

City of Hercules

111 Civic Drive
Hercules, CA 94547



Meeting Agenda

Tuesday, March 13, 2018

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. SPECIAL MEETING - CLOSED SESSION – NONE

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS - NONE

III. CONVENE INTO CLOSED SESSION - NONE

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

V. REPORT ON ACTION TAKEN IN CLOSED SESSION - NONE

VI. PLEDGE OF ALLEGIANCE

VII. MOMENT OF SILENCE

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. [18-51](#) Proclamation recognizing March 2018 as American Red Cross Month.

Attachments: [Proclamation](#)

2. [18-52](#) School Resource Officers Presentation

Attachments: [Power Point](#)

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. [18-57](#) **Fire Facilities Impact Fees**
Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution amending Development Impact Fees to incorporate the updated Rodeo-Hercules Fire Protection District levied Fire Facilities

Impact Fee and amending the City's Master Fee Schedule.

Attachments: [Staff Report](#)

[Attachment 1 - Resolution](#)

[Attachment 2 - Fire District DIF Information & Study](#)

[Attachment 3 - Fee Schedule](#)

2. [18-56](#) **Annual Housing Report**

Recommendation: Conduct a public hearing and upon conclusion approve the Annual Housing Element Progress Report for the 2017 calendar year and direct staff to submit to the appropriate State agencies.

Attachments: [Staff Report](#)

[Attachment 1 - Hercules 2017 Annual Housing Report](#)

3. [18-55](#) **Zone Text Amendment No. ZTA 18-01 related to Accessory Dwelling Units**

Recommendation: Conduct a public hearing and upon conclusion waive first reading and introduce an Ordinance for No. ZTA 18-01 modifying the Hercules Zoning Ordinance by repealing and replacing Section 35.320 and modifying Section 60.200 regarding Accessory Dwelling Units (ADUs).

Attachments: [Staff Report](#)

[Attachment 1 - Draft Ordinance](#)

[Attachment 2 - PC Resolution No. 18-03](#)

[Attachment 3 - Redline of Proposed Ordinance](#)

[Attachment 4 - Past Planning Commission Reports on ADUs](#)

XII. CONSENT CALENDAR

1. [18-49](#) **Minutes**

Recommendation: Approve the Minutes for the Council Meeting of February 27, 2018

Attachments: [Minutes](#)

[Attachment 1 - Revised Staff Report February 27, 2018 - Mid Year Budget Review](#)

XIII. DISCUSSION AND/OR ACTION ITEMS

1. [18-58](#) **Contract Amendment: Transportation Impact Fee Nexus Study and Circulation Element Update**

Recommendation: Adopt a Resolution authorizing the City Manager to execute Contract Amendment No. 2 to Contract No. 16-056 with DKS in the amount of \$37,795 for a total contract amount not to exceed \$235,014 for purposes of updating the Transportation Impact Fee Nexus Study and the Circulation Element.

Attachments: [Staff Report](#)
 [Attachment 1 - Resolution](#)
 [Attachment 2 - Contract Amendment](#)
 [Attachment 3 - Scope of Work for Circulation Element](#)

2. [18-34](#) **Amendments to Hercules Municipal Code Title 5, Chapter 6, Smoking Ordinance**

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

Attachments: [Staff Report](#)
 [Attachment 1 - 1992 Hercules Smoking Ordinance \(HMC 5-6\)](#)
 [Attachment 2 - ANR Model Ordinance](#)

3. [18-06](#) **Legislative Policies and Processes**

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

Attachments: [Staff Report](#)
 [Attachment 1 - Summary](#)

4. [18-47](#) **FY 2018/19 Landscaping and Lighting Assessment District (LLAD) Engineer's Report**

Recommendation: Adopt a Resolution directing the filing of the Annual Engineer's Report for LLAD No. 83-2, Victoria By The Bay LLAD No. 2002-1, Hercules Village LLAD No. 2002-2, Baywood LLAD No. 2004-01, and Bayside LLAD No. 2005-01.

Attachments: [Staff Report](#)
 [Attachment 1 - Resolution](#)

5. [18-48](#) **FY 2016-17 Comprehensive Annual Financial Reports**

Recommendation: Receive and File the FY 2016-17 Comprehensive Annual Financial Reports and Accept the Audited Statements.

Attachments: [Staff Report](#)
 [Attachment 1- FY 2016-17 CAFR](#)

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, March 27, 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: March 8, 2018)

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

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

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

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

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

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

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

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

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



Legislation Details (With Text)

File #: 18-51 **Version:** 1 **Name:**

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

File created: 3/6/2018 **In control:** City Council

On agenda: 3/13/2018 **Final action:**

Title: Proclamation recognizing March 2018 as American Red Cross Month.

Sponsors:

Indexes:

Code sections:

Attachments: [Proclamation](#)

Date	Ver.	Action By	Action	Result
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Proclamation recognizing March 2018 as American Red Cross Month.

**PROCLAMATION RECOGNIZING MARCH 2018 AS AMERICAN RED
CROSS MONTH IN THE CITY OF HERCULES**

WHEREAS, the American Red Cross has a long history of helping neighbors in need and American Red Cross Month is a special time to recognize and thank our heroes- those local Red Cross volunteers and donors who give their time and resources to help community members; and

WHEREAS, across the country and around the world, the American Red Cross responds to disasters big and small. It collects about 40 percent of the nation's blood supply; provides 24-hour support to military members, veterans and their families; teaches millions lifesaving skills such as lifeguarding and CPR; and through its Restoring Family Links program, connects family members separated by crisis, conflict or migration; and

WHEREAS, in 2017 the Red Cross saw a record-breaking year of challenging domestic and international response efforts. In a 45 day period, through the support of its volunteers, the Red Cross responded to six of the largest and most complex disasters including back-to-back hurricanes, the deadliest week of wildfires in California history, and the horrific mass shooting in Las Vegas. In addition, the Red Cross responded to nearly 50,000 home fires in 2017, providing casework assistance to help 76,000 families recover; and

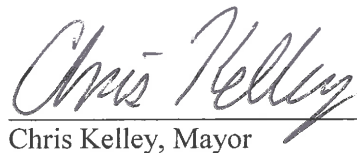
WHEREAS, in 2017 in Contra Costa County, volunteers responded to 113 local disasters, educated 175 students with fire safety information through the Pillowcase Project, and collected 15,937 units of blood from generous blood donors. The Red Cross taught First Aid, CPR, AED, and Water Safety to 9,605 residents. Through its Service to the Armed Forces, the Red Cross responded to 124 Emergency Service Cases and assisted 471 families of service members; and

WHEREAS, we dedicate the month of March to all those who support the American Red Cross mission to prevent and alleviate human suffering in the face of emergencies. Our community depends on the American Red Cross, which relies on donations of time, money and blood to fulfill its humanitarian mission.

NOW, THEREFORE BE IT PROCLAIMED that I, Chris Kelley, Mayor of the City of Hercules, on behalf of the entire City Council, do hereby recognize March 2018 as American Red Cross Month in the City of Hercules.

In witness whereof, I hereunto set my hand and cause the seal of the City of Hercules to be affixed this 13th day of March, 2018.




Chris Kelley, Mayor



Legislation Details (With Text)

File #: 18-52 **Version:** 1 **Name:**
Type: Introductions/Presentation **Status:** Agenda Ready
File created: 3/6/2018 **In control:** City Council
On agenda: 3/13/2018 **Final action:**
Title: School Resource Officers Presentation
Sponsors:
Indexes:
Code sections:
Attachments: [Power Point](#)

Date	Ver.	Action By	Action	Result
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School Resource Officers Presentation

Hercules Police Department School Resource Officer Program



School Resource Officer

School Resource Officers are valued members of cross-agency school safety team, helping to promote a safe, supportive and peaceful school environment. Creating an effective SRO program begins with strong relationship among the school communities and law enforcement agency which clearly defines the multifaceted role of the SRO as an educator, informal counselor and law enforcement problem-solver. A clearly articulated description of SRO roles and responsibilities recognizes that school discipline resides with school administrators, not the SRO.

Through positive relationships with students and parents, as well as collaboration with educators and mental health professionals, SRO's can address school safety issues proactively and divert at-risk students from the juvenile justice system.

Properly selected, trained, and governed SRO's will achieve positive outcomes for students and the school communities by providing youth with the support they need to succeed in school and in life.

Goals of a SRO Program

- ▶ Bridge the gap between officers and young people.
- ▶ Increase positive attitudes towards law enforcement.
- ▶ Teach the value of our legal system.
- ▶ Promote respect for people and property.
- ▶ Reduce juvenile delinquency by helping students formulate an awareness of rules, authority and justice.

History

- ▶ In 2001 Hercules Middle/High School opened its doors and the Hercules Police Department developed a D.A.R.E Officer Program who was assigned as a liaison to the school from 2001 to 2003.
- ▶ 2004 Hercules Police Department assigned its first School Resource Officer who was paid by the Hercules Police Department.
- ▶ 2006-2007 the school district paid for one officer and the Police Department paid for the second officer.
- ▶ 2010-2011 the city suffered major budget cuts that included the SRO position, leaving one SRO to patrol an approximately one mile long campus and over 1,500 students.
- ▶ Currently the school district funds both SRO positions, paying the city \$360,000 annually for two fulltime sworn officers.

Basic SRO Training

Basic SRO training includes instruction on how to teach, mentor, counsel students, work collaboratively with administrators and staff, manage time in a school environment, and adhere to juvenile justice and privacy laws. Specialized training on other topics can also promote an SRO's effectiveness.

For example:

- Mental Health
- Education Code
- Adolescent Development and Communication
- Bias and Bullying
- Trauma-Informed Care
- De-Escalation Techniques
- School-Specific Topics
- Cultural Awareness



Emergency Preparedness Crisis and Incident Management

SRO's help prepare schools to handle a crisis by assisting in crisis planning, developing and coordinating emergency response plans, creating protocols for handling specific emergencies, and leading protocol rehearsals.

- ▶ The Hercules and Pinole Police Department as well as the Rodeo-Hercules Fire Department conduct joint scenario based training in immediate threat-active shooter.
- ▶ At the beginning of every school year, the SRO's conduct Active Shooter Training for all Hercules schools, city daycares and library staff.
- ▶ The SRO assist in the planning and execution of lockdown, fire and earthquake drills.



Promoting Crime Prevention through Environmental Design

- ▶ SRO's work with administrators on how to decrease risks and opportunities for problem behaviors by employing the principles of surveillance, access control, territorial reinforcement, and maintenance. This may involve altering aspects of the physical environment (e.g. building architecture or landscape design), guardianship in problem areas, and revising school policies to ensure that students move through monitored areas.

Lupine Hills Elementary



Hercules Middle / High



Hanna Ranch Elementary



Ohlone Elementary



Statistical Data

School Year (7:00 a.m-5:00 p.m.)

	2014-15	2015-16	2016-17
▶ Misc.	136	143	156
▶ Disturbances	77	78	107
▶ Medicals	23	33	46
▶ Lost/stolen property	27	19	19
▶ Mental Health	9	1	3
▶ Missing person	2	4	1
▶ Narcotics	17	9	7
▶ Sexual Assault	2	0	0
▶ Vehicle code violations	34	50	33
▶ Trespassing	1	4	0
▶ Pedestrian stops	14	4	3
	344	385	375

School Year 2014 - 2015				School Year 2015 - 2016				School Year 2016 - 2017			
August 1, 2014 - June 30, 2015 (0700 - 1700 Hours)				August 1, 2015 - June 30, 2016 (0700 - 1700 Hours)				August 1, 2016 - June 30, 2017 (0700 - 1700 Hours)			
Charges	Status	Sex	Total	Charges	Status	Sex	Total	Charges	Status	Sex	Total
273A	849'D	MAL E	1	11364 HS	BOOKED	MALE	1				
11359	849'D	MAL E	1	1203.2	BOOKED	FEMAL E	1	11357(E)	CITE	FEM ALE	1
626.10(A)	BOOKED	MAL E	1	23140(A)	CITE	MALE	1	11357(E)	CITE	MAL E	1
417(A)(1)	BOOKED	MAL E	1	243(A)	BOOKED	MALE	1	11364 HS	CITE	MAL E	1
626.10(A)	BOOKED	MAL E	1	496	BOOKED	FEMAL E	1			MAL	1
11357(E)	CITE	MAL E	1	496	BOOKED	MALE	1	20002	BOOKED	E	
459	CITE	MAL E	2			FEMAL E	1	23152(A)/23152(B)	BOOKED	MAL E	1
182(A)(1)	CITE	MAL E	2	530.5(A)	BOOKED			243(A)	CITE	MAL E	1
243.2(a)(1)	BOOKED	MAL E	1	530.5(A)	BOOKED	MALE	1	626.10(A)	849'D	MAL E	1
4462(B)	CITE	MAL E	1	626.10(A)	CITE	MALE	1	BW MIS	BOOKED	MAL E	1
				69	BOOKED	MALE	1				
				OSW MIS	BOOKED	FEMAL E	1				
Grand Total for School Year 14/15			12	Grand Total for School Year 15/16			11	Grand Total for School Year 16/17			8



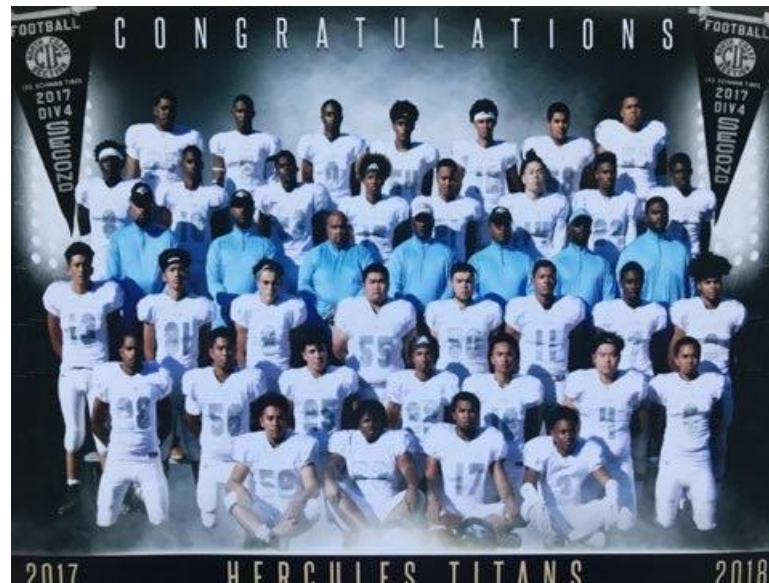
Coordinated Programs Between PD and Schools

- Drug Abuse Resistance Education (D.A.R.E.)
- Every 15 Minutes
- SQUIRES (San Quentin Utilization of Inmate Resources)
- COST (Coordination of Services Team)
- Golf Program





- Building relationships with students and faculty, where the job often doesn't end at the close of the school day.

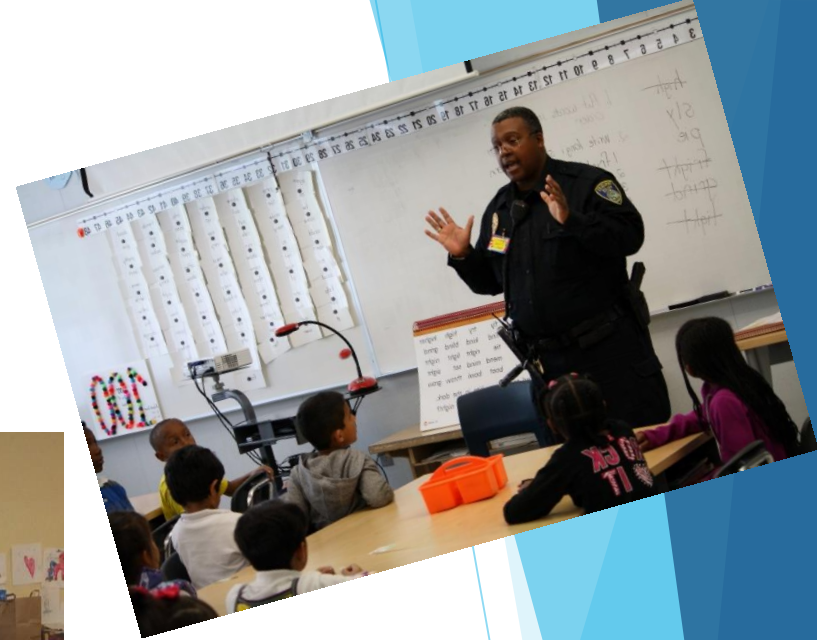


Outreach Programs

- ▶ Coordinating with the Parent Teacher Organization with fund raising efforts and the Christmas Tree Give-Away.
- ▶ Free book and backpack give away.



Read Across America



Differences Between Having an On-site Officer and Working with the Local Police Department

- ▶ Training in counseling and other skills that help SRO's to be effective in a school setting.
- ▶ Involvement when a young person may pose a danger to the school community.
- ▶ Coordinate with school administration to provide home visits with students working directly with parents and family.
- ▶ SRO's are not security guards or a hired officer who "stands guard" in front of a school.
- ▶ SRO's are fully sworn law enforcement officers, armed, in uniform, and assigned to a school full-time, just as an officer might be assigned a patrol beat.
- ▶ SRO's have all the same training as other police officers, and often more.

SRO Programs Are a Vital Component of an Overall Positive School Climate Policy

- ▶ Properly trained School Resource Officers play important roles in creating school communities where young people thrive and are prepared to meet future challenges.
- ▶ Safe schools are fundamental for students and educators to achieve their full potential. Students who report feeling safe in schools are more engaged in class, have higher academic achievement, and have lower rates of absenteeism, truancy, and behavioral issues.
- ▶ Educators who report feeling safe in school are able to focus better on academics, are more likely to remain in their positions, and are better equipped to teach and support students. Feeling safe in school is intrinsically connected to achieving educational outcomes for students and educators alike.

An Effective SRO Program Facilitates:

- ▶ Increased feelings of safety among students, teachers, and administrators.
- ▶ Deterring aggressive behavior and empowers staff to maintain order and address behavioral issues in a timely fashion.
- ▶ Diminished classroom time spent on discipline and behavioral disruptions.
- ▶ Improving overall school safety and reducing school-based crime.
- ▶ Increased likelihood that students report witnessing a crime and helps reduce community-wide criminality.
- ▶ Improved relationships among law enforcement and youth.



SRO Roles

- ▶ Educators
- ▶ Informal Counselors
- ▶ Law Enforcers



SRO's can fulfill a variety of roles: preventing and responding to school-based crime; fostering positive relationships among law enforcement, educators, and youth; and promoting a positive school climate.

Educators

Law enforcement training and experience equip SRO's with specialized knowledge that can be particularly valuable in a school environment. SRO's extend this knowledge to school staff, students, parents, and the community in several ways:

Teaching School Staff

SRO's can lead in-service trainings, educate staff about crime and justice issues, and provide training on crisis prevention and intervention.

Educating Students

SRO's serve as guest lecturers in the classroom, teaching students about criminal investigation, laws and constitutional rights, law enforcement as a career, substance abuse, conflict resolution and restorative justice, and youth-relevant crimes such as dating violence. Spending time in the classroom also serves to build positive relationships between law enforcement and youth.

Informal Counselor

Positive relationships between the SRO and students are consistently identified as a key to success for SRO Programs. Youth often view and turn to officers in the same way they might turn to parents or other adults in their lives, seeking out SRO's informally to discuss issues. SRO's can build trust and foster relationships with youth through formal and informal interactions.

By guiding students through a variety of challenging issues, such as underage drinking, stressful life situations, or even the legality of senior pranks, students can come to trust SRO's to answer questions and address problems, which in turn enables SRO's to identify at-risk students early. These relationships also allow SRO's to intervene before issues escalate, refer students to appropriate resources (e.g. mental and behavioral services within and outside of the school), and divert them from the juvenile justice system.



Law Enforcer

Protecting students and staff from threats of violence is an integral component of an SRO's law enforcement role. Having a sworn law enforcement officer available at the school diminishes critical response time in the case of a violent incident or other emergency. Likewise, an SRO's familiarity with a school's layout and design, as well as knowledge of the individuals involved in a problem, can further improve response efficiency.



SRO's Fulfill a Number of Traditional Law Enforcement Functions

- ▶ Responding to on-campus calls, emergencies, or trespassers, and to off-campus crimes involving students.
- ▶ Provides Law Enforcement presence at football and basketball games.
- ▶ Deterring on-campus violence and criminality.
- ▶ Conducting criminal investigations and sharing information with investigation units.
- ▶ Patrolling the school property and serving as truancy and security enforcers.
- ▶ Issuing citations and making arrests as needed.

QUESTIONS



Legislation Details (With Text)

File #: 18-57 **Version:** 1 **Name:**
Type: Public Hearing **Status:** Agenda Ready
File created: 3/7/2018 **In control:** City Council
On agenda: 3/13/2018 **Final action:**
Title: Fire Facilities Impact Fees
Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution amending Development Impact Fees to incorporate the updated Rodeo-Hercules Fire Protection District levied Fire Facilities Impact Fee and amending the City's Master Fee Schedule.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[Attachment 1 - Resolution](#)
[Attachment 2 - Fire District DIF Information & Study](#)
[Attachment 3 - Fee Schedule](#)

Date	Ver.	Action By	Action	Result
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Fire Facilities Impact Fees

Recommendation: Conduct a public hearing and upon conclusion, adopt a Resolution amending Development Impact Fees to incorporate the updated Rodeo-Hercules Fire Protection District levied Fire Facilities Impact Fee and amending the City's Master Fee Schedule.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 13, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager

SUBJECT: Public Hearing to Adopt a Resolution Amending Development Impact Fees to Incorporate the Updated Rodeo-Hercules Fire Protection District Levied Fire Facilities Impact Fee and Amending the City's Master Fee Schedule.

RECOMMENDATION: Open the Public Hearing, Take Public Testimony, Close the Public Hearing, and Adopt a Resolution Amending Development Impact Fees to Incorporate the Updated Rodeo-Hercules Fire Protection District Levied Fire Facilities Impact Fee and Amending the City's Master Fee Schedule.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION: Not Applicable.

FISCAL IMPACT OF RECOMMENDATION: None for the City as the Fire Facilities Impact Fee is passed on in its entirety to the District.

DISCUSSION: California cities and special districts have a constitutional police power to protect the public health, safety and welfare. From that police power flows a broad authority to regulate new development, including the power to exact things of value as a condition of allowing new development to occur. New development causes impacts on the need to provide permanent public infrastructure. A city or other agency may exact a fee upon new development, if the city can demonstrate a reasonable relationship leading from the new development's impacts to the need for permanent public infrastructure. That relationship may include both direct and indirect impacts.

The Rodeo-Hercules Fire Protection District is an independent agency which provides fire protection services in the City of Hercules and the unincorporated community of Rodeo. On January, 11, 2018, the Board of the District conducted a public hearing and adopted Resolution 2018-01 which approved an updated nexus study and an update to the Fire Facilities Impact Fee already being levied. The Resolution and the supporting nexus study are provided as Attachment 2.

The Fire Facilities Impact Fees as imposed by the Rodeo-Hercules Fire Protection District as adopted by Resolution 2018-01 are \$1,729 per residential unit, \$1,060 per multifamily residential unit, \$0.87/sq. ft. Commercial, \$1.18 sq. ft. Office, \$0.50/sq. ft. Industrial for new enclosed/habitable construction including miscellaneous building and garages, and \$92.00 per hotel/motel room, with an automatic annual adjustment based on the “construction cost index,” or the “consumer price index,” whichever is higher.

The City is required to add the new fees to our Master Fee Schedule for the fees to become effective. Attachment 1 is a resolution which accepts the District’s updated nexus study and fees with the updated fees being added to the City’s Master Fee Schedule. The new fees would be effective here in Hercules as of the date of adoption of the City’s resolution.

ATTACHMENTS:

1. Resolution
2. Fire District Request, Resolution, and Nexus Study
3. City’s Master Fee Schedule – Fire Facilities Fees

RESOLUTION NO. 18-____

ADOPTING THE 2017 FIRE FACILITIES IMPACT FEE STUDY AS APPROVED BY THE BOARD OF THE RODEO-HERCULES FIRE PROTECTION DISTRICT BY RESOLUTION 2018-01, ESTABLISHING NEW LEVELS OF FIRE FACILITIES DEVELOPMENT IMPACT FEES, UPDATING THE FIRE FACILITIES IMPACT FEES ON THE MASTER FEE SCHEDULE, AND MAKING CERTAIN FINDINGS IN CONNECTION THEREWITH.

WHEREAS, the City of Hercules is a city organized and existing under and by virtue of the general law of the State of California and is a "local agency" as defined in the Mitigation Fee Act (California Government Code Section 66000 et seq); and

WHEREAS, the Rodeo-Hercules Fire Protection District has undertaken and caused to be prepared a study entitled *Fire Facilities Impact Fee Study* dated October 14, 2017 (the "2017 RHFPD DIF Study") and adopted by the Rodeo-Hercules Fire Protection District on January 11, 2018 which identifies fire protection facilities in Hercules that will be impacted or necessitated by future development; and

WHEREAS, the Rodeo-Hercules Fire Protection District has requested that the City of Hercules implement the updated Fire Facilities Impact Fee adopted by the District;

WHEREAS, the City of Hercules has determined that it needs to increase the level of the Fire Facilities Impact Fee to offset the effect of inflation; and

WHEREAS, the 2017 RHFPD DIF Study explains the nexus between the imposition of the fees and the estimated reasonable cost of providing the service for which the fees are charged; and

WHEREAS, the updated Fire Facilities Impact Fees need to be added the City's Master Fee Schedule.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HERCULES AS FOLLOWS:

SECTION 1. Adoption of Studies

- a) The 2017 RHFPD DIF Study is hereby approved, adopted and by this reference incorporated herein.

SECTION 2. Findings Pursuant To The Mitigation Fee Act (California Government Code section 66000 et seq.)

The City Council finds and determines that the Fire Facilities Impact fee established, increased or imposed by this Resolution is supported by the 2017 RHFPD DIF Study in that it:

- a) Identifies the purpose of each fee evaluated therein;

- b) Identifies the use to which each fee will be put;
- c) Determines there is a reasonable relationship between the use of each fee and the type of development project on which the fee is imposed;
- d) Demonstrates a reasonable relationship between the need for the public facilities and the type of development projects on which each fee is imposed; and
- e) Demonstrates a reasonable relationship between the amount of the fee and the cost of the public facilities or portion of the public facilities attributable to the development on which each fee is imposed.

SECTION 3. Approval of Items in Studies

The Board of the Rodeo-Hercules Fire Protection District has considered and approved the specific project descriptions and cost estimates provided in the 2017 RHFPD DIF Study, and the City Council accepts such project descriptions, cost estimates and inflation adjustments and finds them reasonable as the basis for calculating and imposing certain development impact fees.

SECTION 4. Consistency with General Plan

The City Council finds that the projects and fee methodology identified in the 2018 RHFPD DIF Study, are consistent with the City's Five-Year Capital Improvement Plan and City's General Plan.

SECTION 5. Differentiation Among Fees

The City Council finds that the development impact fees recommended in the 2017 RHFPD DIF Study, are separate and different from other fees the City may impose as a condition of final map approval, building permit issuance or tentative or parcel map approval pursuant to its authority under the Subdivision Map Act, the Quimby Act, and the City's implementing ordinances, as may be amended from time to time, for, among other projects, the construction of storm drainage, major thoroughfares and bridges and the acquisition of parkland.

SECTION 6. Findings Under The California Environmental Quality Act

The City Council hereby finds and determines, based upon substantial evidence in the record before it, as follows:

- a) The adoption of the 2018 RHFPD DIF Study, and the approval of the development impact fees adopted by this resolution do not constitute a "project" as that term is defined by or used in the California Environmental Quality Act (California Public Resources Code Section 21000 et seq, hereinafter "CEQA"), the California Code of Regulations Title 14, Division 6, Chapter 3 "Guidelines for Implementation of the California Environmental Quality Act" (the "CEQA Guidelines"), or any court or attorney general opinion construing the same. Accordingly, the City Council finds that the provisions of CEQA and the CEQA Guidelines are not applicable thereto.
- b) In the event that it is found that said action constitutes a "Project" as defined by or used in CEQA or the CEQA Guidelines, which finding would be contrary to the City's opinion of its

action, the City Council hereby finds that said action is exempt from CEQA and the CEQA Guidelines, for the following reasons:

(1) The action is covered by Public Resources Code Section 21080(b)(8) and Section 15273 of the CEQA Guidelines which provide that CEQA does not apply to the establishment, modification, structuring, restructuring or approval of rates, tolls, fares or other charges by public agencies which the public agency finds are for the purpose of (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment, or materials, (3) meeting financial reserve needs and requirements, or (4) obtaining funds for capital projects necessary to maintain service within existing service areas. The City Council finds that its action falls within one or more of said exemptions.

(2) The action is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment, the action is not subject to CEQA or the CEQA Guidelines. See CEQA Guidelines Section 15061(b)(3). It can be seen with certainty that the City's action cannot possibly have a significant effect on the environment.

c) The City Manager or his designee is hereby authorized and instructed to file a Notice of Exemption from the provisions of CEQA.

SECTION 7. Prior Resolutions and Ordinances Superseded.

The Fire Facilities Impact Fee approved and adopted by this resolution shall supersede comparable fees adopted in prior resolutions that establish development impact fees.

SECTION 8. Master Fee Schedule.

Whereas it is appropriate to add updated fees and fines to the Master Fee Schedule, delete old fees and fines, and to make adjustments to existing fees and fines in order for the Schedule to reflect current fees and charges. The City Council hereby authorizes amendments to the existing Master Fee Schedule, approving additions, deletions and adjustments to Fire Facilities Impact Fees in the highlighted sections of the attached Master User Fee Schedule to become effective upon adoption of this resolution.

SECTION 9. Severability.

If any section, subsection, sentence, clause or phrase of this resolution or the imposition of a development impact fee for any public facility described in the 2017 RHFPD DIF Study, or the application thereof to any person or circumstance is held invalid, unenforceable or unconstitutional by the final judgment of a court of competent jurisdiction, such judgment shall not affect the validity of the remaining portions of this resolution or other fees levied by this resolution.

SECTION 15. Incorporation of Recitals

The recitals in this resolution are true and correct statements of fact and are incorporated into this resolution by this reference.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 13th day of March, 2018 by the following vote of the Council:

AYES:

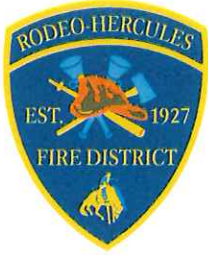
NOES:

ABSENT:

Chris Kelley, Mayor

ATTEST:

Lori Martin, City Clerk



RODEO - HERCULES FIRE PROTECTION DISTRICT
1680 REFUGIO VALLEY ROAD, HERCULES, CALIFORNIA 94547
(510) 799-4561 • FAX: (510) 799-0395

January 17, 2018

David Biggs, City Manager
City of Hercules
111 Civic Drive
Hercules CA, 94547

Re: Rodeo-Hercules Fire Facilities Impact Fees

Dear Mr. Biggs,

During the regular board meeting of the Rodeo-Hercules Fire Protection District held on January 11, 2018, after holding two public hearings, the Board of Directors unanimously passed Resolution 2018-01, establishing Fire Facilities Impact Fees for the City of Hercules and unincorporated Contra Costa County located in the Rodeo-Hercules Fire Protection District. Please find attached a copy of the Resolution and the Engineer's report from Willdan Financial Services that was used in establishing the new fee structure.

Sincerely,


Bryan Craig
Interim Fire Chief

RESOLUTION 2018-01

RESOLUTION OF THE RODEO-HERCULES FIRE PROTECTION DISTRICT BOARD OF DIRECTORS REQUESTING IMPLEMENTATION BY THE COUNTY OF CONTRA COSTA AND THE CITY OF HERCULES OF FIRE FACILITIES IMPACT FEES TO IMPLEMENT THEIR RESPECTIVE GENERAL PLAN GOALS, POLICIES AND OBJECTIVES FOR ASSURING ADEQUATE FIRE PROTECTION ASSOCIATED WITH NEW DEVELOPMENT

A RESOLUTION TO ADOPT THE RODEO - HERCULES FIRE PROTECTION DISTRICT FIRE FACILITIES IMPACT FEE STUDY AND FEE AMOUNTS.

WHEREAS, The Rodeo – Hercules Fire Protection District ("District") provides Fire and Rescue Services to Approximately 25 square miles of unincorporated and incorporated Contra Costa County with an approximate service population of nearly 40,000. This service area includes the unincorporated community of Rodeo, and the City of Hercules. The District currently imposes an impact fee of \$1,029 per single-family dwelling unit, \$662 per multi-family dwelling unit, \$721, \$536 and \$306 per 1,000 square feet for office, commercial and industrial development, respectively; and

WHEREAS, As per the *Mitigation Fee Act* contained in Government Code Section 66000 *et. seq.*, cities hold the legal authority to impose fees on behalf of the District within their city limits. In unincorporated areas however, the County, rather than the District, has legal authority to impose impact fees; and

WHEREAS, in response to ongoing demands for service and the facilities needed to provide service, the Rodeo-Hercules Fire Protection District Board of Directors commissioned a "Fire Facilities Impact Fee Study" (FIFS) by Willdan Financial Services, a private financial consulting firm, dated October 4, 2017, consistent with the provisions of Government Code Section 66000 *et. seq.* including section 66001 to analyze methods to update and implement a fire facilities impact fee as authorized by Health and Safety Code section 13861(f), a portion of the Fire Protection Law of 1987, Health and Safety Code section 13800 *et seq.*, (the "Act"); and

WHEREAS, a report has been completed by Willdan Financial Services entitled "Fire Facilities Impact Fee Study," a copy of which is attached as Exhibit "A" to this Resolution, setting forth methods to update and implement a fire facilities fee that would include both the County and the City and making findings, which are consistent with provisions of Government Code Section 66000 *et. seq.* concerning the need, implementation, and use of such a fee by the District: and

WHEREAS, at a duly noticed regular meeting of the Board of Directors, the District Board accepted and adopted the Willdan Financial Services report entitled "Fire Facilities Impact Fee Study," dated October 4, 2017; and

WHEREAS, Government Code Section 66000 *et. seq.* (CGC 66000) requires local government to document the necessary five findings: Purpose of Fee, Use of Revenues, Benefit Relationship, Burden Relationship, and Proportionality; and

WHEREAS, the 2017 FIFS supports the need for mitigation fees in the amount of \$1,729 per Residential unit, \$1,060 per Multi-family Residential unit, \$0.87/ft. Commercial, \$1.18/ft. Office, \$0.50/ft. Industrial for new enclosed/habitable construction including miscellaneous buildings and garages; and

RESOLUTION 2018-01

WHEREAS, as the County (consistent with its General Plan) and the City (consistent with its General Plan) have adopted Developer Fee Ordinances to assure adequate fire protection for new development, it is in the best interest of the District to request the County and the City to update those ordinances through the adoption of the Fire Facilities Impact Fee as described in the attached report.

NOW, THEREFORE, the Board of Directors of the Rodeo - Hercules Fire Protection District do hereby declare, find, resolve, approve, and adopt the 2017 FIFS and the Board of Directors establishes the Impact Fee for new development in the Rodeo - Hercules Fire Protection District, as follows

1. That there is a present and ongoing need to maintain and enhance the District's level of fire protection services and facilities within the District occasioned by existing and new development; and
2. That an Impact Fee equal to \$1,729 per Residential unit, \$1,060 per Multi-family Residential unit, \$0.87/ft. Commercial, \$1.18/ft. Office, \$0.50/ft. Industrial for new enclosed/habitable construction including miscellaneous buildings and garages, and \$92.00 per hotel/motel room, effective 60 days from the signed date of this resolution; and
3. That annually as part of the budget process, the Fire Chief shall review the estimated cost of the described capital improvements, the need for those improvements, and the reasonable relationship between such need and the impacts of the various types of development pending or anticipated and for which the Fire Facilities Impact Fee is charged; and
4. That the Fire Facilities Impact Fee will have an automatic annual adjustment based on the "construction cost index" or the "consumer price index," whichever is higher, to keep up with the cost of inflation on the cost of the capital projects, but not less than the fees stated in the 2017 Engineer's Report.

APPROVED AND ADOPTED by the Board of Directors of the Rodeo – Hercules Fire Protection District held on January 11, 2018 by the following vote:

AYES: 3
NOES: 0
ABSENT: 2
ABSTAIN: 0



Earnest Wheeler
Chairman of the Board
Rodeo – Hercules Fire Protection District

FIRE FACILITIES IMPACT FEE UPDATE STUDY

RODEO-HERCULES FIRE PROTECTION DISTRICT

FINAL DRAFT

OCTOBER 4, 2017



Oakland Office

1939 Harrison Street
Suite 430
Oakland, CA 94612
Tel: (510) 832-0899
Fax: (510) 832-0898

Corporate Office

27368 Via Industria
Suite 110
Temecula, CA 92590
Tel: (800) 755-MUNI (6864)
Fax: (909) 587-3510

www.willdan.com

Other Regional Offices

Lancaster, CA
Memphis, TN
Orlando, FL
Phoenix, AZ
Sacramento, CA
Seattle, WA

EXHIBIT A

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Fire Facilities Impact Fee Study

This report summarizes an analysis of the need for fire facilities by the Rodeo-Hercules Fire Protection District ("RHFPD"; "District") to accommodate new development. The report documents a reasonable relationship between new development and an impact fee for funding new facilities to serve that development.

Introduction

The District protects an area of approximately 25 square miles of unincorporated and incorporated Contra Costa County with an approximate service population of nearly 40,000. The service area includes the unincorporated community of Rodeo, and the City of Hercules. The District currently imposes an impact fee of \$1,029 per single-family dwelling unit, \$662 per multi-family dwelling unit, \$721, \$536 and \$306 per 1,000 square feet for office, commercial and industrial development, respectively.

As with most local agencies, the District's property tax revenue stream has diminished in terms of real dollars over time since the imposition of Proposition 13 in 1978. Consequently, the District must manage its resources carefully to properly serve the projected influx of new residents and businesses to the region.

As per the *Mitigation Fee Act* contained in Government Code Section 66000 et. seq., cities hold the legal authority to impose fees on behalf of the District within their city limits. In unincorporated areas, however, the County rather than the District has legal authority to impose impact fees. This report provides the necessary documentation for the jurisdictions to adopt a fire facilities impact fee for imposition within the District. It also provides a list of statutory findings pertaining to the imposition of the District fees.

The following sections of this report define and present the existing service population for the District, describe the existing inventory of fire protection facilities as well as a list of planned facilities and determine the proportional share of planned fire facilities – and corresponding impact fees – by land use type. Finally, this report provides a brief section on impact fee program implementation and addresses the list of findings required by the *Mitigation Fee Act*.

Fire Facilities Service Population

The Rodeo-Hercules Fire Protection District serves all structures including homes, businesses, schools, hospitals and other miscellaneous structures in its service area. Demand for the District's services and associated facilities is measured by its service population, or the number of residents and workers within its service area. Service population reasonably represents the need for fire facilities because people requesting medical assistance generate the most calls for service. Structural fire suppression is the second most important mission of the fire department after the protection of life.

Table 1 provides estimates of the District's total service population in 2017 and 2035. 2017 is the most recent year for which demographic data for the District was available at the time of this study. Total service population is comprised of residents and employees working within the District.

Table 1: Rodeo-Hercules Fire Protection District Service Population

	A	B	C	D = A + (B x C)
	Residents ¹	Workers ²	Worker Demand Factor ³	Service Population
<u>Existing Development (2017)</u>				
City of Hercules	25,600	4,600	0.69	28,800
Town of Rodeo (uninc.)	9,700	1,000	0.69	10,400
Subtotal	35,300	5,600		39,200
<u>New Development (2017-2035)</u>				
City of Hercules	7,300	1,300	0.69	8,200
Town of Rodeo (uninc.)	2,800	300	0.69	3,000
Subtotal	10,100	1,600		11,200
<u>Total Development (2035)</u>				
City of Hercules	32,900	5,900	0.69	37,000
Town of Rodeo (uninc.)	12,500	1,300	0.69	13,400
Subtotal	45,400	7,200		50,400

Note: Figures have been rounded to the nearest hundred.

¹ Existing residential population is based on the CA DOF Table E-5 for the City of Hercules and American Community Survey Table DP05 for unincorporated Rodeo. Growth based on 1.4% annual growth rate implied by ABAG projections.

² Current employment based on most recent job counts for city of Hercules and Rodeo CDP as identified by OnTheMap, US Census. The growth in workers is determined by maintaining the 2017 resident to worker ratio.

³ Service population worker demand factor based on City of Phoenix service call data weighted by the relative proportions of residential and nonresidential land use in the City.

Sources: California Department of Finance, Table E-5; Source: U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates, Table DP05; U.S. Census Bureau, 2016, OnTheMap Application; Willdan Financial Services.

An estimate of existing residential population comes from the California Department of Finance for the City of Hercules, and the US Census' American Community Survey for unincorporated Rodeo. Growth in residents is based on 1.4% annual average growth rate implied by ABAG projections.

Current employment based on most recent job counts for city of Hercules and Rodeo CDP as identified by OnTheMap, US Census. The growth in workers is determined by maintaining the 2017 resident to worker ratio.

The specific 0.69 per worker weighting used here is derived from an extensive study carried out by planning staff in the City of Phoenix. Data from that study is used to calculate a per capita factor that is independent of land use patterns. It is reasonable to assume that relative demand for fire service between residents and workers does not vary substantially on a per capita basis across communities, enabling the use of this data in other communities in the documentation of a fire facilities impact fee.

The ratio of the worker per capita factor to the resident per capita factor is the worker demand factor shown in **Table 1**.

Land Use Types

To ensure a reasonable relationship between each fee and the type of development paying the fee, the fee schedule distinguishes between different land use types. The land use types that impact fees have been calculated for are defined below.

- **Single family:** Detached and attached one-unit dwellings, including single family homes and townhouses.
- **Multi-family:** All attached multi-family dwellings including duplexes and condominiums.
- **Commercial:** All commercial, retail, educational, and hotel/motel development.
- **Office:** All general, professional, and medical office development.
- **Industrial:** All manufacturing and warehouse development.

Some developments may include more than one land use type, such as a mixed-use development with both multi-family and commercial uses. In those cases, the facilities fee would be calculated separately for each land use type.

The District has the discretion to determine which land use type best reflects a development project's characteristics for purposes of imposing an impact fee and may adjust fees for special or unique uses to reflect the impact characteristics of the use.

Occupant Densities

All fees in this report are calculated based on dwelling units or building square feet. Occupant density assumptions ensure a reasonable relationship between the size of a development project, the increase in service population associated with the project, and the amount of the fee.

Occupant densities (residents per dwelling unit or workers per building square foot) are the most appropriate characteristics to use for most impact fees. The fee imposed should be based on the land use type that most closely represents the probable occupant density of the development.

The average occupant density factors used in this report are shown in **Table 2**. The residential density factors are based on data for the City of Hercules from the US Census' 2011-2015 American Community Survey, Tables B25033 and B25024.

The nonresidential occupancy factors are based on occupancy factors found in the District's *Fire Facilities Impact Fee Study*, 2009. This study uses those factors for consistency.

Table 2.2: Occupant Density**Residential**

Single Family	3.18	Residents Per Dwelling Unit
Multifamily	1.95	Residents Per Dwelling Unit

Nonresidential

Commercial	2.33	Employees per 1,000 square feet
Office	3.13	Employees per 1,000 square feet
Industrial	1.33	Employees per 1,000 square feet

Sources: U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates, Tables B25024 and B25033; The Natelson Company, Inc., Employment Density Study Summary Report, prepared for the Southern California Association of Governments, October 31, 2001, SCAG region data; Willdan Financial Services.

Existing Fire Facilities

The District's inventory of existing and planned fire facilities was used as part of the basis for calculating the District's facility standard. This standard is used to determine new development's fair share obligation for expanded facilities as growth occurs. The District's existing fire protection facilities described in this section currently serve the entire District.

Tables 3 through 5 provide a detailed inventory of the District's land, buildings, vehicles, apparatus and special equipment. The estimated value of the District's inventory is based on unit cost assumptions. Unit costs reflected in Tables 3, 4 and 5 include the following:

- **Land cost per acre.** Estimated cost per acre based on the District planned land acquisition estimates.
- **Buildings.** Estimated replacement costs.
- **Apparatus/Vehicles/Equipment.** Estimated replacement cost of apparatus, vehicles and equipment carried on apparatus provided by the District.

Table 3 highlights the District's existing inventory of land and buildings. The District currently serves the entire service area from two stations. In total the District owns approximately \$5.5 million worth of land and buildings.

Table 3: Existing Land and Buildings

	Quantity	Unit Value ¹	Total Value
<u>Rodeo Fire Station 75</u>			
Land	0.25 acres	\$ 387,000	\$ 96,800
Building	5,413 sq. ft.	440	2,381,700
Subtotal			\$ 2,478,500
<u>Hercules Fire Station 76</u>			
Land	0.99 acres	\$ 387,000	\$ 383,100
Building	5,980 sq. ft.	440	2,631,200
Subtotal			\$ 3,014,300
Total Value, Buildings and Land			\$ 5,492,800

¹ Land values based on planned land acquisition costs.

Sources: Rodeo-Hercules FPD; Willdan Financial Services.

Table 4 displays the inventory and estimated value of existing firefighting apparatus and vehicles. In total the District owns approximately \$4.3 million worth of fire protection vehicles and apparatus.

Table 4: Existing Apparatus and Equipment Inventory and Valuation

Vehicle	Type	Model	Year Purchased	Current Replacement Cost
Fire Chief Vehicle (1)	Staff	Chevrolet Tahoe	2017	\$ 65,000
Battalion Chief Vehicle (1)	Staff	Chevrolet Tahoe	2017	65,000
E-75	Type I	Spartan	2014	750,000
E-75A	Type I	Spartan	2000	750,000
Q-76	Quint	Smeal	2006	1,000,000
E-76	Type I	Spartan	2018	750,000
376	Type III	International	2005	400,000
375	Type III	International	2007	400,000
Utility Pick-up	Staff	Ford F-350	2005	90,000
Total				\$ 4,270,000

Source: Rodeo-Hercules FPD.

Table 5 displays the District's inventory of special equipment, including information technology, training equipment, ladders, hoses, nozzles and a variety of firefighting items. In total the District owns \$1.5 million worth of special equipment.

Table 5: Existing Special Equipment Inventory

Description	Replacement Cost
<i>Fire Equipment</i>	
Computers and Main frame for 10 work stations	\$ 50,000
Specialized hand held fire suppression equipment	11,000
Interior firefighting Live fire training simulator	45,000
Training interior ladder tower	30,000
Office Furniture	18,400
Fire suppression and large capacity water delivery Hose	72,000
Ladders	9,500
Medical equipment including, monitors and difibulators	175,000
Fire Suppression Nozzles	84,200
Portable Medical Oxygen	10,000
Physical Fitness Equipment	55,000
Radios: Base Station, Portable and Mobile	210,000
Vehicle based Mobile Data Transmission and tracking	36,000
Hydraulic and Edraulic Forcible rescue tools	195,000
Thermal imaging cameras	80,000
High and Low Angle Rescue	15,000
Personnel Protective Clothing	100,000
Self-Contained Breathing Apparatus	270,000
Hand held tools	12,000
Miscellaneous	60,000
Total:	\$ 1,538,100

Source: Rodeo-Hercules FPD.

Table 6 summarizes the estimated value of the District's existing inventory of fire facilities, as shown in Tables 3, 4 and 5. The District currently owns the equivalent of approximately \$11.4 million in fire protection facilities, apparatus and equipment to meet the needs of its existing service population.

Table 6: Estimated Total Value of Existing Inventory

Description	Value
Stations	\$ 5,492,800
Apparatus	4,270,000
Other Equipment	1,538,100
Subtotal	\$ 11,300,900
Total Fund Balance from District Impact Fee Program	\$ 38,000
Total Value of Existing Inventory	\$ 11,339,000

Note: Totals have been rounded.

Sources: Rodeo-Hercules FPD; Tables 3, 4 and 5, Willdan Financial Services.

Fire Facilities to Accommodate New Development

Table 7 identifies the District's preliminary planned facilities. These facilities were identified by the District as facilities needed to serve new development. The cost to construct a new station is based on recent cost estimates for Station 70 in nearby San Pablo. Currently the District anticipates the acquisition of land and construction of a new station as necessary to serve development as it occurs in the District. The District also anticipates purchasing several apparatuses, including equipment. In total, the District has identified \$15.5 million in planned fire protection facilities.

Table 7: Planned Fire Facilities

Item	Quantity	Unit Cost	Total Cost
New station construction	11,000 sq. ft.	\$ 990	\$ 10,890,000
Land acquisition	3.83 acres	387,467	1,484,000
Type 1 engine plus equipment	1 engine	850,000	850,000
Type 3 engine plus equipment	1 engine	500,000	500,000
100' ladder truck plus equipment	1 truck	1,850,000	1,850,000
Total Cost of Planned Fire Facilities			\$ 15,574,000
Less Existing Fund Balance			(38,000)
Net Cost of Planned Facilities			\$ 15,536,000

Note: Figures have been rounded.

Sources: Rodeo-Hercules FPD; and Willdan Financial Services.

Fire Facility Standards

The fire facilities impact fees calculated in this report are based on a system facilities standard approach. The system standard approach calculates the level of investment that will be achieved in the District once all planned facilities are built and the service population has increased. This per capita facility standard is calculated by dividing the total investment in existing and planned facilities, by the service population at the planning horizon, and is displayed in **Table 8**.

Table 8: System Plan Standard

Value of Existing Facilities	\$ 11,300,900
Value of Planned Facilities	15,574,000
Total	\$ 26,874,900
Future Service Population (2035)	50,400
System Plan Standard per Capita	\$ 533
Standard per Resident	\$ 533
Standard per Worker ¹	368

¹ Based on a worker weighting factor of 0.69.

Sources: Tables 1, 6 and 7; Willdan Financial Services.

The projected impact fee revenue from new development within the District is shown in **Table 9**. The bottom line of Table 9 shows that to complete future facilities as currently planned there is a need for \$9.6 million in revenue from non-fee funding sources. To complete the planned facilities that represent an increase in facility standards, the District will need to identify an additional \$9.6 million by the planning horizon.

Table 9: Projected Impact Fee Revenue - System Plan Standard

Net Cost of Planned Facilities	\$ 15,536,000
Value of Facility Standards per Capita	\$ 533
Service Population Growth Within District	11,200
Total Projected Fire Facilities Impact Fee Revenue	\$ 5,969,600
Non-Impact Fee Revenue Needed	\$ 9,566,400

Sources: Tables 1, 7 and 8, Willdan Financial Services.

Alternative Funding Sources

The District recognizes that non-fee revenues will be needed to fund a portion of the planned facility costs. The District has already begun taking steps to develop alternative revenue sources to fund fire facilities, particularly the District is investigating establishing a community facilities district (CFD). Other sources of revenue include, but are not limited to General Fund revenue, special taxes, grants and assessment districts. General Fund revenue is derived from the District's share of the constitutionally imposed one percent property tax rate. Any new or increased special tax would require two-thirds voter approval. Any new or increased assessment would require a majority property

owner approval. Any new or increased property-related charge or fee would require a majority voter approval.

Fee Schedule

Table 10 shows the maximum justified fire protection facilities fee schedule. The cost per capita is converted to a fee per unit of new development based on dwelling unit and employment densities (persons per dwelling unit or employees per 1,000 square feet of nonresidential building space) from Table 2. The total fee includes a two percent (2%) percent administrative charge to fund costs that include: a standard overhead charge applied for legal, accounting, and administrative support, and fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

In Willdan's experience with impact fee programs, two percent of the base fee adequately covers the cost of fee program administration. It should be reviewed and adjusted during comprehensive impact fee updates to ensure that revenue generated from the charge sufficiently covers, but does not exceed, the administrative costs associated with the fee program.

Table 10: Fire Facilities Impact Fee - System Plan Standard

Land Use	A Cost Per Capita	B Density	C = A x B Base Fee ¹	D = C x 0.02 Admin Charge ^{1, 2}	E = C + D Total Fee ¹	E / 1,000 Fee per Sq. Ft.
<i>Residential (per dwelling unit)</i>						
Single Family	\$ 533	3.18	\$ 1,695	\$ 34	\$ 1,729	
Multi-family	533	1.95	1,039	21	1,060	
<i>Nonresidential (per 1,000 square feet)</i>						
Commercial	\$ 368	2.33	\$ 857	\$ 17	\$ 874	\$ 0.87
Office	368	3.13	1,152	23	1,175	1.18
Industrial	368	1.33	489	10	499	0.50

¹ Fee per dwelling unit (residential) or per 1,000 square feet (nonresidential).

² Administrative charge of 2.0 percent for (1) legal, accounting, and other administrative support and (2) impact fee program administrative costs including revenue collection, revenue and cost accounting, mandated public reporting, and fee justification analyses.

Sources: Tables 2 and 8; Willdan Financial Services

Program Implementation

The fire facilities impact fee would be collected at time of building permit issuance. Because the District does not have the statutory authority to adopt a fee, it must rely on the City Council and County Board of Supervisors for the authority within each respective jurisdiction. In addition, to implement the fee the District, in cooperation with the County and City, should:

- Seek to acquire the necessary property for new stations through purchase or dedication and maintain an updated master plan indicating fire facility standards and the types of facilities anticipated to accommodate growth;
- Identify funding sources to complement impact fee revenues to fully fund planned facilities;
- Maintain an annual Capital Improvement Program budget or another accounting mechanism

- to indicate where fees are being expended to accommodate growth;
- Maintain records on use of the administrative charge to justify the amount;
- Comply with the annual and five-year reporting requirements of *Government Code* Section 66001 and 66006; and
- Identify appropriate inflation indexes in the fee ordinance and allow an automatic inflation adjustment to the fee annually.

Typically, an inflation index can be based on the District's recent capital project experience or from any reputable published source. Willdan recommends using the local Construction Cost Index of the Engineering News Record. The District may also elect to use separate indexes for land and construction. Calculating the land index may require use of a property appraiser every several years. To calculate the fee increase, total planned facility costs represented by land or construction, as appropriate, should weight each index.

Mitigation Fee Act Findings

To guide the widespread imposition of development impact fees, the State Legislature adopted the *Mitigation Fee Act* (the *Act*) with Assembly Bill 1600 in 1988 and subsequent amendments. The *Act* is contained in *California Government Code* Section 66000 *et seq.* and establishes requirements for the imposition and administration of impact fee programs. The *Act* became law in January 1988 and requires local governments to document the five findings explained in the sections below when adopting an impact fee. For the fire facilities impact fee to be adopted by the County of Contra Costa (County) on behalf of the Rodeo-Hercules Fire Protection District, the findings are summarized here and supported in detail by the report that follows. All statutory references are to the *Act*.

Purpose of Fee

For the first finding the District must:

Identify the purpose of the fee. (§66001(a)(1))

The purpose of the Rodeo-Hercules Fire Protection District fire facilities impact fee is to provide a funding source from new development for capital improvements to serve that development. The fee advances a legitimate interest of the District, County and cities by assuring that new development within the District is provided with adequate fire protection facilities and services.

Use of Fee Revenues

For the second finding the District must:

Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan as specified in Section 65403 or 66002, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged. (§66001(a)(2))

The fire facilities impact fee will fund expanded facilities to serve new development. All planned facilities will be located within the Rodeo-Hercules Fire Protection District boundaries:

- Land for fire station and other related structures;
- Fire stations including furniture and other equipment;
- Fire apparatus including equipped engines, trucks and other vehicles;
- Medical response, hazardous materials, training, and other specialized fire fighting equipment.
- Potential financing costs associated with the above.

Planned fire facilities are preliminarily identified in this report. Additional planning may be provided in the District's capital improvement plan and annual budgets. This report provides a preliminary description and cost estimate for planned facilities. Other planning documents may provide additional details and proposed timing for construction/acquisition of the facility.

Benefit Relationship

For the third finding the District must:

Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed. (§66001(a)(3))

The District will restrict fee revenues to the acquisition of land, construction of public buildings, and the purchase of related equipment, furnishings, vehicles, and services that will serve new development and the additional residents and workers associated with that new development as part of a district-wide network of fire protection facilities and services. Thus, there is a reasonable relationship between the use of fee revenues and the residential and nonresidential types of new development that will pay the fee.

Burden Relationship

For the fourth finding the District must:

Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed. (§66001(a)(4))

Service population provides an indicator of the demand for the facilities needed to accommodate growth. Service population is calculated based on residents associated with residential development and employment associated with nonresidential development. To calculate a single per capita standard, one worker is weighted less than one resident based on an analysis of the relative demand for fire facilities by land use type.

The need for the fee is based on the facility standards identified in this report and the growth in district-wide service population projected through 2035. Facilities standards represent the level of service that the District plans to provide its residents and businesses in 2035. Standards are based on the District's total existing and planned facilities allocated across the District's total service population in 2035.

See the *Fire Facilities Service Population* section, for a description of how service population and growth projections are calculated. Facility standards are described in the *Fire Facility Standards* section.

Proportionality

For the fifth finding the District must:

Determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed. (§66001(b))

This reasonable relationship between the fire facility impact fee for a specific development project and the cost of the facilities attributable to that project is based on the estimated size of the service population that the project will accommodate. The total fee for a specific project is based on its size as measured by dwelling units or building square feet. The fee schedule converts the estimated service population that a development project will accommodate into a fee based on the size of the project. Larger projects of a certain land use type will have a higher service population and pay a

higher fee than smaller projects of the same land use type. Thus, the fee schedule ensures a reasonable relationship between the public facility fee for a specific development project and the cost of the facilities attributable to that project.

See the *Fee Schedule* section for a description of how service population is determined for different types of land uses. The *Fee Schedule* section also presents the fire facilities impact fee schedule.

CITY OF HERCULES MASTER FEE SCHEDULE							
03/13/2018 Excerpt							
FUND NUMBER	DEPT. NUMBER	ACCOUNT NUMBER	FEE	LEGAL AUTHORITY	CURRENT FEE	Proposed Fee Description for 03-13-2018 Council Considerations	
COMMUNITY DEVELOPMENT DEPARTMENT							
			Development Impact Fees				
			Single Family (Per dwelling unit)				
247	5238	362.50-00	Park and Recreation Facilities	Reso 11-132	1,475.00		
			Public Benefit for the Bayfront Project only	Resos 11-132 & 17-002	4,000.00		
241	5238	362.50-00	General Public Facilities	Reso 11-132	717.00		
244	5238	362.50-00	Police Facilities	Reso 10-088	1,269.00		
246	5238	362.50-00	Fire Facilities ⁴	Reso 10-088	1,029.00	1,729.00	
261	5238	362.50-00	Traffic Facilities	Reso 11-132	982.00		
420	0000	368.10-00	Sewer Facilities	Reso 10-088	4,048.00		
242	5238	362.45-00	Community Development Tax	Reso 11-132	1,500.00		
264	5238	362.55-00	West County Sub-regional Transportation Mitigation Fee ¹	Reso 10-088	2,904.00		
			Multi Family (Per dwelling unit)				
247	5238	362.50-00	Park and Recreation Facilities	Reso 11-132	895.00		
			Public Benefit for the Bayfront Project only	Resos 11-132 & 17-002	2,350.00		
241	5238	362.50-00	General Public Facilities	Reso 11-132	448.00		
244	5238	362.50-00	Police Facilities	Reso 10-088	792.00		
246	5238	362.50-00	Fire Facilities ⁴	Reso 10-088	662.00	1,060.00	
261	5238	362.50-00	Traffic Facilities	Reso 11-132	603.00		
420	0000	368.10-00	Sewer Facilities	Reso 10-088	4,048.00		
242	5238	362.45-00	Community Development Tax	Reso 11-132	1,500.00		
264	5238	362.55-00	West County Sub-regional Transportation Mitigation Fee ¹	Reso 10-088	1,844.00		
			Retail - Flex (Per building square foot)	Reso 17-002			
			Public Benefit for the Bayfront Project only	Resos 11-132 & 17-002	0.200		
247	5238	362.50-00	Park and Recreation Facilities	Reso 09-114	N/A		
241	5238	362.50-00	General Public Facilities	Reso 10-088	0.575		
244	5238	362.50-00	Police Facilities	Reso 10-088	0.255		
246	5238	362.50-00	Fire Facilities ⁴	Reso 10-088	0.536	0.870	
261	5238	362.50-00	Traffic Facilities	Reso 11-132	2.01		
420	0000	368.10-00	Sewer Facilities	Reso 10-088	0.539		
264	5238	362.55-00	West County Sub-regional Transportation Mitigation Fee ¹	Reso 10-088	2.036		
			Office (Per building square foot)				
247	5238	362.50-00	Park and Recreation Facilities	Reso 09-114	N/A		
			Public Benefit for the Bayfront Project only	Resos 11-132 & 17-002	0.20		
241	5238	362.50-00	General Public Facilities	Reso 11-132	0.240		
244	5238	362.50-00	Police Facilities	Reso 10-088	0.425		
246	5238	362.50-00	Fire Facilities ⁴	Reso 10-088	0.721	1.180	
261	5238	362.50-00	Traffic Facilities	Reso 11-132	1.450		
420	0000	368.10-00	Sewer Facilities	Reso 10-088	1.079		
264	5238	362.55-00	West County Sub-regional Transportation Mitigation Fee ¹	Reso 10-088	3.927		
			Industrial (Per building square foot)				
247	5238	362.50-00	Park and Recreation Facilities	Reso 09-114	N/A		
241	5238	362.50-00	General Public Facilities	Reso 10-088	0.411		
244	5238	362.50-00	Police Facilities	Reso 10-088	0.183		
246	5238	362.50-00	Fire Facilities ⁴	Reso 10-088	0.306	0.500	
261	5238	362.50-00	Traffic Facilities (Reduced rate)	Reso 10-088	4.766		
420	0000	368.10-00	Sewer Facilities	Resos 11-132 & 17-002	1.08		
264	5238	362.55-00	West County Sub-regional Transportation Mitigation Fee ¹	Reso 10-088	2.741		
			Hotel (Per room)				
247	5238	362.50-00	Park and Recreation Facilities	Reso 09-114	N/A		
			Public Benefit for the Bayfront Project only	Resos 11-132 & 17-002	20.00		
241	5238	362.50-00	General Public Facilities	Reso 11-132	23.50		
244	5238	362.50-00	Police Facilities	Reso 09-114	26.00		
246	5238	362.50-00	Fire Facilities ⁴	Reso 10-088	94.00	92.00	
261	5238	362.50-00	Traffic Facilities	Reso 11-132	176.00		
264	5238	362.55-00	West County Sub-regional Transportation Mitigation Fee ¹	Reso 10-088	2,197.00		
			¹ STMP fees are collected by the City and remitted to WCCTAC				
			² SMIP fees are collected by the City and remitted to State of California				
			³ GBF fees are collected by the City and remitted to State of California				
			⁴ Fire Facilities Fees are collected by the City and remitted to Rodeo-Hercules Fire Protection District				



Legislation Details (With Text)

File #: 18-56 **Version:** 1 **Name:**

Type: Public Hearing **Status:** Agenda Ready

File created: 3/7/2018 **In control:** City Council

On agenda: 3/13/2018 **Final action:**

Title: Annual Housing Report
Recommendation: Conduct a public hearing and upon conclusion approve the Annual Housing Element Progress Report for the 2017 calendar year and direct staff to submit to the appropriate State agencies.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[Attachment 1 - Hercules 2017 Annual Housing Report](#)

Date	Ver.	Action By	Action	Result
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Annual Housing Report

Recommendation: Conduct a public hearing and upon conclusion approve the Annual Housing Element Progress Report for the 2017 calendar year and direct staff to submit to the appropriate State agencies.



STAFF REPORT TO THE CITY COUNCIL

DATE: March 13, 2018

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: 2017 Annual Housing Element Progress Report

RECOMMENDED ACTION:

- a. Open, conduct, and close public hearing.
- b. Approve the Annual Housing Element Progress Report for the 2017 calendar year and direct staff to submit to the appropriate State agencies.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

There was no commission or subcommittee review of the item.

FISCAL IMPACT OF RECOMMENDATION:

No direct financial impact of filing the annual housing report; however, failing to file the annual housing report can negatively impact the potential receipt of various grant and regional funds.

DISCUSSION:

Government Code Section 65400 requires each governing body (City Council or Board of Supervisors) to prepare an annual report on the status and progress in implementing the jurisdiction's Housing Element of the General Plan, using forms and definitions adopted by the Department of Housing and Community Development (HCD).

The annual report defines how many new residential units are being constructed in the reporting period, broken down by income levels, and then compares this information to the regional housing needs allocation (RHNA) assigned to the City for the entire Housing Element period. The report also looks at the City's housing policies and reports on the progress in achieving those goals.

Attached is the proposed Hercules 2017 Annual Housing Element Progress Report for the 3rd cycle of the 2015–2023 Housing Element. All new residential construction for the calendar year—which consisted entirely of 41 single-family detached homes at Muir—qualified as above-moderate income housing (as noted in Tables A3 and B of the Annual Progress Report). The last component of the report in Table C shows progress made on the various Housing Element implementation programs that have occurred during the reporting period, which was limited given the dissolution of

redevelopment, lack of funding for housing activities, and lack of staffing. HCD requires that this Annual Progress Report be considered at a public meeting prior to the City Council approving the Report for submittal to the HCD and the Office of Planning and Research (OPR). Council can approve the report via minute action and not by Resolution. In the Bay Area, copies of the approved report are also usually forwarded to Association of Bay Area Governments (ABAG) and Contra Costa Transportation Authority (CCTA) as well.

ATTACHMENTS:

1. 2017 Annual Housing Element Progress Report

<i>Financial Impact</i>			
Description:			
Funding Source:			
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"/>			

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction HERCULES

Reporting Period 01/01/2017 - 12/31/2017

Pursuant to GC 65400 local governments must provide by April 1 of each year the annual report for the previous calendar year to the legislative body, the Office of Planning and Research (OPR), and the Department of Housing and Community Development (HCD). By checking the “Final” button and clicking the “Submit” button, you have submitted the housing portion of your annual report to HCD only. Once finalized, the report will no longer be available for editing.

The report must be printed and submitted along with your general plan report directly to OPR at the address listed below:

**Governor’s Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044**

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction HERCULES

Reporting Period 01/01/2017 - 12/31/2017

Table A

Annual Building Activity Report Summary - New Construction Very Low-, Low-, and Mixed-Income Multifamily Projects

Housing Development Information								Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions	
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions.
			Very Low- Income	Low- Income	Moderate- Income	Above Moderate- Income			See Instructions	See Instructions	
(9) Total of Moderate and Above Moderate from Table A3						0	41				
(10) Total by Income Table A/A3			0	0	0	41					
(11) Total Extremely Low-Income Units*			0								

* Note: These fields are voluntary

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

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Jurisdiction HERCULES

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Table A2
Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)

Please note: Units may only be credited to the table below when a jurisdiction has included a program in its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA which meet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income	TOTAL UNITS	
(1) Rehabilitation Activity	0	0	0	0	
(2) Preservation of Units At-Risk	0	0	0	0	
(3) Acquisition of Units	0	0	0	0	
(5) Total Units by Income	0	0	0	0	

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT

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Jurisdiction HERCULES

Reporting Period 01/01/2017 - 12/31/2017

Table A3
Annual building Activity Report Summary for Above Moderate-Income Units
(not including those units reported on Table A)

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for Moderate	0	0	0	0	0	0	0
No. of Units Permitted for Above Moderate	41	0	0	0	0	41	0

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction HERCULES

Reporting Period 01/01/2017 - 12/31/2017

Table B

Regional Housing Needs Allocation Progress

Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.													
Income Level		RHNA Allocation by Income Level	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	220	0	0	0	0	0	0	0	0	0	0	220
	Non-Restricted		0	0	0	0	0	0	0	0	0		
Low	Deed Restricted	118	0	0	0	0	0	0	0	0	0	1	117
	Non-Restricted		0	1	0	0	0	0	0	0	0		
Moderate		100	0	0	0	0	0	0	0	0	0	0	100
Above Moderate		244	190	30	41	0	0	0	0	0	-	261	0
Total RHNA by COG. Enter allocation number:		682											
Total Units ▶ ▶ ▶			190	31	41	0	0	0	0	0	0	262	437
Remaining Need for RHNA Period ▶ ▶ ▶ ▶ ▶													

Note: units serving extremely low-income households are included in the very low-income permitted units totals.

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Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction HERCULES

Reporting Period 01/01/2017 - 12/31/2017

Table C

Program Implementation Status

Program Description (By Housing Element Program Names)		Housing Programs Progress Report - Government Code Section 65583. Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.	
Name of Program	Objective	Timeframe in H.E.	Status of Program Implementation
Program 1a: Section 8 Housing Choice Vouchers	Maintain current level of funding support for residents receiving Section 8 assistance	Ongoing	Activity of the Housing Authority of the County of Contra Costa, as the City of Hercules is not a designated Successor Housing Agency.
Program 1a: Section 8 Housing Choice Vouchers	Assist the County in advertising this program through the City web site, public counters, and bulletin boards in order to meet the HUD requirements that 70% of new Section 8 vouchers be used by extremely-low-income households.	Ongoing	Since the dissolution of the Redevelopment Agency (RDA), the City's web site has been modified to remove all RDA components. City web site provides links to the Housing Authority's web site and its online database of currently available housing. Have not yet received hard copy materials from Housing Authority or other agencies.
Program 1b: Affordable Housing Development Incentives and Outreach	Maintain a list of interested and qualified affordable housing developers. Actively and annually publicize to affordable housing developers the opportunities to develop affordable housing in Hercules, available incentives, and financing options provided by the City or other agencies.	Annual	During the public hearing process through which the City adopted its current Housing Element in 2015, the City contacted non-profit housing developers. Since then, there has not been separate outreach regarding affordable housing development opportunities as the City does not have funding incentives available.
Program 1b: Affordable Housing Development	Utilize State and Federal assistance	Ongoing	No funding opportunities were sought due to lack of City staffing, and no

Incentives and Outreach	<p>programs, such as HOME, LIHTC, and CHFA funds, on an ongoing basis to the fullest extent possible to develop affordable lower income housing for seniors, families, and persons with disabilities, including persons with developmental disabilities. Support funding applications by developers if the proposed projects are consistent with the goals and policies of the City's General Plan. Annually, the City will pursue funding opportunities.</p>		<p>developers contacted the City to support funding applications.</p>
Program 1b: Affordable Housing Development Incentives and Outreach	<p>Work with developers in the Central Hercules Plan area and other areas of new development on an ongoing basis to ensure that the City's housing goals of providing a wider mix of housing types and affordability levels are achieved. The City will provide incentives, including density bonus, expedited processing, and flexible development standards to encourage a variety of housing in the community, including projects that set aside units for households with extremely low incomes. With limited funding available, the City anticipates only a goal of eight affordable units.</p>	Ongoing	<p>City responded to multiple inquiries regarding the potential to develop housing in the Central Hercules Plan area and on some properties zoned General Commercial as well as the Waterfront/Bayfront and Hilltown areas regarding single-family and multi-family housing opportunities, but no applications were submitted in 2017.</p>
Program 1c: Density Bonus Program	<p>Continue to monitor the effectiveness of the Density Bonus program and provide technical assistance to developers in the use of the City's program.</p>	Ongoing	<p>No developers pursued density bonuses for residential projects, and therefore the use of the density bonus program was not applicable.</p>
Program 1d: Extremely Low Income Households	<p>Explore incentives to encourage developers to include units affordable to extremely low income households, including but not limited to additional density or floor-area ratio increases, flexible development standards (such as parking, height limit) and priority processing. The objective is to create three affordable units for extremely low income households over the planning period.</p>	2017	<p>No opportunities to offer such incentives occurred in 2017.</p>

Program 1d: Extremely Low Income Households	Within one year of Housing Element adoption, revise the Zoning Ordinance to clarify the provision of transitional/supportive housing in the RM-L zone as similar uses in the same zone.	2016	Ordinance 496, adopting Zone Amendment #ZA 16-02, was passed by the City Council on June 28, 2016 to amend the City's Zoning Ordinance, Chapter 6 (Residential Districts) and Chapter 53 (Reasonable Accommodations for Persons with Disabilities) to clarify provisions of transitional/supportive housing in the RM-L zone as similar uses in the same zone.
Program 2a: Code Enforcement	Continue to implement the code enforcement program to ensure that Hercules's neighborhoods are maintained and improved.	Ongoing	The City has a small group of volunteers in the Police Department that has done some basic pro-active code enforcement. In response to complaints filed, the Building Department has also sent out voluntary compliance letters to owners of reported properties. The City Council approved limited funding in FY 2016/17 for additional code enforcement augmentation, which has not yet been implemented.
Program 2a: Code Enforcement	Continue installation of automatic gas shut-off valves to improve resident safety.	Ongoing	This program continues to be implemented as every house that is sold, and every house permitted for improvements exceeding \$25,000, is required to have an automatic gas shut-off valve installed.
Program 2a: Code Enforcement	Continue referring code compliance violations to available residential rehabilitation programs to bring those homes up to standards.	Ongoing	Since the dissolution of the Redevelopment Agency (RDA), the City's web site has been modified to remove all RDA components. City web site provides links to the Housing Authority's web site and its online database of currently available housing. Have not yet received hard copy materials from other Housing Authority or other agencies.
Program 6a: Energy Conservation	Promote mixed-use/transit-oriented development that provides opportunities for energy conservation.	Ongoing	In 2017 the City approved development of Block N in the Waterfront District. The project will comprise 172 apartment units within 1/4-mile of the future Regional Intermodal Transportation Center.
Program 6a: Energy Conservation	Encourage developers to exceed the California Green Building Code requirements in incorporating energy conservation features and techniques.	Ongoing	The City Council encourages approved developments to provide "dark fiber" conduit to prepare for future high-speed internet service, which can help accommodate telecommuting opportunities, thus reducing greenhouse gases. In 2016, the City approved funding to help pay for installation of "dark fiber" conduit when other entities are conducting open-trench work. In 2017, the City installed conduit in Bayfront Boulevard.
Program 2b: Foreclosure Prevention Assistance	Advertise the program through City website and provide brochure at public counters.	Ongoing	Since the dissolution of the Redevelopment Agency (RDA), the City's web site has been modified to remove all RDA components. City web site provides links to the Housing Authority's web site and its online database of currently available housing. Have not yet received hard copy materials from Housing Authority or other agencies.
Program 2c: Owner-Occupied Single-Family Residential Rehabilitation	Advertise the program through City website and provide brochure at public counters.	Ongoing	Since the dissolution of the Redevelopment Agency (RDA), the City's web site has been modified to remove all RDA components. City web site provides links to the Housing Authority's web site and its online database of currently available housing. Have not yet received hard copy materials from Housing Authority or other agencies.

Program 3a: Provision of Adequate Sites	Continue to pursue/implement the projects on available sites as outlined in Table 46. Monitor the City's progress in meeting the RHNA and work with developers to achieve an income distribution that meet the City's remaining RHNA units.	Ongoing	Muir Pointe (formerly Parcel C) continued construction of the 144-unit single-family detached subdivision. In 2012, the City suspended its city-wide inclusionary housing ordinance, thus the Muir Pointe units are sold entirely at market rate and do not qualify as affordable units.
Program 3a: Provision of Adequate Sites	Update the City's sites inventory every two years to monitor the consumption of residential and mixed-use properties and continued ability to fulfill the RHNA.	2015, and every two years thereafter	The residential sites inventory was updated in 2015 with the update of the 2015-2023 Housing Element. In 2017, there were no land use changes that affected the site inventory as accounted for in the Housing Element.
Program 3a: Provision of Adequate Sites	Encourage sustainable development patterns by continuing to offer reductions in Traffic Facilities Impact Fees for projects that are located within one-half mile of a transit station and for mixed-use projects where 50% or more of the building space is used for residential purposes. Offer Traffic Facility Fee reductions to mixed-use projects, subject to funding availability.	Ongoing	Traffic impact fees continue at a discounted rate since November 8, 2011, when the City Council approved Resolution 11-132 to reduce the impact fees.
Program 4a: Development Standards and Procedures	Annually review the development standards, fees, and procedures and make adjustments as appropriate and legally feasible to encourage the development of a variety of housing in the community.	Ongoing	In 2017, the City reviewed and recommended revisions to the secondary dwelling unit policy to ensure consistency with recently enacted State of California accessory dwelling unit laws. Anticipated adoption in early 2018.
Program 5a: Fair Housing	Continue to support the County and refer any complaints and inquiries to the County for resolution and services.	Ongoing	Since the dissolution of the Redevelopment Agency (RDA), the City's web site has been modified to remove all RDA components. City web site provides links to the Housing Authority's web site and its online database of currently available housing. Have not yet received hard copy materials from other Housing Authority or other agencies.
Program 5a: Fair Housing	Advertise fair housing services of the County at public counters, through the City website, and at various community locations, including the City Library, Community Centers, and Senior Center.	Ongoing	Since the dissolution of the Redevelopment Agency (RDA), the City's web site has been modified to remove all RDA components. City web site provides links to the Housing Authority's web site and its online database of currently available housing. Have not yet received hard copy materials from other Housing Authority or other agencies.
Program 5b: Reasonable Accommodation	Advertise the program through City website and provide brochure at public	Ongoing	Since the dissolution of the Redevelopment Agency (RDA), the City's web site has been modified to remove all RDA components. City web site provides links

	counters.		to the Housing Authority's web site and its online database of currently available housing. Have not yet received hard copy materials from other Housing Authority or other agencies.
Program 5b: Reasonable Accommodation	Provide technical assistance regarding the application requirements and procedures to persons/entities seeking reasonable accommodation.	Ongoing	Building Department staff address questions as they come up.
Program 5b: Reasonable Accommodation	Within one year of the Housing Element adoption, revise the Reasonable Accommodation Ordinance to remove the primary residence requirement, thereby allowing the application of reasonable accommodation to all dwellings, including secondary homes.	2016	The City Council on June 28, 2016, adopted Ordinance 496, approving Zone Amendment #ZA 16-02, which amended the City's Zoning Ordinance, Chapter 6 (Residential Districts) and Chapter 53 (Reasonable Accommodations for Persons with Disabilities) to clarify provisions of transitional/supportive housing in the RM-L zone as similar uses in the same zone.
Program 5c: Cooperation with Contra Costa Health Services Homeless Program	Advertise the program through the City website and provide brochure at public counters.	Ongoing	Since the dissolution of the Redevelopment Agency (RDA), the City's web site has been modified to remove all RDA components. City web site provides links to the Housing Authority's web site and its online database of currently available housing. Have not yet received hard copy materials from other Housing Authority or other agencies.
Program 5c: Cooperation with Contra Costa Health Services Homeless Program	Participate in County Homeless Program biennial Point-in-Time count and participate in other regional studies and efforts in reducing homelessness.	2015, and every two years thereafter	A Volunteer in Policing participated in the biennial point-in-time count in 2017.

ANNUAL ELEMENT PROGRESS REPORT

Housing Element Implementation

(CCR Title 25 §6202)

Jurisdiction HERCULES

Reporting Period 01/01/2017 - 12/31/2017

General Comments:



Legislation Details (With Text)

File #:	18-55	Version:	1	Name:	
Type:	Public Hearing	Status:		Agenda Ready	
File created:	3/7/2018	In control:		City Council	
On agenda:	3/13/2018	Final action:			
Title:	Zone Text Amendment No. ZTA 18-01 related to Accessory Dwelling Units Recommendation: Conduct a public hearing and upon conclusion waive first reading and introduce an Ordinance for No. ZTA 18-01 modifying the Hercules Zoning Ordinance by repealing and replacing Section 35.320 and modifying Section 60.200 regarding Accessory Dwelling Units (ADUs).				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Staff Report Attachment 1 - Draft Ordinance Attachment 2 - PC Resolution No. 18-03 Attachment 3 - Redline of Proposed Ordinance Attachment 4 - Past Planning Commission Reports on ADUs				

Date	Ver.	Action By	Action	Result
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Zone Text Amendment No. ZTA 18-01 related to Accessory Dwelling Units

Recommendation: Conduct a public hearing and upon conclusion waive first reading and introduce an Ordinance for No. ZTA 18-01 modifying the Hercules Zoning Ordinance by repealing and replacing Section 35.320 and modifying Section 60.200 regarding Accessory Dwelling Units (ADUs).



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 13, 2018

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, AICP, Planning Director

SUBJECT: Consider Approving an Ordinance to Adopt Proposed Zone Text Amendment #ZTA 18-01 related to Accessory Dwelling Units

RECOMMENDATION:

Receive staff presentation, open the public hearing, waive the First Reading, and introduce an Ordinance for #ZTA 18-01 modifying the Hercules Zoning Ordinance by repealing and replacing Section 35.320 and modifying Section 60.200 regarding Accessory Dwelling Units (ADUs).

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

On February 20, 2018 the Planning Commission held a public hearing and adopted the attached Recommending Resolution 18-03 (Attachment 2), which reflects the proposed modifications to two sections of the City's Zoning Ordinance to be in conformance with State law that went into effect on January 1, 2017. The recommended modifications were based on the Commission's discussions at their August 7, 2017 and January 16, 2018 meetings with some of the provisions required by State law. Attachment 3 shows redlined tracked changes of the existing Zoning Ordinance with the modifications. The attached Planning Commission reports from August, January and February are shown in Attachment 4 to reflect the progression of the draft Ordinance, various brochures from the state and the various staff reports on the topic.

FISCAL IMPACT OF RECOMMENDATION:

The ordinance requires payment of the multi-family impact fee for each ADU given that ADUs have similar impacts in terms of size and occupancy and staff has determined that this fee is proportional to those impacts. Conversions of existing "living spaces" will not be charged impact fees in accordance with the City's current practice.

DISCUSSION:

The state has passed legislation that limits the ability of local government to regulate the construction of new Accessory Dwelling Units, also commonly referred to as “second units.” The state considers the legislation a way of helping to address the state’s housing crisis, particularly as it relates to affordable housing. The new law went into effect on January 1, 2017¹. It contains specific language that renders “null and void” all existing City ordinances regulating ADUs, unless the local ordinance is updated to be consistent with the requirements of the new state legislation.

In response to the new ADU state legislation, staff brought a report detailing the state law and new requirements for local jurisdictions to the Planning Commission as discussed above. The Planning Commission requested a minor change to ordinance in order to allow “detached” ADUs to be the lesser of 50% of the existing living area of the single family home or 1,200 square feet (instead of an 800 square foot maximum previously contained in the City’s ordinance). The Planning Commission also clarified that all types of ADUs require an exterior entrance, as allowed by law.

The statutory scheme governing ADUs (Gov. Code sections 65852.1 et seq.) establishes requirements for three types of ADUs:

1. ADUs within existing structures
2. ADUs attached to existing structures
3. Detached ADUs

To avoid confusion and to promote consistency, the draft ordinance incorporated the state law distinctions regarding ADU types so that it is clear (i) what type of ADU the applicant is seeking to be permitted, and (ii) what development standards apply to that type of ADU. A summary of the three types of ADUs follows:

I. ADUs within existing structures

This type of ADU is created wholly within an existing structure. State law requires that such an existing structure include a single family residence, accessory structure, or a garage. No "new construction" would be required *outside* of the existing structure (i.e. only walls or other indoor improvements) -- so there is no square footage limit for this type. ADUs within existing structures only require building permits (i.e. NOT an administrative use permit, like the other two types of ADUs), which is a state law requirement. This type of ADU must still meet applicable building and safety codes, have independent exterior access, and "sufficient" side/rear setbacks for fire safety. The City cannot require this type of ADU to create new/separate utility/sewer connections.

II. ADUs attached to existing structures.

Per state law, this type of ADU cannot exceed 50% of the existing living area (as defined) with a maximum increase of 1200 square feet. State law allows the City to decide whether it wants to require separate utility/sewer connections. The Public Works Director sees no need to require separate utilities. As for separate sewer connections, the Public Works Director would like that determination made on a case-by-case basis, and subject to the City’s approval, depending on the building/construction conditions existing at the location.

¹ Two additional bills providing minor amendments to the law (SB 229 and AB 494) were signed later in 2017. All references to the new state legislation include those updates and refer to the law as it exists today.

III. Detached ADUs.

This type of ADU is completely detached from the existing structure, as currently proposed cannot be more than 1200 square feet or 50% of the main structure size whichever is smaller. Similar to the attached type, the City can decide whether it wants to require separate utility/sewer connections. The Public Works Director sees no need to require separate utilities. As for sewer connections, the Public Works Director would like that determination made on a case-by-case basis, and subject to the City's approval, depending on the building/construction conditions existing at the location.

Other requirements.

All ADUs are required to comply with the following requirements. These requirements are specified in the proposed ordinance:

Design Standards — ADUs must conform to design and architectural characteristics of the existing single family home, building materials, paint color, landscape buffer, etc.

Fire sprinklers — ADUs must comply with all applicable state and local fire safety provisions. State law does not allow the City to require sprinkler installation in ADUs unless sprinklers are also required for the existing residence. The ordinance currently contains a requirement for sprinklers when the existing residence is required to have sprinklers.

Parking — The parking standards in the ordinance mirror state law requirements, so they must be included “as-is.”

Fees — The ordinance requires payment of all Multi-Family unit impact fees.

Attachments:

- 1** Draft Ordinance on Accessory Dwelling Units
- 2** Planning Commission Recommending Resolution 18-03
- 3** Redlined Tracked changes of Proposed Ordinance
- 4** Staff Reports with Attachments from 2/20/18, 1/16/18 and 8/7/17 Planning Commission

ORDINANCE NO. 18-___

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES
APPROVING ZONING TEXT AMENDMENT #ZTA 18-01 REPEALING AND
REPLACING SECTION 35.320 AND AMENDING SECTION 60.200 OF THE ZONING
ORDINANCE RELATED TO ACCESSORY DWELLING UNITS, AND FINDING THAT
THIS ORDINANCE IS EXEMPT FROM CEQA**

WHEREAS, the California Legislature requires and authorizes cities to provide for secondary, smaller housing units on residential parcels, at Government Code sections 65852.1 et seq.; and

WHEREAS, the California Legislature recently passed several amendments to Government Code sections 65852.1 et seq., including but not limited to SB 1069 and AB 2299, and these amendments designate and define secondary dwelling units as “accessory dwelling units” (ADUs), streamline their approval, minimize parking requirements for ADUs, and otherwise encourage local approval of ADUs; and

WHEREAS, the City currently provides for ADUs at section 35.320 of the Zoning Ordinance, and as a result of the recent changes to state law, the City proposes to update its existing requirements and make consistent amendments to definitions within the Zoning Ordinance to conform to current state law (collectively, the “Zoning Text Amendment”); and

WHEREAS, the Planning Commission had a study session regarding the recent changes in state law at their August 7, 2017 and January 16, 2018 meetings and made recommendations to staff regarding amending section 35.320 of the Zoning Ordinance; and

WHEREAS, the Planning Commission held a properly noticed public hearing on February 20, 2018 and adopted Resolution 18-03 recommending that the City Council approve the Zoning Text Amendment; and

WHEREAS, Section 52.400 of 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 that the proposed amendment 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 March 13, 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 18-01 in accordance with Section 52.400 of the Zoning Ordinance of the Hercules Municipal Code, the City Council finds that #ZTA 18-01 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 determined 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. The City Council also determined that the Zoning Text Amendment is categorically exempt from CEQA pursuant to section 15303(a) of the CEQA Guidelines because it governs construction of second dwelling units in residential zones.

SECTION 2.

Title 10 of the Hercules Municipal Code Zoning Ordinance Section 35.320 - Second Residential Units is hereby repealed and to be replaced with the following text:

35.320 Accessory Dwelling Units

1. Purpose. This section is intended to implement the General Plan policies which encourage Accessory Dwelling Units (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's ADU provisions as set forth in Government Code Section 65852.1 et seq. ADUs are commonly referred to as second units, in-law-units, and accessory-apartments, and contribute needed housing to the City’s housing stock.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, all ADUs are subject to administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320. No public hearing or any additional permit shall be required of applicants seeking an administrative use permit for an ADU under this section.

3. Definitions.

A. *Accessory Dwelling Unit (ADU).* An ADU shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. An ADU shall have a separate exterior entrance. An efficiency unit as defined in Health and Safety Code section 17958.1 and a manufactured home as defined in Health and Safety Code section 18007 are considered ADUs.

B. *Living Area.* Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

4. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADU is allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees for Multi-Family units required by the City's Master Fee Schedule (excluding ADUs within existing living spaces) as it exists at the time the ADU application is filed. All fees are subject to the requirements of Government Code 65852.2 and the Mitigation Fee Act.

5. Development Standards.

A. *ADUs within existing space.* An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

- (i) The ADU meets all applicable building and safety codes.
- (ii) The ADU has independent exterior access from the existing residence.
- (iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility or sewer connections.

B. *Attached ADUs.* ADUs attached to an existing dwelling shall = not exceed the lesser of fifty percent (50%) of the existing living area or 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the City shall not impose any setback requirements from the side and rear lot lines that exceed five (5) feet. An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

C. *Detached ADUs.* ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed the lesser of 50% of the existing living area or 1200 square feet, and shall conform to the applicable standards and requirements of the zoning district in which it is located, including height and setback requirements. An

ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

6. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

7. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

8. Parking. A minimum of one off-street parking space shall be provided for each ADU in addition to the offstreet parking spaces required for the existing residence ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

9. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall be required and may be located in any configuration on the same lot as the ADU.

SECTION 3.

Title 10 of the Hercules Municipal Code Zoning Ordinance Section 60.200 – Definitions portion of Chapter 60 of the Hercules Zoning Ordinance is to be modified as follows:

60.200 Definitions.

Accessory Dwelling Unit (ADU). An ADU is defined in section 35.320 of this Zoning Ordinance.

Second Residential Unit. As used in this Zoning Ordinance, Second Residential Unit means an Accessory Dwelling Unit.

SECTION 4. 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 5. 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 first read at a regular meeting of the Hercules City Council on the 13TH day of March, 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. 18-03

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE REPEALING AND REPLACING SECTION 35.325 OF THE ZONING ORDINANCE AND AMENDING SECTION 60.200 OF THE HERCULES ZONING ORDINANCE REGARDING ACCESSORY DWELLING UNITS CONSISTENT WITH CHANGES IN STATE LAW

WHEREAS, the California Legislature requires and authorizes cities to provide for secondary, smaller housing units on residential parcels ("accessory dwelling units" or "ADUs"), at Government Code section 65852.2; and

WHEREAS, the California Legislature recently amended Government Code section 65852.2 to refer to such units as "accessory dwelling units" ("ADUs"), and to streamline their approval, minimize parking requirements, and otherwise encourage the local approval of ADUs; and

WHEREAS, the City proposes to update its requirements, retitle that section, and make consistent amendments to definitions within the Zoning Ordinance to conform to current state law; and

WHEREAS, the Planning Commission considered the updated state law requirements in August of 2017, and considered a draft ordinance and proposed revisions to said draft ordinance in January of 2018; and

WHEREAS, at a properly noticed public hearing on February 20, 2018, the Planning Commission reviewed the revised draft ordinance ("ADU Ordinance") and considered the staff report, supporting documents, public testimony, and all appropriate information submitted and recommended that the City Council adopt the ADU Ordinance, repealing and replacing section 32.325 of the Zoning Ordinance (Second Residential Units) and incorporating corresponding amendments to section 60.200 (Definitions); and

WHEREAS, adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility for the ordinance to have a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The Planning Commission finds as follows:
 - a. The proposed amendment to the Zoning Ordinance is consistent with the General Plan.
 - b. The proposed amendment to the Zoning Ordinance would not be detrimental to the health, safety, welfare and public interest of the City.
 - c. The proposed amendment to the Zoning Ordinance is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance.

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDS THAT THE CITY COUNCIL:

1. Find that this ordinance is exempt from CEQA pursuant to CEQA Guideline Section 15061(b)(3) because it can be seen with certainty that there is no possibility for the ordinance to have a significant effect on the environment.
2. Consider adopting an Ordinance approving the attached Exhibit A Zone Text Amendment #ZTA 18-01 for Accessory Dwelling Unit policy that would repeal and replace section 32.325 of the Zoning Ordinance (Second Residential Units) and incorporate corresponding amendments to section 60.200 (Definitions) after holding a duly noticed public hearing (anticipated to be March 13, 2018) and having a first and second reading of the Ordinance.

PASSED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES on this 20th day of February 2018, by the following votes:

AYES: Morrison, Rubio, Bailey

NOES: None

ABSENT: Galieva and Tolley

ABSTAIN: None


Dion Bailey, Chair

ATTEST:


Holly P. Smyth, Planning Director &
Secretary

Exhibit A: Zone Text Amendment #ZTA 18-01 – Accessory Dwelling Unit (ADU) Ordinance language, amending the Hercules Zoning Ordinance sections 35.325 and 60.200.

PROPOSED ZONE TEXT AMENDMENT #ZTA 18-01 – ACCESSORY DWELLING UNIT**35.320 Accessory Dwelling Units**

1. Purpose. This section is intended to implement the General Plan policies which encourage Accessory Dwelling Units (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's ADU provisions as set forth in Government Code Section 65852.1 et seq. ADUs are commonly referred to as second units, in-law-units, and accessory-apartments, and contribute needed housing to the City's housing stock.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, all ADUs are subject to administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320. No public hearing or any additional permit shall be required of applicants seeking an administrative use permit for an ADU under this section.

3. Definitions.

A. *Accessory Dwelling Unit (ADU)*. An ADU shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. An ADU shall have a separate exterior entrance. An efficiency unit as defined in Health and Safety Code section 17958.1 and a manufactured home as defined in Health and Safety Code section 18007 are considered ADUs.

B. *Living Area*. Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

4. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADU is allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees for Multi-Family units required by the City's Master Fee Schedule (excluding ADUs within existing living spaces) as it exists at the time the ADU application is filed. All fees are subject to the requirements of Government Code 65852.2 and the Mitigation Fee Act.

5. Development Standards.

A. *ADUs within existing space.* An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

- (i) The ADU meets all applicable building and safety codes.
- (ii) The ADU has independent exterior access from the existing residence.
- (iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility or sewer connections.

B. *Attached ADUs.* ADUs attached to an existing dwelling shall not exceed the lesser of fifty percent (50%) of the existing living area or 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the City shall not impose any setback requirements from the side and rear lot lines that exceed five (5) feet. An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

C. *Detached ADUs.* ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed the lesser of 50% of the existing living area or 1200 square feet, and shall conform to the applicable standards and requirements of the zoning district in which it is located, including height and setback requirements. An ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

6. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

7. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

8. Parking. A minimum of one off-street parking space shall be provided for each ADU in addition to the offstreet parking spaces required for the existing residence ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant

to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

9. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall be required and may be located in any configuration on the same lot as the ADU.

60.200 Definitions.

Accessory Dwelling Unit (ADU). An ADU is defined in section 35.325 of this Zoning Ordinance.

Second Residential Unit. As used in this Zoning Ordinance, Second Residential Unit means an Accessory Dwelling Unit.

35.320 Second Residential Accessory Dwelling Units

1. Purpose. This section is intended to implement the General Plan policies which encourages Accessory Dwelling second residential uUnits (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's second residential unitADU provisions as set forth in Government Code Section 65852.1 et seq. Second residential unitsADUs are commonly referred to as second units, mother-in-law-units, grannyflats and accessory-apartments, and contribute needed housing to the City's housing stock. An efficiency unit and manufactured home as respectively defined in Sections 17958.1 and 18007 of the Health and Safety Code are also considered second residential units under State law.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, aAll second residential units ADUs are required subject to secure use permit and design review approval. Second residential units are allowed by administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320. No public hearing or any additional permit shall be required of applicants seeking an administrative use permit for an ADU under this section. approval in single family residential zoning districts and in other districts where there is one conforming use single family residence on the parcel.

43. Definitions.

A. Accessory Dwelling Unit (ADU). An ADU A second residential unit shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. An ADU The second residential unit Unless an ADU is located within existing residential space or accessory structure, it shall have include independent heating and cooling controls; its own kitchen with sink and standard built-in or freestanding appliances, its own bathroom with bath or shower, and a separate exterior entrance. An efficiency unit as defined in Health and Safety Code section 17958.1 and a manufactured home as defined in Health and Safety Code section 18007 are considered ADUs

B. Living Area. Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

42. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADU second residential unit may is be allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees for Multi-Family units required by the City's Master Fee Schedule (excluding ADUs within existing living spaces) as it exists at the time the ADU application is filed. All fees are subject to the requirements of Government Code 65852.2 and the Mitigation Fee Act. ~~not consider the ADU to be a new residential use when calculating utility and sewer connection fees and capacity charges, and any such connection fee or capacity charge will be proportionate to the impact of the ADU.~~ containing one larger single family, owner occupied dwelling. No second residential units are allowed on lots having more than one residential unit, or on lots where the existing residential unit is a nonconforming use. The second residential unit is not intended for sale and may be rented.

3. No more than one dwelling unit on a single family residential with a second residential dwelling unit parcel may be rented or leased at one time.

54. Development Standards.

A. ADUs within existing space. An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

(i) The ADU meets all applicable building and safety codes.

(ii) The ADU has independent exterior access from the existing residence.

(iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility or sewer connections.

B. Attached ADUs. ADUs attached to an existing dwelling shall ~~The total floor space for a second residential unit shall contain adequate area to provide the required facilities listed in subsection 1, but not exceed the lesser of fifty percent (530%) of the existing living area, or with a maximum increase in floor area of 1200 square feet.~~ Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the City shall not impose any setback requirements from the side and rear lot lines that exceed five (5) feet. An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer, ~~and if detached shall not exceed 800 square feet.~~ Living area is defined as the interior habitable area of a dwelling unit including habitable basements and attics, but does not include a garage or any accessory structure.

C. Detached ADUs. ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed the lesser of 50% of the existing living area or 1200 square feet, and

5. The second residential unit may either be within the living area of the existing dwelling, attached to the existing dwelling, or detached from the existing dwelling.

~~6. A second residential unit shall conform to the applicable standards and requirements of the zoning district in which it is to be located, including height and setback requirements. An ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer. Requirements for building height, setbacks, yards and similar design standards that apply to the single family dwelling unit shall apply to the second residential unit.~~

65. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

675. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

786. Parking. A minimum of one off-street parking space shall be provided for each ADU~~second residential unit~~ in addition to the offstreet parking spaces required for the existing residence(s) ~~on the site.~~ ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

98. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall be required and may be located in any configuration on the same lot as the ADU.

60.200 Definitions.

Accessory Dwelling Unit (ADU). An ADU is defined in section 35.3205 of this Zoning Ordinance.

Second Residential Unit. An dwelling unit in addition to an existing residential unit, that provides complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation; and does not exceed 30% of the existing living area or 800 square feet whichever is less. As used in this Zoning Ordinance, Second Residential Unit means an Accessory Dwelling Unit.



STAFF REPORT TO THE PLANNING COMMISSION

DATE: Planning Commission Meeting of February 20, 2018

TO: Members of the Planning Commission

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: Consider Approving Resolution #18-03 Recommending the City Council Adopt an Ordinance for proposed Zone Text Amendment #ZTA 18-01 related to Accessory Dwelling Units

RECOMMENDATION:

Receive a brief presentation, open public hearing and consider adopting Resolution #18-03 recommending that the Council Adopt an ordinance regulating Accessory Dwelling Units (ADUs).

BACKGROUND:

The State has passed legislation that limits the ability of local government to regulate the construction of new Accessory Dwelling Units, also commonly referred to as “second units.” The State considers the legislation a way of helping to address the State’s housing crisis, particularly as it relates to affordable housing. The new law went into effect on January 1, 2017¹. It contains specific language that renders “null and void” all existing City ordinances regulating ADUs, unless the local ordinance is updated to be consistent with the requirements of the new state legislation.

In response to the new ADU state legislation, staff brought a report detailing the state law and new requirements for local jurisdictions to the Planning Commission for initial review in August 2017. Following input and discussion from the Commission, staff and the City Attorney’s Office updated the City’s existing ordinance and brought a proposed ADU ordinance back to the Planning Commission for a workshop review and discussion on January 16, 2018. Copies of the prior staff reports are provided as Attachments 1 and 2.

The Planning Commission requested a minor change to ordinance in order to allow “detached” ADUs to be the lesser of 50% of the existing living area of the single family home or 1200 square feet (instead of an 800 square foot maximum). Staff also made minor clarifications to the fee provision and the replacement parking provision. The draft ordinance is provided as Exhibit A to the draft resolution.

¹ Two additional bills providing minor amendments to the law (SB 229 and AB 494) were signed later in 2017. All references to the new state legislation include those updates and refer to the law as it exists today.

DISCUSSION:

The statutory scheme governing ADUs (Gov. Code sections 65852.1 et seq) establishes requirements for three types of ADUs:

1. ADUs within existing structures
2. ADUs attached to existing structures
3. Detached ADUs

To avoid confusion and to promote consistency, the draft ordinance being presented to the Planning Commission adopts the state law distinctions regarding ADU types so that it is clear (i) what type of ADU the applicant is seeking to be permitted, and (ii) what development standards apply to that type of ADU. A summary of the three types of ADUs follows:

I. ADUs within existing structures

This type of ADU is created wholly within an existing structure. State law requires that such an existing structure include a single family residence, accessory structure, or a garage. No "new construction" would be required *outside* of the existing structure (i.e. only walls or other indoor improvements) -- so there is no square footage limit for this type. ADUs within existing structures only require building permits (i.e. NOT an administrative use permit, like the other two types of ADUs), which is a state law requirement. This type of ADU must still meet applicable building and safety codes, have independent exterior access, and "sufficient" side/rear setbacks for fire safety. The City cannot require this type of ADU to create new/separate utility/sewer connections.

II. ADUs attached to existing structures.

Per state law, this type of ADU cannot exceed 50% of the existing living area (as defined) with a maximum increase of 1200 square feet. State law allows the City to decide whether it wants to require separate utility/sewer connections. The Public Works Director sees no need to require separate utilities. As for separate sewer connections, the Public Works Director would like that determination made on a case-by-case basis, and subject to the City's approval, depending on the building/construction conditions existing at the location.

III. Detached ADUs.

This type of ADU is completely detached from the existing structure, as currently proposed cannot be more than 1200 square feet or 50% of the main structure size whichever is smaller. Similar to the attached type, the City can decide whether it wants to require separate utility/sewer connections. The Public Works Director sees no need to require separate utilities.

As for sewer connections, the Public Works Director would like that determination made on a case-by-case basis, and subject to the City's approval, depending on the building/construction conditions existing at the location.

Other requirements.

All ADUs are required to comply with the following requirements. These requirements are specified in the proposed ordinance:

Design Standards — ADUs must conform to design and architectural characteristics of the existing single family home, building materials, paint color, landscape buffer, etc.

Fire sprinklers — ADUs must comply with all applicable state and local fire safety provisions. State law does not allow the City to require sprinkler installation in ADUs unless sprinklers are also required for the existing residence. The ordinance currently contains a requirement for sprinklers when the existing residence is required to have sprinklers.

Parking — The parking standards in the ordinance mirror state law requirements, so they must be included “as-is.”

Fees — The ordinance requires payment of all Multi-Family unit impact fees.

Changes since previous Planning Commission ADU Ordinance workshop

Following the Planning Commission’s consideration of this ordinance at a “workshop” level, the below changes were incorporated into the attached draft ordinance at the request of the Planning Commission:

1. Detached ADUs are now allowed to be the lesser of 50% of the existing single family home or 1200 square feet (i.e. the same as the attached ADUs).
2. Replacement parking is required when a garage/carport is demolished for an ADU.

Additionally, section 4.C was revised to provide for payment of Multi-Family unit impact fees, and other sections were revised to clarify that a separate exterior entrance is required for all types of ADUs. Finally, corresponding changes to the definitions section of the Zoning Ordinance (section 60.200) have been included in order to properly define ADU.

Attachments:

- 1:** Staff Report and Attachments from Planning Commission meeting of August 7, 2017.
- 2:** Staff Report and Attachments from Planning Commission meeting of January 16, 2018.
- 3:** Draft Resolution #18-03 Recommending that the City Council Adopt an Ordinance for Zone Text Amendment 18-01 to Repeal and Replacing ADU policy in the City Zoning Ordinance
Exhibit A -Draft Resolution #18-03 –Zone Text Amendment 18-01- Draft ADU Ordinance



STAFF REPORT TO THE PLANNING COMMISSION

DATE: August 7, 2017

TO: Chairperson Morrison and Members of the Planning Commission

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: Study session on recent changes to State Law that regulate Accessory Dwelling Units, and the implication of these changes for the City's current Accessory Dwelling Unit Ordinance

RECOMMENDED ACTION:

Receive a brief presentation by City staff summarizing the relevant issues, discuss the implications of the new State legislation that impacts the City's current ordinance regulating Accessory Dwelling Units (ADU's), and provide direction to staff as appropriate concerning this matter.

Background:

In 2016 the State passed legislation (SB 1069 and AB 2299), that limits the ability of local government to regulate the construction of new Accessory Dwelling Units, also commonly referred to as "second units". The State considers this legislation as a way of helping to address the State's housing crisis, particularly as it relates to affordable housing. Both SB 1069 and AB 2299 went into effect on January 1, 2017. AB 2299 contains specific language that renders "null and void" all existing City ordinances regulating ADU's, unless the local ordinance is updated to be consistent with the requirements of the new legislation.

Given these circumstances, the City needs to make a decision whether to update its ordinance regulating ADU's to be consistent with the new State laws, or to take no such action and have ADU's in Hercules regulated solely by the new State legislation. From a staff perspective, there are clear advantages to the City updating/revising its current ADU regulations, as opposed to taking no action. This is due to the fact that the new State law allows cities to put in place regulations as long as the regulations don't conflict with State law. While any updated City regulations will, given the new State laws, be more limited in scope than the City's now "preempted" ordinance, taking no action would result in the City having little control over ADU's being built in Hercules other than the default State requirements. For example, the State regulations in the absence of any local ordinance to the contrary, could be interpreted to allow a travel trailer parked in the back yard of a single family home to be considered a legal ADU. Looked at from another perspective, there really is no downside for the City to go through the process of updating its ADU ordinance, other than the time and resources needed to do the work.

In addition to SB 1069 and AB2299, the State Legislature passed another bill in 2016, AB 2406, that gives local jurisdictions the flexibility of permitting what are referred to as "Junior Accessory Dwelling Units" (JADU's). These are second units that are built entirely within an existing residential structure and cannot

exceed 500 square feet. This legislation is different than SB 1069 in that its provisions are optional. A City can decide whether or not it wants to amend its accessory dwelling unit ordinance to permit JADU's. It should be noted that the City's current preempted ordinance allows ADU's to be built within an existing structure. The City could implement the provisions of AB2406 as part of the ADU Ordinance update process. The details of how this could work would be addressed with the ADU Ordinance update.

Current ADU Ordinance Requirements:

It's instructive to compare the current City Ordinance regulating ADU's with the new State requirements. The following table provides a summary of the more significant implications of the new State legislation. It should be emphasized that the following comparisons between current City requirements and the new State legislation are "tentative" in the sense that a detailed legal review will be required prior to any formal changes to the City's Accessory Dwelling Unit regulations. Accessory Dwelling units are regulated by the City Zoning Code Section 35.320 "Second Residential Units". A copy of this section of the Zoning Code is attached (see Attachment 1) as well as Section 35.210-Accessory Structures and Uses for reference.

Table: Comparison of City Ordinance and State Legislation Concerning Accessory Dwelling Units

City Requirement	City's Current Ordinance	Recent State Legislation
1) Approval process for ADU	Administrative use permit and design review required.	No discretionary permit required so long as there is independent exterior access.
2) Maximum size of ADU	A maximum of 800 square feet, plus an ADU may not exceed 30% of the size of the main residential unit.	A maximum size of 1,200 square feet plus may not exceed 50% of the size of the main residential unit.
3) Development standards applicable to ADU	ADU must conform to the setback, building height and other requirements for single family homes.	No specific setback or other requirements, other than Building Code and Fire Code requirements must be met.
4) Parking requirements	One off street parking space for the ADU.	No parking required if ADU is within ½ mile from public transit, or 1 block of a car share area, or if ADU is in historic district, or if ADU is part of main structure.
5) Use of garage for ADU	Garage cannot be converted into an ADU without constructing a replacement garage.	Garage <u>can</u> be converted into an ADU as long as a driveway allows for parking for the main structure and potentially 1 spaces for the new accessory dwelling structure if it doesn't meet parking exemptions, which can be tandem.

Types of Regulations that can be Included in an Updated ADU Ordinance:

While the new State legislation limits the City's discretion in regulating ADU's, provisions in the new State laws give local jurisdictions a fair degree of latitude in establishing requirements that allow local jurisdictions some degree of control over ADU's. In contrast, as mentioned previously, the new State regulations in the absence of a valid updated local ordinance give City's very little discretion over where and how ADU's develop in their community. The following are some of the types of regulations that a local agency can include under the new State legislation in an updated local ordinance to regulate ADU's. It is important to note that under the new State law any such regulation can't place an "undue burden" on the ability to build an ADU. Any new ordinance the City develops to regulate ADU's will require close legal scrutiny by the City Attorney to ensure it complies with the requirements and restrictions of the new State legislation. In addition, a jurisdiction is required to forward any updated local ordinance regulating ADU's to the State, although the State at this point in time will not be formally reviewing the local ordinances it receives. California Department of Housing and Community Development produced the "Accessory Dwelling Unit Memorandum, dated December 2017" to help the public understand the various provisions of the law and is found in Attachment 2.

Examples of Provisions that can be included in Local Ordinance:

- A. The new legislation allows a jurisdiction to include architectural and landscape requirements for ADU's.
- B. Development standards can be established addressing such issues as establishing a minimum lot size on which an ADU can be constructed, setbacks, lot coverage, maximum floor area ratio (FAR), and maximum building height.
- C. The legislation also allows a jurisdiction to restrict constructing an ADU's in certain situations and locations. For example, if an ADU was proposed in a high traffic area where the occupant of the ADU would have to back out onto a busy street.
- D. Limits can be included to address valid public health and safety issues. An example of a public health issue would be if an ADU was proposed in an area that lacked sewer or water capacity.
- E. Require a deed restriction be placed on the property requiring owner-occupancy at the property and/or that the ADU be used exclusively for long term rentals not short term.

A local ordinance regulating ADU's would allow a jurisdiction to include these type of requirements and tailor the requirements to fit the local situation. Obviously, this would not be the case if the City did not choose to update its local ordinance to be compliant with State law, and instead relied solely on the new State legislation for ADU regulation.

Planning Commission Action:

Provide direction to staff as to what eligible provisions should be integrated into a new code.

ATTACHMENTS:

- 1. Section 35.320 – Second Residential Units provision of the City's Zoning Ordinance and Section 35.210 – Accessory Structures and Uses for sample criteria
- 2. Ca HCD "Accessory Dwelling Unit Memorandum", December 2016

CHAPTER 35

SPECIFIC LAND USE REQUIREMENTS

35.100 Purpose and Applicability

The purpose of this Chapter is to provide land use and development regulations for specific uses that will then be applicable to sites throughout the City. Unless noted otherwise, these standards are intended to be applied within all zoning and overlay districts.

35.200 Specific Use Standards

Zoning and overlay district development standards or performance standards in Article II will take precedence over the specific use requirements within this chapter. If there is a conflict between regulations and standards specified for a particular zoning district and the specific use standards contained within this chapter, the district specific regulations and standards shall be applied.

35.210 Accessory Structures and Uses

Accessory buildings are generally allowed in all zoning districts subject to the requirement that the use of the structure be subordinate and incidental to the principal use or structure on the site. Accessory structures may require an administrative use permit and may have conditions limiting use as determined by the land use regulations for each zoning district.

Accessory structures may be either attached to and have a common wall with the main structure on a site, or may be freestanding (i.e., not attached to the main structure). For the purposes of this Chapter, an accessory structure that is connected to the main structure by a breezeway, gazebo, shade structure, deck, or other combustible material (as that term is used in the uniform building code) shall be treated as an attached accessory structure.

1. No accessory structure shall encroach into front and side yards except as noted below.
2. No accessory structure shall be used as living quarters unless specifically allowed in this code.
3. Freestanding accessory structures located in the front half of a site shall provide the same front and side yards as required for the main structure, and, in the residential districts, shall be connected to the main structure by a breezeway not less than 6 feet in width and not more than 12 feet in height.

4. A freestanding accessory structure shall be located at least 5 feet from all side and rear property lines. Structures made with wood or other combustible material (for example, decks, gazebos and similar construction) may not be located in the 5 foot setback.
5. On a corner lot, a freestanding accessory structure shall be located at least 10 feet from the side property line adjoining the street, except that garages and carports with access from the street adjoining the side yard shall be located at least 20 feet from this side property line.
6. On a lot where the rear yard faces a public street, a freestanding accessory structure shall not be located in the rear yard setback required for the main structure.
7. The maximum height of an attached accessory structure shall be as specified for the main structure, and for a freestanding accessory structure the maximum height shall be 15 feet, except that within 10 feet of a property line, no part of the structure shall exceed 8 feet.
8. In the RS-L district, freestanding accessory structures shall cover not more than 30% of the required rear yard, unless there remains a portion of the rear yard or a side yard which has an area of not less than 20% of the site, and that the least dimension of such yard shall be at least 15 feet
9. Special Situations: The Community Development Director in consultation with the Director of Public Works and the Chief of the Rodeo-Hercules Fire Protection District (or their designated representatives) shall have the authority to approve exceptions to these regulations in the following cases. In reviewing these situations, the Community Development Director may impose any conditions needed to fulfill the intent of this subsection. Any determination may be appealed to the Planning Commission.
 - A. For a structure built out of noncombustible materials, including a spa (but not including a gazebo or any other wood structure), the 5 foot setback may be reduced, provided that the Community Development Director finds that the proposed structures will not significantly increase the fire hazard.
10. Detached and attached accessory structures under 120 square feet total for the property that meet all requirements of this section are exempt from use permit requirements. However, accessory structures with permanent foundations shall require design review through the Community Development Director. Accessory structures that are freestanding without permanent foundations such as prefabricated storage sheds do not require a use permit or design review as long as all criteria of this section are met.
11. Before approving the proposed design plans for an accessory structure with a reduced setback (as allowed by this section), pursuant to Chapter 42 Design Review, the Community Development Director shall notify the owners of parcels within 150 feet, and on the same side of the street as, the site of the proposed accessory structure that construction of an accessory structure has been proposed. If any written protest to the proposed structure is received within 15 calendar days of the mailing of such notice, the Director shall take no action regarding the structure and shall refer the matter to the Planning Commission for a public design review hearing and action.

35.320 Second Residential Units

This section is intended to implement the General Plan policies which encourages second residential units on owner occupied, single family residential parcels; and is also intended to address the State's second residential unit provisions as set forth in Government Code Section 65852.1 et seq. Second residential units are commonly referred to as mother-in-law-units, granny-flats and accessory-apartments. An efficiency unit and manufactured home as respectively defined in Sections 17958.1 and 18007 of the Health and Safety Code are also considered second residential units under State law.

All second residential units are required to secure use permit and design review approval. Second residential units are allowed by administrative use permit approval in single family residential zoning districts and in other districts where there is one conforming use single family residence on the parcel.

1. A second residential unit shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. The second residential unit shall include independent heating and cooling controls; its own kitchen with sink and standard built-in or freestanding appliances, its own bathroom with bath or shower, and a separate exterior entrance.
2. A maximum of one second residential unit may be allowed on a lot containing one larger single family, owner occupied dwelling. No second residential units are allowed on lots having more than one residential unit, or on lots where the existing residential unit is a nonconforming use. The second residential unit is not intended for sale and may be rented.
3. No more than one dwelling unit on a single family residential with a second residential dwelling unit parcel may be rented or leased at one time.
4. The total floor space for a second residential unit shall contain adequate area to provide the required facilities listed in subsection 1, but not exceed 30% of the existing living area and if detached shall not exceed 800 square feet. Living area is defined as the interior habitable area of a dwelling unit including habitable basements and attics, but does not include a garage or any accessory structure.
5. The second residential unit may either be within the living area of the existing dwelling, attached to the existing dwelling, or detached from the existing dwelling.
6. A second residential unit shall conform to the applicable standards and requirements of the zoning district in which it is to be located. Requirements for building height, setbacks, yards and similar design standards that apply to the single family dwelling unit shall apply to the second residential unit.
7. A minimum of one off-street parking space shall be provided for each second residential unit in addition to the offstreet parking spaces required for the residence(s) on the site.



Courtesy of Karen Chapple, UC Berkeley

California Department of Housing and Community Development
Where Foundations Begin

Accessory Dwelling Unit Memorandum

December 2016



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Understanding Accessory Dwelling Units and Their Importance



Courtesy of Karen Chapple, UC Berkeley

California's housing production is not keeping pace with demand. In the last decade less than half of the needed housing was built. This lack of housing is impacting affordability with average housing costs in California exceeding the rest of the nation. As affordability becomes more problematic, people drive longer distances between a home that is affordable and where they work, or double up to share space, both of which reduces quality of life and produces negative environmental impacts.

Beyond traditional market-rate construction and government subsidized production and preservation there are alternative housing models and emerging trends that can contribute to addressing home supply and affordability in California.

One such example gaining popularity are Accessory Dwelling Units (ADUs) (also referred to as second units, in-law units, or granny flats).

What is an ADU

An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes three forms:

- *Detached:* The unit is separated from the primary structure
- *Attached:* The unit is attached to the primary structure
- *Repurposed Existing Space:* Space (e.g., master bedroom) within the primary residence is converted into an independent living unit
- *Junior Accessory Dwelling Units:* Similar to repurposed space with various streamlining measures

ADUs offer benefits that address common development barriers such as affordability and environmental quality. ADUs are an affordable type of home to construct in California because they do not require paying for land, major new infrastructure, structured parking, or elevators. ADUs are built with cost-effective one- or two-story wood frame construction, which is significantly less costly than homes in new multifamily infill buildings. ADUs can provide as much living space as the new apartments and condominiums being built in new infill buildings and serve very well for couples, small families, friends, young people, and seniors.

ADUs are a different form of housing that can help California meet its diverse housing needs. Young professionals and students desire to live in areas close to jobs, amenities, and schools. The problem with high-opportunity areas is that space is limited. There is a shortage of affordable units and the units that are available can be out of reach for many people. To address the needs of individuals or small families seeking living quarters in high opportunity areas, homeowners can construct an ADU on their lot or convert an underutilized part of their home like a garage

into a junior ADU. This flexibility benefits not just people renting the space, but the homeowner as well, who can receive an extra monthly rent income.

ADUs give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care and helping extended families to be near one another while maintaining privacy.

Relaxed regulations and the cost to build an ADU make it a very feasible affordable housing option. A UC Berkeley study noted that one unit of affordable housing in the Bay Area costs about \$500,000 to develop whereas an ADU can range anywhere up to \$200,000 on the expensive end in high housing cost areas.

ADUs are a critical form of infill-development that can be affordable and offer important housing choices within existing neighborhoods. ADUs are a powerful type of housing unit because they allow for different uses, and serve different populations ranging from students and young professionals to young families, people with disabilities and senior citizens. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education and services for many Californians.

Summary of Recent Changes to ADU Laws



Courtesy of Karen Chapple, UC Berkeley

The California legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in single family and multifamily zones provides additional rental housing and are an essential component in addressing housing needs in California. Over the years, ADU law has been revised to improve its effectiveness such as recent changes in 2003 to require ministerial approval. In 2017, changes to ADU laws will further reduce barriers, better streamline approval and expand capacity to accommodate the development of ADUs.

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, the disabled, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the Department has prepared this guidance to assist local governments in encouraging the development of ADUs. Please see Attachment 1 for the complete statutory changes. The following is a brief summary of the changes for each bill.

SB 1069 (Wieckowski)

S.B. 1069 (Chapter 720, Statutes of 2016) made several changes to address barriers to the development of ADUs and expanded capacity for their development. The following is a brief summary of provisions that go into effect January 1, 2017.

Parking

SB 1069 reduces parking requirements to one space per bedroom or unit. The legislation authorizes off street parking to be tandem or in setback areas unless specific findings such as fire and life safety conditions are made. SB 1069 also prohibits parking requirements if the ADU meets any of the following:

- Is within a half mile from public transit.
- Is within an architecturally and historically significant historic district.
- Is part of an existing primary residence or an existing accessory structure.
- Is in an area where on-street parking permits are required, but not offered to the occupant of the ADU.
- Is located within one block of a car share area.

Fees

SB 1069 provides that ADUs shall not be considered new residential uses for the purpose of calculating utility connection fees or capacity charges, including water and sewer service. The bill prohibits a local agency from requiring an ADU applicant to install a new or separate utility connection or impose a related connection fee or capacity charge for ADUs that are contained within an existing residence or accessory structure. For attached and detached ADUs, this fee or charge must be proportionate to the burden of the unit on the water or sewer system and may not exceed the reasonable cost of providing the service.

Fire Requirements

SB 1069 provides that fire sprinklers shall not be required in an accessory unit if they are not required in the primary residence.

ADUs within Existing Space

Local governments must ministerially approve an application to create within a single family residential zone one ADU per single family lot if the unit is:

- contained within an existing residence or accessory structure.
- has independent exterior access from the existing residence.
- has side and rear setbacks that are sufficient for fire safety.

These provisions apply within all single family residential zones and ADUs within existing space must be allowed in all of these zones. No additional parking or other development standards can be applied except for building code requirements.

No Total Prohibition

SB 1069 prohibits a local government from adopting an ordinance that precludes ADUs.

AB 2299 (Bloom)

Generally, AB 2299 (Chapter 735, Statutes of 2016) requires a local government (beginning January 1, 2017) to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements, as follows:

- The unit is not intended for sale separate from the primary residence and may be rented.
- The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.
- The unit is either attached to an existing dwelling or located within the living area of the existing dwelling or detached and on the same lot.
- The increased floor area of the unit does not exceed 50% of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- The total area of floorspace for a detached accessory dwelling unit does not exceed 1,200 square feet.
- No passageway can be required.
- No setback can be required from an existing garage that is converted to an ADU.

- Compliance with local building code requirements.
- Approval by the local health officer where private sewage disposal system is being used.

Impact on Existing Accessory Dwelling Unit Ordinances

AB 2299 provides that any existing ADU ordinance that does not meet the bill's requirements is null and void upon the date the bill becomes effective. In such cases, a jurisdiction must approve accessory dwelling units based on Government Code Section 65852.2 until the jurisdiction adopts a compliant ordinance.

AB 2406 (Thurmond)

AB 2406 (Chapter 755, Statutes of 2016) creates more flexibility for housing options by authorizing local governments to permit junior accessory dwelling units (JADU) through an ordinance. The bill defines JADUs to be a unit that cannot exceed 500 square feet and must be completely contained within the space of an existing residential structure. In addition, the bill requires specified components for a local JADU ordinance. Adoption of a JADU ordinance is optional.

Required Components

The ordinance authorized by AB 2406 must include the following requirements:

- Limit to one JADU per residential lot zoned for single-family residences with a single-family residence already built on the lot.
- The single-family residence in which the JADU is created or JADU must be occupied by the owner of the residence.
- The owner must record a deed restriction stating that the JADU cannot be sold separately from the single-family residence and restricting the JADU to the size limitations and other requirements of the JADU ordinance.
- The JADU must be located entirely within the existing structure of the single-family residence and JADU have its own separate entrance.
- The JADU must include an efficiency kitchen which includes a sink, cooking appliance, counter surface, and storage cabinets that meet minimum building code standards. No gas or 220V circuits are allowed.
- The JADU may share a bath with the primary residence or have its own bath.

Prohibited Components

This bill prohibits a local JADU ordinance from requiring:

- Additional parking as a condition to grant a permit.
- Applying additional water, sewer and power connection fees. No connections are needed as these utilities have already been accounted for in the original permit for the home.

Fire Safety Requirements

AB 2406 clarifies that a JADU is to be considered part of the single-family residence for the purposes of fire and life protections ordinances and regulations, such as sprinklers and smoke detectors. The bill also requires life and protection ordinances that affect single-family residences to be applied uniformly to all single-family residences, regardless of the presence of a JADU.

JADUs and the RHNA

As part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a JADU toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit which is fairly flexible. Local government count units as part of reporting to DOF. JADUs meet these definitions and this bill would allow cities and counties to earn credit toward meeting their RHNA allocations by permitting residents to create less costly accessory units. See additional discussion under JADU frequently asked questions.

Frequently Asked Questions: Accessory Dwelling Units

Should an Ordinance Encourage the Development of ADUs?

Yes, ADU law and recent changes intend to address barriers, streamline approval and expand potential capacity for ADUs recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment and implementation of local ADU ordinances must be carried out consistent with Government Code Section 65852.150:

(a) The Legislature finds and declares all of the following:

- (1) Accessory dwelling units are a valuable form of housing in California.*
 - (2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.*
 - (3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.*
 - (4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.*
 - (5) California faces a severe housing crisis.*
 - (6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.*
 - (7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.*
 - (8) Accessory dwelling units are, therefore, an essential component of California's housing supply.*
- (b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.*



Courtesy of Karen Chapple, UC Berkeley

Are Existing Ordinances Null and Void?

Yes, any local ordinance adopted prior to January 1, 2017 that is not in compliance with the changes to ADU law will be null and void. Until an ordinance is adopted, local governments must apply "state standards" (See Attachment 4 for State Standards checklist). In the absence of a local ordinance complying with ADU law, local review must be limited to "state standards" and cannot include additional requirements such as those in an existing ordinance.

Are Local Governments Required to Adopt an Ordinance?

No, a local government **is not required** to adopt an ordinance. ADUs built within a jurisdiction that lacks a local ordinance must comply with state standards (See Attachment 4). Adopting an ordinance can occur through different forms such as a new ordinance, amendment to an existing ordinance, separate section or special regulations within the zoning code or integrated into the zoning code by district. However, the ordinance should be established legislatively through a public process and meeting and not through internal administrative actions such as memos or zoning interpretations.

Can a Local Government Preclude ADUs?

No local government cannot preclude ADUs.

Can a Local Government Apply Development Standards and Designate Areas?

Yes, local governments may apply development standards and may designate where ADUs are permitted (GC Sections 65852.2(a)(1)(A) and (B)). However, ADUs within existing structures must be allowed in all single family residential zones.

For ADUs that require an addition or a new accessory structure, development standards such as parking, height, lot coverage, lot size and maximum unit size can be established with certain limitations. ADUs can be avoided or allowed through an ancillary and separate discretionary process in areas with health and safety risks such as high fire hazard areas. However, standards and allowable areas must not be designed or applied in a manner that burdens the development of ADUs and should maximize the potential for ADU development. Designating areas where ADUs are allowed should be approached primarily on health and safety issues including water, sewer, traffic flow and public safety. Utilizing approaches such as restrictive overlays, limiting ADUs to larger lot sizes, burdensome lot coverage and setbacks and particularly concentration or distance requirements (e.g., no less than 500 feet between ADUs) may unreasonably restrict the ability of the homeowners to create ADUs, contrary to the intent of the Legislature.

Requiring large minimum lot sizes and not allowing smaller lot sizes for ADUs can severely restrict their potential development. For example, large minimum lot sizes for ADUs may constrict capacity throughout most of the community. Minimum lot sizes cannot be applied to ADUs within existing structures and could be considered relative to health and safety concerns such as areas on septic systems. While larger lot sizes might be targeted for various reasons such as ease of compatibility, many tools are available (e.g., maximum unit size, maximum lot coverage, minimum setbacks, architectural and landscape requirements) that allows ADUs to fit well within the built environment.

Can a Local Government Adopt Less Restrictive Requirements?

Yes, ADU law is a minimum requirement and its purpose is to encourage the development of ADUs. Local governments can take a variety of actions beyond the statute that promote ADUs such as reductions in fees, less restrictive parking or unit sizes or amending general plan policies.

Santa Cruz has confronted a shortage of housing for many years, considering its growth in population from incoming students at UC Santa Cruz and its proximity to Silicon Valley. The city promoted the development of ADUs as critical infill-housing opportunity through various strategies such as creating a manual to promote ADUs. The manual showcases prototypes of ADUs and outlines city zoning laws and requirements to make it more convenient for homeowners to get information. The City found that homeowners will take time to develop an ADU only if information is easy to find, the process is simple, and there is sufficient guidance on what options they have in regards to design and planning.

The city set the minimum lot size requirement at 4,500 sq. ft. to develop an ADU in order to encourage more homes to build an ADU. This allowed for a majority of single-family homes in Santa Cruz to develop an ADU. For more information, see <http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program>.

Can Local Governments Establish Minimum and Maximum Unit Sizes?

Yes, a local government may establish minimum and maximum unit sizes (GC Section 65852.2(c)). However, like all development standards (e.g., height, lot coverage, lot size), unit sizes should not burden the development of ADUs. For example, setting a minimum unit size that substantially increases costs or a maximum unit size that unreasonably restricts opportunities would be inconsistent with the intent of the statute. Typical maximum unit sizes range from 800 square feet to 1,200 square feet. Minimum unit size must at least allow for an efficiency unit as defined in Health and Safety Code Section 17958.1.

ADU law requires local government approval if meeting various requirements (GC Section 65852.2(a)(1)(D)), including unit size requirements. Specifically, attached ADUs shall not exceed 50 percent of the existing living area or 1,200 square feet and detached ADUs shall not exceed 1,200 square feet. A local government may choose a maximum unit size less than 1,200 square feet as long as the requirement is not burdensome on the creation of ADUs.

Can ADUs Exceed General Plan and Zoning Densities?

An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Minimum lot sizes must not be doubled (e.g., 15,000 square feet) to account for an ADU. Further, local governments could elect to allow more than one ADU on a lot.

New developments can increase the total number of affordable units in their project plans by integrating ADUs. Aside from increasing the total number of affordable units, integrating ADUs also promotes housing choices within a development. One such example is the Cannery project in Davis, CA. The Cannery project includes 547 residential units with up to 60 integrated ADUs. ADUs within the Cannery blend in with surrounding architecture, maintaining compatibility with neighborhoods and enhancing community character. ADUs are constructed at the same time as the primary single-family unit to ensure the affordable rental unit is available in the housing supply concurrent with the availability of market rate housing.

How Are Fees Charged to ADUs?

All impact fees, including water, sewer, park and traffic fees must be charged in accordance with the Fee Mitigation Act, which requires fees to be proportional to the actual impact (e.g., significantly less than a single family home).

Fees on ADUs, must proportionately account for impact on services based on the size of the ADU or number of plumbing fixtures. For example, a 700 square foot new ADU with one bathroom that results in less landscaping should be charged much less than a 2,000 square foot home with three bathrooms and an entirely new landscaped parcel which must be irrigated. Fees for ADUs should be significantly less and should account for a lesser impact such as lower sewer or traffic impacts.

What Utility Fee Requirements Apply to ADUs?

Cities and counties cannot consider ADUs as new residential uses when calculating connection fees and capacity charges.

Where ADUs are being created within an existing structure (primary or accessory), the city or county cannot require a new or separate utility connections for the ADU and cannot charge any connection fee or capacity charge.

For other ADUs, a local agency may require separate utility connections between the primary dwelling and the ADU, but any connection fee or capacity charge must be proportionate to the impact of the ADU based on either its size or the number of plumbing fixtures.

What Utility Fee Requirements Apply to Non-City and County Service Districts?

All local agencies must charge impact fees in accordance with the Mitigation Fee Act (commencing with Government Code Section 66000), including in particular Section 66013, which requires the connection fees and capacity charges to be proportionate to the burden posed by the ADU. Special districts and non-city and county service districts must account for the lesser impact related to an ADU and should base fees on unit size or number of plumbing fixtures. Providers should consider a proportionate or sliding scale fee structures that address the smaller size and lesser impact of ADUs (e.g., fees per square foot or fees per fixture). Fee waivers or deferrals could be considered to better promote the development of ADUs.

Do Utility Fee Requirements Apply to ADUs within Existing Space?

No, where ADUs are being created within an existing structure (primary or accessory), new or separate utility connections and fees (connection and capacity) must not be required.

Does “Public Transit” Include within One-half Mile of a Bus Stop and Train Station?

Yes, “public transit” may include a bus stop, train station and paratransit if appropriate for the applicant. “Public transit” includes areas where transit is available and can be considered regardless of tighter headways (e.g., 15 minute intervals). Local governments could consider a broader definition of “public transit” such as distance to a bus route.

Can Parking Be Required Where a Car Share Is Available?

No, ADU law does not allow parking to be required when there is a car share located within a block of the ADU. A car share location includes a designated pick up and drop off location. Local governments can measure a block from a pick up and drop off location and can decide to adopt broader distance requirements such as two to three blocks.

Is Off Street Parking Permitted in Setback Areas or through Tandem Parking?

Yes, ADU law deliberately reduces parking requirements. Local governments may make specific findings that tandem parking and parking in setbacks are infeasible based on specific site, regional topographical or fire and life safety conditions or that tandem parking or parking in setbacks is not permitted anywhere else in the jurisdiction. However, these determinations should be applied in a manner that does not unnecessarily restrict the creation of ADUs.

Local governments must provide reasonable accommodation to persons with disabilities to promote equal access housing and comply with fair housing laws and housing element law. The reasonable accommodation procedure must provide exception to zoning and land use regulations which includes an ADU ordinance. Potential exceptions are not limited and may include development standards such as setbacks and parking requirements and permitted uses that further the housing opportunities of individuals with disabilities.

Is Covered Parking Required?

No, off street parking must be permitted through tandem parking on an existing driveway, unless specific findings are made.

Is Replacement Parking Required When the Parking Area for the Primary Structure Is Used for an ADU?

Yes, but only if the local government requires off-street parking to be replaced in which case flexible arrangements such as tandem, including existing driveways and uncovered parking are allowed. Local governments have an opportunity to be flexible and promote ADUs that are being created on existing parking space and can consider not requiring replacement parking.

Are Setbacks Required When an Existing Garage Is Converted to an ADU?

No, setbacks must not be required when a garage is converted or when existing space (e.g., game room or office) above a garage is converted. Rear and side yard setbacks of no more than five feet are required when new space is added above a garage for an ADU. In this case, the setbacks only apply to the added space above the garage, not the existing garage and the ADU can be constructed wholly or partly above the garage, including extending beyond the garage walls.

Also, when a garage, carport or covered parking structure is demolished or where the parking area ceases to exist so an ADU can be created, the replacement parking must be allowed in any “configuration” on the lot, “...including,

but not limited to, covered spaces, uncovered spaces, or tandem spaces, or....” Configuration can be applied in a flexible manner to not burden the creation of ADUs. For example, spatial configurations like tandem on existing driveways in setback areas or not requiring excessive distances from the street would be appropriate.

Are ADUs Permitted in Existing Residence or Accessory Space?

Yes, ADUs located in single family residential zones and existing space of a single family residence or accessory structure must be approved regardless of zoning standards (Section 65852.2(a)(1)(B)) for ADUs, including locational requirements (Section 65852.2(a)(1)(A)), subject to usual non-appealable ministerial building permit requirements. For example, ADUs in existing space does not necessitate a zoning clearance and must not be limited to certain zones or areas or subject to height, lot size, lot coverage, unit size, architectural review, landscape or parking requirements. Simply, where a single family residence or accessory structure exists in any single family residential zone, so can an ADU. The purpose is to streamline and expand potential for ADUs where impact is minimal and the existing footprint is not being increased.

Zoning requirements are not a basis for denying a ministerial building permit for an ADU, including non-conforming lots or structures. The phrase, “..within the existing space” includes areas within a primary home or within an attached or detached accessory structure such as a garage, a carriage house, a pool house, a rear yard studio and similar enclosed structures.

Are Owner Occupants Required?

No, however, a local government can require an applicant to be an owner occupant. The owner may reside in the primary or accessory structure. Local governments can also require the ADU to not be used for short term rentals (terms lesser than 30 days). Both owner occupant use and prohibition on short term rentals can be required on the same property. Local agencies which impose this requirement should require recordation of a deed restriction regarding owner occupancy to comply with GC Section 27281.5

Are Fire Sprinklers Required for ADUs?

Depends, ADUs shall not be required to provide fire sprinklers if they are not or were not required of the primary residence. However, sprinklers can be required for an ADU if required in the primary structure. For example, if the primary residence has sprinklers as a result of an existing ordinance, then sprinklers could be required in the ADU. Alternative methods for fire protection could be provided.

If the ADU is detached from the main structure or new space above a detached garage, applicants can be encouraged to contact the local fire jurisdiction for information regarding fire sprinklers. Since ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, students, the elderly, in-home health care providers, the disabled, and others, the fire departments want to ensure the safety of these populations as well as the safety of those living in the primary structure. Fire Departments can help educate property owners on the benefits of sprinklers, potential resources and how they can be installed cost effectively. For example, insurance rates are typically 5 to 10 percent lower where the unit is sprinklered. Finally, other methods exist to provide additional fire protection. Some options may include additional exits, emergency escape and rescue openings, 1 hour or greater fire-rated assemblies, roofing materials and setbacks from property lines or other structures.

Is Manufactured Housing Permitted as an ADU?

Yes, an ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes an efficiency unit (Health and Safety Code Section 17958.1) and a manufactured home (Health and Safety Code Section 18007).

Health and Safety Code Section 18007(a) “**Manufactured home**,” for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

Can an Efficiency Unit Be Smaller than 220 Square Feet?

Yes, an efficiency unit for occupancy by no more than two persons, by statute (Health and Safety Code Section 17958.1), can have a minimum floor area of 150 square feet and can also have partial kitchen or bathroom facilities, as specified by ordinance or can have the same meaning specified in the Uniform Building Code, referenced in the Title 24 of the California Code of Regulations.

The 2015 International Residential Code adopted by reference into the 2016 California Residential Code (CRC) allows residential dwelling units to be built considerably smaller than an Efficiency Dwelling Unit (EDU). Prior to this code change an EDU was required to have a minimum floor area not less than 220 sq. ft unless modified by local ordinance in accordance with the California Health and Safety Code which could allow an EDU to be built no less than 150 sq. ft. For more information, see HCD’s Information Bulletin at <http://www.hcd.ca.gov/codes/manufactured-housing/docs/ib2016-06.pdf>.

Does ADU Law Apply to Charter Cities and Counties?

Yes. ADU law explicitly applies to “local agencies” which are defined as a city, county, or city and county whether general law or chartered (Section 65852.2(i)(2)).

Do ADUs Count toward the Regional Housing Need Allocation?

Yes, local governments may report ADUs as progress toward Regional Housing Need Allocation pursuant to Government Code Section 65400 based on the actual or anticipated affordability. See below frequently asked questions for JADUs for additional discussion.

Must ADU Ordinances Be Submitted to the Department of Housing and Community Development?

Yes, ADU ordinances must be submitted to the State Department of Housing and Community Development within 60 days after adoption, including amendments to existing ordinances. However, upon submittal, the ordinance is not subject to a Department review and findings process similar to housing element law (GC Section 65585)

Frequently Asked Questions: Junior Accessory Dwelling Units

Is There a Difference between ADU and JADU?



Courtesy of Lilypad Homes and Photo Credit to Jocelyn Knight

Yes, AB 2406 added Government Code Section 65852.22, providing a unique option for Junior ADUs. The bill allows local governments to adopt ordinances for JADUs, which are no more than 500 square feet and are typically bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink, but is not required to have a private bathroom. Current law does not prohibit local governments from adopting an ordinance for a JADU, and this bill explicitly allows, not requires, a local agency to do so. If the ordinance requires a permit, the local agency shall not require additional parking or charge a fee for a water or sewer connection as a condition of granting a permit for a JADU. For more information, see below.

ADUs and JADUs

REQUIREMENTS	ADU	JADU
Maximum Unit Size	Yes, generally up to 1,200 Square Feet or 50% of living area	Yes, 500 Square Foot Maximum
Kitchen	Yes	Yes
Bathroom	Yes	No, Common Sanitation is Allowed
Separate Entrance	Depends	Yes
Parking	Depends, Parking May Be Eliminated and Cannot Be Required Under Specified Conditions	No, Parking Cannot Be Required
Owner Occupancy	Depends, Owner Occupancy <i>May</i> Be Required	Yes, Owner Occupancy Is Required
Ministerial Approval Process	Yes	Yes
Prohibition on Sale of ADU	Yes	Yes

Why Adopt a JADU Ordinance?

JADUs offer the simplest and most affordable housing option. They bridge the gap between a roommate and a tenant by offering an interior connection between the unit and main living area. The doors between the two spaces can be secured from both sides, allowing them to be easily privatized or incorporated back into the main living area. These units share central systems, require no fire separation, and have a basic kitchen, utilizing small plug in appliances, reducing development costs. This provides flexibility and an insurance policy in homes in case additional income or housing is needed. They present no additional stress on utility services or infrastructure because they simply repurpose spare bedrooms that do not expand the homes planned occupancy. No additional address is required on the property because an interior connection remains. By adopting a JADU ordinance, local governments can offer homeowners additional options to take advantage of underutilized space and better address its housing needs.

Can JADUs Count towards the RHNA?

Yes, as part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, a JADU, including with shared sanitation facilities, that meets the census definition and is reported to the Department of Finance as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. Local governments can track actual or anticipated affordability to assure the JADU is counted to the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit application.

A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

Can the JADU Be Sold Independent of the Primary Dwelling?

No, the JADU cannot be sold separate from the primary dwelling.

Are JADUs Subject to Connection and Capacity Fees?

No, JADUs shall not be considered a separate or new dwelling unit for the purposes of fees and as a result should not be charged a fee for providing water, sewer or power, including a connection fee. These requirements apply to all providers of water, sewer and power, including non-municipal providers.

Local governments may adopt requirements for fees related to parking, other service or connection for water, sewer or power, however, these requirements must be uniform for all single family residences and JADUs are not considered a new or separate unit.

Are There Requirements for Fire Separation and Fire Sprinklers?

Yes, a local government may adopt requirements related to fire and life protection requirements. However, a JADU shall not be considered a new or separate unit. In other words, if the primary unit is not subject to fire or life protection requirements, then the JADU must be treated the same.

Resources



Courtesy of Karen Chapple, UC Berkeley

Attachment 1: Statutory Changes (Strikeout/Underline)

Government Code Section 65852.2

(a) (1) ~~Any~~ A local agency may, by ordinance, provide for the creation of ~~second-accessory dwelling~~ units in single-family and multifamily residential zones. The ordinance ~~may~~ shall do ~~any~~ all of the following:

(A) Designate areas within the jurisdiction of the local agency where ~~second-accessory dwelling~~ units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of ~~second-accessory dwelling~~ units on traffic ~~flow~~. flow and public safety.

(B) (i) Impose standards on ~~second-accessory dwelling~~ units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that ~~second-accessory dwelling~~ units do not exceed the allowable density for the lot upon which the ~~second-accessory dwelling~~ unit is located, and that ~~second-accessory dwelling~~ units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. ~~Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of ADUs.~~ permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of ADUs. an accessory dwelling unit.

~~(b) (4) (1) An~~ When existing ordinance governing the creation of an accessory dwelling unit by a local agency which has not adopted an ordinance governing ADUs in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a ADU if the ADU complies with all of the following: that complies with this section.

~~(A) The unit is not intended for sale and may be rented.~~

~~(B) The lot is zoned for single family or multifamily use.~~

~~(C) The lot contains an existing single family dwelling.~~

~~(D) The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.~~

~~(E) The increased floor area of an attached ADU shall not exceed 30 percent of the existing living area.~~

~~(F) The total area of floorspace for a detached ADU shall not exceed 1,200 square feet.~~

~~(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.~~

~~(H) Local building code requirements which apply to detached dwellings, as appropriate.~~

~~(I) Approval by the local health officer where a private sewage disposal system is being used, if required.~~

~~(2)~~ (5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

~~(3)~~ (6) This subdivision establishes the maximum standards that local agencies shall use to evaluate ~~proposed ADUs on lots~~ a proposed accessory dwelling unit on a lot zoned for residential use ~~which contain~~ that contains an existing single-family dwelling. No additional standards, other than those provided in this ~~subdivision or subdivision~~ (a), subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an ~~owner-occupant~~ owner-occupant or that the property be used for rentals of terms longer than 30 days.

~~(4)~~ (7) ~~No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any~~ A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of ADUs an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

~~(5)~~ (8) A ADU ~~which conforms to the requirements of~~ An accessory dwelling unit that conforms to this subdivision shall be deemed to be an accessory use or an accessory building and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use ~~which that is~~ consistent with the existing general plan and zoning designations for the lot. The ADUs accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

~~(e)~~ (b) No ~~When a~~ local agency shall adopt an ordinance which totally precludes ADUs within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing ADUs within single-family and multifamily zoned areas justify adopting the ordinance. that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

~~(d)~~ (c) A local agency may establish minimum and maximum unit size requirements for both attached and detached ~~second~~ accessory dwelling units. No minimum or maximum size for a ~~second~~ an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings ~~which that~~ does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

~~(e)~~ Parking requirements for ADUs shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the

~~use of the ADU and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction. Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.~~

(f) ~~(1)~~ Fees charged for the construction of ~~second-accessory dwelling~~ units shall be determined in accordance with Chapter 5 (commencing with Section ~~66000~~), 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs. an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ~~ordinances~~ ordinance adopted pursuant to subdivision (a) ~~or (e)~~ to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living ~~area,~~ area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) ~~"Second-~~ "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. ~~A second-~~ An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for ~~second~~ accessory dwelling units.

Government Code Section 65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine whether the junior accessory dwelling unit is in compliance with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. A permit shall be issued within 120 days of submission of an application for a

permit pursuant to this section. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For the purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Attachment 2: Sample ADU Ordinance

Section XXX1XXX: Purpose

This Chapter provides for accessory dwelling units on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings contribute needed housing to the community's housing stock. Thus, accessory dwelling units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities, including near transit on single family lots.

Section XXX2XXX: Applicability

The provisions of this Chapter apply to all lots that are occupied with a single family dwelling unit and zoned residential. Accessory dwelling units do exceed the allowable density for the lot upon which the accessory dwelling unit is located, and are a residential use that is consistent with the existing general plan and zoning designation for the lot.

Section XXX3XXX: Development Standards

Accessory Structures within Existing Space

An accessory dwelling unit within an existing space including the primary structure, attached or detached garage or other accessory structure shall be permitted ministerially with a building permit regardless of all other standards within the Chapter if complying with:

1. Building and safety codes
2. Independent exterior access from the existing residence
3. Sufficient side and rear setbacks for fire safety.

Accessory Structures (Attached and Detached)

General:

1. The unit is not intended for sale separate from the primary residence and may be rented.
2. The lot is zoned for residential and contains an existing, single-family dwelling.
3. The accessory dwelling unit is either attached to the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
4. The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
5. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.
6. Local building code requirements that apply to detached dwellings, as appropriate.
7. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
8. No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.
9. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence and may employ alternative methods for fire protection.

Parking:

1. Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking, including on an existing driveway or in setback areas, excluding the non-driveway front yard setback.
2. Parking is not required in the following instances:
 - The accessory dwelling unit is located within one-half mile of public transit, including transit stations and bus stations.

- The accessory dwelling unit is located in the WWWWW Downtown, XXX Area, YYY Corridor and ZZZ Opportunity Area.
 - The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - When there is a car share vehicle located within one block of the accessory dwelling unit.
3. Replacement Parking: When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit, replacement parking shall not be required and may be located in any configuration on the same lot as the accessory dwelling unit.

Section XXX4XXX: Permit Requirements

ADUs shall be permitted ministerially, in compliance with this Chapter within 120 days of application. The Community Development Director shall issue a building permit or zoning certificate to establish an accessory dwelling unit in compliance with this Chapter if all applicable requirements are met in Section XXX3XXXXX, as appropriate. The Community Development Director may approve an accessory dwelling unit that is not in compliance with Section XXX3XXXXX as set forth in Section XXX5XXXXX. The XXXX Health Officer shall approve an application in conformance with XXXXXX where a private sewage disposal system is being used.

Section XXX5XXX: Review Process for Accessory Structure Not Complying with Development Standards

An accessory dwelling unit that does not comply with standards in Section XXX3XX may be permitted with a zoning certificate or an administrative use permit at the discretion of the Community Development Director subject to findings in Section XXX6XX.

Section XXX6XXX: Findings

A. In order to deny an administrative use permit under Section XXX5XXX, the Community Development Director shall find that the Accessory Dwelling Unit would be detrimental to the public health and safety or would introduce unreasonable privacy impacts to the immediate neighbors.

B. In order to approve an administrative use permit under Section XXX5XXX to waive required accessory dwelling unit parking, the Community Development Director shall find that additional or new on-site parking would be detrimental, and that granting the waiver will meet the purposes of this Chapter.

Section XXX7XXX: Definitions

(1) "Living area means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(3) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(4) (1) “Existing Structure” for the purposes of defining an allowable space that can be converted to an ADU means within the four walls and roofline of any structure existing on or after January 1, 2017 that can be made safely habitable under local building codes at the determination of the building official regardless of any non-compliance with zoning standards.

Attachment 3: Sample JADU Ordinance

(Lilypad Homes at <http://lilypadhomes.org/>)

Draft Junior Accessory Dwelling Units (JADU) – Flexible Housing

Findings:

1. Causation: Critical need for housing for lower income families and individuals given the high cost of living and low supply of affordable homes for rent or purchase, and the difficulty, given the current social and economic environment, in building more affordable housing
2. Mitigation: Create a simple and inexpensive permitting track for the development of junior accessory dwelling units that allows spare bedrooms in homes to serve as a flexible form of infill housing
3. Endangerment: Provisions currently required under agency ordinances are so arbitrary, excessive, or burdensome as to restrict the ability of homeowners to legally develop these units therefore encouraging homeowners to bypass safety standards and procedures that make the creation of these units a benefit to the whole of the community
4. Co-Benefits: Homeowners (particularly retired seniors and young families, groups that tend to have the lowest incomes) – generating extra revenue, allowing people facing unexpected financial obstacles to remain in their homes, housing parents, children or caregivers; Homebuyers - providing rental income which aids in mortgage qualification under new government guidelines; Renters – creating more low-cost housing options in the community where they work, go to school or have family, also reducing commute time and expenses; Municipalities – helping to meet RHNA goals, increasing property and sales tax revenue, insuring safety standard code compliance, providing an abundant source of affordable housing with no additional infrastructure needed; Community - housing vital workers, decreasing traffic, creating economic growth both in the remodeling sector and new customers for local businesses; Planet - reducing carbon emissions, using resources more efficiently;
5. Benefits of Junior ADUs: offer a more affordable housing option to both homeowners and renters, creating economically healthy, diverse, multi-generational communities;

Therefore the following ordinance is hereby enacted:

This Section provides standards for the establishment of junior accessory dwelling units, an alternative to the standard accessory dwelling unit, permitted as set forth under State Law AB 1866 (Chapter 1062, Statutes of 2002) Sections 65852.150 and 65852.2 and subject to different provisions under fire safety codes based on the fact that junior accessory dwelling units do not qualify as “complete independent living facilities” given that the interior connection from the junior accessory dwelling unit to the main living area remains, therefore not redefining the single-family home status of the dwelling unit.

- A) *Development Standards.* Junior accessory dwelling units shall comply with the following standards, including the standards in Table below:
- 1) *Number of Units Allowed.* Only one accessory dwelling unit or, junior accessory dwelling unit, may be located on any residentially zoned lot that permits a single-family dwelling except as otherwise regulated or restricted by an adopted Master Plan or Precise Development Plan. A junior accessory dwelling unit may only be located on a lot which already contains one legal single-family dwelling.
 - 2) *Owner Occupancy:* The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the accessory dwelling, except when the home is held by an agency such as a land trust or housing organization in an effort to create affordable housing.
 - 3) *Sale Prohibited:* A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

- 4) *Deed Restriction:* A deed restriction shall be completed and recorded, in compliance with Section B below.
- 5) *Location of Junior Accessory Dwelling Unit:* A junior accessory dwelling unit must be created within the existing walls of an existing primary dwelling, and must include conversion of an existing bedroom.
- 6) *Separate Entry Required:* A separate exterior entry shall be provided to serve a junior accessory dwelling unit.
- 7) *Interior Entry Remains:* The interior connection to the main living area must be maintained, but a second door may be added for sound attenuation.
- 8) *Kitchen Requirements:* The junior accessory dwelling unit shall include an efficiency kitchen, requiring and limited to the following components:
 - a) A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
 - b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and-twenty (120) volts or natural or propane gas, and
 - c) A food preparation counter and storage cabinets that are reasonable to size of the unit.
- 9) *Parking:* No additional parking is required beyond that required when the existing primary dwelling was constructed.

Development Standards for Junior Accessory Dwelling Units

SITE OR DESIGN FEATURE	SITE AND DESIGN STANDARDS
Maximum unit size	500 square feet
Setbacks	As required for the primary dwelling unit
Parking	No additional parking required

- B) *Deed Restriction:* Prior to obtaining a building permit for a junior accessory dwelling unit, a deed restriction, approved by the City Attorney, shall be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a junior accessory dwelling unit identified in this Section. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, or assigns. A copy of the recorded deed restriction shall be filed with the Department stating that:
 - 1) The junior accessory dwelling unit shall not be sold separately from the primary dwelling unit;
 - 2) The junior accessory dwelling unit is restricted to the maximum size allowed per the development standards;
 - 3) The junior accessory dwelling unit shall be considered legal only so long as either the primary residence, or the accessory dwelling unit, is occupied by the owner of record of the property, except when the home is owned by an agency such as a land trust or housing organization in an effort to create affordable housing;
 - 4) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a junior accessory dwelling unit on the property.
- C) *No Water Connection Fees:* No agency should require a water connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.
- D) *No Sewer Connection Fees:* No agency should require a sewer connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard

may be assessed.

- E) *No Fire Sprinklers and Fire Attenuation:* No agency should require fire sprinkler or fire attenuation specifications for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.

Definitions of Specialized Terms and Phrases.

“Accessory dwelling unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(1) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

“Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

Attachment 4: State Standards Checklist (As of January 1, 2017)

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.	65852.2(a)(1)(D)(ii)
	Accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.	65852.2(a)(1)(D)(iv)
	Total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines are not required for an accessory dwelling unit that is constructed above a garage.	65852.2(a)(1)(D)(vii)
	(Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)

* Other requirements may apply. See Government Code Section 65852.2

Attachment 5: Bibliography

Reports

[ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

[THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. — Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

[RESPONDING TO CHANGING HOUSEHOLDS: Regulatory Challenges for Micro-units and Accessory Dwelling Units](#) (76 pp.)

By Vicki Been, Benjamin Gross, and John Infranca (2014)
New York University: Furman Center for Real Estate & Urban Policy
Library Call # D55 3 I47 2014

This White Paper fills two gaps in the discussion regarding compact units. First, we provide a detailed analysis of the regulatory and other challenges to developing both ADUs and micro-units, focusing on five cities: New York; Washington, DC; Austin; Denver; and Seattle. That analysis will be helpful not only to the specific jurisdictions we study, but also can serve as a model for those who want to catalogue regulations that might get in the way of the development of compact units in their own jurisdictions. Second, as more local governments permit or encourage compact units, researchers will need to evaluate how well the units built serve the goals proponents claim they will.

[SCALING UP SECONDARY UNIT PRODUCTION IN THE EAST BAY: Impacts and Policy Implications](#) (25 pp.)

By Jake Webmann, Alison Nemirow, and Karen Chapple (2012)
UC Berkeley: Institute of Urban and Regional Development (IURD)
Library Call # H44 1.1 S33 2012

This paper begins by analyzing how many secondary units of one particular type, detached backyard cottages, might be built in the East Bay, focusing on the Flatlands portions of Berkeley, El Cerrito, and Oakland. We then investigate the potential impacts of scaling up the strategy with regard to housing affordability, smart growth, alternative transportation, the economy, and city budgets. A final section details policy recommendations, focusing on regulatory reforms and other actions cities can take to encourage secondary unit construction, such as promoting carsharing programs, educating residents, and providing access to finance.

[SECONDARY UNITS AND URBAN INFILL: A literature Review \(12 pp.\)](#)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

[YES, BUT WILL THEY LET US BUILD? The Feasibility of Secondary Units in the East Bay \(17 pp.\)](#)

By Alison Nemirow and Karen Chapple (2012)
UC Berkeley: IURD
Library Call # H44.5 1.1 Y47 2012

This paper begins with a discussion of how to determine the development potential for secondary units, and then provides an overview of how many secondary units can be built in the East Bay of San Francisco Bay Area under current regulations. The next two sections examine key regulatory barriers in detail for the five cities in the study (Albany, Berkeley, El Cerrito, Oakland, and Richmond), looking at lot size, setbacks, parking requirements, and procedural barriers. A sensitivity analysis then determines how many units could be built were the regulations to be relaxed.

[YES IN MY BACKYARD: Mobilizing the Market for Secondary Units \(20 pp.\)](#)

By Karen Chapple, J. Weigmann, A. Nemirow, and C. Dentel-Post (2011)
UC Berkeley: Center for Community Innovation.
Library Call # B92 1.1 Y47 2011

This study examines two puzzles that must be solved in order to scale up a secondary unit strategy: first, how can city regulations best enable their construction? And second, what is the market for secondary units? Because parking is such an important issue, we also examine the potential for secondary unit residents to rely on alternative transportation modes, particular car share programs. The study looks at five adjacent cities in the East Bay of the San Francisco Bay Area (Figure 1) -- Oakland, Berkeley, Albany, El Cerrito, and Richmond -- focusing on the areas within ½ mile of five Bay Area Rapid Transit (BART) stations.

Journal Articles and Working Papers:

[BACKYARD HOMES LA \(17 pp.\)](#)

By Dana Cuff, Tim Higgins, and Per-Johan Dahl, Eds. (2010)
Regents of the University of California, Los Angeles.
City Lab Project Book.

[DEVELOPING PRIVATE ACCESSORY DWELLINGS \(6 pp.\)](#)

By William P. Macht. Urbanland online. (June 26, 2015)
Library Location: Urbanland 74 (3/4) March/April 2015, pp. 154-161.

[GRANNY FLATS GAINING GROUND](#) (2 pp.)

By Brian Barth. Planning Magazine: pp. 16-17. (April 2016)
Library Location: Serials

["HIDDEN" DENSITY: THE POTENTIAL OF SMALL-SCALE INFILL DEVELOPMENT](#) (2 pp.)

By Karen Chapple (2011)
UC Berkeley: IURD Policy Brief.
Library Call # D44 1.2 H53 2011

California's implementation of SB 375, the Sustainable Communities and Climate Protection Act of 2008, is putting new pressure on communities to support infill development. As metropolitan planning organizations struggle to communicate the need for density, they should take note of strategies that make increasing density an attractive choice for neighborhoods and regions.

[HIDDEN DENSITY IN SINGLE-FAMILY NEIGHBORHOODS: Backyard cottages as an equitable smart growth strategy](#) (22 pp.)

By Jake Wegmann and Karen Chapple. Journal of Urbanism 7(3): pp. 307-329. (2014)

Abstract (not available in full text): Secondary units, or separate small dwellings embedded within single-family residential properties, constitute a frequently overlooked strategy for urban infill in high-cost metropolitan areas in the United States. This study, which is situated within California's San Francisco Bay Area, draws upon data collected from a homeowners' survey and a Rental Market Analysis to provide evidence that a scaled-up strategy emphasizing one type of secondary unit – the backyard cottage – could yield substantial infill growth with minimal public subsidy. In addition, it is found that this strategy compares favorably in terms of affordability with infill of the sort traditionally favored in the 'smart growth' literature, i.e. the construction of dense multifamily housing developments.

[RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

[ADUS AND LOS ANGELES' BROKEN PLANNING SYSTEM](#) (4 pp.)

By CARLYLE W. Hall. The Planning Report. (April 26, 2016).
Land-use attorney Carlyle W. Hall comments on building permits for accessory dwelling units.

News:

[HOW ONE COLORADO CITY INSTANTLY CREATED AFFORDABLE HOUSING](#)

By Anthony Flint. The Atlantic-CityLab. (May 17, 2016).

In Durango, Colorado, zoning rules were changed to allow, for instance, non-family members as residents in already-existing accessory dwelling units.

[NEW HAMPSHIRE WINS PROTECTIONS FOR ACCESSORY DWELLING UNITS](#) (1 p.)

NLIHC (March 28, 2016)

Affordable housing advocates in New Hampshire celebrated a significant victory this month when Governor Maggie Hassan (D) signed Senate Bill 146, legislation that allows single-family homeowners to add an accessory

dwelling unit as a matter of right through a conditional use permit or by special exception as determined by their municipalities. The bill removes a significant regulatory barrier to increasing rental homes at no cost to taxpayers.

[NEW IN-LAW SUITE RULES BOOST AFFORDABLE HOUSING IN SAN FRANCISCO](#). (3 pp.)

By Rob Poole. Shareable. (June 10, 2014).

The San Francisco Board of Supervisors recently approved two significant pieces of legislation that support accessory dwelling units (ADUs), also known as “in-law” or secondary units, in the city...

[USING ACCESSORY DWELLING UNITS TO BOLSTER AFFORDABLE HOUSING](#) (3 pp.)

By Michael Ryan. Smart Growth America. (December 12, 2014).



Attachment 2

STAFF REPORT TO THE PLANNING COMMISSION

DATE: Planning Commission Meeting of January 16, 2018

TO: Members of the Planning Commission

SUBMITTED BY: Holly Smyth, Planning Director
Patrick Tang, City Attorney

SUBJECT: Continued Study Session on Accessory Dwelling Unit Policy to Conform to State Law

RECOMMENDATION:

Receive a brief presentation and discuss draft policy changes regarding the City's current ordinance regulating Accessory Dwelling Units (ADU's).

Background:

As discussed at the Planning Commission's meeting of August 7, 2017, the State has passed legislation that limits the ability of local government to regulate the construction of new Accessory Dwelling Units, also commonly referred to as "second units". The State considers the legislation a way of helping to address the State's housing crisis, particularly as it relates to affordable housing. The new law went into effect on January 1, 2017. It contains specific language that renders "null and void" all existing City ordinances regulating ADU's, unless the local ordinance is updated to be consistent with the requirements of the new state legislation.

In response to the new ADU state legislation, staff brought to the Planning Commission for initial discussion a report detailing the state law and the new requirements for local jurisdictions. A copy of the prior staff report is provided as Attachment 1. In consultation with legal counsel, staff has prepared a draft ordinance that meets the requirements of state law and is responsive to comments from the Commissioners. The draft ordinance is provided as Attachment 2.

Discussion:

The statutory scheme governing ADUs (Gov. Code sections 65852.1 et seq) establishes requirements for three types of ADUs:

1. ADUs within existing structures
2. ADUs attached to existing structures
3. Detached ADUs

To avoid confusion and to promote consistency, the draft ordinance being presented to the Planning Commission adopts the state law distinctions regarding ADU types so that it is clear (i) what type of ADU the applicant is seeking to be permitted, and (ii) what development standards apply to that type of ADU. A summary of the three types of ADUs follows:

I. ADUs within existing structures

This type of ADU is created wholly within an existing structure. State law requires that such an existing structure include a single family residence, accessory structure, or a garage. No "new construction" would be required *outside* of the existing structure (i.e. only walls or other indoor improvements) -- so there is no square footage limit for this type. ADUs within existing structures only require building permits (i.e. NOT an administrative use permit, like the other two types of ADUs), which is a state law requirement. This type of ADU must still meet applicable building and safety codes, have independent exterior access, and "sufficient" side/rear setbacks for fire safety. The City cannot require this type of ADU to create new/separate utility/sewer connections.

II. ADUs attached to existing structures.

Per state law, this type of ADU cannot exceed 50% of the existing living area (as defined) with a maximum increase of 1200 square feet. State law allows the City to decide whether it wants to require separate utility/sewer connections. The Public Works Director sees no need to require separate utilities. As for separate sewer connections, the Public Works Director would like that determination made on a case-by-case basis, and subject to the City's approval, depending on the building/construction conditions existing at the location.

III. Detached ADUs.

This type of ADU is completely detached from the existing structure, and cannot be more than 800 square feet. Similar to the attached type, the City can decide whether it wants to require separate utility/sewer connections. The Public Works Director sees no need to require separate utilities.

As for sewer connections, the Public Works Director would like that determination made on a case-by-case basis, and subject to the City's approval, depending on the building/construction conditions existing at the location.

Other requirements.

All ADUs are required to comply with the following requirements. These requirements are specified in the proposed ordinance:

Design Standards — ADUs must conform to design and architectural characteristics of the existing single family home, building materials, paint color, etc.

Fire sprinklers — ADUs must comply with all applicable state and local fire safety provisions. State law does not allow the City to require sprinkler installation in ADUs unless sprinklers are also required for the existing residence. The ordinance currently contains a requirement for sprinklers when the existing residence is required to have sprinklers.

Parking — The parking standards in the ordinance mirror state law requirements, so they must be included "as-is."

Fees — The ordinance requires payment of all city impact fees, subject to state law requirements that govern calculation of utility/sewer connection and capacity fees.

ATTACHMENTS:

1. Staff Report and Attachments from meeting of August 7, 2017
2. Draft ADU ordinance.



STAFF REPORT TO THE PLANNING COMMISSION

DATE: August 7, 2017

TO: Chairperson Morrison and Members of the Planning Commission

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: Study session on recent changes to State Law that regulate Accessory Dwelling Units, and the implication of these changes for the City's current Accessory Dwelling Unit Ordinance

RECOMMENDED ACTION:

Receive a brief presentation by City staff summarizing the relevant issues, discuss the implications of the new State legislation that impacts the City's current ordinance regulating Accessory Dwelling Units (ADU's), and provide direction to staff as appropriate concerning this matter.

Background:

In 2016 the State passed legislation (SB 1069 and AB 2299), that limits the ability of local government to regulate the construction of new Accessory Dwelling Units, also commonly referred to as "second units". The State considers this legislation as a way of helping to address the State's housing crisis, particularly as it relates to affordable housing. Both SB 1069 and AB 2299 went into effect on January 1, 2017. AB 2299 contains specific language that renders "null and void" all existing City ordinances regulating ADU's, unless the local ordinance is updated to be consistent with the requirements of the new legislation.

Given these circumstances, the City needs to make a decision whether to update its ordinance regulating ADU's to be consistent with the new State laws, or to take no such action and have ADU's in Hercules regulated solely by the new State legislation. From a staff perspective, there are clear advantages to the City updating/revising its current ADU regulations, as opposed to taking no action. This is due to the fact that the new State law allows cities to put in place regulations as long as the regulations don't conflict with State law. While any updated City regulations will, given the new State laws, be more limited in scope than the City's now "preempted" ordinance, taking no action would result in the City having little control over ADU's being built in Hercules other than the default State requirements. For example, the State regulations in the absence of any local ordinance to the contrary, could be interpreted to allow a travel trailer parked in the back yard of a single family home to be considered a legal ADU. Looked at from another perspective, there really is no downside for the City to go through the process of updating its ADU ordinance, other than the time and resources needed to do the work.

In addition to SB 1069 and AB2299, the State Legislature passed another bill in 2016, AB 2406, that gives local jurisdictions the flexibility of permitting what are referred to as "Junior Accessory Dwelling Units" (JADU's). These are second units that are built entirely within an existing residential structure and cannot

exceed 500 square feet. This legislation is different than SB 1069 in that its provisions are optional. A City can decide whether or not it wants to amend its accessory dwelling unit ordinance to permit JADU's. It should be noted that the City's current preempted ordinance allows ADU's to be built within an existing structure. The City could implement the provisions of AB2406 as part of the ADU Ordinance update process. The details of how this could work would be addressed with the ADU Ordinance update.

Current ADU Ordinance Requirements:

It's instructive to compare the current City Ordinance regulating ADU's with the new State requirements. The following table provides a summary of the more significant implications of the new State legislation. It should be emphasized that the following comparisons between current City requirements and the new State legislation are "tentative" in the sense that a detailed legal review will be required prior to any formal changes to the City's Accessory Dwelling Unit regulations. Accessory Dwelling units are regulated by the City Zoning Code Section 35.320 "Second Residential Units". A copy of this section of the Zoning Code is attached (see Attachment 1) as well as Section 35.210-Accessory Structures and Uses for reference.

Table: Comparison of City Ordinance and State Legislation Concerning Accessory Dwelling Units

City Requirement	City's Current Ordinance	Recent State Legislation
1) Approval process for ADU	Administrative use permit and design review required.	No discretionary permit required so long as there is independent exterior access.
2) Maximum size of ADU	A maximum of 800 square feet, plus an ADU may not exceed 30% of the size of the main residential unit.	A maximum size of 1,200 square feet plus may not exceed 50% of the size of the main residential unit.
3) Development standards applicable to ADU	ADU must conform to the setback, building height and other requirements for single family homes.	No specific setback or other requirements, other than Building Code and Fire Code requirements must be met.
4) Parking requirements	One off street parking space for the ADU.	No parking required if ADU is within ½ mile from public transit, or 1 block of a car share area, or if ADU is in historic district, or if ADU is part of main structure.
5) Use of garage for ADU	Garage cannot be converted into an ADU without constructing a replacement garage.	Garage <u>can</u> be converted into an ADU as long as a driveway allows for parking for the main structure and potentially 1 spaces for the new accessory dwelling structure if it doesn't meet parking exemptions, which can be tandem.

Types of Regulations that can be Included in an Updated ADU Ordinance:

While the new State legislation limits the City's discretion in regulating ADU's, provisions in the new State laws give local jurisdictions a fair degree of latitude in establishing requirements that allow local jurisdictions some degree of control over ADU's. In contrast, as mentioned previously, the new State regulations in the absence of a valid updated local ordinance give City's very little discretion over where and how ADU's develop in their community. The following are some of the types of regulations that a local agency can include under the new State legislation in an updated local ordinance to regulate ADU's. It is important to note that under the new State law any such regulation can't place an "undue burden" on the ability to build an ADU. Any new ordinance the City develops to regulate ADU's will require close legal scrutiny by the City Attorney to ensure it complies with the requirements and restrictions of the new State legislation. In addition, a jurisdiction is required to forward any updated local ordinance regulating ADU's to the State, although the State at this point in time will not be formally reviewing the local ordinances it receives. California Department of Housing and Community Development produced the "Accessory Dwelling Unit Memorandum, dated December 2017" to help the public understand the various provisions of the law and is found in Attachment 2.

Examples of Provisions that can be included in Local Ordinance:

- A. The new legislation allows a jurisdiction to include architectural and landscape requirements for ADU's.
- B. Development standards can be established addressing such issues as establishing a minimum lot size on which an ADU can be constructed, setbacks, lot coverage, maximum floor area ratio (FAR), and maximum building height.
- C. The legislation also allows a jurisdiction to restrict constructing an ADU's in certain situations and locations. For example, if an ADU was proposed in a high traffic area where the occupant of the ADU would have to back out onto a busy street.
- D. Limits can be included to address valid public health and safety issues. An example of a public health issue would be if an ADU was proposed in an area that lacked sewer or water capacity.
- E. Require a deed restriction be placed on the property requiring owner-occupancy at the property and/or that the ADU be used exclusively for long term rentals not short term.

A local ordinance regulating ADU's would allow a jurisdiction to include these type of requirements and tailor the requirements to fit the local situation. Obviously, this would not be the case if the City did not choose to update its local ordinance to be compliant with State law, and instead relied solely on the new State legislation for ADU regulation.

Planning Commission Action:

Provide direction to staff as to what eligible provisions should be integrated into a new code.

ATTACHMENTS:

- 1. Section 35.320 – Second Residential Units provision of the City's Zoning Ordinance and Section 35.210 – Accessory Structures and Uses for sample criteria
- 2. Ca HCD "Accessory Dwelling Unit Memorandum", December 2016

CHAPTER 35

SPECIFIC LAND USE REQUIREMENTS

35.100 Purpose and Applicability

The purpose of this Chapter is to provide land use and development regulations for specific uses that will then be applicable to sites throughout the City. Unless noted otherwise, these standards are intended to be applied within all zoning and overlay districts.

35.200 Specific Use Standards

Zoning and overlay district development standards or performance standards in Article II will take precedence over the specific use requirements within this chapter. If there is a conflict between regulations and standards specified for a particular zoning district and the specific use standards contained within this chapter, the district specific regulations and standards shall be applied.

35.210 Accessory Structures and Uses

Accessory buildings are generally allowed in all zoning districts subject to the requirement that the use of the structure be subordinate and incidental to the principal use or structure on the site. Accessory structures may require an administrative use permit and may have conditions limiting use as determined by the land use regulations for each zoning district.

Accessory structures may be either attached to and have a common wall with the main structure on a site, or may be freestanding (i.e., not attached to the main structure). For the purposes of this Chapter, an accessory structure that is connected to the main structure by a breezeway, gazebo, shade structure, deck, or other combustible material (as that term is used in the uniform building code) shall be treated as an attached accessory structure.

1. No accessory structure shall encroach into front and side yards except as noted below.
2. No accessory structure shall be used as living quarters unless specifically allowed in this code.
3. Freestanding accessory structures located in the front half of a site shall provide the same front and side yards as required for the main structure, and, in the residential districts, shall be connected to the main structure by a breezeway not less than 6 feet in width and not more than 12 feet in height.

4. A freestanding accessory structure shall be located at least 5 feet from all side and rear property lines. Structures made with wood or other combustible material (for example, decks, gazebos and similar construction) may not be located in the 5 foot setback.
5. On a corner lot, a freestanding accessory structure shall be located at least 10 feet from the side property line adjoining the street, except that garages and carports with access from the street adjoining the side yard shall be located at least 20 feet from this side property line.
6. On a lot where the rear yard faces a public street, a freestanding accessory structure shall not be located in the rear yard setback required for the main structure.
7. The maximum height of an attached accessory structure shall be as specified for the main structure, and for a freestanding accessory structure the maximum height shall be 15 feet, except that within 10 feet of a property line, no part of the structure shall exceed 8 feet.
8. In the RS-L district, freestanding accessory structures shall cover not more than 30% of the required rear yard, unless there remains a portion of the rear yard or a side yard which has an area of not less than 20% of the site, and that the least dimension of such yard shall be at least 15 feet
9. Special Situations: The Community Development Director in consultation with the Director of Public Works and the Chief of the Rodeo-Hercules Fire Protection District (or their designated representatives) shall have the authority to approve exceptions to these regulations in the following cases. In reviewing these situations, the Community Development Director may impose any conditions needed to fulfill the intent of this subsection. Any determination may be appealed to the Planning Commission.
 - A. For a structure built out of noncombustible materials, including a spa (but not including a gazebo or any other wood structure), the 5 foot setback may be reduced, provided that the Community Development Director finds that the proposed structures will not significantly increase the fire hazard.
10. Detached and attached accessory structures under 120 square feet total for the property that meet all requirements of this section are exempt from use permit requirements. However, accessory structures with permanent foundations shall require design review through the Community Development Director. Accessory structures that are freestanding without permanent foundations such as prefabricated storage sheds do not require a use permit or design review as long as all criteria of this section are met.
11. Before approving the proposed design plans for an accessory structure with a reduced setback (as allowed by this section), pursuant to Chapter 42 Design Review, the Community Development Director shall notify the owners of parcels within 150 feet, and on the same side of the street as, the site of the proposed accessory structure that construction of an accessory structure has been proposed. If any written protest to the proposed structure is received within 15 calendar days of the mailing of such notice, the Director shall take no action regarding the structure and shall refer the matter to the Planning Commission for a public design review hearing and action.

35.320 Second Residential Units

This section is intended to implement the General Plan policies which encourages second residential units on owner occupied, single family residential parcels; and is also intended to address the State's second residential unit provisions as set forth in Government Code Section 65852.1 et seq. Second residential units are commonly referred to as mother-in-law-units, granny-flats and accessory-apartments. An efficiency unit and manufactured home as respectively defined in Sections 17958.1 and 18007 of the Health and Safety Code are also considered second residential units under State law.

All second residential units are required to secure use permit and design review approval. Second residential units are allowed by administrative use permit approval in single family residential zoning districts and in other districts where there is one conforming use single family residence on the parcel.

1. A second residential unit shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. The second residential unit shall include independent heating and cooling controls; its own kitchen with sink and standard built-in or freestanding appliances, its own bathroom with bath or shower, and a separate exterior entrance.
2. A maximum of one second residential unit may be allowed on a lot containing one larger single family, owner occupied dwelling. No second residential units are allowed on lots having more than one residential unit, or on lots where the existing residential unit is a nonconforming use. The second residential unit is not intended for sale and may be rented.
3. No more than one dwelling unit on a single family residential with a second residential dwelling unit parcel may be rented or leased at one time.
4. The total floor space for a second residential unit shall contain adequate area to provide the required facilities listed in subsection 1, but not exceed 30% of the existing living area and if detached shall not exceed 800 square feet. Living area is defined as the interior habitable area of a dwelling unit including habitable basements and attics, but does not include a garage or any accessory structure.
5. The second residential unit may either be within the living area of the existing dwelling, attached to the existing dwelling, or detached from the existing dwelling.
6. A second residential unit shall conform to the applicable standards and requirements of the zoning district in which it is to be located. Requirements for building height, setbacks, yards and similar design standards that apply to the single family dwelling unit shall apply to the second residential unit.
7. A minimum of one off-street parking space shall be provided for each second residential unit in addition to the offstreet parking spaces required for the residence(s) on the site.



Courtesy of Karen Chapple, UC Berkeley

California Department of Housing and Community Development
Where Foundations Begin

Accessory Dwelling Unit Memorandum

December 2016



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Understanding Accessory Dwelling Units and Their Importance



Courtesy of Karen Chapple, UC Berkeley

California's housing production is not keeping pace with demand. In the last decade less than half of the needed housing was built. This lack of housing is impacting affordability with average housing costs in California exceeding the rest of the nation. As affordability becomes more problematic, people drive longer distances between a home that is affordable and where they work, or double up to share space, both of which reduces quality of life and produces negative environmental impacts.

Beyond traditional market-rate construction and government subsidized production and preservation there are alternative housing models and emerging trends that can contribute to addressing home supply and affordability in California.

One such example gaining popularity are Accessory Dwelling Units (ADUs) (also referred to as second units, in-law units, or granny flats).

What is an ADU

An ADU is a secondary dwelling unit with complete independent living facilities for one or more persons and generally takes three forms:

- *Detached:* The unit is separated from the primary structure
- *Attached:* The unit is attached to the primary structure
- *Repurposed Existing Space:* Space (e.g., master bedroom) within the primary residence is converted into an independent living unit
- *Junior Accessory Dwelling Units:* Similar to repurposed space with various streamlining measures

ADUs offer benefits that address common development barriers such as affordability and environmental quality. ADUs are an affordable type of home to construct in California because they do not require paying for land, major new infrastructure, structured parking, or elevators. ADUs are built with cost-effective one- or two-story wood frame construction, which is significantly less costly than homes in new multifamily infill buildings. ADUs can provide as much living space as the new apartments and condominiums being built in new infill buildings and serve very well for couples, small families, friends, young people, and seniors.

ADUs are a different form of housing that can help California meet its diverse housing needs. Young professionals and students desire to live in areas close to jobs, amenities, and schools. The problem with high-opportunity areas is that space is limited. There is a shortage of affordable units and the units that are available can be out of reach for many people. To address the needs of individuals or small families seeking living quarters in high opportunity areas, homeowners can construct an ADU on their lot or convert an underutilized part of their home like a garage

into a junior ADU. This flexibility benefits not just people renting the space, but the homeowner as well, who can receive an extra monthly rent income.

ADUs give homeowners the flexibility to share independent living areas with family members and others, allowing seniors to age in place as they require more care and helping extended families to be near one another while maintaining privacy.

Relaxed regulations and the cost to build an ADU make it a very feasible affordable housing option. A UC Berkeley study noted that one unit of affordable housing in the Bay Area costs about \$500,000 to develop whereas an ADU can range anywhere up to \$200,000 on the expensive end in high housing cost areas.

ADUs are a critical form of infill-development that can be affordable and offer important housing choices within existing neighborhoods. ADUs are a powerful type of housing unit because they allow for different uses, and serve different populations ranging from students and young professionals to young families, people with disabilities and senior citizens. By design, ADUs are more affordable and can provide additional income to homeowners. Local governments can encourage the development of ADUs and improve access to jobs, education and services for many Californians.

Summary of Recent Changes to ADU Laws



Courtesy of Karen Chapple, UC Berkeley

The California legislature found and declared that, among other things, allowing accessory dwelling units (ADUs) in single family and multifamily zones provides additional rental housing and are an essential component in addressing housing needs in California. Over the years, ADU law has been revised to improve its effectiveness such as recent changes in 2003 to require ministerial approval. In 2017, changes to ADU laws will further reduce barriers, better streamline approval and expand capacity to accommodate the development of ADUs.

ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, friends, students, the elderly, in-home health care providers, the disabled, and others. Further, ADUs offer an opportunity to maximize and integrate housing choices within existing neighborhoods.

Within this context, the Department has prepared this guidance to assist local governments in encouraging the development of ADUs. Please see Attachment 1 for the complete statutory changes. The following is a brief summary of the changes for each bill.

SB 1069 (Wieckowski)

S.B. 1069 (Chapter 720, Statutes of 2016) made several changes to address barriers to the development of ADUs and expanded capacity for their development. The following is a brief summary of provisions that go into effect January 1, 2017.

Parking

SB 1069 reduces parking requirements to one space per bedroom or unit. The legislation authorizes off street parking to be tandem or in setback areas unless specific findings such as fire and life safety conditions are made. SB 1069 also prohibits parking requirements if the ADU meets any of the following:

- Is within a half mile from public transit.
- Is within an architecturally and historically significant historic district.
- Is part of an existing primary residence or an existing accessory structure.
- Is in an area where on-street parking permits are required, but not offered to the occupant of the ADU.
- Is located within one block of a car share area.

Fees

SB 1069 provides that ADUs shall not be considered new residential uses for the purpose of calculating utility connection fees or capacity charges, including water and sewer service. The bill prohibits a local agency from requiring an ADU applicant to install a new or separate utility connection or impose a related connection fee or capacity charge for ADUs that are contained within an existing residence or accessory structure. For attached and detached ADUs, this fee or charge must be proportionate to the burden of the unit on the water or sewer system and may not exceed the reasonable cost of providing the service.

Fire Requirements

SB 1069 provides that fire sprinklers shall not be required in an accessory unit if they are not required in the primary residence.

ADUs within Existing Space

Local governments must ministerially approve an application to create within a single family residential zone one ADU per single family lot if the unit is:

- contained within an existing residence or accessory structure.
- has independent exterior access from the existing residence.
- has side and rear setbacks that are sufficient for fire safety.

These provisions apply within all single family residential zones and ADUs within existing space must be allowed in all of these zones. No additional parking or other development standards can be applied except for building code requirements.

No Total Prohibition

SB 1069 prohibits a local government from adopting an ordinance that precludes ADUs.

AB 2299 (Bloom)

Generally, AB 2299 (Chapter 735, Statutes of 2016) requires a local government (beginning January 1, 2017) to ministerially approve ADUs if the unit complies with certain parking requirements, the maximum allowable size of an attached ADU, and setback requirements, as follows:

- The unit is not intended for sale separate from the primary residence and may be rented.
- The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.
- The unit is either attached to an existing dwelling or located within the living area of the existing dwelling or detached and on the same lot.
- The increased floor area of the unit does not exceed 50% of the existing living area, with a maximum increase in floor area of 1,200 square feet.
- The total area of floorspace for a detached accessory dwelling unit does not exceed 1,200 square feet.
- No passageway can be required.
- No setback can be required from an existing garage that is converted to an ADU.

- Compliance with local building code requirements.
- Approval by the local health officer where private sewage disposal system is being used.

Impact on Existing Accessory Dwelling Unit Ordinances

AB 2299 provides that any existing ADU ordinance that does not meet the bill's requirements is null and void upon the date the bill becomes effective. In such cases, a jurisdiction must approve accessory dwelling units based on Government Code Section 65852.2 until the jurisdiction adopts a compliant ordinance.

AB 2406 (Thurmond)

AB 2406 (Chapter 755, Statutes of 2016) creates more flexibility for housing options by authorizing local governments to permit junior accessory dwelling units (JADU) through an ordinance. The bill defines JADUs to be a unit that cannot exceed 500 square feet and must be completely contained within the space of an existing residential structure. In addition, the bill requires specified components for a local JADU ordinance. Adoption of a JADU ordinance is optional.

Required Components

The ordinance authorized by AB 2406 must include the following requirements:

- Limit to one JADU per residential lot zoned for single-family residences with a single-family residence already built on the lot.
- The single-family residence in which the JADU is created or JADU must be occupied by the owner of the residence.
- The owner must record a deed restriction stating that the JADU cannot be sold separately from the single-family residence and restricting the JADU to the size limitations and other requirements of the JADU ordinance.
- The JADU must be located entirely within the existing structure of the single-family residence and JADU have its own separate entrance.
- The JADU must include an efficiency kitchen which includes a sink, cooking appliance, counter surface, and storage cabinets that meet minimum building code standards. No gas or 220V circuits are allowed.
- The JADU may share a bath with the primary residence or have its own bath.

Prohibited Components

This bill prohibits a local JADU ordinance from requiring:

- Additional parking as a condition to grant a permit.
- Applying additional water, sewer and power connection fees. No connections are needed as these utilities have already been accounted for in the original permit for the home.

Fire Safety Requirements

AB 2406 clarifies that a JADU is to be considered part of the single-family residence for the purposes of fire and life protections ordinances and regulations, such as sprinklers and smoke detectors. The bill also requires life and protection ordinances that affect single-family residences to be applied uniformly to all single-family residences, regardless of the presence of a JADU.

JADUs and the RHNA

As part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a JADU toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit which is fairly flexible. Local government count units as part of reporting to DOF. JADUs meet these definitions and this bill would allow cities and counties to earn credit toward meeting their RHNA allocations by permitting residents to create less costly accessory units. See additional discussion under JADU frequently asked questions.

Frequently Asked Questions: Accessory Dwelling Units

Should an Ordinance Encourage the Development of ADUs?

Yes, ADU law and recent changes intend to address barriers, streamline approval and expand potential capacity for ADUs recognizing their unique importance in addressing California's housing needs. The preparation, adoption, amendment and implementation of local ADU ordinances must be carried out consistent with Government Code Section 65852.150:

(a) The Legislature finds and declares all of the following:

(1) Accessory dwelling units are a valuable form of housing in California.

(2) Accessory dwelling units provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods.

(3) Homeowners who create accessory dwelling units benefit from added income, and an increased sense of security.

(4) Allowing accessory dwelling units in single-family or multifamily residential zones provides additional rental housing stock in California.

(5) California faces a severe housing crisis.

(6) The state is falling far short of meeting current and future housing demand with serious consequences for the state's economy, our ability to build green infill consistent with state greenhouse gas reduction goals, and the well-being of our citizens, particularly lower and middle-income earners.

(7) Accessory dwelling units offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character.

(8) Accessory dwelling units are, therefore, an essential component of California's housing supply.

(b) It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.



Courtesy of Karen Chapple, UC Berkeley

Are Existing Ordinances Null and Void?

Yes, any local ordinance adopted prior to January 1, 2017 that is not in compliance with the changes to ADU law will be null and void. Until an ordinance is adopted, local governments must apply "state standards" (See Attachment 4 for State Standards checklist). In the absence of a local ordinance complying with ADU law, local review must be limited to "state standards" and cannot include additional requirements such as those in an existing ordinance.

Are Local Governments Required to Adopt an Ordinance?

No, a local government **is not required** to adopt an ordinance. ADUs built within a jurisdiction that lacks a local ordinance must comply with state standards (See Attachment 4). Adopting an ordinance can occur through different forms such as a new ordinance, amendment to an existing ordinance, separate section or special regulations within the zoning code or integrated into the zoning code by district. However, the ordinance should be established legislatively through a public process and meeting and not through internal administrative actions such as memos or zoning interpretations.

Can a Local Government Preclude ADUs?

No local government cannot preclude ADUs.

Can a Local Government Apply Development Standards and Designate Areas?

Yes, local governments may apply development standards and may designate where ADUs are permitted (GC Sections 65852.2(a)(1)(A) and (B)). However, ADUs within existing structures must be allowed in all single family residential zones.

For ADUs that require an addition or a new accessory structure, development standards such as parking, height, lot coverage, lot size and maximum unit size can be established with certain limitations. ADUs can be avoided or allowed through an ancillary and separate discretionary process in areas with health and safety risks such as high fire hazard areas. However, standards and allowable areas must not be designed or applied in a manner that burdens the development of ADUs and should maximize the potential for ADU development. Designating areas where ADUs are allowed should be approached primarily on health and safety issues including water, sewer, traffic flow and public safety. Utilizing approaches such as restrictive overlays, limiting ADUs to larger lot sizes, burdensome lot coverage and setbacks and particularly concentration or distance requirements (e.g., no less than 500 feet between ADUs) may unreasonably restrict the ability of the homeowners to create ADUs, contrary to the intent of the Legislature.

Requiring large minimum lot sizes and not allowing smaller lot sizes for ADUs can severely restrict their potential development. For example, large minimum lot sizes for ADUs may constrict capacity throughout most of the community. Minimum lot sizes cannot be applied to ADUs within existing structures and could be considered relative to health and safety concerns such as areas on septic systems. While larger lot sizes might be targeted for various reasons such as ease of compatibility, many tools are available (e.g., maximum unit size, maximum lot coverage, minimum setbacks, architectural and landscape requirements) that allows ADUs to fit well within the built environment.

Can a Local Government Adopt Less Restrictive Requirements?

Yes, ADU law is a minimum requirement and its purpose is to encourage the development of ADUs. Local governments can take a variety of actions beyond the statute that promote ADUs such as reductions in fees, less restrictive parking or unit sizes or amending general plan policies.

Santa Cruz has confronted a shortage of housing for many years, considering its growth in population from incoming students at UC Santa Cruz and its proximity to Silicon Valley. The city promoted the development of ADUs as critical infill-housing opportunity through various strategies such as creating a manual to promote ADUs. The manual showcases prototypes of ADUs and outlines city zoning laws and requirements to make it more convenient for homeowners to get information. The City found that homeowners will take time to develop an ADU only if information is easy to find, the process is simple, and there is sufficient guidance on what options they have in regards to design and planning.

The city set the minimum lot size requirement at 4,500 sq. ft. to develop an ADU in order to encourage more homes to build an ADU. This allowed for a majority of single-family homes in Santa Cruz to develop an ADU. For more information, see <http://www.cityofsantacruz.com/departments/planning-and-community-development/programs/accessory-dwelling-unit-development-program>.

Can Local Governments Establish Minimum and Maximum Unit Sizes?

Yes, a local government may establish minimum and maximum unit sizes (GC Section 65852.2(c)). However, like all development standards (e.g., height, lot coverage, lot size), unit sizes should not burden the development of ADUs. For example, setting a minimum unit size that substantially increases costs or a maximum unit size that unreasonably restricts opportunities would be inconsistent with the intent of the statute. Typical maximum unit sizes range from 800 square feet to 1,200 square feet. Minimum unit size must at least allow for an efficiency unit as defined in Health and Safety Code Section 17958.1.

ADU law requires local government approval if meeting various requirements (GC Section 65852.2(a)(1)(D)), including unit size requirements. Specifically, attached ADUs shall not exceed 50 percent of the existing living area or 1,200 square feet and detached ADUs shall not exceed 1,200 square feet. A local government may choose a maximum unit size less than 1,200 square feet as long as the requirement is not burdensome on the creation of ADUs.

Can ADUs Exceed General Plan and Zoning Densities?

An ADU is an accessory use for the purposes of calculating allowable density under the general plan and zoning. For example, if a zoning district allows one unit per 7,500 square feet, then an ADU would not be counted as an additional unit. Minimum lot sizes must not be doubled (e.g., 15,000 square feet) to account for an ADU. Further, local governments could elect to allow more than one ADU on a lot.

New developments can increase the total number of affordable units in their project plans by integrating ADUs. Aside from increasing the total number of affordable units, integrating ADUs also promotes housing choices within a development. One such example is the Cannery project in Davis, CA. The Cannery project includes 547 residential units with up to 60 integrated ADUs. ADUs within the Cannery blend in with surrounding architecture, maintaining compatibility with neighborhoods and enhancing community character. ADUs are constructed at the same time as the primary single-family unit to ensure the affordable rental unit is available in the housing supply concurrent with the availability of market rate housing.

How Are Fees Charged to ADUs?

All impact fees, including water, sewer, park and traffic fees must be charged in accordance with the Fee Mitigation Act, which requires fees to be proportional to the actual impact (e.g., significantly less than a single family home).

Fees on ADUs, must proportionately account for impact on services based on the size of the ADU or number of plumbing fixtures. For example, a 700 square foot new ADU with one bathroom that results in less landscaping should be charged much less than a 2,000 square foot home with three bathrooms and an entirely new landscaped parcel which must be irrigated. Fees for ADUs should be significantly less and should account for a lesser impact such as lower sewer or traffic impacts.

What Utility Fee Requirements Apply to ADUs?

Cities and counties cannot consider ADUs as new residential uses when calculating connection fees and capacity charges.

Where ADUs are being created within an existing structure (primary or accessory), the city or county cannot require a new or separate utility connections for the ADU and cannot charge any connection fee or capacity charge.

For other ADUs, a local agency may require separate utility connections between the primary dwelling and the ADU, but any connection fee or capacity charge must be proportionate to the impact of the ADU based on either its size or the number of plumbing fixtures.

What Utility Fee Requirements Apply to Non-City and County Service Districts?

All local agencies must charge impact fees in accordance with the Mitigation Fee Act (commencing with Government Code Section 66000), including in particular Section 66013, which requires the connection fees and capacity charges to be proportionate to the burden posed by the ADU. Special districts and non-city and county service districts must account for the lesser impact related to an ADU and should base fees on unit size or number of plumbing fixtures. Providers should consider a proportionate or sliding scale fee structures that address the smaller size and lesser impact of ADUs (e.g., fees per square foot or fees per fixture). Fee waivers or deferrals could be considered to better promote the development of ADUs.

Do Utility Fee Requirements Apply to ADUs within Existing Space?

No, where ADUs are being created within an existing structure (primary or accessory), new or separate utility connections and fees (connection and capacity) must not be required.

Does “Public Transit” Include within One-half Mile of a Bus Stop and Train Station?

Yes, “public transit” may include a bus stop, train station and paratransit if appropriate for the applicant. “Public transit” includes areas where transit is available and can be considered regardless of tighter headways (e.g., 15 minute intervals). Local governments could consider a broader definition of “public transit” such as distance to a bus route.

Can Parking Be Required Where a Car Share Is Available?

No, ADU law does not allow parking to be required when there is a car share located within a block of the ADU. A car share location includes a designated pick up and drop off location. Local governments can measure a block from a pick up and drop off location and can decide to adopt broader distance requirements such as two to three blocks.

Is Off Street Parking Permitted in Setback Areas or through Tandem Parking?

Yes, ADU law deliberately reduces parking requirements. Local governments may make specific findings that tandem parking and parking in setbacks are infeasible based on specific site, regional topographical or fire and life safety conditions or that tandem parking or parking in setbacks is not permitted anywhere else in the jurisdiction. However, these determinations should be applied in a manner that does not unnecessarily restrict the creation of ADUs.

Local governments must provide reasonable accommodation to persons with disabilities to promote equal access housing and comply with fair housing laws and housing element law. The reasonable accommodation procedure must provide exception to zoning and land use regulations which includes an ADU ordinance. Potential exceptions are not limited and may include development standards such as setbacks and parking requirements and permitted uses that further the housing opportunities of individuals with disabilities.

Is Covered Parking Required?

No, off street parking must be permitted through tandem parking on an existing driveway, unless specific findings are made.

Is Replacement Parking Required When the Parking Area for the Primary Structure Is Used for an ADU?

Yes, but only if the local government requires off-street parking to be replaced in which case flexible arrangements such as tandem, including existing driveways and uncovered parking are allowed. Local governments have an opportunity to be flexible and promote ADUs that are being created on existing parking space and can consider not requiring replacement parking.

Are Setbacks Required When an Existing Garage Is Converted to an ADU?

No, setbacks must not be required when a garage is converted or when existing space (e.g., game room or office) above a garage is converted. Rear and side yard setbacks of no more than five feet are required when new space is added above a garage for an ADU. In this case, the setbacks only apply to the added space above the garage, not the existing garage and the ADU can be constructed wholly or partly above the garage, including extending beyond the garage walls.

Also, when a garage, carport or covered parking structure is demolished or where the parking area ceases to exist so an ADU can be created, the replacement parking must be allowed in any “configuration” on the lot, “...including,

but not limited to, covered spaces, uncovered spaces, or tandem spaces, or....” Configuration can be applied in a flexible manner to not burden the creation of ADUs. For example, spatial configurations like tandem on existing driveways in setback areas or not requiring excessive distances from the street would be appropriate.

Are ADUs Permitted in Existing Residence or Accessory Space?

Yes, ADUs located in single family residential zones and existing space of a single family residence or accessory structure must be approved regardless of zoning standards (Section 65852.2(a)(1)(B)) for ADUs, including locational requirements (Section 65852.2(a)(1)(A)), subject to usual non-appealable ministerial building permit requirements. For example, ADUs in existing space does not necessitate a zoning clearance and must not be limited to certain zones or areas or subject to height, lot size, lot coverage, unit size, architectural review, landscape or parking requirements. Simply, where a single family residence or accessory structure exists in any single family residential zone, so can an ADU. The purpose is to streamline and expand potential for ADUs where impact is minimal and the existing footprint is not being increased.

Zoning requirements are not a basis for denying a ministerial building permit for an ADU, including non-conforming lots or structures. The phrase, “..within the existing space” includes areas within a primary home or within an attached or detached accessory structure such as a garage, a carriage house, a pool house, a rear yard studio and similar enclosed structures.

Are Owner Occupants Required?

No, however, a local government can require an applicant to be an owner occupant. The owner may reside in the primary or accessory structure. Local governments can also require the ADU to not be used for short term rentals (terms lesser than 30 days). Both owner occupant use and prohibition on short term rentals can be required on the same property. Local agencies which impose this requirement should require recordation of a deed restriction regarding owner occupancy to comply with GC Section 27281.5

Are Fire Sprinklers Required for ADUs?

Depends, ADUs shall not be required to provide fire sprinklers if they are not or were not required of the primary residence. However, sprinklers can be required for an ADU if required in the primary structure. For example, if the primary residence has sprinklers as a result of an existing ordinance, then sprinklers could be required in the ADU. Alternative methods for fire protection could be provided.

If the ADU is detached from the main structure or new space above a detached garage, applicants can be encouraged to contact the local fire jurisdiction for information regarding fire sprinklers. Since ADUs are a unique opportunity to address a variety of housing needs and provide affordable housing options for family members, students, the elderly, in-home health care providers, the disabled, and others, the fire departments want to ensure the safety of these populations as well as the safety of those living in the primary structure. Fire Departments can help educate property owners on the benefits of sprinklers, potential resources and how they can be installed cost effectively. For example, insurance rates are typically 5 to 10 percent lower where the unit is sprinklered. Finally, other methods exist to provide additional fire protection. Some options may include additional exits, emergency escape and rescue openings, 1 hour or greater fire-rated assemblies, roofing materials and setbacks from property lines or other structures.

Is Manufactured Housing Permitted as an ADU?

Yes, an ADU is any residential dwelling unit with independent facilities and permanent provisions for living, sleeping, eating, cooking and sanitation. An ADU includes an efficiency unit (Health and Safety Code Section 17958.1) and a manufactured home (Health and Safety Code Section 18007).

Health and Safety Code Section 18007(a) “**Manufactured home**,” for the purposes of this part, means a structure that was constructed on or after June 15, 1976, is transportable in one or more sections, is eight body feet or more in width, or 40 body feet or more in length, in the traveling mode, or, when erected on site, is 320 or more square feet, is built on a permanent chassis and designed to be used as a single-family dwelling with or without a foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. “Manufactured home” includes any structure that meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C., Sec. 5401, and following).

Can an Efficiency Unit Be Smaller than 220 Square Feet?

Yes, an efficiency unit for occupancy by no more than two persons, by statute (Health and Safety Code Section 17958.1), can have a minimum floor area of 150 square feet and can also have partial kitchen or bathroom facilities, as specified by ordinance or can have the same meaning specified in the Uniform Building Code, referenced in the Title 24 of the California Code of Regulations.

The 2015 International Residential Code adopted by reference into the 2016 California Residential Code (CRC) allows residential dwelling units to be built considerably smaller than an Efficiency Dwelling Unit (EDU). Prior to this code change an EDU was required to have a minimum floor area not less than 220 sq. ft unless modified by local ordinance in accordance with the California Health and Safety Code which could allow an EDU to be built no less than 150 sq. ft. For more information, see HCD’s Information Bulletin at <http://www.hcd.ca.gov/codes/manufactured-housing/docs/ib2016-06.pdf>.

Does ADU Law Apply to Charter Cities and Counties?

Yes. ADU law explicitly applies to “local agencies” which are defined as a city, county, or city and county whether general law or chartered (Section 65852.2(i)(2)).

Do ADUs Count toward the Regional Housing Need Allocation?

Yes, local governments may report ADUs as progress toward Regional Housing Need Allocation pursuant to Government Code Section 65400 based on the actual or anticipated affordability. See below frequently asked questions for JADUs for additional discussion.

Must ADU Ordinances Be Submitted to the Department of Housing and Community Development?

Yes, ADU ordinances must be submitted to the State Department of Housing and Community Development within 60 days after adoption, including amendments to existing ordinances. However, upon submittal, the ordinance is not subject to a Department review and findings process similar to housing element law (GC Section 65585)

Frequently Asked Questions: Junior Accessory Dwelling Units

Is There a Difference between ADU and JADU?



Courtesy of Lilypad Homes and Photo Credit to Jocelyn Knight

Yes, AB 2406 added Government Code Section 65852.22, providing a unique option for Junior ADUs. The bill allows local governments to adopt ordinances for JADUs, which are no more than 500 square feet and are typically bedrooms in a single-family home that have an entrance into the unit from the main home and an entrance to the outside from the JADU. The JADU must have cooking facilities, including a sink, but is not required to have a private bathroom. Current law does not prohibit local governments from adopting an ordinance for a JADU, and this bill explicitly allows, not requires, a local agency to do so. If the ordinance requires a permit, the local agency shall not require additional parking or charge a fee for a water or sewer connection as a condition of granting a permit for a JADU. For more information, see below.

ADUs and JADUs

REQUIREMENTS		ADU	JADU
Maximum Unit Size	Yes, generally up to 1,200 Square Feet or 50% of living area	Yes, 500 Square Foot Maximum	
Kitchen	Yes		Yes
Bathroom	Yes		No, Common Sanitation is Allowed
Separate Entrance	Depends		Yes
Parking	Depends, Parking May Be Eliminated and Cannot Be Required Under Specified Conditions		No, Parking Cannot Be Required
Owner Occupancy	Depends, Owner Occupancy <i>May</i> Be Required		Yes, Owner Occupancy Is Required
Ministerial Approval Process	Yes		Yes
Prohibition on Sale of ADU	Yes		Yes

Why Adopt a JADU Ordinance?

JADUs offer the simplest and most affordable housing option. They bridge the gap between a roommate and a tenant by offering an interior connection between the unit and main living area. The doors between the two spaces can be secured from both sides, allowing them to be easily privatized or incorporated back into the main living area. These units share central systems, require no fire separation, and have a basic kitchen, utilizing small plug in appliances, reducing development costs. This provides flexibility and an insurance policy in homes in case additional income or housing is needed. They present no additional stress on utility services or infrastructure because they simply repurpose spare bedrooms that do not expand the homes planned occupancy. No additional address is required on the property because an interior connection remains. By adopting a JADU ordinance, local governments can offer homeowners additional options to take advantage of underutilized space and better address its housing needs.

Can JADUs Count towards the RHNA?

Yes, as part of the housing element portion of their general plan, local governments are required to identify sites with appropriate zoning that will accommodate projected housing needs in their regional housing need allocation (RHNA) and report on their progress pursuant to Government Code Section 65400. To credit a unit toward the RHNA, HCD and the Department of Finance (DOF) utilize the census definition of a housing unit. Generally, a JADU, including with shared sanitation facilities, that meets the census definition and is reported to the Department of Finance as part of the DOF annual City and County Housing Unit Change Survey can be credited toward the RHNA based on the appropriate income level. Local governments can track actual or anticipated affordability to assure the JADU is counted to the appropriate income category. For example, some local governments request and track information such as anticipated affordability as part of the building permit application.

A housing unit is a house, an apartment, a mobile home or trailer, a group of rooms, or a single room that is occupied, or, if vacant, is intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants live separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

Can the JADU Be Sold Independent of the Primary Dwelling?

No, the JADU cannot be sold separate from the primary dwelling.

Are JADUs Subject to Connection and Capacity Fees?

No, JADUs shall not be considered a separate or new dwelling unit for the purposes of fees and as a result should not be charged a fee for providing water, sewer or power, including a connection fee. These requirements apply to all providers of water, sewer and power, including non-municipal providers.

Local governments may adopt requirements for fees related to parking, other service or connection for water, sewer or power, however, these requirements must be uniform for all single family residences and JADUs are not considered a new or separate unit.

Are There Requirements for Fire Separation and Fire Sprinklers?

Yes, a local government may adopt requirements related to fire and life protection requirements. However, a JADU shall not be considered a new or separate unit. In other words, if the primary unit is not subject to fire or life protection requirements, then the JADU must be treated the same.

Resources



Courtesy of Karen Chapple, UC Berkeley

Attachment 1: Statutory Changes (Strikeout/Underline)

Government Code Section 65852.2

(a) (1) ~~Any~~ A local agency may, by ordinance, provide for the creation of ~~second-accessory dwelling~~ units in single-family and multifamily residential zones. The ordinance ~~may~~ shall do ~~any~~ all of the following:

(A) Designate areas within the jurisdiction of the local agency where ~~second-accessory dwelling~~ units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of ~~second-accessory dwelling~~ units on traffic ~~flow~~. flow and public safety.

(B) (i) Impose standards on ~~second-accessory dwelling~~ units that include, but are not limited to, parking, height, setback, lot coverage, landscape, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(ii) Notwithstanding clause (i), a local agency may reduce or eliminate parking requirements for any accessory dwelling unit located within its jurisdiction.

(C) Provide that ~~second-accessory dwelling~~ units do not exceed the allowable density for the lot upon which the ~~second-accessory dwelling~~ unit is located, and that ~~second-accessory dwelling~~ units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(D) Require the accessory dwelling units to comply with all of the following:

(i) The unit is not intended for sale separate from the primary residence and may be rented.

(ii) The lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.

(iii) The accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(iv) The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.

(v) The total area of floorspace for a detached accessory dwelling unit shall not exceed 1,200 square feet.

(vi) No passageway shall be required in conjunction with the construction of an accessory dwelling unit.

(vii) No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.

(viii) Local building code requirements that apply to detached dwellings, as appropriate.

(ix) Approval by the local health officer where a private sewage disposal system is being used, if required.

(x) (I) Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.

(II) Offstreet parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(III) This clause shall not apply to a unit that is described in subdivision (d).

(xi) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit, and the local agency requires that those offstreet parking spaces be replaced, the replacement spaces may be located in any configuration on the same lot as the accessory dwelling unit, including, but not limited to, as covered spaces, uncovered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts. This clause shall not apply to a unit that is described in subdivision (d).

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. ~~Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of ADUs.~~ permits, within 120 days after receiving the application. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of ADUs. an accessory dwelling unit.

~~(b) (4) (1) An~~ When existing ordinance governing the creation of an accessory dwelling unit by a local agency which has not adopted an ordinance governing ADUs in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to this subdivision unless it or an accessory dwelling ordinance adopted by a local agency subsequent to the effective date of the act adding this paragraph shall provide an approval process that includes only ministerial provisions for the approval of accessory dwelling units and shall not include any discretionary processes, provisions, or requirements for those units, except as otherwise provided in this subdivision. In the event that a local agency has an existing accessory dwelling unit ordinance that fails to meet the requirements of this subdivision, that ordinance shall be null and void upon the effective date of the act adding this paragraph and that agency shall thereafter apply the standards established in this subdivision for the approval of accessory dwelling units, unless and until the agency adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a ADU if the ADU complies with all of the following: that complies with this section.

~~(A) The unit is not intended for sale and may be rented.~~

~~(B) The lot is zoned for single family or multifamily use.~~

~~(C) The lot contains an existing single family dwelling.~~

~~(D) The ADU is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.~~

~~(E) The increased floor area of an attached ADU shall not exceed 30 percent of the existing living area.~~

~~(F) The total area of floorspace for a detached ADU shall not exceed 1,200 square feet.~~

~~(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.~~

~~(H) Local building code requirements which apply to detached dwellings, as appropriate.~~

~~(I) Approval by the local health officer where a private sewage disposal system is being used, if required.~~

~~(2)~~ (5) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

~~(3)~~ (6) This subdivision establishes the maximum standards that local agencies shall use to evaluate ~~proposed ADUs on lots~~ a proposed accessory dwelling unit on a lot zoned for residential use ~~which contain~~ that contains an existing single-family dwelling. No additional standards, other than those provided in this ~~subdivision or subdivision~~ (a), subdivision, shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an ~~owner-occupant~~ owner-occupant or that the property be used for rentals of terms longer than 30 days.

~~(4)~~ (7) ~~No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any~~ A local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of ADUs an accessory dwelling unit if these provisions are consistent with the limitations of this subdivision.

~~(5)~~ (8) A ADU ~~which conforms to the requirements of~~ An accessory dwelling unit that conforms to this subdivision shall ~~be deemed to be an accessory use or an accessory building and shall~~ not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use ~~which that is~~ consistent with the existing general plan and zoning designations for the lot. The ADUs accessory dwelling unit shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

~~(e)~~ (b) No ~~When a~~ local agency shall adopt an ordinance which totally precludes ADUs within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing ADUs within single-family and multifamily zoned areas justify adopting the ordinance. that has not adopted an ordinance governing accessory dwelling units in accordance with subdivision (a) receives its first application on or after July 1, 1983, for a permit to create an accessory dwelling unit pursuant to this subdivision, the local agency shall accept the application and approve or disapprove the application ministerially without discretionary review pursuant to subdivision (a) within 120 days after receiving the application.

~~(d)~~ (c) A local agency may establish minimum and maximum unit size requirements for both attached and detached ~~second~~ accessory dwelling units. No minimum or maximum size for a ~~second~~ an accessory dwelling unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings ~~which that~~ does not permit at least an efficiency unit to be constructed in compliance with local development standards. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

(d) Notwithstanding any other law, a local agency, whether or not it has adopted an ordinance governing accessory dwelling units in accordance with subdivision (a), shall not impose parking standards for an accessory dwelling unit in any of the following instances:

(1) The accessory dwelling unit is located within one-half mile of public transit.

(2) The accessory dwelling unit is located within an architecturally and historically significant historic district.

(3) The accessory dwelling unit is part of the existing primary residence or an existing accessory structure.

(4) When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

(5) When there is a car share vehicle located within one block of the accessory dwelling unit.

~~(e) Parking requirements for ADUs shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the~~

~~use of the ADU and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction. Notwithstanding subdivisions (a) to (d), inclusive, a local agency shall ministerially approve an application for a building permit to create within a single-family residential zone one accessory dwelling unit per single-family lot if the unit is contained within the existing space of a single-family residence or accessory structure, has independent exterior access from the existing residence, and the side and rear setbacks are sufficient for fire safety. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.~~

(f) ~~(1)~~ Fees charged for the construction of ~~second-accessory dwelling~~ units shall be determined in accordance with Chapter 5 (commencing with Section ~~66000~~), 66000) and Chapter 7 (commencing with Section 66012).

(2) Accessory dwelling units shall not be considered new residential uses for the purposes of calculating local agency connection fees or capacity charges for utilities, including water and sewer service.

(A) For an accessory dwelling unit described in subdivision (e), a local agency shall not require the applicant to install a new or separate utility connection directly between the accessory dwelling unit and the utility or impose a related connection fee or capacity charge.

(B) For an accessory dwelling unit that is not described in subdivision (e), a local agency may require a new or separate utility connection directly between the accessory dwelling unit and the utility. Consistent with Section 66013, the connection may be subject to a connection fee or capacity charge that shall be proportionate to the burden of the proposed accessory dwelling unit, based upon either its size or the number of its plumbing fixtures, upon the water or sewer system. This fee or charge shall not exceed the reasonable cost of providing this service.

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of ADUs. an accessory dwelling unit.

(h) Local agencies shall submit a copy of the ~~ordinances~~ ordinance adopted pursuant to subdivision (a) ~~or (e)~~ to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) "Living ~~area,~~ area" means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, "neighborhood" has the same meaning as set forth in Section 65589.5.

(4) ~~"Second-~~ "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. ~~A second-~~ An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(5) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for ~~second~~ accessory dwelling units.

Government Code Section 65852.22.

(a) Notwithstanding Section 65852.2, a local agency may, by ordinance, provide for the creation of junior accessory dwelling units in single-family residential zones. The ordinance may require a permit to be obtained for the creation of a junior accessory dwelling unit, and shall do all of the following:

(1) Limit the number of junior accessory dwelling units to one per residential lot zoned for single-family residences with a single-family residence already built on the lot.

(2) Require owner-occupancy in the single-family residence in which the junior accessory dwelling unit will be permitted. The owner may reside in either the remaining portion of the structure or the newly created junior accessory dwelling unit. Owner-occupancy shall not be required if the owner is another governmental agency, land trust, or housing organization.

(3) Require the recordation of a deed restriction, which shall run with the land, shall be filed with the permitting agency, and shall include both of the following:

(A) A prohibition on the sale of the junior accessory dwelling unit separate from the sale of the single-family residence, including a statement that the deed restriction may be enforced against future purchasers.

(B) A restriction on the size and attributes of the junior accessory dwelling unit that conforms with this section.

(4) Require a permitted junior accessory dwelling unit to be constructed within the existing walls of the structure, and require the inclusion of an existing bedroom.

(5) Require a permitted junior accessory dwelling to include a separate entrance from the main entrance to the structure, with an interior entry to the main living area. A permitted junior accessory dwelling may include a second interior doorway for sound attenuation.

(6) Require the permitted junior accessory dwelling unit to include an efficiency kitchen, which shall include all of the following:

(A) A sink with a maximum waste line diameter of 1.5 inches.

(B) A cooking facility with appliances that do not require electrical service greater than 120 volts, or natural or propane gas.

(C) A food preparation counter and storage cabinets that are of reasonable size in relation to the size of the junior accessory dwelling unit.

(b) (1) An ordinance shall not require additional parking as a condition to grant a permit.

(2) This subdivision shall not be interpreted to prohibit the requirement of an inspection, including the imposition of a fee for that inspection, to determine whether the junior accessory dwelling unit is in compliance with applicable building standards.

(c) An application for a permit pursuant to this section shall, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits, be considered ministerially, without discretionary review or a hearing. A permit shall be issued within 120 days of submission of an application for a

permit pursuant to this section. A local agency may charge a fee to reimburse the local agency for costs incurred in connection with the issuance of a permit pursuant to this section.

(d) For the purposes of any fire or life protection ordinance or regulation, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit. This section shall not be construed to prohibit a city, county, city and county, or other local public entity from adopting an ordinance or regulation relating to fire and life protection requirements within a single-family residence that contains a junior accessory dwelling unit so long as the ordinance or regulation applies uniformly to all single-family residences within the zone regardless of whether the single-family residence includes a junior accessory dwelling unit or not.

(e) For the purposes of providing service for water, sewer, or power, including a connection fee, a junior accessory dwelling unit shall not be considered a separate or new dwelling unit.

(f) This section shall not be construed to prohibit a local agency from adopting an ordinance or regulation, related to parking or a service or a connection fee for water, sewer, or power, that applies to a single-family residence that contains a junior accessory dwelling unit, so long as that ordinance or regulation applies uniformly to all single-family residences regardless of whether the single-family residence includes a junior accessory dwelling unit.

(g) For purposes of this section, the following terms have the following meanings:

(1) "Junior accessory dwelling unit" means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

Attachment 2: Sample ADU Ordinance

Section XXX1XXX: Purpose

This Chapter provides for accessory dwelling units on lots developed or proposed to be developed with single-family dwellings. Such accessory dwellings contribute needed housing to the community's housing stock. Thus, accessory dwelling units are a residential use which is consistent with the General Plan objectives and zoning regulations and which enhances housing opportunities, including near transit on single family lots.

Section XXX2XXX: Applicability

The provisions of this Chapter apply to all lots that are occupied with a single family dwelling unit and zoned residential. Accessory dwelling units do exceed the allowable density for the lot upon which the accessory dwelling unit is located, and are a residential use that is consistent with the existing general plan and zoning designation for the lot.

Section XXX3XXX: Development Standards

Accessory Structures within Existing Space

An accessory dwelling unit within an existing space including the primary structure, attached or detached garage or other accessory structure shall be permitted ministerially with a building permit regardless of all other standards within the Chapter if complying with:

1. Building and safety codes
2. Independent exterior access from the existing residence
3. Sufficient side and rear setbacks for fire safety.

Accessory Structures (Attached and Detached)

General:

1. The unit is not intended for sale separate from the primary residence and may be rented.
2. The lot is zoned for residential and contains an existing, single-family dwelling.
3. The accessory dwelling unit is either attached to the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.
4. The increased floor area of an attached accessory dwelling unit shall not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.
5. The total area of floor space for a detached accessory dwelling unit shall not exceed 1,200 square feet.
6. Local building code requirements that apply to detached dwellings, as appropriate.
7. No passageway shall be required in conjunction with the construction of an accessory dwelling unit.
8. No setback shall be required for an existing garage that is converted to a accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage.
9. Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence and may employ alternative methods for fire protection.

Parking:

1. Parking requirements for accessory dwelling units shall not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking, including on an existing driveway or in setback areas, excluding the non-driveway front yard setback.
2. Parking is not required in the following instances:
 - The accessory dwelling unit is located within one-half mile of public transit, including transit stations and bus stations.

- The accessory dwelling unit is located in the WWWW Downtown, XXX Area, YYY Corridor and ZZZ Opportunity Area.
 - The accessory dwelling unit is located within an architecturally and historically significant historic district.
 - When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.
 - When there is a car share vehicle located within one block of the accessory dwelling unit.
3. Replacement Parking: When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an accessory dwelling unit, replacement parking shall not be required and may be located in any configuration on the same lot as the accessory dwelling unit.

Section XXX4XXX: Permit Requirements

ADUs shall be permitted ministerially, in compliance with this Chapter within 120 days of application. The Community Development Director shall issue a building permit or zoning certificate to establish an accessory dwelling unit in compliance with this Chapter if all applicable requirements are met in Section XXX3XXXXX, as appropriate. The Community Development Director may approve an accessory dwelling unit that is not in compliance with Section XXX3XXXXX as set forth in Section XXX5XXXXX. The XXXX Health Officer shall approve an application in conformance with XXXXXX where a private sewage disposal system is being used.

Section XXX5XXX: Review Process for Accessory Structure Not Complying with Development Standards

An accessory dwelling unit that does not comply with standards in Section XXX3XX may be permitted with a zoning certificate or an administrative use permit at the discretion of the Community Development Director subject to findings in Section XXX6XX.

Section XXX6XXX: Findings

A. In order to deny an administrative use permit under Section XXX5XXX, the Community Development Director shall find that the Accessory Dwelling Unit would be detrimental to the public health and safety or would introduce unreasonable privacy impacts to the immediate neighbors.

B. In order to approve an administrative use permit under Section XXX5XXX to waive required accessory dwelling unit parking, the Community Development Director shall find that additional or new on-site parking would be detrimental, and that granting the waiver will meet the purposes of this Chapter.

Section XXX7XXX: Definitions

(1) "Living area means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) "Accessory dwelling unit" means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(3) "Passageway" means a pathway that is unobstructed clear to the sky and extends from a street to one entrance of the accessory dwelling unit.

(4) (1) “Existing Structure” for the purposes of defining an allowable space that can be converted to an ADU means within the four walls and roofline of any structure existing on or after January 1, 2017 that can be made safely habitable under local building codes at the determination of the building official regardless of any non-compliance with zoning standards.

Attachment 3: Sample JADU Ordinance

(Lilypad Homes at <http://lilypadhomes.org/>)

Draft Junior Accessory Dwelling Units (JADU) – Flexible Housing

Findings:

1. Causation: Critical need for housing for lower income families and individuals given the high cost of living and low supply of affordable homes for rent or purchase, and the difficulty, given the current social and economic environment, in building more affordable housing
2. Mitigation: Create a simple and inexpensive permitting track for the development of junior accessory dwelling units that allows spare bedrooms in homes to serve as a flexible form of infill housing
3. Endangerment: Provisions currently required under agency ordinances are so arbitrary, excessive, or burdensome as to restrict the ability of homeowners to legally develop these units therefore encouraging homeowners to bypass safety standards and procedures that make the creation of these units a benefit to the whole of the community
4. Co-Benefits: Homeowners (particularly retired seniors and young families, groups that tend to have the lowest incomes) – generating extra revenue, allowing people facing unexpected financial obstacles to remain in their homes, housing parents, children or caregivers; Homebuyers - providing rental income which aids in mortgage qualification under new government guidelines; Renters – creating more low-cost housing options in the community where they work, go to school or have family, also reducing commute time and expenses; Municipalities – helping to meet RHNA goals, increasing property and sales tax revenue, insuring safety standard code compliance, providing an abundant source of affordable housing with no additional infrastructure needed; Community - housing vital workers, decreasing traffic, creating economic growth both in the remodeling sector and new customers for local businesses; Planet - reducing carbon emissions, using resources more efficiently;
5. Benefits of Junior ADUs: offer a more affordable housing option to both homeowners and renters, creating economically healthy, diverse, multi-generational communities;

Therefore the following ordinance is hereby enacted:

This Section provides standards for the establishment of junior accessory dwelling units, an alternative to the standard accessory dwelling unit, permitted as set forth under State Law AB 1866 (Chapter 1062, Statutes of 2002) Sections 65852.150 and 65852.2 and subject to different provisions under fire safety codes based on the fact that junior accessory dwelling units do not qualify as “complete independent living facilities” given that the interior connection from the junior accessory dwelling unit to the main living area remains, therefore not redefining the single-family home status of the dwelling unit.

- A) *Development Standards.* Junior accessory dwelling units shall comply with the following standards, including the standards in Table below:
- 1) *Number of Units Allowed.* Only one accessory dwelling unit or, junior accessory dwelling unit, may be located on any residentially zoned lot that permits a single-family dwelling except as otherwise regulated or restricted by an adopted Master Plan or Precise Development Plan. A junior accessory dwelling unit may only be located on a lot which already contains one legal single-family dwelling.
 - 2) *Owner Occupancy:* The owner of a parcel proposed for a junior accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the accessory dwelling, except when the home is held by an agency such as a land trust or housing organization in an effort to create affordable housing.
 - 3) *Sale Prohibited:* A junior accessory dwelling unit shall not be sold independently of the primary dwelling on the parcel.

- 4) *Deed Restriction:* A deed restriction shall be completed and recorded, in compliance with Section B below.
- 5) *Location of Junior Accessory Dwelling Unit:* A junior accessory dwelling unit must be created within the existing walls of an existing primary dwelling, and must include conversion of an existing bedroom.
- 6) *Separate Entry Required:* A separate exterior entry shall be provided to serve a junior accessory dwelling unit.
- 7) *Interior Entry Remains:* The interior connection to the main living area must be maintained, but a second door may be added for sound attenuation.
- 8) *Kitchen Requirements:* The junior accessory dwelling unit shall include an efficiency kitchen, requiring and limited to the following components:
 - a) A sink with a maximum waste line diameter of one-and-a-half (1.5) inches,
 - b) A cooking facility with appliance which do not require electrical service greater than one-hundred-and-twenty (120) volts or natural or propane gas, and
 - c) A food preparation counter and storage cabinets that are reasonable to size of the unit.
- 9) *Parking:* No additional parking is required beyond that required when the existing primary dwelling was constructed.

Development Standards for Junior Accessory Dwelling Units

SITE OR DESIGN FEATURE	SITE AND DESIGN STANDARDS
Maximum unit size	500 square feet
Setbacks	As required for the primary dwelling unit
Parking	No additional parking required

- B) *Deed Restriction:* Prior to obtaining a building permit for a junior accessory dwelling unit, a deed restriction, approved by the City Attorney, shall be recorded with the County Recorder's office, which shall include the pertinent restrictions and limitations of a junior accessory dwelling unit identified in this Section. Said deed restriction shall run with the land, and shall be binding upon any future owners, heirs, or assigns. A copy of the recorded deed restriction shall be filed with the Department stating that:
 - 1) The junior accessory dwelling unit shall not be sold separately from the primary dwelling unit;
 - 2) The junior accessory dwelling unit is restricted to the maximum size allowed per the development standards;
 - 3) The junior accessory dwelling unit shall be considered legal only so long as either the primary residence, or the accessory dwelling unit, is occupied by the owner of record of the property, except when the home is owned by an agency such as a land trust or housing organization in an effort to create affordable housing;
 - 4) The restrictions shall be binding upon any successor in ownership of the property and lack of compliance with this provision may result in legal action against the property owner, including revocation of any right to maintain a junior accessory dwelling unit on the property.
- C) *No Water Connection Fees:* No agency should require a water connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.
- D) *No Sewer Connection Fees:* No agency should require a sewer connection fee for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard

may be assessed.

- E) *No Fire Sprinklers and Fire Attenuation:* No agency should require fire sprinkler or fire attenuation specifications for the development of a junior accessory dwelling unit. An inspection fee to confirm that the dwelling unit complies with development standard may be assessed.

Definitions of Specialized Terms and Phrases.

“Accessory dwelling unit” means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. An accessory dwelling unit also includes the following:

(1) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(2) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

“Junior accessory dwelling unit” means a unit that is no more than 500 square feet in size and contained entirely within an existing single-family structure. A junior accessory dwelling unit may include separate sanitation facilities, or may share sanitation facilities with the existing structure.

Attachment 4: State Standards Checklist (As of January 1, 2017)

YES/NO	STATE STANDARD*	GOVERNMENT CODE SECTION
	Unit is not intended for sale separate from the primary residence and may be rented.	65852.2(a)(1)(D)(i)
	Lot is zoned for single-family or multifamily use and contains an existing, single-family dwelling.	65852.2(a)(1)(D)(ii)
	Accessory dwelling unit is either attached to the existing dwelling or located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.	65852.2(a)(1)(D)(iii)
	Increased floor area of an attached accessory dwelling unit does not exceed 50 percent of the existing living area, with a maximum increase in floor area of 1,200 square feet.	65852.2(a)(1)(D)(iv)
	Total area of floor space for a detached accessory dwelling unit does not exceed 1,200 square feet.	65852.2(a)(1)(D)(v)
	Passageways are not required in conjunction with the construction of an accessory dwelling unit.	65852.2(a)(1)(D)(vi)
	Setbacks are not required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines are not required for an accessory dwelling unit that is constructed above a garage.	65852.2(a)(1)(D)(vii)
	(Local building code requirements that apply to detached dwellings are met, as appropriate.	65852.2(a)(1)(D)(viii)
	Local health officer approval where a private sewage disposal system is being used, if required.	65852.2(a)(1)(D)(ix)
	Parking requirements do not exceed one parking space per unit or per bedroom. These spaces may be provided as tandem parking on an existing driveway.	65852.2(a)(1)(D)(x)

* Other requirements may apply. See Government Code Section 65852.2

Attachment 5: Bibliography

Reports

[ACCESSORY DWELLING UNITS: CASE STUDY](#) (26 pp.)

By United States Department of Housing and Urban Development, Office of Policy Development and Research. (2008)

Introduction: Accessory dwelling units (ADUs) — also referred to as accessory apartments, ADUs, or granny flats — are additional living quarters on single-family lots that are independent of the primary dwelling unit. The separate living spaces are equipped with kitchen and bathroom facilities, and can be either attached or detached from the main residence. This case study explores how the adoption of ordinances, with reduced regulatory restrictions to encourage ADUs, can be advantageous for communities. Following an explanation of the various types of ADUs and their benefits, this case study provides examples of municipalities with successful ADU legislation and programs. Section titles include: History of ADUs; Types of Accessory Dwelling Units; Benefits of Accessory Dwelling Units; and Examples of ADU Ordinances and Programs.

[THE MACRO VIEW ON MICRO UNITS](#) (46 pp.)

By Bill Whitlow, et al. — Urban Land Institute (2014)
Library Call #: H43 4.21 M33 2014

The Urban Land Institute Multifamily Housing Councils were awarded a ULI Foundation research grant in fall 2013 to evaluate from multiple perspectives the market performance and market acceptance of micro and small units.

[RESPONDING TO CHANGING HOUSEHOLDS: Regulatory Challenges for Micro-units and Accessory Dwelling Units](#) (76 pp.)

By Vicki Been, Benjamin Gross, and John Infranca (2014)
New York University: Furman Center for Real Estate & Urban Policy
Library Call # D55 3 I47 2014

This White Paper fills two gaps in the discussion regarding compact units. First, we provide a detailed analysis of the regulatory and other challenges to developing both ADUs and micro-units, focusing on five cities: New York; Washington, DC; Austin; Denver; and Seattle. That analysis will be helpful not only to the specific jurisdictions we study, but also can serve as a model for those who want to catalogue regulations that might get in the way of the development of compact units in their own jurisdictions. Second, as more local governments permit or encourage compact units, researchers will need to evaluate how well the units built serve the goals proponents claim they will.

[SCALING UP SECONDARY UNIT PRODUCTION IN THE EAST BAY: Impacts and Policy Implications](#) (25 pp.)

By Jake Webmann, Alison Nemirow, and Karen Chapple (2012)
UC Berkeley: Institute of Urban and Regional Development (IURD)
Library Call # H44 1.1 S33 2012

This paper begins by analyzing how many secondary units of one particular type, detached backyard cottages, might be built in the East Bay, focusing on the Flatlands portions of Berkeley, El Cerrito, and Oakland. We then investigate the potential impacts of scaling up the strategy with regard to housing affordability, smart growth, alternative transportation, the economy, and city budgets. A final section details policy recommendations, focusing on regulatory reforms and other actions cities can take to encourage secondary unit construction, such as promoting carsharing programs, educating residents, and providing access to finance.

[SECONDARY UNITS AND URBAN INFILL: A literature Review \(12 pp.\)](#)

By Jake Wegmann and Alison Nemirow (2011)
UC Berkeley: IURD
Library Call # D44 4.21 S43 2011

This literature review examines the research on both infill development in general, and secondary units in particular, with an eye towards understanding the similarities and differences between infill as it is more traditionally understood – i.e., the development or redevelopment of entire parcels of land in an already urbanized area – and the incremental type of infill that secondary unit development constitutes.

[YES, BUT WILL THEY LET US BUILD? The Feasibility of Secondary Units in the East Bay \(17 pp.\)](#)

By Alison Nemirow and Karen Chapple (2012)
UC Berkeley: IURD
Library Call # H44.5 1.1 Y47 2012

This paper begins with a discussion of how to determine the development potential for secondary units, and then provides an overview of how many secondary units can be built in the East Bay of San Francisco Bay Area under current regulations. The next two sections examine key regulatory barriers in detail for the five cities in the study (Albany, Berkeley, El Cerrito, Oakland, and Richmond), looking at lot size, setbacks, parking requirements, and procedural barriers. A sensitivity analysis then determines how many units could be built were the regulations to be relaxed.

[YES IN MY BACKYARD: Mobilizing the Market for Secondary Units \(20 pp.\)](#)

By Karen Chapple, J. Weigmann, A. Nemirow, and C. Dentel-Post (2011)
UC Berkeley: Center for Community Innovation.
Library Call # B92 1.1 Y47 2011

This study examines two puzzles that must be solved in order to scale up a secondary unit strategy: first, how can city regulations best enable their construction? And second, what is the market for secondary units? Because parking is such an important issue, we also examine the potential for secondary unit residents to rely on alternative transportation modes, particular car share programs. The study looks at five adjacent cities in the East Bay of the San Francisco Bay Area (Figure 1) -- Oakland, Berkeley, Albany, El Cerrito, and Richmond -- focusing on the areas within ½ mile of five Bay Area Rapid Transit (BART) stations.

Journal Articles and Working Papers:

[BACKYARD HOMES LA \(17 pp.\)](#)

By Dana Cuff, Tim Higgins, and Per-Johan Dahl, Eds. (2010)
Regents of the University of California, Los Angeles.
City Lab Project Book.

[DEVELOPING PRIVATE ACCESSORY DWELLINGS \(6 pp.\)](#)

By William P. Macht. Urbanland online. (June 26, 2015)
Library Location: Urbanland 74 (3/4) March/April 2015, pp. 154-161.

[GRANNY FLATS GAINING GROUND](#) (2 pp.)

By Brian Barth. Planning Magazine: pp. 16-17. (April 2016)
Library Location: Serials

["HIDDEN" DENSITY: THE POTENTIAL OF SMALL-SCALE INFILL DEVELOPMENT](#) (2 pp.)

By Karen Chapple (2011)
UC Berkeley: IURD Policy Brief.
Library Call # D44 1.2 H53 2011

California's implementation of SB 375, the Sustainable Communities and Climate Protection Act of 2008, is putting new pressure on communities to support infill development. As metropolitan planning organizations struggle to communicate the need for density, they should take note of strategies that make increasing density an attractive choice for neighborhoods and regions.

[HIDDEN DENSITY IN SINGLE-FAMILY NEIGHBORHOODS: Backyard cottages as an equitable smart growth strategy](#) (22 pp.)

By Jake Wegmann and Karen Chapple. Journal of Urbanism 7(3): pp. 307-329. (2014)

Abstract (not available in full text): Secondary units, or separate small dwellings embedded within single-family residential properties, constitute a frequently overlooked strategy for urban infill in high-cost metropolitan areas in the United States. This study, which is situated within California's San Francisco Bay Area, draws upon data collected from a homeowners' survey and a Rental Market Analysis to provide evidence that a scaled-up strategy emphasizing one type of secondary unit – the backyard cottage – could yield substantial infill growth with minimal public subsidy. In addition, it is found that this strategy compares favorably in terms of affordability with infill of the sort traditionally favored in the 'smart growth' literature, i.e. the construction of dense multifamily housing developments.

[RETHINKING PRIVATE ACCESSORY DWELLINGS](#) (5 pp.)

By William P. Macht. Urbanland online. (March 6, 2015)
Library Location: Urbanland 74 (1/2) January/February 2015, pp. 87-91.

[ADUS AND LOS ANGELES' BROKEN PLANNING SYSTEM](#) (4 pp.)

By CARLYLE W. Hall. The Planning Report. (April 26, 2016).
Land-use attorney Carlyle W. Hall comments on building permits for accessory dwelling units.

News:

[HOW ONE COLORADO CITY INSTANTLY CREATED AFFORDABLE HOUSING](#)

By Anthony Flint. The Atlantic-CityLab. (May 17, 2016).

In Durango, Colorado, zoning rules were changed to allow, for instance, non-family members as residents in already-existing accessory dwelling units.

[NEW HAMPSHIRE WINS PROTECTIONS FOR ACCESSORY DWELLING UNITS](#) (1 p.)

NLIHC (March 28, 2016)

Affordable housing advocates in New Hampshire celebrated a significant victory this month when Governor Maggie Hassan (D) signed Senate Bill 146, legislation that allows single-family homeowners to add an accessory

dwelling unit as a matter of right through a conditional use permit or by special exception as determined by their municipalities. The bill removes a significant regulatory barrier to increasing rental homes at no cost to taxpayers.

[NEW IN-LAW SUITE RULES BOOST AFFORDABLE HOUSING IN SAN FRANCISCO](#). (3 pp.)

By Rob Poole. Shareable. (June 10, 2014).

The San Francisco Board of Supervisors recently approved two significant pieces of legislation that support accessory dwelling units (ADUs), also known as “in-law” or secondary units, in the city...

[USING ACCESSORY DWELLING UNITS TO BOLSTER AFFORDABLE HOUSING](#) (3 pp.)

By Michael Ryan. Smart Growth America. (December 12, 2014).

35.320 Second Residential Accessory Dwelling Units

1. Purpose. This section is intended to implement the General Plan policies which encourages Accessory Dwelling second residential uUnits (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's second residential unitADU provisions as set forth in Government Code Section 65852.1 et seq. Second residential unitsADUs are commonly referred to as second units, mother-in-law-units, grannyflats and accessory-apartments, and contribute needed housing to the City's housing stock. An efficiency unit and manufactured home as respectively defined in Sections 17958.1 and 18007 of the Health and Safety Code are also considered second residential units under State law.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, aAll second residential units ADUs are required subject to secure use permit and design review approval. Second residential units are allowed by administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320. approval in single family residential zoning districts and in other districts where there is one conforming use single family residence on the parcel.

43. Definitions.

A. Accessory Dwelling Unit (ADU). An ADU A second residential unit shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. The second residential unitUnless an ADU is located within existing residential space or accessory structure, it shall have include independent heating and cooling controls; its own kitchen with sink and standard built-in or freestanding appliances, its own bathroom with bath or shower, and a separate exterior entrance.

B. Living Area. Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

42. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADUsecond residential unit may isbe allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees required by the City's fee schedule as it exists at the time the ADU application is filed. The City will not consider the ADU to be a new residential use when calculating utility and sewer connection fees and capacity charges, and any such connection fee or capacity charge will be proportionate to the impact of the ADU.

~~containing one larger single family, owner occupied dwelling. No second residential units are allowed on lots having more than one residential unit, or on lots where the existing residential unit is a nonconforming use. The second residential unit is not intended for sale and may be rented.~~

~~3. No more than one dwelling unit on a single family residential with a second residential dwelling unit parcel may be rented or leased at one time.~~

54. Development Standards.

A. ADUs within existing space. An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

(i) The ADU meets all applicable building and safety codes.

(ii) The ADU has independent exterior access from the existing residence.

(iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility connections.

B. Attached ADUs. ADUs attached to an existing dwelling shall ~~The total floor space for a second residential unit shall contain adequate area to provide the required facilities listed in subsection 1, but not exceed fifty percent (530%) of the existing living area, with a maximum increase in floor area of 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the required setback from the side and rear lot lines shall be at least five (5) feet.~~ An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer ~~and if detached shall not exceed 800 square feet. Living area is defined as the interior habitable area of a dwelling unit including habitable basements and attics, but does not include a garage or any accessory structure.~~

C. Detached ADUs. ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed 800 square feet, and

~~5. The second residential unit may either be within the living area of the existing dwelling, attached to the existing dwelling, or detached from the existing dwelling.~~

~~6. A second residential unit shall conform to the applicable standards and requirements of the zoning district in which it is to be located, including height and setback requirements.~~ . An ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer. ~~Requirements for building height, setbacks, yards and similar design standards that apply to the single family dwelling unit shall apply to the second residential unit.~~

5. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

65. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

76. Parking. A minimum of one off-street parking space shall be provided for each ~~ADUsecond residential unit~~ in addition to the offstreet parking spaces required for the existing residence. ~~(s)~~ ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

8. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall not be required and may be located in any configuration on the same lot as the ADU.

35.320 Accessory Dwelling Units

1. Purpose. This section is intended to implement the General Plan policies which encourage Accessory Dwelling Units (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's ADU provisions as set forth in Government Code Section 65852.1 et seq. ADUs are commonly referred to as second units, in-law-units, and accessory-apartments, and contribute needed housing to the City's housing stock.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, all ADUs are subject to administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320.

3. Definitions.

A. *Accessory Dwelling Unit (ADU)*. An ADU shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. Unless an ADU is located within existing residential space or accessory structure, it shall have a separate exterior entrance.

B. *Living Area*. Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

4. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADU is allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees required by the City's fee schedule as it exists at the time the ADU application is filed. The City will not consider the ADU to be a new residential use when calculating utility and sewer connection fees and capacity charges, and any such connection fee or capacity charge will be proportionate to the impact of the ADU.

5. Development Standards.

A. *ADUs within existing space*. An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

(i) The ADU meets all applicable building and safety codes.

- (ii) The ADU has independent exterior access from the existing residence.
- (iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility connections.

B. Attached ADUs. ADUs attached to an existing dwelling shall not exceed fifty percent (50%) of the existing living area, with a maximum increase in floor area of 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the required setback from the side and rear lot lines shall be at least five (5) feet. An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

C. Detached ADUs. ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed 800 square feet, and shall conform to the applicable standards and requirements of the zoning district in which it is located, including height and setback requirements. . An ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

5. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

6. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

7. Parking. A minimum of one off-street parking space shall be provided for each ADU in addition to the offstreet parking spaces required for the existing residence. ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

8. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall not be required and may be located in any configuration on the same lot as the ADU.

RESOLUTION NO. 18-03

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE REPEALING AND REPLACING SECTION 35.325 OF THE ZONING ORDINANCE AND AMENDING SECTION 60.200 OF THE HERCULES ZONING ORDINANCE REGARDING ACCESSORY DWELLING UNITS CONSISTENT WITH CHANGES IN STATE LAW

WHEREAS, the California Legislature requires and authorizes cities to provide for secondary, smaller housing units on residential parcels ("accessory dwelling units" or "ADUs"), at Government Code section 65852.2; and

WHEREAS, the California Legislature recently amended Government Code section 65852.2 to refer to such units as "accessory dwelling units" ("ADUs"), and to streamline their approval, minimize parking requirements, and otherwise encourage the local approval of ADUs; and

WHEREAS, the City proposes to update its requirements, retitle that section, and make consistent amendments to definitions within the Zoning Ordinance to conform to current state law; and

WHEREAS, the Planning Commission considered the updated state law requirements in August of 2017, and considered a draft ordinance and proposed revisions to said draft ordinance in January of 2018; and

WHEREAS, at a properly noticed public hearing on February 20, 2018, the Planning Commission reviewed the revised draft ordinance ("ADU Ordinance") and considered the staff report, supporting documents, public testimony, and all appropriate information submitted and recommended that the City Council adopt the ADU Ordinance, repealing and replacing section 32.325 of the Zoning Ordinance (Second Residential Units) and incorporating corresponding amendments to section 60.200 (Definitions); and

WHEREAS, adoption of this ordinance is exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines, in that it can be seen with certainty that there is no possibility for the ordinance to have a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED:

1. The foregoing recitals are true and correct and made a part of this Resolution.
2. The Planning Commission finds as follows:
 - a. The proposed amendment to the Zoning Ordinance is consistent with the General Plan.
 - b. The proposed amendment to the Zoning Ordinance would not be detrimental to the health, safety, welfare and public interest of the City.
 - c. The proposed amendment to the Zoning Ordinance is internally consistent and does not conflict with the purposes, regulations and required findings of the Zoning Ordinance.

NOW, THEREFORE, BE IT FURTHER RESOLVED THAT THE PLANNING COMMISSION OF THE CITY OF HERCULES RECOMMENDS THAT THE CITY COUNCIL:

1. Find that this ordinance is exempt from CEQA pursuant to CEQA Guideline Section 15061(b)(3) because it can be seen with certainty that there is no possibility for the ordinance to have a significant effect on the environment.
2. Consider adopting an Ordinance approving the attached Exhibit A Zone Text Amendment #ZTA 18-01 for Accessory Dwelling Unit policy that would repeal and replace section 32.325 of the Zoning Ordinance (Second Residential Units) and incorporate corresponding amendments to section 60.200 (Definitions) after holding a duly noticed public hearing (anticipated to be March 13, 2018) and having a first and second reading of the Ordinance.

PASSED, AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF HERCULES on this 20th day of February 2018, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Dion Bailey, Chair

Holly P. Smyth, Planning Director &
Secretary

Exhibit A: Zone Text Amendment #18-01 – Accessory Dwelling Unit (ADU) Ordinance language, amending the Hercules Zoning Ordinance sections 35.325 and 60.200.

PROPOSED ZONE TEXT AMENDMENT 18-01 – ON ADUs

35.320 Accessory Dwelling Units

1. Purpose. This section is intended to implement the General Plan policies which encourage Accessory Dwelling Units (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's ADU provisions as set forth in Government Code Section 65852.1 et seq. ADUs are commonly referred to as second units, in-law-units, and accessory-apartments, and contribute needed housing to the City's housing stock.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, all ADUs are subject to administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320. No public hearing or any additional permit shall be required of applicants seeking an administrative use permit for an ADU under this section.

3. Definitions.

A. *Accessory Dwelling Unit (ADU)*. An ADU shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. An ADU shall have a separate exterior entrance. An efficiency unit as defined in Health and Safety Code section 17958.1 and a manufactured home as defined in Health and Safety Code section 18007 are considered ADUs.

B. *Living Area*. Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

4. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADU is allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

C. Any fees for Multi-Family units required by the City's Master Fee Schedule (excluding ADUs within existing living spaces) as it exists at the time the ADU application is filed. All fees are subject to the requirements of Government Code 65852.2 and the Mitigation Fee Act.

5. Development Standards.

A. *ADUs within existing space.* An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

- (i) The ADU meets all applicable building and safety codes.
- (ii) The ADU has independent exterior access from the existing residence.
- (iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility or sewer connections.

B. *Attached ADUs.* ADUs attached to an existing dwelling shall not exceed the lesser of fifty percent (50%) of the existing living area or 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the City shall not impose any setback requirements from the side and rear lot lines that exceed five (5) feet. An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

C. *Detached ADUs.* ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed the lesser of 50% of the existing living area or 1200 square feet, and shall conform to the applicable standards and requirements of the zoning district in which it is located, including height and setback requirements. An ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer.

6. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

7. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

8. Parking. A minimum of one off-street parking space shall be provided for each ADU in addition to the offstreet parking spaces required for the existing residence ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

Exhibit A

9. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall be required and may be located in any configuration on the same lot as the ADU.

60.200 Definitions.

Accessory Dwelling Unit (ADU). An ADU is defined in section 35.325 of this Zoning Ordinance.

Second Residential Unit. As used in this Zoning Ordinance, Second Residential Unit means an Accessory Dwelling Unit.

Attachment 4

35.320 Second Residential Accessory Dwelling Units

1. Purpose. This section is intended to implement the General Plan policies which encourages Accessory Dwelling second residential uUnits (ADUs) on owner-occupied, single family residential parcels, and is also intended to address the State's second residential unitADU provisions as set forth in Government Code Section 65852.1 et seq. Second residential unitsADUs are commonly referred to as second units, mother-in-law-units, grannyflats and accessory-apartments, and contribute needed housing to the City's housing stock. An efficiency unit and manufactured home as respectively defined in Sections 17958.1 and 18007 of the Health and Safety Code are also considered second residential units under State law.

2. Administrative Use Permit Required. Except as set forth in this section 35.320, aAll second residential units ADUs are required subject to secure use permit and design review approval. Second residential units are allowed by administrative use permit requirements as set forth in Chapter 50 of the Zoning Ordinance. The Planning Director shall issue an administrative use permit to ADUs in compliance with this section 35.320. No public hearing or any additional permit shall be required of applicants seeking an administrative use permit for an ADU under this section. approval in single family residential zoning districts and in other districts where there is one conforming use single family residence on the parcel.

43. Definitions.

A. Accessory Dwelling Unit (ADU). An ADU A second residential unit shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation. An ADU The second residential unit Unless an ADU is located within existing residential space or accessory structure, it shall have include independent heating and cooling controls; its own kitchen with sink and standard built in or freestanding appliances, its own bathroom with bath or shower, and a separate exterior entrance. An efficiency unit as defined in Health and Safety Code section 17958.1 and a manufactured home as defined in Health and Safety Code section 18007 are considered ADUs

B. Living Area. Living area includes the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory structure.

42. Lot Requirements. ADUs are allowed in single family residential zoning districts where there is exactly one single family residence on the parcel, and in other districts where there is exactly one conforming single family residence on the parcel. A maximum of one ADU second residential unit may is be allowed on a lot. No Administrative Use Permit will be issued for an ADU unless and until the City receives the following:

A. Proof of owner occupancy of either the single family residence or of the ADU;

B. A copy of a recorded deed restriction that complies with Government Code section 27281.5 and states that (i) owner occupancy of the single family residence or ADU is required by this Chapter, and (ii) the ADU will not be sold separately from the single family residence; and

Attachment 4

C. Any fees for Multi-Family units required by the City's Master Fee Schedule (excluding ADUs within existing living spaces) as it exists at the time the ADU application is filed. All fees are subject to the requirements of Government Code 65852.2 and the Mitigation Fee Act. ~~not consider the ADU to be a new residential use when calculating utility and sewer connection fees and capacity charges, and any such connection fee or capacity charge will be proportionate to the impact of the ADU.~~ containing one larger single family, owner occupied dwelling. No second residential units are allowed on lots having more than one residential unit, or on lots where the existing residential unit is a nonconforming use. The second residential unit is not intended for sale and may be rented.

~~3. No more than one dwelling unit on a single family residential with a second residential dwelling unit parcel may be rented or leased at one time.~~

54. Development Standards.

A. ADUs within existing space. An ADU within an existing residential space, including the primary structure, attached or detached garage, or other accessory structure existing on January 1, 2017 shall not require an administrative use permit pursuant to this section, and shall instead only be subject to building permit requirements, only if the following requirements are met:

(i) The ADU meets all applicable building and safety codes.

(ii) The ADU has independent exterior access from the existing residence.

(iii) The ADU has sufficient side and rear setbacks for fire safety.

An ADU created under this section 5.A may, but is not required to, create new or separate utility or sewer connections.

B. Attached ADUs. ADUs attached to an existing dwelling shall ~~The total floor space for a second residential unit shall contain adequate area to provide the required facilities listed in subsection 1, but not exceed the lesser of fifty percent (530%) of the existing living area, or with a maximum increase in floor area of 1200 square feet. Attached ADUs shall meet all applicable building code requirements. For ADUs constructed above an existing garage, the City shall not impose any setback requirements from the side and rear lot lines that exceed five (5) feet. An ADU created under this section 5.B may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer, and if detached shall not exceed 800 square feet. Living area is defined as the interior habitable area of a dwelling unit including habitable basements and attics, but does not include a garage or any accessory structure.~~

C. Detached ADUs. ADUs not attached to an existing dwelling shall meet all applicable building code requirements, shall not exceed the lesser of 50% of the existing living area or 1200 square feet, and

~~5. The second residential unit may either be within the living area of the existing dwelling, attached to the existing dwelling, or detached from the existing dwelling.~~

Attachment 4

~~6. A second residential unit shall conform to the applicable standards and requirements of the zoning district in which it is to be located, including height and setback requirements. An ADU created under this section 5.C may, but is not required to, create new or separate utility connections. Separate sewer connections may be required at the discretion of the City Engineer. Requirements for building height, setbacks, yards and similar design standards that apply to the single family dwelling unit shall apply to the second residential unit.~~

65. Design Standards. To the extent feasible, an ADU must conform to the design characteristics of the existing single family residence, including but not limited to architectural and landscaping features, building materials, and paint color.

675. Fire Sprinklers. ADUs shall comply with all applicable fire safety provisions of state law, as well as locally adopted building and fire codes. If the existing residence contains fire sprinklers or would be required to contain fire sprinklers if constructed at the time of the ADU application, then sprinkler installation is also required for the ADU.

786. Parking. A minimum of one off-street parking space shall be provided for each ADU~~second residential unit~~ in addition to the offstreet parking spaces required for the existing residence(s) ~~on the site~~. ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half (1/2) mile of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection 5.A above; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within one block of a car-sharing pickup/drop-off location.

98. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, replacement parking shall be required and may be located in any configuration on the same lot as the ADU.

60.200 Definitions.

Accessory Dwelling Unit (ADU). An ADU is defined in section 35.325 of this Zoning Ordinance.

Second Residential Unit. An dwelling unit in addition to an existing residential unit, that provides complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating, cooking, and sanitation; and does not exceed 30% of the existing living area or 800 square feet whichever is less. As used in this Zoning Ordinance, Second Residential Unit means an Accessory Dwelling Unit.



Legislation Details (With Text)

File #: 18-49 **Version:** 1 **Name:**

Type: Consent **Status:** Agenda Ready

File created: 3/6/2018 **In control:** City Council

On agenda: 3/13/2018 **Final action:**

Title: Minutes
Recommendation: Approve the Minutes for the Council Meeting of February 27, 2018

Sponsors:

Indexes:

Code sections:

Attachments: [Minutes](#)
[Attachment 1 - Revised Staff Report February 27, 2018 - Mid Year Budget Review](#)

Date	Ver.	Action By	Action	Result
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Minutes

Recommendation: Approve the Minutes for the Council Meeting of February 27, 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, February 27, 2018

Council Chambers

Closed Session - None.
Regular Session - 7:00 p.m.

I. CLOSED SESSION – NONE.

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS - NONE

III. CONVENE INTO CLOSED SESSION - NONE

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

Mayor Kelley called the meeting to order at 7:03 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

None.

VI. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Kelley.

VII. MOMENT OF SILENCE

Mayor Kelley called for a moment of silence for the City of Dublin's Vice Mayor, Don Biddle, who passed on February 21, 2018 following a battle with a brief illness, the City announced last Thursday. Mr. Biddle was 80 years old.

In addition, Mayor Kelley called this moment of silence for the seventeen (17) people killed and fourteen (14) injured at a mass shooting which occurred at Marjory Stoneman Douglas High School in Parkland, Florida

making it one of the world's deadliest massacres.

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. [18-05](#) Hercules Library Manager Lynne Noone to Present the Annual Library Report

Hercules Library Manager Lynne Noone presented the annual library report.
2. [18-30](#) Francis Smith with Contra Costa Advisory Council on Aging to Provide an Update Related to the Creation of a Policy Platform for the Growing Aging Demographic

Francis Smith presented the Council on Aging policy recommendations.

IX. AGENDA ADDITIONS/DELETIONS

City Manager Biggs identified the supplemental information provided prior to the meeting.

X. PUBLIC COMMUNICATIONS

None.

XI. PUBLIC HEARINGS - NONE

XII. CONSENT CALENDAR

MOTION: A motion was made by Council Member Boulanger, seconded by Council Member Esquivias, to adopt the Consent Calendar. 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. [18-35](#) **Approve the February 13, 2018 Regular City Council Minutes**
Recommendation: Adopt minutes.

Approved.

XIII. DISCUSSION AND/OR ACTION ITEMS

1. [18-37](#) **Citywide Full Cost Allocation Plan and OMB Compliant Cost Plan**
Recommendation: Receive report, discuss, provide direction, if any on the citywide full cost allocation plan and OMB compliant cost plan.

City Manager Biggs introduced the item and introduced Courtney Ramos from Matrix Consulting. Ms. Ramos presented the citywide cost allocation plan. City Council discussed, asked questions and provided comments to the citywide cost allocation plan.

The Citywide Cost Allocation Plan and OMB Compliant Cost Plan was received and filed.

2. [18-36](#)

Continued Citywide Comprehensive Update to the Circulation Element of the City's General Plan

Recommendation: Staff recommends that the City Council:

- a. Request that staff make a follow up presentation of the updated Circulation Element;
- b. Discuss suggested updates
- c. Adopt a Resolution Approving the Circulation Element, as modified, with attachments.

City Manager Biggs introduced the item and provided a brief overview of the item. Planning Director Smyth gave a staff report. Planning Director Smyth identified that an amended Resolution was provided prior to the meeting and in addition as a supplemental item a comment letter from Ledcor was distributed prior to the meeting.

City Council reviewed in detail Attachment 1 - ExhD and Attachment 2 included with the staff report for the Circulation Element item. Mayor Kelley polled the City Council to gain a consensus on the final direction given to staff to incorporate amendments into the final documents related to the Citywide Comprehensive Update to the Circulation Element of the City's General Plan.

MOTION: A motion was made by Council Member de Vera, seconded by Council Member Esquivias, to adopt Resolution 18-009 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

3. [18-31](#)

Award of a Contract to AIMS Companies for the Gravity Sewer Cleaning and Inspection Project

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with AIMS Companies in the amount of \$631,000 for the Gravity Sewer Cleaning and Inspection Project, and authorizing an additional expenditure of up to \$63,100 for a 10% contingency on said construction contract.

Public Works Director Roberts introduced the item and gave a staff report.

MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member Boulanger, to adopt Resolution 18-010. 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. [18-39](#)**Award of the Installation Contract and Funding Appropriation for the Pilot Streetlight Replacement Project**

Recommendation: 1) Authorizing the City Manager to execute a contract with WBE in the amount of \$158,706 and up to a 5% contingency of \$7,935 for a not to exceed total contract amount of \$166,641 to install streetlights for the pilot replacement project; and 2) Appropriating \$166,641 in Landscaping & Lighting District (LLAD) No. 83-2 funding to fully fund said contract.

City Manager Biggs introduced the item. Public Works Director Roberts gave a staff report and recommended that City Council reject all bids. City Manager Biggs stated that this will be advertised by using a formal bid process and staff will bring this item back to City Council in April 2018.

MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member Esquivias, to reject all bids for the Pilot Streetlight Replacement Project. 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

5. [18-32](#)**FY 2017-18 Mid-Year Budget Review and Adopt a Resolution Approving Various Mid-Year Budget Appropriations and Adjustments**

Recommendation: Receive report and adopt a Resolution Approving various mid-year budget appropriations and adjustments.

City Manager Biggs introduced the item. Finance Director To gave a staff report and presented the FY 16-17 budget to actual numbers and the FY 17-18 mid-year budget adjustments and projections.

Finance Director To provided a revised staff report and mid-year budget report noting an error that was found on Chart 3 - FY 17-18 General Fund Revenue and Expenditure, and corrected. The error was due to inadvertently inserting a number from an incorrect column. The correction was made to the sentence at the very top of Chart 3. The corrected sentence reflects that as of February 17, 2018, the General Fund has received revenue of \$7.4 million and expended approximately \$7.6 million. The report provided in the agenda packet reflected a General Fund expenditure of \$9.0 million in error and should have reflected \$7.6 million.

For ease of reference the corrected staff report and mid-year budget report provided at the meeting will be attached to the Hercules City Council Regular Meeting Minutes of February 27, 2018.

It was also noted that the Resolution title reflects that it was approving the FY 16-17 budget appropriations and adjustments and should reflect that the Resolution is approving the FY 17-18 budget appropriations and

adjustments.

MOTION: A motion was made by Council Member Esquivias, seconded by Council Member de Vera, to adopt Resolution 18-011 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

6. [18-06](#)

Legislative Policies and Processes

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

This item was tabled to next meeting.

7. [18-34](#)

Discuss Amendments to Hercules Municipal Code Title 5, Chapter 6, Smoking Ordinance

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

This item was tabled to the next meeting.

XIV. PUBLIC COMMUNICATIONS

None.

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

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

XVI. ADJOURNMENT

Mayor Kelley adjourned the meeting at 11:02 p.m.

Chris Kelley, Mayor

Attest:

Lori Martin, MMC
Administrative Services Director/City Clerk



STAFF REPORT TO THE CITY COUNCIL

DATE: Meeting of February 27, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Annie To, Finance Director

SUBJECT: FY 2017-18 Mid-Year Budget Review and Adopt a Resolution Approving Various
Mid-Year Budget Appropriations and Adjustments

RECOMMENDED ACTION:

Receive a report on the FY 2017-18 mid-year budget review and adopt a resolution approving various mid-year budget appropriations and adjustments.

FINANCE COMMISSION AND RECOMMENDATION:

The mid-year review was presented to the Finance Commission on February 26, 2017. Any Commission comments will be provided to the City Council at the meeting.

FISCAL IMPACT OF RECOMMENDATION:

The Discussion section below gives a synopsis of the General Fund and Wastewater Fund. There will be increases and decreases to a variety of revenue and expenditure accounts (budget appropriations).

DISCUSSION:

Prior Year Results

With the completion of the audit for FY 2016-17, prior fiscal year end results are being provided for the same two funds being covered in the Mid-Year review and are shown in Chart 1 General Fund and Chart 2 Wastewater Fund, in order to provide the City Council with a point of reference for the overall status of these funds.

Chart 2 – FY16-17 Wastewater Fund Revenue and Expenditure

CITY OF HERCULES - FY16-17 ACTUAL REV AND EXP REPORT							
WASTEWATER FUND							
				2017			
Type	Activity Basic Account Description	Activity Sub Account Description		Sum of Budget Plan	Sum of YTD Encumbrance	Sum of YTD Actuals	Remaining Balance
REV	USE OF MONEY & PROPERTY	INTEREST INCOME		21,000		47,424	(26,424)
	CHARGES FOR SERVICES	SEWER SERVICES		5,392,899		5,797,764	(404,865)
	MISCELLANEOUS REVENUE	MISCELLANEOUS REVENUE		8,000,000		9,251,800	(1,251,800)
		MISC REIMBURSEMENTS		0		(9,251,800)	9,251,800
	TRANSFERS IN	TRANSFERS IN		19,160,000		0	19,160,000
REV Total				32,573,899		5,845,188	26,728,711
EXP	SALARIES AND BENEFITS	SALARIES AND WAGES		318,480	0	331,673	(13,193)
		SALARIES AND BENEFITS		140,128	0	91,461	48,667
	SERVICES	PROFESSIONAL SERVICES		2,180,000	21,639	137,857	2,020,504
		REPAIR & MAINT		61,500	0	42,360	19,140
		UTILITY SERVICES		73,100	60	77,743	(4,703)
		ADMINISTRATIVE SERVICES		16	0	8	9
		MISCELLANEOUS SERVICES		1,778,000	209,904	985,785	582,311
	OFFICE EXPENSES	MAINTENANCE SUPPLIES		0	0	4,284	(4,284)
		OPERATING SUPPLIES		1,500	0	1,893	(393)
	OTHER EXPENSES	OTHER MISCELLANEOUS EXP		0	0	(9,829,532)	9,829,532
		CHARGEBACK		7,000	0	1,007	5,993
	CAPITAL OUTLAY	IMPROVEMENTS		13,485,000	704,424	10,635,684	2,144,892
		DEPRECIATION		0	0	355,940	(355,940)
	DEBT SERVICE	DEBT SERVICE		598,990	0	487,246	111,744
	INTERFUND/ALLOC/TRANSFERS	INTERFUND CHARGES		126,050	0	126,050	0
		ALLOCATED COSTS		45,949	0	45,949	0
	TRANSFERS OUT	TRANSFERS OUT TO		245,000	0	245,000	0
EXP Total				19,060,713	936,028	3,740,407	14,384,278
EXCESS (DEFICIENCY) REVENUE OVER EXPENDITURE				13,513,186		2,104,781	

GENERAL FUND

As of February 17, 2018, the General Fund has received revenue of \$7.4 million and expended approximately \$7.6 million.

Chart 3 – FY17-18 General Fund Revenue and Expenditure

CITY OF HERCULES - FY17-18 REV AND EXP REPORT 02-17-18 (62%)
FUND 100 - GENERAL FUND

Type	Activity Basic Account Description	Activity Sub Account Description	Budget Plan	YTD Encumbrance	YTD Actuals	Remaining Balance	YE Projection	Note
REV	TAXES	TRANSIENT OCCUPANCY TAX	9,000		4,757	4,243	8,202	
		SECURED PROP TAX	1,189,548		739,225	450,323	1,189,548	
		UNSECURED PROP TAX	50,000		31,604	18,396	57,463	
		PRIOR YR SECURED/UNSECURD	(7,356)		(3,184)	(4,172)	(5,789)	
		SUPPLMNTL-SECURD PROP TX	30,000		4,587	25,413	8,341	
		PROPERTY TAX ADMIN COSTS	(9,825)		0	(9,825)	0	
		GARBAGE LIENS/ASSMTS	125,000		57,834	67,166	105,153	
		SALES AND USE TAX	2,062,711		820,753	1,241,958	1,992,000	
		SALES TAX-PROP 172/SB 509	159,929		58,474	101,455	141,800	
		MEASURE O	1,001,061		471,437	529,624	1,079,000	
		DOCU TRANSFER TAX	118,208		60,229	57,979	103,844	
		BUSINESS LICENSE FEES	187,377		62,082	125,295	107,038	
		CASP FEE	0		768	(768)	1,323	
		GAS	32,257		977	31,280	1,685	
		ELECTRIC	63,590		2,997	60,593	5,167	
		CABLE	368,022		110,042	257,980	262,005	1
		1% PEG	44,977		22,009	22,969	37,946	
		GARBAGE	279,268		178,150	101,118	307,155	
		GAS UUT	341,416		121,816	219,600	347,715	
		ELECTRICITY UUT	1,217,746		674,938	542,808	1,230,556	
		TELEPHONE UUT	953,400		455,221	498,179	882,566	
		WATER UUT	542,725		326,920	215,805	563,654	
		CABLE UUT	482,910		292,916	189,994	551,810	
	INTERGOVERNMENTAL	STATE/COUNTY	1,791,105		1,068,340	722,765	1,852,262	
	LICENSES & PERMITS	BUILDING FEES	410,200		266,138	144,062	458,858	
		ENGINEERING FEES	12,269		180	12,089	310	
	FINES & FORFEITURES	VEHICLE CODE FINES	20,000		23,541	(3,541)	40,587	
	USE OF MONEY & PROPERTY	INTEREST INCOME	181,500		50,946	130,554	87,839	
		CELL TOWER	106,500		46,953	59,547	80,954	
		LEASE PAYMENT	37,500		17,790	19,710	30,672	
	CHARGES FOR SERVICES	POLICE SERVICES	420,887		229,519	191,368	479,860	
		PLANNING SERVS	19,166		31,049	(11,883)	53,533	
		RECREATION SERVICES	1,497,500		923,567	573,933	1,592,357	
	MISCELLANEOUS REVENUE	MISCELLANEOUS REVENUE	172,349		104,960	67,389	180,966	
		MISC REIMBURSEMENTS	331,698		166,025	165,673	286,250	
	TRANSFERS IN	TRANSFERS IN	110,000		0	110,000	100,000	
REV Sum			14,352,638		7,423,558	6,929,080	14,222,628	
EXP	SALARIES AND BENEFITS	SALARIES AND WAGES	5,890,355	0	3,488,656	2,401,699	5,508,900	2
		SALARIES AND BENEFITS	2,694,806	0	1,450,851	1,243,955	2,340,082	3
	SERVICES	SEMI-PROFESSIONAL SERVICE	10,500	0	2,790	7,710	4,500	
		PROFESSIONAL SERVICES	2,053,152	37,171	384,227	1,631,754	1,602,522	4
		REPAIR & MAINT	229,491	39,556	134,730	55,205	181,470	
		UTILITY SERVICES	277,022	0	63,547	213,475	102,494	5
		ADMINISTRATIVE SERVICES	136,672	1,771	64,465	70,436	90,211	
		RENTS	1,011,820	0	226,481	785,339	1,008,207	
		INSURANCE SERVICES	624,148	5,435	554,585	64,128	641,133	
		MISCELLANEOUS SERVICES	763,850	7,619	186,230	570,001	757,378	
	OFFICE EXPENSES	MAINTENANCE SUPPLIES	107,880	11,294	59,120	37,467	106,648	
		OPERATING SUPPLIES	136,805	1,242	65,254	70,308	106,491	
		OFFICE	41,814	1,354	15,453	25,007	26,278	
	OTHER EXPENSES	OTHER MISCELLANEOUS EXP	257,352	0	128,906	128,446	207,912	
		CHARGEBACK	(5,227)	0	(18,212)	12,985	(29,374)	
	CAPITAL OUTLAY	IMPROVEMENTS	150,000	0	249,821	(99,821)	250,000	6
		FIXED ASSETS	559,000	14,242	37,291	507,467	559,000	
	INTERFUND/ALLOC/TRANSFERS	ALLOCATED COSTS	898,382	0	453,764	444,618	900,382	
	TRANSFERS OUT	TRANSFERS OUT TO	847,366	0	50,000	797,366	847,366	
EXP Sum			16,685,188	119,685	7,597,957	8,967,546	15,211,601	
LESS ONE TIME EXP AND COUNCIL APPROVED ITEMS FROM BUDGET BALANCING SPREADSHEET							(2,808,422)	
EXCESS (DEFICIENCY) REVENUE OVER EXPENDITURE							1,819,449	

WASTEWATER FUND

As of February 17, 2018, the Wastewater fund has received approximately \$3.9 million and expended \$3.2 million.

Chart 4 – Wastewater Revenue and Expenditures

CITY OF HERCULES - FY17-18 REV AND EXP REPORT 02-17-18 (62%)

FUND 420 - WASTEWATER FUND

Type	Department Description	Activity Basic Account Description	Activity Sub Account Description	Budget Plan	YTD Encumbrance	YTD Actuals	Remaining Balance	YE Projection	
REV		USE OF MONEY & PROPERTY	INTEREST INCOME	24,895		28,323	(3,428)	51,496	
		CHARGES FOR SERVICES	SEWER SERVICES	5,790,870		3,850,374	1,940,496	7,000,681	1
		MISCELLANEOUS REVENUE	MISCELLANEOUS REVENUE	0		3,364,515	(3,364,515)	6,117,300	2
			MISC REIMBURSEMENTS	0		(3,329,091)	3,329,091	(6,052,892)	3
		TRANSFERS IN	TRANSFERS IN	16,000,000		0	16,000,000	0	
REV Sum				21,815,765		3,914,121	17,901,644	7,116,584	
EXP	ASSET CAPITALIZATION	OTHER EXPENSES	OTHER MISCELLANEOUS EXP	0	0	(2,844,877)	2,844,877	(7,503,804)	4
	CAPITAL PROJECTS	OTHER EXPENSES	OTHER MISCELLANEOUS EXP	0	0	3,500	(3,500)	5,645	
		CAPITAL OUTLAY	IMPROVEMENTS	9,600,000	0	4,652,359	4,947,641	7,503,804	5
	OTHER	DEBT SERVICE	DEBT SERVICE	734,950	0	240,675	494,275	476,966	
	PUBLIC WORKS	SALARIES AND BENEFITS	SALARIES AND WAGES	331,020	0	236,259	94,761	381,063	
			SALARIES AND BENEFITS	145,854	0	104,077	41,777	167,866	
		SERVICES	PROFESSIONAL SERVICES	2,242,000	161,358	99,200	1,981,441	321,359	6
			REPAIR & MAINT	55,000	0	46,983	8,017	75,778	
			UTILITY SERVICES	74,000	5,000	43,275	25,725	74,798	
			ADMINISTRATIVE SERVICES	5,500	0	0	5,500	0	
			MISCELLANEOUS SERVICES	4,862	1,567,423	292,890	(1,855,451)	1,862,000	7
		OFFICE EXPENSES	MAINTENANCE SUPPLIES	4,000	0	1,188	2,812	1,916	
			OPERATING SUPPLIES	1,500	0	923	577	1,488	
		OTHER EXPENSES	CHARGEBACK	7,000	0	0	7,000	0	
		CAPITAL OUTLAY	IMPROVEMENTS	40,000	5,000	0	35,000	5,000	
			DEPRECIATION	31,292	0	256,269	(224,977)	413,336	8
		INTERFUND/ALLOC/ TRANSFERS	INTERFUND CHARGES	129,831	0	64,916	64,916	104,702	
			ALLOCATED COSTS	47,326	0	23,663	23,663	38,166	
EXP Sum				13,454,135	1,738,781	3,221,298	8,494,056	3,930,086	
EXCESS (DEFICIENCY) REVENUE OVER EXPENDITURE								3,186,498	

BUDGET APPROPRIATIONS

Staff is recommending that the Council adopt the following FY17-18 budget appropriations:

Request for FY17-18 Midyear Budget Appropriations

#	Type	Fund	Fund Desc	Amount	Description
1	Expenditure	100	General Fund	\$ 115,000	1% PEG Fee - BugID
2	Expenditure	100	General Fund	\$ 100,000	Street Maintenance Program from FY16-17
	TOTAL		General Fund	\$ 215,000	
3	Revenue	226	CFD	\$ (44,000)	Increase in Revenue
4	Expenditure	226	CFD	\$ 12,852	New Expenditure Budget for CFD
	TOTAL		CFD	\$ (31,148)	
5	Expenditure	262	State Gas Tax	\$ 150,000	Additional Appropriation from Fund Balance for Prof Services
6	Expenditure	262	State Gas Tax	\$ 10,000	Additional Appropriation for a Regular Part-Time Employee
	TOTAL		State Gas Tax	\$ 160,000	
7	Expenditure	262	Measure J	\$ 10,000	Additional Appropriation for a Regular Part-Time Employee
	TOTAL		State Gas Tax	\$ 10,000	
8	Revenue	295	Grant	\$ (8,600,000)	Transfer In from Capital Project
9	Expenditure	331	Capital Project	\$ 8,600,000	Transfer Out to Grant Fund
	TOTAL		Grant	\$ -	
10	Expenditure	420	Sewer Fund	\$ 1,860,138	Correct typo. The budgeted should be \$1,862,000 not \$1,862.
11	Expenditure	420	Sewer Fund	\$ 482,083	Increase Depreciation Amount for Fixed Asset
12	Expenditure	420	Sewer Fund	\$ 5,000	Additional Appropriation for Regular Part-Time
	TOTAL		Sewer Fund	\$ 2,347,221	
13	Revenue	470	Facility Maintenance	\$ (200,000)	Revenues from BART Parking Lot
14	Expenditure	470	Facility Maintenance	\$ 5,690	Additional Appropriation for a Regular Part-Time Employee
15	Expenditure	470	Facility Maintenance	\$ 7,500	Onsite Maintenance
16	Expenditure	470	Facility Maintenance	\$ 15,000	Landscaping and stormwater
17	Expenditure	470	Facility Maintenance	\$ 15,000	Street Light Maintenance
18	Expenditure	470	Facility Maintenance	\$ 3,600	Water - EBMUD
19	Expenditure	470	Facility Maintenance	\$ 18,000	Electricity - PG&E
20	Expenditure	470	Facility Maintenance	\$ -	Capital Upgrade & Infrastructure Allowance
21	Expenditure	470	Facility Maintenance	\$ 3,600	Equipment -Annual Porta Pottie Maint
22	Expenditure	470	Facility Maintenance	\$ 2,500	Equipment -Annual Bike Locker Maint
23	Expenditure	470	Facility Maintenance	\$ 3,600	Internal Service Fund - Admin
24	Expenditure	470	Facility Maintenance	\$ 2,400	Internal Service Fund - IT
25	Expenditure	470	Facility Maintenance	\$ 4,800	Internal Service Fund - Facilities
26	Expenditure	470	Facility Maintenance	\$ 4,800	Internal Service Fund - Vehicle Replacement
27	Expenditure	470	Facility Maintenance	\$ -	Police Services
28	Expenditure	470	Facility Maintenance	\$ 29,000	WestCat for Permits
29	Expenditure	470	Facility Maintenance	\$ 53,000	Capital Improvements for Parking Kiosk, Landscape, LED...
30	Expenditure	470	Facility Maintenance	\$ 37,000	Appropriation from Fund Balance for Prof Services
31	Expenditure	470	Facility Maintenance	\$ 35,000	Appropriation from Fund Balance for Repair & Maint
32	Expenditure	470	Facility Maintenance	\$ 25,000	Appropriation from Fund Balance for HVAC
33	Expenditure	470	Facility Maintenance	\$ 42,000	Appropriation from Fund Balance for Bldgs&Structures
34	Expenditure	470	Facility Maintenance	\$ 2,000	Appropriation from Fund Balance for Other
35	Expenditure	470	Facility Maintenance	\$ 25,000	Appropriation from Fund Balance for Fire
36	Expenditure	470	Facility Maintenance	\$ 650	Appropriation from Fund Balance for Cell Phone/Pager
37	Expenditure	470	Facility Maintenance	\$ 45,000	Appropriation from Fund Balance for Water
38	Expenditure	470	Facility Maintenance	\$ 50,000	Appropriation from Fund Balance for Contract Janitorial
39	Expenditure	470	Facility Maintenance	\$ 8,000	Appropriation from Fund Balance for Vehicle Repair
40	Expenditure	470	Facility Maintenance	\$ (22,500)	Correction of a typo. Should be \$2,500 not \$25,000
	TOTAL		Facility Maintenance	\$ 215,640	

Description: FY 2017-18 mid-year budget review and forecast and appropriation requests

Funding Source: Various funding sources

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"/>		



Legislation Details (With Text)

File #:	18-58	Version:	1	Name:	
Type:	Discussion/Action Item	Status:		Agenda Ready	
File created:	3/7/2018	In control:		City Council	
On agenda:	3/13/2018	Final action:			
Title:	Contract Amendment: Transportation Impact Fee Nexus Study and Circulation Element Update Recommendation: Adopt a Resolution authorizing the City Manager to execute Contract Amendment No. 2 to Contract No. 16-056 with DKS in the amount of \$37,795 for a total contract amount not to exceed \$235,014 for purposes of updating the Transportation Impact Fee Nexus Study and the Circulation Element.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:	Staff Report Attachment 1 - Resolution Attachment 2 - Contract Amendment Attachment 3 - Scope of Work for Circulation Element				

Date	Ver.	Action By	Action	Result
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Contract Amendment: Transportation Impact Fee Nexus Study and Circulation Element Update

Recommendation: Adopt a Resolution authorizing the City Manager to execute Contract Amendment No. 2 to Contract No. 16-056 with DKS in the amount of \$37,795 for a total contract amount not to exceed \$235,014 for purposes of updating the Transportation Impact Fee Nexus Study and the Circulation Element.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 13, 2018

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, AICP, Planning Director

SUBJECT: Contract Amendment No. 2 with DKS for \$37,795 with a total not to exceed contract amount of \$235,014 for the Transportation Impact Fee Nexus Study and the Circulation Element Update Using General Plan Update Fees

RECOMMENDATION: Adopt a resolution authorizing the City Manager to execute Contract Amendment No. 2 to Contract # 16-056 with DKS for \$37,795 with a total not to exceed contract amount of \$235,014 to update the Transportation Impact Fee Study and the City's Circulation Element

FISCAL IMPACT OF RECOMMENDATION:

During the adoption of the 2017-18 Fiscal Year Budget, Decision Package #18-13 was approved and thereby appropriated \$37,795 for the Transportation Impact Fee Nexus Study following the Circulation Element update. This approval amends the existing contract and does not need any additional appropriations.

DISCUSSION:

On October 25, 2016 the City Council approved Resolution #16-101 awarding DKS a \$174,929 professional service contract towards updating the City's Circulation Element of the General Plan. On August 8, 2017, the Council adopted Resolution #17-065 for additional intersection studies and community outreach for an additional \$22,290.

Council previously appropriated funds for the Traffic Impact Fee Nexus Study with the adoption of the FY 2017-18 budget. The attached Amendment No. 2 would add the appropriated \$37,795 to the existing contract for service for a total cost not to exceed \$235,014. References to the Nexus Fee Study are contained on pages 16, 17, and 20 of the original scope of work, see Attachment 3.

The original scope of work anticipated it would take seven months to carry out this task including anticipated adoption timelines once the Circulation Element Update was complete. Due to the extended time it took to complete the Circulation Element, we anticipate that the work could be completed by mid-October 2018 rather than the August 2017 stated in the original scope of work.

ATTACHMENTS:

1. Resolution
2. Contract Amendment No. 2
3. Existing Contract Scope of Work including “Optional” elements

Financial Impact

Description: Approve Amendment No. 2 Professional Services Agreement for Circulation Element Update with DKS in the amount not to exceed \$37,795 (which was previously appropriated with Decision Package 18-13 in the FY 17/18 budget) for total contract amount of \$235,014 from the General Plan Update Fee Revenue Account.

Funding Source: General Plan Update Fee Revenue Account 100-5238-331-17-00
Expenditure Account 100-5235-611-50-00

Budget Recap:

Total Estimated cost:	\$ 235,014	New Revenue:	\$
Amount Budgeted:	\$ 235,014	Lost Revenue:	\$
New funding required:	No	New Personnel:	\$
Council Policy Change:	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		

RESOLUTION NO. 18-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES AMENDING A PROFESSIONAL SERVICES AGREEMENT WITH DKS TO INCREASE THE CONTRACT AMOUNT BY AN ADDITIONAL \$37,795 FOR THE PREPARATION OF A TRANSPORTATION IMPACT FEE NEXUS STUDY FOR A TOTAL AMOUNT NOT TO EXCEED \$235,014 USING THE GENERAL PLAN UPDATE FEE REVENUE ACCOUNT TO THE COMMUNITY DEVELOPMENT ENGINEERING/INSPECTION/PLANNING SERVICES EXPENSE CATEGORY

WHEREAS, on October 25, 2016 the Council approved Resolution #16-101 awarding DKS a \$174,929 professional service contract towards updating the City's Circulation Element of the General Plan; and

WHEREAS, on August 8, 2017, the Council adopted Amendment No. 1 through Resolution #17-065 for additional \$22,290 work on the General Plan Update of the Circulation Element; and

WHEREAS, the original contract included an optional work task to update the City's Transportation Impact Fee Nexus Study for \$37,795 only if authorized by the City; and

WHEREAS, the City Council appropriated \$37,795 for an update to the City's Transportation Impact Fee Nexus Study when it adopted Decision Package 18-13 with the adoption of the 2017/18 Fiscal Year budget using General Plan Update fees but had not yet modified the executed contract with DKS for this work; and

WHEREAS, the attached Amendment No. 2 amends the current contract with DKS to carry out the update to the City's Transportation Impact Fee Nexus Study.

NOW THEREFORE BE IT RESOLVED the City Council of the City of Hercules does hereby authorize the City Manager to execute contract Amendment No. 2 with DKS to conduct the update to the City's Transportation Impact Fee Nexus Study for an additional \$37,795 consistent with adopted budget and paid from the General Plan Update Fee Revenue Account. The total contract costs for the Circulation Element update and the update to the City's Transportation Impact Fee Nexus Study shall not exceed \$235,014.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 13th day of March, 2018 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chris Kelley, Mayor

ATTEST:

Lori Martin
Administrative Services Director/City Clerk

Exhibit
Amendment No. 2 to Agreement No 16-056 with DKS

AMENDMENT NO. 2

1. Parties. The parties to this Contract Amendment are the City of Hercules, a public body corporate and the following named Contractor:

**DKS
1970 Broadway, Suite 740
Oakland, CA 94612**

The parties to this Contract Amendment do mutually agree and promise as follows:

2. Purpose. This Amendment No. 2 is being entered into to amend an existing contract between the City and Contractor which was approved by the City Council of the City of Hercules on March 13, 2018 by Resolution No. 18-. Said contract shall hereinafter be referred to as the "Original Contract" and is incorporated herein by reference.

3. Original Contract Provisions. The parties hereto agree to continue to abide by those terms and conditions of the Original Contract, and any amendments thereto, which are unaffected by this Contract Amendment Agreement.

4. Amendment. This Amendment No. 2 is intended to amend the Original Contract and previously approved amendments (collectively, the "Amended Contract") thereto to provide in an amount not to exceed \$37,795. total contract amount \$ 235,014.

5. Amendment Approval: This Amendment No. 2 is hereby approved by the City Council of the City of Hercules on this 13th day of March, 2018 by Resolution No. 18-.

6. Signatures. These signatures attest the parties' agreement hereto:

City of Hercules

By _____

David Biggs

Title: City Manager

Date: _____

Form approved:

By _____

Patrick Tang, City Attorney

Contractor: DKS Associates

By Terry Klim

Terry Klim

Title: Principal

Date: 3/7/18

REVISED PROPOSAL FOR

**GENERAL PLAN CIRCULATION ELEMENT UPDATE
WITH RELATED TECHNICAL MODELING, MAPS AND
GRAPHICS INCLUDING AN OPTIONAL TASK TO UPDATE
THE CITY'S EXISTING TRANSPORTATION IMPACT FEE**

**PREPARED FOR
CITY OF HERCULES**

Prepared by



1970 Broadway, Suite 740
Oakland, California 94612-2219
(510) 763-2061 Phone
(510) 268-1739 Fax
Contact Person: William R. Loudon
wrl@dksassociates.com
(510) 267-6623

**In Association With:
MIG**

October 19, 2016

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1. PROJECT UNDERSTANDING AND APPROACH

PROJECT PURPOSE

Creating a Multimodal City that Connects Users of all Modes

With the introduction of “Complete Streets” and SB743 legislation there is a growing movement to shift the focus of transportation networks and planning away from being automobile-centered and towards being multimodal. At the same time, the millennial population which represents a growing proportion of the commuting and recreational population has embraced walking and bicycling (the “active transportation” modes) as well as using public transportation. There is also increasing concern about the effects of transportation on public health and climate change, and the opportunity for walking and bicycling to mitigate those effects.

The Intermodal Transit Center represents a planned intermodal hub for Hercules’s transportation system that can connect users of all modes and provides a central location that allows for smooth connectivity between modes. There is a growing need in Hercules for a truly multimodal Circulation Element that will improve mobility for all modes in a balanced “Complete Streets” way. The goal should be to increase a multimodal transportation network in a way that achieves greater economic prosperity and increases the desirability of the Waterfront District and the three districts making up Central Hercules as places to live, work, shop and socialize. This commitment is already reflected in the creation of development code for the “Plan for Central Hercules” in 2000 to guide the creation of pedestrian-oriented districts.

The Contra Costa Countywide Bicycle and Pedestrian Plan identifies the Bay Trail and the San Pablo Avenue corridor as building blocks in Hercules for a comprehensive bicycle and pedestrian network through the County. Local bicycle and pedestrian connections include Sycamore Avenue and along the extension of John Muir Parkway currently underway.

Identifying Projects that will Better Position the City to Qualify and Receive Grant Funding

The City of Hercules exists as part of the larger Contra Costa County and regional transportation system. All long-term planning efforts and policies should to be consistent with the elements of Plan Bay Area as well as the plans and programs of the Contra Costa Transportation Authority (CCTA). These include the Countywide Transportation Plan, Measure “J” funding and growth management program, and West County’s Action Plan for Routes of Regional Significance. The evaluation of existing and future land use will need to incorporate County and CCTA data such as the land use database and the GIS system with forecasted growth identified in the City’s recent Housing Element, the current General Plan and Zoning designations, and approved and projected development. Developing an updated Circulation Model will require coordination with both CCTA and City staff to ensure consistency with the larger regional model while still achieving City goals.

Aligning the goals and policies of Hercules with the regional, countywide and subarea planning framework also provides opportunities for grant funding through these programs. San Pablo Avenue and State Route 4/John Muir Parkway are both identified as Routes of Regional



Significance for Contra Costa County and are forecasted to have more than 50% growth by 2040. The identification and evaluation of improvements to address future growth will need to be consistent with level of service standards for Hercules while incorporating the guidelines for evaluating VMT change called for by SB 743.

Supporting Innovation and Changing Technology in Transportation within the Legislative Guidelines

The State of California General Plan Guidelines introduced in 2003 and the introduction of “Complete Streets” and SB743 legislation has resulted in additional requirements for Circulation Elements as well as transportation improvements to mitigate traffic impacts since the previous Circulation Element was prepared in 1998. The Circulation Element Update should address all of the changing requirements while still addressing the needs of automobile users through the use of the existing LOS standards. Additionally, transportation technology is changing rapidly, especially in the Bay Area. CCTA has embraced the next generation of transportation technologies and has partnered with Gomentum Station to develop autonomous and connected vehicles only 20 miles away in Concord, making Contra Costa County a hub for changing transportation technologies. The Circulation Element, which covers the next 20 years, should account for changing technologies.

APPROACH

To successfully complete the City of Hercules Circulation Element Update, we identified three principles that will guide our approach and achieve the successful completion of this project:

- The Circulation Element should be a multimodal document that addresses the needs of all users in the network.
- The Circulation Element should be consistent with regional, countywide and subarea transportation plans and programs to maximize grant funding opportunities
- The Circulation Element should embrace evolving technologies and innovative approaches to legislative requirements.

Our approach for the Circulation Element Update is to use the principles listed above to guide the project in achieving the goals and the objectives for the City of Hercules. Our team will work with City staff and the community to establish goals and policies along with a set of improvements that will not only reflect the community today, but also provide a framework that can be used to adapt to a changing and evolving region.

DKS Associates has teamed with MIG for this proposal to provide a comprehensive team to prepare the Circulation Element Update for the City of Hercules. DKS Associates specializes in transportation planning and operations with experience working with jurisdictions throughout the Bay Area. DKS Associates will prime the project and lead the forecasting, inventory, modeling, cost estimating, updating the goals and policies, and adoption project tasks. MIG specializes in environmental analysis and will lead the public outreach and CEQA compliance tasks.



The DKS Team has taken a leading role in the Bay Area in developing multimodal solutions to address the needs of a diverse cross section of transportation users. Our involvement in the Contra Costa County Action plans have resulted in the first non-roadway route of regional significance, recognizing that transit lines and bicycle and pedestrian facilities can have regional significance. We will approach the Circulation Element Update in a such a way to **recognize the most important multimodal facilities in Hercules**, potentially including the planned Bay Trail as a bicycle and pedestrian facility and the upcoming ferry route from Hercules to San Francisco as a transit facility.

Our work with WETA regarding the expansion of ferry services in downtown San Francisco specifically focused on facilitating access to the Ferry building in an environment where pedestrian, bicycle, and transit access is the primary consideration and our recent Tri-Valley Park and Ride access study has identified key considerations and amenities important to the successful operation of a satellite parking facility as a part of a transportation network. The Park and Ride facility located off Willow Avenue will be operate as an **important multimodal link between the Central and Waterfront districts**.

The current Circulation Element, similar to most Circulation Elements throughout the region, only provides standards of significance for identifying impacts to automobile facilities based on vehicle delay and level of service. Only providing for the improvement of vehicle facilities can act in opposition to the VMT requirements introduced with SB 743 as well as not responding to the changing multimodal cross section of users. Our work on the Contra Costa County Action Plans and the Comprehensive Transportation Management Plan we are currently preparing for San Mateo County have introduced multimodal standards of significance that allow for the identification of deficiencies and impacts to bicycle, pedestrian, and transit facilities. We will consider the needs of pedestrians, bicyclist, transit users, people with disabilities, people traveling by car and emergency vehicles. **Developing multimodal standards** to capture multiple criteria and multiple modes, we will present the results of needs analysis and the evaluation of improvement alternatives in a way that will **appeal to stakeholders, decision makers and the public**. We will also evaluate alternatives in terms of safety, mobility, livability and economic vitality for of the districts of Hercules.

DKS has worked closely with CCTA staff in the preparation of the Contra Costa County Action Plans, the Countywide Transportation Plan and the I-680 Transit Investment and Congestion Reduction study. DKS has also assisted MTC in the development of two different regional transportation plans and has supported MTC through a variety of on-call contracts and helped them develop elements of Plan Bay Area. Because of our experience producing such area and countywide plans for CCTA and MTC, the DKS team can identify future projects for Hercules that will be competitive for county and regional funding.

While VMT has become the focus of larger scale studies, often cities are more focused on delay and operation of signals because of the direct effect on their residents and business owners. DKS has recently started working with CCTA to determine the effect of SB 743 on recently approved planning studies, allowing for mitigations that improve vehicle-delay and may increase VMT while still meeting the requirements of SB 743 on a citywide scale. We will approach the Circulation Element Update using a complete streets approach that focuses

vehicle demand to efficient intersections while allowing specific zones that are bicycle and pedestrian friendly, partially based on the development code in the “Plan for Central Hercules”. The DKS team has worked with the Cities of Oakland and Fremont to develop applications for the Smart City Challenge and is working with MTC on developing new practices for evaluating the operations of Next Generation Arterial Operating strategies, such as adaptive signal timing and active traffic monitoring. Improving technology can address more than automobile operations with connected vehicles and infrastructure. Bicycle and pedestrian facilities can be improved with smart lighting and DKS just finished working on the East Bay Bus Rapid Transit line in Oakland and San Leandro which makes use of transit signal priority and innovative transit hubs. We will identify goals and policies that encourage the development of smart technologies for the multimodal network and research vehicle level of service standards that account for express lanes and the changing market share of electric, hybrid, and connected cars.

SCOPE OF WORK

The DKS team has developed a detailed scope of work and schedule to update the City of Hercules Circulation Element by doing the following:

- Developing a program for outreach that helps identify the needs and concerns of stakeholders, decision makers and the public
- Evaluating the existing circulation system and projected development to evaluate and prioritize potential improvements
- Creating a circulation model for Hercules based on the existing CCTA traffic model to evaluate various transportation improvement alternatives
- Updating the goals and policies included in the existing Circulation Element to reflect current priorities
- Confirming environmental (CEQA) compliance for the identified alternatives
- Assisting in the adoption of the Circulation Element and providing the City with guidance on fee programs, grant programs and other existing or emerging sources that could be tapped to help fund improvements identified in the Circulation Element

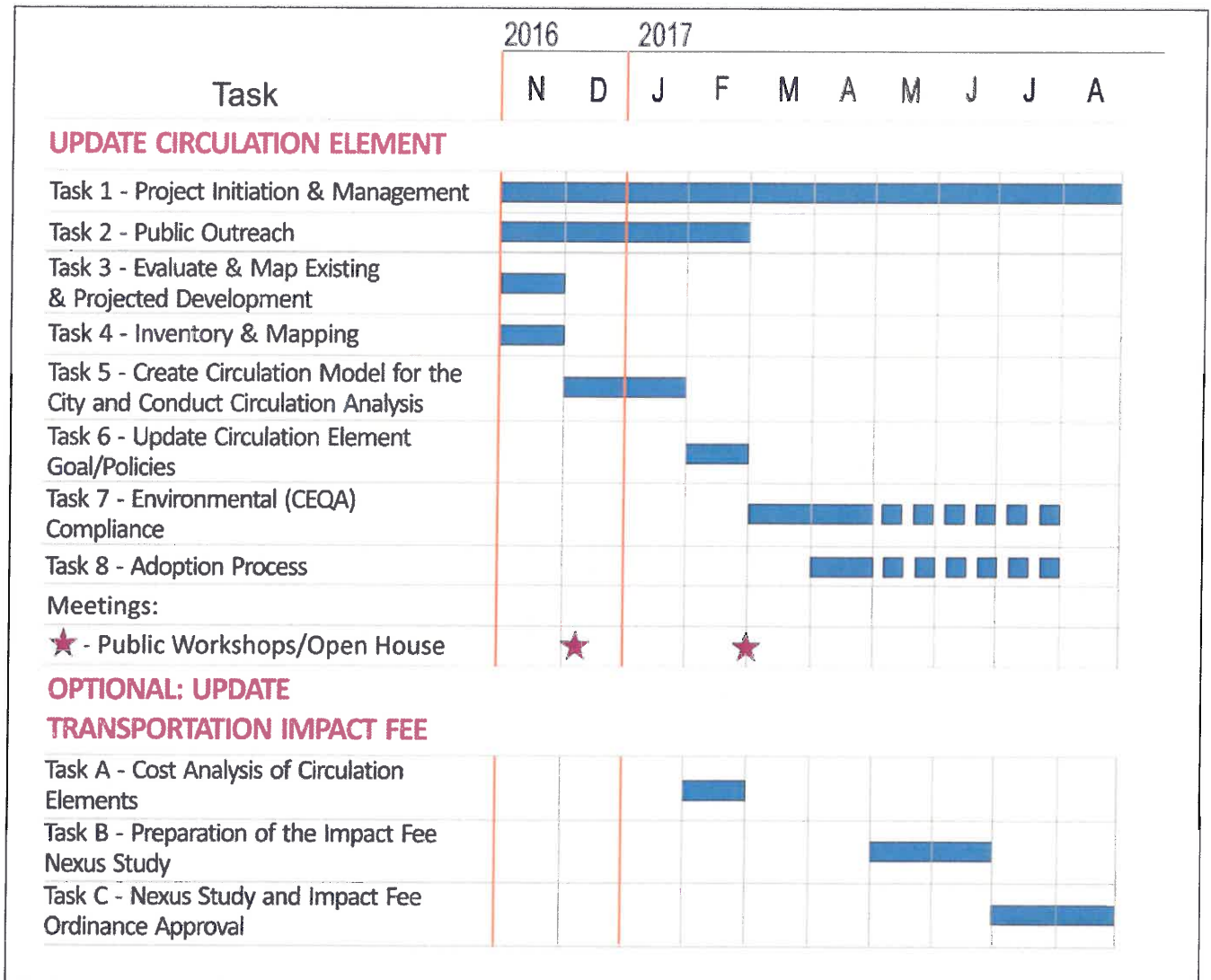
The DKS Team has also proposed option tasks that would use the work in the update of the Circulation Element to update the City’s existing Transportation Impact Fee. If directed by the city Council to undertake this additional work, the update of the fee program will include the following tasks:

- Developing cost estimates for future transportation projects defined in the update of the Circulation Element
- Preparation of the Impact Fee Nexus Study
- Assisting the City staff in the Nexus Study and Impact Fee Ordinance Approval Process

Conducting the project in the following eight core tasks and three optional tasks will result in the desired consensus and implementation strategy delivered within the ten-month schedule identified in **Figure 1**.



Figure 1 – Project Schedule



Scope of Work for the Update of the Circulation Element

TASK 1: PROJECT INITIATION AND MANAGEMENT

Schedule: November 2016 – August 2017

Task Objective: The objective of this task is to provide management of the DKS Team and to coordinate with the City staff.

Description: DKS will lead this task. The DKS project manager will work with e the City staff to organize a kick-off meeting and tour of Hercules. DKS will also conduct background data collection and review relevant background documents. Monthly meetings will then be scheduled, either in-person or by video conference to coordinate the activities of the team.

Subtasks: Specific subtasks will include:

- 1.1 Kick-off Meeting and Site Visit
- 1.2 Background Data Collection and Review
- 1.3 On-Going Management

Work Products:

- Agendas and minutes for coordination meetings

TASK 2: PUBLIC OUTREACH

Schedule: November 2016 – February 2017

Task Objective: The objective of this task is to communicate the goals of the Circulation Element Update to the community and how it will affect them, ensure that there are ample opportunities for residents, business owners, and other stakeholders to share what transportation issues are important to them, and report the findings back to the community before the draft Circulation Element is prepared.

Description: MIG will lead this task with assistance from DKS to work with City staff to ensure that all interested parties have a voice in the planning and review process.

The public outreach will take the form of two rounds of community workshops, both focused on a specific topic:

1. Workshop #1: Identifying Issues, Opportunities, and Constraints (early December 2016)
2. Workshop #2: Draft Circulation Element Open House (late February or Early march 2017)

The initial communication and engagement will focus on understanding the issues, opportunities, and constraints from the perspective of the community and stakeholders. MIG will collect and distill this information through a two-hour community workshop that will include a combination of group exercises and facilitated discussion questions, including the use of real time polling through MIG's Turning Point hand held clicker system.

After a draft Circulation Element Update has been produced, an open house will provide an opportunity for the community and stakeholders to review the draft Circulation Element and

provide input to the Planning Commission in advance of formal public hearings on the Circulation Element. The open house will include display materials (up to eight (8) 36" x 48" display boards) to communicate project goals and objectives; summarize the planning process and next steps; present existing conditions; identify assets, issues and opportunities; identify scenarios that were considered, and present the Circulation Element.

TASK 2 ASSUMPTIONS

- City staff will provide a venue for and address logistical issues associated with all meetings and the open house.
- City staff will be responsible for preparing and distributing all promotional materials (e.g. invitations, e-mails and flyers) for the workshop and open house.
- MIG and DKS will facilitate all discussions and will prepare collateral material (e.g. agendas, presentation materials, meeting summaries) for the workshop and open house.
- City staff will prepare necessary staff reports and resolutions to support Planning Commission and City Council actions related to the Circulation Element.

Subtasks: Specific subtasks will include:

2.1 Identify issues, opportunities, and constraints

2.2 Open House

Work Products:

- Community Workshop and associated presentation materials
- One Open House and associated display boards

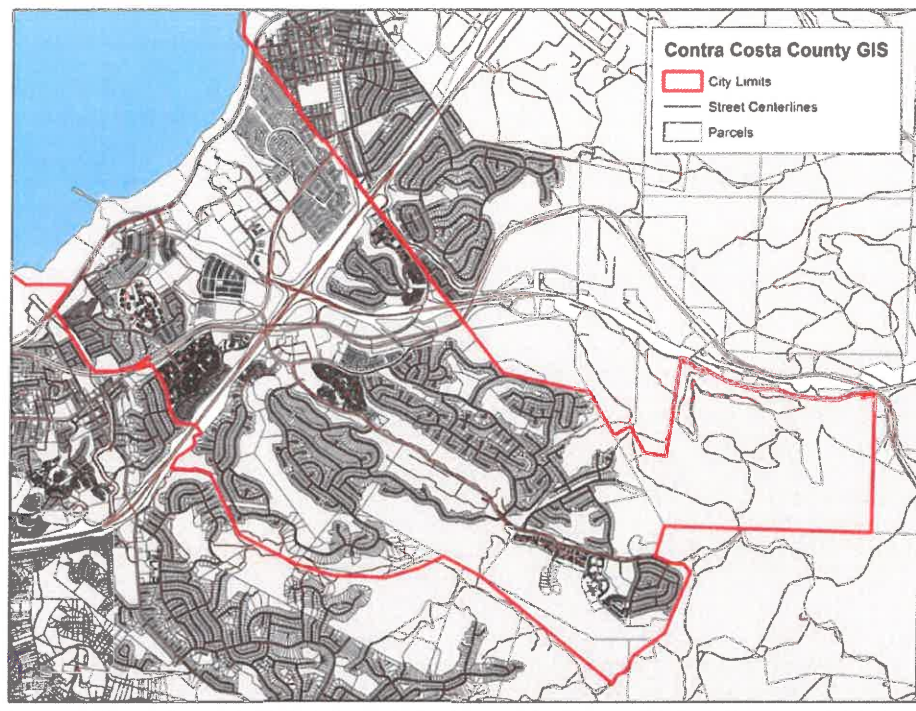
TASK 3: EVALUATE AND MAP EXISTING AND PROJECTED DEVELOPMENT

Schedule: November 2016

Task Objective: The objective of this task is to develop a comprehensive inventory of existing and projected land use that can be flexibly deployed and will serve as a critical input to the circulation model developed under Task 5.

Description: DKS will lead this task and will work with the City Planning Staff to prepare an inventory of existing and forecasted development. The DKS team is familiar with the sources of geographic information that will form the framework for the land use and development map, including the Contra Costa County GIS data and the CCTA's Land Use Information System (LUIS). Project team members have also worked on the most recent Housing Element, which will be an important resource in developing a buildout forecast. The County data includes administrative boundary layers, demographic layers, environmental layers, facilities such as schools and fire stations, hydrology, and transportation layers among other data. **Figure 2** illustrates some of the available County data for the City of Hercules.

Figure 2 – County Data Available for City of Hercules



Key considerations in the approach to Task 3 include:

- Translation of zoning designations, allowable densities, and square footage of approved development into the population, household, and employment variables used in the CCTA travel model
- The need to address any major inconsistencies between local and regional land use forecasts

We are also aware of the potential need to convert geographic data from disparate sources into a standard format. DKS will ensure that the data generated as part of Task 3 can be uploaded into the City's GovClarity account. We will also explore options for making the land use data and maps more easily accessible to the public if this is a feature that the City desires. One option would be to use the Google Earth KML/KMZ file format which can be exported from both GovClarity and ESRI software. **Figure 3** shows an example of the CCTA's land use information displayed in Google Earth.

Figure 3 – CCTA Land use Information



(Source: Google Earth)

Subtasks: Specific subtasks will include:

- 3.1 Evaluate in detail existing sources of GIS data including the County GIS, the CCTA Land Use Information System, and the CCTA travel demand model
- 3.2 Collect existing land use data, zoning designations, and approved projects and any other relevant data from City
- 3.3 Prepare technical memorandum detailing approach
- 3.4 Assemble land use data files with existing and forecast data

Work Products:

- Land use data in geographic and tabular file formats for both existing and buildout year
- Existing and forecast year land use data to support the Hercules model developed under Task 5
- A selection of maps in PDF or other agreed-upon format for use by the City in presentations and publications

TASK 4: INVENTORY AND MAPPING

Schedule: November 2016

Task Objective: The objective of this task is to create an inventory and map of streets, bicycle, and pedestrian facilities. The transportation network will analyze streets for type and current level of service, and the bicycle and pedestrian network will be analyzed to identify locations where connections are needed.

Description: DKS will lead this task to prepare a comprehensive inventory of the multimodal facilities that make up the City of Hercules transportation network. DKS will identify the roadway network, bicycle and pedestrian facilities and will prepare an inventory of facilities (e.g. benches, bike racks and lockers). DKS will then analyze how to optimally link the network with the City's planned Regional Intermodal Transit Center (RITC).

Building on the existing circulation element, DKS will use information provided by City staff at meetings to compile inventory data for both the physical system and programs. Using this information, we will identify the type and distribution of improvements, constraints and opportunities to expand the network. The physical inventory of the system will include the complete system, summarized on a base map of the city as well as an inventory table detailing the location, type, and current status of existing facilities.

The inventory will be reviewed by the Staff Project Team to ensure accuracy and completeness before proceeding with analysis. The analysis of the physical system will include:

- System gaps, utilizing the geographic analysis
- Operations and maintenance issues and requirements
- Potential for increased connectivity
- Opportunities for expansion of facilities

In order to produce existing level of service data for study intersections, DKS will collect traffic volume data for peak study hours.

The inventory and analysis of the existing system will be summarized in an Existing System Analysis Summary.

The DKS Team will prepare maps that will include the roadway network and intersection level of service, pedestrian and trail facilities, areas of deficiency and opportunities for improvement, transit coverage, and parking availability.

TASK 4 ASSUMPTIONS

- The City will provide the DKS Team with CAD or Arcview files for the trail system and related facilities. The City will provide one consolidated set of comments on the Administrative Draft System Analysis Summary.
- The City will be responsible for producing and distributing copies to stakeholders and participants.

Subtasks: Specific subtasks will include:

4.1 System Inventory

4.2 System Mapping

Work Products:

- Word and PDF version of the Administrative Draft and Draft System Analysis Summary
- PDF of the Existing System Plan and the Opportunities Plan

TASK 5: CREATE CIRCULATION MODEL FOR THE CITY AND CONDUCT CIRCULATION ANALYSIS

Schedule: December 2016 - January 2016

Task Objective: This task will build on the land use data compiled under Task 3 and the circulation system mapped under Task 4 to develop and apply a “City of Hercules Traffic Model”. This citywide model will be an updated and refined version of the CCTA’s travel model with updated land use, smaller TAZs, and additional roadway network detail.

Description: DKS will lead this task to create and run a “City of Hercules Traffic Model”. DKS is familiar with the CCTA travel model, having most recently applied it in a series of nexus studies in unincorporated Contra Costa County.

We anticipate that this task will involve developing a focus area of the existing CCTA model, using the existing model stream and user interface but with modified inputs. This focus area approach will ensure that the city model remains consistent with the CCTA model and therefore is also consistent from a regional perspective. The CCTA travel model application runs in the TransCad GIS/travel modeling software environment. The application includes a user interface that would facilitate use by City staff.

We will work with the City to identify potential analysis scenarios in assessing the level of network detail to be added to the model. For example, particular attention should be paid to roadways leading to the Regional Intermodal Transit Facility (RITC) shown in Figure 4.

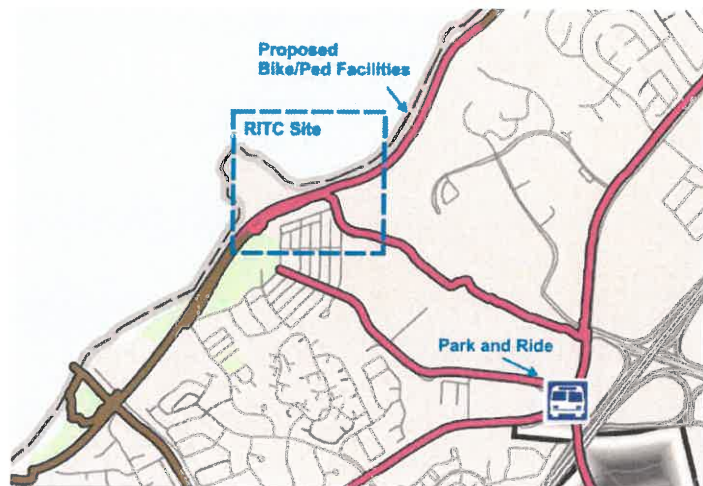


Figure 4 – RITC Location Map

We anticipate developing a “baseline” forecast year scenario that incorporates the most likely package of transportation network improvements and approved projects for the year 2040. This will be supplemented by up to two additional scenarios to be defined in consultation with City staff. We will also outline the steps necessary to develop additional scenarios in our model documentation should the need arise in the future.

Assumptions

- The City of Hercules will need to acquire/maintain a TransCAD license if they wish to run the Hercules Traffic Model in-house after project completion.

Subtasks: Specific subtasks will include:

5.1 Create Transportation Model

5.2 Run Transportation Model

Work Products:

- Technical memorandum detailing the model development process
- Modified master land use input and transportation networks reflecting additional level of detail for the City of Hercules to be used within the CCTA's travel model application
- User's Guide to aid City staff in the appropriate application of the Hercules traffic model

TASK 6: UPDATE CIRCULATION ELEMENT GOALS/POLICIES

Schedule: February 2017

Task Objective: The objective of this task is to update the Hercules Circulation Element of the General Plan by updating the Goals, Policies, and Implementation Measures to match the changing priorities of the City and new legislative requirements.

Description: DKS will lead this task to create a new Circulation Element with an updated list of multimodal Goals, Policies, and Implementation Measures. Through discussion with City staff and feedback gleaned from Community Outreach (Task 2), The DKS Team will gather staff perceptions of needs, gaps, challenges and opportunities in the policy framework; identify the related planning efforts (past and present), policies and standards that should be considered in Circulation Element; and develop an understanding of the role circulation improvements play in Hercules. The DKS Team will use this opportunity to establish multimodal standards that address not only the traditional intersection vehicle delay level of service standards, but also introduce bicycle and pedestrian quality of facility standards and transit capacity and frequency standards. In addition, the DKS Team will research examples of goals and policies that address evolving transportation related technologies across all modes, and develop a set of goals and policies that match the issues, opportunities, and constraints unique to the City of Hercules.

The DKS Team will assemble and review all identified documents to ensure compatibility with the final recommendations. We will summarize the findings from this task in the Draft and Final Goals/Policies Update Recommendations, which will include proposed changes to relevant policies. This summary will also include the facility gaps identified in related and past planning efforts and recommendations for addressing them as new projects, programs or service delivery approaches that can be refined during the Circulation Element update process.

The DKS Team will provide the final recommendations in electronic format suitable for review and commenting. An Administrative Draft of the Circulation Element will be provided to staff for review by early February 2017. Based on staff comments a Review Draft will be prepared for review by the Hercules Planning Commission. The City will provide one set of consolidated, non-conflicting comments for one revision of this document. The DKS Team will then deliver a final version suitable for distribution online.

TASK 6 ASSUMPTIONS

- The City will provide one consolidated set of comments on the Administrative Draft and Draft Goals and Policies update.
- The City will be responsible for producing and distributing copies to stakeholders and participants.

Subtasks: Specific subtasks will include:

- 6.1 Administrative Draft Circulation Element
- 6.2 Draft Circulation Element
- 6.3 Final Circulation Element

Work Products:

- Draft and Final Goals and Policies update.

TASK 7: ENVIRONMENTAL (CEQA) COMPLIANCE

Schedule: March 2017 - April 2017/July 2017 (Depending on CEQA Determination)

Task Objective: The objective of this task is to prepare a traffic, noise, and air quality analysis as part of a Mitigated Negative Declaration (MND). A full Environmental Impact Report is not expected based on minimal expected changes to the circulation system.

Description: MIG will lead the CEQA compliance task. For all CEQA environmental checklist topics (CEQA Appendix G: Environmental Checklist Form), MIG will evaluate the project to determine first if a Mitigated Negative Declaration is sufficient or if additional environmental analysis must be prepared. Based on our current understanding of the proposed project, we have estimated the cost and scope of work associated with a Mitigated Negative Declaration.

The work will proceed pursuant to CEQA Guidelines to evaluate all CEQA environmental checklist topics. The Initial study will include all topical areas identified in the CEQA checklist, however the technical analysis will focus mainly on Noise Quality, Air Quality, and Transportation/Circulation.

As part of the CEQA process, MIG will prepare the following documents:

- Administrative Draft Initial Study
- Public Review Draft Initial Study or Mitigated Negative Declaration (MND)
- Response to Comment on Public Review Draft Initial Study/MND
- Final Initial Study/MND

The Administrative Draft Initial Study will be prepared for review and comment by City staff. It is assumed that the Initial Study results will support preparing a MND. Following the City's review of the draft Initial Study/MND, MIG will revise the document for public review. MIG assumes the City will be responsible for distribution of the public review Initial Study/MND.

At the close of the public review period, MIG will review and catalog all written comments received on the Initial Study/MND and prepare written responses. Comment letters with corresponding responses will be provided to the City as a separate document that can be attached to the final IS/MND presented to the City Council.

Based on feedback from the Board of Supervisors, MIG will prepare a Final Initial Study/MND.

TASK 7 ASSUMPTIONS

- The Circulation Element will qualify for a Mitigated Negative Declaration.
- The Circulation Element will be completed in draft form prior to preparation of the CEQA Project Description.
- The City will prepare all notices (e.g. Notice of Intent and Notice of Determination) and arrange for all filings (e.g. County Clerk, State Clearinghouse, etc.) associated with the Environmental Review.
- The DKS Team will attend the City Council meeting pertaining to adoption of the IS/MND
- The DKS Team will spend up to 16 hours preparing responses to comments on the public review draft IS/MND
- The Administrative Draft, Draft and Final Initial Studies/MND's will be provided to the City electronically in Word and PDF formats.

Subtasks: Specific subtasks will include:

- 7.1 Initial Study and Scoping
- 7.2 Administrative Draft Initial Study/MND (ADIS)
- 7.3 Public Review Draft Initial Study/MND (DIS/MND)
- 7.4 Response to Comments on Public Review Draft IS/MND
- 7.5 Final Initial Study/MND (FIS/MND)

Work Products:

- Administrative Draft Environmental Document
- Draft Environmental Document
- Final Environmental Document

TASK 8: ADOPTION PROCESS

Schedule: April 2017/July 2017

Task Objective: The objective of this task is to present the findings and conclusions of the Circulation Element Update at City Planning Commission and City Council meetings required for the adoption of the Circulation Element Update through a General Plan Amendment.

Description: DKS will lead this task and prepare and present the relevant details of the Circulation Plan Update at up to four meetings, including public hearings of the City Planning Commission and City Council required to pass a General Plan Amendment.

Subtasks: Specific subtasks will include the following:

- 8.1 Preparation of presentations and coordination with City Staff
- 8.2 Attendance and presentation of the Circulation Element Update at Public Hearings

Work Products:

- Presentation describing the findings and conclusions of the Circulation Element
- Attendance at up to four Commission, Council or other meetings required for the adoption of a General Plan Amendment
- Final Version of the Circulation Element

Optional Scope of Work for the Update of the City's Existing Transportation Impact Fee

TASK A: COST ANALYSIS OF CIRCULATION ELEMENTS

Schedule: February 2017

Task Objective: The objective of this task is to prepare design-level cost estimates of the improvements identified by the analysis of the City traffic model.

Description: DKS will lead this task, creating design-level cost estimates for the various improvement alternatives. Cost estimates will be prepared as design level cost estimates, recognizing the full cost of the proposed improvements by taking into account specific site features and constraints.

Subtasks: Specific subtasks will include:

- A.1 Field visits for each improvement
- A.2 Preparation of cost estimates for each improvement

Work Products:

- Design-level cost estimates for each improvement and summaries for each alternative

TASK B: PREPARATION OF THE IMPACT FEE NEXUS STUDY

Schedule: May 2017 – June 2017

Task Objective: The objective of this task is to prepare a nexus study that will legally justify the update of the city's Transportation Impact Fee

Description: DKS will lead this task and will be responsible for the preparation of the impact fee nexus study. DKS will review the current fee program and its project list as well as other transportation impact fees to which new development in Hercules is subject. DKS will also conduct the technical analysis to determine the portion of the project costs that can be allocated to the fee program and the amount of growth that will be subject to the updated fee. From this, DKS will determine the new fee rates and draft the Nexus Study Report.

Subtasks: Specific subtasks will include:

- B.1 Evaluation of Current Fee Programs Affecting Hercules
- B.2 Estimation of Cost Allocation to Fee Program and Fee Rates
- B.3 Preparation of Draft Nexus Study

Work Products:

- Memorandum on Current Fee Programs Affecting Hercules
- Draft Nexus Study

TASK C: NEXUS STUDY AND IMPACT FEE ORDINANCE APPROVAL PROCESS

Schedule: July 2017 – August 2017

Task Objective: The objective of this task is to support the City staff in getting the updated impact fee adopted by the Hercules City Council.

Description: DKS will lead this task and will be responsible for presenting the proposed impact fee to the City Council. This will include the preparation of presentation materials for the meeting

Subtasks: Specific subtasks will include:

- C.1 Presentation of the Nexus Study and impact fee program to the City Council
- C.2 Revision of Nexus Study to reflect comment by the City Council as appropriate

Work Products:

- Presentation of the Draft Nexus Study to the City Council
- Final Nexus Study

2. MANAGEMENT PLAN

DKS has assembled an outstanding team of highly trained professionals provide overall leadership of this project and the technical staff needed to lead the task work. Our team organization and staff plan is presented in **Figure 5**. Management of the DKS team and interface with the City of Hercules will be the responsibility of the DKS Project Manager – **Josh Pilachowski**. Josh will use a Project Leadership Team to assist him in management of the DKS team and the project. The Leadership Team will include the leaders of the work areas identified below. Josh will also lead the Goals and Policy Development task. **Bill Loudon, PE**, will act as Principal-in-Charge and will be the Task Lead the Adoption Process.

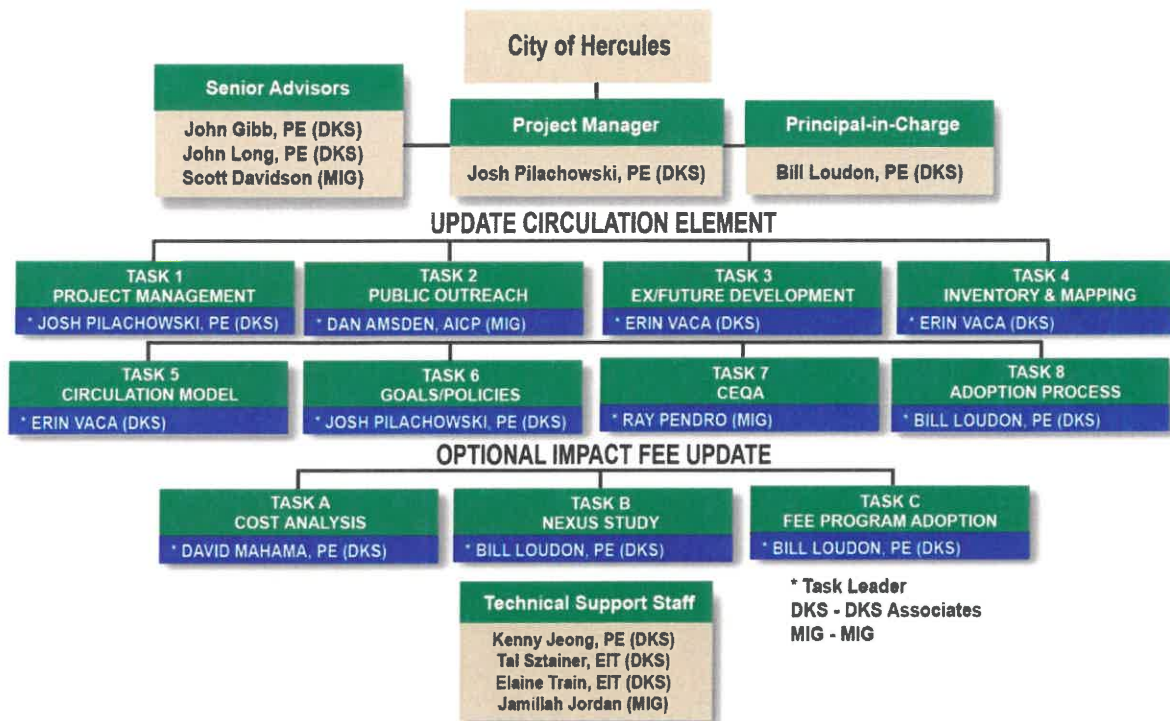
DKS maintains a commitment to quality control through a formal policy and procedure that we embrace for all projects. The Quality Assurance plan includes an independent review of all technical products, plus administrative tools such as progress reports and documented invoicing. Our reviews encompass DKS products and sub-consultant products. As part of our sub-contractual agreements we require that the sub-consultants will have a quality control plan in place that is consistent with the DKS plan.

Open and documentable communication is a very important function of our management plan. At the Kick-off Meeting, we will discuss the lines of communication and protocols that the client desires for this project. We will establish formats for the recording and for maintaining logs of the various activities associated with the project.

DKS maintains a special filing system that segregates incoming and outgoing information, products and stakeholder reviews and consultant comments. The filing system is managed on-site during the entire active stage of the project. We also use state-of-the-art budget management tools that allow us to track results on a weekly basis, by task and by person.



Figure 5 – Project Team Organization



Deliverable development is monitored utilizing track-changes. Reviews are performed by an independent reviewer assigned at the beginning of the project. Our standard procedure is to log all comments on key deliverables into a spreadsheet and provide responses to each one. This document is returned to the client with the following submittal.

DKS monitors client satisfaction annually through a survey to its clients. The firm's performance is measured and the information is shared with the key members of DKS during the annual staff review to assure continuous improvement to customer service.

3. PROJECT BUDGET

DKS proposes to conduct the work in this project for a budget of \$174,929 for the Circulation Element. If directed by the city Council to also complete a Transportation Development Impact Fee Nexus Study, an additional budget of \$37,795 will be required as indicated in cost estimates in the tables below.

Hercules Circulation Element Budget

TASK	Total Hours	Total Cost	DKS Associates										MIG										Other Direct Costs	Fee on ODC and Sub and Sub (5%)
			W. Loudon (PIC)	J. Pilachowski (PM)	J. Long	D. Mahama	E. Vaca	T. Sztainer	E. Tran	D. Mallori	DKS Labor Hours	DKS Labor Cost	S. Davidson	D. Amisden	J. Jordan	M. Riley	R. Pendro	I. Ku	S. Ridone	P. Hoge	MIG Labor Hours	MIG Labor Cost		
1. Project Initiation and Management	104	\$ 20,786	10	40		8				58	\$ 9,950	4	26		10				6	46	\$ 6,240	\$ 4,080	\$ 516	
2. Public Outreach	186	\$ 27,596	14	20					8	42	\$ 7,730	16	32	48	48				144	\$ 17,920	\$ 1,000	\$ 946		
3. Evaluate and Map Existing and Projected Development	148	\$ 19,680				76		72		148	\$ 19,680									\$ -	\$ -	\$ -		
4. Inventory and Mapping	108	\$ 14,905	8	8		24		64	4	108	\$ 14,800									\$ -	\$ 100	\$ 5		
5. Create Circulation Model and Conduct Circulation Analysis	96	\$ 14,000	8			48		40		96	\$ 14,000									\$ -	\$ -	\$ -		
6. Update Circulation Element Goals/Policies	172	\$ 26,905	24	64		28		48	8	172	\$ 26,800									\$ -	\$ 100	\$ 5		
7. Environmental (CEQA) Compliance	283	\$ 36,587									\$ -		7			52	148	76	283	\$ 34,745	\$ 100	\$ 1,742		
8. Adoption Process	70	\$ 14,470	32	32					6	70	\$ 14,260									\$ -	\$ 200	\$ 10		
Total Budget	1167	\$ 174,929	96	164	184	224	26	806	\$ 107,220	20	65	48	58	52	148	76	6	473	\$ 58,905	\$ 5,580	\$ 3,224			



Hercules Development Impact Fee Program Budget

TASK	Total Hours	Total Cost	DKS Associates										Other Direct Costs	Fee on ODC and Subs (5%)	
			W. Loudon (PIC)	J. Pilachowski (PM)	J. Long	D. Mahama	E. Vaca	T. Sztainer	E. Tran	D. Mallori	DKS Labor Hours	DKS Labor Cost			
A. Cost Analysis of Circulation Element	112	\$ 17,635	8			24	80					112	\$ 17,480	\$ 150	\$ 5
B. Preparation of the Impact Fee Nexus Study	94	\$ 16,435	10	20	8		16		32	8		94	\$ 14,910	\$ 1,400	\$ 125
C. Nexus Study and Impact Fee Ordinance Approval Process	18	\$ 3,725	6	8	2					2		18	\$ 3,620	\$ 100	\$ 5
Total Budget	224	\$ 37,795	24	28	10	24	16	80	32	10		224	\$ 36,010	\$ 1,650	\$ 135





Legislation Details (With Text)

File #: 18-34 **Version:** 1 **Name:**
Type: Discussion/Action Item **Status:** Agenda Ready
File created: 2/20/2018 **In control:** City Council
On agenda: 3/13/2018 **Final action:**

Title: Amendments to Hercules Municipal Code Title 5, Chapter 6, Smoking Ordinance
Recommendation: Receive report, discuss and provide direction, if any.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[Attachment 1 - 1992 Hercules Smoking Ordinance \(HMC 5-6\)](#)
[Attachment 2 - ANR Model Ordinance](#)

Date	Ver.	Action By	Action	Result
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Amendments to Hercules Municipal Code Title 5, Chapter 6, Smoking Ordinance

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



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 13, 2018

TO: Mayor Kelley and Members of the City Council

SUBMITTED BY: Patrick Tang, City Attorney

SUBJECT: Discuss Amendments to Hercules Municipal Code Title 5, Chapter 6,
Smoking Ordinance

RECOMMENDED ACTION:

Receive report, discuss and provide direction, if any.

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:

The City Council considered and discussed legislation to ban commercial sale of cannabis in the City of Hercules, and in 2017 passed an ordinance prohibiting various aspects of cannabis use and sales. During that discussion, the Council noted that the City's current smoking ordinance has not been updated since 1992, and that e-cigarettes and vaping were not expressly addressed in the existing ordinance. The 1992 Hercules ordinance actually allows for smoking in bars, in designated smoking areas within office spaces, and in restaurants with outdoor areas. This conflicts with current state law; since January 1, 1995, smoking has been banned in all enclosed workplaces in California, including bars and restaurants (smoking in bars was permitted until January 1, 1998). Given that the 1992 ordinance is outdated and inconsistent with state law, Council directed that staff and the City Attorney report back during the first quarter of 2018 on current standards for smoking ordinances.

A model ordinance promulgated by Americans for Nonsmokers' Rights (ANR), based in Berkeley, California, is attached for your review and consideration. ANR claims that the model ordinance for smoke free workplaces and public places has been used by hundreds of cities and numerous states. The City Attorney has requested information regarding California cities that have adopted the ANR model, but has not heard from ANR in sufficient time to include that information in this report.

According to ANR, the purpose of the model ordinance is to provide fair and sound language that clearly states the intent and specific points of a smoke free policy. The ordinance is intended to allow for clear implementation and enforcement, and is designed by ANR to stand up to legal challenges.

The ANR model provides definitions for “Electronic Smoking Device”, “Hookah”, and a definition of “Smoking” that includes marijuana use. I would recommend in addition to the definitions provided in the model ordinance the inclusion of a definition for “Tobacco Shop” or “Smoke Shop” as is found in ordinances in some other jurisdictions.

It should be noted that the ANR model ordinance is intended to further the goal of a smoke free workplace, and thus would not allow smoking in any enclosed places, including hotels and motels. While Hercules does not currently have any hotel or motel facilities, the Model Ordinance if adopted would preclude smoking in any hotel or motel rooms.

ATTACHMENTS:

1. Title 5, Chapter 6, Hercules Municipal Code
2. Model Ordinance Prohibiting Smoking in All Workplaces and Public Places

Chapter 6. Smoking in Enclosed Public Places and Workplaces

Article 1. General Provisions

Sec. 5-6.101 Purpose and Findings.

The City Council of the City of Hercules, County of Contra Costa, does find that:

- (a) The U.S. Environmental Protection Agency has determined that tobacco smoke is the major contributor of particulate indoor air pollution; and
- (b) Reliable studies have shown that breathing sidestream or secondhand smoke is a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and
- (c) Health hazards induced by breathing sidestream or secondhand smoke include heart disease, lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and bronchospasm; and
- (d) Nonsmokers with allergies, respiratory diseases and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions to same; and
- (e) The smoking of tobacco, or any other weed or plant, is a proven danger to health; and
- (f) The health care costs and lost productivity incurred by smoking-related disease and death represent a heavy and avoidable financial drain on our community; and
- (g)
 - (1) The free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products and thereby become addicted to the habit, discourages people from quitting smoking, and tempts those who had quit smoking to begin smoking again. Encouraging smoking and discouraging those who are currently smoking from overcoming the habit endangers the public health by leading more people into habits that cause illness and death; and
 - (2) Free distribution of cigarettes and other tobacco products promotes unsightly litter, thereby increasing the costs to the public in cleaning the streets; and also causes pedestrian traffic congestion.

The compelling purpose and intent of this Chapter is to generally promote the health, safety, and welfare of all people in the community against the health hazards and harmful effects of the use of addictive tobacco products. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.102 Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as hereafter set out, unless it shall be apparent from the context that they have a different meaning:

- (a) "Area open to the public" means any area available to and customarily used by the general public.
- (b) "Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages (Department of Alcoholic Beverage Control Type 61, 42, or 48 licenses). That area of a restaurant which is devoted to the serving of alcoholic beverages and in which the service of food may only be incidental to the consumption of such beverages, shall also be considered a bar. An area in which food service is only incidental shall (1) not exceed forty percent (40%) of a restaurant's total seating capacity, or (2) shall encompass only those areas in which gross receipts of the restaurant from food do not exceed forty percent (40%). The operator of each restaurant shall designate by which method it determines its bar area.
- (c) "Distribute" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.
- (d) "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit.
- (e) "Employer" means any person, partnership, corporation, including municipal corporation or public entities, who employs the services of two or more persons, or two or more people conduct business within the establishment.
- (f) "Enclosed" means closed in by a roof and walls with appropriate openings for ingress and egress.
- (g) "General public" means shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise or non-profit entity.
- (h) "Place of employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, conference rooms, and employee cafeterias. A private residence is not a place of employment unless it is used as a child care or a health care facility.
- (i) "Smoking" means the carrying or holding of a lighted pipe, cigar, or cigarette of any kind, or any other lighted smoking equipment, or the lighting or emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind.

(j) "Sports arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling centers, halls, and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

(k) "Vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper bill, or other thing representative of value, which dispenses or releases a tobacco product and/or tobacco accessories.

(l) "Bowling lane" means the bowler's approach, the foul line and the lanes.

(m) "Bowlers' settee" means the area immediately behind the bowling lane in which score is kept and seating is provided for bowlers waiting their turn to bowl;

(n) "Visitors' settee" means seating provided immediately behind the bowlers' settee;

(o) "Bowling center concourse" means that area separated from the bowling lane, bowlers' settee, and visitors' settee by at least one step or a physical barrier. (Ord. 309 Div. 2 (part), 1992)

Article 2. Regulations

Sec. 5-6.201 Regulation of Smoking in City-owned Facilities.

Smoking is prohibited in all buildings, vehicles, or other enclosed areas occupied by City employees, owned or leased by the City of Hercules, or otherwise operated by the City. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.202 Prohibition of Smoking in Enclosed Places.

Smoking shall be prohibited in the following places within the City:

(a) All enclosed areas available to and customarily used by the general public and all businesses patronized by the public, including, but not limited to, retail stores, common areas of hotels and motels, pharmacies, banks, attorneys' offices, shopping malls, and other offices;

(b) All available customer seating in a restaurant shall be designated as nonsmoking except for those outdoor eating areas specified in Section 5-6.204(h). The owner, manager or operator of the restaurant shall post signs as prescribed by Section 5-6.301 and remove all ashtrays from tables;

(c) Waiting rooms, hallways, wards, and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices, except that health facilities shall also be subject to the provisions of Section 5-6.203 of this Chapter regulating smoking in places of employment;

(d) Elevators, public restrooms, indoor service lines, buses, taxicabs and other means of public transit under the authority of the City, while within the boundaries of the City, and in ticket, boarding, and waiting areas of public transit depots; provided, however, that this prohibition does not prevent (1) the

establishment of separate waiting areas for smokers and non-smokers, or (2) the establishment of at least sixty percent (60%) of a given waiting area as a non-smoking area;

(e) In public areas of museums, galleries;

(f) Theaters, auditoriums, concert facilities, and halls which are used for motion pictures, stage dramas and musical performances, ballets or other exhibitions, both indoor and outdoor, except when smoking is part of any such production; provided, however, in outdoor facilities, designated smoking areas may be provided which shall be segregated from non-smoking areas. Where seating area is provided in an outdoor facility, no more than forty percent (40%) of the total seats of the facility may be designated as smoking seats;

(g) Retail food marketing establishments, including grocery stores and supermarkets;

(h) Public schools and other public facilities under the control of another public agency, which are available to and are customarily used by the general public, to the extent that the same are subject to the jurisdiction of the City;

(i) Sports arenas, both indoor and outdoor, and convention halls, except in outdoor sports arenas, designated smoking areas may be provided which shall be segregated from non-smoking areas. Where spectator seating is provided at outdoor arenas, no more than forty percent (40%) of the seats shall be designated as smoking seats;

(j) Bowling centers, including, but not limited to, bowling lanes, settees, gamerooms, except seating provided on the concourse, a designated smoking area may be provided which shall be segregated from non-smoking areas. Where seating is provided on the concourse, no more than forty percent (40%) of the seating shall be designated as smoking seats. The owner, manager or operator of the bowling center shall post signs as prescribed by Section 5-6.301 and remove all ashtrays from non-smoking areas;

(k) Private residences when used as child care or health care facilities. Board and care facilities shall provide smoke-free living quarters for non-smoking boarders;

(l) Bingo parlors, except a separate enclosed room may be designated as a smoking room. The owner, manager or operator of the bingo parlor shall post signs as prescribed by Section 5-6.301 and remove all ashtrays from the nonsmoking room.

(m) Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this Section may declare that entire establishment as a non-smoking establishment. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.203 Regulation of Smoking in Places of Employment.

(a) Smoking is prohibited in any place of employment, including, but not limited to, open office areas, shared offices, and private offices occupied by employees performing clerical, technical, administrative or

other business or work functions; and, conference and meeting rooms, classrooms, auditoriums, restrooms, medical facilities, hallways, and elevators.

(b) The provisions of this Section shall be communicated to all employees within three weeks of its adoption. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.204 Smoking—Optional Areas.

Notwithstanding any other provisions of this Chapter to the contrary, the following areas shall not be subject to the smoking restrictions of this Article:

(a) Private residences, including one which may serve as a place of employment, except when covered by Section 5-6.202(k);

(b) Bars, except as provided otherwise in this Chapter,

(c) Cardrooms licensed by the Sheriff-Coroner;

(d) Hotel and motel rooms rented to guests; provided, however, that each hotel and motel designates not less than thirty percent (30%) of their guest rooms as non-smoking rooms and removes ashtrays from these rooms;

(e) Retail stores that deal exclusively in the sale of tobacco and smoking paraphernalia;

(f) Restaurants, hotel, and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions;

(g) Restaurants whose primary activity is entertainment during specified days and hours, which includes the serving of alcoholic beverages and in which the service of food may only be incidental to the consumption of such beverages. The owner, manager or operator of the restaurant shall submit to the City a written notice providing the specified days and hours of operation solely intended for such activity and prior approval must be secured from the City Manager;

(h) Outdoor eating areas of restaurants. A designated smoking area may be provided which shall be segregated from the non-smoking area and no more than forty percent (40%) of the seating shall be designated as smoking seats;

(i) In places of employment, employers may provide specific smoking areas for employees provided all of the following conditions are met:

(1) The smoking area shall be provided with a heating, ventilating and air-conditioning (HVAC) system designed such that none of the air from the smoking area will be recirculated into the other areas of the building;

(2) The smoking area shall be completely separated from the remainder of the building by solid partitions or glazing without openings other than doors, and all doors leading to the smoking area shall be self-closing. The door shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top;

(3) The smoking areas shall maintain a minimum negative pressure of 0.005-inch water column relative to non-smoking areas;

(4) The employer shall submit written verification and test results to the City Manager or designees prepared by a licensed mechanical contractor or engineer that the HVAC system has been designed and tested and meets the requirements set forth in subsections (1) through (3) above;

(5) If the HVAC system is part of a smoke-removal system or pressurization system, any modifications to these systems to provide smoking areas will require approval from the Rodeo-Hercules Fire District. Written verification of this approval shall be provided to the City;

(6) If the specific smoking area is an employee break room, lunch room or other area which may be used by nonsmoking employees, then a separate nonsmoking break room, lunch room or other area shall be provided of equal or larger size and include at least equal facilities. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.205 Cigarette Vending Machines.

Coin-operated cigarette vending machines may be located only in those premises which have either a type 61, type 42, or type 48 license from the Department of Alcoholic Beverage Control. Cigarette vending machines must be located at least twenty-five (25) feet from any entry into the premises. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.206 Distribution of Free Samples and Coupons.

(a) No person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute, or direct, authorize, or permit any agent or employee to distribute (1) any cigarette or other tobacco or smoking product, including any smokeless tobacco product; or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building.

(b) No agent or employee or any person, firm, association or corporation in the business of selling or otherwise distributing cigarettes or other tobacco or smoking products for commercial purposes shall in the course of such business distribute (1) cigarette or product; or (2) coupons, certificates, or other written material which may be redeemed for tobacco products without charge, to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building.

(c) For purposes of this Section, "public ground" and "public building" include sports arenas as defined in Section 5-6.102(j) and any entertainment facility whether enclosed or not, except a bar, for which a charge is made for admission, whether publicly or privately owned. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.207 Out-of-package Sales.

No person shall sell or offer for sale cigarettes or smokeless tobacco not in the original packaging provided by the manufacturer. (Ord. 309 Div. 2 (part), 1992)

Article 3. Posting Requirements

Sec. 5-6.301 Posting Requirements.

(a) "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than 1" in height 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) shall be clearly, sufficiently and conspicuously posted in every building or other place where smoking is controlled by this Chapter, by the owner, operator, manager or other person having control of such building or other place.

(b) Every hotel or motel regulated by this Chapter will have posted at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked as to his or her preference. (Ord. 309 Div. 2 (part), 1992)

Article 4. Enforcement

Sec. 5-6.401 Enforcement.

Enforcement shall be implemented by the City Manager or designees.

Any citizen who desires to register a complaint under this Chapter may initiate enforcement considerations with the City Manager, or designees.

Any owner, manager, operator or employer of any establishment controlled by this Chapter shall have the right to inform persons violating this Chapter of the appropriate provisions thereof. (Ord. 309 Div. 2 (part), 1992)

Article 5. Penalty

Sec. 5-6.501 Penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the restrictions of this Chapter to fail to:

- (1) Properly post signs required hereunder;
- (2) Adopt a smoking restriction policy;
- (3) Comply with any other requirements of this Chapter.

(b) It shall be unlawful for any person to smoke in any area restricted by the provisions of this Chapter.

(c) Any person/business who violates subsections (a) or (b) of this Section, or any other provisions of this Chapter, shall be guilty of an infraction, punishable by:

(1) A fine, not to exceed One Hundred Dollars (\$100), for first violation;

(2) A fine, not to exceed Two Hundred Dollars (\$200), for a second violation of this Chapter within one year;

(3) A fine, not to exceed Five Hundred Dollars (\$500), for each additional violation of this Chapter within one (1) year. (Ord. 309 Div. 2 (part), 1992)

Sec. 5-6.502 Non-retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this Chapter. (Ord. 309 Div. 2 (part), 1992)

Article 6. Other Laws

Sec. 5-6.601 Other Applicable Laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 309 Div. 2 (part), 1992)

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

Sec. 1000. Title

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

Sec. 1001. Findings and Intent

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 1002. Definitions

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

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

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

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

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

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

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

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

Sec. 1004. Prohibition of Smoking in Enclosed Public Places

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

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

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

T. Service lines.

U. Shopping malls.

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

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

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

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

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

Sec. 1006. Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 1007. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

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

B. All hotel and motel guest rooms.

Sec. 1008. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

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

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

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

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

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

Sec. 1010. Where Smoking Not Regulated

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

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

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

Sec. 1012. Posting of Signs and Removal of Ashtrays

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

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

Sec. 1013. Nonretaliation; Nonwaiver of Rights

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

Sec. 1014. Enforcement

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

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

Sec. 1015. Violations and Penalties

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

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

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

Sec. 1016. Public Education

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

Sec. 1017. Governmental Agency Cooperation

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

Sec. 1018. Other Applicable Laws

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

Sec. 1019. Liberal Construction

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

Sec. 1020. Severability

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

Sec. 1021. Effective Date

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

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Legislation Details (With Text)

File #: 18-06 **Version:** 1 **Name:**

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

File created: 2/6/2018 **In control:** City Council

On agenda: 3/13/2018 **Final action:**

Title: Legislative Policies and Processes
Recommendation: Receive report, discuss, and provide direction, if any.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[Attachment 1 - Summary](#)

Date	Ver.	Action By	Action	Result
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Legislative Policies and Processes

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



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 13, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager

SUBJECT: Legislative Policies and Processes

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.

DISCUSSION: The City of Hercules may desire to take positions on pending legislation or may receive requests to do so from a variety of sources, including the League of California Cities, of which the City is an active member. In addition, the City sometimes receives requests from other agencies and outside organizations to take a position on a matter, often through the adoption of a resolution. The City's extremely limited resources and staffing result in a very constrained level of involvement in legislation, hampering responses to requests for support. Historically, the City of Hercules has only taken positions on matters of extreme local importance or impact, and this has only been by the matter being considered by the City Council as a whole in order to express an official position of the City. Alternatively, individual City Council Members have authored letters supporting or opposing legislation using City letterhead in their individual capacity, and then only with language that notes the correspondence does not reflect the position of the City as a whole.

Recently the City Council asked staff to return with an item to discuss the City's legislative policies and processes, and how other types of requests should be handled. This item is designed to allow the City Council to review our current practices and to perhaps make modifications.

Background

Many cities adopt an annual legislative platform which guides when and how a position will be taken, including "pre-approval" for letters to be sent on behalf of the City to support or oppose legislation consistent with the adopted platform, often without further action by the City Council.

Most often, these letters are sent in response to requests by the League of California Cities. The City of Hercules is a member of the League and the League has staff dedicated to monitoring and analyzing legislation of interest to cities, lobbying members of legislature, and keeping League members informed. The League has adopted Policies & Guiding Principles which guide its legislative activities. The 2016 Summary of Existing Policies & Guiding Principles for the League is attached for reference (Attachment 1).

In addition, the League also adopts key strategic goals each year which also serve to guide their legislative priorities and the 2018 goals are set forth below:

2018 League of California Cities Strategic Goals

1. Address Public Safety Concerns of California Cities.

Address public safety concerns arising from recently enacted reduced sentencing laws.

Protect local funding and authority in the implementation of the Adult Use of Marijuana Act.

Continue to preserve city rights to deliver emergency medical services (Health and Safety Code 1797.201).

Seek additional tools and resources to address critical community challenges such as homelessness, mental health, domestic violence, drug rehabilitation, ex-offender reentry, and human trafficking.

2. Ensure Sustainability of Public Pension and Retirement Health Benefits.

Consistent with the League's adopted pension sustainability principles, work with affected stakeholders, employees, CalPERS, legislators and the Governor to achieve meaningful options for cities to address growing unfunded pension liabilities that will ensure cities remain solvent and provide services to residents while continuing to offer employees meaningful and sustainable pension and health benefits.

3. Protect Existing Transportation Funding for Local Priorities.

Protect existing transportation funding for local priorities and oppose efforts that would reduce or eliminate funding for cities.

4. Improve Housing Affordability and Support Additional Resources to Address the Homelessness Crisis.

Increase state and federal financial support and provide additional local incentives and tools to improve housing affordability and develop more workforce and affordable housing. Support additional resources and tools to address the homelessness crisis and advance the recommendations of the CSAC-League Homelessness Task Force.

Throughout the year, staff and City Council Members regularly receive updates from the League and their Regional Public Affairs Managers. Action Alerts are sent which identify important legislation and which request that League members take positions in support or opposition to specific legislation consistent with the Existing Policies & Guiding Principles and the adopted Strategic Goals. For example, the City recently received an action alert requesting opposition to the SB 847 (Weiner) which would seriously undermine local control as it relates to housing development close to transportation hubs and routes. In this instance, City Council Members were

provided with the opportunity to individually express their opposition to the measure, and some members did send a letter.

As the legislative process sometimes moves very quickly, there is often not time to have the City Council consider a position on specific legislation in a timely manner, in addition to our resource constraints.

This is not the same for requests from other agencies or outside organizations where often the issues are not specific to Hercules or are at more of a global level. Generally, these requests have not been acted upon given resource constraints and no direct linkage to Hercules. In those instances where it is of local importance, the matter has been specifically agendaized for consideration by the City Council, though these occurrences have been relatively rare.

Possible Alternatives

City staff did a scan of legislative platforms, policies and processes, in order to develop some alternatives for the City Council to consider. The City of Hercules is, unfortunately, not in a position to adopt a robust, multifaceted, and comprehensive legislative platform as seen in many communities with more staff resources. While certainly not the full universe of options, the City Council could adopt a framework to enhance the participation in the legislative process as described below:

Approve a Broad Legislative & Regulatory Platform

This platform should reflect the City Council's goals and priorities as well as its position on issues that are currently, or are anticipated to be, the focus of future legislation and regulation at the state and federal levels. The adoption of a platform, unless amended in the future, would authorize the City's active participation to influence state and federal decision-making on legislative, administrative, regulatory, and funding issues, and would permit judicial advocacy consistent with the City's priorities and platform.

Advocacy

Using the Broad Legislative & Regulatory Platform as a guide, the City may take positions on specific legislation, regulations, and budget proposals, and respond to requests for amicus curiae support when the outcome of a pending lawsuit is likely to significantly affect a City priority and which is consistent with the platform.

Relying primarily on information received from the League of California Cities, the City Manager would identify issues of priority and will prepare a letter for the Mayor to sign in support or opposition based on the City's identified interests. The Mayor, Council Members, and City staff will advance City interests through individual and regional advocacy efforts, and the Mayor will act on requests from the City Attorney to join in friend-of-the court briefs.

Issues which fall outside of the Broad Legislative & Regulatory Platform, or matters to which the City Manager, City Attorney, or Mayor object, would require consideration of the City Council as a whole prior to a City position being communicated.

The Mayor and City Council Members may take individual positions and may communicate those positions to others using City letterhead as long as the letter clearly indicates it is an individual position and does not reflect the official position of the City or City Council.

Process

City staff will work collaboratively with our federal and state representatives, the League of California Cities, and other professional organizations and groups with which we share a community of interest to understand and develop strategies to influence legislation. This will include identifying funding resources and grants for projects. Council Members and City staff will participate in organizations such as The League of California Cities, the West Contra Costa Mayors & Supervisors Association, the Contra Costa Transportation Authority, the Bayfront Chamber of Commerce, and other groups that weigh in on issues that are important to the City. This will allow the City to have a stronger voice and a greater potential to influence key policy and legislative matters.

Should the City Council desire to engage at a higher level in regard to legislation as outlined above, an initial Broad Legislative & Regulatory Platform such as the one set forth below could be adopted as a starting point:

Broad Legislative & Regulatory Platform

1. The City of Hercules believes in local control and the ability of the City Council to make decisions that address the needs of residents and businesses within its jurisdiction. In general, the City of Hercules will oppose legislation that erodes local control and will support legislation that increases local control.
2. The City of Hercules also believes in fiscal responsibility and requires financial flexibility and sustainability to carry out its mission and objectives for the community. The City will oppose legislation that hinders financial flexibility and sustainability, and will support legislation that encourages financial flexibility and sustainability.
3. Oppose legislation that is an unfunded mandate and which would require the City to provide a service or benefit without appropriate and full funding.
4. Oppose legislation that would negatively impact City revenues including but not limited to sales tax, property tax, other General Fund revenues and enterprise fund revenues.
5. Support legislation that protects and maintains City sales and other tax revenues and oppose legislation that erodes this revenue.
6. Support legislation and programs which would provide possible funding for City Capital Improvement needs and projects such as the Hercules Regional Intermodal Transportation Center.
7. Support transportation initiatives that would address traffic congestion and gridlock on Bay Area roadways, especially Interstate 80, including expansion of bus, rail, and ferry services.
8. Support the Legislative Platform of the League of California Cities and specific calls for action to the extent they align with the City's legislative and regulatory platform.

8. Support legislation and programs which would assist in the achievement of the City's 2017 Strategic Plan Goals, Strategies, and Objectives.

The City Council's review of this report and discussion can assist in clarifying the manner in which the City can respond to legislation and requests for positions.

ATTACHMENTS:

1. League 2016 Summary of Existing Policies & Guiding Principles

Summary of Existing Policy and Guiding Principles

MARCH 2016

The Summary of Existing Policy and Guiding Principles

document is available in PDF format at:

www.cacities.org/summary

**1400 K Street
4th Floor
Sacramento, CA 95814
916.658.8200
916.658.8240 Fax
www.cacities.org**



VISION

*To be recognized and respected as the leading advocate
for the common interests of California's Cities.*

MISSION STATEMENT

*To expand and protect local control for cities through education and advocacy.
To enhance the quality of life for all Californians.*

WE BELIEVE

- *Local self-governance is the cornerstone of democracy.*
- *Our strength lies in the unity of our diverse communities of interest.*
- *In the involvement of all stakeholders in establishing goals and in solving problems.*
- *In conducting the business of government with openness, respect, and civility.*
- *The spirit of public service is what builds communities.*
- *Open decision-making that is of the highest ethical standards honors the public trust.*
- *Cities are the economic engine of California.*
- *The vitality of cities is dependent upon their fiscal stability and local autonomy.*
- *The active participation of all city officials increases the League's effectiveness.*
- *Focused advocacy and lobbying is most effective through partnerships and collaboration.*
- *Well-informed city officials mean responsive, visionary leadership, and effective and efficient city operations.*

ABOUT THE LEAGUE

Established in 1898, the League of California Cities is a member organization that represents California's incorporated cities. The League strives to protect the local authority and autonomy of city government and help California's cities effectively serve their residents.

In addition to advocating on cities' behalf at the state capitol, the League provides its members with professional development programs and information resources, conducts educational conferences and research, and publishes *Western City* magazine.

To learn more about the League and how to be involved, see inside back cover.

The Summary of Existing Policy and Guiding Principles document is available in PDF format on our Web site:

www.cacities.org/summary



INTRODUCTION

This edition of ***Summary of Existing Policy and Guiding Principles*** marks the ninth time since 1997 that the League has published a summary of its existing policies. The original document was prepared by researching and summarizing policy guidelines and positions on past legislation adopted by the League, as well as past League Annual Conference resolutions.

The Summary was developed with the assistance of the eight standing League policy committees and the League Board of Directors to ensure that the content accurately reflects existing League policy. The 2016 edition reflects policy changes adopted by the League through December 2015 through review of legislation and annual conference resolutions. The ***Summary*** is posted on the League's Web site (www.cacities.org/summary) in its entirety, as well as on individual policy committee pages.

The ***Summary of Existing Policy and Guiding Principles*** is intended to be a living reference, updated periodically to reflect changes to League policy made throughout the year. In addition, the League uses it to review new legislation that is introduced to determine how it relates to existing League policy. We encourage all cities to review the document carefully and to visit our Web site to identify any additions since this March publication date. The ***Summary*** can be of assistance in better understanding League policy and positions on state and federal legislation. In addition, we encourage cities to adopt all or part of the ***Summary*** so that they may be able to respond in a timely manner to new legislation introduced at the state and federal levels. This will permit cities to become more active in the legislative process and involved in issues impacting cities.

We hope you will find the ***Summary*** useful in your city's involvement in the legislative process and the League. Please do not hesitate to relay any comments you may have about this reference guide to the League's Sacramento office. Your suggestions are always welcome.

A handwritten signature in dark ink, reading "Chris McKenzie".

Executive Director

League of California Cities

March 2016

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Administrative Services

Scope of Responsibility

The Committee on Administrative Services reviews election law, administration, and government transparency. Additionally the committee reviews privacy issues related to data transparency and security. Finally, issues involving technology, insurance, tort reform, open meeting law (the Brown Act), the Public Records Act, and the Political Reform Act – in addition to other conflict of interest laws.

Summary of Existing Policy and Guiding Principles

Open Meeting Law (Ralph M. Brown Act) & Open Access to Public Records (California Public Records Act)

The League supports legislation that recognizes the need to conduct the public's business in public. To this end, the League supported and was a co-sponsor of the original Ralph M. Brown Act and supports legislation that conforms to the intent of the Act. The League also supports the regulation of the state and other public agencies to ensure conformance to the principles of the open meetings provision in the Ralph M. Brown Act.

The League opposes legislation claiming to enhance open and public meetings that in practice unnecessarily complicates the ability of a local governing body to properly communicate with the public and that discourages communications among governing body members through unproductive restrictions and inappropriate activities.

The League opposes legislation that would impose further unnecessary restrictions on the action that a governing body can take in closed sessions.

The League supports legislation that recognizes the realities of other constraints under which a local governing body must operate that necessitates judicious use of closed sessions, including:

- The privacy rights granted to individuals under the U.S. and California constitutions.
- The personnel issues that have a potential impact on an individual's career and potential earning capacity and that raise serious liability questions for a local jurisdiction.
- The protection of the taxpayer's interests over property and other acquisitions by a public agency.
- The proper maintenance of the same attorney-client privilege enjoyed by the private sector.

The League supports legislation that includes less-than-a-quorum advisory committees within the definition of "legislative body" as defined in the Ralph M. Brown Act, if the committee is composed solely of members of the legislative body whose subject matter jurisdiction has cumulatively lasted two years or less.

The League supports alternative methods of meeting public notice requirements and enhancing them through the use of cost effective and innovative, technology friendly methods of communication.

Political Reform Act of 1974 (PRA)

The League supports legislation and regulations that establish sound practices and principles related to political campaigns. Regulations and legislation that restrict or preempt local authority will be opposed.

The League should continue to explore opportunities to improve and streamline the Political Reform Act and its implementation through regulations.

The League supports an increase in the fee for the reproduction of statements required under the Political Reform Act from ten cents (\$0.10) per page to twenty-five cents (\$0.25) per page.

The League opposes legislation that would prohibit the use of public resources to commence an action to enjoin the operation of any law or constitutional amendment that was proposed by initiative petition and approved by the voters.

The League supports legislation providing the FPPC with authority to issue opinions to guide local officials in understanding conflict of interest laws, including Government Code Section 1090.

Governance, Transparency, and Ethics

Public trust and confidence in government is essential to the vitality of a democratic system and is the reason ethics laws hold public officials to high standards.

Laws alone cannot foresee or prevent all actions that might diminish the public's trust in governmental institutions. Transparency laws impose the minimum standards of conduct; to preserve public trust, public officials should aspire to conduct that exceeds minimum standards.

State revisions to laws governing local agency transparency and ethics should address material and documented inadequacies in those laws and have a reasonable relationship to resolving those problems.

In order to encourage and facilitate compliance with new transparency and ethics requirements, State laws should be internally consistent, avoid redundancy and be mindful of the practical challenges associated with implementation.

State officials and agencies should aspire to conform to the same level of transparency and ethical behavior as is imposed on local officials and agencies.

The League supports legislation that strengthens the ethics laws related to the Board of Administration (Board) for the California Public Employees' Retirement System (CalPERS) including banning the ability for former Board members to do business with CalPERS.

The League believes that a statute of limitations for bribery should not begin until the act is discovered. The League also believes that in cases of conspiracy to commit a felony, the statute of limitations should be the same as the statute of limitations for the underlying crime.

Elections

The League supports legislation that reduces any unnecessary and costly procedures for conducting a municipal election. The League opposes legislation that mandates costly and unnecessary procedures related to the election process.

The League opposes state-mandated consolidated elections as they lead to increased costs and move local elections further down on the ballot even though local outcomes have a direct impact on voters themselves.

The League supports providing city councils more flexibility to fill city council vacancies including extending the appointment period to fill a vacancy.

The League supports mail ballot elections.

The League supports the requirement that the intent and text of a local ballot measure is to be filed with the city clerk and published in a newspaper of general circulation with a filing fee. With regard to any land use measure, the League supports allowing the city council to refer it to the planning agency for a report on the measure's effects.

The League supports legislation that facilitates newly sworn citizen's voter registration.

The League supports permitting elections officials to administer voter information electronically so long as such a process remained voluntary to voters.

The League opposes any legislation or regulation that would prohibit legal action from being filed by any person(s) challenging the validity of the initiative petition or ordinance after the date of the election.

The League supports a process that would allow a city presented with an allegation of a violation of the California Voter Rights Act (CVRA) to address the allegation before any person may file a lawsuit related to the alleged violation.

The League supports authorizing cities to convert from an at-large to a by-district election system using an ordinance process, thus avoiding possible California Voting Rights lawsuits and costs associated with gaining voter approval at the ballot.

Recall Elections

The League supports legislation that maintains the integrity of the recall process.

The League supports legislation that reduces the amount of recall abuse while improving, streamlining and ensuring that the public has full knowledge of the issues.

Elected Officials

The League recognizes that elected and appointed officials receive threats, and have become the target of violence at their homes. The unauthorized publication of home addresses or telephone numbers in newspapers or similar periodicals, like publications on the Internet, is a threat to the security of public officials in their homes. The League supports legislation to extend or provide protection to elected and appointed officials from the unauthorized publication of their home addresses or telephone numbers in newspapers or similar periodicals.

Administrative Services

The League supports requiring both elected local and state officials to maintain their place of residence in the jurisdiction they were elected to represent.

Legal Issues

Attorney-Client Privilege

The League recognizes the special role of public agency attorneys in protecting the public interest, while at the same time maintaining appropriate and critical attorney-client confidentiality. The basis for this position is the belief that it is the public agency that is the public agency attorney's client, not an individual public official. Thus, the League supports legislation that permits public agency attorneys to breach attorney-client confidentiality to disclose only very serious wrongdoings where internal corrective measures have failed or are futile; the disclosure is made to narrowly circumscribe regulatory agencies and the public agency attorney follows specific procedures.

Government Liability and Tort Reform

The League supports legislation that limits the exposure of local governments to lawsuits related to liability, including but not limited to such areas as unimproved natural conditions, design immunity, hazardous recreational activities, and injuries due to wild animals in public places.

The League supports modifications to the joint liability laws that require the responsible parties in a civil action to pay only their fair share of judgment based on their relative responsibility.

Private Sector Liability

The League will work closely with private sector representatives to evaluate the potential for League support of civil justice reform measures designed to improve the business climate in California. These measures should be evaluated on a case-by-case basis through the League policy process.

The League supports legislation that enables cities to better prosecute unfair competition cases (Business and Professions Code 17200) in order to protect consumers and their residents, and that removes the 750,000 population and District Attorney approval for city attorney action in this area. The League opposes legislation that restricts cities from pursuing unfair competition cases beyond the restrictions in current law (2003).

Interest on Judgments

The League supports ensuring that pre-and post-judgment interest rates are fair to all parties, including taxpayers, recognizing the impact on public budgets.

Data and Privacy Protection

The League encourages cities to do everything in their power to protect the privacy of employees and constituents. However, the League opposes mandates that would require, in the event of a security data breach, cities to provide identity theft prevention and mitigation services at no cost to the impacted persons.

Note: The League will review new legislation to determine how it relates to existing League policies and guiding principles. In addition, because this document is updated every two years to include policies and guiding principles adopted by the League during the previous two years, there may be new, evolving policies under consideration or adopted by the League that are not reflected in the current version of this document. However, all policies adopted by the League Board of Directors or the League's General Assembly become League policy and are binding on the League, regardless of when they are adopted and whether they appear in the current version of "Summary of Existing Policies and Guiding Principles."

Community Services

Scope of Responsibility

The Committee on Community Services reviews issues related to childcare, parks and recreation, libraries, cultural arts and community and human services programs.

Summary of Existing Policy and Guiding Principles

Arts, Cultural Resources, Historic Preservation and Activities

The League supports continued state funding that recognizes the important role of local arts activities and historic preservation in community life and how these cultural activities affect the social health and economic vitality of cities.

Child Care

The League supports the creation of more affordable, innovative and quality parks and recreation and child care options for parents and concurrently encourages adherence to strict regulations and guidelines.

Children

The League believes that the children of California must be recognized as our state's most valuable resource. Their development, education and well-being are key to our state's future. Further, it is essential that each child have the support needed to become a productive citizen in the world of the 21st Century. This involves supporting diverse before-and-after-school programs and creating stronger linkages between municipal services and school-based job training programs in order to produce more job placement opportunities.

The League promotes the development of a cooperative program with the goal to increase enrollment of California's children in the Healthy Families Program.

The League encourages cities to promote anti-bullying efforts across California as well as provide education and awareness to the general public about the imminent health and safety concerns for bullied children, especially those with special needs.

Park Bond Funds

The League believes that any statewide park bond measure should include a component that provides per capita grants to cities and counties. The League opposes tying local eligibility for grant funds to non-park related issues, such as rent control or housing element status.

Public Parks/Recreational Facilities

While the State of California studies the use of crumb rubber in synthetic turf and playground surfaces, the League opposes legislation that requires cities to undertake specific actions before installation can occur.

Public Libraries

The League supports full funding of the Public Library Fund so that the State of California can fully fund its share of the program, understanding how libraries play an integral role in building and sustaining our communities. (Additional library-related policy is included in "Restructuring California's Public Library Services," the report of a joint task force co-sponsored by the League, CSAC, California Library Association and the California Association of Library Trustees and Commissioners.)

The League opposes legislation that requires public libraries to install and maintain computer software for use on computers in the library that prohibits access to obscene material to minors and other library patrons. The League believes that this issue is more appropriately addressed at the local level, in ways that meet local circumstances, and thus is an issue of local control.

Community Services

Seniors

The League encourages cities to recognize seniors as a valuable state resource and to develop and improve intergenerational programs and activities. The League supports legislation that would provide funding for side-by-side day care facilities for California's youth, adults and seniors.

Healthy Cities

The League encourages California cities to help parents make healthy family choices; create healthy schools; provide access to healthy and affordable foods; and adopt city design and planning principles that promote physical activity.

The League encourages cities to involve youth, especially middle and high school students, with city health-related programs.

The League encourages cities to address the needs of an aging population through local and statewide planning, education and conference programming.

The League encourages cities to establish their own rules and regulations pertaining to community recreational activities.

Smoking and Tobacco Control

The League supports legislation that establishes a statewide smoking and tobacco control standard that includes electronic cigarettes and vapor products, as long as such legislation does not preempt the ability of cities and counties to enact local laws that are stronger than the statewide standard or to regulate in areas not covered in the statewide standard. The League opposes legislation that would restrict such local authority.

The League supports legislation that limits the ability of minors to obtain tobacco and tobacco products, including electronic cigarettes and vapor products.

The League supports and advocates that all 480 California cities be equitably included in the distribution of moneys that the state receives from the Tobacco Settlement Memorandum of Understanding, and believes that the moneys received by counties should benefit all cities within the county and that cities have input into the decision-making process.

The League supports legislation that requires tobacco retailers to obtain a state-issued license to sell tobacco products, as long as the legislation does not restrict or preempt the ability of cities to enact and enforce their own retail licensing programs and to enforce the state-wide licensing program. The League also supports legislation designed to restrict the sale of illegal, counterfeit tobacco products.

Note: The League will review new legislation to determine how it relates to existing League policies and guiding principles. In addition, because this document is updated every two years to include policies and guiding principles adopted by the League during the previous two years, there may be new, evolving policies under consideration or adopted by the League that are not reflected in the current version of this document. However, all policies adopted by the League Board of Directors or the League's General Assembly become League policy and are binding on the League, regardless of when they are adopted and whether they appear in the current version of *"Summary of Existing Policies and Guiding Principles."*

Employee Relations

Scope of Responsibility

The Committee on Employee Relations reviews issues related to the field of labor relations and human resource management.

Summary of Existing Policy and Guiding Principles

Labor Relations

The League supports legislation that specifically exempts local public agencies from the requirement to negotiate with any labor or special interest group about matters submitted to the voters of that jurisdiction as initiatives or Charter amendments.

The League supports efforts to promote, initiate and improve both public and private sector labor-management relations.

The League opposes any system of compulsory and binding interest arbitration, including state-mandates and the imposition of binding arbitration through the initiative process. No arbitrator board or other private person should have any control, direct or indirect, over local budgets, revenues or appropriations.

The League opposes any legislative action that requires the continuation of the terms of any Memorandum of Understanding (MOU) between a public agency and an employee organization until a successor MOU is agreed upon.

The League opposes any extension of the State Public Employment Relations Board jurisdiction over local public agency labor relations disputes and charges of unfair labor practices, and also opposes any interference or intervention in local collective bargaining by all labor-management relations councils or boards.

The League opposes state-mandated legislation related to employer/employee relations that are not mutually agreed upon by the local public agency and its employee organizations, except as provided by local law.

Public Sector Pensions, Compensation and Other Post-Employment Benefits (OPEBs)

General Pension Principles

The League supports balanced measures that ensure sustainable retirement and health care benefits are offered to public agency employees while at the same time ensuring that public agencies have solid retirement benefits to attract and retain highly talented employees. The League supports locally negotiated retirement programs that are fiscally responsible, transparent, sustainable, affordable and equitable for employees and for taxpayers in the long term.

The League supports reasonable measures to ensure that retirement benefits are properly funded allowing flexibility to local agencies to negotiate equitable cost sharing with employees and smoothing the employers' costs during challenging economic times. The League supports the long term sustainability of retiree health benefits by including their costs in employer/employee costs sharing formulas.

The League recognizes and supports the value of a dependable, sustainable, employer provided defined benefit plan for career employees; supplemented with other employee only funded retirement options including personal savings such as a 457 Plan. The League supports further exploration of defined contribution options as part of future pension reform discussions.

The League supports pension portability across all public agencies to sustain a competent cadre of California public servants.

The League supports calculating benefits only on core components; special pays such as temporary upgrade of out of class pay should be eliminated from final compensation calculations.

The League supports meeting any retirement needs for part-time employees with alternatives to a defined benefit plan.

The League supports employee benefits (including but not limited to retirement and disability) and desires to ensure that income derived from such sources are non-duplicative.

The League opposes preemption of charter city authority over public pension systems.

The League supports reducing public retirement benefit fraud and increasing transparency of other post-employment benefits.

The League supports full participation in the PERS Coalition (PERS/PAC) and its purpose of monitoring legislation, policies and action necessary to maintain or further the interests of contracting agencies.

Employee Relations

The League believes that cities with retirement programs must retain the ability to opt out of Social Security.

The League believes that the employee benefit structure within local government should be developed locally through the local government collective bargaining process and that process should be strictly honored by the state Legislature and the Governor.

CalPERS (California Public Employees' Retirement System)

The League supports an exemption for retired CalPERS employees, allowing them to work for CalPERS agency under contract or appointment by the local agency.

The League supports agencies having the maximum amount of flexibility when employing and compensating part-time, seasonal and temporary employees (ie. lifeguards, seasonal maintenance workers, recreation leaders, summer camp leaders, and other temporary hires, etc.) to include eliminating the mandate that CalPERS retirement benefits must be provided when the part-time, seasonal or temporary employee works 1,000 hours in a fiscal year given the costs associated with the CalPERS retirement plan. Further, the League supports providing CalPERS with information regarding enrolled members while eliminating the requirement to provide information regarding employees who are not members of CalPERS. The League also encourages agencies to support long-term part-time/seasonal employees by providing proportional retirement benefits via appropriate mechanisms.

The League supports having CalPERS provide a broader range of formula choices classes with maximum local control and flexibility in negotiating all options.

The League supports having CalPERS provide a broader range of health plan choices with a variety of benefit options for all types of member classes with maximum local control and flexibility in negotiating all benefit options with active employees and for retirees.

The League supports legislation that allows agencies to offer a variety of different health care plans to retired employees that provides adequate, affordable coverage.

The League supports legislation permitting cities to establish their contributions toward retiree health premiums through the labor relations negotiating process, including: (a) multi-tiered contribution levels; (b) vesting eligibility other than PERS retirement eligibility; (c) prorated contribution based on age and/or length of service; and (d) different contributions for active and retired employees.

When discussing pension policy, the total cost of the pension benefit should be considered. In cost share arrangements, the League supports shared employee/employer costs based on the total cost of the pension benefit.

The League supports providing local governments with maximum flexibility and options. Local agencies must be able to decide on issues such as minimum retirement ages, pension caps, cost sharing, formulas and other options to meet local needs and promote ease of administration.

The League supports giving government agencies through the collective bargaining process the option to extend retirement ages for miscellaneous employees up to social security retirement ages.

The League supports eliminating the requirement that any negotiated changes in pension benefits under the Public Employees' Retirement Law (PERL) are voted on twice by the affected employees.

The League supports a State Constitutional Amendment to allow employers to negotiate plan changes with classic CalPERS members.

The League supports restructuring the CalPERS Board of Administration to substantially increase in independent public members (preferably with financial expertise) to ensure greater representation of tax payer interests with regard to public pension decisions.

The League supports setting uniform standards and definitions for disability benefits and evaluating the level of benefit that is considered as tax exempt. The tax exempt portion should either be eliminated or allowed on a proportional basis to the severity of the disability.

If the above reforms prove unfeasible or ineffective, the League supports considering a standard public employee pension system where one benefit level is offered to every employee as a further option to restore sustainability to CalPERS.

The League supports developing a program with the State to ensure that pension programs offered by localities are fully transparent, and that professional actuarial evaluations of unfunded components of other post-retirement benefits (OPEBs) and pension plans are completed.

Employee Relations

Compensation Principles

Employee compensation should be based on each individual agency's overall philosophy on employee compensation as well as the agency's ability to pay and provide services to their community. The League recognizes that sound compensation practices are based on the complexity of the job and the community as well as the job requirements and the knowledge, skills and abilities needed to meet those requirements.

The League believes that employee compensation should be based on job requirements, complexity of both the makeup of the city organization and community, the leadership needed, labor market conditions, ethical considerations of what is just and fair, and the organization's ability to pay.

Public compensation systems programs should be sustainable, fair to taxpayers and employees, and provide long-term financial stability.

Transparency of compensation and other benefits ensures the public is informed about the fiscal realities local agencies face as they relate to fiscal obligations.

The League opposes legislation that would require employers to pay more than the regular pay for work on family holidays.

Workers' Compensation

The League supports legislation and policy that controls escalating workers compensation costs to public agencies and taxpayers.

The League opposes legislation that would permit an employee to use more than one legal process in regard to disability claims (i.e., ADA, workers' compensation, DFEH), or any other erosion of the "exclusive remedy" principle as it relates to disability claims covered under workers' compensation.

The League supports reforming the workers compensation process to incentivize employees returning to work creating a penalty for those that do not return to available modified duty or alternate positions.

Other Employer and Employee Related Issues

The League supports efforts to conform the California Family Care Leave Laws to the federal Family and Medical Leave Act (FMLA) laws.

The League supports the special protection of elected officials, county public defenders, public figures and public employees acting in their official capacity against threats of death or serious bodily injury.

The League opposes legislation making it a misdemeanor to disclose peace officer personnel records and citizen complaint records, as well as prohibiting the use of documents or information obtained in violation of this procedure in any administrative proceeding against a peace officer, and any measure that makes it more difficult to discipline the misconduct of police officers.

The League supports maintaining the confidentiality of personnel matters and protecting public safety personnel discipline records from public disclosure.

The League opposes the mandated inclusion of governmental entities for Occupational Safety and Health Agency (OSHA) violations without appropriate compensation for the mandates.

The League supports legislation to protect the authority of city employers to request that an applicant disclose information or use for hiring decisions information concern a felony conviction.

The League supports the establishment of a state program similar to that of the federal AmeriCorps program that would allow cities and other local agencies to host service members.

The League opposes legislation that would allow employment applicants to bring action against the agency for taking into consideration their status as a current or former public employee.

The League supports controlling the overall costs of healthcare through community-wide actions.

Note: The League will review new legislation to determine how it relates to existing League policies and guiding principles. In addition, because this document is updated every two years to include policies and guiding principles adopted by the League during the previous two years, there may be new, evolving policies under consideration or adopted by the League that are not reflected in the current version of this document. However, all policies adopted by the League Board of Directors or the League's General Assembly become League policy and are binding on the League, regardless of when they are adopted and whether they appear in the current version of "Summary of Existing Policies and Guiding Principles."

Environmental Quality

Scope of Responsibility

The Committee on Environmental Quality reviews issues related to air, water and water quality, climate change, CEQA, integrated waste management, hazardous materials, coastal issues, and utilities.

Summary of Existing Policy and Guiding Principles

Air Quality

The League supports inclusion of city officials on the governing boards of air districts and opposes efforts to delete such city representation.

The League believes cities should have the authority to establish local air quality standards and programs that are stricter than state and federal standards. The League opposes efforts to restrict such authority.

The League opposes legislation redirecting the funds authorized by Health and Safety Code Section 44223, which are currently used by local governments for locally based air quality programs.

The League opposes air quality legislation that restricts the land use authority of cities.

The League supports the requirement that both public and private diesel garbage trucks be retrofitted to reduce the amount of particulate matter pollution emitted from the trucks. (See also Integrated Waste Management Section below.)

Climate Change

The League recognizes that climate change is both immediate and long term, with the potential for profound environmental, social and economic impacts to the planet and to California.

Through the Global Warming Solutions Act of 2006 (AB 32 (Nuñez), Chapter 488, Statutes of 2006) California has embarked on a plan that requires the reduction of greenhouse gas emissions to 1990 levels by 2020. Although uncertainty remains about the pace, distribution and magnitude of the effects of climate change, the League recognizes the need for immediate actions to mitigate

the sources of greenhouse gas emissions and has adopted the following principles:

1. Action Plans for Mitigating Greenhouse Gas Emissions. Encourage local governments to complete an inventory of greenhouse gas emissions, set appropriate reduction targets, and create greenhouse gas emission reduction action plans.
2. Smart Growth. Consistent with the League's Smart Growth policies, encourage the adoption of land use policies designed to reduce sprawl, preserve open space, and create healthy, vibrant, and sustainable communities.
3. Green Technology Investment Assistance. Support tax credits, grants, loans and other incentives to assist the public, businesses, and local agencies that invest in energy efficient equipment and technology, and fuel efficient, low emission vehicles.
4. Energy and Water Conservation and Efficiency. Encourage energy efficiency, water efficiency, and sustainable building practices in new and existing public, residential and commercial buildings and facilities. This may include using the U.S. Green Building Council's LEED program or similar systems.
5. Increase the Use of Clean Alternative Energy. Promote the use and purchase of clean alternative energy through the development of renewable energy resources, recovery of landfill methane for energy production and waste-to-energy technologies.
6. Reduction of Vehicle Emissions in Public Agency Fleets. Support the reduction of vehicle emissions through increased fuel efficiency, use of appropriate alternative fueled vehicles, and/or low emission vehicles in public agency fleets. Encourage the use of appropriate alternative fueled vehicles, and/or low emission vehicles in private fleets.
7. Climate Change Impacts. Encourage all levels of government to share information to prepare for climate change impacts.
8. Coordinated Planning. State policy should encourage and provide incentive for cities to coordinate and share planning information with neighboring cities, counties, and other governmental entities so that there are agreed upon regional blueprints and strategies for dealing with greenhouse gas emissions.

9. Water Supply for New Development. Encourage exchange of water supply information between state and local agencies, including information on the impacts of climate change on state and local water supplies.
10. Recycles Content and Green Purchasing Policies. Encourage the adoption and implementation of recycled content and green procurement policies, if fitness and quality are equal, including the adoption of an Environmental Management System and authorization of local agencies to consider criteria other than only cost in awarding contracts for services.
11. Recycles Content and Green Purchasing Policies. Encourage the adoption and implementation of recycled content and green procurement policies, if fitness and quality are equal, including the adoption of an Environmental Management System and authorization of local agencies to consider criteria other than only cost in awarding contracts for services.

Hazardous Materials

The League supports the ability of local governments to enact local standards or regulations that are stronger than those enacted at the state and federal level. To this end, where the city fire department is the lead agency for regulating and enforcing hazardous materials laws, the League supports the provisions of existing law that permit a local fire department to adopt stronger local requirements, as long as it complies with specified procedures to enact such stronger local standards. The League opposes legislation or regulations that restrict such authority.

The League supports efforts to streamline and coordinate hazardous materials regulation among various levels of government, including city fire and county environmental health departments. The League supports the ability of city fire departments to be administering agencies for any of the major hazardous materials laws or to be the lead agency (the Certified Unified Program Agency) under the SB 1082 program, and opposes legislation or regulations to restrict such authority.

The League opposes any efforts to restrict the ability of cities to issue building or other permits it is now authorized to issue relative to hazardous materials laws.

The League opposes any proposals that would preempt the ability of a city to deny a land use permit or restrict its ability to issue a conditional use permit for the siting of a hazardous waste facility.

The League opposes legislation that mandates that cities post information on the Internet regarding adoption, amendment or repeal of hazardous materials ordinances. However, the League does not object to legislation that makes such posting voluntary.

The League supports the following principles related to Brownfields Revitalization:

- The League supports state and federal legislation that would create additional fiscal resources and options to restore and develop urban and industrial brownfields contaminated by hazardous materials. The League also supports creative state and federal efforts to encourage revitalization and better use of abandoned urban and industrial brownfields, as long as local governments retain existing land use authority.
- Cities should have the ultimate say on whether a proposed brownfield remediation project is consistent with local land use policy. The proposed use of a project (i.e., parking garage, business park, residential development) should be consistent with a city's general plan and land use authority.
- The clean-up level of a project should be based on its proposed use (i.e., parking garage, as oppose to residential development).
- Mechanisms, such as restrictive covenants of deed restrictions, need to be in place to ensure that if a future use for a property is different than that which was proposed when the site was cleaned up, that the clean-up levels be re-evaluated and additional remediation be required before the new use can be approved.
- Local agencies do not have the desire or generally the expertise to do the technical evaluation for site assessment and remediation plans. Appropriate state agencies should have that responsibility.
- If a property owner plans to develop the site, then the owner should be required to do the necessary site assessment and clean up.

Integrated Waste Management

The League supports continued efforts by local agencies to meet the 25% and 50% recycling and diversion provisions of the Integrated Waste Management Act of 1989 (AB 939) and believes that decisions on how to achieve those requirements are best determined at the local level, rather than by state agencies. The League believes that those jurisdictions that have made a good faith effort to comply with the requirements of AB 939 should not be subject to enforcement penalties. The League opposes the

Environmental Quality

repeal of AB 939, but supports continued efforts to streamline its provisions and to assist in compliance.

The League believes that green waste used as alternative daily cover (ADC) should be eligible for limited AB 939 credit, as long as the ADC meets performance and health and safety criteria established by the California Integrated Waste Management Board (CIWMB), now the California Department of Resources, Recovery & Recycling (Cal Recycle).

The League opposes efforts to dismantle the CIWMB and transfer its functions to a department. This position is based upon the need to have public access to decision makers outside of the administrative process, similar to access that Waste Board members currently provide. The League supports inclusion of a designated local government representative on the CIWMB.

The League continues to support legislation to provide changes to AB 939 (the California Integrated Waste Management Act) that will:

- Place more emphasis on implementation of waste diversion programs and less strict mathematical accounting;
- Require Cal Recycle to evaluate the level of accuracy of the existing system the board uses to measure jurisdictions' achievement of the waste diversion requirements of state law and develop appropriate policies, in consultation with local jurisdictions, to account for any inaccuracies in the system;
- Encourage the development of non-burn transformation technologies by providing full diversion credit for the waste that jurisdictions send to non-burn transformation facilities;
- Require the board to expand its market development activities, including providing more funding for research and development of markets for recyclable materials; and
- Require Cal Recycle to staff its existing regional offices with personnel that can assist jurisdictions in carrying out the requirements of the act.

The League supports legislation and other efforts to increase the markets for recycled materials, including advance disposal fees, minimum content laws, and recycling market development zones. The League opposes legislation that requires local governments to adopt refuse fees based upon variable can rates.

The League supports efforts to strengthen curbside recycling programs and opposes efforts to weaken such programs. The League supports legislation to expand the container types included in the AB 2020-bottle bill program.

The League supports the right of cities under existing law to be designated as Local Enforcement Agencies for solid waste facility permitting, inspection and enforcement, and opposes legislation to restrict this authority or transfer it to state agencies.

The League opposes legislation that would preempt local land use authority over solid waste facilities, would restrict the ability of a city to issue a land use permit for a solid waste facility or would restrict the ability of a city to condition such facilities through the conditional use permit process.

The League does not oppose legislation that assesses fees on solid waste that is disposed of out of state, as long as the fees reflect the pro-rata portion of in-state costs.

The League opposes legislation that would authorize the Director of Cal Recycle to consider landfill capacity as a reason for denying concurrence of a solid waste facility permit and also opposes legislation that would prohibit a public agency from being certified as a Local Enforcement Agency if the public agency is also an operator of a solid waste facility.

The League opposes legislation that would authorize the Director of Cal Recycle to consider environmental justice as a basis for concurring or denying a solid waste facility permit. The League has adopted the policy that issues of environmental justice are best addressed at the local level through the local land use and public hearing process and through existing federal and state policy.

While the League supports the retrofit of public and private diesel fueled garbage trucks to reduce particulate matter air pollution (see Air Quality section), the League opposes funding such retrofits in a way that would either interfere with the existing franchise relationship between local governments and haulers or would impose a surcharge on landfills.

Electronic Waste

The League supports legislation implementing the concept of manufacturer responsibility for electronic waste (e-waste). This includes, but is not limited to, encouraging or providing incentives for e-waste recycling, requiring manufacturers of computer, cathode-ray tube (CRT), photovoltaic modules (solar panels) and other electronic products considered universal wastes, to operate or fund comprehensive, extended producer responsibility programs. Such programs should require products to be sustainably designed and labeled, offer financial incentives to consumers to properly dispose e-wastes, encourage recycling, reuse and collection programs by manufacturers, incentives to consumers to redeem or recycle e-waste, and fund a convenient collection infrastructure.

The League supports statewide and manufacturer education programs to educate consumers about e-waste and recycling efforts.

The League supports an advance disposal fee on computer and other electronic products in order to fund such manufacturer responsibility programs and local collection and recycling programs.

The League supports national efforts to address the e-waste problem.

Household Hazardous Waste

The League opposes legislation that requires local jurisdictions to collect household hazardous waste in a specific collection manner, including mandatory curbside collection.

Extended Producer Responsibility (EPR)

The League supports legislation implementing producer responsibility. This includes, but is not limited to, mandating or providing incentives including funding for comprehensive producer responsibility programs for hazardous and universal wastes and products and packaging for which disposal or recycling is problematic for local governments.

Single-Use Carryout Bags

The League supports in concept legislation that charges a fee for all consumers for single-use carryout bags at the point of sale; however, the League does not have a position on the amount of the fee except that it should be set to modify consumer behavior.

Cities should be eligible for moneys generated from any fee placed upon single-use carryout bags, provided those dollars are used by the city to mitigate the effects of single-use carryout bags on the storm water, solid waste diversion, visitor education and awareness, and water quality in the city. Any application for funding provided to cities by single-use carryout bag fees should be streamlined, simple and not overly burdensome.

The League supports CEQA exemptions for single-use carryout bag bans or a programmatic EIR.

The League opposes any bill that would preempt local governments from individually banning or placing a fee on single-use carryout bags distributed within the city.

Utilities

The League supports the constitutional right of municipal utilities to operate outside the jurisdiction of the California Public Utilities Commission (PUC) and opposes any legislation that would erode the ability of municipal utilities to operate, or place them under PUC control.

The League opposes legislation that dictates the mix of generating sources (i.e., hydro, coal, biomass, wind, etc.) used by municipal utilities.

The League opposes any legislation that interferes with local utility rate setting authority and opposes any legislation that restricts the ability of a city to transfer revenue from a utility (or other enterprise activity) to the city's general fund.

The League is neutral on legislation requiring municipal electric utilities to include a "renewable portfolio standard" (RPS) in their mix of sources of electricity, as long as the requirement is the same as that which applies to investor owned utilities. The League opposes legislation that requires municipal electric utilities to meet an RPS that is stronger than that applied to investor owned utilities.

The following principles will guide the League's position regarding exit fees to avoid cost shifting for newly formed municipal utilities or extensions of existing municipal utilities:

- A mechanism or venue other than the PUC should be used to determine and impose the exit fees in order to prevent PUC jurisdiction over municipal utilities. For example, exit fees might be best evaluated and incorporated by the courts as part of eminent domain and the condemnation proceeding used when a city wishes to take over the IOU's distribution system.

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- The League does not object to fair exit fees to avoid cost shifting for customers that were actually served by an investor-owned utility.
- Exit fees should consist of payments of a fair share of the DWR bond costs, a fair portion of the IOU under collections and a fair share of the remaining amount of the CTC (competition transition charge, left over from AB 1890).
- Exit fees should not be charged to newly annexed municipal utility territory that was never served by an IOU (so called “greenfields”).
- In addition, the League believes photovoltaic systems should be completely exempt from any type of exit fee.

Electric Industry Restructuring

The League supports restructuring of the electricity services industry, provided it meets the following criteria:

- Support the Concept. The League of California Cities supports the concept of electric industry restructuring if it results in lower electricity rates that continue permanently into the future. The League does not support or oppose any specific form of restructuring and believes the program ultimately implemented must satisfactorily address the adopted criteria listed below. Any new industry restructure should be based on a thorough economic analysis of the full costs and potential benefits of the alternatives under consideration.
- Equitable Benefits. Any restructuring program should result in all ratepayers directly sharing in the benefits equitably.
- Municipal Utilities. Any restructuring program should maintain the concept of municipal utilities. No restructuring proposal should abridge the existing authority of municipal utilities to operate or abridge the ability of cities to form municipal utilities in the future.
- Franchise Authority. Cities should continue to have the authority to issue franchises and any program should be at least revenue neutral relative to revenue currently received from franchises.
- Aggregation. Under any restructuring program agreed upon by the PUC or the Legislature, cities should have the opportunity to become aggregators for municipal operations or the community at large. As an aggregator, a city would be able to combine the electric loads of various users and negotiate the purchase of electricity for those users.

- Stranded Investments. The problem of stranded investments should be resolved in a way that keeps investors, ratepayers, and generators financially whole. Any policy to deal with stranded investments for large energy producers (i.e., nuclear power) should be applicable to all other producers (i.e., independent power producers).
- Wheeling. Any program should facilitate the wheeling of electricity between generators and users.
- Alternative Sources. Consistent with existing League policy that supports the development of alternative energy sources, any restructuring program should incorporate support for alternative energy in order to enhance the mix of energy sources available in California, both for environmental and strategic energy security reasons.
- Biomass. The unique problems of the biomass industry, as they relate to California’s solid waste infrastructure, should be fairly resolved in any deregulation program.
- Social and Environmental Impacts. Consistent with existing League policy, California should not abandon its energy programs that provide social and environmental benefits.

In addition to those policy guidelines, the League agrees that cities that are aggregators should be required to follow the same consumer protection standards as other aggregators, that participation in aggregation by an electricity user should be voluntary, and that cities should have the opportunity to serve as aggregators for their municipal operations or for those residential or commercial customers who wish to participate in a city-sponsored aggregation program.

Finally, the League believes that any federal action in the area of electricity restructuring must not preempt legislation and actions in states that choose to restructure their utility industry if such federal action relates to state and local government home rule authority. This includes authority related to regulation of rights-of-way, franchises, taxing utilities and services, or to aggregate.

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In response to the energy crisis of 2001, the League adopted the following principles related to energy:

- Land Use Control. Local control over land use should be inviolate. The League will oppose legislation that restricts local land use control beyond that which is already in existing law.
- Municipal Utilities. The autonomy of municipal utilities should not be eroded. The League will oppose any legislation that harms municipal utilities.
- Energy Prices and Rates. The League is concerned about the impacts of escalating energy prices on the overall economic health of our state, including city budgets. Although at this time the League will not get involved in individual bills dealing with technical aspects of pricing, the League believes that any solution to address the short and long term energy price situation should meet several key criteria.
 - » The League believes energy prices should encourage conservation and reward those who reduce energy use (i.e., tiered rates).
 - » The League is concerned about the impacts of escalating energy prices on low income residents and small businesses. The League supports energy pricing structures and other mechanisms to soften the impacts on this segment of our community.
 - » In designing rates, the state should be aware of the operational constraints of some businesses and thus their potential inability to take advantage of conservation pricing. Thus, the state should provide other incentives to conserve to businesses that cannot take advantage of other options.
- Conservation in City Facilities. Support legislation that provides direct funding for conservation and demand reduction projects in city facilities.
 - » Work to obtain the greatest level of funding for local governments, and work with all authors and the Administration in crafting legislation that will be most effective and beneficial to local governments.
- Siting Energy Facilities– Incentives to Local Governments. Funding should be available to cities to streamline the siting process at the local level.
 - » Eligible projects to receive incentive payments would not only cover new electricity generating facilities, but also projects to expand existing generation facilities, to replace them with more efficient facilities, or to build renewable projects, including photovoltaics, fuel cells or cogeneration.
 - » In order to stimulate the development of these facilities, it will be necessary to provide additional long-term community benefits that the local government can demonstrate to its citizens.
 - » Any city or county that approves siting of a privately developed generating facility should receive 100% of the property tax of that facility. To stimulate development of projects such as cogeneration facilities, the standby charges for the facility should be waived.
 - » The state should provide additional financial assistance to cities and counties for such projects, which could include the cost of transmission line extension.
 - » The League will work to ensure that there are no negative impacts on municipal utilities from efforts to streamline energy facility siting.
- Power Plant Siting – Other Issues. Support legislation that increases the threshold at which a city is the lead permitting agency for an energy facility from 50 to 100 MW (or above). Oppose legislation that decreases this threshold.
 - » Take no position on proposals to streamline the facility approval process, except to suggest appropriate revisions to reflect technical comments from city experts on local government review and comment-related provisions.
 - » Explore exempting cities with municipal utilities completely from the Energy Commission review process for all power plants proposed within their jurisdiction, regardless of the size of the facility (i.e., the municipal utility city would have lead agency authority, regardless of the size of the facility).
- Environmental Regulation of Power Plants. The League should not get directly involved in legislative discussions and should not take a position on legislation to relax, suspend, or eliminate environmental regulation, with several exceptions.
 - » If environmental standards are relaxed, suspended, or eliminated, the League should seek legislation to ensure that cities do not bear the burden of meeting the shortfall in environmental protection. For example, suspended or reduced waste discharge requirements for a power plant may result in increased hot or salty cooling water discharged from a power plant into a bay or stream. Publicly owned treatment works should not be required to meet a higher discharge level to offset the power plant discharge or fined as an indirect result of the increased water pollution that would result. Similar arguments can be made for air pollution burdens. There should be some sunset included for environmental waivers for re-powering

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- of existing facilities and all new plants should be required to meet the BACT (best available control technology) standard.
- **Public Power Options.** Support all bills that enhance the public power options available to cities and counties.
 - » Condition support and/or sponsorship upon the correct language being written. Work with municipal utilities and others to ensure the provisions are drafted properly.
 - » The League should not support legislation that would give up the existing, limited authority of cities to regulate cable and telecommunications companies as a trade-off to make it easier to form a municipal electric utility.
- **Interruptible Rates.** The League should take no position on legislation dealing with changes to interruptible rates, but should watch the subject carefully.
 - » The League should comment on legislation, as appropriate, to express concern that resolution of the issue should seek equity in how it handles classes of ratepayers and communities. Legislation should take into consideration economic gains previously made by customers on interruptible rates and should provide assistance for those caught in extreme situations.
- **Rotating Outages – Exemptions.** The League should not get directly involved in bills dealing with which type of customers are exempt from rotating block outages and should not take a position on these bills. However, the League should work with police and fire chiefs to ensure that police and fire facilities are appropriately protected either legislatively or administratively, if proposals move ahead to expand the range of exempted facilities.
 - » The League should seek legislative or administrative resolution giving advance notification to those businesses, such as some agricultural businesses, that use hazardous materials that could pose a danger if the plant is not shut down properly.
 - » The League should seek grant or loan funding for essential services (i.e., police/fire, water/waste water) to purchase new or replace existing backup generators that are more energy efficient and less polluting.
- **Wholesale Regional Price Caps – Federal Legislation.** The League should not take a position on federal legislation to give the Secretary of Energy authority to impose regional wholesale price caps on electricity. This is a mixed bag and the League should stay out of the issue.

- **Price Gouging by Electricity Suppliers.** The League should send a letter to the Governor and Attorney General supporting their ongoing efforts to determine whether wholesale market abuse occurred and asking that appropriate action be taken to remedy the problem if illegal activity occurred.

California Environmental Protection Act (CEQA)

Procedures and Notices

Fair Argument Test. The League strongly opposes the elimination of the fair argument test as the threshold for determining whether to prepare an Environmental Impact Report (EIR). There are a number of other reforms that will reduce CEQA's complexity while preserving the fair argument test's role as a planning tool. These include funding for Master EIRs and eliminating attorneys fees for petitioners.

Master EIR Funding. The League strongly supports the development of a funding source for Master EIRs. Both of the proposals contained in the Little Hoover Commission report would meet the needs of cities.

Exemption for Modified Project Renewals. The League opposes exempting the renewal or reissuance of a permit, license, or other entitlement where there is a change in the project.

Centralized Responsible Agency Notification. The League opposes shifting the responsibility to notify responsible agencies from the lead agency to the State Clearing House.

Centralized Responsible Agency Notification. The League opposes making identification of Responsible Agencies at the Notice of Preparation stage by other than the Lead Agency (e.g., the Office of Planning and Research) conclusive so that agencies not identified would be barred from later commenting on projects.

Responsible Agency Documentation. The League supports requiring that Responsible Agency comments be supported by specific referenced documentation.

Substitution of Environmental Impact Statements. The League opposes allowing an Environmental Impact Statement to be substituted for an Environmental Impact Report in any situation other than military base closures because the National Environmental Policy Act does not contain CEQA's duty to mitigate.

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Duty to Respond to Comments. The League opposes shielding lead agencies from responding to comments received more than 30 days after a Notice of Preparation (NOP) or received verbally.

Timelines for CEQA Contracts. The League supports eliminating subdivision (b) of Public Resources Code Section 21151.5, which mandates the timeline for entering into CEQA contracts.

Arbitration of Disputes. The League supports adding an arbitration option to the requirement that each county over 200,000 designate a “CEQA judge.” Among the issues that will need further refinement are whether an alternative dispute resolution process should be a condition precedent to litigation, whether the alternative dispute resolution process would be binding on participants, and how to limit the alternative dispute resolution process to CEQA adequacy issues rather than community mitigation issues.

Bounty Hunter Limitations. The League supports discouraging lawsuits that have little merit by eliminating the availability of section 1094.5 fee recovery to petitioners or by authorizing cities to collect their fees and costs where they prevail.

Recirculation Standards. The League supports raising the threshold for recirculation of EIRs so that only new “significant unavoidable impacts” would necessitate recirculation.

Basis for Statements of Overriding Considerations. The League supports clarifying that the basis for Statements of Overriding Considerations is information contained in the record.

Compliance with Local Public Notice Requirements. The League supports legislation to require all projects proposed by state or local public agencies, including universities, community colleges, schools, counties, cities, and special districts, to comply with the identical local public notice requirements that would be applicable to projects sponsored by private developers in the jurisdiction where the project is located.

Tolling Agreements. The League supports tolling agreements; but acknowledges and relies on existing published case law that already allows for the use of tolling agreements in CEQA cases.

Concurrent Preparation of Administrative Record. The League opposes legislation that would require concurrent preparation of the administrative record and the electronic posting of administrative record unless (1) the full costs of concurrent preparation and electronic posting as determined by the lead agency are paid for by the applicant or other member of the public who requests these processes; and (2) a lead agency that is unable to comply with such a request, because of either lack of personnel or lack of technological capability is not required to provide these processes.

Court Remedies. The League supports legislation that would clarify a courts ability to fashion a remedy that is specific to the project and limited to only those aspects of the project held invalid under CEQA.

Definition of a Project

Effect on the Environment. The League supports narrowing the definition of “project” to prevent CEQA lawsuits on non-environmental matters.

School Operations Exemption. The League supports exempting any school closure or student transfers from CEQA.

Categorical Exemption for Nonindustrial Infill Projects. The League supports expanding categorical exemptions to include development projects in urbanized areas that are consistent with general plans, zoning and cumulative impact projections analyzed in a Master EIR. Such projects should be limited infill and nonindustrial.

Significant Environmental Effect

Significance Thresholds. The League opposes the creation of a new mandate requiring each city to develop boilerplate significance thresholds. The League also opposes a single statewide set of standards for determining significance at the local level. Instead, the League supports requiring that each EIR contain significance thresholds formally adopted by the lead agency for the project.

Safe Harbor. The League supports the concept of “safe harbor”, which means that if a project complies with certain locally adopted standards, then a project could not be challenged in court based upon those impacts on the environment.

Aesthetics. The Leagues opposes any effort to limit a local agency’s ability to challenge the aesthetic impact of a project under CEQA.

Consideration of Socio-Economic Factors. The League opposes adding social, economic, recreational or other factors to be considered when analyzing the significance of environmental impacts.

Indirect Effects. The League opposes amending the definition of effects to eliminate the analysis of indirect and cumulative environmental effects.

Cumulative Effects. The League supports the elimination of EIRs for projects with solely cumulatively significant impacts where the impact has been addressed by a comprehensive plan that identifies specific mitigation measures.

Environmental Quality

Cumulative Effects. The League opposes exempting projects that are subject to their own subsequent environmental review from consideration as a reasonably foreseeable future project when analyzing cumulative impacts.

Statement of Overriding Considerations. The League supports transparency in CEQA decision-making but opposes a public comment period for the notice of draft Statement of Overriding Considerations.

Alternatives

Alternative Site Requirement. The League supports eliminating the alternative site requirement for all private projects.

Level of Detail. The League supports requiring that projects of statewide, regional or area-wide significance describe at least two feasible project alternatives with a level of detail equal to the proposed project.

No Project Alternative. The League opposes the elimination of the “no project alternative.”

Environmental Impact Report (EIR). The League opposes the elimination of the fair argument test as the threshold for determining whether to prepare an Environmental Impact Report (EIR). The League strongly supports the development of a funding source for Master EIRs. The League supports adding an arbitration option to the requirement that each county over 200,000 population designate a “CEQA judge.”

Coastal Issues

The League opposes legislation that would permit the state to impose conditions on Local Coastal Plans developed by cities and counties.

The League supports efforts to curb frivolous appeals to local coastal decisions.

The League supports the Federal Coastal Protection Act, which prohibits additional offshore development through the year 2002. This position was based, in part, on concern about the impacts to on-shore support facilities and services by offshore development activities.

The League opposes legislation that grants authority to the Coastal Commission that is inconsistent, duplicative and overlapping with the authority of other regulatory agencies, such as regional water quality control boards or other agencies, or that grants the Coastal Commission authority outside the coastal zone.

The League affirms its commitment to local control by requesting the Coastal Commission to defer to the elected officials of a City with respect to choices in the implementation of a Local Coastal Plan that complies with the requirements of state law and regulation.

Miscellaneous

The League supports efforts to ensure compliance with Mitigation Monitoring Programs, but opposes any effort to require local agencies to report on compliance or add other procedures regarding the implementation of Mitigation Monitoring Programs.

The League encourages cities to consider the Ahwahnee Water Principles for Resource-Efficient Land Use when making future land use decisions. (<http://www.lgc.org/about/ahwahnee/h2o-principles/>)

The League encourages state agencies to provide leadership in developing voluntary, model statewide residential green building guidelines that will provide information to local jurisdictions on how to evaluate and use different green building strategies. Additionally, the League encourages cities to adopt voluntary residential green building guidelines as a reference guide, to evaluate available green building programs and adopt those best suited for their communities, and to explore incentives to encourage green building by private developers of residential construction projects.

The League supports the right of cities to serve as lead agencies for the purposes of the Surface Mining and Reclamation Act (SMARA).

Consistent with policy adopted by the National League of Cities, the League believes the appropriate venue for addressing the issue of “regulatory takings” is within the evolving judicial interpretations of the Fifth Amendment of the U.S. Constitution.

- The League opposes any federal or state regulation, statute or constitutional amendment which would place restrictions on federal, state and local government actions regulating private property or requiring additional compensation beyond the continually evolving judicial interpretation of the Fifth Amendment of the U.S. Constitution.
- The League will oppose any legislation that includes such a provision, regardless of what else is included in the legislation (i.e., legislation that designates a listing of an endangered species as a “regulatory taking”).

Environmental Quality

The League supports flexibility for state and local governments to enact environmental and other standards or mandates that are stronger than the federal standards. However, the League reserves the right to question or oppose stronger standards on the merits. The League also opposes legislation that prohibits state and local governments from enacting stricter standards.

The League supports the ability of local governments to voluntarily develop and approve species habitat plans for their communities, in conjunction with willing property owners. The League opposes requiring local governments to amend their general plans to include species habitat plans developed by others but not approved by the local government.

The League supports legislation and regulation that authorizes the land application of biosolids that meet specified statewide health and safety standards. The League supports legislation that permits enactment of stronger local ordinances only if they are based upon protecting public health and safety and good science. The League opposes legislation that preempts outright stronger local ordinances, regardless if they are based on protecting public health and safety and good science.

The League supports legislation that imposes "Sinclair"-type fees on products in order to fund the cost of prevention or mitigation of the pollution or environmental and health impacts of such products. The League opposes legislation that would restrict the imposition of such fees at the state or local levels.

The League supports legislation that exempts public works projects, within the existing right of way, from CEQA if approved by the city in which the project takes place.

The League supports partnering with the Legislature and the Governor to address the devastating environmental impacts of illegal marijuana grows on both private and public lands and the associated threats to public safety. The League supports the creation of responsive solutions with adequate funding support and effective State and federal government leadership to address this widespread problem.

Note: The League will review new legislation to determine how it relates to existing League policies and guiding principles. In addition, because this document is updated every two years to include policies and guiding principles adopted by the League during the previous two years, there may be new, evolving policies under consideration or adopted by the League that are not reflected in the current version of this document. However, all policies adopted by the League Board of Directors or the League's General Assembly become League policy and are binding on the League, regardless of when they are adopted and whether they appear in the current version of *"Summary of Existing Policies and Guiding Principles."*

League of California Cities

California Water Guidelines

February 2010

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NOTE: The League of California Cities most recently updated and revised the California Water Guidelines in 2010. The effort began in 2008 with the formation of the Water Task Force, which was comprised of members from the League's 16 Regional Divisions and all interested city officials. After months of meetings and conference calls, the Water Task Force submitted the California Water Guidelines revisions to the Board of Directors. Upon formal adoption by the Board, the California Water Guidelines were incorporated in the Environmental Quality Policy Committee's scope of responsibility. For additional information, please see the California Water Guidelines introduction on the following page.

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Introduction

The **California Water Guidelines** were first adopted by the League of California Cities (The League) in 1988. The League and the County Supervisors Association of California (CSAC) developed the guidelines. Together, at the time, the two organizations represented 58 counties and 449 cities.

Much has changed in the realm of water policy in the more than 20 years that have passed since the Guidelines were first adopted. The number of counties has remained at 58, but California has gained an additional 31 cities and the population of the state has increased to more than 38 million people, creating increased demands on water supply. There is growing recognition that there are better ways of managing the flow of water within California's many watersheds and through the Delta, to prevent harmful environmental impacts while still ensuring a reliable supply of water to its citizens. Climate change is seen as having an increasingly important impact on water supply and water quality. Water shortages place renewed emphasis on the importance of water reclamation, water recycling and other means of nurturing and protecting an essential resource.

In 2003, the League Board created the League Water Quality Task Force to identify and evaluate waste water and storm water regulatory issues of concern to cities and to recommend steps that the League should take to address those concerns. The Task Force drafted new League policy on water quality and the League's Board of Directors adopted their report on July 18, 2003.

In 2008, the League formed a new Water Task Force to consider updates and revisions to the Water Guidelines the League drafted and adopted 20 years earlier. The League's 16 Regional Divisions designated voting members; but membership on the Task Force was open to all interested city officials, and meetings were open to all interested parties.

The Task Force first met in Sacramento in April 2009 and organized three working groups (Water Use, Water Supply and Water Discharges). Members of the working groups held numerous meetings by conference call over the next two months. Subsequent meetings of the full Task Force were held in June and September 2009 before the revised Guidelines were submitted to the League policy committees in January 2010, for review and approval. The Guidelines were formally approved by the League Board of Directors in February 2010.

The California Water Guidelines are designed to be used by policy makers at all levels of government in developing future water policy for the state of California. The League encourages city, county and state officials, as well as representatives from other organizations, to review the guidelines as water policies and programs are developed.

I. California Water: General Principles

1. Water needs are projected to increase significantly in the future. While water is a renewable resource, it is also a finite one.
2. The League supports the development of additional groundwater and surface water storage, including proposed surface storage projects now under study if they are determined to be feasible, including but not limited to: environmentally, economically, and geographically relating to point of origin. Appropriate funding sources could include, but are not limited to user fees, bonds and federal funding.
3. Local, state and federal agencies should prepare plans for short-term water emergencies as well as long-term cooperative water management plans and policies, such as the Integrated Regional Water Management Plan (IRWMP) process.
4. All water development projects must be economically, environmentally and scientifically sound.
5. Critical California water issues cannot be solved without the cooperation of the state and federal governments. Communication and cooperation among policy groups with emphasis on finding statewide consensus is supported.
6. Adequate water quality requirements for wastewater discharge into surface water and groundwater to safeguard public health and protect beneficial uses should be supported. Beneficial water quality is fundamental to the health and welfare of California and all of its citizens.
7. The long-term viability of rivers and streams for instream uses such as fishery habitat, recreation and aesthetics must be protected.
8. The League encourages all cities to work with counties, water agencies, and special districts to facilitate water conservation, recycling and reuse efforts.
9. The League supports state water policy that allows undertaking aggressive water conservation and water use efficiency while preserving, and not diminishing, public and constitutional water rights.
10. The League supports land use as an important strategy for water supply and water quality benefits.

II. Water Conservation

1. Statewide Goal. The League supports the development of a statewide goal to reduce water use by 20% by 2020 through the implementation of fair and equitable measures consistent with these principles.
2. Statewide Effort. Accomplishing water conservation and water use efficiency goals will require statewide action by all water users, including residential, commercial, industrial and agricultural water users, local and regional planning agencies, state and federal agencies, chambers of commerce, and business, commercial and industrial professional and trade associations.
3. Comprehensive Solutions. Water conservation and water use efficiency must be part of a comprehensive solution that includes local resource development and infrastructure improvements, including storage and conveyance, as part of a statewide system that promotes economic and environmental sustainability.
4. Monitoring, Reporting, and Accountability. The League supports the implementation of programs to assure prudent measurement and monitoring of water use to provide accountability and transparency toward the accomplishment of water conservation and water use efficiency goals.
5. Protect Water Rights. Implementation of water conservation and water use efficiency programs must be consistent with existing state law in that the act of conservation cannot be allowed to undermine the water rights of the entities implementing the water conservation or water use efficiency program, or interfere with existing water conservation or water use efficiency projects.
6. One Size Does Not Fit All. Water conservation and water use efficiency programs must have the flexibility to adjust to widely varying local circumstances recognizing that one size does not fit all. The League encourages each city to develop its own ordinance outlining its conservation plan.
7. Urban Water Conservation and Water Use Efficiency. In urban areas, the League advocates for the implementation of residential and commercial retrofit programs, innovative pricing strategies, water efficient landscaping, including implementation of urban Best Management Practices (BMPs).
8. Agricultural Water Use Efficiency. In agricultural areas, the League advocates incentive-based programs.

III. Water Recycling

1. Wherever feasible, water recycling should be practiced in urban, industrial and agricultural sectors. This includes increasing the use of recycled water over 2002 levels by at least one million acre-feet/year (afy) by 2020 and by at least two million afy by 2030.
2. Potable water should include as much use of reclaimed water and water conservation by 2030 as possible.
3. Increased recycling, reuse and other refinements in water management practices should be included in all water supply programs.

IV. Water Quality

1. General

- a. The League supports the development of objectives and standards to assure high quality water throughout California. Surface and groundwater should be protected from contamination.
- b. The League supports the development of economic protocols and guidelines to assist local governments and water boards in determining reasonably achievable, cost effective and environmentally sound regulations.
- c. The League supports the ability of cities to enact discharge and water quality requirements or standards that are stricter than state or federal standards, and opposes efforts to restrict such authority.
- d. When addressing contamination in a water body, water boards should place priority emphasis on clean-up strategies targeting sources of pollution, rather than in stream or end-of-pipe treatment.
- e. The League encourages water boards to address cross-media pollution of water, including but not limited to the problems of atmospheric deposition of water pollutants.
- f. The League encourages all state offices, departments and boards to comply with state policy for water quality control, including compliance with the Basin Plans.

2. Water Board Reforms

- a. The League generally supports the concept of water board reform.
- b. Any water board reforms should recognize the inherent differences between cities and regions in California.

- c. Water board reform should recognize the symbiotic relationship between regional water quality control boards and local governments.
- d. The League supports the retention of designated local government representatives on the regional boards and inclusion of a designated local government representative on the State Water Board.
- e. The League supports streamlining the board process, including delegating permit authority to the executive officers, with rights of appeal, and giving greater authority to the State Water Board over regional board policies and decisions.

3. Basin Plan Updates

- a. The League supports the option of local agencies developing funding for basin plan updates.
- b. The League supports comprehensive updates to the basin plans that recognize the unique and varied nature of stormwater. Basin plans need to recognize the unique and varied nature of stormwater, both wet weather and dry weather runoff.
- c. Basin plan updates should comply with the Porter-Cologne requirements to recognize economic impacts, local drainage conditions and scientific consensus, including source control and atmospheric deposition strategies.

4. National Pollutant Discharge Elimination System (NPDES) Permits

- a. The League supports reform of the States Water Board's administration of the federal NPDES program.
- b. The League encourages the water boards to issue permits that are reasonably achievable, based on the unique conditions of a city or region.
- c. The League supports regulations and legislation that promotes watershed management, that appropriately spreads the responsibility for clean water beyond the requirements that apply to point-source dischargers, municipal storm drain systems and publically-owned treatment works.
- d. The League generally opposes legislation that requires the use of numeric limits in waste discharge permits, especially in storm water permits, because of the difficulties in meeting them, problems with exceeding them, and the cost and potential enforcement impacts.
- e. The League supports development of a standard definition of "maximum extent practicable."

Environmental Quality – California Water Guidelines

5. Total Maximum Daily Load (TMDL)

- a. The League supports development of reasonably achievable, environmentally sound and cost-effective TMDL's based on monitoring and sound science and addressing local water conditions.
- b. Although the League is supportive of local agency development of TMDL funding, greater emphasis needs to be given to state and federal funding of the TMDL program, including providing increased funding to local government for implementation.
- c. The League supports implementation of TMDLs through alternatives to the NPDES permits, consistent with the Clean Water Act and policy, such as Memorandums of Agreement between local governments and the water boards.

6. Water Quality Recommended Legislation/ Policies

- a. Ex-Parte Communication
 - The League supports public access to decision makers, including during the time that new proposed permits and permit terms are being proposed. The League also supports access to pending permittees, outside of the administrative process.
- b. Maximum Extent Practicable (MEP)
 - The League supports legislation to define MEP.
- c. Safe Harbor
 - The League supports legislation that provides immunity from fines or third-party litigation for a local government that is in compliance with maximum extent practicable iterative best management practices requirements and NPDES stormwater permit conditions.
- d. Mandatory Minimum Penalty (MMP)
 - The League supports legislation to modify the MMP provision of the existing law to make them fair and equitable for local governments. This would include eliminating the provisions relied upon to compound penalties for single violations and providing economic hardship exemption for small cities (50,000 in population or less) where there has been no significant adverse impacts on the public or the environment from the alleged violation.

e. Economic Analysis

- The League supports legislation to develop economic protocols and guidelines to assist local government and the water boards in determining reasonably achievable, cost effective and environmentally sound regulations, as outlined in Porter-Cologne Sections 13000 and 13241.

f. Basin Plans

- The League supports legislation allowing local agencies to participate in funding basin plan updates.

g. Water Softeners

- The League supports the right for cities to enact ordinances that restrict the use of water softeners.

h. Local Discharge Prohibitions

- The League supports legislation that would enable cities to adopt ordinances that limit or regulate industrial discharges into local sewers and storm drains, based on limits in municipal discharge permits.

7. General Water Quality Guidelines

- a. Protection and maintenance of objectives and standards to assure high quality water throughout California is essential. Beneficial uses of surface and groundwater should be protected from contamination, even when treatment methods are available to meet drinking water standards.
- b. Local, state and federal governments and the private sector should provide for the safe management of hazardous materials, including mining leachates, to avoid pollution and degradation of both surface water and groundwater.
- c. Adequate research funding to determine appropriate public health standards for water should be supported.
- d. Additional research and education in the application and use of herbicides and pesticides and alternatives to their usage as well as research to reduce industrial and household hazardous wastes should be supported.
- e. The importance of water quality of bays, estuaries, groundwater, and other bodies of water important to municipalities, including the problem of salt water intrusion, should be recognized.

V. Areas Of Origin

1. Ultimate reasonable and beneficial water needs of all areas of origin should be assured. State law should continue to provide that only water surplus to the reasonable and beneficial needs of the areas of origin may be exported. The League supports preserving the principle of protecting the water rights of areas of origin.
2. Areas of origin protections should apply to all water sources, including groundwater.
3. Reasonable and beneficial water needs of the areas of origin should include instream needs or uses, including recreation and sediment flushing.
4. Areas of origin should be afforded financial assistance, such as the Davis-Grunsky type bonds, in developing new water facilities.
5. Projects that export water from areas of origin should not increase the cost of new local water development projects.
6. Those features of new projects that are required by state and/or federal agencies to enhance area of origin recreation, fish, wildlife, and water quality should be the financial responsibility of the state and/or federal government.
7. New policies and programs should not undermine or alter the water rights of the entities implementing the policies or programs.

VI. Water Storage

1. The League believes that California needs to develop additional water storage and therefore believes that the construction and retention of economically feasible and environmentally sound flood control, storage and multi-use projects that will meet present and future needs should be supported.
2. The development of additional surface facilities and use of groundwater basins to store surface water that is surplus to that needed to maintain State Water Resource Control Board (SWRCB) Bay-Delta estuary water quality standards should be supported.
3. The League encourages project developers to mitigate the negative impacts of water storage projects on fishery and wildlife resources, adjacent lands, water quality and recreation.

VII. Conveyance Systems

1. Statewide
 - a. Conveyance facilities including, but not limited to, the Sacramento River, whether man-made or natural, should be constructed and/or operated to minimize seepage and erosion problems and, where practicable, to restore or maintain river functions and to protect previously existing riparian habitats. They should be constructed to mitigate these problems and other adverse impacts on adjacent lands.
 - b. The owner or purveyor of the water conveyance system should be responsible for correcting adverse impacts, i.e., erosion, seepage and sediment problems upon waterways, either anthropogenic or natural.
 - c. Environmentally-sound methods of erosion-control should be encouraged along river banks to protect adjacent lands from flood or other erosive flows provided any adverse impacts on fish and wildlife habitat are mitigated.
 - d. Local distribution systems should be interconnected with regional systems, where feasible, to assist in maximizing the use of local ground and surface waters during droughts and emergencies.
 - e. Solving the water quality, levee stability and fishery problems in the Sacramento-San Joaquin Delta is a primary step in developing any plan to meet the state's water needs.
 - f. The League acknowledges that the use of the Sacramento River as a conveyance system presents problems of erosion and seepage which must be addressed in the operation of existing projects and the design of future projects.
2. Delta
 - a. Conveyance of water across the Delta should be through existing channels wherever possible. Delta transfer system improvements should be constructed and operated so as to minimize or, if possible, eliminate reverse flows in the lower San Joaquin River.
 - b. Construction of Delta transfer facilities should not proceed until the Department of Fish and Game and the Department of Water Resources have entered into an agreement to implement measures to offset the State Water Project's impacts on the Delta fisheries and other ecological concerns in the Bay-Delta estuary, which are shown to be adversely affected by the proposed transfer facilities.

- c. Implementation of an integrated program of rehabilitation and maintenance of Delta levees involving federal, state, local and user interests for the purposes of protecting the islands, waterways and other features including, but not limited to, highways, railways, water conduits, natural gas storage, etc., should be supported. Costs and responsibilities should be fairly allocated among beneficiaries of such a program.
- d. Until an integrated Delta levee program is initiated, the Delta levee maintenance program, (by former California Sen. Howard Way), California Water Code Sections 12980-12991, should be funded and implemented.
- e. Any Delta governance and/or water management structure should include local government representation from the Delta region.
- f. When assessing conveyance projects, the League encourages cities to consider the guidelines outlined in other areas of this document.
- g. Protection, as well as enhancement where practicable, of Delta water quality, while providing adequate future supplies for all segments of the state, should be required.
- h. Standards balancing the protection of all beneficial uses of Bay-Delta waters, including water flowing into or exported from the Delta, must be adopted by the SWRCB and enforced to protect the environmental health of the Bay-Delta system. Pollution from point and non-point sources into the Bay and Delta shall be controlled as stringently as practicable.
- i. Programs and facilities to assure safe drinking water for importing regions dependent on the Delta should be supported.
- j. The SWRCB should assure the continued monitoring for contaminants in the Delta.

VIII. Flood Management

- 1. The League believes that our citizens have a reasonable expectation that their federal, state and local governments will work to protect them from flooding.
- 2. The League believes that flood protection and management is a statewide issue, involving flood infrastructure issues related to levees, urban/suburban/rural creeks, streams and rivers, and alluvial fans.

- 3. The League believes that it is important to recognize that levee failures in the Sacramento-San Joaquin River Delta have water quality, water supply and economic impacts that may have statewide effects beyond the local or regional levee break situation.
- 4. Flood control issues require cooperative planning, evaluation and solutions that utilize a regional and statewide perspective, such as the state IRWMP process.
- 5. In assessing problems and proposing solutions, it is important to consider the differences between infill development and new, greenfield development.
- 6. The public safety and health of California citizens and the economic health of California communities and our state depend upon good flood protection. This includes the potentially devastating impacts of floods on homes and businesses.
- 7. The League supports efforts to improve communication, cooperation and better coordinated planning between different government agencies involved in flood management. The League believes that there must be a genuine partnership between state and local agencies in addressing flood control issues.
- 8. The League believes cities must ask the right questions and have the means to obtain accurate information prior to approving development in floodplains. This involves educating elected officials and staff about whether their city is located in a floodplain, the local flood control infrastructure, the agencies that are responsible for providing flood protection, the status of levees and other structures that provide flood protection, emergency response and evacuation protocols, and how their city would be impacted by flooding.
- 9. The League believes that city officials should understand that a 100-year flood zone does not mean a low, once-in-100-years risk of flooding. The designation actually means that there is a 1 percent chance of flooding in any given year. This translates to a 26 percent chance of flooding over the life of a typical 30-year mortgage.
- 10. The League supports a 200-year flood standard for cities in the Sacramento-San Joaquin and Central Valleys.
- 11. The League generally endorses the recommendations of the State's Flood Control Task Force, especially those recommendations involved in updating the CEQA Checklist and General Plan Guidelines and building codes.
- 12. The State, Army Corps of Engineers (ACOE) and Federal Emergency Management Agency (FEMA) should work collaboratively with state and local governments regarding flood issues.

IX. Groundwater

1. The SWRCB, through the regulatory process of its regional boards, should ensure the highest possible quality and safety of groundwater by preventing contamination from point and non-point sources, especially for usable water.
2. Local drilling, sealing and abandonment ordinances for water supply and monitoring wells for the protection of groundwater and public health should be supported.
3. The principle that local entities within groundwater basins (i.e., cities, counties, special districts, and the regional water quality control boards) working cooperatively should be responsible for and involved in developing and implementing basin wide groundwater, basin management plans should be supported. The plans should include, but not be limited to: a) protecting groundwater quality; b) identifying means to correct groundwater overdraft; c) implementing better irrigation techniques; d) increasing water reclamation and reuse; and e) refining water conservation and other management practices.
4. An active state and federal role in cleaning up contaminated groundwater basins should be supported.
5. State and federal involvement, if requested, in developing groundwater management plans should include technical assistance for defining the characteristics of groundwater resources.
6. Financial assistance from state and federal governments should be made available to requesting local agencies to develop and implement their groundwater management plans.
7. Planned, joint use of surface and groundwater and development of incentives for such conjunctive use for increased efficiency should be encouraged.
8. Early development of a cost-sharing formula among all beneficiaries to fund groundwater replenishment projects should be supported.
9. The importation of additional supplemental water, consistent with Section VI Conveyance Systems, as one means of eliminating groundwater overdraft in the critically overdrafted basins should be supported.

X. Fish and Wildlife

1. Protection, maintenance, and restoration of fish and wildlife habitat and resources and their beneficial uses including recreational and commercial uses, should be supported. Where feasible, enhancement of fish and wildlife habitats should be provided.
2. Water projects shall mitigate for adverse impacts on fish and wildlife resources. Mitigation measure shall be on-site, if feasible; otherwise, as close as practicable to the area of adverse impact. Where practicable, such projects should incorporate programs designed to eliminate unnecessary barriers or impediments to fish migration, to stabilize areas of streambank erosion, to increase spawning and rearing habitat for fish, and to maintain riparian vegetation for cover and temperature control.
3. Protection and restoration of documented fish habitat should be supported.

XI. Drainage

1. Agricultural Drainage
 - a. Finding long-term, economically feasible and environmentally sustainable solutions to agricultural drainage problems is essential and in the public interest. Solutions must be safe and environmentally acceptable in order to protect:
 - Viability of agricultural lands;
 - Rivers, estuaries and groundwater from potential degradation from agricultural drainage; and
 - Water quality for public consumption.Drainage of agricultural lands must be part of current and future agricultural water project planning and implementation.
 - b. Both state and federal funding should be provided to investigate: a) further improvement in irrigation and drainage management practices and conservation; b) evaporation ponds; c) deep-well injection; and d) desalination and other treatment technologies. An equitable cost-sharing formula for implementing solutions to existing and future drainage problems shall include state and federal governments and irrigation project beneficiaries.

2. Other (Run-Off)

- a. Finding safe and environmentally acceptable solutions to problems caused by run-off from non-point sources is essential and in the public interest.
- b. Similarly, finding safe and environmentally acceptable solutions to other drainage and run-off problems, such as those caused by mining, dairying and forest practices, is essential and in the public interest.
- c. Equitable cost sharing among appropriate public and private bodies for implementing solutions to urban and other run-off problems should occur.

XII. Recreation

1. Water development projects should minimize adverse impacts to existing recreational uses, and provide new recreational opportunities where feasible.
2. The state and federal governments and the recreational users should bear the recreational development costs of water projects.
3. Operation and maintenance costs of recreational facilities developed in conjunction with water projects should be provided from on-site user fees and other applicable sources. Other costs incurred as a result of these recreational activities, such as law enforcement and emergency rescue, should receive appropriate assistance from state and federal sources.

XIII. New Technology

Development of new technology in water use, reuse, desalination, detoxification and so forth is encouraged. This should be primarily funded by the federal and state governments. Public-private partnerships in this research also should be encouraged. A high priority should be given to the protection of public health. New technology should be evaluated based on sound science.

XIV. Financial Considerations

1. It is recognized that:
 - a. The development and operation of water supply, water conveyance, flood control and stormwater management, water storage, and wastewater treatment facilities is frequently beyond the capability of local areas to finance;

- a. Since most facilities have widespread benefits, it has become traditional for federal, state, and local governments to share their costs; and
- a. It is necessary that such sharing be continued and that different institutional arrangements including cost sharing formulas among all beneficiaries, public-private partnerships, and user fees should be explored.
2. The requiring agency (whether it be state, federal, or otherwise) should pay for the features of projects or programs that are required that agency.
3. The League supports legislation to provide funding for stormwater, water and wastewater programs, including a constitutional amendment which would place stormwater fees in the category of water and wastewater fees, for the purposes of Proposition 218 compliance.
4. Any agency that regulates water with regard to local governments needs to be involved in the appropriate city with regard to how the city will pay for the new regulatory burden imposed by the agency.

APPENDIX A

State Water Resources Control Board Water Quality Improvement Initiative (2008)

1. WQI 1: The League supports applying the 10% rule "One Per Region Basis"
2. WQI 2: The League supports staggering the regional water board terms
3. WQI 3: The League has no recommendation on reducing the size of the regional water board from nine members to seven, with the exception that at least one person on the regional board should have local government experience.
4. WQI 4: The League supports delegating permitting authority to the regional water board executive officer and that the executive officer should take his or her direction from the State Water Resources Control Board (SWRCB).
5. WQI 5: The League is opposed to regional water board's having full time chairs.
6. WQI 6: The League is opposed to the creation of a statewide council of full-time regional water board chairs. (Note: Water Discharge Subcommittee members believe that it may be helpful to combine a number of regional boards into larger regional boards to address areas that are similar (ex: Los Angeles and Orange County). A large regional board could bring more consistency to basin plan management. Any inconsistencies between the regional boards should be addressed by the state Board.)
7. WQI 7: The League supports the implementation of biennial priority setting based on the Strategic Plan, with six month updates by the regional water boards.
8. WQI 8: The League is opposed to allowing the SWRCB to make the TMDL environmental process subject to NEPA instead of CEQA.
9. WQI 9: The League supports requiring a TMDL to be affirmatively approved by the State Water Board or upon petition.
10. WQI 10: The League supports requiring the regional water board to consider costs of TMDL compliance.
11. WQI 11: The League supports authorizing the SWRCB to make changes to TMDLs, rather than remanding these decisions back to the regional water boards (Note: Subcommittee members believe that this policy should be tied into WQI#9).
12. WQI 12: The League has no position on confirmation of regional water board conflict of interest rules with the Political Reform Act – (Note: the Subcommittee asked for a legal opinion. The question is: what are the current conflict of interest rules pursuant to AB 1234. Staff and members believe that this provision is similar to what already exists for other state boards [example: Waste Board].)
13. WQI 13: The League has no position on the establishment of civil penalties for fraudulent information with regard to reporting by permittees.
14. WQI 14: The League is generally opposed to any removal of notice and hearing requirements prior to the SWRCB referring a case to the State Attorney General for additional action.
15. WQI 15: The League has no recommendation on additional authorization of district and city attorneys to pursue civil violations (for cities over 750,000 in population).
16. WQI 16: The League believes the state should limit the number of mandatory minimum penalties (MMP) to one violation, and the population limit to qualify under the MMP law as a small, disadvantaged community for a single missing report should move from 10,000 to 50,000 (in accordance with federal law).
17. WQI 17: The League has no recommendation on early payment of MMP violations.
18. WQI 18: The League supports enhanced ability of the Regional Water Boards to administratively enforce state Underground Storage Tank (UST) Requirements.
19. WQI 19: The League supports enhanced oversight of UST testers.
20. WQI 20: The League supports moving the SWRCB Enforcement Report deadline to July 1.
21. WQI 21: The League supports the SWRCB developing and implementing performance measures
22. WQI 22: The League supports improved data management systems for the SWRCB.
23. WQI 23: The League generally has no recommendation on the standardization of NPDES permits and believes that this issue should be worked out with the individual regional water boards.
24. WQI 24: The League generally has no recommendation regarding the update of SWRCB Strategic Plan.
25. WQI 25: The League supports SWRCB conducted training of regional water boards, provided the SWRCB both conducts the training and sets consistent standards statewide.

Appendix B

APPENDIX B

GLOSSARY

Affordable: A word used increasingly to express concern whether recipients of water will be able to meet the cost. Whether people view water as affordable will depend on many factors.

Agricultural Drainage: Usually refers to installed drains to permit removal of water which accumulates within plant root zone. May be essential to maintain favorable salt balance for plant growth. May contain selenium, salinity, pesticides, herbicides, etc.

Area and County of Origin Protections: Refers to legislative provisions for protecting water rights of these areas.

Area of Origin Law: Applies to a watershed or area wherein water originates, or an area immediately adjacent thereto which can be conveniently supplied with water there from. Because this law was enacted as part of the Central Valley Project Act, it applies to the Sacramento River watershed. The Burns- Porter Act subsequently defined the Sacramento-San Joaquin Delta to be part of the watershed of the Sacramento River. Gives area of origin preferential rights regarding operation of federal Central Valley Project and to contract for State Water Project water and to certain rights to construct projects or make diversions, provided use is reasonable and beneficial. (California Water Code Sections 11128, 11460-11463).

County of Origin Law: Prohibits State Water Resources Control Board from assignment of rights which will deprive a county in which the water originates of such water necessary for the development of the county. (California Water Code Section 10505).

Delta Protection Act: Establishes that an adequate supply of water in the Delta is necessary to the peace, health, safety and welfare of the people of the state, except that delivery of such water is subject to County of Origin and Area of Origin laws. (California Water Code Sections 12200-12220).

California Wild and Scenic Rivers Act and Federal Wild and Scenic Rivers Act: Establish certain rivers or sections of rivers are to be preserved in their free-flowing condition. The California law (California Public Resources Code Sections 5093.50-5093.65) allows domestic water diversion for residents of counties through which the river flows, provided there is no adverse effect upon the free-flowing character of the river. California law finds that the free-flowing state of such rivers is a reasonable and beneficial use within the meaning of the state constitution.

Atmospheric Deposition: The transfer of pollutants suspended in the air to the earth's surface. Pollutants move directly from the atmosphere into water bodies through precipitation, falling

particles, or the absorption of gases into water. They also may be deposited over land and transported to water bodies via runoff. Atmospheric deposition is believed to be a significant source of various pollutants to many water bodies.

Basin Plan: The Regional Water Quality Control Plan adopted by a regional water quality control board for that board's area of responsibility in California. (See Cal. Water Code Section 13240). The basin plan establishes water quality standards, uses and other criteria for surface and ground waters.

Best Management Practices (BMPs): Methods, measures, or practices designed and selected to reduce or eliminate the discharge of pollutants to surface waters from point and nonpoint source discharges, including urban runoff. BMPs include structural and nonstructural controls, and operation and maintenance procedures, which can be applied before, during, and/or after pollution producing activities.

California Toxics Rule (CTR): A federal rule adopted by the U.S. EPA on May 19, 2000, which established numeric criteria for various priority pollutants for California. The rule can be found at 65 Federal Register 31682-31719, and was codified in the Code of Federal Regulations at 40 CFR 131.38.

Characteristics of Groundwater Resource: Include quality, quantity, rate of renewal and yield.

Clean Water Act (CWA): A comprehensive water quality statute (33 USC 1241 et seq.). The CWA was first adopted by Congress in 1972 and later amended in 1987 to apply to stormwater/urban runoff. The CWA was designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters to support "the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water."

Coliform: A group of related bacteria that are generally benign to humans. They are natural and common inhabitants of the soil and ambient waters (e.g., lakes, rivers, and estuaries), as well as the gastrointestinal tracts of animals.

Compensation: Full replacement for unavoidable fish and wildlife resource losses in terms of habitat area and long term renewability of the quality and quantity of such resources. In the interest of clarification, compensation does not mean monetary payment as a substitute for replacement of resources losses.'

Conjunctive Use of Surface and Groundwater: Planned joint use of surface and groundwater. This usually involves maximizing use of surface water in wet years (with minimum groundwater pumping) and using any surplus surface water to recharge groundwater, and in dry years augmenting surface supplies by drawing on the stored groundwater.

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Conservation: Fish and wildlife resource loss prevention, mitigation and compensation.

Conservation (of Water): Means efficient use of water. Also means reducing water losses, or eliminating waste; storing water for water use; preserving water quality.

Contamination: An impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. (California Water Code Section 13050) (See "Pollution").

Contamination Sources:

Point Discharge: Source is identifiable, as from a pipe or drain ditch.

Non-Point Discharge: Sources are more diffuse and not easily identified with well defined outlets; includes runoff from agricultural or forested land, general urban runoff, except where collected in identifiable drains.

Cross-Media Pollution: The contribution or "flux" of pollution from one environmental medium to another. (For instance, the transfer of pollutants from the atmosphere to water.)

Davis-Grunsky Bond: This legislation established a bond fund to facilitate financing of projects in counties with limited financial resources.

Demand/Need: "Demand" usually refers to a statement of water requirements which may be projected on the basis of past water use practices. In contrast, "need" is intended to refer to water that is truly needed to satisfy purpose if water is efficiently utilized.

Delta: Refers to the Sacramento-San Joaquin Delta. 700,000 acres of islands, waterways, levees and lands into which the natural runoff flows from the Sacramento, San Joaquin, Mokelumne and Consumnes river systems before either being exported or entering the San Francisco Bay and, then, the Pacific Ocean.

Desalination: A process designed to treat brackish or sea water to make it useful for potable or non-potable use.

Enhancement: Development or improvement of fish and wildlife resource values of the area affected by a project beyond that which would occur without the project.

Enterococcus: A non-coliform bacteria group used as an indicator of the presence of fecal material in drinking and recreational waters. USEPA believes that enterococci have a better correlation with swimming-associated gastrointestinal illness in both marine and fresh waters than coliform organisms, and "die off" more slowly in saltwater.

Environmentally Safe: Not a precise technical term, but used to mean actions which have little or no adverse impact.

Economically Sound/Feasible: Not a precise technical term, but one that refers to a balance of costs and benefits. Formerly emphasis was placed on calculating benefit-cost ratios. Uncertainties and possible abuses in such calculations have raised questions concerning usefulness of such calculations. Problems include what types of benefits to involve as well as what costs to involve. Many, including environmentally related benefits and costs, cannot be adequately quantified.

Fish and Wildlife Issues: See Compensation, Conservation, Enhancement, Fish and Wildlife resources, Instream uses, Loss prevention measures, Mitigation, Preservation, Protection, and Restoration.

Fish and Wildlife Resources: Birds, mammals, fishes, amphibians, reptiles, invertebrate animals, endangered, threatened or rare native plants, their habitat area and all types of aquatic and land vegetation and other factors of the environment upon which resources are dependent. (See Fish and Game Code Section 45 for definition of fish).

Flood Irrigation: Used to describe what is more appropriately called basin and border irrigation in which land prepared as basins or land bordered by small levees is irrigated with relatively large streams of water.

Groundwater Management: The process of controlling extraction of groundwater and/or planned recharge to manage the supply and/or quantity of groundwater. Objectives of groundwater management may include minimizing (or preventing) adverse effects such as groundwater overdraft or quality degradation. (Also see conjunctive use and water management practices).

Groundwater Overdraft: Where, over a period of time, groundwater extraction exceeds natural or artificial recharge.

Indicator Bacteria: Bacteria that are used to assess the microbiological quality of water because, although not typically disease causing themselves, they may indicate the presence of several waterborne disease-causing organisms. The concentration of indicator bacteria is used as a measure of water safety for body-contact and for consumption of water.

Instream Uses: Include fish, wildlife, recreation, aesthetics, hydro-power production, dilution of contamination, waste discharge, and sediment transport.

Local Entities: Includes cities, counties, water districts, joint powers, etc.

Loss Prevention Measures: Designing and implementing measures to avoid immediate and long term impacts to fish and wildlife resources.'

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Maximum Extent Practicable (MEP): The vaguely defined standard set forth in the CWA to be included in Municipal NPDES Permits to be complied with by municipal dischargers in order to reduce the discharge of pollutants from their municipal separate storm sewer systems. CWA Section 1342 (p)(3)(B)(iii) requires that permits for discharges from municipal storm sewers “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and systems, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.”

Mitigation: Measures to lessen or reduce adverse effects on fish and wildlife resources through use of structural and non-structural loss prevention measures in project design and operations. (See CEQA Guidelines Section 15370)¹ NEPA regulations have a functionally similar definition. NEPA definition includes restoration as a mitigation measure, however.

National Pollutant Discharge Elimination System (NPDES): The program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing wastewater and stormwater discharge permits, and imposing and enforcing pretreatment requirements, under CWA.

Non-Point Source Discharge: Pollution caused by rainfall or snowmelt moving over and through the ground. As the water moves, it picks up and conveys natural and human-made pollutants, depositing them into water bodies and groundwater. Atmospheric deposition and hydromodification are also nonpoint sources of pollution.

Numeric Limits: Numeric or numerically expressed narrative restrictions on the quantity, discharge rate, concentration, or toxicity units of a pollutant or pollutants that may be discharged from an NPDES permitted location or outfall.

Pathogens: Disease-causing bacteria, viruses, and protozoans that are transmitted to people when they consume contaminated water.

Pollution: An alteration of the quality of the waters of the state by waste to a degree which unreasonably affects: (1) such waters for beneficial uses, or (2) facilities which serve such beneficial uses. Pollution may include contamination. (California Water Code Section 13050: Please see “Contamination”).

Porter-Cologne Water Quality Control Act (Porter-Cologne): The California equivalent of the federal Clean Water Act. This legislation established that the State Water Resources Control Board (State Water Board) has the ultimate authority over state water rights, water quality policy, and the nine regional water quality control boards (regional water boards) which oversee water quality on a day-to-day basis in their geographic regions.

Preservation: Maintenance and protection of fish and wildlife resources at levels that existed prior to the commencement of a (the current) project. Preservation is achieved through mitigation for avoidable resource losses and/or compensation for unavoidable resource losses and/or compensation for unavoidable resource losses. The term “preservation” is synonymous with “conservation” as used in the U.S. Fish and Wildlife Coordination Act. Preservation does not assume that restoration will occur, but it could.

Project Beneficiaries: Those who gain value in some fashion from any of the following: water supply, flood control, power generation, recreation, salinity repulsion, wildlife.

Protection: Department of Fish and Game appears to use this term when referring to legal enforcement by wardens. (See Preservation and Conservation).

Real Water Savings: Simply means there is an “actual” savings of water which could be put to other use.

Reasonable and Beneficial: Depends on facts and circumstances of each case. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time. (Tulare Irrigation District v. Lindsay-Strathmore Irrigation District). The courts have determined the law requires an evaluation of the ascertainable facts in view of the increasing need for water conservation within California.

Beneficial uses include: storing water underground if thereafter to be applied to beneficial purposes; use of water for recreation and preservation and enhancement of fish and wildlife resources.

Reclaimed Water: Wastewater that has been cleaned so that it can be used for most purposes except drinking.

Recycled Water: Municipal and/or industrial wastewater that has been treated to a sufficiently high level that it can be reused usually for non-potable purposes such as irrigating landscape and refilling aquifers.

Restoration: Means to return to “original” conditions. (Selection or “original” or base condition is often source of debate.)

Reverse Flows: Where direction of flow in a channel is reversed, as in the case of channels in South Delta which normally drain towards San Francisco Bay, but where pumping for export may cause flow reversal, drawing more saline water further into the Delta.

Sediment Transport: Sediment of various particle sizes may be carried by moving water. The size of particles transported by water increases as velocity rises.

Stormwater: Water that accumulates on land as a result of storms, and can include runoff from urban areas such as roads and roofs.

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Surplus Water: When used as a technical term in water contracts, this is the water that is available after entitlement water has been delivered. The amount of surplus water varies from year to year, generally according to amounts of runoff. Surplus water ordinarily is less expensive to the user than entitlement water. Reference is also made to water which is surplus to reasonable and beneficial uses of area of origin and Bay/Delta.

System Expansion: Extension of existing infrastructure exclusively to serve new customers in presently unserved areas and/or increase in water supply exclusively for the same purpose.

Total Maximum Daily Load (TMDL): A calculation of the maximum amount of a pollutant that an impaired water body can receive and still meet applicable water quality standards. A TMDL is to include allocations for the maximum load a particular source of a pollutant may discharge to the subject water body. TMDLs are required pursuant to Section 1313(d) of the CWA for water bodies that have first been listed as being impaired for the particular pollutant or pollutants at issue.

Triennial Review: A review of water quality standards in basin plans that is required at least once every three years by Section 1313(c) (1) of the CWA and periodically under Section 13240 of the Porter-Cologne Water Quality Control Act.

Ultimate: Imprecise meaning. Depends on time frame.

Usable Groundwater: Refers to groundwater which can be pumped within the cost and technical constraints appropriate to the situation.

Water Banking: Not a precise term. Generally refers to storing presently surplus water in groundwater basins or in surface storage facilities.

Water Management Practices: Relate to the varied objectives of irrigation, municipal and industrial use. These objectives may not be compatible. In general, management practices are developed to maximize economic returns and/or to minimize (or prevent) adverse environmental impacts including water quality degradation. Conservation of supply, reuse, treatment for use and waste disposal, and the planned conjunction use of surface and groundwater are all aspects of water management. (Also see Conjunctive use and Groundwater management).

Water Quality Standards and Objectives: The regional water quality boards set "objectives" in their basin planning process which are equivalent to what EPA calls "standards". The "standards" include numerical narrative criteria and plans to implement these criteria.

Water Reclamation: Usually refers to removing contaminants in water so that the water can be discharged into a receiving water without creating problems for fish, wildlife and other aspects of environment. Also, refers to water which has been treated to remove contaminants as required to permit its reuse particularly for irrigation of landscaped or agricultural areas.

Way Bill (Program): Delta Levee Maintenance Program. Declares the Sacramento-San Joaquin Delta, characterized by islands and meandering waterways, as a unique resource of major statewide significance. Reasons are stated. Declares the system of levees is the key to preserving the physical characteristics of the Delta. Finds there is an urgent need for a higher degree of levee maintenance and rehabilitation throughout the Delta and 'that the state has an interest in providing technical and financial assistance. Establishes that local agencies maintaining non-project (private) levees shall be eligible for reimbursement from the General Fund. Reimbursement shall be at 50% of cost. (California Water Code Sections 12980-12991).

303(d) List of Impaired Waterbodies: The State is required to prepare a list of water bodies that are polluted, under Section 303(d) of the CWA. Inclusion of a water body on the 303(d) list generally leads to the development of a total maximum daily load (TMDL) for the water body.

Prepared by Robert M. Hagan, Extension Water Specialist, Marcia Kreith, Program Representative, University of California Cooperative Extension, July 1987 and Ken Farfsing, City Manager, City of Signal Hill, October 2009.

Sources:

Some of the preceding definitions were derived from the following sources:

California Wetlands Information System Website: Porter-Cologne Act

Los Angeles MS4 Permit: Basin plan, best management practices, maximum extent practicable, NPDES permit

RWA: Cross-media pollution

Southern California Coastal Waters Research Project (SCCWRP) Website: Atmospheric deposition

State Water Board Website: Numeric Limits, Triennial Review,

U.S. EPA Website: California Toxics Rule, Clean Water Act, coliform, enterococcus, TMDLs

U.S. Geological Service (USGS) Website: Indicator bacteria, pathogen

Housing, Community and Economic Development

Scope of Responsibility

The principle behind the policies reviewed by the Committee on Housing, Community and Economic Development (HCED) is to foster local control of community planning decisions as they relate to land use and economic development. The issues within the purview of the HCED Committee include general plans and zoning, housing, rent control, subdivision map act, residential care facilities, other land use regulation, development fees including school fee adequacy, annexation and incorporation policy, development agreements, building standards including seismic safety standards, economic development policy including redevelopment and enterprise zones, military base closure and reuse, mobile home regulation, and sign regulation.

Summary of Existing Policy and Guiding Principles

Planning And Zoning

General Plans

The League supports the use of the general plan as a guide to meeting community planning needs. A city's general plan should guide the individual city's land use planning and strategic decision-making. A city's general plan should not be subject to mandatory review by regional or state agencies. General plan requirements should be flexible and provide guidance to local communities without requiring inappropriate levels of detail or mandating new topics or elements. The League supports guidance by expert state agencies in a consultation format but opposes granting mandatory review, certification or other approval authority to another level of government.

Water Supply and Land Use Planning

The League supports having the best information available on the reliability of water supplies when land use decisions are made by local agencies, while protecting and retaining local land use decision-making authority.

Zoning

The League believes local zoning is a primary function of cities and is an essential component of home rule. The process of adoption, implementation and enforcement of zoning ordinances should be open and fair to the public and enhance the responsiveness of local decision-makers. State policy should leave local siting and use decisions to the city and not interfere with local prerogative beyond providing a constitutionally valid procedure for adopting local regulations. State agency siting of facilities, including campuses and office buildings, should be subject to local notice and hearing requirements in order to meet concerns of the local community. The League opposes legislation that seeks to limit local authority over parking requirements.

Housing Element

Housing issues should be addressed in the general plan as other planning issues are. The housing element should be prepared for the benefit of local governments and should have equal status with the other elements of the general plan.

The projections of regional and local growth and the allocations of housing units should account for state and local planning factors and should be subject to a formal hearing and appeal process to ensure that they are realistic. Cities should be allowed to work together to allocate housing units among themselves within a subregion. Appeals should be heard by politically accountable officials at the state and regional levels.

Cities should focus their efforts on facilitating the production of below market rate housing units. Local government efforts should be subject to realistic performance standards, not to arbitrary state agency review of the housing element. Local government housing efforts should be rewarded by incentives. These incentives should include streamlining by not being subject to the Department of Housing and Community Development review, priority ranking for discretionary funds, and new discretionary funds available for general fund purposes.

The League supports and encourages legislation that implements comprehensive reforms to the housing element process that:

- Address conflicts between local growth projections and state regional housing need numbers;
- Resolve the problems associated with the distribution of RHNA units within a council of governments;
- Achieve improvements to the housing element review process;

Housing, Community and Economic Development

- Develop a neutral dispute resolution process and fair enforcement alternatives to deal with disputes over questions of compliance;
- Require state laws and policies which affect housing and land use to be internally consistent;
- Establish additional legal protections to local agencies that approve affordable housing and that establish local pro-active affordable housing policies; and,
- Authorize communities which achieve quantifiable affordable housing production levels to self-certify their housing elements without being subject to state review.

Housing Finance

The League supports legislation and state and federal programs that assist in providing financing for affordable housing, including the development of fiscal tools and incentives to assist local governments in their efforts to encourage housing and finance the infrastructure to support housing, as well as establishing an ongoing state commitment for funding affordable housing.

The League supports the re-establishment of federal tax incentives which were in effect prior to 1986 which encouraged private development and ownership of rental housing.

The League supports property tax assessment policies that match local affordable housing policies.

Economic Development

Job Creation, Retention and Expansion

The League supports legislation that will provide tangible and productive tools and incentives to support job creation and retention in housing-rich, jobs-poor communities, such as the awarding of direct grants to fund the development of infrastructure that results in the creation and retention of jobs; the elimination of matching dollar requirements for economic development and infrastructure state grants; the provision of grant funding for infrastructure planning and design and the creation of economic development strategies; and, allowing cities the maximum flexibility in the use of state funds toward local priorities that support job creation. The League also encourages the state to adopt policies and programs that establish a comprehensive solution to the infrastructure and jobs/housing needs of all communities within the state.

Tax Increment Tools

The League supports the enactment and expansion of tax increment financing authority for economic development, infrastructure, and community revitalization, including recently enacted Enhanced Infrastructure Financing District Law (EIFD), Community Revitalization and Investment Authorities (CRIA) and Annexation Development Plans.

The League supports the enactment and expansion of state tax incentives that assist city economic development and community revitalization efforts.

Eminent Domain

The League supports enactment of fair eminent domain reforms that protect homeowners, and opposes proposals that would cripple the ability of state and local agencies to manage development.

Rent Control

The League opposes legislation that restricts the ability of cities to enact rent control ordinances for mobile homes and stick-built housing that are tailored to meet local conditions and circumstances.

The League opposes legislation that would require a city to adopt a mobile home rent control ordinance.

Subdivision Map Act

The League supports maximizing local control over subdivisions and public improvement financing. Discretion over the conditions and length of subdivision and parcel maps should be retained by cities.

Residential Care Facilities

The League supports permitting cities to exercise review and land use regulation of group home facilities and residential care facilities in residential neighborhoods including the application of zoning, building and safety standards. State and county licensing agencies should be required to confer with the city's planning agency in determining whether to grant a license to a community care facility. The League recognizes that better review and regulation of residential care facilities will protect both the community surrounding a facility and the residents within a facility from a poorly managed facility or the absence of state oversight.

The League supports state legislation to require a minimum distance of 300 feet between all new and existing residential care facilities. The League supports notification of cities about conditional release participants residing in group homes.

Development Fees

The League supports providing local discretion in the assessment, collection and usage of development fees. The state should provide infrastructure funding to help local communities meet California's growth demands and to increase housing affordability. The League opposes limiting the ability of cities to levy fees to provide for infrastructure or services.

The League recognizes that school facilities are a component of a community's infrastructure and must be maintained to foster positive outcomes for youth and economic development. The League supports maintaining city discretion over the extent to which legislative authority should be exercised to fully mitigate impacts from development to the adequacy of school facilities. Consistent with maintaining discretion, cities should maintain the ability to condition and deny projects that the city determines inadequately mitigate impacts to community schools.

The League opposes the elimination of any development fee or tax including excise taxes. Tax shifts and initiative measures have severely limited city abilities to provide for community needs. The state must ensure that cities have adequate revenues for local infrastructure and services.

Annexation and Incorporation

The League supports strengthening city control over urban boundaries. Sphere of Influence law should be modified to ban county development and to allow cities to annex logical growth. The Revenue and Taxation Code should not allow counties to block annexations in exchange for unreasonable property tax sharing agreements. In addition, cities should have expanded authority over adjacent lands outside of their sphere of influence regardless of jurisdictional lines so long as the land is not within another city's sphere. Cities should not be required to incur costs for planning to meet infrastructure needs of unincorporated areas or leveraged to annex areas which would result in unfunded costs.

The League supports facilitating the incorporation of cities that have met procedural requirements and voter approval. The League opposes efforts by the Legislature to disincorporate a city for any reason, unless requested by the affected city.

Development Agreements

The League recognizes voluntary development agreements as one tool for providing flexibility in development approvals.

Building Standards

The League supports flexibility in the adoption and implementation of health and safety standards contained in the building codes. Statutes should maximize local control over standards applying to local conditions. The League opposes new standards imposed by statute rather than regulation.

The League opposes attempts to have multiple state agencies develop specific or subject related building standards. New building standards should be proposed through the California Standards Commission.

The League supports authorizing cities to adopt independent occupancy standards to prevent overcrowding and associated health and safety hazards, including fire-related fatalities.

Housing for Homeless

Housing and programs for homeless and other extremely low-income populations are necessary to ensure quality of life and economic viability for all Californians.

Homelessness is a statewide problem that disproportionately impacts specific communities. The state should make funding and other resources available to help assure that local governments have the capacity to address the needs of the homeless in their communities.

Homeless housing is an issue that eludes a statewide, one-size-fits-all solution, and collaboration between local jurisdictions should be encouraged.

State and federal funding programs should be designed to reflect responsibilities imposed by state and federal law.

Military Base Closure And Reuse

Base Closures and Reuse

The League supports local decision-making over military base closure and reuse. The affected cities independently or subregionally should work together towards efficient reuse planning.

Housing, Community and Economic Development

Economic Reuse

The League supports incentives for broad economic reuse of closed military facilities. Cities should work on a regional and interstate basis to maintain economic productivity. Economic reuse includes both reuse of military facilities and the retooling of related industries to continue to provide jobs for residents of California's cities.

Mobile Home Regulation

The League supports initiatives that maintain cities as the enforcement authority for mobile home regulation.

The League supports the preservation of existing mobile home parks as an important source of affordable housing.

Sign Regulation

The League supports the authority of cities to regulate billboards and other signage. The League opposes mandatory local abatement programs.

Principles for Smart Growth

Well-Planned New Growth

Recognize and preserve open space, watersheds, environmental habitats, and agricultural lands, while accommodating new growth in compact forms, in a manner that:

- De-emphasizes automobile dependency;
- Integrates the new growth into existing communities;
- Creates a diversity of affordable housing near employment centers; and,
- Provides job opportunities for people of all ages and income levels.

Maximize Existing Infrastructure

Accommodate additional growth by first focusing on the use and reuse of existing urbanized lands supplied with infrastructure, with an emphasis on reinvesting in the maintenance and rehabilitation of existing infrastructure.

Support Vibrant City Centers

Give preference to the redevelopment and reuse of city centers and existing transportation corridors by supporting and encouraging:

- Mixed use development;
- Housing opportunities for all income levels;
- Safe, reliable and efficient multi-modal transportation systems; and,
- Retaining existing businesses and promoting new business opportunities that produce quality local jobs.

Coordinated Planning For Regional Impacts

Coordinate planning with neighboring cities, counties, and other governmental entities so that there are agreed upon regional strategies and policies for dealing with the regional impacts of growth on transportation, housing, schools, air, water, wastewater, solid waste, natural resources, agricultural lands and open space.

Support High-Quality Education and School Facilities

Develop and maintain high quality public education and neighborhood-accessible school facilities as a critical determinant in:

- Making communities attractive to families;
- Maintaining a desirable and livable community;
- Promoting life-long learning opportunities;
- Enhancing economic development; and,
- Providing a work force qualified to meet the full range of job skills required in the future economy.

Build Strong Communities

Support and embrace the development of strong families and socially and ethnically diverse communities, by:

- Working to provide a balance of jobs and housing within the community;
- Avoiding the displacement of existing residents;
- Reducing commute times;
- Promoting community involvement;
- Enhancing public safety; and,
- Providing and supporting educational, mentoring and recreational opportunities.

Emphasize Joint Use of Facilities

Emphasize the joint use of existing compatible public facilities operated by cities, schools, counties and state agencies, and take advantage of opportunities to form partnerships with private businesses and nonprofit agencies to maximize the community benefit of existing public and private facilities.

Support Entrepreneurial/Creative Efforts

Support local economic development efforts and endeavors to create new products, services and businesses that will expand the wealth and job opportunities for all social and economic levels.

Encourage Full Community Participation

Foster an open and inclusive community dialogue and promote alliances and partnerships to meet community needs.

Establish a Secure Local Revenue Base

Support the establishment of a secure, balanced and discretionary local revenue base necessary to provide the full range of needed services and quality land use decisions.

Note: The League will review new legislation to determine how it relates to existing League policies and guiding principles. In addition, because this document is updated every two years to include policies and guiding principles adopted by the League during the previous two years, there may be new, evolving policies under consideration or adopted by the League that are not reflected in the current version of this document. However, all policies adopted by the League Board of Directors or the League's General Assembly become League policy and are binding on the League, regardless of when they are adopted and whether they appear in the current version of "Summary of Existing Policies and Guiding Principles."

Public Safety

Scope of Responsibility

The Committee on Public Safety reviews federal and state legislation and issues related to law enforcement, fire and life safety policies, emergency communications, emergency services, disaster preparedness, Indian gaming, and nuisance abatement.

Summary of Existing Policy and Guiding Principles

Fire Services

The League supports the fire service mission of saving lives and protecting property through fire prevention, disaster preparedness, hazardous-materials mitigation, specialized rescue, etc., as well as cities' authority and discretion to provide all emergency services to their communities.

The League supports and strives to ensure local control of emergency medical services by authorizing cities and fire districts to prescribe and monitor the manner and scope of pre-hospital emergency medical services, including transport through ambulance services, all provided within local boundaries for the purpose of improving the level of pre-hospital emergency medical service.

The League supports legislation to provide a framework for a solution to long-standing conflict between cities, counties, the fire service and LEMSA's, particularly by local advisory committees to review and approve the EMS plan and to serve as an appeals body. Conflicts over EMS governance may be resolved if stakeholders are able to participate in EMS system design and evaluation and if complainants are given a fair and open hearing.

The League supports stored pressure dry chemical fire extinguishers to be serviced and recharged every six years or after each use, whichever occurs first. Additionally, the League supports requiring a licensed technician to perform the annual external maintenance examination of stored pressure dry chemical fire extinguishers.

The League opposes legislation, regulations and standards that impose minimum staffing and response time standards for city fire and EMS services since such determinations should reflect the conditions and priorities of individual cities.

The League supports Emergency 911 systems to ensure cities and counties are represented on decisions affecting emergency response.

The League supports additional funding for local agencies to recoup the costs associated with fire safety in the community and timely mutual aid reimbursement for disaster response services in other jurisdictions.

Emergency Services and Preparedness

The League supports the 2-1-1 California telephone service as a non-emergency, human and community services and disaster information resource.

The League supports “Good Samaritan” protections that include both medical and non-medical care when applicable to volunteer emergency, law enforcement, and disaster recovery personnel. The League also supports providing “Good Samaritan” protections to businesses that voluntarily place automated external defibrillators (AEDs) on their premises to reduce barriers to AED accessibility.

Emergency Communications Interoperability: The League supports activities to develop and implement statewide integrated public safety communication systems that facilitate interoperability and other shared uses of public safety spectrum with local, state and federal law enforcement, fire, emergency medical and other public safety agencies.

The League supports a single, efficient, performance-based state department (the California Emergency Management Agency) to be responsible for overseeing and coordinating emergency preparedness, response, recovery, and homeland security activities.

The League supports efforts to secure additional funding for local agencies to provide training opportunities for appropriate first responder personnel to improve their ability to respond to oil spills, fires, and other hazardous materials accidents.

The League supports legislation and additional state and federal regulation crafted to ensure that first responders can perform their duties during emergency response operations without interference from unmanned aerial systems, or drones.

Law Enforcement

The League supports the promotion of public safety through:

- Stiffer penalties for violent offenders, and

- Protecting state Citizens’ Option for Public Safety (COPS) and federal Community Oriented Police Services (COPS) funding and advocating for additional funding for local agencies to recoup the costs of crime and increase community safety.

The League opposes booking fees and continues to seek their repeal, while encouraging localities to pursue resolution of the issues with their respective counties.

The League supports a local government’s ability to double the fine for traffic violations in school zones in an attempt to reduce the speed of drivers and protect our youth.

The League supports reimbursement by the federal government to local agencies, specifically cities, for the costs associated with incarcerating deportable criminals, including the direct costs associated with processing and booking at the time of arrest.

The League supports policies that promote a victim’s right to seek restitution, create restrictions on the early release of state inmates from incarceration for the purpose of alleviating overcrowding, and limit parole hearing opportunities for state inmates serving a life sentence or paroled inmates with a violation.

The League supports parolee search and seizure terms, which aids local law enforcement’s ability to manage paroled offenders.

The League supports increased penalties for metal theft, and recognizes that statewide regulation is needed to discourage “jurisdiction shopping”. The League also supports increased record-keeping and reporting requirements for junk dealers, including the collection of thumbprints from sellers.

Wildland Urban Interface

The League supports activities to cooperate, coordinate, and communicate in the development of better land use policies and wildland fuel management programs to decrease impacts to public health and safety resulting from wildland urban interface fires.

Nuisance Abatement

The League supports enhanced local control over public nuisances including, but not limited to:

- Adult entertainment facilities;
- Problem alcohol establishments; and,
- Properties where illegal drugs are sold.

Violence

The League supports the reduction of violence through strategies that address gang violence, domestic violence, youth access to tools of violence, including but not limited to firearms, knives, etc., and those outlined in the California Police Chiefs Policy Paper endorsed by the League Board of Directors.

The League supports the use of local, state, and federal collaborative prevention and intervention methods to reduce youth and gang violence.

Indian Gaming

The League supports the following principles that are intended to balance tribal self-reliance with the local government mandate to protect the public health and safety.

- Require an Indian Tribe that plans to construct or expand a casino or other related businesses to seek review and approval of the local jurisdiction for such improvements consistent with state law and local ordinances including the California Environmental Quality Act, with the Tribal government acting as the lead agency and with judicial review in the California courts.
- Require mitigation of off-reservation impacts consistent with environmental protection laws that are at least as stringent as those of the surrounding local community and CEQA.
- Require written agreements between tribes and affected local agencies to ensure tribes are subject to local authority related to the infrastructure needs and services outlined above.
- Require adequate compensation from the tribes to the local agency providing the government services that are required by the tribal casino or related businesses.
- Ensure compensation to local agencies from the Special Distribution Fund for off-reservation mitigation coupled with other sources to ensure adequate compensation.
- Require a judicially enforceable agreement between tribes and local jurisdictions on all of these issues before a new compact or an extended compact may become effective.
- Establish appropriate criteria and guidelines to address future compact negotiations.
- The Governor should establish and follow appropriate criteria to guide discretion of the Governor and the Legislature when considering whether to consent to tribal gaming on lands acquired in trust after October 17, 1988 and governed by the Indian Gaming Regulatory Act (25 U.S.C. § 2719).

Alcohol

The League supports policies that limit the ability of minors to engage in alcohol consumption, and limit youth access to alcoholic beverages, so long as related state-mandated programs or services provide for full reimbursement to all local agencies.

The League supports local policies that hold social hosts responsible for underage drinking that occurs on property under their possession, control, or authority.

The League supports additional penalties for repeat driving under the influence (DUI) offenders that include, but are not limited to, permanent revocation of an individual's driver's license.

The League supports legislation and other regulations intended to improve local governments' enforcement capability against alcohol licensees that are in violation of state law and local ordinances.

Marijuana Regulation

The League opposes the legalization of marijuana cultivation and use for non-medicinal purposes.

Reaffirming that local control is paramount, the League holds that cities should have the authority to regulate medical marijuana dispensaries, cooperatives, collectives or other distribution points if the regulation relates to location, operation, or establishment to best suit the needs of the community.

The League affirms that revenue or other financial benefits from creating a statewide tax structure on medical marijuana should be considered only after the public safety and health ramifications are fully evaluated.

While the value of marijuana as a physical or mental health treatment option is uncertain, the League recognizes the need for proactive steps to mitigate the proliferation of unlawful medical marijuana dispensaries, cooperatives, collectives and other access points acting outside state or local regulation.

The League supports marijuana regulation only to the degree that any such regulatory structure preserves and upholds local control and the police power of local governments pursuant to Article XI, Section 7 of the California Constitution.

Graffiti

The League endorses the “Tag You Lose” anti-graffiti campaign and encourages other cities to implement this program into their existing anti-graffiti programs.

The League supports increased authority and resources devoted to cities for abatement of graffiti and other acts of public vandalism.

Sex Offender Management

The League supports policies that will assist local law enforcement with the comprehensive and collaborative management of sex offenders, including tools for tracking the location of sex offenders within local jurisdictions, so long as state-mandated programs provide for full reimbursement to all local agencies.

Corrections

The League supports constitutional protections for state funded corrections realignment programs, so long as it includes funding for local police department needs. The League also supports increasing city representation and participation on the Community Corrections Partnerships, who are charged with developing local corrections plans.

Miscellaneous

The League opposes reductions to city authority to regulate needle and syringe accessibility and exchange programs.

The League asks any company manufacturing or marketing or planning to manufacture or market colored-tread tires in California to voluntarily abandon such a product line and thereby prevent the public safety, environmental and social problems these tires can potentially cause.

The League warns those individuals who advocate or perpetrate hate, not to test the cities’ resolve to oppose them as each city is encouraged to vigorously pursue a course of investigation, apprehension, prosecution, conviction, and incarceration of all those who participate in hate crimes.

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Revenue and Taxation

Scope of Responsibility

The Committee on Revenue and Taxation reviews issues related to finance administration, taxation reform, revenue needs, and revenue sources at the federal, state and local levels.

Summary of Existing Policy and Guiding Principles

Cities and the League

Preamble

Inherent in these recommendations is the underlying principle that meaningful fiscal reform should allow each level of government to adequately finance its service responsibilities, with each being accountable to taxpayers for its own programs.

Efficiency

Cities and the League should continue to emphasize efficiency and effectiveness, encouraging and assisting cities to achieve the best possible use of city resources.

Authority and Accountability

Cities must locally achieve political authority and accountability for revenues raised and services provided. For accountability, revenues should be logically linked to traditional and emerging responsibilities. Cities must effectively communicate the good news about city programs and operations, as well as information concerning financial conditions and city responsibilities.

Alliances

Cities should seek alliances with counties, schools, other cities, employee organizations, other local agencies, and business and professional organizations to support cooperation, sound financial policies and joint action.

Initiative

Cities and the League are prepared to use the statewide initiative process, if necessary, to secure fiscal independence and a sound intergovernmental financial structure. Initiative efforts should, to the extent feasible, incorporate and, in no case violate, the principles developed by the Fiscal Reform Task Force as follows:

- Cities require a greater share of the property tax and other reliable, discretionary revenues in order to finance local services to property.
- Cities require constitutional protection of their revenue sources in order to provide insurance against diversion by the state of these revenues in the future for non-municipal purposes.
- Major reforms in the unfunded mandate reimbursement process should be enacted to make it more workable and meaningful.

Legislature or the Voters

Local Authority and Accountability

To preserve local authority and accountability for cities, state policies must:

- Ensure the integrity of existing city revenue sources for all cities, including the city share and situs allocation, where applicable, of property tax, sales tax, vehicle license fees, etc.
- Protect the authority of local governments to collect revenues from telecommunications providers and ensure that any future changes are revenue neutral for local governments.
- Oppose any state or federal legislation that would pre-empt or threaten local taxation authority including but not limited to Utility User's Taxes.
- Allow every level of government to enjoy budgetary independence from programs and costs imposed by other levels of government.
- Authorize a simple majority of the voters in a city or county to establish local priorities, including the right to increase taxes or issue general obligation bonds.
- Offer incentives to reward cities achieving program goals rather than withhold or reduce revenues to accomplish targets.

State Legislative and Budget Reforms

To stabilize state funding and programs and reverse the trend of the state's reliance on local revenues to solve the state's fiscal crises, the state should implement fiscal and legislative reforms which may include for consideration the following:

- A two-year spending plan with the first session focused on expenditures over the period.
- Oversight hearings that review programs for savings, duplication or gaps in services.
- Limits on the number of bills that legislators may introduce.
- A prudent reserve fund.
- Official records kept of all Assembly official meetings.
- A balanced deficit reduction approach, which could include temporary revenue increases dedicated solely to retiring short-term debt, spending cuts, short-term borrowing and multi-year spending limitations.
- Long term restructuring measures, including increased local government property tax shares to create balanced growth and separate budget detail of all state expenditures at local level.

State Mandates

The state must provide full and prompt reimbursement to all local agencies for all state-mandated programs and/or infractions and losses associated with local revenue shifts.

Local agencies must be authorized to petition the Commission on State Mandates immediately after legislation is chaptered for determination of eligibility for reimbursement, and reserve the right to directly pursue court intervention without an administrative appeals process.

Reforms are needed in the mandate approval and reimbursement process.

The State should be prohibited from deferring mandate payments.

Unless specifically requested by a city, no new duties, responsibilities or obligations should be assigned to a city or cities under state realignment.

Additional Revenue

Additional revenue is required in the state/local revenue structure. There is not enough money generated by the current system or allocated to the local level by the current system to meet the requirements of a growing population and deteriorating services and facilities.

When disasters occur in various areas of the state, state government has traditionally stepped in to assist with recovery efforts through various means, including the passage of legislation to provide income and property tax relief to affected individuals and businesses, and reimbursing local governments for their losses. The League supports disaster recovery legislation that includes mitigation for losses experienced by local governments. The League also supports establishing a federal debt guarantee program that supports state catastrophe insurance programs for post-event debt that they incur as a result of paying for insured losses caused by major natural catastrophes.

The League supports legislation that would make adjustments to the vehicle license fee-property tax swap of 2004 to ensure that the formula appropriately accounts for city incorporations and annexations of inhabited territory.

The League supports legislation that would bolster existing local efforts to enforce local ordinances and revenue collection associated with short-term rentals.

Reduce Competition

Revenue from new regional or state taxes or from increased sales tax rates should be distributed in a way that reduces competition for situs-based revenue. (Revenue from the existing sales tax rate and base, including future growth from increased sales or the opening of new retail centers, should continue to be returned to the point of sale.)

The existing situs-based sales tax under the Bradley Burns 1% baseline should be preserved and protected.

Tax proceeds collected from internet sales should be allocated to the location where the product is received by the purchaser.

Restrictions should be implemented and enforced to prohibit the enactment of agreements designed to circumvent the principle of situs-based sales and redirect or divert sales tax revenues from other communities, when the physical location of the affected businesses does not change.

Funding for Counties

Counties require additional funding if they are to fulfill their state-mandated and traditional roles.

As legal agents of the state, county expenditures in that capacity should be funded by the state. Their local programs should be financed locally.

The concept of “self-help” for counties should be expanded. An example might be that counties could receive certain state funding if they raise a specified level of revenue locally.

To alleviate competition among cities and counties, funding for counties should be accompanied by agreements on new development in undeveloped areas within the cities’ sphere of influence.

Regional Revenues

Local government issues, programs, and services do not always recognize local government jurisdictional boundaries. In cases where regional issues, programs, and services are identified, multi-jurisdictional revenues should then be identified and implemented. As an example, the sales tax has been considered and used by many countywide areas to address multi-jurisdictional transportation issues.

Support regional cooperation on common interests and goals by providing access to share incremental growth in ERAF property tax.

Revenue Modernization

Property Tax

The League supports legislation which would clarify and improve the definition of “change of ownership” for property tax reassessment purposes to include when more than 90 percent of direct or indirect ownership interests in a legal entity are cumulatively transferred in one or more transactions. Such changes would reduce the use of complicated strategies employed to evade reassessment of property upon changes of ownership.

Sales Tax

Sales and Use Tax Base: The League supports modernization to the sales tax through measures that would either broaden the tax base on goods, which includes reviewing existing exemptions on certain goods and expanding to digital forms of goods that are otherwise taxed, and expanding the sales tax base to services, such as those commonly taxed in other states. Specific proposals in these areas should be carefully reviewed so that the impacts of any changes are fully understood.

Sales Tax Sourcing Rules: Support as League policy that point of sale (situs) is where the customer receives the product. Specific proposals in this area should be carefully reviewed so that the impacts of any changes are fully understood.

County Pool Use Tax Allocations: Support the League working with the state Board of Equalization to update the county pool allocation process to ensure that more revenues are allocated to the jurisdiction where the purchase or first use of a product occurs (usually where the product is delivered).

State Sales Tax Exemptions: The League opposes state legislation that proposes to grant exemptions for specific products that fails to protect those portions of the sales tax that are dedicated to local government.

Federal Streamlined Sales and Use Tax Agreement (SSUTA)

There are more questions than answers for California cities about potential state participation in the SSUTA. The SSUTA offers many more risks for California cities than benefits. Thus, the League should:

Continue to monitor developments of the SSUTA and related federal legislations, but not support any additional efforts that would lead to California joining the agreement. This position can always be revisited at a future point if events change.

Strongly oppose any federal effort that attempts to force California to conform to the Agreement, or amendments to federal legislation that would directly undermine California's utility user tax structure.

Work with the State Board of Equalization and other parties on alternative efforts to increase the collection of use taxes within California. Share the League's analysis of the SSUTA with interested parties, exchange information on use tax collection issues with municipal Leagues in other states, including those states with tax structures similar to California.

Federal Legislation Requiring Use Tax Collection

The League supports federal legislation that would require the collection of use tax from internet or "remote sales" that meets the following conditions:

Is limited to the collection of sales and use taxes.

Does not require states to participate in the SSUTA.

Requires remote sellers to collect the full destination rate (combination of state and local rate at location the product will be delivered).

Exempts intrastate (non-remote sales within California) from the destination rule.

Provides sufficient flexibility to accommodate California's tax structure. (There are instances where the state, for policy reasons, has opted not to collect the state's share of sales taxes on an item, but the local rates on those items are still collected).

State regulatory actions and possible legislation may be needed to address issues raised by the collection of new revenue from remote sales. Implementation by the State Board of Equalization would likely require appropriate software for remote sellers to implement the new system.

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Transportation, Communication and Public Works

Scope of Responsibility

The Committee on Transportation, Communication and Public Works reviews both state and federal legislation as it relates to issues of transportation funding, construction, public works, telecommunications, and other related areas.

Summary of Existing Policy and Guiding Principles

Transportation

The League supports additional funding for local transportation and other critical unmet infrastructure needs. One of the League's priorities is to support a consistent and continuous appropriation of new monies from various sources directly to cities and counties for the preservation, maintenance and rehabilitation of the local street and road system. New and additional revenues should meet the following policies:

- System Preservation and Maintenance. Given the substantial needs for all modes of transportation, a significant portion of new revenues should be focused on system preservation. Once the system has been brought to a state of good repair, revenues for maintenance of the system would be reduced to a level that enables sufficient recurring maintenance.
- Commitment to Efficiency. Priority should be given to using and improving current systems. Recipients of revenues should incorporate operational improvements and new technology in projects.
- All Users Based System. New revenues should be borne by all users of the system from the traditional personal vehicle that relies solely on gasoline, to those with new hybrid or electric technology, to commercial vehicles moving goods in the state, and even transit, bicyclists, and pedestrians who also benefit from the use of an integrated transportation network.
- Alternative Funding Mechanisms. Given that new technologies continue to improve the efficiency of many types of transportation methods, transportation stakeholders must be open to new alternative funding mechanisms. Further, the goal of reducing greenhouse gases is also expected to

affect vehicle miles traveled, thus further reduce gasoline consumption and revenue from the existing gas tax. The existing user based fee, such as the base \$0.18-cent gas tax is a declining revenue source. Collectively, we must have the political will to push for sustainable transportation revenues.

- Unified Statewide Solution. For statewide revenues, all transportation stakeholders must stand united in the search for new revenues. Any new statewide revenues should address the needs of the entire statewide transportation network, focused in areas where there is defensible and documented need.
- Equity. New revenues should be distributed in an equitable manner, benefiting both the north and south and urban, suburban, and rural areas as well as being equally split between state and local projects.
- Flexibility. Needs vary from region to region and city to city. New revenues and revenue authority should provide the flexibility for the appropriate level of government to meet the goals of the constituents.
- Accountability. All tax dollars should be spent properly, and recipients of new revenues should be held accountable to the taxpayers, whether at the state or local level.

The League supports a permanent shift of the sales tax on gasoline for transportation purposes and an allocation formula equivalent to 40/40/20 split of 40 percent to cities and counties, 40 percent to STIP and 20 percent to transit.

The League supports enhanced autonomy for local transportation decision-making and pursues transportation policy changes that move more dollars and decisions to local policy leaders. The League supports spending transportation moneys for transportation purposes. The League will seek the maximum share of available funding for local transportation programs. The League supports implementation of federal transportation funding re-authorization legislation in a manner that supports these principles.

The League supports bicycle and pedestrian access with maximum local flexibility to prioritize this transportation need, as long as funding is available directly for it and other transportation priorities are not affected. Furthermore, this funding should not compete with preservation of the road system in light of the identified \$77 billion in unmet needs on the city and county street and road system, as identified in the California Statewide Local Streets and Roads Needs Assessment Update completed in 2014.

The League opposes requiring a city or parking processing agency to automatically cancel notices of parking violations, prior to a request from a vehicle owner, if the violation does not substantially match the corresponding information on the vehicle registration.

Transportation, Communication and Public Works

The League supports the visionary effort of the High-Speed Rail project, and supports the involvement of local officials in the project planning and implementation. However, the League opposes efforts to exempt the High-Speed Rail project from the California Environmental Quality Act (CEQA) and other processes that provide an opportunity for local input. The League also supports efforts to reaffirm voters support of the project, including voter reconsideration for the bond.

The League supports the development of best practices and funding to support all modes of goods movement including ports, roadways, storage/distribution centers, rail and air. A focus should be kept on job creation and retention, economic development, and safety. The League encourages cities to actively engage their region and the state in making goods movement decisions.

The League supports efforts to improve the California Public Utilities Commission's ability to respond to and investigate significant transportation accidents in a public and timely manner to improve rail shipment, railroad, aviation, marine, highway, and pipeline safety.

The League supports efforts to expand the Caltrans Business Logo Program.

Public Works

The League supports retaining maximum flexibility for timely and cost-effective completion of public works projects. The League supports innovative strategies including public private partnerships at the state and local levels to enhance public works funding.

The League supports efforts to divert products that contribute to decreased capacity and increased maintenance costs at wastewater treatment facilities.

The League encourages the state to adopt maximum response time for all necessary state reports, including Project Study Reports, to allow for a timely and cost-effective completion of public works projects. The League supports the certification of private firms to complete reports when state staff is unavailable.

The League supports expedited permitting when the work is necessary to ensure the integrity of gas pipelines, provided that local permitting and plan review requirements are met.

Vehicles

The League opposes all efforts that allow vehicles and vehicle operators on the road that will jeopardize the integrity of the public infrastructure or the health and safety of the motoring public. The League supports all efforts to retain maximum control

of the local street and road system. The League supports traffic safety enhancements such as motorcycle helmets, child restraints, seat belt and speed limit laws.

The League opposes any efforts to increase truck size or weight. The size and weight of trucks is important because it affects the stability and control of the truck, the way it interacts with other traffic, and the impact it has when colliding with other vehicles. Truck safety is particularly important because these vehicles share city streets and county roads with users — such as, motorists, pedestrians, cyclists, motorcyclists, and bus riders.

The League encourages cities to promote safe driving across California and the education of the general public about the dangers of texting while driving.

The League supports a requirement that all state rulemaking bodies consider the following factors for any proposed rule impacting vehicles: the weight added to any vehicle; the effect any added weight would have on pavement wear; and the resulting costs to state and local governments.

The League supports efforts to protect consumers from unscrupulous tow trucker companies and operators.

The League holds that increasing vehicle fines do not improve safety around school zones and encourages other efforts, such as increased police presence and additional crossing guards as better solutions to safety issues in school zones.

Contracts

The League supports maintaining maximum local flexibility in the area of contracting and contract negotiations. The League supports changes to law that allow cities options to use design-build contracting and other innovations designed to bring efficiency to public contracting. The League also supports contracting out with private entities to increase project delivery efficiency and affordability.

Telecommunications

The League supports a state tax levied on direct broadcast satellite television service providers if the proceeds are distributed to support local public safety programs consistent with a geographic distribution methodology that reflects households using this service, and provided that the tax is repealed should the revenues be diverted by the state for another purpose.

Traditional franchising at the local level has served the valuable purpose of tailoring service to unique local conditions and needs and assuring responsiveness of providers to consumers. The continued involvement of local government in any new

Transportation, Communication and Public Works

state or federal regulatory scheme by way of locally negotiated agreements is an essential component of telecommunications regulations; best serves the needs of consumers, and is consistent with the goal of providing consumers greater choice in telecommunications options.

Any new state or federal standards must conform to the following principles:

Revenue Protection

Protect the authority of local governments to collect revenues from telecommunications providers and ensure that any future changes are revenue neutral for local governments.

Regulatory fees and/or taxes should apply equitably to all telecommunications service providers.

A guarantee that all existing and any new fees/taxes remain with local governments to support local public services and mitigate impacts on local rights-of-way.

Oppose any state or federal legislation that would pre-empt or threaten local taxation authority

Rights-of-Way

To protect the public's investment, the control of public rights-of-way must remain local.

Local government must retain full control over the time, place and manner for the use of the public right-of-way in providing telecommunications services, including the appearance and aesthetics of equipment placed within it.

Access

All local community residents should be provided access to all available telecommunications services.

Telecommunications providers should be required to specify a reasonable timeframe for deployment of telecommunications services that includes a clear plan for the sequencing of the build-out of these facilities within the entire franchise area.

Public Education and Government (PEG) Support

The resources required of new entrants should be used to meet PEG support requirements in a balanced manner in partnership with incumbent providers.

For cities currently without PEG support revenues, a minimum percentage of required support needs to be determined.

Institutional or Fiber Network (INET)

The authority for interested communities to establish INET services and support for educational and local government facilities should remain at the local level.

Public Safety Services

The authority for E-911 and 911 services should remain with local government, including any compensation for the use of the right-of-way. All E-911 and 911 calls made by voice over internet protocol shall be routed to local public safety answering points (PSAPs); i.e., local dispatch centers.

All video providers must provide local emergency notification service.

Customer Service Protection

State consumer protection laws should continue to apply as a minimum standard and should be enforced at the local level. Local governments should retain the authority to assess penalties to improve customer service.

Other Issues

Existing telecommunications providers and new entrants shall adhere to local city policies on public utility undergrounding.

The League supports the authority of cities to zone and plan for the deployment of telecommunications infrastructure. The League supports the ability of cities to maintain and manage the public right-of-way and receive compensation for its use. The League supports the innovation and economic development potential of the "information superhighway" and the many possible benefits in the areas of telecommuting and productivity it promises. The League will work with the California Public Utilities Commission, the various telephone companies and federal regulatory agencies to improve telephone area code planning in California.

Air Pollution

The League will monitor developments and the ramifications of efforts to regulate air quality and related congestion strategies as it is related to transportation.

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HOW YOU CAN GET INVOLVED

✓ **Visit the League website: www.cacities.org**

Issues and advocacy;

News and information; and

Education, conferences and networking.

✓ **Subscribe to *CA Cities Advocate*, the League's e-newsletter**

Stay up-to-date on major issues impacting local government. If you would like to automatically receive updates on legislative and policy issues that affect California cities, you may subscribe to the League's *CA Cities Advocate* e-newsletter. It's easy to subscribe on the League's Web site: www.cacities.org/cacitiesadvocate.

✓ **Sign-up for League listserves**

Listserve are a great resource for sharing information, asking questions or getting help. They are intended to facilitate communication and information sharing among city officials. Don't miss out on important information that affects local government and your professional development. It's easy to sign up on the League's Web site: www.cacities.org/listserv.

✓ **Use the Bill Search function to stay informed on key legislation.**

It can be found on the home page under Find a Bill, or go directly to www.cacities.org/billsearch.

Search for all bills in the current legislative session, or prior sessions.
Search by bill number, author, topic word, or key word.

On this page (www.cacities.org/billsearch), you can also link directly to League policy areas. Here you will find bills that the League is tracking, as well as the registered positions (*Support, Oppose or Watch*), sample letters and the legislative representative assigned to the bill.

Note: The League's standard position on tracking legislation is "watch" until such time that we take an official position.



1400 K Street
4th Floor
Sacramento, CA 95814
916.658.8200
916.658.8240 Fax
www.cacities.org

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On agenda: 3/13/2018 **Final action:**

Title: FY 2018/19 Landscaping and Lighting Assessment District (LLAD) Engineer's Report
Recommendation: Adopt a Resolution directing the filing of the Annual Engineer's Report for LLAD No. 83-2, Victoria By The Bay LLAD No. 2002-1, Hercules Village LLAD No. 2002-2, Baywood LLAD No. 2004-01, and Bayside LLAD No. 2005-01.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[Attachment 1 - Resolution](#)

Date	Ver.	Action By	Action	Result
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FY 2018/19 Landscaping and Lighting Assessment District (LLAD) Engineer's Report

Recommendation: Adopt a Resolution directing the filing of the Annual Engineer's Report for LLAD No. 83-2, Victoria By The Bay LLAD No. 2002-1, Hercules Village LLAD No. 2002-2, Baywood LLAD No. 2004-01, and Bayside LLAD No. 2005-01.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 13, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager

SUBJECT: FY 2018/19 Landscaping and Lighting Engineer's Reports – Resolution of Initiation

RECOMMENDED ACTION:

Adopt a resolution directing the filing of the Annual Engineer's Reports for the City of Hercules Landscaping and Lighting Assessment District No. 83-2, Victoria by the Bay Landscaping and Lighting Assessment District No. 2002-1, Hercules Village Landscaping and Lighting Assessment District No. 2002-2, Baywood Landscaping and Lighting Assessment District No. 2004-1, and Bayside Landscaping and Lighting Assessment District No. 2005-1 pursuant to the Landscaping and Lighting Act of 1972.

FISCAL IMPACT OF RECOMMENDATION:

If assessments are not levied as proposed, a deficit balance could result and there would be a loss of revenue of approximately \$2,450,000 for FY 2018/19.

DISCUSSION:

As required by the Landscaping and Lighting Act of 1972 (hereinafter "the Act"), the first step in the annual process to levy and collect assessments through the City's five (5) Landscaping and Lighting Assessment Districts (LLADs) is the preparation of an annual Engineer's Report for each District. The Act requires that the City adopt a resolution ordering the filing of the Engineer's Report and that the Engineer's Report identify the following:

- 1) The fiscal year for which the report applies.
- 2) Any proposed new improvements or any substantial changes in existing improvements.
- 3) Plans and specifications for the improvements.
- 4) An estimate of the costs of the improvements, including:
 - a) The total costs for improvements to be made that year, being the total costs of constructing or installing all proposed improvements and of maintaining and servicing all existing and

- proposed improvements, including all incidental expenses. This may include a reserve which shall not exceed the estimated costs of maintenance and servicing through December 31st of the fiscal year, or whenever the City expects to receive its first installment of special assessments and tax collections from the county, whichever is later.
- b) The amount of any surplus or deficit in the improvement fund to be carried over from a previous fiscal year.
 - c) The amount of any contributions to be made from sources other than assessments.
 - d) The net amount to be assessed upon assessable lands within the District.
- 5) A diagram for the District.
- 6) An assessment of the estimated costs of the improvements, which will:
- a) State the net amount to be assessed upon assessable lands within the District.
 - b) Describe each assessable lot or parcel of land within the District.
 - c) Assess the net amount upon all assessable lots or parcels of land within the District by apportioning that amount among the several lots or parcels in proportion to the estimated benefits to be received by each lot or parcel from the improvements.

For FY 2018/19, City staff is proposing to proceed with a Proposition 218 election to increase assessments in the following LLAD No. 83-2 Benefit Zones:

- Benefit Zones 1 and 3&4 – Increases needed to eliminate annual operating deficits and fund wooden street light pole replacements over a 10-year repayment term.
- Benefit Zone 6 – Increase needed to eliminate the annual operating deficit, eliminate the cumulative deficit over a ten-year term, and fund wooden street light pole replacements over a 10-year repayment term.
- Zone 7 – Increase needed to fund wooden street light pole replacements over a 10-year repayment term.
- Zone 9 – Eliminate an annual operating deficit.

Once completed, the Engineer's Report for each District will be brought to the City Council for preliminary approval. At that time, the City Council may request modifications to the Engineer's Report and will adopt a resolution declaring its intent to levy and collect assessments within each District and set a public hearing date for consideration of the assessments. Notices and Ballots will be mailed to the affected property owners in Benefit Zones 1, 3&4, 6, 7 and 9 a minimum of 45 days prior to the public hearing. At the set public hearing, the City Council will take testimony on the levy and collection of the assessments and continue the public hearing to the following Council meeting date to allow sufficient time to tabulate the returned ballots. At the continued public hearing, the results of the ballot tabulation will be presented, and City Council will determine if the assessments should be levied per the Final Engineer's Report.

LLAD BACKGROUND INFORMATION:

1. Landscaping and Lighting Assessment District No. 83-2

Landscaping and Lighting Assessment District No. 83-2 (hereinafter "LLAD No. 83-2") was formed on January 5, 1984 by Resolution No. 84-7. LLAD No. 83-2 originally consisted of four residential areas or zones: Zone 1 (Olympian Hills, Citation Homes West of San Pablo and Historic Homes), Zone 2 (Foxboro and Willow Glen Apartments), Zone 3 (Valley Oaks and Tiffany Ridge) and Zone 4 (Falcon Heights).

Later in 1984; Zones 3 and 4 were combined when connected by the Marsten Ranch development annexation; Zone 5 (commercial and undeveloped properties) was annexed to LLAD No. 83-2, Zone 6 (Village Parkway) a residential area was separated from Zone 5 upon development, and Zone 7 (Hanna Ranch) was annexed to the LLAD No. 83-2.

In 1991, the existing neighborhoods known as Zone 8 (Trees and Flowers) and Zone 9 (Birds and Country Run) and Zone 10 (Citywide park and recreation facilities) were annexed to LLAD No. 83-2 following a mailed assessment ballot proceeding.

In 1997 the assessment methodology was revised to conform to the requirements of Article XIII D of the California Constitution (enacted by Proposition 218). An assessment ballot proceeding in June of 1997 confirmed LLAD No. 83-2. The June 1997 assessment ballot authorized the City to levy and collect assessments through FY 2002/03. The 1997 assessment ballot proceeding also authorized the City to increase assessments annually by the prior year's change in the Consumer Price Index (CPI) each fiscal year through FY 2002/03.

In FY 2003/04 the property owners approved an assessment increase commencing FY 2003/04 and approved the continuation of LLAD No. 83-2 through FY 2012/13. The 2003 assessment ballot proceeding also authorized the City to annually increase assessments by the prior year's change in the Consumer Price Index (CPI) each fiscal year through FY 2012/13.

In May of 2010, the property owners approved three (3) major changes to LLAD No. 83-2 commencing in FY 2010/11:

1. The removal of the assessment levy sunset date of FY 2012/13 and allowing LLAD No. 83-2 to continue in perpetuity.
2. Continuation of the authorization to increase assessments annually by the prior year's change in the Consumer Price Index (CPI).
3. Changes to the assessment methodology to recognize changes to developing areas to provide consistency throughout LLAD No. 83-2.

In FY 2016/17 the City conducted a Proposition 218 election to increase assessments in LLAD No. 83-2 Benefit Zones 1, 3&4, 5C, 6, and 7 for FY 2017/18. The assessment increase was only approved by property owners in Zone 5C.

2. Victoria by the Bay Landscaping and Lighting Assessment District No. 2002-1

The Victoria by the Bay development was required to install approximately 24 acres of landscaped medians, frontages and parks and 211 streetlights as a condition for approval of the development. The area was formerly part of Zone 5C in LLAD No. 83-2. The improvements in the Victoria by the Bay development were determined to be distinct from other improvements within existing LLAD No. 83-2 and to require a higher level of maintenance. Therefore, the development was detached from LLAD No. 83-2 and Victoria by the Bay Landscaping and Lighting Assessment District No. 2002-1 was formed on May 14, 2002 by Resolution No. 02-050 of the City Council pursuant to the Landscaping and Lighting Act of 1972.

3. Hercules Village Landscaping and Lighting Assessment District No. 2002-2

The Hercules Village development was required to extend Railroad Avenue, install approximately 50 acres of landscaped improvements, which include parkway strips, paseos, an enhanced pond and detention basins, 122 streetlights and provide slope and retaining wall maintenance adjacent to the City's existing pedestrian pathway as a condition for approval of the development. The area was formerly part of Zone 5C in LLAD No. 83-2. The improvements in the Hercules Village development were determined to be distinct from other improvements within existing LLAD No. 83-2 and would require a higher level of maintenance. Therefore, the development was detached from LLAD No. 83-2 and Hercules Village Landscaping and Lighting Assessment District No. 2002-2 was formed on May 14, 2002 by Resolution No. 02-049 of the City Council pursuant to the Landscaping and Lighting Act of 1972.

4. Baywood Landscaping and Lighting Assessment District No. 2004-1

The Baywood development was required to extend Sycamore Avenue 60 feet, install approximately 4.5 acres of landscaped improvements, which include tree-lined streets, alleyways, and natural open spaces, and construct 37 streetlights as a condition for approval of the development. The area was formerly part of Zone 5C in LLAD No. 83-2. The improvements in the Baywood development were determined to be distinct from other improvements within existing LLAD No. 83-2 and would require a higher level of maintenance. Therefore, the development was detached from LLAD No. 83-2 and Baywood Landscaping and Lighting Assessment District No. 2004-1 was formed on April 13, 2004 by Resolution No. 04-034 of the City Council pursuant to the Landscaping and Lighting Act of 1972.

5. Bayside Landscaping and Street Lighting Assessment District No. 2005-1

The Bayside development was required to install a 0.67 acre neighborhood park and public street lights as a condition of approval of the development. The area was formerly part of Zone 5C in LLAD No. 83-2. The improvements in the Bayside development were determined to be distinct from other improvements within existing LLAD No. 83-2 and would require a higher level of maintenance. Therefore, the development was detached from LLAD No. 83-2 and Bayside Landscaping and Lighting Assessment District No. 2005-1 was formed on May 10, 2005 by Resolution No. 05-060 of the City Council pursuant to the Landscaping and Lighting Act of 1972.

ATTACHMENTS:

Attachment 1 – Resolution

RESOLUTION 18-___

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES DIRECTING THE FILING OF THE ANNUAL ENGINEER'S REPORT FOR CITY OF HERCULES LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT NO. 83-2, VICTORIA BY THE BAY LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT NO. 2002-1, HERCULES VILLAGE LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT NO. 2002-2, BAYWOOD LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT NO. 2004-1, AND BAYSIDE LANDSCAPING AND LIGHTING ASSESSMENT DISTRICT NO. 2005-1 PURSUANT TO THE LANDSCAPING AND LIGHTING ACT OF 1972

WHEREAS, the City Council through previous resolutions has established and levied annual assessments for the City of Hercules Landscaping and Lighting Assessment District No. 83-2, Victoria by the Bay Landscaping and Lighting Assessment District No. 2002-1, Hercules Village Landscaping and Lighting Assessment District No. 2002-2, Baywood Landscaping and Lighting Assessment District No. 2004-1, and Bayside Landscaping and Lighting Assessment District No. 2005-1 (hereinafter referred to as the "Districts"), pursuant to the provisions of the *Landscaping and Lighting Act of 1972, Part 2, Division 15* of the California Streets and Highways Code (commencing with *Section 22500*) (hereinafter referred to as the "Act") that provides for the collection of assessments by the County of Contra Costa on behalf of the City of Hercules to pay the maintenance and services of improvements and facilities related thereto, and

WHEREAS, the City Council desires to initiate proceedings for the levy of annual assessments against certain lots and parcels of land within the Districts for fiscal year 2018/2019 for the landscape and lighting improvements and services that will provide benefit to the properties within the Districts pursuant to the provisions of the Act; and

WHEREAS, The City formed an ad hoc committee to discuss the need to increase assessments in Zones 1, 3&4, 6, and 7 of Lighting and Landscape District No 83-2; and

WHEREAS, The ad hoc committee discussed the need to conduct a Proposition 218 election with property owners located within Zones 1, 3&4, 6, 7 and 9 of Lighting and Landscape Districts No. 83-2 in order to obtain property owner approval to increase assessments within those zones; and

WHEREAS, the City has retained Francisco & Associates, Inc. (hereinafter referred to as the "Engineer"), for the purpose of assisting with the levy of such assessments, including the preparation and filing of the Engineer's Report with the City Clerk in accordance with the Act.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Hercules as follows:

1. The above recitals are true and correct.
2. Engineer's Report: The City Council hereby orders the Engineer to prepare and file with the City Clerk Engineer's Reports concerning the improvements and services within the Districts and the levy of assessments within the Districts for the fiscal year commencing July 1, 2018 and ending June 30, 2019, in accordance with *Chapter 3 Section 22623* of the Act. Said Engineer's Reports shall contain a description of the improvements and services, an estimate of the costs financed by the levy of the assessments, the properties benefiting from the improvements, the method of apportioning the assessments, and any substantial changes to the existing improvements and assessments.
3. Proposed Improvements: The improvements and services include but are not limited to the maintenance, operation and incidental expenses related to: street lighting, street trees; turf; ground cover and shrubs;

irrigation and electrical systems; monuments; fountains; hardscape improvements; masonry walls and other fencing, and all necessary appurtenances and services connected with the landscaped channelways, medians, parkways, entryways, parks and public easements and facilities designated and maintained as part of the District improvements. The Engineer's Reports prepared in connection with these proceedings shall provide a more detailed description of the improvements and services to be provided by the Districts and for which properties are proposed to be assessed.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the thirteenth day of March 2018, by the following vote of the Council:

AYES:

NOES:

ABSENT:

Chris Kelley, Mayor

ATTEST:

Lori Martin, Administrative Services Director/City Clerk



Legislation Details (With Text)

File #: 18-48 **Version:** 2 **Name:**
Type: Discussion/Action Item **Status:** Agenda Ready
File created: 3/6/2018 **In control:** City Council
On agenda: 3/13/2018 **Final action:**
Title: FY 2016-17 Comprehensive Annual Financial Reports
Recommendation: Receive and File the FY 2016-17 Comprehensive Annual Financial Reports and Accept the Audited Statements.

Sponsors:

Indexes:

Code sections:

Attachments: [Staff Report](#)
[Attachment 1- FY 2016-17 CAFR](#)

Date	Ver.	Action By	Action	Result
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FY 2016-17 Comprehensive Annual Financial Reports

Recommendation: Receive and File the FY 2016-17 Comprehensive Annual Financial Reports and Accept the Audited Statements.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of March 13, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Annie To, Finance Director

SUBJECT: FY 2016/17 Comprehensive Annual Financial Reports

RECOMMENDED ACTION: Receive and File the FY 2016/17 Comprehensive Annual Financial Reports and Accept the Audited Statements.

FISCAL IMPACT OF RECOMMENDATION: None as result of this action. The audited results of the 2016/17 fiscal year are utilized as a starting point in the development of the FY 2018/19 budget, especially in regard to the one-time funding.

DISCUSSION: On February 13, 2018, the City Council received a presentation by the City's Auditor, Clifton Larson Allen (CLA) (formerly Galina, LLP), and conducted an initial review on the FY 2016/17 audit and related reports. The staff report from that meeting is Attachment A. The City Council opted to defer to receive and file action on that report until after the Finance Commission's review.

These audited financial reports and related materials were presented to the Finance Commission on February 26, 2018. The following is a list of questions from the Finance Commission regarding the audited reports:

1. Question: From 2016 to 2017, there was an increase in expenditures in the amount of \$696,406 (25%) in the expenditure classification for "Streets and Public Works". What was the 25% increase for? Vice-Chair Tom recommended that an explanation for any variances under/over 25% as compared to the prior year should be provided in future reports.

Response: The increase in the expenditures for "Streets and Public Works" was due primarily to the reconstruction of Refugio Valley Road.

2. Question: \$250,000 shows as a write-off under Loans Receivable. What was the loan for?

Response: The \$250,000 was written off for a loan to a former City Manager. The loan was intended to assist in the finance and purchase of a home in Hercules as a condition of his employment. This amount was determined to be uncollectable in FY16-17.

3. A question was asked about payments due on the 2003B Public Financing Authority Lease Revenue Bonds.

It was clarified that the first few rows from June 30, 2018 to June 30, 2022 was for a single year of payments while the last few rows shown was for the sum of the next four years, from June 30, 2023 to June 30, 2027.

4. The Management Discussion and Analysis was omitted in the Hercules Public Financing Authority report as it was not required per the auditors; however, Vice Chair Tom suggested that staff include the management discussion in the future.

All the audited reports were presented to the City Council by Elba Zuniga, Principal of Clifton Larson Allen, at the City Council meeting on February 13, 2018.

ATTACHMENTS:

1. Staff Report from February 13, 2018
 - a. [FY 16/17 City Annual Financial Report](#)
 - b. [FY 16/17 PFA Annual Financial Report](#)
 - c. [FY 16/17 Waste Water Financial Report](#)
 - d. [FY 16/17 Single Audit Report](#)
 - e. [FY 16/17 City of Hercules GANN report](#)
 - f. [FY 16/17 Agreed Upon Procedure \(AUP\) for Measure B](#)
 - g. [FY 16/17 Agreed Upon Procedure \(AUP\) for Measure C](#)
 - h. [FY 16/17 Letter from Auditor](#)

<i>Financial Impact</i>			
Description: No Fiscal Impact			
Funding Source:			
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"/>			



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of February 13, 2018

TO: Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Annie To, Finance Director

SUBJECT: FY 2016/17 Comprehensive Annual Financial Reports

RECOMMENDED ACTION: Receive the FY 2016/17 Comprehensive Annual Financial Reports and Accept the Audited Statements.

FISCAL IMPACT OF RECOMMENDATION: None as result of this action. The audited results of the 2016/17 fiscal year are utilized as a starting point in the development of the FY 2018/19 budget, especially in regard to the one-time funding.

DISCUSSION: The City of Hercules prepares audited financial statements for each fiscal year in accordance with generally accepted accounting principles (GAAP). The firm of Clifton Larson Allen (CLA) (formerly Gallina, LLP) has served as the independent auditors for FY 2016/17. CLA has completed their audit of all City funds including the General Fund, the Sewer Fund, and the Hercules Public Financing Authority. In addition, the auditor completed the Single Audit which covers federally funded programs and activities. They also performed an Agreed-Upon Procedures to the revenues received related to Measures B and C.

These audited financial report and related materials are contained in the Comprehensive Annual Financial Report (CAFR) for FY 2016/17 which is attached and available on the City's website. There are no audit findings for the FY 2016/17 CAFR. The Management Discussion and Analysis for FY 2016/17 is included in the CAFR.

The Single Audit identified a significant deficiency which relates to a transaction that was booked in FY14-15. During FY14-15, the City reported a \$5.2 million from the Redevelopment Property Tax Trust Fund (RPTTF) as unearned revenue. The City made the error originally and classified the revenue as unearned rather than as earned revenue. So, while reflected in the City's balance sheet, it was not reflected in the Operating Statement as actual revenue received. This has been corrected in the FY16-17 Financial Statements. On a forward going basis, the City will review unearned revenue balances as part of its year-end closing process to ensure that revenue recognition requirements have not been met for amounts reported as unearned.

The Audit Partner from CLA will be attending the City Council meeting to provide an overview of their audit.

Review and Analysis

The budget for FY 2016/17 was adopted with a small operating surplus of approximately \$21K. The 2017/18 budget was developed using estimated positive year-end results for FY 2016/17 of approximately \$2.25 million.

On the revenue side, actual revenues in the general fund operating budget were a net of (\$865K), which is slightly below the final budget FY16-17. Even with slightly lowered actual revenues than budgeted revenues, the net change in Fund Balances at the end of June 30, 2017 is \$2.3 million as shown in the FY16-17 audited report.

On the expenditure side, actual expenditures in the general fund operating budget were a net of \$3 million lower than the final budget for FY16-17. This was due primarily, to lower than budgeted healthcare cost increases, vacant positions in multiple departments, lower legal expenses, lower debt service payments in Finance, and lower claim payouts. Though some one-time planned projects and activities were not completed and will still be undertaken. The proposed budget for FY 2018/19 will include modifications in these areas to capture the surplus and to carry-over any one-time funding.

The FY16-17 results in a \$2.3 million positive change to fund balance in the General Fund. Most of this amount was anticipated at the time the FY 2017/18 budgeted was developed and was allocated as part of that process either as one-time or on-going expenditures as reflected in the Budget Balancing Spreadsheet.

ATTACHMENTS:

1. FY 16/17 City Annual Financial Report
2. FY 16/17 PFA Annual Financial Report
3. FY 16/17 Waste Water Financial Report
4. FY 16/17 Single Audit Report
5. FY 16/17 City of Hercules GANN report
6. FY 16/17 Agreed Upon Procedure (AUP) for Measures B
7. FY 16/17 Agreed Upon Procedure (AUP) for Measures C

<i>Financial Impact</i>			
Description: No Fiscal Impact			
Funding Source:			
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"/>			