcement.
- Continue to utilize community policing strategies.
- Maintain the special response team and school resource officers.
- Coordinate disaster preparedness with local police, fire, emergency medical services and the County and State office of emergency services.
- Utilize Reserve Police Officers when feasible to keep costs under control.
- Complete a succession plan to deal with anticipated future retirements.
- Complete an equipment replacement plan with a rationale, schedule and budget.
- Seek federal, state and other funding to enhance police department funding for staff and equipment.
- Recruit volunteers to assist office personnel with front counter duties, records processing and data entry.

Goal C: Enhance Economic Development Efforts

Strategy 1: Pursue high priority economic development initiatives.

Objectives

- Develop and implement economic development strategies.
- Consider whether the City's fee structure or permitting process might be impediments to new businesses opening in Hercules.
- Recruit qualified volunteer help on a regular and/or ad hoc basis from the City Council, Chamber of Commerce, local business leaders and the community at large.
- Participate in regional economic development efforts that will help Hercules.
- Focus on high priority sites for new development.

Strategy 2: Create a "brand" for Hercules and promote/market the brand.

Objectives

- Enhance the entry gateways of the City with volunteer landscaping/beautifying projects, public art, and signage.
- Promote the waterfront/intermodal transportation center (ITC) Development – A special place that is distinctive of other planned developments and serves as the City's downtown.
- Work with the City Council, staff and volunteers to develop and implement a brand and marketing strategy in-house.
- Consider whether the City's fee structure or permitting process might be impediments to new businesses opening in Hercules.

Strategy 3: Recruit businesses that make sense for Hercules; retain and grow existing businesses.

Objectives

- Prioritize and visit potential businesses to recruit to Hercules.
- Review various plans and ordinances for potential updates, with an eye toward balancing economic development with "new urbanism" planning principals.

Goal D: Enhance Transportation Access and Options

Strategy 1: Promote alternative forms of transit

Objectives

- Leverage the Regional Intermodal Transportation Center (RITC) site control into grant funding for station and related infrastructure.
- Complete the Regional Intermodal Transportation Center
- Look for opportunities to partner with rail for movement of goods.
- Work with Capital Corridor to get a firm commitment for a train stop.
- Pursue future ferry service.
- Work with WestCAT to expand service.
- Expand City's walkways and bike paths via Complete Streets program.
- Provide leadership role in BART's participation to enhance services at Hercules Transit Center.

Goal E: Complete the Vision of the City's Development

Strategy 1: Undertake updates of General Plan and Zoning Code to implement the Vision.

Objectives

- Complete the update of the City's Circulation Element.
- Review various plans and ordinances for potential updates.
- Revise the City Zoning Ordinance to be consistent with the General Plan and Specific Plans.
- Plan for the resources and funding to update the priority elements of the City's General Plan.
- Revisit the City's sign ordinance and update as needed.

Goal F: Provide Outstanding Cultural and Recreational Services to the Community

Strategy 1: Evaluate programs for community impact and cost effectiveness, and make recommendations to improve the overall effectiveness of the City's efforts in services managed by the Parks and Recreation Department.

Objectives

- Work with volunteer organizations to ensure full funding for a 40 hour per week Library.
- Work with the County to reinstate 45 hours per week of Library services.
- Cooperate with public/private partnerships to enhance City cultural and recreation services.
- Continue to provide high quality recreation programs that reinforce Hercules' reputation for a high quality of life.
- Continue to work on the current cost recovery objective of being budget neutral to minimize General Fund support.
- Annually analyze and report on costs and revenues on a program by program basis.
- Create and implement new ways to fund Parks and Recreation programs, including increasing participation.
- Continue to manage facilities rentals and find ways to increase number of rentals as well as income from rentals.

Strategy 2: Continue to look for ways to augment City funding for parks and recreation programs and initiatives.

Objectives

- Research federal, state and foundation funding availability under "Health and Wellness" and other programs.
- Apply for federal, state, and foundation grants as appropriate to support and enhance our parks, open space and recreation programs.

Goal G: Invest in and Enhance Maintenance of Public Infrastructure and Facilities

Strategy 1: Re-evaluate and make recommendations to improve the City's capital improvement program, clean water program and all lighting and landscape assessment districts.

Objectives

- Prioritize the City's capital improvement program.
- Develop and implement a new code compliance model based on the new administrative citation program.
- Secure maintenance and operations funding for all new capital facilities.
- Effectively manage day-to-day operations to ensure Hercules keeps its reputation as a well-maintained city.
- Update lighting and landscaping districts annually.
- Consider updating the lighting and landscaping districts to increase funding and level of service.

Goal H: Continue to Provide Exemplary Governance and City Administration

Strategy 1: Improve administrative processes and overall quality of executive and administrative management.

Objectives

- Enhance strategic planning and implementation efforts with linkages to the budget.
- Improve financial, personnel and administrative functions.
- Ensure all required state and federal financial reports are timely.
- Complete financial and operational audits in a timely manner.
- Provide regular financial reports including a mid-year review.
- Evaluate financial controls and streamline where advisable.
- Evaluate and re-engineer as necessary administrative processes.
- Evaluate IT systems, especially financial management to determine possible improvements.
- Ensure good inter-departmental communications and collaboration.

Strategy 2: Enhance usage of the City's Finance Commission.

Objectives

- Provide oversight of City tax measures.
- Serve as a resource to staff.
- Provide training to commissions.

Strategy 3: Provide and enhance exemplary governance.

Objectives

- Enhance relationships in support of education and schools.
- Encourage and engage in regional collaboration and cooperation.
- Continue to enhance transparency and open government.
- Foster an ethical environment free from conflicts of interest.
- Enhance access to information (sunshine provisions).
- Provide a means for employees to report concerns or possible wrong doing (whistle-blowing).
- Conduct annual review and update of anti-nepotism, anti-cronyism, conflict of interest, and Code of Ethics.
- Reduce exposure to litigation and claims.

2017 Strategic Plan Review

May 2018

Goals/Strategies/Objectives	
Goal A: Strengthen Financial Stability	
<i>Strategy 1(a): Maintain a Balanced Budget</i>	
<u>Objectives</u>	Comments/Status
Ensure ongoing revenues support ongoing costs.	The annual budget is prepared using a budget balancing spreadsheet to ensure on-going revenues support on-going costs. The City is working to implement key development projects to expand the City's revenue base to support service levels. In addition, cost containment remains a priority. Public Works will be beginning a sewer rate study to ensure funding is sustainable for ongoing operations and proposed capital projects out into the future.
Ensure one-time revenues fund one-time expenditures.	Each year, one-time revenues are identified as part of the annual budget process and applied to one-time costs including topping up reserves and funding capital and other needs. In addition, using one-time funds, the City established an IRS Section 115 Pension Trust as a vehicle to mitigate future increases in employee retirement contributions. General Plan Update fees are now being placed into a separate project deposit account based on actual fees collected with related General Plan updates being charged from the same account.
Restructure debt where possible to reduce near term debt payments.	Staff evaluates opportunities to restructure debt as they arise. Refinancing of former redevelopment agency bonds have been explored and require resolution of Department of Finance related issues before proceeding.
Continue a formal volunteer program to help various departments.	The Police Department's annual Citizens Academy is our primary source of volunteers. In addition, volunteers are utilized in special projects like the recent and on-going renovations of the Ohlone and Foxboro Community Centers. The Parks & Recreation Nonprofit program also results in volunteer support of special events like the community clean-up day and the Holiday Tree Lighting. In addition, volunteers are a key element of the City's new three tier Code Compliance program which is also being supported with some contract services. P&R also has an "Adopt a Park/Adopt a Trail" program. Residents with an interest in a particular park or trail can volunteer their time to help clean up the park or trail by pulling weeds. Bags are provided, and picked up by City personnel. There are also volunteers that work in the Senior Center on a daily basis.

Consider new ways to deliver municipal services in more cost-effective ways.	The City looks for opportunities on an on-going basis. Most recent examples include the successful outsourcing of Business License processing; a three party partnership for CAD/RMS with Pinole and San Pablo; and a pending transition to the County for reinstatement of Cable Broadcasting services on a new separate City Channel. The City will be looking into “bundling” street projects with other agencies to be more cost-effective.
Consider service-sharing with other communities when mutually beneficial.	The CAD/RMS contract with Pinole and San Pablo, pending contract with the County for Cable, and updated three party BART/WestCAT/City contract for operation of the Hercules Transit Center have been implemented in the past year. The WWTP is shared with Pinole and the outfall is also jointly shared with the Rodeo District. The City participates with 20 other agencies in the Clean Water Program for the City’s storm water permit.
<i>Strategy 1(b): Balance the Budget and Increase Revenues</i>	
<u>Objectives</u>	
Review all Parks and Recreation fees before mid-year budget review.	The Finance Commission is engaged in a soon to be completed review of Parks & Recreation programs. Initial results were available at the time of the mid-year budget review. In addition, staff have modified and implemented modifications to a number of Parks and Recreation fee components with positive outcomes such as with Childcare programs.
Consider cost effectiveness of increasing code enforcement activities.	The City has launched a new three-tier code compliance program which seeks voluntary compliance initially, followed by use of Administrative Citations, and then for the most egregious cases, the Nuisance Abatement Process. Coordination with a consultant to get them the baseline information, have them finalize volunteer training program, and start getting involved in some difficult cases started in March. IT department has set up a shared network drive for police/planning/building departments to share basic information across departments. The DataTicket contract has been signed to process administrative citations.
Consider annual fee review.	A review of fees will be considered in conjunction with the annual budget process.
Partner with other entities when beneficial for grant and cost-sharing opportunities.	The most high profile example of partnership is the upgrade and expansion of the joint Pinole/Hercules Wastewater Plant now under construction. Other examples have been discussed under other Objectives. The City is applying for a joint grant with other agencies on the I-80 Corridor to coordinate signals and bus pre-emption.
Take advantage of telecommunication and broadband opportunities.	In August 2017, the City Council approved a program which will result in the City installing fiber when opportunities arise as utility work is taking place in City Streets. The City Council also allocated funding to allow these opportunistic installation of fiber to take place.
Push County and State elected officials to increase Hercules’s share of each dollar of property taxes that is collected in Hercules.	The City continues to look for opportunities to address achieve this goal. The City’s legal and property tax consultant team are reviewing responses from a Public Records Act request made of the County for which a response has been received.

Goal B: Continue to Provide Excellent Police Services to the Community*Strategy 1(a): Protect Life and Property*

<u>Objectives</u>	Comments/Status
Maintain core services, including police patrols and traffic enforcement.	The City has utilized State grant funding for two additional Police Officers for two fiscal years which we will endeavor to continue to fund in future fiscal years. In addition, the City Council has approved an overfill program which allows for up to two additional positions to be filled to minimize the impact from retirements and other turnover to allow for the recruitment and training of new Police Officers. In addition, initial steps have been made to reinstate a Traffic Enforcement assignment which will be further considered as part of the FY 2018/19 proposed budget. Public improvements in new development is being designed to reduce opportunities for unlawful behavior and lower need for police oversight by sending staff to Crime Prevention Through Environmental Design (CPTED).
Continue to utilize community policing strategies.	The Police Department continues to utilize a community oriented approach to policing. Examples include our School Resource Officer program, the Citizen's Police Academy, Neighborhood and Business Watch, and the use of volunteers in Policing and the expansion of a role of Police volunteers in code compliance which is also a crime prevention tools.

Maintain the special response team and school resource officers	The Special Response Team continues to be fully functional. The City is actively engaged in an effort to ensure School District funding continues in support of the School resource Officer program, The City Council received an update on the School Resource Officer Program on February 27 th with the matter also discussed on April 10, 2018 and a letter to the School Board approved.
Coordinate disaster preparedness with local police, fire, emergency medical services and the County and State office of emergency services	The Police Department takes the lead in the City's Emergency Operations efforts. Later this fiscal year the City will embarking on an update of the Safety Element of the General Plan and the Hazard Mitigation Plan in coordination with police, fire, and other agencies
Utilize Reserve Police Officers when feasible to keep costs under control	Reserve Officers continue to be a tremendous asset to our Police Department.
Complete a succession plan to deal with anticipated future retirements	With the pending retirement of Chief Goswick at the end of June, 2018, the formal development of a succession plan will fall to a new Chief. In the meanwhile, officers are identified for training which will assist in their development including the Administrative Sergeant having recently completed the national FBI Academy.
Complete an equipment replacement plan with a rationale, schedule and budget	While equipment replacement is on-going and considered as part of the annual budget process each year, a more formalized replacement plan still needs to be developed.

Seek federal, state and other funding to enhance police department funding for staff and equipment.	Staff actively scans for grant and other funding opportunities. A key funding source for equipment is the Asset Forfeiture funding received as result of criminal convictions.
Recruit volunteers to assist office personnel with front counter duties, records processing and data entry.	Volunteers, Reserve Police Officers, and Explorers play key on-going roles in support of Police operations.
Goal C: Enhance Economic Development Efforts	
<i>Strategy 1: Pursue High Priority Economic Development Initiatives</i>	
<u>Objectives</u>	Comments/Status
Develop and implement economic development strategies.	The City's current economic development efforts are primarily development site driven which will result in new retail space, the City's first hotel, and sales tax and in-lieu fee generating auto service park and self-storage facility. Staff has also worked with the owner of the Franklin Golf Course property on an RV Park/hospitality scenario with economic development benefits.
Consider whether the City's fee structure or permitting process might be impediments to new businesses opening in Hercules.	With completion of the General Plan Circulation Element update, the City is reviewing its Traffic Impact Fees. A comprehensive review of the City's Zoning Code is a desired future effort.
Recruit qualified volunteer help on a regular and/or ad hoc basis from the City Council, Chamber of Commerce, local business leaders and the community at large.	The City has increased cooperation with the Chamber in regard to a number of special events. Other outreach to volunteers is on a case-by-case basis and occurs infrequently.
Participate in regional economic development efforts that will help Hercules.	The City participates in the some activities of the East Bay Economic Development Alliance.
Focus on high priority sites for new developments.	Moving forward proposed projects on the Safeway, Sycamore Crossing, Bayfront, and Willow Avenue sites are a high priority. Other possible development sites include the Willow Loop and the Franklin Canyon Golf Course property and the Hilltown site.

<i>Strategy 2: Create a "Brand" for Hercules and Promote/Market the Brand</i>	
<u>Objectives</u>	
Enhance the entry gateways of City with volunteer landscaping/beautifying projects, public art, and signage.	Efforts are currently focused on the appearance of private developments taking place on key corners. Additionally, the City is currently replacing all street signs.
Promote the waterfront/intermodal transportation center (ITC) Development – A special place that is distinctive of other planned developments and serves as the City's downtown.	The first phase of the Bayfront development has been approved with the first apartment building to start construction soon. The Bay Trail West segment has been substantially completed. The City continues to pursue grant funding necessary to construct the rail and station improvements.
Work with the City Council, staff and volunteers to develop and implement a brand and marketing strategy in-house.	This objective has not yet been specifically pursued. Reusable bags have been purchased as part of efforts to promote recycling and brand the City. Additionally, a number of special events have been reinstated like the Social Bite to further the development of a brand identity; the City participates in these events with a booth.
Consider whether the City's fee structure or permitting process might be impediments to new businesses opening in Hercules.	This objective has not yet been specifically pursued, other than the above mentioned traffic impact fee nexus study has started and should be complete by October 2018

Strategy 3: Recruit Businesses that Make Sense for Hercules; Retain and Grow Existing Businesses

<u>Objectives</u>	
Prioritize and visit potential businesses to recruit to Hercules.	Pending the development of new retail sites and to be done in conjunction with the developers of these sites.
Review various plans and ordinances for potential updates, with an eye towards balancing economic development with “new urbanism” planning principals	Undertaken currently on a case-by-case basis as development proposals are received. A comprehensive review has not yet been initiated.

Goal D: Enhance Transportation Access and Options

Strategy 1: Promote Alternative Forms of Transit

<u>Objectives</u>	Comments/Status
Leverage the Regional Intermodal Transportation Center (RITC) site control into grant funding for station and related infrastructure.	With grant funding having made the first three phases possible, the City is actively working to identify and apply for grant funding for the utility relocation phase and the rail/station improvement phases of the RITC.
Complete the Regional Intermodal Transportation Center.	This remains the major focus for the City with additional staffing resources being dedicated to the project through an action taken by the City Council as part of the mid-year budget review on February 27 th .
Look for opportunities to partner with rail for movement of goods.	The City is facilitating interim improvements to the existing railroad trestle bridge across Refugio Creek by Union Pacific Railroad this spring. The design of the future rail and track improvements will result in enhanced goods movement and will set the stage for even better efficiencies.

Work with Capital Corridor to get a firm commitment for a train stop.	The City is actively engaged with the Capital Corridor JPA, including having made presentations to the Board, on securing a firmer commitment for the train to stop once the rail and station improvements are completed. Many of the Capital Corridor Board Members have made site visits to Hercules as has the Executive Director. The station stop model is being updated to facilitate discussion of a Hercules stop. The City Council has also designated Vice Mayor Romero as its liaison to the Capital Corridor Board.
Pursue future ferry service.	The City actively engages with the water Emergency Transportation Authority (WETA), the ferry operator. A Hercules Ferry stop remains in their long-term business plan. Hercules advanced some of its dedicated ferry funding to the Richmond ferry terminal project, with service set to start later this year. This was acknowledged by WETA officials at the groundbreaking for the new Richmond Ferry Terminal and the successful initiation of Richmond service will bode well for future Hercules service. The City Council has also designated Council Member Esquivias as its liaison to WETA. The City is also pursuing Public Private Partnership (P3) opportunities for service with assistance from CCTA.
Work with WestCAT to expand service.	We are working with WestCAT in initiate interim service to the Waterfront with the completion of the Path to Transit Phase.

Expand City's walkways and bike path via Complete Streets program.	The recently completed Circulation Element update focused on incorporating Complete Street Standards into our circulation objectives. In addition, the City has applied for and received grant funding to for a complete streets project along Sycamore to Palm and Willow to improve pedestrian safety and provide a sidewalk to the Hercules Transit Center. Preliminary engineering has also been done for another project in anticipation of future grant activities. In addition, plans to repave the Refugio Creek Trail are in design with the project to be constructed starting this summer. The proposed sidewalk on San Pablo between John Muir Parkway and Sycamore Drive is being included in the funding plan for regional traffic impact fees administered by WCCTAC. We are also working on expanding the width of the path along John Muir Parkway from San Pablo Avenue to Alfred Noble with funds of up to \$100,000 from Taylor Morrison required in their Development Agreement.
Provide leadership role in BART's participation to enhance services at Hercules Transit Center.	The City, BART, and WestCAT have entered into a new three party agreement on regard to operation of the Hercules Transit Center. The City recently completed the repair and upgrade to LED of the on-site lighting. BART is working on additional improvements of benefit to the users.
Goal E: Complete the Vision of the City's Development	
<i>Strategy 1: Undertake Updates of General Plan and Zoning Code to Implement the Vision.</i>	
<u>Objectives</u>	Comments/Status
Complete the update of the City's Circulation Element	The update of the Circulation Element of the General Plan was approved by the City Council on February 27, 2018 and will be posted in final form on the City's website soon
Review various plans and ordinances for potential updates.	The City Council has considered ordinance amendments related to cannabis (Prop 64); accessory dwelling units (ADUs) to comply with State law; and has initiated the consideration of a paving ordinance. The City Council also reviewed and updated the penalties associated with illegal construction. The City Council requested that update to the City's Smoking Ordinance be developed and took action on that new ordinance in April. Also, the City Council has taken initial steps to have the derelict Queen Anne House on the Corporation site relocated to another community for restoration, with the precursor environmental review having been completed in April.
Revise the City's Zoning Ordinance to be consistent with the General Plan and Specific Plans.	This objective has not yet been specifically pursued.
Plan for the resources and funding to update the priority elements of the City's General Plan.	The General Plan update fee should be sufficient to address the updates needed for most elements of the General Plan over time. The Circulation Element update has recently been completed with an update of the Safety Element about to start.
Revisit the City's sign ordinance and update as needed.	A comprehensive update of the sign ordinance to bring the City into compliance with case law is pending with an initial element included with the processing of the Safeway Master Sign Program.

Goal F: Provide Outstanding Cultural and Recreational Services to the Community

Strategy 1: Evaluate Programs for Community Impact and Cost Effectiveness, and Make Recommendations to Improve the Overall Effectiveness of the City's Efforts in Services Managed by the Parks And Recreation Department.

<u>Objectives</u>	Comments/Status
Work with volunteer organizations to ensure full funding for a 40 hour per week Library.	The City included funding to return the Library to 40 hours in the FY 2017/18 budget. This supplements funding provided by the Friends of the Library and the Library Foundation.
Work with the County to reinstate 45 hours per week of Library services.	The City reaches out the County to discuss funding priorities for the Library Budget each spring. Thus far, the County has not made hours reinstatement a priority for funding.
Cooperate with public/private partnerships to enhance City cultural and recreation services.	The Parks & Recreation Department continues to add contract class instructors to meet community needs. In addition, a new selection of day, regional and trips further afield have been added as offerings for the senior community. The City has also contracted with an on-line course provide to expand offerings. Special events are also being done in conjunction with partners like the "May the Fourth Be With You" movie night and related events
Continue to provide high quality recreation programs that reinforce Hercules' reputation for high quality of life.	Programs and offerings are regularly evaluated to enhance the City's offerings as described above in addition to changes and modifications made to the City's direct offerings. Staff continues to take a critical look at all of the current programs and trends by tweaking programs as needed to accommodate for emerging trends. A good example of this was the rebranding efforts of the child care program moving to a license exempt program by creating a new and improved morning Breakfast Club program and updating the after school program to a "recreational" program now called RAP.
Continue to work on the current cost recovery objective of being budget neutral to minimize General Fund support.	Staff is working with the Finance Commission on a review of programs, costs, and revenues. A number of key programs have been restructured with cost recovery being a high priority. One example is that childcare programs have been revamped in a manner to allow for reduced costs and more flexible selections by program participants.
Annually analyze and report on costs and revenues on a program by program basis.	Parks & Rec is working with Finance to allow for the generation of reports to make this task easier. The effort by the Finance Commission has served as a pilot for this type of reporting.
Create and implement new ways to fund Parks and Recreation programs, including increasing participation.	New revenue sources to support core activities are being generated by the senior trip offerings and the on-line course offerings. Basketball has been transitioned to being an internally run program. The staff will continue to trial new approaches on an on-going basis in order to achieve this objective.
Continue to manage facilities rentals and find ways to increase number of rentals as well as income from rentals.	Facility rentals have increased. Efforts are underway to enhance certain facilities through the investment with volunteer assistance in an upgrade of the facilities. An initial round of chair replacement is underway to ensure the facilities are properly equipped.

Strategy 2: Continue to Look for Ways to Augment City Funding for Parks and Recreation Programs and Initiatives

<u>Objectives</u>	
Research federal, state and foundation funding availability under “Health and Wellness” and other programs.	The staff regularly scans the environment for grant opportunities.
Apply for federal, state, and foundation grants as appropriate to support and enhance our parks, open space and recreation programs.	The staff regularly scans the environment for grant opportunities.

Goal G: Invest In and Enhance Maintenance of Public Infrastructure and Facilities

Strategy 1: Re-evaluate and Make Recommendations to Improve the City’s Capital Improvements Programs, Clean Water Programs and all Lighting and Landscaping Assessment Districts

<u>Objectives</u>	Comments/Status
Prioritize the City’s capital improvement program.	The annual budget process includes a five year capital improvement program with the first year funded as part of the budget. The Public Works Department would like to prepare a more comprehensive Five Year CIP and this will be done in future years.
Develop and implement a new code compliance model based on the new administrative citation program.	A three-tier code compliance model has been developed and is being implemented with various elements underway on a pilot basis.
Secure maintenance and operations funding for all new capital facilities.	Elements of funding for improvements like the new segments of the Bay Trail have been added into the Citywide Landscape & Lighting Assessment District. Options to address these needs are being explored for other projects, including the Bayfront.
Effectively manage day-to-day operations to ensure Hercules keep its reputation as a well-maintained city.	The landscaping contracts is now being more actively managed. Two Public Works Maintenance Workers have been designated leads with new oversight responsibilities related to maintenance in effect. A firm has been retained to provide adjunct engineering services in support of the operation and management of the City’s sewer system. Street sign replacement is underway. A major tree maintenance and trimming contract has been completed. A major pothole repair contract was let and completed as was a street striping contract. The City Council approved a trench cut ordinance to protect our investments in streets which requires utilizes and others to make repairs to newly rehabilitated streets when they make trench cuts to access their utilities and systems. A contract for a major sewer system cleaning and inspection will begin early May and an ordinance to mandate full trash capture on commercial properties was introduced and acted upon in March.
Update lighting and landscaping districts annually.	The annual update for the base landscape & light assessments is underway now.
Consider updating the lighting and landscaping districts to increase funding and level of service.	The City Council has embarked on another effort to have assessment payers in five zones of the Citywide District consider an approve assessment increases through a Proposition 218 process. That process will conclude in July.

Goal H: Continue to Provide Exemplary Governance and City Administration

Strategy 1: Improve Administrative Processes and Overall of Executive and Administrative Management

<u>Objectives</u>	Comments/Status
Enhance strategic planning and implementation efforts with linkage to the budget.	A Five Year Forecast was developed and reviewed after the Strategic Plan was approved in July 2017. An update of the forecast was reviewed together with the Strategic Plan on March 27, 2018, as a first step in setting the stage for the development of the 2018/19 budget. This update on Strategic Plan Objectives was as a result of that review.
Improve financial, personnel, and administrative functions.	Numerous efforts to enhance systems in these areas have been completed or are underway. Business Licensing has been outsourced. A new master personnel model is in development. An update of the City's Overhead & Cost Allocation Model has been completed. A Class & Compensation Study is nearing completion. A comprehensive update to the City's records retention schedule, management policies and system was recently reviewed by the City Council. The City's standard form contracts have been updated. A new agenda processing system called Legistar has been implemented and is now in use. An audit of UUT/Franchise Fees is underway.
Ensure all required state and federal financial reports are timely.	The City is keeping current with its federal and state reporting requirements.
Complete financial and operational audits in a timely manner.	The annual audit was completed at its earliest date since the prior periods where the City had fallen behind.
Provide regular financial reports including mid-year review.	The Finance Department provides the Finance Commission and City Council with quarterly reports including a mid-year review. In addition, the City is annually updating the League of California Cities Financial Diagnostic Tool. The development of an annual update of the Five Year Forecast is also another new tool to assist in financial reporting.
Evaluate financial controls and streamline where advisable.	The City Council approved an increase in the City Manager's contracting authority which has greatly streamlined the process to move projects and activities forward. A listing of City Manager approved contracts is being provided quarterly. The City has developed a purchasing matrix to assist staff in navigating the purchasing process. An update of the City's purchasing policies is currently underway.
Evaluate and re-engineer as necessary administrative processes.	This objective cross-over to a number of other objectives where activities related to this objective have already been described.
Evaluate IT systems, especially financial management to determine possible improvements.	A new web site was launched in April. The launch of the Legistar module for agenda production was discussed previously. An upgrade of the broadcast equipment in the City Council Chambers was completed.
Ensure good inter-departmental communications and collaboration	This is on-going effort. Interdepartmental teams are leading efforts related to the website upgrade, the new code compliance model, and other initiatives.

Strategy 2: Enhance Usage of the City's Finance Commission

<u>Objectives</u>	
Provide oversight of City tax measures.	The Finance Commission serves as the citizen's oversight board for the City's two local tax measures. The Finance Commission provided its annual report on the Measures for the 2017 fiscal year to the City Council on March 27, 2018. The City Council also serves as an additional level of oversight on the measures.
Serve as a resource to staff.	The Finance Commission serves as a sounding board for staff in addition to having formed an Ad Hoc Committee this year to undertake a financial review of parks & recreation programs.
Provide training to commissions.	The City Clerk & City Attorney undertake annual training for Commissions with that having taken place in March, 2018. In addition, a Leadership Coffee was launched this year and took place in February with the Mayor and Vice Mayor meeting with the Chair and Vice Chair of each of the Commissions in a joint session to exchange ideas and information.

Strategy 3: Provide and Enhance Exemplary Governance

<u>Objectives</u>	
Enhance relationships in support of education and schools.	The City has been actively engaged in the effort to preserve School Resource Officers which directly support a safe school environment which contributes to learning and performance.
Encourage and engage in regional collaboration and cooperation.	Regional collaboration efforts of note include the Tri-City dispatch and CAD/RMS contract; the pending transition to the County for cable broadcasting; the City active participation in many regional boards and Joint Powers Authorities; a regional freeway camera project for Highways 80 and 4 to enhance community safety; and others. The City also hosted the West County Mayors & Supervisors Association for the last six months of 2018.
Continue to enhance transparency and open government.	The Pilot Streaming of City Council and Planning Commission meetings and the re-initiation of cable casting contributes to transparency and open government. The recently completed and launched upgrade of the City website should also facilitate this objective. In addition, the recent update of the City's record retention schedule and approval of a revised records management program will contribute to transparency.
Foster an ethical environment free from conflicts of interest.	The City Council has adopted a Code of Ethics which is reviewed annually and an annual acknowledgment of the policy is required for City Council Members, Commission Members and key staff.
Enhance access to information (sunshine provision).	An update of the City's website was recently completed and will serve as a vehicle for enhanced access to information.
Provide a means for employees to report concerns or possible wrong doing (whistle-blowing).	The City maintains a whistleblower hotline through a third party and regularly makes that information available to employees.
Conduct annual review and update of anti-nepotism, anti-cronyism, conflict of interest, and Code of Ethics.	The City Council conducts an annual review of these policies with that having taken place last on January 23, 2018.

Reduce exposure to litigation and claims.	The City has been successful in reducing claims and litigation over the past few years. Efforts to continue this trend include updates to the City's standard form of contracts and the development of specialty contract models, the investment of monies to address key infrastructure issues like the maintenance of trees, sidewalks, and the filling of major potholes.
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Legislation Details (With Text)

File #:	18-135	Version:	5	Name:	
Type:	Discussion/Action Item	Status:		Agenda Ready	
File created:	4/30/2018	In control:		City Council	
On agenda:	5/8/2018	Final action:			
Title:	Pre-Qualified Vendors for Planning-Related Services Recommendation: Adopt a Resolution approving a list of qualified vendors for planning, environmental and technical planning, transportation planning, architecture & urban design, landscape architecture, historic preservation, and fiscal analysis services.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Staff Report - 2018 RFQ - Planning Services 050818 Attach 1 - 2018 RFQ - Planning Services - Resolution Attach 2 - 2018 RFQ - Planning Services - List of Recommended Vendors Attach 3 - 2018 RFQ - Planning Services - Summary of Responses to RFQ				

Date	Ver.	Action By	Action	Result
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Pre-Qualified Vendors for Planning-Related Services

Recommendation: Adopt a Resolution approving a list of qualified vendors for planning, environmental and technical planning, transportation planning, architecture & urban design, landscape architecture, historic preservation, and fiscal analysis services.



STAFF REPORT TO THE CITY COUNCIL

DATE: May 8, 2018

TO: The Mayor and Members of the City Council

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: Recommended Pre-Qualified Vendors for Planning-Related Services

RECOMMENDED ACTION:

Adopt a Resolution approving a list of qualified vendors for planning, environmental and technical planning, transportation planning, architecture & urban design, landscape architecture, historic preservation, and fiscal analysis services.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

None.

FISCAL IMPACT OF RECOMMENDATION:

No funding authorization is being requested for this action, and therefore the recommended actions have no direct fiscal impact. Expenditure authorizations will be requested at the time services are needed and in accordance with the City's purchasing policy and Municipal Code. Awarding of contract services will require future City Council approval, except as allowed under the authority granted by the City Council to the City Manager for approval and execution of contracts under \$100,000. Most services are likely to be required for processing of development projects, which are generally funded by developers as part of their entitlement review process.

DISCUSSION:

The Planning Department consists of one full-time employee and one part-time employee and therefore relies heavily on contract professional services to process and review applications for large-scale projects as well as to prepare long-term planning documents. Often times, the need for these services comes with little notice, and the time to enlist professional services could take upwards of two months (approximately one week to develop a scope of work, 3–4 weeks to advertise the need, and another 2–3 weeks to review proposals and award a contract).

Pre-Qualified Vendors for Planning-Related Services

To reduce multiple Requests for Proposals and shorten the time frame to award contracts, and, to expedite proposed development, the City on February 8, 2018, issued a request for qualifications (RFQ) for professional services, with a response deadline of March 5, 2018. The RFQ requested qualifications for both planning-related and engineering-related services.

By the March 5th deadline, 61 separate planning and engineering companies had submitted their qualifications to the City. The Engineering Department continues to review those companies that have submitted engineering-related qualifications and will submit a list of recommended engineering vendors for City Council's approval at a later date to be determined. Planning Department staff has completed its review of the submitted planning-related responses, identified the type of specific work in which each company is experienced, and determined which firms met the minimum qualifications within the respective fields of expertise, including those firms listed as potential subcontractors for specialty services (e.g., complex environmental evaluation and documentation).

One of the primary goals of the RFQ process is to expedite future selection of vendors for as-needed project-based work. Staff's original intention was to recommend all qualified companies for inclusion on a list of pre-qualified vendors. However, having received far more applications than anticipated, staff recommends that City Council include on the pre-qualification list those firms that Staff deems best qualified and/or most competitive to provide the kind of planning-related services for the types of projects the City anticipates over the next few years. Based on the qualifications received, City staff have further refined the categories of planning-related services listed in the original RFQ by separating out (a) Transportation from other Technical Planning Services, and (b) Landscape Design from Architecture & Urban Design. Staff proposes that the City of Hercules authorize a three-year qualified vendor list with firms that provide these planning-related services to the City of Hercules by adopting a resolution (Attachment 1) which includes a listing of the pre-qualified firms (Attachment 2). This action does not prohibit the City of Hercules from issuing future Request for Proposals if deemed necessary.

For inclusion on the City's final list of pre-qualified vendors, all vendors will need to agree to the terms of the City's standard contract as well as the City's nepotism/cronyism policy, which have been made available to all applicants. A complete set of all responses are on file in the Office of the City Clerk with a summary list provided as Attachment 3.

ATTACHMENTS:

Attachment 1 – Resolution

Attachment 2 – Qualified Planning-Related Vendor List

Attachment 3 – Summary of Responses to Request for Qualifications

RESOLUTION NO. 18-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING A LIST OF QUALIFIED VENDORS FOR PLANNING, ENVIRONMENTAL AND TECHNICAL PLANNING, TRANSPORTATION PLANNING, ARCHITECTURE & URBAN DESIGN, LANDSCAPE ARCHITECTURE, HISTORIC PRESERVATION, AND FISCAL ANALYSIS SERVICES.

WHEREAS, the City relies on professional services, including planning, environmental and technical planning, architecture & urban design, landscape architecture, historic preservation, and fiscal analysis services; and

WHEREAS, often times the need for these services is urgent and cannot wait for Requests for Qualifications (RFQ) preparation and review; and

WHEREAS, staff recommends that the City of Hercules authorize a three-year qualified vendor list with firms that provide these services; and

WHEREAS, staff is requesting no funding at this time because funding authorizations will be requested at the time the services are needed, in accordance with the City's purchasing policy; and

WHEREAS, this agreement does not prohibit the City of Hercules from issuing future Request for Proposals and/or Qualifications if deemed necessary.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hercules hereby approves a three-year list of qualified vendors for planning, environmental and technical planning, transportation planning, architecture & urban design, landscape architecture, historic preservation, and fiscal analysis services.

The foregoing Resolution was duly adopted at a regular meeting of the City Council of the City of Hercules held on the eighth day of May, 2018, by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chris Kelley, Mayor

May 8, 2018

ATTEST:

Lori Martin, City Clerk/Administrative Services Director

May 8, 2018



**Recommended Qualified Vendor List
by Type of Service
May 2018 through April 2021**

Planning

- M-Group
- MIG
- MRG
- PlaceWorks
- Stevenson, Porto & Pierce

Environmental & Technical Planning

- Analytical Environmental Services (AES)
- Circlepoint
- First Carbon Solutions
- Helix Environmental Planning
- Michael Baker International
- MIG
- Rincon Consultants, Inc.
- Stantec

Transportation Planning

- DKS
- Kimley Horn

Architecture & Urban Design

- MIG
- PlaceWorks
- RRM Design

Landscape Design

- Gates & Associates
- McArdle Design
- RRM Design
- Vallier Design Associates
- WRT

Historic Preservation

- Architectural Resources Group
- Garavaglia Architecture

Fiscal Analysis

- EPS
- MRG
- Willdan Financial Services

Responses to City of Hercules's Request for Qualifications for Professional Services

Legend

X	Submitted
X	Submitted; under review
X	Recommended for inclusion on pre-qualified vendor list

Company	Planning					Engineering			
	Planning	Environmental & Technical Planning	Architecture / Landscape / Urban Design	Historic Preservation	Fiscal Analysis	Construction Inspection	Construction Management	Environmental Engineering & Permitting	Civil Engineering Misc. Engineering & Surveying
AE3 Partners			X				X		
AES		X							
AnchorCM						X	X		
Architectural Resources Group				X					
Bellecci & Associates						X	X		X
BKF							X		X
Cal Engineering & Geology									X
Carollo					X	X	X		X
Circlepoint		X							
CSG Consultants	X					X	X		X
Cuhna Engineering							X		X
Cullen-Sherry & Associates						X			X
David J. Powers & Associates, Inc.		X							
DK Consulting	X		X						X
DKS	X	X							X
Dudek	X	X		X					
EMC Planning Group	X								
ENGEO						X		X	X
EPS (Economic & Planning Services)					X				
ESA				X					
First Carbon Solutions		X							
Francisco & Associates					X				X
Garavaglia Architecture			X	X					
Gray-Bowen-Scott									X
Gates & Associates			X						
Guida Surveying, Inc.									X
HDR	X	X				X	X	X	X
Helix Environmental Planning		X							
ICF Jones & Stokes		X		X					
Interactive Resources			X	X					X
Kennedy & Associates									X
Kimley Horn		X							X

Company	Planning					Engineering			
	Planning	Environmental & Technical Planning	Architecture / Landscape / Urban Design	Historic Preservation	Fiscal Analysis	Construction Inspection	Construction Management	Environmental Engineering & Permitting	Civil Engineering Misc. Engineering & Surveying
KPA Group	X		X	X					
Lamphier Gregory		X		X					
LCC Engineering & Surveying									X
Mack5							X		
McArdle Design			X						
M-Group	X	X	X	X					
Michael Baker International	X	X							
MIG	X	X	X						
MRG	X				X				
Pakpour Consulting Group						X	X		X
Panorama Environmental		X							
Parisi CSW Design Group							X		X
PlaceWorks	X	X	X						
Quincy Engineering						X	X		X
Restoration Design Group			X						X
Rincon Consultants, Inc.	X	X		X				X	
RJA (Ruggieri-Jensen-Azar)									X
RRM Design			X						
SP2 (Stevenson, Porto & Pierce)	X	X							
Stantec	X	X							
Swaim Biological		X						X	
Urban Planning Partners	X	X							
Vali Cooper & Associates						X	X		
Vallier Design Associates			X						
Vista Environmental Consulting		X						X	
West Yost									X
Willdan Financial Services					X				
WRT	X		X						
WSP - Parsons Brinckerhoff							X	X	X