CORONAVIRUS (COVID-19) ADVISORY

IMPORTANT INSTRUCTIONS ON HOW TO PARTICIPATE AND WATCH THE HERCULES CITY COUNCIL MEETING

On March 16, 2020, the Health Officer of Contra Costa County issued an Order through April 7, 2020 that directed that all individuals living in the county to shelter at their place of residence except that they may leave to provide or receive certain essential services or engage in certain essential activities and work for essential businesses and governmental services.

Under the Governor's Executive Order N-25-20, this meeting may utilize teleconferencing or other virtual meeting platforms. Pursuant to the Governor's Executive Order N-25-20, teleconferencing restrictions of the Brown Act have been suspended.

Beginning with the April 14, 2020 Hercules City Council meeting, the City Council will conduct its meeting utilizing ZOOM.

DUE TO THE SHELTER IN PLACE ORDERS AND PURSUANT TO EXECUTIVE ORDER N-25-20, direct public attendance or participation at council meetings has been suspended and the Council Chambers will be closed to the general public. City Council and staff will participate virtually through the ZOOM application. Applicants, consultants, and others with matters before the Council will be allowed to participate via ZOOM but must make prior arrangements with the City Clerk. The public may log into the Zoom meeting to provide their public comment virtually. Please refer to the Zoom meeting information on the front cover of the Agenda.

How to watch the meeting from home:

1. Comcast Channel 28
2. Livestream online at https://hercules.legistar.com/Calendar.aspx

We are happy to accommodate written public comments. Public Comment will be accepted by email to **lmartin@ci.hercules.ca.us** and will be available on the City's website. Additional ways to provide your public comment is to mail your comment to City of Hercules, ATTN: City Clerk – Public Comment (Meeting Date), 111 Civic Drive, Hercules, CA 94547 via USPS in time to reach the City Clerk no later than 4:00 p.m. on the day of the meeting or by telephone by calling **(510) 799-8215** no later than 4:00 p.m. on the meeting date. All comments received by the close of the public comment period will be available after the meeting as supplemental materials and will become part of the official meeting record. The City cannot guarantee that its network and/or the site will not be uninterrupted. To ensure that the City Council receives your comments, you are strongly encouraged to submit your comments in writing in advance of the meeting by 4:00 p.m. on the day of the Council meeting.
Individuals wishing to address the City Council are asked to provide the following information:

1. Subject Line to contain the words "PUBLIC COMMENTS"
2. (Optional) - Name, address and contact information of person providing comments.
3. General topic or agenda item you wish to comment on.

All public comments are allowed up to 3 minutes to relay their message or concern. All public comments are recorded and become part of the public record. A limit of 30 minutes will be devoted to taking public comment during the first public comment period on the agenda. If any speaker comments have not been read into the record at the conclusion of the initial 30 minute period, time will be reserved at the conclusion of the meeting to read the remaining comments.

City of Hercules

111 Civic Drive
Hercules, CA 94547

Meeting Agenda

Tuesday, January 26, 2021

6:00 PM

Zoom Meeting ID: 814 3711 9064
Zoom Password: 924491
Zoom Phone No: 1-669-900-6833

City Council

Mayor Chris Kelley
Vice Mayor Dion Bailey
Council Member Alexander Walker-Griffin
Council Member Dan Romero
Council Member Tiffany Grimsley

David Biggs, City Manager
Patrick Tang, City Attorney

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

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

II. PUBLIC COMMUNICATION - CLOSED SESSION ITEMS

III. CONVENE INTO CLOSED SESSION

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

1. 21-047 **Conference with Legal Counsel - Anticipated Litigation Pursuant to Government Code Section 54956.9 (d) (2): In two (2) matters - Vela, Claim No. GL-014088 and Gaan, Claim No. GL-014088**

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. 21-043 **Presentation by the PHREED Organization**

2. 21-042 **Presentation by Tamara Miller from the City of Pinole Regarding the San Pablo Bridge Replacement Project**

Attachments: 2021_01_13 Pinole - San Pablo Avenue Bridge Replacement Pinole FINAL

IX. AGENDA ADDITIONS/DELETIONS

X. PUBLIC COMMUNICATIONS

In accordance with Executive Order N-25-20 and guidance from the California Department of Public Health on gatherings, remote public participation is allowed as follows:

The public may log into the Zoom meeting (refer to agenda cover for Zoom login information) and provide their public comment (3 minute time limit). When the public comment period is open for the item you wish to speak on, use the "raise hand" feature in Zoom (or press *9 if connecting via phone audio only) at the time the Mayor calls for public comment. Please wait your turn and once you are brought into the meeting, state your name and city of residence for the record.

For additional alternatives to providing public comments please refer to the Notice of Important Instructions on how to Participate and Watch the Hercules City Council Meeting on the front page of the agenda.

All public comments are allowed up to 3 minutes to relay their message or concern. A limit of 30 minutes will be devoted to taking public comment at this point in the agenda. If any speakers remain at the conclusion of the initial 30 minute period, time will be reserved at the conclusion of the meeting to take the remaining comments.

XI. PUBLIC HEARINGS

1. 21-039 **Continued Public Hearing Regarding Zoning Text Amendment #20-03: City Ordinance to update Municipal Code Section 13-35-320 to address changes in State housing law affecting local regulation of Accessory Dwelling Units (ADUs)**

Recommendation: Open the continued public hearing, take public testimony, waive the first reading, and approve the introduction of Ordinance No. 531 amending Hercules Municipal Code Title 13, Chapter 35 "Specific Land Use Requirements" to update the City's current policies and processes for accessory dwelling units (ADU's) for conformity with current State law.

Attachments: Staff Report - ADU 2020 Ordinance
Attach 1 - ADU 2020 Ordinance - 2021-01-12

XII. CONSENT CALENDAR

1. 21-041 **Minutes**

Recommendation: Approve the regular meeting minutes of January 12, 2020.

Attachments: Minutes - 011221 - Regular

2. 21-040 **Second Reading of Ordinance No. 532 Adding Chapter 2-1.06 to Title 2 "Administration entitled "Electronic Filing of Campaign Disclosure Documents".**

Recommendation: Consider waiving the second reading and adopt Ordinance 532 amending Title 2 of the Hercules Municipal Code by adding Chapter 2-1.06, "Electronic Filing of Campaign Disclosure Documents".

Attachments: Staff Report - Ordinance Adding Chapter to Title 2 - electronic filing of campaign stmts
Attach 1 - Ordinance 532
Attach 2 - Assembly Bill No 2151
Attach 3 - Proposal 2020

3. 21-046 **Update Regarding the Following Matters:**
1) Anti-Nepotism and Anti-Cronyism Ordinance;
2) Hercules Ethics Policy
Recommendation: Accept and file the report.

Attachments: Staff Report - nepotism ethics update 210126
Attach 1 - Nepotism Cronyism Ordinance
Attach 2 - Resolution No. 13-051-Ethics

4. 21-048 **Resolution Authorizing Application For, and Receipt of, Local Government Planning Support Grant Program Funds From the Department of Housing & Community Development to Support the City's 6th Cycle Update (2023-2031) of the Housing Element of the General Plan**
Recommendation: Adopt a Resolution and direct staff to submit application for $150,000 Local Early Action Planning (LEAP) 2020 Grant.

Attachments: Staff Report - LEAP Grant Application - CC 2021-01-26
Attach 1 - LEAP Grant Application - Resolution - 2021-01-26
Attach 2 - LEAP Grant Application - HCD Application - Hercules

XIII. DISCUSSION AND/OR ACTION ITEMS

1. 21-044 **Update on Landscape & Lighting Assessment Districts and 221/22 Annual Renewal**
Recommendation: Receive report, discuss, and provide direction , if any.

Attachments: Staff Report - L&LAD Update 01262021
Attach 1 - L&LAD Service Reductions SR 10232018
Attach 2 - LLAD Neighborhood Notification Letter 11272018 final
Attach 3 - First Look L&LAD Financials
Attach 4 - Summary of LLAD Assessments and Maintenance (12-14-2020)

2. 21-045 **Continued Discussion and Presentation of Draft Ordinance Regarding Sidewalk Maintenance and Liability**
Recommendation: Receive report, discuss, and provide direction, if any.

Attachments: Staff Report - Sidewalk Liability 210126 - JPT
Attach 1 - Staff Report - 111020
Attach 2 - Staff Report - 100819
Attach 2a - LOCC Article
Attach 2b - article from Risk Management
Attach 3 - Sidewalk Exhibit Map_
Attach 4 - RMA Model Sidewalk Ordinance
Attach 5 - Draft Sidewalk Ordinance

3. 21-025 **Water Consumption Review**
Recommended Action: Receive Report, Discuss, and Provide Direction, if any.

Attachments: Staff Report - Water Consumption Review 01262021
Attach 1 - Water Charges Hercules

4. 21-026 **Update on Smoking Ordinance Restrictions for Multi-Unit Residence Comprised of Ten (10) Or More Units**
Recommended Action: Receive Report, Discuss, and Provide Direction, if any.

Attachments: Staff Report - Smoking Ordiance Update 01262021
Attach 1 - Staff Reports - Multi-family smoke free ordinance
Attach 2 - Notification Letters

5. 21-027 **Possible Ordinance Imposing a Cap on Food Delivery Service Charges**
Recommendation: Receive report, discuss, and provide direction, if any.

Attachments: Staff Report - Delivery Fee Cap 01262021
Attach 1 - Milpitas Staff Report

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, February 9, 2021 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 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: January 21, 2021)

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

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

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

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

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

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

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

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

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

SAN PABLO AVENUE BRIDGE REPLACEMENT PROJECT

QUINCY ENGINEERING
developing YOUR vision | delivering YOUR project

gbs
GRAY • BOWEN • SCOTT

Introduction

Tamara Miller, City of Pinole

Matt Todd, Gray-Bowen-Scott

Jason Jurrens, Quincy Engineering

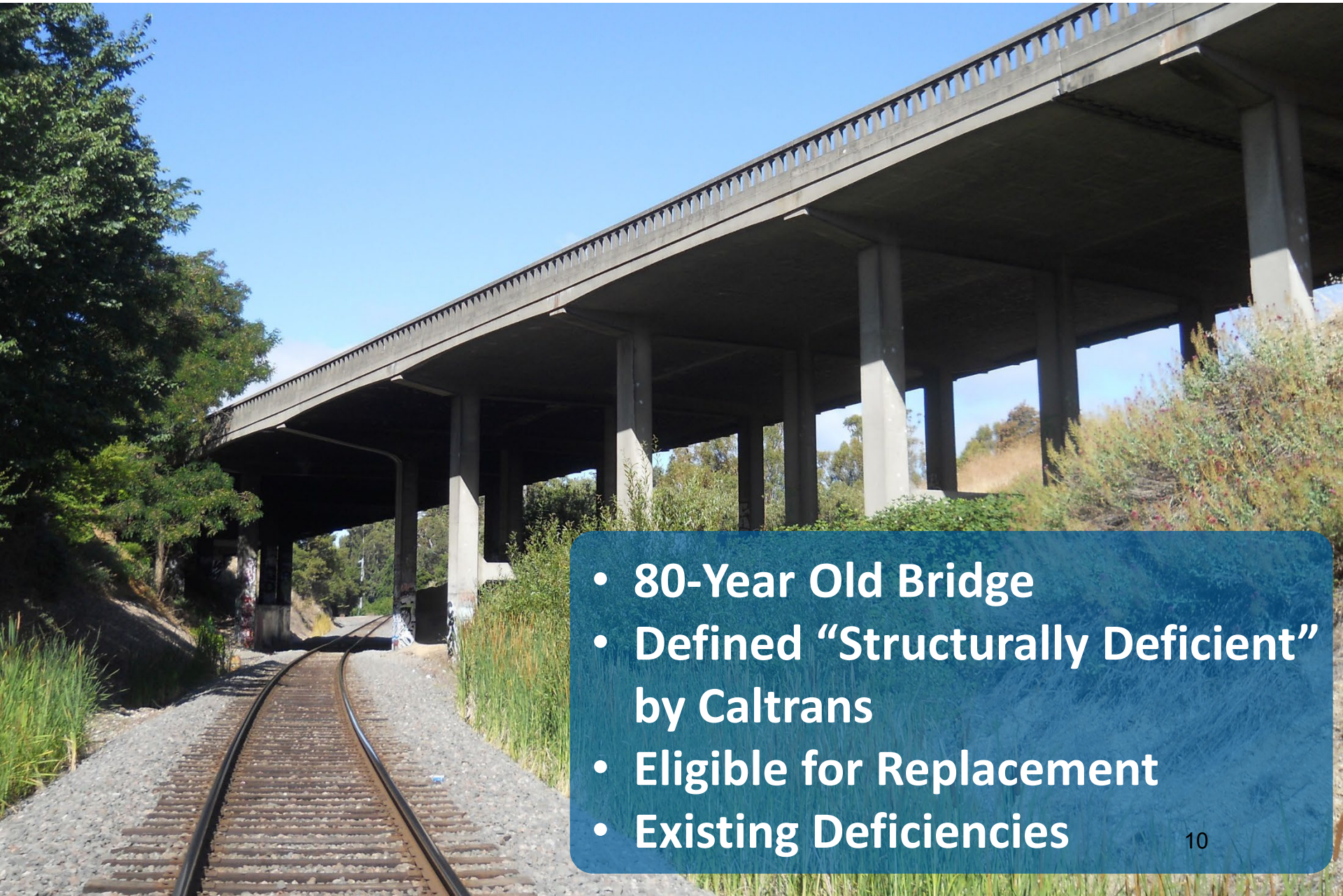
Project Goal

Provide a Safe, Modern Bridge and Roadway That Enhances and Supports Multi-Modal Transportation

Maintain four vehicular lanes

Bike/pedestrian facilities to current standards

Existing Bridge



- 80-Year Old Bridge
- Defined “Structurally Deficient” by Caltrans
- Eligible for Replacement
- Existing Deficiencies

History

- **Project Study Report Completed in 2015**
  - ✓ Documented the “structural deficiencies” of the bridge
- **Highway Bridge Program (HBP) Funding Approved**
  - ✓ Safety program that provides federal funds to local agencies to replace and rehabilitate deficient locally owned public highway bridges
- **Matching Fund Sources Secured Through CCTA and WCCTAC**

Status

- **Funding Package Includes Federal Funds**
  - ✓ Requires formal consultant procurements
  - ✓ Requires NEPA clearance
- **Quincy Engineering Team Selected to Develop the Project**
- **Started Environmental and Preliminary Engineering Work in Spring 2020**
  - ✓ Working on initial tasks that will be the basis for starting the environmental studies
  - ✓ Agreements with railroad for entry and review

Project Considerations & Challenges

Project Challenges & Considerations

Potential City of Pinole Staging Area
Staging area needed for contractor equipment during construction.

City of Pinole Gateway
Gateway sign, landscaping, and irrigation will need to be replaced.

Active BNSF Railroad
New bridge must meet clearance criteria and accomodate second track and access road.

Telecommunications on North Side of Existing Bridge
Utilities must be protected in place or relocated (temporary or permanent).

San Pablo Avenue/John Street Intersection & Charles Avenue
Modify intersection configuration with Charles Avenue and John Street to improve traffic operations.

Private Driveway at Southwest Corner of Existing Bridge
Driveway needs an improved access off San Pablo Avenue or needs to be relocated to John Street.

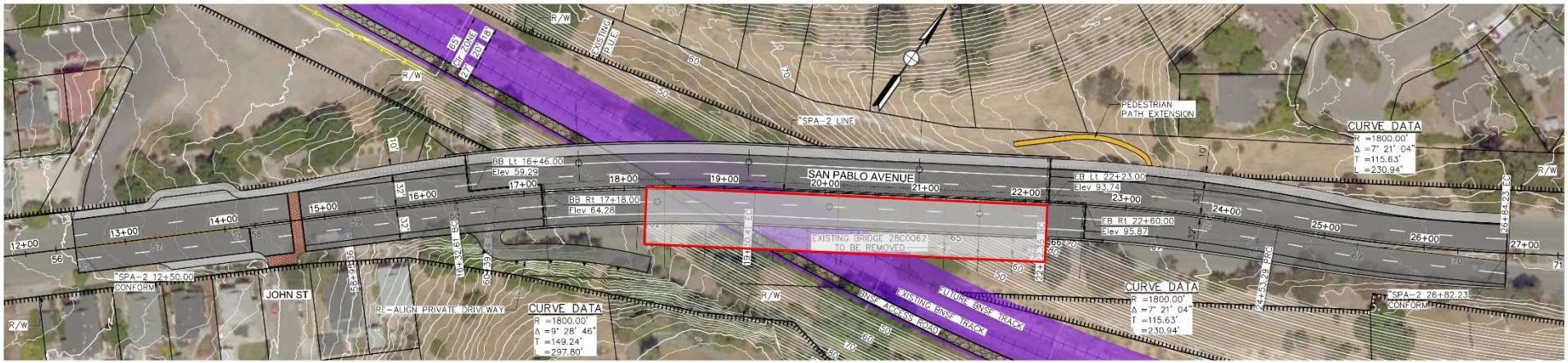
San Pablo Avenue Traffic
Bridge construction is disruptive. Minimize disruptions using staged construction, intelligent transportation system (ITS), and/or Accelerated Bridge Construction (ABC).

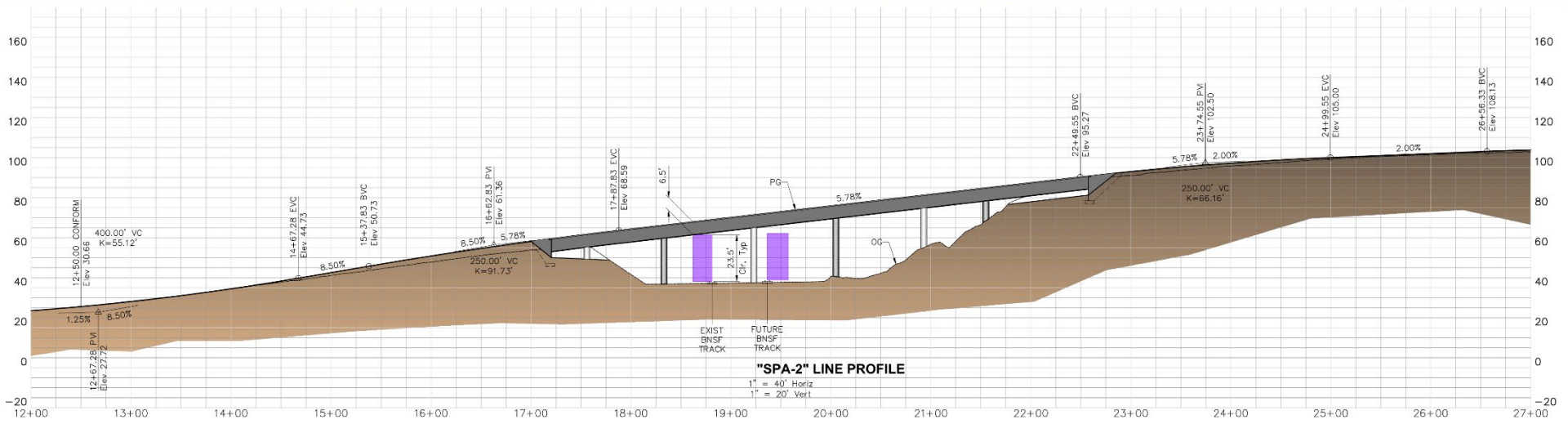
Underground Utilities
24" PG&E natural gas and 36" EBMUD water line located within City of Hercules parcel. New bridge and approach roadway should avoid these major utilities.

Pedestrian Access
Project should be mindful of multimodal users. Existing trail will be connected to new sidewalk at northeast corner of the bridge.

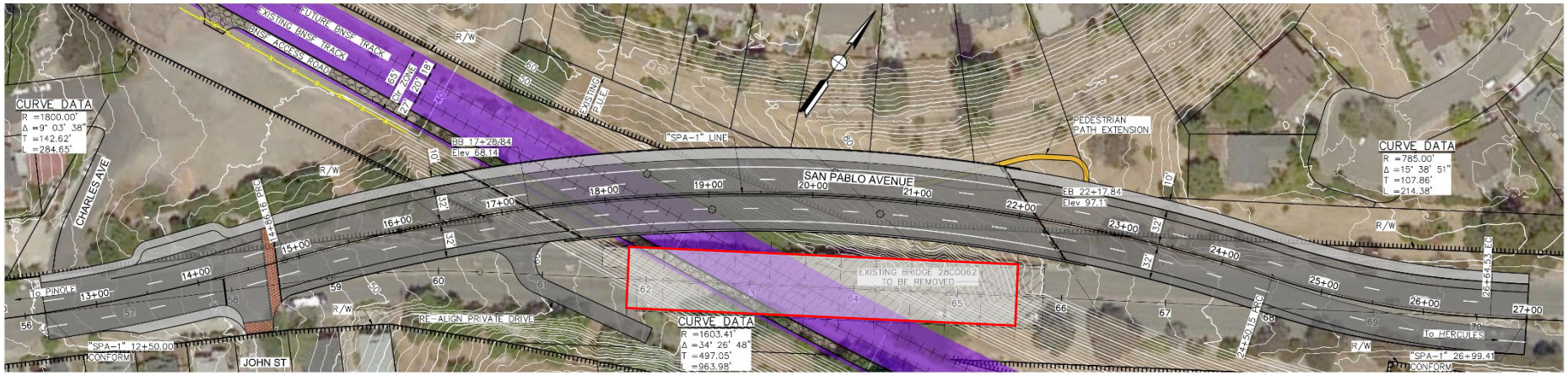
Project Location

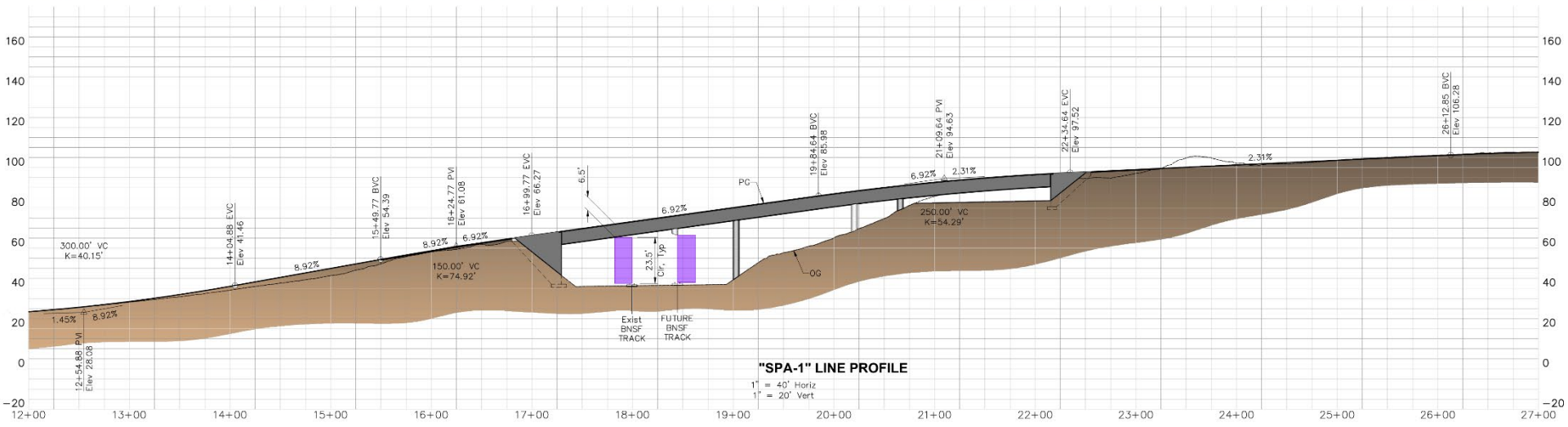
Preliminary Alignment



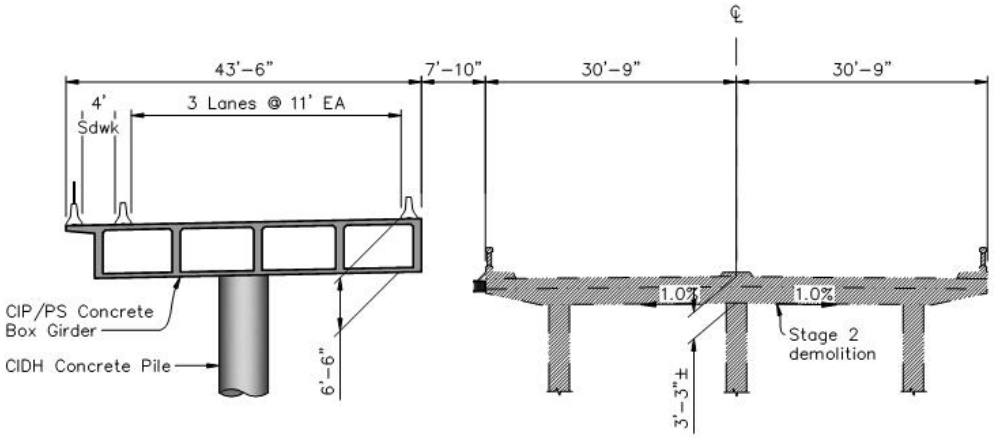


Preliminary Alignment



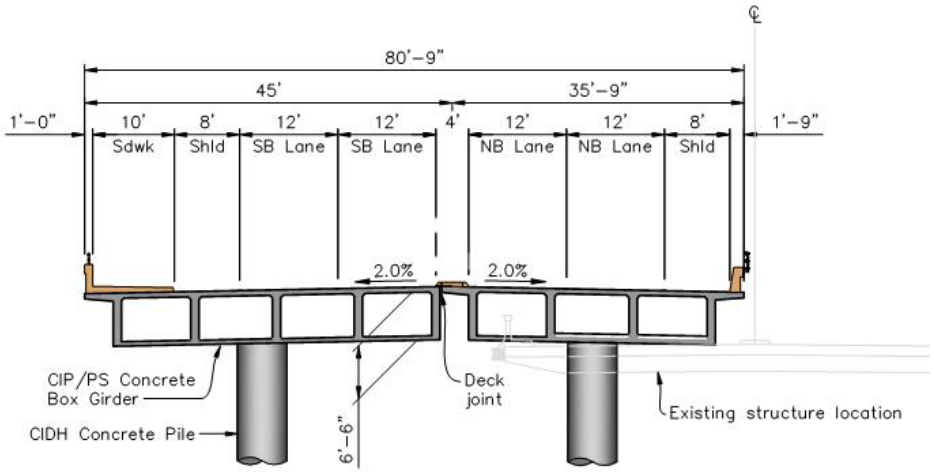


Typical Construction Staging



SPANS 1, 3 & 4

STAGING TYPICAL SECTION



SPANS 1, 3 & 4

TYPICAL SECTION

Bridge Types

ALT. #	# OF TRACKS	# ACCESS ROAD	S.S. TYPE	# OF CONST. STAGES	SKEW	S.S. Depth (ft.)	TEMP. VERT. CLR. (ft.)	IMPACT TO UTILITY CORRIDOR	IMPACT TO R/W	RDWY. SLOPE	COST	COMMENTS
1	2	1	Steel Girder	1	High	6	N/A	All to move	Biggest	Med. Raise	Very High	Highly skewed alt.
2	2	1	Steel Girder	2	High	6	N/A	Partial	Minor	Med. Raise	Very High	Highly skewed alt.
3	2	1	Steel or PC Girder	2	None	9	N/A	Partial	Minor	Steepest	Very High	Girders probably to long to erect
4	2	1	Steel Thru Girder	1	High	3	N/A	All to move	Biggest	Minor Raise	Extremely High	Due to rdwy. curve, bridge needs to be extra wide
5	2	1	Steel Thru Girder	2	High	3	N/A	Partial	Minor	Minor raise	Most Expensive	Due to rdwy. curve, bridge needs to be extra wide
6	1	0	CIP Slab	2	None	2.5	21.5	Partial	Minor	Minor Raise	Least Expensive	Difficult to get BNSF approval
7	2	1	CIP/PC Concrete	2	None	6.5	N/A	Partial	Minor	Med. Raise	High	**Likely Bridge Type**
8	2	1	Varies	1 or 2	High	Varies	N/A	Varies	Varies	Varies	Varies	Tall abut. eliminates span. Different str. types can be used

Key Considerations During Construction

Maintaining Traffic

- Signal modifications
- Pedestrian and bicycle access
- No disruption to bus service
- Maintain driveway access

Timing of Utility Relocations (if needed)

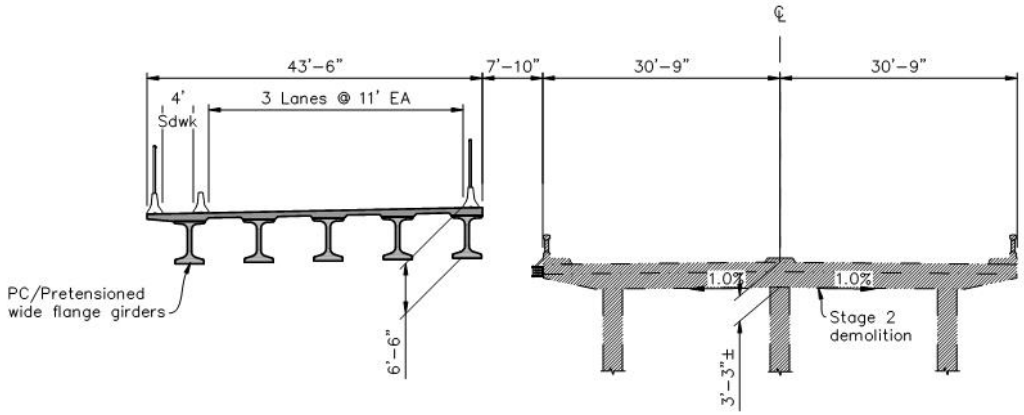
- Temporary relocation of lines on bridge

Sensitive Receptors to Construction Noise

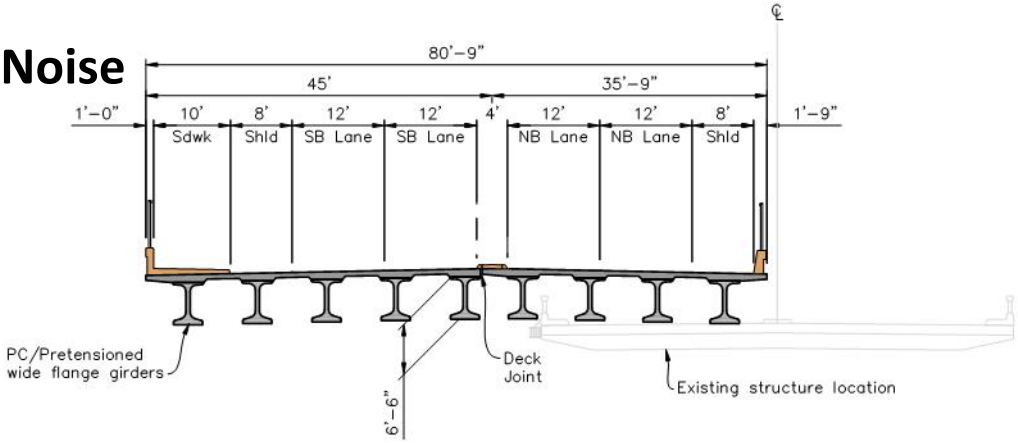
- Strict work windows

Staging Area

- Use of BNSF and City parcels



SPAN 2
STAGING TYPICAL SECTION



SPAN 2
TYPICAL SECTION

Traffic

- **Traffic Volumes Will Not Be Collected Due to COVID-Related Travel changes**
- **Historical Traffic Counts Will be Utilized**
- **Reliever Route for I-80**
- **Determine Traffic Impacts During Construction**
  - Five adjacent intersections to be evaluated
    - Four in Pinole
    - One in Hercules
  - Includes possible detours using adjacent roadway segments

Potential Traffic Staging

Two-Lanes (One Lane in Each Direction)

- Provide information to regional traffic to encourage alternate route (I-80)
- Maintains local traffic by encouraging regional traffic to stay on I-80

Two Lanes with Temporary Signals at Each End

(Two Lanes in Each Direction)

- Allow peak direction to have additional cycle time
- Additional delay for local traffic to provide for less impact to regional traffic

Three Lanes with Reversible Lane to Provide Two Lanes in Peak Direction (Outside the Box Alternative)

- Maintains local traffic and provides for regional traffic

Railroad Challenges & Considerations

BNSF Requirements will Control Many Bridge Design Requirements

- Updated BNSF Design Standards
- Temporary and Permanent Clearances
- Existing & Future Track Configurations
- Access to Tracks

Environmental Considerations – Bridge Construction

Cultural Resources

- Subsurface disturbance has potential to expose buried resources
- Tribal notification/consultation

Hydrology

- Proximity to Pinole Creek
- Stormwater Treatment

Noise

- Proximity of residences to the new bridge
- Noise from demolition

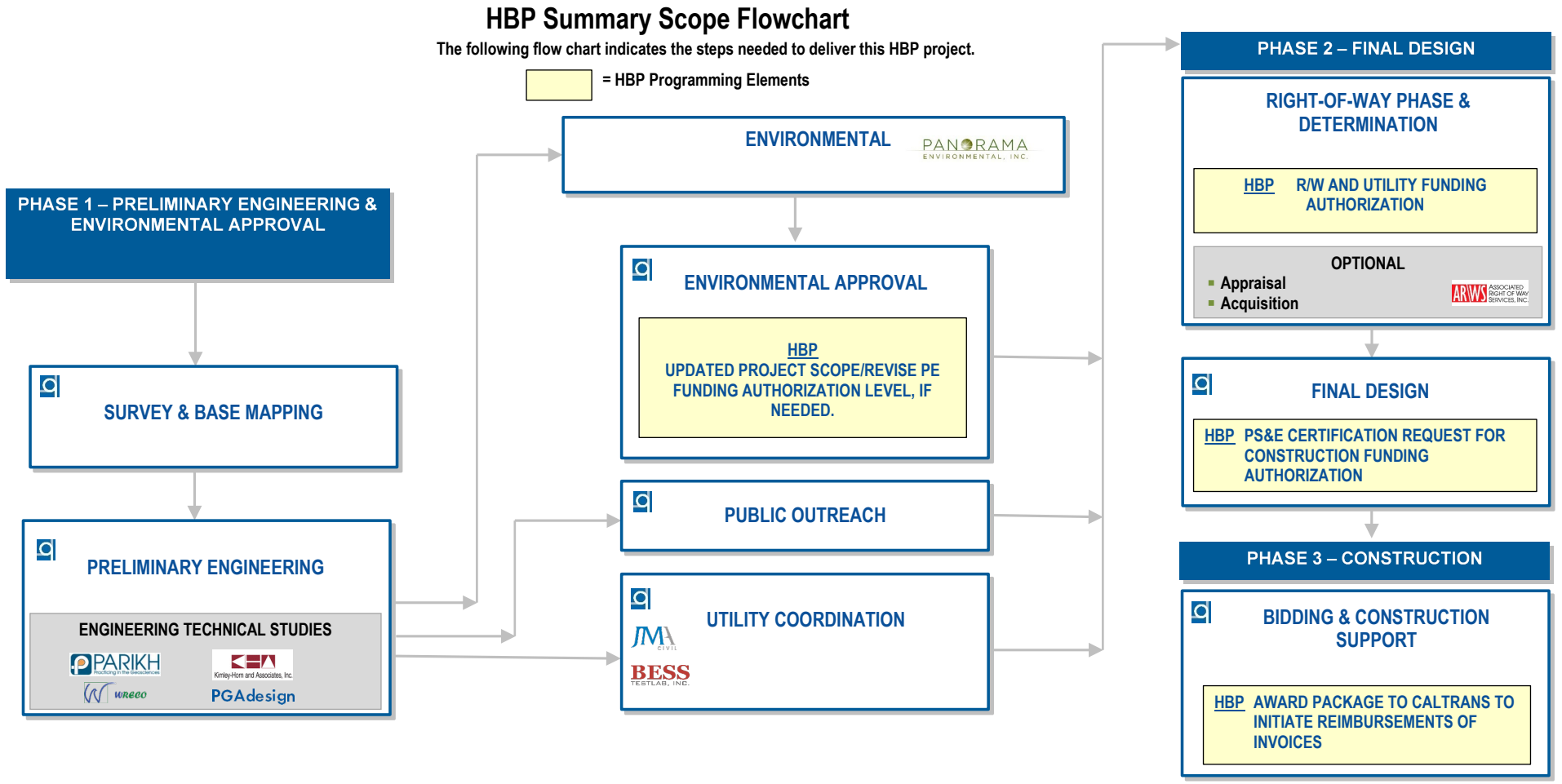
Traffic

- Use of existing bridge during construction
- Delays and slower speeds due to staged construction

Additional Issues & Considerations

- Complete Streets
  - Bicycle, Pedestrians, Vehicles
- Green Infrastructure
- ADA Compliance
- Aesthetics
- Outreach/Communications
- Funding & Value Engineering
- Landscape Architecture

HBP Process


HBP Summary Scope Flowchart
The following flow chart indicates the steps needed to deliver this HBP project.
= HBP Programming Elements
PHASE 1 – PRELIMINARY ENGINEERING & ENVIRONMENTAL APPROVAL
SURVEY & BASE MAPPING
PRELIMINARY ENGINEERING
ENGINEERING TECHNICAL STUDIES
PARIKH
Kimley-Horn and Associates, Inc.
wreeo
PGAdesign
ENVIRONMENTAL
PANORAMA ENVIRONMENTAL, INC.
ENVIRONMENTAL APPROVAL
HBP
UPDATED PROJECT SCOPE/REVISE PE FUNDING AUTHORIZATION LEVEL, IF NEEDED.
PUBLIC OUTREACH
UTILITY COORDINATION
JMA CIVIL
BESS TESTLAB, INC.
PHASE 2 – FINAL DESIGN
RIGHT-OF-WAY PHASE & DETERMINATION
HBP R/W AND UTILITY FUNDING AUTHORIZATION
OPTIONAL
Appraisal
Acquisition
ARWS ASSOCIATED RIGHT OF WAY SERVICES, INC.
FINAL DESIGN
HBP PS&E CERTIFICATION REQUEST FOR CONSTRUCTION FUNDING AUTHORIZATION
PHASE 3 – CONSTRUCTION
BIDDING & CONSTRUCTION SUPPORT
HBP AWARD PACKAGE TO CALTRANS TO INITIATE REIMBURSEMENTS OF INVOICES

Funding

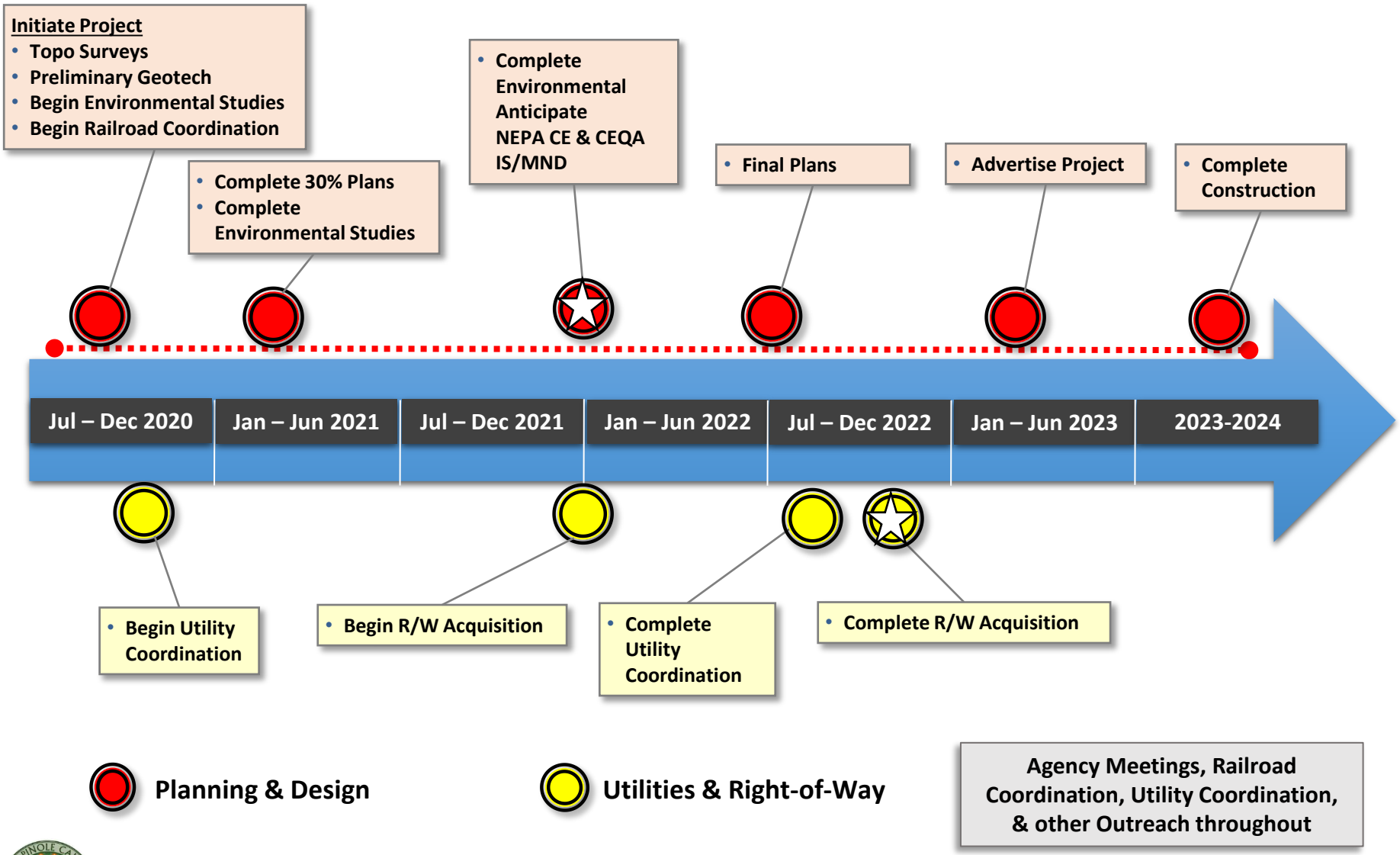
- **Caltrans Highway Bridge Program Funding**
  - ✓ **$15.78M**
  - ✓ Requires a funding match of a minimum of 11.5%
- **WCCTAC**
  - ✓ **$1.6M** - Subregional Transportation Mitigation Program (STMP)
- **CCTA**
  - ✓ **$387,000** - Measure J TLC

Funding

- **Project Cost Estimate from Initial PSR - $17 M – Since 2015:**
  - ✓ High speed rail project development – basing new assumptions on these project discussions
  - ✓ Through initial contact with railroad, assuming clearance for 2 tracks and access road
    - Initial assumption required doubling horizontal clearance, new assumption increases more than 400%
  - ✓ Cascading effect…..
    larger clearances – longer structure – deeper structures → **More $**
  - ✓ Higher construction cost/Escalation – over 150% increase in cost per sq foot

- **Updated Project Cost Estimate - $38 M**
  - ✓ Complete preliminary engineering work (i.e. 30% design) and further refine cost estimate
    - Pursue additional federal HBP funds
    - Continue to work with partners to identify matching funds (11.5%)

Schedule


Initiate Project
• Topo Surveys
• Preliminary Geotech
• Begin Environmental Studies
• Begin Railroad Coordination
• Complete 30% Plans
• Complete Environmental Studies
• Complete Environmental Anticipate NEPA CE & CEQA IS/MND
• Final Plans
• Advertise Project
• Complete Construction
Jul – Dec 2020
Jan – Jun 2021
Jul – Dec 2021
Jan – Jun 2022
Jul – Dec 2022
Jan – Jun 2023
2023-2024
• Begin Utility Coordination
• Begin R/W Acquisition
• Complete Utility Coordination
• Complete R/W Acquisition
Planning & Design
Utilities & Right-of-Way
Agency Meetings, Railroad Coordination, Utility Coordination, & other Outreach throughout

Q & A

REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 26, 2021

TO: Mayor Chris Kelley and Members of the City Council

SUBMITTED BY: Robert Reber, Community Development Director
Christie Crowl, Assistant City Attorney

SUBJECT: Continued Public Hearing Regarding Zoning Text Amendment #20-03—City Ordinance to update Hercules Municipal Code (Section 13-35.320) to address changes in state housing law affecting local regulation of Accessory Dwelling Units ("ADUs")

RECOMMENDED ACTION:
Open the continued public hearing, receive staff report, take public testimony, close the public hearing, and consider waiving the first reading and approving introduction of the draft zone text amendments to the City's accessory dwelling unit regulations.

FISCAL IMPACT OF RECOMMENDATION:
There are no direct fiscal impacts associated with this item.

BACKGROUND:
The City Council conducted a public hearing at the January 12, 2021 City Council meeting and continued the public hearing to the January 26, 2021 City Council meeting to receive additional information requested by City Council at the January 12, 2021 City Council meeting. To address the Council's request, City Staff have confirmed with the local Postmaster that U.S. Postal Service will accept separate addresses assigned by the City to detached ADUs.

An accessory dwelling unit (ADU), sometimes called a "second unit" or "in-law unit," is a self-contained living unit on the same property as a primary residential building. These units must include a living and sleeping area, kitchen, and bathroom. They can be detached from or attached to a primary dwelling. An ADU can also be created by converting a garage or existing space in a home into a separate living unit. Typically, an ADU is used as a rental unit or as a home for an elderly relative, a caregiver, or an older son or daughter living at home.

In April 2018, the City adopted an updated ADU Ordinance to align with prior changes to state law. New state legislation was passed in late 2019 that further streamlines and clarifies the state's evolving ADU requirements, expands opportunities for new ADUs, and limits the applicability of local zoning controls and requirements for certain ADUs. These recent changes to state law are intended to encourage the development of ADUs to address the statewide housing shortage, and now arguably conflict with and preempt certain aspects of the City's current ADU requirements.

DISCUSSION:
At the City Council's August 8, 2020 meeting, City staff provided the Council a summary of the changes to state law, and Council directed staff to accordingly prepare amendments to the City's ADU Ordinance consistent with state law, and to bring a draft of the amended ADU Ordinance back to the Council for consideration before introducing it to the Planning Commission for further review and recommendation. Staff presented the draft ADU Ordinance to the City Council at its October 13 meeting, at which Council's consensus direction to staff was:

- Keep maximum ADU size at the minimum levels required by the State; and
- Require separate utility/sewer connections only when necessary due to technical reasons.

These directions from City Council were reflected in the revised draft Ordinance presented during a public hearing at the Planning Commission's regular meeting on November 2, 2020. The Planning Commission requested that staff further revise the draft accessory dwelling unit (ADU) ordinance to reflect several policy preferences and to more clearly explain some requirements, including:

- Requiring that garage spaces converted to ADUs replace garage doors with walls, windows, and/or doors rated by building code for habitable spaces.
    - *This change was initially recommended by the City Council at its regular meeting on October 27 and confirmed as appropriate by the Rodeo–Hercules Fire District (RFHD) and the City's Building Department following the Commission's November 2 meeting. RHFD further requested that detached ADUs have individual addresses separate from the primary residence. Addresses must be displayed on the ADU building so that they are clearly visible and legible from the street or adjacent alley. If the ADU is located on the property such that it cannot be seen from a street or alley, the property shall post a sign or display some other type of marker in the front yard with the ADU address on it, subject to Fire District approval*.
- Clarifying that ***new*** detached ADUs cannot be taller than 18 feet or 1 habitable story.
    - Exception: Second-story ADUs are allowed on top of existing, legally-approved detached structures, provided final height does not exceed that of the existing primary residence.
- Eliminating the requirement that access staircases be enclosed.
- Requiring that ADUs constructed on any property designated in the California Register of Historic Resources as a historic contributing or landmark structure shall adhere to the *Hercules Design Guidelines for Historic Preservation*.
- Clarifying that—in addition to the off-street parking spaces required for the existing residence—at least one new on-site parking space shall be provided for an ADU with one or more bedrooms, but that no additional off-street parking is required for a studio ADU (i.e., ADU without a separate bedroom space).

Consistent with the consensus views expressed by the City Council at its October 27 meeting, the Planning Commission on November 2 did not express interest in making the State-mandated requirements for ADUs more lenient (e.g., larger maximum sizes, lesser setbacks, reduced or waived parking requirements, lower fees, etc.). Furthermore, the Planning Commission did not feel it worthwhile to expend the time and effort to develop a list of pre-approved ADU plans, models, vendors, etc., especially given existing architectural diversity throughout the City.

The Commission continued its hearing to its November 16 meeting, at which the Commission considered City staff's recommendation to give clear direction regarding design standards. Except for "statewide exemption ADUs" (which are exempt from such criteria), the City can apply some design standards to ADUs, so long as the standards are objective and the review is strictly ministerial. The City's existing ADU design criteria strive to achieve some degree of aesthetic compatibility between an ADU and the primary residence through four reasonably objective design considerations: architectural features; landscaping features; building materials; and paint color. The Planning Commission recommended retaining three of the four criteria (architectural features, building materials, and paint color) and eliminating one (landscape features). Under the draft Ordinance, ADUs need meet ***only one*** of the three criteria, thus allowing a greater degree of flexibility in ADU design.

Because of the extent of the proposed changes as compared to the existing Municipal Code section on ADUs, the draft ordinance is presented without tracked changes and recommended to replace the existing Municipal Code section in its entirety. Per state requirements and the Council's and Planning Commission's previous directions, the proposed ADU Ordinance includes the following provisions:

- JADUs: Defined as an ADU that is 500 square feet or less. JADUs must include an efficiency kitchen. The property owner must either reside in the JADU or the remainder of the dwelling. JADUs cannot be subject to any parking requirements, but do require deed restrictions prohibiting short-term rental.
- "Statewide exemption" ADUs: State law describes these units (ADUs/JADUs Within Existing Space, Detached ADUs 800 square feet or less and 16 feet in height or less) as a class of ADUs that are allowed by right, i.e., require only ministerial approval. These types of ADUs are not subject to the minimal design requirements that the City can impose on other ADUs, are not subject to impact fees, and cannot be required to install new or separate utility connections.
- Owner occupancy no longer required (except for Junior ADUs, which are no bigger than 500 sq. ft. and can share a bathroom with the primary residence).
- Impact fees charged only for ADUs 750 sq. ft. or larger and only in proportion to the square footage of the primary dwelling (e.g., at 50% if the ADU is 1,000 square feet and the primary dwelling is 2,000 square feet). ADUs are not considered "new" residential uses when calculating connection and/or capacity fees unless they are constructed with a new single-family dwelling.
- Definition of "ADUs Within Existing Space" clarified and development standards other than setbacks removed.
- New or separate sewer connections can be required for Attached ADUs and Detached ADUs that exceed 500 square feet, but not for JADUs or ADUs Within Existing Space.
- Planning Director must act on a complete ADU application within 60 days (e.g., approval, denial, or written comments describing necessary revisions).
- New maximum size requirements for attached/detached ADUs
    - Attached: 850 square feet if one bedroom, 1,000 if more than one bedroom, cannot exceed 50% of floor area of primary dwelling;

    - Detached: 850 square feet if one bedroom, 1,000 square feet if more than one bedroom.

- Setback requirements are now generally at 4 feet instead of 5 feet (except for ADUs Within Existing Space, JADUs, and certain "statewide exemption" ADUs that are generally smaller and within existing space as well.
- Each ADU must provide the lesser of one off-street parking space or one off-street parking space per bedroom. However, the City cannot require any parking or replacement parking for garage/accessory structure conversions, JADUs, ADUs Within Existing Space, and the "statewide exemption" ADUs.
- On single-family lots, one ADU ***and*** one Junior ADU are both allowed if exterior access is available and side and rear setbacks are sufficient for fire and safety.
- ADUs allowed in all zoning districts that permit multifamily dwellings, which in Hercules, would some commercial and mixed-use districts.
- On multifamily lots, at least one ADU and up to 25% of existing multifamily dwelling units are allowed within a building, and up to 2 detached ADUs subject to compliance with 18-foot height and four-foot setback requirements.
- Existing structures can be converted to or replaced with an ADU, regardless of whether it conforms with setback or building separation standards and without the replacement of off-street parking.
- Utility Connections: The draft ordinance requires most ADUs to pay capacity and connection fees proportionate to the square footage of the primary dwelling, with the caveat that ADUs cannot be considered "new" residential uses for the purposes of calculating these fees unless the ADU is constructed with a new primary dwelling. These fees will provide funding for improvements necessary to address capacity shortages.

ENVIRONMENTAL DETERMINATION

Under Public Resources Code Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of the proposed ordinance amendments by a city or county to implement the provisions of Section 65852.1 or 65852.2 of the Government Code (the state ADU law). The draft ordinance would implement Government Code Section 65852.2 within the City of Hercules in a manner that is consistent with the requirements of state law. As such, the adoption of the ordinance is exempt from CEQA.

ATTACHMENTS:

1. Draft Accessory Dwelling Unit Ordinance (Zoning Text Amendment #20-03)

ATTACHMENT 1

ORDINANCE NO. 20-___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES APPROVING ZONING TEXT AMENDMENT #20-03 REPEALING AND REPLACING SECTION 13-35.320 OF THE HERCULES MUNICIPAL CODE RELATED TO ACCESSORY DWELLING UNITS, AND FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the California Legislature, through Government Code Sections 65852.1 et seq, requires and authorizes cities to provide for accessory dwelling units (ADUs) on residential parcels; and

WHEREAS, to address the statewide housing shortage, the California Legislature recently passed several amendments to Government Code Sections 65852.1 et seq.— including but not limited to SB 13, AB 68, AB 881, AB 587, AB 670, and AB 671—which took effect January 1, 2020, and which reduce barriers, better streamline approval processes, and expand capacity to accommodate the development of ADUs and junior accessory dwelling units (JADUs); and

WHEREAS, the City currently provides for ADUs at Section 13-35.320 of the Municipal Code, and as a result of the recent changes to state law, the City proposes to update its existing requirements and make consistent amendments to definitions and regulations within the Municipal Code to conform to current state law (collectively, the "Zoning Text Amendment"); and

WHEREAS, the City Council, at its regular meetings on August 8, 2020, and October 13, 2020, directed staff to draft amendments to the City's ADU Ordinance consistent with state law; and

WHEREAS, the Planning Commission held a properly noticed public hearing on November 2, 2020, and continued the hearing to November 16, 2020 and adopted Resolution 20-07 recommending that the City Council approve Zoning Text Amendment #20-03 amending Section 13-35.320 of the Municipal Code; and

WHEREAS, Chapter 13-52.400 of City of Hercules Municipal Code allows for amendments of the Zoning Ordinance whenever the City Council determines that: the proposed amendment is consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and is internally consistent and does not conflict with the purposes, regulations, and required findings of the Zoning Ordinance; and

WHEREAS, in accordance with Chapter 13-52 (Zoning Amendments) of the City of Hercules Municipal Code, the City Council received and considered Zoning Text Amendment #20-03 and related environmental review at a properly noticed public hearing on January 12, 2021, and did hear and use its independent judgment to consider all reports, recommendations, and testimony before taking any action on this Zoning Text Amendment.

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

After due study and deliberation, and after convening a public hearing for the proposed Zoning Text Amendment #20-03 in accordance with Chapter 13-52.400 of the Hercules Municipal Code, the City Council finds that Zoning Text Amendment #20-03: is consistent with the General Plan; would not be detrimental to the health, safety, welfare, and public interest of the City; and is internally consistent and does not conflict with the purposes, regulations, and required findings of the Zoning Ordinance.

SECTION 1. **Compliance with California Environmental Quality Act ("CEQA"):** The City Council determined that under Public Resources Code Section 21080.17, the California Environmental Quality Act (CEQA) does not apply to the adoption of the proposed ordinance amendments by a city or county to implement the provisions of Section 65852.1 or 65852.2 of the Government Code (the state ADU law). The draft ordinance would implement Government Code Section 65852.2 within the City of Hercules in a manner that is consistent with the requirements of state law. As such, the adoption of the ordinance is exempt from CEQA.

SECTION 2.

Title 13 of the Hercules Municipal Code Zoning Ordinance Section 35.320 – Accessory Dwelling Units, is hereby repealed and replaced with the following text:

Sec. 13-35.320 Accessory Dwelling Units.

1. Purpose. This section is intended to implement the General Plan policies which encourage accessory dwelling units (ADUs) on residential parcels, and is also intended to address the State's ADU provisions as set forth in Government Code Section 65852.1 et seq. ADUs are commonly referred to as second units, in-law-units, and accessory-apartments, and contribute needed housing to the City's housing stock. ADUs do not exceed the allowable density for the lot and are consistent with general plan and zoning designations.

2. Building Permit Required. The Planning Director shall ministerially approve building permits for ADUs in compliance with this Section 13-35.320. No public hearing or any additional permit shall be required of applicants seeking approval of an ADU pursuant to this Section 13-35.320. The Planning Director shall act on the application to create an ADU within 60 days from the date an application is complete if there is an existing single-family or multi-family dwelling on the lot. If the application involves an ADU where there is also an application for a new single-family dwelling on the lot, then the Planning Director may delay action on the ADU application to coincide with the single-family dwelling application as long as the Director applies the ministerial review required by this section. Applicants may request a delay or waive the 60-day approval period. Applications for ADUs not meeting the requirements of this section are subject to the administrative use permit requirements set forth in Chapter 13-50.

3. Definitions.

   A. "Accessory dwelling unit (ADU)" shall consist of complete independent living facilities for one or more persons including permanent provisions for sleeping, living, eating,

cooking, and sanitation. An ADU shall have exterior entrance separate from the primary dwelling. An efficiency unit as defined in Health and Safety Code Section 17958.1 and a manufactured home as defined in Health and Safety Code Section 18007 are considered ADUs.

B. "Attached ADU" means an ADU that is attached to an existing or proposed primary dwelling or accessory structure.

C. "ADU Within Existing Space" or "JADU Within Existing Space" means an ADU or JADU within the living area of an existing primary dwelling, within an attached or detached garage, or within other permitted accessory structure. An ADU Within Existing Space may include an expansion of up to 150 square feet beyond the physical dimensions of the existing structure to accommodate ingress and egress.

E. "Detached ADU" means an ADU that is not attached to an existing or proposed primary dwelling or accessory structure.

E. "Junior accessory dwelling unit (JADU)" means an ADU that is no more than 500 square feet in size and contained entirely within the walls of an existing or proposed single-family residence and which may or may not share sanitation facilities with the existing structure.

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

4. Lot Requirements. ADUs are allowed in single-family and multi-family residential zoning districts where there is exactly one conforming single-family residence or at least one conforming multi-family building on the parcel or proposed for the parcel. Except as specified in Section 10 below, a maximum of one ADU is allowed on a single-family lot. The City will not approve a building permit for an ADU unless and until the City receives the following:

A. Deed Restriction. A copy of a recorded deed restriction that complies with Government Code Section 27281.5, and states that the ADU will not be rented for less than 30 days and that the ADU will not be sold separately from the primary residence; and

B. Fees.

(1) ADUs containing 750 or more square feet are subject to any fees for residential units required by the City's Master Fee Schedule as it exists at the time the ADU application is filed. Fees shall be charged in proportion to the square footage of the primary dwelling (e.g., a 1,000 square-foot ADU would be charged 50 percent of the applicable fee if the primary dwelling is 2,000 square feet). ADUs on lots with a single-family residence are subject to single-family unit fees, while ADUs on lots with a multi-family residence are subject to multi-family unit fees. All fees are subject to the requirements of Government Code 65852.2 and the Mitigation Fee Act.

(2) ADUs Within Existing Space and ADUs containing less than 750 square feet are not subject to fees under this Subsection (4)(B).

(3) Notwithstanding the requirements of this Subsection (4)(B), unless an ADU is constructed with a new single-family dwelling, it is not considered a "new" residential use for the purpose of calculating any connection fees, sewer facilities fees, or capacity charges. ADUs not constructed with a new single-family home are only subject to connection fees, sewer facilities fees, and capacity charges to the extent that such fees and charges apply to existing uses.

5. Development Standards.

A. ADUs Within Existing Space. An ADU Within Existing Space or a JADU Within Existing Space is permitted as long as the side and rear setbacks are sufficient for fire and safety. No other development standards in this section apply to ADUs and JADUs Within Existing Space, except that:

(1) Only one ADU Within Existing Space or one JADU Within Existing Space is allowed per lot unless a building permit or permits are obtained for multiple ADUs under Section 10(A) below;

(2) Garage spaces converted to ADUs shall replace garage doors with walls, windows, and/or doors rated by building code for habitable spaces.

B. Attached ADUs. Attached ADUs shall comply with the following requirements:

(1) If the Attached ADU contains one bedroom, it shall not exceed 850 square feet. If the Attached ADU contains more than one bedroom, it shall not exceed 1,000 square feet.

(2) All other development standards required by this Section 5.

C. Detached ADUs. Detached ADUs shall comply with the following requirements:

(1) If the Detached ADU contains one bedroom, it shall not exceed 850 square feet. If the Detached ADU contains more than one bedroom, it shall not exceed 1,000 square feet.

(2) Detached ADUs shall have individual addresses separate from the primary residence. Addresses shall be displayed on the ADU building so that it is clearly visible and legible from the street or adjacent alley. If the ADU is located on the property such that it cannot be seen from a street or alley, the property shall post a sign or display some other type of marker in the front yard with the ADU address on it, subject to Fire District approval.

(3) All other development standards required by this Section 5.

D. Setbacks. No setbacks shall be required for ADUs Within Existing Space as long as side and rear setbacks are sufficient for fire safety. A setback of four (4) feet from side and rear lot lines is required for all other ADUs. No ADU shall be built over utility easements or recorded setbacks. No passageway between an ADU and an existing dwelling shall be required. All ADUs are subject to the same front and corner setbacks as the primary

residence, except that front setbacks may not preclude Statewide Exemption ADUs (see Section 10 below).

E. Height. An ADU shall conform to the applicable height limits of the zoning district in which it is located, except that:

(1) No new Detached ADU shall exceed 18 feet or 1 habitable story;

(2) Second-story ADUs are allowed on top of existing, legally-approved detached structures, provided height does not exceed that of the existing primary residence.

F. Building Code Requirements. Except as otherwise provided in this section, all Building Code requirements that apply to detached dwellings apply to Detached ADUs. Notwithstanding any requirements of this Subsection 5(F), a new or separate utility connection directly between the ADU and the utility is not required for either Detached ADUs or Attached ADUs unless a new or separate connection is necessary to serve the ADU due to:

(1) the topography of the property;

(2) existing impediments such as trees, structures, or easements;

(3) the location of the ADU on the property; or

(4) inadequate existing connections.

6. Design Standards. An ADU must conform to the design characteristics of the existing residence or residences. A determination of conformity shall be made if the ADU utilizes any of the following features of the existing residence or residences: architectural features, building materials, or paint color. When an existing garage is converted to an ADU, windows and/or door features may be required for consistency with fire and building codes and in consultation with the Fire Marshal. ADUs constructed on any property that is designated in the California Register of Historic Resources as a historic contributing or landmark structure shall adhere to the Hercules Design Guidelines for Historic Preservation.

7. Fire Sprinklers. If the primary residence, whether existing or proposed, is required to contain fire sprinklers, then sprinkler installation is also required for the ADU.

8. Parking. In addition to the off-street parking spaces required for the existing residence, each ADU with one or more bedrooms must provide at least one off-street parking space; for ADUs without separate bedrooms (i.e., studios), additional off-street parking is not required. ADU parking spaces may be provided as tandem parking, including on an existing driveway or in paved setback areas, excluding the non-driveway front yard setback. Parking requirements shall be waived if the ADU is located: (i) within one-half mile walking distance of a public transit stop; (ii) in a designated historic district; (iii) in part of an existing primary residence or an existing accessory structure pursuant to subsection (5)(A) of this section; (iv) in an area requiring on-street parking permits not offered to the ADU occupant; or (v) within 1 block of a car-sharing pickup/drop-off location.

9. Replacement Parking. When a garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU (excluding JADUs), replacement parking shall not be required.

10. Statewide Exemption ADUs.

    A. Notwithstanding the requirements of this Section 13-35.320, only building permits shall be required for ADUs or JADUs in the following circumstances:

        (1) One ADU Within Exiting Space of an existing or proposed single-family dwelling if the ADU has exterior access separate from the primary dwelling and sufficient side and rear setbacks for fire and safety.

        (2) One JADU Within Existing Space of an existing or proposed single-family dwelling that has exterior access separate from the single-family dwelling, sufficient side and rear setbacks for fire and safety, and meets all requirements of Section 11 below.

        (3) One detached, new construction ADU on a lot with an existing or proposed single-family dwelling that does not exceed four-foot side and rear setbacks, that has a total floor area of no more than 800 square feet, and that does not exceed 16 feet in height. An ADU approved pursuant to this subsection 10(A)(3) may be combined with a JADU described in subsection 10(A)(2) above.

        (4) Multiple ADUs within the portions of existing multifamily dwelling structures that are not used as livable space, including but not limited to storage rooms, boiler rooms, passageways, attics, basements, or garages, if each unit complies with state building standards for dwellings. At least one ADU and up to 25% of the number of existing multi-family dwellings shall be allowed within an existing multifamily dwelling. No more than two detached ADUs are allowed on a lot with an existing multifamily dwelling, subject to a height limit of 16 feet and four-foot side and rear yard setbacks.

    B. No applicant for a building permit sought under this Section 10 shall be required to do, perform, or construct any of the following:

        (1) Correct nonconforming zoning conditions; or

        (2) Install fire sprinklers, unless they are required for the primary residence; or

        (3) Install new or separate utility connection or pay any connection fee, sewer facilities fee, or capacity charge, unless the ADU is constructed with a new single-family home.

    C. ADUs constructed pursuant to this section cannot be rented for a term less than 30 days.

    D. An applicant for a building permit under this section may be required to provide proof of a percolation test within the last five years (or 10 years if the percolation test has been recertified).

11. Junior Accessory Dwelling Units (JADUs). One JADU may be built per residential lot zoned for single-family residences with an existing or proposed single-family residence. The owner of the existing or proposed single-family residence must reside in the JADU or the remaining portion of the single-family residence unless owner is a governmental agency, land trust, or housing organization.

    A. Deed Restriction Required. The owner of the single-family lot upon which a JADU is constructed must record a deed restriction that: complies with Government Code Section 27281.5, runs with the land, states that the JADU cannot be separately sold from the single-family residence, states that the deed restriction can be enforced against future purchasers, and states that the size and attributes of the JADU must conform to the requirements of this Section 13-35.320 and state law.

    B. JADU Development Standards. The following development standards apply to JADUs:

        (1) Efficiency Kitchen. A JADU must have at least an efficiency kitchen, which includes a cooking facility with appliances, and a food preparation counter and storage cabinets that are of reasonable size in relation to the size of the JADU.

        (2) Parking. JADUs are not subject to the parking requirements of Section 8 above but may provide one or more parking spaces at the option of the owner.

        (3) Utilities. For purposes of providing service for water, sewer, or power, including any connection fee, a JADU shall not be considered a separate or new dwelling unit. No separate or new utility connections are required for JADUs.

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.

SECTION 4. Effective Date and Publication. The City Clerk shall certify to the adoption of this Ordinance and shall publish or post the Ordinance as required by law. This Ordinance shall be effective thirty (30) days from date of final adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 12th day of January, 2021, and was passed and adopted at a regular meeting of the Hercules City Council on the _____ day of _____, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Chris Kelley, Mayor

_____
Lori Martin, MMC
Administrative Services Director / City Clerk

City of Hercules

111 Civic Drive
Hercules, CA 94547

Meeting Minutes

City Council

Mayor Chris Kelley
Vice Mayor Dion Bailey
Council Member Alexander Walker-Griffin
Council Member Dan Romero
Council Member Tiffany Grimsley

David Biggs, City Manager
Patrick Tang, City Attorney

Tuesday, January 12, 2021 **7:00 PM** **Virtual Meeting Via Zoom**

CLOSED SESSION - NONE.
REGULAR SESSION - 7:00 PM.

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

Present: 5 - Vice Mayor D. Bailey, Council Member A. Walker-Griffin, Council Member T. Grimsley, Council Member D. Romero, and Mayor C. Kelley

V. REPORT ON ACTION TAKEN IN CLOSED SESSION

None.

VI. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Kelley.

VII. MOMENT OF SILENCE

Mayor Kelley called for a moment of silence for Tom Guarino, a representative with PG&E who recently passed away due to an illness.

VIII. INTRODUCTIONS/PRESENTATIONS/COMMISSION REPORTS

1. 21-002 **Proclamation Recognizing and Congratulating Laura Bond on Being Area 104 Starbucks Manager of the Year**

Mayor Kelley read aloud and presented a Proclamation to Laura Bond, Manager of the Year for District 104 for the Willow Avenue Starbucks in Hercules. Ms. Bond thanked the Mayor and Council for the recognition and the Proclamation. City Council Members provided comments.

2. 21-010 **Proclamation Recognizing Planning Commissioner Susan Tolley for her Years of Service**

Mayor Kelley read aloud and presented a Proclamation to former Planning Commissioner Susan Tolley. Ms. Tolley thanked the Mayor and Council for the recognition and Proclamation. Members of the City Council provided comments.

City Clerk Martin read aloud a public comment submitted by former Council Member Gerard Boulanger recognizing Ms. Tolley's years of service on the Planning Commission.

3. 21-007 **Council on Aging Annual Report by Jennifer Doran, City Representative on Contra Costa County Advisory Council on Aging**
Recommendation: Receive and file report.

Jennifer Doran, City Representative on the Council on Aging provided an annual update of the work program of the Commission. City Council Members asked questions and provided comments.

IX. AGENDA ADDITIONS/DELETIONS

City Manager Biggs stated there were no additions or deletions and identified the supplemental documents provided prior to the meeting and available on the City's website.

X. PUBLIC COMMUNICATIONS

City Clerk Martin read aloud public comments submitted by: Faye Porter; Ali Birnbach; Estela DePaz; Shagoofa Khan; Dianne Ennaid; Jeff Axup; Lynn Schwaebe; Lucas Stuart-Chilcote; Pil Orbison. A late public comment was submitted by Amy Prindle which was not read aloud but available on the City website along with all other public comments received for January 12, 2021.

XI. PUBLIC HEARINGS

1. 21-009 **First Reading of Ordinance No. 532 Adding Chapter 2-1.06 to Title 2 "Administration entitled "Electronic Filing of Campaign Disclosure Documents".**

Recommendation: Open the public hearing, take public testimony, waive the first reading, and approve the introduction of Ordinance 532 amending Title 2 of the Hercules Municipal Code by adding Chapter 2-1.06, "Electronic Filing of Campaign Disclosure Documents".

City Clerk Martin introduced the item and provided a staff report. Members of the City Council asked questions and provided comments.

Mayor Kelley opened the public hearing at 7:58 p.m.

Mayor Kelley closed the public hearing at 7:58 p.m. with no comments offered from the public.

MOTION: A motion was made by Vice Mayor Bailey, seconded by Council Member Walker-Griffin to waive the first reading and approve the introduction of Ordinance 532.

Aye: 5 - Vice Mayor D. Bailey, Council Member A. Walker-Griffin, Council Member T. Grimsley, Council Member D. Romero, and Mayor C. Kelley

2. 21-008 **Zoning Text Amendment #20-03: City Ordinance to update Municipal Code Section 13-35-320 to address changes in State housing law affecting local regulation of Accessory Dwelling Units (ADUs)**

Recommendation: Open the public hearing, take public testimony, waive the first reading, and approve the introduction of Ordinance No. 531 amending Hercules Municipal Code Title 13, Chapter 35 "Specific Land Use Requirements" to update the City's current policies and processes for accessory dwelling units (ADU's) for conformity with current State law.

City Manager Biggs introduced the item and Community Development Director Reber provided a staff report. Assistant City Attorney Crowl provided additional information. City Council Members asked questions and provided comments.

City Council gave direction to staff to reach out to the Post Master in regards to applying a separate address to the ADU and to invite Fire Chief Craig to the next meeting to provide input.

Mayor Kelley opened the public hearing at 8:36 p.m.

Mayor Kelley closed the public hearing at 8:36 p.m. with no comments offered from the public.

MOTION: A motion was made by Council Member Bailey, seconded by Council Member Grimsley, to continue the public hearing to January 26, 2021. The motion carried by the following vote:

Aye: 4 - Vice Mayor D. Bailey, Council Member A. Walker-Griffin, Council Member T. Grimsley, and Mayor C. Kelley

Nay: 1 - Council Member D. Romero

XII. CONSENT CALENDAR

MOTION: A motion was made by Council Member Bailey, seconded by Council Member Walker-Griffin, to adopt the Consent Calendar. The motion carried by the following vote:

Aye: 5 - Vice Mayor D. Bailey, Council Member A. Walker-Griffin, Council Member T. Grimsley, Council Member D. Romero, and Mayor C. Kelley

1. 21-003 **Minutes**

Recommendation: Approve the regular meeting minutes of December 12, 2020.

Approved.

2. 21-005 **Review Upcoming Council Agenda Items List**

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

Approved.

XIII. DISCUSSION AND/OR ACTION ITEMS

1. 20-407 **FY 2019-20 Comprehensive Annual Financial Reports**

Recommendation: Receive the fiscal year 2019-20 Comprehensive Annual Financial Reports (CAFR) and Accept the Audited Financial Statements.

City Manager Biggs introduced the item and Finance Director Gato provided a staff report. Ken Pun and Gary Caporicci of the Pun Group gave a presentation on the audited financial statements. City Council asked questions and provided comments.

The FY 2019-20 Comprehensive Annual Financial Reports were received and filed.

2. 20-427 **Recognized Obligation Payment Schedule for the Period of July 1, 2021 through June 30, 2022 (ROPS 21-22)**

Recommendation: Adopt a Resolution approving the recognized obligation payment schedule for the period of July 1, 2021 through June 30, 2022 (ROPS 21-22).

City Manager Biggs introduced the item and provided a staff report. City Council Members asked questions and provided comments.

MOTION: A motion was made by Council Member Walker-Griffin, seconded by Council Member Bailey, to adopt Resolution SA 20-001. The motion carried by the following vote:

Aye: 5 - Vice Mayor D. Bailey, Council Member A. Walker-Griffin, Council Member T. Grimsley, Council Member D. Romero, and Mayor C. Kelley

3. 21-004 **2021 Development Site Update and Review**

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

City Manager Biggs introduced the item and gave a presentation on the current status of development projects. Members of the City Council asked questions and provided comments.

4. 21-001 **Contra Costa County Library Commission Appointment**

Recommendation: Consider making an appointment to the Contra Costa County Library Commission to an unexpired term ending June 30, 2023.

City Clerk Martin introduced the item and provided a staff report.

MOTION: A motion was made by Council Member Bailey, seconded by Council Member Walker-Griffin, to approve the appointment of Brian Campbell-Miller to the Contra Costa County Library Commission. The motion carried by the following vote:

Aye: 5 - Vice Mayor D. Bailey, Council Member A. Walker-Griffin, Council Member T. Grimsley, Council Member D. Romero, and Mayor C. Kelley

5. 21-006 **2021 Council Appointments on Regional Committees and Council Subcommittees**

Recommendation: Express additional interest and availability for the 2021 Council Appointments on Regional Committees and Council Subcommittees to be made by the Mayor.

Mayor Kelley introduced the item and provided a staff report. Mayor Kelley's proposed appointments to regional committees and city subcommittees was provided to Council prior to the meeting. There were no questions or concerns in regards to any of the appointments. The 2021 Council appointments on regional committees and Council subcommittees was approved by consensus.

XIV. PUBLIC COMMUNICATIONS

City Clerk Martin read aloud a public comment submitted by Selina Williams.

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.

Future Agenda Items:

1. Council Memeber/Walker-Griffin requested a discussion regarding service cap fees on 3rd party app based delivery service;

2. Council Member Romero requested staff to do an update on the City's smoking ordinance;

3. Council Member Romero requested a workshop on the traffic subcommittee instead of just a subcommittee meeting;

4. Council Member Romero requested a discussion item to consider allowing Community Development Director Reber to have more latitude to deal with minor project amendments in regards to paint color.

A poll was conducted and a consensus was obtained to add a discussion item regarding delivery service cap fee for app based delivery service providers.

A poll was conducted and a consensus was obtained to add a discussion item regarding an update on the City's smoking ordinance.

A poll was conducted which resulted in a 3-2 vote to not discuss the item requested for a City Council Workshop to discuss public safety and traffic issues instead of a subcommittee meeting.

A poll was conducted which resulted in a 3-2 vote to not discuss the item requested to consider allowing Community Development Director Reber to have more latitude in dealing with minor project amendments in regards to paint color on buildings.

XVI. ADJOURNMENT

Mayor Kelley adjourned the meeting at 11:08 p.m. in memory of Brian D. Sicknick, a Capitol Police Officer who passed away on January 7, 2021 due to injuries sustained while on-duty responding to the recent riots at the State Capitol.

_____
Chris Kelley, Mayor

Attest:

_____
Lori Martin, MMC
Administrative Services Director/City Clerk

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 26, 2021

TO: Members of the City Council

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

SUBJECT: Second Reading and Adoption of Ordinance No. 532 Adding Chapter 2-1.06 to Title 2 "Administration" entitled "Electronic Filing of Campaign Disclosure Documents".

RECOMMENDED ACTION: Consider waiving the second reading and adopt Ordinance 532 amending Title 2 of the Hercules Municipal Code by adding Chapter 2-1.06, "Electronic Filing of Campaign Disclosure Documents".

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:
There was no commission or subcommittee review of this item.

FISCAL IMPACT OF RECOMMENDATION:
If the proposed Ordinance is approved by City Council, staff will review options to process the electronic filing of campaign disclosure documents by retaining the services of a third-party vendor who specialize in this type of work. The annual cost for this service/subscription is $3700 which includes a $900/year discount if the Campaign Disclosure E-Filing is combined with he Form 700 E-Filing. The cost for just the Campaign Disclosure E-Filing on its own would be $3400 annually. The annual cost can be accommodated within the adopted City Clerk Department and Information Technology Department budgets for Fiscal Year 2020-21.

DISCUSSION:
The City Council held a public hearing on January 12, 2021 and waived the reading and approved the introduction of Ordinance 532.

Effective January 1, 2021, State Assembly Bill 2151 will require a local government agency to post on its internet website, within 72 hours of the applicable filing deadline, a copy of any specified statement, report, or other document filed with that agency in paper format. This bill will require that the statement, report, or other document be made available for four (4) years from the date of the election associated with the filing. By imposing a new duty on local government agencies, this bill will impose a state-mandated local program.

Government Code Section 84615 authorizes the City to adopt an ordinance that requires elected officers, candidates, and committees to file campaign disclosure documents electronically. City Council action is needed for the adoption of a finding that the electronic filing system will operate securely and not unduly burden filers. In order to comply with the new law, staff recommends that the City Council adopt an ordinance requiring the electronic filing of campaign disclosure documents and statements of economic interests so that these documents can be redacted, as permitted by law, and posted to the City website in a cost-effective manner.

The proposed ordinance requires the electronic filing of campaign disclosure documents and is in compliance with Government Code Section 84615 and AB 2151. However, should the proposed ordinance not be adopted by City Council, City Clerk staff would be required to manually redact campaign disclosure documents and post them onto the City website within 72 hours of filing in order to comply with AB 2151. Because this process can be very labor-intensive and time-sensitive, staff will consider retaining the services of a third-party vendor specializing in this area.

Staff has reached out to Netfile which is company that provides this service to many agencies throughout California and is an FPPC approved vendor and approved system. The City of Hercules currently has approximately 31 filers of the Form 700 which consists of Required 87200 filers as well as Designated filers. The online portal can be accessed from any mobile device or computer, filers can file expanded and or combined statement filings. This system also has the ability to track all Ethics Training and Harassment Training filers and their filings which is a bonus. FPPC does require a $1000 application filing fee which is paid on the City's behalf by Netfile.

Filing Campaign Disclosure documents and Form 700s electronically where the public has the ability to access these redacted filings 24/7 and promotes the City Council's objective to develop and maintain on-going efforts that increase transparency in city government.

ATTACHMENTS:

1. Ordinance 532
2. AB 2151
3. NetFile Proposal

ORDINANCE NO. 532

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES ADDING CHAPTER 2-1.06 "ELECTRONIC FILING OF CAMPAIGN DISCLOSURE DOCUMENTS" TO TITLE 2 "ADMINISTRATION" OF THE HERCULES MUNICIPAL CODE RELATING TO CAMPAIGN DISCLOSURE DOCUMENTS

WHEREAS, California Government Code section 84615 currently provides that a local agency may adopt an ordinance to require an elected officer, candidate, committee, or other person required to file statements, reports, or other documents required by Chapter 4 of the Political Reform Act (commencing with Section 84100 of the Government Code), except an elected officer, candidate, committee, or other person who receives contributions totaling less than $2,000 and who makes independent expenditures totaling less than $2,000 in a calendar year, to file those statements, reports, or other documents online or electronically with the local filing officer; and

WHEREAS, the City intends to enter into an agreement with NetFile, Inc., a vendor approved by the California Secretary of State, to provide an online electronic filing system ("System") for campaign disclosure statements and statements of economic interest forms; and

WHEREAS, the City Council finds that the System will operate securely and effectively and will not unduly burden filers. Specifically: (1) the System will ensure the integrity of the data and include safeguards against efforts to tamper with, manipulate, alter or subvert the data; (2) the System will only accept a filing in the standardized record format developed by the California Secretary of State and compatible with the Secretary of State's system for receiving an online or electronic filing; and (3) the System will be available free of charge to filers and to the public for viewing filings; and

WHEREAS, the City of Hercules desires to amend the Hercules Municipal Code to add a new Chapter relating to electronic filing of campaign and conflict of interest statements.

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

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

SECTION 2. Amendment. That the City Council of the City of Hercules does hereby amend Hercules Municipal Code Title 2 by adding Section 2-1.06, to read as follows:

Chapter 2.106 – Electronic Filing of Campaign Disclosure Documents and Statements of Economic Interests.

(a) Any elected officer, candidate, committee, or other person required to file statements, reports, or other documents required by Title 9 of the Government Code, commencing with Section 84100, except an elected officer, candidate, committee or other person who receives contributions totaling less than $2,000, and makes expenditures totaling less than $2,000 in a calendar year shall file those statements, reports or other documents online or electronically with the City Clerk.

(b) Any person holding a position listed in Government Code section 87200 or designated by the City's conflict of interest code shall file any required Statement of Economic Interest reports online or electronically with the City Clerk.

(c) In any instance in which an original statement, report of other document must be filed with the California Secretary of State and a copy of that statement, report or other document is required to be filed with the City Clerk, the filer may, but is not required to, file the copy electronically.

(d) If the city's electronic filing system is not capable of accepting a particular type of statement, report or other document an elected officer, candidate, committee or other person shall file that document with the City Clerk in an alternative format.

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.

SECTION 4. Effective Date and Publication. The City Clerk shall certify to the adoption of this Ordinance and shall publish or post the Ordinance as required by law. This Ordinance shall be effective thirty (30) days from date of final adoption.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Hercules City Council on the 12th day of January, 2021, and was passed and adopted at a regular meeting of the Hercules City Council on the _____ day of _____, 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Chris Kelley, Mayor

Lori Martin, MMC
Administrative Services Director / City Clerk

Assembly Bill No. 2151

CHAPTER 214

An act to add Section 84616 to the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 28, 2020. Filed with Secretary of State September 28, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2151, Gallagher. Political Reform Act of 1974: online filing and disclosure system.

The Political Reform Act of 1974 requires the filing of specified statements, reports and other documents. Under the act, a local government agency may require these filings to be made online or electronically with the local filing officer, as specified. The act requires the local filing officer to make all data so filed available on the internet in an easily understood format that provides the greatest public access.

This bill would require a local government agency to post on its internet website, within 72 hours of the applicable filing deadline, a copy of any specified statement, report, or other document filed with that agency in paper format. This bill would require that the statement, report, or other document be made available for four years from the date of the election associated with the filing. By imposing a new duty on local government agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a $^{2}/_{3}$ vote of each house of the Legislature and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

DIGEST KEY

Vote: 2/3 Appropriation: NO Fiscal Committee: YES Local Program: YES

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 84616 is added to the Government Code, to read:

84616.

(a) Within 72 hours of each applicable filing deadline, a local government agency shall post on its internet website a copy of any statement, report, or other document required by Chapter 4 (commencing with Section 84100) that is filed with that agency in paper format. If the final day of the 72-hour period is a Saturday, Sunday, or holiday, the period is extended to the next day that is not a Saturday, Sunday, or holiday. Before posting, the local filing officer shall redact the street name and building number of the persons or entity representatives listed on any statement, report, or document, or any bank account number required to be disclosed by the filer. Providing a link on the agency's internet website to the statement, report, or other document satisfies this subdivision.

(b) A statement, report, or other document posted pursuant to this section shall be made available for four years from the date of the election associated with the filing.

SEC. 2.

If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 3.

The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning

From: Tom Diebert
To: Lori Martin
Subject: Price breakdown by System
Date: Tuesday, January 5, 2021 4:26:33 PM

Hi Lori,

I was nice speaking with you this afternoon.

The cost breakdown per system is as follows:

Campaign Disclosure E-filing system: $3,400/year ongoing
Form 700 E-filing system: $1,200/year ongoing (plus NetFile pays your initial FPPC application fee to become a paperless Form 700 agency of $1,000)
Discount for taking both systems at the same time: ($900/year)

Total for both systems after discount is taken: $3,700/year (NetFile still pays your initial FPPC application fee of $1,000)

If you have any other questions, just let me know. Have a wonderful rest of your day!

Best regards,

Tom Diebert

Mariposa HQ & Support Phone: 209.742.4100
Fresno Office Phone: 559.250.4847
Fax: 209.391.2200
Agency support e-mail: staffhelp@netfile.com
Pro-Treasurer support e-mail: support@netfile.com
Direct e-mail: diebert@netfile.com
Website: www.netfile.com

NetFile
2707 Aurora Road
Mariposa, CA 95338
Tel (209)742-4100
Fax (209)391-2200

December 14, 2020

Lori Martin, MMC
Administrative Services Director/City Clerk
City of Hercules
111 Civic Drive
Hercules, CA 94547

Dear Lori:

Thank you for the e-mails today. Here is some background information as well as a proposal for our e-filing and administration systems for both the Campaign Disclosure and Form 700 SEI filings.

How NetFile Works

NetFile is a hosted solution that provides you with an extremely affordable system that will enable your filers to electronically file Campaign Statements and/or Form 700 filings.

Who Uses NetFile

NetFile is being used by almost 200 local government agencies in CA today. For Cities, NetFile dominates this market space. Over 72% of Cities in CA using a Form 700 e-filing system and over 95% of Cities in CA using a Campaign e-filing system use NetFile. Our City clients in Northern CA using our systems include Albany, Antioch, Berkeley, Calistoga, Capitola, Carmel-By-The-Sea, Chico, Dublin, East Palo Alto, Fremont, Fresno, Gilroy, Half Moon Bay, Hayward, Hollister, Livermore, Lodi, Los Gatos, Manteca, Menlo Park, Milpitas, Modesto, Monterey, Morgan Hill, Mountain View, Oakland, Oakley, Oroville, Pacific Grove, Palo Alto, Patterson, Piedmont, Pleasanton, Redding, Richmond, Ross, Sacramento, Salinas, San Bruno, San Francisco, San Luis Obispo, San Rafael, Santa Clara, Santa Cruz, Santa Rosa, Sausalito, Sonoma, Stockton, Sunnyvale, Tiburon, Watsonville, West Sacramento, and the Town of Yountville. Our County clients in Northern CA using either one or both our systems are Alameda, Butte, Contra Costa, Del Norte, Madera, Marin, Merced, Monterey, Nevada, Placer, San Francisco, San Mateo, Santa Clara, Santa Cruz, and Shasta. We have several state agencies and boards and commissions in Northern CA who use our systems as well.

Cost Information

NetFile does not charge any setup costs or hidden costs to worry about. Our ongoing fee includes everything (unlimited training, support, maintenance). All form changes and system updates are included as well. The cost for our systems for you would be as follows:

Annual total for both systems: $3,700/year*

We can guarantee this pricing for up to 5 years.

NetFile's Included Main Features

- Hosted platform means you don't need to load any software on your servers or apply any updates or security patches
- Includes your setup, unlimited support, maintenance, and unlimited training
- Automated correspondence and generate filing status reports on the fly
- Filer portal (where the filer creates and electronically files their documents)
- Industry exclusive Form 700 mobile device filer platform
- Your 87200 filers can paperless file directly to the FPPC through the NetFile system
- All your Form 700 and 87200 filers can create expanded and or combined statement filings
- NetFile pays for your initial FPPC $1,000 paperless application fee
- Exclusive Campaign Filer training program that includes free telephone training by NetFile
- NetFile clients have the option to schedule live Campaign filer trainings in their office with NetFile staff providing the training
- Free public viewing portal to display your FPPC 800 series forms you are required to post online

NetFile's Exclusive Public Viewing Portal Features

NetFile easily gives you the ability to show or not show electronically filed documents. Come January 1, 2021 AB 2151 comes into effect that requires local government agencies (like Cities and Counties) to post on the internet within 72 hours a copy of any campaign filing made (both paper and electronic). Any electronic filing through NetFile is instantly be posted online in redacted form as soon as it is e-filed by the filer.

Ethics Training and Sexual Harassment Training Tracking & 800 Series Form Public Site

The NetFile Form 700 system also includes the ability to track all your Ethics Training and Sexual Harassment Training filers and their filings. The system also comes with a free public viewing portal to display your FPPC 800 series forms.

Cross Jurisdictional Electronic Filings

NetFile is the ONLY solution that can offer you cross jurisdictional filings to all of our Form 700 agencies. The reason we can do this and others can't is ALL of our clients use our hosted solution. Just tell us which filers of yours file to our other agencies and we can link them at the database level to make their paperless filing easy across all their agencies.

How Long Does it Take to Setup?

Currently our lead time is 2 days to set up a new agency. For Form 700 the FPPC has to approve you to become paperless and this takes approximately 2 weeks. To become a paperless filing agency for Campaign Disclosure requires an ordinance change. We can send you ordinances from other Cities to review.

The NetFile Difference

The City of Santa Clara was our first Campaign agency back in 2003. The City of San Diego made history with our Campaign system having the first ever paperless campaign statement filed on January 22, 2013. Changing your ordinance is all you have to do! As mentioned above, I can send you samples of other agencies ordinances so you don't have to reinvent the wheel for your ordinance.

The California Political Treasurers Association has endorsed NetFile as the preferred system for local government clients. Attached is a press release about this.

For Form 700 Statements of Economic Interests, NetFile leads the way. Starting the end of 2006 for the County of San Bernardino as well as the Cities of Anaheim and San Diego, NetFile beat the competition to the market by 2 years. NetFile has industry exclusive features for the Form 700 system as well like dedicated mobile apps available through GooglePlay for android devices or the Apple App store for iPhones or iPads.

One of the most important advantages with NetFile is all your revenue spent with NetFile stays in the USA. Additionally, the philosophy at NetFile is that we are a Service Company not a Software Company. We feel our most important strength is the support we provide our clients. This starts at the top and percolates through every level of our organization.

NetFile Social Responsibility Program

Because City Clerks compromise our largest customer market segment, several years ago we developed a program geared towards giving back to the community of Clerks. In 2019 we spent over $50k just on the CCAC! This included providing free Workshops for Cities all over CA. We had 135 clerks attend our Workshop in Ontario and 93 attend our Workshop in Mountain View in July 2019. This year, due to Covid, we have provided 5 free web-based workshops free to clerks to help them achieve their CMC or MMC accreditation. Over 900 clerks have attended these sessions to advance their education.

If you need any additional information, just let me know.

Best regards,

Tom Diebert
Vice President, NetFile

California Political Treasurer's Association
1127-11th Street, Suite 210
Sacramento, CA 95814

January 1, 2020

Tom Diebert
Vice President & COO
NetFile, Inc.
2707-A Aurora Road
Mariposa, CA 95338

Dear Tom:

One of the goals of the California Political Treasurer's Association (CPTA) is to promote the concept of paperless electronic filing for Campaign Disclosure statements in California at all levels.

As such, we would like to acknowledge NetFile, Inc. and their contributions over the years to the local Agency filing community, specifically County and City Agencies in California.

Our members have worked with several of these Agencies and applaud NetFile's efforts in making their Agency system work within the confines of Assembly Bill 2452 which allows local governments to electronically file Campaign Statements in California in a true paperless fashion. We know the first ever paperless filing in CA took place on January 22, 2013 through a CPTA treasurer filing to a NetFile Agency system. Since then we have seen NetFile being adopted by several local government Agencies in CA today.

As such, we recommend that all local government Agencies in CA go to a paperless filing system for their Campaign Disclosure filings. From the prospective of the CPTA, we recommend those Agencies use NetFile as their preferred solution.

NetFile's background in Campaign Disclosure gives them the unique advantage of having expertise nowhere else available for the local government filing community. The fact that NetFile accounts for over 70% of all filings made to the Secretary of State of CA gives them a distinctive advantage in Campaign Disclosure expertise not found anywhere else. All of the treasurers agree that any filings made to local governments that use the NetFile system, makes the process easy and results in the ultimate level of transparency.

We applaud NetFile's efforts in promoting paperless electronic filing in CA and endorse them as the solution of choice for California local government Agencies.

Sincerely,

Laura Ann Stephen
Vice President, Legislative Affairs

Campaign Disclosure

FPPC CAMPAIGN FORMS

Paperless Filing Solution

NetFile

NetFile's advantages..

- Hosted Platform
- Setup Included
- Filer Application
- Public Portal
- Internal Kiosk
- Unlimited Support
- Unlimited Training
- Free Filer Training
- 3rd Party Uploads
- CA Based Support
- Preferred by CPTA
- Industry Innovator
- Industry Leader
- Support Driven
- Data Security

E-FILING & ADMIN SYSTEM

Campaign Statements Made Simple and Secure

Make your hard to track paper filing system obsolete with the most experienced provider of Campaign Disclosure systems! NetFile supports paperless as well as paper filed documents. Being hosted online, the agency, filer, and public can access the system any time day or night. NetFile is an extremely affordable solution for all sizes of local government agencies. Our system comes with around the clock support that is 100% based in California - no need to worry about foreign based programming or support.

Fact: NetFile's support is based from the top down.

Fact: NetFile considers itself to be a support and service company.

Fact: NetFile DOES NOT make contributions to local candidate controlled committees!

Electronic Filing

First time filers can request free live software training from NetFile staff! Filers can input their data as they go or all at one time. Drafts can be generated at any time for review prior to filing. A link from your website starts the filing process. The site is hosted by NetFile but looks just like your site. NetFile servers ensure fast and efficient filings. The submitted filing is validated to stop amendments from happening in the first place. Online documentation available for the filer to make filing easy!

Agency Management Tool

The system acts as your repository of filers and filings. Create the filers in the database just once. Notifications can be sent out through the system to filers. Track your filers and their deadlines through our advanced filing status report. Includes several industry exclusive tools to push information to staff regarding filers and their filings.

Campaign Disclosure INFO SHEET

Document Viewing Portal - Public Transparency Site

You can choose to have your filers' documents shown over the internet in redacted form with your own redaction specifications. You can even narrow down which filers you would want to show.

ADVANCED PUBLIC SEARCH INCLUDED! This means you can search for elements across all your electronically filed data. This guarantees the utmost in transparency for the public to view the filed data.

Document Viewing Portal - Private Site

The system also comes with a kiosk mode that allows you to show filings in unredacted form, but only in your office. That way if someone walks in requesting to view a filing, you can just point them to one of your computers to search for the filings. They could print to your internal printer if they want to purchase a hard copy. No more pulling files and making copies that waste valuable staff time!

NetFile is Number One in California

NetFile is California's first internet based accounting, disclosure, and data management system. Our clients accounts for well over half of all electronic disclosure document filings in the state of California. For our local government platform, there have been hundreds of thousands of e-filings made from both our Form 700 SEI filing and admin system as well as our Campaign Disclosure filing and admin system.

Unparalleled Training and Technical Support

Our business model is based on an ongoing service with no long term contractual commitments from our clients. This guarantees you the best in training and support!

Contact Information:

Company Name:	NetFile, Inc.
Address:	2707 Aurora Road Mariposa, CA, 95338
Phone:	(209) 742-4100 (Main Line & Support)
Phone:	(559) 250-4847 (Local Government Sales)
Fax:	(209) 391-2200
E-mail:	sales@netfile.com
Website:	www.netfile.com

NetFile also has an e-filing system for local governments for Statements of Economic Interests FPPC Form 700 as well as Ethics Training Tracking and Sexual Harassment Training Tracking.

NetFile THE E-FILING LEADER

FPPC Form 700
STATEMENT OF ECONOMIC INTERESTS

Paperless Filing Solution

NetFile

NetFile's advantages..

- Hosted Platform
- FPPC Approved
- Setup Included
- Ethics & Sexual Harassment Training Tracking
- Filer Application
- Video Tutorials
- Public Portal
- Internal Kiosk
- Unlimited Support
- Unlimited Training
- Industry Innovator
- Industry Leader
- Support Driven
- Data Security

E-FILING & ADMIN SYSTEM

Forms 700/800/Plus Forms Training Tracking

Make your hard to track paper filing system obsolete with the most experienced and leading provider of e-filing systems! NetFile does support paperless as well as paper-filed documents. Being hosted online, the agency, filer, and public can access the system at any time day or night. NetFile is an extremely affordable solution for all sizes of local government agencies. Our system comes with around the clock support that is 100% based in California – no need to worry about foreign based programming or support.

Fact: NetFile's support is based from the top down.

Fact: NetFile considers itself to be a support and service company.

Fact: Nobody takes care of their clients like NetFile!

Electronic Filing

Filers can no longer make mistakes that would cause them to amend their filings for missing required fields. All the filers' data from previous filings that can be used for future filings is retained to make their next filing extremely easy! Drafts can be generated at any time for review prior to filing. A link from your website starts the process. NetFile servers ensure fast and efficient filings. Online video tutorials and documentation makes it easy for filers!

Agency Management Tool

The system acts as your repository of filers and filings. Create the filers in the database just once. Notifications can be sent out through the system to filers. Track your filers and their deadlines through our advanced filing status report. Includes several industry exclusive tools to push information to staff regarding filers and their filings.

Document Viewing Portal - Public Transparency Site

You can choose to have your filers' documents shown over the internet in redacted form with your own redaction specifications. You can even narrow down which filers you would want to show.

ADVANCED PUBLIC SEARCH INCLUDED! This means you can search for elements across all your electronically filed data. This guarantees the utmost in transparency for the public to view the filed data.

Document Viewing Portal - Private Site

The system also comes with a kiosk mode that allows you to show filings in unredacted form, but only in your office. That way if someone walks in requesting to view a filing, you can just point them to one of your computers to search for the filings. They could print to your internal printer if they want to purchase a hard copy. No more pulling files and making copies that waste valuable staff time!

NetFile is Number One in California

NetFile is California's first internet based accounting, disclosure, and data management system. Our clients accounts for well over half of all electronic disclosure document filings in the state of California. For our local government platform, there have been hundreds of thousands of e-filings made from both our Form 700 SEI filing and admin system as well as our Campaign Disclosure filing and admin system.

Unparalleled Training and Technical Support

Our business model is based on an ongoing service with no long term contractual commitments from our clients. This guarantees you the best in training and support!

Contact Information:

Company Name:	NetFile, Inc.
Address:	2707 Aurora Road Mariposa, CA, 95338
Phone:	(209) 742-4100 (Main Line & Support)
Phone:	(559) 250-4847 (Local Government Sales)
Fax:	(209) 391-2200
E-mail:	sales@netfile.com
Website:	www.netfile.com

NetFile also has an e-filing system for local governments for their Campaign Disclosure filings and administration of **FPPC Forms 410, 450, 460, 461, 470, 496 & 497**.

REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 26, 2021

TO: Mayor Kelley and Members of the City Council

SUBMITTED BY: J. Patrick Tang, City Attorney

SUBJECT: Annual Update Regarding the Following Matters:
1) Anti-Nepotism and Anti-Cronyism Ordinance;
2) Hercules Ethics Policy.

RECOMMENDED ACTION:

Accept report; provide direction to staff if any.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

The measures discussed in this report stem from recommendations made by the Citizen's Legal Advisory Committee (also referred to as the Legal Ad Hoc Committee), which served the City from 2011 to 2013.

FISCAL IMPACT OF RECOMMENDATION:

None.

SUMMARY:

The City Council has directed that staff report to the Council annually regarding compliance with the Anti-Nepotism and Anti-Cronyism Ordinance and the Hercules Ethics Policy.

As reported to you in prior annual reports, since its enactment and for the period since the last report to Council up to now, there have been no known violations of the Anti-Nepotism and Anti-Cronyism Policy. Likewise, there have been no known violations of the Hercules Ethics Policy. Staff has fully incorporated the reporting requirements contained within the two respective policies.

BACKGROUND:

With the election of reform minded council members starting in November 2010, Hercules public officials have attempted to close loopholes in state conflict of interest laws, and to make local government more transparent and accountable. The Citizen's Legal Advisory Committee (also

referred to as the Legal Ad Hoc Committee), which served the City from 2011 to 2013, was tasked by the new City Council to study and propose local measures to increase transparency and accountability in local government. The matters discussed in this report stem in large part from the recommendations of this Citizen's Committee.

DISCUSSION:

1. Anti-Nepotism and Anti-Cronyism Ordinance.

Initially adopted by the City Council by resolution on June 19, 2012, and then finally by ordinance on April 28, 2015, this measure is intended to prevent the hiring and employment of, and the award of contracts to, individuals related by blood or marriage to public officials. It also prohibits employment or contracting with individuals or firms who have a "crony" relationship with public officials. The provisions are codified in the Hercules Municipal Code, Title 2, Chapter 3, Article 4, entitled, "***Prevention of Nepotism and Cronyism in Employment and Contracting***."

Since the passage of the original measure in June of 2012 to now, there have been no instances in the City of Hercules involving the employment of, or contracting with, prohibited individuals or businesses. Public officials are required annually to sign an acknowledgment confirming that they have reviewed the requirements of the ordinance. Contractors are required to submit as part of their bid package and/or contracting documents that they are not in violation of the requirements. These acknowledgment and reporting requirements have been fully implemented since the adoption of the final ordinance and are being tracked by the City Clerk and those members of city staff who are responsible for putting together contract documents.

2. Hercules Ethics Policy.

Upon the recommendation of the Citizen's Legal Advisory Committee, and after discussion and due consideration, the City Council on May 28, 2013, passed by a unanimous vote Resolution No. 13-051 establishing the City of Hercules Ethics Policy.

The Ethics Policy sets forth a number of ethical expectations for elected officials and appointed members of the City's boards and commissions ("Members"). The five-page policy enumerates the basic and broad requirements that Members shall comply with all laws pertaining to their public duties (Sec. 2). It requires that Members conduct the public's business without even the appearance of impropriety, and refrain from abusive conduct (Sec. 3). Members must respect the public process and rules of order (Sec. 4), and make decisions based on merit (Sec. 6). Members should share with the public information they obtained from sources outside the public decision-making process (Sec. 7). Members should abide by conflict of interest laws and financial disclosure laws and shall not participate in a matter even when there is no statutory violation involved if their participation presents the appearance of impropriety (Sec. 8). Members shall refrain from receiving gifts which might compromise their independence of judgment or which give the appearance of being compromised (Sec. 9). Council members shall not unduly influence Members serving on boards and commissions (Sec. 15). Members are reminded that they have taken an oath of office, and that they have a duty to disclose corruption, abuse, or other violations of law (Sec. 17). Violation of the Policy by a member of a commission, board or committee, may result in the removal of that person from office (Sec. 19).

Under Section 18, it is stated that the Policy is intended to be self-enforcing. For this reason, based upon the language in the resolution, the Policy is intended to be part of the regular orientation for

elected and appointed officials. Training materials have been revised to include a discussion of the Ethics Policy, and all sitting and future Members have been required to sign a statement prepared for the purpose of acknowledging that they have read, and that they understand, the policy.

ATTACHMENTS:
Attachment 1 – Anti-Nepotism and Anti-Cronyism Ordinance.
Attachment 2 – Resolution No. 13-051 Adopting City of Hercules Ethics Policy

Article 4. Prevention of Nepotism and Cronyism in Employment and Contracting

Sec. 2-3.401 Purpose.

In adopting this Article, it is the intent of the City Council to prohibit the contracting with, and employment of, relatives and friends of City officials, to ensure that no conflict of interest, favoritism, preferential treatment, or discrimination enters into the hiring, promotion, contracting and/or transfer practices of the City.

The regulations established by this Article shall apply to all City officials, as defined herein, and to all individuals or firms who provide services to the City as independent contractors or paid consultants. (Ord. 486 § 1 (part), 2015)

Sec. 2-3.402 Definitions.

"City" as used herein shall mean the City of Hercules, California.

"City officials," for the purposes of this Article, means City elected officials, City appointed officials, appointees to City ad hoc or standing committees, appointees to City commissions, and City employees, including all individuals who are employed by the City Manager, City Attorney, and City Clerk, as well as all employees of City agencies and departments.

"Consensual romantic and/or sexual relationship" means any consensual romantic and/or sexual relationship between a City official or contractor and any City official who may supervise him or her directly or indirectly, or who may influence the terms and conditions of his or her employment or contract with the City.

"Contractor" means any individual or firm providing material, equipment, or services to the City pursuant to a written or oral agreement with the City as an independent contractor or consultant, and not as an employee.

"Cronyism" means making an employment or contracting decision based upon personal, political, financial, or commercial relationships instead of merit when the person or entity benefiting from the employment, promotion, supervision or contract does not have the qualifications for the position or contract, or is being compensated at a rate that is more than the rate that would be paid other employees or contractors performing the same or similar functions.

"Family relationship" means a relationship by blood, adoption, marriage, domestic partnership, foster care, and cohabitation, and includes parents, grandparents, great-grandparents, grandchildren, great-grandchildren, children, foster children, uncles, aunts, nephews, nieces, first cousins, second cousins,

siblings, and the spouses or domestic partners of each of these relatives and cohabitants. This definition includes any relationship that exists by virtue of marriage or domestic partnership, such as in-law and step relationships, which are covered to the same extent as blood relationships.

“Nepotism” means employing, promoting, supervising or contracting with a person or persons who have a family relationship or a consensual romantic and/or sexual relationship with a City official. (Ord. 486 § 1 (part), 2015)

Sec. 2-3.403 Restricting Nepotism and Cronyism in Public Employment.

(a) Statement of Policy. It is the policy of the City of Hercules to hire, promote, and transfer employees on the basis of individual merit and to avoid favoritism or discrimination in making such decisions. The employment of relatives of City officials, in positions where one (1) might have influence over the other’s status or job security, is regarded as a violation of this Section. Nepotism and cronyism, as defined in Section 2-3.402, are prohibited from City employment decisions to the full extent permitted by law.

It is therefore the City’s policy to prohibit nepotism and cronyism in public employment according to the guidelines below:

(1) An individual will not be hired, promoted, transferred, or otherwise placed into a position when a person with whom the individual has a family relationship or consensual romantic and/or sexual relationship occupies a position in his or her direct supervisory chain of command.

(2) Individuals will not be hired, promoted, transferred, or otherwise placed into a position when to do so would constitute cronyism.

(3) Department heads are prohibited from employing or supervising any person with whom the department head has a family relationship or consensual romantic and/or sexual relationship within his/her department in any capacity in which that person may receive compensation.

(4) Department heads are prohibited from employing or supervising any individual, when to do so would constitute cronyism.

(5) City positions should be advertised to the public and filled pursuant to an objective selection process based upon qualification.

(b) Resolving a Violation. In the event nepotism or cronyism arises due to circumstances such as through promotion, transfer, the development of a consensual romantic and/or sexual relationship or marriage, the involved individuals have six (6) months in which to settle the issue voluntarily (i.e., by having one (1) of them change assignment or leave City employment).

If the affected parties are unable to resolve the situation within the time provided, their immediate supervisors will review the case at the end of the six (6) month period. The supervisor’s decision

concerning which employee must change assignment, made after consultation with the Director of Human Resources, will be binding.

(c) Responsibility to Report. It is the responsibility of a City official to report a violation of this Section. A City employee must notify his/her supervisor, and it is the responsibility of an elected or appointed official to notify the City Manager, or the City Attorney in the case of a violation by the City Manager, when any of the following situations occur:

(1) When a person who is hired or appointed, or is being considered to be hired or appointed, has a family relationship or consensual romantic and/or sexual relationship with a City official; and/or

(2) When a City official has or develops a family relationship or consensual romantic and/or sexual relationship with another City official who occupies a position in his or her direct supervisory chain of command; and/or

(3) When hiring, promotion, appointment or supervision of a City official constitutes cronyism as defined in Section 2-3.402.

The intent of this Section is to ensure that no conflict of interest, favoritism, preferential treatment, or discrimination enters into the hiring, promotion, and/or transfer practices of the City.

(d) Penalty for Failure to Report. A City official, other than an elected official, who knows or should know that a person with whom he or she has a family relationship or consensual romantic and/or sexual relationship is employed by the City, or who knows or should know of any employment decision that constitutes nepotism or cronyism and fails to report the violation, is subject to discipline, including but not limited to suspension or termination.

An elected official who knows or should know that a person with whom he or she has a family relationship or consensual romantic and/or sexual relationship is employed by the City, or who knows or should know of an employment decision that constitutes nepotism or cronyism and fails to report the violation, is subject to censure. (Ord. 486 § 1 (part), 2015)

Sec. 2-3.404 Restricting Nepotism and Cronyism in Public Contracting.

(a) Statement of Policy. It is the policy of the City of Hercules to avoid favoritism or discrimination in making decisions to award contracts for supplies, construction, maintenance, professional or other services. The awarding of a contract or the approval of payments or expenses under a contract by a City official, to a person with whom she or he has a family relationship or a consensual romantic and/or sexual relationship, is regarded as a violation of this Section. Nepotism and cronyism as defined in Section 2-3.402 are hereby prohibited from City contracting decisions to the full extent permitted by law.

It is therefore the City's policy to prohibit nepotism and cronyism in City contracts, according to the guidelines below:

(1) An individual contractor shall not be awarded a contract with the City when the contractor has a family relationship or consensual romantic and/or sexual relationship with a City official who may have some influence over the award or management of the contract, or when the award of a contract to that individual contractor would constitute nepotism or cronyism.

(2) Firms shall not be awarded contracts with the City when an owner, manager, senior member, principal, officer, or partner of the firm has a family relationship or consensual romantic and/or sexual relationship with a City official who may have some influence over the award or management of the contract, or when the award of a contract to a firm would constitute nepotism or cronyism.

(3) A City official is prohibited from awarding contracts to any individual with whom he or she has a family relationship or consensual romantic and/or sexual relationship, or to any firm when an owner, manager, senior member, principal, officer, or partner of the firm has a family relationship or consensual romantic and/or sexual relationship with the employee or official, or when to do so would constitute nepotism or cronyism.

The intent of this Section is to ensure that no conflict of interest, favoritism, or discrimination enters into the contracting practices of the City.

(b) Responsibility to Report a Violation of Regulations Against Contracting with Relatives or Contracts that Constitute Cronyism. It is the responsibility of a City official to report a violation of this Section. A City employee must notify his or her supervisor, and an elected or appointed official must notify the City Manager, or the City Attorney in the case of a violation by the City Manager, when he or she is aware of any of the following situations:

(1) When a person who has a family relationship or consensual romantic and/or sexual relationship with a City official is being considered for the award of a contract to provide services to the City; and/or

(2) When a City official has or develops a family relationship or a romantic and/or consensual sexual relationship with a person who has an existing contract to provide services to the City; and/or

(3) When the award of a contract would constitute nepotism or cronyism as defined in Section 2-3.402.

(c) Penalty for Failure to Report. A City official, other than an elected city official, who knows or should know that a person with whom he or she has a family relationship or consensual romantic and/or sexual relationship is being considered for or has been awarded a contract with the City in violation of this Section, and fails to report the violation, is subject to discipline, including, but not limited to, suspension or termination.

An elected official who knows or should know that a person with whom he or she has a family relationship or consensual romantic and/or sexual relationship is being considered for or has been awarded a contract with the City in violation of this Section, and fails to report the violation, is subject to censure.

A contractor who has a contract with the City or who seeks a contract with the City and fails to report that a person with whom she or he has a family relationship or consensual romantic and/or sexual relationship is employed by the City or is a City official, or that the award of the contract constitutes cronyism in violation of this Section, may have his or her contract terminated and may be precluded from being awarded any future contracts with the City. (Ord. 486 § 1 (part), 2015)

Sec. 2-3.405 Penalties Not Exclusive.

The penalties provided under this Article are not exclusive, and do not preclude punishment under any other applicable provision of law. (Ord. 486 § 1 (part), 2015)

Sec. 2-3.406 Notice and Acknowledgment.

(a) The requirements of this Article shall be acknowledged annually by all City officials who are required to comply with State of California financial disclosure requirements, on a form developed by the City Attorney and provided by the City Clerk. The written acknowledgment must be submitted at the time such financial disclosures are required to be submitted.

(b) All contractors and prospective contractors shall be notified in writing of the requirements of this Article at the time the City issues a request for proposals or qualifications, and prior to entering into a sole source agreement. (Ord. 486 § 1 (part), 2015)

RESOLUTION NO. 13-051

RESOLUTION OF THE HERCULES CITY COUNCIL ADOPTING AN ETHICS POLICY TO ASSURE PUBLIC CONFIDENCE IN THE INTEGRITY OF LOCAL GOVERNMENT AND ITS EFFECTIVE AND FAIR OPERATION

WHEREAS, the citizens and businesses of Hercules are entitled to have fair, ethical and accountable government which earns the public's full confidence for integrity; and

WHEREAS, the effective functioning of democratic government therefore requires that public officials and appointed members of the City's commissions, boards and committees, including ad hoc committees, comply with both the letter and spirit of the laws affecting the operations of government; and

WHEREAS, public officials and appointed members of the City's commissions, boards and committees, including ad hoc committees, must show that they are independent, impartial and fair in their judgment and actions; and

WHEREAS, public deliberations and processes must be conducted openly, except when closed session is permissible under State law, and must be conducted in an atmosphere of respect and civility; and

WHEREAS, all public resources are held in trust for the people, and must be used for the public good, not for personal gain; and

WHEREAS, nothing in this Resolution is intended to limit or otherwise infringe on the First Amendment rights of free speech or association of public officials and appointed members of the City's commissions, boards and committees, including ad hoc committees, or to conflict with any other federal, state or local laws.

NOW, THEREFORE, in furtherance of the above-mentioned goals and values, the Hercules City Council hereby resolves to adopt this Ethics Policy Policy which shall apply to all City Officials, including elected and appointed officials and appointed members of the City's commissions, boards and committees, including ad hoc committees (collectively "Members"), to assure public confidence in the integrity of local government and its effective and fair operation. Persons who participate without appointment on a City task force are not subject to the requirements of this Ethics Policy.

PRINCIPLES

1. **Act in the Public Interest**
   Recognizing that stewardship of the public interest must be their primary concern, Members will work for the common good of the people of Hercules and not for any private or personal interest, and they will assure fair and equal treatment of all persons, claims and transactions coming before the Hercules City Council, commissions, boards, and committees.

2. **Comply with the Law**
   Members shall comply with the laws of the nation, the State of California, and the City of Hercules in the performance of their public duties. These laws include, but are not limited to: the United States and California Constitutions; the Hercules Municipal Code; laws pertaining to conflicts of interest, election campaigns, financial disclosures, employer responsibilities, and open processes of government. Members shall also comply with all applicable City policies and procedures.

3. **Conduct of Members**
   The professional and personal conduct of Members must be above reproach. Members should take steps to avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, commissions, boards and committees, the staff or public.

4. **Respect for Process**
   Members shall perform their duties in accordance with the processes and rules of order established by the City Council for commissions, boards, and committees governing the deliberation of public policy issues, in order to allow meaningful involvement of the public, and implementation of policy decisions of the City Council by the City Manager and City Attorney.

5. **Conduct of Public Meetings**
   Members shall prepare themselves for public issues, listen courteously and attentively to all public discussions before the body, and focus their attentions on the business at hand. They shall refrain from interrupting other speakers, making personal comments not germane to the business of the body, or interfering with the orderly conduct of meetings.

6. **Decisions Based on Merit**
   Members shall base their decision on the merits and substance of the matter at hand, rather than on unrelated considerations.

7. **Communication**
   Members shall publicly share substantive information that is relevant to a matter under consideration by the Council or commissions, boards, or committees, which they may have received from sources outside of the public decision making process.

8. **Conflict of Interest**
   In order to assure their independence and impartiality on behalf of the common good, Members shall not use their official positions to influence government decisions in which they have a material financial interest, or where they have an organizational responsibility or personal relationship which may give the appearance of a conflict of interest. In accordance with the law, Members shall disclose investments, interests in real property, sources of income and gifts; and should abstain from participating in deliberations and decision making where conflicts may exist. Members are further subject to the Conflict of Interest Policy of the City of Hercules.

When participating as a Member does not implicate the specific statutory criteria for conflict of interest, however, participation does not "look" or "feel" right, that Member has probably encountered the appearance of impropriety. For the public to have faith and confidence that government authority will be implemented in an even-handed and ethical manner, Members may, for the good of the community, need to step aside to avoid the appearance of a conflict of interest, even though no technical conflict exists,

9. **Gifts and Favors**
   Members shall not use their public office to take any special advantage of services or opportunities for personal gain that are not available to the public in general. They shall refrain from accepting any gifts, favors or promises of future benefit which might compromise their independence of judgment or action or give the appearance of being compromised

10. **Confidential Information**
    Members shall respect the confidentiality of information concerning the property, personnel or affairs of the City to the extent confidentiality is required by the Brown Act. They shall neither disclose confidential information without proper legal authorization, nor use such information to advance their personal, financial or other private interests.

11. **Use of Public Resources**
    Members shall not use public resources not available to the public in general, such as City staff time, equipment, supplies or facilities, for private gain or personal purposes.

12. **Representations of Private Interests**
    In keeping with their role as stewards of the public interest, Members of the Council shall not appear on behalf of the private interests of third parties before the Council or any commission, board, committee, or proceeding of the City, nor shall members of commissions, boards, and committees appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.

13. **Advocacy**
    Members shall represent the official policies or positions of the City Council, commission, board, or committee to the best of their ability when designated as delegates for this purpose. When presenting their individual opinions and positions, Members shall explicitly state they do not represent their body or the City of Hercules, nor shall they allow the inference that they do. When representing the City on federal, state, or regional bodies, Members shall advocate policies which are in the best interest of the City of Hercules over their own personal interests.

14. **Policy Role of Members**
    Members shall respect and adhere to the council-manager structure of Hercules city government. In this structure, the City officials determine the policies of the City with the advice, information and analysis provided by the public, commissions, boards, and committees, and City staff. Individual Members therefore shall not interfere with the

administrative functions of the City or the professional duties of City officials; nor shall they impair the ability of staff to implement Council policy decisions.

15. **Independence of Commissions, Boards, and Committees**
Because of the value of the independent advice of commissions, boards, and committees to the public decision-making process, members of Council shall refrain from using their position to unduly influence the deliberations or outcomes of board and commission proceedings.

16. **Positive Work Place Environment**
Members who interact with City employees shall support the maintenance of a positive and constructive work place environment for City employees and for citizens and businesses dealing with the City. Members shall recognize their special role in dealings with City employees to in no way create the perception of inappropriate direction to staff.

17. **Disclosure of Corruption**
All members shall take an oath upon assuming office, pledging to uphold the constitution and laws of the City, the State and the Federal government. As part of this oath, members commit to disclosing to the appropriate authorities and/or to the City Council any behavior or activity that may qualify as corruption, abuse, fraud, bribery or other violation of the law.

18. **Implementation**
As an expression of the standards of conduct for Members expected by the City, the Hercules Ethics Policy is intended to be self-enforcing. It therefore becomes most effective when Members are thoroughly familiar with it and embrace its provisions. For this reason, this Ethics Policy shall be included in the regular orientations for candidates for City Council, application packets to commissions, boards, and committees, and given to newly elected and appointed officials. Members entering office shall sign a statement affirming they read and understood the City of Hercules Ethics Policy. In addition, the Ethics Policy shall be periodically reviewed and updated by the City Council upon its own recommendation and recommendations from commissions, boards, committees, and the citizens of Hercules.

19. **Compliance and Enforcement**
The Hercules Ethics Policy expresses standards of ethical conduct expected for members of the Hercules City Council, commissions, boards, and committees. Members themselves have the primary responsibility to assure that ethical standards are understood and met, so that the public can continue to have full confidence in the integrity of government. In the event of violation of this Ethics Policy by a member of a commission, board, or committee, where removal by the City Council is permitted without cause, the City Council may remove that person from office. A violation of this Ethics Policy shall not be a basis for challenging the validity of any Council, commission, board, or committee decision.

Severability. If any section, sub-section, sentence, clause or phrase of this Resolution is for any reason determined to be invalid or unconstitutional, such determination shall not affect the validity of the remaining portions of this Resolution, and the Council hereby declares that it would have adopted this Resolution, and each section, sub-section, sentence, clause, and phrase

hereof, irrespective of any one or more sections, sub-sections, sentences, clauses or phrases being declared invalid or unconstitutional.

The foregoing Resolution was duly and regularly adopted at a regular meeting of the City Council of the City of Hercules held on the 28th day of May, 2013 by the following vote of the Council:

AYES: de Vera, Kelly, McCoy, Romero, Delgado

NOES: None

ABSTAIN: None

ABSENT: None

John Delgado, Mayor

ATTEST:

CITY OF HERCULES INCORPORATED SEAL DEC. 15, 1900

Doreen Mathews, City Clerk

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 26, 2021

TO: Mayor and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Robert Reber, Community Development Director

SUBJECT: Local Early Action Planning (LEAP) Grant Application

RECOMMENDED ACTION:

Adopt the attached Resolution (Attachment 1) authorizing the application (Attachment 2) for, and receipt of, funds for the Local Early Action Planning (LEAP) Grant from the State of California Housing and Community Development Department (HCD).

FISCAL IMPACT OF RECOMMENDATION:

There is no cost to the City to apply for the LEAP grant. The recommended action will allow the City to be eligible to participate in the LEAP grant program and, if approved by the HCD, be awarded up to $150,000 for the purpose of preparing and adopting required updates to the Housing Element. Such funds could be used to offset costs to prepare an updated Housing Element.

DISCUSSION:

State law requires every city and county in California to adopt a Housing Element as part of its General Plan. The law provides for periodic updates of the Housing Element, with the next required update being "round 6" of the Housing Element. For cities and counties within the Association of Bay Area Governments (ABAG), including Hercules, this 6th cycle covers the timeframe of 2023–2031, with updated Housing Elements due to HCD in January 2023. Grant funding received could be allocated towards preparing and adopting the required Housing Element updates in compliance with State law.

In the 2019–20 Budget Act, Governor Newsom allocated $250 million for all regions, cities, and counties to do their part by prioritizing planning activities that accelerate housing production to meet identified needs of every community. With this allocation, HCD established the Local Early Action Planning (LEAP) Grant Program with $119 million for cities and counties. LEAP provides a one-time grant funding to cities and counties to update their planning documents and implement process improvements that will facilitate the acceleration of housing production and help local

governments prepare for their 6th cycle Regional Housing Needs Assessment (RHNA). LEAP provides over-the-counter grants complemented with technical assistance to local governments for the preparation and adoption of planning documents, and process improvements that:

1. Accelerate housing production;
2. Facilitate compliance to implement the sixth-cycle RHNA/Housing Element update.

On January 27, 2020, HCD issued a Notice of Funding Availability (NOFA) in the amount of $119,040,000 for assistance to local California jurisdictions. Funding awards for jurisdictions are scaled based on population. If approved, the City is eligible for a grant maximum of $150,000. The original deadline to submit the LEAP grant application was extended from July 1, 2020, to January 31, 2021.

The LEAP Grant Program requires a resolution passed by the City Council in order for staff to apply for the grant funds. The funds could be used for the preparation of the forthcoming required updates to the City's Housing Element during the next RHNA cycle (2023-2031). However, jurisdictions should consider beginning their planning activities, including preparation for a comprehensive update of their Housing Element, in advance of these dates.

ATTACHMENTS:

Attachment 1 – Resolution
Attachment 2 – LEAP Application (draft)

RESOLUTION NO. 21-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HERCULES AUTHORIZING APPLICATION FOR, AND RECEIPT OF, LOCAL GOVERNMENT PLANNING SUPPORT GRANT PROGRAM FUNDS FROM THE DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT TO SUPPORT THE CITY'S SIXTH CYCLE UPDATE (2023–2031) OF THE HOUSING ELEMENT OF THE GENERAL PLAN.

WHEREAS, pursuant to Health and Safety Code 50515 et. Seq, the Department of Housing and Community Development (HCD) is authorized to issue a Notice of Funding Availability (NOFA) as part of the Local Government Planning Support Grants Program (hereinafter referred to as the Local Early Action Planning Grants program or LEAP); and

WHEREAS, the City Council of the City of Hercules desires to submit a LEAP grant application package ("Application"), on the forms provided by HCD, for approval of grant funding for projects that assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment; and

WHEREAS, HCD has issued a NOFA and Application on January 27, 2020, in the amount of $119,040,000 for assistance to all California Jurisdictions;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hercules ("Applicant") hereby resolves as follows:

SECTION 1. The City Manager is hereby authorized and directed to apply for and submit to HCD the LEAP Application package;

SECTION 2. In connection with the LEAP grant, if the Application is approved by the Department, the City Manager of the City of Hercules is authorized to submit the Application, enter into, execute, and deliver on behalf of the Applicant, a State of California Agreement (Standard Agreement) for the amount of $150,000.00, and any and all other documents required or deemed necessary or appropriate to evidence and secure the LEAP grant, the Applicant's obligations related thereto, and all amendments thereto; and

SECTION 3. The Applicant shall be subject to the terms and conditions as specified in the NOFA, and the Standard Agreement provided by HCD after approval. The Application and any and all accompanying documents are incorporated in full as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the Application will be enforceable through the fully executed Standard Agreement. Pursuant to the NOFA and in conjunction with the terms of the Standard Agreement, the Applicant hereby agrees to use the funds for eligible uses and allowable expenditures in the manner presented and specifically identified in the approved Application.

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 January, 2021, by the following vote of the Council:

AYES:

NOES:
ABSTAIN:
ABSENT:

_____
Chris Kelley, Mayor

ATTEST:

_____
Lori Martin, MMC
Administrative Services Director/City Clerk

Resolution No. 21-___

Local Early Action Planning Grant Application

State of California
Governor Gavin Newsom

Alexis Podesta, Secretary
Business, Consumer Services and Housing Agency

Doug McCauley, Acting Director
Department of Housing and Community Development

Zachary Olmsted, Deputy Director
Department of Housing and Community Development
Housing Policy Development

2020 West El Camino, Suite 500
Sacramento, CA 95833

Website: https://www.hcd.ca.gov/grants-funding/active-funding/leap.shtml
Email: EarlyActionPlanning@hcd.ca.gov

January 27, 2020

LEAP Application Packaging Instructions

The applicant is applying to the Department of Housing and Community Development (Department) for a grant authorized underneath the Local Early Action Planning Grants (LEAP) provisions pursuant to Health and Safety Code Sections 50515 through 50515.05. LEAP provides funding to jurisdictions for the preparation and adoption of planning documents, process improvements that accelerate housing production and facilitate compliance in implementing the sixth cycle of the regional housing need assessment. If you have questions regarding this application or LEAP, email earlyactionplanning@hcd.ca.gov.

If approved for funding, the LEAP application is incorporated as part of your Standard Agreement with the Department. In order to be considered for funding, all sections of this application, including attachments and exhibits if required, must be complete and accurate.

All applicants must submit a complete, signed, original application package and digital copy on CD or USB flash drive to the Department and postmarked by the specified due date in the NOFA. Applicants will demonstrate consistency with LEAP requirements by utilizing the following forms and manner prescribed in this application.

- Pages 3 through 14 constitute the full application (save paper, print only what is needed)
- Attachment 1: Project Timeline and Budget: Including high-level tasks, sub-tasks, begin and end dates, budgeted amounts, deliverables, and adoption and implementation dates.
- Attachment 2: Nexus to Accelerating Housing Production
- Attachment 3: State and Other Planning Priorities
- Attachment 4: Required Resolution Template
- Government Agency Taxpayer ID Form (available as a download from the LEAP webpage located at https://www.hcd.ca.gov/grants-funding/active-funding/leap.shtml
- If the applicant is partnering with another local government or other entity, include a copy of the legally binding agreement; and
- Supporting documentation (e.g., letters of support, scope of work, project timelines, etc.)

Pursuant to Section XII of the LEAP 2020 Notice of Funding Availability (NOFA), the application package must be postmarked on or before July 1, 2020, and received by the Department at the following address:

Department of Housing and Community Development
Division of Housing Policy Development
2020 West El Camino Ave, Suite 500
Sacramento, CA 95833

A. Applicant Information and Certification

Applicant (Jurisdiction)		City of Hercules	
Applicant's Agency Type		Incorporated City	
Applicant's Mailing Address		111 Civic Drive	
City		Hercules	
State	California	Zip Code	94547
County		Contra Costa	
Website		https://www.ci.hercules.ca.us/government/planning	
Authorized Representative Name		David Biggs	
Authorized Representative Title		City Manager	
Phone	(510) 799-8200	Fax	
Email			
Contact Person Name		Robert Reber	
Contact Person Title		Community Development Director	
Phone	510-799-8248	Fax	
Email	rreber@ci.hercules.ca.us		
Proposed Grant Amount	$	150,000	

Pursuant to Health and Safety Code Section 50515.03 through (d) of the Guidelines, all applicants must meet the following two requirements to be eligible for an award:

1. Does the application demonstrate a nexus to accelerating housing production as shown in Attachment 2?	Yes	■	No	☐
2. Does the application demonstrate that the applicant is consistent with State Planning or Other Priorities shown in Attachment 3?	Yes	■	No	☐
Is a fully executed resolution included with the application package?	Yes	■	No	☐
Does the address on the Government Agency Taxpayer ID Form exactly match the address listed above?	Yes	■	No	☐
Is the applicant partnering with another eligible local government entity? *If Yes, provide a fully executed copy of the legally binding agreement.*	Yes	☐	No	■

As the official designated by the governing body, I hereby certify that if approved by HCD for funding through the Local Early Action Planning Program (LEAP), the City of Hercules assumes the responsibilities specified in the Notice of Funding Availability and certifies that the information, statements and other contents contained in this application are true and correct.

Signature:_____ Name: David Biggs

Date:_____ Title: City Manager

B. Proposed Activities Checklist

Check all activities the locality is undertaking. Activities must match the project description.		
1	☒	Rezoning and encouraging development by updating planning documents and zoning ordinances, such as general plans, community plans, specific plans, implementation of sustainable communities' strategies, and local coastal programs
2	☐	Completing environmental clearance to eliminate the need for project-specific review
3	☐	Establishing housing incentive zones or other area based housing incentives beyond State Density Bonus Law such as a workforce housing opportunity zone pursuant to Article 10.10 (commencing with Section 65620) of Chapter 3 of Division 1 of Title 7 of the Government Code or a housing sustainability district pursuant to Chapter 11 (commencing with Section 66200) of Division 1 of Title 7 of the Government Code
4	☐	Performing infrastructure planning, including for sewers, water systems, transit, roads, or other public facilities necessary to support new housing and new residents
5	☐	Planning documents to promote development of publicly owned land such as partnering with other local entities to identify and prepare excess or surplus property for residential development
6	☐	Revamping local planning processes to speed up housing production
7	☐	Developing or improving an accessory dwelling unit ordinance in compliance with Section 65852.2 of the Government Code
8	☐	Planning documents for a smaller geography (less than jurisdiction-wide) with a significant impact on housing production including an overlay district, project level specific plan, or development standards modifications proposed for significant areas of a locality, such as corridors, downtown or priority growth areas
9	☒	Rezoning to meet requirements pursuant to Government Code Section 65583(c)(1) and other rezoning efforts to comply with housing element requirements, including Government Code Section 65583.2(c) (AB 1397, Statutes of 2018)
10	☐	Upzoning or other implementation measures to intensify land use patterns in strategic locations such as close proximity to transit, jobs or other amenities
11	☐	Rezoning for multifamily housing in high resource areas (according to Tax Credit Allocation Committee/Housing Community Development Opportunity Area Maps); Establishing Pre-approved architectural and site plans
12	☒	Preparing and adopting housing elements of the general plan that include an implementation component to facilitate compliance with the sixth cycle RHNA
13	☐	Adopting planning documents to coordinate with suballocations under Regional Early Action Planning Grants (REAP) that accommodate the development of housing and infrastructure and accelerate housing production in a way that aligns with state planning priorities, housing, transportation equity and climate goals, including hazard mitigation or climate adaptation
14	☐	Zoning for by-right supportive housing, pursuant to Government Code section 65651 (Chapter 753, Statutes of 2018)
15	☐	Zoning incentives for housing for persons with special needs, including persons with developmental disabilities
16	☐	Planning documents related to carrying out a local or regional housing trust fund
17	☐	Environmental hazard assessments; data collection on permit tracking; feasibility studies, site analysis, or other background studies that are ancillary (e.g., less than 15% of the total grant amount) and part of a proposed activity with a nexus to accelerating housing production
18	☐	Other planning documents or process improvements that demonstrate an increase in housing related planning activities and facilitate accelerating housing production
19	☐	Establishing Prohousing Policies

C. Project Description

Provide a description of the project and each activity using the method outlined below, and ensure the narrative speaks to ***Attachment 1: Project Timeline and Budget.***

a. *Summary of the Project and its impact on accelerating production*
b. *Description of the tasks and major sub-tasks*
c. *Summary of the plans for adoption or implementation*

Please be succinct and use Appendix A or B if more room is needed.

PROPOSAL
The City of Hercules is applying for Local Early Action Planning funds to update their 2015 Hercules Housing Element to meet the anticipated Regional Housing Needs Allocation issued by the Association of Bay Area Governments for the next eight years cycle.

BACKGROUND
On July 29, 2020, the Association of Bay Area Governments released the Regional Housing Needs Assessment (RHNA) target figures for the 6th Housing Cycle. The RHNA states the greater Bay Area region needs to provide 441,176 housing and is dispersed by income category. The City of Hercules Housing Element must be updated by January 31, 2023 to accommodate Hercules' fair share of the Bay Area Region's housing need over the 6th cycle planning period (2023 – 2031).

PROPOSED SCOPE OF WORK
• Housing Element RFP and Consultant Solicitation
• Existing Conditions, Housing Element Assessment, and Document Assessment
• Preliminary RHNA Site Identification and Analysis
• Community Outreach and Engagement
• Housing Element preparation (including Administrative and Public Review Draft Element)
• General Plan Consistency Review and Zoning Analysis
• Public Hearings
• HCD Coordination and Review
• Housing Element revisions and adoption

The Housing Element is considered a "project" under the California Environmental Quality Act (CEQA); therefore, CEQA review will be required. The funds of the grant will support this requirement.

HOUSING ELEMENT DESCRIPTION
The Housing Element and CEQA analysis will provide a framework/long-term strategy to guide public/private development within the City of Hercules for the future housing needs of residents of all income levels and lifestyle preferences. To accomplish this goal, the Housing Element Update will present policy and programmatic implementation actions that will work to address housing related issues in the City that may make housing development difficult, in addition to programmatic CEQA coverage.

Elements of the Housing Element will include a set of primary tasks and subtasks as follows: (CONT'D IN APPENDIX A)

D. Legislative Information

District	#	Legislator Name
Federal Congressional District	5	Mike Thompson
State Assembly District	15	Buffy Wicks
State Senate District	9	Nancy Skinner

Applicants can find their respective State Senate representatives at https://www.senate.ca.gov/, and their respective State Assembly representatives at https://www.assembly.ca.gov/.

Attachment 1: Project Timeline and Budget: (if more room is needed, duplicate Attachment 1 or add attachment labeled Attachment 1A)

Task	Est. Cost	Begin	End	Deliverable	Notes
Housing Element Consultant Initiation	$ 1,000	5/1/21	5/31/21	RFP, selected proposal	
Housing Element and Document Assessment	$ 5,000	6/1/21	7/2/21	Assessment memo	
Preliminary RHNA Site Identification	$ 9,000	7/5/21	9/3/21	Site Inventory Analysis/Map	
Community Engagement	$ 22,000	7/5/21	7/5/22	Agendas, meetings, minutes, notes	
Draft Housing Element	$ 40,000	9/6/21	3/7/22	Admin Draft Housing Element	
Public Review Draft Housing Element	$ 5,000	3/8/22	5/2/22	Review comments	
General Plan/Zoning Consistency Analysis	$ 7,000	3/9/22	4/5/22	Consistency Analysis memo	
Housing Element Review + Adoption Hearings	$ 12,000	2/1/22	7/22/22	Agendas, hearings, minutes	
HCD Review/Coordination/Approval	$ 6,500	6/1/21	7/29/22	Review comments, HCD Certification	
Final Housing Element	$ 2,500	5/3/22	7/29/22	Revised Housing Element	
CEQA Document	$ 40,000			Draft Initial Study	
Total Projected Cost $	150000				

Include high-level tasks, major sub-tasks (Drafting, Outreach, Public Hearings and Adoption), budget amounts, begin and end dates and deliverables. If other funding is used, please note the source and amount in the Notes section.

Attachment 2: Application Nexus to Accelerating Housing Production

Applicants shall demonstrate how the application includes a nexus to accelerating housing production by providing data regarding current baseline conditions and projected outcomes such as a reduction in timing, lower development costs, increased approval certainty, increases in number of entitlements, more feasibility, or increases in capacity. An expected outcome should be provided for each proposed deliverable. If necessary, use Appendix B to explain the activity and its nexus to accelerating housing production.

Select at least one	*Baseline	**Projected	***Difference	Notes
Timing (e.g., reduced number of processing days)				
Development cost (e.g., land, fees, financing, construction costs per unit)				
Approval certainty and reduction in discretionary review (e.g., prior versus proposed standard and level of discretion)				
Entitlement streamlining (e.g., number of approvals)				
Feasibility of development				
Infrastructure capacity (e.g., number of units)				
Impact on housing supply and affordability (e.g., number of units)	9,117*	9,788	671	(*) 2015 HE supply + building permits issued from

**** Baseline – Current conditions in the jurisdiction (e.g. 6-month development application review, or existing number of units in a planning area)***

*****Projected – Expected conditions in the jurisdiction because of the planning grant actions (e.g. 2-month development application review)***

******Difference – Potential change resulting from the planning grant actions (e.g., 4-month acceleration in permitting, creating a more expedient development process)***

Attachment 3: State and Other Planning Priorities Certification (Page 1 of 3)

Applicants must demonstrate that the locality is consistent with State Planning or Other Planning Priorities by selecting from the list below activities that are proposed as part of this application or were completed within the last five years. Briefly summarize the activity and insert a date of completion.

State Planning Priorities

Date of Completion	Brief Description of the Action Taken
Promote Infill and Equity	
Rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas.	
Seek or utilize funding or support strategies to facilitate opportunities for infill development.	
Other (describe how this meets subarea objective)	
Promote Resource Protection	
Protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands; natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands; recreation lands such as parks, trails, greenbelts, and other open space; and landscapes with locally unique features and areas identified by the state as deserving special protection.	
5/31/17	Regional Intermodal Transportation Center (RITC) will combine several modes of public transportation (train and bus, with possible ferry service in the future) in one convenient Waterfront location along Bayfront Boulevard near Refugio Creek. Phase I through III completed new Bay Trail segments, creek restoration to Refugio Creek.
Actively seek a variety of funding opportunities to promote resource protection in underserved communities.	
Other (describe how this meets subarea objective)	
Encourage Efficient Development Patterns	
Ensuring that any infrastructure associated with development, other than infill development, supports new development that does the following:	
(1) Uses land efficiently.	
5/31/17	Regional Intermodal Transportation Center (RITC) will combine several modes of public transportation (train and bus, with possible ferry service in the future) in one convenient Waterfront location along Bayfront Boulevard near Refugio Creek. Phase I through III completed new Bay Trail segments, creek restoration to Refugio Creek.

Attachment 3: State and Other Planning Priorities Certification (Page 2 of 3)

(2) Is built adjacent to existing developed areas to the extent consistent with environmental protection.	
(3) Is located in an area appropriately planned for growth.	
(4) Is served by adequate transportation and other essential utilities and services.	
5/31/17	Phase II and III of the RITC enabled direct access from San Pablo Avenue/I-80/Highway 4 to the Waterfront and RITC, with an extension of John Muir Parkway, North Channel improvements, Bayfront Boulevard extension over Refugio Creek, and Bayfront Bridge construction. A total of 1,700 linear feet of new streets were installed, including new bicycle lanes and sidewalks.
(5) Minimizes ongoing costs to taxpayers.	
Other (describe how this meets subarea objective)	

Other Planning Priorities

Affordability and Housing Choices	
Incentives and other mechanisms beyond State Density Bonus Law to encourage housing with affordability terms.	
Efforts beyond state law to promote accessory dwelling units or other strategies to intensify single-family neighborhoods with more housing choices and affordability.	
Upzoning or other zoning modifications to promote a variety of housing choices and densities.	
Utilizing surplus lands to promote affordable housing choices.	
Efforts to address infrastructure deficiencies in disadvantaged communities pursuant to Government Code Section 65302.10.	
Other (describe how this meets subarea objective)	

Attachment 3: State and Other Planning Priorities Certification (Page 3 of 3)

Conservation of Existing Affordable Housing Stock	
Policies, programs or ordinances to conserve stock such as an at-risk preservation ordinance, mobilehome park overlay zone, condominium conversion ordinance and acquisition and rehabilitation of market rate housing programs.	
Policies, programs and ordinances to protect and support tenants such as rent stabilization, anti-displacement strategies, first right of refusal policies, resources to assist tenant organization and education and "just cause" eviction policies.	
Other (describe how this meets subarea objective)	
Climate Adaptation	
Building standards, zoning and site planning requirements that address flood and fire safety, climate adaptation and hazard mitigation.	
11/30/20	Currently updating the General Plan Safety Element, Local Hazard Mitigation Plan (LHMP), with adoption anticipated in Q1 2021. FEMA deemed LHMP "approvable pending adoption." Will be locally adopted in a few months.
Long-term planning that addresses wildfire, land use for disadvantaged communities, and flood and local hazard mitigation.	
Community engagement that provides information and consultation through a variety of methods such as meetings, workshops, and surveys and that focuses on vulnerable populations (e.g., seniors, people with disabilities, homeless, etc.).	
11/30/20	General Plan Safety Element and Local Hazard Mitigation Plan Update process, currently underway, including extensive meetings, on-line forums/workshops, and on-line surveys. Plans will be locally adopted in a few months.
Other (describe how this meets subarea objective)	

Certification: I certify under penalty of perjury that all information contained in this LEAP State Planning and Other Planning Priorities certification form (Attachment 2) is true and correct.

Certifying Officials Name: Robert Reber

Certifying Official's Title: Community Development Director

Certifying Official's Signature: _____ Date: _____

Attachment 4: Required Resolution Template

RESOLUTION NO. **[insert resolution number]**

A RESOLUTION OF THE **[INSERT EITHER "CITY COUNCIL" OR "COUNTY BOARD OF SUPERVISORS**"] OF **[INSERT THE NAME OF THE CITY OR COUNTY]** AUTHORIZING APPLICATION FOR, AND RECEIPT OF, LOCAL GOVERNMENT PLANNING SUPPORT GRANT PROGRAM FUNDS

WHEREAS, pursuant to Health and Safety Code 50515 et. Seq, the Department of Housing and Community Development (Department) is authorized to issue a Notice of Funding Availability (NOFA) as part of the Local Government Planning Support Grants Program (hereinafter referred to by the Department as the Local Early Action Planning Grants program or LEAP); and

WHEREAS, the [**insert either** "**City Council**" **or** "**County Board of Supervisors**"] of [**insert the name of the City or County**] desires to submit a LEAP grant application package ("Application"), on the forms provided by the Department, for approval of grant funding for projects that assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment; and

WHEREAS, the Department has issued a NOFA and Application on January 27, 2020 in the amount of $119,040,000 for assistance to all California Jurisdictions;

Now, therefore, the **[insert either "City Council" or "County Board of Supervisors"]** of **[insert the name of the city or county]** ("Applicant") resolves as follows**:**

SECTION 1. The [**insert the authorized designee's TITLE ONLY**] is hereby authorized and directed to apply for and submit to the Department the Application package;

SECTION 2. In connection with the LEAP grant, if the Application is approved by the Department, the [**insert the authorized designee's TITLE ONLY**] of the **[insert the name of the City or County]** is authorized to submit the Application, enter into, execute, and deliver on behalf of the Applicant, a State of California Agreement (Standard Agreement) for the amount of [**$ enter the dollar amount of the Applicant's request**], and any and all other documents required or deemed necessary or appropriate to evidence and secure the LEAP grant, the Applicant's obligations related thereto, and all amendments thereto; and

SECTION 3. The Applicant shall be subject to the terms and conditions as specified in the NOFA, and the Standard Agreement provided by the Department after approval. The Application and any and all accompanying documents are incorporated in full as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the Application will be enforceable through the fully executed Standard Agreement. Pursuant to the NOFA and in conjunction with the terms of the Standard Agreement, the Applicant hereby agrees to use the funds for eligible uses and allowable expenditures in the manner presented and specifically identified in the approved Application.

ADOPTED ON [**insert the date of adoption**], by the [**insert either "City Council" or "County Board of Supervisors"**] of [**insert the name of the City or County**] by the following vote count:

AYES: NOES: ABSENT: ABSTAIN:

_____ATTEST: APPROVED AS TO FORM:
[Signature of Attesting Officer]

_____APPROVED
[Signature of approval]

Appendix A

PRIMARY TASKS

• Preliminary Sites Identification to understand the current stock of sites that are suitable for housing. The areas in the City identified as most likely to redevelop will also be assessed to understand the density levels that can facilitate housing, specifically affordable housing. Estimated Budget: $9,000

• The Housing Element will include evaluation of existing housing programs and their progress in facilitating housing development. By evaluating existing programs, the City will understand if new programs are needed to meet the 6th cycle RHNA numbers or how existing programs could be modified to assist in this effort. For example, the evaluation will include an assessment of current development review and permit issuance process. Identification of any direct or indirect barriers, such as cost, time and resources that may slow or prevent all together the development of housing and the feasibility of programs that respond to those barriers will be included in this analysis. Estimated budget: $5,000

• Funding will also be used to develop and implement a meaningful public outreach that will result in the City understanding how and where new housing should occur. The public engagement plan will include a social media campaign, stakeholder interviews and community workshops. Estimated budget: $22,000

An additional $5,000 of grant funds will be used to organize, coordinate and respond to public comments on the administrative draft Housing Element.

• The Housing Element Update will include revising the typical components of the Administrative Draft of a Housing Element: Needs Assessment, Housing Constraints, Housing Resources, and a Housing Plan that will include goals, policies and programs relative to the maintenance, preservation, improvement, and development of housing to cover the new planning period. Estimated budget: $40,000

• The work of updating the Housing Element will include participation from many of the decision makers in the City of Hercules. We expect four public hearings, including work sessions, with the Planning Commission. Estimated Budget: $12,000

• We expect that during the initial review period and during the Housing Element preparation, the city and HCD will keep in contact to facilitate review and anticipate/respond to any specific concerns HCD may have. We are assuming two rounds of HCD review: one round for the Public Review Draft Housing Element, expected to last for 60 days, and one round for the adopted Housing Element, expected to take 90 days. Estimated budget: $6,500

• Preparation of the Housing Element will be prepared for approval and adoption by the City Council. Estimated budget: $2,500

• To be in compliance with the California Environmental Quality Act (CEQA), a program level analysis of the project will be prepared, including appropriate noticing and approval. The CEQA analysis would be partially funded by the City and LEAP funds. Estimated budget: $40,000

(CONT'D IN APPENDIX B)

Appendix B

In addition to these key elements, the Housing Element will also consist of a sub task with corresponding deliverables that will serve as an equally important tool in maintaining compliance with State law, as well as accelerating and reinforcing housing production and to ensure consistency and compliance with state law

• Part of the LEAP funding will be used to conduct a review of the General Plan elements for inconsistencies and identify whether any amendments are needed. Similarly, the Zoning Code will be reviewed to identify barriers to housing development and production. If barriers to housing development and production are identified, not only will these documents be reviewed but programmatic actions for resolving these barriers will be reported. Estimated budget: $7,000

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 26, 2021

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 2021/22 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 is anticipated to result in a maximum increase in assessments in the amount of the consumer price index for the 2021/22 fiscal year. This will not address the Zone 6 (Village Park) issues, nor the need to replace streetlights in Zones 3 & 4 (Gems & Birds). The cost of the normal annual renewal process is provided for in the budget for the Landscape & Lighting Assessment Districts, and in the case of Zone 6 which is the last Zone with an unaddressed operating deficit and cumulative deficit, will contribute to that deficit increasing. Any costs associated with a possible Prop 218 balloting in select Zones are not budgeted.

DISCUSSION:

The kick-off to the annual process for Landscape & Lighting Assessment District assessment setting for the next fiscal year typically occurs in April to ensure that assessment increases are considered and approved by the end of June. In October 2018, 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, the City was successful in balloting in Zone 1 to address the deficit and to replace the failing streetlights. However, proposed assessment increases were not approved in Zones 3 & 4 and 6, and the service reductions remain in effect.

The City Council opted to not ballot in those Zones in 2020, and the purpose of this report is to update the City Council on all of the Districts and Zones in general, and to provide a more detailed update and discussion of options for Zones 3 & 4, and 6.

Attached is an updated summary of how the District and Zones end the 2020/21 fiscal year and an initial projection for the 2021/22 fiscal year (Attachment 3).

In regard to Zone 3 & 4, with the service reductions in place, which is primarily the elimination of street light maintenance and associated staffing costs, the Zone operates in the green and is slowly building up reserves. The number of failed streetlights is increasing and residents in the area have expressed concern about this. Replacement of the streetlights remains the most effective way to ensure the cost-effective provision of services and to ensure operational streetlights and also allow for street lights to be replaced with more energy efficient lights.

An initial estimate of what would be required in the form of an increased assessment to fund the streetlight replacement with the cost recovered over ten years as previously proposed is set forth below:

Zone 3&4	
Current FY 2020-21 Assessment	$82.66
Assessment to eliminate annual deficit	$0.00
Assessment to eliminate cumulative deficit (over 10 years)	$0.00
Assessment to replace wooden poles (financed over 10 years)	$46.70
	$129.36

The current FY 20-21 annual assessment in Zone 3 & 4 is $82.16 per single-family home. In 2018, the City balloted on the annual assessment increasing to $139.00, and that was supported by 48.6% of the ballots returned and unfortunately below the approval threshold.

Even with service reductions, Zone 6 continues to have an operating deficit and thus a growing cumulative deficit. The current FY 20-21 annual assessment in Zone 6 is $23.45 per condominium. In 2018, the City balloted on the annual assessment increasing to $139.50 for the condominiums in Westwood Duets and to $76.50 for the condominiums in the other HOA developments within Zone 6, and that was supported by 38% of the ballots returned and unfortunately below the approval threshold.

For Zone 6, staff has re-engaged with representatives of a number of the HOA areas, including Westwood Duets, where they have expressed an interest in taking ownership of the streetlights within their neighborhood and which are located on private streets. City staff has also been in contact with PG&E about the possible transfer of the streetlights to the Westwood Duets HOA and we are awaiting some additional information. In the event that the PG&E transfer of streetlights to the HOA is too costly, staff is looking into whether the City could lease the streetlights to the Westwood Duets HOA. Staff has also done an assessment of the hollow-core wood poles in the Westwood Duets area and they are a thicker pole with an estimated remaining life of 5 years or more.

These discussions have helped define a number of possible options if the City were to propose to ballot again in Zone 6 for increased assessments. Given the remaining life of the Westwood Duets Streetlights, we could ballot to just address the operating deficit, the cumulative deficit over ten years, and the replacement of just the 24 Village Parkway streetlights financed over 10 years, and not for the 33 Westwood Duets Streetlights. This scenario is illustrated below:

Zone 6 (Village Parkway)	Proposed Assessment Rate
Current FY 2020-21 Assessment	$23.45
Additional Assessment to eliminate annual deficit	$31.97
Assessment to eliminate cumulative deficit (over 10 years)	$18.01
Assessment to replace wooden poles along Village Parkway (financed over 10 years)	$9.21
	$82.64

Of course, we could ballot for the same scenario as we did in 2018, and below is that updated scenario:

Zone 6 (Village Parkway) - Westwood Duets Condominiums	Proposed Assessment Rate
Current FY 2020-21 Assessment	$23.45
Additional Assessment to eliminate annual deficit	$31.97
Assessment to eliminate cumulative deficit (over 10 years)	$18.01
Assessment to replace wooden poles along Village Parkway (financed over 10 years)	$9.21
Assessment to replace wooden poles in Westwood Duets (financed over 10 years)	$55.64
	$138.28

Zone 6 (Village Parkway) - Other Condominium Developments	Proposed Assessment Rate
Current FY 2020-21 Assessment	$23.45
Additional Assessment to eliminate annual deficit	$31.97
Assessment to eliminate cumulative deficit (over 10 years)	$18.01
Assessment to replace wooden poles along Village Parkway (financed over 10 years)	$9.21
	$82.64

In regard to Zone 6, the HOA reps with whom we have been meeting have shared some insights as to concerns residents had with the prior balloting and perhaps why we have been unsuccessful to date. One of the items of information they asked us to provide was a summary sheet that compares the level of assessment and services provided in the other parts of the City. That is provided for the City Council's information as well (Attachment 4). Feedback provided previously remains important and the HOA reps believe we need to more clearly define 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 be financed over 10 years. At the end of ten years, this component would sunset. They also had suggestions

about how to fine tune our outreach and communication and we would continue to work with them to do so if the Council were to opt to proceed to balloting.

Below is a tentative FY 2021-22 schedule (Council meetings in bold) for the LLAD assuming no Proposition 218 effort to increase assessments in any Districts or Zones is contemplated, which means we are just applying the applicable CPI increase:

- March thru April 2021 – Prepare Preliminary Engineer's Report and determine FY 2021-22 assessment rates
- **April 27, 2020 – Adopt Resolution of Initiation/FAI Contract Approval**
- **May 25, 2020 – Adopt Resolution of Intention and approve FY 2021-22 Preliminary Engineer's Report**
- **June 22, 2020 – Conduct Public Hearing and approve FY 2021-22 Final Engineer's Report/Assessments**

Below is a tentative schedule (Council meetings in bold) that is probably the most realistic to meet if the City decides to propose increased assessments in any Zones for FY 2021-22, if so desired:

- March thru April 2021 – Perform assessment rates analysis, obtain approval from City Council as necessary, and conduct Public Outreach efforts
- **April 13, 2020 – Adopt Resolution of Initiation/FAI Contract Approval**
- **April 27, 2020 – Adopt Resolution of Intention and approve FY 2021-22 Preliminary Engineer's Report**
- May 3, 2020 – Mail Notices/Ballots (minimum of 45 days prior to the PH)
- **June 22, 2020 – Conduct Public Hearing**
- June 23, 2020 – Tabulate Ballots
- **July 13, 2020 – Conduct Continued Public Hearing, Declare Results of Ballot Tabulation, and approve FY 2021-22 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 3&4	832	$800	$4,368	$5,168
Zone 6	962	$1,600	$5,051	$6,651
	1,794	**$2,400**	**$9,419**	**$11,819**

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.

The City Council is requested to provide direction as to the process to be initiated for the FY 2021/22 renewal process.

ATTACHMENTS:

1. October 23, 2018 Staff Report
2. Service Reductions Notification Letter
3. Preliminary 2021-22 Financial Analysis
4. Assessment and Service Level Comparisons

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 ☐ No ☐			

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 (Belleterre)	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 ☐ No ☐			

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 C. Biggs

David Biggs
City Manager

LANDSCAPING AND LIGHTING DISTRICT NO. 83-2
PRELIMINARY BUDGET ESTIMATES
FISCAL YEAR 2021-22

	LLAD 83-2 NEIGHBORHOOD ZONES										
REVENUES	**ZONE 1 HERCULES BY THE BAY**	**ZONE 2 FOXBORO**	**ZONE 3&4 THE GEMS/ BIRDS**	**ZONE 5A BUSINESS PARK**	**ZONE 5B COMMERCIAL**	**ZONE 5C DEV. PARCELS**	**ZONE 6 VILLAGE PARKWAY**	**ZONE 7 HEIGHTS**	**ZONE 8 TREES AND FLOWERS**	**ZONE 9 BIRDS AND COUNTRY RUN**	**LLAD 83-2 CITYWIDE ZONE 10**
Assessments	$87,627	$80,544	$68,294	$79,305	$42,341	$18,395	$24,201	$107,359	$162,599	$85,201	$1,070,212
Public Agency Assessments	$221	$350	$4,881	$7,197	$6,233	$2,718	$0	$933	$23,395	$28	$18,274
General Benefit Contribution	$1,323	$731	$781	$886	$273	$173	$246	$1,329	$1,991	$1,111	$20,914
TOTAL REVENUES	**$89,171**	**$81,625**	**$73,956**	**$87,388**	**$48,848**	**$21,286**	**$24,447**	**$109,622**	**$187,984**	**$86,341**	**$1,109,399**
DIRECT COSTS											
Personnel	$22,160	$22,160	$5,621	$9,119	$9,119	$5,621	$2,189	$19,941	$19,941	$22,003	$355,740
Transfer for Arterials/Major Roads Landscape and Lighting Maintenance	$22,770	$18,021	$24,475	$17,980	$10,030	$9,776	$21,408	$27,677	$45,162	$23,913	$0
Neighborhood Wood Pole Replacements (Financed over 10 years or less)	$20,259	$0	$0	$0	$0	$0	$0	$33,867	$0	$0	$0
Landscaping, Open Space, and Associated Repairs	$8,000	$6,000	$8,000	$10,000	$1,000	$0	$1,000	$1,500	$25,000	$2,000	$300,000
Tree Trimming and Replacement	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$50,000
Electricity and Streetlight Repairs	$6,500	$3,500	$13,500	$6,000	$500	$500	$6,000	$7,500	$50,000	$28,000	$30,000
Landscape and Facilities Water	$5,000	$1,500	$8,000	$12,000	$0	$0	$1,000	$0	$2,000	$1,500	$130,000
Supplies and Vehicle Repairs	$2,545	$1,896	$1,937	$1,001	$93	$0	$400	$1,800	$551	$400	$16,335
Assessment Engineering Cost	$736	$736	$736	$736	$736	$736	$736	$736	$736	$736	$736
Incidental / Direct Admin Cost*	$0	$0	$376	$5,128	$1,951	$1,518	$0	$0	$0	$0	$206,313
County Fees	$945	$749	$882	$309	$267	$290	$981	$1,102	$1,298	$924	$6,562
Capital Improvement Projects	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
TOTAL DIRECT COSTS	**$88,915**	**$54,563**	**$63,528**	**$62,274**	**$23,697**	**$18,441**	**$33,714**	**$94,123**	**$144,688**	**$79,476**	**$1,095,686**
COLLECTIONS/(CREDITS) APPLIED TO LEVY											
Reserve Collection (Transfer)	$256	$27,062	$10,429	$25,114	$25,151	$2,845	($9,267)	$15,499	$43,297	$6,864	$13,713
DISTRICT STATISTICS											
Total Parcels Levied	915	657	832	78	22	52	962	1,121	1,379	887	8,305
ERUs	490.213	639.049	867.893	637.593	355.680	346.659	759.150	562.948	1,601.478	847.977	8,030.840
Maximum Levy per Benefit Unit	$65.54	$126.59	$84.31	$135.67	$136.57	$60.91	$31.89	$78.03	$116.15	$100.52	$135.54
Additional Maximum Levy per Benefit Unit (ceases after FY 2028-29)	$63.67							$55.22			
Total Applied Levy per Benefit Unit	$129.21	$126.59	$84.31	$135.67	$136.57	$60.91	$31.89	$133.25	$116.15	$100.52	$135.54
Zone 1 - Cottage Ln, Coventry, and Olympian Hills Parcels											
ERUs	317.250										
Maximum Levy per Benefit Unit	$65.54										
Additional Maximum Levy per Benefit Unit (ceases after FY 2028-29)	$11.71										
Total Applied Levy per Benefit Unit	$77.25										
Zone 7 - Bay Pointe, Bravo, Caprice Parcels											
ERUs								418.500			
Maximum Levy per Benefit Unit								$78.03			
Total Applied Levy per Benefit Unit								$78.03			
Beginning Balance - July 1, 2021	($30,091)	($15,207)	$55,604	$89,656	$148,687	($7,887)	($173,053)	$53,703	$212,618	($70,088)	$323,465
Reserve Collection Increase/(Decrease)	$256	$27,062	$10,429	$25,114	$25,151	$2,845	($9,267)	$15,499	$43,297	$6,864	$13,713
Ending Balance - Projected June 30, 2022	**($29,835)**	**$11,856**	**$66,032**	**$114,770**	**$173,838**	**($5,042)**	**($182,321)**	**$69,202**	**$255,914**	**($63,224)**	**$337,177**

LANDSCAPING AND LIGHTING DISTRICT NO. 2002-1
(VICTORIA BY THE BAY)
PROPOSED INCOME AND EXPENSE
FISCAL YEAR 2021-22

REVENUES		
Assessments		$453,759
Public Agency Assessments		$7,149
General Benefit Contribution		$8,689
	Total:	**$469,597**
DIRECT COSTS		
Personnel		$82,012
Transfer for Arterials/Major Roads Landscape and Lighting Maintenance		$23,792
Landscaping, Open Space, and Associated Repairs		$150,000
Tree Trimming and Replacement		$25,000
Electricity and Streetlight Repairs		$15,000
Landscape and Facilities Water		$150,000
Supplies and Vehicle Repairs		$5,234
Assessment Engineering Cost		$4,045
Incidental / Direct Admin Cost*		$27,303
County Fees		$853
Capital Improvement Projects		$0
	Total:	**$483,238**
COLLECTIONS/(CREDITS) APPLIED TO LEVY		
Reserve Collection (Transfer)		($13,640)
DISTRICT STATISTICS		
Total Parcels		839
Total Parcels Levied		794
Total Equivalent Residential Units (ERU)		843.682
Maximum Levy per Benefit Unit		$546.47
Applied Levy per Benefit Unit		$546.47
FUND BALANCE INFORMATION		
Beginning Balance - Projected July 1, 2021		$109,545
Reserve Fund Adjustments		($13,640)
Ending Balance - Projected June 30, 2022		**$95,904**

LANDSCAPE AND LIGHTING DISTRICT NO. 2002-2
(PROMENADE)
PROPOSED INCOME AND EXPENSE
FISCAL YEAR 2021-22

REVENUES		
Assessments		$153,474
Public Agency Assessments		$4,699
General Benefit Contribution		$3,497
	Total:	**$161,670**
DIRECT COSTS		
Personnel		$39,455
Transfer for Arterials/Major Roads Landscape and Lighting Maintenance		$6,487
Landscaping, Open Space, and Associated Repairs		$46,000
Tree Trimming and Replacement		$20,000
Electricity and Streetlight Repairs		$12,000
Landscape and Facilities Water		$40,000
Supplies and Vehicle Repairs		$1,159
Assessment Engineering Cost		$4,045
Incidental / Direct Admin Cost*		$11,747
County Fees		$420
Capital Improvement Projects		$0
	Total:	**$181,313**
COLLECTIONS/(CREDITS) APPLIED TO LEVY		
Reserve Collection (Transfer)		($19,642)
DISTRICT STATISTICS		
Total Parcels		224
Total Parcels Levied		224
Total Equivalent Residential Units (ERU)		230.030
Maximum Levy per Benefit Unit		$688.03
Applied Levy per Benefit Unit		$688.03
FUND BALANCE INFORMATION		
Beginning Balance - Projected July 1, 2021		$226,281
Reserve Fund Adjustments		($19,642)
Ending Balance - Projected June 30, 2022		**$206,639**

LANDSCAPING AND LIGHTING DISTRICT NO. 2004-1 INCOME AND EXPENSE FISCAL YEAR 2021-22	
REVENUES	
Assessments	$135,142
Public Agency Assessments	$5,478
General Benefit Contribution	$3,284
Total:	**$143,904**
DIRECT COSTS	
Personnel	$38,462
Transfer for Arterials/Major Roads Landscape and Lighting Maintenance	$2,289
Landscaping, Open Space, and Associated Repairs	$42,000
Tree Trimming and Replacement	$30,000
Electricity and Streetlight Repairs	$3,000
Landscape and Facilities Water	$35,000
Supplies and Vehicle Repairs	$71
Assessment Engineering Cost	$4,045
Incidental / Direct Admin Cost*	$11,300
County Fees	$311
Capital Improvement Projects	$0
Total:	**$166,477**
COLLECTIONS/(CREDITS) APPLIED TO LEVY	
Reserve Collection (Transfer)	($22,573)
DISTRICT STATISTICS	
Total Parcels	81
Total Parcels Levied	80
Total Equivalent Residential Units (ERU)	81.159
Maximum Levy per Benefit Unit	$2,544.46
Applied Levy per Benefit Unit	$1,700.00
FUND BALANCE INFORMATION	
Beginning Balance - Projected July 1, 2021	$59,825
Reserve Fund Adjustments	($22,573)
Ending Balance - Projected June 30, 2022	**$37,252**

LANDSCAPING AND LIGHTING DISTRICT NO. 2005-1
(BAYSIDE)
INCOME AND EXPENSE
FISCAL YEAR 2021-22

REVENUES		
Assessments		$137,643
Public Agency Assessments		$914
General Benefit Contribution		$1,630
	Total:	**$140,187**
DIRECT COSTS		
Personnel		$21,739
Transfer for Arterials/Major Roads Landscape and Lighting Maintenance		$15,587
Landscaping, Open Space, and Associated Repairs		$25,000
Tree Trimming and Replacement		$0
Electricity and Streetlight Repairs		$11,000
Landscape and Facilities Water		$10,000
Supplies and Vehicle Repairs		$1,058
Assessment Engineering Cost		$4,045
Incidental / Direct Admin Cost*		$8,059
County Fees		$616
Capital Improvement Projects		$0
	Total:	**$97,103**
RESERVES		
Reserve Collection (Transfer)		$43,084
DISTRICT STATISTICS		
Total Parcels		526
Total Parcels Levied		481
Total Equivalent Residential Units (ERU)		552.718
Maximum Levy per Benefit Unit		$250.71
Applied Levy per Benefit Unit		$250.71
FUND BALANCE INFORMATION		
Beginning Balance - Projected July 1, 2021		$208,028
Reserve Fund Adjustments		$43,084
Ending Balance - Projected June 30, 2022		**$251,112**

LLAD District/Zone	Description of Improvements Maintained*	FY 2020-21 Assessment (Single-Family Home)	FY 2020-21 Assessment (Condo/Townhomes)	Fiscal Year Property Owners Approved Assessment Increase
LLAD 83-2 Zone 1 (Hercules by the Bay)	Maintenance and services for Arterial Roadway landscaping and street lights, Railroad Park, neighborhood cul-de-sac landscaping, street lights along local roadways, landscape medians along Hercules Ave, and weed abatement services	$126.68	$95.01	2019-20
LLAD 83-2 Zone 1 (Hercules by the Bay - Olympian Hills, Cottage Ln, and Coventry)	Maintenance and services for Arterial Roadway landscaping and street lights, Railroad Park, neighborhood cul-de-sac landscaping, street lights along local roadways, landscape medians along Hercules Ave, and weed abatement services	$75.74	$56.81	2019-20
LLAD 83-2 Zone 2 (Foxboro)	Maintenance and services for Arterial Roadway landscaping and street lights, street lights along local roadways, landscape medians along Canterbury, and weed abatement services	$124.11	$93.08	N/A
LLAD 83-2 Zone 3&4 (The Gems/Birds)	Maintenance and services for Arterial Roadway landscaping and street lights, cul-de-sac landscaping, street lights along local roadways, and weed abatement services	$82.88	$62.16	N/A
LLAD 83-2 Zone 6 (Village Parkway)	Maintenance and services for Arterial Roadway landscaping and street lights, street lights along local roadways, landscape medians along Hercules Ave and Village Parkway, and weed abatement services	$31.26	$23.45	N/A
LLAD 83-2 Zone 7 (Heights)	Maintenance and services for Arterial Roadway landscaping and street lights, street lights along local roadways and weed abatement services	$131.72	N/A	2019-20
LLAD 83-2 Zone 7 (Heights - Bay Pointe, Caprice, and Bravo Developments)	Maintenance and services for Arterial Roadway landscaping and street lights, street lights along local roadways and weed abatement services	$76.50	$57.38	N/A
LLAD 83-2 Zone 8 (Trees and Flowers)	Maintenance and services for Arterial Roadway landscaping and street lights, Beechnut Park, neighborhood cul-de-sac landscaping, street lights along local roadways, landscape medians along Redwood Rd and Lupine Rd, and weed abatement services	$113.87	N/A	N/A
LLAD 83-2 Zone 9 (Birds and Country Run)	Maintenance and services for Arterial Roadway landscaping and street lights, neighborhood cul-de-sac landscaping, street lights along local roadways, landscape medians along Pheasant Dr, and weed abatement services	$98.54	$73.91	2018-19
LLAD 83-2 Zone 10** (Citywide Parks and Facilities)	Maintenance and services for Foxboro Park, Frog Pad Park, , Woodfield Park, Ohlone Park and Community Center, Regugio Valley Park, Refugio Valley Tennis Courts, Refugio Valley Linear Park, Hanna Ranch Park and Childcare Center, Victoria Shoreline Park, Duck Pond Park, City Hall and Senior Center, Hercules Library, Community Swim/Teen Center, Lupine Childcare Center, the Fire Station Landscape areas.	$132.89	$99.67	N/A
LLAD 2002-1 (Victoria by the Bay)	Maintenance and services for Arterial Roadway landscaping and street lights, Victoria Park, Arbor Park, street lights along local roadways, local parkway strips, local landscape medians, and weed abatement services	$535.76	N/A	N/A

LLAD 2002-2 (Promenade)	Maintenance and services for Arterial Roadway landscaping and street lights, street lights along local roadways, local parkway strips, local landscape medians, and weed abatement services	$674.54	N/A	N/A
LLAD 2004-1 (Baywood)	Maintenance and services for Arterial Roadway landscaping and street lights, street lights along local roadways, local parkway strips, local landscape medians, and weed abatement services	$1,700.00	N/A	N/A
LLAD 2005-1 (Bayside)	Maintenance and services for Arterial Roadway landscaping and street lights, Shasta Park, Sierra Park, Bayside Park, and street lights along local roadways	$245.80	N/A	N/A

*All Zones and Districts pay approximately $30/Single-Family Home and $23/Condo-Townhome for Arterial Roadway Landscaping and Street Lighting Maintenance.

**All residential parcels in the City pay a LLAD 83-2 Zone 10 assessment

REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 26, 2021

TO: Mayor Kelley and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Mike Roberts, Public Works Director
Patrick Tang, City Attorney

SUBJECT: Continued Discussion of Draft Sidewalk Maintenance and Liability Ordinance

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

FISCAL IMPACT OF RECOMMENDATION:
If adopted by the City Council, a Sidewalk Liability Ordinance would likely reduce the City's pay-outs for sidewalk related injuries because (1) property owners would be more likely to maintain sidewalks in a safe condition; and (2) depending on the situation, property owners and their insurance companies would pay all or a portion of any claims for personal injuries attributable to unsafe sidewalk conditions.

BACKGROUND:
This matter has been previously discussed at the October 8, 2019 and November 10, 2020 regular council meetings. Copies of the previous staff reports to Council, including all related attachments, are provided as Attachments to this report.

Additional Information Requested by Council: At the November 10, 2020 council meeting, Council directed staff to bring this item back in January 2021 for further discussion and to provide additional information regarding:

- How other cities in Contra Costa County handle sidewalk liability, specifically when the sidewalk defect is caused by a city tree.
- Whether other cities in the county require adjacent property owners to maintain median and park strips and the trees and landscaping planted within those median and park strips.
- Whether the City could require sidewalk inspections and repairs at the time properties are sold.

DISCUSSION:
California Streets and Highways Code Section 5610 requires property owners to "maintain any [adjacent] sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas." While this statute imposes a duty on the abutting property owner to repair any defects or hazards in the adjacent sidewalk, the statute does not actually hold property owners accountable for the failure to correct or repair dangerous conditions on those sidewalks. Accordingly, unless a sidewalk maintenance and liability ordinance is adopted to put adjacent property owners on notice, the City, rather than the property owner, is solely liable when an individual is injured on a damaged sidewalk that an adjacent property owner failed to repair.

As previously reported to Council, state law allows cities to adopt ordinances assigning responsibility for maintenance of sidewalks to the owner or person in possession of property adjacent to a sidewalk, and holding private property owners responsible for dangerous conditions on those adjacent sidewalks. In Contra Costa County, Hercules and Pinole are the only two cities that have not adopted some form of sidewalk liability ordinance. If adopted, a sidewalk liability ordinance would affirm the existing statutory duty of the property owner to maintain and repair the sidewalk pursuant to California Streets and Highways Code section 5610, and establish that the failure to do so would be considered negligence on the part of the property owner so that the property owner would be liable to members of the public injured as a result of such negligence.

In addition, the sidewalk maintenance ordinance may also include a provision providing that, if the property owner fails to maintain and repair the sidewalk as necessary to create a safe condition, the City may perform any necessary work and invoice such costs to the property owner. If the property owner fails to pay the invoices, the City may record a lien on the property.

What Other Cities do When Sidewalk Damage is Caused by City Trees. While information from all cities within the county was not obtained prior to finalizing this report, it has been determined that in seven cities within Contra Costa County (Brentwood, El Cerrito, Lafayette, Pittsburg, San Pablo, San Ramon, and Walnut Creek) the city pays for repairing sidewalks damaged by city trees. In six cities within the County (Antioch, Clayton, Danville, Martinez, Moraga, and Oakley), the adjacent property owner pays for repairing sidewalks damaged by city trees. One city, Pleasant Hill, has no street trees planted, owned, or maintained by the city. Sidewalk repair permit fees are waived by some cities when the damage is caused by city trees.

Who Repairs and Maintains Park and Planter Strips in Other Cities. While the number of Hercules neighborhoods and homes that have park and planter strips is relatively small, this feature is prevalent in some of the newer neighborhoods, such as the Promenade, Baywood, and Bayside. See Attachment 3. Seventeen cities in Contra Costa County require adjacent property owners to maintain park and planter strips; no cities in the county were found to expressly undertake this maintenance responsibility. This is evidenced by the wholesale adoption by reference within local municipal codes of California Streets & Highways Code section 5600 which defines sidewalks broadly as follows:

> *As used in this chapter "sidewalk" includes a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining*

walls or other works for the protection of any sidewalk or of any such park or parking strip. Cal. Streets & Highways Code Sec. 5600.

Or in the alternative some of the seventeen cities have adopted an even more specific definition of "sidewalk" such as that found in the City of San Pablo Municipal Code:

> *"Sidewalk" as used in this chapter, in addition to paved walkways, includes parks or parking strips maintained in the area between the property line and the street line, and also includes driveways, curbing, and other works constructed by any person under and by virtue of any permit or right granted by law or by the city council or city officer in charge thereof upon sidewalk areas of the public highways.* City of San Pablo Municipal Code Sec. 12.04.010

The most comprehensive maintenance and repair requirements are found in the Antioch Municipal Code, which requires property owners to maintain and repair sidewalk areas, including grinding, removing and replacing sidewalk, repairing and maintaining curb and gutters, removing and filling or replacing parking strips, removing weeds and debris, tree root pruning and installing of root barriers and trimming shrubs and ground cover. Antioch Municipal Code Section 7-8.02(c).

Some cities such as San Ramon and Walnut Creek simply define the sidewalk area as the area between the property line of a parcel and the edge of the street pavement or the property side of a curb; this would presumably include curb and gutters, parking strips, and other improvements within and between the property line and the edge of the street.

Whether the City Could Require Sidewalk Inspections and Repairs at the Time Properties are Sold. It is legally permissible to enact a program that, similar to a sewer lateral inspection program, would require sidewalk inspection and repair upon the sale of property. The City of Piedmont requires sidewalk inspections and repairs when real property is sold, and also when a home improvement project's value is $5,000 or greater and a sidewalk inspection has not been performed in the past two years (Piedmont Municipal Code Chapter 18, Article V, Sec. 18.26). While there is no legal impediment to adopting such a requirement, there may be practical concerns; such a program would need to be implemented properly to avoid hindering the timely sale and transfer of property.

Related Measures: Many cities that have adopted sidewalk liability ordinances have also adopted sidewalk inspection and repair programs. Depending on available resources and staffing levels, some cities have set up revolving loan funds to assist property owners unable to afford sidewalk repairs. Other cities waive permit fees for sidewalk repairs when the damage is a result of city trees (Oakland and Vallejo among others) and/or provide discounted repairs to residents by "bundling" repair work to achieve an economy of scale (Oakland and Oakley).

In addition, the National League of Cities offers a program called The NLC Service Line Warranty Program which would give residents who have not set aside money to pay for an unexpected, expensive utility line repair, caused by tree root invasion or other sources, the opportunity to obtain an optional warranty that will provide repairs for a low monthly fee, with no deductibles or service charges. Many cities sign on and offer this NLC program in conjunction with addressing sidewalk liability. More information on the program can be found here: NLC National Service Line Program

CONCLUSION:

A sidewalk maintenance and liability ordinance would limit the City's exposure to liability arising out of trip-and-fall cases. However, such an ordinance would not completely eliminate the City's potential liability for dangerous conditions on sidewalks as the City could still be liable to a plaintiff injured as a result of a dangerous sidewalk condition if the adjacent property owner is unable to pay the damages (which is likely if the property owner does not have homeowner's insurance), if the City's actions caused the dangerous condition, or if the City was aware of a dangerous condition and failed to take action to correct the dangerous condition.

ATTACHMENTS:

1- November 10, 2020 Staff report to Council with attachments.
2- Draft Sidewalk Liability Ordinance.
3- Parkway Strip Locations in Hercules

REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of November 10, 2020

TO: Mayor Esquivias and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Mike Roberts, Public Works Director
Patrick Tang, City Attorney

SUBJECT: Continued Discussion and Presentation of Draft Ordinance regarding Sidewalk Maintenance and Liability

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

FISCAL IMPACT OF RECOMMENDATION:
If adopted by the City Council, a Sidewalk Liability Ordinance would likely reduce the City's pay-outs for sidewalk related injuries because (1) property owners would be more likely to maintain sidewalks in a safe condition if they are jointly liable for injuries due to damaged and neglected sidewalks adjacent to their property; and (2) the City would have the right to recover from property owners and their insurance companies a portion of the claims for injuries resulting from unsafe sidewalk conditions.

BACKGROUND:
As discussed at the October 8, 2019 regular council meeting, California Streets and Highways Code Section 5610 requires property owners to "maintain any [adjacent] sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas." While this statute imposes a duty on the abutting property owner to repair any defects or hazards in the adjacent sidewalk, the statute does not actually hold property owners accountable for the failure to correct or repair dangerous conditions on those sidewalks. Accordingly, unless a sidewalk maintenance and liability ordinance is adopted to put adjacent property owners on notice regarding their repair and maintenance obligations and to clearly determine their liability for failure to do so, the City, rather than the property owner, is solely liable when an individual is injured on a damaged sidewalk that an adjacent property owner failed to repair.

As previously reported to Council, cities have the legal authority to enact ordinances that reaffirm the duty of property owners to maintain and repair adjacent sidewalks and hold private property owners responsible for dangerous conditions on those sidewalks. The City's risk management pool, the Municipal Pooling Authority ("MPA"), has recommended that their client cities adopt this type of ordinance in order to increase the City's protection, and decrease the risk to the City of sidewalk related "trip-and-fall" cases. If this type of ordinance is adopted, the City could benefit from both a

positive impact on insurance premiums related to MPA, and from a reduction in the number of incidents and payments resulting from sidewalk trip-and-fall claims.

DISCUSSION:
As discussed in more detail in the several attachments to this staff report, State law allows the City to adopt an ordinance assigning responsibility for maintenance of sidewalks to the owner or person in possession of property adjacent to a sidewalk, and holding private property owners responsible for dangerous conditions on those adjacent sidewalks. Sidewalk liability ordinances are common throughout California; the City of Oakland adopted such a measure in 2019, joining other Northern California cities including Albany, Concord, Emeryville, Larkspur, Lodi, Sacramento, Vacaville, Richmond, San Francisco, Tiburon, Mill Valley, Sausalito, Fairfax, Novato, Lafayette, Orinda, Gilroy, Walnut Creek, San Pablo, and Pleasant Hill, to name a few. Currently the Cities of Pinole and Hercules are the only cities in Contra Costa County that do not have some form of sidewalk liability ordinance which would require property owners to maintain sidewalks fronting their properties, and hold private property owners responsible for dangerous conditions on those adjacent sidewalks. The Pinole City Council in 2018 received a presentation regarding the possibility of adopting a sidewalk liability ordinance and directed that the matter be further studied by a council committee.

If adopted, a sidewalk liability ordinance would affirm the existing statutory duty of the property owner to maintain and repair the sidewalk pursuant to California Streets and Highways Code section 5610, and establish that the failure to do so would be considered negligence on the part of the property owner. The property owner would be liable to members of the public injured as a result of such negligence. In addition, the sidewalk maintenance ordinance may also include a provision providing that, if the property owner fails to maintain and repair the sidewalk as necessary to create a safe condition, the City may perform any necessary work and invoice such costs to the property owner. If the property owner fails to pay the invoices, the City may record a lien on the property.

CONCLUSION:

A sidewalk ordinance such as the draft provided would limit the City's exposure to liability arising out of trip-and-fall cases. However, the ordinance would not completely eliminate the City's potential liability for dangerous conditions on sidewalks. The City could still be liable to a plaintiff injured as a result of a dangerous condition on a City owned sidewalk if the adjacent property owner is unable to pay (which is likely to happen if the property owner does not have home owners insurance), if the City's actions caused the dangerous conditions, or if the City was aware of a dangerous condition and failed to act.

ATTACHMENTS:

1- October 8, 2019 Staff report to Council with attachments.
2- Draft Sidewalk Liability Ordinance.

REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of October 8, 2019

TO: Mayor Romero and Members of the City Council

SUBMITTED BY: David Biggs, City Manager
Mike Roberts, Public Works Director
Patrick Tang, City Attorney

SUBJECT: Presentation and Discussion of City Ordinances regarding Sidewalk Maintenance and Liability

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

FISCAL IMPACT OF RECOMMENDATION:
No fiscal impact as a result of this action. Depending upon direction provided, there could be future cost reductions and impacts. If adopted by the City Council, a Sidewalk Liability Ordinance would likely reduce the City's pay-outs for sidewalk related injuries because (1) property owners would be more likely to maintain sidewalks in a safe condition if they are jointly liable for injuries due to damaged and neglected sidewalks adjacent to their property; and (2) the City would have the right to recover from property owners and their insurance companies a portion of the claims for injuries resulting from unsafe sidewalk conditions.

DISCUSSION:
California Streets and Highways Code section 5610 requires property owners to "maintain any [adjacent] sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas." While this statute imposes a duty on the abutting property owner to repair any defects or hazards in the adjacent sidewalk, the statute does not actually hold property owners accountable for the failure to correct or repair dangerous conditions on those sidewalks. Accordingly, the City, rather than the property owner, is solely liable if an individual is injured on a damaged sidewalk that a property owner failed to repair.

Cities have the legal authority to enact ordinances that reaffirm the duty of property owners to maintain and repair adjacent sidewalks, and hold private property owners responsible for dangerous conditions on those sidewalks. The City's risk management pool, the Municipal Pooling Authority ("MPA"), has recommended that their client cities adopt this type of ordinance in order to increase the City's protection, and decrease the risk to the City of sidewalk related "trip-and-fall" cases. If this type of ordinance is adopted, the City could benefit from both a positive impact on insurance premiums related to MPA, and from a reduction in the number of incidents and payments resulting from sidewalk trip-and-fall claims.

As discussed in more detail in the several attachments to this staff report, State law allows the City to adopt an ordinance assigning responsibility for maintenance of sidewalks to the owner or person in possession of property adjacent to a sidewalk, and holding private property owners responsible for dangerous conditions on those adjacent sidewalks. Sidewalk liability ordinances are very common throughout California; the City of Oakland adopted such a measure in 2019, joining other Northern California cities including Albany, Concord, Emeryville, Larkspur, Lodi, Sacramento, Vacaville, Richmond, San Francisco, Tiburon, Mill Valley, Sausalito, Fairfax, Novato, Lafayette, Orinda, Gilroy, Walnut Creek, San Pablo, and Pleasant Hill, to name a few. Currently the cities of Pinole and Hercules are the only cities in Contra Costa County that do not have some form of sidewalk liability ordinance which would require property owners to maintain sidewalks fronting their properties, and hold private property owners responsible for dangerous conditions on those adjacent sidewalks. The Pinole City Council in 2018 received and discussed a presentation regarding the possibility of adopting a sidewalk liability ordinance, and directed that the matter be further studied by a council committee.

A sidewalk liability ordinance would affirm the existing statutory duty of the property owner to maintain and repair the sidewalk pursuant to California Streets and Highways Code section 5610, and establish that the failure to do so would be considered negligence on the part of the property owner. The property owner would be liable to members of the public injured as a result of such negligence. In addition, the sidewalk maintenance ordinance may also include a provision providing that, if the property owner fails to maintain and repair the sidewalk as necessary to create a safe condition, the City may perform any necessary work and invoice such costs to the property owner. If the property owner fails to pay the invoices, the City may record a lien on the property.

A sidewalk liability ordinance would limit the City's exposure to liability arising out of trip-and fall cases. However, the ordinance would not completely eliminate the City's potential liability for dangerous conditions on sidewalks. The City could still be liable to a plaintiff injured as a result of a dangerous condition on a City owned sidewalk if the property owner is unable to pay (which is likely to happen if the property owner does not have home owners insurance), if the City's actions caused the dangerous conditions, or if the City was aware of a dangerous condition and failed to act.

ATTACHMENTS:

1- League of California Cities 2014 Sidewalk Liability Report
2- Article from Risk Management Monitor, "Defective Sidewalk Condition: Who is at Fault?" – September 10, 2015

LEAGUE® OF CALIFORNIA CITIES

But It's Your Sidewalk! Sidewalk Repair and Liability

Thursday, May 8, 2014 General Session; 2:15 – 4:15 p.m.

Gerald C. Hicks, Supervising Deputy City Attorney, Sacramento

BUT IT'S YOUR SIDEWALK!

This paper and presentation arose out of a desire to create a comprehensive summary of the law concerning an adjacent property owner's obligation to repair a defective sidewalk under Streets and Highways Code section 5610. This effort was motivated to address the numerous objections and threatened lawsuits from angry property owners upon receipt of a repair notice. The title was suggested by the oft heard property owners' mantra and perspective. Research into the history of sidewalk repair for purposes of the paper led to research into the general history of sidewalks and research concerning repair naturally delved into research concerning the interplay between sidewalk repair and liability for unrepaired sidewalks. In sum, the paper and presentation deal with various issues concerning the most pedestrian of infrastructure – sidewalks. Because understanding some of the issues concerning sidewalk repair and liability may best be understood in a historical context, I begin with a brief history of sidewalks.

I

A Brief History of Sidewalks

Sidewalks, perhaps the most ubiquitous yet inconspicuous of critical infrastructure, have a long history. The first evidence of paved pedestrian paths dates from ancient Greece and Rome.[1] Sidewalks, as walkways separated from roads, disappeared during the Middle Ages. They reappeared during the seventeenth century when the first governmental acts calling for the paving of pedestrian paths were passed by Parliament a few years after the 1666 Great Fire of London, apparently as part of Christopher Wren's rebuilding and organization of the City of London.

In the nineteenth century, sidewalks were often constructed by adjacent property owners and businesses and by the end of that century sidewalks had become an important aspect of urban

[1] Loukaitou-Sideris and Ehrenfeucht, *Sidewalks: Conflict and Negotiation over Public Space* (2009) p. 15

infrastructure. Because sidewalks were often the only paved aspect of streets, they were the easiest place to walk, shop and carry out various economic and social activities. "In commercial areas, sidewalks extended the realm of adjacent shops; shopkeepers displayed their merchandise on sidewalks and stored deliveries and overstock on them as well. Street peddlers made a living outdoors while street speakers and newsboys conveyed information to passersby. Sidewalks were also a realm for social encounters where friends, acquaintances, and strangers mixed. The sidewalks were thus both a route and a destination; a way to move through the city, but also a place of commerce, social interaction, and civic engagement."[2] Sidewalks were also critical to the safety of a city and to establishing a sense of community.

As sidewalks became more prevalent, cities moved to standardize their dimensions and the material used to construct them. With standardization came a contraction of their use as cities focused on a singular purpose for sidewalks – to move people. As a result, many cities imposed sidewalk regulations with respect to the storage of material or products; public speaking; vending; and loitering. Jane Jacobs lamented the reduction in value and physical contraction of sidewalks in her 1961 book, *The Death and Life of Great American Cities*, "Sidewalk width is invariably sacrificed for vehicular width, partly because city sidewalks are conventionally considered to be purely space for pedestrian travel and access to buildings and go unrecognized and unrespected as the uniquely vital and irreplaceable organs of city safety, public life, and child rearing that they are."[3] In her book, Jacobs relates numerous examples of how a busy and vibrant sidewalk, even in the less affluent parts of a city, can decrease crime and promote social discourse.

---

[2] Loukaitou-Sideris and Renia Ehrenfeucht, *Vibrant Sidewalks in the United States: Reintegrating Walking and a Quintessential Social Realm* (Access Magazine Spring 2010), p. 24
[3] Jacobs, *The Death and Life of Great American Cities* (1961)

In recent years, sidewalks have gained renewed respect as planners seek to restore their status as "public space" as opposed to a simple mode of transportation. The health benefits of walking are patent but have been extolled by the Surgeon General and numerous health professionals as a means to combat obesity, diabetes, and other diseases. In addition, as a result of concerns with climate change, energy conservation and congestion, transportation planners view sidewalks as an important component of sustainable and healthy communities and walking as an inexpensive and enjoyable activity that reduces congestion and conserves energy.[4]

II

Sidewalk repair

A. Approaches to Sidewalk Repair and Maintenance

Despite their long history and ubiquity, sidewalks are often overlooked as non-critical infrastructure. While listing bridges, dams, levees, ports, rails and roads, the American Society of Civil Engineers' Report Card for America's Infrastructure does not mention sidewalks. While it is true that the catastrophic failure of a dam or bridge would undoubtedly have calamitous results, the cumulative injuries and consequent expenditure of municipal funds from the incremental decay of sidewalks can be equally substantial.

The legal and fiscal impact of broken or displaced sidewalks and the responsibility for their repair has been a constant, if inconspicuous, issue in many California cities for some time. The issue of repair responsibility has obvious legal implications: liability for the existence of a dangerous condition and the requirement to maintain an accessible sidewalk under the Americans with Disabilities Act and California

[4] Loukaitou-Sideris and Renia Ehrenfeucht, *Vibrant Sidewalks in the United States: Reintegrating Walking and a Quintessential Social Realm* (Access Magazine Spring 2010); American Planning Association, *The Importance of Sidewalks* (The New Planner, Fall 2013)

disability access laws. The repair obligation also creates political difficulties - both for those cities which maintain an ordinance placing the repair obligation on property owners (and who consistently deal with surprised and disgruntled property owners) and those cities that have not enacted such an ordinance because of public opposition and which face a steady increase in damaged sidewalks and the potential liability arising from those sidewalks.

Los Angeles provides a singular example. In 1974, as a result of a grant of federal funds, Los Angeles passed an ordinance placing the obligation to repair sidewalks on the City. Since the federal funds dried up a few years later, the City has had difficulty enacting legislation to place the repair obligation back on the property owners. As of 2010, approximately 4,700 of the Los Angeles' 11,000 linear miles of sidewalk (approximately 43%) were in disrepair. The City estimated spending between 4 and 6 million dollars in liability claims and the cost estimate to repair the sidewalks was between 1.2 and 1.5 billion dollars.[5] Los Angeles has been considering repealing the 1974 ordinance to shift responsibility back to the homeowners. This effort has faced opposition from the homeowners and even unsuccessful efforts in the State Legislature to require a public vote prior to placing the obligation back on the homeowner. Sacramento also experimented with assuming the repair obligation. From 1943 through mid-1973, the City's policy was that property owners were responsible for the cost of all repairs except those caused by City street tree roots for which the City shared responsibility. In mid-1973, the City adopted a new policy making the City responsible for all sidewalk repairs. Not surprisingly, sidewalk repair requests increased substantially. In mid-1976, finding the existing policy unworkable, the City elected to adopt a policy making property owners responsible for all sidewalk repairs, including those repairs necessitated by damage caused by City street trees. Other cities have backed away from an ordinance placing the

---

[5] Brasuell, *Where the Sidewalk Ends ... In a Tree Root-Related Lawsuit*, (Oct. 20, 2011) <http://la.curbed.com/archives/2011/10/where_the_sidewalk_endsin_a_tree_rootrelated_lawsuit.php>

obligation of sidewalk repair on the property owner after a public outcry. Those cities that do have sidewalk repair ordinances in place nonetheless face fairly consistent questions from the public as to the fairness and legality of asking a property owner to repair the "public" sidewalk.

California, like numerous states, has provisions allowing municipalities to impose a repair obligation for damaged sidewalks on adjacent property owners.[6] Pursuant to these provisions, virtually every major United States city has a sidewalk repair program that places a repair obligation on adjacent property owners to varying degrees. For example, New York, Philadelphia, Phoenix and Cincinnati make the adjoining property owners fully responsible for adjacent sidewalks. Atlanta also makes the adjacent property owner responsible and just faced a public backlash for sending out a number of repair notices prompted by disability access pressures.[7] Chicago operates a "shared cost" responsibility program by limiting the repair cost to a set price per square foot and subsidizing any remainder. Washington D.C. is responsible for repairing the sidewalks but "permanent repairs" may be subject to "available funding."

California's sidewalk repairs provisions are set forth in Streets and Highways Code sections 5600 *et seq*. In 1935, Assembly Bill 1194 amended section 31 of the Improvement Act of 1911 to provide for the repair and maintenance of sidewalks, curbing, parking strips and retaining walls by adjacent property owners. Although the legislative history of Assembly Bill 1194 is no longer available, some possible context for the measure may be gleaned from the time period of its passage. In his Inaugural Address of January 8, 1935, California Governor Merriam, in speaking of the economic upheavals of the Great Depression, said:

---

[6] See *Schaefer v. Lenahan*, 63 Cal.App.2d 324 327-328 (1944), and cases cited therein. Research into the statutes referenced in the twenty cited cases (a small and completely unscientific sample) revealed that the earliest enactment date was 1856, the latest was 1937 and the average enactment date was 1903.

[7] http://archive.11alive.com/news/local/story.aspx?storyid=277146 (2/11/13)

But as fondly as some may believe, and as earnestly as others may hope, government itself cannot indefinitely assume the responsibility for meeting all the demands of this depression and this emergency.

* * *

Of primary importance at this time, from the standpoint of an efficient administration of State functions, is the need for placing the government of California on a sound financial basis. This we must do without imposing intolerable taxes upon the people and without undertaking obligations not absolutely essential to the public service. As the first step in such a direction, we must adopt a program that will enable us to keep out expenditures below our income.

Assembly Member Lyons presented Assembly Bill 1194 a little over two weeks later. Though the Governor's message does not explicitly reference an effort to place the sidewalk repair obligation on adjacent property owners, it is consistent with the tone and content of the Inaugural Address.

The primary provision requiring a property owner to repair a defective sidewalk is Streets and Highways Code section 5610.

§5610. Maintenance by lot owners

The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public

convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under alike duty in relation thereto.

Pursuant to the authority of section 5610, the majority of cities in California have passed ordinances imposing the obligation for sidewalk repair on adjacent property owners. However, there is some diversity as to the extent of the obligation and how it is imposed. Some cities, like Sacramento, impose the entire repair cost on the property owner regardless of the cause of any damage or displacement. Many cities exempt damage caused by city trees from the repair obligation. Another option followed by many cities is a 50/50 sharing of repair costs.[8] Some cities, in addition to a general sidewalk repair program, have instituted a program which requires a defective sidewalk to be repaired upon the sale of the property.[9] This has the benefit of allowing the cost of repair to be recovered or paid as part of the price of the property. One means of imposing such a requirement is to require that the escrow documents include a certificate of compliance with the sidewalk ordinance. In addition, some cities require the sidewalk to be repaired as a condition of the issuance of a building permit above a set value.

One issue often overlooked is the secondary obligation of section 5610. After setting forth the obligation of adjacent property owners to maintain the sidewalk "in such condition that the sidewalk will not endanger persons or property . . . [or] interfere with the public convenience," section 5610 "except[s] . . . those conditions created or maintained in, upon,

[8] This diversity appears to be present throughout the nation. A survey of 82 cities in 45 states found that 40 percent of the cities required property owners to pay the full cost of repairing sidewalks, 46 percent share the cost with property owners, and 13 percent pay the full cost of repair. Shoup, *Fixing Broken Sidewalks* (*Access* , No.36, Spring 2010) pp. 30-36

[9] Both Pasadena and Piedmont have such programs in place.

along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof , and such persons shall be under a like duty in relation thereto."

There are no reported cases interpreting or applying this language. The purpose appears to be to impose on utilities which maintain facilities (poles, guide wires, vaults, etc.) in or on the sidewalk, the same obligation as imposed on adjacent property owners. This is a somewhat different conceptual obligation than that imposed on adjacent property owners because the source of any defect or interference with the public convenience would be the utility facility, not the sidewalk itself. Potentially, the primary importance of this aspect of section 5610 would be with respect to accessibility issues. In many cities, utility entities maintain facilities, particularly poles, which reduce the sidewalk width below the required three feet of the California Building Code[10] and the four feet required by the ADA draft Public Right-of-Way Guidelines. [11]

B. Legal Issues Involving Sidewalk Maintenance Obligation

One issue that adjacent property owners charged for sidewalk repairs often raise is whether the sidewalk repair obligation of section 5610 applies where the sidewalk is displaced or damaged due to trees located in the public right of way.[12] Though no statistics exist, tree roots are

---

[10] Title 24 2013 California Building Code, section 11B-403.5.1 **Clear Width** – ***"Exception 3***. The clear width for sidewalks and walks shall be 48 inches minimum. When, because of right of way restrictions, natural barriers or other exiting conditions, the enforcing agency determines that compliance with the 48-inch clear sidewalk width would create an unreasonable hardship, the clear width may be reduced to 36 inches."

[11] http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines - R302.3 – "Continuous Width. Except as provided in R302.3.1, the continuous clear width of pedestrian access routes shall be 1.2 m (4.0 ft.) minimum, exclusive of the width of the curb."

[12] The issue is one of substantial importance to the City of Sacramento - one of many cities claiming the moniker: "City of Trees." According to some estimates, as of 2005, Sacramento had more trees per capita than any city except Paris. Jason Margolis, *California's Capital Sees Big Benefits in More Trees* (11/25/05) <http://www.npr.org/templates/story/story.php?storyId=5027514>.

undoubtedly the predominate cause of damage to sidewalks.[13] As noted above, many cities do not impose the sidewalk repair obligation on adjacent property owners where trees located in the right of way have damaged the sidewalk. Many do, including those with a 50/50 sharing program.

Though there is a great deal of visceral appeal to the argument that an adjacent property owner should not bear responsibility to repair a sidewalk caused by a tree in the right of way when the property owner has no control over the tree's roots, the statutory language and the reported cases do not support this position.[14]

Initially, it should be noted that section 5610 makes no distinction as to the cause of a damaged sidewalk in imposing a mandatory repair obligation on the adjacent property owner. Though not expressly addressing the issue, *Jones v. Deeter* (1984) 152 Cal.App.3d 798, supports the proposition that the adjacent property owner is responsible where damage is caused by a tree located in the right-of –way. In *Jones*, the plaintiff was injured when she tripped on a break in the sidewalk caused by a Magnolia tree located in the "parkway." [15] The plaintiff brought suit against both the property owner and the city. The plaintiff appealed a judgment for the property owner. The Court, in affirming the judgment, held that while the property owner had a duty of repair, even though the sidewalk had been damaged by a tree in the right-of-way (parkway), liability could not be imposed against the property owner on this basis. "Under section 5610 the abutting owner bears the duty to repair defects in the

---

[13] Randup, McPherson and Costello, *A Review of Tree Root Conflicts with Sidewalk, Curbs and Roads*, (Kluwer Academic Publishers) 2003

[14] In *Jordan v. City of Sacramento* (2007) 148 Cal.App.4th 1487, at page 1492 footnote 2 , the court questioned the legality of imposing repair responsibility on property owners for damage caused by city trees and suggested the "City might wish to revisit its ordinance ..."

[15] The *Jones* court defined "parkway" as the area "between the sidewalk and the public street." Streets and Highways Code section 5600 defines "sidewalk" to include "a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining walls or other works for the protection of any sidewalk or of any such park or parking strip." This portion of the right of way is also sometimes referred to a as "mow strip."

sidewalk, *regardless of whether he has created these defects*. It was felt, however, that it would be unfair for such an owner to be held liable to travelers injured as a result of sidewalk defects which were not of the owner's making." (*Id.* at 827, italics added.) Thus, the case highlights the absolute nature of the repair obligation (even when caused by trees located in the right-of-way) by contrasting it with the absence of any liability exposure unless the defect is caused by the owner. Putting aside the legal arguments, not all of the equities for imposing the cost of repair on adjacent property owners where damage is caused by a tree in the right of way are on the side of the property owner. While property owners may argue that they have no control over the direction of tree roots; neither does the city. In addition, city trees typically provide great benefits to homeowners and for many the presence of large trees is a factor in the purchase of their home. The trees are aesthetically pleasing and provide shade which cools the home and helps keep other vegetation alive. They also enhance the monetary value of the home. While obtaining these benefits, the homeowners do not incur the costs of maintaining the trees (such as watering, trimming or fertilizing) or suffer the potential of liability for injuries caused by the tree itself (falling limbs; low hanging branches; branches obscuring traffic signs or lights, etc.).

III

Sidewalk Liability

A. Tort Liability for Defective Sidewalks

Nine years after the passage of the predecessor to section 5610, the First Appellate District decided *Schaefer v. Lenahan* (1944) 63 Cal.App. 2d 324 . Florence Schaeffer stepped in a hole in the sidewalk in front of property owned by J.W. Lenahan. Lenahan was notified by the City and County of San Francisco to repair the sidewalk but did not do so. The common law rule was that, in the absence of statute, the owner or occupant of premises abutting a public street had no duty to repair the sidewalk and consequently, no liability to those injured as a result of a

defective sidewalk. Schaefer argued that the predecessor to section 5610 (as it existed in 1944) imposed a duty of repair and a violation of that duty gave rise to a cause of action for those injured by a defective sidewalk. The court rejected the argument, finding that the "obvious purpose of the statute was to provide a means of reimbursing the city for the cost of the repairs. To impose a wholly new duty upon the property owner in favor of third persons would require clear and unambiguous language." (*Id.* at p. 332.)

The limitation on liability to third parties for a defective sidewalk is commonly referred to as the "Sidewalk Accident Decisions Doctrine." (*Contreras v. Anderson* (1997) 59 Cal.App.4th 188, 195 fn.6.) As noted by *Lenahan*, a liability obligation may be imposed on property owners by "clear and ambiguous language."

An ordinance with such language was approved by the Court in *Gonzales v. San Jose* (2004) 125 Cal.App.4th1127 . The San Jose ordinance approved by *Gonzales* provides that if an abutting property owner fails to maintain a sidewalk in a non-dangerous condition and any person suffers injuries as a result, the property owner is responsible to the person for the resulting damage and injury. (*Gonzales, supra,* 125 Cal.App.4th at p. 1134 citing San Jose Municipal Code §§ 14.16.220 and 14.16.2205.) However, it is important to note the limits of sidewalk liability ordinances. Because municipal liability for torts is a matter of statewide concern, such liability "may not be regulated by local ordinances inconsistent with state law as established by the Tort Claims Act." (*City of Ontario v. Superior Court* (1993) 12 Cal.App.4th 894, 899-900 citing *Societa per Azioni de Navigazione Italia v. City of Los Angeles* (1982) 31 Cal.3d 446, 463.) This precludes a city from absolving itself of liability but does allow concurrent liability of adjacent property owners. Sidewalk liability ordinances "provide[] an additional level of responsibility for the maintenance of safe sidewalks on the owners whose property is adjacent to and abuts the

sidewalk." (*Gonzales, supra* at 1139.) "These owners are often in the best position to quickly identify and address potentially dangerous conditions that might occur on the sidewalks, as opposed to [the city]." (*Id.*) Moreover, as the *Gonzales* court noted, in order to fully protect its citizens, a city would have to have sidewalk inspectors circulating the city, day and night. (*Id.*)

B. Liability for Defective or Narrowed Sidewalks under the ADA and California Disability Access Laws:

In 2002, in *Barden v. City of Sacramento* (9th Cir. 2002) 292 F.3d 1073, the Ninth Circuit, relying in large part on statutory and regulatory interpretation by the United States Department of Justice, determined that sidewalks constituted "programs" under the ADA. While the matter was pending in the United States Supreme Court on a *writ of certiorari*, the parties settled the case and conveyed this information to the Court. *Certiorari* was subsequently denied leaving the Ninth Circuit opinion intact. The legal effect of the decision was that because maintaining sidewalks was a "program" under the ADA and its implementing regulations, sidewalks needed to be made maintained to be immediately accessible. According to the United States Solicitor General, interpreted the holding and the Title II regulations to "require only that the City's system of public sidewalks – when viewed "in its entirety" – be generally accessible to and usable by individuals with disabilities."[16]

Subsequent to the *Barden* decision, federal agencies, particularly the United States Access Board (the entity charged with creating public right of way guidelines) has taken the position in

[16] Brief for the United States as Amicus Curiae of the United States Solicitor General in *City of Sacramento, et al. v. Barden, et al.*(Filed May 2003).

numerous publications, that sidewalks are "facilities."[17] This is also the conclusion reached by the Fifth Circuit in *Frame v. Arlington*, 657 F.3d 215 (5th Cir. 2011 – cert denied 2012).

The drift from sidewalks as "programs" to sidewalks as "facilities" is notable. Under the ADA, "programs" must be made immediately accessible; conversely, "facilities" are subject to a new construction/alteration standard – in essence meaning that only newly constructed or altered sidewalks must be made "accessible." This is also the framework adopted by the ADA draft Public Right of Way Guidelines. Though cities within the Ninth Circuit remain subject to the *Barden* decision, the *Frame* decision, as well as the position taken by federal agencies, may form the basis for a reexamination of the *Barden* decision.

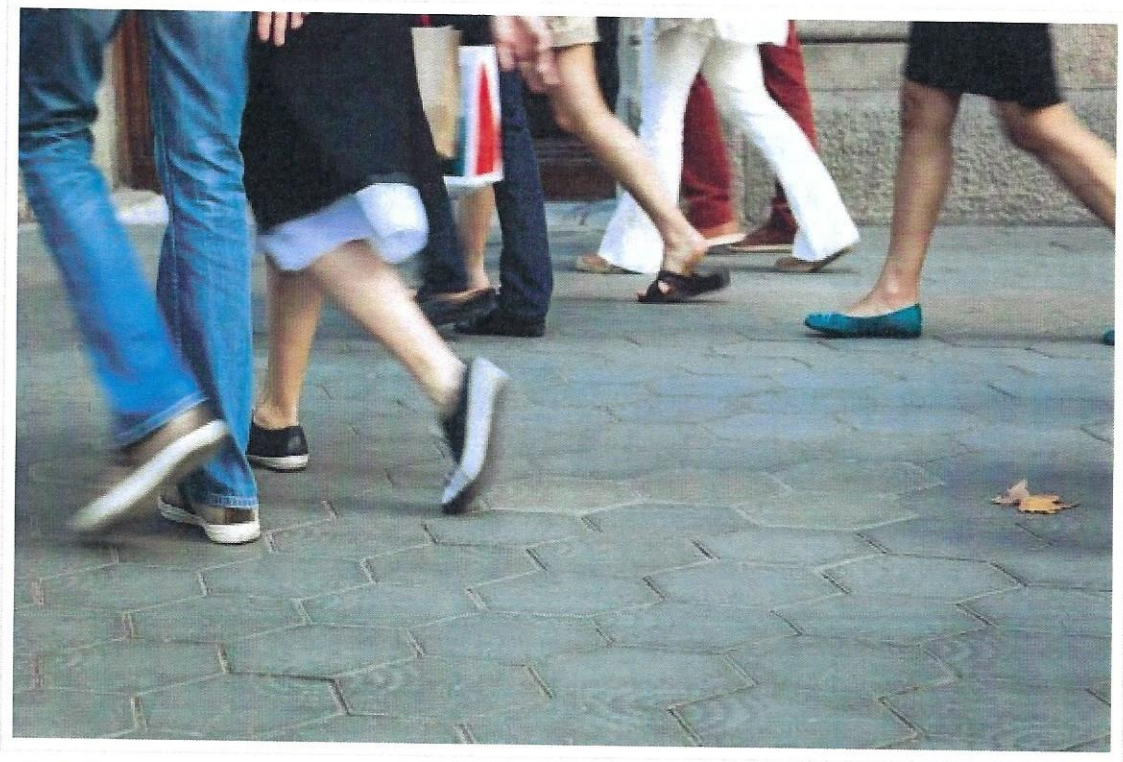
Of course, it is important to recognize that California law has required that new constructed sidewalks, whether constructed using private or public funds, have been required to be accessible since 1971. (Government Code section 4450 and Health and Safety Code section 19956.5). Presumably, this has somewhat softened the impact of the 2003 *Barden* holding.

[17] *See e.g.* United States Access Board, Proposed Rights-of-way Guideline, Part 1900. "The accessibility guidelines for pedestrian facilities in the public right-of-way are set forth in the appendix to this part." < http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines/part-1190-accessibility-guidelines-for-pedestrian-facilities-in-the-public-right-of-way>

This page left intentionally blank.

Defective Sidewalk Conditions: Who is at Fault?

Posted on **September 10, 2015** by **Barry D. Brown**



Liability between municipalities and landowners for injuries sustained by pedestrians due to defective sidewalk conditions has been the subject of lawsuits and statutory enactments for years. In California, municipalities generally own the sidewalks adjacent to private property owners' land, but state law provides that the landowners are responsible for maintaining the sidewalk fronting their property in a safe and usable manner. According to Streets and Highways Code 5610:

"The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a parking or a parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience…"

California state law provides that a municipality may assess landowners for the cost the municipality incurs to maintain sidewalks if the landowner fails to perform his/her duty. Although state law provides that abutting landowners are responsible for sidewalk maintenance and may be assessed the cost of repairs, they may not be liable for injuries or damages to third persons who use the sidewalk, unless the municipality enacts an ordinance that addresses liability. *Williams v. Foster* (1989). *Williams* arose after the plaintiff, Dennis Williams, tripped on a raised portion of the sidewalk in the City of San Jose, and thereafter sued the City. In its defense, San Jose argued that under 5610, the owner of the property fronting the sidewalk in question was solely liable. Rejecting this contention, the court held that Foster (landowner) owed no legal duty at all to the injured plaintiff.

In reaching the *Williams* decision, the court held that imposing upon abutting owners a duty of care in favor of third persons "would require clear and unambiguous language," which according to the court, is not contained in 5610. Notably, the court went on to state that the City "could have enacted an ordinance which expressly made abutting owners liable to members of the public for failure to maintain the sidewalk, but did not." Following the *Williams* decision, the City of San Jose amended its sidewalk ordinance to include language similar to that suggested by the *Williams* Court.

In 2001, after adopting a sidewalk liability ordinance that addressed the issues raised in *Williams*, San Jose was sued by Joanne Gonzalez, who alleged she was injured when she tripped and fell over a raised portion on a public sidewalk. Gonzalez also sued Charles Huang, who owned the property adjacent to the sidewalk on which she fell. Huang was sued on the theory that he had a common law duty to the plaintiff to maintain the sidewalk in a non-dangerous condition, as well as a duty under the San Jose Municipal Code.

The City of San Jose argued that the adjacent property owner was partially liable because he had not maintained the sidewalk as required by the local ordinance. Huang filed a motion for summary judgment arguing in part that the sidewalk liability ordinance enacted by the City of San Jose was unconstitutional. The trial court agreed with Huang and granted his Motion for Summary Judgment. Both Gonzalez and the City of San Jose appealed.

The case proceeded to the Court of Appeal which in 2004 ruled in San Jose's favor. (*Gonzales v. City of San Jose* (2004.) The primary issue before the court was whether the state law preempted the local measure. The court found that the ordinance was constitutional and was not preempted by state law.

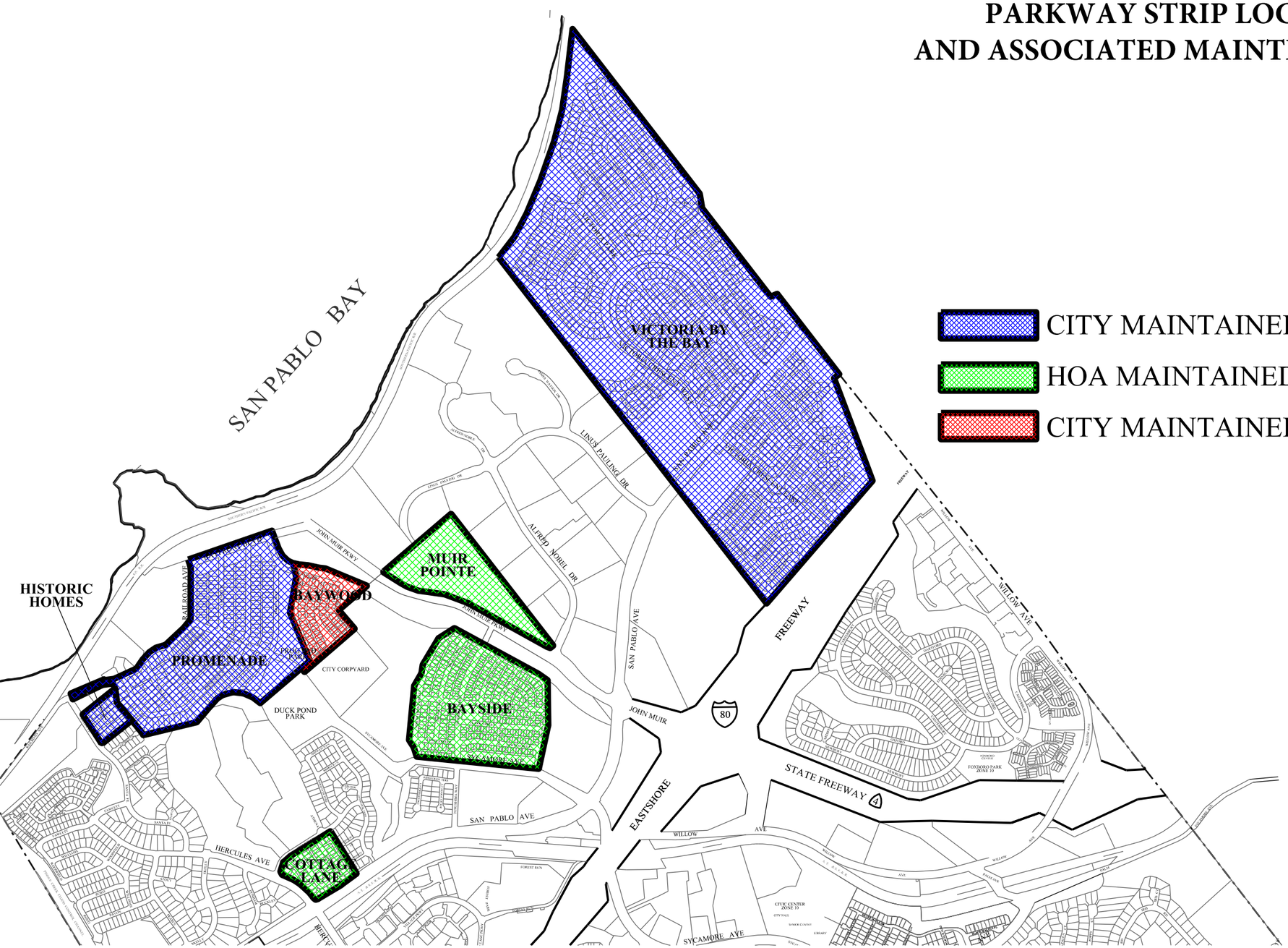
In its holding, the *Gonzales* court noted that cities are empowered under the California Constitution to enact ordinances and regulations deemed necessary to protect the public health, safety, and welfare, and that the City of San Jose's ordinance was a permissible exercise of that power. Without such an ordinance, the court noted, landowners would have no incentive to maintain adjacent sidewalks in a safe manner.

The court emphasized that the ordinance did not serve to absolve the city of liability for dangerous conditions on city-owned sidewalks when the city created the dangerous condition, knew of its existence and failed to remedy it. Since the *Gonzales* ruling, many municipalities have considered liability shifting ordinances. Some have enacted such ordinances while others have not, oftentimes on public policy concerns.

Note that even in jurisdictions which have enacted liability shifting ordinances, one must determine the cause of the defective sidewalk condition. In many ordinances, liability does not shift to the landowner if the landowner did not cause the defective condition to exist.

Thus, in analyzing liability in a case involving an allegedly defective sidewalk condition, a major issue will be whether the municipality has a liability shifting ordinance. If such an ordinance exists, it must be read carefully to determine its scope, as each ordinance differs from municipality to municipality.

PARKWAY STRIP LOCATIONS IN HERCULES AND ASSOCIATED MAINTENANCE RESPONSIBILITIES



CITY MAINTAINED PARKWAY STRIPS

HOA MAINTAINED PARKWAY STRIPS

CITY MAINTAINED PARKWAY STRIPS AND FRONT YARDS

PUBLIC ENTITY
RISK MANAGEMENT AUTHORITY

BOARD OF DIRECTORS' MEETING
March 2, 2006

ACTION / DISCUSSION ITEMS

AGENDA ITEM 7E: *Model Sidewalk Ordinance*

PREPARED BY: Scott Ellerbrock
General Manager

RECOMMENDATION:
Receive and file.

FISCAL IMPLICATIONS:
Not applicable for this report.

BACKGROUND & OVERVIEW:
The January 2006 PERMA Pulse newsletter included an article by Dennis Molloy on the recently tested City of San Jose ordinance regarding maintenance and repair of sidewalks.

The article included the San Jose ordinance as a model; however, Board Counsel recommends the model ordinance also include an indemnity provision for consideration. Attached is the model sidewalk ordinance with the fictitious 14.16.2206 for indemnity, which could be given any number or designation, but must relate to the numbers or designation of the other ordinances.

Streets and Highway Code Section 5610 establishes a property owner's duty to a city to maintain the abutting sidewalk in a condition that will not endanger persons or property and a duty to maintain the sidewalk in a condition that will not interfere with public use.

However, the California Legislature has not specifically imposed upon property owners a duty of care to third parties regarding the condition of abutting sidewalks. Therefore, cities in California, consistent with their police power and case law, are free to adopt local ordinances creating such a duty of care. The courts have determined that these types of ordinances do not conflict with the California Tort Claims Act because they do not attempt to shift liability from the cities to the abutting property owner.

The ordinance provides strong incentive for property owners to make sure their sidewalks are

in good condition and repair any defects, because they would be liable if someone is injured.

In 1941, the State of California enacted Streets and Highways Code Section 5610, which states in part:

> "The owners of lots...fronting on any portion of a public street...shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience..."

Section 5610 describes a process whereby the designated Street Superintendent may notify a property owner to repair a damaged sidewalk. If repairs are not made, the Streets Superintendent can perform the work and, after a hearing held before City Council, a lien may be placed on the property for the cost of the repairs. Section 5610 is valuable insofar as it provides a financing mechanism for the repair and maintenance of damaged sidewalk areas.

However, Section 5610 does not change the common law as it pertains to liability for personal injuries occurring on a sidewalk. For many years, cities throughout California assumed the section allowed cities to transfer liability to property owners. It does not. It imposes a duty on the part of the property owner to the city to maintain a sidewalk. It does not impose liability on the property owner should someone be injured on that sidewalk. The City of San Jose's experience changed that incorrect assumption.

Through a series of court cases, the City of San Jose learned that liability cannot be imposed on property owners via Streets and Highways Code Section 5610. Liability can however be imposed through adoption of a properly worded ordinance. The City of San Jose therefore designed, and in April 1990 adopted, a sidewalk repair and maintenance ordinance.

The ordinance expressly provides that property owners owe a duty of care to members of the public to keep and maintain sidewalk areas in a safe, non-dangerous condition. In December 2004, the California Appellate Sixth District Court upheld the validity of San Jose's ordinance finding in part that the imposition of a duty of care on an abutting landowner serves an important public purpose by providing property owners with an incentive to maintain the sidewalks adjacent to their property in a safe condition. The court's ruling that the ordinance is valid - in effect, makes it an even stronger tool for use by cities throughout California.

The court further held that San Jose's ordinance does not absolve the city of responsibility for dangerous conditions on a public sidewalk, rather, it provides an additional level of responsibility for the maintenance of safe sidewalks on the owner whose property is adjacent to and abuts the sidewalk. If, for example, a city were to receive actual notice, or in some instances constructive notice, of a truly dangerous condition and do nothing about it, then the city could still be deemed liable for a portion of the overall liability assessed. Nevertheless, the establishment of this ordinance does accomplish the following:

- The creation of the potential liability provides an additional incentive for property

owners to repair sidewalk areas. Property owners are in the best position to assess the condition of sidewalks on a day-to-day basis. Paying the relatively low cost of sidewalk repair today suddenly appears attractive when compared to the costs which might be presented by an injured pedestrian tomorrow.

- The existence of such an ordinance virtually ensures participation of the adjoining property owner's insurance carrier towards settlement of trip and fall claims.

For the foregoing reasons, your agency may want to consider adoption of a similar ordinance.

REFERENCE MATERIALS ATTACHED:

- Model Sidewalk Ordinance
- PERMA Pulse Newsletter Article

MODEL SIDEWALK ORDINANCE

14.16.2200 Maintenance and repair of sidewalks.

This section of the Streets and Highways Code begins at Section 5600. It provides an alternate procedure for performing maintenance and repair (not initial construction) of sidewalks. (Sections 5601 and 5602.) It requires adjacent property owners to maintain sidewalks, with provisions for notice by the City, and repair by the City if not done by the property owner, and collection of the cost of repairs.	A. Anything in this chapter to the contrary notwithstanding, the maintenance and repair of sidewalk areas and the making, confirming and collecting of assessments for the cost and expenses of said maintenance and repair may be done and the proceedings therefore may be had and taken in accordance with this part and the procedure therefore provided in Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state as the same is now in effect or may hereafter be amended. In the event of any conflict between the provisions of said Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state and this part, the provisions of this part shall control.
Describes property owners' maintenance responsibilities.	B. The owners of lots or portions of lots adjacent to or fronting on any portion of a sidewalk area between the property line of the lots and the street line, including parking strips, sidewalks, curbs and gutters, and persons in possession of such lots by virtue of any permit or right shall repair and maintain such sidewalk areas and pay the costs and expenses therefore, including a charge for the City's cost of inspection and administration whenever the City awards a contract for such maintenance and repair and including the costs of collection of assessments for the costs of maintenance and repair and under subsection A of this section or handling of any lien placed on the property due to failure of the property owner to promptly pay such assessments.
Defines maintenance and repair.	C. For the purposes of this part, maintenance and repair of sidewalk area shall include, but not be limited to, maintenance and repair of surfaces including grinding, removal and replacement of sidewalks, repair and maintenance of curb and gutters,

	removal and filling or replacement of parking strips, removal of weeds and/or debris, supervision and maintenance of signs, tree root pruning and installing root barriers, trimming of shrubs and/or ground cover and trimming shrubs and/or ground cover within the area between the property line of the adjacent property and the street pavement line, including parking strips and curbs, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of said sidewalk areas.
Allows 2-week commencement period to be extended by 90 days.	D. Notwithstanding the provisions of Section 5614 of the state Streets and Highways Code, the director of streets and parks may in his or her discretion, and for sufficient causes, extend the period within which required maintenance and repair of sidewalk areas must commence by a period of not to exceed ninety days from the time the notice referred to in said Section 5614 is given.

14.16.2205 Liability for injuries to public.

Makes the property owners liable to injured persons if the sidewalk is not maintained in a safe condition.	The property owner(s) required by Section 14.16.2200 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a nondangerous condition as required by Section 14.16.2200, any person suffers injury or damage to person or property, the property owner(s) shall be liable to such person for the resulting damages or injury.

14.16.2206 Indemnity.

Extends property owners duty to defend and indemnify City against claims by injured parties. This shifts much of the risk of loss to the property owners and their insurers.	*If it is claimed that the City is liable for injury or damage to person or property because of an unsafe or dangerous condition of a sidewalk area, the property owner(s) required by Section 14.16.2200 to maintain and repair that sidewalk area shall owe 100% indemnity and defense to the City in regards to such claims, unless it is proved that the City was actively negligent, in which case the property owner's duty to defend and indemnify the City shall be apportioned equitably. Nothing in this section shall reduce the liability of the property owner under Section 14.16.2205 or reduce the City's liability to an injured person.*

\PERMA\general\\Sidewalk ordinance.doc

CLAIMS CORNER

By: Dennis Molloy

Sidewalk Duty - Public Entity & Adjacent Property Owner Liability

In Gonzales v. City of San Jose (2004) 125 CA4 1127, the 6th Appellate Division considered whether an Ordinance enacted to impose a duty on adjacent landowners to pedestrians injured as a result of dangerous conditions on public sidewalks was preempted or conflicted by any similar state law applicable to the public entity.

In May 2000, Joanne Gonzales, was injured in a fall over a rise in a sidewalk on 7th Street in San Jose, adjacent to a commercial building located at 301 East Santa Clara Street. In May 2001, Gonzales filed a complaint against the City of San Jose and the owner of the commercial building, Charles Huang. The complaint alleged that San Jose "owned the public property on which a dangerous condition existed, " and that Huang "negligently owned, maintained, managed and operated" the sidewalk.

Huang filed a motion for summary judgment, asserting that he had no liability because the injuries claimed by Gonzales did not occur on his property, but on property owned by San Jose, and thus there was no duty owed by him to Gonzales. In addition, he claimed that San Jose Municipal Code § 14.16.2205, which makes a landowner liable to third parties who are injured as a result of dangerous conditions on city owned sidewalks, was unconstitutional.

The trial court found for Huang, ruling that San Jose Municipal Code § 14.16.2205 was unconstitutional, because only the State of California has authority to make laws establishing liability for torts occurring on public property (California Tort Claims Act).

Gonzales and the City of San Jose appealed. The issues presented on appeal were whether state law preempts an ordinance (here San Jose Municipal Code § 14.16.2205), enacted to mandate that an adjacent landowner may be liable to third parties that are injured on a defective city owned sidewalk; and whether, even in the absence of a municipal code section mandating liability, an adjacent landowner has a common law duty to the third party who may be injured on a city owned sidewalk.

On the question of preemption, the court held that San Jose Municipal Code § 14.16.2205, and its imposition of a duty of care on an abutting landowner, does not conflict with the state law imposition of liability on owners of public property for dangerous conditions as set forth within the Tort Claims Act and does not serve to absolve San Jose of liability; nor are any of the several criteria for implied preemptive intent present in either the Act or the enactment of the ordinance. Moreover, the ordinance is silent on the liability of adjacent property owners to San Jose, or San Jose's liability to injured pedestrians, only addressing the property owner's liability to third persons. Hence, the San Jose City Ordinance is not preempted by state law, and, in fact, serves an important public purpose in providing an additional level of responsibility for the maintenance of safe sidewalks on the owners whose property is adjacent to and abuts the sidewalk.

The court further concluded that since it found that San Jose Municipal Code § 14.16.2205 was constitutional, and imposed a duty to third persons using the public sidewalk, the question of common law duty by adjacent property owners need not be addressed. However, the court pointed out that since the enactment does not alter San Jose's potential liability under the Tort Claims Act, that under the two laws both San Jose and the property owner could be held liable to a plaintiff injured as a result of a dangerous condition on a city owned sidewalk, Low v. City of

(Continued on page 12)

(Continued from page 10)

Sacramento (1970) 7 Cal.App.3d 826, 833. [city and private landowner may be joint or concurrent tortfeasors].

This case is important to establishing that a city may enact an ordinance imposing a duty on an adjacent landowner to third parties, to maintain sidewalks in clean, safe condition, so long as the ordinance does not effectively abrogate the city's own liability and thus create a conflict with existing state law.

Following is the City of San Jose's ordinance which was the subject of the appellate review, and which survived the constitutional challenge:

14.16.2200 Maintenance and repair of sidewalks.

A. Anything in this chapter to the contrary notwithstanding, the maintenance and repair of sidewalk areas and the making, confirming and collecting of assessments for the cost and expenses of said maintenance and repair may be done and the proceedings therefore may be had and taken in accordance with this part and the procedure therefore provided in Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state as the same is now in effect or may hereafter be amended. In the event of any conflict between the provisions of said Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state and this Part 17, the provisions of Part 17 shall control.

B. The owners of lots or portions of lots adjacent to or fronting on any portion of a sidewalk area between the property line of the lots and the street line, including parking strips, sidewalks, curbs and gutters, and persons in possession of such lots by virtue of any permit or right shall repair and maintain such sidewalk areas and pay the costs and expenses therefore, including a charge for the city of San Jose's cost of inspection and administration whenever the city awards a contract for such maintenance and repair and including the costs of collection of assessments for the costs of maintenance and repair under subsection A of this section or handling of any lien placed on the property due to failure of the property owner to promptly pay such assessments.

C. For the purposes of this part, maintenance and repair of sidewalk area shall include, but not be limited to, maintenance and repair of surfaces including grinding, removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal and filling or replacement of parking strips, removal of weeds and/or debris, supervision and maintenance of signs allowed pursuant to Section 23.04.340 and Section 23.04.830, tree root pruning and installing root barriers, trimming of shrubs and/or ground cover and trimming shrubs within the area between the property line of the adjacent property and the street pavement line, including parking strips and curbs, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of said sidewalk areas.

D. Notwithstanding the provisions of Section 5614 of the state Streets and Highways Code, the director of streets and parks may in his or her discretion, and for sufficient cause, extend the period within which required maintenance and repair of sidewalk areas must commence by a period of not to exceed ninety days from the time the notice referred to in said Section 5614 is given.

14.16.2205 Liability for injuries to public.

The property owner required by Section 14.16.2200 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a nondangerous condition as required by Section 14.16.220, any person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages or injury.

SCHEDULE OF PERMA MEETINGS

Executive Committee
February 2, 2006
March 2, 2006
April 6, 2006
May 4, 2006
June 1, 2006
July 6, 2006
September 7, 2006
October 5, 2006
November 2, 2006
December 7, 2006

Board of Directors
March 2, 2006
June 1, 2006
September 7, 2006
December 7, 2006

We're on the Web!
www.perma.dst.ca.us.

California Association of Joint Powers Authorities

DRAFT
FOR DISCUSSION ONLY
Hercules City Council
November 10, 2020

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES ADDING CHAPTER 5, TITLE 7 OF THE HERCULES MUNICIPAL CODE REGARDING SIDEWALK MAINTENANCE AND LIABILITY

WHEREAS, Sections 5600 *et seq.* of the California Streets and Highways Code requires the owners of property adjacent to public streets and rights-of-way to maintain the sidewalks adjacent to their property in a condition safe for members of the public; and

WHEREAS, failure to maintain sidewalks in a safe condition creates a safety hazard that can cause serious injury to persons and property; and

WHEREAS, property owners are in the best position to know when an adjacent sidewalk is in need of repair; and

WHEREAS, the network of sidewalks within Hercules is extensive, and the City does not have the ability to timely fix every sidewalk in need of repair; and

WHEREAS, Hercules is one of only two cities in Contra Costa County that does not have an ordinance requiring property owners be responsible for sidewalk maintenance; and

WHEREAS, the City Council desires to amend the Hercules Municipal Code to ensure that public sidewalks are maintained in a condition that is safe for use by the general public.

NOW, THEREFORE, the City Council of the City of Hercules does ordain as follows:

Section 1. Recitals.
The above recitals are true and correct and made a part of this Ordinance.

Section 2. Municipal Code Amendment.
Title 7, Chapter 5, "Sidewalk Maintenance" is hereby added to the Municipal Code to read as follows

CHAPTER 7.5 SIDEWALK MAINTENANCE

7-5.010 Definitions
7-5.020 Maintenance and Repair of Sidewalks
7-5.030 Duty to Public
7-5.040 Repair by City
7-5.050 Exceptions
7-5.060 Enforcement

7-5.010 DEFINITIONS

"City" means the City of Hercules.

"Director" means the Public Works Director of the City of Hercules or his or her designee.

"Sidewalk" shall have the same meaning as in Streets and Highways Code Section 5600, as that section is amended or renumbered from time to time, with the exception of Parking Strips.

"Parking Strip" shall be defined as the area between the sidewalk and the street line sometimes referred to as the "planting strip" or "landscape strip."

7-5.020 MAINTENANCE AND REPAIR OF SIDEWALKS

The owner of a parcel of real property adjacent to any sidewalk in the City shall repair and replace such sidewalk as necessary to maintain the sidewalk in a safe and non-dangerous condition. Any encroachment permit fee imposed on a sidewalk repair initiated by the property owner pursuant to this chapter will be waived for one year following adoption of this ordinance.

7-5.030 DUTY TO PUBLIC

The owner of a parcel of real property in the City is under a duty to members of the public to keep the portion of any sidewalk area described in Chapter in a safe and non- dangerous condition. An owner who fails to fulfill the duties imposed by this Section is liable to members of the public injured as a result of that negligence. The City shall not be liable for an injury caused by the negligence of a property owner.

7-5.040 REPAIR BY CITY

If the City becomes aware that a portion of the sidewalk needs repair or endangers the public's use of such sidewalk, the Public Works Director, or his or her designee, may notify the owner of the adjacent property that such sidewalk needs repair in the manner provided for in Streets and Highways Code Sections 5600 *et seq*. If the owner does not repair the sidewalk within 30 days, or within such other period of time provided by the Director in writing, the City may repair the sidewalk and recover the costs of such repair from the property owner in the same manner as provided for by the abatement and lien procedures in Title 4, Chapter 10 of this code.

7-5.050 EXCEPTIONS

An adjacent property owner is not responsible for sidewalk damage and repair if the damage is caused by the action of the City, or its officials and employees, and the property owner has notified the Director in writing of the damage or defects in the sidewalk.

7-5.060 ENFORCEMENT

A. Any violation of this Chapter shall be subject to administrative enforcement pursuant to Title 1, Chapter 4 and/or nuisance abatement pursuant to Title 4, Chapter 10.

Commented [PT1]: Decision Point: Should adjacent property owners also be required to maintain Parking Strips?

Commented [PT2]: Decision Point: Provide a period of time waiving encroachment fees for sidewalk repairs to encourage proactive repair of damaged sidewalks by adjacent property owners? If so, for what period of time?

Commented [PT3]: Decision Point: State law allows a city to make the adjacent property owner responsible for sidewalk repair even when the damage is a result of the City, for instance if the roots of a city maintained tree is the cause of the sidewalk damage. This is a policy question: some cities impose the sidewalk repair obligation on the adjacent property owner even when it is a city tree responsible for the sidewalk damage, reasoning that the property owner receives the benefit of the tree (beautification, shade, increased property value, etc.) and should thus also shoulder the responsibility of tree maintenance. Some cities split the cost with the property owner when a city tree causes the sidewalk damage, while other cities cover all of the cost of repair when it can be determined that the city tree caused the sidewalk damage.

B. The City may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.

Section 3. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Hercules hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. California Environmental Quality Act ("CEQA").

Pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines, this Ordinance is exempt from CEQA based on the general rule set forth in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This Ordinance incorporates an existing obligation of property owners under California law to maintain and repair adjacent sidewalks; thus, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

Section 5. Effective Date.

In accordance with California Government Code Section 36937, this Ordinance shall take effect and be in force on the thirty-first day after adoption.

Section 6. Publication.

Within fifteen days after the passage of this Ordinance the City Clerk shall cause this Ordinance or a summary thereof to be published or to be posted in at least three public places in the City of Hercules in accordance with the requirements of California Government Code Section 36933.

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 26, 2021

TO: Members of the City Council

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

SUBJECT: Water Consumption Review

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

FISCAL IMPACT OF RECOMMENDATION: None as direct result of this item. Water used for landscape irrigation is a significant cost item, especially for the City's Landscape & Lighting Assessment Districts. Efforts to conserve water may result in reduced expenditures, though some investment in upgraded irrigation systems and controllers may be necessary to achieve savings.

DISCUSSION: The City Council requested an opportunity to discuss water consumption at a future meeting and this report has been prepared to provide some basic information to facilitate that initial discussion.

Attached is a summary of water cost by fund dating back to the 2013/14 fiscal year through 2019/20 (Attachment 1). While there are some facility related water costs in the General Fund, and some in the Facility Maintenance Fund, 92.4% of FY 2019/20 water costs were incurred in the City's Landscape & Lighting Assessment Districts including the Arterial Roadways. The vast majority of these costs relate to landscape irrigation.

If you use the FY 2013/14 as a base from which to launch this review, total water costs increased in the 14/15 year, followed by two years with significant decreases. This was due to the imposition by the State of California of severe watering restrictions due to the drought. And while water consumption did decrease, it was at a cost through the loss of landscape material and plants. In the 2017/18 fiscal year, we saw a return to more normal levels of irrigation, though that did include one anomaly which was a significant leak in the pool at the community center. As such, we saw a reduction in cost the following year, with an increase in costs for 19/20 fiscal year.

Overall, from the 2013/14 fiscal year to the 2019/20 fiscal year, the City saw water costs increase by 57.4%.

For comparison purposes, over this same time, the following water rate increases were imposed by East Bay MUD:

Fiscal Year	Percentage Increase
11/12	6%
12/13	6%
13/14	9.75%
14/15	9.5%
15/16	8%
16/17	7%
17/18	9.25%
18/19	9%
19/20	6.5%
20/21	6.25%

The compounded total increase in water rates by East Bay MUD over the 2013/14 to 2019/20 comparison period was 87%, with the City's cost increases over that same period having been lower.

City staff also requested consumption records from East Bay MUD for each of the years for which we have provided annual costs in Attachment 1. That information has been reviewed and reconciles with the cost data.

Several additional factors play into the City's ability to manage its water consumption in regard to irrigation.

- The irrigation system is mostly manual with over 150 values and controllers;
- There are no moisture sensing features in our mostly manual existing system to assist in managing consumption;
- Water is manually shut off once in the fall and is manually turned on again once in the spring based on when the rainy season starts and ends and this may impact annual costs;
- When lawns are fertilized, lawns are overwatered to avoid burning;
- The City participates in the EBMUD water conservation program and our landscape contractor receives consumption alerts designed to assist in identifying when there may be a leak.

In addition, on occasion, staff does consult with East Bay MUD on new conservation opportunities.

Staff is available to provide additional information during the City Council's discussion of water consumption and opportunities to address any concerns which the City Council may have.

ATTACHMENTS:

1. Water Costs 13/14 to 19/20

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 ☐ No ☐			

City of Hercules
Water Charges
FY 13-14 to FY 19-20

Fund #	Description	FY 13-14	FY 14-15	FY 15-16	FY 16-17	FY 17-18	FY 18-19	FY 19-20
100	General Fund - Parks & Recreation - Facility Rentals	394	365	177	231	341	259	256
100	General Fund - Parks & Recreation - Child Care - Lupine	798	741	358	468	692	526	519
100	General Fund - Parks & Recreation - Swim Center	36,100	33,502	16,202	21,171	31,316	23,788	23,468
	Subtotal, General Fund	**37,292**	**34,608**	**16,737**	**21,870**	**32,349**	**24,573**	**24,243**
220	Landscaping & Lighting Assessment District No. 83-2 Zone 10	98,839	131,346	93,175	72,651	100,717	117,475	139,688
221	Landscaping & Lighting Assessment District (Victoria by the Bay) No. 2002-1	98,853	121,250	95,438	113,155	158,674	142,495	191,623
222	Landscaping & Lighting Assessment District (Hercules Village) No. 2002-2	33,667	50,158	30,768	28,231	41,899	38,872	48,165
223	Landscaping & Lighting Assessment District (Baywood) No. 2004-1	28,678	33,176	16,953	9,883	22,904	21,241	33,183
224	Landscaping & Lighting Assessment District (Bayside) No. 2005-1	24,630	7,878	9,874	16,954	29,317	5,270	8,508
225	Arterial Roadways	-	-	-	-	51,948	140,537	182,262
232	Landscaping & Lighting Assessment District No. 83-2 Zone 1	952	958	2,674	1,822	2,373	3,830	4,077
233	Landscaping & Lighting Assessment District No. 83-2 Zone 2	12,760	16,829	14,188	11,987	20,058	1,075	1,468
234	Landscaping & Lighting Assessment District No. 83-2 Zone 3&4	4,514	5,820	4,817	5,396	6,549	7,275	7,967
235	Landscaping & Lighting Assessment District No. 83-2 Zone 5A	9,804	13,369	13,793	10,034	15,783	15,307	22,458
236	Landscaping & Lighting Assessment District No. 83-2 Zone 5B	24,438	28,012	18,830	7,469	6,802	-	-
237	Landscaping & Lighting Assessment District No. 83-2 Zone 5C	10,011	3,241	3,691	20,231	15,161	-	-
238	Landscaping & Lighting Assessment District No. 83-2 Zone 6	-	-	180	1,210	3,537	1,663	1,523
239	Landscaping & Lighting Assessment District No. 83-2 Zone 7	4,392	4,458	7,227	8,374	11,281	-	-
251	Landscaping & Lighting Assessment District No. 83-2 Zone 8	12,213	15,895	20,447	26,491	30,646	8,966	13,847
253	Landscaping & Lighting Assessment District No. 83-2 Zone 9	4,405	4,107	9,566	17,299	24,607	1,333	1,418
470	Facility Maintenance	45,523	42,247	20,431	26,697	39,490	29,997	29,594
	Total, All Funds	**450,971**	**513,352**	**378,788**	**399,754**	**614,095**	**559,909**	**710,024**

REPORT TO THE CITY COUNCIL

DATE: Meeting of January 26, 2021

TO: Members of the City Council

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

SUBJECT: Update on Smoking Ordinance Restrictions for Multi-Unit Residence Comprised of Ten (10) Or More Units

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

DISCUSSION:

At the City Council meeting of January 12, 2021, the City Council agreed to agendize for discussion at a future meeting an update on the City's non-smoking ordinance as it relates to smoking in Multi-Family housing with ten or more units.

On May 14, 2019, the City Council gave final approval to and adopted amendments to the City's non-smoking ordinance which added restrictions for multi-family units in buildings with 10 or more units. The staff reports from the initial consideration and final adoption of these amendments are provided as Attachment 1.

To allow for a period of notification and given that the impacted properties were typically condominiums with individual owners, these expanded restrictions did not take effect until July 1, 2020. After the effective date, staff sent notification to all impacted units and the Homeowners Associations in which these units were located. These letters are included as Attachment 2. In October 2020, Staff identified and mailed notices to over 450 owners and tenants of buildings with 10 or more units in the Devonwood, Glenwood, and Railroad Avenue live–work communities.

At the time the ordinance amendments were considered and adopted by the City Council, while the importance of promoting a smoke free environment was recognized, staff and the staff reports indicated that without a dedicated code enforcement unit the City would not have the capacity to enforce the ordinance. That continues to be the case. Hence, while we have been providing residents with information and resources, we have noted that the primary enforcement mechanism is the private enforcement action provisions in the ordinance:

"(f) Notwithstanding any other provision of this Chapter, an employee or private citizen may bring legal action to enforce this Chapter.

(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 Chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction." Hercules Smokefree Ordinance, Secs. 5-6.116(f-g).

By inclusion of the above quoted provisions, the ordinance creates a private cause of action for those affected by second hand smoke in residential units covered under the ordinance. This means that the affected persons can pursue a remedy through their homeowner's association, or in court by suing the responsible parties directly for injunctive relief, or in the alternative seeking monetary damages in small claims court or superior court.

The City has also recently updated information on the resources available regarding smoking and the smoking ban on the City's web site:

https://www.ci.hercules.ca.us/government/building/code-enforcement/smoking-prohibitions

ATTACHMENTS:

1: Staff Reports

2: Notification Letters

3: City of Hercules Smokefree Ordinance

REPORT TO THE CITY COUNCIL

DATE: Meeting of May 14, 2019

TO: Members of the City Council

SUBMITTED BY: J. Patrick Tang, City Attorney

David Biggs, City Manager

SUBJECT: Consider Adopting Additional Restrictions To Limit Smoking In Common Areas Of Multi-Unit Residences, And to Prohibit Smoking Inside Dwelling Units In Any Multi-Unit Residence Comprised Of Ten (10) Or More Units

RECOMMENDED ACTION:

Waive the second reading, and adopt an ordinance to establish additional restrictions on smoking in common areas of multi-unit residences, and to prohibit smoking inside dwelling units in any multi-unit residence comprised of ten (10) or more units.

BACKGROUND:

On July 24, 2018, the City Council had a preliminary discussion about the desirability of restricting smoking in multi-family units. In a follow up meeting on March 26, 2019, after hearing public comment and after discussion of the proposal, the Council directed staff and the City Attorney to prepare a draft ordinance for the Council's consideration that would prohibit smoking within multi-family housing units when there are ten or more units in the development. The prior staff reports are provided as Attachment 1, and the draft Ordinance is provided as Attachment 2.

The City contracts with the County for animal control services, plan check and building inspection services, and some limited code enforcement. If adopted, smoking enforcement would not be part of the contract services currently provided by the County. The County's Health Services has expressed a willingness to serve as a resource, but would not be able to provide actual enforcement services unless contracted to do so with the City required to reimburse the County for services provided. As such, City staff has expressed concern 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. In response to this concern, the Council at its March 26, 2019 meeting directed staff to draft an ordinance that would restrict smoking in multi-unit housing when there are ten or more units.

DISCUSSION:

Prohibition on Smoking in Multi-unit Housing with ten or more units. 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. A number of jurisdictions have enacted legislation in an attempt to limit the effects of second hand smoke in public, the workplace, and in residential settings.

The proposed changes to the City's existing Smokefree Ordinance are modelled after the restrictions adopted by the Contra Costa County Board of Supervisors in 2018 to address the effects of second hand smoke in residential settings within the County's jurisdiction. The pertinent provisions from the County's ordinance have been added to the City's existing ordinance, and are indicated by redline and strikeout in Attachment 2. The primary distinction is that the City's restrictions would apply only to residences in multi-unit complexes containing ten or more units.

The draft ordinance if adopted would require multi-unit housing of ten or more units to be smoke-free starting July 1, 2019. This will require that leases and rental agreements reflect the new requirements as follows:

- Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence of ten or more units that is entered into, renewed, or continued month-to-month must include that smoking is prohibited within those dwelling units starting July 1, 2019.

- Every existing lease of a dwelling unit in multi-unit housing of ten or more units that specifically allows smoking must contain a clause stating that smoking is prohibited when the lease is renewed, or no later than July 1, 2019, whichever is earliest.

Additional Restrictions on Smoking in Common Areas. The City's Smokefree Ordinance already prohibits smoking in common areas of all multi-unit residences regardless of the number of units, as follows:

> "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 twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited." (HMC Section 5-6.109(k)).

The draft ordinance would amend Section 5-6.109(k) to incorporate additional County restrictions that prohibit designating a common area a "smoking area" when primarily used by children, and to require that the perimeter of a designated "smoking area" be marked clearly and identified with signage:

> "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 twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited. **A designated smoking area of an outdoor common area of a multi-unit residence must not include areas used primarily by children; must have a clearly marked perimeter; and must be identified by conspicuous signs**."

ATTACHMENTS:

1: March 26, 2019 and July 24, 2018 Staff Reports to Council.

2: Draft of Proposed Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES AMENDING THE HERCULES MUNICIPAL CODE, ARTICLE 5, CHAPTER 6, KNOWN AS THE CITY OF HERCULES SMOKEFREE ORDINANCE, TO ADD ADDITIONAL RESTRICTIONS TO LIMIT SMOKING IN COMMON AREAS OF MULTI-UNIT RESIDENCES, AND PROHIBIT SMOKING INSIDE DWELLING UNITS IN ANY MULTI-UNIT RESIDENCE COMPRISED OF TEN (10) OR MORE UNITS

Whereas, exposure to Secondhand Smoke (SHS) is linked to many illnesses, including lung cancer and heart disease; and

Whereas, among children, SHS is also associated with serious respiratory problems, including asthma, pneumonia and bronchitis, sudden infant death syndrome, and low-birth weight; and

Whereas scientific studies from CAL-EPA (California Environmental Protection Agency, 2006) and the Surgeon General's Reports (2006 and 2010) clearly show that secondhand smoke is a health risk.

Now, therefore, be it ordained by the City Council of the City of Hercules that the Hercules Municipal Code, Article 5, Chapter 6, is amended to read as follows:

Chapter 6. Ordinance Prohibiting Smoking in All Workplaces and Public Places

Sec. 5-6.101. Title.

This Chapter shall be known as the City of Hercules Smokefree Ordinance. (Ord. 508 § 1 (part), 2018)

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, two

million five hundred thousand (2,500,000) 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 fifty-three thousand (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 twenty-five percent (25%) to fifty percent (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. Nonsmokers who spend six (6) 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 ten billion dollars ($10,000,000,000) a year: five billion dollars ($5,000,000,000) in estimated medical costs associated with secondhand smoke exposure and four billion, six hundred million dollars ($4,600,000,000) 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 9, 2016, California became the second state to change its tobacco minimum-age sales law to twenty-one (21) years old for tobacco, e-cigarettes and vaping products. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.103 Definitions.
The following words and phrases, whenever used in this Chapter, 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 nonprofit entity.

(e) “Employer” means a person, business, partnership, association, corporation, including a municipal corporation, trust, or nonprofit entity that employs the services of one (1) or more individual persons.

(f) “Enclosed area” means all space between a floor and a ceiling that is bounded on at least two (2) 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) "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 is not a multi-unit residence for purposes of this Chapter.

(j) "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.

(~~i~~**k**) "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~~**l**) "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~~**m**) "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~~**n**) "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~~**o**) "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~~p) “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~~q) “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~~r) “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~~s) “Shopping mall” means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

(~~r~~t) “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~~u) “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 Chapter. “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 twenty-five (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~~v) “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. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.104 Application of Chapter 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 Chapter. (Ord. 508 § 1 (part), 2018)

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 nonprofit 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. (Ord. 508 § 1 (part), 2018)

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 the ordinance codified in this Chapter and to all prospective employees upon their application for employment. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.107 Prohibition of Smoking in Private Clubs.
Smoking shall be prohibited in all private clubs. (Ord. 508 § 1 (part), 2018)

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. (Ord. 508 § 1 (part), 2018)

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 twenty-five (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 twenty-five (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 twenty-five (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 twenty-five (25) feet of, all outdoor playgrounds.

(h) In, and within twenty-five (25) feet of, all outdoor public events.

(i) In, and within twenty-five (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 twenty-five (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 twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited. **A designated smoking area of an outdoor common area of a multi-unit residence must not include areas used primarily by children; must have a clearly marked perimeter; and must be identified by conspicuous signs.**

(l) All dwelling units in any multi-unit residence comprised of ten (10) or more units except as otherwise provided in Section 5-6.105.

Sec. 5-6.105 Exceptions.

(a) Smoking is permitted at any location within the city unless otherwise prohibited by this code or by state or federal law.

(b) If a dwelling unit in a multi-unit residence comprised of ten (10) or more units 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 5-6.114———.

(c) If a dwelling unit in a multi-unit residence comprised of ten (10) or more units is owner-occupied, smoking is permitted in the owner-occupied dwelling unit until July 1, 2020.

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 (2) 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 the ordinance codified in this Chapter and to all prospective City employees upon their application for employment. (Ord. 508 § 1 (part), 2018)

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 three hundred (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 five hundred (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 twenty-one (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 twenty-one (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 twenty-one (21) years of age. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.112 Where Smoking Not Regulated.
Notwithstanding any other provision of this Chapter to the contrary, smoking shall not be prohibited in private residences, unless used as a childcare, adult day care, or health care facility. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.113 Posting of Signs, Disclosure of Complaint Policy, 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 Chapter 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 Chapter at least one (1) 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 Chapter, except for ashtrays displayed for sale and not for use on the premises. (Ord. 508 § 1 (part), 2018)

(e) 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.

(f) In a multi-unit residence where units are rented or leased to tenants, the owner and manager of the residence shall disclose whether a policy for handling smoking complaints is in effect at the multi-unit residence, and if so, shall provide a copy of that policy to each tenant along with every new lease or rental agreement for the occupancy of a unit in the multi-unit residence.

Sec. 5-6.114 Required Lease Terms.

(a) Commencing July 1, 2019, every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence comprised of ten (10) or more units that is

entered into, renewed, or continued month-to-month must include the terms specified in subsection (b) on the earliest possible date allowed by law after providing any required legal notice.

(b) Required Terms.

(1) A clause stating that smoking is prohibited in all dwelling units in a multi-unit residence comprised of ten (10) or more units must be included in the written agreements specified in subsection (a).

(2) A clause stating that it is a material breach of the lease or rental agreement to:

(i) Violate any law regarding smoking while on the premises;

(ii) Smoke in any dwelling unit in a multi-unit residence comprised of ten (10) or more units; or

(iii) Smoke in any multi-unit residence common area where smoking is prohibited, must be included in the written agreements specified in subsection (a).

(c) The California Apartment Association's Form 34.0, as amended from time to time, may be used to comply with this Section.

(d) A landlord's failure to enforce any smoking regulation of a lease or rental agreement on one or more occasions does not constitute a waiver of the lease or rental agreement provisions required by this Section and does not prevent 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.

Sec. 5-6.1145 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 Chapter or reports or attempts to prosecute a violation of this Chapter.

(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. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1156 Enforcement.

(a) This Chapter shall be enforced by the City Manager or an authorized designee.

(b) Notice of the provisions of this Chapter shall be given to all applicants for a business license in the City.

(c) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the City Manager or an authorized designee. Any citizen who desires to register a complaint under this Chapter 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 Chapter.

(e) An owner, manager, operator, or employee of an area regulated by this Chapter shall direct a person who is smoking in violation of this Chapter 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 Chapter, an employee or private citizen may bring legal action to enforce this Chapter.

(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 Chapter may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1167 Violations and Penalties.

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Chapter 1-4.

(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 Chapter shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Chapter 1-4.

(c) In addition to the fines established by this Section, violation of this Chapter 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 Chapter 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 Chapter occurs shall be considered a separate and distinct violation. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1178 Public Education.

The City Manager shall engage in a continuing program to explain and clarify the purposes and requirements of this Chapter 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 Chapter. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1189 Other Applicable Laws.

This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.11920 Construction.

This Chapter shall be broadly construed so as to further its purposes. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.1201 Severability.

If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable. (Ord. 508 § 1 (part), 2018)

Sec. 5-6.121~~1~~2 Declaration of Establishment or Outdoor Area as Nonsmoking.
Notwithstanding any other provision of this Chapter, 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. (Ord. 508 § 1 (part), 2018)

REPORT TO THE CITY COUNCIL

DATE: Meeting of April 23, 2019

TO: Members of the City Council

SUBMITTED BY: J. Patrick Tang, City Attorney

David Biggs, City Manager

SUBJECT: Consider Adopting Additional Restrictions To Limit Smoking In Common Areas Of Multi-Unit Residences, And to Prohibit Smoking Inside Dwelling Units In Any Multi-Unit Residence Comprised Of Ten (10) Or More Units

RECOMMENDED ACTION:

Conduct a public hearing, waive the first reading, and introduce an ordinance to adopt additional restrictions on smoking in common areas of multi-unit residences, and to prohibit smoking inside dwelling units in any multi-unit residence comprised of ten (10) or more units.

BACKGROUND:

On July 24, 2018, the City Council had a preliminary discussion about the desirability of restricting smoking in multi-family units. In a follow up meeting on March 26, 2019, after hearing public comment and after discussion of the proposal, the Council directed staff and the City Attorney to prepare a draft ordinance for the Council's consideration that would prohibit smoking within multi-family housing units when there are ten or more units in the development. The prior staff reports are provided as Attachment 1, and the draft Ordinance is provided as Attachment 2.

The City contracts with the County for animal control services, plan check and building inspection services, and some limited code enforcement. If adopted, smoking enforcement would not be part of the contract services currently provided by the County. The County's Health Services has expressed a willingness to serve as a resource, but would not be able to provide actual enforcement services unless contracted to do so with the City required to reimburse the County for services provided. As such, City staff has expressed concern 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. In response to this concern, the Council at its March 26, 2019 meeting directed staff to draft an ordinance that would restrict smoking in multi-unit housing when there are ten or more units.

DISCUSSION:

Prohibition on Smoking in Multi-unit Housing with ten or more units. 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. A number of jurisdictions have enacted legislation in an attempt to limit the effects of second hand smoke in public, the workplace, and in residential settings.

The proposed changes to the City's existing Smokefree Ordinance are modelled after the restrictions adopted by the Contra Costa County Board of Supervisors in 2018 to address the effects of second hand smoke in residential settings within the County's jurisdiction. The pertinent provisions from the County's ordinance have been added to the City's existing ordinance, and are indicated by redline and strikeout in Attachment 2. The primary distinction is that the City's restrictions would apply only to residences in multi-unit complexes containing ten or more units.

The draft ordinance if adopted would require multi-unit housing of ten or more units to be smoke-free starting July 1, 2019. This will require that leases and rental agreements reflect the new requirements as follows:

- Every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence of ten or more units that is entered into, renewed, or continued month-to-month must include that smoking is prohibited within those dwelling units starting July 1, 2019.

- Every existing lease of a dwelling unit in multi-unit housing of ten or more units that specifically allows smoking must contain a clause stating that smoking is prohibited when the lease is renewed, or no later than July 1, 2019, whichever is earliest.

Additional Restrictions on Smoking in Common Areas. The City's Smokefree Ordinance already prohibits smoking in common areas of all multi-unit residences regardless of the number of units, as follows:

> "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 twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited." (HMC Section 5-6.109(k)).

The draft ordinance would amend Section 5-6.109(k) to incorporate additional County restrictions that prohibit designating a common area a "smoking area" when primarily used by children, and to require that the perimeter of a designated "smoking area" be marked clearly and identified with signage:

> "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 twenty-five (25) feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited. **A designated smoking area of an outdoor common area of a multi-unit residence must not include areas used primarily by children; must have a clearly marked perimeter; and must be identified by conspicuous signs**."

ATTACHMENTS:

1: March 26, 2019 and July 24, 2018 Staff Reports to Council.

2: Draft of Proposed Ordinance.

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

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[10]

Chapter 445-2 - GENERAL PROVISIONS

Sections:

445-2.002 - Title.

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

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

445-2.004 - Purpose.

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

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

445-2.006 - Definitions.

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

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

(b) "Cigar" means any roll of tobacco other than a cigarette wrapped entirely

(j) "Menthol cigarettes" means cigarettes as defined by federal law, that have a flavor of menthol, mint, or wintergreen, including cigarettes advertised, label by the manufacturer as possessing a menthol characterizing flavor.

(k) "Multi-unit residence" means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached accessory dwelling unit permitted pursuant to Chapter 82-24 is not a multi-unit residence for purposes of this division.

(l) "Multi-unit residence common area" means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.

(m) "Place of employment" means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; hotels and motels, including all guest rooms; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children, or patients are present and during business hours. The places specified in subdivisions (e)(1), (2), (6), and (7) of Labor Code section 6404.5 are places of employment for the purposes of this division and are regulated as specified in this division. The places specified in subdivisions (e)(3), (4), and (5) of Labor Code section 6404.5 are not places of employment for the purposes of this division.

(n) "Public place" means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.

(o) "Self-service display" means the open display or storage of tobacco

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

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

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

Chapter 445-4 - SECONDHAND SMOKE

Sections:

445-4.002 - County facilities.

(a) Smoking is prohibited in all buildings, vehicles, and other enclosed areas occupied by county employees, owned or leased by the county, or otherwise operated by the county.

(b) Smoking is prohibited in all outdoor areas owned or leased by the county, including parking lots, the grounds of the county's hospital and health clinics, and the grounds of all other buildings owned or leased by the county.

(c) Smoking is prohibited on the grounds of the county's jails and county juvenile system facilities to the extent allowed by law.

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

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

445-4.004 - Prohibition of smoking.

provided in Section 445-4.006.

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

445-4.006 - Exceptions.

(a) Smoking is permitted at any location within the county unless otherwise prohibited by this code or by state or federal law.

(b) If a dwelling unit in a multi-unit residence is subject to a lease or other rental agreement and smoking is authorized under the lease or rental agreement, smoking is permitted in the dwelling unit until the lease or rental agreement is modified to prohibit smoking in accordance with Section 445-4.014.

(c) If a dwelling unit in a multi-unit residence is owner-occupied, smoking is permitted in the owner-occupied dwelling unit until July 1, 2019.

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

445-4.008 - Posting requirements.

"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), shall be conspicuously posted in every building or other place where smoking is regulated by this division by the owner, operator, manager or other person having control of the building or other place. This section does not require the posting of "No Smoking" signs inside or on the doorway of any dwelling unit in a multi-unit residence.

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

445-4.010 - Ashtray placement.

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

(Ord. No. 2009-26, § II, 10-20-09)

445-4.012 - Disclosure of smoking complaint policy.

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

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

(1) The landlord has fully complied with all provisions of this chapter; and

(2) Upon receiving a signed, written complaint regarding prohibited smoking, the landlord provides a warning to the offending tenant, stating that the tenant may be evicted if another complaint is received. Upon receiving a second signed, written compliant against the offending tenant, the landlord may evict the tenant, but is not liable for the failure to do so.

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

Chapter 445-6 - TOBACCO SALES[11]

Sections:

445-6.002 - Self-service displays.

(a) It is unlawful for any person or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by means of self-service display, vending machine, rack, counter-top or shelf that allows self-service sales for any tobacco product or tobacco paraphernalia.

(b) All tobacco products and tobacco paraphernalia shall be offered for sale exclusively by means of vendor or employee assistance. Tobacco products and tobacco paraphernalia shall be kept in a locked case that requires employee assistance to retrieve the tobacco products or tobacco paraphernalia.

(Ords. 2006-66 § 6, 98-43 § 2).

445-6.004 - Distribution of free samples and coupons.

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

(Ord. No. 2017-01, § VI, 7-18-17)

445-6.012 - Identification required.

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

(Ord. No. 2017-01, § VII, 7-18-17)

Chapter 445-8 - ENFORCEMENT

Sections:

445-8.002 - Compliance.

(a) A person may not smoke in any place where smoking is prohibited by this division.

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

(c) The presence or absence of the signs required by Section 445-4.008 is not a defense to the violation of any other provision of this division.

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

445-8.004 - Remedies.

445-10.002 - License requirement.

(a) It is unlawful for any retailer, individual, or entity to conduct tobacco retailing in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from Contra Costa County for each location where tobacco retailing is conducted.

(b) No tobacco retailer's license will be issued that:

(1) Authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

(2) Authorizes tobacco retailing in a pharmacy.

(3) Results in the total number of tobacco retailer's licenses in the unincorporated area of the county exceeding ninety.

(c) Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation.

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

445-10.004 - Enforcement of state law.

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

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

445-10.006 - Definitions.

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

(a) "Director" means the director of Contra Costa health services or his or her designee.

(b) "Drug paraphernalia" has the meaning set forth in California Health and

(a) Upon receipt of a completed application for a tobacco retailer's license, including payment of a fee pursuant to Section 445-10.012, the tax collector will issue a tobacco retailer's license, unless any of the following grounds for denial exist:

(1) The application is incomplete or inaccurate;

(2) The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect under Section 445-10.018;

(3) The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to Divisions 82 or 84 of this code.

(4) Failure to pay an outstanding fine.

(b) Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.

(c) The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of an application for change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.012 - License fee.

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

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.014 - Business license.

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

(d) Revocation Appeal. The decision of the public health director to revoke a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.

(e) Final Order. The tobacco retailer's license revocation becomes a final administrative order at one of the following times:

(1) On the date of the revocation hearing, if a tobacco retailer fails to appear at a scheduled revocation hearing;

(2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified;

(3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors;

(4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.018 - License suspension.

(a) Grounds for Suspension. A tobacco retailer's license may be suspended for any violation of this division, any state or federal tobacco-related laws, any state or federal law regulating controlled substances or drug paraphernalia, or any state or local law regulating advertising and signage on retailer's window space.

(b) Notice of Suspension Hearing. If any grounds for suspension exist, the director may issue a notice of suspension hearing. The notice of suspension hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:

(1) The date of the violation.

(2) On the date the public health director's decision is served, if a tobacco retaile 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).

CONTRA COSTA
HEALTH SERVICES

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

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

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

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

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

Smoking is also prohibited:

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

Smoking is permitted:

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

Compliance Information

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

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

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

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

Posting Signage Is Required By The Law

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

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

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

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

[help with PDF files]

Contra Costa County smoking ordinance now in effect

June 27, 2018

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

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

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

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

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

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

California Apartment Association

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

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

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

[https://caanet.org/contra-costa-county-smoking-ordinance-takes-effect-july-1/?share=twitter&nb=1]

[https://caanet.org/contra-costa-county-smoking-ordinance-takes-effect-july-1/?share=linkedin&nb=1]

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

Tagged: Smoking [https://caanet.org/news/?newscategory=154]

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

View comments (0) Leave a comment

California Apartment Association
980 Ninth Street, Suite 1430
Sacramento, CA 95814

toll free: 800-967-4222
fax: 877-999-7881
membership@caanet.org
[mailto:membership@caanet.org]

EQUAL HOUSING OPPORTUNITY

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

src=/program_offices/fair_housing_equal_opp]

ORDINANCE NO. 508

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

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

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

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

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

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

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

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

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

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

Sec. 5-6.101. Title
This Article shall be known as the City of Hercules Smokefree Ordinance.

Sec. 5-6.102. Findings and Intent

The City of Hercules does hereby find that:

(a) According to the 2010 U.S. Surgeon General's Report, *How Tobacco Smoke Causes Disease*, even occasional exposure to secondhand smoke is harmful and low levels of exposure to secondhand tobacco smoke lead to a rapid and sharp increase in dysfunction and inflammation of the lining of the blood vessels, which are implicated in heart attacks and stroke.

(b) According to the 2014 U.S. Surgeon General's Report, *The Health Consequences of Smoking—50 Years of Progress*, secondhand smoke exposure causes stroke in nonsmokers. The report also found that since the 1964 Surgeon General's Report on Smoking and Health, 2.5 million nonsmokers have died from diseases caused by tobacco smoke.

(c) Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution, and that breathing secondhand smoke (also known as environmental tobacco smoke) is a cause of disease in healthy nonsmokers, including heart disease, stroke, respiratory disease, and lung cancer. The National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of approximately 53,000 Americans annually.

(d) Based on a finding by the California Environmental Protection Agency in 2005, the California Air Resources Board has determined that secondhand smoke is a toxic air contaminant, finding that exposure to secondhand smoke has serious health effects, including low birth-weight babies; sudden infant death syndrome (SIDS); increased respiratory infections in children; asthma in children and adults; lung cancer, sinus cancer, and breast cancer in younger, premenopausal women; heart disease; and death.

(e) A significant amount of secondhand smoke exposure occurs in the workplace. Employees who work in smoke-filled businesses suffer a 25-50% higher risk of heart attack and higher rates of death from cardiovascular disease and cancer, as well as increased acute respiratory disease and measurable decrease in lung function.

(f) During periods of active smoking, peak and average outdoor tobacco smoke (OTS) levels measured in outdoor cafes and restaurant and bar patios near smokers rival indoor tobacco smoke concentrations.19 Nonsmokers who spend six-hour periods in outdoor smoking sections of bars and restaurants experience a significant increase in levels of cotinine when compared to the cotinine levels in a smokefree outdoor area.

(g) The dangers of residual tobacco contamination are present in hotels, even in nonsmoking rooms. Compared with hotels that are completely smokefree, surface nicotine and smoke is elevated in nonsmoking rooms of hotels that allow smoking. Hallway surfaces outside of smoking rooms also show higher levels of nicotine than those outside of nonsmoking rooms. Partial smoking restrictions in hotels do

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

(h) Unregulated high-tech smoking devices, commonly referred to as electronic cigarettes, or "e-cigarettes," closely resemble and purposefully mimic the act of smoking by having users inhale vaporized liquid nicotine created by heat through an electronic ignition system. Electronic cigarettes produce an aerosol or vapor of undetermined and potentially harmful substances, which may appear similar to the smoke emitted by traditional tobacco products. The World Health Organization (WHO) recommends that electronic smoking devices not be used indoors, especially in smokefree environments, in order to minimize the risk to bystanders of breathing in the aerosol emitted by the devices and to avoid undermining the enforcement of smokefree laws.

(i) Hookah smoke exposes users to many of the same toxicants found in cigarette smoke.

(j) The Society of Actuaries has determined that secondhand smoke costs the U.S. economy roughly $10 billion a year: $5 billion in estimated medical costs associated with secondhand smoke exposure and $4.6 billion in lost productivity.

(k) Numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smokefree.

(l) Creation of smokefree workplaces is sound economic policy and provides the maximum level of employee health and safety.

(m) On June 9th, 2016, California became the second state to change its tobacco minimum-age sales law to 21 years old for tobacco, e-cigarettes and vaping products.

Sec. 5-6.103. Definitions

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

(a) "Bar" means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of those beverages, including but not limited to, taverns, nightclubs, cocktail lounges, and cabarets.

(b) "Business" means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and

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

(c) "Electronic Smoking Device" means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person in any manner for the purpose of inhaling vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

(d) "Employee" means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.

(e) "Employer" means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.

(f) "Enclosed Area" means all space between a floor and a ceiling that is bounded on at least two sides by walls, doorways, or windows, whether open or closed. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent and whether or not containing openings of any kind.

(g) "Health Care Facility" means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, long-term care facilities, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, psychiatrists, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.

(h) "Hookah" means a water pipe and any associated products and devices which are used to produce fumes, smoke, and/or vapor from the burning of material including, but not limited to, tobacco, shisha, or other plant matter.

(i) "Place of Employment" means an area under the control of a public or private employer, including, but not limited to, work areas, private offices, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, hallways, construction sites, temporary offices, and vehicles. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.

(j) "Playground" means any park or recreational area designed in part to be used by children that has play or sports equipment installed or that has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds or on City grounds.

(k) "Private Club" means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

(l) "Public Event" means an event which is open to and may be attended by the general public, including but not limited to, such events as concerts, fairs, farmers' markets, festivals, parades, performances, and other exhibitions, regardless of any fee or age requirement.

(m) "Public Place" means an area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, gambling facilities, health care facilities, hotels and motels, laundromats, parking structures, public transportation vehicles and facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.

(n) "Recreational Area" means any public or private area open to the public for recreational purposes, whether or not any fee for admission is charged, including but not limited to, amusement parks, athletic fields, beaches, fairgrounds, gardens, golf courses, parks, plazas, skate parks, swimming pools, trails, and zoos.

(o) "Restaurant" means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.

(p) "Service Line" means an indoor or outdoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service

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

(q) "Shopping Mall" means an enclosed or unenclosed public walkway or hall area that serves to connect retail or professional establishments.

(r) "Smoke shop and tobacco store" means any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco paraphernalia; provided, however, that any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall not be defined as a "smoke shop and tobacco store" and shall not be subject to the restrictions in this chapter. **It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a person under the age of twenty-one (21) to enter or remain within any smoke shop and tobacco store or to make the purchase of tobacco products or tobacco related products, unless that person is U.S. Active Duty Military personnel over the age of eighteen (18) and is exempt under state law.**

(s) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. "Smoking" also includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Article. "Smoking" of hookahs as defined herein may be allowed by permit on a limited basis in outdoor areas of restaurant and bar establishments when the activity occurs 25 feet or more from other patrons, residences, schools, offices, businesses, or other public places, unless such use creates a nuisance or otherwise results in creation of a disturbance.

(t) "Sports Facility" means a place where people assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events, including sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and bowling alleys.

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

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

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

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

(a) Galleries, libraries, and museums.

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

(b) Bars.

(c) Bingo facilities.

(d) Child care and adult day care facilities.

(e) Convention facilities.

(f) Educational facilities, both public and private.

(g) Elevators.

(h) Gambling facilities.

(i) Health care facilities.

(j) Hotels and motels.

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

(l) Parking structures.

(m) Polling places.

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

(o) Restaurants.

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

(q) Retail stores.

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

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

(s) Service lines.

(t) Shopping malls.

(u) Sports facilities, including enclosed places in outdoor arenas.

(v) Theaters and other facilities primarily used for exhibiting motion pictures, stage dramas, lectures, musical recitals, or other similar performances.

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

(a) Smoking shall be prohibited in all enclosed areas of places of employment without exception. This includes, without limitation, common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

(b) This prohibition on smoking shall be communicated to all existing employees by the effective date of this Article and to all prospective employees upon their application for employment.

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

Smoking shall be prohibited in all private clubs.

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

Smoking shall be prohibited in the following enclosed residential facilities:

(a) All private and semi-private rooms in nursing homes.

(b) All hotel and motel guest rooms.

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

Smoking shall be prohibited in the following outdoor places:

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

(b) On all outdoor property that is adjacent to buildings owned, leased, or operated by the City and that is under the control of the City.

(c) In, and within 25 feet of, outdoor seating or serving areas of restaurants and bars.

(d) In outdoor shopping malls, including parking structures.

(e) In all outdoor arenas, stadiums, and amphitheaters. Smoking shall also be prohibited in, and within 25 feet of, bleachers and grandstands for use by spectators at sporting and other public events.

(f) In outdoor recreational areas, including parking lots.

(g) In, and within 25 feet of, all outdoor playgrounds.

(h) In, and within 25 feet of, all outdoor public events.

(i) In, and within 25 feet of, all outdoor public transportation stations, platforms, and shelters under the authority of the City.

(j) In all outdoor service lines, including lines in which service is obtained by persons in vehicles, such as service that is provided by bank tellers, parking lot attendants, and toll takers. In lines in which service is obtained by persons in vehicles, smoking is prohibited by both pedestrians and persons in vehicles, but only within 25 feet of the point of service.

(k) In outdoor common areas of apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities, except in designated smoking areas, not to exceed twenty-five percent (25%) of the total outdoor common area, which must be located at least 25 feet outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited.

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

(a) Smoking shall be prohibited in all outdoor places of employment where two or more employees are required to be in the course of their employment. This includes, without limitation, work areas, construction sites, and temporary offices such as trailers, restroom facilities, and vehicles.

(b) This prohibition on smoking shall be communicated to all existing City employees by the effective date of this Article and to all prospective City employees upon their application for employment.

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

(a) Smoke shops and tobacco stores wishing to operate within the City after the effective date of the ordinance codified in this chapter must obtain a conditional use permit (CUP). Smoke shops and tobacco stores that are legally existing on the effective date of the ordinance codified in this chapter may continue to operate as legal nonconforming uses and shall not be required to obtain a conditional use permit. However, any change or expansion of the legal nonconforming use may require compliance with this chapter and a conditional use permit.

(b) Smoke shops and tobacco stores shall not be located within 300 feet, measured property line to property line, from a school (public or private), family day care home, child care facility, youth center, community center, recreational facility, park, church, hospital, or other similar uses where children regularly gather.

(c) Smoke shops and tobacco stores shall not be located within 500 feet, measured property line to property line, from another smoke shop and tobacco store.

(d) It is unlawful for a smoke shop and tobacco store to knowingly allow or permit a person under the age of twenty-one (21) to enter or remain within any smoke shop and tobacco store **or to make the purchase of tobacco products or tobacco related products, unless that person is U.S. Active Duty Military personnel over the age of eighteen (18) and is exempt under state law.**

(e) Smoke shops and tobacco stores shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. The notice shall also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 21 years of age. The warning signs shall include a toll-free telephone number to the State Department of Public Health for persons to report unlawful sales of tobacco products to any person under 21 years of age.

Sec. 5-6.112. Where Smoking Not Regulated

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

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

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

(a) Clearly and conspicuously post "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) in that place.

(b) Clearly and conspicuously post at every entrance to that place a sign stating that smoking is prohibited or, in the case of outdoor places, clearly and conspicuously post "No Smoking" signs in appropriate locations as determined by the City Manager or an authorized designee.

(c) Clearly and conspicuously post on every vehicle that constitutes a place of employment under this Article at least one sign, visible from the exterior of the vehicle, stating that smoking is prohibited.

(d) Remove all ashtrays from any area where smoking is prohibited by this Article, except for ashtrays displayed for sale and not for use on the premises.

Sec. 5-6.114. Nonretaliation; Nonwaiver of Rights

(a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, customer, or resident of a multiple-unit residential facility because that employee, applicant, customer, or resident exercises any rights afforded by this Article or reports or attempts to prosecute a violation of this Article.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

Sec. 5-6.115. Enforcement

(a) This Article shall be enforced by the City Manager or an authorized designee.

(b) Notice of the provisions of this Article shall be given to all applicants for a business license in the City.

(c) Any citizen who desires to register a complaint under this Article may initiate enforcement with City Manager or an authorized designee. Any citizen who desires to register a complaint under this Article may initiate enforcement with the City Manager or an authorized designee.

(d) The Health Department, Fire Department, or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Article.

(e) An owner, manager, operator, or employee of an area regulated by this Article shall direct a person who is smoking in violation of this Article to extinguish or turn off the product being smoked. If the person does not stop smoking, the owner, manager, operator, or employee shall refuse service and shall immediately ask the person to leave the premises. If the person in violation refuses to leave the premises, the owner, manager, operator, or employee shall contact a law enforcement agency.

(f) Notwithstanding any other provision of this Article, an employee or private citizen may bring legal action to enforce this Article.

(g) In addition to the remedies provided by the provisions of this Section, the City Manager or any person aggrieved by the failure of the owner, operator, manager, or other person in control of a public place or a place of employment to comply with the provisions of this Article may apply for injunctive relief to enforce those provisions in any court of competent jurisdiction.

Sec. 5-6.116. Violations and Penalties

(a) A person who smokes in an area where smoking is prohibited by the provisions of this Article shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Article 1, Chapter 4 of this Code.

(b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Article shall be subject to the penalty provisions of this Code, including but not limited to administrative citations and/or infractions as specified in Article 1, Chapter 4 of this Code.

(c) In addition to the fines established by this Section, violation of this Article by a person who owns, manages, operates, or otherwise controls a public place or place of employment may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

(d) Violation of this Article is hereby declared to be a public nuisance, which may be abated by the City Attorney by restraining order, preliminary and permanent injunction, or other means provided for by law, and the City may take action to recover the costs of the nuisance abatement.

(e) Each day on which a violation of this Article occurs shall be considered a separate and distinct violation.

Sec. 5-6.117. Public Education

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

Sec. 5-6.118. Other Applicable Laws

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

Sec. 5-6.119. Construction

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

Sec. 5-7.120. Severability

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

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

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

SECTION 2. Publication and Effective Date.

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

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

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

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

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

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

AYES: Council Members: G. Boulanger, M. de Vera, R. Esquivias, Vice Mayor Romero, Mayor Kelley
NOES: None.
ABSENT: None.
ABSTAIN: None.

Chris Kelley, Mayor

CITY OF HERCULES INCORPORATED DEC. 15, 1900 CONTRA COSTA COUNTY, CALIFORNIA

Lori Martin, MMC
City Clerk

Community Development Department

October 7, 2020

Subject: Prohibition of Smoking in Enclosed Residential Facilities

Dear Owner/Occupant,

This letter is to notify you that our records indicate you own or occupy property that is subject to new smoking restrictions that took effect on July 1, 2020. Adopted by the City Council on April 23, 2019, Ordinance No. 520 prohibits smoking in all common areas and multi-unit residences with ten (10) or more units in Hercules, including—as of July 1, 2020—inside all owner-occupied dwelling units in a multi-unit residential building with ten (10) or more units. Additionally, smoking is prohibited within 25 feet of outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, to prevent smoke from entering those areas. (The Ordinance is part of the City's Municipal Code, which is available online at: https://www.codepublishing.com/CA/Hercules/#!/Hercules05/Hercules056.html.)

Compliance with this law is encouraged through signage and education. However, a person who smokes in an area where smoking is prohibited by the provisions of the City's Smoking Ordinance may be subject to the penalty provisions of the code, which also includes the right of a private enforcement action. In addition to the City's Smoking Ordinance, your homeowners' association may have additional rules and restrictions on smoking in the development.

For those wishing to quit smoking, the Contra Costa Tobacco Prevention Project provides information and resources at: https://cchealth.org/tobacco/
The Smokers' Helpline also provides free cessation services via phone to all California smokers at: 1-800-NO-BUTTS or https://www.nobutts.org/

If you have any questions about the City's smoking regulations, please feel free to contact me via the phone number and email listed below.

Sincerely,

Robert Reber, AICP
Community Development Director
510-799-8248
rreber@ci.hercules.ca.us

Community Development Department

October 7, 2020

Subject: Prohibition of Smoking in Enclosed Residential Facilities

Dear Property Manager,

This letter is to notify you that our records indicate you manage property that is subject to new smoking restrictions that took effect on July 1, 2020. Adopted by the City Council on April 23, 2019, Ordinance No. 520 prohibits smoking in all common areas and multi-unit residences with ten (10) or more units in Hercules, including—as of July 1, 2020—inside all owner-occupied dwelling units in a multi-unit residential building with ten (10) or more units. Additionally, smoking is prohibited within 25 feet of outside entrances, operable windows, and ventilation systems of enclosed areas where smoking is prohibited, to prevent smoke from entering those areas. (The Ordinance is part of the City's Municipal Code, which is available online at: https://www.codepublishing.com/CA/Hercules/#!/Hercules05/Hercules056.html.)

Compliance with this law is encouraged through signage and education. However, a person who smokes in an area where smoking is prohibited by the provisions of the City's Smoking Ordinance may be subject to the penalty provisions of the code, which also includes the right of a private enforcement action.

In addition to the City's Smoking Ordinance, your homeowners' association may have additional rules and restrictions on smoking in the development. If not, you may want to consider updating your associations' bylaws for consistency with the City's smoke-free ordinance, as this is the most effective way to eliminate secondhand smoke in your condo complex. You may also be able to restrict on-site smoking through nuisance provisions that may already exist in your bylaws. Making your building smoke-free is beneficial to you because it can reduce costs, risks, and liability associated with smoking, and is attractive to residents. (See the attached flyer, "How to Make a Condo Complex Smokefree.")

If you have any questions about the City's smoking regulations, please feel free to contact me via the phone number and email listed below.

Sincerely,

Robert Reber, AICP
Community Development Director
510-799-8248
rreber@ci.hercules.ca.us

STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 24, 2021

TO: Members of the City Council

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

SUBJECT: Possible Ordinance Imposing a Cap on Food Delivery Service Charges

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

FISCAL IMPACT OF RECOMMENDATION: None for this item. Development and consideration of a possible ordinance would require City Attorney time and expense, in addition to the cost to advertise any ordinance for public hearing. Additional costs could be incurred if City staff were to play a role in enforcement or if there were any type of legal challenge to the ordinance.

DISCUSSION: At the January 12, 2021, City Council meeting, the City Council agreed to have an initial discussion of a possible ordinance to impose a cap on food delivery charges. This item is being presented to provide some initial information to facilitate that requested discussion.

Whether Hercules could legally implement a cap on food delivery service charges as Berkeley and several other cities have done, it appears that most of the cities doing this are larger sized charter cities. However, the City Attorney did find that at least one general law city has enacted similar caps and the staff report from that city (Milpitas) is attached (Attachment 1).

While the City Attorney has not done any specific independent research, given the fact that several cities have adopted these measures, they must have concluded that the risk of a legal challenge from Doordash, Grubhub, and other service providers is not high. The Milpitas staff report recommended that their council stick to the same limits as those being adopted by other cities, to avoid possibly being singled out if the food delivery service providers decided to sue one or more cities.

Please also note the enforcement provision in the Milpitas scheme provides a cause of action for the restaurant owner to file a civil action against a food delivery service provider who violates the cap. There appears to be no enforcement role for the city and thus arguably no impact on city staff resources.

In addition, City Staff was contacted by the County to see if we would be supportive of the County sponsoring a countywide cap on third-party restaurant delivery fees. County staff advised that the incoming board chair, Supervisor Burgis, had identified this as an issue of concern. At this point, it has not been set for the full board's deliberation though the County Staff anticipates the Board asking County Counsel to prepare something to adopt relatively soon, presumably based on San Mateo's ordinance, but with the caveat that the services cannot add a new fee called "Contra Costa County fee" like Hayward has seen. County staff has committed to keeping us in the loop as their possible ordinance progresses.

ATTACHMENTS:

1. Milpitas Staff Report

CITY OF MILPITAS
AGENDA REPORT
(AR)

Item Title:	**Receive Staff Report and Consider Adopting Uncodified Urgency Ordinance No. 307 to Temporarily Limit Fees Charged by Third-party Food Delivery Service Providers to Help Local Restaurants During the COVID-19 Emergency**
Category:	Community Development
Meeting Date:	10/20/2020
Staff Contacts:	**Alex Andrade, 408-584-4036 and Nicole Inamine, 408-586-3045**
Recommendations:	1. Receive staff report on temporarily limiting fees charged by third-party food delivery service providers to help local restaurants during the COVID-19 emergency. 2. Following the City Attorney reading the title, move to waive the reading of Ordinance No. 307 and adopt Uncodified Urgency Ordinance No. 307 by a minimum 4/5 vote of the City Council, to be effective October 20, 2020.

Background:

To curb the spread of COVID-19, multiple Health Orders were issued by federal, state, and local governments to encourage residents to Shelter-in-Place and social distance. Milpitas City Manager, Steve McHarris, declared a State of Local Emergency in Milpitas due to COVID-19 on March 12, 2020. Effective March 16, 2020, Santa Clara County was among the first jurisdictions to enact a Shelter-in-Place Order, which prohibited many “non-essential” business operations from continuing, including indoor dining.

The City has undertaken various efforts to assist small businesses during the pandemic including, but not limited to, the Milpitas Microenterprise Grant Program, establishing a Virtual Business Assistance Center, Milpitas Small Business Spotlight Program, and using Constant Contact to inform business representatives of valuable business resources. The City also developed a Temporary Outdoor Dining Program consisting of registration and no-fee for restaurants to participate in outdoor dining.

Of the 225+ food establishments in Milpitas, approximately 75 have registered for the Temporary Outdoor Dining Program. On October 5, 2020, the County of Santa Clara issued a Revised Risk Reduction Order in compliance with the State of California’s Public Health Department’s promotion of the County into the Orange Tier as of October 13, 2020. While the County of Santa Clara enters a new phase of allowed business activity, the County will keep indoor dining levels in the Red Tier, which limits restaurants to 25% capacity or 100 customers, whichever is fewer. While restaurants are slowly expanding their services again, they have yet to return to pre-COVID-19 levels and are struggling to stay afloat. During the pandemic, restaurateurs have increased their use and reliance on third-party delivery services to remain viable during this difficult time. Restaurants partner with third-party food delivery services out of necessity to stay viable during COVID-19. This partnership can result in high fees that compromise the restaurants’ ability to retain sufficient profits.

Analysis:

For many restaurants prior to the COVID-19 pandemic, third-party delivery services had already been an established method for serving customers and as a supplemental revenue stream. The pandemic has forced restaurants to adapt to new restrictions placed on them, making thin margins even thinner. With the prohibition of indoor dining for the past seven months, until last week, and with approximately one-third of restaurants participating in the outdoor dining program, third-party food delivery services have become a significant source of

generating income. The most prominent third-party food delivery services are Uber Eats, Grubhub, and DoorDash. These companies charge varying fee structures to fund operational costs related to the following:

- Delivering food;
- Listing and marketing the restaurant on the third-party delivery service platform;
- Processing orders, including credit card processing fees; and
- General maintenance of the online platform.

Third-party food delivery service providers charge various rates for different options. For example, DoorDash has a variable commission rate depending on the various marketing services a restaurant may decide to utilize. In addition, Grubhub has charged 10% for listing restaurants on their website, 15% for delivery, and a range of prices for additional marketing services. Uber Eats has charged a flat rate commission of 30% that is inclusive of all three elements described above. Restaurateurs are often charged fees ranging from 20% to 30% per order, which is a considerable amount of a restaurant's profits. There are reports that some restaurants have experienced a net loss in profits because of high fees being charged. As such, the proposed temporary third-party food delivery service fee caps can protect restaurants during a time of heavy reliance and the pandemic.

Key Provisions of the Proposed Temporary Urgency Ordinance

Pursuant to Article XI, Section 7 of the California Constitution and California Government Code section 36937, the City Council has the authority to adopt an Urgency Ordinance as an emergency measure to promote stability and safe and healthy operations within the local restaurant sector during the pandemic. The adoption of the proposed Urgency Ordinance requires at least a four-fifths vote of the City Council. The proposed action will help to prevent avoidable business closures, ensure that jobs stay intact, and promote economic vitality within Milpitas. Furthermore, adoption of the Urgency Ordinance will help restaurants with limited bargaining power remain viable, enable the City to ensure continuity of essential food services for its residents, protect restaurants against predatory activity, and ensure that restaurants operate in a safe manner where social distancing can be maintained in accordance with guidance from the State and local health officials.

1) Why 15% and 10% specifically?

A 15% delivery fee cap was first enacted by the Cities of San Francisco and Santa Cruz in April 2020, followed by at least nine other Bay Area cities (Attachment B). Staff recommends a similar 15% fee cap on delivery orders to remain consistent with the precedent set by nearby cities, and the proposed cap would result in significantly less than the typical 30% fees currently charged to restaurants. In addition, the City of South San Francisco has enacted a 10% fee cap for non-delivery orders to further protect consumers. Staff proposes to add a similar 10% fee cap provision because non-delivery orders, defined as when the consumer places an order through a third-party app then picks up the food from the restaurant themselves, do not warrant the same level of service as delivery orders. Staff recognizes that third-party food delivery service providers must still cover operational and service costs, so 10% would be a reasonable middle ground for non-delivery orders.

2) Unlawful to Reduce Delivery Drivers' Compensation

The proposed Urgency Ordinance includes specific language prohibiting third-party service providers from shifting costs by reducing delivery drivers' compensation. Similar provisions have been included in other cities' ordinances and executive orders reviewed by staff.

3) Disclosure of All Charges

By receiving an itemized receipt for each order placed through a third-party service provider, restaurant owners can easily calculate that they have not been charged more than the 15% cap for delivery orders and 10% for non-delivery orders. If a restaurant finds that they have been overcharged, then they have recourse against the third-party food delivery service provider as explained in the following paragraph.

4) Enforcement

Under the proposed Urgency Ordinance, if a third-party food delivery service provider charges a fee greater than 15% of the online purchase order with delivery or greater than 10% of the online order for non-delivery, then the

restaurant owner may pursue civil action if the violation is not cured within 7 business days of the restaurant providing a written notice to the third-party delivery service provider. The restaurant may recover all actual damages resulting from a violation of the Ordinance and reasonable attorneys' fees and costs. Additionally, there is a grace period of 7 days, from October 20 to October 27, immediately following when the Urgency Ordinance takes effect, which allows third-party food delivery service providers the time to understand and make the necessary changes to their platforms to incorporate the terms of the Urgency Ordinance.

5) Temporary Urgency Ordinance

The proposed Urgency Ordinance will expire 90 days after the Milpitas City Council terminates the declared local emergency.

Third-party food delivery services continue to be an important platform for restaurants to remain open during the COVID-19 pandemic. However, high fees charged per order by third-party food delivery service providers make it even harder for restaurants to retain enough or any profits. The proposed temporary Urgency Ordinance will help local restaurants maximize their share of the profits and their chances of surviving this challenging time.

Policy Alternatives:

Alternative 1: The City Council could choose not to adopt the temporary Urgency Ordinance at this time.

Pros: Staff would to continue to conduct research on other best practices on helping restaurants through the pandemic.

Cons: Restaurants would continue to struggle by paying high third-party food service delivery fees, which may negatively affect businesses and potentially result in permanent closures.

Reason not recommended: Restaurants would continue to pay high commissions and fees to third-party food delivery service providers during a time when business owners must rely on food delivery and online ordering to be financially viable and comply with COVID-19 Health Orders.

Alternative 2: Adopt more restrictive third-party food service delivery fees than the proposed recommendation.

Pros: Restaurants would be given a better opportunity to maximize their profits and maximize their chances of surviving the pandemic.

Cons: More restrictive fees may result in third-party food delivery service providers reducing marketing and delivery services, which could lead to reduced order volume. A more restrictive ceiling than what other Bay Areas cities have already approved may also expose the City of Milpitas to legal liability.

Reasons not recommended: Third-party food delivery service providers have the right to participate in the open market and recoup service costs through fees in order to provide necessary marketing and delivery services to restaurants. The proposed recommendation aligns with actions approved by other Bay Area cities as a precedent has been set.

Staff Outreach

Staff intended to present the proposed Urgency Ordinance to the Economic Development and Trade Commission at its October 12, 2020 meeting; however, a quorum was not reached. Staff's review of similar ordinances included talking with representatives of other Bay Area cities including South San Francisco, Santa Clara, and Fremont. In addition, staff sent emails regarding the proposed Urgency Ordinance to third-party food delivery service providers such as Grubhub, DoorDash, and Uber Eats on October 13, 2020., DoorDash representatives have responded to staff's correspondence and a meeting is scheduled for Friday, October 16.

Fiscal Impact:

If the recommendation is approved by the City Council, staff will continue to dedicate time to educate local restaurateurs about the regulations imposed by the Urgency Ordinance. As the recommended action is in

response to COVID-19's negative economic impacts to local restaurants, staff will continue to record and track time associated with this effort for the potential of state and/or federal reimbursement.

California Environmental Quality Act:
By the definition provided in the California Environmental Quality Act (CEQA) Guidelines Section 15378, this action does not qualify as a "project" for the purpose of CEQA as this action has no potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

Recommendations:
1. Receive staff report on temporarily limiting fees charged by third-party food delivery service providers to help local restaurants during the COVID-19 emergency.
2. Following the City Attorney reading the title, move to waive the reading of Ordinance No. 307 and adopt Uncodified Urgency Ordinance No. 307 by a minimum 4/5 vote of the City Council, to be effective October 20, 2020.

Attachments:
A. Urgency Ordinance No. 307
B. Bay Area Cities with Limitations on Third-Party Food Delivery Service Fees