

# City of Hercules

111 Civic Drive  
Hercules, CA 94547



## Meeting Agenda

Tuesday, March 26, 2019

7:00 PM

**SPECIAL CLOSED SESSION - 6:00 P.M.**

**REGULAR MEETING - 7:00 P.M.**

**Council Chambers**

### **City Council**

*Mayor Dan Romero*  
*Vice Mayor Roland Esquivias*  
*Council Member Chris Kelley*  
*Council Member Gerard Boulanger*  
*Council Member Dion Bailey*

*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](http://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. [19-531](#) Pursuant to Government Code Section 54957(b)(1) PUBLIC EMPLOYMENT - Title: City Manager Contract
2. [19-532](#) Pursuant to Government Code Section 54956.9 (d)(1), Conference with Legal Counsel - Pending/Existing Litigation - Taylor Morrison of California, LLC, entitled *Taylor Morrison of California, LLC v. City of Hercules*, Superior Court for the County of Contra Costa, Case No. C19-00366.

**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. [19-528](#) Proclamation Recognizing Stanley Tom for his Service to the Hercules Finance Commission and Acknowledging his Dedication and Commitment to the Hercules Community

Attachments: [Proclamation - Stanley Tom - Finance Commission - 2019](#)

2. [19-519](#) Presentation from Education Matters, Jason Singer, Executive Director

Attachments: [WCC-Master-Spreadsheet-2017-18](#)

**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. [19-529](#) **Meeting Minutes**  
**Recommendation:** Approve the Regular Meeting Minutes of March 12, 2019.

**Attachments:** [Minutes - 031219 - Regular](#)

2. [19-516](#) **Proclamation Declaring the Month of March as American Red Cross Month**  
**Recommendation:** Receive Proclamation recognizing March 2019 as American Red Cross Month in the City of Hercules.

**Attachments:** [Staff Report - American Red Cross 0326209](#)  
[Proclamation - 2019 Red Cross Proclamation Final](#)

## XIII. DISCUSSION AND/OR ACTION ITEMS

1. [19-515](#) **Update on WestCAT Bus Service**  
**Recommendation:** Receive Report, Discuss, and Provide Direction, if any.

**Attachments:** [Staff Report - West Cat Bus Service 03262019](#)  
[Attach 1 - Full-System-Map](#)  
[Attach 2 - Bayfront Interim Bus Improvements](#)

2. [19-518](#) **Multi-Family Smoking Ordinance Update**  
**Recommendation:** Receive update, discuss, and provide direction, if any.

**Attachments:** [Staff Report - Update Multi Family Smoking 03262019](#)  
[072418 Staff Report - smoking restrictions multi-family units discussion](#)

3. [19-530](#) **Second Reading and Adoption of Transportation Facilities Impact Fee Ordinance**  
**Recommendation:** Waive second reading and adopt the attached Ordinance of the City Council of the City of Hercules amending Title 10, Chapter 18 - Development Impact Fees, Article 6 - Traffic Facilities Impact Fees of the Hercules Municipal Code related to the Transportation Facilities Impact Fees.
- Attachments:**     [Staff Report - 2nd Reading of Transportation Facilities Fee Ordinance 512](#)  
                              [Attach 1- Ordinance 518 -Transportation Impact Fees](#)  
                              [Exhibit A to Ordinance 518-Amending HMC Transportation Impact Fees](#)  
                              [Attach 2- Previously Passed CC Reso 19-011 Setting Transportation Impact Fees](#)
4. [19-501](#) **Proposed Amendment to Employment Agreement for City Manager David Biggs**  
**Recommendation:** Adopt a Resolution of the Hercules City Council approving Amendment No. 2 to the Employment Agreement with City Manager David Biggs extending the term of the agreement to December 21, 2021 with an option for two (2) additional one year extensions, and effective July 1, 2019, providing a 5% deferred compensation match and a 10% increase in annual salary.
- Attachments:**     [Staff Report - BIGGS Employment Agreement Extension 03262019](#)  
                              [Attach 1 - City Manager Employment Agreement](#)  
                              [Attach 2 - Amendment No. 1](#)  
                              [Attach 3 - CM Employment Agree Reso](#)  
                              [Attach 4 - BIGGS Contract Amendment No. 2](#)
5. [19-517](#) **Update on Landscape & Lighting Assessment Districts and 2019/20 Annual Renewal**  
**Recommendation:** Receive report, discuss, and provide direction, if any.
- Attachments:**     [Staff Report - L&LAD Update 03262019](#)  
                              [Attach 1 - 10232018 Staff Report & Attachments](#)  
                              [Attach 2 - LLAD Neighborhood Notification Letter 11272018 final](#)
6. [19-527](#) **Inclusionary Housing Implementation Policy Recommendations**  
**Recommendation:** Receive report, discuss, and provide direction on formulation of an inclusionary housing implementation policy to manage the City's interests in the development, restriction, and management of affordable housing units to be constructed as part of projects with development agreements requiring affordable housing.
- Attachments:**     [Staff Report - Inclusionary Housing Policy 03262019](#)  
                              [Attach 1 - Ordinance 469](#)  
                              [Attach 2 - Inclusionary Housing Best Practices](#)



**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, April 9, 2019 at 7:00 p.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](http://www.ci.hercules.ca.us) and can receive e-mail notification of agenda and staff report postings by signing up to receive an enotice from the City's homepage. Agendas and staff reports may also be obtained by contacting the Administrative Services Department at (510) 799-8215

(Posted: March 21, 2019)

**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, and on the City's website ([www.ci.hercules.ca.us](http://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.

## **PROCLAMATION**

### **RECOGNIZING STANLEY TOM FOR HIS SERVICE TO THE HERCULES FINANCE COMMISSION AND ACKNOWLEDGING HIS DEDICATION AND COMMITMENT TO THE HERCULES COMMUNITY**

**WHEREAS**, as a Hercules resident, Stanley Tom wished to share his knowledge to engage the community and to provide oversight by conducting quarterly review of the City's financial status; reviewing the City's audited financial statements; review of the City's proposed budget; and by providing review and comment on items of extraordinary financial impact.

**WHEREAS**, as a member of the Hercules Finance Commission, Stanley Tom served as a member of the Oversight Committee for Measure "A", including providing an annual report, to ensure that utility user tax funds are spent in accordance with the voter approved measure adopted in June 2013, and in addition served as a member of the Oversight Committee for Measure "O", including providing an annual report to ensure that the sales tax revenues approved by Hercules voters are spent in accordance with the voter approved measure adopted in June 2012.

**WHEREAS**, in order to learn more about the City's finances and to assist and advise the City Council on matters of policy and public interest related to the management of the City's finances and budget, Mr. Stanley Tom responded to the Council's call for applicants to serve on this newly formed Commission; and

**WHEREAS**, on November 25, 2014, Stanley Tom was appointed to the Hercules Finance Commission by a unanimous vote of the Hercules City Council; and

**WHEREAS**, during his tenure, Commissioner Tom provided information to and advised the City Council on items related to the City's finances, including serving as the Oversight Committee for Measure "A" and Measure "O"; and

**WHEREAS**, Stanley Tom successfully served as a Commissioner of the Hercules Finance Commission from 2014-2019.

**NOW THEREFORE BE IT PROCLAIMED** that I, Dan Romero, Mayor of the City of Hercules, on behalf of the entire City Council, do hereby recognize Stanley Tom for his service to the Hercules Finance Commission and hereby acknowledge his dedication and commitment to the Hercules community.

In witness whereof, I hereunto set my hand and cause the seal of the City of Hercules to be affixed this \_\_\_\_ day of \_\_\_\_\_, 2019

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Dan Romero, Mayor

OVERVIEW			DEMOGRAPHICS 2017-18									SBAC RESULTS 2018					
School Name	Family	Grade	Total Enroll	FRL	ELL	SPED*	White	Asian	AA/ Black	Hispanic /Latino	Other	ELA - Met or Exceeded	ELA - Delta from 2017	ELA - 3 year Avg. Delta	Math - Met or Exceeded	Math - Delta from 2017	Math - 3 year Avg. Delta
Amethod: Benito Juarez Elementary	Charter	Elem	417	92%	56%	10%	1%	2%	2%	95%	1%	37%	4%	-1%	41%	1%	-4%
Amethod: John Henry High	Charter	High	257	93%	28%	1%	1%	1%	2%	95%	0%	62%	10%	3%	41%	-1%	0%
Amethod: Richmond Charter Academy	Charter	Middle	218	90%	53%	7%	1%	3%	1%	95%	1%	37%	-2%	-3%	21%	-20%	-8%
Aspire Richmond College Preparatory	Charter	M & H	520	69%	18%	12%	4%	6%	15%	68%	7%	41%	7%	-2%	18%	-7%	-1%
Aspire Richmond Technology Academy	Charter	Elem	342	83%	40%	9%	1%	4%	7%	70%	18%	45%	10%	3%	46%	6%	4%
Bayview Elementary	Richmond	Elem	529	90%	50%	6%	3%	10%	21%	59%	8%	14%	-1%	-1%	10%	-2%	-2%
Caliber: Beta Academy	Charter	E & M	793	79%	30%	11%	2%	3%	14%	76%	6%	44%	4%	3%	30%	4%	-2%
Cesar E. Chavez Elementary	Richmond	Elem	522	94%	64%	9%	3%	2%	5%	89%	2%	17%	-2%	-2%	10%	-2%	0%
Collins Elementary	Pinole	Elem	332	62%	19%	15%	15%	15%	19%	32%	19%	36%	0%	-1%	28%	-1%	0%
Coronado Elementary	Kennedy	Elem	437	95%	53%	6%	3%	3%	26%	66%	3%	8%	-10%	-4%	7%	-4%	-4%
Crespi Junior High	De Anza	Middle	475	82%	19%	15%	9%	16%	21%	45%	9%	33%	1%	0%	18%	-2%	0%
De Anza High	De Anza	High	1,382	70%	19%	16%	9%	14%	23%	43%	11%	46%	11%	3%	14%	3%	1%
Dover Elementary	Richmond	Elem	681	92%	71%	10%	3%	3%	5%	89%	1%	21%	1%	-1%	9%	0%	-1%
Edward M. Downer Elementary	Richmond	Elem	626	91%	66%	8%	4%	4%	6%	85%	2%	20%	-4%	1%	15%	-2%	0%
El Cerrito High	El Cerrito	High	1,482	44%	13%	12%	28%	18%	20%	28%	6%	41%	-2%	-5%	29%	3%	0%
Ellerhorst Elementary	Pinole	Elem	367	43%	17%	18%	31%	6%	11%	40%	12%	45%	9%	2%	33%	9%	-1%
Fairmont Elementary	El Cerrito	Elem	540	62%	40%	14%	19%	25%	10%	34%	12%	46%	-4%	3%	34%	-5%	1%
Ford Elementary	Richmond	Elem	448	94%	61%	6%	4%	6%	5%	81%	4%	27%	0%	1%	12%	0%	-2%
Fred T. Korematsu Middle	El Cerrito	Middle	715	45%	13%	13%	31%	17%	16%	30%	6%	54%	-3%	2%	42%	1%	3%
Grant Elementary	Kennedy	Elem	523	93%	75%	14%	2%	4%	6%	87%	2%	17%	5%	2%	8%	-2%	0%
Greenwood Academy (Alternative)	Kennedy	Other	358	78%	33%	12%	6%	3%	24%	63%	5%	5%	-1%	1%	0%	-1%	0%
Hanna Ranch Elementary	Hercules	Elem	485	32%	12%	5%	7%	22%	15%	24%	31%	53%	-9%	-3%	47%	-13%	-2%
Harding Elementary	El Cerrito	Elem	448	38%	23%	15%	38%	20%	11%	22%	10%	58%	1%	3%	49%	-3%	2%
Helms Middle	Richmond	Middle	997	93%	42%	12%	1%	4%	11%	81%	3%	20%	2%	-2%	7%	-3%	-2%
Hercules High	Hercules	High	935	44%	10%	11%	6%	19%	27%	22%	26%	62%	1%	0%	27%	-1%	-1%
Hercules Middle	Hercules	Middle	594	44%	9%	12%	7%	21%	23%	22%	27%	53%	6%	5%	34%	3%	2%
Highland Elementary	De Anza	Elem	478	90%	43%	13%	3%	11%	21%	58%	7%	38%	0%	-1%	32%	0%	0%
John F. Kennedy High	Kennedy	High	881	96%	38%	14%	2%	5%	24%	66%	3%	20%	6%	-1%	1%	-2%	-2%
Kensington Elementary	El Cerrito	Elem	481	8%	7%	8%	61%	12%	4%	11%	12%	83%	-2%	0%	75%	-6%	0%
Lake Elementary	Richmond	Elem	412	93%	62%	6%	3%	6%	12%	73%	6%	20%	4%	1%	20%	10%	4%
Leadership Public Schools: Richmond	Charter	High	577	89%	21%	9%	0%	2%	4%	92%	2%	63%	-10%	3%	27%	8%	3%
Lincoln Elementary	Kennedy	Elem	428	88%	58%	8%	1%	1%	22%	72%	4%	13%	3%	2%	13%	3%	3%
Lovonya DeJean Middle	Kennedy	Middle	439	90%	44%	15%	1%	6%	18%	72%	2%	15%	4%	1%	4%	0%	0%
Lupine Hills Elementary	Hercules	Elem	398	44%	20%	20%	9%	23%	17%	23%	28%	37%	-3%	-1%	33%	2%	-2%
Madera Elementary	El Cerrito	Elem	498	22%	13%	7%	40%	22%	7%	15%	15%	73%	5%	0%	72%	8 4%	3%

School Name	Family	Grade	Total Enroll	FRL	ELL	SPED*	White	Asian	AA/ Black	Hispanic /Latino	Other	ELA - Met or Exceeded	ELA - Delta from 2017	ELA - 3 year Avg. Delta	Math - Met or Exceeded	Math - Delta from 2017	Math - 3 year Avg. Delta
Making Waves Academy	Charter	M & H	795	86%	19%	6%	1%	1%	7%	89%	2%	44%	➡ 0%	⬆ 1%	25%	⬆ 4%	⬇ -1%
Manzanita Middle	Charter	Middle	121	85%	35%	5%	4%	2%	7%	84%	4%	31%	⬇ -18%	⬆ 3%	15%	⬇ -11%	⬆ 1%
Martin Luther King, Jr. Elementary	Kennedy	Elem	470	98%	48%	15%	6%	7%	32%	52%	3%	4%	⬇ -4%	⬇ -2%	4%	⬇ -1%	⬇ -1%
Middle College High	Hercules	High	296	59%	3%	0%	8%	14%	19%	52%	7%	84%	⬇ -12%	⬇ -3%	55%	⬇ -6%	⬇ -2%
Mira Vista Elementary	El Cerrito	Elem	571	58%	29%	14%	23%	10%	19%	38%	10%	45%	⬆ 1%	⬆ 3%	35%	⬆ 2%	⬆ 2%
Montalvin Manor Elementary	Pinole	Elem	443	89%	53%	8%	5%	7%	14%	68%	6%	49%	⬆ 5%	⬆ 1%	23%	⬇ -4%	⬇ -1%
Murphy Elementary	De Anza	Elem	492	71%	28%	16%	12%	12%	20%	42%	14%	47%	⬆ 5%	⬆ 5%	35%	⬆ 5%	⬆ 2%
Nystrom Elementary	Kennedy	Elem	512	90%	63%	8%	3%	2%	16%	74%	6%	13%	⬇ -2%	⬆ 2%	13%	⬆ 3%	⬆ 3%
Ohlone Elementary	Hercules	Elem	413	34%	14%	13%	7%	19%	20%	23%	32%	54%	⬆ 3%	⬆ 3%	46%	➡ 0%	⬆ 1%
Olinda Elementary	De Anza	Elem	350	34%	24%	7%	18%	23%	15%	30%	14%	52%	⬇ -4%	⬇ -2%	43%	⬆ 1%	⬇ -1%
Peres Elementary	Richmond	Elem	540	93%	61%	15%	2%	2%	15%	78%	3%	26%	⬇ -4%	⬇ -1%	19%	⬆ 1%	➡ 0%
Pinole Middle	Pinole	Middle	505	68%	23%	17%	11%	12%	22%	44%	11%	32%	⬇ -1%	⬆ 2%	19%	⬇ -2%	⬇ -1%
Pinole Valley High	Pinole	High	1,136	62%	15%	11%	15%	13%	16%	45%	12%	42%	⬇ -9%	➡ 0%	18%	⬇ -6%	⬆ 2%
Richmond College Preparatory	Charter	Elem	503	78%	47%	7%	0%	0%	27%	70%	2%	54%	⬆ 8%	⬆ 5%	53%	⬆ 12%	⬆ 6%
Richmond High	Richmond	High	1,511	85%	43%	10%	1%	4%	6%	86%	3%	34%	⬆ 5%	⬆ 1%	10%	⬆ 2%	⬆ 1%
Riverside Elementary	Richmond	Elem	392	89%	41%	12%	8%	11%	18%	53%	9%	29%	➡ 0%	⬆ 2%	28%	⬇ -4%	⬆ 3%
Shannon Elementary	Pinole	Elem	317	70%	30%	12%	9%	16%	15%	42%	20%	44%	⬆ 5%	⬆ 7%	44%	⬆ 7%	⬆ 8%
Sheldon Elementary	De Anza	Elem	366	74%	32%	18%	13%	15%	23%	39%	11%	31%	⬇ -2%	➡ 0%	28%	⬆ 1%	⬇ -1%
Stege Elementary	Kennedy	Elem	280	93%	29%	9%	3%	7%	58%	25%	7%	8%	⬆ 2%	⬇ -1%	3%	⬆ 2%	➡ 0%
Stewart Elementary	Pinole	Elem	466	47%	13%	8%	17%	13%	22%	35%	14%	33%	⬇ -2%	⬇ -2%	20%	⬇ -6%	⬇ -3%
Summit Public School: K2	Charter	M & H	426	58%	14%	8%	14%	8%	21%	37%	21%	51%	⬇ -13%	⬆ 1%	29%	⬇ -9%	⬇ -3%
Summit Public School: Tamalpais	Charter	Middle	237	65%	15%	10%	6%	11%	15%	51%	17%	53%	⬆ 3%	⬆ 1%	36%	⬇ -9%	⬇ -3%
Tara Hills Elementary	Pinole	Elem	464	69%	30%	16%	10%	9%	22%	49%	10%	35%	⬇ -5%	⬆ 1%	21%	⬇ -1%	➡ 0%
Valley View Elementary	De Anza	Elem	343	53%	17%	13%	29%	16%	15%	27%	13%	42%	⬆ 3%	⬇ -1%	33%	⬇ -5%	⬇ -5%
Verde Elementary	Richmond	Elem	328	97%	73%	7%	1%	1%	13%	84%	3%	17%	➡ 0%	⬆ 3%	12%	⬆ 3%	⬆ 2%
Vista High (Alternative)	Richmond	Other	264	76%	25%	56%	13%	8%	28%	45%	7%	28%	⬇ -3%	⬆ 3%	6%	⬇ -1%	➡ 0%
Washington Elementary	El Cerrito	Elem	469	64%	41%	8%	16%	2%	13%	66%	3%	19%	⬇ -9%	⬇ -4%	19%	⬇ -10%	⬇ -3%
West County Mandarin	Kennedy	Elem	67	49%	33%	N/A	8%	37%	16%	28%	11%	N/A	N/A	N/A	N/A	N/A	N/A
Wilson Elementary	Kennedy	Elem	429	89%	50%	15%	4%	11%	11%	66%	7%	26%	⬇ -8%	⬆ 1%	20%	➡ 0%	⬆ 2%
District Total	N/A	All	28,318	70%	34%	12%	11%	11%	17%	52%	9%	34%	➡ 0%	⬆ 1%	23%	➡ 0%	➡ 0%
Charter Total	N/A	All	5,206	80%	30%	8%	2%	3%	11%	77%	6%	46%	⬆ 1%	N/A	31%	➡ 0%	N/A
West Contra Costa Total	N/A	All	33,524	72%	33%	11%	10%	10%	16%	56%	9%	36%	⬆ 1%	N/A	25%	➡ 0%	N/A
Contra Costa Total	N/A	All	178,060	41%	17%	12%	31%	13%	9%	36%	12%	54%	➡ 0%	⬆ 1%	42%	⬇ -3%	➡ 0%
State Total	N/A	All	6,220,413	60%	20%	12%	23%	9%	6%	54%	8%	50%	⬆ 1%	⬆ 2%	39%	⬆ 1%	⬆ 2%

Color Scale 0% 100%



# City of Hercules

111 Civic Drive  
Hercules, CA 94547

## Meeting Minutes

### City Council

*Mayor Dan Romero*  
*Vice Mayor Roland Esquivias*  
*Council Member Chris Kelley*  
*Council Member Gerard Boulanger*  
*Council Member Dion Bailey*

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

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Tuesday, March 12, 2019

7:00 PM

Council Chambers

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#### **SPECIAL CLOSED SESSION - NONE.**

#### **REGULAR MEETING - 7:00 P.M.**

#### **I. SPECIAL MEETING - CLOSED SESSION – NONE.**

#### **II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS - NONE.**

#### **III. CONVENE INTO CLOSED SESSION - NONE.**

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

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

**Present:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

#### **V. REPORT ON ACTION TAKEN IN CLOSED SESSION**

None.

#### **VI. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Vice Mayor Esquivias.

#### **VII. MOMENT OF SILENCE**

Mayor Romero called for a moment of silence for Leo Garfield, former Police Chief for the City of Richmond, CA. Leo Garfield passed away at the age of 90.

#### **VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS**

1. [19-493](#) Presentation from Education Matters, Jason Singer, Executive Director  
This item was tabled to the March 26, 2019 City Council meeting.

**IX. AGENDA ADDITIONS/DELETIONS**

City Manager Biggs stated there were no additions or deletions to the agenda. City Manager Biggs identified the supplemental information handed out prior to the meeting and available to the public at the side table.

**X. PUBLIC COMMUNICATIONS**

Speakers: Lynne Noone; Ben Ortega.

**XI. PUBLIC HEARINGS**

1. [19-492](#) **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. Ms. Janna Coverston from Republic Services provided additional information. City Council asked questions and provided comments.

Mayor Romero opened the public hearing.

Mayor Romero closed the public hearing with no comments offered from the public.

**MOTION: A motion was made by Council Member Kelley, seconded by Council Member Boulanger, to approve Resolution 19-010. The motion carried by the following vote:**

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

2. [19-497](#) **2019 Hercules Transportation Impact Fee Update**  
**Recommendation:** Hold a public hearing and consider the following:
- 1) Approving a Resolution
    - a) Adopting the 2019 Hercules Transportation Impact Fee Nexus Study
    - b) Approving a "Transportation Impact Fee" as set by the Council at or below the maximum justified fee, and
    - c) Amending the City's Master Fee Schedule to Replace the "Traffic Facilities Fee" with the "Transportation Impact Fee" contingent upon adoption of the companion Ordinance, and

2) Waive the first reading and introduce an Ordinance amending title 10, Chapter 18, Article 6 - Traffic Facilities Impact Fees.

City Manager Biggs introduced the item and Planning Director Smyth

provided a staff report. Assistant City Attorney Crawl provided additional information. City Council asked questions and provided comments.

Mayor Romero opened the public hearing.

Mayor Romero closed the public hearing with no comments offered from the public.

City Council gave direction to staff to set the transportation impact fee at 75% with the exception of hotels to be set at 50% for up to five (5) years. Furthermore, City Council gave direction to staff to rescind the 2011 temporary reduction Resolution back to 2010 rates set by the 2009 nexus study.

**MOTION: A motion was made by Council Member Kelley, seconded by Vice Mayor Esquivias, to adopt Resolution 19-011, as amended. The motion carried by the following vote:**

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

**MOTION: A motion was made by Vice Mayor Esquivias, seconded by Council Member Kelley, to waive the first reading and approve the introduction of Ordinance 518, as amended. The motion carried by the following vote:**

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

**3. [19-499](#)**

**2018 Annual Housing Element Progress Report**

**Recommendation:** Conduct a public hearing and approve the annual Housing Element Progress Report for the 2018 calendar year and direct staff to submit the report to the appropriate state and regional agencies via minute action.

City Manager Biggs introduced the item and Planning Director Smyth provided a staff report.

Mayor Romero opened the public hearing. Mayor Romero closed the public hearing with no comments offered from the public.

**MOTION: A motion was made by Council Member Bailey, seconded by Council Member Boulanger, to approve the 2018 Annual Housing Element Progress Report. The motion carried by the following vote:**

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

**XII. CONSENT CALENDAR**

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

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey



1. [19-495](#) **Meeting Minutes**  
**Recommendation:** Approve the Special and Regular Meeting Minutes of February 26, 2019.

Approved.

2. [19-496](#) **Acceptance of the Bay Trail West Project**  
**Recommendation:** Adopt a Resolution accepting the Bay Trail West Project contract with Grade Tech Inc. as complete for a total amount of \$1,252,872 and authorizing the filing of the Notice of Completion with the Contra Costa County Recorder's Office.

Approved.

### **XIII. DISCUSSION AND/OR ACTION ITEMS**

Mayor Romero called for a 10 minute recess at 9:00 p.m.  
Mayor Romero reconvened the meeting at 9:10 p.m.

1. [19-491](#) **Update on Recycling and Recycling Audits by Republic Services**  
**Recommendation:** Receive Report, Discuss, and Provide Direction, if any.

City Manager Biggs introduced the item and provided a staff report. Mr. Sean Moberg from Republic Services gave a presentation on recycling and recycling audits. Mr. Moberg introduced other staff members from Republic Services: Regan Chung and Terry Singleton, Recycling Coordinator and BL Moore, Political and Community Leader. Mr. Moberg stated that Terry Singleton would be giving the presentation.

Public Speakers: Waldemeir Pernes; Mary Tobin-Kelly.

City Council asked questions and provided comments. City Council provided direction to staff to work with Republic Services and come back in 2-4 weeks with a proposal to incorporate the recycling audit fee into either the franchise agreement or the current approved rate structure.

2. [19-498](#) **Approval of Contract Amendment No. 3 for \$15,080 with DKS for the Transportation Impact Fee Nexus Study and Circulation element Update for a Total Not To Exceed Contract Amount of \$250,094, and Appropriation of \$15,080 to cover the Cost of Said Amendment.**  
**Recommendation:** Adopt a Resolution appropriating an additional \$15,080 in funds from the General Plan Update Fees and approving Amendment No. 3 to Contract # 16-056 with DKS for a total not to exceed contract amount of \$250,094, to update the Transportation Impact Fee Study and the City's Circulation Element.

City Manager Biggs introduced the item and provided and staff report. City

Council asked questions and provided comments.

**MOTION:** A motion was made by Council Member Kelley, seconded by Vice Mayor Esquivias, to adopt Resolution 19-013. The motion carried by the following vote:

**Aye:** 5 - Mayor D. Romero, Vice Mayor R. Esquivias, Council Member C. Kelley, Council Member G. Boulanger, and Council Member D. Bailey

3. [19-490](#)

**Discussion of Parking Restrictions**

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

City Manager Biggs introduced the item and provided and staff report. City Council asked questions and provided comments. City Council gave direction to refer this item to the Traffic and Safety Committee.

**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 Members reported on attendance at events and community and regional meetings.

**XVI. ADJOURNMENT**

Mayor Romero adjourned the meeting at 11:08 p.m.



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of March 26, 2019

**TO:** Members of the City Council

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

**SUBJECT:** Proclamation Declaring March as American Red Cross Month

**RECOMMENDED ACTION:** Receive Proclamation Recognizing March 2019 as American Red Cross Month in the City of Hercules

**FISCAL IMPACT OF RECOMMENDATION:** None

**DISCUSSION:** The American Red Cross plays an integral role in American society in many ways especially in response to disasters or emergencies. Mayor Romero has signed a proclamation declaring March as Red Cross Month here in Hercules, joining other cities in Contra Costa County and throughout the nation is doing so.

**ATTACHMENTS:**

1. Proclamation

<i>Financial Impact</i>			
<b>Description:</b>			
<b>Funding Source:</b>			
<b>Budget Recap:</b>			
Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>			

## **PROCLAMATION RECOGNIZING MARCH 2019 AS AMERICAN RED CROSS MONTH IN THE CITY OF HERCULES**

**WHEREAS**, every year the American Red Cross, the largest humanitarian organization in the world, responds to an average of more than 62,000 disasters across the country, from small home fires to massive disasters; and

**WHEREAS**, last year's large crises included overwhelming mudslides in California, an earth-shattering volcano eruption in Hawaii, ravaging wildfires in California and Colorado, destructive hurricanes in Florida and the Carolinas, and a devastating typhoon in U.S. territories; and

**WHEREAS**, thousands of American Red Cross volunteers provided emotional support and around-the-clock shelter for disaster victims, served millions of meals and snacks with community partners, collected 40 percent of the nation's blood, taught skills that save lives, provided international humanitarian aid, and supported military members and their families; and

**WHEREAS**, through its Home Fire Campaign that began in October 2014, the American Red Cross has worked with fire departments and community partners across the country to install at no-cost to the residents more than 1.5 million smoke alarms, made more than 648,000 households safer and saved 511 lives. During the past year, the American Red Cross Bay Area responded to 838 home fires, installed 10,605 free smoke alarms, made 3,403 households safer and helped save lives; and

**WHEREAS**, last year in Contra Costa County, besides responding to 109 local disasters, the American Red Cross has a long history of helping our neighbors by teaching First Aid, CPR & AED to 6,595 enrollees and Aquatic & Water Safety to another 2,173. We also assisted 1,393 military families and collected 16,025 units of blood from our generous blood donors; and

**WHEREAS**, March is American Red Cross Month, a special time to recognize and thank the American Red Cross volunteers, partners and donors who give of their time and resources to deliver help and hope to members of the community; and

**WHEREAS**, the American Red Cross applaud our heroes here in Contra Costa County who gave 43,495 hours to assist our neighbors when they needed a helping hand; and

**WHEREAS**, we dedicate the month of March to all those who support the American Red Cross mission to prevent and alleviate human suffering in the face of emergencies. Our community depends on the American Red Cross, which relies on volunteers and the generosity of the public to perform its mission.

**NOW, THEREFORE BE IT PROCLAIMED** that I, Dan Romero, Mayor of the City of Hercules, on behalf of the entire City Council, do hereby recognize March 2019 as American Red Cross Month in the City of Hercules.

In witness whereof, I hereunto set my hand and cause the seal of the City of Hercules to be affixed this 26<sup>th</sup> day of March, 2019.

---

Dan Romero, Mayor



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of March 26, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Mike Roberts, Public Works Director

**SUBJECT:** Update on WestCAT Bus Service

**RECOMMENDED ACTION:** Receive Report, Discuss, and Provide Direction, if any.

**FISCAL IMPACT OF RECOMMENDATION:** None as a result of this report.

**DISCUSSION:** The City Council recently requested an update on WestCAT bus service and WestCAT General Manager Charlie Anderson will be in attendance to provide the Council with a service update. Attached is the current service map for WestCAT (Attachment A).

In addition, City staff is currently working with WestCAT to introduce bus service to the Bayfront. This service introduction has been made possible by the completion of the City's Path to Transit project. This interim service introduction is planned to be an extension of JX and/or JPX service to the El Cerrito del Norte BART station. In order to introduce this service, staff is currently working on the design of interim improvements which would allow the buses to stop on Bayfront Boulevard to pick up and drop off passengers, travel up Bayfront towards Railroad Avenue and then use the alley to parallel to Bayfront to return to Bayfront Boulevard via Ernest Street. In addition, staff is working on a Memorandum of Understanding with the property owner, David Cury, for the use of the parcel through which the alley passes and upon which there is an access easement, to facilitate the use by busses.

In addition to facilitating bus service, these interim improvements will also provide for an interim dedicated pedestrian connection along Bayfront Boulevard between the Bay Trail East and Bay Trail West segments. Attached is the current conceptual design for these improvements (Attachment 2).

### **ATTACHMENTS:**

1. WestCAT Service Map
2. Conceptual Interim Bus Service Improvement Design

*Financial Impact*

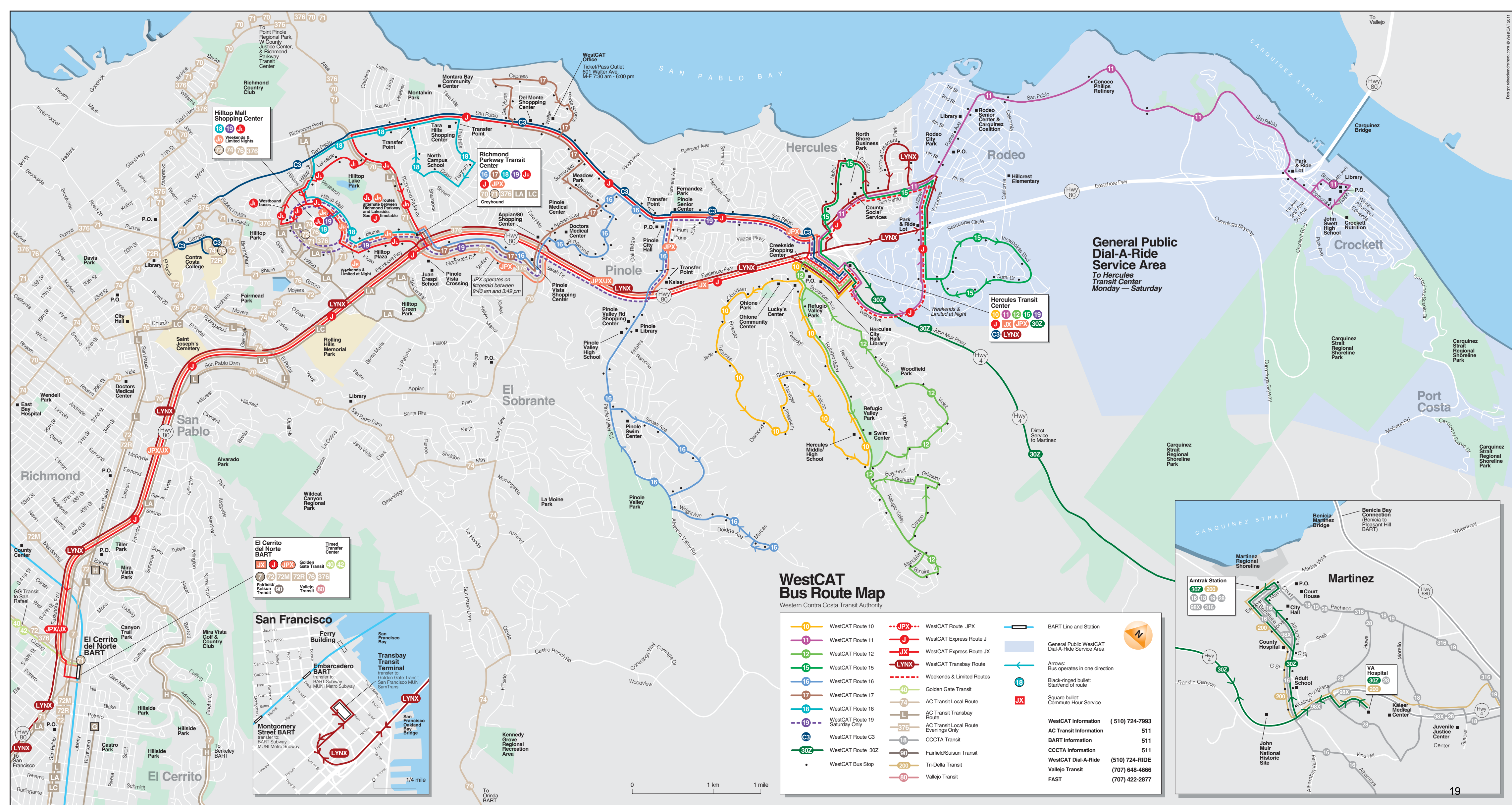
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**Funding Source:**

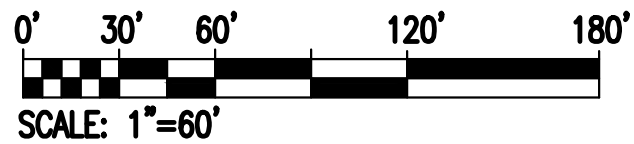
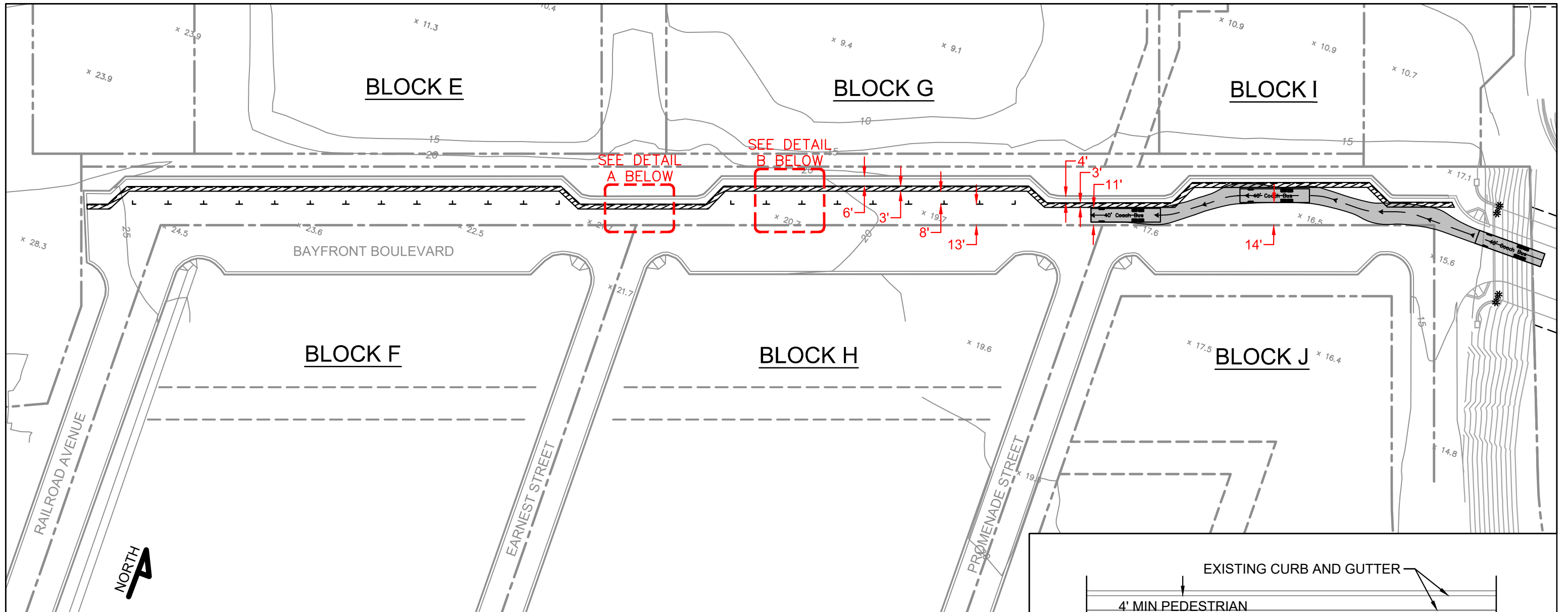
**Budget Recap:**

Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change:	Yes <input type="checkbox"/> No <input type="checkbox"/>		







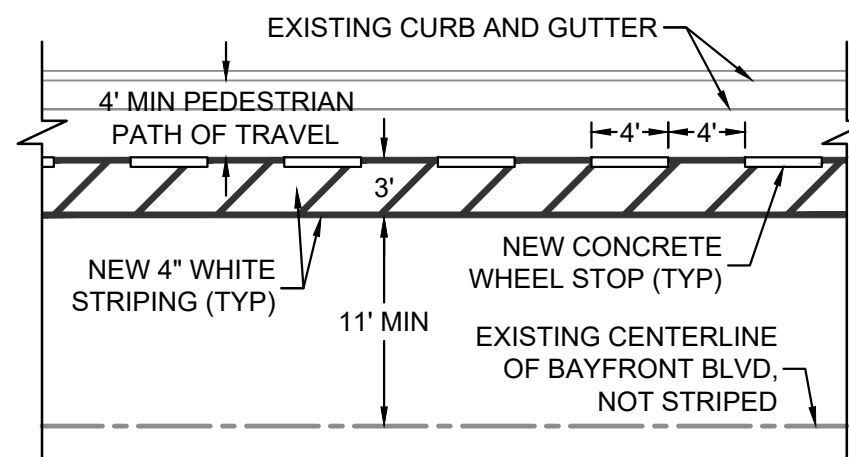


**BUS STOP CONSIDERATIONS**  
**CITY OF HERCULES**  
**BAYFRONT BOULEVARD**

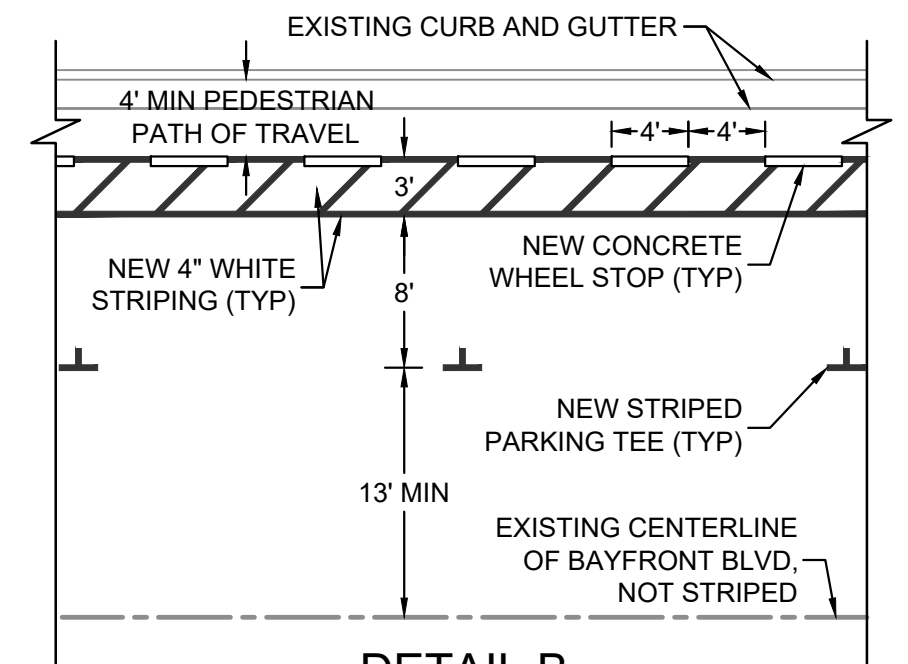
FEBRUARY-28-2019



1936 University Ave, Suite 250  
 Berkeley, CA 94704  
 510 343 6400  
 www.parisi-associates.com

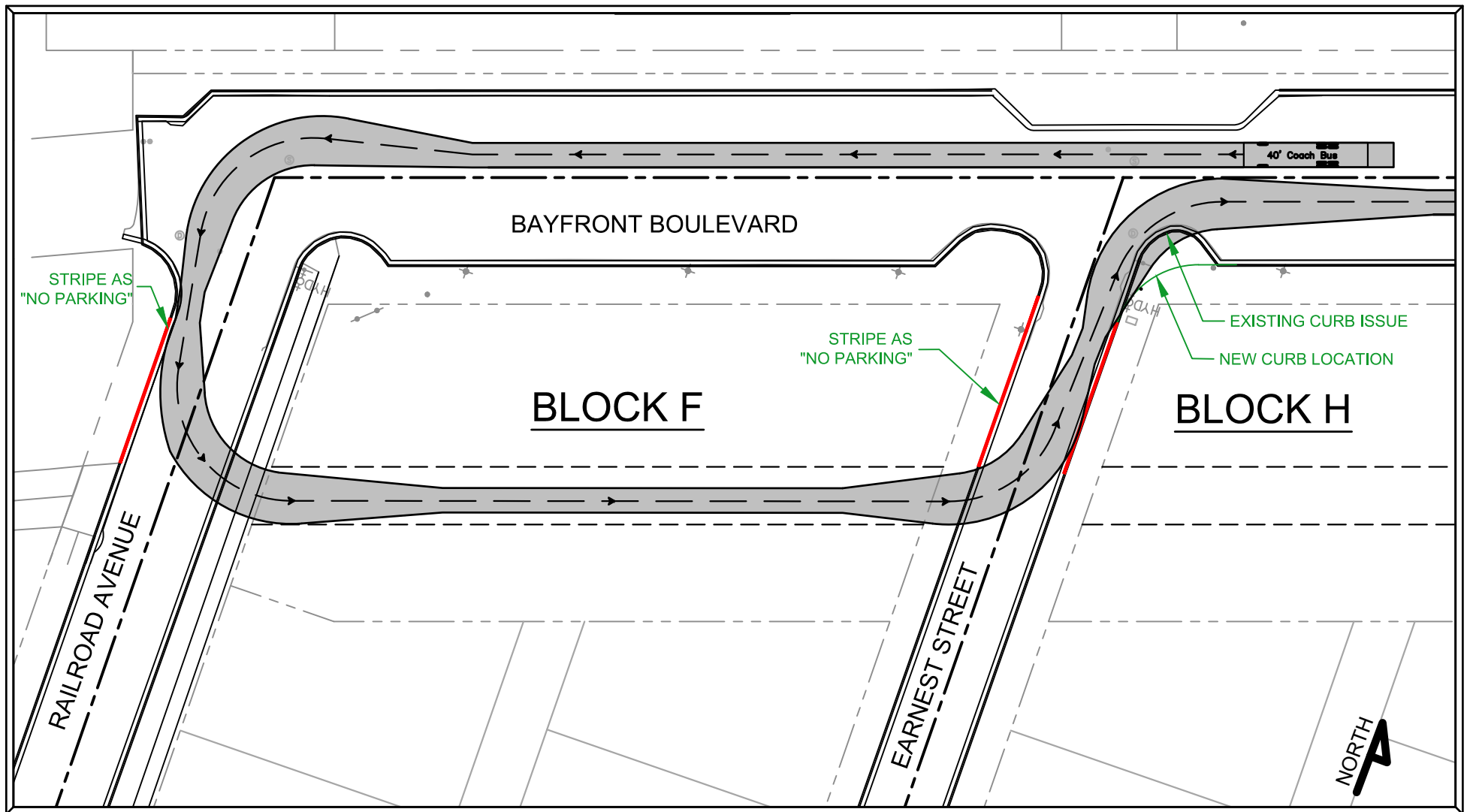


**DETAIL A**  
 WHERE NO PARALLEL  
 PARKING IS PROVIDED



**DETAIL B**  
 WHEN PARALLEL  
 PARKING IS PROVIDED





# CITY OF HERCULES

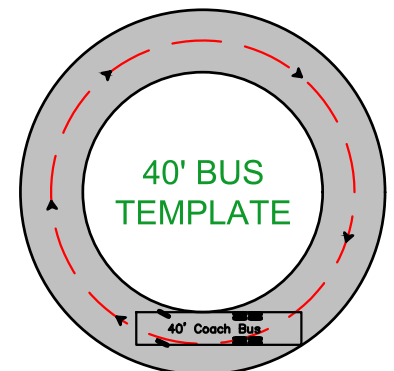
BAYFRONT BOULEVARD

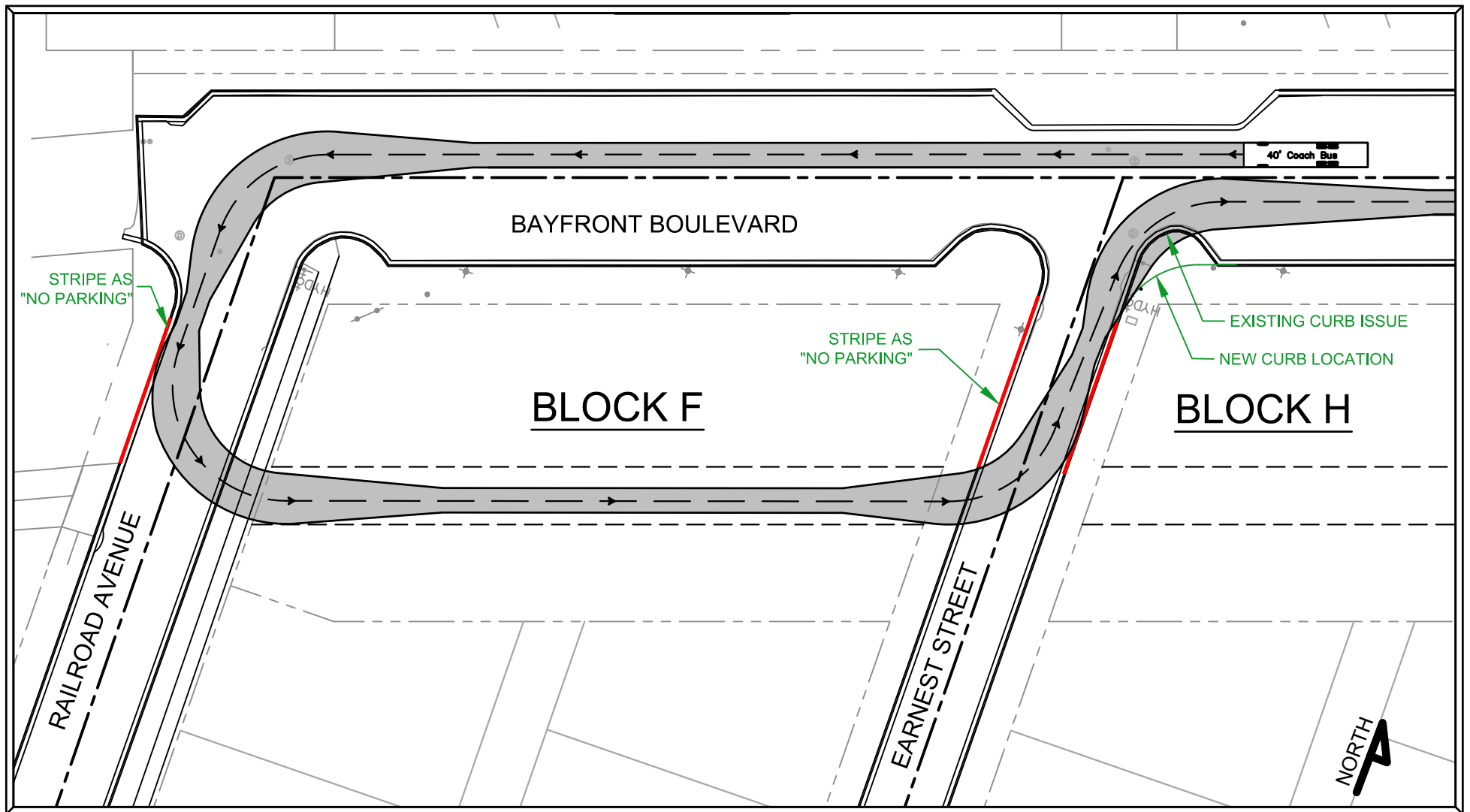
## OPTION 1: "BLOCK F"- BUS TURN AROUND

SEPTEMBER-17-2018



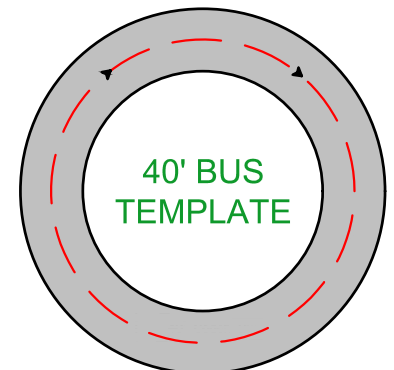
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**CITY OF HERCULES**  
BAYFRONT BOULEVARD

**OPTION 2: "BLOCK F"- BUS TURN AROUND**



SEPTEMBER-17-2018

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## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of March 26, 2019

**TO:** Members of the City Council

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

**SUBJECT:** Possible Multi-Family Smoking Ordinance

**RECOMMENDED ACTION:** Receive Update, Discuss, and Provide Direction, if any.

**FISCAL IMPACT OF RECOMMENDATION:** None as a result of this item, though, the adoption of restrictions on smoking in Multi-Family units may result in enforcement obligations and costs in the future.

**DISCUSSION:** On July 24, 2018, the City Council has a preliminary discussion about the desirability of restricting smoking in multi-family units. The staff report and attachments from that meeting are attached (Attachment 1). Since that time, the City Attorney has been further exploring the issues associated with the adoption of such a prohibition, including having reached out to the County of Contra Costa to discuss the possibility of the County enforcing such an ordinance should one be adopted either as a stand-alone ordinance or if the County's current restrictions were adopted by reference, as the City has done with animal control.

In the instance of animal control, the City contracts with the County for animal control services. While the City contracts with the County for plan check and building inspection services, and some limited code enforcement, smoking enforcement would not be part of these contract services. The County's Health Services has expressed a willingness to serve as a resource, but would not be able to provide actual enforcement services. As such, City staff is concerned that the adoption of a non-smoking ordinance for multi-family units would create expectations for enforcement which the City would not be able to fulfill.

This item is being presented to allow the City Council to determine if staff should bring back an ordinance for consideration which would implement Multi-Family Smoking Restrictions in the context of the limited ability to enforce here in Hercules. If the City Council would like to proceed, it is recommended that the City adopt by reference the County's code as to facilitate possible future involvement by the County in enforcement should that become an option at a later date.

**ATTACHMENTS:**

1. Staff Report from July 24, 2018 and attachments

<i>Financial Impact</i>			
<b>Description:</b>			
<b>Funding Source:</b>			
<b>Budget Recap:</b>			
Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>			



## **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.

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 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.

### **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<sup>[10]</sup>

## 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; Ord. No. 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<sup>[11]</sup>

### 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 all<sup>37</sup>

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) (<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) (<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) [<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=linkedin&nb=1>]



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

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**Contra Costa** [<https://caanet.org/news/?newsdivision=325>]

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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.<sup>19</sup> 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 24<sup>th</sup> day of April, 2018, and was passed and adopted at a regular meeting of the Hercules City Council on the 8<sup>th</sup> 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



## STAFF REPORT TO THE CITY COUNCIL

**DATE:** March 26, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** Holly Smyth, AICP, Planning Director

**SUBJECT:** Second Reading and Adoption of Transportation Facilities Impact Fee Ordinance

### RECOMMENDED ACTION:

Waive second reading and adopt the attached Ordinance of the City Council of the City of Hercules amending Title 10, Chapter 18- Development Impact Fees, Article 6- Traffic Facilities Impact Fees of the Hercules Municipal Code related to the Transportation Facilities Impact Fees.

### FISCAL IMPACT OF RECOMMENDATION:

Approval of updated Transportation Impact Fees will result in revenues that can be used to make improvements to the City's transportation infrastructure representing a fair share given the impacts of new development.

### DISCUSSION:

At the March 12, 2019 City Council meeting, after holding a public hearing, Council waived the first reading and introduced the draft ordinance modifying the Hercules Municipal Code (HMC) Title 10, Chapter 18, Article 6 with a few minor modifications related to the prior 2009 Traffic Facilities Impact Fees. In working further with the City Attorney's office, staff has incorporated clarifying text regarding that Council wished to incorporate in Ordinance Section 3 which is shown in tracked changes and which addresses what fees would apply if the State were to retroactively pre-empt this action. Please note that Exhibit A attached to the Ordinance now only contains Article 6 which is being amended within the HMC; Article 1 was only previously provided for context and has been removed

Once approved, the City staff will publish a summary of the Ordinance with the Council vote within fifteen (15) days after its passage and adoption. The Ordinance will become effective 60 days after adoption and at that time the updated fees as set in Resolution No. 19-011 (Attachment 2) adopted on March 12<sup>th</sup> will apply to any permits issued after that date, unless otherwise controlled by a Development Agreement.

### ATTACHMENTS:

1. Ordinance 512 with Exhibit A Amending Title 10, Chapter 18, Article 6 of the HMC
2. Resolution 19-011

## **ORDINANCE NO. 518**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES AMENDING TITLE 10, CHAPTER 18 OF THE HERCULES MUNICIPAL CODE RELATING TO TRANSPORTATION IMPACT FEES**

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

**WHEREAS**, the City conducted a comprehensive review of the City’s existing traffic impact fees to determine whether those fees are adequate to offset the cost of facilities related to future development; and

**WHEREAS**, the City undertook and caused to be prepared a study entitled “2019 Hercules Transportation Impact Fee Nexus Study” which, among other things, identified transportation facilities that will be impacted or necessitated by future development; and

**WHEREAS**, the 2019 Hercules Transportation Impact Fee Nexus Study recommended an increase to the City's existing transportation impact fees and substantiated the need for the increase by explaining the nexus between the imposition of the fees and the impact of future development to transportation facilities; and

**WHEREAS**, the City adopted the 2019 Hercules Transportation Impact Fee Nexus Study and approved the increased transportation impact fee concurrent with this Ordinance by way of Resolution 19-011; and

**WHEREAS**, the City has determined that it needs to amend its current development impact fee ordinance in order to offset all or a portion of the cost of transportation facilities identified in the 2019 Hercules Transportation Impact Fee Nexus Study.

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

#### **SECTION 1.**

Title 10, Chapter 18, Article 16 of the Hercules Municipal Code entitled “Development Impact Fees” is hereby amended to read as depicted on Exhibit A, attached hereto and made a part hereof.

#### **SECTION 2 – CEQA.**

The adoption of the 2019 Hercules Transportation Impact Fee Nexus Study and approval of the transportation impact fee do not constitute a “project” as that term is defined by or used in the California Environmental Quality Act (Cal. Pub. Res. Code section 21000 et seq.; “CEQA”) or

the CEQA Guidelines (Cal. Code of Regulations Title 14, Division 6, Chapter 3). Accordingly, the City Council finds that the provisions of CEQA and the CEQA Guidelines are not applicable thereto. In the event that the action is found to constitute a “project,” the City Council hereby finds that the action is exempt from CEQA because CEQA does not apply to the establishment, modification, or approval of rates, tolls, fares or other charges for the purpose of (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment, or materials, (3) meeting financial reserve needs and requirements, or (4) obtaining funds for capital projects necessary to maintain service within existing service areas. The City Council finds that its action falls within one or more of those exemptions. Moreover, the City Council finds that, pursuant to CEQA Guidelines section 15061(b)(3), it can be seen with certainty that there is no possibility that adoption of this ordinance may have a significant effect on the environment, so this action is not subject to CEQA or the CEQA Guidelines.

### **SECTION 3 – SEVERABILITY.**

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

If state law repeals or otherwise supersedes the amendments to Title 10, Chapter 8 contained in Exhibit A hereto, the existing text of Title 10, Chapter 8 shall automatically be reinstated and the City shall impose the Traffic Facilities Fee adopted and set by Resolution 09-136 on September 8<sup>th</sup>, 2009 and as amended by Resolution 10-88 on June 22, 2010 (the “2010 Traffic Facilities Fee”). Nothing in this section shall prohibit the City Council from adopting or setting any fee by resolution following any such reinstatement of the 2010 Traffic Facilities Fee.

### **SECTION 4. 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 sixty (60) days after the date of its passage and adoption per California Government Code Section 66017(a) regarding adoption of impact fees.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the \_12th\_\_\_ day of \_\_\_March\_\_\_\_\_, 2019, and was passed and adopted at a regular meeting of the Hercules City Council on the \_26th\_\_\_ day of \_\_\_March\_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Dan Romero, Mayor

\_\_\_\_\_  
Lori Martin, Administrative Services Director &  
City Clerk

Exhibit A: Amending Title 10, Chapter 18 – Development Impact Fees , Article 6 –  
Transportation Facilities Impact Fees



## AMENDING THE HERCULES MUNICIPAL CODE TITLE 10

### Chapter 18. Development Impact Fees

#### Article 6. ~~Traffic~~ Transportation Facilities Impact Fees

##### Sec.10-18.601 Intent and Purpose.

The City Council of the City of Hercules finds and declares that:

(a) As a result of increasing regional growth, significant residential, commercial and industrial development is expected to occur within the City.

(b) The general plan specifies the permitted uses of land within the City, ~~and~~ places limits on the intensity and density of such use, ~~and as well as includes policies to improve the safety for of roadway facilities and the to provision of for pedestrian and bicycle infrastructure.~~ The City Council has examined the relationship between the land uses and densities permitted under the general plan and the rate and amount of actual development of property within the City. Based upon this examination, the City Council has identified trends in growth and development which enable the council to project, with substantial certainty, the magnitude and extent of future development based upon the City's general plan.

(c) Based upon projected growth and development permitted under the general plan, a substantial amount of residential, commercial and industrial development will occur in the City before the City is fully built out.

(d) ~~New development in Hercules will increase the demand for all modes of travel (including walking, biking, transit, automobile and truck/goods movement), and thus will increase the need for improvement to transportation facilities, including but not limited to vehicular, transit, bicycle, and pedestrian infrastructure and improvements.~~ This anticipated development cumulatively will generate a substantial increase over existing levels of ~~vehicular~~ traffic, ~~and transit, bicycle and pedestrian travel.~~ This increase in ~~multi-modal traffic travel~~ will result in traffic volumes which exceed the capacity of the existing City-wide circulation system to provide acceptable levels of service ~~and safe transportation facilities for roadway facilities and provision of pedestrian and bicycle infrastructure and improved transit.~~ New development within the City will thus create an additional burden on the existing ~~transportation facilities~~ circulation system.

(e) If additional traffic-related as well as transit, bicycle, and pedestrian transportation improvements facilities are not added as development occurs, the existing ~~circulation-transportation facilities system~~ will not be adequate to serve the community consistent with the General Plan. This could result in adverse impacts, such as unacceptable levels of congestion on streets and at intersections, traffic accidents, air pollution, noise and restricted access for emergency vehicles. This would lead to a deterioration of the level of service for vehicles and deterioration of other transportation facilities, such as poor access via transit, bicycle and pedestrian facilities, which the residents, employees, and property owners in Hercules now enjoy.

(f) To prevent these undesirable consequences, the capacity of the City-wide ~~circulation-system~~ transportation facilities must be built at a rate which will accommodate the expected growth in the City.

(g) Although the traffic volume generated by an individual development project may not be, in and of itself, sufficient to overload the existing City-wide ~~circulation-transportation facilities system~~, the cumulative impact of all new development, including development currently approved or submitted for approval, will result in unacceptable levels of traffic congestion.

(h) It is the policy of the City that new development pay for the cost of improvements to the City-wide circulation system which are necessary to accommodate the traffic volumes generated by new development. In the absence of this Article imposing a traffic facilities fee, existing and future sources of revenue will be inadequate to fund a substantial portion of the ~~circulation-system-improvements~~ transportation facilities which are necessary to avoid unacceptable levels of congestion and the related adverse impacts.

(i) All types of urban development require and use transportation improvements facilities. The City Council also has examined the rates at which different land uses generate traffic. The City Council, in evaluating these traffic generation rates, has taken into consideration, among other things, other traffic-related studies and reports prepared by or on behalf of the City. The City Council finds that these traffic generation rates represent a reasonable estimate of the actual impact on the City's circulation system.

(j) A fair and equitable method of securing some of the revenues necessary to construct the required ~~circulation-system-improvements~~ to the transportation facilities is to impose a ~~traffic-transportation~~ impact fee based on the extent to which new development generates additional

traffic volumes and impacts to the transportation facilities.

(k) The Comprehensive Impact Fee Study 2019 Hercules Transportation Impact Fee Nexus Study specifically identifies circulation-transportation facility improvements which are necessary to accommodate future growth. These improvements are and will be incorporated in the City's Capital Improvement Program (CIP).

(l) The circulation system improvements that will be constructed with funds generated pursuant to the article will significantly benefit the contributor in that the adverse impacts, such as noise, air pollution, delay, accidents, increased fuel consumption, harm to the local economy, and inconveniences caused by traffic congestion will be substantially mitigated. Persons who undertake new development in the City are benefitted by a desirable community and the City's reputation for providing, and ability to provide, an adequate traffic-circulationtransportation system.

(m) Pursuant to Government Code section 66001, and based upon the Comprehensive Impact Fee Study 2019 Hercules Transportation Impact Fee Nexus Study and the terms of this Article, the Council finds that:

(1) The purpose of the fee imposed pursuant to this Article is to provide adequate transportation improvements to serve new development within the City.

(2) The improvements for which the fee will be used are identified in Hercules Transportation Impact Fee Nexus, as approved in 2019, summarized below and supported by -the Hercules General Plan, to be contained in the City's Capital Improvements Program (CIP) and in the Comprehensive Impact Fee Study.

<u>1.</u>	<u>Signalize intersection of San Pablo &amp; Tsushima</u>
<u>2.</u>	<u>Reconfigure Sycamore Ave cross section from Willow to San Pablo</u>
<u>3.</u>	<u>San Pablo / Jon Muir Prkwy to I-80 ramp expansion</u>
<u>4.</u>	<u>Intersection improvements at Willow &amp; Sycamore</u>
<u>5.</u>	<u>Add 3<sup>rd</sup> NB through lane to San Pablo Ave at Sycamore</u>
<u>6.</u>	<u>Install pedestrian activated signal at Market Hall crosswalk</u>
<u>7.</u>	<u>Upgrade or add ADA curb ramps</u>
<u>8</u>	<u>Hercules Creekside trail from Alfred Noble to Sycamore</u>
<u>9.</u>	<u>Multiuse path at Market Hall</u>
<u>10.</u>	<u>Pedestrian connection along Palm between Sycamore and Willow</u>

<u>11.</u>	<u>Bay Trail gap closure and lighting</u>
<u>12.</u>	<u>Expand bicycle network</u>
<u>13.</u>	<u>Add sidewalk along Willow Ave to Hercules Transit Center</u>
<u>14.</u>	<u>Improve pedestrian connections to Hercules Transit Center from Creekside Shopping Center along Sycamore to Willow</u>
<u>15.</u>	<u>Extend sidewalk connections to Rodeo</u>
<u>16.</u>	<u>Complete bicycle facilities between Mariner's Pointe and HTC</u>
<u>17.</u>	<u>Add lighting to Refugio Valley Trail</u>
<u>18.</u>	<u>Remove crosswalk at north leg of San Pablo &amp; Sycamore</u>
<u>19.</u>	<u>Provide bus shelters along San Pablo</u>
<u>20.</u>	<u>Parking for Intermodal Transit Center</u>
<u>21.</u>	<u>Complete Intermodal Transit Center/Rail Station (RITC)</u>

(2)(3) All types of urban development require and use the transportation system.

(3)(4) The amount of the fee imposed pursuant to this Article shall bear a fair and reasonable relationship to each development's burden on and benefit from the City-wide circulation system improvements to be funded by the traffic impact fee, and shall be based on the following considerations:

A. New development will pay only for those improvements which serve new development or which are necessary to reduce impacts to the transportation facilities ~~traffic congestion~~ which would otherwise be created by new development. The cost of improvements needed to alleviate existing ~~circulation~~ transportation system deficiencies are not included in this fee.

B. Each type of development shall contribute to the needed improvements in proportion to the use of improvements by that type of development, based upon traffic generation and trip length characteristics of various land uses to those same rates for a typical single-family residential unit- (referred to as a DUE – Dwelling Unit Equivalent) ~~rates~~ for each type of land use category.

(n) Periodic review, and possible revision, of the resolution adopted by the City Council under this Article will allow for the adjustment of the fee to ensure that the fee remains a fair and equitable method for the distribution of costs to construct circulation system improvements necessary to accommodate traffic volumes generated by development.

(o) The ~~Comprehensive Impact Fee Study~~ 2019 Hercules Transportation Impact Fee Nexus Study prepared by DKS for the City of Hercules ~~and Muni Financial~~, a copy of which is on file with the City clerk, and future council-approved amendments to it, are approved, incorporated herein by reference and provide the technical information on which the fee imposed pursuant to this Article is based. ~~(Ord. 364 § 2 (part), 2001)~~

## **Sec. 10-18.602 Definitions.**

### **In this Article:**

(a) Director means the City Manager or the City Manager's designee;

(b) ~~Comprehensive Impact Fee Study~~ 2019 Hercules Transportation Impact Fee Nexus Study is the report of that title dated ~~February-March 1221~~, 2019~~04~~ prepared by DKS for the City of Hercules ~~and Muni Financial~~, and future additions and amendments or supplements to or replacements of that report, all of which are incorporated in this Article.

(c) Permit means a building or use permit authorizing the development of new floor area or a change from one land use category to another.

(d) Floor area means the gross floor area of a building or, if a building contains separate uses for which the fee is payable, the floor area of each of those uses. It is determined by calculating the total combined floor area within the building's exterior walls or, in the case of a building containing more than one use, the area within the walls containing each separate use. Floor area includes the area of an addition where floor area is increased. Parking areas and exterior walkways are not included in this calculation.

(e) Improvements are the ~~circulation-transportation facility~~ system improvements in the City which are identified in the 2019 Hercules Transportation Impact Fee Nexus Study, the Hercules General Plan, ~~and the Capital Improvements Program (CIP) and the Comprehensive Impact Fee Study~~. They include improvements to intersections ~~improvements~~, roadways link improvements, freeway ramps, ~~interchanges and~~ traffic signals, pedestrian facilities, bicycle facilities, and transit facilities.

(f) Land uses referred to in this Article and in the resolution establishing fees are defined as follows:

(1) Single-family dwelling includes ~~a one detached onesingle--~~ family dwelling unit on a single parcel ~~at densities less than six per acre, excluding mobile homes.~~

(2) Multi-family dwelling means all attached ~~single family~~ dwellings



**Sec. 10-18.603 Fee Requirement.**

(a) General. The amount of the fee shall be established by resolution of the City Council and is based upon the following considerations.

(1) Development will pay only for improvements where there is a reasonable relationship between the improvements and the traffic generated by the new development.

(2) Each type of development shall contribute to the needed improvements in proportion to the use of the improvements by that type of development.

(b) Type of Development Subject to the Fee. The categories of land uses for which the fee will be charged are listed below, based on each uses Dwelling Unit Equivalents (accounting for trip lengths) in the Nexus Study. The fee is based on the estimated level of traffic generated by each type of development.

(1) Single-family residential per unit;

(2) Multifamily residential per unit;

(3) Office per square foot;

(4) Retail per square foot;

(5) Industrial per square foot;

(6) Hotel per room;

(6)(7) Fast Food / Drive thru per square foot;

(7)(8) Fuel Station pumps

(8)(9) Other uses not specifically set forth, consistent with the 2019 Hercules Transportation Impact Fee Nexus Study.

(c) When and How Applicable. The fee is ~~applicable~~imposed upon issuance of a development-to-a-building permit, certificate of occupancy or change of use. A development permit means any permit or approval from the City, including but not limited to subdivision maps, final planned development permit, building permit, or other permit for construction or reconstruction. The fee applies as follows:

(1) The fee for residential construction is for each dwelling unit. There is no fee for unit replacement or remodeling or for an addition to an existing unit not resulting in a new accessory dwelling second unit.

(2) The fee per square foot for retail, office and similar construction is imposed on a per square foot basis for all new floor area including additions where floor area is increased, and on a per room basis for hotel construction. There is no fee for remodeling or restoration where floor area is improved or replaced but not increased.

(3) A fee may be due for a change in land use category. The fee is based upon the incremental difference between the current applicable fee for the prior use and the current fee for the proposed new use.

(d) Improvements. The fee shall be based on the cost of the improvements attributable to new development as determined in the ~~Comprehensive Impact Fee Study~~2019 Hercules Transportation Impact Fee Nexus Study. The improvements included in the total cost are set forth in the ~~Comprehensive Impact Fee Study~~2019 Hercules Transportation Impact Fee Nexus Study, and do not and shall not include the costs to alleviate existing deficiencies in the circulation system. ~~(Ord. 364 § 2 (part), 2001).~~

#### **Sec. 10-18.604 Exemptions and Credit.**

(a) No fee is due if a traffic ~~or -transportation facilities~~ impact fee was previously paid in full for a particular property and use.

(b) No fee is due for an increase in floor area of a retail use when such increase does not expand existing floor area by more than ten percent (10%) or seven hundred fifty (750) square feet. ~~(Ord. 364 § 2 (part), 2001)~~

#### **Sec. 10-18.605 Time of Payment.**

The time for payment of the traffic facilities fee shall be established by resolution of the City Council setting the fee and shall conform to the requirements of Government Code Section 66007. (Ord. 364 § 2 (part), 2001)

#### **Sec. 10-18.606 ~~Traffic-Transportation~~ Facilities Fee Impact Fund—Use of Fee.**

(a) The City shall deposit the fees collected under this Article in a special fund, the ~~Traffic-Transportation~~ Facilities Impact Fee Fund ~~(previously known as the Traffic Facilities Impact Fee Fund)~~, designated for transportation ~~facilities~~ improvements.

(b) The fees and any interest earned shall be used only to:

(1) Complete the transportation improvement projects specified in the ~~Hercules General Plan, any applicable traffic mitigation or other studies, the Hercules Capital Improvements Program or the Comprehensive Impact Fee Study~~2019 Hercules Transportation Impact Fee Nexus Study and any amendment thereto or to reimburse the City for such construction if funds were advanced by the City from other sources; or

(2) Reimburse developers who have been required or permitted to install such improvements (after the effective date of this Article) which are oversized with supplemental size, length or capacity relative to the demand generated by the proposed project contained in the improvement list; or

(3) Reimburse the City for its reasonable costs in administering this Article. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.607 Authority for Separate Mitigation Measures.**

Fees collected under this Article are not intended to replace or limit other City requirements to provide site-specific mitigation of site-specific traffic impacts imposed upon development projects as part of normal development review process. (Ord. 364 § 2 (part), 2001)

**Sec. 10-18.608 Annual Review/ Index Adjustment.**

The City Council shall, as it deems necessary, review the traffic facilities fee authorized by this Article, implementing Council resolutions and supporting documentation, including the ~~Comprehensive Impact Fee Study~~ 2019 Hercules Transportation Impact Fee Nexus Study as amended, supplemented or replaced from time-to-time and any traffic mitigation or other studies, and may, based on such review, institute an amended traffic facilities impact fee program. (Ord. 364 § 2 (part), 2001)

Effective July 1, 2020 and on each subsequent anniversary date of such date, the amount of each of the Transportation Facilities Impact Fees, set forth above, shall increase or decrease by the annual percentage change in the Engineering News Record Construction Cost Index for the San Francisco Bay Area for the twelve month period ending with the February index of the same calendar year. The percentage change will be calculated by staff and presented to City Council with the annual update to the Master Fee Schedule.

**Sec. 10-18.609 General Provisions Apply.**

Article 1 applies to this traffic facilities impact fee. (Ord. 364 § 2 (part), 2001)

## **RESOLUTION NO. 19- 011**

### **ADOPTING THE 2019 HERCULES TRANSPORTATION IMPACT FEE NEXUS STUDY, APPROVING A TRANSPORTATION IMPACT FEE, AND AMENDING THE CITY'S MASTER FEE SCHEDULE TO REPLACE THE TRAFFIC FACILITIES FEE WITH SAID TRANSPORTATION IMPACT FEE AT THE RATES SHOWN HEREIN**

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

**WHEREAS**, the City conducted a comprehensive review of the City's existing traffic impact fees to determine whether those fees are adequate to offset the cost of facilities related to future development; and

**WHEREAS**, the City undertook and caused to be prepared a study entitled "2019 Hercules Transportation Impact Fee Nexus Study" which, among other things, identified transportation facilities that will be impacted or necessitated by future development; and

**WHEREAS**, the 2019 Hercules Transportation Impact Fee Nexus Study recommended an increase to the City's existing transportation impact fees (currently called the "Traffic Facilities" impact fee) and substantiated the amount of the increase by explaining the nexus between the imposition of the fees and the impact of future development to transportation facilities; and

**WHEREAS**, the City Council has reviewed the 2019 Hercules Transportation Impact Fee Nexus Study and has found it to contain substantial evidence that supports increasing the City's existing transportation impact fee consistent with the requirements of the Mitigation Fee Act and applicable case law, and has determined that the City needs to increase the level of the existing transportation impact fee in order to offset all or a portion of the cost of transportation facilities impacted or necessitated by future development; and

**WHEREAS**, the City Council has further determined that it needs to amend its current development impact fee ordinance consistent with the findings contained in this Resolution and the 2019 Hercules Transportation Impact Fee Nexus Study.

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

#### **SECTION 1. – Adoption of Study.**

The City Council has considered the specific project descriptions and cost estimates provided in the 2019 Hercules Transportation Impact Fee Nexus Study and finds them reasonable as the basis for calculating and imposing certain development impact fees and hereby approves, adopts, and incorporates herein by reference the 2019 Hercules Transportation Impact Fee Nexus Study



## **SECTION 2 – Mitigation Fee Act Findings.**

The City Council finds and determines that the transportation development impact fee imposed by this Resolution is supported by the 2019 Hercules Transportation Impact Fee Nexus Study, and that the study:

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

## **SECTION 3 – Adoption of Fees.**

The City Council has considered the 2019 Hercules Transportation Impact Fee Nexus Study's maximum potential justifiable fee for each land use category shown below, and hereby approves and adopts a reduced "Transportation Facilities " impact fees as follows:

<b><u>Land Use</u></b>	<b><u>Maximum Justifiable Transportation Facilities Impact Fee</u></b>	<b><u>Approved Reduction</u></b>	<b><u>Reduced Transportation Facilities Impact Fee</u></b>
Single Family (per unit)	\$7,129	75%	\$5,346.75
Multi-Family (per unit)	\$4,033	75%	\$3,024.75
Retail (per sq. ft.)	\$9.59	75%	\$7.19
Office (per sq. ft)	\$8.35	75%	\$6.26
Industrial (per sq. ft.)	\$7.77	75%	\$5.83
Hotel (per room)	\$3,927	50%	\$1,963.50
Fast Food (per sq. ft.)	\$43.80	75%	\$32.83
Fuel Station (per pump)	\$7,678	75%	\$5,758.50
Other		75%	Consistent with the 2019 Hercules Transportation Impact Fee Nexus Study

## **SECTION 4 – Consistency with General Plan.**

The City Council finds that the projects and fee methodology identified in the 2019 Hercules Transportation Impact Fee Study are consistent with the City's General Plan.

## **SECTION 5 – Differentiation Among Fees.**

The City Council finds that the Transportation Facilities impact fee (previously known as the Traffic Facilities impact fee) recommended in the 2019 Hercules Transportation Impact Fee Study are separate and different from other fees the City may impose as a condition of final map approval, building permit issuance or tentative or parcel map approval pursuant to its authority under the Subdivision Map Act, the Quimby Act, and the City's implementing ordinances, as may be amended from time to time.

## **SECTION 6 – Amendment to Fee Schedule.**

The section of the City's Master Fee Schedule, related to Traffic Facilities Development Impact Fees, is hereby amended as follows effective July 1, 2019, with all other impact fees remaining unchanged:

<b><u>COMMUNITY DEVELOPMENT DEPARTMENT</u></b>		
<b><u>Development Impact Fees</u></b>		
<b><u>FEE</u></b>	<b><u>LEGAL AUTHORITY</u></b>	<b><u>Changes Effective 7/1/2019</u></b>
<b>Single Family</b> (Per dwelling unit)		
Traffic / Transportation Facilities	Reso 19-011	\$ 5,346.75
<b>Multi-Family</b> (per unit)		
Traffic / Transportation Facilities	Reso 19-011	\$ 3,024.75
<b>Retail</b> (Per building square foot)		
Traffic / Transportation Facilities	Reso 19-011	\$ 7.19
<b>Office</b> (Per building square foot)		
Traffic / Transportation Facilities	Reso 19-011	\$ 6.26
<b>Industrial</b> (Per building square foot)		
Traffic / Transportation Facilities	Reso 19-011	\$ 5.83
<b>Hotel</b> (Per room)		
Traffic / Transportation Facilities	Reso 19-011	\$ 1,963.50
<b>Other Community Development Fees*</b>		
Other Traffic / Transportation Facilities	Reso 19-011	
Fast Food (per sq. ft.)		\$ 32.83
Fuel Station (per pump)		\$ 5,758.50

\*Consistent with the 2019 Hercules Transportation Impact Fee Nexus Study

## **SECTION 7 – CEQA.**

The adoption of the 2019 Hercules Transportation Impact Fee Nexus Study, approval of the Transportation Facilities impact fee, and amendment to the Master Fee Schedule do not constitute a “project” as that term is defined by or used in the California Environmental Quality Act (Cal. Pub. Res. Code section 21000 et seq.; “CEQA”) or the CEQA Guidelines (Cal. Code of Regulations Title 14, Division 6, Chapter 3). Accordingly, the City Council finds that the provisions of CEQA and the CEQA Guidelines are not applicable thereto. Also, the City Council finds that the City will not expend funds from the Transportation Facilities impact fee on any specific development prior to completion of environmental review for such specific development, so the adoption of this Resolution is not a “project” under CEQA.

In the event that the action is found to constitute a “project,” the City Council hereby finds that the action is exempt from CEQA because CEQA does not apply to the establishment, modification, or approval of rates, tolls, fares or other charges for the purpose of (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment, or materials, (3) meeting financial reserve needs and requirements, or (4) obtaining funds for capital projects necessary to maintain service within existing service areas. The City Council finds that its action falls within one or more of those exemptions.

Finally, the City Council also finds that, pursuant to CEQA Guidelines section 15061(b)(3), it can be seen with certainty that there is no possibility that adoption of this Resolution may have a significant effect on the environment, so this action is not subject to CEQA or the CEQA Guidelines.

## **SECTION 8 – Severability.**

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

## **SECTION 9 – Effective Date of 2019 Transportation Facilities Impact Fee**

This Transportation Facilities Impact fee (which effectively replaces the current Traffic Facilities impact fee) shall be in effect on July 1, 2019 contingent upon the companion Ordinance #518 being adopted and in effect 60 days following adoption consistent with California Government Code section 66017(a).

## **SECTION 10 – Imposition and Payment of Fees Upon Permit Issuance**

All development impact fees shall be imposed upon the issuance of any development permit and shall be paid at the earliest time allowed by California Government Code 66007.

## **SECTION 11 – Annual Index Adjustment**

Effective July 1, 2020 and on each subsequent anniversary date of such date, the amount of each of the Transportation Facilities Impact Fees, set forth above, shall increase or decrease by the annual percentage change in the Engineering News Record Construction Cost Index for the San Francisco Bay Area for the twelve month period ending with the February index of the same calendar year. The percentage change will be calculated by staff and presented to City Council with the annual update to the Master Fee Schedule.

## **SECTION 12 – Incorporation of Recitals.**

The recitals in this Resolution are true and correct and are incorporated into this Resolution by reference.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 12<sup>th</sup> day of March, 2019 by the following vote of the Council:

**AYES:** COUNCIL MEMBERS: G. Boulanger, D. Bailey, C. Kelley, Vice Mayor Esquivias, Mayor Romero

**NOES:** None.

**ABSTAIN:** None.

**ABSENT:** None.

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Dan Romero, Mayor

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Lori Martin, MMC  
Administrative Services Director / City Clerk



## REPORT TO THE CITY COUNCIL

**DATE:** Regular Meeting of March 26, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** Dan Romero, Mayor  
Dion Bailey, Councilmember

**SUBJECT:** Proposed Amendment to Employment Agreement for City Manager David Biggs

**RECOMMENDED ACTION:** Adopt a Resolution of The Hercules City Council Approving Amendment No. 2 to the Employment Agreement with City Manager David Biggs Extending the Term of the Agreement To December 31, 2021 with an Option for Two (2) Additional One Year Extensions, and Effective July 1, 2019, Providing a 5% Deferred Compensation Match and a 10% Increase in Annual Salary

### **FISCAL IMPACT OF RECOMMENDATION:**

The proposed amendment to the employment agreement will increase the City Manager's annual salary by 10% from \$224,400 to \$246,840 as detailed in the attached amendment. All other benefits Mr. Biggs will receive are consistent with the benefits provided to Executive level employees. The incremental fully loaded annual cost increase from the original contract is approximately \$37,000 including employer-paid benefits. This cost will be included in the FY 2019-20 Budget and will be effective on July 1, 2019, with 50% of the cost allocated to the General Fund and the balance to other City operating funds.

### **BACKGROUND**

In 2014, the City Council engaged the services of Avery and Associates to conduct an open and broad search for the most qualified candidates to serve as the City of Hercules City Manager. Approximately 50 applications were received by Avery and the six top candidates were interviewed by the members of the City Council. A second interview was also conducted and Mr. David Biggs was ultimately selected as the finalist.



The City Council approved an Employment Agreement with Mr. Biggs on June 10, 2014, and he has served as the City of Hercules City Manager since that date. A copy of the Original Agreement is provided as Attachment “1” to this report.

## **DISCUSSION**

The initial term of Mr. Biggs’ Employment Agreement was for three years, with two-one year extension periods, and that full five years will expire June 30, 2019. There has been one contract amendment during this five (5) year period, which was approved in 2018, and which applied the same new employee contribution of 3% of the employer CalPERS costs with a 2% wage offset as agreed to by all employees in 2018 and which is being implemented in March of 2019 (Attachment 2). That increased the City Manager’s base salary to \$224,400, or by \$4,400 annually with the City Manager to pay \$6,732 of the employer CalPERS retirement contribution on a pre-tax basis, resulting in a net savings to the City.

The City Council desires to formalize an extension of his original Employment Agreement, and has designated Mayor Dan Romero and Councilmember Dion Bailey to serve as the Council Liaisons to work with the City Attorney to negotiate with Mr. Biggs an amendment to the original 2014 Employment Agreement. The attached Amendment No. 2 (Attachment 4) is the product of this negotiation process.

## **RECOMMENDATION**

Designated Council Liaisons Mayor Romero and Councilmember Bailey recommend adoption by the full City Council of the proposed Amendment No. 2 to the original Employment Agreement of City Manager David Biggs.

The draft Resolution approving adoption of Amendment No. 2 is provided as Attachment 3 to this Report; Amendment No. 2 is provided as Attachment 4 to this Report.

The proposed resolution would authorize amendments to the Original Agreement as follows:

- Extend the term of the Original Agreement to December 31, 2021, with an option for two (2) additional one year extensions.
- Provide, effective July 1, 2019, a 5% compensation match. The 5% deferred compensation match is a condition of the Original Agreement, which provides that the City Manager is entitled to receive benefits on the same terms and conditions as other senior management employees as provided for in the Senior Management Employment Agreement.
- Increase Mr. Biggs’ adjusted salary by 10%. Mr. Biggs has not had an increase in his base annual salary since the beginning of his term of employment in 2014. The salary increase would increase Mr. Biggs’ adjusted annual salary of \$224,400 to \$246,840. The proposed 10% increase in annual salary would be one-time with no future cost of living adjustments (“COLA”) unless the Employment Agreement were amended in the future.

- Waive the annual Performance Review for 2019, but continue annual Performance Reviews each year thereafter on or about Mr. Biggs' anniversary.
- Clarify that the City Manager may elect to deposit any one-time payments into the ICMA Section 457 Deferred Compensation Plan or the VantageCare Retirement Health Savings Account.

All other terms and conditions of the Original Agreement would remain in full force and effect for the entire term of Amendment No. 2.

Attachments:

1. Original 2014 Agreement with David Biggs for City Manager Services
2. Amendment No. 1
3. Resolution Approving Amendment No. 2 to Original Agreement
4. Amendment No. 2 to Original Agreement

**CITY OF HERCULES  
AGREEMENT WITH DAVID BIGGS FOR  
CITY MANAGER/EXECUTIVE DIRECTOR SERVICES**

This Agreement is made and entered into at Hercules, California this 11<sup>th</sup> day of May, 2014, by and between the City of Hercules, a California municipal corporation, and the City of Hercules as Successor Agency to the Redevelopment Agency (hereinafter "City"), and David Biggs ("Biggs"), an individual.

**RECITALS**

**WHEREAS**, the City requires the services of a person with proven executive and administrative qualifications to fill the position of City Manager; and

**WHEREAS**, the City, acting by and through its City Council, desires to employ the services of David Biggs as City Manager, and to appropriately compensate him for such services; and

**WHEREAS**, the Parties acknowledge that the City Manager must be committed to the ideals of the International City Management Association ("ICMA"), and that the City Manager shall be subject to and shall comply with the ICMA Code of Ethics, incorporated herein by reference; and

**WHEREAS**, David Biggs desires to accept employment as City Manager of the City of Hercules under the terms and conditions of employment as set forth herein.

**NOW, THEREFORE**, in consideration of this Agreement, and the mutual promises, terms and conditions contained herein, the parties agree as follows:

1. Appointment. The City agrees to employ and appoint Biggs to the position of City Manager, and Biggs agrees to accept employment as City Manager, subject to successful completion of all required background checks and a pre-employment physical. Biggs will commence providing services to the City of Hercules on June 30, 2014, or upon successful completion of all required background checks and a pre-employment physical, whichever occurs later. Upon Biggs' commencement of services, City shall confer upon and delegate to Biggs all of the duties, powers, and responsibilities of City Manager as the same are set forth in the City of Hercules Municipal Code, and the ordinances, resolutions, policies, rules and regulations existing thereunder ("the Services").

2. Term. This Agreement shall be for a three year term ("Initial Term"), unless services are otherwise terminated pursuant to Sections 4, 5 or 6 of this Agreement. Upon expiration of the three year Initial Term, Biggs shall continue as City Manager on a year-to-year basis, with the year-to-year service subject to the same terms and conditions specified in this Agreement, including the termination provisions in Sections 4, 5 and 6, and subject to the Incentive provisions in Section 6(D).

3. Duties.

A. Biggs covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services pursuant to this Agreement. Biggs further covenants that he shall be subject to and abide by the applicable provisions of the Political Reform Act, and all City ordinances, regulations, and policies related to conflict of interest, including but not limited to Resolution No. 12-059A, prohibiting nepotism and cronyism in contracting and employment, a copy of which has been provided to Biggs.

B. As full time City Manager of the City, Biggs accepts employment subject to the terms and conditions of this Agreement and agrees (1) to perform the duties and functions identified in Hercules Municipal Code Title 2, Chapter 3, Article 1, and other duties and functions as the Council assigns either orally or in writing and (2) to devote all of his productive time, attention and energies to performing all such duties and functions in a professional and ethical manner to the best of his skill and ability and (3) to use his best efforts to promote and advance the interests of the City. Biggs further agrees that he has no authority to bind the City or any of its elected or appointed officials or commit the City to any course of action without the duly authorized written consent of the City. Biggs acknowledges that the position of City Manager is a position of high visibility before the public and agrees that he shall conduct himself before the public and City staff, both during and outside of regular working hours, in a manner that reflects favorably on the City. Biggs agrees to use his best efforts to pursue and realize Council goals and objectives.

C. Full Time. Biggs understands and agrees that the position of City Manager is not a part time position and will require Biggs to work greater than a customary forty hour week. Although City Hall is generally open to the public during regular set work hours, Biggs shall perform his obligations as full time City Manager during regular work hours and on such evenings, weekends and other times as are necessary.

D. Vacation Notice. Vacation and other leave susceptible to advance scheduling shall be scheduled with the City Council in advance.

E. No Other Employment. Biggs agrees not to undertake any other employment during the term of this Agreement. Biggs further agrees to obtain Council approval before undertaking any non-paid projects for organizations or other non-City work which may require a substantial time commitment by Biggs.

Biggs agrees not to engage in any activity, consulting service, or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with, his duties and responsibilities to the City.

4. Termination by Biggs. Biggs may terminate this Agreement and resign as City Manager at any time, for any reason, upon sixty (60) days prior written notice to the City. Upon receipt of written notice from Biggs, the City may elect to immediately remove Biggs from his position as City Manager or allow Biggs to remain as City Manager for all or any part of the sixty day notice period. If the City removes Biggs from his position as City Manager prior to the expiration of the sixty day notice period, the City will pay Biggs an amount equal to the salary and benefits that Biggs would have received if he had remained in the City Manager position until the expiration of the sixty day notice period, less legally required withholdings. If the City advises Biggs that he should continue to perform his duties and functions as City Manager during the sixty day notice period, and Biggs fails to do so, Biggs will receive no salary or benefits after the last date on which he actually performs his City Manager duties and functions.

5. Termination by City.

A. Termination With Cause. The City Manager may be discharged with cause. Cause as determined in the reasonable discretion of the City, shall mean only any of the following: (1) insubordination, (2) dishonesty, (3) embezzlement, (4) violation of Federal, State, local, or common law requirements pertaining to conflict of interest, (5) conviction of a criminal act, (6) involvement in any act involving moral turpitude that would compromise Biggs' effective performance as City Manager, (7) taking a position adverse to the interests of the City without the City's prior written consent, (8) violation of any fiduciary duty owed to the City, (9) failure to abide by the employment restrictions under Sec. 3(C) of this Agreement, (10) failure to observe or perform any of his duties and obligations under this Agreement, if that failure continues for a period of thirty (30) days after Biggs receives written notice from the City Council specifying the acts or omissions deemed to constitute that failure.

If the City elects to terminate this Agreement with cause, it will pay Biggs for all earned pay and accrued, unused vacation benefits at the time it notifies Biggs of the termination decision, less legally required withholdings. Biggs will be entitled to no pay or benefits after the date that the City notifies him that this Agreement and his employment by the City are being terminated with cause. If the City elects to terminate this Agreement with cause, it will provide Biggs with a written explanation for that decision sent to Biggs' last known home address. Biggs shall have the right to meet



with the City Council in closed session for the purpose of discussing the basis for his proposed termination with cause prior to a final vote on his termination with cause. In order to exercise that right, he must provide a written request to meet in closed session to the Mayor of the City and the City Attorney within fifteen days of the effective date of his termination with cause. Failure to timely provide such written notice shall constitute a waiver of the right to be heard.

If Biggs is convicted of a crime involving an abuse of his office or position, all of the following shall apply:

1. If Biggs is provided with administrative leave pay pending an investigation, Biggs shall be required to fully reimburse City such amounts paid;
2. If City pays for the criminal legal defense of Biggs (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Biggs shall be required to fully reimburse City such amounts paid; and
3. If this Agreement is terminated, any severance pay and severance benefits related to the termination that Biggs may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Biggs. For purposes of this Section, abuse of office or position means either: a) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or b) a crime against public justice.

B. Termination Without Cause. Notice of Termination Without Cause shall be provided in writing sent to Biggs' last known home address. If Biggs' employment is terminated without cause, City shall not be required to provide any reasons for that decision to Biggs or anyone else. If the City elects to terminate this Agreement and Biggs' employment without cause within the first two years of this Agreement, then as of the effective date of termination the term of this Agreement shall be deemed to have a remaining duration of nine months. If the City elects to terminate this Agreement and Biggs' employment without cause during the last year of this Agreement or during the year-to-year extension beyond the last year of this Agreement, then as of the effective date of termination the term of this Agreement shall be deemed to have a remaining duration of the lesser of six months or until the end of the remaining year. The City will pay Biggs for all earned pay and accrued, unused vacation benefits up to but not including the effective date of termination, less legally required withholdings. Additionally, the City will, within thirty (30) days of the effective date of termination, pay Biggs for the remaining duration specified in this Section 5B of this Agreement the amount of salary and benefits he is earning on the date he is given notice that this Agreement and his employment are being terminated, less legally required withholdings.

C. Inability To Perform Essential Duties and Functions. Biggs agrees that if he is unable to perform the essential duties and functions of the City Manager position for any reason for more than thirty (30) consecutive calendar days, the City may terminate this Agreement. If the City elects to terminate this Agreement based on Biggs' inability

to perform the essential duties and functions of the City Manager position, it will so advise Biggs in writing sent to Biggs' last known home address. At the time the City provides such notice, it will pay Biggs for all earned pay and accrued, unused vacation benefits, less legally required deductions.

If termination of this Agreement is the result of the death of Biggs, this Agreement shall be considered terminated effective upon his death, and City shall pay all salary and benefits then due to Biggs at the time of death to his legal heir(s).

D. Statement Upon Termination. In the event City terminates Biggs for any reason or no reason, the City and Biggs agree that no member of the City Council, the City Management staff, or Biggs, shall make any written, oral or electronic statement to any member of the public, the press, or any city employee concerning Biggs' termination except in the form of a joint press release or statement, the content of which is mutually agreeable to the City and Biggs. The joint press release or statement shall not contain any text or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

6. Compensation.

A. Salary.

The City agrees to pay Biggs for the performance of his duties and functions an annual salary of \$220,000.00, less legally required deductions.

Salary will be paid in installments at the same time that other employees of the City are paid. Any adjustment to Biggs' salary must be pursuant to a resolution of the Council. Biggs shall not be entitled to receive payment or credit for, and City shall not pay or credit Biggs for, overtime, compensated time off in lieu of overtime, or other compensation except as expressly provided in this Agreement. Biggs acknowledges that the position of City Manager is exempt from the provisions of the Fair Labor Standards Act (FLSA).

B. Benefits.

During the Term of this Agreement and his employment hereunder, Biggs shall be entitled to receive benefits on the same terms and conditions as other senior management employees of the City, as provided for in the Senior Management Employment Agreement. In addition, Biggs shall receive:

1. Vacation accrual at the 20 year rate level, and a one- time bank of ten (10) vacation days upon commencement of employment.
2. A one-time bank of five (5) additional sick days upon commencement of employment.

Some benefits may change during the course of Biggs' employment. Employees are noticed regarding any changes in benefits. Except as expressly set forth in this Agreement, Biggs shall be entitled to the same benefits as those provided to senior management employees generally, but shall not be entitled to or be paid for any other benefits available to certain non-senior management employees of the City; for example, uniform allowances for police officers and public works employees.

C. One Time Moving Allowance.

Biggs shall be provided a one time moving allowance to be applied to relocation expenses incurred within the three year Term of this Agreement. Biggs shall provide the City with three estimates for the cost of relocation and moving expenses, and City shall reimburse Biggs within thirty (30) days for such costs the amount equal to the lowest estimate provided by Biggs, or \$15,000, whichever is lowest.

D. Incentive.

As a retention incentive, if after the end of the three year Term of this Agreement, Biggs continues as City Manager on a year-to-year basis for two full years, City agrees to pay Biggs, in addition to an annual salary of \$220,000.00, a 10% bonus for each of years four and five, for a total bonus of \$44,000.00, less legally required withholdings, to be paid within thirty (30) days after the conclusion of his fifth year as City Manager. The bonus is not part of his annual salary and no portion of the bonus shall be awarded to Biggs unless he has completed his fifth year as City Manager, except that Biggs would receive a pro rata portion of the bonus if the City were to terminate Biggs without cause at any time during years four or five.

7. Performance Evaluations. The City shall review and evaluate Biggs' performance as City Manager in closed session as close as reasonably possible to the expiration of each twelfth month of this Agreement. The City shall conduct an additional mid-year review at the expiration of the first six months of the first year of this Agreement. Performance Reviews shall be discussed with Biggs and reduced to writing. In addition to the evaluation schedule provided in this section, Council may schedule additional review and evaluation of Biggs' performance for closed session at any time.

To assist the Council in measuring the City Manager's performance, within thirty (30) days of commencing his tenure as City Manager, Biggs shall propose for Council approval a Performance Evaluation Plan that will form the basis for the initial Performance Review. Biggs shall revise the Plan at the start of each successive year of service. The Plan shall specify actions to be taken until the next Performance Review, and shall contain specific and measurable criteria, with specified milestones.

8. Confidential Information. Biggs agrees that he will not reveal attorney-client privileged, or any other confidential information about the City or City employees that he learns while performing the duties and functions of City Manager.
9. City Property. Biggs agrees that all materials, regardless of their form, that he receives, creates or produces in connection with this Agreement and/or his employment as City Manager are and will remain the exclusive property of the City. Biggs will immediately deliver all originals and all copies of such materials to the City that are in his possession or control upon termination of this Agreement or upon any request from the Mayor and/or the City.
10. Assistance in Litigation. Biggs agrees that he will furnish information and proper assistance to the City as it may reasonably require with any litigation in which it is or may become involved, either during or after the termination of this Agreement. Biggs further agrees that he will not discuss, reveal or convey any information or documents pertaining to the City to any person or entity, or to any attorney for or representative of any person or entity, with actual or potential claims adverse to the City except pursuant to duly issued legal process or as otherwise authorized by the City. Biggs agrees to notify the City immediately upon receipt of any legal process pertaining to the City.
11. Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of California.
12. Headings. The headings used in this Agreement are provided for convenience only and may not be used to construe meaning or intent.
13. Assignment. Neither this Agreement nor any interest in this Agreement may be assigned by Biggs without the prior express written approval of the City.
14. Severability. If any provision or portion of this Agreement is held to be invalid or unenforceable, this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable provision(s) or portion(s) had never been included.

15. Notices. Notices pursuant to this Agreement will be deposited with the United States Postal Service, postage prepaid and addressed as follows:

City:  
City Clerk  
City of Hercules  
111 Civic Center Drive  
Hercules, CA 94547

Biggs:  
Last Known Home Address  
Official City Hall Address

16. Modification. This Agreement may only be modified by Resolution at a duly noticed meeting of the City Council. The City Council may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.


17. Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, and contains all agreements between Biggs and the City regarding his employment as City Manager. Biggs and the City agree that no representations, inducements, promises or agreements, oral or otherwise, have been made to either party, or anyone acting on behalf of either party, which are not stated herein, and that no agreement, statement, or promise not contained in this Agreement will be valid or binding on either party.

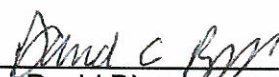
18. Effective Date. This Agreement will become effective on the date of approval by the City Council at a duly noticed meeting of the Council.

19. Independent Review. Biggs acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement, and acknowledges that he has made an independent judgment regarding this Agreement and has not relied upon any representation of City, its officers, agents or employees, other than those expressly set forth in this Agreement.

20. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

City of Hercules

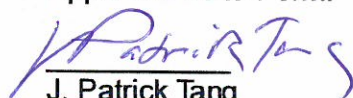
By:   
Myrna L. deVera, Mayor

  
David Biggs

ATTEST:

  
Margaret Roberts  
Administrative Services Director

Approved as to Form:

  
J. Patrick Tang  
City Attorney



**AMENDMENT NO. 1 TO CITY MANAGER CONTRACT**

**Pursuant to action taken by the City Council at the Regular City Council Meeting of October 23, 2018, Section 6 of the City of Hercules Agreement with David Biggs for City Manager/Executive Director Services is hereby amended to include a new Subsection 6(B)(3) to read as follows:**

**6. Compensation.**

**A. Salary.**

The City agrees to pay Biggs for the performance of his duties and functions an annual salary of \$220,000.00, less legally required deductions.

Salary will be paid in installments at the same time that other employees of the City are paid. Any adjustment to Biggs' salary must be pursuant to a resolution of the Council. Biggs shall not be entitled to receive payment or credit for, and City shall not pay or credit Biggs for, overtime, compensated time off in lieu of overtime, or other compensation except as expressly provided in this Agreement. Biggs acknowledges that the position of City Manager is exempt from the provisions of the Fair Labor Standards Act (FLSA).

**B. Benefits.**

During the Term of this Agreement and his employment hereunder, Biggs shall be entitled to receive benefits on the same terms and conditions as other senior management employees of the City, as provided for in the Senior Management Employment Agreement. In addition, Biggs shall receive:

1. Vacation accrual at the 20 year rate level, and a one- time bank of ten (10) vacation days upon commencement of employment.
2. A one-time bank of five (5) additional sick days upon commencement of employment.
3. **In accordance with revised Pay Plans for senior management employees adopted by the City Council on October 23, 2018, Biggs shall pay 3% of the Employer CalPERS contribution offset by an additional 2% wage increase effective upon implementation.**

Some benefits may change during the course of Biggs' employment. Employees are noticed regarding any changes in benefits. Except as expressly set forth in this Agreement, Biggs shall be entitled to the same benefits as those provided to senior management employees generally, but shall not be entitled to or be paid for any other benefits available to certain non-senior management employees of the City; for example, uniform allowances for police officers and public works employees.

C. One Time Moving Allowance.


Biggs shall be provided a one-time moving allowance to be applied to relocation expenses incurred within the three year Term of this Agreement. Biggs shall provide the City with three estimates for the cost of relocation and moving expenses, and City shall reimburse Biggs within thirty (30) days for such costs the amount equal to the lowest estimate provided by Biggs, or \$15,000, whichever is lowest.

D. Incentive.

As a retention incentive, if after the end of the three year Term of this Agreement, Biggs continues as City Manager on a year-to-year basis for two full years, City agrees to pay Biggs, in addition to an annual salary of \$220,000.00, a 10% bonus for each of years four and five, for a total bonus of \$44,000.00, less legally required withholdings, to be paid within thirty (30) days after the conclusion of his fifth year as City Manager. The bonus is not part of his annual salary and no portion of the bonus shall be awarded to Biggs unless he has completed his fifth year as City Manager, except that Biggs would receive a pro rata portion of the bonus if the City were to terminate Biggs without cause at any time during years four or five.

City of Hercules

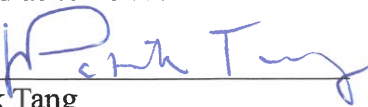
By:   
Chris Kelley, Mayor

  
David Biggs

ATTEST:

  
Lori Martin, MMC  
Administrative Services Director/City Clerk

Approved as to Form:

  
J. Patrick Tang  
City Attorney

## **RESOLUTION NO. 19-**

### **RESOLUTION OF THE HERCULES CITY COUNCIL APPROVING AMENDMENT No. 2 TO THE EMPLOYMENT AGREEMENT WITH CITY MANAGER DAVID BIGGS EXTENDING THE TERM OF THE AGREEMENT TO DECEMBER 31, 2021 WITH AN OPTION FOR TWO (2) ADDITIONAL ONE YEAR EXTENSIONS, AND EFFECTIVE JULY 1, 2019, PROVIDING A 5% DEFERRED COMPENSATION MATCH AND A 10% INCREASE IN ANNUAL SALARY**

**WHEREAS**, on the 10<sup>th</sup> day of June 2014, after an extensive search and following interviews of a large number of top candidates for the position of City Manager, the City Council passed a resolution approving an Employment Agreement with David C. Biggs to serve as the City Manager, effective for an Initial Term of three (3) years, with the term to continue on a year-to-year basis thereafter for up to two additional years; and

**WHEREAS**, the City Council desires to continue to retain the services of City Manager David Biggs; and

**WHEREAS**, David Biggs has expressed his desire to remain City Manager of the City of Hercules; and

**WHEREAS**, David Biggs has agreed to continue his service as City Manager of the City of Hercules in accordance with the terms of Amendment No. 2 to his Employment Agreement, attached hereto as Exhibit "A".

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Hercules that David Biggs' employment as City Manager of the City of Hercules is continued in accordance with the terms and conditions contained in Amendment No. 2 to his Employment Agreement, attached hereto as Exhibit "A"; and

**BE IT FURTHER RESOLVED** that Amendment No. 2 to the Employment Agreement attached hereto as Exhibit "A" is hereby approved, and the Mayor is authorized to execute said Employment Agreement on behalf of the City of Hercules.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 26th day of March 2019 by the following vote of the Council:

**AYES:**

**NOES:**

**ABSENT:**

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Dan Romero, Mayor

**ATTEST:**

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Lori Martin, City Clerk

**AMENDMENT NO. 2**  
**to**  
**CITY OF HERCULES AGREEMENT WITH DAVID BIGGS FOR CITY**  
**MANAGER/EXECUTIVE DIRECTOR SERVICES**

1. Parties. The Parties to this Contract Amendment are the City of Hercules, a California municipal corporation and the City of Hercules as Successor Agency to the Redevelopment Agency (hereinafter "City"), and David Biggs, Hercules City Manager (hereinafter "Biggs").

The Parties to this Contract Amendment do mutually agree and promise as follows:

2. Purpose. This Amendment No. 2 is being entered into to amend the existing contract between City and Biggs which was approved by the City Council of the City of Hercules on June 10, 2014 by Resolution No. 14-037, and as amended on October 23, 2018, as Amendment No. 1 by Resolution 18-064. Said contract including Amendment No. 1 shall hereinafter be referred to as the "Original Agreement" and is incorporated herein by reference.

3. Original Agreement Provisions. The Parties hereto agree to continue to abide by those terms and conditions of the Original Agreement, which except for the express amendments contained herein, are unaffected by this Amendment No. 2.

4. Amendment. This Amendment No. 2 is intended to amend the Original Agreement to provide for the following:

- A. Extend the term of the Original Agreement to December 31, 2021, with two additional one year options to extend, each one year option to extend requiring approval by Council pursuant to the Annual Performance Evaluation process established in Section 7 of the Original Agreement based on Biggs' anniversary date of June 30th. In the event the City Council does not complete the annual evaluation process on or before September 30th, then the one year option shall be deemed to be effective.
- B. Effective July 1, 2019, Biggs shall be provided with the same benefit provided to all Executive Level employees in Article 2, Section 13.2 of the Pay & Benefits Plan for Executive Level Employees and shall receive an employer contribution equivalent to 5% of his salary on a one-to-one match deposited into his ICMA 457 Deferred Compensation Plan through payroll deduction subject to the limits, policies and conditions established by the ICMA and Federal Tax laws.
- C. Effective July 1, 2019, increase Biggs' adjusted annual salary of \$224,400 by 10%, for an annual salary of \$246,840.

D. Section 6 D of the Original Agreement – Incentive, is clarified to expressly allow for the retention incentive to be deposited into the City’s ICMA 457 Deferred Compensation Plan or the VantageCare Retiree Health Savings (RHS) Program at the election of Biggs.

E. Waive for 2019 the Annual Performance Evaluation required pursuant to Section 7 of the Original Agreement. The Annual Performance Evaluation will be required pursuant to Section 7 of the Original Agreement for all subsequent years during the term of this Amendment No 2, unless expressly waived by the City Council.

5. Severability. If any provision or portion of this Amendment No. 2 is held to be invalid or unenforceable, this Amendment, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable provision(s) or portion(s) had never been included.

6. Independent Review. Biggs acknowledges that he has had the opportunity to obtain independent review of the financial and legal effects of this Amendment No. 2, and acknowledges that he has made an independent judgment regarding this Amendment No 2 and has not relied upon any representation of City, its officers, agents or employees, other than the terms expressly set forth in this Amendment No. 2.

7. Counterparts. This Amendment No. 2 may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Amendment.

8. Effective Date. This Amendment No. 2 will become effective on the date of approval by the City Council at a duly noticed regular meeting of the Council.

9. Signatures. These signatures attest the parties' agreement hereto:

City of Hercules

By \_\_\_\_\_  
Dan Romero, Mayor

By \_\_\_\_\_  
David Biggs, City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

By \_\_\_\_\_  
J. Patrick Tang, City Attorney



---

ATTEST:

\_\_\_\_\_  
Lori Martin, Administrative Services Director/City Clerk

Amendment Approval: This Amendment No. 2 to the Original Agreement has been approved by Resolution No. \_\_\_\_\_ of the City Council of the City of Hercules at a regular meeting of the Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2019.



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of March 26, 2019

**TO:** Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Mike Roberts, Public Works Director

**SUBJECT:** Update on Landscape & Lighting Assessment Districts and 2019/20 Annual Renewal

**RECOMMENDED ACTION:** Receive Report, Discuss, and Provide Direction, if any.

**FISCAL IMPACT OF RECOMMENDATION:** The regular annual renewal of Landscape & Lighting Assessment District assessments will result in a maximum increase in assessments in the amount of the consumer price index. This will not address those Zones in the Citywide District which have cumulative and annual operating deficits, beyond perhaps making a small contribution to reducing the annual deficits given the City's cost reduction strategies already put in place in those Zones. A more detailed fiscal review will be developed as part of the annual renewal process.

The cost of the normal annual renewal process is provided for in the budget for the Landscape & Lighting Assessment Districts, and for those Zones with operating deficits will contribute to those increasing. Any costs associated with a possible Prop 218 balloting in select Zones are not budgeted.

### **DISCUSSION:**

On October 23, 2018, the City Council received a report on options for a path forward in regards to three Zones in the Citywide District which have continuing cumulative and/or operating deficits. The Council considered service reductions in Zones 1, 3& 4, and 6, (Staff Report attached as Attachment 1) and direction was given to implement a modified level of service reductions. These service reductions were shared with the impacted neighborhoods in a letter dated November 19, 2018, which is attached as Attachment 2.

Since that time, staff has implemented the proposed service reductions, though PG & E has not yet made the change in the rate structure, so some of the anticipated savings have not yet been realized.

As directed, staff also reached out the Homeowners Associations (HOAs) in Zones 1 and 6 to discuss the possibility of the HOAs participating financially to eliminate the service reductions. In Zone 1, staff and the Mayor met with the Board of the Hercules by the Bay HOA, and then the Hercules by the Bay HOA endeavored to get the HOAs in Zone 1 and together to discuss options.

The Hercules by the Bay HOA President advised that that meeting was not well attended and there was little interest from those there to participate financially.

In the case of Zone 6, the Village Parkway area, the letters to the five (5) HOAs in that area generated a better response, with three of the HOA's expressing interest initially in perhaps funding the cost of current services or some part. Those HOAs were Westwood Duets, Forest Park, and Wildwood, with Glenwood, and Devonwood not responding. The Westwood Duets has also agreed to assume responsibility for the streetlights on their private streets which will eliminate most street lighting from the L&LAD. That transfer request is being processed by PG & E, and is not in effect yet. In addition, staff has met with the Forest Park HOA about their request to have the City abandon the public street portion of Forest Run, which we are pursuing, and which would result in that HOA assuming responsibility for the streetlights on Forest Run. That would leave the only L&LAD funded streetlights as being those on the Village Loop and Hercules Avenue.

It is anticipated that the normal annual renewal for Zone 6 or the Village Parkway area will assume that the transfer of at least the Westwood Duets streetlights have been completed by July 1, 2019.

March is typically when we kick-off the annual L&LAD renewal process to have the process done for the new assessments to be included on the 2019/20 tax bills.

Below is a FY 2019-20 schedule for the LLAD assuming no Proposition 218 effort to increase assessments in any Districts or Zones is contemplated, which means we are just applying a CPI type increase:

- March thru April 2019 – Prepare Preliminary Engineer's Report and determine FY 2019-20 assessment rates
- April 23, 2019 – City Council Resolution of Initiation/FAI Contract Approval
- May 3, 2019 – FAI to provide City staff with Council Documents and Preliminary Engineer's Reports
- May 28, 2019 – City Council Resolution of Intention
- June 7, 2019 – FAI to provide City staff with Council Documents and Final Engineer's Reports for Public Hearing
- June 25, 2019 – City Council Public Hearing and approve FY 2019-20 Final Engineer's Report/Assessments

Below is a schedule that is probably the most realistic to meet if the City decides to propose increased assessments in the deficit Zones for FY 2019-20, if so desired:

- March thru April 2019 – Perform assessment rates analysis, obtain approval from City Council and Ad-hoc committee as necessary, and conduct Public Outreach efforts
- April 9, 2019 – City Council Resolution of Initiation/FAI Contract Approval
- April 10, 2019 – FAI to provide City staff with Council Documents and Preliminary Engineer's Reports
- April 23, 2019 – City Council Resolution of Intention

- May 9, 2019 – Mail Notices/Ballots (minimum of 45 days prior to the PH)
- June 4, 2019 – FAI to provide City staff with Council Documents and Final Engineer's Reports for Public Hearing
- June 25, 2019 – City Council Public Hearing
- June 26, 2019 – Tabulate Ballots
- June 28, 2019 – FAI to provide City staff with Council Documents and Final Engineer's Reports for Continued Public Hearing (includes assessment rates per results of Ballot Tabulation)
- July 9, 2019 – City Council Continued Public Hearing (Declare Results of Election) and approve FY 2019-20 Final Engineer's Report/Assessments

As noted under the fiscal impact section, the cost of the regular renewal process is budgeted. The cost of undertaking a Proposition 218 process is not a budgeted cost and the costs by Zone are illustrated below:

Benefit Zone	No. of Parcels	Notice/Ballot Preparation & Public Outreach Review	Duplication/Mailing Services/ Postage/Ballot Tabulation	Totals
Zone 1	915	\$1,300	\$3,660	\$4,960
Zone 3 & 4	832	\$800	\$3,328	\$4,128
Zone 6	962	\$1,300	\$3,848	\$5,148
Zone 7	<u>563</u>	<u>\$600</u>	<u>\$2,252</u>	<u>\$2,852</u>
	3,272	\$4,000	\$13,088	\$17,088

That does not include any extraordinary public outreach and education costs. These costs are also typically recovered over time from the Zones in which the City would be balloting.

Staff has also been exploring the idea, based upon feedback from the community and Council Members, of the possibility of more clearly defining that the increased assessments would be for two types of costs. First, to address any current annual operating deficits, which would continue into the future as long as necessary, and hopefully after this adjustment, would not require increases beyond the annual CPI. The second component would be for any cumulative deficit and/or the replacement of streetlights, which has been proposed to finance over 10 years. At the end of ten years, this component would sunset.

The City Council is requested to provide direction as to the process to be initiated for the FY 2019/20 annual renewal process.

#### **ATTACHMENTS:**

1. October 23, 2018 Staff Report
2. Service Reductions Notification Letter

*Financial Impact*

**Description:**

**Funding Source:**

**Budget Recap:**

Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change:	Yes <input type="checkbox"/> No <input type="checkbox"/>		



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of October 23, 2018

**TO:** Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Mike Roberts, Public Works Director

**SUBJECT:** Citywide Landscape & Lighting Assessment District Service Reductions Update

**RECOMMENDED ACTION:** Receive Update Report, Discuss, and Provide Direction, including Approving Implementation of Recommended Service Reductions

**FISCAL IMPACT OF RECOMMENDATION:** Three of the Zones in the Citywide Landscape & Lighting Assessment District require service reductions to eliminate current operating deficits – Zone 1 (Hercules by the Bay); Zone 3 & 4 (Birds & Gems); and Zone 6 (Village Parkway). In addition, there are cumulative deficits which will have to be addressed in the future in Zones 1 and 6.

**DISCUSSION:** On August 14, 2018, City Council reviewed and discussed options to address the operating deficits and potentially the cumulative deficits for three of the Zones in the Citywide Landscape & Lighting Assessment Districts. The staff report which outlined options to do so including recommended service reductions is provided as Attachment 1.

The City Council conceptually approved proceeding with the service reductions identified by staff, though opting to delay the implementation to November 30, 2018, and requested that staff undertake a level of outreach to the Homeowner Associations to explore their willingness to contribute to the cost of providing the services in-lieu of implementing the service reductions. The purpose of this report is to provide an update on the outreach, responses from the HOAs, and an update on other implementing actions.

City staff has made the formal request to PG&E to transition the streetlight rate from the LS-2C which has repair and maintenance responsibilities shared between the City and PG & E to the lower LS-2A rate which has the City assuming sole responsibility. The savings from this lower rate would be applied to deficit reduction, though there would be service impacts as the City would not have the resources to maintain or repair lights in the three Zones identified. PG & E has acknowledged receipt of the request, though it is uncertain as to how quickly they will implement the change with the resultant savings beginning to accrue.

The City contacted each of the Homeowner Associations via letter and e-mail as a basis to explore interest in the preservation of services through HOA participation in Zones 1 and 6. This letter was



provided to the HOA's on August, Xx, 2018, and per the City Council's direction, asked the HOA's to reach out to staff with a response by October 15, 2018. For ease of reference, the list of the component Homeowner Associations is provided below:

HOA Name	Category	No. of Units	Estimated Amount needed from HOA to Eliminate Annual Deficit
Zone 1 (Bellevue)	Single-Family Home	132	\$3,785.76
Zone 1 (Chelsea by the Bay)	Condo/Townhome	118	\$2,538.18
Zone 1 (Cottage Lane)	Condo/Townhome	10	\$35.10
Zone 1 (Cottage Lane)	Single-Family Home	46	\$215.28
Zone 1 (Coventry)	Single-Family Home	40	\$187.20
Zone 1 (Hercules by the Bay)	Single-Family Home	246	\$7,055.28
Zone 1 (Olympian Hills)	Condo/Townhome	301	\$1,056.51
Zone 6 (Devonwood)	Condo/Townhome	168	\$5,500.32
Zone 6 (Forrest Run)	Condo/Townhome	136	\$4,452.64
Zone 6 (Glenwood)	Condo/Townhome	228	\$7,464.72
Zone 6 (Westwood Duets)	Condo/Townhome	192	\$6,286.08
Zone 6 (Wildwood)	Condo/Townhome	237	\$7,759.38

As of the date of this report, staff have heard from only two (2) of the Homeowner Associations. City staff is set to meet with the Westwood Duets HOA on October 28, 2018 to explore their taking ownership of the streetlights internal to their tract, and to also explore the common area services. The only other HOA that has responded was the Forrest Run HOA and they expressed an interest in participating in the preservation of services, though no follow-up has occurred given the lack of response from the other HOA's in Zone 6.

Staff believes that we will be able to reach an agreement with the Westwood Duets to take on the responsibility for the lights within their development on their private streets, though without the full participation of the remainder of the Zone 6 HOA's there is not a realistic path to preserve the common area services.

#### **ATTACHMENTS:**

1. Staff Report from August 13, 2018

***Financial Impact***

**Description:**

**Funding Source:**

**Budget Recap:**

Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change:	Yes <input type="checkbox"/> No <input type="checkbox"/>		



## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of August 14, 2018

**TO:** Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Mike Roberts, Public Works Director

**SUBJECT:** Citywide Landscape & Lighting Assessment District Path Forward Options and Service Reductions

**RECOMMENDED ACTION:** Receive Report, Discuss, and Provide Direction, including Approving Implementation of Recommended Service Reductions

**FISCAL IMPACT OF RECOMMENDATION:** Three of the Zones in the Citywide Landscape & Lighting Assessment District require service reductions to eliminate current operating deficits – Zone 1 (Hercules by the Bay); Zone 3 & 4 (Birds & Gems); and Zone 6 (Village Parkway). In addition, there are cumulative deficits which will have to be addressed in the future in Zones 1 and 6.

**DISCUSSION:** The base financial structure of the City of Hercules since Proposition 13 in 1978, which passed just as the City started to develop, resulted in the City being a low-to-no share property tax community. This meant that the City had to implement other revenue vehicles as the community developed to provide basic services. One of these vehicles were the various Landscape & Lighting Assessment Districts which provide funding for parks, street lighting, landscape maintenance, weed abatement and fire breaks, and other services, through five Landscape & Lighting Assessment Districts, including the Citywide District which has eleven Zones, with services varying by Zone to some degree.

The City of Hercules has been working for more than three years to address the financial shortfalls in some of the zones in the Citywide Landscape & Lighting Assessment District. This process started in 2015 with a concerted effort to ensure that expenses were appropriately allocated and to reduce costs where possible, including having rebid the main landscape maintenance contract not once, but twice. In order to address the fair allocation of arterial/major street landscape and street lighting maintenance costs and to address operating deficits, cumulative deficits and streetlight replacement needs in some Zones, the City conducted a Proposition 218 balloting process in Zones 1, 3 & 4, 5C, 6 and 7 in 2017. Unfortunately, increased assessments were only approved in Zone 5C, where as a result of the increased assessments, the failing hollow-core street lights have been replaced and the cumulative deficit is being paid over ten years. The arterial/major street share reallocation was also implemented in all Zones.

The City continued to explore ways to reduce costs in the balance of the Zones. However, while some adjustments were made, annual operating and cumulative deficits remained in some Zones and the need to replace wood hollow-core streetlights remained. The City undertook a Pilot Streetlight Replacement Project in the first part of 2018. The failing wood hollow core streetlights were replaced in Zone 2 (Foxboro), and on two streets in Zone 7 (Refugio Heights), plus in Zone 5C (Dev. Parcels), Zone 10 (Citywide), together with one streetlight in Zone 1 (Hercules by the Bay), Zone 3 & 4 (Gems/Birds), and Zone 6 (Village Parkway). Assessment income or reserves was sufficient to undertake this Pilot project in all Zones except Zone 1, Zone 3 & 4, and Zone 6, where a small amount of additional deficit spending was necessary.

In addition, it was identified that Zone 9 (Birds & Country Run) had a cumulative deficit where assessments needed to be increased in order to avoid service reductions, though street lights in this Zone are owned and operated by PG & E. Given the still pressing financial needs of these Zones, the City Council elected to try again to secure approval of higher assessments in Zones 1, 3 & 4, 6, 7, and 9. Each time the City undertakes a Prop 218 election process, there are costs associated with this effort including the noticing and balloting, together with the education and outreach efforts. These costs also exacerbate the annual operating deficits and/or cumulative deficits in the impacted Zones.

In 2018, the Proposition 218 balloting was successful only in Zone 9 (Birds & Country Run). Service levels in this Zone will be maintained with the cumulative deficit to be repaid over 10 years or less. However, after two rounds of property owner balloting, the City Council will need to determine a path forward for those Zones where the proposed assessment increases failed: Zone 1 (Hercules by the Bay); Zone 3 & 4 (Gems & Birds); Zone 6 (Village Parkway); and Zone 7 (Refugio Heights). The basic parameters to be considered include prioritizing the payment of the equitable share of arterial/major streets landscape and street lighting maintenance costs as the highest priority, followed by the elimination of any annual operating deficit, followed by the eventual reduction or elimination of any cumulative deficits.

The purpose of this report is to outline options and staff's recommendations as to how to proceed from both a common level and on a Zone by Zone basis.

### **Failing Hollow Core Streetlights**

The need to replace the failing hollow-core wood streetlights remains a high priority in order to reduce or eliminate liability and risk to the City and to avoid possible injury and property damage. This fall, the City will be replacing aging hollow-core wood street lights on the arterial/major streets using gas tax funds. The use of these funds represent a general contribution to the effort to replace the lights and reduces costs being passed through to all of the assessment districts and zones in the City. Lower operating costs will also flow to the other Districts and Zones.

Damaged or dilapidated street lights in the zones where the assessment increase didn't pass will not be replaced as the street lights fail or become a public hazard. The City will remove the street lights as needed, and they will generally not be replaced. An exception to this will be if the streetlight is damaged by a vehicle accident, which has often happened, and the City is able to collect insurance proceeds to replace the streetlight, in which case the streetlight will be replaced with the new energy efficient metal pole lights.

Ultimately, should the lights start to fail at a high rate or become more hazardous, they may need to be removed proactively. In that case, the failing hollow core wooden street lights would have to be de-energized by an electrician and be cut off close to base. Staff is estimating that it could cost up to \$500 per pole to have this work done.

The number of wooden hollow core streetlights in each Zone is shown in the table below:

Zone	Number of Wooden Hollow Core Street Lights	Number Replaced During Pilot Project	Estimated Remaining Cost to Replace
Zone 1 – Hercules by the Bay	81	1	\$280,000
Zone 2 - Foxboro	45	45	\$0
Zone 3 & 4 – Gems & Birds	136	1	\$472,500
Zone 5B – Dev Parcels	2	2	\$0
Zone 5C - Commercial	1	1	\$0
Zone 6 – Village Parkway	54	1	\$185,500
Zone 7 – Refugio Heights	129	24	\$367,500
Zone 10 – Citywide/Parks	3	3	\$0
Arterials	30	1	\$150,000 - budgeted in 2018/19 from Gas Tax

Staff also heard a level of frustration from many community members about the often long-time it takes for streetlights to be repaired. This may have contributed to the lack of support for higher assessments. The root of this repair time problem is twofold.

First, currently responsibility for streetlight repair is shared between the City and PG &E under the current LS-2C streetlight rate structure. PG & E is responsible for the bulbs, glass dome, ballast, and sensors. The City is responsible for the pole and wiring. When a streetlight malfunctions, coordination is needed between the two agencies to determine the cause of the failure and then determine who is responsible for the repair. This relationship is inherently inefficient and adds to response times. Second, PG&E has generally not responded in a timely manner to streetlight calls for service, which has further complicated coordination efforts and added significantly to the delays.

To address this issue, staff is proposing to transition to a different rate structure which will take PG & E out of the mix for maintenance. This lower cost structure may result in a more effective and less costly approach to repair, and depending upon Zone, may help to eliminate the operating deficits or allow for increases in reserves as necessary. The Zone by Zone analysis below assumes the savings which would result from transitioning to the LS-2A rate structure.

However, even with the City taking on all repair responsibilities, the aging streetlights are becoming increasingly difficult and costly to maintain. As such, depending upon the financial resources available in the different Zones, it is likely that lights will not be repaired as quickly or at all depending upon condition, and that over time, more and more streetlights will become inoperable. This will be discussed further under each Zone later in this report.

Given financial constraints, it will also be necessary to reduce or eliminate streetlight expenses in some Zones. Staff is working to determine the feasibility and costs associated with turning streetlights off entirely, or say on an every other light basis, as part of the need to eliminate annual operating deficits in some Zones.

### **Partnership Opportunities**

Staff will be reaching out to those Zones where service reductions will be necessary to eliminate operating deficits to see if any of the neighborhood Homeowner Associations may be willing to take on some of the Zone funded responsibilities, for example by acquiring the streetlights or entering into a contract with the City to provide funding to support desired service levels. Perhaps the HOA's have capacity within their current HOA fee structure to do so or would have a better ability to increase HOA dues than the City has to increase assessments.

The table below shows what the costs would be in Zones 1 and 6 where there are HOA's with which to potentially partner and what the annual cost per unit would be to sustain existing services and eliminate the operating deficit in those zones:

Zone/Development Category	Current Assessment	Required Assessment to Eliminate Operating Deficit	Difference
Zone 1 (Cottage Ln, Coventry, Olympian Hills) Single-Family Home	\$60.32	\$65.00	\$4.68
Zone 1 (Cottage Ln, Coventry, Olympian Hills) Condo/Townhome	\$45.24	\$48.75	\$3.51
Zone 1 (Bellevue, Chelsea by the Bay, and Hercules by the Bay) Single-Family Home	\$60.32	\$89.00	\$28.68
Zone 1 (Bellevue, Chelsea by the Bay, and Hercules by the Bay) Condo/Townhome	\$45.24	\$66.75	\$21.51
Zone 6 (Devonwood, Forrest Run, Glenwood, Westwood Duets, Wildwood) Condo/Townhome	\$22.01	\$54.75	\$32.74

The above table for Zone 6 assumes that the streetlights in the Westwood Duets HOA area are transferred to the HOA as these lights are on private streets, as such the figures above only reflect the shared streetlights and maintenance costs on Village Parkway.

The second table below shows what the cost would be for each of these HOA's to maintain services.



HOA Name	Category	No. of Units	Estimated Amount needed from HOA to Eliminate Annual Deficit
Zone 1 (Bellevue)	Single-Family Home	132	\$3,785.76
Zone 1 (Chelsea by the Bay)	Condo/Townhome	118	\$2,538.18
Zone 1 (Cottage Lane)	Condo/Townhome	10	\$35.10
Zone 1 (Cottage Lane)	Single-Family Home	46	\$215.28
Zone 1 (Coventry)	Single-Family Home	40	\$187.20
Zone 1 (Hercules by the Bay)	Single-Family Home	246	\$7,055.28
Zone 1 (Olympian Hills)	Condo/Townhome	301	\$1,056.51
Zone 6 (Devonwood)	Condo/Townhome	168	\$5,500.32
Zone 6 (Forrest Run)	Condo/Townhome	136	\$4,452.64
Zone 6 (Glenwood)	Condo/Townhome	228	\$7,464.72
Zone 6 (Westwood Duets)	Condo/Townhome	192	\$6,286.08
Zone 6 (Wildwood)	Condo/Townhome	237	\$7,759.38

### **Personnel Costs**

The City allocates a level of Public Works maintenance staff to all of the Landscape & Lighting Assessment District and Zones based on the amount of staff working in these Districts and Zones. As service levels are reduced, these personal costs will need to be reallocated to other Districts and Zones, or other non- L&LAD funding sources.

### **Zone 1 (Hercules by the Bay)**

This Zone is expected to have an annual operating deficit for the 2018/19 fiscal year of just over \$14,000. This would increase an existing \$17,000 cumulative deficit to be just over \$31,000.

Zone 1 funded amenities include streetlights, Railroad Park, landscaped median islands on Hercules Avenue, fire breaks, and a fair-share contribution towards landscaping & lighting improvements on arterial/major roads throughout the City, and a handful of cul-de-sacs which over time have evolved into a shared responsibility between the City and the adjacent homeowners association.

Elimination of the annual operating deficit would require some combination of reducing landscape & irrigation expense, water, street lighting expense, and personnel costs equal to approximately \$14,000 or approximately 22% of total expenses for this Zone.

With regards to establishing priorities as it relates to potential cost cutting, reducing fire breaks is not recommended for self-explanatory reasons. Landscaping and Lighting improvements on arterial/major roads is more impactful than neighborhoods in maintaining the character of the City and overall property values, plus other LLAD Districts and Zones pay their full fair share contribution. For these reasons, reductions in arterial/major roads landscaping and lighting is not recommended. Reductions to Zone 1 neighborhood landscaping initially seems like a more viable option until closely scrutinized. Closing Railroad Park would require fencing costs and become a liability due to trespassers using an unmaintained park. Detrimental impacts to the landscaping due to eliminating maintenance and irrigation water could result in losing established trees and lawn areas that would take years to recover. Landscaping costs in medians and cul-de-sacs is fairly low relative to the deficit.

The existing streetlights in Zone 1, as discussed above, have well-exceeded their useful life. The electronic hardware is failing at an increasingly frequent level such that current staffing resources available are not adequate to sustain the increasing repair demand. The wood poles are in many cases warped, cracked, or rotting and a liability. For these reasons, continuing to spend money on the streetlights is a poor investment, especially when viewed relative to the impacts cuts would have on other amenities. Staff is therefore recommending streetlight service levels be decreased to eliminate the operating deficit. This could be achieved by keeping the streetlights on Hercules Avenue and Santa Fe for safety purposes given traffic volumes and shutting a number of the failing wooden hollow core street lights off at all other locations. Personnel costs would be shifted to other areas such as Streets. No further maintenance would be performed on the hollow-core wooden streetlights left in service. When the streetlights fail, electricity would be turned off.

As an alternative to service reductions, this is a Zone where the City could explore the willingness of the Homeowners Associations to contribute to the continuation of services.

### **Zone 3 & 4 (Gems & Birds)**

This Zone is expected to have an annual operating deficit for the 2018/19 fiscal year of just over \$27,000, however, \$20,000 of this amount is a maintenance project which would see the hillside v-ditches cleaned and repaired which can be funded from existing capital reserves. If the v-ditch cleaning project were funded from reserves, then the annual operating deficit would be just over \$7,000. There is no cumulative deficit in this Zone.

Zone 3 & 4 funded amenities include streetlights, fire breaks, a fair-share contribution towards landscaping & lighting improvements on arterial/major roads, and landscaping in cul-de-sacs. Elimination of the annual operating deficit would require some combination of reducing landscape & irrigation expense, water, street lighting expense, and personnel costs equal to approximately 9% of total annual expenses for this Zone.

Similar to the evaluation for Zone 1, staff is recommending cuts in street lighting to eliminate the deficit in Zones 3 & 4. Establishing the necessary savings could be achieved by discontinuing maintenance on all the streetlights. Once the streetlights fail, the electricity would be turned off.

There are no Homeowners Association in this Zone with a number of small exceptions.

### **Zone 6 (Village Parkway)**

This Zone is most problematic of all of the Zones. This Zone is expected to have an annual operating deficit for the 2018/19 fiscal year of just over \$33,000, and with revenues of just over \$24,000, has little to no room to reduce the operating deficit without dramatic cuts to services.

To eliminate all but \$1,300 of the annual operating deficit, all of the street lights would have to be turned off, together with the elimination of all landscape & irrigation maintenance, together with all associated personnel costs. This would allow for just the equitable share of arterial/major streets landscape and street lighting costs to be funded together with fire breaks/discing and irrigation water

to continue to be funded. This Zone is projected to have a cumulative deficit of over \$160,000 at the end of FY 2018/19 before any expenses are reduced.

This is a Zone where the City could explore the willingness of the Homeowners Associations to contribute to the continuation of services. For example, the street lights in the Westwood Duets neighborhood are City owned but are on private streets. The Westwood Duets HOA has expressed an interest in taking on the street lights costs in their neighborhood which would put them on par with the other HOA's in this Zone where the street lights interior to the neighborhoods are privately owned and funded. This would result in the Zone funding just the streetlights along Village Parkway, together with some Village Parkway and Hercules Avenue landscape maintenance.

### **Zone 7 (Refugio Heights)**

The only purpose of the proposed assessment increase in this Zone was to fund the replacement of street lights. There were sufficient reserves in this Zone to allow for 24 street lights to be replaced along Carson and Coronado Streets which was done as part of the Pilot Streetlight Replacement Project. There is no annual operating deficit in this Zone, and in fact, there is an amount being added to capital reserves each year. As such, funds can be continued to be applied to repair existing street lights for as long as that is cost effective. In addition, as reserves build up, the City may be able to replace street lights as they fail, at least until such time as all available funds have been exhausted. A minimum balance of \$52,500 as a capital reserve should be accumulated should it become necessary for liability reasons to cut down the remaining 105 wood poles and cap the electrical wires at an estimated cost of \$500 for each pole.

### **Recommendation**

After two failed attempts at property owner balloting to put the subject Zones in the Citywide Landscape & Lighting Assessment District on better financial footing and eliminate operating deficits, together with replacing failing wooden hollow-core street lights, it is recommended that services be eliminated in order to bring expense in line with revenues. As such, should the City Council concur, staff will implement expense reductions as identified in each of the Zones as discussed above and we will work to do so by September 30, 2018, as a quarter of the fiscal year will have already passed.

In summary, the changes will involve:

- Changing from the LS-2C rate with PG&E to the LS-2A rate with the saving applied to expense reduction;
- Eliminate that portion of staff costs in each Zone attributable to the reduction in services;
- As a result, lights which fail or need repair will not be addressed as staff will not be allocated for this purpose except in Zone 7;
- All streetlights will be turned off in Zone 6 and a number of the wooden hollow-core street lights will also be turned off in Zone 1;
- Landscape Maintenance will be eliminated in Zone 6.

Between now and September 30, 2018, staff will advise the Homeowners Associations of the service reductions and they will be afforded an opportunity to enter into an agreement with the City to fund the gap to maintain existing services levels.

None of the recommended changes address the need to replace streetlights nor do they address the existing cumulative deficits on Zone 1 and Zone 6. As such, these will have to be revisited over time. The City Council may wish to modify or build upon what staff is recommending, though the passage of time does not improve the financial state of the impacted Zones and it will take some time to fully implement what is recommended.

**ATTACHMENTS:** None

<i>Financial Impact</i>			
<b>Description:</b>			
<b>Funding Source:</b>			
<b>Budget Recap:</b>			
Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>			



CITY MANAGER

David Biggs, City Manager

August 21, 2018

Chelsea by the Bay Homeowners Association  
c/o Willis Management Group, Inc.  
3180 Crow Canyon Place #100  
San Ramon, CA 94583

Dear Chelsea by the Bay Homeowners Association,

As you are aware, in each of the past two years, the City has asked the property owners in the Citywide Landscape & Lighting Assessment District No. 83-2 to approve assessment increases to support current service levels. Your Homeowners Association is located in a Zone where those assessment increases have been unsuccessful. An unfortunate outcome of this is a need to balance the budget for your Zone.

On Tuesday evening last week, the City Council tentatively authorized service reductions to eliminate the operating deficits in those Zones where they exist. Attached for your information is the staff report which was presented to the City Council. It should be noted that these unavoidable reductions in services do not address cumulative deficits or the need to replace the failing wooden hollow-core streetlights. City staff will be working to implement these service reductions by November 30, 2018.

For Zone 1, the Hercules by the Bay area, these reductions will mean that the City will no longer be repairing the wood hollow-core streetlights as they fail and that we will turning off 52 of the 80 remaining wood streetlights. The streetlights which will remain in operation until they fail are located along Hercules and Santa Fe Avenues which are the main collector streets in the neighborhood.

As an alternative to the service reductions, the City is willing to explore each of the Homeowners Associations in Zone 1 assuming responsibility for the gap between the annual assessments collected and the cost to sustain existing services. It is anticipated that the City and each HOA would enter into an agreement to provide the funding gap on annual basis. The amount which would be needed by HOA for the shared services in the area based on a share of the funding gap proportionate the assessments collected, is set forth below:

HOA Name	Category	No. of Units	Estimated Amount needed from HOA to Eliminate Annual Deficit
Zone 1 (Bellevue)	Single-Family Home	132	\$3,785.76
Zone 1 (Chelsea by the Bay)	Condo/Townhome	118	\$2,538.18
Zone 1 (Cottage Lane)	Condo/Townhome	10	\$35.10
Zone 1 (Cottage Lane)	Single-Family Home	46	\$215.28
Zone 1 (Coventry)	Single-Family Home	40	\$187.20
Zone 1 (Hercules by the Bay)	Single-Family Home	246	\$7,055.28
Zone 1 (Olympian Hills)	Condo/Townhome	301	\$1,056.51

In order for this to be a workable solution, each of the HOA's in Zone 1 would need to participate. Please let us know by no later than October 15, 2018, if your Homeowner's Association has any interest in exploring this idea further by contacting Public Works Director Mike Roberts at (510) 799- 8241 via [mroberts@ci.hercules.ca.us](mailto:mroberts@ci.hercules.ca.us). We look forward to hearing from you and entering into a partnership which would preserve service levels.

Sincerely yours,



City Manager

Attachment: Staff Report from August 14, 2018



CITY MANAGER

David Biggs, City Manager

August 21, 2018

Devonwood Condominium Owners Association  
c/o First Service Residential  
2000 Crow Canyon Place, Ste. 255  
San Ramon, CA 94583

Dear Devonwood Condominium Owners Association,

As you are aware, in each of the past two years, the City has asked the property owners in Citywide Landscape & Lighting Assessment District to approve assessment increases to support current service levels. Your Homeowners Association is located in a Zone where those assessment increases have been unsuccessful. An unfortunate outcome of this is a need to balance the budget for your Zone through

On Tuesday evening last week, the City Council tentatively authorized service reductions to eliminate the operating deficits in those Zones where they exist. Attached for your information is the staff report which was presented to the City Council. It should be noted that these unavoidable reductions in services do not address cumulative deficits or the need to replace the failing wooden hollow-core streetlights. City staff will be working to implement these service reductions by November 30, 2018.


For Zone 6, Village Parkway, this will mean that we will be turning off all of the wood hollow-core streetlights, and maintenance on the landscaped medians and other areas will be eliminated. As an alternative to the service reductions, the City is willing to explore each of the Homeowners Associations in Zone 6 assuming responsibility for the gap between the annual assessments collected and the cost to sustain existing services. It is anticipated that the City and each HOA would enter into an agreement to provide the funding gap on annual basis. The amount which would be needed by HOA for the shared services in the area based on a share of the funding gap proportionate the assessments collected, excluding the streetlights on the Westwood Duets private streets, are set forth below:



HOA Name	Category	No. of Units	Estimated Amount needed from HOA to Eliminate Annual Deficit
Zone 6 (Devonwood)	Condo/Townhome	168	\$5,500.32
Zone 6 (Forrest Run)	Condo/Townhome	136	\$4,452.64
Zone 6 (Glenwood)	Condo/Townhome	228	\$7,464.72
Zone 6 (Westwood Duets)	Condo/Townhome	192	\$6,286.08
Zone 6 (Wildwood)	Condo/Townhome	237	\$7,759.38

In order for this to be a workable solution, each of the HOA's in Zone 6 would need to participate. Please let us know by no later than October 15, 2018, if you Homeowner's Association has any interest in exploring this idea further by contacting Public Works Director Mike Roberts at (510) 799- 8241 via [mroberts@ci.hercules.ca.us](mailto:mroberts@ci.hercules.ca.us). We look forward to hearing from you and entering into a partnership which would preserve service levels.

Sincerely yours,



City Manager

Attachment: Staff Report from August 14, 2018

November 27, 2018

To: Residents/Property Owners  
Citywide Landscape & Lighting Assessment District Zones 1, 3 & 4, and 6

The City of Hercules has been endeavoring to address a combination operating and cumulative deficits in three of the Zones in the Citywide Landscaping & Lighting Assessment District for a number of years, including two failed attempts at having increased assessment approved by property owners. I am reaching out to advise the property owners and residents of Hercules by the Bay (Zone 1); the Gems & Birds (Zones 3 & 4); and, The Village Parkway (Zone 6) regarding upcoming cuts to services provided through the Landscape & Lighting Assessment District which covers your neighborhood. These cuts are necessary to match expenditures in these areas to the revenues generated by the assessments paid and are due to the failure of two efforts to raise the assessments.

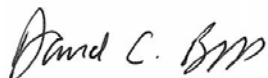
On October 23, 2018, the City Council authorized service reductions in your landscape and lighting assessment district zone. The service reductions include:

- Changing from the LS-2C streetlight rate with PG&E to the LS-2A rate in both Zones 1, 3 & 4, and 6 with the savings applied to expense reduction, which has the City assuming full maintenance responsibility.
- Landscape Maintenance will be eliminated in Zone 6.
- Eliminate that portion of staff costs in each Zone attributable to the reduction in services.
- As a result, lights which fail or need repair will not be addressed as staff will not be allocated or available for this purpose.

The City Council considered turning off all streetlights in Zone 6 and a number of the wooden hollow-core streetlights in Zone 1; as this is needed to balance the budget in these zones, but delayed that to after the first of the year in order to allow for notice and for those areas with Homeowners Associations, to engage with these HOAs.

It is unfortunate that these service reductions are having to be implemented and we will reach out after the first of the year if there is any change to what the service reductions will involve.

Sincerely,



David Biggs  
City Manager





## **STAFF REPORT TO THE CITY COUNCIL**

**DATE:** March 26, 2019  
**TO:** Members of the City Council  
**SUBMITTED BY:** David Biggs, City Manager  
**SUBJECT:** Inclusionary Housing Implementation Policy Recommendations

### **RECOMMENDED ACTION:**

Receive Report, Discuss, and Provide Direction on Formulation of an Inclusionary Housing Implementation Policy to Manage the City's Interests in the Development, Restriction, and Management of Affordable Housing Units to be Constructed as Part of Projects with Development Agreements Requiring Affordable Housing.

### **COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:**

There was no commission or subcommittee review of the item.

### **FISCAL IMPACT OF RECOMMENDATION:**

No direct financial impact for item; the implementation, administration, and monitoring of affordable housing will have a cost associated with those units.

### **DISCUSSION:**

At the last City Council meeting, staff presented the 2018 Annual Progress Report on the City's Housing Element, which concluded, in part, that while the City has seen the construction of 489 market rate ("above moderate income") units since the beginning of the 2015-2023 Housing Element cycle, only 1 affordable unit has been created. The 2015-2023 Housing Element called for a total of 682 units to be constructed, of which the majority are for very low, low, and moderate income households, as summarized in the table below:

2015-2023 Permitted Housing Units (From 2018 Annual Progress Report, Table B)	RHNA Allocation by Income Level	Units Produced Through 2018	Remaining Surplus / (Deficit)
Very Low	220	0	(220)
Low	118	1	(117)

Moderate	100	0	(100)
Subtotal Affordable	438	1	(437)
Above Moderate	244	489	245
TOTAL	682	490	(192)

As shown above, the City's current RHNA obligation is for 437 affordable units to be constructed in the City by 2023; with a lack of local funding and staff resources to create such a project, other means will need to be used to achieve these goals. Failure to do so may cause the City to be subject to streamlining applications.

On July 10, 2018, the City Council requested a future agenda item to allow for a discussion of the implementation of affordable housing provisions under development agreements. There are two projects which currently have development agreements with affordable housing requirements: Bayfront, and Hilltown. This staff report includes information to facilitate the City Council's desired discussion.

Inclusionary housing is a method for creating affordable, income-restricted housing, for specific households in new residential projects. Typically, the percentage and affordability of the inclusionary units depends on project size, but generally a 10 percent inclusionary requirement (meaning that 10 percent of the total units constructed) is a standard practice. Affordability usually includes units restricted, by a recorded covenant or affordable housing agreement, for a period of 45-55 years; these restricted units are specifically restricted to moderate, low, very low, and, more frequently, extremely-low income households.

In markets where housing is being constructed, planners and affordable housing advocates find that this can be one way to effectively deliver affordable units even without any financial subsidies. Since the elimination of the largest source of California's affordable housing funds with the dissolution or redevelopment agencies, finding creative means to construct new units has shifted towards inclusionary practices.

Commonly, inclusionary housing is a requirement of discretionary project approvals, density bonuses, and, in more cases, codified in local zoning codes. While the City Zoning Ordinance does not presently contain an inclusionary housing requirement for new residential construction, recent changes in state law have clarified that cities now have the right to do so for both for-sale and rental housing.

When the affordable units are created, it is often the responsibility of the City to oversee the management, tenancy and condition of affordable units during their restricted period. For for-sale housing, this often means working with the property owner to coordinate and transfer the restriction of the covenant to an eligible household. However, for rental housing, the administrative burden can be more complex, because of the higher turnover associated with rental housing and the role of third parties (e.g. property managers). As a result of the potential complexity of managing a portfolio of affordable inclusionary restrictions, cities often adopt policies to guide the implementation of inclusionary zoning practices to ensure that the inclusionary units remain affordable.

The City of Hercules had an Inclusionary Housing requirement on the books as adopted in 2006 by Ordinance No. 416. Those inclusionary housing requirements applied to those projects outside of redevelopment project areas where a State-imposed inclusionary requirement already existed, and provided guidance to both redevelopment and non-redevelopment inclusionary units. In June of 2012, the City

Council adopted Ordinance No. 469, which suspended Chapter 10.19, of the Municipal Code, which is the inclusionary housing provisions. This suspension was in response to the elimination of redevelopment and the state of the economy in a post-Great Recession environment. The language added to Section 10.19 reads:

**Sec. 10-19.113 Suspension.**

The provisions of this Chapter 10.19 are suspended as of the effective date of Ordinance No. 469 and shall become reinstituted by the City Council except by subsequent Ordinance.

Staff is recommending that the City Council consider adoption of a uniform policy to ensure consistency, equity, and transparency when working with developers and property managers on inclusionary units. This policy would apply to all inclusionary projects in the City, as required currently under development agreements, or in the future should additional affordable units be proposed.

The policy recommendations revolve around the following three areas:

1. **Location of affordable units** – does the city wish to allow a developer to choose where to locate the inclusionary units within a project, which can often lead to concentration of the affordable units in a part of the project.
2. **Type of affordable units** – does the city wish to allow a developer to select which size of units may be made to be affordable in inclusionary projects, thereby allowing a developer to effectively limit the household sizes that may be able to secure affordable housing in the city.
3. **Means for securing affordability** – state law does not require that inclusionary units be deed-restricted, meaning that these units may perpetually be at risk from being lost when the household turns over.

Attached to this staff report is a compilation of research on these housing issues prepared by the City's consultant, who evaluated several California cities inclusionary housing practices. In short, the recommendation from the research is that the City formulate a policy that achieves the following goals:

1. Location of affordable units should be interspersed throughout the project, both by building and in the project as a whole.
2. The type of inclusionary units should be directly proportional to the project as a whole, both in terms of size and number of bedrooms, so that a variety of households may be able to have access to affordable housing.
3. Staff and legal counsel recommend a single means for ensuring that an inclusionary unit is kept affordable for the intended duration, typically 45 years for ownership housing and 55 years for rental housing. Without a covenant recorded on the property, the units are perpetually at risk of being lost.
4. That any projects which produce inclusionary housing should be required to enter into an implementation agreement to ensure conformity with the City's policies and to ensure project developers and future owners are aware of how the inclusionary housing requirements and policies will be implemented and administered.

The City's now suspended Inclusionary Housing Ordinance reflected these best practices and should continue to guide the City's efforts. Staff would recommend that the City Council provide direction to bring back an inclusionary housing policy containing these and other provisions for consideration for adoption at a future City Council meeting. In addition, recommendations can also be provided by staff as to the best means to implement, monitor, and manage the units produced on a forward-going basis.

**ATTACHMENTS:**

1. Ordinance No. 469
2. RSG Memorandum to City Manager dated March 19, 2019

<i><b>Financial Impact</b></i>			
<b>Description:</b>			
<b>Funding Source:</b>			
<b>Budget Recap:</b>			
Total Estimated cost:	\$	New Revenue:	\$
Amount Budgeted:	\$	Lost Revenue:	\$
New funding required:	\$	New Personnel:	\$
Council Policy Change: Yes <input type="checkbox"/> No <input type="checkbox"/>			



## ORDINANCE NO. 469

### AN ORDINANCE OF THE CITY OF HERCULES, CALIFORNIA, AMENDING CHAPTER 10-19 OF THE HERCULES MUNICIPAL CODE TO SUSPEND INDEFINITELY THE CITY'S INCLUSIONARY HOUSING REQUIREMENTS

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HERCULES as follows:**

**1. Purpose.**

This Ordinance amends the Hercules Municipal Code in order to suspend indefinitely the provisions of Title 10, Chapter 19, entitled, "Inclusionary Housing."

**2. Findings.**

**WHEREAS**, in 2006, the City Council of the City of Hercules approved passage of Ordinance No. 416, establishing an inclusionary housing program for the City of Hercules to insure that private developers construct a required number of affordable units or pay appropriate in-lieu fees; and

**WHEREAS**, in 2009, two California appellate decisions invalidated significant portions of different inclusionary housing programs, calling into question some of the key legal assumptions underlying such mandates, including the validity of in lieu fees and the imposition of affordable rental unit requirements; the cases are, *BLA v. City of Patterson*, 171 Cal.App.4<sup>th</sup> 886 (2009), and *Palmer/Sixth Street Properties v. City of Los Angeles*, 175 Cal.App.4<sup>th</sup> 1396 (2009); and

**WHEREAS**, the Hercules Ordinance requires affordable units in Redevelopment Project areas, which no longer exist under the ABx26 legislation that eliminated redevelopment agencies and thereby also eliminated the most important funding source cities have had to subsidize affordable housing, and

**WHEREAS**, due to the elimination of the Hercules Redevelopment Agency and the administrative requirements of managing and monitoring affordable housing programs, the City has opted out of continuing to manage the affordable housing obligations of the former Hercules Redevelopment Agency because there is no funding available to do so, and likewise no funding available for staffing to manage and monitor the requirements of the City's inclusionary housing ordinance; and

**WHEREAS**, implementation of the inclusionary housing ordinance in the current, distressed real estate market could actually result in the deterrence of housing development in the City, thus undercutting the goal of providing additional affordable housing in the City; and

**WHEREAS**, the City Council has determined that the proposed amendments contained in this Ordinance have been reviewed pursuant to the provisions of the California Environmental Quality Act ("CEQA") and that no further environmental documentation is required for this

amendment to the Inclusionary Housing Ordinance because the proposed project does not involve any new significant environmental effects, and there is no substantial evidence that the approval of the amendment would have any significant environmental impact.

### **3. Amendment.**

Title 10, Chapter 19, of the Hercules Municipal Code is hereby amended to add a new subsection, delineated in **bold** type, to read as follows:

#### **“Title 10, Chapter 19. Inclusionary Housing**

##### **Article 1. General Provisions**

###### **Sec. 10-19.101 Title.**

This Chapter is known and to be cited as the City of Hercules Inclusionary Housing Ordinance. (Ord. 416 § 3 (part), 2006)

###### **Sec. 10-19.102 Purpose.**

The purpose of this Chapter is to:

- (a) Enhance the public welfare and assure that further housing development contributes to the attainment of the City’s housing goals by increasing the production of residential units affordable by households of very low, low and moderate income.
- (b) Assure that the limited remaining developable land in the City is utilized in a manner consistent with the City’s housing policies and needs. (Ord. 416 § 3 (part), 2006)

###### **Sec. 10-19.103 Definitions.**

As used in this Chapter, each of the following terms shall be defined as follows:

- (a) “Affordable unit” means an ownership or rental-housing unit, including senior housing, affordable to households with very low, low or moderate incomes as defined in this Chapter.
  - (1) Rental units are deemed affordable units if the annual rent does not exceed thirty percent (30%) of the maximum income level for very-low, low- or moderate-income households, adjusted for household size and as defined below.
  - (2) Owner-occupied units are deemed affordable units if the sales price results in an annual housing expenses that do not exceed thirty-five percent (35%) of income level for very-low, low- and moderate-income households, adjusted for household size and as defined below.
- (b) “Applicant” means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks City real property development or approvals.
- (c) “Dwelling unit” means a dwelling designed and intended for occupancy by one (1) household.

(d) "Very low, low and moderate income levels" means those income and eligibility levels determined periodically by the California Department of Housing and Community Development based on Contra Costa County median income levels adjusted for family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members, and all other sources of household income and will be re-certified as set forth by local standards, and state and federal housing law.

(1) "Very low income" means fifty percent (50%) or less of the median income, adjusted for actual household size.

(2) "Low income" means more than fifty percent (50%) to eighty percent (80%) of the median income, adjusted for actual household size.

(3) "Moderate income" means more than eighty percent (80%) to one hundred twenty percent (120%) of the median income, adjusted for actual household size.

(e) "Resale controls and/or rent restrictions" means legal restrictions by which the affordable unit shall be restricted to ensure that the unit remains affordable to very-low, low- or moderate-income households, as applicable, for a period of fifty-five (55) years for rental units and forty-five (45) years for owner-occupied units. With respect to rental units, such rent restrictions shall be in the form of a regulatory agreement recorded against the applicable property. With respect to owner-occupied units, such resale control shall be in the form of resale restrictions, deed of trust, and/or other similar documents recorded against the applicable property.

(f) "Residential development" means and includes, without limitation, detached single-family dwellings, multiple-dwellings structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed use development that include housing units, and residential subdivisions intended to be sold to the general public. (Ord. 416 § 3 (part), 2006)

#### **Sec. 10-19.104 General Requirements.**

(a) Affordability Requirement. All new residential development projects designed and intended for permanent occupancy shall construct ten percent (10%) of the total number of dwelling units within the development as affordable units, except as otherwise provided by this Chapter. All new development projects designed and intended for permanent occupancy within a redevelopment project area shall construct fifteen percent (15%) of the total number of dwelling units within the development as affordable units of this fifteen percent (15%) of the units, forty percent (40%) must be affordable to very-low income households. The foregoing shall be applied no more than once to an approved development (and generally at the tentative map stage), regardless of the changes in the character or ownership of the development, provided the total number of units does not change. In applying and calculating the affordability requirement, any decimal fraction less than 0.50 may be disregarded, and any decimal fraction greater than or equal to 0.50 shall be construed as one (1) unit.

(b) Allocation of Units Outside of Redevelopment Project Area to Income Levels. Affordable units provided, outside of a redevelopment project area, pursuant to this Section shall be allocated to households with very low, low and moderate income levels as follows:

Very-low income households 20%

Low-income households 20%

Moderate-income households 40%

To meet regional housing need 20%

Where the calculation of all the allocation results in fewer units than would otherwise be required pursuant to subsection (a) of this Section, one (1) additional unit shall be allocated to the income level with a decimal fraction closer to 0.50.

(c) Conditions of Approval. Any tentative map, conditional use permit, or site development review approving residential development projects subject to this Chapter shall contain conditions sufficient to ensure compliance with the provisions of this Chapter. Such conditions shall detail the number of affordable units required, specify the schedule of construction of affordable units, set forth the applicant's manner of compliance with this Chapter, and require the execution of an agreement imposing appropriate resale controls and/or rental restrictions on the affordable units.

(d) Concurrent Construction. All affordable units in a project or phase of a project shall be constructed concurrently with market-rate units, unless the City Manager determines in writing that extenuating circumstances exist that make concurrent construction infeasible or impractical. If the concurrent construction of the affordable units is found to be infeasible or impractical the developer shall provide the City a performance bond for delivery and construction of the affordable units, which provides for a specific delivery date of the affordable units. The performance bond value, for the total number of affordable units that will be delivered at a later date, shall be determined as indicated in Section 10-19.105(a) (In-lieu Fee).

(e) Design and Distribution of Affordable Units. All affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole and shall not be distinguished by exterior design, construction, or materials. Affordable units may be smaller size than the units in the project and may have fewer amenities than the market-rate units in the project. All affordable units shall be reasonably dispersed throughout the project. (Ord. 416 § 3 (part), 2006)

**Sec. 10-19.105 Exceptions to Affordability Requirement.**

Developers of projects subject to Section 10-19.104(a) of this Chapter shall the number of total dwelling units within the development as affordable units, unless subject to an exception set forth in this Section. All exceptions require City Council approval, which shall be obtained at or prior to the last discretionary approval for the project.

(a) Payment of Fees In Lieu of Creation of Affordable Units. Upon request of the applicant, the City Council shall permit the applicant to pay a fee in lieu of constructing up to forty percent (40%) of the affordable units that the developer would otherwise be required to construct pursuant to Section 1019.104(a) of this Chapter. The amount of the fee shall be as set forth in a resolution of the City Council, which may be amended from time to time to reflect inflation and changed conditions in the City and the region. In-lieu fees shall be paid at the time and in the amount set forth in the in-lieu fee resolution in effect at the time of issuance of the building permit.

(b) Off-Site Projects. An applicant may construct the affordable units not physically within the development in lieu of constructing some or all of the affordable units within the development, with the approval of the City Council, if the City Council finds:

- (1) That construction of the units off-site in lieu of constructing units on-site is consistent with the Chapter's goal of creating, preserving, maintaining, and protecting housing for very-low, low- and moderate-income households.
- (2) That the units to be constructed off site are consistent with this Chapter.
- (3) That it would be infeasible or impractical to construct affordable units on-site.
- (4) That conditions of approval for the project require that the off-site affordable units would be governed by the terms of a deed restriction and, if applicable, rental restrictions similar to that used for the on-site affordable units.
- (5) That the conditions of approval for the project, or other security such as a cash deposit, bond, or letter of credit, are adequate to require the construction of the off-site affordable units concurrently with the completion of the construction of the residential development or within a reasonable period (not to exceed two (2) years).

(c) Land Dedication. An applicant may dedicate land to the City or City-designated local non-profit housing developer in lieu of construction of some or all of the required affordable units, if the Council finds that:

- (1) That dedication of land in lieu of construction units is consistent with the Chapter's goal of creating, preserving, maintaining, and protecting housing for very-low, low- and moderate-income households.
- (2) That the dedicated land is usable for its intended purpose, is free of toxic substances and contaminated soils, and is fully improved, with infrastructure, adjacent utilities, grading and all development impact fees paid excluding any inclusionary zoning ordinance fees.
- (3) That the proposed land dedication is of sufficient size to meet the following requirement:

A. The dedication includes land sufficient to construct the number of units that the applicant would otherwise be required to construct, based on the size of lots in the subdivision for which the applicant is meeting its obligation.

(d) Credit Transfers. An applicant may fully or partially satisfy the requirements of Section 10-19.104(a) of this Chapter through the use of transfer credits created pursuant to Section 10-19.107 of this Chapter. Credit certificates shall be presented to the Community Development Director, who shall note at the time of project approval the credit certificate by number. Credit certificates may only be used to satisfy the requirements for inclusionary units for the income category (i.e., very low, low or moderate) and the number of bedrooms for which they were issued. The City may offer credit certificates from historical projects at a value as determined by subsection (a) of this Section.

(e) Waiver Requirements. The City Council, at its discretion, may waive, wholly or partially, the requirements of this Chapter and approve alternate methods of compliance with this Chapter if the applicant demonstrates, and the City Council finds, that such alternate methods meet the purposes of this Chapter. (Ord. 416 § 3 (part), 2006)

**Sec. 10-19.106 General Procedures for Implementing Inclusionary Zoning Requirements.**

(a) Agreements. Prior to the issuance of a building permit for an affordable unit, resale restrictions or rental controls, or both, as the case may be, shall be set forth in an agreement between the City and the developer, in a form consistent with the City Council-adopted form agreement, which agreement shall be recorded against the property containing the affordable units. The agreement shall be executed by the City Manager, and its requirements shall run with the land and bind the applicant's successors.

(b) Rental Units; Occupancy; Annual Report. Agreements involving rental units shall require the owner of the affordable units to ensure that the units are occupied by tenants whose monthly income levels do not exceed very low to moderate income levels and shall preclude tenants from subletting or subleasing the unit. The agreement shall also require the owner of the affordable unit to submit an annual report to the City Manager, in a format approved by the City. The report shall include, but not be limited to, the following information: an identification of the affordable units within the project; the monthly rents charged and proposed to be charged; vacancy information for the prior year; and the monthly income for tenants of each affordable unit throughout the prior year.

(c) Ownership Units, Occupancy, City's Right of First Refusal. Agreements for ownership units shall specify that the inclusionary units must be occupied by the owner or owners and may not be leased or rented without the written approval of the City. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupant unit at the maximum price that could be charged to an eligible household.

(d) Selection Criteria. No household shall be permitted to occupy a unit that is required under this Chapter to be affordable unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income; the median combined household income statistics for

Contra Costa County published periodically by the California Department of Housing and Community Development, all sources of household income and assets, the relationship between household size and the size of available units, and any further criteria required by law. The developer shall use a selection method established by the City's Affordable Housing Program. (Ord. 416 § 3 (part), 2006)

**Sec. 10-19.107 Affordable Unit Credits.**

(a) Creation. Affordable unit credits may be created by the City Council. One (1) affordable unit credit certificate shall be issued

for each affordable unit constructed in excess of the number of affordable units to be constructed for the project as required by this Chapter. The certificate shall designate a specific income category (i.e., very low, low or moderate income) and number of bedrooms for which they are issued.

(b) Ownership and Use of Credits. Affordable unit credit certificates are issued to and become the possession of the City, who may then use them to satisfy the requirements of this Chapter for another project in the City. (Ord. 416 § 3 (part), 2006)

**Sec. 10-19.108 Incentives to Encourage On-Site Construction of Affordable Units.**

The City may, but shall not be required to, offer incentives or financial assistance to encourage the on-site construction of affordable units in excess of minimum total number of units in the project to the extent resources for this purpose are available and approved for such use by the City Council or City Manager. Such incentives may include, but shall not be limited to, the following:

(a) Fee Deferral.

(1) Development Processing Fees. The City Manager may approve deferred payment of City processing fees applicable to the review and processing of the project. The terms and payment schedule of the deferred fees shall be subject to the approval of the City Manager.

(2) Development Impact Fees. The City Council may authorize the deferred payment of development impact fees applicable to the affordable units. Approval of this incentive requires demonstration by the applicant that the deferral increases the project's feasibility. The applicant must provide appropriate security to ensure future payment of such fees.

(b) Design Modifications. The City Council may approve design modifications to affordable units that increase the feasibility of the construction of affordable units, including but not limited to, the following:

- (1) Reduced lot size;
- (2) Reduced setback requirements;
- (3) Reduced open space requirements;
- (4) Reduced landscaping requirements;
- (5) Reduction interior or exterior amenities;
- (6) Reduction in parking requirements;
- (7) Height restriction waivers. (Ord. 416 § 3 (part), 2006)



**Sec. 10-19.109 Inclusionary Zoning In-Lieu Fee Fund.**

In-lieu fees shall be deposited into a fund known as the "Inclusionary Zoning In-Lieu Fees Fund" ("Fund").

(a) Use. All monies in the fund, together with any interest earnings on such monies less reasonable administrative charges, shall be used or committed to use by the City for the purpose of providing very-low, low- and moderate-income ownership or rental housing in the City of Hercules.

(b) Annual Report. The City Manager shall prepare an annual report to the City Council identifying the balance of monies in the Fund and the affordable units provided and any monies committed to providing very-low, low- and moderate-income housing. The annual report shall also include a review of administrative charges. (Ord. 416 § 3 (part), 2006)

**Sec. 10-19.110 Violations.**

It shall be unlawful for any person, firm, corporation, partnership or other entity that is subject to this Chapter pursuant to Section 1019.104(a) of this Chapter to violate any provision or to fail to comply with any of the requirements of this Chapter shall constitute a misdemeanor; except that notwithstanding any other provisions of this Code, any such violation constituting a misdemeanor under this Chapter, may in the discretion of the enforcing authority, be charged and prosecuted as an infraction. Any person convicted of an infraction under the provisions of this Code shall be punishable as provided by the Government Code of the State of California. (Ord. 416 § 3 (part), 2006)

**Sec. 10-19.111 Enforcement.**

(a) General. The City Manager shall enforce this Chapter, and its provisions shall be binding on all agents, successors, and assigns of an applicant. The City Manager may suspend or revoke any building permit or approval upon finding a violation of any provision of this Chapter. No land-use approval, building permit, or certificate of occupancy shall be issued for any residential development unless exempt from or in compliance with this Chapter. The City may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny, or suspend any permit or development approval.

(b) Excessive Rents/Legal Action. If the City Manager determines that rents in excess of those allowed by operation of this Chapter have been charged to a tenant residing in an affordable unit, the City may take appropriate legal action to recover, and the project owner shall be obligated to pay to the tenant, or to the City in the event the tenant cannot be located, any excess rents charged. (Ord. 416 § 3 (part), 2006)

**Sec. 10-19.112 Appeals.**

Decisions of the City Manager under this Chapter may be appealed as provided in this Municipal Code. (Ord. 416 § 3 (part), 2006)

**Sec. 10-19.113 Suspension.**

**The provisions of this Chapter 10.19 are suspended as of the effective date of Ordinance No. 469 and shall not become reinstituted by the City Council except by subsequent Ordinance."**

**SECTION 2. Publication and E ffective 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 prepared by the City Attorney in the West County Times and posting a certified copy of the entire Ordinance in the office of the City Clerk at least five (5) days prior to the passage and adoption, and a second time within fifteen (15) days after its passage and adoption, along with the names of those City Council Members voting for and against the Ordinance.

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


THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 22nd day of May, 2012, and was passed and adopted at a regular meeting of the Hercules City Council on the 12th day of June, 2012, by the following vote:

AYES: Boulanger, Delgado, de Vera, Wilkins, Romero

NOES: None

ABSENT: None

ABSTAIN: None

  
Dan Romero, Mayor

ATTEST:





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**Date:** March 19, 2019

**To:** David Biggs, City Manager  
CITY OF HERCULES

**From:** James C. Simon, Principal  
Jordan Perez, Research Assistant

**Subject: Hercules - Inclusionary Housing Policy Best Practices**

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It is best practice for inclusionary units to be of comparable size and contain on average the same number of bedrooms as non-inclusionary units. The location of inclusionary units should be reasonably dispersed throughout the project. These assumptions are based on municipal codes from several California cities of various size and geographical location including Pinole, Richmond, San Pablo, Dublin, Fremont, Glendale, Solana Beach, Patterson, and San Francisco.

#### **Pinole Municipal Code Section 17.32.050 (A) & (B)**

- Design. Except as otherwise provided in this chapter, affordable housing units shall be integrated within **and reasonably dispersed throughout the project** and shall be comparable in infrastructure (including sewer, water, and other utilities), construction quality, exterior design, and materials to the market-rate units.
- Size. All affordable housing units shall **reflect the range and numbers of bedrooms provided in the project as a whole**, except that affordable housing units need not provide more than four bedrooms.

#### **Richmond Municipal Code Section 15.04.810.053 (D) (2)**

- Location and Design of Affordable Housing Units. The affordable housing units shall be **integrated with other housing units in the housing development with regard to siting and placement within buildings**, and shall not differ in exterior appearance from the other housing units. The location of the affordable housing units may or may not be on contiguous parcels within the site. **In no event shall the affordable housing units be located in only one portion of the housing development** or situated in one building of a multi-building development;

### **San Pablo Municipal Code Section 17.60.020 (M) (I)**

- As required by state law (California Government Code §65915(j)), the location of density bonus units within the residential project may be at the discretion of the developer. However, **the inclusionary units shall be reasonably dispersed throughout the development and shall contain on average the same number of bedrooms as the non-inclusionary units in the development**, and shall be compatible with the design or use of the remaining units in terms of appearance, materials, and quality finish.

### **Dublin Municipal Code Section 8.68.040 (E)**

- Design and Distribution of Affordable Units. **All affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole** and shall not be distinguished by exterior design, construction, or materials. Affordable units may be of smaller size than the units in the project and may have fewer amenities than the market rate units in the project. **All affordable units shall be reasonably dispersed throughout the project.**

### **Fremont Municipal Code Section 18.155.060**

- Standards for on-site affordable units. On-site affordable units shall be **comparable to the market rate units in terms of unit type, number of bedrooms per unit**, quality of exterior appearance and overall quality of construction. **Affordable unit size should be generally representative of the unit sizes within the market-rate portion** of residential projects, as acceptable to the community development director or designee. Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing. **The affordable units shall be dispersed throughout the residential project in a manner acceptable to the community development director** unless an alternative provided under Section 18.155.080 or 18.155.085 is approved by the approval body.

### **Glendale Municipal Code Sections 30.35.070 (B) & 30.35.080 (C) (I) (b)**

- All off-site inclusionary units will contain **on average the same number of bedrooms** as the non-inclusionary units in the project, and be comparable with the non-inclusionary units in terms of appearance, finished quality, materials, and **location within the building**;
- [All inclusionary units] shall contain **on average the same number of bedrooms as the non-inclusionary units** in the project; and

### **Solana Beach Municipal Code Section 17.70.035 (B)**

- Affordable units shall be **comparable to market-rate units in overall number of bedrooms and the proportion of units in each bedroom category.** [...]

### **Patterson Municipal Code Section 18.86.040**

- Design and building requirements. **All inclusionary units shall be comparable** with the market-rate units in terms of the size, base design, appearance, materials, and finished quality, and shall be proportional in number, size, and **location. Affordable units shall be comparable in number of bedrooms,** exterior appearance, and overall quality of construction to first-class quality affordable housing found elsewhere in the city. [...]

### **San Francisco Inclusionary Affordable Housing Program Monitoring and Procedures Manual Sections VI (C) (1) (a & c) & VI (E) (2)**

- Exterior Features and Size: BMR Units should be **comparable in number of bedrooms,** exterior appearance and overall quality of construction to market-rate units in the same project.
- Location of BMR Units: **BMR Units should be evenly distributed throughout the building, except for buildings over 120', in which case they should be evenly distributed in the building's lower 2/3rds.** Project Sponsors should also consult Planning Department Zoning Administrator Bulletin No. 10 for further information concerning BMR location requirements regarding issues such as adjacency and comparable access to building and neighborhood amenities, (balconies, views, light, etc.) as well as income tier distribution.
- Unit Mix: The **mix of bedroom sizes among the BMR Units must be proportional to the bedroom sizes for the market-rate units** in the Principal Project.