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HERITAGE COMMERCE CORP
 Form S-8
 July 16, 2004

As filed with the Securities and Exchange Commission on June 16, 2004
 File No. 333-_____

UNITED STATES
 SECURITIES AND EXCHANGE COMMISSION
 Washington, D.C. 20549

FORM S-8
 REGISTRATION STATEMENT
 UNDER
 THE SECURITIES ACT OF 1933

HERITAGE COMMERCE CORP

(Exact name of registrant as specified in its charter)

CALIFORNIA

77-0469558

(State or other jurisdiction of incorporation
 or organization)

(I.R.S. Employer
 Identification Number)

150 ALMADEN BOULEVARD, SAN JOSE, CA 95113

(Address of principal executive offices)

HERITAGE COMMERCE CORP 2004 STOCK OPTION PLAN

(Full title of plan)

LAWRENCE D. MCGOVERN
 HERITAGE COMMERCE CORP
 150 ALMADEN BOULEVARD
 SAN JOSE, CA 95113
 (408) 947-6900

(Name, address and telephone number of agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum Aggregate offering
Common Stock, no par value	295,500	\$14.695	\$4,342,372.50
	4,500 2/ --	\$14.31	\$64,395

1/ Estimated solely for the purpose of computing the amount of the registration
 -- fee pursuant to Rule 457(c) and (h) based on the average of the high and low

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prices of the Company's common stock as reported on the Nasdaq National Market on July 15, 2004. In addition to the common stock set forth in the table, the amount to be registered includes an indeterminate number of shares issuable pursuant to stock splits and stock dividends in accordance with Rule 416(b) and includes preferred stock purchase rights relating to all shares covered by this registration statement.

- 2/ Represents shares of Common Stock underlying option grants made effective -- June 24, 2004 at an exercise price of \$14.31 per share.
- 3/ Calculated on the basis of the maximum aggregate offering price of all the -- securities listed, pursuant to Rule 457(o).

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The Company hereby incorporates by reference in this Registration Statement the following documents:

- (a) The Company's Annual Report on Form 10-K for the year ended December 31, 2003;
- (b) The Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2004;
- (c) The Company's Current Report on Form 8-K dated March 17, 2004;
- (d) The description of the Company's common stock contained in the Company's Registration Statement on Form 8-A, as filed with the Commission on March 5, 1998; and
- (e) The description of rights covering the Company's Series A Junior Participating Preferred Stock contained in the Company's Registration Statement on Form 8-A, as filed with the Commission on November 15, 2001.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents.

ITEM 4. DESCRIPTION OF SECURITIES.

The class of securities to be offered is registered under Section 12 of the Exchange Act.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

Not applicable.

ITEM 6. INDEMNIFICATION OF OFFICERS AND DIRECTORS.

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Section 317 of the California General Corporation Law permits indemnification of directors, officers and employees of corporations under certain conditions and subject to certain limitations. Article V of the Articles of Incorporation of the Company contains provisions limiting the monetary liability of directors for breaches of the duty of care. Article VII of the Articles of Incorporation of the Company contains provisions that authorize the registrant to indemnify its directors, officers and employees to the fullest extent permitted, and in excess of that authorized, under Section 317. Section 12 of the Company's By-laws provide for the indemnification of directors and officers to the fullest extent permitted by law.

The Company also maintains insurance policies which insure its officers and directors against certain liabilities.

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The foregoing summaries are necessarily subject to the complete text of the statute, the Articles and the By-Laws referred to above and are qualified in their entirety by reference thereto.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

The exhibits to this Registration Statement are listed in the Exhibit Index to this filing, which is incorporated by reference.

ITEM 9. UNDERTAKINGS.

(a) Rule 415 Offering.

The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

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(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) Filings incorporating subsequent Exchange Act documents by reference.

The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(h) Request for acceleration of effective date or filing of Registration Statement on Form S-8.

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Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Jose, State of California, on June 24, 2004.

HERITAGE COMMERCE CORP

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(Registrant)

By /s/LAWRENCE D. MCGOVERN

Lawrence D. McGovern
Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)

The officers and directors of Heritage Commerce Corp whose signatures appear below hereby constitute and appoint William J. Del Biaggio, Jr. and Lawrence D. McGovern, and each of them, their true and lawful attorneys and agents, with full power of substitution, each with power to act alone, to sign and execute on behalf of the undersigned any amendment or amendments to this Registration Statement on Form S-8 for the Heritage Commerce Corp 2004 Stock Option Plan, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each of said attorneys-in-fact and agents full power and authority to do everything necessary to accomplish the foregoing, as fully to all intents and purposes as he or she might or could do in person, and each of the undersigned does hereby ratify and confirm all that each of said attorneys and agents, or their substitutes, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons on behalf of the registrant in the capacities and on the dates indicated.

SIGNATURE	TITLE	DATE
<u>/s/ FRANK BISCEGLIA</u> Frank Bisceglia	Director	June 24, 2004
<u>/s/ JAMES BLAIR</u> James Blair	Director	June 24, 2004
<u>/s/ RICHARD CONNIFF</u> Richard Conniff	Director, President and Chief Operating Officer	June 24, 2004
<u>/s/ WILLIAM DEL BIAGGIO, JR.</u> William Del Biaggio, Jr.	Director, Chairman of the Board and Interim Chief Executive Officer (Principal Executive Officer)	June 24, 2004
<u>/s/ LAWRENCE D. MCGOVERN</u> Lawrence D. McGovern	Individually and as Attorney-in-Fact	June 24, 2004
<u>/s/ ANNEKE DURY</u> Anneke Dury	Director	June 24, 2004
<u>/s/ ROY LAVE</u> Roy Lave	Director	June 24, 2004
<u>/s/ LON NORMANDIN</u> Lon Normandin	Director	June 24, 2004

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/s/ JACK L. PECKHAM	Director	June 24, 2004
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Jack L. Peckham		
/s/ HUMPHREY POLANEN	Director	June 24, 2004
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Humphrey Polanen		
/s/ KIRK ROSSMANN	Director	June 24, 2004
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Kirk Rossmann		
/s/ CHARLES TOENISKOETTER	Director	June 24, 2004
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Charles Toesniskoetter		
/s/ RANSON W. WEBSTER	Director	June 24, 2004
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Ranson W. Webster		

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EXHIBIT LIST

EXHIBIT	DESCRIPTION
4.1	Heritage Commerce Corp 2004 Stock Option Plan (incorporated by reference to Exhibit C to the proxy statement of Heritage Commerce Corp filed April 7, 2004 (File No. 000-23877))
4.2	Form of Stock Option Agreement under the Heritage Commerce Corp 2004 Stock Option Plan
4.3	Heritage Commerce Corp Restated Articles of Incorporation as Amended effective June 29, 2001 (incorporated by reference to Exhibit 3.1 to Quarterly Report on Form 10-Q for the quarter ended June 30, 2001)
4.4	Heritage Commerce Corp By-Laws as Amended on September 27, 2001 (incorporated by reference to Exhibit 3.2 to Quarterly Report on Form 10-Q for the quarter ended September 30, 2001)
5	Opinion of Counsel as to the legality of securities being registered
24.1	Consent of Counsel (included in Exhibit 5)
24.2	Consent of Independent Registered Public Accounting Firm
25	Power of Attorney (included in signature page)

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