

HERITAGE COMMERCE CORP

Form S-1

July 23, 2010

[Table of Contents](#)

As filed with the Securities and Exchange Commission on July 23, 2010

Registration No. 333-

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM S-1

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

HERITAGE COMMERCE CORP

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction of
incorporation or organization)

6022
(Primary Standard Industrial
Code Number)

77-0469558
(I.R.S. Employer
Identification Number)

**150 Almaden Boulevard
San Jose, California 95113
(408) 947-6900**

Edgar Filing: HERITAGE COMMERCE CORP - Form S-1

(Address, including Zip Code, and Telephone Number, including Area Code, of Registrant's Principal Executive Offices)

LAWRENCE D. McGOVERN

Executive Vice President and Chief Financial Officer

Heritage Commerce Corp

**150 Almaden Boulevard
San Jose, California 95113
(408) 497-6900**

(Name, Address, including Zip Code, and Telephone Number, including Area Code, of Agent for Service)

Copy to:

MARK A. BONENFANT, ESQ.

Buchalter Nemer
1000 Wilshire Boulevard
Fifteenth Floor
Los Angeles, California 90094
(213) 891-0700
(213) 630-5664 Facsimile

Approximate date of commencement of the proposed sale of the securities to the public: From time to time after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Edgar Filing: HERITAGE COMMERCE CORP - Form S-1

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer <input type="checkbox"/>	Accelerated filer <input type="checkbox"/>	Non-accelerated filer <input type="checkbox"/>
Non-accelerated filer <input type="checkbox"/> (Do not check if a smaller reporting company)	Smaller reporting company <input checked="" type="checkbox"/>	

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered (1)	Amount to be Registered (2)	Proposed maximum offering price per Share (3)	Proposed maximum aggregate offering price (2)	Amount of registration fee (1)(4)
Series B Mandatorily Convertible Cumulative Perpetual Preferred Stock, no par value (and underlying shares of Common Stock)	53,996	\$981.34	\$52,988,434	\$3,778
Series C Convertible Perpetual Preferred Stock, no par value (and underlying shares of Common Stock)	21,004	\$981.34	\$20,612,065	\$1,469
Underlying Shares of Common Stock, no par value (5)	22,222,223			
Total			\$73,600,499	\$5,248

(1) This registration statement relates to the following securities to be offered for resale by the selling securityholders: (a) shares of Series B Mandatorily Convertible Cumulative Perpetual Preferred Stock, no par value (the Series B Preferred Stock), Series C Convertible Perpetual Preferred Stock, no par value (the Series C Preferred Stock), (c) the shares of Common Stock, no par value (the Common Stock), underlying the Series B Preferred Stock and the Series C Preferred Stock; and (d) any additional shares of Common Stock or Series B Preferred Stock or Series C Preferred Stock that become issuable in connection with anti-dilution adjustments as set forth in the terms of the Certificates of Determination of the Series B Preferred Stock of the Series C Preferred Stock.

(2) Estimated solely for purposes of calculating the registration fee. Pursuant to Rule 416, there are also registered such indeterminate number of additional shares of Series B Preferred Stock, Series C Preferred Stock and Common Stock that may become issuable due to anti-dilution adjustments for changes resulting from stock splits, stock dividends, recapitalizations or similar transactions and certain other events specified in the terms of the Series B Preferred Stock and the Series C Preferred Stock, as applicable.

(3) Estimated solely for the purpose of calculating the registration fee and based on the average of the high and low sales price of Common Stock of \$3.68 on July 19, 2010 on the NASDAQ Global Select Market pursuant to Rule 457(c).

Edgar Filing: HERITAGE COMMERCE CORP - Form S-1

(4) Pursuant to Rule 457 (i), a single registration fee is payable with respect to the Series B Preferred Stock, the Series C Preferred Stock and the underlying shares of Common Stock.

(5) Represents 20,000,000 shares of Common Stock issued to be upon conversion of the 53,996 outstanding shares of Series B Preferred Stock and the 21,004 outstanding shares of Series C Preferred Stock, plus an additional 2,222,223 shares that will be issuable if certain shareholder approvals are not obtained within six months of the date of issuance of the Series B Preferred Stock and the Series C Preferred Stock.

The Registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said section 8(a), may determine.

Table of Contents

SUBJECT TO COMPLETION, DATED JULY 23, 2010

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS

HERITAGE COMMERCE CORP

53,996 Shares of Series B Mandatorily Convertible Cumulative Perpetual Preferred Stock

21,004 Shares of Series C Convertible Perpetual Preferred Stock

14,399,000 Shares of Common Stock Underlying the Series B Preferred Stock

5,601,000 Shares of Common Stock Underlying the Series C Preferred Stock

This prospectus relates to the securities listed below that may be offered for sale from time to time by the persons named in this prospectus (and their transferees) identified under the heading "selling securityholders" on page 14 of this prospectus who currently own such securities or may acquire such securities upon the conversion of securities currently held. We refer to these persons as the "selling securityholders."

Edgar Filing: HERITAGE COMMERCE CORP - Form S-1

An investment in the securities involves risks. You should carefully consider all of the information set forth in this prospectus, including the risk factors beginning on page 4 of this prospectus, as well as the risk factors and other information contained in any documents we incorporate by reference into this prospectus before investing in any of the securities.

This prospectus covers the following securities:

- Some or all of the 53,996 shares of our Series B Mandatorily Convertible Cumulative Perpetual Preferred Stock (Series B Preferred Stock);
- Some or all of the 21,004 shares of our Series C Convertible Perpetual Preferred Stock (Series C Preferred Stock);
- The shares of our Common Stock, no par value (Common Stock), issuable upon the mandatory conversion into Common Stock of our Series B Preferred Stock; and
- The shares of our Common Stock issuable upon the mandatory conversion into Common Stock of our Series C Preferred Stock.

Pursuant to a Securities Purchase Agreement, dated June 18, 2010, entered into by Heritage Commerce Corp and each of the selling securityholders (or an affiliate of the selling securityholders), we issued shares of Series B Preferred Stock and Series C Preferred Stock to the selling securityholders in a private placement transaction exempt from the registration requirements of the Securities Act of 1933, as amended. We refer to this transaction as the June 2010 Private Placement. In order to enable the Series B Preferred Stock and the Series C Preferred Stock to convert into our Common Stock in accordance with their respective terms, we will seek approval from our shareholders of proposals concerning the issuance of our Common Stock in connection with the conversion of the Series B Preferred Stock and Series C Preferred Stock into our Common Stock for purposes of NASDAQ Listing Rule 5635 and California law. We refer to these shareholder approvals together as the Shareholder Approvals.

When used in this prospectus, the term Securities refers to the shares of Series B Preferred Stock, shares of Series C Preferred Stock and the shares of Common Stock. We agreed in the Securities Purchase Agreement to file this resale registration statement covering these Securities.

Table of Contents

The selling securityholders who may sell or otherwise dispose of the Securities were the initial investors (or the permitted affiliate transferees of such investors) in the June 2010 Private Placement described above. The selling securityholders may offer the Securities from time to time directly or through underwriters, broker-dealers or agents and in one or more public or private transactions and at fixed prices, at prevailing market prices, at prices related to prevailing market prices, at various prices determined at the time of sale or otherwise or at negotiated prices. If the Securities are sold through underwriters, broker-dealers or agents, the selling securityholders (or the purchasers of the Securities as negotiated with the selling securityholders) will be responsible for underwriting discounts or commissions or agent commissions, if any. The registration of the Securities does not necessarily mean that any of the Securities will be sold by the selling securityholders. The timing and amount of any sale is within the selling securityholder's sole discretion, subject to certain restrictions. See Plan of Distribution.

We will not receive any proceeds from the sale of Securities by the selling securityholders.

Shares of our Common Stock are traded on the NASDAQ Global Select Market under the symbol HTBK. The Series B Preferred Stock and the Series C Preferred Stock are not currently listed on any established securities exchange or quotation system, and we do not intend to seek such listings. In the event we were to seek such listings, there is no guarantee that any established securities exchange or quotation system would accept the Series B Preferred Stock or Series C Preferred Stock for listing.

None of the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System or any state securities commission has approved or disapproved of these Securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

These Securities are not savings accounts, deposits or other obligations of any bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation, the Deposit Insurance Fund or any other government agency or fund.

This date of this prospectus is _____, 2010.

Table of Contents

TABLE OF CONTENTS

	Page
<u>ABOUT THIS PROSPECTUS</u>	ii
<u>CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	ii
<u>INFORMATION INCORPORATED BY REFERENCE</u>	iii
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	iv
<u>PROSPECTUS SUMMARY</u>	1
<u>RISK FACTORS</u>	5
<u>PRICE RANGE OF COMMON STOCK</u>	12
<u>DIVIDEND POLICY</u>	13
<u>SUMMARY OF THE UNDERLYING TRANSACTIONS</u>	14
<u>USE OF PROCEEDS</u>	14
<u>SELLING SECURITYHOLDERS</u>	15
<u>DESCRIPTION OF CAPITAL STOCK</u>	18
<u>PLAN OF DISTRIBUTION</u>	31
<u>LEGAL MATTERS</u>	33
<u>EXPERTS</u>	33

Table of Contents

ABOUT THIS PROSPECTUS

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with different or inconsistent information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these Securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this prospectus or the documents incorporated by reference is accurate as of any date other than the date of such applicable document. Our business, financial condition, results of operations and prospects may have changed since that date.

Unless we state otherwise or the context indicates otherwise, references to Heritage, we, us, our and the Company in this prospectus refer to Heritage Commerce Corp and its subsidiaries. References to Heritage Bank of Commerce or HBC mean our wholly-owned banking subsidiary.

CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus including the documents incorporated by reference in it, contains various statements that may constitute forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (Securities Exchange Act), and are intended to be covered by the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Any statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These forward-looking statements often can be, but are not always, identified by the use of words such as assume, expect, intend, plan, project, believe, estimate, predict, anticipate, may, might, should, and similar expressions. We base these forward-looking statements on our current expectations and projections about future events, our assumptions regarding these events and our knowledge of facts at the time the statements are made. These statements include statements relating to our projected growth, anticipated future financial performance, and management's long-term performance goals, as well as statements relating to the anticipated effects on results of operations and financial condition.

These forward-looking statements are subject to various risks and uncertainties that may be outside our control and our actual results could differ materially from our projected results. In addition, our past results of operations do not necessarily indicate our future results. Please see our most recent Annual Report on Form 10-K for the year ended December 31, 2009 and our subsequent Quarterly Reports on Form 10-Q and the other information contained in this prospectus for a further discussion of these and other risks and uncertainties applicable to our business. The forward-looking statements could be affected by many factors, including but not limited to:

- Our ability to attract new deposits and loans;
- Local, regional, and national economic conditions and events and the impact they may have on us and our customers;
- Risks associated with concentrations in real estate related loans;

- Increasing levels of classified assets, including nonperforming assets, which could adversely affect our earnings and liquidity;
- Market interest rate volatility;
- Stability of funding sources and continued availability of borrowings;
- Changes in legal or regulatory requirements or the results of regulatory examinations that could restrict growth and constrain our activities, including our written agreement entered into by the Company and the Federal Reserve Bank of San Francisco and the California Department of Financial Institutions;
- Changes in accounting standards and interpretations;

Table of Contents

- Significant decline in the market value of the Company that could result in an impairment of goodwill;

- Our ability to raise capital or incur debt on reasonable terms;

- Regulatory limits on Heritage Bank of Commerce's ability to pay dividends to the Company;

- Effectiveness of the Emergency Economic Stabilization Act of 2008, the American Recovery and Reinvestment Act of 2009 and other legislative and regulatory efforts to help stabilize the U.S. financial markets;

- Future legislative or administrative changes to the U.S. Treasury Capital Purchase Program enacted under the Emergency Economic Stabilization Act of 2008;

- The impact of the Emergency Economic Stabilization Act of 2008 and the American Recovery and Reinvestment Act of 2009 and related rules and regulations on our business operations and competitiveness, including the impact of executive compensation restrictions, which may affect our ability to retain and recruit executives in competition with other firms who do not operate under those restrictions;

- The impact of the Dodd-Frank Wall Street Reform and Consumer Protection Act signed by President Obama on July 21, 2010; and

- Our success in managing the risks involved in the foregoing items.

We are not able to predict all the factors that may affect future results. You should not place undue reliance on any forward-looking statement, which speaks only as of the date of this prospectus or the date of the document incorporated by reference. Except as required by applicable laws or regulations, we do not undertake any obligation to update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

INFORMATION INCORPORATED BY REFERENCE

Edgar Filing: HERITAGE COMMERCE CORP - Form S-1

The SEC allows us to incorporate by reference the information contained in the documents we file with the SEC, which means that we can disclose important information to you in this prospectus by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus.

We incorporate by reference the documents listed below (other than filings or portions of filings that, under applicable SEC rules, are furnished rather than filed):

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, as filed on March 17, 2010, including portions incorporated by reference therein to our Definitive Proxy Statement on Schedule 14A filed with the SEC on April 20, 2010;
- Our Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2010 (as filed on May 11, 2010);
- Current Reports on Form 8-K filed on May 3, 2010 (solely with respect to Item 8.01), May 28, 2010, June 22, 2010, June 30, 2010 and July 15, 2010; and
- The description of our Common Stock contained in our Registration Statement on Form 8-A, dated March 5, 1998, which registers our Common Stock under Section 12 of the Exchange Act, together with any amendments or reports filed with the SEC for the purpose of updating the description.

You may obtain a copy of these filings at no cost by writing to us at Heritage Commerce Corp, 150 Almaden Boulevard, San Jose, California 95113, Attention: Corporate Secretary or by telephone request to our Corporate Secretary at (408) 947-6900.

Table of Contents

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly, and current reports, proxy statements and other information with the Securities and Exchange Commission (SEC). Our SEC filings are available to the public on the Internet at the SEC 's website at www.sec.gov and on our website www.heritagecommercecorp.com (as soon as practicable after we electronically file such materials with, or furnish them to, the SEC). Except for those SEC filings incorporated by reference in this prospectus, none of the information contained on, or that may be accessed through, our website is a prospectus or constitutes part of, or is otherwise incorporated into, this prospectus.

You may also read and copy any document we file with the SEC at its public reference facilities at 100 F Street N.E., Washington, D.C. 20549. You can also obtain copies of the documents upon the payment of a duplicating fee to the SEC. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

This prospectus omits some information contained in the registration statement in accordance with SEC rules and regulations. You should review the information and exhibits included in the registration statement for further information about us and the securities we are offering. Statements in this prospectus concerning any document we filed as an exhibit to the registration statement or that we otherwise filed with the SEC are not intended to be comprehensive and are qualified by reference to these filings. You should review the complete document to evaluate these statements.

Table of Contents

PROSPECTUS SUMMARY

This summary highlights selected information contained elsewhere or incorporated by reference in this prospectus and may not contain all the information that you need to consider in making your investment decision. You should carefully read this entire prospectus, as well as the information to which we refer you and the information incorporated by reference herein, before deciding whether to invest in our Securities. You should pay special attention to the Risk Factors section of this prospectus to determine whether an investment in the Securities is appropriate for you.

About Heritage Commerce Corp

Heritage Commerce Corp, a California corporation organized in 1997, is a bank holding company registered under the Bank Holding Company Act of 1956, as amended. We provide a wide range of banking services through Heritage Bank of Commerce, our wholly-owned subsidiary and our principal asset. Heritage Bank of Commerce is a California state-chartered bank headquartered in San Jose, California and has been conducting business since 1994.

Heritage Bank of Commerce is a multi-community independent bank that offers a full range of commercial banking services to small and medium-sized businesses and their owners, managers and employees. We operate through 10 full service branch offices located entirely in the southern and eastern regions of the general San Francisco Bay Area of California in the counties of Santa Clara, Alameda, and Contra Costa. Our market includes the headquarters of a number of technology-based companies in the region commonly known as Silicon Valley.

Our lending activities are diversified and include commercial, real estate, construction and land development, consumer and SBA guaranteed loans. We generally lend in markets where we have a physical presence through our branch offices and SBA loan production offices. We attract deposits throughout our market area with a customer-oriented product mix, competitive pricing, and convenient locations. We offer a wide range of deposit products for business banking and retail markets. We offer a multitude of other products and services to complement our lending and deposit services.

As a bank holding company, we are subject to the supervision of the Board of Governors of the Federal Reserve System (the Federal Reserve). We are required to file with the Federal Reserve reports and other information regarding our business operations and the business operations of our subsidiaries. As a California chartered bank, Heritage Bank of Commerce is subject to primary supervision, periodic examination, and regulation by the California Department of Financial Institutions (DFI), and by the Federal Reserve, as its primary federal regulator.

Our principal executive office is located at 150 Almaden Boulevard, San Jose, California 95113, telephone number: (408) 947-6900.

Recent Developments

Edgar Filing: HERITAGE COMMERCE CORP - Form S-1

On July 23, 2010, we announced our financial results for the quarter and the six months ended June 30, 2010. For the six months ended June 30, 2010, we had a net loss allocable to common shareholders of \$59.8 million, or (\$5.06) per diluted common share. For the six months ended June 30, 2009, we had a net loss allocable to common shareholders of \$10.5 million, or (\$0.89) per diluted common share.

At June 30, 2010, based on management's analysis, with the assistance of an independent valuation firm, and continued deteriorating economic conditions and the length of time and amount by which the Company's book value exceeded the market value per share for its Common Stock, the Company determined it was appropriate to write off the entire \$43.2 million of goodwill related to its acquisition of Diablo Valley Bank in June 2007. This goodwill impairment charge had no effect on the cash balances, liquidity, or tangible equity capital of the Company or Heritage Bank of Commerce. Goodwill is excluded when calculating regulatory capital and, therefore, the Company's and Heritage Bank of Commerce's regulatory capital ratios were not significantly affected by the charge.

Table of Contents

Other financial developments for the three months and six months ended June 30, 2010 include the following:

- Net interest margin increased to 3.88% in the second quarter of 2010 from 3.55% in the second quarter of 2009, and 3.81% for the first quarter of 2010.
- The provision for loan losses was \$18.6 million in the second quarter of 2010 compared to a provision for loan losses of \$10.7 million in the second quarter of 2009, and \$5.1 million in the first quarter of 2010.
- The Company recorded a \$3.7 million partial valuation allowance on deferred tax assets in the second quarter of 2010.
- Heritage Bank of Commerce exceeded regulatory well-capitalized levels with a leverage ratio of 11.68%, a tier 1 risk-based capital ratio of 14.49%, and a total risk-based capital ratio of 15.75% at June 30, 2010.
- On a consolidated basis, the Company exceeded regulatory well-capitalized levels with a leverage ratio of 8.65%, a tier 1 risk-based capital ratio of 10.73%, and a total risk-based capital ratio of 18.66% at June 30, 2010.
- The Company had tangible common equity to tangible assets of 5.68% at June 30, 2010.
- Total assets were \$1.30 billion at June 30, 2010, a decrease of 9% from a year ago and a decrease of 2% over the first quarter ended March 31, 2010.
- Loans, excluding loans held-for-sale, decreased 19% to \$937.8 million at June 30, 2010 from \$1.16 billion at June 30, 2009, and decreased 7% from \$1.01 billion at March 31, 2010.
- Land and construction loans decreased \$120.6 million to \$110.2 million or 12% of the total loan portfolio at June 30, 2010, compared to \$230.8 million or 20% of total loans at June 30, 2009, and decreased \$43.6 million from \$153.8 million or 15% of the total loan portfolio at March 31, 2010.
- Nonperforming assets were \$60.1 million or 4.1% of total assets at June 30, 2010, of which \$9.8 million was related to classified loans transferred to loans held-for-sale. Nonperforming assets were \$61.7 million or 4.30% of total assets at June 30, 2009, and

Edgar Filing: HERITAGE COMMERCE CORP - Form S-1

\$69.0 million or 5.17% of total assets at March 31, 2010.

- The allowance for loan losses was \$26.8 million or 2.85% of total loans at June 30, 2010, compared to \$31.4 million or 2.70% of total loans at June 30, 2009, and \$26.5 million, or 2.64% of total loans at March 31, 2010.

- Net charge-offs were \$18.4 million in the second quarter of 2010. Net charge-offs were \$3.2 million in the second quarter of 2009, and \$7.3 million in the first quarter of 2010.

Table of Contents

The Offering

Maximum number of shares of Common Stock offered by the selling securityholders (in each case subject to anti-dilution adjustments)

14,399,000 shares of Common Stock underlying the 53,996 outstanding shares of Series B Preferred Stock (15,998,889 if the Shareholder Approvals are not received within six months of issuance of the Series B Preferred Stock) 5,601,000 shares of Common Stock underlying the 21,004 outstanding shares of Series C Preferred Stock (6,223,333 if the Shareholder Approvals are not received within six months of the issuance of the Series C Preferred Stock).

Maximum number of shares of Series B Preferred Stock offered by the selling securityholders (subject to anti-dilution adjustments)

53,996 shares of Series B Preferred Stock issued by us to the selling securityholders on June 21, 2010, as discussed in Summary of the Underlying Transactions and Selling Securityholders.

Maximum number of shares of Series C Preferred Stock offered by the selling securityholders (subject to anti-dilution adjustments)

21,004 shares of Series C Preferred Stock issued by us to two of the selling securityholders on June 21, 2010.

Shares outstanding as of June 30, 2010

11,820,509 shares of Common Stock

53,996 shares of Series B Preferred Stock

21,004 shares of Series C Preferred Stock