

HERITAGE COMMERCE CORP
Form 8-K
September 30, 2008

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **September 25, 2008**

HERITAGE COMMERCE CORP

(Exact name of registrant as specified in its charter)

| | | |
|--|--------------------------|-----------------------------------|
| California | 000-23877 | 77-0469558 |
| (State or other jurisdiction of incorporation) | (Commission File Number) | (IRS Employer Identification No.) |

150 Almaden Boulevard, San Jose, CA
(Address of principal executive offices)

95113
(Zip Code)

Registrant's telephone number, including area code: **(408) 947-6900**

Not Applicable

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(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (See General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Disability. In the event a participant becomes disabled, the participant will receive the actuarial equivalent of his or her supplemental retirement benefit, payable monthly, commencing on the first of the month following determination that the participant is disabled and continuing until the death of the participant.

Cause. If a participant's employment is terminated for cause the participant forfeits any rights the participant may have under the SERP.

Change of Control. If a participant's employment is terminated for any reason (except cause or after qualifying for normal retirement) within two years following a change of control the participant will receive 100% of his or her supplemental retirement benefit commencing at the later of the first month following the age selected by the participant or the first month following the participant's separation from service, and continuing until the death of the participant. In the event payments commence prior to the participant's normal retirement age, then the benefit due the participant will be reduced by five percent for each year (or partial year) that the participant's benefit is paid prior to the participant's normal retirement age.

The SERP is a nonqualified deferred compensation plan under the Internal Revenue Code of 1986, as amended. The tax law governing nonqualified deferred compensation was completely revised with the addition of Section 490A. Section 490A imposes severe tax penalties on executives whose deferred compensation benefits do not comply with the new tax rules. Many of the changes to the SERP are intended to comply with Section 409A.

Item 9.01. Financial Statements and Exhibits.

99.1 2005 Amended and Restated Supplemental Executive Retirement Plan.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

HERITAGE COMMERCE CORP

DATED: September 29, 2008

By:

/s/ Lawrence D. McGovern

Lawrence D. McGovern
Executive Vice President and

Exhibit Index

| Exhibit | Description |
|----------------|---|
| 99.1 | 2005 Amended and Restated Supplemental Executive Retirement Plan. |