

AGENDA ITEM REQUEST FORM

Department: Planning

Department Director: Holly Smyth

Phone: 799-8200

Meeting Date: April 14, 2015

Final Decision Date Deadline:

SUBJECT:

Code Enforcement Process

INDICATE APPROPRIATE BODY

- ☒ City Council ☐ Successor Agency to the Redevelopment Agency ☐ Public Financing Authority ☐ Finance Commission
- ☐ Planning Commission ☐ Community/ Library Services Commission ☐ Other _____

ITEM

- ☐ Presentation/Introduction ☐ Study Session ☐ Grant Application/Acceptance
- ☐ Public Hearing ☐ Resolution ☐ Video/PowerPoint
- ☐ Consent Calendar ☐ Ordinance
- ☒ Discussion/Action ☐ Contract/Agreement

RECOMMENDED ACTION:

Receive report, discuss and provide direction on the City's Code Enforcement process

☐ Copy of executed Resolution/Ordinance/Contract/Application required immediately upon approval.

REVIEWED AND APPROVED FOR AGENDA:

City Attorney (if Contract, Ordinance or Resolution)

Signature / Date

Finance Department for Fiscal Impact

Nikia Mastay 4/9/15

Signature / Date

City Manager

David B. Smith 4/9/15

Signature / Date

AGENDA ITEM NO:

XII.4

April 14, 2015



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of April 14, 2015

TO: Members of the City Council

SUBMITTED BY: Holly Smyth, Planning Director

SUBJECT: Code Enforcement Process

RECOMMENDED ACTION:

Receive report, discuss and provide direction on the City's Code Enforcement Process.

COMMISSION/SUBCOMMITTEE ACTION AND RECOMMENDATION:

There was no review or recommendations from a commission or subcommittee.

FISCAL IMPACT OF RECOMMENDATION:

Depending on direction from the City Council, any changes in approach to code enforcement could result in increased costs with some revenue generation to offset code enforcement these higher costs, though in general code enforcement is not a self-supporting activity.

DISCUSSION:

Several years ago, the City had a very active code enforcement program under the Building Department supported by two code enforcement officers as well as two building officials as needed to supplant these efforts. According to the City's website under the Building Department / Code Enforcement section, the purpose of the program was to keep the City healthy, safe, clean, and attractive place to live. The City's role was to identify code issues independently in the field in addition to community based complaints, track the code enforcement on a computer system, and actively work to abate problems. The City website lists what generally constitutes code enforcement issues (Attachment 1). Additionally, Title 4, Chapter 10 – Nuisance Abatement section of the Municipal Code (Attachment 2) gives a more detailed description of various nuisances with the legal requirements for the abatement process adopted by the City. Less used Municipal Code sections can include dangerous building abatement and then various Vehicle Codes. Per the City's current ordinance, the abatement process is extremely time consuming, takes

multiple notifications, and can ultimately lead to the City carrying out the work and placing liens on property.

With the reductions in staffing which resulted from the City's financial difficulties, the Building Department no longer has code enforcement employees and only one Building Technician (that does work for four departments) with the Planning Director overseeing Building and Planning Department work. In addition, many services contracted out as needed, and there is little to no capacity within the department to carry out code enforcement related tasks.

As the City down-sized, certain services were contracted with the County including plan check, building inspection, and code enforcement services. The Contract with the County is attached (Attachment 3). While the County can carry out some of code enforcement activity under this contract, their services would be to an inspection if needed and letter writing and we would pay for those services on an hourly basis. There is no money budgeted for Code Enforcement services from the County. In addition, the responsibility for follow-up and other actions to ensure compliance still reside with the City.

Therefore, the practice that has been implemented has been based only on responding to complaints coming from the community, rather than City staff initiated actions unless there is a high risk health and safety violation. Complaints from the public have originated from submitting forms online, phone calls, or visits to City Hall. The City no longer tracks complaints in the City's computer module and generally mails out a voluntary compliance letter for the more egregious cases when time permits and the complaint can be easily visually verified by City staff. When issues are a City maintenance issue, like overgrowth of weeds on City owned hillside, our Public Works Maintenance Division fields the call. When issues involve vehicles, be it on public or private property, the Police Department abates through primarily through a volunteer parking enforcement officer. Extreme weed abatement issues are forwarded to the Fire District. Signage and illegal land uses are generally a Planning issue. Issues that are private or Homeowner Association responsibilities are explained to the parties and they are encouraged to resolve the matter themselves or through a civil action. Many code enforcement issues are seen by City staff but there is not currently resources available to handle the volume, so generally only the highest priority health and safety matters are addressed, with some other matters occasionally being pursued as time and resources allow.

To enhance the current code enforcement program practice several things can be done if so desired by the City Council, but may be unpopular as follows, and will still take staff time to implement:

- A. Change the current abatement process in the Municipal Code to an Administrative Citation Program which would allow one warning notice and then implement fines immediately if compliance is not met within the allotted time frame with fines increasing for continued non-compliance. This would provide some cost recovery but probably not full cost recovery in the more involved cases though a pilot program utilizing current staff resources may be viable to minimize costs.
- B. Hire a full-time Code Enforcement Officer, which could be around \$120,000 annually due to hours and benefits.

- C. Hire a part-time Code Enforcement Officer, which may prove difficult to recruit a qualified person on an hourly non-benefit basis.
- D. Try implementing/recruiting a new volunteer program or enhance the current one and provide code enforcement training to volunteers, however it may be unclear how far a volunteer can take a case under current laws.

In any of the options outlined above, it is anticipated that there would need to be some funding appropriated to restore some higher level of code enforcement. This would ultimately have to be considered as part of the City's budget process.

ATTACHMENTS:

- 1. City Website description of Code Enforcement
- 2. Title 4, Chapter 10 – Nuisance Abatement section of the Municipal Code
- 3. County Contract for Building and Planning Services

Code Enforcement

The Code Enforcement Program was adopted to help keep the City of Hercules a healthy, safe, clean, and attractive place in which to live. City Staff works with residents to take an active role in improving and maintaining the quality of life of their neighborhoods, as well as maintaining property values.



Typical Neighborhood Problems

The Code Enforcement Program is designed to address neighborhood problems including:

- Garbage containers in public view.
- Discarded furniture, appliances, litter, debris, and junk.
- Overgrown weeds, which are a fire hazard.
- Graffiti.
- Zoning violations.
- Illegal signs and promotional displays.
- Inoperable vehicles on private property; recreational, boat, and trailer storage.
- Building code violations.

Specific requirements for some common complaints:

• **Garbage container storage**

Garbage and recycling containers must be screened from the public view. Receptacles should not be placed in the street earlier than 24 hours before the collection and should be removed no later than 48 hours after collection.

• **Inoperable Vehicles**

Vehicles parked in the driveway must be in running condition. If they are inoperable they must be stored inside the garage or in the rear screened from the public view.

• **Recreational Vehicles, Boat and Trailer Storage**

Recreational vehicles, boats and trailers must be stored behind a solid 6 foot fence in the side or rear yard and screened from public view.



• **Signs**

A sign permit is required for all permanent signage. "A" frame signs are not allowed to be placed in the street medians.

For more information, contact the Planning Department.

• **Storm water / Illegal Discharge**

Only rain water can be discharged into a storm drain. Paint, concrete, chlorinated water and other deleterious materials are prohibited from being discharged into the storm drain. Please contact your local recycler for disposal.

• **Home- Operated Business**

Certain types of businesses are allowed to be run out of your home. You must first secure a home occupation business license from the Planning Division.

- **Construction Permits**

Most types of construction, including repair work, require that you first obtain a permit. There are permits for building, plumbing, electrical and mechanical. Please contact the Building Division for further information.

To File a Complaint

To report violations, please complete our online Code Enforcement Complaint Form or call 510-799-8244.

You will need to provide the following information:

- **Name and telephone number.**

Staff will contact you if more information is needed. Your name will not be divulged unless subpoenaed by the courts.

- **The address of the violation.**

Please be as specific as possible.

- **The nature of the violation.**

What type of violation is it? Does it occur at a specific time of day? Please report as many facts as possible.



Chapter 10. Nuisance Abatement

Sec. 4-10.01 Purpose.

Pursuant to Government Code Section 38770 et seq., the City Council establishes, as an alternate to procedures otherwise provided for by law, procedures that may be used for the purpose of abating a public nuisance. It shall be a violation of this Chapter for any person, firm, partnership or corporation owning, renting, leasing, occupying or having charge of any premises to permit a nuisance as herein defined to exist. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.02 Public Nuisances Included.

The provisions of this Chapter shall be applicable to any nuisance defined as a nuisance by any City of Hercules ordinance, section of the Hercules Municipal Code, resolution of the City Council, statutes of the State, or by the conditions or activities set forth in Section 4-10.04 of this Chapter. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.03 Owner's Responsibility.

The owner of the property or properties in question remains liable to the City for violations of duties imposed upon him by this Chapter even though:

- (a) An obligation is also imposed on the occupant; or
- (b) The owner has, by agreement, imposed upon the occupant the duty of complying with this Chapter. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.04 Nuisance Conditions.

It is declared a public nuisance for any person owning, leasing, occupying or having charge of any premises in this City to maintain such premises in such manner that any one or more of the following conditions or activities are found to exist:

- (a) Land, the topography, geology or configuration of which, whether in natural state or as a result of grading operations, excavation or fill, causes erosion, subsidence, or surface water drainage problems of such magnitude as to be injurious or potentially injurious to the public health, safety and welfare or to adjacent properties;
- (b) Buildings which are abandoned, partially destroyed, or permitted to remain unreasonably in a state of partial construction;
- (c) The failure to close by means acceptable to the City, all doorways, windows and other openings into vacant structures;
- (d) Unpainted buildings causing dry rot, warping or termite infestation;
- (e) Broken windows constituting hazardous conditions or inviting trespassers and malicious mischief;

- (f) Overgrown vegetation: (1) likely to harbor rats, vermin and other nuisances, (2) causing detriment to neighboring properties, or (3) causing a fire hazard;
- (g) Dead, decayed, diseased or hazardous trees, weeds and other vegetation: (1) constituting a danger to public safety and welfare, or (2) detrimental to nearby property;
- (h) Attractive nuisance dangerous to children in the form of: (1) abandoned and broken equipment, (2) hazardous pools, ponds and excavations, and (3) neglected machinery;
- (i) Broken or discarded furniture and household equipment on the premises for unreasonable periods, visible from the street or nearby property which constitutes visual blight or is detrimental to nearby property or property values;
- (j) Garbage cans located in front or side yards and visible from public streets;
- (k) Packing boxes, lumber, trash, dirt and other debris deposited for unreasonable periods either inside or outside buildings, visible from the street or nearby property which constitutes visual blight or is offensive to the senses or is detrimental to nearby property or property values;
- (l) The accumulation of dirt, litter or debris in vestibules, doorways or the adjoining sidewalks of commercial or industrial buildings;
- (m) Neglect of premises: (1) to spite neighbors, or (2) to influence zone changes, or (3) to cause detrimental effect upon nearby property or property values;
- (n) Maintenance of premises in such condition as to be detrimental to the public health, safety or general welfare or in such manner as to constitute a public nuisance as defined by Civil Code Section 3479;
- (o) Property maintained in such condition as to become so defective, unsightly, or in such condition of deterioration or disrepair that the same causes appreciable diminution of the property values of surrounding properties or is materially detrimental to proximal properties and improvements;
- (p) Maintenance of premises so out of harmony or conformity with the maintenance standards of adjacent properties as to cause substantial diminution of the enjoyment, use, or property values of such adjacent properties;
- (q) Property maintained (in relation to others) so as to establish a prevalence of depreciated values, impaired investments, and social and economic maladjustments to such an extent that the capacity to pay taxes is reduced and tax receipts from such particular area are inadequate for the cost of public services rendered therein;
- (r) Any automobile service station which is closed, vacant or inoperative for a period exceeding sixty (60) days is declared to be a public nuisance. "Inoperative" is defined as the failure to sell gas, either retail or wholesale, during the sixty (60) day period;

(s) Specialty structures which have been constructed for a highly specific single use only, and which are not enclosed or shielded and which are unfeasible to convert to other uses, and which are abandoned, partially destroyed or are permitted to remain in a state of partial destruction or disrepair and constitute a hazardous condition including, but not limited to: tanks for gas or liquid, boat housing and storing facilities, boat hoisting and docking facilities, boat mooring pilings, lateral support structures and bulkheads, utility high-voltage towers and poles, utility high-rise support structures, electronic transmitting antennas and tower, structures which support or house mechanical and utility equipment and are located above the roof lines of existing buildings, high-rise freestanding chimneys and smoke stacks, drive-in movie screens, recreational structures such as tennis courts and cabanas, and all other specialty structures not listed in this subsection but determined to be a specialty structure by the City;

(t) Any vehicle, as defined in Section 670 of the California Vehicle Code, or parts thereof, when such vehicle or parts are not currently registered as operational with the Department of Motor Vehicles, or when such vehicle or parts are dismantled, partially dismantled, inoperative, or being repaired or restored in areas other than those permitted in the Hercules Municipal Code. This Section shall not apply to vehicles or parts thereof which are completely enclosed within a building, or by a wall or fence, or other public or private property;

(u) Storage of dismantled motor vehicles, motorcycles, recreational vehicles, trailers, campers, boats or parts thereof in the yard of any district property;

(v) Obstruction or encroachment of any public property, including but not limited to any public street, highway, right-of-way, park or building;

(w) Parking or storage of any commercial vehicle or recreational vehicle having a manufacturer's rated capacity in excess of one (1) ton, or any boat, boat trailer, school bus, semi-truck, semi-trailer, truck tractor, unmounted camper or camper shell, camp trailer or trailer, or motor home in the front or front-side yard of a residence. Front-side for purposes of this Section is the area from the front corners of either side of the primary structure on the property to the side property line. Parking or storage of any of the above described vehicles or parts is permitted if parked on either side or rear of the primary structure, behind a solid fence or enclosure;

(x) Any violation of any provision of the Hercules Municipal Code;

(y) Storage of hazardous materials in such a manner as to be injurious or potentially injurious to the public health, safety and welfare or to adjacent properties;

(z) Any condition recognized in law or in equity as constituting a public nuisance.

(aa) Any residential structure or commercial business that experiences five (5) or more calls for law enforcement service in any fourteen (14) day period.

(bb) Anything that unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal or basin;

(cc) Any alteration of property, excluding water, from its natural condition which results in or supports the development, attraction or harborage of vectors, provided that the presence of vectors in their developmental stages on such property shall be prima facie evidence that the property is a public nuisance;

(dd) Any water that is a breeding place for vectors, with the presence of vectors in their developmental stages in the water being prima facie evidence that the water is a public nuisance;

(ee) Any activity that supports the development, attraction, or harborage of vectors, or that facilitates the introduction or spread of vectors.

For the purpose of subsections (bb), (cc), (dd) and (ee) of this Section, "vector" means any animal or insect capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including but not limited to mosquitoes, flies, mites, ticks, other arthropods, and rodents and other vertebrates. (Ord. 402 § 1, 2005; Ord. 359 §§ 1, 2, 2000; Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.05 Abatement by Repair, Rehabilitation, Demolition or Removal.

All or any part of premises found to constitute a public nuisance shall be abated by rehabilitation, demolition, or repair pursuant to the procedures set forth herein. The procedures set forth herein shall not be exclusive and shall not in any manner limit or restrict the City from enforcing City ordinances or abating public nuisances in any other manner provided by law. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.06 Abatement by Proceedings Before City Council and Notice of Public Hearing.

Whenever the Public Works Administrator or such other City official as may be designated by the City Manager, determines that any premises within the City are being maintained contrary to one (1) or more of the provisions of Section 4-10.02, then he/she shall cause notice to be given as provided in this Chapter, of a public hearing before the City Council to ascertain whether the same does in fact constitute such public nuisance, the abatement of which is appropriate under the police power of the City. The hearing date shall be no less than twenty (20) days after service of the notice. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.07 Form of Notice of Hearing on Abatement.

Notice of the time and place of hearing before the City Council shall be titled "NOTICE OF HEARING," and shall be substantially in the form set out in Form 4-10.07. (Ord. 252 Div. 1 (part), 1987)

FORM 4-10.07

NOTICE OF HEARING TO: DETERMINE EXISTENCE OF PUBLIC NUISANCE AND ORDER
ABATEMENT

TO: _____

1. Hearing to Determine Existence of Public Nuisance

NOTICE IS HEREBY GIVEN that on the ___ day of ___, 19___, at the hour of ___, of said day, the City Council of the City of Hercules will hold a public hearing in the Council Chambers of the Hercules City Hall, Hercules, California, to determine whether certain premises situated in the City of Hercules, known and designated as _____ (street address and such other description as is required to identify the premises) constitute a public nuisance subject to abatement. You are ordered to appear to show cause why the premises should not be declared a public nuisance and the same abated in accordance with this chapter. Failure to appear shall be deemed a waiver of your right to appear and present evidence.

Said alleged violations consist of the following: _____

Said methods of abatement available are: _____

If you choose to voluntarily abate the conditions described above, you must advise the Public Works Administrator in writing and the date of completion of such abatement. You may request a continuance of the hearing if, for good cause, the voluntary abatement cannot be completed prior to the hearing date.

2. If So Determined, Order of Abatement

If said premises, in whole or part, are found to constitute a public nuisance, you shall be ordered to abate the conditions constituting the nuisance by rehabilitation, repair, or demolition.

3. Abatement By City Authorities

If said conditions constituting the nuisance are not abated within a time schedule as established by order of the City Council, such nuisance may be abated by City authorities, and the costs of rehabilitation, repair or demolition will be assessed upon such premises, and such cost will constitute a lien upon such property until paid.

4. Notice of Hearing Before City Council

All persons having any objection to, or interest in, said matters are hereby notified to attend a meeting of the City Council of the City of Hercules to be held on the ___ day of ___, 19___, at the hour of ___, when their testimony and evidence will be heard and given due consideration.

DATED: This ___ day of ___, 19___

Sec. 4-10.08 Posting and Serving Notice.

(a) The Public Works Administrator, or such other City official as may be designated by the City Manager, shall cause to be served upon the owner of the affected premises a copy of the notice of public hearing and shall cause a copy of the notice to be conspicuously posted on each of the affected premises.

(b) The notice shall be posted and served, at least twenty (20) days before the time fixed for the public hearing. Proof of posting and service of such notices shall be made by declaration under penalty of perjury filed with the City Clerk. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.09 Form of Proper Service of Notice.

Service of the notice shall be by personal service upon the owner of the affected premises or by mail. If notice is served by mail, it shall be sent by first class mail, postage prepaid, registered or certified, return receipt requested, addressed to the owner, and if there is no known address for the owner, then to the owner at the property address. The service is complete at the time of such deposit. "Owner" as used herein means any person in possession and also any person having or claiming to have any legal or equitable interest in said premises, as disclosed by a current title search from any accredited title company. The failure of any person to receive such notice shall not affect the validity of the proceedings hereunder. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.10 Hearing by City Council.

At the time stated in the notice, the City Council shall hear and consider all relevant evidence, objections or protests, and shall receive testimony from owners, witnesses, City personnel and interested persons relative to such alleged public nuisance and to proposed rehabilitation, repair, demolition, or other abatement appropriate under the legal powers of the City. The hearing may be continued from time to time. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.11 Decision of City Council—Resolution Ordering Abatement.

(a) Upon or after the conclusion of the hearing, the City Council shall determine whether the premises, or any part thereof, as maintained constitutes a public nuisance. If the City Council finds that such public nuisance does exist and that there is sufficient cause to rehabilitate, demolish or repair the same, the City Council shall adopt a resolution setting forth its findings. This resolution shall order the owner and any other person having charge or control of such premises to abate the conditions determined to be a nuisance and shall state the abatement methods. Such resolution shall set forth the times within which such abatement work shall be commenced and completed. The resolution shall inform the owner or owners that if the nuisance is not abated within the specified time, the nuisance may be abated by the City and the expense thereof made a lien on the property involved.

(b) The resolution shall also inform the owner that the time for judicial review is governed by the California Code of Civil Procedure Section 1094.6. Otherwise, all objections to the order shall be deemed waived.

(c) The decision and order of the City Council shall be final. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.12 Service of Resolution Ordering Abatement.

(a) A copy of the resolution of the City Council ordering the abatement of the nuisance shall be served upon the owner or owners of the property in accordance with the provisions of Section 4-10.09. Any property owner shall have the right to have any such premises rehabilitated or to have such building or structures demolished or repaired in accordance with the resolution and at his own expense provided the same is done prior to the expiration of abatement period set forth in the resolution. Upon abatement in full by the owner, then proceedings hereinunder shall terminate.

(b) If the City Council should determine that the abatement of the nuisance is likely to cause a significant depreciation in the value of the property upon which the nuisance is located, the City Council may order that all mortgagees and/or beneficiaries under any deeds of trust of record on the property be served a copy of the resolution in the manner prescribed in this Section. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.13 Abatement by City Officer.

If such nuisance is not completely abated by the owner as directed within the designated abatement period, then the City Manager, or such other City official as may be designated, may, after consultation with the City Attorney, cause the same to be abated by the City either through the use of its own employees or private contract, and the City Manager, or designated agents, is expressly authorized to enter upon the premises for such purpose. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.14 Report to City Council of Costs of Abatement by the City.

(a) If the City abates the nuisance, the City official abating the nuisance shall keep an account of the cost of abatement (including incidental expenses) and shall render an itemized written report to the City Council showing the cost of abatement, including any salvage value of material from the abatement.

(b) The term "incidental expenses" shall include, but not be limited to, the actual expenses and costs of the City in: (1) preparation of notices, specifications and contracts, (2) inspecting the work, (3) the costs of printing and mailing required hereunder, and (4) associated administrative costs, including costs of levying a special assessment on the property, if that is made necessary.

Should the proceeds of the sale of any salvage material exceed the cost of such abatement, the balance, if any, shall be paid to the owner of the premises from which the nuisance was abated, when his/her property claim is established. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.15 Hearing by City Council on Report of Costs of Abatement by the City.

(a) The City Council shall set the report of costs of abatement by the City for hearing to determine the correctness and/or reasonableness of such costs.

(b) A copy of the report of costs of abatement by the City and notice of hearing shall be posted upon the property and served at least ten (10) days prior to the date of the City Council hearing. Service shall be as set forth in Section 4-10.09. Proof of the posting and service shall be made by declaration under penalty of perjury filed with the City Clerk.

(c) At the time and place fixed for receiving and considering the report, the City Council shall hear and pass upon the report of such costs of abatement, together with any objections or protests. The City Council may revise, correct or modify the report. The City Council shall by resolution confirm the report either as submitted or as revised, corrected, or modified. The decision of the City Council on all protests and objections shall be final and conclusive. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.16 Special Assessment and Lien on Property for Costs of Abatement by the City.

(a) The costs of abatement by the City as determined by the City Council pursuant to Section 4-10.15 shall be levied as a special assessment against the subject property and certified to the Auditor of the County of Contra Costa. Such special assessments shall be recorded as a lien on the property and shall be collected at the same time and in the same manner as ordinary municipal taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to such special assessment taxes.

(b) After recordation, such lien may be foreclosed by judicial or other sale in the manner and means provided by law.

(c) Such notice of lien for recordation shall be substantially as set out in Form 410.16. (Ord. 321 § 2, 1993; Ord. 252 Div. 1 (part), 1987)

FORM 4-10.16

NOTICE OF LIEN

(Claim of City of Hercules)

Pursuant to the authority vested by the provisions of Section 4-10.01 et seq. of the City of Hercules Municipal Code, the City Council of the City of Hercules did on the ____ day of _____, 19____, order the premises hereinafter described to be rehabilitated, or the building or structure on the property hereinafter described to be repaired or demolished, in order to abate a public nuisance on said real property (Resolution No. ____).

Pursuant to Section 4-10.13 et seq. of the Hercules Municipal Code, the City Manager (or designated agents) did on or about the ____ day of _____, 19____, cause the premises hereinafter described to be rehabilitated, or the building or structure on the property hereinafter described to be repaired or demolished, in order to abate a public nuisance on said real property.

The City Council of the City of Hercules did on the ____ day of _____, 19____, (Resolution No. ____) assess the cost of such rehabilitations, repair or demolition upon said real property hereinafter described. The same has not been paid nor any part thereof.

The City of Hercules does hereby claim a lien for such rehabilitation, repair or demolition in the amount of said assessment in the sum of \$____, and the same shall be a lien upon said real property until the same has been paid in full and discharged of record.

The real property herein mentioned and upon which a lien is claimed, is that certain parcel of land lying and being in the City of Hercules, County of Contra Costa, State of California, and more particularly described as follows:

(DESCRIPTION)

DATED: This ___ day of _____, 19___

City Manager

Sec. 4-10.17 Abatement of Certain Vehicles.

Pursuant to California Vehicle Code Section 22660, procedures to remove abandoned, wrecked, dismantled or inoperative vehicles or parts thereof, as public nuisances, are found in Title 4, Chapter 7 of the Hercules Municipal Code. (Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.18 Alternative Remedies.

Nothing in the foregoing Chapter shall be deemed to prevent the City Council from ordering the City Attorney to commence a civil or criminal proceeding to abate a public nuisance under the applicable Civil or Penal Code provisions as an alternative to the proceedings set forth herein. The City Council may also order the City Attorney to seek remedies in equity, including preliminary or permanent injunctions ordering violators to correct violations of the Hercules Municipal Code. The City shall keep an account of any costs of abatement, including incidental expenses, made in connection with an order of a court to abate a public nuisance. (Ord. 359 § 3, 2000; Ord. 252 Div. 1 (part), 1987)

Sec. 4-10.19 Emergency Nuisance Abatement.

(a) Notwithstanding any other provisions in this Chapter, the City shall be able to abate immediately all public nuisances, which, in the judgment of the City Engineer, Public Works Administrator or any other City or other official, pose an imminent hazard to public health or safety. Such abatement will include, but not be limited to, the removal of fallen trees and other objects that obstruct or threaten to obstruct public rights-of-way.

(b) Field employees of the Contra Costa Mosquito and Vector Control District shall be authorized, upon the specific, prior request of the City in circumstances constituting an immediate threat to public health or safety, to abate public nuisances supporting the development, attraction or harborage of mosquitoes and other vectors as described in Section 4-10.04(bb) through (ee) of this Chapter.

(c) Whenever reasonably feasible, the City Engineer, Public Works Administrator or any other City or other official shall provide notice prior to entering onto private property or otherwise incurring expenses related to emergency nuisance abatement which are chargeable to a private property owner under this Section. Failure to provide such prior notice shall not affect the City's authority to recover costs of emergency nuisance abatement.

(d) Recovery of costs for emergency nuisance abatement shall take place in the manner prescribed in Sections 4-10.14 through 4-10.16 of this Chapter. (Ord. 402 § 2, 2005; Ord. 321 § 1, 1993)

Sec. 4-10.20 Attorneys' Fees.

In nuisance abatement actions, the prevailing party shall be entitled to recover reasonable attorneys' fees, but only if the City elects in writing, at the initiation of an individual abatement action, to seek recovery of its own attorneys' fees. In no event shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the abatement action. The remedies provided for in this Chapter shall not be exclusive and shall be in addition to all other remedies for the abatement of nuisances provided under State law or City ordinances. (Ord. 348 § 1, 1998)

Sec. 4-10.21 Enforcement Officer—Defined.

For purposes of this Chapter, Enforcement Officer shall mean any City employee or agent of the City with the authority to enforce any provision of this Code as determined by the City Manager. (Ord. 359 § 4 (part), 2000)

Sec. 4-10.22 Hearing Officer—Defined.

The City Manager shall designate the Hearing Officer for the nuisance abatement hearing. The Hearing Officer will not be a member of the Community Development staff. (Ord. 359 § 4 (part), 2000)

Sec. 4-10.23 Nuisance Declared—Abatement by Enforcement Officer.

Whenever a nuisance exists, the Enforcement Officer, as defined under Section 410.21 of this Chapter, may give notice ordering the owner(s) (as shown by the last equalized assessment roll) of such property to remedy or otherwise abate the nuisance. The notice shall be mailed, postage prepaid, addressed to the owner at the address shown on the last equalized assessment roll. The notice shall contain the following, at a minimum:

(a) The notice shall describe the property by reference to its address and assessor's parcel number and shall describe the nuisance declared to exist thereon, including the specific violation of this Code, if applicable.

(b) The order of abatement contained in the notice shall provide a reasonable time period for abating the nuisance, in no event less than fifteen (15) days and not more than thirty (30) days therefrom.

(c) The notice shall also specify the necessary actions required to reasonably abate the nuisance.

(d) The notice shall warn that failure to comply with the order within the time provided may result in the City abating the nuisance and assessing the owner the costs of abatement unless the owner requests a hearing held before a Hearing Officer and the Hearing Officer determines that the City should not be allowed to enter the property to abate the nuisance and assess the costs thereof to the owner. A hearing fee of two hundred dollars (\$200) must be submitted with the hearing request. (Ord. 359 § 4 (part), 2000)

Sec. 4-10.24 Abatement by Proceedings Before Hearing Officer and Notice of Public Hearing.

Whenever the Enforcement Officer finds that a nuisance exists, the matter may, at the request of the owner, be set for public hearing before the Hearing Officer. The City shall inform the owner of the opportunity for a hearing. If the owner desires a hearing he or she shall so advise the City within the time specified in the notice from the City. Notice of the hearing date shall be provided in the same manner as provided in Sections 4-10.08 and 4-10.09 of this Chapter. The notice shall contain, at a minimum, the date, time and place of the hearing. In addition, the notice shall advise the owner that if legal action is instituted by either the owner or City in any manner relating to the abatement of the nuisance, the City shall seek recovery of its costs and attorneys' fees if it is determined to be the prevailing party.

Whenever the Enforcement Officer finds that a nuisance has recurred following abatement of that nuisance by the owner, the Enforcement Officer may set the matter for public hearing before the Hearing Officer. The City shall give the owner notice of the hearing as required where the hearing is requested by the owner. Where the hearing was set by the Enforcement Officer, costs of abatement assessed shall include the two hundred dollar (\$200) hearing fee. (Ord. 359 § 4 (part), 2000)

Sec. 4-10.25 Hearing by Hearing Officer.

At the time fixed in the notice, a Hearing Officer appointed under Section 410.22 of this Code shall proceed to hear evidence relating to the nuisance. The Hearing Officer may continue the hearing from time to time. If the owner fails to appear at the time fixed for the hearing, or at any time to which the hearing may be continued, such failure to appear shall not deprive the Hearing Officer of his jurisdiction to determine the matter, but shall constitute a failure of the owner to exhaust its administrative remedies. At the conclusion of the hearing, the Hearing Officer shall render a written decision regarding the nuisance and whether or not the City is authorized to cause the nuisance to be abated and assess its costs thereof to the owner. The Hearing Officer may include the manner and scope of abatement in its decision. If the Hearing Officer determines that the nuisance condition is one which is susceptible of recurring after abatement if further precautions are not taken, he may also direct that the owner take adequate precautions for a period of up to one year so that the nuisance is not permitted to recur for such time. (Ord. 359 § 4 (part), 2000)

Sec. 4-10.26 Appeal of Hearing Officer's Decision.

(a) Any aggrieved person, including any real property which is the subject of a proceeding pursuant to this Chapter, may appeal the Hearing Officer's determination to the City Council. Such an appeal shall be timely only if filed within fifteen (15) calendar days from and after the giving of notice by the Hearing Officer of his determination.

(b) The appeal shall be in writing, and shall be filed with the City Clerk within the time permitted pursuant to this Chapter. A filing and processing fee of two hundred dollars (\$200) shall be paid. Upon the receipt of the appeal and the fee, if any, the City Clerk shall prepare an administrative record which shall consist of the minutes of the proceedings before the Hearing Officer, copies of the written material submitted at the hearing, if any, and a copy of the Hearing Officer's determination, along with any photographs presented at the hearing. The administrative record shall then be transmitted to each member of the City Council. The City Clerk shall set a time and place for the City Council's hearing upon the appeal.

(c) At the time of the hearing, the City Council shall permit any interested person to present written or oral arguments relating to the appeal, but shall not permit the introduction of any new evidence, unless a showing is made by the offering party that the evidence could not reasonably have been presented to the Hearing Officer at the time and place of that hearing or hearing opportunity. Additionally, the City Council may permit the presentation of evidence if the evidence is reasonably calculated to show that there has been a substantial change in the condition of the property since the time of the hearing or hearing opportunity. Thereafter, based upon the administrative record, the evidence as may be presented pursuant to this subsection, and the written or oral arguments of interested persons, the City Council shall determine whether the property, in its then condition, constitutes a public nuisance. If it finds that a public nuisance exists, it shall issue an order or abatement requiring the abatement thereof, in the time and manner set forth in the order, along with an order that the abatement costs shall constitute a special assessment against the property; if it finds that a nuisance does not exist, it shall dismiss the proceedings. If the property owner chooses not to attend the hearing, the City Council may make its determination notwithstanding such absence. (Ord. 359 § 4 (part), 2000)

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AGREEMENT

FOR BUILDING INSPECTION AND PLANNING SERVICES

This Agreement is entered into between the City of Hercules ("City") and Contra Costa County ("County") for Building Inspection and Planning services to be provided by the County to the City.

RECITALS:

- A. The City desires to utilize County Department of Conservation and Development (DCD) staff to provide Building Inspection and Planning services to the City, including building plan checking, construction inspection and processing of planning applications, as set forth in Attachment A to this Agreement.
- B. The purpose of this Agreement is to set forth the terms and fees for providing Building Inspection and Planning services to the City's Planning Department.

NOW, THEREFORE, the parties, for valuable consideration, agree as follows:

Section 1. SERVICES TO BE RENDERED

The City agrees to hire DCD staff to provide Building Inspection and Planning services to the City's Planning Department, as set forth in Attachment A, which is incorporated by reference herein. The City will furnish direction to the DCD staff as needed through its Planning Director ("Director"), in order to accomplish the services listed in this Agreement. The County will provide vehicles and communication equipment as deemed necessary by the County. County staff shall remain employees of the County. City shall not be responsible for worker's compensation or any employee benefits, other than provided in this Agreement and attached Attachment A.

Section 2. TERM

This Agreement is effective January 29, 2014 and shall remain in effect until terminated as set forth in this Agreement.

Section 3. PAYMENT OF FEES AND REIMBURSEMENT OF COSTS

A. Plan Check and Inspection Services.

- 1. Beginning on January 29, 2014, and continuing until the City adopts the County's DCD fee schedule, as compensation for providing Plan Check and Inspection Services to the City, the City shall pay the County monthly for all Plan Check and Inspection Services provided to the public under Section I.A. in Attachment A. The amount of the City's payments to the County during this period shall be calculated by multiplying the amount of time County staff performed Plan Check and Inspection Services specified

in Section I.A. in Attachment A, by the applicable billing rates in Exhibit A to this Agreement.

2. After the City adopts the County's DCD fee schedule, as compensation for providing Plan Check and Inspection Services to the City, the County will collect and retain all City fees paid by the public for Plan Check and Inspection Services provided to the public under Section I.A. in Attachment A, except the City's 40% land development surcharge. On or before the 15th day of each month, the County will remit payment to the City in the amount of the City's 40% land development surcharge revenue collected by the County during the preceding month.
- B. Code Enforcement and Planning Services. The City shall pay the County monthly for all Code Enforcement and Planning Services performed by the County during each month under Sections I.B. and II. in Attachment A. The amount of each of City's monthly payments to the County shall be calculated by multiplying the amount of time County staff performed Code Enforcement and Planning Services specified in Sections I.B. and II. in Attachment A, by the applicable billing rates in Exhibit A to this Agreement.
- C. DCD will invoice the City for Code Enforcement and Planning Services for each month on the 10th day of the following month.
- D. The City shall pay DCD within 30 days of receipt of an invoice from DCD.
- E. DCD will provide the City monthly reports showing permit activity within the City, and the amount of land development surcharge fees collected by DCD and returned to the City.

Section 4. HOLD HARMLESS AND INDEMNITY

County agrees to indemnify and hold harmless City from County's share of liability for damages caused by negligence or willful misconduct of the County, its officers, agents or employees in the County's performance under this Agreement. County's obligations under this section shall not apply to any claim, cost or liability caused in whole or in part by the negligence or willful misconduct of the City. Under no circumstances shall County have any liability to City or to any other person or entity, for consequential or special damages, or for any damages based on loss of use, revenue, profits or business opportunities arising from or in any way relating to County's performance under this Agreement. City shall defend, indemnify and save harmless County, its officers and employees from all claims, suits or actions of every name, kind and description brought by or on account of injuries to or death of any person or damage to property resulting from anything done or omitted to be done by City, its officers, agents or employees under or in connection with this agreement or with any work, authority or jurisdiction of City.

Section 5. NOTICES

All correspondence regarding this agreement, including invoices, payments, and notices, shall be directed to the following persons at the following addresses and telephone numbers:

COUNTY: Jason Crapo
Deputy Director
Department of Conservation and Development
Contra Costa County
30 Muir Road, Martinez, CA 94553
(925) 674-7722

CITY: Phil Batchelor
City Manager
City of Hercules
111 Civic Drive, Hercules, CA 94547
(510) 799-8200

Section 6. TERMINATION

- A. This Agreement may be terminated by either the City or the County, giving at least 30 days written notice thereof to the other party.
- B. Should either party be in default of the terms of this Agreement, the non-defaulting party may give written notice of such default and should such default not be cured within thirty days after the mailing of said notice, this Agreement may then be terminated by the non-defaulting party by giving ten days written notice thereof.

The parties, by the Deputy Director of the County's Department of Conservation and Development, as authorized by the County Board of Supervisors, and by the City Manager of the City, as authorized by the City Council, each hereunto duly authorized, have executed this Agreement on the date appearing below.

[Remainder of page intentionally left blank – Signatures on next page.]

CONTRA COSTA COUNTY

By: Jason Crapo
Jason Crapo
Deputy Director
Conservation and Development

Dated: 2/26/14

Approved as to form:

By: [Signature]
Deputy County Counsel

Dated: 3/4/14

CITY OF HERCULES

Phil Batchelor
Phil Batchelor
City Manager
City of Hercules

Dated: 2/18/2014

Approved as to form:

Patrick Tany
City Attorney

Dated: 2.13.14

ATTACHMENT A

SERVICES TO BE PROVIDED BY THE COUNTY'S CONSERVATION AND DEVELOPMENT DEPARTMENT TO THE CITY'S PLANNING DEPARTMENT

I. BUILDING INSPECTION SERVICES

A. Plan Check and Inspection Services

1. Building and grading plan check services to determine compliance with applicable State and City codes.
2. Building and grading inspection services for permits issued.
3. Supervise building and grading plan check and inspection operations and function in the capacity of Building Official as defined in applicable State and City codes.

B. Code Enforcement

1. At the request of, and as directed by the City, through the Director, DCD staff will investigate complaints regarding zoning and/or building code violations.
2. Investigations, inspections and other code enforcement actions will follow the requirements of the current building code, as adopted by the City, and applicable provisions of the City's Municipal Code.
3. The cost of code enforcement services will be billed to the City at the hourly billing rates specified in Exhibit A.
4. The role of County Building Inspection staff is limited to code enforcement inspections and investigations. The City will be responsible for issuing any notices, including notices of code violations or other notices, that the City may deem necessary for seeking compliance with its municipal code. The City will be responsible for taking any enforcement action, including pursuing judicial or administrative remedies that the City may deem necessary for seeking compliance with its municipal code.

II. PLANNING SERVICES

- A. At the request of, and as directed by the City, through the Director, DCD staff will review planning applications consistent with the requirements of the City's Municipal Code, General Plan and other applicable laws and regulations.
- B. At the request of, and as directed by the City, through the Director, DCD staff will supervise the activities of consultants hired by the City in connection with land development projects.
- C. The cost of all planning services will be billed to the City at the hourly billing rates specified in Exhibit A.

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EXHIBIT A

DCD Hourly Billing Rates For FY 2013-2014

Position/Title	Hourly Rate
Building Inspector II	130.00
Senior Building Inspector	145.00
Plan Checker II	105.00
Senior Plan Checker	120.00
Senior Structural Engineer	190.00
Principal Structural Engineer	210.00
Planner I	110.00
Planner II	135.00
Planner III	175.00
Principal Planner	195.00
IT Support	165.00

