



## MEMORANDUM

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DATE: November 17, 2012

TO: Mayor Romero and City Council Members  
City Employees and Members of the Public

FROM: Steve Duran, City Manager

SUBJECT: City Manager's Weekly Report

### **HOLIDAY SCHEDULE**

City offices will be closed Wednesday, November 21 as well as the November 22 – 23 Thanksgiving Holiday. The Wednesday closure is due to shifting the furlough Friday to Wednesday due the Friday Holiday. Normal Monday through Thursday office hours will resume on November 26.

### **FORMER CITY MANAGER OLIVA LAWSUIT UPDATE**

City Attorney Patrick Tang reported yesterday that the Superior Court in Alameda County denied Nelson Oliva's Demurrer to our complaint against him. Thus the City's suit against Mr. Oliva and his daughters ("Defendants") regarding their activities working for the City directly and through NEO Consulting can go forward. The tentative ruling, which was issued Thursday, was contested in court Friday by the Defendants. However, the judge ruled in favor of the City.

### **REAL PROPERTY PROJECT UPDATES**

**Market Hall/Red Barn Site:** Palo Alto based McNellis Partners, led by John McNellis, has purchased the Market Hall/Red Barn Site bordered by Interstate 80, Highway 4, San Pablo Avenue and Sycamore. This approximately 6.5 acre site is one of two premier retail sites in Hercules, the other being Sycamore Crossing. McNellis is a well regarded developer of retail centers and is one of several developers that were vying for this site. You can find out more about McNellis Partners at [www.mcnellis.com](http://www.mcnellis.com).

**Town Centrale:** The City Council has approved a set of entitlement actions for the Town Centrale project, which were previously approved on October 8 by the Planning Commission. These approvals allow the developer to resume and complete construction of the former Sycamore North project. As part of a purchase and sale agreement approved earlier this year, Presidio Development Partners proposes to finish construction on the mixed use project with approximately 140 apartments, four live-work units, and approximately 12,000 sq. ft. of ground-floor retail space, with 166 on-site parking spaces.

**Sycamore Crossing:** A Purchase and Sale Agreement (PSA) was entered into with Property Development Centers (PDC) in January. PDC is a wholly owned subsidiary of Safeway and plans to build a 55,000 to 65,000 Safeway store and gas station near San Pablo Avenue, with another junior anchor, restaurant and shop space to compliment the supermarket.

Staff and legal counsel completed a mediation session with Save-Mart, which is the beneficiary of the deed restriction under their lease for the Lucky's supermarket in Hercules. Considerable progress was made in the mediation discussions and a second round is scheduled for January 11, 2013. City legal counsel and PDC legal counsel concur that the deed restriction does not impact the smaller 3+ acre portion of the site on the east side of the creek at the corner of San Pablo and Sycamore, which is a separate parcel. Thus, PDC is developing an alternative plan for the site.

One plan is for a traditional one story Safeway close to Tsushima Drive and the other is for a more urban Safeway in either a podium style or roof-top parking style on the corner three acre site that is not subject to the deed restriction. With the podium style, the store is on the second level with parking at street level below the store. With the roof-top parking style, parking is on the roof with the store on the first level off a smaller parking lot on the ground level. If the deed restriction can be removed, the traditional store provides more flexibility for leasing, but either plan will work for Safeway.

Final site plans will be influenced by the status of the deed restriction, key tenants, and the design review and entitlement process. DPC is actively seeking tenants that will compliment the Safeway supermarket. Two or three story residential units on Sycamore facing Sycamore North are being considered for the site, but there is a potential for a 100% retail project.

**Sala Restaurant Site:** Under ABx26, assets of the former Redevelopment Agency not used for civic purposes and not under contract for a redevelopment project must be sold and the proceeds used to pay obligations of the former Redevelopment Agency. The City as Successor Agency is required to move expeditiously to dispose of such assets. AB 1484, however, does provide for a property management plan that could include transferring qualifies assets to the City for Civic Uses. 1991 Railroad Avenue, the Civic Art Building, which is leased to Sala Restaurant, is an asset of the former Redevelopment Agency that the City as Successor Agency will have to determines a use for, subject to the approval of the Redevelopment Oversight Board and the State Department of Finance.

November 29 has been set for a community meeting to get input of the future use of the Sala Restaurant site and building. Ideas expressed to date include selling the property, continuing to lease it as a restaurant and returning the property to a civic use.

**Bayfront – ITC Project:** This project will develop a 42.36 acre portion of the Hercules Waterfront District master Plan (WDMP) area with the “Hercules Bayfront Project,” a transit-oriented, mixed-use neighborhood that includes a variety of dwelling unit types with businesses, an associated system of walkable streets, pedestrian interconnections, and public plazas with bay views. The City portion of the project includes the Intermodal Transit Center (ITC) and other public improvements, including the extension of John Muir Parkway and the construction of a major Bay Trail segment.

The Water Board has requested additional information to supplement the application submitted on September 7, 2012 for water quality certification of the ITC plans. In order for the Water Board to issue waste discharge requirements and water quality certification, they must (1) verify that impacts to wetlands and other waters have been avoided to the maximum extent possible, (2) verify that the proposed mitigation design is sustainable and that it provides adequate compensation for the impacts, and, (3) ensure that storm water runoff impacts have been addressed. While the application submitted provided a substantial amount of information, the Water Board has requested more specific detail on some elements of the plan in order to make these determinations.

Upcoming significant milestones:

- Obtain water quality certification.
- Advance and finalize construction permitting efforts for the ITC Project.
- Finalize design for the initial ITC construction bid packages.

**Parcel C:** The property will be transferred and the Purchase and Sale Agreement with DeNova Homes will be assigned to the City as Successor Agency to the Hercules Redevelopment Agency. DeNova is proposing up to 350 high-quality, high-amenity residential apartments with a condo map and is considering the feasibility of some retail on the site. Two to three acres of the site will be used for a bio-retention area and a sewer lift station. This transit oriented development will provide support for the Intermodal Transit Center and the planned retail/restaurant node on Bayfront Boulevard adjacent to the ITC.

The Agreement is currently in its due diligence phase. Staff and legal counsel are working to remove and modify certain outdated easements that encumber this property and other properties, including a number of Bayfront-ITC parcels, and to deal with impacts of AB 1484, which places additional administrative burden on the disposition of former redevelopment agency properties. These issues will require an amendment to the Purchase and Sale Agreement, which staff and legal counsel are preparing. Parcel C and Victoria Crescent are the two properties being sold under a court approved \$6.5 million writ of attachment to settle the Ambac lawsuit, so time is of the essence in order to fulfill the requirements of the court sealed settlement to pay Ambac, as well as to pay Oliver & Company nearly \$2 million secured by Parcel C. The Oliver payment is due by March 31, 2013. Staff is in discussions with Oliver to renegotiate the schedule.

**Victoria Crescent:** The City Council has approved a Purchase and Sale Agreement with City Ventures, which has proposed detached residential homes for the site. Since this is a property that will be transferred to the City as Successor Agency to the Hercules Redevelopment Agency, the Redevelopment Oversight Board will be asked to approve the City Council's action at their next meeting, which is Monday, November 19. City Ventures is planning its first community meeting in December.

## PLANNING UPDATES

### Upcoming Hearings:

We anticipate the following project hearings at the Planning Commission meeting on Dec. 3:

- **Proposal to enclose a 239-sq.-ft. second-story deck at 136 Hemlock.**  
At the Design Review Subcommittee meeting on Tuesday, Oct. 30, Commissioner Bowermaster recommended the project for full Planning Commission consideration, without changes or additional conditions. (Commissioner Mitchell recused himself due to work-related relationships with both the applicant and the applicant's representative.)
- **Proposal to relocate "Aguirre Fitness" to 718 & 720 Alfred Nobel Dr. (North Shore Business Park)** from its current location at 1581 Sycamore Ave. (Creekside Shopping Center).
- **Proposal by Verizon Wireless to install antennas to the existing PG&E lattice tower on the open space land south of the intersection of the Falcon Way & Refugio Valley Road.**  
The Design Review Subcommittee reviewed the plans this week, but without the project representative present. The project is contingent on Verizon agreeing to the City's lease terms for installing ground-based equipment on City-owned land (\$2,000/month, similar to an existing lease agreement with AT&T for the same location).

### Housing Element:

The State requires that the Housing Element of every City's General Plan be updated every five years. Two years ago (Sept. 2010), the City submitted its [\*Preliminary Draft of the Housing Element Update for 2009-2014\*](#) to the [California Department of Housing and Community Development](#) (HCD) for 60-day public review of compliance with state laws. However, due to various uncertainties (elimination of redevelopment, disposition of City-owned properties, turnover in leadership and staff, resource limitations, etc.), the City has not—until now—followed up on certifying the Housing Element. To achieve HCD certification, and thus ensure the legitimacy of the City's General Plan and to remain eligible for certain funding opportunities, we anticipate completing the Housing Element Update along this schedule:

- Staff to finish revising the Housing Element to respond to prior HCD comments and to address policy and development changes that have occurred over the past two years (mid-November);
- Present the revised Housing Element to the Planning Commission and City Council (late Nov./early December);
- Resubmit by December the revised Housing Element to HCD for 60-day review;
- Complete the requisite CEQA review for the Housing Element by January 2013;
- Anticipate receiving from HCD by February 2013 a letter with Finding of Substantial Compliance;
- Adopt the Housing Element in March 2013;
- Send the adopted Housing Element back to HCD for final certification in April 2013;

## MUNICIPAL SERVICES UPDATE

### Building Permits:

- Number of permits issued-----11
- Building permit fees collected-----\$2,223.41
- Number of inspections-----12
- Code Enforcement inspections-----2

### Sewer Lateral Inspection Program:

- Applications received-----2
- Inspection fees collected-----\$250.00
- Number of Certificates issued-----2
- Number of deficiency notices-----7
- Number of condominium waivers issued-----1

### Other Permits:

- Wide-load permits-----0
- Encroachment permits-----2
- Grading permits-----0

### Other Activities:

- Landscape irrigation has been shut down for the winter city wide.
- Landscape mulching continues by Contractor.
- Staff repaired numerous streetlights within the City.
- Staff continues repainting of red curbs city-wide.
- Staff has been working on Bayfront lift station removal documents.
- Staff has been working on the John Muir Parkway extension and Bayfront Bridge documents.
- Staff continues to work on documents for the Bay Trail.
- Staff working on C.7 Provisions of the Regional Water Board Permit.
- Staff attended the Pinole/Hercules Wastewater Subcommittee.
- Staff continues to work with the pre-design engineers on the Pinole/Hercules wastewater treatment plant improvements.
- Staff has completed documents necessary to demolish two homes on Carson Street. The City Attorney and Municipal Services Director hope to deliver the documents to the Court next week subject to the availability of the judge.

## PARKS AND RECREATION UPDATES

Currently the Park & Recreation Department offers a wide variety of recreation classes and programs that cater to all ages and help to promote a healthy lifestyle. The classes & programs provide a great opportunity to have fun and exercise while interacting with others in a safe environment. You can go online to [www.ci.hercules.ca.us](http://www.ci.hercules.ca.us) to get more information or to register for classes.

### **Licensed Before & After School Child Care**

Sign up for Fall Child Care; please make sure to register early so you get your space. For more information please call 245-4803. What are the benefits of our licensed programs?

- Provides a safe and nurturing environment
- Provides qualified and matured staff
- All lead Staff have training in school age programming through accredited colleges
- Provides a 1 staff to 14 ratio, not to exceed 28 children per classroom
- All staff have passed a Livescan/Background check

### **Aquatics:**

- CRAB FEED!! January 19<sup>th</sup>, 2013. Buy your tickets NOW!!
- EBSD All Year Round Membership! Taking sign-ups NOW!!
- Swim Passes available for Lap Swim/Water Walking (Monday-Friday 6-7pm)
- Water Polo Conditioning starts on 11/5/12-2/1/13, Time: 5-6:30pm, Days: Monday-Friday, Fees: \$200, Ages 5-18
- EBSD Swim Clinics starts on 1/2/13-1/31-13, Times: 5-6:30pm, Days: Monday-Friday, Fees: \$60, Ages 5-18

### **Teens:**

Sign up for our SPOT Before and After school program for grades 6<sup>th</sup> -9<sup>th</sup>.

- We currently have 30 participants signed up for the Before and After school program.

### **Facilities:**

Are you looking for a hall to rent to hold a meeting, party, wedding reception, graduation, birthday, retirement or baptisms. Check out our many facilities we have to offer by going online to [www.ci.hercules.ca.us](http://www.ci.hercules.ca.us) or call 799-8291 for more information.

- Community Center is fully rented out for Saturdays for the month of November.

### **Recreation Classes:**

We are now taking registration for many new and exciting classes. Classes include Tutoring, Math Tutoring, Oil Painting, Chinese, Dog Obedience, Ballet, Gymnastics, Belly Dance, Guitar, Karate, Ab Lad, Zumba & Jazzercise. Make sure to register early before they fill up or get canceled for low enrollment.

- Buy your Zumba passes

### **Parks & Recreation Activity Guide & Banner Programs:**

We are accepting applications to advertise in the next edition of the Parks and Recreation activity guide which come out December. If you have specific questions feel free to give Andrea Mendez a call at (510) 799-8290 or email [amendez@ci.hercules.ca.us](mailto:amendez@ci.hercules.ca.us).

- Preparing the guide to be released by the end of November staff brought in \$1,488.00 in advertisements

**Sports:**

We are now taking registration for many new and exciting sports classes and programs that we are offering: Pee Wee Basketball, Tennis, Adult 3 on 3 basketball, Youth Flag Football, Gymnastic, Tiny Tot Sports: 10 participants, Functionally Fit, Table Tennis: 5 participants, Co-ed Adult Dodge ball, Co-ed Kick Ball. Make sure to register early before they fill up or get canceled for low enrollment.

- Open Gym Basketball Mondays/Tuesday/ Thursdays from 8:15pm-10:15pm \$5res/\$6nres

**Tiny Tots & Little Learners:**

A great introduction to your child's "First Learning Experiences". They will have fun making their first school friends, learning through play, games, arts, crafts, and healthy snacks. Our loving and qualified staff will guide them with socialization and self-help skills. Children have so much fun, they do not realize they are learning! Our program runs along with the school year from September-June. Come see what keeps our children smiling! Children must be completely toilet trained (no pull-ups).

- We are currently full. Tiny Tots has 2 classrooms running at Hanna with a total of 48 for MWF and one class for T/Th with 24 participants.

**Seniors/50+:**

Come to the Senior Center Programs to enjoy: CC Café, Art Class, Card Club, Ping Pong, Tai Chi, Zumba Gold, Low Impact Exercise Classes, Dance Club, and a Hula Dance. Become a Member for \$20.00, your membership gives you access to over 30 classes and programs at a discounted rate.

**WEEKLY POLICE REPORT - As of November 15, 2012**

**Stolen Vehicle:** On November 9, 2012, at 8:28am, an Officer was dispatched to the 2100 block of Tsushima for a report of a stolen vehicle. The reporting party stated she last saw her locked Honda Civic, at 8:30pm on November 8, 2012, parked in front of her residence.

**Lost Property:** On November 9, 2012 at 3:19pm, an Officer was dispatched to Hercules Police Department for a lobby detail. The reporting party said she lost her wallet sometime today but is unsure where she lost it.

**Warrant Arrest:** On November 9, 2012 at 8:30 p.m. Hercules Officers went to the 1000 block of Canterbury to attempt to serve an outstanding Misdemeanor Warrant. The Officers arrested 41 year old Oswaldo Nieva, of Hercules. Nieva was cited and released.

**Stolen Vehicle:** On November 10, 2012, at 8:25am, an Officer was dispatched to the 300 block of Sparrow for a report of a stolen vehicle. The reporting party said he last saw his 1995 Honda Accord, at 10:00pm, on November 9, 2012, parked in front of his residence.

**Recovered Stolen Vehicle:** On November 10, 2012 at 12:31pm a Volunteer Parking Enforcement Officer located a stolen vehicle in the parking lot of Refugio Valley Park. The vehicle was reported stolen to San Pablo PD this morning. As Officers were processing the vehicle they were approached by an 18 year old female, who said the vehicle belonged to her. Later she said the vehicle belonged to her 15 year old brother. The registered owner of the vehicle arrived and told Officers that the female and her brother were his girlfriend's children; and that 15 year old took the vehicle without his permission. The owner saw the juvenile driving the vehicle in Richmond, but could not follow him. The juvenile was not located. The vehicle was returned to the owner. 18 year old Mireya Flores, of Richmond, had a no-bail warrant. She was arrested and transported to Martinez Detention Facility.

**Public intoxication:** On Nov. 10, 2012 at 9:13 PM an Officer conducted a pedestrian stop on two males, standing at the bus stop, on Willow Ave at San Pablo Ave. One of the males had a 24oz. can of an alcoholic beverage in his hand. Both males were determined to be extremely intoxicated and unable to safely care for themselves. 57 year old Mark Ostenberg, of San Pablo; and 59 year old Donald Scholes, of Martinez, were arrested for Public Intoxication and transported to the Martinez Detention Facility.

**Warrant Arrest:** On November 10, 2012 at 9:39 PM an officer conducted a pedestrian stop in the 100 block of Bobolink. The Officer recognized the subject and knew he had an outstanding felony warrant for Auto Theft and Possession of a Stolen Auto. 29 year old Justin Kemal, of Hercules, was arrested and transported to the Martinez Detention Facility.

**Hit and Run Collision:** On November 11, 2012, at about 4:34 pm, Officers were dispatched to the area of Falcon and Refugio Valley Rd. The calling party said two vehicles were racing in the area. One of vehicles collided into a mailbox and did not stop. The vehicle was described as dark colored Chevrolet, possibly a Corvette. When Officers arrived they observed a community mailbox, in the 300 block of Falcon, had been sheared from its original position; and that there was damage to a resident's landscaping. The suspect vehicle was determined to be a dark green 2000 Chevy Camaro and was located, parked unoccupied, in the cul-de-sac of Wren Ct. The Officers located the driver in the 100 block of Wren Ct. 25 year old Michael Videau, Oakland, arrested for Hit and Run. He was subsequently cited and released for the Hit and Run, and other miscellaneous associated vehicle code violations.

**Warrant Arrest:** On Nov. 12, 2012 at 1:29 AM an Officer conducted a traffic stop on Willow Ave. near Canterbury. The driver was determined to have a Misdemeanor Warrant. 21 year old Leteef Omari, was arrested on the warrant. He was cited and released on scene.

**Residential Burglary:** On November 12, 2012, at about 11:52 am, a Real Estate agent said she is representing a house in the 200 block of Newberry. The house is in the process of being sold. When she checked the house she observed it appeared to have been broken into sometime in the last week. Officer found the front door, and front bedroom window, were open; a kitchen window was broken; and the rear glass sliding door appeared to have been pried. The loss appears to be metal fixtures.

**Hit and Run Collision:** On November 12, 2012, at about 1:05 pm, Officers responded Sycamore Ave and San Pablo Ave. The reporting party said a collision had just occurred and one of the vehicles, described as a dark colored Mini Cooper, had left the scene. The victim vehicle sustained moderate front end damage and the driver did not have any visible injuries. Witnesses stated they saw the suspect park his vehicle in the 4000 block of San Pablo Ave, and adjust something on the front end, before driving away.

**Strong Arm Robbery:** On November 12, 2012, at about 5:41 PM, Officers were dispatched to the dog park in the 100 block of Turquoise Dr, for a reported strong arm robbery that had. The suspects were described as three African American male juveniles, one was wearing a white hoodie and another had on a black scarf around his neck. The third suspect was riding a bicycle. One of the suspects indicated he had a weapon. All three were last seen heading towards Park Lake Plaza. An area search was conducted but the suspects were not located.

**Attempted Residential Burglary and Residential Burglary:** On November 12, 2012, at about 5:54 pm, a resident from the 300 block of N. Wildwood reported an attempted burglary on November 4, 2012. She stated about 8:30 am, an unfamiliar African American male, about 18-19 years old, jumped over the back fence into her backyard. The subject opened the screen door, saw the resident and ran in unknown direction. The Incident was not reported to the police at that time. A case was taken for attempted burglary.

The same resident reported a second incident that occurred November 11, 2012, about 10:30 am. She stated she exited the bathroom and saw a subject described as an African American male juvenile, walking towards her in the hallway inside of the residence. She yelled at the subject and chased him out of the residence. A second case was taken for residential burglary

**Delaying, Obstructing or Resisting a Police Officer:** on Nov. 12 at 9:32 PM an Officer conducted a traffic stop at Shell Station, Sycamore Ave at San Pablo Ave. The driver exited his vehicle, walked into the Shell station, and paid for gas. The Officer told the driver he needed to return to his car. The driver told the Officer that he did not have to do anything that he was told. The driver continued to be argumentative and refused to identify himself. The subject, later identified as 30 year old Jason Anderson, of Hercules, was arrested for Delaying and Obstructing an Officer. He was transported to the Martinez Detention Facility.

**Commercial Burglary:** November 13, 2012, at about 11:23 am, Officers were dispatched to the Sun Flower Bakery in the 1500 block of Sycamore Ave. A witness observed a subject enter the business and grab the tip jar that was sitting on top of the counter. The suspect turned to leave and was startled by the witness. The suspect placed the tip jar back onto the counter and fled the area. The suspect was located and detained. The witness positively identified the suspect. 21 year old Duane Hooper, of Hercules, was arrested for Second Degree Burglary (entering a business with the intent to commit theft). Hooper was transported to the Martinez Detention Facility.

**Identity Theft:** On November 13, 2012, at about 12:23 pm, a citizen came to the Hercules Police Department and reported somebody used his personal information, without his permission, to open a bank account in Atlanta, Georgia.

**Identity Theft:** On November 13, 2012, at about 3:00 pm, a citizen came to the Hercules Police Department and reported someone used his personal information, without his permission, to open a PayPal account.

**Residential Burglary:** on November 14, 2012 at 12:18 AM Officers were dispatched to the 100 block of Iris Rd. The resident stated he left his home at approximately 9:00 AM on Tuesday morning, and returned just after midnight. When he got home he observed the front door was standing open and personal property was missing. The Officer was unable to determine how entry was made into the residence. The house is currently for sale and has a realtor's lock box.

**Mental Health Evaluation:** On November 12, 2012 at 9:42am, Officers were dispatched to the 100 block of Thrush Court regarding an adult male who was reportedly hallucinating. The subject was determined to be a danger to himself, and to meet the criteria for a Mental Health Evaluation. The subject was transported to the County Regional Medical Center, by ambulance.

**Cold Hit and Run Collision:** On November 12, 2012 at 2:19pm, an Officer was dispatched to Hercules Police Department for a lobby detail. The reporting said she had been the victim of a hit and run collision on November 12, 2012 at the Hercules Middle High School parking lot.

**Lost Property:** On November 12, 2012 at 6:06pm, an Officer was dispatched to the Hercules Police Department for a lobby detail. The reporting party said she lost her wallet somewhere inside the building at 500 Alfred Nobel.

**Suspicious Subject:** On November 14, 2012 at 6:57 p.m. Hercules Officers were dispatched to the 800 block of Willow Avenue. The reporting party said a male subject had been sitting in a parked Silver Honda Accord for over 2 hours. The reporting party stated the same subject was parked in the same area yesterday, and believed the subject was involved in suspicious activity. Officers contacted the male subject and advised him his presence was bothering people in the area. He agreed to leave.

**Identity Theft (Bob-Cop Report):** On November 15, 2012 at 2:46 a.m. an Officer handled an online police report. The reporting party stated they had been the victim of Identity Theft. An unknown person had attempted to make a large purchase, at a retailer, using the victim's name, address and debit card number. The victim told the retailer she did not authorize anyone to use her information and the purchase did not go through.

**Auto Burglary:** On November 15, 2012 at 4:55 a.m. an Officer responded to the 100 block of South Wildwood. The reporting party said he came outside at 4:50 a.m. and found the trunk open on his 2002 Chevy Tahoe. The victim said an unknown suspect took his set of Golf Clubs and a Speaker. There were no signs of forced entry found but stated he locked his vehicle when he parked it at 7:00 p.m. the night before.