

City of Hercules

*111 Civic Drive
Hercules, CA 94547*



Meeting Agenda

Tuesday, July 24, 2018

Closed Session - 6:00 p.m.

Regular Session - 7:00 p.m.

Council Chambers

City Council

Mayor Chris Kelley

Vice Mayor Dan Romero

Council Member Roland Esquivias

Council Member Myrna de Vera

Council Member Gerard Boulanger

David Biggs, City Manager

Patrick Tang, City Attorney

Lori Martin, City Clerk

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

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

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

III. CONVENE INTO CLOSED SESSION

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

1. [18-251](#) Pursuant to Government Code Section 54957.6 CONFERENCE WITH LABOR NEGOTIATORS - City Negotiators: David Biggs, City Manager; Annie To, Director of Finance; Lori Martin, Director of Administrative Services relative to the following employee groups:
 - a. Teamsters Local 315 Employee Organizations
 - b. Hercules Police Officers Association
 - c. Hercules Senior Manager Employee Group
 - d. Confidential Unrepresented Employee Group
 - e. Mid Management Employee Group

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

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

VI. PLEDGE OF ALLEGIANCE

VII. MOMENT OF SILENCE

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. [18-252](#) Contra Costa Animal Services (CCAS) Presentation and Update by Director Beth Ward

Attachments: [Contra Costa Animal Services Presentation 2018](#)

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

XII. CONSENT CALENDAR

1. [18-256](#) **Meeting Minutes**
Recommendation: Approve the Regular City Council Meeting Minutes of July 10, 2018.

Attachments: [Minutes - 071018 - Regular](#)

2. [18-259](#) **Contra Costa County Council on Aging Commission Appointment**
Recommendation: Consider the nomination and re-appointment of Jennifer Doran to the Contra Costa Council on Aging for a new two year term beginning on October 1, 2018.

Attachments: [Staff Report - Commission Appointment](#)

XIII. DISCUSSION AND/OR ACTION ITEMS

1. [18-253](#) **Acceptance of the Pilot Streetlight Replacement Project**
Recommendation: Adopt a Resolution accepting the Pilot Streetlight Replacement Project contract with NEMA as complete for a total amount of \$96,750 and authorizing the filing of a Notice of Completion with the Contra Costa County Recorder's Office.

Attachments: [Staff Report - Pilot Streetlight Acceptance](#)

[Attach 1 - Resolution Pilot Streetlight Acceptance](#)

[Attach 2 - Notice of Completion - Pilot Streetlight Project Contract Acceptance](#)

[Attach 3 - Pilot & Demo SL Replacement Map](#)

2. [18-254](#) **Stormwater Program - Update on Landscaping Waste Blown Down Storm Drains**
Recommendation: Receive report, discuss, and provide direction, if any.

Attachments: [Staff Report - Lawn & Landscape Debris Report 07172018](#)

[Attach 1 - Lawn & Landscape Debris Report SR 10242017](#)

3. [18-258](#) **Discuss Whether Restrictions on Smoking in Multi-Unit Housing as Adopted by Contra Costa County Should Be Considered in Hercules Recommendation:** Receive report, discuss, and provide direction to staff, in any.

Attachments: [Staff Report - smoking restrictions multi-family units discussion 180724](#)
 [Attach 1 - County Multi-Unit Smoking Ordinance](#)
 [Attach 2 - County Educational Materials](#)
 [Attach 3 - Ordinance 508 - Smoking](#)

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, August 14, 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: July 19, 2018)

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

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

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

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

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

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

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

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

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

CONTRA COSTA COUNTY ANIMAL SERVICES

HERCULES CITY COUNCIL PRESENTATION



JULY 24, 2018

Our Department

- **Field Services** – Protecting public health & safety through enforcement of the County's Animal Ordinance, rabies control, field patrols and dead animal impounds.
- **Shelter Operations** – Adoptions, transfers, intake and daily care, behavior assessment and maintenance of animals and kennels.
- **Medical Services** – Care and treatment of animals, spay/neuter surgeries, low-cost vaccination clinic,
- **Clerical Division** – Dispatch and frontline support staff, the hub of the department.
- **Volunteers** – Animal socialization, adoption counseling, lost and found, mobile adoptions, transfer partner coordination.
- **Administration** – Director, Deputy Director, Administrative Services Officer, Community & Media Relations Coordinator, Personnel Mgr.



CCAS Serving Hercules

Highlights of Services Provided to Hercules in 2017

- 175 Stray Animal Impounds
- 111 Deceased Animal Impounds
- 77 Noise/Animal/Inhumane Ordinance Investigations
 - 24 Human Bite Investigations
 - 14 Animal/Animal Bite Investigations
 - 9 Inhumane Investigations
 - 8 Noise Investigations
 - 24 Other Investigations
- 9 Local Agency Assists (Police, Fire, Code Enforcement etc.)
- 7 Animal Rescues

2018 Rate Increase*

- Contra Costa Animal Services will be implementing a \$0.17 per capita rate increase for FY 2018-2019 (from \$5.94 to \$6.11) per the County's contract.

*Most Bay Area municipalities pay approx. \$11.80 per capita for animal services.



CCAS Serving Hercules



CONTRA
COSTA
ANIMAL
SERVICES

SUMMARY OF ANIMAL ACTIVITIES AND ACTIONS

For the Period: 1/1/2017 - 12/31/2017

HERCULES

Total Intake

	Total	Live	Dead
Total	328	222	106
CAT	121	104	17
DOG	103	99	4
DEER	20		20
RACCOON	19		19
BIRD	17	10	7
SKUNK	17	1	16
OPOSSUM	11		11
BAT	6	2	4
GUINEA PIG	4	4	
SQUIRREL	4		4
FOX	3		3
LIVESTOCK	1	1	
RABBIT	1	1	
RAT	1		1

CCAS Serving Hercules

HERCULES							
Priority	Calls	Median Response Time	Average Response Time	Maximum Response Time	Minimum Response Time	Target Compliance	N/I
Priority 1	28	23m	3h 6m	1d 3h 24m	0m	85.19 %	4 %
Priority 2	10	4h 46m	22h 49m	3d 20h 49m	14m	60.00 %	0 %
Priority 3	29	23h 8m	4d 2h 51m	48d 23h 34m	8m	56.00 %	14 %
Priority 5	3	2m	2m	4m	0m	100.00 %	33 %
70 - Total Calls for HERCULES							

Call Details for HERCULES by Priority, Activity Status and Inclusion into Calculations

	CANCELLED	COMPLETED	Total
Priority 1:	1	27	28
Not Included(N/I):	1		1
Priority 2:		10	10
Not Included(N/I):			0
Priority 3:	3	26	29
Not Included(N/I):	3	1	4
Priority 5:		3	3
Not Included(N/I):		1	1
Total:	4	66	70
Not Included(N/I) Total:	4	2	6

Target Response Times By Priority Level

Priority 1 = 2 Hours
 Priority 2 = 12 Hours
 Priority 3 = 24 Hours
 Priority 4 = 3 Days
 Priority 5 = 5 Days

CCAS Serving Hercules

Hercules represents 2.0% of CCAS' total service area and uses 1.72% of total services provided by CCAS.

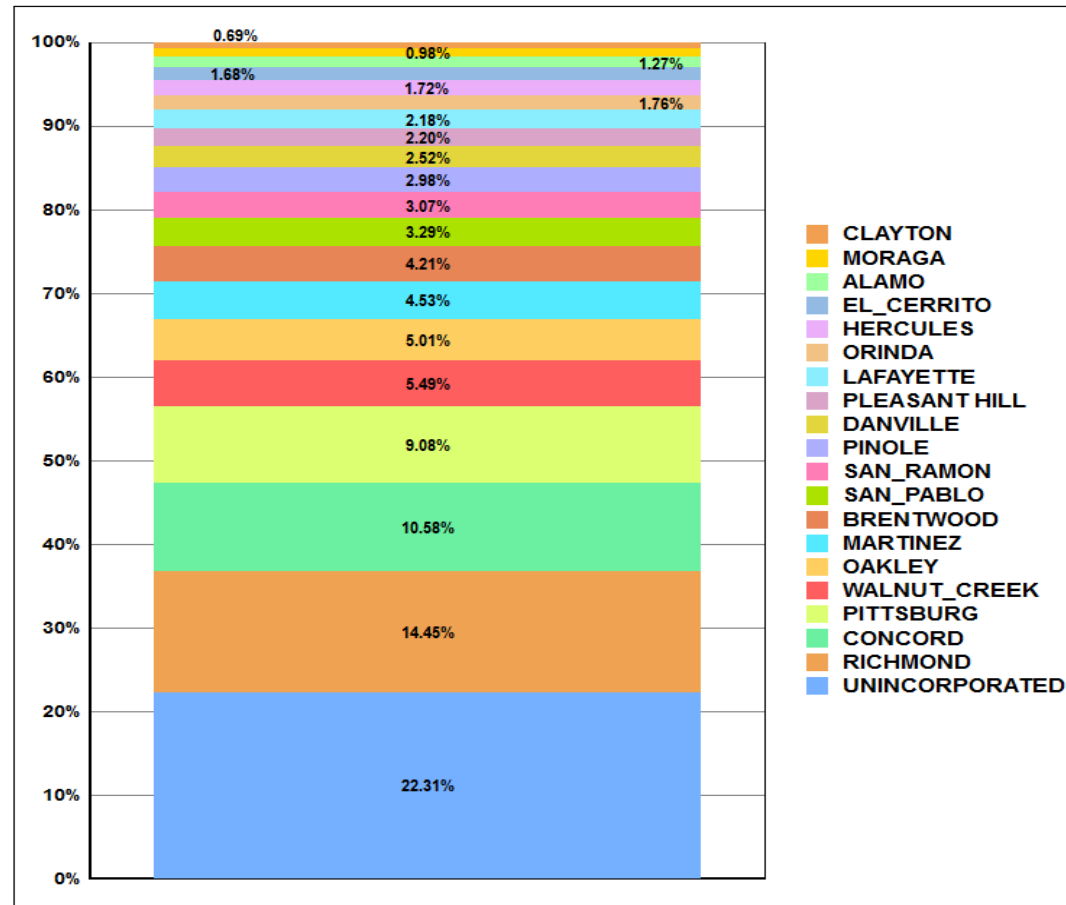


CONTRA
COSTA
ANIMAL
SERVICES

SUMMARY OF ANIMAL ACTIVITIES AND ACTIONS

For the Period: 1/1/2017 - 12/31/2017
ALL CITIES

Cities' Percentage of Activities Total



Policy Updates

□ **Noisy Animal Ordinance Passed in 2017**

- ▣ Complaint process changed from phone-based to online.
- ▣ Citation/Hearing process replacing investigative process.
- ▣ *Until the Hercules City Council adopts, noise complaints cannot be serviced in Hercules.

□ **Rooster Ordinance Passed in 2018**

- ▣ Allows certain parcel designations in unincorporated areas to keep no more than two (2) roosters.
- ▣ Allows Contra Costa Animal Services to investigate and enforce rooster fighting in Contra Costa County.

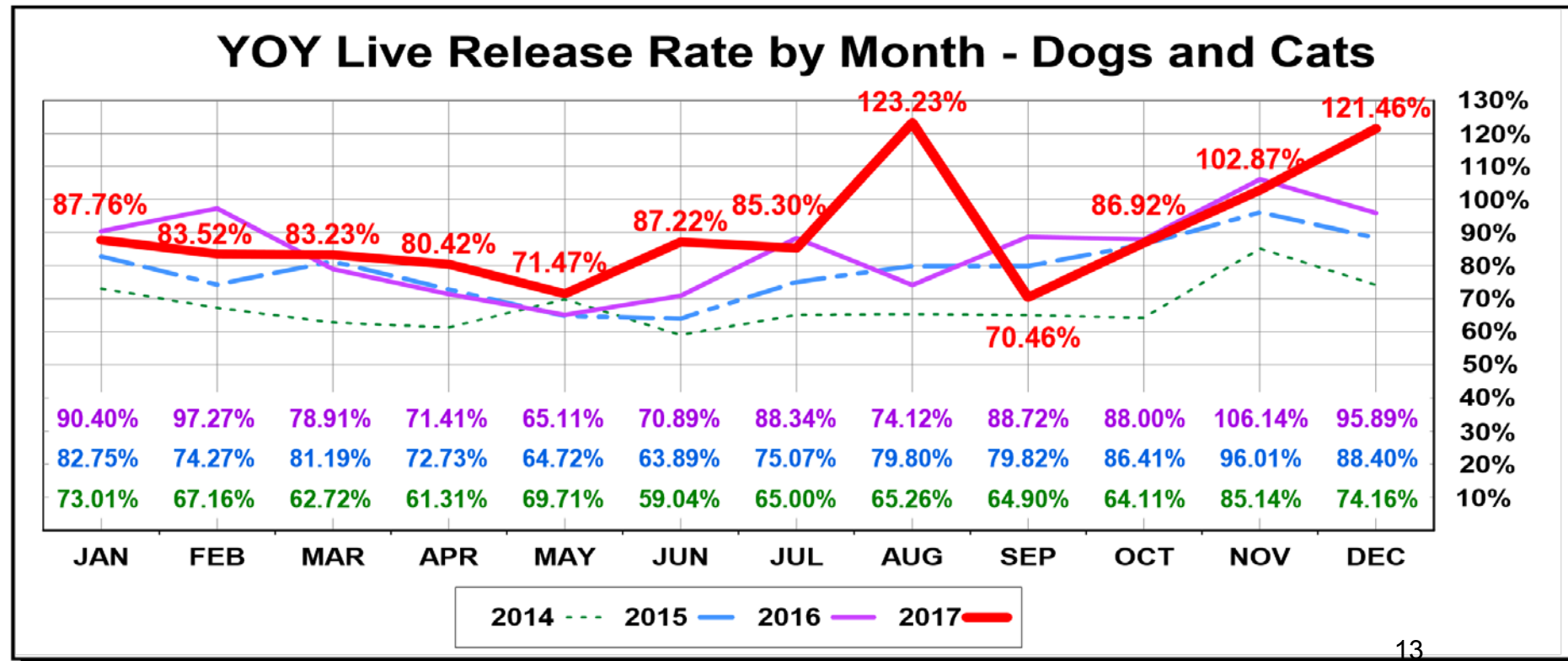
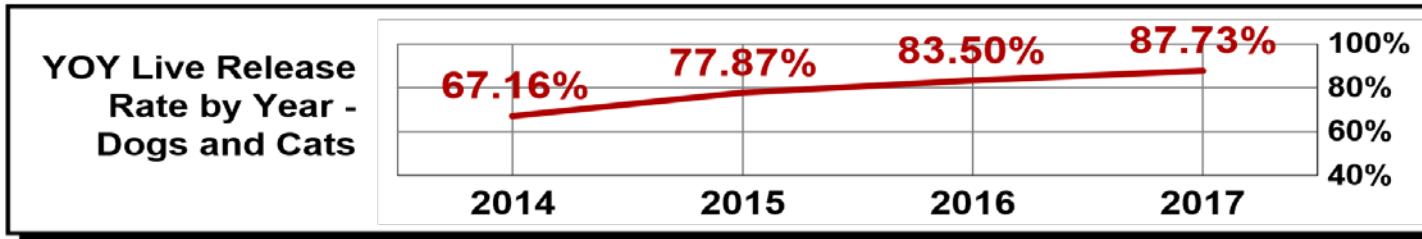
Live Release Rate

2017 Live Release Rate Stats

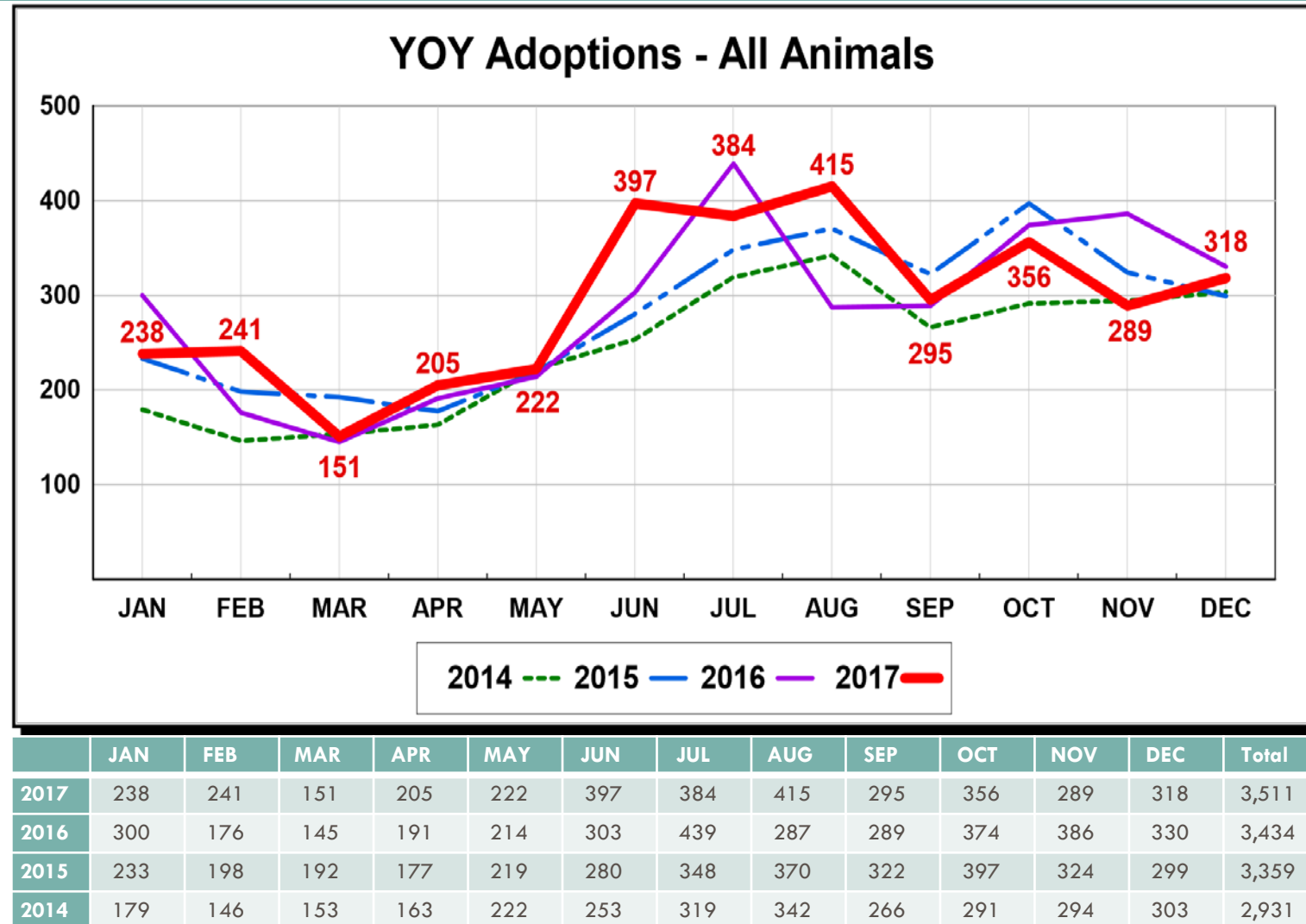
Overall Live Release Rate = 83.7%

Dog Live Release Rate = 92.1%

Cat Live Release Rate = 82.7%



Adoptions



2017 At A Glance

- Animal Intake = 10,459
- Animals Reunited with Owners = 1,987
- Public Adoptions = 3,511
- Adoptions to Transfer Partners = 2,664
- Cats Returned to Field = 911
- Over 2,000 Low-Cost Vaccinations
- Over 5,000 Spay/Neuter Surgeries
- Police, Fire & Code Enforcement Assists = 571

Teaching Your Pets To Text You When They're Lost Is Not Easy

But licensing your pet is very easy!

License Amnesty! May 1 - May 31

Contra Costa County residents - No fines or penalties for licenses during May!

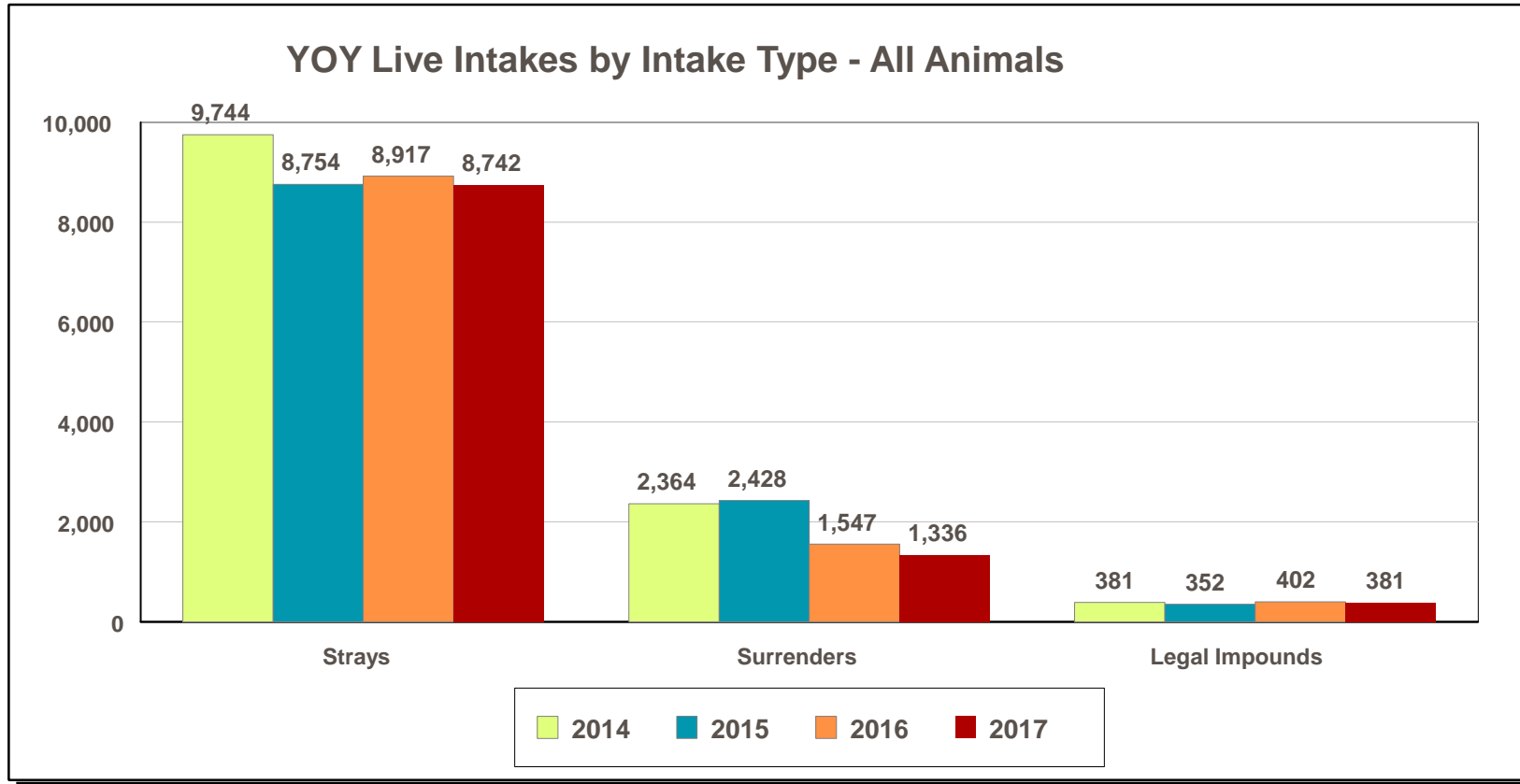
Discounts on other services too! Check our website!

Web: www.ccasd.org Ph: 925-608-8400 FB: facebook.com/ccasd

A promotional graphic for Contra Costa County Animal Services. It features a Chihuahua puppy on the left and a scruffy dog on the right, both holding tablets. The puppy's tablet shows a pet profile for 'Buddy', a 12-month-old male dog. The scruffy dog's tablet shows a pet profile for 'Kermit', a 6-month-old male dog. The background is white with blue and green accents. The text is in a clean, sans-serif font. The overall theme is pet licensing and adoption.

Pet Retention Program

Since 2016, the CCAS/ARF Pet Retention Program has reduced the number of animals being surrendered by their owners by 50% by providing resources and intervention to County residents to help them keep their pets.



	Strays	Surrenders	Legal Impounds	Total
2017	8,742	1,336	381	10,459
2016	8,917	1,547	402	10,866
2015	8,754	2,428	352	11,534
2014	9,744	2,364	381	12,489

Opportunities & Challenges

■ Opportunities

- Increase Low-Cost Spay/Neuter and Vaccination Programs to Address Pet Overpopulation and Animal Disease.
- Environment Ripe for Collaboration with Local Animal Welfare Groups.
- Hard-Working, Committed Staff and Volunteers.
- A Supportive and Engaged Community.

■ Challenges

- Balancing Life Saving with Length of Stay and Quality of Care.
- Need to Update Process/Procedures to Bring the Department into the 21st Century.
- Need to Increase Staffing.
- Volume of Animals.
- Physical Facility Constraints.
- Continuous Population Growth (Including Pets).



Go all in, we're not bluffing!

We've got a
FULL HOUSE

This Saturday & Sunday Only!
All Adoptable Animals
FREE!!

Saturday Jan. 16th 10am - 5pm
Sunday Jan. 17th 12pm - 3pm
(Sunday at Martinez Shelter Only)

Martinez - 4800 Inhoff Place
(925) 335-4300
Pinole - 910 San Pablo Ave
(510) 374-3966
Please visit our website
WWW.CCASD.ORG

ANIMAL SERVICES

Five Easy Steps to Support Your Local Shelter

- Adopt from your local shelter!
- Ensure your pets are licensed and microchipped! Licensed and microchipped pets have higher percentages of being reunited with their owners and are less likely to become shelter residents.
- Volunteer at the Martinez or Pinole Shelter. We have a broad range of volunteer opportunities that allow us to place volunteers in areas where they are most suited or most want to help.
- Sign up to take a tour of the Martinez or Pinole Shelter. Come learn about the amazing things that our staff and volunteers do every day. The tour will take you through the various aspects of what CCAS does, including field, medical, sheltering and adoptions.
- Like us on Facebook

Questions & Answers

Main Phone Line: 925-608-8400

Website: ccasd.org





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, July 10, 2018

Council Chambers

Closed Session - 6:00 p.m.

Regular Session - 7:00 p.m.

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

Mayor Kelley called the meeting to order at 6:00 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

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

None.

III. CONVENE INTO CLOSED SESSION

City Attorney Tang announced the items to be discussed in closed session.
Mayor Kelley recessed the meeting at 6:03 p.m.

1. [18-230](#) Pursuant to Government Code Section 54957.6 CONFERENCE WITH LABOR NEGOTIATORS - City Negotiators: David Biggs, City Manager; Annie To, Director of Finance; Lori Martin, Director of Administrative Services relative to the following employee groups:
 - a. Teamsters Local 315 Employee Organizations
 - b. Hercules Police Officers Association
 - c. Hercules Senior Manager Employee Group
 - d. Confidential Unrepresented Employee Group
 - e. Mid Management Employee Group
2. [18-235](#) Pursuant to Government Code Section 54957(b) PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Manager (Discuss Annual Evaluation Per Employment Agreement)

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

Mayor Kelley called the meeting to order at 7:00 p.m.

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

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

City Attorney Tang reported that the City Manager evaluation has been completed and concluded.

City Attorney Tang reported no final or reportable action related to Closed Session Item 2: Conference with Labor Negotiators.

VI. PLEDGE OF ALLEGIANCE

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

VII. MOMENT OF SILENCE

Mayor Kelley called for a moment of silence for Catherine Barbara (Smith) Silva who passed away peacefully at her home in Pinole at the age of 94 on July 6, 2018.

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. [18-233](#) **Heritage Garden Presentation and Proclamation to the Hercules Rotary Club**

Holly Smyth, Planning Director and Rotarian gave a presentation of the Heritage Garden project from the start of the project to the end result. Ms. Smyth called the volunteers to the podium and Mayor Kelley read aloud and presented the members of the Hercules, Rodeo and Crockett Rotary with a Proclamation.

IX. AGENDA ADDITIONS/DELETIONS

City Manager Biggs identified the supplemental document provided prior to the meeting.

X. PUBLIC COMMUNICATIONS

Planning Chair Dion Bailey provided an update from the last Planning Commission meeting.

Speakers: Chris Tallerico; Dennis Clay & Sue Pricco; Bob Polachi.

XI. PUBLIC HEARINGS

1. [18-228](#) **Mandatory Garbage/Solid Waste Disposal - Delinquent Accounts Recommendation:** Conduct a public hearing and upon conclusion,

consider adopting a Resolution confirming the report of delinquent accounts and placing liens on said properties and special assessments upon property taxes pursuant to City of Hercules Municipal Code Section 5-2.01 to 5-2.16, Mandatory Garbage/Solid Waste Disposal.

City Manager Biggs introduced the item and provided a staff report. Janna Coverston with Republic Services provided additional information.

Mayor Kelley opened the public hearing at 7:41 p.m.

Mayor Kelley closed the public hearing at 7:41 p.m. with no comments offered from the public.

City Council asked questions and provided comments.

MOTION: A motion was made by Council Member Boulanger, seconded by Council Member Esquivias, to adopt Resolution 18-045. The motion carried by the following vote:

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

2. [18-238](#)

Landscaping and Lighting Assessment District No. 83-2 - Conduct Continued Public Hearing, Declare the Results of the Property Owner Protest Balloting Proceedings Conducted for Proposed Assessment Increases in Designated Zones, Adopt a Resolution Declaring the Same, and Adopt a Resolution Approving the Final Engineers Report, Confirming Diagrams and Assessments and Ordering Levy of Assessments for Fiscal Year 2018-19

Recommendation:

1. Open the continued public hearing, conduct the continued public hearing and receive ballots, close the continued public hearing and declare the results of the property owner protest balloting proceedings conducted for a proposed increase in the maximum assessment rate for Benefit Zones 1, 3&4, 6, 7 and 9 within the Hercules Landscaping and Lighting Assessment District (LLAD) No. 83-2 commencing Fiscal Year 2018-19; and
2. Adopt a Resolution declaring the results of the property owner protest balloting proceedings conducted for a proposed increase in the maximum assessment rate for Benefit Zones 1, 3&4, 6, 7 and 9 within the Hercules Landscaping and Lighting Assessment District No. 83-2 commencing Fiscal Year 2018-19; and
3. Adopt a Resolution approving the final Engineers Report, confirming diagram and assessments and ordering levy of assessments for FY 2018-19 for the Hercules Landscaping and Lighting Assessment District No. 83-2 commencing Fiscal Year 2018-19 pursuant to the Landscaping and Lighting act of 1972.

CM Biggs introduced the item and provided a staff report. City Manager Biggs stated that the city has received ballots for Zone 1 in the mail and the City Clerk has provided those ballots to the City's Assessment Engineer, Ed Espinoza who will tabulate the ballots after the close of the public hearing.

Mayor Kelley opened the continued public hearing at 7:45 pm and asked that anyone here to turn in ballots from the Coventry Development (Zone 1) to come forward with their ballot.

Mayor Kelley closed the continued public hearing at 7:45 pm with no comments offered from the public. There were no additional ballots turned in prior to the close of the public hearing.

Mayor Kelley informed everyone in attendance that the City Council will come back to this item after allowing time for the City's Assessment Engineer, Ed Espinoza of Francisco and Associates time to tabulate the ballots from Zone 1 and Mr. Espinoza will report on the results of the remaining Landscaping and Lighting Assessment Districts at this time as well.

Mayor Kelley re-opened this item at 8:34 p.m. to allow Mr. Espinoza to report on the results of the Landscaping and Lighting Assessment Districts Proposition 218 Election.

Mr. Espinoza reported the following results:

Zone 1	No - 59.3%	Yes - 40.7%	-	Failed
Zone 3 & 4	No - 51.4%	Yes - 48.6%	-	Failed
Zone 6	No - 62%	Yes - 38%	-	Failed
Zone 7	No - 53.2%	Yes - 46.8%	-	Failed
Zone 9	No - 42.4%	Yes - 57.6%	-	Passed

City Council by unanimous vote adopted a Resolution declaring the results of the property owner protest balloting proceedings conducted for a proposed increase in the maximum assessment rate for Benefit Zones 1, 3&4, 6, 7 and 9 within the Hercules Landscaping and Lighting Assessment District No. 83-2 commencing Fiscal Year 2018-19.

City Council by unanimous vote adopted a Resolution approving the final Engineers Report, confirming diagram and assessments and ordering levy of assessments for FY 2018-19 for the Hercules Landscaping and Lighting Assessment District No. 83-2 commencing Fiscal Year 2018-19 pursuant to the landscaping and Lighting Act of 1972.

83-2

MOTION: A motion was made by Council Member de Vera, seconded by Council Member Esquivias, to adopt Resolution 18-046. The motion carried by the following vote:

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

MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member Boulanger, to adopt Resolution 18-047. 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

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. [18-232](#)

Meeting Minutes

Recommendation: Approve the Regular City Council Meeting Minutes of June 26, 2018.

Approved.

2. [18-236](#)

Surplus Vehicles

Recommendation: Adopt a Resolution declaring two city fleet vehicles as surplus property and authorize the disposal of the vehicles.

Approved.

XIII. DISCUSSION AND/OR ACTION ITEMS

1. [18-237](#)

Municipal Resources Group (MRG) Professional Services Agreement for Planning, Building, and Public Works Staff Augmentation Services for \$100,000

Recommendation: Adopt a Resolution authorizing the City Manager to execute a Professional Services Agreement for \$100,000 for Planning, Building, and Public Works staff augmentation services for continued project management consulting services on development funded projects and programs, general plan related updates, planning related field inspections and conditions of approval verifications, and public works special assignments as needed for the 2018-19 fiscal year.

City Manager Biggs introduced the item and Planning Director Smyth provided a staff report. City Council asked questions and provided comments. Mike Oliver of MRG provided additional information.

MOTION: A motion was made by Council Member Esquivias, seconded by Council Member Boulanger, to adopt Resolution 18-049. The motion carried by

the following vote:

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

2. [18-231](#)

Consideration of Attendance Waiver Requests from Two (2) Commissioners

Recommendation: Review and discuss approving attendance waiver requests received from two (2) commissioners.

City Manager Biggs introduced the item. City Clerk Martin provided a staff report.

City Council asked questions and provided direction to staff.

MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member Boulanger, to approve attendance waivers for Finance Commissioner Harris and Planning Commissioner Galieva and directed staff to send a letter to all Commissioners reminding them of the attendance rule and reminding the Commissioners that an absence is not an excused absence even if they notified the Chair of their need to miss a meeting and requiring that each Commissioner return a signed copy of the letter showing that they received the letter and understand the attendance requirement. 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. [18-229](#)

2018 Emergency Management Office Holder Successors

Recommendation: Each member of the City Council to make three (3) standby officer appointments each to the Office Holder Successors in the event of a state or local emergency.

City Manager Biggs introduced the item and provided a staff report. City Council asked questions. A consensus of City Council was established for each member of the City Council to send via email to the City Clerk the names of their three (3) office holder successors.

4. [18-227](#)

Review Upcoming Council Agenda Items List

Recommendation: Review, discuss and provide direction.

City Manager Biggs introduced the item and provided a staff report. City Council discussed and did not have any additions or deletions to the list.

MOTION: A motion was made by Vice Mayor Romero, seconded by Council Member de Vera, to provide this report on the Consent Calendar for future meetings. 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. [18-234](#)

Professional Services Agreement with LSA in the Amount of \$61,955 for Permit Preparation, Including 30% Plans and Regulatory Agency coordination for the Lake Refugio Dredging Project

Recommendation: Adopt a Resolution authorizing the City Manager to execute a consultant agreement with LSA for a not to exceed amount of \$61,955 to prepare permits including 30% dredging plans, and assist in coordination with the regulatory agencies for the Lake Refugio Dredging Project.

Public Works Director Roberts introduced the item and provided a staff report. Mr. Dan Sidel with LSA provided additional information. City Council asked questions and provided comments.

MOTION: A motion was made by Council Member Esquivias, seconded by Council Member Boulanger, to adopt Resolution 18-050. 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. [18-239](#)

Process for Determining Future Council Agenda Items

Recommendation: Discuss options and provide direction to staff.

City Manager Biggs introduced the item and City Attorney Tang provided a staff report. City Council asked questions and provided direction to staff to keep the current process identified in the Council Rules of Procedure.

7. [18-180](#)

Workforce Housing Update

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

City Manager Biggs introduced the item and provided a staff report. City Council asked questions and provided comments. A consensus of City Council was established directing staff to bring this item back at a future meeting to discuss the implementation of development based affordable housing.

XIV. PUBLIC COMMUNICATIONS

None.

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

City staff and Council reported on events and attendance at community and regional meetings.

Mayor Kelley announced that she will be on vacation at the next City Council meeting and that Vice Mayor Romero will Chair the August 14, 2018 City Council meeting.

Vice Mayor Romero requested a future agenda item relating to the impact of reduced recycling revenues. A consensus of City Council was established to add Vice Mayor Romero's request to the pending agenda

items list to be discussed at a future meeting.

XVI. ADJOURNMENT

Mayor Kelley adjourned the meeting at 10:48 p.m.

Chris Kelley, Mayor

Attest:

Lori Martin, MMC
Administrative Services Director/City Clerk



STAFF REPORT TO THE CITY COUNCIL

DATE: Meeting of July 24, 2018

TO: Members of the City Council

SUBMITTED BY: Lori Martin, Administrative Services Director/City Clerk

SUBJECT: Contra Costa County Council on Aging Commission Appointment

RECOMMENDED ACTION:

Consider re-appointment of Jennifer Doran to the Contra Costa Council on Aging for a new term beginning October 1, 2018.

FISCAL IMPACT OF RECOMMENDATION:

There is no fiscal impact associated with this item.

DISCUSSION:

Ms. Jennifer Doran has been the appointed representative serving on the Contra Costa County Council on Aging and was appointed by City Council on January 10, 2017 to a term expiring on September 30, 2018. Ms. Doran has applied for re-appointment to a new 2 year term beginning on October 1, 2018. No other applications have been received for appointment to this Committee.

If Ms. Doran is re-appointed by City Council as the City's representative on the Contra Costa Council on Aging for a new term, the City Clerk will send a letter to the Area Agency on Aging advising the Agency of the City Council's nomination and will forward Ms. Doran's application for consideration and approval by the Contra Costa Board of Supervisors.

ATTACHMENTS:

None.



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of July 24, 2018

TO: Members of the City Council

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

SUBJECT: Acceptance of the Pilot Streetlight Replacement Project

RECOMMENDED ACTION:

Adopt a resolution accepting the Pilot Streetlight Replacement Project contract with NEMA as complete for a total amount of \$96,750 and authorizing the filing of the Notice of Completion with the Contra Costa County Recorder's Office.

FISCAL IMPACT OF RECOMMENDATION:

This project was completed for the original bid amount of \$96,750, there were no change orders. Funding sources and amounts are shown on the attached resolution under the column "Installation (without 5% contingency)."

DISCUSSION:

The Pilot Streetlight Replacement Project replaced 76 wood pole, high pressure sodium bulb streetlights that had exceeded their useful life with durable aluminum pole, energy efficient LED streetlights that were previously purchased under a separate contract. The new streetlights match the replacement streetlights PG&E installed approximately 4 years ago.

The majority of the new streetlight replacements, 45 in total, were installed in the Foxboro neighborhood, which has now been fully upgraded to the new lights. A total of 24 streetlights were replaced on Coronado and Carson Streets. Two streetlights were replaced on the median of Turquoise Avenue approaching Crystal Avenue while one streetlight was replaced on the asphalt pathway off Sycamore Avenue just west of the I-80 overcrossing. NEMA inadvertently replaced a nearby streetlight on Sycamore Avenue under the I-80 overcrossing, but did not charge the City for this work. The locations for these replacements were based upon available funding in the zones of Landscaping & Lighting Assessment District 83-2. Lastly, one streetlight was installed in each of Zones 1, 3&4, and 6 as demonstration projects.

The work was completed in accordance with the plans and specifications and to the satisfaction of the City Engineer. Authorizing the filing of the Notice of Completion will allow the contractor to receive the retention.

ATTACHMENTS:

1. Resolution
2. Notice of Completion
3. Pilot and Demo Streetlight Replacement Map

Financial Impact

Description: See Fiscal Impact Section of Staff Report

RESOLUTION NO. 18-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES HEREBY ACCEPTING THE PILOT STREETLIGHT REPLACEMENT CONTRACT WITH NEMA AS COMPLETE FOR A TOTAL AMOUNT OF \$96,750 AND AUTHORIZING THE FILING OF THE NOTICE OF COMPLETION WITH THE CONTRA COSTA COUNTY RECORDER'S OFFICE

WHEREAS, the Pilot Streetlight Replacement Project contract was awarded to NEMA construction on April 10, 2018; and

WHEREAS, NEMA diligently persecuted the work to completion; and

WHEREAS, the work was completed in accordance with the plans and specifications and to the satisfaction of the City Engineer; and

WHEREAS, this project was completed for \$96,750, the original bid amount with no contingency, and is funded as itemized in the column "Installation (without 5% Contingency) below:

Zone	Pole/Fixtures (Purchased Previously)	Installation (without 5% Contingency)	Total Pilot Project Cost	Appropriation (with 5% Installation Contingency)	Source/Impact without Contingency
1 – Hercules By the Bay	\$1,953	\$1,290	\$3,243	\$1,354	Deficit Spending covered by Zone 10 Capital Reserves until repaid
2 -Foxboro	\$92,137	\$54,180	\$146,317	\$56,889	Net Balance to be financed increases to a total of \$56,889 or \$5,889 annually for 10 years
3&4 – Gems/Birds	\$1,953	\$1,290	\$3,243	\$1,355	From available Capital Reserves fund balance
5B - Commercial	\$6,468	\$2,580	\$9,048	\$2,709	From available Capital Reserves fund balance
5C – Development Parcels	\$1,953	\$1,290	\$3,243	\$1,354	Total costs to be financed increases to a total of \$4,077 which will be repaid over 2 years or less
6 – Village Parkway	\$1,953	\$1,290	\$3,243	\$1,355	Deficit Spending covered by Zone 10 Capital Reserves until repaid

7 - Heights	\$46,868	\$30,960	\$77,828	\$32,508	\$32,508 from available Capital Reserves fund balance of \$37,123
10 - Citywide	\$5,940	\$3,870	\$9,810	\$4,063	From available Capital Reserves fund balance.
Grand Total	\$159,225	\$96,750	\$255,975	\$101,587	

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hercules that the City Council hereby accepts the Pilot Streetlight Replacement contract with NEMA as complete for a total amount of \$96,750 and authorizes the filing of the Notice of Completion with the Contra Costa County Recorder's Office.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 24th day of July, 2018 by the following vote of the Council:

AYES:

NOES:

ABSTAIN:

ABSENT:

Chris Kelley, Mayor

ATTEST:

Lori Martin, MMC, City Clerk

Recording Requested By:

When Recorded Mail To:

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

NOTICE OF COMPLETION
Civil Code §§ 8182, 8184, 9204, and 9208

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is the Owner or agent of the Owner of the Project described below.
2. Owner's full name is CITY OF HERCULES.
3. Owner's address is 111 CIVIC DRIVE, HERCULES, CA 94547.
4. The nature of Owner's interest in the Project is:
X Fee ownership Lessee Other: _____
5. Construction work on the Project performed on Owner's behalf is generally described as follows: PILOT STREETLIGHT REPLACEMENT PROJECT
6. The name of the original Contractor for the Project is:
Nema Construction
555 PIERCE STREET #1005, ALBANY, CA 94706.
7. The Project was completed on: JULY 24, 2018.
8. The Project is located at: MISCELLANEOUS STREETS IN THE CITY OF HERCULES.

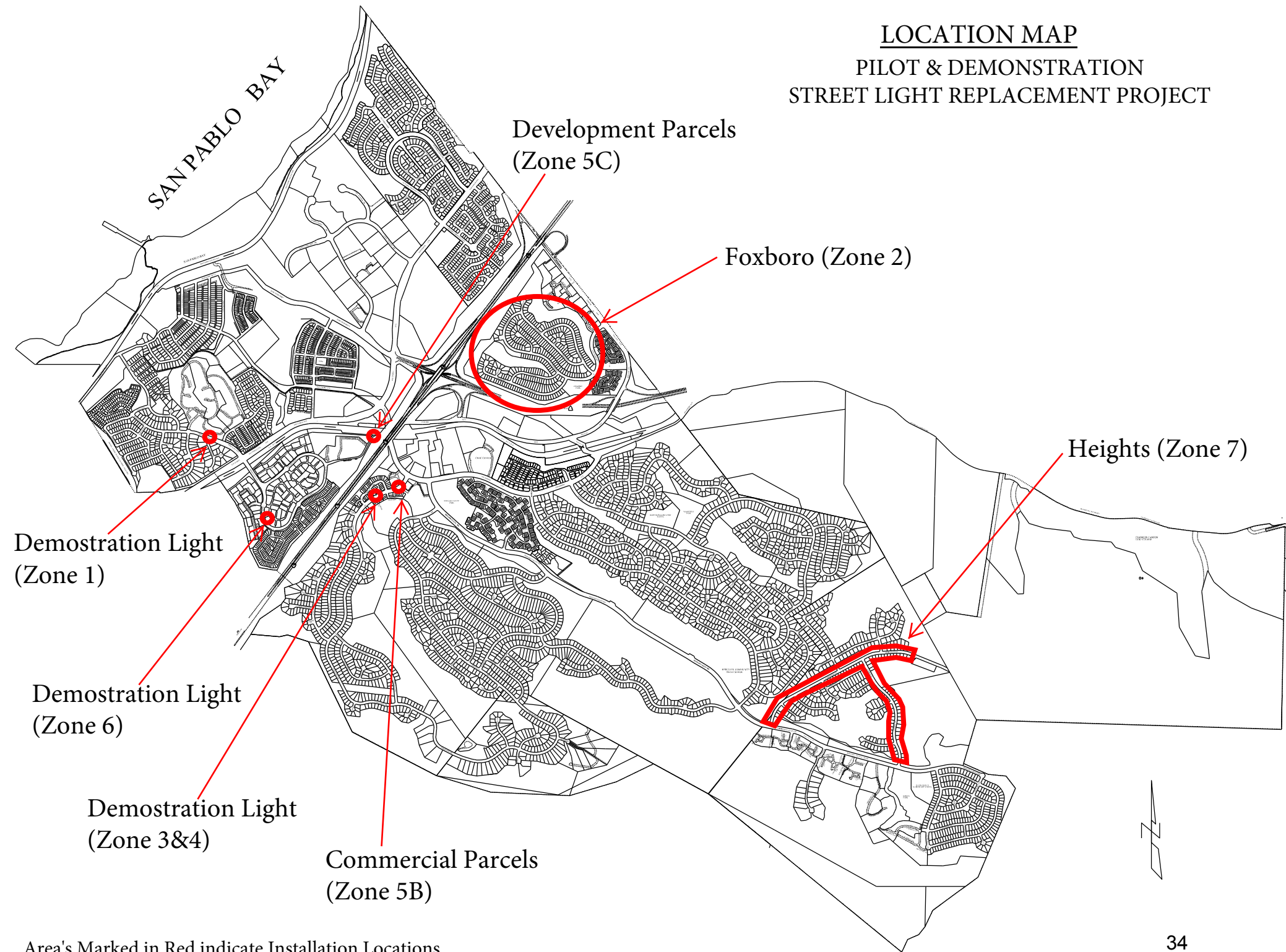
Verification: In signing this document, I, the undersigned, declare under penalty of perjury under the laws of the State of California that I have read this notice, and I know and understand the contents of this notice, and that the facts stated in this notice are true and correct.

Date and Place

Signature of Person Signing on Behalf of Owner

MIKE ROBERTS,
PUBLIC WORKS DIRECTOR/CITY ENGINEER
Print Name and Title

LOCATION MAP
PILOT & DEMONSTRATION
STREET LIGHT REPLACEMENT PROJECT



Area's Marked in Red indicate Installation Locations



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of July 24, 2018

TO: Members of the City Council

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

SUBJECT: Stormwater Program – Update on Landscaping Waste Blown Down Storm Drains

RECOMMENDED ACTION:

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

FISCAL IMPACT OF RECOMMENDATION:

There are no fiscal impacts associated with receiving this informational report.

DISCUSSION:

This agenda item is a status update on the direction Council provided to staff at their October 24, 2017 meeting regarding the prohibited practice of blowing landscaping waste down the City's storm drain system.

I am pleased to report the Public Works Department has just hired an engineering intern who is carrying out the direction provided to staff, including:

- Creating a bilingual informational flyer on the prohibition against blowing grass clippings, leaves, and branches down the storm drain.
- Reaching out to the East Bay Municipal Utility District to discuss including the flyer in their water bills to Hercules residents.
- Compiling a mailing list of landscaping companies working in the City of Hercules that will receive the flyer, and also to notify them of the requirement to obtain a business license. The flyer will also be sent to all Homeowners Associations in the City for them to provide to their landscapers and residents.
- The flyer, once completed, will be sent out on E-Notify, Facebook, Nextdoor, the City's website, and handed out to landscapers who are observed working in the community (which will also include the business license requirement).

Once these tasks have been completed over the next month, staff intends to begin formal enforcement through the Administrative Citation Program. The goal is to have the outreach completed before the fall foliage period starts. The nature of the code violation and negative impacts of blowing landscaping waste down the storm drain is discussed in detail in the October 24, 2017 Staff Report (attached).

ATTACHMENTS:

Attachment 1 – 10/24/17 Staff Report



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 24, 2017

TO: Members of the City Council

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

SUBJECT: Stormwater Program – Landscaping Waste Blown Down Storm Drains

RECOMMENDED ACTIONS:

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

FISCAL IMPACT OF RECOMMENDATION:

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

DISCUSSION:

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

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

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

ATTACHMENTS:

1. Municipal Code



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of July 24, 2018

TO: Mayor Kelley and Members of the City Council

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

SUBJECT: Discuss whether restrictions on smoking in multi-unit housing as adopted by Contra Costa County should be considered in Hercules

RECOMMENDED ACTION: Discuss and provide direction to staff.

FISCAL IMPACT OF RECOMMENDATION:

There would be some expense associated with providing notice to residents and affected businesses if additional restrictions were adopted. There would be an undetermined cost associated with code enforcement efforts in the event enforcement were required.

DISCUSSION:

Earlier this year, the City Council voted to adopt a revised smoking ordinance that amends and updates the City's outdated smoking restrictions. The new ordinance does not regulate smoking within private residences in multi-unit complexes. A copy of the ordinance as adopted by Council is attached for your reference (Attachment 3).

During the discussion of the updated proposed ordinance, council was made aware of new legislation adopted by the County that has imposed additional restrictions to limit smoking in private residences within multi-unit developments. The County's ordinance (Attachment 2) does not apply within the city limits of Hercules. Council directed staff to include as a future agenda item a discussion of the County's ordinance, to determine whether it is desirable and/or feasible to adopt a similar ordinance that would limit smoking in residences within multi-unit properties within Hercules. This staff report is responsive to the Council's request; relevant information regarding the new restrictions is being provided as attachments to this report (Attachment 3).

ATTACHMENTS:

1. [County Multi-Unit Smoking Ordinance.](#)
2. [County educational materials explaining the new policy.](#)
3. The Revised Hercules Smoking Ordinance.

Division 445 - SECONDHAND SMOKE AND TOBACCO PRODUCT CONTROL^[10]

Chapter 445-2 - GENERAL PROVISIONS

Sections:

445-2.002 - Title.

This division is known as the secondhand smoke and tobacco product control ordinance of Contra Costa County.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.004 - Purpose.

The purposes of this division are to protect the public health, safety and welfare against the health hazards and harmful effects of the use of addictive tobacco products; and further to maintain a balance between the desires of persons who smoke and the need of nonsmokers to breathe smoke-free air, while recognizing that where these conflict, the need to breathe smoke-free air shall have priority.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.006 - Definitions.

For the purposes of this division, the following words and phrases have the following meanings:

- (a) "Characterizing flavor" means a distinguishable taste or aroma imparted by a tobacco product or any byproduct produced by the tobacco product that is perceivable by an ordinary consumer by either the sense of taste or smell, other than the taste or aroma of tobacco. A "characterizing flavor" includes, but is not limited to, a taste or aroma relating to a fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.
- (b) "Cigar" means any roll of tobacco other than a cigarette wrapped entirely

- (j) "Menthol cigarettes" means cigarettes as defined by federal law, that have a flavor of menthol, mint, or wintergreen, including cigarettes advertised, label by the manufacturer as possessing a menthol characterizing flavor.
- (k) "Multi-unit residence" means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached accessory dwelling unit permitted pursuant to Chapter 82-24 is not a multi-unit residence for purposes of this division.
- (l) "Multi-unit residence common area" means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.
- (m) "Place of employment" means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; hotels and motels, including all guest rooms; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children, or patients are present and during business hours. The places specified in subdivisions (e) (1), (2), (6), and (7) of Labor Code section 6404.5 are places of employment for the purposes of this division and are regulated as specified in this division. The places specified in subdivisions (e)(3), (4), and (5) of Labor Code section 6404.5 are not places of employment for the purposes of this division.
- (n) "Public place" means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.
- (o) "Self-service display" means the open display or storage of tobacco

(4) "Tobacco product" does not include any product that has been approved by the Food and Drug Administration for sale as a tobacco cessation product for therapeutic purposes where the product is marketed and sold solely for that purpose.

(u) "Tobacco retailer" means any individual or entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. "Tobacco retailing" means the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(Ord. No. 2018-07, § VII, 3-13-18; Ord. No. 2017-01, § II, 7-18-17; Ord. No. 2013-10, § II, 4-9-13; Ord. No. 2010-10, § II, 10-12-10; Ord. No. 2006-66 § 4; Ord. No. 98-43 § 2; Ord. No. 91-44 § 2)

Chapter 445-4 - SECONDHAND SMOKE

Sections:

445-4.002 - County facilities.

- (a) Smoking is prohibited in all buildings, vehicles, and other enclosed areas occupied by county employees, owned or leased by the county, or otherwise operated by the county.
- (b) Smoking is prohibited in all outdoor areas owned or leased by the county, including parking lots, the grounds of the county's hospital and health clinics, and the grounds of all other buildings owned or leased by the county.
- (c) Smoking is prohibited on the grounds of the county's jails and county juvenile system facilities to the extent allowed by law.

(Ord. No. 2014-06, § II, 6-17-14; Ords. 2006-66 § 5, 91-44 § 2)

Editor's note— Ord. No. 2014-06, § II, adopted June 17, 2014, amended the title of § 445-4.002 to read as set out herein. Previously § 445-4.002 was titled county-owned facilities.

445-4.004 - Prohibition of smoking.

provided in Section 445-4.006.

(Ord. No. 2018-07, § II, 3-13-18; Ord. No. 2010-10, § III, 10-12-10; Ords. 2006-66 § 5, 91-44 § 2)

445-4.006 - Exceptions.

- (a) Smoking is permitted at any location within the county unless otherwise prohibited by this code or by state or federal law.
- (b) If a dwelling unit in a multi-unit residence is subject to a lease or other rental agreement and smoking is authorized under the lease or rental agreement, smoking is permitted in the dwelling unit until the lease or rental agreement is modified to prohibit smoking in accordance with Section 445-4.014.
- (c) If a dwelling unit in a multi-unit residence is owner-occupied, smoking is permitted in the owner-occupied dwelling unit until July 1, 2019.

(Ord. No. 2018-07, § III, 3-13-18; Ord. No. 2010-10, § IV, 10-12-10; Ords. 2006-66 § 5, 91-44 § 2)

445-4.008 - Posting requirements.

"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch 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 conspicuously posted in every building or other place where smoking is regulated by this division by the owner, operator, manager or other person having control of the building or other place. This section does not require the posting of "No Smoking" signs inside or on the doorway of any dwelling unit in a multi-unit residence.

(Ord. No. 2018-07, § IV, 3-13-18; Ords. 2006-66 § 5, 91-44 § 2)

445-4.010 - Ashtray placement.

No ashtray or other receptacle used for disposing of smoking materials may be placed at any location where smoking is prohibited by this division or otherwise prohibited by law.

(Ord. No. 2009-26, § II, 10-20-09)

445-4.012 - Disclosure of smoking complaint policy.

future enforcement of the lease or rental agreement provisions required by this section.

(e) A landlord is not liable under this chapter to any person for a tenant's breach of smoking regulations if:

- (1) The landlord has fully complied with all provisions of this chapter; and
- (2) Upon receiving a signed, written complaint regarding prohibited smoking, the landlord provides a warning to the offending tenant, stating that the tenant may be evicted if another complaint is received. Upon receiving a second signed, written complaint against the offending tenant, the landlord may evict the tenant, but is not liable for the failure to do so.

(Ord. No. 2018-07, § VI, 3-13-18; Ord. No. 2010-10, § V, 10-12-10)

Chapter 445-6 - TOBACCO SALES^[11]

Sections:

445-6.002 - Self-service displays.

- (a) It is unlawful for any person or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by means of self-service display, vending machine, rack, counter-top or shelf that allows self-service sales for any tobacco product or tobacco paraphernalia.
- (b) All tobacco products and tobacco paraphernalia shall be offered for sale exclusively by means of vendor or employee assistance. Tobacco products and tobacco paraphernalia shall be kept in a locked case that requires employee assistance to retrieve the tobacco products or tobacco paraphernalia.

(Ords. 2006-66 § 6, 98-43 § 2).

445-6.004 - Distribution of free samples and coupons.

It is unlawful for any person, agent, or employee of a person in the business of selling or distributing cigarettes or other tobacco or smoking products to distribute, or direct, authorize, or permit any agent or employee to distribute, any of the following to any person on any

(Ord. No. 2017-01, § VI, 7-18-17)

445-6.012 - Identification required.

No tobacco retailer may sell or transfer a tobacco product or tobacco paraphernalia to a person who reasonably appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase the tobacco product or tobacco paraphernalia.

(Ord. No. 2017-01, § VII, 7-18-17)

Chapter 445-8 - ENFORCEMENT

Sections:

445-8.002 - Compliance.

- (a) A person may not smoke in any place where smoking is prohibited by this division.
- (b) A person who owns, manages, operates or otherwise controls the use of any place where smoking is prohibited by this division may not knowingly or intentionally permit smoking in those places. For purposes of this subsection, a person has acted knowingly or intentionally if he or she has not taken the following actions to prevent smoking by another person: (1) requested that a person who is smoking refrain from smoking; and (2) requested that a person who is smoking leave the place if the person refuses to stop smoking after being asked to stop. This section does not require physically ejecting a person from a place or taking steps to prevent smoking under circumstances that would involve risk of physical harm.
- (c) The presence or absence of the signs required by Section 445-4.008 is not a defense to the violation of any other provision of this division.

(Ord. No. 2009-26, § IV, 10-20-09; Ords. 2006-66 § 7, 91-44 § 2)

445-8.004 - Remedies.

445-10.002 - License requirement.

- (a) It is unlawful for any retailer, individual, or entity to conduct tobacco retailing in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from Contra Costa County for each location where tobacco retailing is conducted.
- (b) No tobacco retailer's license will be issued that:
 - (1) Authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
 - (2) Authorizes tobacco retailing in a pharmacy.
 - (3) Results in the total number of tobacco retailer's licenses in the unincorporated area of the county exceeding ninety.
- (c) Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation.

(Ord. No. 2017-01, § VIII, 7-18-17; Ord. No. 2003-01 § 3; Ord. No. 98-50 § 2)

445-10.004 - Enforcement of state law.

If a clerk or employee sells a tobacco product or tobacco paraphernalia to any person under the age of twenty-one, the retailer shall immediately notify the appropriate local law enforcement agency of the violation of Penal Code section 308 for enforcement under that statute.

(Ord. No. 2017-01, § IX, 7-18-17; Ord. No. 2003-01 § 3; Ord. No. 98-50 § 2)

445-10.006 - Definitions.

For purposes of this chapter, the following words and phrases have the following meanings:

- (a) "Director" means the director of Contra Costa health services or his or her designee.
- (b) "Drug paraphernalia" has the meaning set forth in California Health and

- (a) Upon receipt of a completed application for a tobacco retailer's license, including payment of a fee pursuant to Section 445-10.012, the tax collector will issue a tobacco retailer's license, unless any of the following grounds for denial exist:
- (1) The application is incomplete or inaccurate;
 - (2) The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect under Section 445-10.018;
 - (3) The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to Divisions 82 or 84 of this code.
 - (4) Failure to pay an outstanding fine.
- (b) Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.
- (c) The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of an application for change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.012 - License fee.

A tobacco retailer's license will not be issued unless a fee is paid. The fee for a tobacco retailer's license shall reflect the reasonable cost of providing services necessary to the licensing activities of this chapter. The fees prescribed by this section are regulatory permit fees and do not constitute a tax for revenue purposes. The fee shall be in the amount established annually by the board of supervisors in the Contra Costa County health services department's fee schedule.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.014 - Business license.

public health director will issue a written decision to revoke or not revoke the license and will list in the decision the reason or reasons for that decision. The written decision will be served as specified in Section 445-10.022. A revocation is without prejudice to the filing of a new application for a tobacco retailer's license.

- (d) Revocation Appeal. The decision of the public health director to revoke a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.
- (e) Final Order. The tobacco retailer's license revocation becomes a final administrative order at one of the following times:
 - (1) On the date of the revocation hearing, if a tobacco retailer fails to appear at a scheduled revocation hearing;
 - (2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified;
 - (3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors;
 - (4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.018 - License suspension.

- (a) Grounds for Suspension. A tobacco retailer's license may be suspended for any violation of this division, any state or federal tobacco-related laws, any state or federal law regulating controlled substances or drug paraphernalia, or any state or local law regulating advertising and signage on retailer's window space.
- (b) Notice of Suspension Hearing. If any grounds for suspension exist, the director may issue a notice of suspension hearing. The notice of suspension hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:
 - (1) The date of the violation.

- (2) On the date the public health director's decision is served, if a tobacco retailer written appeal to the board of supervisors within the time specified.
- (3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors.
- (4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

(Ord. No. 2017-01, § XI, 7-18-17; Ord. No. 2003-01 § 3; Ord. No. 98-50 § 2)

445-10.020 - Enforcement.

The county may seek compliance with this chapter by any remedy allowed under this code, including, but not limited to, revocation (Section 445-10.016), suspension (Section 445-10.018), administrative fines (Chapter 14-12), criminal citations (Section 14-8.008), and any other remedy allowed by law.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.022 - Service.

All notices or decisions required to be served by this chapter will be served either by the method specified in subsection (a) or by the method specified in subsection (b). The failure of a person to receive a properly addressed service shall not affect the validity of the proceedings.

- (a) Certified mail. Certified mail will be addressed to the tobacco retailer at the address shown on the license application. Service is deemed complete upon the deposit of the notice or decision, postage pre-paid, in the United States mail. Simultaneously, the same notice or decision may be sent by regular mail. If a notice or decision sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail on the date mailed.
- (b) Personal service. Personal service is deemed complete on the date the notice or decision is personally served.

(Ords. 2003-01 § 3, 98-50 § 2).

Secondhand Smoke Protections Ordinance

Exposure to Secondhand Smoke (SHS) is linked to many illnesses, including lung cancer and heart disease. Among children, SHS is also associated with serious respiratory problems, including asthma, pneumonia and bronchitis, sudden infant death syndrome, and low-birth weight. Protecting workers and the public from the effects of Secondhand Smoke remains a high priority for the Tobacco Prevention Project and Tobacco Prevention Coalition.

In 2006, the Contra Costa County Secondhand Smoke Protections Ordinance for all of the unincorporated areas of the county was adopted by the County Board of Supervisors. The Board of Supervisors continues to strengthen this ordinance as new evidence demonstrates that additional protections are needed. This law was passed based on scientific studies from CAL-EPA (California Environmental Protection Agency, 2006) and the Surgeon General's Reports (2006 and 2010) that clearly show that secondhand smoke is a health risk.

NEW! Multi-unit housing in unincorporated areas Contra Costa is going smoke-free starting July 1, 2018.

- Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence that is entered into, renewed, or continued month-to-month must include that smoking is prohibited in all dwelling units starting July 1, 2018.
*
- Existing leases that specifically allow smoking must contain a clause stating that smoking is prohibited in all dwelling units *when the lease is renewed or no later than July 1, 2019, whichever is earliest.* *
- **NEW! Ordinance: Secondhand Smoke Protections Ordinance**
Contra Costa County Code Chapter 445

- Coming Soon! Brochure: A Guide to Contra Costa County's Secondhand Smoke Protections Ordinance

Smoking (including the use of a hookah pipe, medical marijuana or electronic smoking device such as an e-cigarette) is prohibited in the following outdoor areas:

- All areas within 20 feet of the doors, operable windows, air ducts and ventilation systems of any enclosed worksite or enclosed places open to the public, except while passing on the way to another destination;
- In outdoor dining areas at bars and restaurants (including outdoor dining areas at places of employment and in outdoor lounges);
- On public trails and in public parks;
- In service areas. (Service area means an area used to receive or wait for a service, enter a public place or make a transaction, including ATM's, bank teller windows, ticket lines, bus stops and taxi stands);
- In public event venues (such as stadiums, fairs, pavilions, farmers markets); and
- On the campus of all County-owned or leased properties.

In Multi-Unit Housing Residences, smoking is prohibited:

- NEW! In 100% of all dwelling units of multi-unit housing residences starting July 1, 2018 for new and renewing leases. All units, including owner-occupied, must be 100% smoke-free by July 1, 2019.
- In common indoor and outdoor areas of multi-unit housing residences of 4 or more unit; and
- On all balconies, patios, decks and carports for existing and new multi-unit housing.
- All areas within 20 feet of doors, windows, air ducts and ventilation systems of multi-unit housing residences, except while walking from one destination to another.

Landlord Responsibilities:

- NEW! Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence that is entered into, renewed, or continued month-to-month must include that smoking is prohibited in all dwelling units starting July 1, 2018. *
- NEW! Existing leases that specifically allow smoking must contain a clause stating that smoking is prohibited in all⁵¹

dwelling units when the lease is renewed or no later than July 1, 2019, whichever is earliest. *

- Disclose the policy for handling smoking complaints in effect at the multi-unit housing residence, and provide a copy of that policy to each tenant along with every new lease or rental agreement for the occupancy of a unit in a multi-unit housing residence.
- Post "No smoking" signs with letters of not less than one inch in height, or the international "No Smoking" symbol (consisting of a burning cigarette in a red circle with a red bar across it). The sign must be visibly posted in every building or other place where smoking is prohibited by law;
- Not allow ashtrays or other receptacles for disposing of smoking material where smoking is prohibited; and
- Not knowingly allow smoking in smoking prohibited areas.

Landlords may designate a common outdoor area of a multi-unit housing residence as a smoking area. For details contact Tobacco Prevention Project at tobaccopreventionproject@hsd.cccounty.us (<mailto:tobaccopreventionproject@hsd.cccounty.us>)

*The California Apartment Association's form 34.0 may be used.

Smoking is also prohibited:

- In any indoor workplace or indoor area open to the public, including tobacco shops, owner or volunteer operated businesses and hotel lobbies.

Smoking is permitted:

- In any location within the county unless otherwise prohibited by local, state or federal law; and
- In up to 20 percent of guests room in any hotel, unless the hotel has designated the entire hotel smoke-free.

Compliance Information

In every building or other place where smoking is prohibited by law, the owner, operator or manager must:

- Post "No smoking" signs with letters of not less than one inch in height, or the use of the international "No Smoking" symbol (consisting of a burning cigarette in a red circle with a red



bar across it), must be visibly posted in every building or other place where smoking is regulated by the owner, operator, manager.

- Not allow ashtrays or other receptacles for disposing of smoking material where smoking is prohibited.
- Not knowingly allow smoking in smoking prohibited areas. The owner, operator or manager must request that the person stop smoking and if the person fails to stop, ask them to leave the premises.

Posting Signage Is Required By The Law

Research shows that 80% of all smokers would like to quit and that smoke-free public places provide a more supportive environment. Information about cessation programs (to quit smoking) are available by calling the California Smoker's Helpline at 1-800-NO-BUTTS or visit www.californiasmokershelpline.org (<http://www.californiasmokershelpline.org/>)

Below are links to Contra Costa County Secondhand Smoke Protection Ordinance Signs for business owners, landlords and the general public to download:

1. ["No smoking" sign \(11" X 8.5"\)](#)
2. ["No smoking" sign \(7" X 5"\)](#)
3. ["No fumar" sign \(11" X 8.5"\)](#)
4. ["No smoking within 20 feet" sign \(11" X 8.5"\)](#)
5. ["No smoking within 20 feet" sign \(5" X 7"\)](#)
6. ["No Smoking within 20 feet" - Spanish sign \(11" X 8.5"\)](#)
7. ["No Smoking within 20 feet" - Spanish sign \(5" X 7"\)](#)
8. ["No Smoking" sign \(expanded language\) \(11" X 8.5"\)](#)
9. ["No smoking" sign \(expanded language\) \(7" X 5"\)](#)



While supplies last, signage is available through the [Tobacco Prevention Project \(/tobacco/\)](#).

[[help with](#) [PDF files](#)]

Contra Costa County smoking ordinance now in effect

June 27, 2018

Multifamily properties in unincorporated areas of Contra Costa County are smoke-free as of Sunday, July 1.

In March, the county Board of Supervisors unanimously adopted the Contra Costa County Secondhand Smoke Ordinance, which prohibits smoking inside multifamily properties with two or more units. Although the ordinance takes effect July 1, property owners and operators have until July 1, 2019, to amend house rules and make the necessary transition to smoke-free housing before fines can be imposed.

CAA Contra Costa does not oppose the efforts of local jurisdictions to promote smoke-free housing and protect residents from secondhand smoke.

CAA Contra Costa staff worked with the county to ensure that impacts on rental property owners are mitigated and to reduce administrative burdens on property owners and operators.

County staff and the Board of Supervisors were receptive to CAA Contra Costa's comments and allowed the final ordinance to have the following:

- A 12-month phase-in period to provide ample time for owners to amend house rules and post signage.
- Allow the use of CAA's Smoking Addendum for new leases and renewals.
- Allow property owners to designate a smoking area within the property.
- Not require "no smoking" signs individual housing units.

California Apartment Association

A full copy of the law, signage, as well as information about the harmful effects of secondhand smoke exposure are available through the Contra Costa Health Services Tobacco Prevention Project's [website](http://cchealth.org/tobacco/secondhand-smoke/)

[<http://cchealth.org/tobacco/secondhand-smoke/>].

Questions or concerns? Contact Rhovy Lyn Antonio, CAA's vice president of public affairs for Contra Costa County, at (408) 342-3506 or rantonio@caanet.org [<mailto:rantonio@caanet.org>]



[<https://caanet.org/contracosta-county-smoking-ordinance-takes-effect-july-1/?share=facebook&nb=1>]



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[<https://caanet.org/contracosta-county-smoking-ordinance-takes-effect-july-1/?share=email&nb=1>]

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[<http://portal.hud.gov/hudportal/HUD?>

ORDINANCE NO. 508

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES
REPEALING AND REPLACING ARTICLE 5, SECTION 6 OF THE HERCULES
MUNICIPAL CODE RELATED TO SMOKING IN WORKPLACES AND PUBLIC
PLACES , AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM CEQA**

WHEREAS, the City of Hercules in 1992 adopted by ordinance regulations regarding smoking in public places and in the workplace; and

WHEREAS, changes in State law regarding smoking render the City's 1992 Smoking Ordinance in conflict with state law; and

WHEREAS, the 1992 Smoking Ordinance does not address use of new and popular smoking technologies that were not in existence at the time the ordinance was passed; and

WHEREAS, the Council desires to enact more comprehensive smoking regulations to better protect the health and safety of the City's residents; and

WHEREAS, the Findings contained in the revised Section 5-6.102 are incorporated herein by reference and are made a part of these Recitals as if fully set forth herein; and

WHEREAS, the City Council has determined that the Amendment is categorically exempt from CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the Amendment will not have a significant effect on the environment. The City Council has also determined that the Zoning Text Amendment is categorically exempt from CEQA pursuant to section 15303(a) of the CEQA Guidelines because it governs smoking in public workplaces and public places.

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

SECTION 1. Hercules Municipal Code Article 5, Section 6 shall be replaced in its entirety with a new Article 5, Section 6 as follows:

**“Title 5, Chapter 6 - Ordinance Prohibiting Smoking in
All Workplaces and Public Places**

Sec. 5-6.101. Title

This Article shall be known as the City of Hercules Smokefree Ordinance.

Sec. 5-6.102. Findings and Intent

The City of Hercules does hereby find that:

- (a) According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.
- (b) According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.
- (c) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.
- (d) Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.
- (e) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.
- (f) During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.¹⁹ Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area.
- (g) The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and smoke is elevated in nonsmoking rooms of hotels that allow smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do

not protect non-smoking guests from exposure to tobacco smoke and tobacco-specific carcinogens.

- (h) Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or “e-cigarettes,” closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.
- (i) Hookah smoke exposes users to many of the same toxicants found in cigarette smoke.
- (j) 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.
- (k) 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.
- (l) Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.
- (m) On June 9th, 2016, California became the second state to change its tobacco minimum-age sales law to 21 years old for tobacco, e-cigarettes and vaping products.

Sec. 5-6.103. Definitions

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

- (a) “Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.
- (b) “Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and

other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.

- (c) “Electronic Smoking Device” means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.
- (d) “Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- (e) “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
- (f) “Enclosed Area” means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.
- (g) “Health Care Facility” means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
- (h) “Hookah” means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.
- (i) “Place of Employment” means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.

- (j) "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.
- (k) "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.
- (l) "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.
- (m) "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- (n) "Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.
- (o) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- (p) "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service

involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, movie ticket lines, and sporting event lines.

- (q) "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.
- (r) "Smoke shop and tobacco store" means any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall not be defined as a "smoke shop and tobacco store" and shall not be subject to the restrictions in this chapter. **It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a person under the age of twenty-one (21) to enter or remain within any smoke shop and tobacco store or to make the purchase of tobacco products or tobacco related products, unless that person is U.S. Active Duty Military personnel over the age of eighteen (18) and is exempt under state law.**
- (s) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article. "Smoking" of hookahs as defined herein may be allowed by permit on a limited basis in outdoor areas of restaurant and bar establishments when the activity occurs 25 feet or more from other patrons, residences, schools, offices, businesses, or other public places, unless such use creates a nuisance or otherwise results in creation of a disturbance.
- (t) "Sports Facility" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

Sec. 5-6.104. Application of Article to City-Owned Facilities and Property

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

Sec. 5-6.105. Prohibition of Smoking in Enclosed Public Places

Smoking shall be prohibited in all enclosed public places within the City of Hercules, including but not limited to, the following places:

(a) Galleries, libraries, and museums.

Areas available to the general public in businesses and non-profit entities patronized by the public, including but not limited to, banks, laundromats, professional offices, and retail service establishments.

(b) Bars.

(c) Bingo facilities.

(d) Child care and adult day care facilities.

(e) Convention facilities.

(f) Educational facilities, both public and private.

(g) Elevators.

(h) Gambling facilities.

(i) Health care facilities.

(j) Hotels and motels.

(k) Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.

(l) Parking structures.

(m) Polling places.

(n) Public transportation vehicles, including buses and taxicabs, under the authority of the City, and ticket, boarding, and waiting areas of public transportation facilities, including bus, carpool, ferry, and train facilities.

(o) Restaurants.

(p) Restrooms, lobbies, reception areas, hallways, and other common-use areas.

(q) Retail stores.

(r) Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee

or council of the City or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City.

- (s) Service lines.
- (t) Shopping malls.
- (u) Sports facilities, including enclosed places in outdoor arenas.
- (v) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

Sec. 5-6.106. Prohibition of Smoking in Enclosed Places of Employment

- (a) Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.
- (b) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

Sec. 5-6.107. Prohibition of Smoking in Private Clubs

Smoking shall be prohibited in all private clubs.

Sec. 5-6.108. Prohibition of Smoking in Enclosed Residential Facilities

Smoking shall be prohibited in the following enclosed residential facilities:

- (a) All private and semi-private rooms in nursing homes.
- (b) All hotel and motel guest rooms.

Sec. 5-6.109. Prohibition of Smoking in Outdoor Public Places

Smoking shall be prohibited in the following outdoor places:

- (a) Within a reasonable distance of 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, so as to prevent smoke from entering those areas.

- (b) On all outdoor property that is adjacent to buildings owned, leased, or operated by the City and that is under the control of the City.
- (c) In, and within 25 feet of, outdoor seating or serving areas of restaurants and bars.
- (d) In outdoor shopping malls, including parking structures.
- (e) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 25 feet of, bleachers and grandstands for use by spectators at sporting and other public events.
- (f) In outdoor recreational areas, including parking lots.
- (g) In, and within 25 feet of, all outdoor playgrounds.
- (h) In, and within 25 feet of, all outdoor public events.
- (i) In, and within 25 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City.
- (j) In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within 25 feet of the point of service.
- (k) In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

Sec. 5-6.110. Prohibition of Smoking in Outdoor Places of Employment

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

Sec. 5-6.111. Regulation of Smoke Shops and Tobacco Stores

- (a) Smoke shops and tobacco stores wishing to operate within the City after the effective date of the ordinance codified in this chapter must obtain a conditional use permit (CUP). Smoke shops and tobacco stores that are legally existing on the effective date of the ordinance codified in this chapter may continue to operate as legal nonconforming uses and shall not be required to obtain a conditional use permit. However, any change or expansion of the legal nonconforming use may require compliance with this chapter and a conditional use permit.
- (b) Smoke shops and tobacco stores shall not be located within 300 feet, measured property line to property line, from a school (public or private), family day care home, child care facility, youth center, community center, recreational facility, park, church, hospital, or other similar uses where children regularly gather.
- (c) Smoke shops and tobacco stores shall not be located within 500 feet, measured property line to property line, from another smoke shop and tobacco store.
- (d) It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a person under the age of twenty-one (21) to enter or remain within any smoke shop and tobacco store **or to make the purchase of tobacco products or tobacco related products, unless that person is U.S. Active Duty Military personnel over the age of eighteen (18) and is exempt under state law.**
- (e) Smoke shops and tobacco stores shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 21 years of age. The warning signs shall include a toll-free telephone number to the State Department of Public Health for persons to report unlawful sales of tobacco products to any person under 21 years of age.

Sec. 5-6.112. Where Smoking Not Regulated

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

Sec. 5-6.113. Posting of Signs and Removal of Ashtrays

Upon being provided notice pursuant to Section 5-6.115(b), the owner, operator, manager, or other person in control of a place of employment, public place, private club, or residential facility where smoking is prohibited by this Article shall:

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

Sec. 5-6.114. Nonretaliation: Nonwaiver of Rights

- (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.
- (b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 5-6.115. Enforcement

- (a) This Article shall be enforced by the City Manager or an authorized designee.
- (b) Notice of the provisions of this Article shall be given to all applicants for a business license in the City.
- (c) Any citizen who desires to register a complaint under this Article may initiate enforcement with City Manager or an authorized designee. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Manager or an authorized designee.
- (d) The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

- (e) An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.
- (f) Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.
- (g) In addition to the remedies provided by the provisions of this Section, the City Manager or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 5-6.116. Violations and Penalties

- (a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Article 1, Chapter 4 of this Code.
- (b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Article 1, Chapter 4 of this Code.
- (c) In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.
- (d) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City Attorney by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.
- (e) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 5-6.117. Public Education

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

Sec. 5-6.118. Other Applicable Laws

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

Sec. 5-6.119. Construction

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

Sec. 5-7.120. Severability

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

Sec. 5-7.121. Declaration of Establishment or Outdoor Area as Nonsmoking

Notwithstanding any other provision of this Article, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 5-6.113 is posted.

SECTION 2. Publication and Effective Date.

a. This Ordinance shall be published in accordance with applicable law, by one or more of the following methods:

1. Posting the entire Ordinance in at least three (3) public places in the City of Hercules, within fifteen (15) days after its passage and adoption; or

2. Publishing the entire Ordinance at least once in the West County Times, a newspaper of general circulation published in the County of Contra Costa and circulated in the City of Hercules, within fifteen (15) days after its passage and adoption; or

3. Publishing a summary of the Ordinance in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Councilmembers voting for and against the Ordinance.

b. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the Hercules City Council on the 24th day of April, 2018, and was passed and adopted at a regular meeting of the Hercules City Council on the 8th day of May, 2018, by the following vote:

AYES: Council Members: G. Boulanger, M. de Vera, R. Esquivias, Vice Mayor Romero, Mayor Kelley

NOES: None.

ABSENT: None.

ABSTAIN: None.




Chris Kelley, Mayor