



CITY of BRISBANE

City Council Meeting Agenda

Thursday, April 15, 2021 at 7:30 PM • Virtual Meeting

This meeting is compliant with the Governors Executive Order N-29-20 issued on March 17, 2020 allowing for deviation of teleconference rules required by the Brown Act. The purpose of this is to provide the safest environment for staff, Councilmembers and the public while allowing for public participation. The public may address the council using exclusively remote public comment options.

The Council may take action on any item listed in the agenda.

PUBLIC MEETING VIDEOS

Members of the public may view the City Council Meeting by logging into the Zoom Webinar listed below. City Council Meetings can also be viewed live and/or on-demand via the City's YouTube Channel, www.youtube.com/brisbaneca, or on Comcast Channel 27. Archived videos can be replayed on the City's website, <http://brisbaneca.org/meetings>.

TO ADDRESS THE COUNCIL

The City Council Meeting will be an exclusively virtual meeting. The City Council agenda materials may be viewed online at www.brisbaneca.org at least 24 hours prior to a Special Meeting, and at least 72 hours prior to a Regular Meeting.

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. Aside from commenting while in the Zoom webinar the following email and text line will be also monitored during the meeting and public comments received will be noted for the record during Oral Communications 1 and 2 or during an Item.

Email: ipadilla@brisbaneca.org

Text: 628-219-2922

Join Zoom Webinar: zoom.us (please use the latest version: zoom.us/download)
brisbaneca.org/cc-zoom

Webinar ID: 991 9362 8666

Passcode: 123456

Call In Number: 1 (669) 900 9128

SPECIAL ASSISTANCE

If you need special assistance to participate in this meeting, please contact the City Clerk at (415) 508-2113. Notification in advance of the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

1. 7:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

2. ROLL CALL

3. ADOPTION OF AGENDA

4. AWARDS AND PRESENTATIONS

- A. Legislative Update by Senator Becker
- B. Reimagine SamTrans Presentation

5. ORAL COMMUNICATIONS NO. 1

6. CONSENT CALENDAR

- C. Approve Minutes of City Council Meeting of March 18, 2021
- D. Approve Dog Park Resurfacing Award of Contract to ForeverLawn, in the amount of \$69,968.40
- E. Adopt Ordinance No. 660, Waiving Second Reading, for Disposable Food Ware
- F. Adopt Ordinance 659, Waiving Second Reading, to Permit Streamlining for Electric Vehicle Charging Stations

7. OLD BUSINESS

- G. Consider Approval of Environmental Technical Studies for Crocker Trail Resurfacing

(It is being recommended to approve a supplemental appropriation in the amount of \$65,000 from the General Fund for required technical studies for Crocker Trail Resurfacing.)

8. NEW BUSINESS

- H. Consider Adoption of Urgency Ordinance No. 661 Concerning the Removal of Invasive Species, Waste Material and Combustible Vegetation and Requiring Fire Breaks on Unimproved Properties

9. STAFF REPORTS

I. City Manager's Report on upcoming activities

10. MAYOR/COUNCIL MATTERS

J. Countywide Assignments and Subcommittee Reports

K. City Council Meeting Schedule

L. Written Communications

11. ORAL COMMUNICATIONS NO. 2

12. ADJOURNMENT

C.

File Attachments for Item:

C. Approve Minutes of City Council Meeting of March 18, 2021



BRISBANE CITY COUNCIL**ACTION MINUTES**

BRISBANE CITY COUNCIL MEETING AGENDA**THURSDAY, MARCH 18, 2021***VIRTUAL MEETING***CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Cunningham called the meeting to order at 7:48 P.M. and led the Pledge of Allegiance.

ROLL CALL

Councilmembers present: Councilmembers Davis, Lentz, Mackin, O'Connell and Mayor Cunningham

Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, Interim City Attorney McMorrow, Assistant City Manager Schillinger, Community Development Director Swiecki, City Engineer Breault, Public Works Deputy Director Kinser, Sustainability Manager Etherton, Parks and Recreation Leek, Administrative Management Analyst Ibarra and Police Chief Macias

REPORT OUT OF CLOSED SESSION

Interim City Attorney McMorrow reported that Council gave staff direction regarding Closed Session Item D.

ADOPTION OF AGENDA

Mayor Cunningham requested to pull Consent Calendar Item E for discussion.

CM Davis made a motion, seconded by CM Mackin, to approve the agenda as it stands. The motion passes unanimously by all present.

Ayes: Councilmembers Davis, Lentz, Mackin, O'Connell and Mayor Cunningham

Noes: None

Absent: None

AWARDS AND PRESENTATIONS

A. Consider Approval of Resolution No. 2021-25 Denouncing Racism and Affirming the City's Commitment to the Well-Being and Safety of the Asian American Pacific Islander Community

Mayor Cunningham read Resolution No. 2021-25.

CM O'Connell made a motion, seconded by CM Davis, to approve Resolution No. 2021-25 Denouncing Racism and Affirming the City's Commitment to the Well-Being and Safety of the Asian American Pacific Islander Community. The motion passes unanimously by all present.

Ayes: Councilmembers Davis, Lentz, Mackin and Mayor Cunningham

Noes: None

Absent: None

ORAL COMMUNICATIONS NO. 1

No member of the public wished to make public comment.

CONSENT CALENDAR

B. Approve Minutes of City Council Closed Session Meeting of March 4, 2021

C. Approve Minutes of City Council Meeting of March 4, 2021

D. Accept Open Space and Ecology Committee 2021 Work Plan

F. Approve Resolution No. 2021-24 to Express Support for Protecting Local Decision Making on Planning and Land Use Issue

G. Introduce Ordinance No. 659 for Permit Streamlining for Electric Vehicle Charging Stations

CM O'Connell made a motion, seconded by CM Davis, to approve Consent Calendar Items B-D, F and G. The motion passes unanimously by all present.

Ayes: Councilmembers Davis, Lentz, Mackin, O'Connell and Mayor Cunningham

Noes: None

Absent: None

Mayor Cunningham directed staff to add the evaluation of the blind corner on San Benito and Glenn Park Way to the Complete Streets Safety Committee 2021 Work Plan.

CM O'Connell made a motion, seconded by CM Davis, to approve Consent Calendar Items E as amended. The motion passes unanimously by all present.

Ayes: Councilmembers Davis, Lentz, Mackin, O'Connell and Mayor Cunningham

Noes: None

Absent: None

NEW BUSINESS

H. Consider Introduction of Ordinance No. 660 for Disposable Food Ware

(The purpose of introducing Ordinance No. 660 will ultimately allow the County of San Mateo to perform education and enforcement services on the use of disposable food service ware in the City of Brisbane)

Sustainability Manager Etherton presented on the impact of our throw-away culture, the state of the recycling market, and San Mateo County's Adopted Food Ware Ordinance in 2020. She also presented the details of which businesses are impacted by the Ordinance and how they would be impacted.

After some Council questions, Barbara Ebel commented that the Council can wait to approve the ordinance to do more research on recycled content standards.

Teresa Montgomery, from the South San Francisco Scavenger Company, commented that she would appreciate more research on recycled content standards.

Michele Salmon, commented that the vote should not be delayed.

Eun-Soo Lim, from the County Office of Sustainability, thanked the city for the partnership and addressed the concern on recycled content.

Barbara Ebel further commented that she felt that the City can apply the recycled content standards to paper products.

Eun-Soo Lim, from the County Office of Sustainability, responded that applying the recycled content standards will go beyond the County's Ordinance and therefore the County will not be able to conduct education and enforcement.

Council members agree to move forward and align with the County's ordinance.

CM O'Connell made a motion, seconded by CM Davis, to introduce Ordinance No. 660 for Disposable Food Ware. The motion passes unanimously by all present.

Ayes: Councilmembers Davis, Lentz, Mackin, O'Connell and Mayor Cunningham

7 es: None

Absent: None

WORKSHOP

I. Review Preliminary Draft for Crocker Trail Master Plan

Parks and Recreation Director Leek introduced the RRM Design Group to provide an update on the preliminary draft for Crocker Trail Master Plan. She added that the goal of this workshop is to review plan elements and provide comments or suggestions on the draft master plan that will inform the RRM team as they prepare the final master plan for adoption.

Kayla Szubielski, from the RRM Design Group, presented on the public engagement process and the details of the preliminary draft for Crocker Trail Master Plan.

After some council questions with staff and consultants, Council said they were in favor of low lighting for safety measures, safe cross walk areas, less mature trees being cut, the benches' designs, ways to incorporate public art, maintaining the wildlife habitat, and providing signage of dawn to dusk operations.

Michael Barnes commented that motion sensor lights should be available and public safety should come first.

Barbara Ebel stated that she supported lighting for safety and a bench where one can enjoy and observe nature.

Kim Follien commented that it is possible to provide lighting without light pollution.

Michele Salmon she is excited about the removal of invasive species, seeing more of the Guadalupe Creek, and low lighting for certain hours.

Kim Follien commented that kids would also benefit from an outdoor classroom.

Council thanked RRM Design Group and Parks and Recreation Director Leek for the presentation and their work.

STAFF REPORTS

J. City Manager's Report on upcoming activities

City Manager Holstine reported on the latest City news and upcoming events.

MAYOR/COUNCIL MATTERS

K. Countywide Assignments and Subcommittee Reports

The Mayor and Councilmembers reported on the following activities:

Baylands Subcommittee, Infrastructure Utilities, & Franchise Subcommittee, Planning Issues Subcommittee, City/County Association of Governments, County Library JPA

L. City Council Meeting Schedule

The next City Council meeting is scheduled for April 1st.

Council directed staff to proceed with the cancellation of the City Council Meetings of July 1, August 5, August 19, and September 2, 2021.

M. Written Communications

Council received the following correspondence from March 5 through March 18, 2021:

- Chris Rasmussen (3/17/21) Request to Host City Proclamation and Lighting for 2021 May Mental Health Month
- Carolyn Moore (3/18/21) I support a pump track on Crocker Park trail
- Coralin Feierbach (3/18/21) Local Zoning Control

ORAL COMMUNICATIONS NO. 2

No member of the public wished to make public comment.

ADJOURNMENT

Mayor Cunningham adjourned the meeting at 10:04 P.M.

Ingrid Padilla
City Clerk

D.

File Attachments for Item:

D. Approve Dog Park Resurfacing Award of Contract to ForeverLawn, in the amount of \$69,968.40



CITY COUNCIL AGENDA REPORT

Meeting Date: April 15, 2021

From: Noreen Leek, Parks & Recreation Director

Subject: Award of Contract to ForeverLawn for the Dog Park Resurfacing Project

Community Goal/Result

Community Building

Purpose

Maintain high-quality recreation facilities for community interaction.

Recommendation

Award the contract for resurfacing of the Dog Park to ForeverLawn, in the amount of \$69,968.40.

Background

In late 2019, the Recreation Facilities Subcommittee along with the City Council Parks & Recreation Liaisons met with stakeholders at the dog park. The purpose of this meeting was to engage the stakeholders and gather input regarding their overall preferences at the park. At this meeting, dog park users expressed a strong desire for resurfacing of the park to replace the existing grass given the concentrated use and its overall condition.

In 2020, the Parks & Recreation Commission addressed this item, reviewed various alternative surfacing options and estimated costs, and discussed the pros and cons to each. The Commission voted unanimously to recommend to Council to proceed with resurfacing of the park including a combination of hardscape surface and artificial turf.

Discussion

At the November 11, 2020 meeting, City Council reviewed the recommendation from the Parks & Recreation Commission and various options presented by staff. Council directed staff to draft a formal Request For Proposals (RFP) (*Attachment 1*), to solicit bids and approved funding with a not to exceed amount of \$80,000. The scope of the resurfacing project includes design and construction. On March 8, 2020, staff published the project RFP and a total of three (3) proposals were received. The following table shows the results of the responsive bids in order of lowest to highest:

Contractor	Bid Amount(s)
ForeverLawn	\$69,968.40
Southwest Greens	\$73,762.85 / \$75,155.79
Bruno Landscape Management & Construction	\$79,013.50

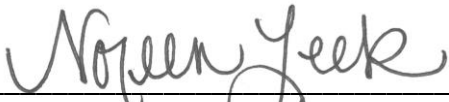
Proposals were evaluated by City staff based upon professional qualifications necessary for satisfactory performance; understanding of the project; approach to the project; capacity to accomplish the work in the proposed timeframe; past projects; and providing the best value in meeting the interest of the City. Using a quality-based selection process, staff recommends awarding the contract to ForeverLawn.

Fiscal Impact

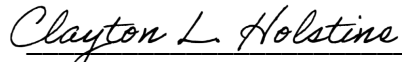
The award of contract would result in a new general fund allocation in the amount of \$69,968.40.

Attachments

1. Dog Park Resurfacing Project RFP
2. ForeverLawn Pricing Agreement



Noreen Leek, Parks & Recreation Director



Clay Holstine, City Manager



REQUEST FOR PROPOSALS

Dog Park Resurfacing

Brisbane Parks & Recreation

50 Park Place
Brisbane, CA 94005

p. 415.508.2140
Email: nleek@brisbaneca.org



The City of Brisbane, CA is seeking proposals from qualified individuals, firms, vendors, and contractors (hereinafter referred to as Contractor) with demonstrated experience in developing dog parks and/or installing artificial turf and surfacing for recreational facilities. Prospective bidders are invited to submit a proposal outlining their experience and qualifications in performing work directly related to the services required.

Selection will be made from responsive proposals that will best serve the interests of the City based on a combination of price, experience, availability, and capacity to perform the specified work.

Please submit your proposal using the format specified in this Request For Proposals (RFP). **PROPOSALS MUST BE RECEIVED BY FRIDAY MARCH 26, 2021 by no later than 1:00PM.** Any proposal received after the specified time and date will not be considered. Proposals may be submitted one of the following ways:

1. Electronically to nleek@brisbaneca.org AND snahass@brisbaneca.org. *Note: An email will be sent to confirm receipt of the electronic proposal.*
2. Mailed to:
ATTN: Noreen Leek
Parks & Recreation Director
City of Brisbane
50 Park Place
Brisbane, CA 94005

If mailed, it must be received by the City by no later than 1:00p.m. on March 26, 2021.

3. Dropped off in person at Brisbane City Hall, 50 Park Place, Brisbane, CA 94005 on Friday, March 26th between the hours of 9:00am-1:00pm. A staff person will be onsite to receive hard-copy proposals during that time frame only.

Questions regarding proposals should be directed to:

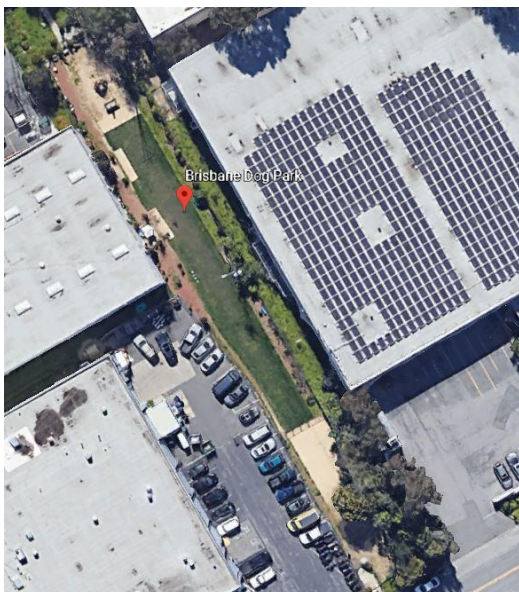
Noreen Leek
(415) 508-2140
nleek@brisbaneca.org

INTRODUCTION

The Brisbane Dog Park is in the heart of the Crocker Industrial Park and shares a parking lot with Brisbane City Hall at 50 Park Place, Brisbane CA 94005. The City-owned facility is the only official dog park in City limits and serves as a social venue for dogs and owners alike. The parcel on which the dog park is located is a long and narrow strip of land between neighboring warehouses, with entrances to the dog park on either end. At each entrance, decomposed granite exists before a transition to grass. The existing facility incorporates a fenced area with amenities including seating, mutt mitt dispensers, trash receptacles, water access, and a K9 ramp.

A site visit will be held at the Brisbane Dog Park, 50 Park Place, Brisbane, CA 94005 on Thursday, March 18, 2021 at 11:00am for the purpose of acquainting all prospective bidders with a review of the site and contract documents. It is strongly advised that all prospective bidders attend the site visit. (Note: mask-wearing and social distancing will be required.) Note: Proposed bidders shall be responsible for visiting the site prior to bidding and the Contractor to whom the bid is awarded shall be responsible for having ascertained pertinent site conditions such as location, accessibility, and character of the site and extent of existing improvements thereon. Attention is directed to the location of the site, existing access conditions, work area constraints, transportation and storage of materials, and all other matters which may affect the work or cost thereof.

After City staff selects a proposal to recommend to the City Council, City Council will review and award the contract. The chosen Contractor will be required to provide to the City construction documents (including plans, base specifications, and special provisions) for the project.



SCOPE OF WORK

Following a series of public meetings and after receiving community feedback, the City of Brisbane is pursuing alternative surfacing for the existing grass portion of the dog park. The overarching objective of this project is to enhance the dog park by providing a safer environment for pet socialization and exercise available for use year-round.

The City of Brisbane is now accepting proposals from qualified Contractors for the preparation and installation of new surfacing. The City is soliciting bids for conceptual designs and installation of base and surfacing (including excavation and sub grading) with a combination of dog-friendly (suitable) artificial turf and hardscape (decomposed granite) to replace the existing grass area. Surfacing should be all-weather, dog-friendly play surfaces that is long-lasting and that will hold up against heavy use and dog play. Surfacing should be safe, comfortable, antimicrobial where possible, permeable/drainable, low maintenance, and inviting for dogs as well as their owners. For the surface installed, the Contractor will be required to supply complete maintenance guidelines or manual.

Contractor is responsible for ensuring that the site drains properly. Should removal of soil be required, the Contractor will be responsible for testing and proper disposal of the soil. Some reasonable redistribution of soil onsite is allowable. Note: A grading permit is required if more than six (6) cubic yards are removed from the site.

This resurfacing project serves to replace the existing grass area of the park which is approximately 4,200 square feet. The City would prefer to incorporate as much dog-friendly artificial turf in this area as possible, with the remaining surface to be covered in decomposed granite or a similar alternative appropriate for the given use of the space. Please refer to Enclosure B for an aerial image of the facility with corresponding measurements of the area in question.

OVERVIEW

- 1. Summary of Project:** To provide both design and construction services for the installation of new surfacing at the Brisbane Dog Park as described herein.
- 2. Design:** Although the design of the space is flexible, it should incorporate at least one large patch of dog-friendly artificial turf. The design proposal should consider minimizing haul-away costs by repurposing excavated materials for an above ground mound to create additional opportunities for dog play. Artificial turf patches should be surrounded by new decomposed granite that complements other portions of the dog park.
- 3. Plans and Specifications:** Once the contract is awarded, the Contractor is to prepare detailed design plans and specifications, as appropriate and necessary for this project. The City must review and approve such plans and specifications.
- 4. American's with Disabilities Act (ADA) Compliance:** The City has available a draft ADA Transition Plan for the Dog Park which proposed bidders should review. The Contractor will be responsible for full ADA compliance for this project. A Certified Access Specialist (CASP) should be engaged to review the draft ADA Transition plan to ensure that the design is ADA compliant.
- 5. Applicable Standard Specifications and Details:** The Contractor must complete the project in accordance with applicable City, State, and Federal laws, statutes, codes, and any other applicable standard specifications.
- 6. Approvals and Permits:** The Contractor will be responsible to obtain all required building permits and business licenses. An interim sediment and erosion control plan will be required for work

during the rainy season, identified in the Brisbane Municipal Code as October 15 to April 15 per the California Stormwater Best Management Practices Handbook for Construction Activity prepared for the Stormwater Quality Task Force. In addition to the sediment and erosion control plan, normal construction operations shall also conform to the California stormwater best management practices during construction.

7. Progress Meetings: Regular progress meetings with the Contractor, City, and other interested parties will be held throughout the life of the project. The frequency and location of these meetings will be established, by mutual agreement. The purposes of these meetings are to establish and maintain lines of communication, report on design, progress, discuss and resolve problem areas, review schedule and progress, review project costs/budgets, review quality control and such other matters related to the project. The Contractor shall complete all work included in the contract within 150 calendar days. The Contractor's schedule shall anticipate any limitations and plan the work accordingly. The contract calendar days will begin immediately after the Notice to Proceed is issued.

8. Insurance Requirements: Set forth in the Design-Build Agreement. (Enclosure A, No. 14)

9. Payment and Faithful Performance Bond: A payment bond and a bond for the faithful performance of the contract will be required of the successful bidder who is awarded the contract. Set forth in the Payment Bond and Faithful Performance Bond. (Enclosure B)

10. Prevailing Wages: The successful bidder must comply with the latest general prevailing rate of per diem wages as determined by the Director of Industrial Relations, State of California, Department of Industrial Relations. Set forth in the Design-Build Agreement. (Enclosure A, No. 15)

NOTE: All services shall be performed by the awarded Contractor or under the awarded Contractor's direct supervision, and all personnel shall possess the qualifications, permits, and licenses required by state and local law to perform such services. If the Contractor intends to subcontract, the bidder shall herein set forth the name and location of the place of business of each subcontractor who will perform work or render services to the bidder and describe the specific role of each.

SUBMISSION REQUIREMENTS

In order to submit a responsive bid, the following information must be included in the proposal in the order listed:

1. A letter of interest, not to exceed two (2) pages.
2. Project Team: Organizational chart of resources including the Project Manager, subcontractors, and other key personnel, not to exceed two (2) pages.
3. Experience: Provide a listing of current and/or completed representative projects (at least three) including project name/location, brief description and results, completion date, project costs, and client name/contact. Contractors shall describe their experience with design and construction of artificial turf surfaces for recreation facilities and dog parks. Not to exceed ten (10) pages.
4. Scope: Set forth a detailed approach for completing the tasks described in this RFP and include deliverables. Affirm your proposed team's ability to start the project immediately after the notice to proceed and provide a project timeline. An initial concept design should be generated for City review. Not to exceed ten (10) pages.
5. Cost: A project budget outlined by task and deliverable-based fee schedule. Cost shall include all work to be performed and all costs for which the contractor (and

subcontractors) expect to be paid, divided according to the tasks and deliverables.
Note: this is a City-funded project, estimated around \$80,000.

The proposal must be received before March 26, 2021 at 1:00p.m. Please see page two of this document for submission details.

SCHEDULE

Proposal submission deadline

City staff bid review

City Council award of contract

Notice to proceed issued to Contractor

March 26, 2021

March 29 - April 2, 2021

April 15, 2021

April 16, 2021

EVALUATION & SELECTION PROCESS

The City will use a quality-based selection process and the bid will be awarded to the Contractor whose proposal is determined as providing the best value in meeting the interest of the City, given the scope of the project. Proposals will be evaluated by City staff based upon professional qualifications necessary for satisfactory performance; understanding of the project; approach to the project; capacity to accomplish the work in the proposed timeframe; past performance on contracts with government agencies; and quality of the proposal. Proposals shall remain firm for a period of ninety (90) days after the proposal due date. The City of Brisbane reserves the right to reject all proposals, refuse any or all proposal(s), to waive technicalities, and to accept whichever proposal(s) that may be in the best interest of the City, at its sole discretion.

City staff will evaluate all proposals deemed responsive and make a recommendation to City Council based on the below criteria and the percentage of their importance.

1. Professional qualifications and relevant experience **(25 percent)**
 - a. Project Manager, subcontractors, and key team members are qualified to perform the work categories/tasks on the project.
 - b. Contractor's knowledge of dog park surfacing installation.
 - c. Contractor's experience with this type of project.
 - d. Samples of previous work and references.
2. Project Understanding **(20 percent)**
 - a. Contractor has demonstrated an understanding of the nature and scope of project.
 - b. Contractor has provided comparable projects with which the Contractor has been involved.
3. Approach to the project **(20 percent)**
 - a. Contractor has recognized and identified special circumstances of the project.
 - b. Contractor has provided logical approach to tasks and issues of the project.
4. Project Schedule **(15 percent)**
 - a. Contractor has adequate staff for this project.
 - b. Current workload of the Contractor.
5. Quality of proposal **(20 percent)**

- a. Information conveyed, overall proposal quality, readability, and the technical expertise presented.

** **Clarification during evaluation and selection process:** During the evaluation process, the City has the right to request additional information for clarification to understand the Contractor's view and approach to the project and scope of the work. The City further reserves the right to make an award without further clarification of proposals reviewed. Any changes to a submitted proposal made before executing the contract will become part of the final Contractor contract.*

GENERAL TERMS AND CONDITIONS

1. This RFP does not commit the City to award a contract, to pay any cost incurred in the preparation of a submittal to this request for proposals or in subsequent negotiations, or to procure or contract for the project.
2. At any time prior to the specified time and date set for the submission, a person/firm, or a designated representative, may withdraw a proposal that has been submitted.
3. The issuance of this RFP and the acceptance of a submittal do not constitute an agreement by the City that the City will award any contract. The City expressly reserves the right to:
 - Reject any or all proposals.
 - Reissue an RFP.
 - Extend the time frame for submission of the proposals by notification to all parties who have registered an interest in this RFP with the City.
 - Request more information from any or all proposers.
 - Waive any immaterial defect or informality.
 - Decline to go forward with the project. The City expressly reserves the right not to proceed to award a contract for this project.
 - Reject any proposal.
4. All services shall be provided in accordance with Enclosure "A," the City's Design-Build Agreement. Final terms of any agreement will be established during negotiations. Negotiations may be terminated by the City for failure to reach mutually acceptable terms.
5. Each Contractor/firm will be responsible for all costs incurred in preparing a response to this RFP.
6. All materials and documents submitted in response to this RFP will become the property of the City and will not be returned. Contractors/firms selected for further negotiations will be responsible for all costs incurred by it during negotiations whether or not such negotiations lead to a contract with the City.
7. Bidders are responsible for reviewing all portions of this RFP. A Bidder is to promptly notify the City, in writing, if a bidder discovers any ambiguity, discrepancy, omission or other error in the RFP. Any such notification should be directed to the City promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals.

ENCLOSURES

Enclosure A	DRAFT Design-Build Agreement
Enclosure B	DRAFT Payment Bond and Faithful Performance Bond
Enclosure C	Aerial Map of Brisbane Dog Park
Enclosure D	Existing Facility Conditions

ENCLOSURE A

DESIGN-BUILD AGREEMENT

THIS AGREEMENT, dated _____, 2021 is made by and between THE CITY OF BRISBANE, a municipal corporation ("City"), and _____ ("Contractor").

RECITALS

- A. City desires to retain Contractor to prepare conceptual designs for resurfacing of the existing grass area of the Brisbane Dog Park and to install the resurfacing of the existing area of the Brisbane Dog Park including sub grading, excavating, and installing base plus surface as described in the Contractor's responses to the City's Dog Park Resurfacing Request for Proposals ("RFP").
- B. Contractor is qualified to prepare the required conceptual design document and to install the resurfacing of the existing area of the Brisbane Dog Park..

AGREEMENT

1. **Scope of Services.** Subject to the direction and approval of City through its staff that City may provide from time to time, Contractor shall perform the services described in the scope of work outlined in the Contractor's responses to the RFP and incorporated herein by reference or as may be amended.

2. **Time of Performance.** The services of Contractor shall commence upon the execution of this Agreement and shall be satisfactorily completed within 150 calendar days. The Contractor's schedule shall anticipate any limitations and plan the work accordingly. The 150 calendar days will begin immediately after the Notice to Proceed is issued.

3. **Responsible Personnel.** The personnel acting on behalf of Contractor primarily responsible for performance of the services hereunder shall be as set forth within Contractor's proposal.

4. **Compensation.** As compensation for all services to be performed by Contractor under this Agreement, Contractor shall be paid the amounts set forth in _____ and incorporated herein by reference. In no event shall Contractor's total compensation exceed the agreed upon sum without additional authorization from City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to City at the time of payment.

5. **Method of Payment.** Contractor shall submit billings to City describing in detail the services provided and work performed for which payment is requested, the date the services/work were provided/performed, and the number of hours spent if applicable. Billings shall be submitted monthly, or at such other time as agreed upon between City and Contractor. City shall pay Contractor no later than 30 days after approval of the invoice by City. Such payment shall not be unreasonably withheld.

6. **Maintenance and Inspection of Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, time cards, and other records or documents relating to charges for services or expenditures charged to City, for a minimum of three (3) years from the date of final payment to Contractor under this Agreement and shall make the same available to City

or its authorized representatives for inspection and audit, at any time during regular business hours, upon written request by City. The right of inspection shall include the right to make extracts and copies.

7. **Assignment and Subcontracts.** Contractor acknowledges that Contractor's special skill and expertise is a material consideration for City entering into this Agreement. Contractor may subcontract a portion of the project to a predetermined sub-contractor as outlined in the proposal and agreed upon. Contractor shall not assign, subcontract or delegate to any other party the performance of any services or work to be rendered by Contractor or predetermined subcontractors without the prior written approval of City. If City consents to any subcontracting of work, Contractor shall be fully responsible to City for all acts or omissions of the subcontractor.

8. **Ownership of Documents.** Upon payment of fees and expenses due, all plans, studies, documents and other writings prepared by and for the Contractor in the course of performing its services under this Agreement, except working notes and internal documents, shall become the property of City upon payment to the Contractor for such work, and City shall have the sole right to use such materials in its discretion without further compensation to Contractor or to any other party. Contractor shall, at Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

9. **Independent Contractor.** Contractor is, and at all times shall remain, an independent contractor, and not an agent, officer or employee of City. As such an independent contractor, neither Contractor nor any of Contractor's agents or employees shall be entitled to any salary, fringe benefits, worker's compensation, retirement contributions, sick leave, insurance or other benefit or right connected with employment by City, or any compensation other than as provided in this Agreement. Contractor shall have no power or authority to bind City to any contract or otherwise to incur any obligation or liability for, or on behalf, or in the name of City.

10. **Licenses.** Contractor represents and warrants to City that Contractor has all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of Contractor to practice its profession. Construction plans must be stamped by a licensed engineer. Contractor shall, at its sole cost and expense, keep and maintain such licenses, permits, qualifications, insurance and approvals in full force and effect at all times during the term of this Agreement. Contractor shall maintain a City of Brisbane business license.

11. **Compliance with Laws.** Contractor shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations in connection with the performance of its services under this Agreement.

12. **Employment Eligibility.** At the request of City, Contractor shall furnish to City copies of Employment Eligibility Verifications (INS Form I-9) or other evidence satisfactory to City showing that any or all persons providing services under this Agreement for on behalf of Contractor is eligible to be employed in the United States. In the event Contractor is unable or unwilling to provide the employment eligibility verification within ten (10) days after City's request, City may require the immediate removal from the project of such workers as specified by City, and upon any failure by Contractor to do so, City shall be entitled to terminate this Agreement.

13. **Indemnity.** Contractor shall indemnify, defend, and hold City, its officers, officials, agents, employees and volunteers, harmless from and against any and all claims, demands, causes of action, losses, damages, injuries, expenses and liabilities, direct or indirect, including reasonable attorney's fees, to the extent actually caused by negligence or willful misconduct in the performance by Contractor of its services under this Agreement or its failure to comply with any of the its obligations contained in this Agreement, and City shall not be liable for any negligent acts or omissions or willful misconduct of Contractor. Contractor shall not be liable for the negligent acts or omissions of the City.

14. **Insurance.** Contractor, at its own expense, shall procure and maintain, for the duration of this Agreement, insurance policies, which satisfy the following requirements:

(a) Type of policies and coverage:

- (1) *General Liability Coverage.* Contractor shall maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage, providing coverage at least as broad as Insurance Services Office Commercial General Liability form CG 0001 (Ed. 11/88). If the form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
- (2) *Automobile Liability Coverage.* Contractor shall maintain automobile liability insurance in an amount not less than \$1,000,000 combined single limit for each occurrence, for bodily injury and property damage, providing coverage at least as broad as Insurance Services Office form CA 0001 (Ed. 12/90) Code 1 (any auto).
- (3) *Workers' Compensation and Employer's Liability Coverage.* Contractor shall maintain workers' compensation insurance as required by the State of California and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, for any and all persons employed by Contractor in connection with the performance of services under this Agreement. In the alternative, Contractors may rely on a self-insurance program to provide this coverage so long as the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or Contractors, if a program of self-insurance is provided, shall waive all rights of subrogation against City for loss arising from work performed by Contractors for City.
- (4) *Professional Liability Coverage.* Contractor shall maintain professional errors and omissions liability insurance in an amount not less than \$1,000,000 per occurrence, covering negligent acts, errors or omissions which may be committed by Contractor in the performance of its services under this Agreement.

(b) Endorsements: Each general liability and automobile liability insurance policy shall contain, or be endorsed to contain, the following provisions:

- (1) The City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents or volunteers.
- (2) For any claims related to the Project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Contractors' insurance and shall not contribute with it.

- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, its officers, officials, employees, agents or volunteers.
- (4) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (5) Contractor's insurance coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.
- (c) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- (d) Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII, unless otherwise approved by City in writing.
- (e) Verification of coverage. Contractor shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required by this Agreement. Certificates of such insurance shall be filed with City before commencement of work by Contractor. At the request of City, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement.

15. Industrial relations compliance and Prevailing wage requirements.

Effective January 1, 2015, no contractor or subcontractor may be listed on a bid proposal for a public works project (submitted after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with the limited exceptions from this requirement for bid purposed only under Labor code Section 1771.1(a)). Register at <https://efiling.dir.ca.gov/PWCR>.

No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Contractor is required to post job site notices prescribed by regulations. See 8 Calif. Code Regulation §16451(d).

Effective April 1, 2015, All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner at: <https://apps.dir.ca.gov/ecpr/das/altlogin>.

16. Claims.

- (a) A CHANGE ORDER shall mean a document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the work, or an adjustment in the contract price or the contract times, issued on or after the effective date of the agreement.
- (b) As provided in Article 1.5 of Chapter 1 of Part 3 of Division 2 of the Public Contract

Code, claims by the CONTRACTOR shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed with the OWNER promptly, and in no case later than 30 days after the close of the month during which extra cost is claimed to have been incurred. Any claim forwarded to OWNER shall be accompanied by a cover sheet prepared on CONTRACTOR's letterhead which includes the following personal certification of the claim:

I, _____, BEING THE _____, (TITLE) OF _____, (GENERAL CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650, ET SEQ, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND OR OTHER SEVERE LEGAL CONSEQUENCES.

- (c) This certification must be signed by an officer of the party of the second part of the agreement. Unless so presented, the claim shall be deemed to have been waived.

17. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, addressed to the other party as follows:

To City

City of Brisbane
50 Park Lane
Brisbane, CA 94005
Attn.: City Manager

To Contractor

TBD

18. **Litigation Expenses and Attorneys' Fees.** If any party to this Agreement commences any legal action against the other party to enforce or interpret this Agreement, the prevailing party shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including court costs, expert witness fees, discovery expenses, and reasonable attorneys' fees.

19. **Termination of Agreement.** This Agreement may be terminated by any party, effective upon written notice, should the other party commit any material default in the performance of its obligations hereunder. This Agreement may also be terminated by either party, for any reason, upon fifteen (15) day's prior written notice to the other party. In the event this Agreement is terminated by City through no fault of Contractor, Contractor shall be compensated for all services performed to the date of termination.

20. **Equal Opportunity Employment.** Contractor warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment.

21. **Miscellaneous Provisions.**

- (a) Severability. Should any portion of this Agreement be declared void or unenforceable in a final decision by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement can be reasonably interpreted to implement the intention of the parties.
- (b) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and cancels all prior agreements or understandings, whether written or verbal.
- (c) Amendments. This Agreement may be modified or amended only by a written document duly executed by both City and Contractor.
- (d) Waiver. The waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same provision or any other provision of this Agreement.
- (e) Execution. Each party warrants that the individuals signing this Agreement on its behalf have the legal power and authority to do so and to bind the party to this Agreement.
- (f) Successors and Assigns. Subject to the restriction against assignment and subcontracting, this Agreement shall be inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

THE CITY OF BRISBANE

CONTRACTOR

By: _____
Clayton L. Holstine, City Manager

By: _____
Printed Name

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Michael Roush, Legal Counsel

ENCLOSURE B

PAYMENT BOND AND FAITHFUL PERFORMANCE BOND

Bond Number: _____

CONTRACTOR'S PAYMENT BOND

LET THE FOLLOWING BE KNOWN:

THAT WHEREAS, THE CITY OF BRISBANE, a municipal corporation of the State of California (hereinafter designated as "City") on _____, 2021, entered into a certain contract with _____, a _____ (designate type of business entity), hereinafter designated as the "Principal," namely, a Design-Build Agreement for the **DOG PARK RESURFACING PROJECT** for the work hereinafter briefly described, to wit:

- At the Brisbane Dog Park, the project includes the conceptual design and installation of base & surfacing (including excavation and sub grading) with a combination of dog-friendly (suitable) artificial turf and hardscape (decomposed granite or similar alternative) to replace the existing 4,200 square foot grass area. Surfacing should be long-lasting and safe, comfortable, antimicrobial where possible, permeable/drainable, low maintenance, and inviting for dogs as well as their owners. Contractor is responsible for deficiency corrections and ADA compliance relative to the scope of this project and the area noted for renovation. Contractor will be required to supply complete maintenance guidelines or manual.

More fully described in and required by said Design-Build Agreement, incorporated herein by reference, the award of which said Agreement was made to said Principal by the City Council of the City of Brisbane on _____, 2021, as will more fully appear by reference to the minutes of said Council of said City of said date.

WHEREAS, said Principal is required by Section 9550 of the California Civil Code to furnish a bond in connection with said Agreement.

NOW, THEREFORE, we, the Principal and _____, incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole surety, as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his, her or its subcontractors, heirs, executors, administrators, successors, or assigns, shall fail to pay any of the persons named in Section 9100 of the California Civil Code, or amounts due under the Unemployment Insurance Code with respect to any work or labor performed or materials supplied by any such claimant, which said work, labor or materials are covered by the said Construction Agreement and any amendments, changes, change orders, additions, alterations, or modifications thereof, or for any amounts required to be deducted, withheld, or paid over to the Employment Development Department from the wages of employees of the Contractor and his or her subcontractors, pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, the Surety will pay for the same, in an amount not exceeding the sum hereinabove specified, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the court.

This bond shall insure to the benefit of any of the persons named in Section 9100 of the California Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement hereinabove described or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement hereinabove described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to

recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the City and original Contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person entitled to file claims under Title 1 (commencing with Section 8000) of Part 6 of Division 4 of the California Civil Code, and has not been paid the full amount of his or her claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration, modification, rescission or attempted rescission, herein mentioned.

It is further stipulated and agreed that no final settlement between the City and the Contractor with reference to the work, shall abridge the right of any beneficiary hereunder whose claims may be unsatisfied.

This bond is executed and delivered to comply with the requirements of the City of Brisbane, and to comply with the provisions of Title of Part 6 of Division 4 of the Civil Code of the State of California.

SIGNED AND SEALED this _____ day of _____, 2021

PRINCIPAL

SURETY

(Insert Company Name)

A _____ (designate type of entity)

By: _____
Title: _____

By: _____
Title: _____

By: _____
Title: _____

Address: _____

Telephone: _____

(Affix Corporate Seals; Attach Acknowledgments of both Principal and Surety signatures.)

Approved by Legal Counsel for the City of Brisbane on the _____ day of _____, 2021

Michael Roush
Legal Counsel for the City of Brisbane

Bond Number: _____

FAITHFUL PERFORMANCE BOND

WHEREAS, THE CITY OF BRISBANE, a municipal corporation of the State of California (hereinafter designated as "City") on entered into a Design-Build Agreement whereby principal agrees to install and complete certain designated public improvements, which said agreement, dated _____, 2021, and project identified as:

DOG PARK RESURFACING PROJECT

is hereby referred to and made a part hereof; and

Whereas, said Principal is required under the terms of said agreement to furnish a bond for the faithful performance of said agreement.

Now, therefore, the Principal and _____, incorporated under the laws of the State of _____ and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto the City of Brisbane, hereafter called "City," in the penal sum of _____ dollars (\$_____) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of obligation is such that if the above bounded Principal, his, her or its subcontractors, heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and provisions in the said agreement and any alteration thereof made as therein provided, on this or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless City, its officers, agents and employees, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

As a condition precedent to satisfactory completion of said agreement, the above obligations to the amount of _____ dollars (\$_____) lawful money of the United States, being not less than ten percent (10%) of the total bid of the Project, shall hold good for a period of one (1) year after the completion and acceptance of said work during which time if the above bounded Principal, his, her or its heirs, executors, administrators, successors, or assigns shall fail to make full, complete and satisfactory repair and replacement or totally protect the City from loss or damage made evident during said period of one year from the date of acceptance of said work, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligations in the same sum of _____ dollar (\$_____) lawful money of the United States, shall remain in full force and virtue; otherwise the above obligation shall be void.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or the work or to the specifications.

In witness whereof, this instrument has been duly executed by the Principal and surety above named on

_____, 2021.

NOTE: to be signed by
Principal and Surety and
acknowledgment and notarial
seal attached

(SEAL)

Principal

Surety

The above bond is accepted and approved this _____ day of _____, 2021.

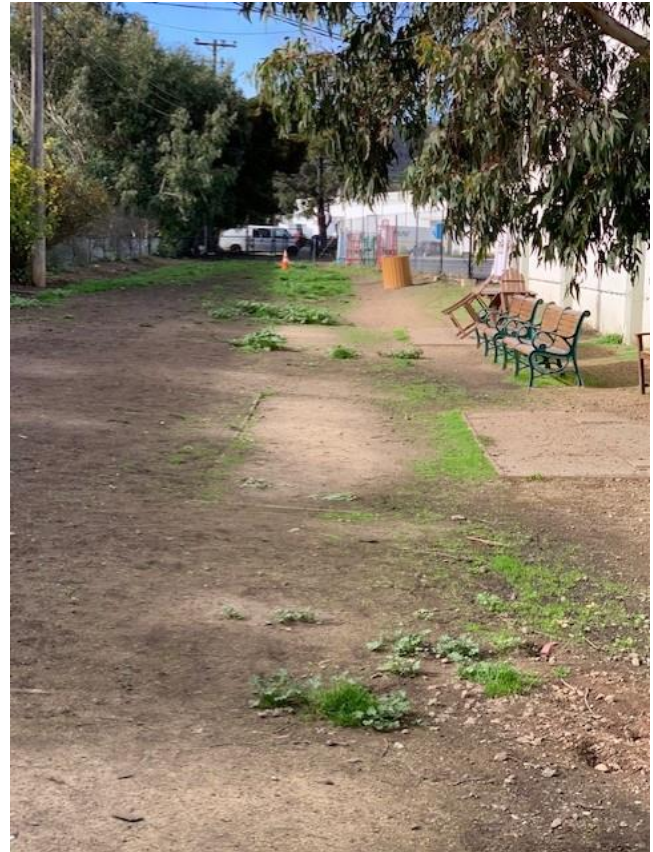
Michael Roush
Legal Counsel for the City of Brisbane

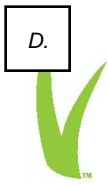
IMPORTANT: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in California.

ENCLOSURE C
AERIAL MAP OF BRISBANE DOG PARK



ENCLOSURE D EXISTING FACILITY CONDITIONS





Pricing Agreement

ATTACHMENT 2

Date: 3/8/2021

ForeverLawn Turf Expert: Jorge Prado

City of Brisbane
Noreen Leek
50 Park Place
Brisbane, Ca 94005
(415) 508-2140

Project Name: City of Brisbane 4,200sqft Dog Park

Project Description: ForeverLawn Bay Area is pleased to present our proposal for the installation of our K9Grass in your Brisbane Dog Park project.

Project Size: 4,200 SF

Project Pricing:	Materials:	\$53,038.40
	Labor:	\$15,390.00
	Shipping:	\$1,540.00
	Total:	\$69,968.40

Pricing Includes: All materials for the turf, installation materials, all associated freight charges and a professional installation by a trained and certified ForeverLawn install team.

Note: Any changes to project scope may incur additional charges.
Any taxes, if applicable are not included in this agreement.

Expiration: This pricing is guaranteed for 60 days from date above.

Project Timeline: Project will be scheduled upon receipt of the down payment and may vary depending on availability of turf and crew. It is expected that this project will take 4-5 working days to complete once started and depending on the option chosen.

Note: if team arrives for installation and the area is not prepared for installation, there will be a remobilization fee of \$2,500.00 that will be charged.

ForeverLawn Bay Area to Provide:

- ForeverLawn product and installation accessories
- Professional ForeverLawn installation including layout, trimming, seaming, and attaching of the product.
- Cleanup

Client is to Provide:

- Easy access to work area for crew and equipment and staging area for materials
- Any changes to scope of work prior to start of project
- Access to water hookup and electricity

Remit Payment to:

Authorized Signature

Date

ForeverLawn®

Grass without limits.®

- A dumpster or receptor for project waste
- Someone on site to receive shipments in advance of installation

E.

File Attachments for Item:

E. Adopt Ordinance No. 660, Waiving Second Reading, for Disposable Food Ware



CITY COUNCIL AGENDA REPORT

Meeting Date: April 15, 2021

From: Adrienne Etherton, Sustainability Manager

Subject: Adopt Ordinance No. 660, Waiving Second Reading for Disposable Food Ware Ordinance

Recommendation

Adopt Ordinance No. 660, waiving second reading, repealing Chapter 8.18 of the Brisbane Municipal Code and adopting a new Chapter 8.19 regulating the use of disposable food service ware by food facilities to reduce waste.

Background

This ordinance was introduced at the regular City Council meeting held on March 18, 2021, and was passed unanimously with no requested changes.

Discussion

After the first reading, the County of San Mateo Office of Sustainability staff shared a template mailer for City staff to send to local food businesses after adoption, informing them of the ordinance. They also shared a list of food facilities, which will be cross-referenced with our business license data. Staff will prepare these letters in the coming weeks so businesses are best able to prepare for compliance by March 2022.

Attachments

1. March 18, 2021 staff report (minus attachments)
2. Final version Ordinance No. 660

Prepared by: Adrienne Etherton, Sustainability Manager

Randy Breault, Public Works Director

Clay Holstine, City Manager



CITY COUNCIL AGENDA REPORT

Meeting Date: March 18, 2021

From: Adrienne Etherton, Sustainability Manager

Subject: Disposable Food Ware Ordinance

Community Goal/Result

Ecological Sustainability - Brisbane will be a leader in setting policies and practicing service delivery innovations that promote ecological sustainability

Purpose

To introduce an Ordinance that will ultimately allow the County of San Mateo to perform education and enforcement services on the use of disposable food service ware in the City of Brisbane.

Recommendation

1. Adopt Ordinance No. 660 "Repealing Chapter 8.18 of the Brisbane Municipal Code and Adopting a New Chapter 8.19 Regulating the Use of Disposable Food Service Ware by Food Facilities.
2. Authorize the City Manager to enter into a Memorandum of Understanding with the County of San Mateo to provide education and enforcement of the food service ware ordinance.

Background

In March 2011, the County of San Mateo Board of Supervisors adopted Ordinance No. 04542 prohibiting the use of polystyrene based disposable food service ware by food vendors ("Polystyrene Ban Ordinance"). The City of Brisbane adopted Ordinance No. 590 in November 2014 extending the polystyrene ban within city limits, with the County providing enforcement.

Since the adoption of the Polystyrene Ban Ordinance, there has been increasing concern over the impact of disposable food service ware, especially items made from plastic. Disposable food service ware is a major contributor to street litter, ocean pollution, marine and other wildlife endangerment, and climate change. Many plastic food service ware items are used for just a few minutes before becoming waste, which lasts for hundreds or even thousands of years.

Accordingly, the County of San Mateo's Office of Sustainability (OOS) and Environmental Health Services conducted extensive research and outreach to develop a Disposable Food Service Ware Ordinance (Ordinance) that would repeal and replace the Polystyrene Ban Ordinance. On February 25, 2020, the Board of Supervisors adopted San Mateo County Ordinance No. 04823, with an effective date of March 25, 2021. Because the County repealed and replaced their previous Polystyrene Ban, the City's Polystyrene ban is no longer being enforced.

City staff had followed and contributed to the County effort with the intention of bringing forward a local ordinance to extend the new provisions within Brisbane and continue to align with the County requirements to retain their role in enforcement. Unfortunately, shortly thereafter, the Coronavirus

Pandemic broke out and city staff did not feel it was an appropriate time to bring forward new regulations on struggling food businesses. However, several other cities in the County have moved forward: South San Francisco, Burlingame, Atherton, Half Moon Bay, Belmont, San Mateo, and Millbrae (first reading 2/26/21). Recently, the County adopted an amendment that pushed their enforcement date back to March 25, 2022.

Discussion

The provisions of the proposed Ordinance are summarized below.

1. Accessories such as straws, stirrers, cup spill plugs, condiment packets, utensils, napkins, etc. shall be provided only: (1) when requested by the consumer, (2) upon acceptance by the consumer after being offered by the food facility, or (3) at a self-serve area and/or a dispenser. Accessories will be distributed unbundled as separate individual units. Take-out food delivery services that utilize digital ordering platforms shall provide clear options for customers to affirmatively request accessories.
2. Polystyrene (#6 plastics, Styrofoam) disposable food service ware is prohibited. (This is a provision that will be carried over from the Polystyrene Ban Ordinance.)
3. Food facilities shall use disposable straws, stirrers, utensils, and cocktail/ toothpicks (and the packaging that these individual items are wrapped in, if any) made from non-plastic, compostable materials. Non-plastic, compostable is defined as, but not limited to, natural fiber-based materials such as paper, sugarcane, wheat stalk/stem, bamboo, wood, etc. Traditional plastics (petroleum-based) and compostable plastics (a.k.a. bioplastics or polylactic acid [PLA]) shall not be allowed for the abovementioned items.
4. Food facilities shall use non-plastic, compostable plates, bowls, cups, food trays, clamshells, boxes, deli containers, and other containers. These items may be lined with, but not made entirely of compostable plastic. Additionally, these items shall be certified by the Biodegradable Products Institute (BPI) or by another 3rd party approved by the OOS to ensure that the items breakdown in an industrial composting facility and are free of or have minimal traces of harmful fluorinated chemicals.
5. Some notable exemptions that will be allowed are summarized below.
 - a. Disposable food service ware made from aluminum.
 - b. Disposable plastic straws may be provided only upon request to consumers with medical needs.
 - c. Healthcare facilities may distribute disposable plastic straws without a request from the patient.
 - d. Drive-through areas of food facilities may distribute straws and cup sleeves without a request from the consumer.
 - e. If no reasonably feasible disposable food service ware alternative exists.
6. The San Mateo County Office of Sustainability (OOS) will maintain and have available a list of approved disposable food service ware sources and/or references to organizations that maintain regularly updated lists of products that meet the Ordinance requirements.

OOS is developing a “Sustainability Ambassadors” program for summer 2021 which will provide materials and training to volunteers to encourage food businesses to immediately begin providing accessories only upon request, which would save businesses money by minimizing the distribution of disposable utensils, napkins, condiments and other accessories. The pandemic has led to an increase in take-out, often brought to a home environment not in need of these accessories, which are then thrown away or stashed in ever-growing piles in our homes. Eliminating these unnecessary items can help offset potentially higher costs for other compostable food ware items and save considerable waste. Staff intends to promote this volunteer opportunity and run related articles through city communications channels.

In February, County staff presented their ordinance to the Open Space and Ecology Committee, who expressed concern about the impact on the local restaurants and discussed various methods of support. City staff reported that outreach to all impacted businesses in summer 2019 indicated many Brisbane eateries are already using compliant items. OSEC recommended adoption of the ordinance paired with a program to provide up to 6 months of compostable containers and education encouraging restaurants not to provide accessories unnecessarily.

Enacting the support proposed by OSEC would impose a significant burden on staff and an unknown but potentially considerable cost. The City Council has recently made a commitment of \$50,000 to help local small businesses, in addition to the grants available from County, State, and Federal sources. With local businesses already reporting to be largely in compliance in 2019, and a one-year lead time to use any non-compliant items stocked, staff believes the impact will be minimal. In addition, the requirements will be imposed uniformly on food businesses, preventing any competitive disadvantage between local establishments.

Fiscal Impact

There is no direct fiscal impact to the City upon adoption of this ordinance because the County of San Mateo will be responsible for outreach and enforcement. Should Brisbane not adopt this ordinance, the existing Polystyrene Ban would require city enforcement at our own expense. Provision of material support to businesses would be an additional cost.

Measure of Success

An overwhelming transition to non-disposable food service ware by Brisbane food service businesses.

Attachments

1. Brisbane Disposable Food Service Ware Ordinance No. 660
2. Disposable Food Service Ware Ordinance MOU



Prepared by: Adrienne Etherton, Sustainability Manager



Randy Breault, Public Works Director



Clay Holstine, City Manager

ORDINANCE NO. 660

**AN ORDINANCE OF THE CITY OF BRISBANE
REPEALING CHAPTER 8.18 OF THE BRISBANE MUNICIPAL CODE AND
ADOPTING A NEW CHAPTER 8.19 REGULATING THE USE OF DISPOSABLE
FOOD SERVICE WARE BY FOOD FACILITIES**

The City Council of the City of Brisbane hereby ordains as follows:

SECTION 1. Findings.

The City Council finds and determines that:

- A. The production, management, and consumption associated with disposable food service ware, typically used for only a few minutes before being discarded, have significant environmental impacts, including environmental contamination; consumption of precious resources such as energy and water; emissions of greenhouse gases; air and water pollution; litter on streets; and plastic pollution in waterways and oceans.
- B. Disposable food service ware constitutes a substantial portion of the litter found within the City of Brisbane, San Mateo County and the rest of the Bay Area. These types of food service ware are commonly littered or blown out of trash receptacles and migrate through the storm drain system where they eventually end up in the ocean and the county's beaches and creeks.
- C. Polystyrene is a petroleum-based, lightweight plastic material commonly used as food service ware by retail food vendors. Polystyrene, often referred to by the trademark, Styrofoam, has also become a problematic environmental pollutant given its non-compostable and nearly non-reusable nature.
- D. The most effective ways to reduce the negative environmental impacts of disposable food service ware include, in order of priority, using reusable food service ware; using natural-fiber based compostable materials, many made from renewable resources such as bamboo, wheat stalk/stem, and sugarcane that do not contain toxic chemicals; and recycling food service ware. When products are reused and recycled, natural resources are spared, less energy is used for the production of new products, and premium landfill space is preserved. When compostable products are turned into compost, they can reduce water use and lessen the need for fertilizer at the site where the compost is applied (e.g., gardens, yards, farm land, etc.), which can also lead to cost savings since less/no fertilizers need to be purchased.
- E. Compostable food service ware such as cups, plates, clamshell containers, and utensils are now made from paper, sugarcane stalk, bamboo, wheat stalk/straw, and other blends of natural plant fibers. As these products degrade, they pose less of a danger to the environment.

- F. Even with the emergence of compostable plastics, which are derived from renewable biomass sources such as plants and microorganisms, there are limited certified types of compostable plastic that biodegrade in a marine environment.
- G. Certain disposable food service ware, including compostable paperboard containers, may contain fluorinated chemicals, also known as per- and polyfluorinated alkyl substances (PFAS), which are synthetic chemicals commonly used in disposable food service ware to repel water and grease. Fluorinated chemicals pose a public health risk as they have been linked to serious health effects including kidney and testicular cancer, thyroid disruption, delayed puberty, and obesity.
- H. Plastics in waterways and oceans break down into smaller pieces, called microplastics, that do not biodegrade and are present in most of the world's oceans. Microplastics consumed by marine organisms make their way into animals' tissues and are beginning to show up in the fish that humans consume. Plastic debris also attracts and concentrates ambient pollutants in seawater and freshwater, which can transfer to fish and other seafood that is eventually sold for human consumption.
- I. Reduction of disposable food service ware in the environment will advance compliance with federal, state, and local clean water mandates, including the Municipal Regional Stormwater Permit requirement, by helping to reduce trash and litter in stormwater discharges.
- J. Understanding the importance of and need for reducing plastic litter, the City adopted a plastic bag ban ordinance in 2013. Adopting this Ordinance will help further reduce the amount of litter entering the city's storm drains, creeks, the bay, and the ocean.
- K. On February 25, 2020, the San Mateo County Board of Supervisors adopted San Mateo County Ordinance No. 04823 repealing Chapters 4.106 and 4.107 and adopting a new Chapter 4.107 entitled "Regulating the Use of Disposable Food Service Ware by Food Facilities".
- L. The City of Brisbane should restrict the use by food facilities of polystyrene-based disposable food service ware and require the replacement of non-compostable or non-recyclable disposable food service ware with compostable alternatives that are non-plastic, natural fiber-based, and free of all intentionally added fluorinated chemicals, when and where possible.

SECTION 2. Chapter 8.18 of the Brisbane Municipal Code is hereby repealed and replaced in its entirety by a new Chapter 8.19 to be numbered and entitled and to read as follows:

CHAPTER 8.19 REGULATING THE USE OF DISPOSABLE FOOD SERVICE WARE

§8.19.010 – Application of Chapter.

This section intentionally left blank.

§8.19.020 – Definitions.

For purposes of this Chapter, the following terms have the following meanings:

- A. “Aluminum Foil-based” means any Disposable Food Service Ware composed entirely of aluminum, including but not limited to aluminum tray liners, aluminum foil, and aluminum foil baskets.
- B. “Biodegradable Products Institute (BPI)” refers to a certification program that ensures that products and packaging displaying the BPI logo have been independently tested and verified accordingly to scientifically based standards to successfully break down in professionally managed industrial composting facilities. BPI-certified products meet the standards of the American Society for Testing Materials (ASTM) D6400 or D6868 for compostability. Starting on January 1, 2020, all BPI-certified products will also be required to have (1) a limit of 100 parts per million (ppm) total Fluorinated Chemicals as the upper threshold for acceptance and (2) no intentionally added Fluorinated Chemicals.
- C. “Compostable” means that an item or material (1) will break down, or otherwise become part of usable compost in a safe and timely manner and (2) is Natural Fiber-based or made from other materials approved by the County Manager or designee. Compostable items may include those that are made entirely of Natural Fiber or Natural Fiber-based items that are coated or lined with biologically based polymer, such as corn or other plant sources (e.g., compostable plastics), if certified by BPI or by another independent third party approved by the County Manager or designee.
- D. “Disposable” means designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple reuse.
- E. “Food Service Ware” means food contact products used for serving, distributing, holding, packaging, and/or transporting Prepared Food including, but not limited to plates, cups, bowls, trays, clamshell containers, boxes, utensils, straws, lids, and food contact paper (e.g., wraps, bags, tray liners, etc.). The term "Food Service Ware" includes Food Service Ware Accessories.
- F. “Food Service Ware Accessories” include Food Service Ware such as straws, stirrers, cup spill plugs, cup sleeves, condiment packets, utensils (including chopsticks), cocktail sticks/picks, toothpicks, napkins, and other similar accessory or accompanying Food Service Ware used as part of food or beverage service or packaging. Detachable lids for beverage cups and food containers are not considered a Food Service Ware Accessory.
- G. “Fluorinated Chemicals” means perfluoroalkyl and polyfluoroalkyl substances (PFAS chemicals) or fluorinated chemicals, which are a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom.

- H. “Food Facility” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food to the public for human consumption, as defined by the California Health and Safety Code Section 113789 or successor. It includes both permanent and temporary food facilities. Public schools are exempt from the provisions of this Chapter.
- I. “Food Scrap Composting Method” means (1) self-hauling of food scraps to a permitted composting facility or a transfer station that accepts food scraps that will be transferred to a permitted composting facility for on-site compost processing, (2) food scrap compost collection service provided by a curbside hauler, or (3) on-site food scrap composting.
- J. “Healthcare Facilities” mean places that provide healthcare to the public. Healthcare Facilities includes, but is not limited to hospitals, clinics, outpatient care centers, nursing homes, psychiatric care centers, medical offices, hospice homes, mental health and addiction treatment centers, orthopedic and other rehabilitation centers, urgent care, birth centers, etc.
- K. “Natural Fiber/Natural Fiber-based” means a plant or animal-based, non-synthetic fiber, including but not limited to products made from paper, sugarcane, bamboo, wheat stems/stalk, hay, wood, etc.
- L. “Non-Compostable” means not meeting the definition of Compostable set forth in this Chapter.
- M. “Polystyrene-based” means and includes expanded polystyrene, which is a thermoplastic petrochemical material utilizing a styrene monomer and processed by any number of techniques including, but not limited to fusion of polymer spheres (expandable bead polystyrene), injection molding, form molding, and extrusion-blow molding (extruded foam polystyrene). The term "polystyrene" also includes polystyrene that has been expanded or blown using a gaseous blowing agent into a solid foam (expanded polystyrene [EPS]) and clear or solid polystyrene known as oriented polystyrene.
- N. “Prepackaged Food” means any properly labeled processed food, prepackaged to prevent any direct human contact with the food product upon distribution from the manufacturer and prepared at an approved source.
- O. “Prepared Food” means food or beverages that undergo a cooking or food preparation technique on the Food Facility’s premises for consumption by the public. Cooking or food preparation technique includes, but is not limited to the following:
 1. Cooking methods, utilizing the application of heat, such as steaming, microwaving, simmering, boiling, broiling, grilling, frying, or roasting.
 2. Beverage preparation, such as blending, brewing, steeping, juicing, diluting, or pouring.
 3. Food preparation techniques, such as defrosting, rinsing, washing, diluting, cutting, portioning, mixing, blending, assembling, coating, dipping, garnishing, decorating, or icing.

4. Prepared Food does not include raw eggs or raw, butchered meats, fish, and/or poultry sold from a butcher case, a refrigerator case, or similar retail appliance.
- P. "Takeout Food" means Prepared Food requiring no further preparation, which is purchased to be consumed off a Prepared Food Facility's premises. Takeout Food includes Prepared Food delivered by a Food Facility or by a third-party Takeout Food Delivery Service.
- Q. "Takeout Food Delivery Service" is a service that delivers Takeout Food from a Food Facility to a customer for consumption off the premises. This service can be provided directly by the Food Facility or by a third-party.

§8.19.030 – Distribution of Disposable Food Service Ware Accessories.

- A. No Food Facility shall provide any Disposable Food Service Ware Accessories except (1) upon request by the consumer, (2) upon acceptance by the consumer after being offered by the Food Facility, or (3) at a self-serve area and/or a dispenser.
- B. Food Facilities shall only distribute Disposable Food Service Ware Accessories unbundled, as separate individual units.
- C. Takeout Food Delivery Services that utilize digital ordering/point of sale platforms, including but not limited to the internet and smart-phone, shall only offer Disposable Food Service Ware Accessories by providing clear options for customers to affirmatively request these items separate from orders for food and beverages. The default option on the digital ordering/point of sale platforms shall be that no Disposable Food Service Ware Accessories are requested. Each individual Disposable Food Service Ware Accessory (e.g., each fork, knife, condiment packet, napkin, etc.) provided with Prepared Food must be specifically requested by the customer in order for a Food Facility to provide it.

§8.19.040 – Standards and Required Use of Disposable Food Service Ware.

- A. No Food Facility shall use Polystyrene-based Disposable Food Service Ware when providing Prepared Food.
- B. Food Facilities shall only provide Disposable straws, stirrers, utensils, and cocktail/toothpicks (and the packaging that these individual items are wrapped in, if any) that are Compostable.
- C. Nothing in this Chapter shall conflict or be construed to conflict with the Americans with Disabilities Act or any other applicable law concerning the rights of individuals with disabilities. In particular, nothing in this Chapter shall restrict, or be construed to restrict, the provision by Food Facilities of Disposable Non-Compostable straws to individuals who may request the use of Disposable Non-Compostable straws to accommodate medical needs or disabilities. Healthcare Facilities may distribute Disposable Non-Compostable straws with or

without request by a patient at the discretion of the Healthcare Facility staff based on the physical or medical needs of the patient.

D. Food Facilities shall use Compostable items for the below Disposable Food Service Ware:

1. Plates
2. Bowls (of all sizes including, but not limited to soup and salad bowls and accessory bowls for condiments)
3. Cups (of all sizes including, but not limited to beverage cups)
4. Food trays
5. Clamshells, boxes, deli containers, and other containers used for the sale and/or distribution of Prepared Food (e.g., Takeout Food, leftover “doggie containers”, etc.)

E. Compostable items for the Disposable Food Service Ware listed in Subsection D used by Food Facilities must have been tested to breakdown into compost in an industrial composting facility in a timely manner and shall be free of all intentionally added Fluorinated Chemicals. To verify, these items shall be certified by Biodegradable Products Institute (BPI) or another independent third party approved by the County Manager or designee, in collaboration with local waste processors and haulers.

F. For all other Disposable Food Service Ware not listed in Subsections B and D, Food Facilities shall use only Disposable Food Service Ware that can be composted by the Food Scrap Composting method utilized by the Food Facility and/or accepted for recycling by the Food Facility’s recycling collection service.

G. The County shall maintain a list of approved Disposable Food Service Ware sources and/or references to organizations that maintain regularly updated lists of products that meet the requirements detailed in Subsections A, B, D, and E of this Section. This information shall be made available on the Office of Sustainability website and in the Office. If a product is not included on the approved lists, the Food Facility wishing to use a product as Disposable Food Service Ware shall establish to the County Manager or designee’s satisfaction that the product complies with the requirements detailed in Subsections A, B, D, and E.

§8.19.050 – Recordkeeping and Inspection.

A. Food Facilities shall keep complete and accurate record or documents of the below items.

1. Commencing on the effective date of this Ordinance and ending 365 days from the Ordinance effective date, the purchase of all Disposable Food Service Ware, including Non-Compostable and Compostable items.
2. The purchase of the acceptable Disposable Food Service Ware evidencing compliance with this Chapter for a minimum period of three years from the date of purchase.

- B. The record shall be made available for inspection at no cost to the County during regular business hours by County employee or County-designated staff authorized to enforce this Chapter. Unless an alternative location or method of review is mutually agreed upon, the records or documents shall be made available at the Food Facility address.
- C. The provision of false or incomplete information, records, or documents to the County shall be a violation of this Chapter.

§8.19.060 – Automatic Exemptions.

- A. Prepackaged Food is exempt from the provisions of this Chapter.
- B. Polystyrene coolers and ice chests intended for reuse are exempt from the provisions of this Chapter.
- C. Disposable Food Service Ware that is entirely Aluminum Foil-based is exempt from the provisions of this Chapter.
- D. If the County determines that a reasonably feasible Disposable Food Service Ware that complies with Section 8.19.040 A, B, D, and E of this Chapter does not exist, these items will be exempt from the abovementioned provisions of this Chapter until the County determines that a reasonably feasible alternative is available on the market for purchase. The County will have a current list of these exempted Disposable Food Service Ware posted on the Office of Sustainability website with hard copies available in the Office.
- E. Certain Disposable Food Service Ware Accessories for beverage orders, specifically, straws and cup sleeves, shall be exempt from Section 8.19.030 A and may be distributed for safety reasons without the need for a request by the consumer or an offer by the Food Facility, specifically at drive-through areas of Food Facilities. Detachable lids are not considered a Disposable Food Service Ware Accessory, so Section 8.19.030 A does not apply to detachable lids.
- F. Temporary exemptions due to an emergency are automatic without the submission of a request for an exemption. An emergency is defined as a sudden, unexpected occurrence posing a clear and imminent danger that requires immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services. Examples of an emergency include, but are not limited to natural disasters, emergencies due to the release of hazardous materials, emergencies associated with loss of power and/or water, or emergency medical response.

§8.19.070 – Case-by-Case Consideration of Requests for Hardship Exemption.

- A. Grounds for an exemption.

An exemption from any of the provisions of this Chapter may be granted by the County Manager or designee upon demonstration by a Food Facility to the satisfaction of the County that strict application of the requirements would cause undue hardship. An “undue hardship” includes, but is not limited to the following:

1. A situation unique to the Food Facility where a suitable alternative that conforms with the requirements detailed in Section 8.19.040 A, B, D, and E does not exist for a specific application.
 2. Imposing the provisions of this Chapter would cause significant economic hardship. “Significant economic hardship” may be based on, but not limited to, demonstrating that suitable Disposable Food Service Ware is not available at a commercially reasonable price and the additional cost associated with providing the Disposable Food Service Ware is particularly burdensome to the Food Facility based on the type of operation(s) affected, the overall size of the business/operation, the number, type and location of its facilities, the impact on the overall financial resources of the Food Facility, and other factors. Reasonable added cost for a suitable item as compared to a similar item that the Food Facility can no longer use shall not by itself constitute adequate grounds to support an exemption for such item. In determining whether a significant economic hardship has been established, the County Manager or designee shall consider the following information: ability of the Food Facility to recover the additional expense by increasing its prices; the availability of tax credits and deductions; outside funding; and other options.
- B. Request for an exemption. A request for an exemption from the requirements of this Chapter shall include all information deemed necessary by the County to render a decision, including but not limited to documentation showing the factual support for the requested exemption. A request for an exemption may be approved by the County Manager or designee, in whole or in part, with or without conditions. The duration of the exemption, if granted, shall also be determined by the County Manager or designee. Information about the application process for requesting an exemption will be available on the Office of Sustainability’s website and in the Office.

§8.19.080 – Enforcement.

- A. The County of San Mateo's County Manager or designee is hereby authorized to enforce, on behalf of the City of Brisbane, this chapter and any amendments thereto, within the jurisdictional boundaries of the city of Brisbane as set forth in Section 4.107.080 of the County of San Mateo Ordinance Code. Such enforcement authority includes, but is not limited to, the authority to hold hearings, issue citation, and assess administrative fines for violations of this chapter within the geographical limits of the City of Brisbane.

- B. A violation of this Chapter is an infraction and is also punishable by administrative fines as set forth in San Mateo County Code of Ordinances [Chapter 1.40](#).
- C. Violation of this Chapter is a public nuisance subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures contained in this ordinance code and state law including, but not limited to, an action for abatement or injunctive relief.
- D. This Section shall not be interpreted to limit any otherwise available civil or administrative remedies under law.

SECTION 3. This Ordinance is exempt from the environmental review requirements of CEQA pursuant to Section 15061 (b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the provisions contained herein may have a significant effect on the environment. Further, the Ordinance is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 of Title 14 of the California Code of Regulations as actions taken by regulatory agencies to assure the maintenance, restoration, enhancement of natural resources, or protection of the environment.

SECTION 4. If any provision, section, subsection, sentence, clause, phrase, or word of this Chapter 8.19, or any application thereof to any person or circumstance, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions or applications of the Chapter. The City Council hereby declares that it would have passed this Chapter, and each provision, section, subsection, sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to whether any portion of this Chapter or application thereof would be subsequently declared invalid or unconstitutional.

SECTION 5. This Ordinance shall be effective thirty (30) days after adoption. However, the mandatory provisions of this Ordinance, except for Section 8.19.050 (A)(1), shall only become operative and subject to enforcement on March 25, 2022.

Karen Cunningham, Mayor

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2021, by the following vote:

AYES:

NOES:

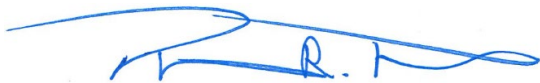
ABSENT:

ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas C. McMorrow, City Attorney

File Attachments for Item:

F. Adopt Ordinance 659, Waiving Second Reading, to Permit Streamlining for Electric Vehicle Charging Stations

**MEMO TO CITY COUNCIL****Meeting Date:** April 15, 2021**From:** Ingrid Padilla, City Clerk**Subject:** Adopt Ordinance 659, Waiving Second Reading, to Permit Streamlining for Electric Vehicle Charging Stations

The Ordinance listed above was introduced at the City Council Meeting of March 18, 2021. No changes were made at the time.

It is on this agenda for consideration of adoption.



CITY COUNCIL AGENDA REPORT

Meeting Date: March 18, 2021

From: John Swiecki, Community Development Director

Subject: Introduction of Draft Ordinance 659-Permit Streamlining for Electric Vehicle Charging Stations

COMMUNITY GOAL/RESULT

Safe Community - Residents and visitors will experience a sense of safety.

Ecological Sustainability - Brisbane will be a leader in setting policies and practicing service delivery innovations that promote ecological sustainability.

PURPOSE

To adopt a local permit streamlining ordinance for electric vehicle charging stations (EVCS) consistent with the requirements of state law.

RECOMMENDATION

That the City Council introduce Ordinance 659.

BACKGROUND

In order to promote the use of electric vehicles over fossil fuel consuming vehicles for GHG reduction, in 2015 the state adopted Assembly Bill No. 1236 which required cities and counties to administratively approve applications for EVCS, unless the proposed installation would have a specific adverse impact upon public health or safety. The bill further required cities and counties to adopt this permit streamlining into local ordinance and to create a checklist for EVCS applicants.

Consistent with the intent of AB 1236, Brisbane has been processing EVCS through the building permit process and has made a checklist of technical requirements available to applicants through the Building Department's webpage and through an over-the-counter handout. However, the City has not yet adopted a local permit streamlining ordinance formalizing these procedures.

DISCUSSION

As indicated above, state law places requirements on cities and counties to allow for permitting of EVCS through an administrative process, with a finding of no adverse impact on public health and safety on specific applications.

While Brisbane currently implements administrative review of EVSC via the building permit process, the draft ordinance would codify Brisbane’s existing process for reviewing EVCS thereby complying with the provisions of state law. The proposed ordinance would add chapter 15.86 – “Electric Vehicle Charging Station Permit Streamlining” to the City’s Building Code, Title 15. Additionally, sub-section 15.12.160.C would be added to the “Building Permit-Issuance Procedure” section, to provide a cross reference to the new chapter 15.86.

Substantive provisions of the ordinance include:

- The City would continue to process EVCS through building permit review, providing a checklist and electronic application portal to EVCS applicants.
- When an applicant applies for a building permit for EVCS, whether residential or non-residential, they would be need to provide documentation demonstrating that the EVCS would not have an adverse impact on public health or safety
- Permit applications would be subject to a 15-business day turnaround time for review. Typically, review would either result in notice of approval being provided to the applicant or correction items to achieve compliance with the building code.
- An EVCS application can only be denied on health and safety grounds. If an EVCS building permit application were denied or conditions were imposed by the Building Official to address an adverse health or safety impact, the applicant may appeal the Building Official’s decision to the City Manager.

FISCAL IMPACT

None. Cost recovery for review and inspection is through building permit fees.

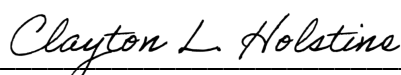
MEASURE OF SUCCESS

Compliance with state law for permit streamlining of EVCS and furthering the use of electric vehicles consistent with the City’s Climate Action Plan goals for the reduction of GHG emissions.

ATTACHMENTS

1. Draft City Ordinance No. 659
2. Redlined Draft Ordinance No. 659


 John Swiecki, Community Development Director


 Clay Holstine, City Manager

ATTACHMENT 1

---Draft ---
ORDINANCE NO. 659__

**AN ORDINANCE OF THE CITY OF BRISBANE
 TO AMEND SECTION 15.12.160 OF THE BRISBANE MUNICIPAL CODE AND
 ADDING CHAPTER 15.86, ELECTRIC VEHICLE CHARGING STATION PERMIT
 STREAMLINING, TO THE BRISBANE MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: The City Council finds and determines that:

- A. Use of fossil fuel vehicles is a primary contributor to transportation emissions and availability of EV charging infrastructure, which is furthered by permit streamlining, is a critical component to EV adoption over the continued use of fossil fuel reliant vehicles.
- B. Section 65850.7 of the California Government Code provides that every city shall adopt an ordinance that creates an expedited, streamlined permitting process for Electric Vehicle Charging Stations.
- C. Adoption of this ordinance will meet the requirements of Section 65850.7 of the California Government Code.
- D. The actions contained in this ordinance comply with the California Environmental Quality Act (CEQA), being exempt pursuant to the General Rule (14 C.C.R. Section 15061 (b)(3)) because this ordinance involves updates and revisions to existing administrative building permit regulations consistent with California law, specifically Government Code section 65850.7. Additionally, the adoption of this ordinance is categorically exempt per CEQA Sections 15307 and 15308, actions by regulatory agencies in support of state and local climate action goals and for protection of the environment.

SECTION 2: Section 15.12.160 of the Brisbane Municipal Code is amended to read as follows:

15.12.160 - Building permit—Issuance procedure

- A. The building official shall issue building permits in accordance with the procedure set forth in Sections 15.12.170 through 15.12.200.
- B. Issuance of building permits for installation of small residential rooftop solar energy systems, as defined in Chapter 15.82 of this title, shall conform to the requirements of the solar streamlining policy on file with the community development department.
- C. Issuance of building permits for installation of electric vehicle charging stations shall conform with Chapter 15.86 of this title.

SECTION 3: Chapter 15.86, “Electric Vehicle Charging Station Permit Streamlining” is added to read as follows:

Chapter 15.86- Electric Vehicle Charging Station Permit Streamlining

15.86.010 Title.

This chapter shall be known as the City of Brisbane Electric Vehicle Charging Station Permit Streamlining Ordinance.

15.86.020 Purpose of Chapter

This chapter is adopted for the following purposes:

- A. To comply with California Government Code Section 65850.7.
- B. To provide an expedited, streamlined permitting process for Electric Vehicle Charging Stations.
- C. To continue to address life-safety issues for electric vehicle charging stations through the building permit process.
- D. To further the purposes of Chapter 15.84 of this Code (Electric Vehicle Infrastructure) concerning the requirements for electrical vehicle charging infrastructure as part of new development projects.

15.86.030 Applicability.

- A. This chapter shall apply to any level of an electric vehicle supply equipment station that is designed and built to deliver electricity from a source outside an electric vehicle to a plug-in electric vehicle as defined in Section 15.86.040.B.
- B. This chapter shall not apply to electric vehicle charging stations that were legally established prior to the effective date of this ordinance, unless physical modifications or alterations are undertaken that materially change the size, type, or components of an electric vehicle charging station such that a building permit would be required. Routine operation and maintenance or like-kind replacements with no structural alterations shall not require a permit.

15.86.040 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings:

- A. "Electronic submittal" means using the City's online portal or the Internet.
- B. "Electric vehicle charging station" or "charging station" means any level of an electric vehicle supply equipment station that is designed and built in compliance with Article 625 of the California Electric Code, as it reads on January 1, 2019 or subsequently adopted amendments, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.
- C. "Specific adverse impact" means a significant, quantifiable, direct, or unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- D. "Building official" is the community development director and the duties specified herein may be assigned to the director's designee.
- E. "Unusual circumstances" means the City's resources have been limited due to such things as response to a declaration of local emergency, natural disaster, pandemic or similar unforeseen events.

15.86.050 Application Requirements and Procedures

An electric vehicle charging station shall require a building permit subject to the requirements and procedures set forth in Sections 15.86.050.A-D. These sections apply to the permitting of all electric vehicle charging stations in the City.

A. Requirements (as set forth in Government Code, Section 65870.7).

1. Electric vehicle charging stations shall meet all applicable health and safety requirements imposed by the State and the City.
2. Electric vehicle charging stations shall meet all applicable safety and performance standards established by the California Electric Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and the accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

B. Application Streamlining

1. The City's permitting procedures shall comply with Government Code Section 65870.7. The City shall:
 - a. Provide an administratively adopted building permit checklist of requirements and application form that will available through the City's website.
 - b. Accept an applicant's electronic signature on all forms, applications, and other documents.
 - c. Administratively approve building permit applications that comply with all requirements.
 - d. Limit its review and requirements to those standards and regulations necessary to ensure there is no specific adverse impact on public health or safety by the proposed installation.
 - e. Complete its review of each building permit application and, except in the event of unusual circumstances, provide the applicant with written notice of the status of the application within 15 business days. This shall include one of the following: notice of approval based on the finding provided in section 15.86.050.C.1, notice of an incomplete application with deficiencies indicated, or notice of denial based on the finding provided in section 15.86.050.C.2.
2. Application Requirements:
 - a. As required by the building official, the applicant shall complete and submit the charging station building permit checklist, application form, plans and supplemental documentation and shall submit payment of adopted application fees to the City.
 - b. Through the application for a building permit, the applicant shall provide documentation demonstrating that the installation of an electric vehicle charging station will not have a specific adverse impact to public health and safety or any building occupants, such verification shall include but not be limited to: electrical system capacity and loads; electrical system wiring, bonding and overcurrent protection; building infrastructure affected by charging station equipment and associated conduits; areas of charging station equipment and vehicle parking.

- c. Anchorage of either floor-mounted or wall-mounted electric vehicle charging stations shall meet the requirements of the California Building or Residential Code as applicable per occupancy, and the manufacturer's installation instructions. Mounting of charging stations shall not adversely affect building elements.

C. Findings

1. Approval: The building official shall approve a complete permit application that meets the required standards and approved checklist demonstrating that the electric vehicle charging station will not have a specific adverse impact on public health or safety.
2. Denial: The building official shall not approve a complete permit application where it is found that the proposed electric vehicle charging station would have a specific adverse impact upon the public health or safety and there is no known condition of approval that may be applied to mitigate the specific adverse impact given the circumstances of the application. The building official shall provide to the applicant in writing such finding when made. .

D. Conditions of Approval

1. If necessary to meet the finding provided in Section 15.86.050.C.1, the building official may impose condition(s) of approval, but such condition(s) shall be limited to those designed to mitigate the specific adverse impact upon the public health and safety at the lowest feasible cost.
2. The City shall not condition its approval on the approval of an association as that term is defined on Section 4080 of the State Civil Code.

15.86.60 Appeals

- A. The applicant may appeal the building official's action or conditions imposed and such shall be made to the city manager in writing, clearly stating the reason for appeal, and filed with the city clerk within ten (10) calendar days after the final action of the building official.
- B. The city manager shall consider the appeal within thirty (30) days and may affirm, reverse or modify the director's decision concerning the department decision. The decision of the city manager shall be final.

SECTION 4: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 5: This Ordinance shall be in full force and effect 30 days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____ 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

MAYOR

ATTEST:

APPROVED AS TO FORM:

CITY CLERK

LEGAL COUNSEL

ATTACHMENT 2**REDLINED
DRAFT ORDINANCE NO. 659__**

Note that the text shown below in red would be added to the Brisbane Municipal Code. Text shown in grey is already in the Brisbane Municipal Code.

SECTION 2: Section 15.12.160 of the Brisbane Municipal Code is amended to read as follows:

15.12.160 - Building permit—Issuance procedure

A. The building official shall issue building permits in accordance with the procedure set forth in Sections 15.12.170 through 15.12.200.

B. Issuance of building permits for installation of small residential rooftop solar energy systems, as defined in Chapter 15.82 of this title, shall conform to the requirements of the solar streamlining policy on file with the community development department.

C. Issuance of building permits for installation of electric vehicle charging stations shall conform with Chapter 15.86 of this title.

SECTION 3: Chapter 15.86, “Electric Vehicle Charging Station Permit Streamlining” is added to read as follows:

Chapter 15.86- Electric Vehicle Charging Station Permit Streamlining

15.86.010 Title.

This chapter shall be known as the City of Brisbane Electric Vehicle Charging Station Permit Streamlining Ordinance.

15.86.020 Purpose of Chapter

This chapter is adopted for the following purposes:

- A. To comply with California Government Code Section 65850.7.
- B. To provide an expedited, streamlined permitting process for Electric Vehicle Charging Stations.
- C. To continue to address life-safety issues for electric vehicle charging stations through the building permit process.
- D. To further the purposes of Chapter 15.84 of this Code (Electric Vehicle Infrastructure) concerning the requirements for electrical vehicle charging infrastructure as part of new development projects.

15.86.030 Applicability.

- A. This chapter shall apply to any level of an electric vehicle supply equipment station that is designed and built to deliver electricity from a source outside an electric vehicle to a plug-in electric vehicle as defined in Section 15.86.040.B.
- B. This chapter shall not apply to electric vehicle charging stations that were legally established prior to the effective date of this ordinance, unless physical modifications or alterations are undertaken that materially change the size, type, or components of an electric vehicle charging station such that a building permit would be required. Routine operation and maintenance or like-kind replacements with no structural alterations shall not require a permit.

15.86.040 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings:

- A. "Electronic submittal" means using the City's online portal or the Internet.
- B. "Electric vehicle charging station" or "charging station" means any level of an electric vehicle supply equipment station that is designed and built in compliance with Article 625 of the California Electric Code, as it reads on January 1, 2019 or subsequently adopted amendments, and delivers electricity from a source outside an electric vehicle into a plug-in electric vehicle.
- C. "Specific adverse impact" means a significant, quantifiable, direct, or unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.
- D. "Building official" is the community development director and the duties specified herein may be assigned to the director's designee.
- E. "Unusual circumstances" means the City's resources have been limited due to such things as response to a declaration of local emergency, natural disaster, pandemic or similar unforeseen events.

15.86.050 Application Requirements and Procedures

An electric vehicle charging station shall require a building permit subject to the requirements and procedures set forth in Sections 15.86.050.A-D. These sections apply to the permitting of all electric vehicle charging stations in the City.

A. Requirements (as set forth in Government Code, Section 65870.7).

- 1. Electric vehicle charging stations shall meet all applicable health and safety requirements imposed by the State and the City.
- 2. Electric vehicle charging stations shall meet all applicable safety and performance standards established by the California Electric Code, the Society of Automotive Engineers, the National Electrical Manufacturers Association, and the accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

B. Application Streamlining

- 1. The City's permitting procedures shall comply with Government Code Section 65870.7. The City shall:

- a. Provide an administratively adopted building permit checklist of requirements and application form that will available through the City's website.
- b. Accept an applicant's electronic signature on all forms, applications, and other documents.
- c. Administratively approve building permit applications that comply with all requirements.
- d. Limit its review and requirements to those standards and regulations necessary to ensure there is no specific adverse impact on public health or safety by the proposed installation.
- e. Complete its review of each building permit application and, except in the event of unusual circumstances, provide the applicant with written notice of the status of the application within 15 business days. This shall include one of the following: notice of approval based on the finding provided in section 15.86.050.C.1, notice of an incomplete application with deficiencies indicated, or notice of denial based on the finding provided in section 15.86.050.C.2.

2. Application Requirements:

- a. As required by the building official, the applicant shall complete and submit the charging station building permit checklist, application form, plans and supplemental documentation and shall submit payment of adopted application fees to the City.
- b. Through the application for a building permit, the applicant shall provide documentation demonstrating that the installation of an electric vehicle charging station will not have a specific adverse impact to public health and safety or any building occupants, such verification shall include but not be limited to: electrical system capacity and loads; electrical system wiring, bonding and overcurrent protection; building infrastructure affected by charging station equipment and associated conduits; areas of charging station equipment and vehicle parking.
- c. Anchorage of either floor-mounted or wall-mounted electric vehicle charging stations shall meet the requirements of the California Building or Residential Code as applicable per occupancy, and the manufacturer's installation instructions. Mounting of charging stations shall not adversely affect building elements.

C. Findings

1. Approval: The building official shall approve a complete permit application that meets the required standards and approved checklist demonstrating that the electric vehicle charging station will not have a specific adverse impact on public health or safety.
2. Denial: The building official shall not approve a complete permit application where it is found that the proposed electric vehicle charging station would have a specific adverse impact upon the public health or safety and there is no known condition of approval that may be applied to mitigate the specific adverse impact given the circumstances of the application. The building official shall provide to the applicant in writing such finding when made. .

D. Conditions of Approval

1. If necessary to meet the finding provided in Section 15.86.050.C.1, the building official may impose condition(s) of approval, but such condition(s) shall be limited to those designed to mitigate the specific adverse impact upon the public health and safety at the lowest feasible cost.
2. The City shall not condition its approval on the approval of an association as that term is defined on Section 4080 of the State Civil Code.

15.86.60 Appeals

- A. The applicant may appeal the building official's action or conditions imposed and such shall be made to the city manager in writing, clearly stating the reason for appeal, and filed with the city clerk within ten (10) calendar days after the final action of the building official.
- B. The city manager shall consider the appeal within thirty (30) days and may affirm, reverse or modify the director's decision concerning the department decision. The decision of the city manager shall be final.

File Attachments for Item:

G. Consider Approval of Environmental Technical Studies for Crocker Trail Resurfacing

(It is being recommended to approve a supplemental appropriation in the amount of \$65,000 from the General Fund for required technical studies for Crocker Trail Resurfacing.)



CITY COUNCIL AGENDA REPORT

Meeting Date: April 15, 2021

From: Randy Breault, Director of Public Works/City Engineer

Subject: Environmental Technical Studies for Crocker Trail Resurfacing

Community Goal/Result

Safe Community, Ecological Sustainability

Purpose

Ensure that technical studies can be completed in accordance with National Environmental Policy Act (NEPA) requirements for the Crocker Trail Commuter Connectivity Upgrades Project.

Recommendation

Approve a supplemental appropriation in the amount of \$65,000 from the General Fund for required technical studies for the Crocker Trail resurfacing.

Background

In 2017, the City of Brisbane was awarded federal funds as part of MTC's One Bay Area Grant 2 Bicycle/Pedestrian Improvement Program (OBAG 2 BPIP) for a resurfacing of the Crocker Trail path. The project cost is to be covered by \$885,300 as allocated by the grant program and an 11.47% match in the amount of \$114,700 by the City, and the grant funds are scheduled to be obligated during the 2021/2022 federal fiscal year, with construction occurring in the summer of 2022. Staff had originally estimated the project cost based on the use of stabilized decomposed granite surfacing material, but later decided to utilize crusher fines, which is an equally appropriate and less costly material recommended by the City's Crocker Trail Master Plan consultant, RRM Design, in 2020. This design change to a less costly material potentially makes a portion of the grant funds available for the project scope to include additional improvements such as lighting, wayfinding signage, furniture, and street crossing enhancements.

Discussion

Caltrans, as the agency responsible for administering the federal funds, conducted a Field Review with City staff in early 2021, at which they reviewed project data and preliminary environmental information. Caltrans determined that because of the trail's former use as a railroad spur, and because of the recently added minor excavation work necessary for installation of the recently proposed features such as lighting and amenities, an environmental site assessment will be required to evaluate the potential for subsurface hazardous materials to be present. Additionally, due to accounts of historical human settlement in the Crocker Park

area, an archaeological survey will be required as well. Completion of these studies as part of NEPA procedures is necessary to obtain environmental clearance and to be able to proceed with project design in a timely manner. Therefore, staff is requesting a supplemental appropriation to fund the two necessary technical studies.

Fiscal Impact

Consultant fees needed from the General Fund for the studies are approximately \$65,000, to be placed into project account 400-9018-000-52030.

Measure of Success

The ability to complete the technical studies as required so that project design and subsequent authorization to start construction can be achieved.

gt PY

Prepared by: Justin Yuen, Assistant Engineer

R2 Breault

Randy Breault, Director of Public Works/City Engineer

Clayton L. Holstine

Clay Holstine, City Manager

File Attachments for Item:

H. Consider Adoption of Urgency Ordinance No. 661 Concerning the Removal of Invasive Species, Waste Material and Combustible Vegetation and Requiring Fire Breaks on Unimproved Properties



CITY COUNCIL AGENDA REPORT

Meeting Date: April 15, 2021

From: Ron Myers, Fire Chief and Barry Biermann, Deputy Fire Chief, Support Services Bureau

Subject: Urgency Ordinance Concerning the Removal of Invasive Species, Waste Material and Combustible Vegetation and Requiring Fire Breaks on Unimproved Properties

Community Goal/Result

Safe Community - Residents and visitors will experience a sense of safety.

Purpose

To ensure the health and safety of the public through removal of invasive species, waste materials and combustible vegetation and requiring fire breaks on unimproved properties.

Recommendation

Adopt an ordinance of the City of Brisbane amending section 15.44.120 of the Brisbane Municipal Code concerning the removal of invasive species, waste materials and combustible vegetation, requiring fire breaks and other fire prevention measures on unimproved properties, and declaring the urgency thereof, to take effect immediately upon its adoption. A four-fifths vote of the City Council is needed to adopt the Ordinance on an urgency basis.

Background

Wildfires have been particularly prevalent in unimproved ("open") acreage and often in difficult terrain. For fire growth reduction and containment purposes as to such acreage, best practices are to maintain at least 100 feet of clearance along all property lines regardless of acreage and, for larger parcels (two acres or more), to maintain within such parcels fire breaks such that no area has more than three acres without a crosscut fire break. Within the City of Brisbane there are unimproved (vacant) parcels and it is necessary that those parcels have fire breaks as described in this Ordinance. The North County Fire Authority annually sends out notices to property owners of such parcels to advise them that they must perform abatement and the removal of combustible vegetation on their properties; these notices are sent in annually in the month of May so that the removal of combustible vegetation can be accomplished before fuels become overly dry and flammable. Accordingly, adoption of this ordinance on an urgency basis

is necessary so that these new requirements may be included in the May notices sent out by the North County Fire Authority to affected property owners.

The Ordinance exempts from the requirements of the Ordinance land owned by the City, as the 49 parcels owned by the City in the upper “Brisbane Acres” are not adjacent to any properties developed with buildings and, more significantly, are within the boundaries of the San Bruno Mountain Habitat Conservation Plan (HCP). Because of that, and due to the potential presence of protected plant species, the City annually engages a firm specialized in working in the HCP that selectively cuts, treats and re-treats to remove invasive species. The removals prescribed in this Ordinance would be inconsistent with the preservation efforts the City performs in the upper Brisbane Acres. The remaining 98 parcels owned by the City tend to be highly developed property (e.g., City Hall, Community Park, etc.), or are narrow rights of way where in many cases there is not thirty feet of total width. As an example of the latter, the Crocker Trail would require nearly a complete clear-cutting of the former railroad spur if this Ordinance were applied there. Notwithstanding these exclusions, the City will continue to perform its annual weed abatement as provided for in the City’s bi-annual operating budget and will work closely with the North County Fire Authority to ensure maintenance of public land is consistent with best management practices.

With regard to other unimproved properties, the maintenance specifics are set forth in the ordinance. Any unimproved acreage covered with flammable material that is two acres or less shall maintain a one hundred (100) foot fire break around the perimeter of such acreage. Any person who owns unimproved acreage that is more than two acres, but less than four acres shall maintain a one hundred (100) foot clearance along each property line and a one hundred (100) foot crosscut break such that there is one hundred (100) feet of clearance around every three acres. Any person who owns unimproved acreage four acres or greater shall maintain a one hundred (100) foot clearance along each property line and a one hundred (100) foot crosscut break every three acres. Trees that are more than 10 feet tall within the (100) foot clearance or within the crosscut break must be limbed such that the lowest limb is not less than six (6) feet from the ground. Dead or dying grass shall be mowed to a maximum of 4” in height. Trees shorter than six (6) feet must be removed entirely. Brush should be cut to within several inches of the surface. Vegetation that is well maintained may remain within the (100) foot clearance and crosscut break. Well maintained is defined in the Ordinance and includes appropriately watered lawns, ground cover plants, ornamental shrubbery and trees that are spaced, pruned, free of all dead material and which will not rapidly spread fire. Dead trees within the (100) foot clearance and within the crosscut break shall be removed completely from the acreage.

Fiscal Impact

There is no direct fiscal impact to the City. If a property owner fails to remove the material as directed, the City must front the cost to have the materials removed. The owner is then billed for the costs; the failure to pay results in the cost being placed on the owner's property tax bill.

Measure of Success

Removing flammable vegetation prevents and reduces the spread of wildfire.

Attachments

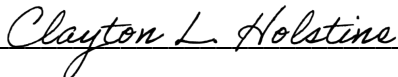
1. Ordinance No. 661



Ron Myers, Fire Chief, NCFA



Barry Biermann, Deputy Fire Chief



Clay Holstine, City Manager

ORDINANCE NO. 661

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING SECTION 15.44.120 OF THE BRISBANE MUNICIPAL CODE CONCERNING THE REMOVAL OF INVASIVE SPECIES, WASTE MATERIALS AND COMBUSTIBLE VEGETATION AND DECLARING THE URGENCY THEREOF, TO TAKE EFFECT IMMEDIATELY UPON ITS ADOPTION

The City Council of the City of Brisbane ordains as follows:

Section 1. Section 15.44.120 of the Brisbane Municipal Code is amended to read as follows:

“15.44.120 - Section 304.1.4 added—Removal of invasive species, waste materials and combustible vegetation.

Section 304.1.4 is added to the fire code, to read as follows:

304.1.4 Removal of invasive species, waste materials and combustible vegetation.

(a) For purposes of this Section 301.1.4, the following definitions apply:

“Invasive species” means any plant species that is non-native to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm to human health.

“Person” shall mean an owner of any property within the City of Brisbane excepting the City of Brisbane, the Successor Agency of the Redevelopment Agency of the City of Brisbane and the Brisbane Housing Authority.

“Well maintained” means property that is maintained in such a way as to prevent a fire from rapidly spreading including, but not limited to, appropriately watered lawns, ground cover plants, and ornamental shrubbery and trees that are sufficiently spaced, pruned, and free of all dead or dying material.

(b) Notice to Remove. The Division of Fire Prevention is authorized to notify any person owning property within the City of Brisbane or its jurisdiction, or the agent of such person, to properly dispose of invasive species and such wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, brush, waste petroleum products, blackberry vines and other growth or rubbish of any kind located on such person’s property which is dangerous to public safety, health or welfare or is deemed a fire hazard by the Division of Fire Prevention. Such notice shall inform the person or the person’s agent that should the invasive species, wastepaper, hay, grass, straw, weeds, flammable vegetation, brush, litter, combustible or flammable waste, waste petroleum products, blackberry vines and other growth or rubbish of any kind not be removed as required, then it will be

removed by the City and the cost of said removal shall in accordance with this chapter be assessed as a lien on the property, to be collected with the next regular tax bill.

Such notice shall be by certified mail, addressed to the person owning the property at the person's last known address, as revealed by the tax rolls, and such additional address as may be known by the Division of Fire Prevention.

- (c) **Action Upon Non-compliance.** Upon failure, neglect or refusal of any person owning property or the person's agent so notified to properly dispose of invasive species and such wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, brush, waste petroleum products, blackberry vines or other growth or rubbish of any kind dangerous to the public health, safety and welfare within fifteen (15) days after receipt of written notice provided for in subsection (b) above, or within fifteen (15) days after the date of such notice in the event the same is returned to the Division of Fire Prevention because of its inability to make delivery thereof, provided the same was properly addressed to the last known address of such person or agent, as provided in subsection (b) of this section, the Division of Fire Prevention is hereby authorized to refer this non-compliance to the City Manager to have the City pay for disposing of such invasive species, wastepaper, hay, grass, straw, weeds, litter, combustible or flammable waste, brush, waste petroleum products, blackberry vines and other growth or rubbish that endangers property or is liable to be fired.
- (d) **Charge Included in Tax Bill.** When the City has effected the removal of dangerous or hazardous conditions from property as noted in subsection (b) or has paid for its removal, the actual cost thereof, plus accrued interest at the rate of ten percent (10%) per annum from the date of the completion of the work, if not paid for by such person prior thereto, shall be charged to the person owning such property on the next regular tax bill forwarded to such person, and said charge shall be due and payable by said person at the time of payment of such bill.
- (e) **Property Including Buildings, Structures and Acreage Maintained.**
 - 1. Any person who owns, leases, controls, operates or maintains any building or structure in, upon, or adjoining any mountainous area or forest-covered lands, brush-covered lands or grass covered lands, or any land covered with flammable material shall maintain around and adjacent to such building or structure a fire break for a distance of not less than thirty (30) feet or to the property line, whichever shall be less.
 - 2. Any person who owns unimproved acreage that is two acres or less shall maintain a one hundred (100) foot fire break around the perimeter of such acreage. Any person who owns unimproved acreage that is more than two acres, but less than four acres shall maintain a one hundred (100) foot clearance along each property line and a one hundred (100) foot crosscut break such that there is one

hundred (100) feet of clearance around every three acres, Any person who owns unimproved acreage four acres or greater shall maintain a one hundred (100) foot clearance along each property line and a one hundred (100) foot crosscut break every three acres. Trees within the 100-foot clearance or within the crosscut break (i) that are less than six feet in height shall be removed entirely from the acreage, (ii) that are ten feet in height or greater must be limbed such that the lowest limb is not less than six (6) feet from the ground, and (iii) that are dead shall be removed completely from the acreage.

3.. Within the areas described in paragraph 2 of subsection (e), dead or dying grass shall be mowed to a maximum of four inches in height, brush shall be cut to within several inches of the surface and vegetation shall be well maintained.

- (f) The Fire Chief or the Fire Chief's designee has the discretion to direct the maintenance requirements of subsection (e) or to modify the requirements of subsection (e) due to terrain or environmental concerns.
- (g) Notwithstanding that a person has taken action to remove the flammable materials described in subsection (b), if flammable materials re-occur on the property, such person shall remove such materials as provided in this section.
- (h) Remedies Cumulative. The remedies set forth in this section are in addition to any other remedies available to the City as set forth in its ordinances and resolutions and the statutes of the State of California.
- (i) Other Regulations. In addition to the remedies set forth herein, the City Council may adopt such other additional, appropriate resolutions and ordinances establishing procedures and regulations for the regulation, control and abatement of invasive species, waste materials, weeds and other matters constituting a fire and/or safety hazard. The City Manager or the City Manager's designee may promulgate regulations to implement and carry out the purposes of this Ordinance, Other regulations concerning vegetation management and fire prevention apply to properties within the San Bruno Mountain Habitat Conservation Plan Area, including the need for a person engaging in vegetation management and fire prevention to obtain a permit from the County of San Mateo before engaging in such activity."

Section 2. This Ordinance is adopted as an urgency ordinance to take effect immediately upon is adoption and the reasons for its urgency are as follows: In the past several years, California has experienced numerous wildfires that have resulted in deaths, injuries and billions of dollars in property damage. These wildfires have been particularly prevalent in open acreage and often in difficult terrain. For fire prevention and containment purposes, as to open acreage, best practices are to maintain at least 100 feet of clearance along all property lines regardless

of acreage and, for larger parcels (two acres or more), to maintain within such parcels fire breaks such that no area has more than three acres without a crosscut fire break. Within the City of Brisbane there are vacant parcels and for public health and safety purposes, and to protect residents and property within the City of Brisbane, it is necessary that those parcels have fire breaks as described in this Ordinance. The Division of Fire Prevention annually sends out notices to property owners of vacant parcels to advise them that they must perform proper weed abatement and the removal of combustible vegetation on their properties; these notices are sent in May so that weed abatement and the removal of combustible vegetation can be accomplished before the onset of fire season which, due to climate change, occurs more and more early in the summer months. Accordingly, these new requirements need to be adopted now so that they may be included in the notices that the Division of Fire Prevention sends to affected property owners.

Section 3. As an urgency Ordinance, this Ordinance becomes effective immediately upon its first reading by a four-fifths vote of the City Council.

Karen Cunningham, Mayor

certify that the foregoing Ordinance was passed and adopted by the City Council of the City of Brisbane at a regular meeting held on April 15, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

Approves as to form:



Thomas R. McMorrow, City Attorney