

**INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS  
CITY OF HERCULES**

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

**Ballot Title: Waterfront Master Plan Initiative.**

**Ballot Summary: On July 25, 2000, the Hercules City Council adopted the Hercules Waterfront District Master Plan (the “Waterfront Master Plan”) and amended it in September, 2001. This measure relates to approximately 40 acres of undeveloped land southeast of the railroad tracks, 10.9 acres of open space and 53 acres of waterfront, tidal and submerged property northwest of the railroad tracks, within the Waterfront Master Plan Area. The undeveloped property generally includes the areas designated in the Waterfront Master Plan as the Historic Town Center and Transit Village, plus the 10.9 acre area designated as Hercules Point.**

The purpose of this initiative is to modify the City’s primary planning documents and facilitate completion of the Hercules Waterfront as a transit-oriented neighborhood mixed-use project. If approved, this initiative will amend the City’s General Plan and Zoning Ordinance and the Waterfront Master Plan in the following respects.

1. The General Plan Diagrams, Land Use Element, Open Space/Conservation Element, Growth Management Element and Hazardous Waste Management Element and the Zoning Ordinance will be amended to (a) designate the Hercules Point as Open Space and allow both active and passive uses subject to any needed remediation; (b) allow mixed use neighborhood and residential uses within the Historic Town Center planning area; (c) add the Administration Building of the former Hercules Powder Company to the buildings to be retained for public or private use or access; (d) add marina use, including boat slips and docks, to the permissible uses for submerged and tidal land to the north and south of Hercules Point and permit inclusion of public rest room facilities within areas designated as Waterfront Commercial (WC); (e) increase allowable residential density to 40 units per acre and permissible building height to no more than eight stories within areas designated as Planned Commercial-Residential (PC-R) and (f) rezone property within various designated sub-districts.

2. The Waterfront Master Plan will be amended by adding a Section 4 which will establish a form-based code to regulate and provide detailed development and design standards for the currently undeveloped portions of the Historic Town Center, Transit Village, and Hercules Point sub-districts. The form-based code will only apply to those specific areas. The existing Waterfront Master Plan will continue to apply to other portions of the Waterfront Master Plan Area. The initiative will not apply to property that has already been developed within the Waterfront Master Plan Area or to land exempted from local regulation by state or federal law.

The initiative will approve a development agreement between the City of Hercules and Hercules Bayfront LLC. Specific projects allowed by the development agreement will undergo review pursuant to the California Environmental Quality act and pursuant to the City’s governing ordinances.

**FULL TEXT OF THE INITIATIVE MEASURE**

The people of the City of Hercules do ordain as follows:

**Section 1. Title.**

This initiative measure shall be known as the “Waterfront Now Initiative.”

**Section 2. Purposes and Findings.**

A. Purposes. The purposes of this *Initiative* are as follows:

- (1) To promote and enhance the unique waterfront character and scenic resources of the City of Hercules' Waterfront District through development of a transit-oriented neighborhood that includes walkable streets, a variety of dwelling types and businesses, and public plazas with views of San Francisco and San Pablo Bays.
- (2) To implement the final stages of the Hercules Waterfront District Master Plan through adoption of design and development guidelines for the Historic Town Center, Transit Village, and Hercules Point Sub-Districts that encourage a transit-oriented, and pedestrian-oriented mix of uses along the bayfront in the City of Hercules.
- (3) To implement the goals and objectives of the Waterfront District Master Plan by providing for the location of a Multi-Modal Transit System linking together rail service, a connection to downtown San Francisco via a ferry terminal, and bus service via WestCAT, making Hercules home to the first train, ferry, and bus center in California.
- (4) To preserve and reuse existing historic structures within the Historic Town Center Sub-District -- the Clubhouse and Administration buildings of the old Hercules Powder Company -- and to weave these historic buildings into the fabric of an architecturally cohesive and harmonized downtown bayfront area.
- (5) To assist the City of Hercules in meeting its housing needs for all economic segments of the population, while promoting the planning principles of New Urbanism and Smart Growth, by adopting a detailed design and development standards for those areas within the Waterfront District that have not yet been developed.
- (6) To amend the City of Hercules General Plan and Waterfront District Master Plan to provide for the preservation of Hercules Point as permanent open space and to provide for the City to facilitate the future improvement of Hercules Point to include passive recreational uses by the public.
- (7) To amend the City of Hercules General Plan as necessary to provide for establishment of a transit-oriented, traditional neighborhood project that includes residential, commercial, retail, and public uses of unique architectural character within the Hercules Waterfront District.
- (8) To amend the City of Hercules General Plan to identify certain lands of the Waterfront District for future uses as a marina, ferry terminal, or other waterfront-serving uses.
- (9) To enter into a Development Agreement, consistent with California law, providing for the long term planning and development of the Hercules Waterfront District.
- (10) To ensure that prior to further development of the Hercules Waterfront District, the City of Hercules, at the developer's expense, evaluates the environmental impacts associated with such development, as required by the California Environmental Quality Act ("CEQA").

**B. Findings.** The people of the City of Hercules find and declare the following:

- (1) This *Initiative* will protect and enhance the City of Hercules' unique character and quality of life by:
  - (a) Providing for development of an architecturally unique, pedestrian and transit-friendly waterfront community of residential, commercial, retail, and public uses that will complement the scenic quality of the Waterfront District and will enhance the unique character of the City.
  - (b) Providing for development of a Multi-Modal Transit Station within the Waterfront District.

- (c) Promoting the needed redevelopment of the Waterfront District.
  - (d) Assisting the City of Hercules in continuing to meet the housing needs of all economic segments of its population, while promoting the principles of New Urbanism and Smart Growth.
  - (e) Providing for protection of regionally significant waterfront open space at Hercules Point and for future improvement of such open space by the City of Hercules to allow for increased public use in the future.
- (2) The Zoning Ordinance amendments adopted through this *Initiative* are consistent with the City’s General Plan as amended by this *Initiative*.
  - (3) The Historic Town Center, Transit Village, and Hercules Point Sub-District Amendments of the Waterfront District Master Plan adopted through this *Initiative* are consistent with the City’s General Plan.

**Section 3. Definitions and Conventions.**

A. As used in this *Initiative*:

- (1) *Effective Date* means the date this Initiative takes effect, which shall be on the earliest date legally possible. If the four amendments of the mandatory elements of the General Plan permitted by state law for any calendar year have already been enacted in the year in which this *Initiative* would otherwise take effect, the General Plan amendments set forth in this *Initiative* shall take effect on January 1 of the next year. All aspects of this *Initiative* other than the General Plan Amendments shall still take effect on the earliest date legally possible, but shall be deemed subject to a condition of effectiveness of the General Plan Amendments enacted by the Initiative.
- (2) *Filing Date* means the date the Notice of Intent To Circulate Petition for this initiative was presented to the City.
- (3) *Filing Date General Plan* means the General Plan in the form it was published by the City as of the *Filing Date*.
- (4) *Initiative* means the Waterfront Now Initiative measure placed upon the ballot and adopted by the voters of Hercules. Exhibits showing diagrams in the form they were published prior to the *Filing Date* are attached to this *Initiative* for reference purposes only, and are not enacted by this *Initiative*.
- (5) *Subject Property* means the property reflected in the diagram attached as **Exhibit A**. The *Subject Property* is generally located at the northwestern edge of the City, bordering San Pablo Bay.

B. Text added to the existing City plans, codes and other enactments by this *Initiative* is indicated in **bold** type, while text deleted by this *Initiative* is indicated in ~~strikeout~~. Text in standard type appears in the plans, code and enactments as they existed on the *Filing Date*, is not amended by this *Initiative*, and is shown for reference purposes only.

**Section 4. Amendments To General Plan Diagrams.**

A. The portion of the Land Use Diagram in the General Plan, which also entitled “City of Hercules Land Use and Zoning Map,” that depicts the *Subject Property* is amended to reflect the diagram attached as **Exhibit B**. Only the portion of **Exhibit B** that depicts the *Subject Property* is amended by this *Initiative*; the rest of **Exhibit B** is included for context and reference only and is not adopted by this *Initiative*. For reference purposes only, the Land Use Diagram on page II-28 of the *Filing Date General Plan* is attached to this *Initiative* as **Exhibit C**.

B. The portion of the “City of Hercules General Plan Open Space and Conservation Plan” diagram that depicts the *Subject Property* is amended to reflect the diagram attached **Exhibit D**. Only the portion of **Exhibit D** that depicts the *Subject Property* is amended by this *Initiative*; the rest of **Exhibit D** is included for context and reference only and is not adopted by this *Initiative*. For reference purposes only, the Open Space and Conservation Plan diagram on page V-20 of the *Filing Date General Plan* is attached to this *Initiative* as **Exhibit E**.

## Section 5. Amendments To The Land Use Element.

A. Chapter II of the General Plan, entitled “Land Use Element,” contains a Table 2.2, entitled “Land Use Distribution.” The title of that table is amended to add the following footnote:

**In 2008, the Waterfront Now Initiative was enacted, which added 10.9 acres of open space and 42 acres of waterfront commercial land. The City Council may have adopted other land use changes not reflected in this table.**

B. Chapter II of the General Plan, entitled “Land Use Element,” contains a section entitled “V. Land Use Plan.” That section V, in turn, contains descriptions of several land use categories. The descriptions of the following four land use categories are amended to reflect the following:

Historic Town Center: (HTC) - The former administrative center, and some residences of the Hercules Powder Company, may be an important historical asset of Hercules. The Historic Town Center designation is to allow the reuse of existing structures, where appropriate, and the addition of new buildings, while maintaining the architectural character of the area and incorporating into the design the visual and physical access to the adjoining San Pablo Bay Shoreline. View corridors and vista points will be established to protect and promote the views to the Bay. Uses within this land use designation shall include professional, **mixed use neighborhood and residential**, administrative, and personal service offices (e.g., real estate, travel agent, etc.), as well as retail businesses. Retail and other commercial uses shall include business support service, restaurants and coffee shops, specialty shops, and other businesses that support the professional and administrative offices, as well as uses that provide goods and services to visitors of the adjoining waterfront area. The predominance of these uses shall be located in close proximity to ~~Railroad Avenue~~ **Bayfront Boulevard** which is intended to be the “Main Street” of this area. **These uses will complement the Multi-Modal Transit Station located near Bayfront Boulevard. The Historic Town Center area also should be carefully planned to integrate the existing historic structures.**

Areas separated from ~~Railroad Avenue~~ **Bayfront Boulevard** by existing or planned buildings shall be developed with either uses described above or with multi-family dwellings. This residential development will be allowed so long as the existing or planned non-residential uses would be compatible with the residential living environment.

~~The historic structures The design and character of uses and buildings in this land use category is critical. The Historic Clubhouse is to be retained for public use or access. Existing buildings should be retained, where feasible, for public or private use, and may be expanded as long as the existing character is maintained.~~

The FAR for the non-residential category shall range from 0.15 to ~~4.0~~ **0.40**, with a typical FAR of ~~2.0~~ **0.20** for the land use designation area. The density for residential shall be **approximately 40** ~~17~~ units per acre. ~~with no more than 40 units to be developed in total (about 50 persons per acre, up to approximately 115 persons).~~

A planned development process will be used to refine the intensity of commercial development and density of residential development, as well as location of such development. Development guidelines will be prepared.

Waterfront Commercial: (WC) - This land use category encompasses ~~a portion of Hercules Point, that may allow private development. Hercules Point is approximately 15 acres. State and Federal agencies will likely require much of this area to be set aside for public access or to preserve wetlands adjacent to San Pablo Bay.~~ **approximately 53 acres of waterfront, tidal and submerged lands within the City, to the north and south of Hercules Point. State and Federal agencies may require some of this area be used for public access or to preserve wetlands.** However, a portion of this area may be developed. The commercial uses allowed shall provide goods and services for visitors to the public access areas. Typical uses would include restaurants, bait-and-tackle shops, and other visitor-oriented uses. Other uses may include:

- Recreational boat yard, maintenance and launching facilities
- **Marina use, including boat slips and docks**
- Water oriented recreational instruction facilities
- Administrative offices, and other appurtenant uses
- Food, beverage, sundries, and recreational equipment sales
- Public transportation facility (ferry and charter boat service)
- Fishing Pier

**Public rest room facilities and other appropriate or necessary structures may also be included on the site.** The open character and the views of the Bay are a very important asset of this portion of the community, and the design of any structures must preserve and enhance the enjoyment of the meeting of land and water. Most of this area is within the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC) which has permit jurisdiction for development within and 100 feet inland of the San Francisco Bay as defined by the McAteer-Petris Act. (See section B.6.) The amount of development shall be limited. Substantial public access to the shoreline shall be provided. The FAR for this category shall range from ~~0.05 0.15~~ to ~~0.50 0.30~~, with a typical FAR of ~~0.20~~.

Planned Commercial-Residential: (PC-R) - This land use category is designed to provide the potential to accommodate either residential or commercial or both residential and commercial uses in a well-planned, mixed-use development. Commercial structures and uses shall be developed according to a planned development plan and shall be arranged as a unified development, which may resemble a shopping center, a shopping mall, or a traditional downtown shopping street ("Main Street"). Appropriate commercial uses shall include retail businesses, professional service offices, and other customer-oriented businesses.

The residential density in this category shall ~~be approximately 40 not exceed 30~~ units per acre (approximately up to ~~85 115~~ persons per acre); structures within this land use designation shall have a maximum height of ~~three four~~ stories, **except that where a building height overlay zone is adopted in the Waterfront District Master Plan Historic Town Center, Transit Village, and Hercules Point Sub-District Amendments dated May 27, 2008, a building height of eight stories may be allowed consistent with such overlay zone.** The FAR for non-residential use within this category shall range from 0.20 to ~~4.0 0.40~~ with a typical FAR of ~~2.0 0.30~~.

Development of these properties shall be carefully planned to insure that the benefits of mixed use development are fully realized, and the potential negative impacts of one use or another are minimized. Subdivision or partial development of any properties with this category shall not be approved until a planned development plan for full development of the property has been reviewed and

approved. Planned Development plans and subdivision maps may be processed concurrently.

A 12 acre area fronting San Pablo Avenue within the Gelsar property is designated on the Land Use diagram as “Committed to Commercial Development.” This specific area shall be developed with exclusively commercial uses.

Public/Semi-Public - Open Space: (P/SP-OS) - This land use category is intended to designate and preserve public open spaces within the City; and to develop and maintain trail systems, open space, and other public amenities that benefit the quality of life in the community. Most of the larger open spaces east of Highway 80 have been dedicated to open space use as a result of past residential development. This designation is also appropriate for future open space dedications within the hills, along the San Pablo Bay, within and adjacent to sensitive habitat areas such as wetlands, and along the Refugio Creek corridor. Development would not typically be allowed within this area except for recreation facilities, caretaker housing and accessory structures directly related to the use and maintenance of an open space area. Such development shall be sited and designed to be small scale and unobtrusive.

An open space corridor along Refugio Creek within the Gelsar property is shown in the Land Use Diagram. Since the current creek location is in a meandering pattern, and may be relocated in the future, the Refugio Creek open space corridor is shown wider than existing width of the creek to acknowledge construction could not occur within 50 feet of the top of the creek’s bank, except that a setback of 35 feet may be allowed on the west branch of the creek.

**This land use category encompasses Hercules Point, which acts as an important regional open space. The open space character and views of the Bay are a very important community asset, and the design of public rest room facilities and other appropriate or necessary structures to provide limited goods and services for visitors also may be included on the site or along the shoreline to preserve and enhance the enjoyment of the meeting of land and water. Most of this area is within the jurisdiction of the San Francisco Bay Conservation and Development Commission (BCDC), which has permit jurisdiction for development within and 100 feet inland of the San Francisco Bay as defined by the McAteer-Petris Act. It is intended that active and passive recreational uses, including marina uses along the shoreline, may ultimately be permitted after compliance by the City with any permitting and clean-up requirements identified by regulating agencies.**

**Section 6. Amendments To The Open Space/Conservation Element.**

A. “Table 1: Hercules Parks and Open Space” on page V-21 of the *Filing Date General Plan*, is hereby amended to add the following footnote to the title of that table:

**In 2008, the Waterfront Now Initiative was enacted, which added 10.9 acres of open space at Hercules Point. The City Council may have adopted other land use changes not reflected in this table.**

B. The General Plan Open Space/Conservation Element contains “Program 1a.1 Public Open Spaces,” which in turn contains section “7) Baylands.” Section 7 appeared on page V-23 of the *Filing Date General Plan*. Section 7 is amended to reflect the following:

7) Baylands

There are no proposals in the General Plan for development of the baylands with the minor exception of an elevated walkway over the salt marsh **and the potential development of Waterfront Commercial uses, including marina and ferry uses, within the Hercules Point Sub-District of the Waterfront Master Plan as amended by the Waterfront Now Initiative.** The Recreation Element recognizes the recreational value of the baylands and indicates that potentials be

explored with the several agencies having jurisdiction or interest in the future use of this natural resource. Access to the Bay is severely limited in the City because of the existence of the Union Pacific Railroad right on the shoreline. Public access to the Bay will be through the Waterfront Park, a twenty-acre community-type facility. An overhead crossing of the railroad tracks and a boardwalk through the salt marsh are proposed to provide convenient and safe public access to the water. **If the City complies with permitting and clean-up requirements identified by relevant regulating agencies, access to Hercules Point also may be provided. A boardwalk would connect Hercules Point to the Multi-Modal Transit Station while at least one more at-grade crossing over the Union Pacific Railroad tracks may directly connect Hercules Point to the Hercules community.**

C. The standards for provision of parks and open space are amended as follows. The Open Space/Conservation element of the General Plan contains section “III. The Open Space/Conservation Plan.” That section III contains section “C. Standards,” beginning on page V-36 of the *Filing Date General Plan*. The text of the beginning of that section “C. Standards” is amended to reflect the following:

The standards for provision of parks and open space in Hercules are:

Neighborhood Parks:	A minimum of 1.75 acres of neighborhood parks shall be provided for each 1,000 residents.
Community Parks:	A minimum of 3.25 acres of community park space shall be provided for each 1,000 residents.
Open Space:	A minimum of 34 acres of open space (public and private combined) shall be provided for each 1,000 residents.

The existing and proposed open space resources identified in the General Plan include the following:

- Public open spaces (852 acres)
- Community parks (81 acres)
- Neighborhood and mini parks (44.5 acres)
- Schools (96.9 acres)
- Civic Center (15 acres)
- Arterial and Freeway rights-of-way (308 acres)
- Baylands (8,140 acres)

**Additional open space resources may be provided as the General Plan is implemented by the City, including 10.9 acres of open space at Hercules Point.** In addition, there will be private open space and recreation areas within residential neighborhoods. The most effective open space will be the public open space and developed city parks which will amount to a total of 852 acres, **plus parks and open space developed pursuant to the Waterfront Now Initiative adopted in 2008.** ~~This is about 21% of the developable land in the City.~~

## **Section 7. Amendments To The Growth Management Element.**

A. The Growth Management Element of the General Plan contains section “III. Performance Standards for Capital Facilities,” which contains section “C. Existing Facilities,” which contains section “3. Parks.” The second paragraph of section “3. Parks,” on page X-8 of the *Filing Date General Plan*, is amended to reflect the following:

The City also maintains systems of trails and open space areas, distributed throughout the City. These open space areas encompass a total of approximately 832 acres. The open space areas and the City parks together account for approximately 1/5 of the total land area within the existing City limits. The homeowners' association for the Refugio Valley Ranch development owns about 320 acres of the permanent open space. It is anticipated that another 20 acres of open space will be provided by the Lower Refugio Creek Open Space Corridor. **The acreages reflected above were published in the General Plan prior to adoption of the Waterfront Now Initiative in 2008, and do not include additional acreages to be developed pursuant to that initiative.**

#### **Section 8. Amendments To The Hazardous Waste Management Plan Element.**

A. The General Plan contains "VIII. Hazardous Waste Management Plan Element," a document which is also entitled "City of Hercules Final Hazardous Waste Management Plan And Element Of The Hercules General Plan December 1990." The second paragraph of section "1.0 Introduction" of that element is amended to reflect the following:

Due to a growth in commercial development in the City, hazardous waste management has become an important priority of the residents of Hercules. Based on this priority, in March 1990, the City contracted for the preparation of a specific City Hazardous Waste Management Plan (HWMP) to augment the Contra Costa County HWMP. This document will serve as the primary planning document for hazardous waste in the City of Hercules. **Hazardous waste clean-up activities also have taken place in the Waterfront District since 1985. These activities facilitated development in the Refugio and Waterfront Neighborhoods, and further clean-up is anticipated.**

#### **Section 9. Amendments To The Zoning Ordinance.**

A. The portion of the "Zoning Map," also entitled "City of Hercules Land Use And Zoning Map," that depicts the *Subject Property* is amended to reflect the diagrams shown on attached **Exhibit B**. Only the portion of **Exhibit B** that depicts the *Subject Property* is amended by this *Initiative*; the rest of **Exhibit B** is included for context and reference only and is not adopted by this *Initiative*. For reference purposes only, the Land Use and Zoning Map in effect on the *Filing Date* is attached to this *Initiative* as **Exhibit C**.

B. Sections 27.100 and 27.200 of the Zoning Ordinance of the City are amended as follows. To avoid confusion, headings or text that presently appear in **bold** in the existing Zoning Ordinance are shown here as underline type.

27.100 Purpose. The purposes of the establishment of the Waterfront District Master Plan **and subsequent Sub-District Amendments** as the Regulating and Design Codes for the Hercules Village, Refugio Neighborhood, **Historic Town Center (including the ~~and~~ Railroad Live/Work areas), Transit Village, and Hercules Point Sub-Districts** are to:

1. Recognize and preserve the historic character of the existing Hercules Powder Company town site and allow reuse of existing structures, where appropriate;
2. Allow the construction of new buildings while maintaining the architectural quality of the District;
3. Provide a network of public spaces that have access to views to Hercules Point and San Pablo Bay;
4. Provide access along the Bay shoreline that does not degrade its existing natural resources;
5. Provide a location for a commuter rail station with adjacent mixed-use development;

6. Provide for a variety of professional, administrative and personal service offices, as well as retail businesses that support the offices and provide services and goods to visitors to the waterfront area;
7. Provide the opportunity to accommodate both residential and commercial uses in a well-planned, mixed-use development;
8. Provide public spaces and facilities that offer a balance of open space, landscaping, recreation space, transit access and shared parking facilities.
9. Allow lower cost live-work opportunities for start-up businesses that are compatible with the residential and commercial uses within the District;
10. Provide the opportunity for upper floor residential uses over ground floor commercial uses;
11. Provide for careful design review of proposed buildings to ensure that the benefits of mixed-use development are fully realized and the potential negative impacts of one use upon another are minimized.

27.200 Establishment and Application. The zoning regulations and development standards for the first phase of the “Hercules Village” for the “Waterfront District Master Plan” were adopted on September 12, 2000 by Ordinance No. 357. The zoning regulations and development standards for the second phase of the “Refugio Neighborhood” and third phase of the “Railroad Live/Work” project were adopted by Ordinances 378 and 379 on November 26, 2002, respectively. **The zoning regulations and development standards for the Historic Town Center (excluding the Railroad Live/Work project), Transit Village, and Hercules Point were adopted via the Waterfront Now Initiative ordinance in 2008.**

#### **Section 10. Amendments To the Hercules Waterfront District Master Plan.**

A. The Hercules Waterfront District Master Plan, adopted and amended by Ordinances 357, 368, 378, 379 and 397, is further amended as set forth below to promote development in the manner intended by this *Initiative*.

B. The portions of the “Conceptual District Master Plan” diagram and the “Planning Sub-District” diagram that depict the *Subject Property* are amended to reflect **Exhibit F**. This amendment enacts a new conceptual master plan for the *Subject Property*, and expands the boundaries of the Hercules Waterfront District and the Historic Town Center Sub-District to include the site of the existing Civic Arts building located south of Railroad Avenue, across from San Pablo Bay Park, and the waterfront, and the submerged and tidal lands depicted on **Exhibit F**. Only the portion of **Exhibit F** that depicts the *Subject Property* is amended by this *Initiative*; the rest of **Exhibit F** is included for context and reference only and is not adopted by this *Initiative*.

C. Section “1.1 Location and Setting” of the Hercules Waterfront District Master Plan is amended to add the following paragraph at the end:

**The Hercules Waterfront District Master Plan was amended in 2008 by the Waterfront Now Initiative to include provisions applicable to the Undeveloped Portion of the Historic Town Center, Transit Village and Hercules Point Sub-Districts (as that term is defined in Section 4, Chapter 5). These provisions are set forth in Section 4 below.**

D. Section “1.2 Purpose and Intent” of the Hercules Waterfront District Master Plan is amended to add the following paragraph at the end:

**12. For the Undeveloped Portion of The Historic Town Center, Transit Village and Hercules Point Sub-Districts (as that term is defined in Section 4, Chapter 5), provide the opportunity for housing that is affordable to moderate to low-income households.**

E. Section “1.3 Structure and Authority” of the Hercules Waterfront District Master Plan is amended to add the following paragraph at the end of the subsection describing “The Code,” immediately before the subsection entitled “Authority”:

**However, the Public Space Master Plan and The Code for the Undeveloped Portion of the Historic Town Center, Transit Village and Hercules Point Sub-Districts (as that term is defined in Section 4, Chapter 5) are organized differently and are located in Section 4 below. For the undeveloped portions of these sub-districts, “The Code” content has been redefined as a form-based code, as explained in Section 4 below. In addition, notwithstanding any other provision of the Hercules Waterfront District Master Plan, none of Section 2 and none of Sections 3.5, 3.6 or 3.7 of the Waterfront Master Plan applies to the Undeveloped Portion of the Historic Town Center, Transit Village or Hercules Point Sub-Districts. Instead, the Undeveloped Portions of The Historic Town Center, Transit Village and Hercules Point Sub-Districts are subject to Section 4 below.**

F. Section “1.5 Neighborhood Build-out” of the Hercules Waterfront District Master Plan is amended to add the following paragraph at the end:

**The estimated buildout of the Undeveloped Portion of the Historic Town Center, Transit Village and Hercules Point Sub-Districts (as that term is defined in Section 4, Chapter 5), is as listed in the table below. The block letters correspond to the block labeling on the regulating plans throughout Section 4. Residential Unit counts and Flex, Office, and Retail square footages are approximate, and the final build-out for the Sub-Districts may vary. The block areas listed are gross acreages calculated to the centerlines of the streets. The entirety of the Hercules Point Sub-District is not included because it includes 10.9 acres of open space and waterfront commercial uses intended in the future to provide opportunities for direct access and interaction with the Bay.**

<b>Estimated build-out</b>						
<b>Block</b>	<b>Area (acres)</b>	<b>Units</b>	<b>Flex (Net sq. ft.)</b>	<b>Office (Net sq. ft.)</b>	<b>Retail (Net sq. ft.)</b>	<b>D.U.A.</b>
<b>A1, A2</b>	<b>2.28</b>	<b>108</b>	<b>1,500</b>	<b>12,000</b>	<b>-</b>	<b>47.37</b>
<b>B1, B2, B3</b>	<b>5.56</b>	<b>100</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>17.67</b>
<b>C</b>	<b>2.64</b>	<b>128</b>	<b>1,000</b>	<b>14,000</b>	<b>2,500</b>	<b>48.48</b>
<b>D</b>	<b>1.73</b>	<b>70</b>	<b>19,500</b>	<b>-</b>	<b>-</b>	<b>40.46</b>
<b>E</b>	<b>1.61</b>	<b>60</b>	<b>20,000</b>	<b>17,000</b>	<b>11,000</b>	<b>37.27</b>
<b>F</b>	<b>0.70</b>	<b>25</b>	<b>-</b>	<b>-</b>	<b>11,000</b>	<b>35.71</b>
<b>G</b>	<b>1.41</b>	<b>40</b>	<b>10,500</b>	<b>23,000</b>	<b>13,000</b>	<b>28.47</b>
<b>H</b>	<b>0.70</b>	<b>25</b>	<b>-</b>	<b>-</b>	<b>11,000</b>	<b>35.71</b>
<b>I</b>	<b>1.59</b>	<b>-</b>	<b>-</b>	<b>15,000</b>	<b>3,000</b>	<b>0.00</b>
<b>J</b>	<b>1.19</b>	<b>71</b>	<b>-</b>	<b>-</b>	<b>8,000</b>	<b>58.66</b>
<b>K</b>	<b>3.71</b>	<b>120</b>	<b>11,000</b>	<b>-</b>	<b>3,000</b>	<b>32.35</b>
<b>L</b>	<b>2.02</b>	<b>64</b>	<b>9,500</b>	<b>-</b>	<b>3,000</b>	<b>31.68</b>
<b>M</b>	<b>1.77</b>	<b>84</b>	<b>5,000</b>	<b>-</b>	<b>-</b>	<b>47.46</b>
<b>N1, N2, N3</b>	<b>6.58</b>	<b>103</b>	<b>32,000</b>	<b>-</b>	<b>-</b>	<b>15.65</b>
<b>O1, O2</b>	<b>2.64</b>	<b>128</b>	<b>19,000</b>	<b>-</b>	<b>3,000</b>	<b>48.48</b>
<b>P</b>	<b>1.24</b>	<b>73</b>	<b>-</b>	<b>-</b>	<b>3,000</b>	<b>58.87</b>
<b>Q</b>	<b>2.99</b>	<b>105</b>	<b>5,000</b>	<b>-</b>	<b>3,000</b>	<b>35.12</b>
<b>R</b>	<b>1.42</b>	<b>52</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>36.62</b>
<b>S</b>	<b>0.58</b>	<b>36</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>62.07</b>
<b>Total</b>	<b>42.36</b>	<b>1,392</b>	<b>134,000</b>	<b>81,000</b>	<b>74,500</b>	<b>--</b>

G. Section “2.0 Public Space Master Plan” of the Hercules Waterfront District Master Plan is amended to insert the following paragraph at the beginning, immediately before section 2.1 “Circulation Master Plan”:

**Notwithstanding any other provision of the Hercules Waterfront District Master Plan, this Section 2 of the Hercules Waterfront District Master Plan does not apply to the Undeveloped Portion of the Historic Town Center, Transit Village and Hercules Point Sub-Districts (as that term is defined in Section 4, Chapter 5). Instead, the Undeveloped Portion of the Historic Town Center, Transit Village and Hercules Point Sub-Districts is subject to Section 4 below.**

H. The last paragraph of Section “3.1 Intent Of The Code” of the Hercules Waterfront District Master Plan is amended to reflect the following:

**For the Undeveloped Portion of the Historic Town Center, Transit Village and Hercules Point Sub-Districts (as that term is defined in Section 4, Chapter 5), the form-based code set forth in Section 4 below translates the goals and visions of the Waterfront District Master Plan into prescriptive standards and pointed guidelines that facilitate new development projects with a high level of urban design, architecture and landscaping. The design of all buildings, site improvements, signs and other appurtenances within other parts of the District shall be regulated and approved in accordance with the provisions of this Section 3.**

I. Section “3.2 Organization and Use of the Code” of the Hercules Waterfront District Master Plan is amended to add the following at the end:

**The form-based code applicable to the Undeveloped Portion of the Historic Town Center, Transit Village and Hercules Point Sub-Districts (as that term is defined in Section 4, Chapter 5) is set forth in Section 4 below.**

**Notwithstanding any other provision of the Hercules Waterfront District Master Plan, the Historic Town Center Sub-District Plan that was adopted by the City Council on October 12, 2004 does not apply to any part of the Undeveloped Portion of the Historic Town Center, Transit Village and Hercules Point Sub-Districts.**

**Section 4 contains an introduction and five chapters, which include the urban and architectural regulations, development standards and design guidelines applicable to the Undeveloped Portion of The Historic Town Center, Transit Village and Hercules Point Sub-Districts. The methods, materials, and forms prescribed in Section 4 are standard. In the event of any conflict between Section 4 and the rest of the Hercules Waterfront District Master Plan, Section 4 shall control.**

J. Section “3.3 Administration Of The Code” of the Hercules Waterfront District Master Plan is amended to add the following at the end:

**The planning that has already taken place for the Undeveloped Portions of The Historic Town Center, Transit Village and Hercules Point Sub-Districts (as defined in Section 4, Chapter 5), including adoption of the Waterfront Now Initiative in 2008, has satisfied the purposes of master planning as set forth in Chapter 48, Planned Development Plans, of the Hercules Zoning Ordinance. Accordingly, none of the additional plans referenced in Chapter 48 shall be required for that area, except for final planned development plans (see Zoning Ordinance section 48.500). Specifically, no additional conceptual planned development plan (see Zoning Ordinance section 48.300), or initial planned development plan (see Zoning Ordinance section 48.400), shall be required for development within the Undeveloped Portions of The Historic Town Center, Transit Village and Hercules Point Sub-Districts (as defined in Section 4, Chapter 5).**

**The final planned development plan or plans for the Undeveloped Portions of The Historic Town Center, Transit Village and Hercules Point Sub-Districts (as defined in Section 4, Chapter 5) shall be processed according to Chapter 48 and all other applicable provisions of the Zoning Ordinance, with the following exceptions to that process: 1) the processing requirements shall not**

be applied or interpreted to allow the City to require substantive deviations from the matters adopted by the Waterfront Now Initiative; 2) upon receipt of any application for a final planned development plan within the Historic Town Center, Transit Village or Hercules Point Sub-Districts, the City shall notify all landowners within the relevant Sub-District of that application and of any hearings, workshops or similar public meetings concerning such application; 3) before the City retains an architect or planner to review or process any application for a final planned development plan within the Historic Town Center, Transit Village or Hercules Point Sub-Districts, the City shall provide notice of the proposed architect or planner to any owner of land that comprises at least 25% of the total gross acreage within the relevant Sub-District, allow that landowner ten business days after receipt of that notice to comment on the proposed architect or planner or any other aspect of the architect or planner selection process; and 4) consider any comments received from that landowner before deciding to retain the proposed architect or planner.

K. The first sentence of Section “3.4 General” of the Hercules Waterfront District Master Plan is amended to reflect the following:

**For the Undeveloped Portion of The Historic Town Center, Transit Village and Hercules Point Sub-Districts (as defined in Section 4, Chapter 5), the Code consists of the Building Form Standards, Architectural Standards, Civic Space Standards, Street and Circulations Standards, and Definitions contained in Section 4 below. Notwithstanding any other provision of the Hercules Waterfront District Master Plan, Sections 3.5, 3.6 and 3.7 do not apply to the Undeveloped Portion of The Historic Town Center, Transit Village and Hercules Point Sub-Districts, but the provisions of section 3.8 do apply. For all other properties in the District, tThis Code consists of the Regulating Plan and the Urban, Architectural and Landscape Regulations.**

L. Section 4 is added to the Hercules Waterfront District Master Plan. Section 4 is entitled “Hercules Waterfront District Master Plan, Historic Town Center/Transit Village/Hercules Point Sub-District Amendments.” A copy of Section 4, which includes an introduction and chapters 1 through 5, is attached as **Exhibit I** and incorporated by this reference.

#### **Section 11. Enactment of a Development Agreement.**

Attached as **Exhibit J** is a Development Agreement between the City of Hercules and the holders of legal or equitable interests in the real property described in exhibit A to the Development Agreement. To implement the provisions of this *Initiative*, and pursuant to the authority of Government Code Section 65867.5 specifying that a development agreement is a legislative act, the Development Agreement attached as **Exhibit J** is hereby adopted as an ordinance of the City of Hercules and approved. Not later than ten (10) days following the *Effective Date* of this *Initiative*, the City of Hercules shall complete the intentionally omitted information in the Introductory Paragraph of the Development Agreement and the City of Hercules shall execute the Development Agreement. Not later than ten (10) days following the date the City of Hercules executes the Development Agreement, the City shall have the Development Agreement recorded with the County Clerk-Recorder.

#### **Section 12. Exemptions.**

This *Initiative* shall not apply to any of the following: (1) any land that, under state or federal law, is beyond the power of the local voters to affect by the initiative power reserved to the people under the California Constitution; and (2) any property that has vested rights as of the *Effective Date* which preclude application of this *Initiative*.

#### **Section 13. Implementation of this Initiative.**

A. Upon the *Effective Date* of this *Initiative*, City staff is directed to take promptly such administrative and clerical steps as may be required to implement this *Initiative*, including but not limited to revising any General Plan or Waterfront District Master Plan figures or tables.

B. The General Plan Amendment enacted by this *Initiative* results in an integrated, internally consistent, and compatible statement of policies for the City. To ensure that the General Plan remains an integrated, internally consistent, and compatible statement of policies for the city as required by state law and to ensure that the actions of the voters or the City Council in enacting this *Initiative* are given effect, any provision of the General Plan that is adopted between the *Filing Date* and the *Effective Date* of the General Plan Amendments enacted by this *Initiative* shall, to the extent that such interim-enacted provision is inconsistent with the General Plan Amendments enacted by this *Initiative*, be amended as soon as possible and in the manner and time required by state law to ensure consistency between the provisions adopted by this *Initiative* and other elements of the General Plan.

C. To the extent permitted by law, the voters of the City hereby authorize and direct the City staff and decisionmakers to amend any elements or provisions of the General Plan and Waterfront District Master Plan, including all exhibits and figures, and all other City ordinances, policies, and implementation programs or policies, as soon as possible, to implement this *Initiative* and to ensure consistency and correlation between this *Initiative* and other elements of the General Plan, Municipal Code, Zoning Ordinance and Waterfront District Master Plan. The preceding sentence shall be interpreted broadly pursuant to *Pala Band of Mission Indians v. Board of Supervisors* (1997) 54 Cal.App.4th 565, to promote the requirements that a general plan constitute an integrated and consistent document.

D. After the *Effective Date*, any provision of the Hercules Municipal Code or Zoning Ordinance that is inconsistent with the General Plan Amendments enacted by this *Initiative* shall be deemed null and void and shall not be enforced.

#### **Section 14. Interpretation.**

A. To ensure that the voters' intent prevails, words in this *Initiative* shall be interpreted according to the intent expressed in this *Initiative* measure, and shall be applied according to their plain meaning. In the event the plain meaning is not clear, we the voters declare our intent that this *Initiative* be interpreted in light of the ballot materials and campaign materials offered in favor of this *Initiative*. Any titles of the sections or subsections of this *Initiative* are inserted for convenience of reference only and shall be disregarded in interpreting, applying or implementing any part of the provisions of this *Initiative*.

B. This *Initiative* shall be interpreted so as to be consistent with all federal and state constitutions, laws, rules, and regulations. This *Initiative* shall not be interpreted, applied or implemented in a manner that would take private property without the payment of just compensation, but shall be interpreted, applied and implemented to accomplish its purposes to the maximum extent possible without requiring payment of compensation. If that is not possible, then this *Initiative* shall be interpreted, applied and implemented in a manner that accomplishes its purposes to the maximum extent possible notwithstanding the requirement that just compensation be paid.

#### **Section 15. Severance.**

If any word or words of this *Initiative*, or its application to any situation, are held invalid or unenforceable, in a final judgment that is no longer subject to rehearing, review or appeal by a court of competent jurisdiction, then the invalid word or words are severed, and the remaining parts of this *Initiative*, and the application of any part of this *Initiative* to other situations, shall continue in full force and effect. We, the people of Hercules, declare that we would have adopted this *Initiative*, and each word of it, irrespective of the fact that any other word, condition, or application to any situation, be held invalid. It is our intent that any portion of this *Initiative* that can lawfully be implemented is implemented, even if doing so would not permit development of the project described herein and even if doing so would otherwise appear trivial or inconsequential.

## **Section 16. Amendment and Repeal.**

The matters adopted in Sections 4 through 12 of this *Initiative* may be renumbered, without a vote of the people, so long as doing so effects no substantive change to the contents of this *Initiative*. Clerical changes to reproduce or relocate any text or diagram of this *Initiative* may be made, without a vote of the people, so long as doing so effects no substantive change. Text and the portions of diagrams that are included in this *Initiative* for reference or context purposes only may be amended, supplemented or repealed according to the same procedures that would apply if this *Initiative* had not been enacted, without a vote of the people, provided that doing so does not result in any provisions inconsistent with the remainder of this *Initiative*. Corrections may be made to fix any typographical or clerical errors in this *Initiative*, without a vote of the people, provided that doing so effects no substantive change. No other part of this *Initiative* may be altered, amended or supplemented, except upon a subsequent vote of the people, or without a vote of the people but with the written consent of the owner of land within the *Subject Property* that is affected by or subject to the amendment.

## **Section 17. Statute Of Limitations**

Unless a shorter statute is enacted by the State Legislature, all provisions of this *Initiative* shall be deemed subject to Government Code section 65009(c), and no action or proceeding challenging all or any part of this *Initiative* shall be maintained unless commenced and service made within 90 days of the date of the legislative body's decision.

## **Section 18. Exhibits.**

The following is a list of exhibits that are attached to this *Initiative*. This listing is provided for ease of reference only, and does not constitute part of the matters adopted by this *Initiative*. Exhibits marked with an asterisk (\*) are incorporated into this *Initiative* by reference as though set forth in full. The other exhibits are attached for reference purposes only:

- Exhibit A\*     The *Subject Property*.
- Exhibit B\*     City of Hercules General Plan Land Use Diagram, and Hercules Zoning Map, as amended by this *Initiative*.
- Exhibit C     Land Use Diagram and Zoning Map as published in the *Filing Date General Plan*.
- Exhibit D\*     Open Space and Conservation Plan as amended by this *Initiative*.
- Exhibit E     Open Space and Conservation Plan as published in the *Filing Date General Plan*.
- Exhibit F\*     Concept District Master Plan with Planning Sub-Districts as amended by this *Initiative*.
- Exhibit G     Pre-*Initiative* Hercules Waterfront District Master Plan diagram entitled "Conceptual District Master Plan.
- Exhibit H     Pre-*Initiative* Hercules Waterfront District Master Plan diagram entitled "Planning Sub-District."
- Exhibit I\*     Section 4 of the Hercules Waterfront District Master Plan, entitled "Hercules Waterfront District Master Plan, Historic Town Center/Transit Village/Hercules Point Sub-District Amendments."
- Exhibit J\*     Development Agreement

-- Page numbers continued after EXHIBITS A through J --