



# CITY *of* BRISBANE

## City Council Meeting Agenda

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Thursday, September 7, 2023 at 7:30 PM • Hybrid Meeting 50 Park Place, Brisbane, CA

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The public may observe/participate in City Council meetings using remote public comment options or attending in person. City Council members shall attend in person unless remote participation is permitted by law. The City Council may take action on any item listed in the agenda.

### TO ADDRESS THE COUNCIL

#### IN PERSON

Location: 50 Park Place, Brisbane, CA 94005, Community Meeting Room

Masking is not required but according to the California Department of Public Health guidelines, people at higher risk for severe illness should consider masking. To help maintain public health and safety, we respectfully request that people not attend in-person if they are experiencing symptoms associated with COVID-19 or are otherwise ill and likely contagious (e.g., respiratory illnesses).

To address the City Council on any item – whether on the posted agenda or not – please fill out a Request to Speak Form located in the Community Meeting Room Lobby and submit it to the City Clerk. Speakers are not required to submit their name or address.

#### REMOTE PARTICIPATION

Members of the public may participate in the City Council meeting by logging into the Zoom Webinar listed below. City Council meetings may also be viewed live and/or on-demand via the City's YouTube Channel, [youtube.com/brisbaneca](https://youtube.com/brisbaneca), or on Comcast Ch. 27. Archived videos may be replayed on the City's website, [brisbaneca.org/meetings](https://brisbaneca.org/meetings). Please be advised that if there are technological difficulties, the meeting will nevertheless continue if remote participation is available.

The agenda materials may be viewed online at [brisbaneca.org](https://brisbaneca.org) at least 72 hours prior to a Regular Meeting, and at least 24 hours prior to a Special Meeting.

#### Remote Public Comments:

Remote meeting participants may address the City Council. We also encourage you to submit public comments in writing in advance of a meeting. Aside from commenting personally 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 agenda item.

**Email:** [ipadilla@brisbaneca.org](mailto:ipadilla@brisbaneca.org) or **Text:** (628) 219-2922

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

Webinar ID: 991 9362 8666

Call In Number: 1 (669) 900-9128

Note: Callers dial \*9 to “raise hand” and dial \*6 to mute/unmute.

### **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.

### **WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED**

Any writings that are received after the agenda has been posted but before 4pm of the day of the meeting will be available for public inspection at the front lobby in City Hall and on the internet ([brisbaneca.org/meetings](https://brisbaneca.org/meetings)). Any writings that are received after 4pm of the day of the meeting will be available on the internet at the start of the meeting ([brisbaneca.org/meetings](https://brisbaneca.org/meetings)), at which time the materials will be distributed to the Council.

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

#### **ROLL CALL**

- A. Consider any request of a City Councilmember to attend the meeting remotely under the “Emergency Circumstances” of AB 2449

### **ADOPTION OF AGENDA**

### **AWARDS AND PRESENTATIONS**

- B. September Recovery Happens Month
- C. Suicide Prevention Month

### **ORAL COMMUNICATIONS NO. 1**

#### **CONSENT CALENDAR**

- D. Accept Investment Reports as of May 2023
- E. Accept Investment Reports as of June 2023
- F. Adopt an Ordinance, waiving second reading, amending Chapter 8.41 of Title 8 of the Brisbane Municipal Code pertaining to “Water Conservation”
- G. Approve Response to Grand Jury Report, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication
- H. Introduce an Ordinance Repealing Chapter 8.44 of the Brisbane Municipal Code, Enacting a New Chapter 8.44 to the Brisbane Municipal Code to Clarify Existing Definitions and to Enact Additional Requirements for Tobacco Retailer Permits, and Finding that No Further Environmental Review is Required Concerning this Ordinance
- I. Approve Brisbane Chamber’s Event Co-sponsorship Application for Halloween and Anniversary events

- J. Approve Excelsior Running Club's Event Co-sponsorship Application for a Half Marathon event
- K. Approve Sierra Point Yach Club's Event Co-sponsorship Application for the 2023 Regatta
- L. To Appoint Director of Public Works Randy Breault as Representative of the City's Water System to BAWSCA and RFA

#### **OLD BUSINESS**

- M. Receive presentation by C/CAG staff and Consider Authorizing the City Manager to sign a Funding Agreement for the Initial Installation of Conduit and Fiber Optic Liners in Bayshore Blvd
- N. Information Report Concerning Development Impact Fees

#### **NEW BUSINESS**

- O. Consider the approval of the Phase 3 Proposal Package for Privately Installed Public Art

#### **STAFF REPORTS**

- P. City Manager's Report on Upcoming Activities

#### **MAYOR/COUNCIL MATTERS**

- Q. Countywide Assignments and Subcommittee Reports
- R. Written Communications

#### **ORAL COMMUNICATIONS NO. 2**

#### **ADJOURNMENT**

**File Attachments for Item:**

D. Accept Investment Reports as of May 2023



CITY OF BRISBANE  
CASH BALANCES & INVESTMENTS  
SOURCE OF FUNDING  
May 31, 2023

NAME OF DEPOSITORY	INVESTMENT TYPE	DATE OF INVESTMENT	FACE VALUE OF INVESTMENT	CARRY VALUE OF INVESTMENT	MARKET VALUE OF INVESTMENT	COUPON INTEREST RATE %	MATURITY DATE	RATING/ COLLATERAL
WELLS FARGO	Checking A/C		\$ 4,679,821	\$ 4,679,821	\$ 4,679,821	0.000		110% collateral
STATE FUND (LAIF)	Deposit on call	continuous	\$ 2,020,280	\$ 2,020,280	\$ 2,020,280	2.993	on call	no rating
<b>Other Investments</b>								
	FFCB	3/8/2022	\$ 1,000,000	\$ 1,000,000	\$ 971,450	1.670	03/08/2024	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 973,990	2.400	04/22/2024	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 239,518	2.750	05/01/2024	
	FHLB	7/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 977,940	3.350	07/26/2024	
	Wells Fargo Bank	9/23/2022	\$ 250,000	\$ 250,000	\$ 244,573	3.750	09/23/2024	
	American Express	9/21/2022	\$ 250,000	\$ 250,000	\$ 244,585	3.750	09/24/2024	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 945,200	1.000	09/30/2024	
	FHLM	12/13/2022	\$ 1,000,000	\$ 1,000,000	\$ 991,770	5.140	12/13/2024	
	FHLB	3/24/2022	\$ 1,000,000	\$ 1,000,000	\$ 947,580	2.000	03/24/2025	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 959,200	2.750	04/22/2025	
	FHLB	7/28/2022	\$ 1,000,000	\$ 1,000,000	\$ 978,040	4.050	07/28/2025	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 925,700	1.300	09/30/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 991,000	4.750	10/27/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 991,870	5.000	10/27/2025	
	FFCB	9/12/2022	\$ 1,000,000	\$ 1,000,000	\$ 976,800	4.125	12/12/2025	
	FHLB	9/29/2022	\$ 1,000,000	\$ 1,000,000	\$ 973,800	4.150	09/29/2026	
	FHLB	3/25/2022	\$ 1,000,000	\$ 1,000,000	\$ 933,470	2.600	03/25/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 967,330	3.150	05/26/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 961,670	3.750	05/26/2027	
	FHLB	9/30/2022	\$ 1,000,000	\$ 1,000,000	\$ 983,370	5.000	09/30/2027	
BNY Mellon	Treasury Obligations	continuous	\$ 6,754,173	\$ 6,754,173	\$ 6,754,173	5.030	on call	110% collateral
Sub-total			\$ 24,500,173	\$ 24,500,173	\$ 23,933,029			
U.S. Bank	2014 BGPGA Bond (330)	Improvements	Fed Treas Obl	\$ -	10031			
		Reserve Fund	Fed Treas Obl	\$ 1	10032			
		Revenue Fund	Fed Treas Obl	\$ -	10034			
		Expense Fund	Fed Treas Obl	\$ -	10035			
		Principal	Fed Treas Obl	\$ 1	10036			
		Interest Fund	Fed Treas Obl	\$ 0	10037			
U.S. Bank	2015 Utility Capital (545)	Improvements	Fed Treas Obl	\$ -	10031			
		Reserve	Fed Treas Obl	\$ 93	10032			
		Expense Fund	Fed Treas Obl	\$ -	10035			
PARS	OPEB Trust	Trust Cash	Investments	\$ 3,628,033	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,342,911	13050			
Sub-total	Cash with Fiscal Agents			\$ 4,971,038				
Total other investments			\$ 24,500,173	\$ 29,471,211	\$ 23,933,029			
TOTAL INVESTMENTS & CASH BALANCES			\$ 31,200,274	\$ 36,171,312	\$ 30,633,130			

Outstanding Loans to Department Heads

	Date of loan	Amount	Amount Remaining	Interest Rate
Stuart Schillinger	4/1/2002	318,750	\$ 318,750	Variable, LAIF + 1%
Clay Holstine (1)	7/8/2008	300,000	\$ -	Paid off Dec 2016
Clay Holstine (2)	9/10/2008	200,000	\$ 125,000	Variable, LAIF + 1%

FFCB - Federal Farm Credit Bank  
FHLB - Federal Home Loan Bank  
FHLM - Federal Home Loan Mortgage Corporation  
FNMA -Federal National Mortgage Association

Two year Treasury	4.40%	
Weighted Interest	3.17%	
Weighted maturity	1.88	Years

TREASURER'S CERTIFICATE

These are all the securities in which the city funds, including all trust funds and oversight agencies funds, are invested and that (excluding approved deferred compensation plans) all these investments are in securities as permitted by adopted city policy.

It is also certified that enough liquid resources (including maturities and anticipated revenues) are available to meet the next six months' cash flow.

Carolina Yuen  
CITY TREASURER

**File Attachments for Item:**

E. Accept Investment Reports as of June 2023

CITY OF BRISBANE  
CASH BALANCES & INVESTMENTS  
SOURCE OF FUNDING  
June 30, 2023

NAME OF DEPOSITORY	INVESTMENT TYPE	DATE OF INVESTMENT	FACE VALUE OF INVESTMENT	CARRY VALUE OF INVESTMENT	MARKET VALUE OF INVESTMENT	COUPON INTEREST RATE %	MATURITY DATE	RATING/ COLLATERAL
WELLS FARGO	Checking A/C		\$ 5,367,117	\$ 5,367,117	\$ 5,367,117	0.000		110% collateral
STATE FUND (LAIF)	Deposit on call	continuous	\$ 2,020,280	\$ 2,020,280	\$ 2,020,280	3.010	on call	no rating
<b>Other Investments</b>								
	FFCB	3/8/2022	\$ 1,000,000	\$ 1,000,000	\$ 973,470	1.670	03/08/2024	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 974,730	2.400	04/22/2024	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 240,200	2.750	05/01/2024	
	FHLB	7/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 977,490	3.350	07/26/2024	
	Wells Fargo Bank	9/23/2022	\$ 250,000	\$ 250,000	\$ 243,577	3.750	09/23/2024	
	American Express	9/21/2022	\$ 250,000	\$ 250,000	\$ 243,597	3.750	09/24/2024	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 946,150	1.000	09/30/2024	
	FHLM	12/13/2022	\$ 1,000,000	\$ 1,000,000	\$ 991,370	5.140	12/13/2024	
	FHLB	3/24/2022	\$ 1,000,000	\$ 1,000,000	\$ 943,900	2.000	03/24/2025	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 958,320	2.750	04/22/2025	
	FHLB	7/28/2022	\$ 1,000,000	\$ 1,000,000	\$ 976,860	4.050	07/28/2025	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 923,720	1.300	09/30/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 990,730	4.750	10/27/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 991,950	5.000	10/27/2025	
	FFCB	9/12/2022	\$ 1,000,000	\$ 1,000,000	\$ 976,140	4.125	12/12/2025	
	FHLB	9/29/2022	\$ 1,000,000	\$ 1,000,000	\$ 967,030	4.150	09/29/2026	
	FHLB	3/25/2022	\$ 1,000,000	\$ 1,000,000	\$ 932,330	2.600	03/25/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 967,090	3.150	05/26/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 961,100	3.750	05/26/2027	
	FHLB	9/30/2022	\$ 1,000,000	\$ 1,000,000	\$ 983,560	5.000	09/30/2027	
BNY Mellon	Treasury Obligations	continuous	\$ 6,841,116	\$ 6,841,116	\$ 6,841,116	5.040	on call	110% collateral
Sub-total			\$ 24,587,116	\$ 24,587,116	\$ 24,004,430			
U.S. Bank	2014 BGPGA Bond (330)	Improvements	Fed Treas Obl	\$ -	10031			
		Reserve Fund	Fed Treas Obl	\$ 1	10032			
		Revenue Fund	Fed Treas Obl	\$ -	10034			
		Expense Fund	Fed Treas Obl	\$ -	10035			
		Principal	Fed Treas Obl	\$ 1	10036			
		Interest Fund	Fed Treas Obl	\$ 0	10037			
U.S. Bank	2015 Utility Capital (545)	Improvements	Fed Treas Obl	\$ -	10031			
		Reserve	Fed Treas Obl	\$ 93	10032			
		Expense Fund	Fed Treas Obl	\$ -	10035			
PARS	OPEB Trust	Trust Cash	Investments	\$ 3,739,405	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,384,156	13050			
Sub-total	Cash with Fiscal Agents			\$ 5,123,656				
Total other investments			\$ 24,587,116	\$ 29,710,772	\$ 24,004,430			
TOTAL INVESTMENTS & CASH BALANCES			\$ 31,974,514	\$ 37,098,170	\$ 31,391,828			

Outstanding Loans to Department Heads

	Date of loan	Amount	Amount Remaining	Interest Rate
Stuart Schillinger	4/1/2002	318,750	\$ 318,750	Variable, LAIF + 1%
Clay Holstine (1)	7/8/2008	300,000	\$ -	Paid off Dec 2016
Clay Holstine (2)	9/10/2008	200,000	\$ 125,000	Variable, LAIF + 1%

FFCB - Federal Farm Credit Bank  
FHLB - Federal Home Loan Bank  
FHLM - Federal Home Loan Mortgage Corporation  
FNMA -Federal National Mortgage Association

Two year Treasury	4.87%	
Weighted Interest	3.11%	
Weighted maturity	1.83	Years

TREASURER'S CERTIFICATE

These are all the securities in which the city funds, including all trust funds and oversight agencies funds, are invested and that (excluding approved deferred compensation plans) all these investments are in securities as permitted by adopted city policy.

It is also certified that enough liquid resources (including maturities and anticipated revenues) are available to meet the next six months' cash flow.

*Carolina Yuen*  
CITY TREASURER

**File Attachments for Item:**

F. Adopt an Ordinance, waiving second reading, amending Chapter 8.41 of Title 8 of the Brisbane Municipal Code pertaining to “Water Conservation”



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** June 1, 2023  
**From:** Director of Public Works/City Engineer  
**Subject:** Municipal Code Change to Chapter 8.41 – Water Conservation

### Recommendation

Adopt an Ordinance, waiving second reading, amending Chapter 8.41 of Title 8 of the Brisbane Municipal Code pertaining to “Water Conservation.”

Adoption of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2).

### Background

This ordinance was introduced at the regular City Council meeting held on June 29, 2023, and was passed unanimously with no requested changes.

### Environmental Review

Adoption of this Ordinance is not a project under CEQA because it is a continuing administrative activity, such as general policy and procedure making, and not applied to any specific instance. CEQA Guidelines, Section 15378 (b)(5). Accordingly, no further environmental review is necessary.

### Attachments

1. June 29, 2023 staff report

*R.L. Breault*

Randy Breault, Public Works Director

Clay Holstine, City Manager



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** June 29, 2023  
**From:** Director of Public Works/City Engineer  
**Subject:** Municipal Code Change to Chapter 8.41 – Water Conservation

### Community Goal/Result:

Ecological Sustainability

### Purpose

To modify a section of the city’s municipal code that is inconsistent with the revised Water Shortage Contingency Plan.

### Recommendation

Introduce an Ordinance, waiving first reading, amending Chapter 8.41 of Title 8 of the Brisbane Municipal Code pertaining to “Water Conservation.”

Introduction and adoption of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2).

### Background

Assuming that Council acting in its capacity as City Council for the City of Brisbane’s water system and as Board of Directors for the Guadalupe Valley Municipal Improvement District’s water system has approved the 2023 Water Shortage Contingency Plan (WSCP) in earlier action on this agenda, the item now under consideration is necessary to align the city’s municipal code with the revised WSCP.

### Discussion

The primary changes to Chapter 8.41 include revising terms to align them with current State Water Resources Control Board (SWRCB) language, and to delete language referring to four water shortage stages as there are now six stages required for evaluation by SWRCB.

Also, in order to allow future changes to a WSCP to be completed more quickly than the two-step ordinance process, all references to drought stages in the WSCP are removed from the BMC, and the adoption of future WSCPs is only required by Council action (i.e., by resolution).

**Environmental Review**

Introduction and adoption of this Ordinance is not a project under CEQA because it is a continuing administrative activity, such as general policy and procedure making, and not applied to any specific instance. CEQA Guidelines, Section 15378 (b)(5). Accordingly, no further environmental review is necessary.

**Fiscal Impact**


None as a result of the recommended action.

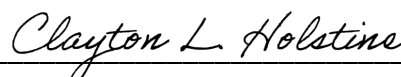
**Measure of Success**

Consistency throughout the city's municipal code and with the Water Shortage Contingency Plan.

**Attachments**

1. Proposed Ordinance
2. Redline of Chapter 8.41

  
\_\_\_\_\_  
Randy Breault, Public Works Director

  
\_\_\_\_\_  
Clay Holstine, City Manager

**ORDINANCE NO. - - -**

**AN ORDINANCE OF THE CITY OF BRISBANE  
REVISING CHAPTER 8.41 OF THE BRISBANE MUNICIPAL CODE  
CONCERNING WATER CONSERVATION**

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

**Section 1: Chapter 8.41 of the Brisbane Municipal Code is revised to read as follows:**

**"8.41.010 – Purpose, scope and notice.**

The purpose of this chapter is to establish standards and procedures for water conservation; assure the maximum beneficial use of city water supplies; enable the implementation of the city's responsive actions to drought conditions and/or water supply shortages ("shortage response actions"); facilitate compliance with requirements for voluntary or mandatory reductions during water shortages promulgated by a governing authority; ensure sufficient water supplies to meet the basic needs of human consumption, sanitation and fire protection; and protect the health, safety, welfare, and economic vitality of the city's customers.

Nothing in this chapter is intended to limit the ability of the city to respond to an emergency, including declaring or enforcing a water shortage emergency pursuant to Water Code Section 350, or to comply with other requirements promulgated by a governing authority.

**8.41.020 – Definitions.**

The following definitions apply to this chapter:

A. "City" means the City of Brisbane and/or the Guadalupe Valley Municipal Improvement District.

B. "Director" means the director of the department of public works/city engineer of the city, or the director's designee.



C. "Shortage response actions" include the restrictions on water use in an adopted water shortage contingency plan. A reference to a particular stage of shortage response actions refers to the corresponding shortage level described in the water shortage contingency plan.

D. "Governing authority" means any entity — including, but not limited to, the SFPUC — that has the legal authority to limit the ability of the city to purchase and/or use water.

E. "Person" or "persons" means any natural person or persons, corporation, public or private entity, or any other user of water provided by the city.

F. "SFPUC" means the San Francisco Public Utilities Commission.

G. "Water shortage contingency plan" means a plan, as may be amended, to address water shortages, including a detailed description of increasingly restrictive shortage response actions, developed under the direction of the director and as amended.

#### **8.41.030 - Water shortage contingency plan.**

The specifics of the water use restrictions are listed as shortage response actions contained in the water shortage contingency plan. The water shortage contingency plan shall be developed under the direction of the director and approved by the City Council . The water shortage contingency plan may be amended as necessary, in the director's discretion, to better achieve the overall goals in this chapter or to comply with any terms of the water shortage contingency plan. The operative version of the water shortage contingency plan shall be posted as soon as possible on the city's website. The water shortage contingency plan is intended to comply substantially with the requirements of California Water Code Section 10609.60.

#### **8.41.040 –Permanent water conservation measures.**

Nothing in this chapter shall limit the requirements of Chapter 8.40 (Water Waste), Chapter 15.70 (Water Conservation in Landscaping), or Chapter 15.72 (Indoor Water Conservation Regulations) of the Brisbane Municipal Code. These water conservation requirements are in effect at all times.

#### **8.41.050 –Enforcement.**

The director shall enforce this chapter. When the director has declared a drought shortage level, failure to comply with the shortage response actions shall be a violation of this chapter and may be subject to administrative penalties (as provided in Chapter 1.16 of the Brisbane Municipal Code and Water Code Section 71590) and may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days and/or by a fine not exceeding one thousand dollars (\$1,000.00) (as provided in Water Code Section 377).

Prior to, or in addition to imposing penalties as described above, the director may, in the director's sole discretion, take any or all of the following actions:

A. Written Warning: If the director determines that a person is using water in violation of this chapter, the city may send a written warning to the person that lists the name and address of the person on the account, identifies the wasteful use of water that violates the restrictions on water use currently in effect, requests that the person stop such wasteful use, informs the person about the process for applying for an exception from the requirements of this chapter, and informs the person that failure to comply with this chapter may result in the termination of service.

B. On-site Warning: The director may conduct an on-site visit to ascertain whether wasteful use of water is occurring. In the event that waste of water that violates the restrictions on water use current in effect is observed, and no exception has been granted, the director will make reasonable efforts to notify an adult residing at the property if a residential account or an adult working on the property if a non-residential account, and will issue a written on-site warning of wasteful water use. This warning will include a written warning hand-delivered to the adult on the premises or posted on the premises.

C. Termination of Water Service: In the event that city personnel observe continued waste of water that violates the restrictions on water use currently in effect occurring on the person's premises more than forty-eight (48) hours after the on-site warning, it shall be

deemed to be a willful violation of the restrictions on water use currently in effect, and the director may authorize termination of water service.

D. Restoring Water Service: The reconnection charge established in the city's rate and fee schedule shall be paid before the city restores service. In addition, the person must have stopped the wasteful use of water and have paid all charges owed to the city under this chapter, and all other rates and fees owed, before the city restores water service.

E. Installation of Flow Restricting Device: The director may, in the director's sole discretion, install a water flow restricting device in the service line of a person who violates this chapter. Written notice will be provided to the person by hand delivery at least forty-eight (48) hours prior to installation of the flow restricting device. The flow restricting device will be up to one gallon per minute (1 GPM) capacity for services up to one and one-half (1.5) inch size and comparatively sized restrictors for larger services. The cost of installation of the flow restricting device shall be charged to the person.

These enforcement actions are in addition to any enforcement actions specified in the water shortage contingency plan.

#### **8.41.060 –Relief from compliance.**

Upon written application made to the director for an exception or adjustment to the requirements of this chapter, the director may grant, in the director's sole discretion, variances to a person who demonstrates that the person has adopted all reductions in water consumption that could practically be achieved. Any exception or adjustment shall not grant a special privilege inconsistent with the limitations placed upon similarly-situated persons. Exceptions or adjustments may also be granted if failure to do so would adversely affect the sanitation, fire protection, health, safety, or welfare of the public, or of the Person applying for an exception or adjustment. The information required with the variance application will be specified in the water shortage contingency plan.

The denial of an application for an exception or adjustment may be appealed in writing to the city manager within thirty (30) days of the date of the notice of the denial of the

application. The city manager shall grant or deny the appealed application within fifteen (15) days and shall mail notice thereof to the appellant as soon as practicable. The city manager's decision shall be final and non-appealable.”

**Section 2:** 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 3:** This Ordinance shall be in full force and effect thirty 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 \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Madison Davis, Mayor

ATTEST:

\_\_\_\_\_  
Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Thomas R. McMorrow, City Attorney

Title 8 - HEALTH AND SAFETY  
Chapter 8.41 WATER CONSERVATION

## Chapter 8.41 WATER CONSERVATION

### 8.41.010 Purpose, scope, and notice.

The purpose of this chapter is to establish standards and procedures for water conservation; assure the maximum beneficial use of city water supplies; enable the implementation of the city's responsive actions to drought conditions and/or water supply shortages ("shortage response actions")~~stage-response-measures~~actions; facilitate compliance with requirements for voluntary or mandatory reductions during water shortages promulgated by a governing authority; ensure sufficient water supplies to meet the basic needs of human consumption, sanitation and fire protection; and protect the health, safety, welfare, and economic vitality of the city's customers.

~~This chapter establishes four stages of increasingly restrictive drought response actions to be implemented in times of water shortage. The provisions of each drought response stage are triggered upon the director's determination that a governing authority has required a voluntary or mandatory reduction in water use because of shortage conditions.~~

~~The provisions of each drought response stage will become effective five (5) days after the director determines that a particular stage should be triggered and has published notice of this determination by mail. Once effective, the provisions of a drought response stage will stay in effect until the effective date of a different drought response stage that is triggered or until the director determines that no drought response stages are required and has published notice of this determination by mail.~~

Nothing in this chapter is intended to limit the ability of the city to respond to an emergency, including declaring or enforcing a water shortage emergency pursuant to Water Code Section 350, or to comply with other requirements promulgated by a governing authority.

(Ord. No. 589, § 1, 9-2-14)

### 8.41.020 Definitions.

The following definitions apply to this chapter:

- A. "City" means the City of Brisbane and/or the Guadalupe Valley Municipal Improvement District.
- B. "Director" means the director of the department of public works/city engineer of the city, or the ~~director's~~his or her designee.
- C. "Drought Shortage response measures~~actions~~" ~~include~~mean the measures-restrictions on water use in an adopted~~the~~ water shortage contingency plan. A reference to a particular stage of drought-shortage response measures-actions refers to the corresponding stage-shortage level described in the water shortage contingency plan.
- D. "Governing authority" means any entity — including, but not limited to, the SFPUC — that has the legal authority to limit the ability of the city to purchase and/or use water.
- E. "Person" or "persons" means any natural person or persons, corporation, public or private entity, or any other user of water provided by the city.
- F. "SFPUC" means the San Francisco Public Utilities Commission.

- G. "Water shortage contingency plan" means a plan, as may be amended, to address water shortages, including a detailed description of four (4) stages of increasingly restrictive drought-shortage response actions, developed under the direction of the director and as amended.

(Ord. No. 589, § 1, 9-2-14)

#### **8.41.030 Water shortage contingency plan.**

The specifics of the terms water use restrictions of the are listed as drought-shortage response measures actions are contained in the water shortage contingency plan. The water shortage contingency plan shall be developed under the direction of the director and approved by the City Council Resolution. The water shortage contingency plan. During a declared drought the plan may be amended as necessary, in the director's discretion, to better achieve the overall goals in this chapter or to comply with any terms of a the water shortage contingency plan required of urban water suppliers, as defined by Water Code Section 10617. The operative version of the water shortage contingency plan shall be posted as soon as possible on the city's website. The water shortage contingency plan is intended to comply substantially with the requirements of California Water Code Section 10632-10609.60 and may be used as a framework through which to actually comply with the requirements of Water Code Section 10632 if the city is legally required to do so.

(Ord. No. 589, § 1, 9-2-14)

#### **8.41.040 Permanent water conservation measures.**

Nothing in this chapter shall limit the requirements of Chapter 8.40 (Water Waste), Chapter 15.70 (Water Conservation in Landscaping), or Chapter 15.72 (Indoor Water Conservation Regulations) of the Brisbane Municipal Code. These water conservation requirements are in effect at all times.

(Ord. No. 589, § 1, 9-2-14)

#### **8.41.050 Stage 1 drought response measures.**

Stage 1 drought response measures apply when a governing authority declares a need for its purchasers to voluntarily reduce consumption by at least ten percent (10%), and the director gives notice pursuant to Section 8.41.010 of his or her determination that the stage 1 drought response measures must be triggered.

The overall goal of the stage 1 drought response measures is to reduce water usage by the city and its water consumers by at least ten percent (10%) of the average annual use by the city and its water consumers over the most recent five (5) calendar years preceding the effective date of the stage 1 drought response measures, until such time as a governing authority determines that a voluntary reduction in consumption of at least ten percent ten percent (10%) is no longer necessary. The city will endeavor to increase its public education and outreach efforts to increase public awareness of the need for all persons to implement the stage 1 drought response measures.

{Ord. No. 589, § 1, 9-2-14}

#### **8.41.060 Stage 2 drought response measures.**

Stage 2 drought response measures apply when a governing authority imposes a mandatory requirement for its purchasers to reduce consumption system-wide by at least ten percent (10%), and the director gives notice pursuant to Section 8.41.010 of his or her determination that the stage 2 drought response measures must be triggered.

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The overall goal of the stage 2 drought response measures is to reduce water usage by the city and its water consumers by at least ten percent (10%) of the average annual use by the city and its water consumers over the most recent five (5) calendar years preceding the effective date of the stage 2 drought response measures, until such time as a governing authority determines that a mandatory reduction in consumption of at least ten percent (10%) is no longer necessary. While the stage 2 drought response measures are effective, all persons shall also comply with the stage 1 drought response measures, which will be mandatory.

(Ord. No. 589, § 1, 9-2-14)

#### **8.41.070 Stage 3 drought response measures.**

Stage 3 drought response measures apply when a governing authority declares a need for its purchasers to voluntarily reduce consumption by at least twenty percent (20%), and the director gives notice pursuant to Section 8.41.010 of his or her determination that the stage 3 drought response measures must be triggered.

The overall goal of the stage 3 drought response measures is to reduce water usage by the city and its water consumers by at least twenty percent (20%) of the average annual use by the city and its water consumers over the most recent five (5) calendar years preceding the effective date of the stage 3 drought response measures, until such time as a governing authority determines that a voluntary reduction in consumption of at least twenty percent (20%) is no longer necessary. While the stage 3 drought response measures are effective, all persons shall also comply with the stage 1 and stage 2 drought response measures, both of which will be mandatory.

(Ord. No. 589, § 1, 9-2-14)

#### **8.41.080 Stage 4 drought response measures.**

Stage 4 drought response measures apply when a governing authority imposes a mandatory requirement for its purchasers to reduce consumption by at least twenty percent (20%), and the director gives notice pursuant to Section 8.41.010 of his or her determination that the stage 4 drought response measures must be triggered.

The overall goal of the stage 4 drought response measures is to reduce water usage by the city and its water consumers by at least twenty percent (20%) of the average annual use by the city and its water consumers over the most recent five calendar years preceding the effective date of the stage 4 drought response measures, until such time as a governing authority determines that a mandatory reduction in consumption of at least twenty percent (20%) is no longer necessary. While the stage 4 drought response measures are effective, all persons shall also comply with the stage 1, stage 2, and stage 3 drought response measures, all of which will be mandatory.

(Ord. No. 589, § 1, 9-2-14)

#### **8.41.090 Enforcement.**

The director shall enforce this chapter. When the director has declared a drought shortage level, failure to comply with the shortage response actions shall be a violation of this chapter and may be subject to administrative penalties (as provided in Chapter 1.16 of the Brisbane Municipal Code and Water Code Section 71590) and may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days and/or by a fine not exceeding one thousand dollars (\$1,000.00) (as provided in Water Code Section 377).

Prior to, or in addition to imposing administrative penalties as described above, the director may, in the director's sole discretion, take any or all of the following actions:

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- A. Written Warning: If the ~~directoreity~~ determines that a person is using water in violation of this chapter, the city may send a written warning to the person that lists the name and address of the person on the account, identifies the wasteful use of water that violates the restrictions on water use currently in effect, requests that the person stop such wasteful use, informs the person about the process for applying for an exception from the requirements of this chapter, and informs the person that failure to comply with this chapter may result in the termination of service.
- B. On-site Warning: The ~~directoreity~~ may conduct an on-site visit to ascertain whether wasteful use of water is occurring. In the event that waste of water that violates the restrictions on water use current in effect is observed, and no exception has been granted, the ~~directoreity~~ will make reasonable efforts to notify an adult residing at the property if a residential account or an adult working on the property if a non-residential account, and will issue a written on-site warning of wasteful water use. This warning will include a written warning hand-delivered to the adult on the premises or posted on the premises.
- C. Termination of Water Service: In the event that city personnel observe continued waste of water that violates the restrictions on water use currently in effect occurring on the person's premises more than forty-eight (48) hours after the on-site warning, it shall be deemed to be a willful violation of the restrictions on water use currently in effect, and the director may authorize termination of water service.
- D. Restoring Water Service: The reconnection charge established in the city's rate and fee schedule shall be paid before the city restores service. In addition, the ~~p~~Person must have stopped the wasteful use of water and have paid all charges owed to the city under this chapter, and all other rates and fees owed, before the city restores water service.
- E. Installation of Flow Restricting Device: The ~~directoreity~~ may, in ~~the director's~~ sole discretion, install a water flow restricting device in the service line of a person who violates this chapter. Written notice will be provided to the person by hand delivery at least forty-eight (48) hours prior to installation of the flow restricting device. The flow restricting device will be ~~at least~~ up to one gallon per minute (1 GPM) capacity for services up to one and one-half (1.5) inch size and comparatively sized restrictors for larger services. The cost of installation of the flow restricting device shall be charged to the person.

These enforcement actions are in addition to any enforcement actions specified in the water shortage contingency plan.

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(Ord. No. 589, § 1, 9-2-14)

#### **8.41.060100 Relief from compliance.**

Upon written application made to the director for an exception or adjustment to the requirements of this chapter, the director may grant, in ~~the director's~~ sole discretion, variances to a person who demonstrates that the person has adopted all reductions in water consumption that could practically be achieved. Any exception or adjustment shall not grant a special privilege inconsistent with the limitations placed upon similarly-situated persons. Exceptions or adjustments may also be granted if failure to do so would adversely affect the sanitation, fire protection, health, safety, or welfare of the public, or of the Person applying for an exception or adjustment. The information required with the variance application will be specified in the water shortage contingency plan.

The denial of an application for an exception or adjustment may be appealed in writing to the city manager within thirty (30) days of the date of the notice of the denial of the application. The city manager shall grant or deny the appealed application within fifteen (15) days and shall mail notice thereof to the appellant as soon as practicable. The city manager's decision shall be final and non-appealable.

(Ord. No. 589, § 1, 9-2-14)

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**File Attachments for Item:**

G. Approve Response to Grand Jury Report, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023

**From:** John Swiecki, Community Development Director

**Subject:** Response to Grand Jury Report, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

### Community Goal/Result

Safe Community

### Purpose

For the City Council to review to the City’s draft response to the 2022-2023 Civil Grand Jury Report, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?”

### Recommendation

Approve the attached response letter to the Grand Jury Report on Accessory Dwelling Units (ADUs).

### Background

The 2022-2023 Civil Grand Jury filed a report on June 12, 2023 (Attachment 2) which contains findings and recommendations pertaining to municipalities’ use of ADUs to avoid the construction of multifamily low-income housing over the next eight years. The City of Brisbane must submit comments to Hon. Nancy L. Fineman by September 11, 2023 and the response must indicate that it was approved by the City Council at a public meeting.

The Grand Jury report contains seven findings that the City must indicate if it wholly or partially agrees or disagrees with for each finding. Additionally, the report contains six recommendations that the City must indicate has been implemented, will be implemented, requires further analysis, or will not be implemented.

### Discussion

The 2022-2023 Civil Grand Jury Report, “Accessory Dwelling Units: Affordable Housing’s Panacea or Prevarication?” generally found that:

- Counting ADUs as affordable housing may result in cities issuing permits for fewer deed-restricted low-, very low-, and moderate-income apartments and homes; and
- Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units through ADU construction.

While the City of Brisbane counts ADUs toward meeting our Regional Housing Needs Allocation (RHNA), it is one of many strategies and ADUs account for less than five percent of our total

RHNA. Additionally, the City of Brisbane is one of two San Mateo County jurisdictions with an adopted and certified 2023-2031 Housing Element with a State-approved method of monitoring the affordability of ADU rental rates to ensure their affordability to lower-income households are at the ratios assumed within our Housing Element. The City is also committed to act accordingly should the ratios of affordability differ from those assumed, per Housing Element Program 3.A.3.

The City also works collaboratively with San Mateo County jurisdictions through 21 Elements to develop, adopt, and implement housing policies and programs within the County to specifically address the recommendations contained within the Grand Jury report related to establishing a countywide ADU monitoring program and the development of a new countywide ADU nonprofit with programs to incentivize the production of affordable ADUs within San Mateo County.

Staff has collaborated with San Mateo County and cities within the county, where applicable, in developing consistent responses (Attachment 1) to the Grand Jury Report. The City's responses follow each finding and recommendation from the Grand Jury.

### **Fiscal Impact**

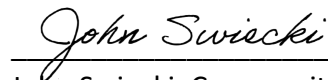
None.

### **Measure of Success**

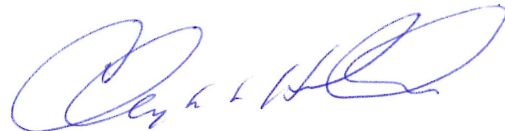
Submission of a timely response to the Grand Jury's report.

### **Attachments**

1. Draft Response to Grand Jury Report
2. June 12, 2023 Grand Jury Report



John Swiecki, Community Development Director



Clay Holstine, City Manager

September 8, 2023

Honorable Nancy L. Fineman  
 Judge of the Superior Court  
 c/o Bianaca Fasuescu  
 Hall of Justice  
 400 County Center, 2<sup>nd</sup> Floor  
 Redwood City, CA 94063-1655

**Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?**

Dear Honorable Nancy L. Fineman and members of the Grand Jury,

This letter is in response to the 2022-2023 Grand Jury report of June 12, 2023 which contained findings and recommendations pertaining to the City of Brisbane. Listed below are the Jury's findings and recommendations followed by the City of Brisbane's responses, as reviewed and approved by the Brisbane City at a public meeting on September 7, 2023.

**The San Mateo County 2022-2023 Grand Jury makes the following findings (F1 through F7) to the City Councils of the cities of San Mateo County:**

**F1.** Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.

**RESPONSE:** *The City of Brisbane agrees with this finding.*

**F2.** San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.

**RESPONSE:** *The City of Brisbane partially agrees with this finding. While the City of Brisbane counts ADUs to meet affordable housing commitments under RHNA, it is one of many strategies. Specifically, the City of Brisbane has a total affordable housing RHNA of 803 units and ADUs make up only 36 of these, or less than five percent of our total. Additionally, the City of Brisbane's adopted and certified 2023-2031 Housing Element contains the following programs, that will be implemented within the next eight years, to meet our affordable housing commitments:*

- *Develop an affordable housing policy to promote the distribution of affordable housing equitably across the City (program 1.B.1);*

- *Require an affordable housing plan as part of the approval for development at the Baylands (program 2.A.2);*
- *Grant priority water and sewer service to housing with units affordable to lower-income households (program 2.B.6);*
- *Amend the Density Bonus Ordinance to allow for both greater bonuses and bonuses for small projects that would not otherwise qualify under State law (program 2.C.1);*
- *Evaluate methods to subsidize the cost of affordable and/or special needs housing development (program 2.D.1);*
- *Adopt and implement an Affordable Housing Strategic Plan (AHSP) that includes the following components (program 2.E.1):*
  - I. *Identifies programmatic funding goals, objectives, and priorities;*
  - II. *Evaluates and prioritizes new ongoing revenue streams for affordable housing development;*
  - III. *Evaluates preferences for current Brisbane residents in new special needs and affordable housing; and*
  - IV. *Engages community stakeholders, including landowners, affordable housing developers, and lower-income households within Brisbane and San Mateo County to identify opportunities for affordable housing development.*
- *Update the Inclusionary Housing Ordinance to consider in-lieu fee alternatives for for-sale developments that may provide additional affordable housing revenue to the City (program 2.E.4);*
- *Amend the Zoning Ordinance to require a higher minimum (20 percent) of new units in certain zoning districts be affordable to lower income households (program 2.E.4);*
- *Adopt an ordinance establishing and imposing a nexus fee applicable to new commercial development to fund affordable housing development (program 2.E.5);*
- *Study vacant and/or underutilized City-owned parcels for use as affordable and/or special needs housing sites (program 2.E.6);*
- *Develop relationships with nonprofit housing development corporations to maximize affordable housing opportunities within Brisbane (Program 2.F.2);*
- *Evaluate the potential for the City to acquire vacant sites and underdeveloped properties within the City to land-bank for future affordable housing projects (program 2.F.3);*
- *Establish how City funding sources will be used to subsidize development costs in residential and mixed-use projects to encourage inclusion of more affordable housing units than required by the City's Inclusionary Housing Ordinance (program 2.F.4);*

- *Implement affordable housing preservation and management policies identified within the AHSP (program 3.A.1).*
- *Amend the Zoning Ordinance to require one-to-one replacement of deed-restricted affordable housing units converted to market-rates (program 3.A.5);*
- *Amend the Inclusionary Housing Ordinance to extend the required timeframe of affordability covenants on new affordable housing development (program 4.A.11); and*
- *Implement preservation policies identified in the AHSP (program 4.B.2).*

**F3.** Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.

**RESPONSE:** *Not applicable. The City of Brisbane is not named in this finding and therefore has no comment.*

**F4.** HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.

**RESPONSE:** *The City of Brisbane partially agrees with this finding. The City of Brisbane did not receive comments from HCD requiring the City to specify how to verify the income levels of ADU occupants prior to their certification of our 2023-2031 Housing Element. However, program 3.A.3 of the City of Brisbane's adopted and certified Housing Element stipulates the City will annually survey rental rates for permitted ADUs to ensure their affordability to lower-income households are at the ratios assumed within the Housing Element. It further states that if survey results show that ADUs are being rented at levels that are not affordable to low-income households at the ratios assumed, the City will provide targeted outreach to homeowners regarding tenant placement assistance provided by HIP Housing (program 4.A.9). Finally, the City of Brisbane is in support of a regional ADU monitoring effort through ABAG or 21 Elements, a long-standing collaboration among the 21 jurisdictions of San Mateo County.*

**F5.** Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.

**RESPONSE:** *The City of Brisbane agrees with this finding. As certified by HCD, program 3.A.3 of the City of Brisbane's adopted Housing Element specifies how the City of Brisbane will monitor and verify ADU production annually.*

**F6.** Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.

**RESPONSE:** *The City of Brisbane agrees with this finding. As stated above, the City of Brisbane is committed to annually surveying rental rates for permitted ADUs to ensure their affordability to lower-income households are at the ratios assumed in our adopted and certified 2023-2031 Housing Element and the City of Brisbane supports a regional approach to monitoring ADU affordability.*

**F7.** ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

**RESPONSE:** *The City of Brisbane agrees with this finding. HIP is one potential partner agency and the City of Brisbane's adopted and certified 2023-2031 Housing Element contains a number of programs that leverage assistance and resources offered by HIP Housing.*

**The San Mateo County 2022-2023 Grand Jury made a number of recommendations to the City Councils of the cities of San Mateo County. The Grand Jury requested responses from the City of Brisbane regarding R1, R2, R3, R4, R5, and R6.**

**R1.** San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.

**RESPONSE:** *The recommendation will not be implemented because it is not warranted. While the City of Brisbane shares the Civil Grand Jury's goal to increase ADU affordability monitoring, the City of Brisbane has an adopted and certified 2023-2031 Housing Element that was developed through a rigorous process of multiple years of public input and revisions and ADUs account for less than five percent of our required affordable units. It is not reasonable to revise our Housing Element to eliminate the use of ADUs to meet affordable housing goals when, over the last five years, 67% of survey respondents to the City's annual rental rate survey have indicated their ADU is rented at a rate that is considered affordable, based on the income limits established by the U.S. Department of Housing and Urban Development (HUD) for San Mateo County, suggesting ADUs are rented at affordable levels within the City of Brisbane. Furthermore, the City's certified Housing Element already articulates how the City will monitor and verify ADU production or*

*affordability, including what action to take should the affordability ratios differ from that assumed within the Housing Element, and contains a number of strategies to meet our affordable housing needs under RHNA.*

*The City of Brisbane is committed to complying with State housing law and supporting the development of an effective regional ADU monitoring program that will be operated by 21 Elements or ABAG. The City of Brisbane also supports the development of a new ADU nonprofit with programs to incentivize the production of affordable ADUs in San Mateo County. The City expects to have this monitoring program in place for future Housing Element cycles.*

**R2.** By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.

**RESPONSE:** *The recommendation has been implemented for the City of Brisbane. The city has been, and will continue per Housing Element program 3.A.3, to annually survey rental rates (and occupancy) for permitted ADUs within the City to ensure their affordability to lower-income households are at the ratios assumed in our adopted and certified 2023-2031 Housing Element. The City of Brisbane has also committed to act accordingly should the ratios differ from those assumed.*

*The City of Brisbane agrees that it is important to have high quality information about who is living in ADUs so the City will also participate in the ABAG or 21 Elements ADU monitoring system. The monitoring is projected to launch in January 2025 and will likely survey people about their plans for their ADU at the time permits are issued. However, due to homeowner privacy concerns and the cost of engaging with thousands of homeowners every year, it would not be practical to have an ongoing verification system that checks the income of every resident of every ADU within the county.*

**R3.** By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.

**RESPONSE:** *This recommendation has yet to be implemented but will be implemented in the future. The City of Brisbane agrees with the goal of adopting an affordable ADU program. The City is actively involved in the creation of an ADU nonprofit to serve San Mateo County jurisdictions and 21 Elements, working on behalf of the City, has been researching best practices. The draft work plan for the nonprofit calls for it to offer programs to incentivize the production of*



*affordable ADUs and support homeowners in constructing ADUs in exchange for agreeing to rent at affordable levels. The nonprofit is projected to launch in July 2024 and will be financially supported by San Mateo County jurisdictions as well as private philanthropy, if possible. Additionally, programs 2.D.1, 2.D.2, 2.E.2 and 2.E.3 of the City's adopted and certified 2023-2031 Housing Element, planned to be implemented between Fall 2023 and January 2025, aim to reduce construction costs and identify private and public funding sources specifically for the construction of affordable ADUs.*

**R4.** By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.

**RESPONSE:** *This recommendation has yet to be implemented but will be implemented in the future. As part of the ABAG or 21 Elements ADU monitoring program (also referenced in response to R2), the City of Brisbane will track the intended use of ADUs during the permitting process. The monitoring is projected to launch in January 2025. Additionally, the City of Brisbane supports the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in exchange for affordability requirements, such as deed restrictions, in San Mateo County.*

**R5.** By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.

**RESPONSE:** *The recommendation will not be implemented because it is not warranted or is not reasonable. While the City of Brisbane agrees with the importance of an accurate affordability distribution formula, given the relatively small size of Brisbane, a more meaningful distribution formula can be attained by collecting data on ADUs constructed across multiple jurisdictions. The City of Brisbane's adopted and certified 2023-2031 Housing Element specifies a ratio of affordability to lower-income ADU households utilizing the UC Berkeley study which surveyed thousands of homeowners statewide with repeat mailing and data that was aggregated to reduce the margins of errors. Furthermore, the recommendations of the UC Berkeley study (30 very low/30 low/30 moderate/10 above moderate) had a significant cushion built in to ensure cities did not accidentally underproduce the amount of housing needed, and there is no evidence in the data to suggest significant variation from city to city.*

*Additionally, the City of Brisbane is supporting the creation of an ADU monitoring program through 21 Elements or ABAG which will collect data that can be used to revise the distribution formula based on actual observed income levels within San Mateo County.*

**R6.** *San Mateo County and each City should consider working together to address Recommendations 2 and 3.*

**RESPONSE:** *This recommendation has been implemented. San Mateo County jurisdictions work collaboratively through 21 Elements to develop, adopt, and implement housing policies and programs within the county and San Mateo County jurisdictions are already working together to address recommendations R2 and R3. The City of Brisbane is one of many San Mateo County jurisdictions planning on supporting a regional ADU monitoring effort through ABAG or 21 Elements and supports the development of a new ADU nonprofit that will have programs to incentivize the production of affordable ADUs in San Mateo County.*

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On behalf of the City of Brisbane, I would like to thank the members of the Grand Jury for their efforts.

Sincerely,

Madison Davis  
Mayor



Superior Court of California, County of San Mateo  
Hall of Justice and Records  
400 County Center  
Redwood City, CA 94063-1655

NEAL I. TANIGUCHI  
COURT EXECUTIVE OFFICER  
CLERK & JURY  
COMMISSIONER

(650) 261-5016  
[www.sanmateocourt.org](http://www.sanmateocourt.org)

VIA E-MAIL: [clayh@ci.brisbane.ca.us](mailto:clayh@ci.brisbane.ca.us)

June 12, 2023

*Re: Grand Jury Report: "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication?"*

Dear Clay Holstine:

The 2022-2023 Grand Jury has publicly released a report on June 12, 2023 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. Nancy L. Fineman. Your agency's response is due no later than **September 11, 2023**. **Please note that the response should indicate that it was approved by your governing body at a public meeting.**

For all findings, your responding agency shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Additionally, as to Grand Jury recommendations, your responding agency shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Please submit your responses in all of the following ways:

**1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.**

- Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address and mail to Judge Fineman.

Hon. Nancy L. Fineman  
Judge of the Superior Court  
c/o Bianca Fasuescu  
Hall of Justice  
400 County Center; 2<sup>nd</sup> Floor  
Redwood City, CA 94063-1655.

**2. Responses to be placed at the Grand Jury website.**

- Copy response and send by e-mail to: [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org). (Insert agency name if it is not indicated at the top of your response.)

**3. Responses to be placed with the clerk of your agency.**

- File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please email [bfasuescu@sanmateocourt.org](mailto:bfasuescu@sanmateocourt.org).

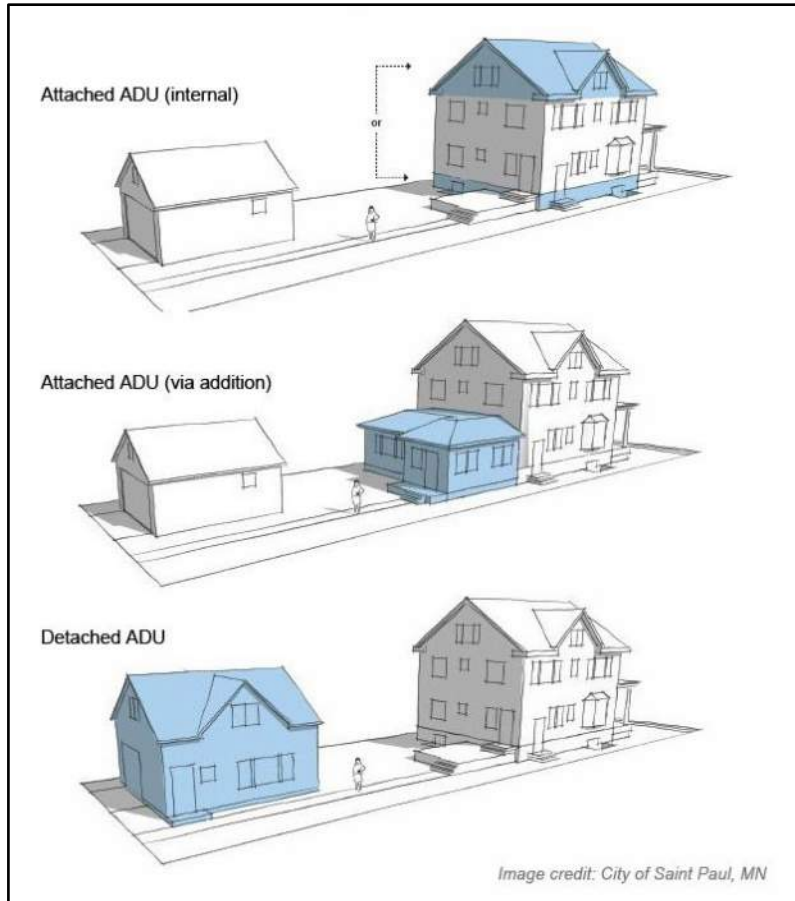
If you have any questions regarding these procedures, please do not hesitate to contact David Silberman, County Attorney at email [dsilberman@smcgov.org](mailto:dsilberman@smcgov.org).

Very truly yours,

  
Neal I. Taniguchi  
Court Executive Officer

Enclosure

cc: Hon. Nancy L. Fineman  
David Silberman



# Accessory Dwelling Units:

## Affordable Housing's Panacea or Prevarication?

Release Date: June 12, 2023  
2022-2023 San Mateo County Grand Jury

***“You can always count on Americans to do the right thing – after they’ve tried everything else.” Winston Churchill***

***“Every man must decide whether he will walk in the light of creative altruism or in the darkness of destructive selfishness.” Martin Luther King, Jr.***

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## ISSUE

Are some San Mateo County communities misusing Accessory Dwelling Units (ADUs) to avoid the construction of multifamily low-income housing over the next eight years?

## SUMMARY

Anointed the “epicenter of America’s housing dysfunction” by Harvard Business Review this year, the San Francisco Bay Area has faced an acute housing shortage at all levels for decades, especially for those who have the least.

And it is no longer news that many of the workers that San Mateo County communities depend upon daily – first responders, teachers, nurses, city employees, gardeners, and housekeepers, to name just a few – cannot afford a decent place to live and raise their families close to their jobs.

To address the issue, the State Legislature in 1969 passed the Housing Element Law, which says all California cities, towns, and counties, every eight years, must plan for the housing needs of all their residents regardless of income, which effectively requires development of affordable housing. Many changes and additions have been made to the law over the years, most recently eliminating zoning restrictions governing ADUs – small homes or apartments that share a single-family lot of a larger primary residence – and allowing communities to count them as affordable housing in their Regional Housing Needs Allocation (RHNA) plans.

At issue:

- Although their intentions have been good, the State has neglected to include any form of regulation to ensure low-income tenants ultimately use these ADUs as planned.
- Because owners often rent their ADUs to family and friends, they can exacerbate patterns of segregation and exclusion.<sup>1</sup>
- And perhaps most importantly – counting ADUs as affordable housing will likely result in cities issuing permits for fewer deed-restricted low-, very low-, and moderate-income apartments and homes.

Without accountability through oversight and regulations, low-, very low-, and moderate-income housing now planned in some San Mateo County jurisdictions may end up existing solely on paper and never in operation.

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<sup>1</sup> Association of Bay Area Governments, “Final Regional Housing Needs Allocation (RHNA) Plan, San Francisco Bay Area, 2023-2031”, accessed May 27, 2023, [https://abag.ca.gov/sites/default/files/documents/2021-12/Final\\_RHNA\\_Allocation\\_Report\\_2023-2031-approved\\_0.pdf](https://abag.ca.gov/sites/default/files/documents/2021-12/Final_RHNA_Allocation_Report_2023-2031-approved_0.pdf)

This problem is most acute in Atherton, Hillsborough, Portola Valley, and Woodside, where some residents are up in arms over the State-mandated housing requirements, and the city governments, trying to appease them, are proposing counting on ADUs to meet as much as 80 percent of their affordable housing targets.

Assembly Bill 72 (2017) gives the California Department of Housing and Community Development (HCD) enforcement capability on local government's land use, planning, and zoning requirements. In the current RHNA-6 (2023-2031) planning cycle, HCD demands that San Mateo County jurisdictions monitor and verify ADU affordability every two years. However, HCD has not specified how to prove the ADUs are rented to very low-, low- or moderate-income households, leaving it to the communities to find a solution.

So far, jurisdictions have yet to do so, even though local independent agencies such as HIP Housing have systems and services in place, which they use to verify affordability of deed-restricted affordable housing, and that could be adapted Countywide to monitor and verify ADUs' affordability and occupancy in a manner that adheres to fair housing guidelines.

California needs to build 2.5 million homes by 2030 to meet current housing demands, according to the HCD. But the State averages only about 125,000 new homes annually – a shortfall by nearly two-thirds.

ADUs can, indeed, provide affordable housing. And to many citizens of affluent communities, they are an appealing alternative to multi-family, deed-restricted affordable housing projects. However, just because the law makes it possible to count ADUs as affordable housing, it does not exempt cities and towns from credibly planning for badly needed affordable housing.

## BACKGROUND

One of the State's long-standing priorities has been to increase the availability of affordable housing for all economic segments.

HCD – the California Department of Housing and Community Development – focuses on making this happen by working with local jurisdictions to create rental and homeownership opportunities for all Californians, including individuals and families who are experiencing homelessness.

Beginning in 1969, the State mandated that all California cities, towns, and counties must plan for the housing needs of all Californians, regardless of income. They meet this mandate by developing and updating a Housing Element, part of a local jurisdiction's General Plan, which shows where they will allow new housing and describes the policies and strategies necessary to support building new housing.

The process of updating the Housing Element involves HCD working with various Councils of Governments (COG) to develop a RHNA plan that includes the Regional Housing Needs Determination (RHND), which assigns the number of housing units that each county and city are expected to facilitate being built in the subsequent eight years to accommodate projected growth.

In the case of the Bay Area, this Council of Governments is the Association of Bay Area Governments (ABAG), which represents all nine Bay Area counties, including San Mateo County and its 20 cities and towns. Components that ABAG considers in determining each Bay Area county's and city's allocation of housing units include population, employment potential, proximity to transportation centers, open space,



inclusivity, and diversification, all of which are becoming increasingly important to the State, according to ABAG reports.

Multiple bills in both houses of the State Legislature have been proposed over the years to change the process and increase the amount of State control over housing development. Particularly significant changes occurred during the 2017 legislative session when senators and assembly members proposed approximately 150 housing bills. That year the Governor ultimately signed a package of 15 bills related to funding for housing, streamlining development approvals, and increasing accountability for meeting the requirements of the Housing Element Law. These included bills that significantly changed the RHNA process, requiring additional outreach and reporting, modifying how to calculate the RHND to reflect unmet housing needs better, increasing the number of topics to be considered in the allocation methodology, and giving HCD, on behalf of the State, the ability to sue individual counties or cities for not meeting requirements.

Updating the Housing Element every eight years is an iterative process involving HCD, the regional COGs, the State Department of Finance (DOF), and local jurisdictions. (See Appendix D.) But the ultimate authority for approval of the RHNA, the RHND, and the associated Housing Elements resides with HCD.

The current approved RHNA plan developed by ABAG is known as RHNA-6, which spans 2023 to 2031.

HCD requires each jurisdiction to submit its completed Housing Element for review and approval by a specific date. For RHNA-6, the due date for San Mateo County and its cities was January 31, 2023. Before the due date, the jurisdictions were able to send their draft Housing Elements to HCD for preliminary review and comments and make necessary modifications that HCD highlights. Any jurisdiction which fails to meet the deadline for submission of their completed Housing Element is subject to a potential "builders remedy" action that forces a city to allow building projects regardless of whether they meet most of the local zoning restrictions.

Once Housing Elements are approved, HCD monitors the progress of approved RHNA plans by requiring each jurisdiction to report its building permit activities annually. If progress is below expectations, the jurisdiction must develop alternative strategies for review and approval by HCD.

During the RHNA-5 (2015-2023) progress reviews submissions, cities began including ADUs as part of the overall housing inventory in their annual reports because State legislation (Government Code section 65852.150) that became effective in January 2017 stated that ADUs are a valuable form of housing in California, which also "provide housing for family members, students, the elderly, in-home health care providers, the disabled, and others, at below market prices within existing neighborhoods."

Numerous Senate and Assembly bills were enacted in 2018 and 2020, requiring local jurisdictions to streamline and allow for ease of ADU production to increase housing for all income categories. With these encouragements, ADUs being deemed a viable housing option, and facing stringent RHNA-6 requirements of approximately three times more housing units than in the RHNA-5 cycle, a few affluent San Mateo cities have proposed using ADUs to satisfy most of their plans to meet the required number of housing units in the various income categories.

"ADUs are not a panacea, but they're a good tool in the toolbox," said a planning consultant working for a San Mateo County city. "Most land on The Peninsula is single-family homes. ADUs are opening land that was not open before. But higher density housing near transit is better."

Added a city manager: “I think they (ADUs) are a piece of the solution, but not all of it. I think ADUs are an important way to provide opportunities for other things – where people want multigenerational living on-site, for caretakers, or other folks – they can reside in an ADU even if they’re not paying rent.”

## DISCUSSION

While HCD-approved RHNA Housing Elements do not require the cities and counties to build affordable housing, the jurisdictions must adjust zoning ordinances, issue permits to allow construction of affordable housing, and initiate programs that incentivize such construction.

However, as shown in Chart 1 below, significant portions of San Mateo County’s affordable housing in RHNA-5 (2015-2023) plans did not materialize – most likely due to a lack of permit applications.

With RHNA-5’s significantly lower targets, the less-than-expected performance during the RHNA-5 cycle foreshadows the enormous challenge the County’s cities and towns now face in meeting the RHNA-6 goals for the next eight years, which are approximately three times larger, as shown in Chart 2 below.

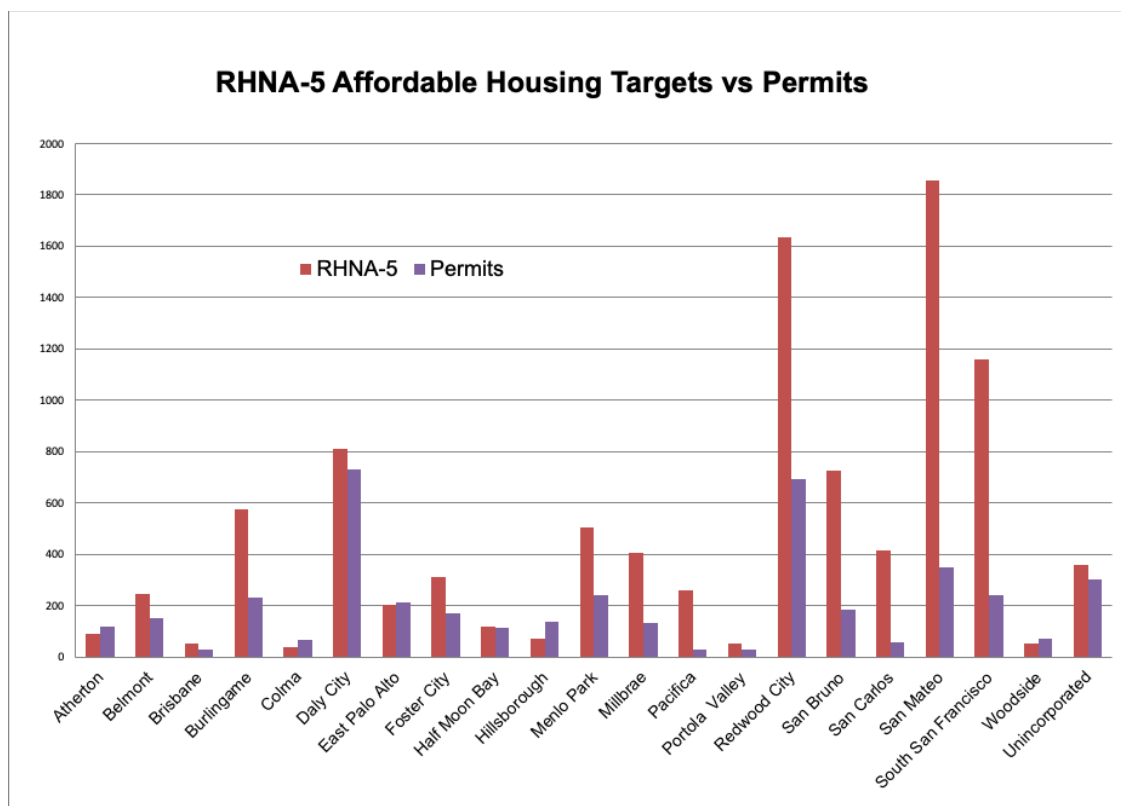


Chart 1: RHNA-5 Affordable Housing Required vs. Permitted

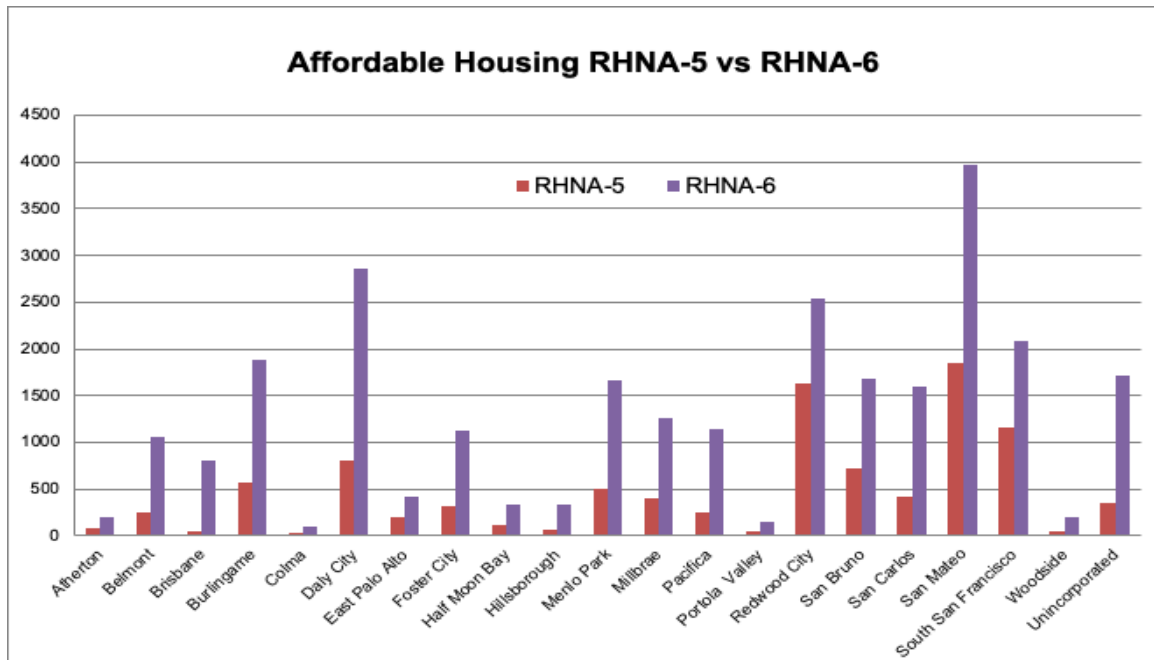


Chart 2: RHNA-5 Affordable Housing Allocations vs RHNA-6

Besides increasing affordable housing targets by nearly 300 percent, the State has made other significant changes in the ADU laws to address the current housing crunch.

Law	Year	Impact
AB671	2019	Through Housing Elements, HCD to promote ADUs for affordable rent
AB670	2019	Any local covenants and restrictions on new housing are void
AB587	2019	Deed-restricted sale of ADU is allowed separately from the main house
AB 68	2019	Removes local restrictions on minimum size, requirement of owner occupancy, parking requirements for garage conversion, and any impact fee.
AB 3182	2020	Permitting process within 60 days
SB9	2021	Facilitates lot split and allows more than 1 ADU per property
AB 345	2021	Allows owners to sell ADUs separately
AB 2221	2023	Pre-specific time permit frame for approval of ADU applications
SB 897	2023	Increases the ADU height limit to 18' and allows retro permitting of previous unauthorized ADUs.

The net effect of these changes was to minimize municipal-level regulations on ADUs – such as parking requirements, property line setbacks, height limits, or the number of ADUs on one property – and make

ADUs an acceptable means to meet affordable housing obligations. Given these changes, namely high mandatory targets for affordable housing, enthusiastic support by the State of ADUs as affordable housing, and requiring zero land use rezoning for ADUs, nearly all San Mateo County cities and towns include ADUs in their RHNA-6 Housing Elements.

The issue, however, is that for every ADU included in a Housing Element – regardless of whether the ADU is built and rented to very low-, low-, or moderate-income tenants – one verifiable, deed-restricted affordable housing unit will not be built in that jurisdiction by a developer.

### **So, How Did We Get Here?**

California cities and counties can now use ADUs to help satisfy their RHNA requirements. But calculating how many ADUs to put into a Housing Element and how to distribute them into each income category, differ from other housing options.

ABAG instructs San Mateo County jurisdictions that the standard method is first to estimate the number of ADUs that homeowners will build in a planning period, which is 2023 through 2031 for RHNA-6.

In its technical memo “Using ADUs to Satisfy RHNA,” ABAG advises members that the estimate should be based on the average number of ADU building permits issued each year, multiplied by eight, because there are eight years in a housing element cycle.

“Most cities base their determination of annual ADU permits by averaging the building permits approved each year since 2019 when State law made it easier to construct the units,” the technical memo explains:

“There is a small amount of flexibility in the calculations,” the memo continues. “If numbers were low in 2019 but were high in 2020, 2021, and 2022, a jurisdiction could potentially use 2020-2022 as the baseline. This rationale would be bolstered if there was a logical explanation for the change, e.g., the jurisdiction further loosened regulations in 2020. Projecting a higher number of ADUs than what has been demonstrated through permit approvals in recent years may be possible, but more challenging. A slightly larger number may be warranted if a robust, funded, and clear plan to increase production has been put in place. However, you are strongly encouraged to coordinate with HCD before deviating from the standard methodology.”

Once cities complete their estimate, they must distribute those units into each income category.

To help its members, ABAG analyzed ADU affordability. Using data from a 2020 statewide survey of homeowners who had constructed ADUs in 2018 or 2019, ABAG concluded that the assumptions in the chart below are generally applicable in most jurisdictions. Many Bay Area jurisdictions chose to use these numbers instead of conducting their own affordability analysis.

Percent	Income Category
30%	Very Low Income
30%	Low Income
30%	Moderate Income
10%	Above Moderate

“UC Berkeley Turner Center did a statewide survey of ADU affordability, and they worked with ABAG to adjust it for the Bay Area specifically,” said a San Mateo County planner. “So those (numbers) are based on surveys and data analysis of actual ADUs that have been produced, and the rents that are being offered to tenants. We are just accepting their analysis as is.”

San Mateo County jurisdictions have almost unanimously adopted ABAG’s 30-30-30-10 formula.

However, a 2021 report and recommendations for RHNA-6 prepared by ABAG’s Housing Technical Assistance Team, titled “DRAFT Affordability of Accessory Dwelling Units,” says that although ADUs are often affordable, jurisdictions should be cautious about relying on them too heavily because of fair housing concerns:

“Many ADUs are affordable to lower and moderate-income households because they are rented to family and friends of the homeowners,” the report states. “If minorities are underrepresented among homeowners, the families and potentially friends of the homeowners will be primarily white. Therefore, relying too heavily on ADUs could inadvertently exacerbate patterns of segregation and exclusion.”

The report also acknowledges that ADUs often do not serve large families, another critical fair housing concern.

And while ADUs accomplish an essential fair housing goal by adding new homes in parts of the municipality that are more likely to be areas of opportunity, the report recommends that jurisdictions with fair housing concerns “may want to use more conservative assumptions based on open market rentals, excluding units made available to family and friends,” as summarized below:

Percent	Income Category
5%	Very Low Income
30%	Low Income
50%	Moderate Income
15%	Above Moderate

So far, 16 San Mateo County cities have chosen the 30-30-30-10 formula, implying there are no fair housing concerns in their jurisdictions.

Only two cities – San Carlos and San Mateo – use ABAG’s more conservative formula of 5-30-50-15 in their plans. One city – Belmont – used its own judgment.<sup>2</sup> And one – Colma – does not use ADUs in their plans at all to meet State requirements.

But in all cases, these statistical estimates may not reflect the actual usage of constructed ADUs. Determining that would require actual verification by each local jurisdiction.

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<sup>2</sup> City of Belmont, “General Housing Element Draft 2023-2031”, p. 25, accessed May 27, 2023, <https://www.belmont.gov/home/showpublisheddocument/21721/637968613354630000>

**ADUs planned in RHNA-6  
(May 11, 2023)**

City	Very Low	Low	Moderate	Above Moderate	Total ADUs	Total RHNA-6 Requirement
Atherton	56	56	56	112	280	348
Belmont	0	0	80	0	80	1785
Brisbane	12	12	12	4	40	1588
Burlingame	50	50	50	17	167	3257
Colma	-	-	-	-	0	202
Daly City	151	151	151	50	503	4838
East Palo Alto	35	34	34	12	115	829
Foster City	7	7	7	3	24	1896
Hillsborough	84	84	84	28	280	554
Menlo Park	26	25	26	8	85	2946
Millbrae	34	34	33	11	112	2199
Pacifica	56	56	56	19	187	1892
Portola Valley	28	28	28	8	92	253
Redwood City	152	152	152	50	506	4588
San Bruno	72	72	72	24	240	3165
San Carlos	10	61	102	30	203	2735
San Mateo	22	132	220	66	440	7015
South San Francisco	113	113	113	38	377	3956
Unincorporated San Mateo	107	107	107	36	357	2833
Woodside	36	36	36	12	120	328

*(This table includes all San Mateo County jurisdictions that have submitted Housing Element plans to HCD for review. As of June 1, 2023, Half Moon Bay and Daly City have not submitted RHNA-6 plans for HCD review.)*

Accordingly, if HCD approves cities and towns' current Housing Elements, San Mateo County may end up with many affordable housing units that exist only on paper because they are counted as affordable units by the State but never made available or occupied by people who need affordable housing:

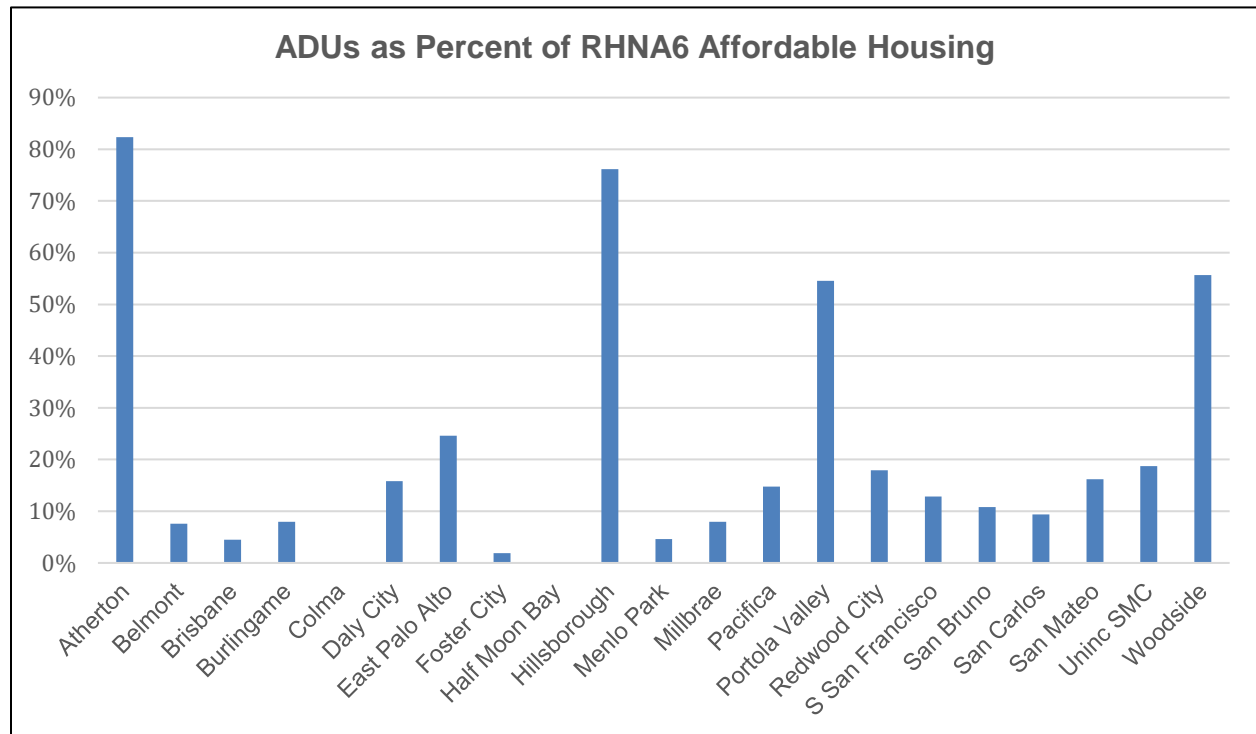
“BMR (below market rate) unit displacement is a legitimate issue,” said a city planning consultant. “RHNA looks at (the number of) units, not the number of people being housed. For the State, they’re all counted the same – an ADU or three-bedroom apartment, five vs. one or two people. In the eyes of the State, they’re all the same.”

Finally, the cities and towns relying primarily on ADUs to meet their RHNA-6 housing targets do not meet the overall objectives required by HCD and RHNA of:

- Increasing the housing supply and mix of housing types, tenure, and affordability
- Promoting infill development and socioeconomic equity, protecting environmental and agricultural resources, and encouraging efficient development patterns
- Promoting an improved intraregional relationship between jobs and housing
- Balancing disproportionate household income distributions
- Affirmatively furthering fair housing

### Housing and Community Development Pushes Back

Four San Mateo County municipalities – Atherton, Hillsborough, Portola Valley, and Woodside – rely heavily on ADUs to meet low-income housing requirements in their RHNA-6 Housing Elements.



May 17, 2023

While HCD does not single out those four cities for their heavy reliance on ADUs to meet their affordable housing needs, throughout the process of submission and review of draft RHNA-6 plans, HCD consistently instructed San Mateo County cities and towns that they must monitor and verify ADU production and affordability at least every two years but has not specified an acceptable process for verifying the affordability level of ADUs as planned.

Should San Mateo County and its cities seek outside help on this issue, there are a handful of independent non-profit agencies and for-profit real estate management companies operating today in the Bay Area that have established systems and processes for monitoring and verifying rented occupied housing for continued affordability and adherence to fair housing guidelines while maintaining tenant and owner privacy – which was an issue continually raised by City Managers and other officials during Grand Jury interviews.

### ADU Affordability Monitoring Emphasized in HCD Review Letters to Jurisdictions

#### Atherton (4-4-23)

Program 3.812 (New Construction of Affordable Accessory Dwelling Units): While the element was revised to include timing of each action, it is unclear how affordability will be established. The program should be revised to clarify actions to establish and track affordability.

#### East Palo Alto (4-25-23)

Accessory Dwelling Units (ADU): As noted in the prior review, the element should include a program that commits to frequent monitoring (every other year) for production and affordability, and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) as needed.

#### Foster City (4-24-23)

Program H-D-4-h (ADU Monitoring): While the program commits to evaluating alternative actions by the end of 2026, it must commit to specific alternative actions and monitor production and affordability of ADUs more than once in the planning period (e.g., every two years).

#### Hillsborough (1-10-23)

This analysis should specifically address whether the ADU strategy to accommodate lower-income households contributes to continued exclusion and disparities in access to opportunity and how the strategy promotes housing choice for a variety of households including lower-income households, and large families.

To support assumptions for ADUs in the planning period, the element should reduce the number of ADUs assumed per year and reconcile trends with HCD records, including additional information such as more recent permitted units and inquiries, resources and incentives, other relevant factors, and modify policies and programs as appropriate. Further, programs should commit to additional incentives and strategies, frequent monitoring (every other year), and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) if ADU production assumptions are not being achieved.

#### Millbrae (1-24-23)

Accessory Dwelling Units (ADU): To support assumptions for ADUs in the planning period, programs should commit to additional incentives and strategies, frequent monitoring (every other year) of production and affordability and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed.

Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the planning period and implement additional actions if not meeting target numbers within a specified time period (e.g., within six months).

#### Redwood City (7-8-22)

Programs must be expanded to include incentives to promote the creation and affordability of Accessory Dwelling Units (ADUs).

Examples include exploring and pursuing funding, modifying development standards and reducing fees beyond State law, increasing awareness, pre-approved plans and homeowner/applicant assistance tools. In addition, given the city's assumptions for ADUs, the element should include a program to monitor permitted ADUs and affordability every other year and take appropriate action such as adjusting assumptions or rezoning within a specified time period (e.g., 6 months).

#### San Bruno (3-29-23)

Accessory Dwelling Units (ADU): While the element revised the ADU assumptions, Program 4-P must be revised to commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed. The element must also address affordability assumptions for ADU projections.

#### San Mateo (3-27-23)

Accessory Dwelling Units (ADU): Program 1.4 must commit to also monitoring affordability of the ADU units that are permitted as well as provide additional incentives or identify additional sites if production and affordability assumptions are not met.

#### County of San Mateo (4-20-23)

Accessory Dwelling Units (ADU): Further, programs should commit to additional incentives and strategies, frequent monitoring for production and affordability (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., 6 months) if needed. The element must also address affordability assumptions for ADU projections, by clarifying what ABAG assumptions are utilized.

#### South San Francisco (3-30-23)

The element should include a commitment to reconcile trends with reported units within the Cities submitted annual progress report. Further, as Stated in the previous review, programs should commit to additional incentives and strategies, frequent monitoring (every other year) and specific commitment to adopt alternative measures such as rezoning or amending the element within a specific time (e.g., six months) if number and affordability assumptions are not met.

#### Woodside (10-14-22)

Depending on the analysis, the element must commit to monitor ADU production and affordability throughout the planning period and implement additional actions if not meeting target numbers within a specified time period (e.g., within six months).



In their HCD approved housing plans, Brisbane and Redwood City aren't definitive about how they will monitor ADU affordability but imply they will use surveys to comply with HCD instructions.

Redwood City plans to collect ADU rental data during its permitting process. And Brisbane says, if available, it will participate in a regional forgivable ADU construction loan program in exchange for limiting rentals of the ADUs to extremely low-income households for 15 years. Brisbane said it is also exploring a possible city forgivable loan program if the regional program doesn't materialize.

"We can't force people to report to us or to be honest with us," said one jurisdiction's planner.

Another city's chief planner concluded that a deed restriction – any limitation on a property that affects the ability of the property owner to utilize the property as they wish, such as a requirement to verify a tenant's income and rent charged – "is the best way to (enforce) affordability." Alternatively, one city planning official suggested the formation of a Countywide nonprofit to income-qualify and match renters to available ADUs, thereby monitoring and enforcing affordability because the smaller towns and cities don't have the resources to perform that function on their own.

Finally, a fourth city planner offered an alternative view: "We're not a city hiding behind ADUs. ABAG gave us a formula. We plopped it in. If the State said you can't count ADUs at all, that would be fine."

### **A Long, Long Way to Go**

The Superior Court of California requires all San Mateo County Civil Grand Jury investigation reports to be completed and published by June 30 annually.

And although the law required San Mateo County cities and towns to submit their housing plans by January 31, 2023, as of June 1, Daly City has yet to adopt and submit a draft plan to HCD for review and approval.

Meanwhile, plans from Foster City, Half Moon Bay, Millbrae and Pacifica are now under HCD review.

So far, HCD has reviewed and rejected plans from 14 jurisdictions: Atherton, Belmont, Burlingame, Colma, East Palo Alto, Hillsborough, Menlo Park, Portola Valley, San Bruno, San Carlos, San Mateo, South San Francisco, Woodside, and San Mateo County, which is responsible for unincorporated areas.

As of the publication of this report, only Redwood City and Brisbane had completed the process and received the green light from HCD to proceed.

One reason cited for the delay is most San Mateo County cities and towns don't have a large enough staff to manage the workload that RHNA planning represents, so they outsource. And many could not find timely help because the consultants were busy preparing RHNA-6 plans for Southern California cities, which were due before San Mateo County municipalities. That caused many communities here to fall behind and are now out of compliance with the timing of their Housing Element submissions.

These delays, coupled with citizen objections to multifamily housing in their communities, almost guarantee RHNA-6 disputes will end up in the courts and remain unresolved for many years to come and postpone the building of sorely needed affordable housing indefinitely.

## FINDINGS

- F1. Due to recent changes in California ADU-related laws, local governments cannot condition ADU permits in San Mateo County on complying with affordability monitoring and verification.
- F2. San Mateo County and most of its municipalities rely on ADUs to meet their affordable housing commitments in their RHNA-6 plans.
- F3. Atherton, Hillsborough, Portola Valley, and Woodside rely on ADUs to meet as much as 80 percent of their affordable housing commitments in their RHNA-6 plans.
- F4. HCD has instructed San Mateo County jurisdictions to monitor and verify future ADU production and affordability every two years but has yet to specify how to verify whether very low-, low- or moderate-income households are occupying the ADUs as planned.
- F5. Other than Brisbane and Redwood City, San Mateo County and its jurisdictions have yet to articulate how they will monitor and verify ADU production or affordability.
- F6. Without effective ADU monitoring and verification, it will be impossible to evaluate whether the jurisdictions are meeting their RHNA-6 obligations for low-, very-low, and moderate-income housing units.
- F7. ADU affordability and occupancy could be monitored by agencies such as HIP Housing which has proven systems and processes to verify occupancy of deed-restricted rental properties in San Mateo County.

## RECOMMENDATIONS

- R1. San Mateo County and each City should immediately stop using ADUs to meet their State-mandated very low-, low-, and moderate-income housing targets in their Housing Element submissions until they have also proposed an effective monitoring system that verifies how newly developed ADU's will be used.
- R2. By February 1, 2024, San Mateo County and each City should develop, adopt, and implement a verification system capable of monitoring and verifying how newly developed ADU's are being used.
- R3. By February 1, 2024, San Mateo County and each City should develop and adopt incentives for ADU owners which could be offered in exchange for deed restrictions that would include requirements for ADU tenants to participate in independent monitoring.
- R4. By February 1, 2024, San Mateo County and each City should track the intended use of ADUs – rented or non-rented – during the permitting process and offer incentives in exchange for deed restrictions that require ADUs to be used as rentals.
- R5. By April 1, 2024, San Mateo County and each City should develop and adopt a new ADU affordability distribution formula specific to each jurisdiction to the extent they are used for meeting the very low-, low-, and moderate-income housing requirements in their RHNA housing elements.
- R6. San Mateo County and each City should consider working together to address Recommendations 2 and 3.

## REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Civil Grand Jury requests responses from San Mateo County and all 20 cities' governing bodies for each and every Finding and Recommendation.

The governing bodies should be aware that their comments or responses must be conducted subject to the Brown Act's notice, agenda, and open meeting requirements.

## RESPONSE REQUIREMENTS

California Penal Code Section 933.05 provides: For purposes of subdivision of Section 933, as to each Grand Jury finding, the responding person or entity shall report one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the disputed finding and shall include an explanation of the reasons.

For purposes of subdivision of Section 933, as to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has yet to be implemented but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall be at most six months from the Grand Jury report's publication date.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

## METHODOLOGY

The San Mateo County Civil Grand Jury used numerous approaches to develop this report.

- **Preliminary Research**

The Grand Jury studied RHNA-5 historical information and RHNA-6 Housing Elements submitted to HCD by the cities and towns in San Mateo County as they became available.

Before conducting in-depth research, the Grand Jury studied ABAG's reports on RHNA-6 housing allocations, introducing numerous issues and a means to understand how jurisdictions establish housing allocations. Additionally, the Grand Jury reviewed a 2021 ABAG report on ADU affordability for RHNA-6 and RHNA-5 annual progress reports to understand history.

The Grand Jury also reviewed a report on ADUs titled “A Solution on the Ground: Assessing the Feasibility of Second Units in Unincorporated San Mateo County, Implementing the Backyard Revolution: Perspectives of California’s ADU Owners,” April 22, 2021, Karen Chapple, Dori Ganetsos, Emmanuel Lopez, UC Berkeley Center for Community Innovation.

An additional resource for Preliminary Research has been the press. Particularly following the January 31, 2023 deadline for RHNA-6 submissions, nearly 60 articles provided insights and analysis the Grand Jury could not find elsewhere.

For a complete list of sources, see the Bibliography below.

- **Survey**

After conducting its Preliminary Research, the Grand Jury sent an eight-question survey in October 2022 to the city managers of the 20 San Mateo County cities and towns and the San Mateo County planning and building department responsible for the County’s unincorporated areas.

See Appendix A for survey results.

- **Interviews**

Much of the time spent by the Grand Jury on this investigation was in more than 30 interviews with 21 city managers and planning managers, five heads of nonprofit housing entities in San Mateo County, and executives at ABAG, HCD, and several other government bodies.

- **Continued Research**

Because RHNA-6 submissions and HCD replies are ongoing, the Grand Jury has continued to monitor the status of RHNA-6 submissions and HCD responses.

This report reflects submissions received prior to the report’s due date of June 30, 2023.

## GLOSSARY

### **Accessory Dwelling Units (ADUs)**

An accessory dwelling unit (ADU) is a legal and regulatory term for a secondary house or apartment that shares the building lot of a larger primary home. The unit is often used to provide additional income through rent or to house a family member. For example, an elderly parent could live in a small unit and avoid having to move to an assisted living facility. (Source: [Investopedia](#))

### **Affordable Housing: Very Low Income; Low Income; Moderate Income; Above Moderate Income**

Affordable housing is generally defined as housing on which the occupant is paying no more than 30 percent of gross income for housing costs, including utilities. (Source: [www.hud.gov](http://www.hud.gov))

Income Category Definitions	
Acutely Low	0 – 15% of area median income
Extremely Low	15% - 30% of area median income
Very Low	30%-50% of area median income
Lower <sup>2</sup>	50%-80% of area median income
Moderate	80%-120% of area median income
Above Moderate	Above 120% of area median income

San Mateo County Annual Income Limits (2021)					
Income Category	Number of Persons Per Household (Maximum Income)				
	1	2	3	4	5
Extremely Low	\$38,400	\$43,850	\$49,350	\$54,800	\$59,200
Very Low	\$63,950	\$73,100	\$82,250	\$91,350	\$98,700
Low Income	\$102,450	\$117,100	\$131,750	\$146,350	\$158,100
Median Income	\$104,700	\$119,700	\$134,650	\$149,600	\$161,550
Moderate Income	\$125,650	\$143,600	\$161,550	\$179,500	\$193,850

### Association of Bay Area Governments (ABAG)

The Association of Bay Area Governments (ABAG) is the Council of Governments (COG) for the nine-county Bay Area. One of California's earliest COGs, ABAG was founded to protect regional assets from State control. ABAG continues to serve the Bay Area by providing a regional venue for collaboration and problem-solving. ABAG's work program includes management over key regional assets, such as the San Francisco Estuary and the Bay Trail Project. It also offers a variety of cost-effective member services programs such as Pooled Liability Assurance Network (PLAN) Corporation (offering affordable liability, property insurance, claims management, risk management, and bond coverage to 30 municipalities) and financial services (offering tax-exempt capital financing for the acquisition, construction, and rehabilitation of affordable multifamily housing, health care facilities, schools, and other community facilities). ABAG POWER Natural Gas Pool conducts pooled purchasing of natural gas on behalf of 38 local governments and special districts. ABAG is also the COG that allocates the regional housing needs assessment (RHNA). (Source: [CALCOG](#))

### Below Market Rate (BMR)

A BMR unit is a housing unit that is priced to be affordable to households that are of moderate income or below. These housing units are often built by local government, nonprofits, or as a requirement of the developer (Inclusionary Affordable Housing Ordinance). As a result, these homes have certain deed restrictions recorded on the property, ensuring the home remains affordable for future generations. (Source: [County of San Mateo](#))

### California Department of Finance (DOF)

The California Department of Finance is a state cabinet-level agency within the government of California. The Department of Finance is responsible for preparing, explaining, and administering the state's annual financial plan, which the Governor of California is required under the California Constitution to present by January 10 of each year to the public. The Department of Finance's other duties include analyzing the budgets of proposed laws in the California State Legislature, creating, and monitoring current and future economic forecasts of the state, estimating population demographics and enrollment projections, and maintaining the state's accounting and financial reporting systems.

### California Department of Housing and Community Development (HCD)

The California Department of Housing and Community Development (HCD) develops housing policy and building codes (i.e., the California Building Standards Code), regulates manufactured homes and mobile home parks, and administers housing finance, economic development, and community development programs. (Source: <https://www.hcd.ca.gov/about-hcd>)

### **Council of Governments (COG)**

Councils of Governments (COGs) are voluntary associations representing member local governments, mainly cities, and counties, that seek to provide cooperative planning, coordination, and technical assistance on issues of mutual concern that cross jurisdictional lines. (Source: [WRCOG](#))

### **Deed Restrictions**

A deed restriction is a term widely used in real estate to refer to any limitation on a property that limits the ability of the property owner to utilize the property as they wish. (Source: [CA Realty Training](#))

### **General Plan**

State law requires every city and county in California to prepare a General Plan for its future growth and development. A General Plan covers land use, transportation, housing, open space, natural resources, and public services. Local General Plans have been mandatory in California since the 1950s. State law also requires the cities and counties to periodically update their General Plans in response to changing conditions. Each General Plan includes maps expressing the community's vision of how and where it will grow and change. The General Plan typically has a time horizon of about 20 years. Once a General Plan is adopted, it is used by the City Council, local commissions, and City Staff as they make day-to-day decisions about the community's future. (Source: [City of San Rafael](#))

### **Housing Element**

Since 1969, California has required that all local governments (cities and counties) adequately plan to meet the housing needs of everyone in the community. California's local governments meet this requirement by adopting housing plans as part of their General Plan (also required by the State). General Plans serve as the local government's blueprint for how the city or county will grow and develop and include eight elements: land use, transportation, conservation, noise, open space, safety, environmental justice, and housing. California's Housing Element Law acknowledges that, for the private market to address Californians' housing needs and demand, local governments must adopt plans and regulatory systems that provide opportunities for (and do not unduly constrain) housing development. As a result, housing policy in California rests mainly on the effective implementation of local General Plans and, in particular, local Housing Elements. (Source: [California Department of Housing and Community Development](#))

### **Jurisdiction (city, town, or county)**

- 1: the power, right, or authority to interpret and apply the law; a matter that falls within the court's jurisdiction
- 2: a: the authority of a sovereign power to govern or legislate  
b: the power or right to exercise authority: CONTROL
- 3: the limits or territory within which authority may be exercised (Source: [Merriam-Webster](#))

### **Regional Housing Needs Allocation (RHNA)**

Every eight years, ABAG develops the Regional Housing Needs Allocation (RHNA) plan approved by HCD and used to assign each city and county in the Bay Area their fair share of new housing units to build. These housing units are intended to accommodate existing needs and projected growth in the region. The RHNA process is critical because it requires all cities and counties to plan for the region's housing needs, regardless of income, to prepare for future growth and ease the California's acute housing crisis. (Source: [ABAG](#))

### Regional Housing Needs Determination (RHND)

The California Department of Housing and Community Development (HCD) identifies the total number of homes each region in California must plan to meet the housing needs of people at all income levels. They base the number on population projections produced by the California Department of Finance and adjustments incorporating the region's current housing needs. The jurisdictions separate the total number of housing units from HCD into four income categories that cover everything from housing for very low-income households to market-rate housing. ABAG is responsible for developing a methodology to allocate a portion of this housing need to every local government in the Bay Area. (Source: [ABAG](#))

## BIBLIOGRAPHY

### Government Agencies

- Department of Housing and Urban Development Office of Policy Development and Research. “U.S. Accessory Dwelling Units: Case Study”. <https://www.huduser.gov/portal/publications/adu.pdf>. June 2008
- U.S. Department of Housing and Urban Development. “Glossary of Terms to Affordable Housing”. <https://archives.hud.gov/local/nv/goodstories/2006-04-06glos.cfm>. August 18, 2011
- Department of Housing and Community Development Division of Housing Policy. “ADU Law Amendments Memorandum”. <https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/Accessory-Dwelling-Unit-Legislation.pdf>. May 29, 2018
- California Legislative Information. “Assembly Bill No. 68”. [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB68](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB68). 2019-2020
- OpenStates. “California Senate Bill SB 13”. <https://openStates.org/ca/bills/20192020/SB13/>. 2019-2020
- 21 Elements. “Second Units and Junior Second Units”. <http://www.21elements.com/second-units>. 2020
- Department of Housing and Community Development Division of Housing Policy. “Local Agency Accessory Dwelling Units, Memorandum”. [https://www.hcd.ca.gov/community-development/housing-element/docs/ADU\\_TA\\_Memo\\_Final\\_01-10-20.pdf](https://www.hcd.ca.gov/community-development/housing-element/docs/ADU_TA_Memo_Final_01-10-20.pdf). January 10, 2020
- Department of Housing and Community Development Division of Housing Policy. “Final Regional Housing Need Determination”. [https://www.hcd.ca.gov/community-development/housing-element/docs/ABAGRHNA-Final060920\(r\).pdf](https://www.hcd.ca.gov/community-development/housing-element/docs/ABAGRHNA-Final060920(r).pdf). June 9, 2020
- Association of Bay Area Governments. “Housing Element Law. Changes from 1969 to the Present”. [https://abag.ca.gov/sites/default/files/rhna\\_background.pdf](https://abag.ca.gov/sites/default/files/rhna_background.pdf). August 1, 2020
- California Legislative Information. “Assembly Bill No. 3182”. [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201920200AB3182](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB3182). September 28, 2020

- Southern California Association of Governments. “SCAG Regional Accessory Dwelling Unit Affordability Analysis”. [https://scag.ca.gov/sites/main/files/file-attachments/adu\\_affordability\\_analysis\\_120120v2.pdf?1606868527](https://scag.ca.gov/sites/main/files/file-attachments/adu_affordability_analysis_120120v2.pdf?1606868527). December 1, 2020
- Association of Bay Area Governments. “DRAFT Affordability of Accessory Dwelling Units”. <http://21elements.com/documents-mainmenu-3/housing-elements/rhna-6-2022-2030/1327-draft-adu-affordability-report-sep-8-2021-1/file>. September 8, 2021
- California Legislative Information. “Assembly Bill No. 345”. [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220AB345](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB345). September 28, 2021
- Association of Bay Area Governments. “Using ADUs to Satisfy RHNA”. <https://abag.ca.gov/technical-assistance/using-adus-satisfy-rhna>. March 10, 2022
- Auditor of the State of California. “Regional Housing Needs Assessments”. <https://www.auditor.ca.gov/pdfs/reports/2021-125.pdf>. March 17, 2022
- California Department of Housing and Community Development. “Accessory Dwelling Unit Handbook”. <https://www.hcd.ca.gov/sites/default/files/2022-07/ADUHandbookUpdate.pdf>. July 2022
- Association of Bay Area Governments. “Final Regional Housing Needs Allocation (RHNA) Plan: San Francisco Bay Area, 2023-2031”. [https://abag.ca.gov/sites/default/files/documents/2022-12/Final%20RHNA%20Methodology%20Report%202023-2031\\_update\\_11-22.pdf](https://abag.ca.gov/sites/default/files/documents/2022-12/Final%20RHNA%20Methodology%20Report%202023-2031_update_11-22.pdf). November 2022
- State of California Department of Justice. “Attorney General Bonta Puts city of Huntington Beach on Notice That Its Proposed Ordinance Violates State Housing Law”. <https://oag.ca.gov/news/press-releases/attorney-general-bonta-puts-city-huntington-beach-notice-its-proposed-ordinance>. February 13, 2023
- Department of Housing and Community Development Division of Housing Policy Development. “RE: Town of Atherton’s 6<sup>th</sup> Cycle (2023-2031) Adopted Housing Element”. [https://www.dropbox.com/home/Grand%20Jury%202022%20-%202023/Committees/ADUs/ADU%20-%20research%20materials/Housing%20Elements/Pending?preview=Atherton\\_HCD\\_Letter40423.pdf](https://www.dropbox.com/home/Grand%20Jury%202022%20-%202023/Committees/ADUs/ADU%20-%20research%20materials/Housing%20Elements/Pending?preview=Atherton_HCD_Letter40423.pdf). April 4, 2023

### Grand Jury Reports

- San Mateo County Civil Grand Jury. “Second Units: Adding New Housing In The Neighborhood”. [https://www.sanmateocourt.org/documents/grand\\_jury/2019/second\\_units.pdf](https://www.sanmateocourt.org/documents/grand_jury/2019/second_units.pdf). 2019-2020

### Independent Agencies

- UC Berkeley. “A Solution on the Ground: Assessing the Feasibility of Second Units in Unincorporated San Mateo County”. <https://smcrecovery.org/wp-content/uploads/2021/08/UC-Report-on-ADU-feasibility.pdf>. January 2017
- Ramsey-Musolf, Darrel. “Accessory Dwelling Units as Low-Income Housing: California’s Faustian Bargain”. <https://www.mdpi.com/2413-8851/2/3/89>. September 18, 2018

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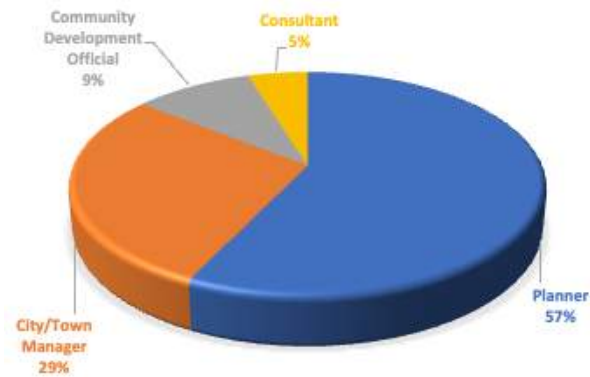
- AARP. “The ABCs of ADUs”. <https://www.hcd.ca.gov/policy-research/docs/adu-guide-web-singles.pdf>. 2019
- California YIMBY (Yes in My Back Yard). “AB 881”. <https://cayimby.org/ab-881/>. October 9, 2019
- Center of Community Innovation. “The ADU Scorecard: Grading ADU Ordinances in California”. <https://www.aducalifornia.org/wp-content/uploads/2020/02/ADU-Scorecard-InterimReport-200201-1.pdf>. February 1, 2020
- UC Berkeley Center for Community Innovation. “Implementing the Backyard Revolution: Perspectives of California’s ADU Owners”. <https://www.aducalifornia.org/wp-content/uploads/2021/04/Implementing-the-Backyard-Revolution.pdf>. April 22, 2021
- Turner Center for Housing Innovation, UC Berkeley. “First Ever Statewide ADU Owner Survey Shows Growth, Room for Improvement”. <https://turnercenter.berkeley.edu/blog/ci-adu-survey/>. April 22, 2021
- University of California, Berkeley. “California ADU”. <https://www.aducalifornia.org/>. August 16, 2021
- Colburn, Gregg. Aldern, Clayton. “Homelessness is a Housing Problem”. <https://homelessnesshousingproblem.com/>. 2021-2022
- Sumner, Scott. “California housing prices and homelessness”. <https://www.econlib.org/california-housing-prices-and-homelessness/>. May 23, 2022
- Williams, Paul. “Carving out a Path for Public Developers”. <https://housingchronicle.substack.com/p/carving-out-a-path-for-public-developers>. July 14, 2022
- Turner Center for Housing Innovation, UC Berkeley. “ADUs for All: Breaking Down Barriers to Racial and Economic Equity in Accessory Dwelling Unit Construction”. <https://turnercenter.berkeley.edu/research-and-policy/adu-equity-barriers/>. August 4, 2022
- Bertolet, Dan. “Washington Bill Would Boost In-Law Apartments Throughout the State”. <https://www.sightline.org/2023/01/21/washington-bill-would-boost-in-law-apartments-throughout-the-State/>. January 21, 2021
- Ohanian, Lee. “California’s Failed Soviet-Style Housing Mandates Should End Now”. <https://www.hoover.org/research/californias-failed-soviet-style-housing-mandates-should-end-now>. February 7, 2023
- Hamilton, Emily. “Learning from Houston’s Townhouse Reforms”. <https://www.mercatus.org/research/policy-briefs/learning-houstons-townhouse-reforms>. April 11, 2023

## APPENDICES

- **A: Survey Results**
- **B: Timeline of Important Legislative Events**
- **C: ADUs: An American Tradition**
- **D: Housing Elements Are an Iterative Process**

### APPENDIX A Survey Results

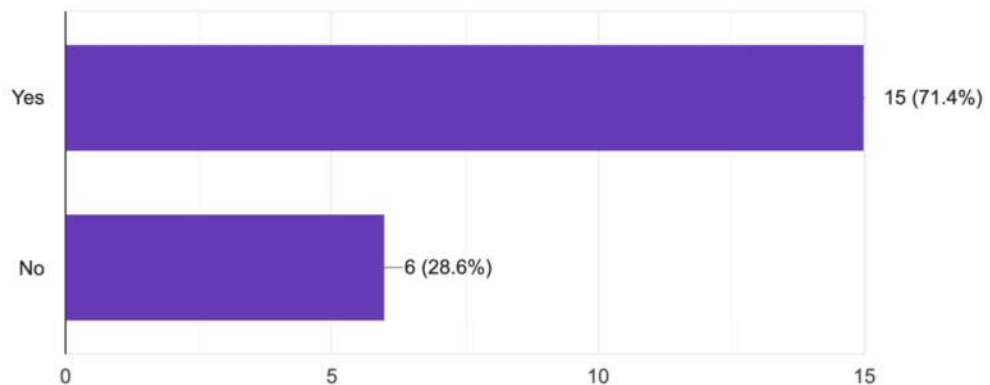
Who responded to the survey



#### Survey responses

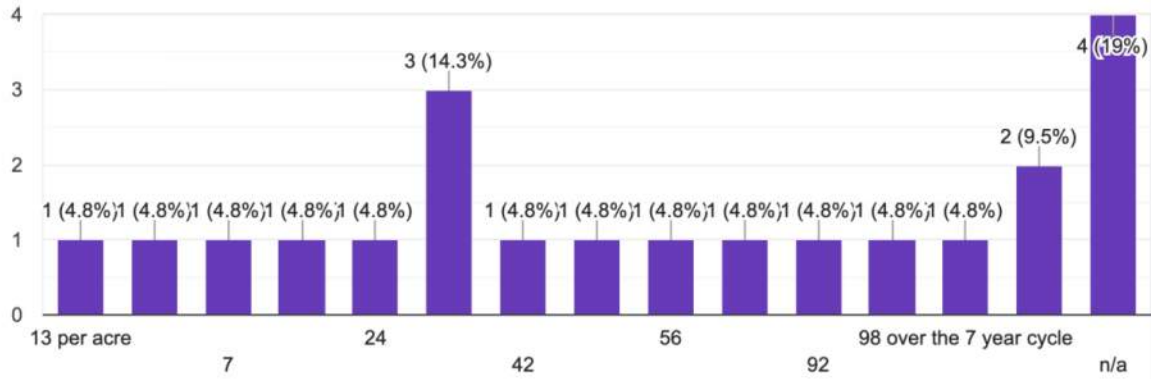
1. Did your city/town include ADUs in its Regional Housing Needs Allocation 5 (RHNA5) Housing Element plan?

21 responses



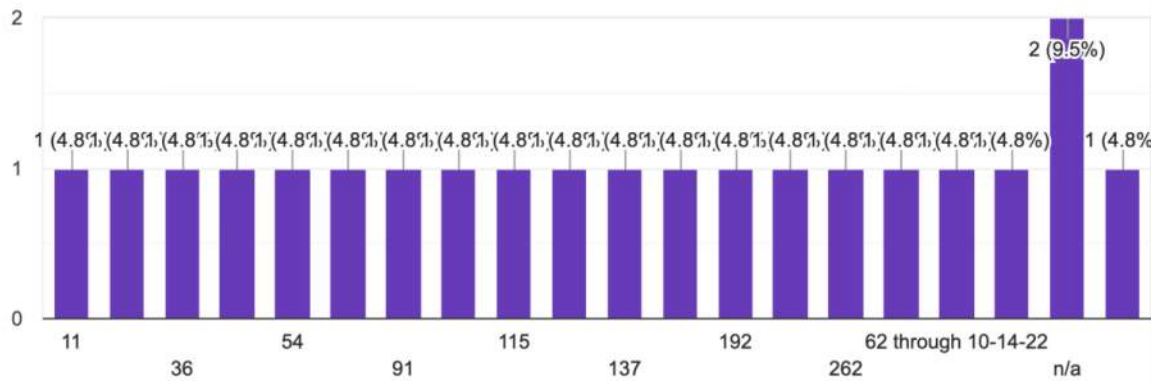
1A. If response was yes (indicate n/a if no): a. How many were planned?

21 responses



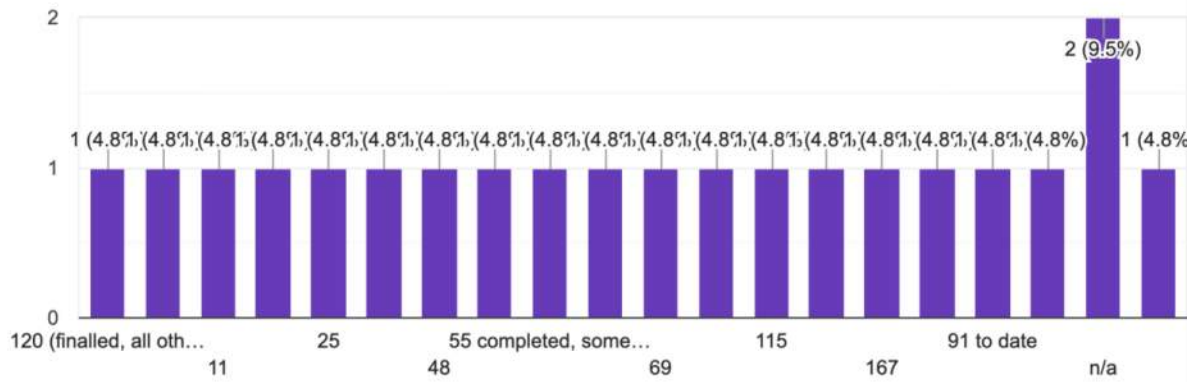
b. How many were permitted?

21 responses



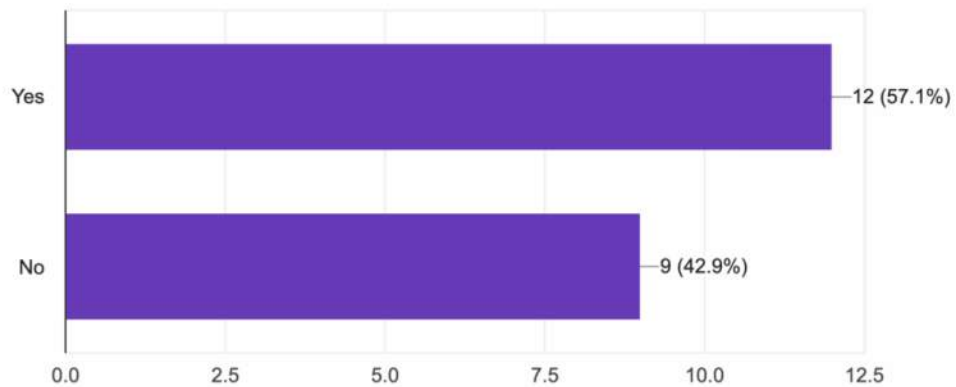
## c. How many were built and completed?

21 responses



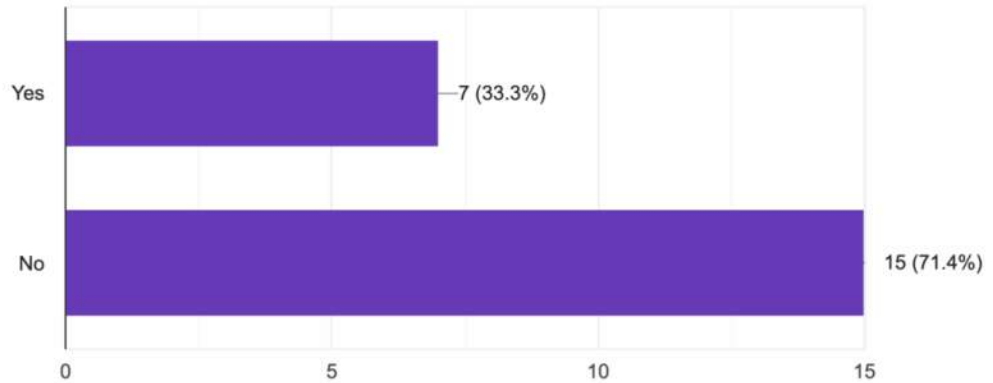
## 2. Were any of your city/town's RHNA5 ADUs designated to provide low, very low, and moderate income housing?

21 responses



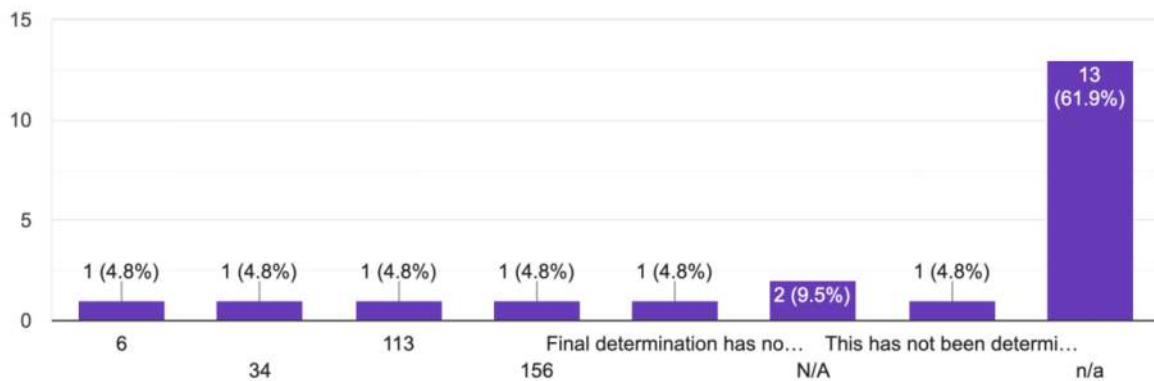
3. Is your city/town counting ADUs in RHNA6 Housing Element towards partial fulfillment of RHNA5 housing needs?

21 responses



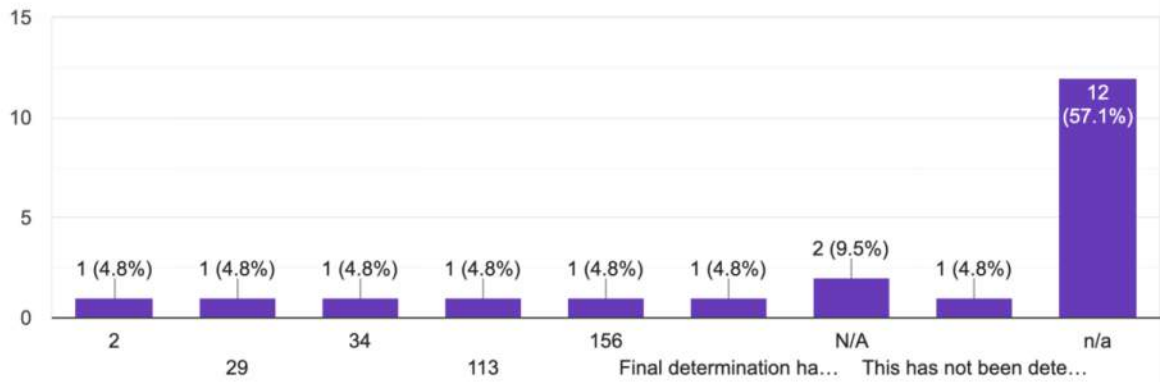
3A. If response was yes (indicate n/a if no): a. How many ADUs for very low-income housing?

21 responses



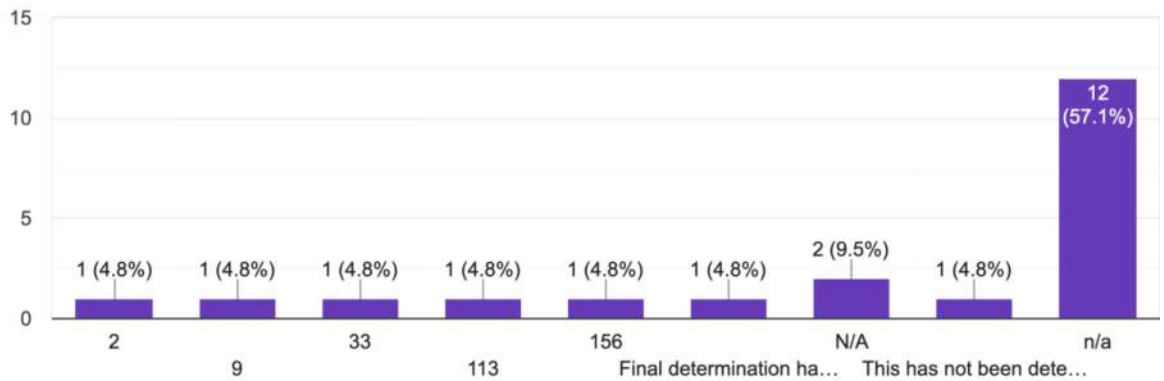
## b. How many ADUs for low-income housing?

21 responses



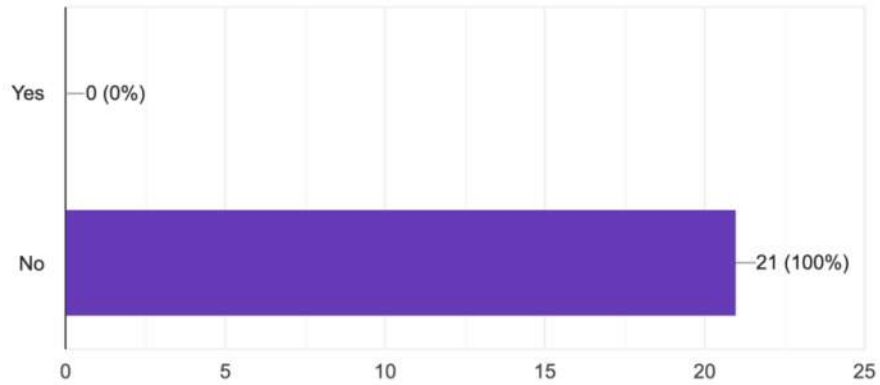
## c. How many ADUs for moderate-income housing?

21 responses



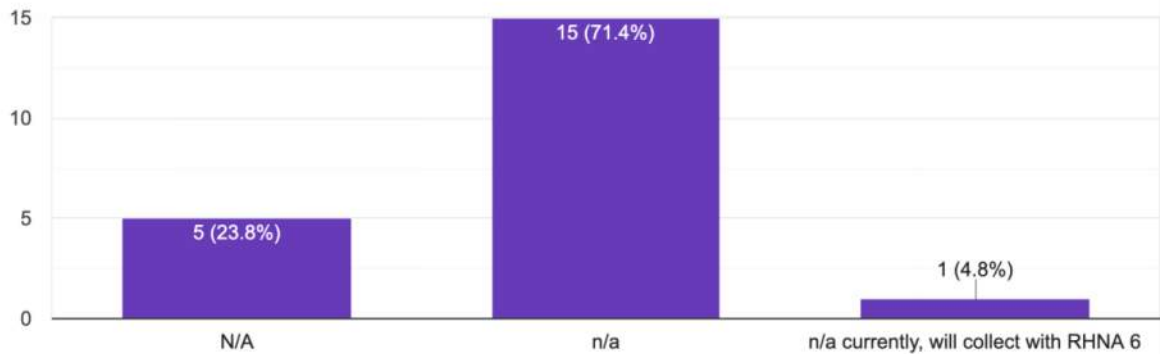
4. Does your city/town collect race and income data on who is renting or occupying ADUs in your city/town?

21 responses



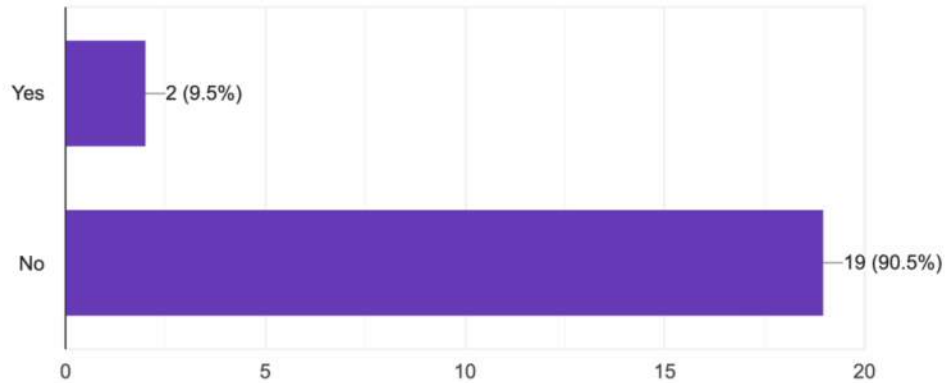
4A. If response was yes, when did you start collecting such data? (indicate n/a if no)

21 responses



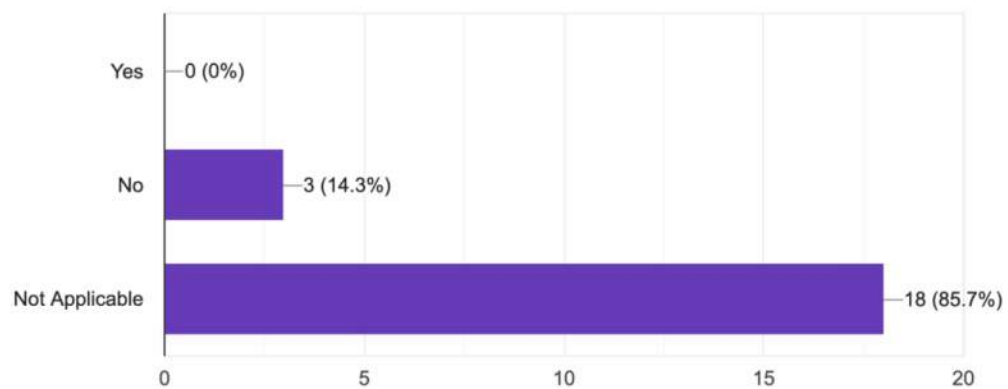
5. Does your city/town collect data on the range of the rents charged today for ADUs in your city/town?

21 responses



5A. If response was yes, does the data include details such as in-lieu services provided by the renter to the owner (i.e., landscaping, housekeeping, childcare services)?

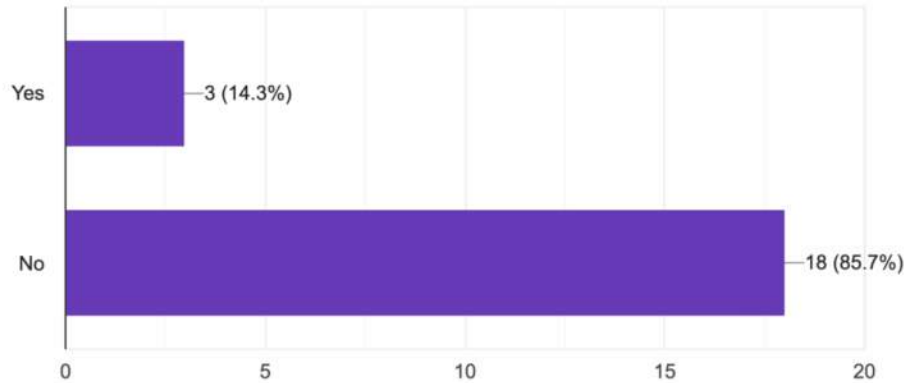
21 responses





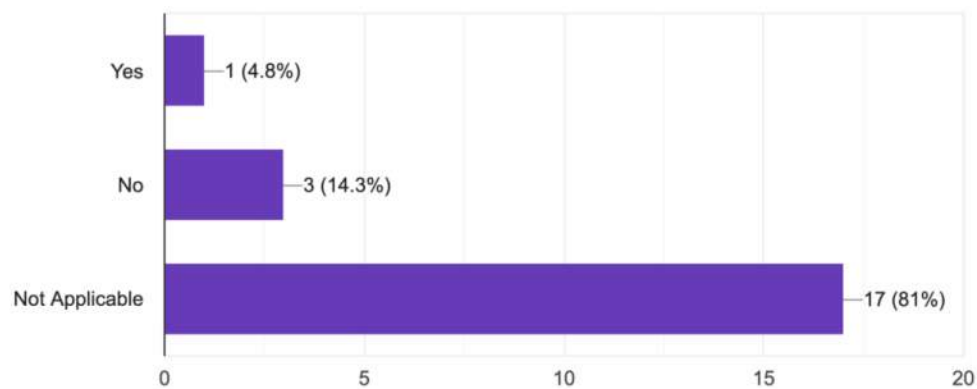
6. Are there any regulations or oversight systems in place in your city/town to monitor the status of very low-, low-, and moderate-income affordable ADUs?

21 responses



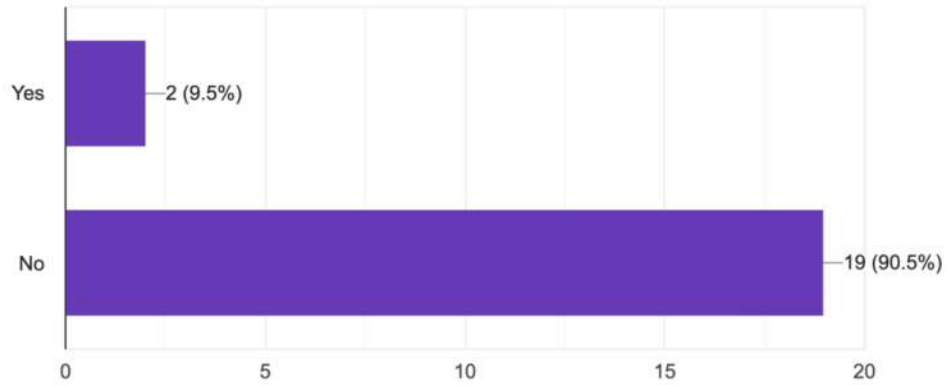
6A. If yes, does your city/town have regulations or oversight systems in place to monitor usage for ADUs over time, especially for ADUs in homes that are sold or remodeled or rebuilt?

21 responses



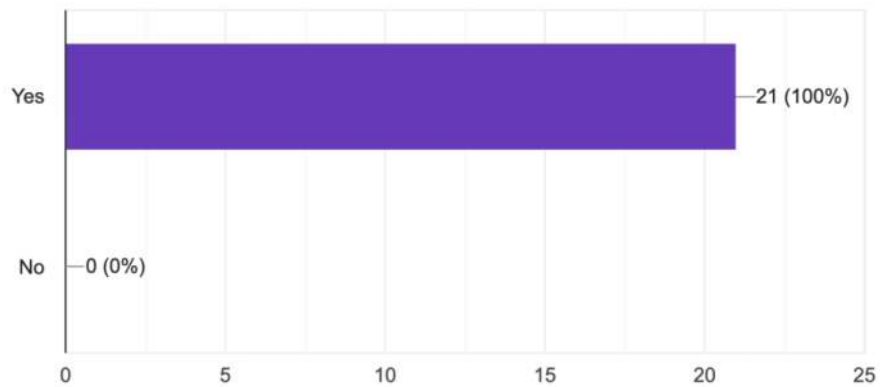
7. Does your city/town have long-term covenants for ADUs like those that regulate conventional low and very low-income housing units (e.g., tax-credits, voucher subsidized, or other)?

21 responses



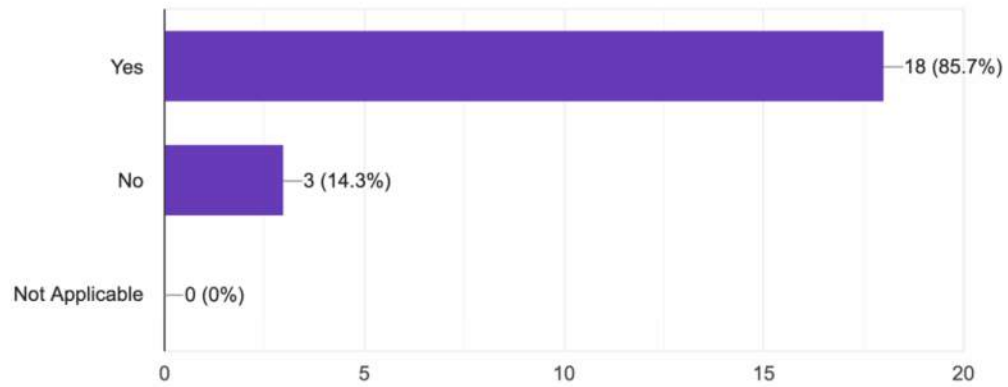
8. Does your city/town plan to include ADUs in its RHNA6 Housing Element submission?

21 responses



8A. If yes, will any of those ADUs be designated for very-low, low and moderate income, as defined by the U.S. Housing and Urban Development?

21 responses



## **APPENDIX B**

### **Timeline of Important Legislative Events**

1. 1970 — the Legislature directed HCD to develop guidelines for housing element preparation on one and five year cycles. SB 1489 (Moscone), emphasized housing need, passed in 1971, and ABX 1 of 1971 established more standards. The California Housing Finance Agency (CalHFA), which also assisted communities in providing affordable housing, was created in 1975. The legislation authorized HCD to review local housing elements for conformity to its guidelines.
2. 1976 — Fair-share was added to the guidelines by HCD. The COGs are now given the responsibility by HCD to distribute shares of low-income and moderate-income housing. The local housing element had to include these income requirements — whether or not communities wanted them. HCD also was given responsibility to review local housing elements. Statewide hearings in 1977 brought out a number of positions on housing elements and HCD requirements.
3. Mid 1980's — AB 2853 (Roos), provided for faster permit processing and higher densities, and allowed the housing element to meet State goals and be reviewed by HCD. COGs would continue to formulate the fair share for each community, but HCD had final approval of the numbers and each community was to revise its Housing Element every five years.
4. 1990s — Cities and counties looked at housing elements, if certified, as providing protection against lawsuits. In addition, this decade also created the concept of regional allocation "sharing burdens of lower- income households among geographic areas," without mandated goals.
5. 1993 — The Senate Committee on Local Government held hearings on housing element progress and heard concerns that communities were not doing enough and that housing elements were despised by local governments. Bills changed the cycle timeframe, including AB 2172 (Hauser), SB 1703 (Costa) and SC 320 (Committee). Main topics for discussion by the Committee on Housing and Land Use hearings in 1995 were the housing allocations and the Department of Finance (DoF) projections. A common complaint was that the DoF projections were not complete enough for communities to develop appropriate allocations. The COGs projections also were criticized.
6. 1998 — AB 438 (Torlakson), allowing for the creation of sub-RHNA areas, looked at how housing units were counted. 2001 — SB 910 (Dunn) would have included imposing fines on jurisdictions not complying; and would have tied RHNA to transportation planning on a six year cycle. However, this bill did not pass. 2002 — SB 423 (Torlakson) created a jobs and housing balance incentive program, also known as Workforce Housing Incentive Program. In 2003, at HCD's request, a working group of stakeholders met to make recommendations, which included:
  - Develop more transparency in determining fair shares
  - Clarify land inventories of building sites
  - Ensure inventories were buildable
  - Increase HCD review consistency of local elements
  - Explore city self-certification
  - Devise better housing element enforcement that would penalize non-compliance.
7. 2004 — AB 2348 (Mullin) clarified the relationship between the land inventory and adequate sites requirement, provided guidance on the content of adequate land inventory, and provided greater development certainty. AB 2158 (Lowenthal) revised the process for determining allocation from just

DoF to include transportation planning numbers and created a review process.

8. 2005 — AB 1233 (Jones) assured that unmet need from previous RHNA cycles was added into the next cycle.
9. 2017 Housing Legislative Package  
Approximately 150 housing bills were submitted in 2017. Fifteen relating to funding, streamlining and accountability, were signed by the governor. These bills significantly changed how RHNA is conducted, requiring additional outreach and reporting, increasing the number of factors included, and the ability of HCD to sue individual cities for not meeting requirements.

SB 2 (Atkins) Building Homes and Jobs Act is projected to generate hundreds of millions of dollars annually for affordable housing, supportive housing, emergency shelters, transitional housing, and other housing needs via a \$75 to \$225 recording fee on specified real estate documents.

SB 3 (Beall) Veterans and Affordable Housing Bond Act of 2018 places a \$4 billion general obligation bond on the November 2018 ballot to fund affordable housing programs and the veterans homeownership program (CalVet).

SB 35 (Wiener) streamlines multifamily housing project approvals, at the request of a developer, in a city that fails to issue building permits for its share of the regional housing need by income category.

SB 35 city approval of a qualifying housing development on a qualifying site is a ministerial act, without need for CEQA review or public hearings.

AB 73 (Chiu) streamlines the housing approval process by allowing jurisdictions to create a housing sustainability district to complete upfront zoning and environmental review in order to receive incentive payments for development projects that are consistent with the ordinance.

SB 167 (Skinner), AB 678 (Bocanegra), and AB 1515 (Daly) are three measures that were amended late in the 2017 legislative session to incorporate changes to the Housing Accountability Act (HAA). The HAA significantly limits the ability of a jurisdiction to deny an affordable or market-rate housing project that is consistent with existing planning and zoning requirements.

AB 1505 (Bloom) allows a jurisdiction to adopt an ordinance that requires a housing development to include a certain percentage of rental units affordable to and occupied by households with extremely low, very low, low or moderate income.

AB 879 (Grayson) expands upon existing law that requires, by April 1 of each year, general law cities and charter cities to send an annual report to their respective city councils, the State Office of Planning and Research (OPR) and HCD that includes information related to implementation of the General Plan.

AB 1397 (Low) makes numerous changes to how a jurisdiction establishes its housing element site inventory.

AB 72 (Santiago) provides HCD broad new authority to find a jurisdiction's housing element out of substantial compliance if it determines that REGIONAL the jurisdiction fails to act in compliance with

its housing element and allows HCD to refer violations of law to the attorney general.

10. 2018 — SB 828 (Wiener) changed the way HCD determines each region's RHND, adding a number of new factors for consideration and accounting for "unmet need" in the existing housing stock by applying "adjustment factors" to a region's total projected households, not just the incremental housing growth.
11. 2018 — AB 1771 (Bloom) and AB 686 (Santiago) strengthened the mandate for regions and local governments to combat discrimination, overcome historic patterns of segregation, and create equal access to opportunity through housing planning and decision-making, in other words, to "affirmatively further fair housing." AB 1771 (Bloom) added to RHNA an enhanced focus on racial equity with an explicit mandate that COGs' housing distribution plans affirmatively further fair housing and required COGs to survey jurisdictions on their fair housing activities, to identify regional barriers to furthering fair housing, and to recommend strategies or actions to overcome those barriers. AB 686 (Santiago) created a mandate that local jurisdictions plan and administer housing and community development programs and activities in a manner that affirmatively further fair housing.
12. 2019 — AB 1486 (Ting) strengthened the Surplus Lands Act (SLA), which requires that local agencies provide right of first refusal to affordable housing developers when disposing of surplus land by expanding the scope of land subject to the right of first refusal requirement, updating the mechanics of the surplus land disposal process, extending HCD's enforcement mandate to include the SLA and establishing financial penalties for violation of the act.

AB 1487 (Chiu), authorized ABAG and MTC to place on the ballot regional housing measures to help fund affordable housing and established 3 REGIONAL HOUSING NEEDS ALLOCATION the Bay Area Regional Housing Authority. The 2019-20 State Budget also included significant new resources to support housing planning, including \$250 million for local governments and COGs for planning activities. The Bay Area is receiving approximately \$50 million in combined funds, split between ABAG and local jurisdictions.

SB 330 (Skinner) made further revisions to the HAA, establishing new criteria for housing approvals at the local level, including prohibiting a local agency from subjecting a project to new ordinances, rules or fees after an application is submitted and limiting the number of hearings on a project to five. The bill also prohibits a local agency from lowering the allowed residential density below that level in effect on January 1, 2018 in high rent, low-vacancy areas, as defined. The bill's provisions sunset in five years.

AB-881, "Accessory dwelling units," and AB-68, "Land use: accessory dwelling units": Makes many of the current restrictions that cities place on ADUs obsolete. It also provides for a streamlined process for approvals.

These bills require permits for ADUs added to single-family and multifamily homes to be approved or denied faster. Current law permits these decisions to take 120 days, but this new law requires decisions within 60 days. These approvals or denials must be issued ministerially, so that way, there are fewer potential issues to encounter. Cities and counties may establish minimum and maximum ADU size requirements, but the maximum size cannot be less than 850 square feet for a one-bedroom ADU or 1,000 square feet for more than one bedroom.

Most importantly, these bills prohibit any lot coverage, minimum lot size, etc. requirements that municipalities have. Cities have enacted these laws to have the effect of making it impossible to build an ADU. Cities cannot require the correction of nonconforming zoning conditions as part of the approval process.

SB-13 Accessory dwelling units are similar to AB-881 and AB-68 with a couple of significant differences. Before this bill, local agencies could require that the person applying for the ADU occupy either the primary residence or the proposed new structure. This bill exempts from these requirements all proposed ADUs until Jan. 1, 2025. Additionally, this bill removes the impact fee for ADUs smaller than 750 square feet. Even for ADUs larger than that, the impact fees assessed must correlate with the square footage of the primary residence.

SB-13 makes building ADUs cheaper and also removes an essential regulation. Now, landlords who rent their properties out can apply for an ADU for their rental properties.

AB-670, "Common interest developments: accessory dwelling units," makes it easier for people within HOA complexes to construct ADUs. Specifically, it prevents banning or unreasonably restricting on single-family lots on the construction of these units. Presently, many HOAs have CCRs ("conditions, covenants and restrictions") that prevent people from building ADUs. HOAs may worry about the uniformity of the properties if one has an ADU on it, or they might be concerned that they don't know who is and who isn't renting from an ADU. Regardless, HOAs now need to have a way for people to construct ADUs if they so choose.

HOAs will likely challenge this bill, at least to some degree, in court, but for now, if you live in an HOA complex with single-family homes, you can construct an ADU.

AB-671, "Accessory dwelling units: incentives," requires that general plans incentivize homeowners in some way to construct these ADUs and make them available for low-to-moderate-income households to rent. While it doesn't specify what these incentives will be, it does require local agencies to think about financial incentives and construct a plan.

## APPENDIX C

### ADUs: An American Tradition

**A**ccessory dwelling units have been around for centuries, going by dozens of names over time, such as in-law apartment, guest house, granny flat, and carriage house.

The American Association of Retired Persons (AARP) traces the tradition of ADUs in the U.S. to early settlers who built small homes to live in while constructing their larger, primary house nearby. When farming was a source of survival for most of the nation's households, families commonly built additional homes on their property to live in during planting or harvesting seasons. Wealthy people with large lots frequently built secondary homes and other independent structures for household staff and guests.

Until the 20th century, there were few or no zoning rules restricting people with land from building as many homes as they wished on their land.

According to AARP a historic precedent for the modern ADU is the carriage house, or coach house, intended for horse-drawn carriages, and often large enough to include living quarters for workers.

Many years later, in response to housing shortages and economic needs, carriage houses were converted into rental homes. Garages have a similar history, and over time, many have been converted – often illegally – into small living spaces.

During World War II, for example, the Bay Area experienced a defense boom that created a high demand for workforce housing, resulting in many illegally constructed second units. By 1960, San Francisco counted between 20,000 to 30,000 secondary units, of which 90 percent were built illegally, according to the San Francisco Planning and Urban Research Association.

With the rise of suburban single-family home developments in the 1950s and 1960s ADUs practically stopped being built legally because zoning codes typically allowed only one home per lot.

Since then, some cities have grandfathered in pre-existing ADUs if the residences remained consistently occupied. But even today, many communities still don't allow new ADUs.

ADUs became popular again in the 1980s as cities looked for new sources of smaller and more affordable housing. And most recently, there's been increasing interest at the state and local levels in legalizing and encouraging the construction of ADUs, driven by the high cost of housing.

#### What is an ADU?

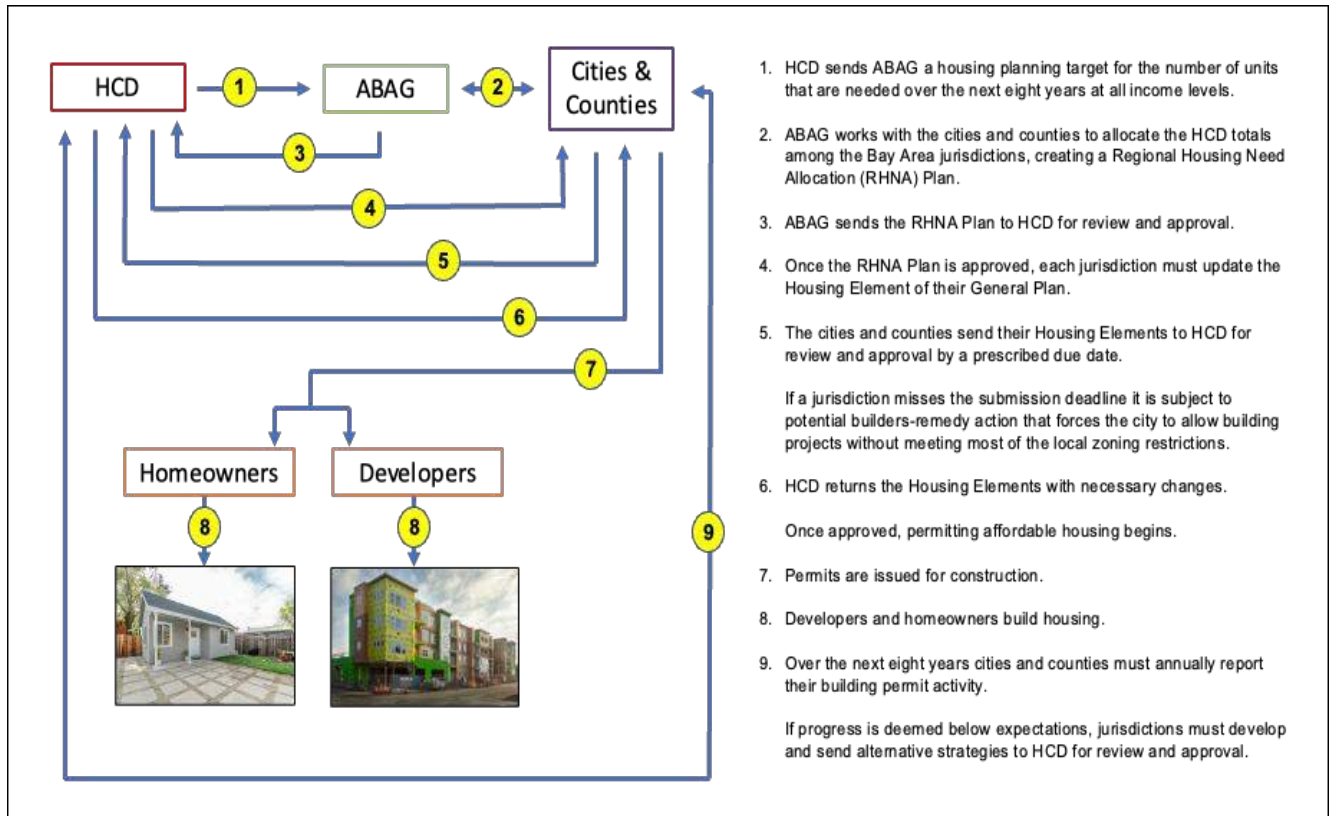
- An ADU is a small residence that shares a single-family lot with a larger, primary dwelling.
- As an independent living space, an ADU is self-contained, with its own kitchen or kitchenette, bathroom and sleeping area. An ADU can be located within, attached to or detached from the main residence.
- An ADU can be converted from an existing structure (such as a garage) or built anew.
- ADUs can be found in cities, in suburbs and in rural areas, yet are often invisible from view because they're positioned behind or are indistinct from the main house.
- Because ADUs are built on single-family lots as a secondary dwelling, they typically cannot be partitioned off to be sold separately.
- An ADU can provide rental income to homeowners and an affordable way for renters to live in single-family neighborhoods.
- An ADU can enable family members to live on the same property while having their own living spaces — or provide housing for a hired caregiver.
- Unlike tiny houses, ADUs are compact but not teeny, so they're a more practical option for individuals, couples and families seeking small, affordable housing.
- For homeowners looking to downsize, an ADU can be a more appealing option than moving into an apartment or, if older, an age-restricted community.
- ADUs can help older residents remain in their community and age in place.

*Source: AARP, 2019*



## APPENDIX D

### Housing Elements Are an Iterative Process



**File Attachments for Item:**

H. Introduce an Ordinance Repealing Chapter 8.44 of the Brisbane Municipal Code, Enacting a New Chapter 8.44 to the Brisbane Municipal Code to Clarify Existing Definitions and to Enact Additional Requirements for Tobacco Retailer Permits, and Finding that No Further Environmental Review is Required Concerning this Ordinance



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023

**From:** City Manager and Legal Counsel

**Subject:** Ordinance Repealing Chapter 8.44 of the Brisbane Municipal Code, Enacting a New Chapter 8.44 to the Brisbane Municipal Code to Clarify Existing Definitions and to Enact Additional Requirements for Tobacco Retailer Permits, and Finding that No Further Environmental Review is Required Concerning this Ordinance

### Community Goal/Result

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

### **RECOMMENDATION:**

Introduce an ordinance repealing Chapter 8.44 of the Brisbane Municipal Code and adopting a new Chapter 8.44 to the Brisbane Municipal Code to clarify existing definitions and enact additional requirements for tobacco retailer permits; and

Find that the introduction and adoption of the Ordinance is not a project under the California Environmental Quality Act (CEQA Guidelines, Section 15378 (b)(5)) and therefore no further environmental review is required to introduce/adopt the Ordinance.

### **BACKGROUND:**

The San Mateo County (County) Board of Supervisors has enacted various legislation concerning tobacco retailers, such as requiring such retailers to have permits in order to sell tobacco products. In 2008, the City Council adopted an ordinance, codified in Chapter 8.44 of the Brisbane Municipal Code, incorporating the provisions of the County Ordinance concerning tobacco retailers and authorizing the County to enforce the City's Ordinance within the City.

In California, 67% of current and former smokers report that they started smoking by the age of 18. In a 2019-20 survey, 28.6% of California high school students reported having used a tobacco product, with 9.7% reporting they were current tobacco users. In the County, 8.7% of high school students use vape products. Despite San Mateo County's overall success in lowering tobacco use rates among all ages, youth are still able to access tobacco products. From April 2021 - June 2022, 11 of 74 tobacco retailers (15%) in San Mateo County sold to underage youth decoys during Sheriff's Office enforcement operations. Limiting youth access

to tobacco products in retail is a key component of a comprehensive tobacco prevention strategy.

Fourteen cities in San Mateo County, including Brisbane, have adopted tobacco retailer permit ordinances over the last 25 years, with varying degrees of inconsistency with the County's ordinance. Amendments to the County's and various cities' tobacco retailer permit ordinances and subsequent ordinances regarding flavored tobacco and e-cigarettes have increased the inconsistencies between the County's and various cities' ordinances.

As new data about youth tobacco use and access to tobacco products have emerged and the County learned of best practices from other jurisdictions, the need to update and strengthen the County ordinance became clear. In addition, the County was of the view that consolidation of the tobacco retail permit policies and regulations into a single Ordinance would promote more efficient administration and enforcement.

Accordingly, earlier this year the County Board of Supervisors enacted a new County Ordinance that consolidates all critical components pertaining to tobacco retail sales into a single Chapter of the County Code. This ordinance has a number of new provisions, discussed below, that are currently not in the City's ordinance but which, if adopted by the City, may impact existing tobacco retailers and will limit the locations where new tobacco retailers may locate.

The County Ordinance provides that the County may administer and enforce its Ordinance in the City if the City Council adopts without substantive change the County Ordinance into its Municipal Code and authorizes the County to administer and enforce the Ordinance on behalf of the City.

#### **DISCUSSION:**

As set forth in the County Ordinance and in the proposed City Ordinance, the following are key provisions are new:

- Updated definitions to align with similar model ordinances across California. For example, the "Tobacco Product" definition will now include synthetic nicotine, and align language, where appropriate, with the new Statewide ban of flavored tobacco products.
- Restrictions on where new retailers may be located: no new Tobacco Retailer Permit will be issued to a location within 1,000 of a Youth-Populated Area or within 500 feet of a location already occupied by another tobacco retailer. "Youth-Populated Areas" is broadly defined to public and private schools, a library, playgrounds, a youth center, a recreational facility (including swimming pools), and

a licensed day care facility. Also, any new retailer may not be located within 500 feet of an existing retailer.

- Prohibition on posting advertisements offering tobacco products unless the retailer has a valid permit to sell tobacco products.
- Increase in the age for those who sell tobacco products to match the minimum age allowed to purchase tobacco under State law, currently 21 years old.
- Increase in fines up to \$500 for the first violation, and up to \$1,000 for all subsequent violations within a 60-month period.
- Requirement that a permit be suspended if a business is found to have sold tobacco products to persons under the age of 21
- Required annual inspection of each tobacco retailer by an enforcement designee to monitor compliance with applicable laws.
- Increased permit suspension and revocation escalation period for cumulative violations from 12 to 60 months.

#### Impact on Existing Tobacco Retailers.

Currently there are three businesses in Brisbane that have tobacco retail licenses: Christy's Donuts located at 138 Old Country Road; Julie's Brisbane Liquor and Deli, located at 45 Visitacion; and Midtown Market, located at 249 Visitacion. These retailers are "grandfathered in", assuming they renew and retain their existing licenses. Attached is a map showing their locations. Also attached is a map showing where existing Youth Populated Areas are. As noted above, any new retailer would not be permitted to locate within 500 feet of an existing tobacco retailer nor within 1000 feet of any Youth Populated Area. What this means practically is that any new tobacco retailer would be restricted to certain areas of Sierra Point and a few locations within Crocker Park.

Also, the proposed Ordinance would ban the sale of any flavored tobacco products, such as menthol cigarettes and "flavored" cigars. It also bans the sale of "vaping products", i.e., electronic smoking devices any substances that may be aerosolized or vaporized by such device, whether or no the substance contains nicotine, and whether natural or synthetic.

City staff has visited the three retailers and confirmed that none of them are selling the tobacco products that under the Ordinance would be banned.

Staff recommends that the Ordinance be introduced, rather than adopted as an urgency ordinance to take effect immediately. In that way, the Ordinance would not go into effect until 30 days after the second reading of the Ordinance which would occur on September 21. This will provide time for the current tobacco retailers, if they do have tobacco products that would be banned, to dispose of the products. Staff will advise the County when the City Ordinance is in effect so that enforcement of Ordinance would not occur until that time. The retailers have been informed that this matter will be under consideration by the Council at its September 7 meeting.

The County's annual inspection for all tobacco retailers would increase the annual permitting fee from \$174 to \$423. Additionally, a \$249 one-time application fee would be assessed to review the application of a new business and assess various new location restrictions. The County has determined these fees are necessary to obtain full cost recovery for the administration of the permit.

Passing a new, comprehensive Ordinance, consistent with the County Ordinance, will eliminate both the current logistical challenges and the ambiguity regarding the County's authority in cities, for more efficient and consistent enforcement, permitting, and administration.

### **ENVIRONMENTAL REVIEW**

Introduction and adoption of this Ordinance is an administrative activity of the City that will not result in direct or indirect physical changes to the environment and therefore it is not a "project" under the California Environmental Quality Act (CEQA). CEQA Guidelines, Section 15378 (b) (5). Accordingly, no further environmental review is required in order to introduce and adopt this Ordinance.

### **FISCAL IMPACT:**

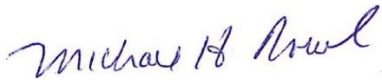
There is no direct fiscal impact to the City if this Ordinance is adopted. The County Health's Environmental Health Services Division permit fees are established by the County to fund the program.

Attachments:

Proposed Ordinance

Map Showing Locations of Existing Tobacco Retailers and 500 foot radius from such locations

Map showing Locations of Youth Populated Areas and 1000 foot radius from such Areas



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Michael Roush, Legal Counsel



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Clay Holstine, City Manager

## ORDINANCE NO. \_\_\_\_\_

\* \* \* \* \*

**AN ORDINANCE REPEALING CHAPTER 8.44 and AND ADOPTING A NEW  
CHAPTER 8.44 TO THE BRISBANE MUNICIPAL CODE TO CONSOLIDATE AND  
CLARIFY EXISTING DEFINITIONS AND ENACT ADDITIONAL REQUIREMENTS  
FOR TOBACCO RETAILER PERMITS**

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

**SECTION 1. Findings.**

The City Council finds and determines that:

- (a) A local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City Council, to protect the health, safety, and welfare of City of Brisbane residents.
- (b) Despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:
  - 1. In California, over 67% of current and former adult smokers started smoking by the age of 18;<sup>1</sup>
  - 2. In a survey taken in 2019-20, 28.6% of California high school students reported that they had used a tobacco product and 9.7% of students reported that they had used tobacco in the last 30 days;<sup>2</sup> and
  - 3. According to the 2019-20 California Student Tobacco Survey, for all of San Mateo County, the prevalence of the use of vaping devices among high school students was 8.7%.<sup>3</sup>
- (c) California retailers continue to sell tobacco to underage consumers, evidenced by the following:
  - 1. According to the 2019-20 California Student Tobacco Survey, among current underage vapers, 51.2% reported paying for their vapes. Of those who paid for their vapes, 27.1% reported buying them from a retail store;<sup>4</sup>
  - 2. In the Bay Area, 21.6% of licensed tobacco retailers sold tobacco products to underage decoys in 2019;<sup>5</sup> and



3. In 2019, the San Mateo County Sheriff's Office coordinated undercover enforcement operations and found that 25 out of 289 visits to retailers by underage decoys resulted in tobacco sales to youth decoys.
- (d) The tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, individuals who use price minimization strategies save an average \$1.04 per pack (or 18.6% off the total price per pack).<sup>6</sup>
  - (e) The density and proximity of tobacco retailers influence smoking behaviors, including the number of cigarettes smoked per day.<sup>7</sup>
  - (f) Adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller<sup>8</sup> and density is higher.<sup>9</sup>
  - (g) Policies to reduce tobacco retailer density have been shown to be effective<sup>10</sup> and may reduce or eliminate inequities in the location and distribution of tobacco retailers.
  - (h) Strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products.<sup>11</sup>
  - (i) Strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g., requiring identification checks) is necessary to achieve reductions in youth tobacco sales.<sup>12</sup>
  - (j) The City Council has a substantial interest in protecting youth and underserved populations from the harms of tobacco use.
  - (k) The City Council finds that a stronger local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City of Brisbane in order to protect the health, safety, and welfare of our residents.
  - (l) As lessons are learned with implementation of licensing systems throughout the State, it is appropriate to update existing City regulations to ensure that the City implements best practices in tobacco prevention.

**SECTION 2.** Chapter 8.44 of the Brisbane Municipal Code is hereby repealed and replaced in its entirety by a new Chapter 8.44 to be numbered and entitled and to read as follows:

## **Chapter 8.44 - TOBACCO RETAILER PERMIT**

### **8.44.010- Definitions.**

- A. "Characterizing Flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.
- B. "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.
- C. "Consumer" means a person who purchases a Tobacco Product for consumption.
- D. "Coupon" means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.
- E. "Director" means the Chief of San Mateo County Health, or designee.
- F. "Distinguishable" means perceivable by either the sense of smell or taste.
- G. "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic. "Electronic Smoking Device" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic

purposes where such product is marketed and sold solely for such an approved purpose.

- H. "Flavored Tobacco Product" means any Tobacco Product that contains a Constituent that imparts a Characterizing Flavor.
- I. "Full Retail Price" means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.
- J. "Labeling" means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its packaging.
- K. "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold, or offered for Sale, to a Consumer.
- L. "Permit" or "Tobacco Retailer Permit" means a valid permit issued by the Director to a Person to act as a Tobacco Retailer.
- M. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other entity.
- N. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for Sale, regardless of whether the retail establishment Sells other retail goods in addition to prescription pharmaceuticals.
- O. "Sale" or "Sell" means transfer to, exchange, barter, or distribute for a commercial purpose.
- P. "Self-Service Display" shall be defined as the open display or storage of Tobacco Products in a manner that is physically accessible to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.
- Q. "Tobacco Paraphernalia" means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- R. "Tobacco" or "Tobacco Product(s)" means:

1. any product containing, made of, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
  2. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic; or
  3. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, whether natural or synthetic, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.
  4. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.
- S. "Tobacco Product Flavor Enhancer" means a product designed, manufactured, produced, marketed or Sold to produce a Characterizing Flavor when added to a Tobacco Product.
- T. "Tobacco Retailer" means any Person who Sells, or offers for Sale, Tobacco Products. This definition is without regard to the quantity of Tobacco Products sold or offered for Sale.
- U. "Youth-Populated Area" means a parcel of real property that is occupied, in whole or in part, by any of the following:
1. a private or public school that educates children in grades kindergarten through high school;
  2. a library that is open to the public;
  3. a playground that is open to the public;
  4. a youth center, defined as a facility where children ages 6 to 17 come together for programs and activities;
  5. a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. "Recreation facility" includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;

6. a public or private college or university that serves as an institution for education beyond the high school level;
7. a licensed child-care facility or preschool, other than a small-family day care home or a large-family daycare home as defined in California Health & Safety Code § 1596.78.

#### **8.44.20 - Requirement for a Permit.**

- A. No Tobacco Retailer or other Person shall Sell or offer for Sale any Tobacco Product without a current and valid Tobacco Retailer Permit from San Mateo County for each location where such activities are conducted.
- B. Permits are valid for one year and must be timely renewed annually by the Permit holder in order to continue to sell or offer for sale any Tobacco Product. A Retailer must obtain a separate Permit for each location at which any Tobacco Product will be sold, offered for sale or distributed. A Permit that is not renewed in a timely manner shall expire at the end of its term, and the Tobacco Retailer must obtain a new Permit prior to any further sale, offer for sale, or distribution of any Tobacco Product.
- C. No Tobacco Retailer shall violate, or cause or allow the Tobacco Retailer's agents or employees to violate, any provision of this Chapter or any other local, state, or federal law applicable to Tobacco Products or Tobacco Retailing.
- D. Tobacco Retailers are responsible for the actions of their employees and agents relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer and the permit holder shall be responsible for any monetary penalties levied.
- E. Nothing in this Chapter shall be construed to penalize the purchase, use, or possession of a Tobacco Product by any Person not engaged in Tobacco Retailing.

#### **8.44.030 - Permit is Nontransferable.**

- A. Tobacco Retailer Permits are nontransferable as between Persons, locations, or otherwise. Any attempted transfer shall render the Permit null and void.
- B. Notwithstanding any other provision of this Chapter, prior violations of this Chapter at a location shall continue to be counted against that location and Permit ineligibility and suspension periods shall continue to apply to that location unless:

1. One hundred percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to the new owner(s); and
2. The County is provided with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction. An Arm's Length Transaction, for the purposes of this section, means a transaction in which two or more unrelated and unaffiliated parties agree on the transfer in question; the parties act independently and in their own self-interest; and the parties have equal bargaining power and symmetric information, leading the parties to agree upon fair-market terms.

#### **8.44.040 - Permit Conveys a Limited, Conditional Privilege.**

Nothing in this Chapter shall be construed to grant any Person or entity obtaining and maintaining a Permit any status or right other than the limited, conditional privilege to Sell Tobacco Products and act as a Tobacco Retailer at the location in the County identified on the face of the Permit for the period of time shown on the Permit. All Permits are issued subject to the County's right to amend this Chapter from time to time, and Retailers shall comply with all provisions of this Chapter, as amended.

#### **8.44.050- Application, Issuance and Renewal Procedure.**

- A. Application for a Tobacco Retailer's Permit or the renewal of a Tobacco Retailer Permit shall be submitted in the name of the Person proposing to conduct retail sales of Tobacco Products, referred to herein as the "Applicant," and shall be signed by such Person or an authorized agent thereof. All applications shall be submitted to the Director on a form supplied by the Director and contain, at a minimum, the following information:
  1. The name, address, and telephone number of the Applicant;
  2. The business name, address, and telephone number of the location where Tobacco Products are proposed to be sold, offered for sale or distributed by the Applicant; and
  3. Proof that the location for which a Tobacco Retailer's Permit is sought has been issued a valid state license for the sale of Tobacco Products, if the Tobacco Retailer sells products that require such license;
  4. A statement whether or not the Tobacco Retailer or any agent of the Retailer has been found to have violated this Chapter or other applicable law governing Tobacco Products or Tobacco Retailing and, if so, the dates and locations of all such violations within the previous five years; and

5. Such other information as the Director determines is necessary for implementation of this Chapter.
- B. An application for a new or renewal Permit will be denied if there are any outstanding fines or late fees issued by the Director, or during any period of suspension.
- C. It is the responsibility of each Permit holder to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer Permit. No Permit holder may rely on the issuance of a Permit as a determination by San Mateo County that the Permit holder has complied with all laws applicable to Tobacco Retailing. A Permit issued contrary to this Chapter or any other law, or on the basis of false or misleading information supplied by the Applicant, shall be revoked. Nothing in this Chapter shall be construed to vest in any person or entity obtaining or maintaining a Tobacco Retailer's Permit any status or right to act as a Tobacco Retailer in contravention of any provision of law.

#### **8.44.060 - Display of Permit.**

Upon receipt of an application for a Tobacco Retailer Permit in compliance with the requirements of this Chapter, the Director or designee may issue a Permit which, if issued, must be prominently displayed in a publicly visible location at the location where Tobacco Product Sales are conducted and permitted.

#### **8.44.070 - Prohibitions Regarding Coupons, Discounts, Pharmacies, Flavored Tobacco, and Electronic Smoking Devices.**

- A. No Tobacco Retailer shall do any of the following:
  1. Honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than Full Retail Price;
  2. Sell any Tobacco Product to a Consumer through a multiple package discount or otherwise provide any such product to a Consumer for less than the Full Retail Price in consideration for the purchase of any Tobacco Product or any other item; or
  3. Provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.
- B. No Person, Tobacco Retailer or other legal entity shall sell or distribute to a person any electronic smoking device that delivers natural or synthetic nicotine or any other substance(s) to the person inhaling from the device. This includes

any component, part, or accessory intended or reasonably expected to be used with the electronic device, whether or not sold separately.

- C. No Person or Tobacco Retailer shall sell or offer to sell any Flavored Tobacco Product or Tobacco Product Flavor Enhancer. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.
- D. No Pharmacy or Pharmacy employee or agent shall sell or offer to sell any Tobacco Product. The Director shall not issue any new, or renew any existing, Tobacco Retailer Permit for any Pharmacy.

#### **8.44.080 - Packaging and Labeling.**

No Tobacco Retailer or other Person shall Sell or offer for Sale any Tobacco Product to any Consumer unless the Tobacco Product (1) is Sold in the original manufacturer's Packaging intended for Sale to Consumers; (2) conforms to all applicable federal Labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.

#### **8.44.90 - Self-Service Displays Prohibited; On-Site, In-Person Sales Required.**

- A. Tobacco Retailing by means of a Self-Service Display is prohibited
- B. All Sales of Tobacco Products and Tobacco Paraphernalia shall be conducted in-person, over the counter, in the permitted location.

#### **8.44.100 - Notice of Minimum Age for Purchase of Tobacco Products.**

Tobacco Retailers shall post conspicuously, at each point of purchase, a notice stating that Selling Tobacco Products to anyone under 21 years of age is illegal and subject to penalties. The form and content of such notice shall be subject to the approval of the Director.

#### **8.44.110 - Positive Identification Required.**

No Tobacco Retailer or other Person shall Sell or offer to Sell a Tobacco Product to another Person without first verifying by means of government-issued photographic



identification that the recipient is at least the minimum legal sales age required under state law to purchase a Tobacco Product.

#### **8.44.120 - Minimum Age for Individuals Selling Tobacco Products.**

No Tobacco Retailer shall allow, at its Retail location, any individual who is younger than 21 years of age to Sell or offer to Sell Tobacco Products.

#### **8.44.130 - Display or Offers to Sell Tobacco Products Without Tobacco Retailer Permit Prohibited.**

A Tobacco Retailer without a current valid Permit:

- A. Shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a Permit.
- B. Shall not display any advertisement relating to Tobacco Products that offers the Sale of such products from the Tobacco Retailer's location.

#### **8.44.140 - Limits on Eligibility for a Permit.**

- A. No Tobacco Retailer's Permit may be issued to authorize Tobacco Retailing at or from other than a fixed location. For example, Sales by Persons on foot or from vehicles or other forms of mobile vending are prohibited.
- B. No Tobacco Retailer's Permit may be issued to authorize Sales of Tobacco Products at a temporary event, such as flea markets and farmers' markets.
- C. No new Tobacco Retailer Permit may be issued to authorize Tobacco Product Sales at any location within 1,000 feet of a Youth-Populated Area, as measured by a straight line from the nearest point of the property line of any parcel on which a Youth-Populated Area is located and any point along the property line of the parcel on which the Permit applicant has or proposes to locate the business.
- D. No new Tobacco Retailer's Permit may be issued for a location which is within 500 feet of a location already occupied by another Tobacco Retailer, as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing Tobacco Retailer's business is located.
- E. Tobacco Retailers with a current and valid Permit as of the date of adoption of this ordinance shall be exempt from subsections C and D of this Section unless the existing Tobacco Retailer fails to timely renew the Permit prior to its annual expiration.

- F. The Sale of Tobacco Products and accessories is prohibited in City or County of San Mateo owned structures and in any area of a structure leased by the City or the County of San Mateo, wherever located.

#### **8.44.150 - Fees for Permit.**

Tobacco Retailers shall pay all applicable fees at the rates set forth in section 5.64.070 of the San Mateo County ordinance code. Fees shall be used by the Director to administer and enforce this Chapter.

#### **8.44.160 - Enforcement.**

- A. The Director or the Director's designee may enforce this Chapter by suspension of a Tobacco Retailer's Permit and /or imposition of administrative fines following the procedures and, in the amounts, set forth in this Chapter.
- B. Violations of this Chapter may be criminally prosecuted as infraction(s) or misdemeanor(s) at the discretion of the prosecuting attorney as the interests of justice require.
- C. This Section shall not be interpreted to limit the applicable civil or administrative remedies available under law.

#### **8.44.170 - Public Nuisance.**

Any violation of this Chapter is hereby declared a public nuisance, subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures of contained in the Brisbane Municipal Code and state law, including but not limited to, an action for abatement or injunctive relief

#### **8.44.180 - Compliance Monitoring.**

- A. Compliance with this Chapter shall be monitored by the Director. In addition, any peace officer may enforce the provisions of this Chapter. The Director may designate additional persons to monitor and facilitate compliance with this Chapter.
- B. Individuals designated to enforce the provisions of this Chapter shall inspect each Tobacco Retailer annually to determine if the Tobacco Retailer is complying with all applicable laws. Compliance checks shall take place during normal business hours, with or without notice. All permitted premises must be open to inspection by designated persons during regular business hours.
- C. Nothing in this section shall create a right of action in any Tobacco Retailer or other person or entity against the City, the County of San Mateo, or their agents.

#### **8.44.190 Suspension or Revocation of Permit**

##### **A. Grounds for Suspension or Revocation.**

1. A Tobacco Retailer Permit may be suspended or revoked, as set forth below in subdivision (b), if any court of a competent jurisdiction determines, or the Director finds, based on a preponderance of the evidence after notice and opportunity for the Tobacco Retailer to be heard, that either of the following violations have occurred:
  - a. After the Permit was issued it is determined that the Application for the Permit is incomplete or inaccurate.
  - b. The Tobacco Retailer or Tobacco Retailer's agent has violated any of the requirements, conditions, or prohibitions of this Chapter or any applicable local, state, or federal tobacco-related law.
2. Notwithstanding the foregoing, a Tobacco Retailer Permit shall be suspended or revoked, for the maximum time periods and as set forth in subdivision (b), if any court of competent jurisdiction determines, or the Director finds, based on a preponderance of evidence and after notice and opportunity for the Tobacco Retailer to be heard, that the Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has Sold Tobacco Products to any Person(s) under the age of 21 years.

##### **B. Time Period of Suspension of Permit.**

1. Upon the first violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to 30 days.
2. Upon the second violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to 90 days.
3. Upon the third violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to one year.
4. Upon the fourth violation within any sixty (60) month period, the Permit to Sell Tobacco Products shall be revoked. If a Permit is revoked, the Retailer shall not be eligible for a new Permit for a period of five (5) years after the effective date of revocation.

##### **C. Effective Date of Suspension or Revocation.**

Within ten (10) calendar days of the hearing, the Director shall issue written findings and an order regarding the suspension or revocation, which order will be

effective ten (10) calendar days from the date such order was sent by certified

mail to the Retailer, unless a timely appeal is filed in accordance with subsection (d).

**D. Appeal of Suspension or Revocation.**

The decision of the Director is appealable to the San Mateo County Licensing Board and the procedural rules of the San Mateo County Licensing Board shall govern hearings on all appeals of suspensions and revocations.

1. An appeal must be in writing, be addressed to the Director and be hand- delivered to the offices of the Division of Environmental Health.
2. An appeal must be received by the Director before the effective date of suspension or revocation provided by subsection (c) in order to be considered.
3. The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the San Mateo County Licensing Board.
4. The decision of the San Mateo County Licensing Board shall be a final administrative order, with no further administrative right of appeal.

**8.44.200 - Administrative Fine.**

- A. Grounds for Fine. A fine may be imposed on a Tobacco Retailer upon findings made by the Director, based on a preponderance of the evidence, that any Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has violated any of the requirements, conditions, or prohibitions of this Chapter. A fine shall be imposed in the maximum amounts set forth in subsection B of this section upon findings made by the Director that the Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has Sold any Tobacco Product to any Person(s) under the age of 21 years. Any administrative fine shall be imposed solely against the Tobacco Retailer, not the Tobacco Retailer's employees or agents.
- B. Amount of Fine. Upon written findings made by the Director under subsection A, the person or entity holding the Tobacco Retailer Permit shall be subject to an administrative fine for each such violation as follows:
  1. A fine not exceeding five hundred dollars (\$500) for a first violation within a sixty (60) month period; and
  2. A fine not exceeding one thousand dollars (\$1,000) for each subsequent violation within a sixty (60) month period.

- C. Each day that Tobacco Products are Sold or offered for Sale without a Permit or otherwise in violation of this Chapter shall constitute a separate violation. A finding of "offered for Sale" in violation of this Chapter will be made if Tobacco Products are either actually Sold and/or displayed in the retail establishment, or if advertisements offering to Sell Tobacco Products are visible to customers.

D. Fine Procedures. Notice of the fine shall be served on the Tobacco Retailer by certified mail. The notice shall contain a description of the facts upon which the asserted violation is based and an advisement of the right to request a hearing before the Director contesting the imposition of the fine. Said hearing must be requested within ten calendar days of the date appearing on the notice of the fine. The decision of the Director shall be a final administrative order, with no administrative right of appeal.

- E. Failure to Pay Fine. If a fine imposed pursuant to this Chapter is not paid within 30 calendar days from the date appearing on the notice of the fine or of the notice of determination of the Director after the review provided for under subdivision C of this Section, the fine may be referred to a collection agency within or external to the County. In addition, any outstanding fines must be paid prior to the issuance of any new Permit or renewal of a Permit.

**SECTION 2.** It is the intent of the City Council of the City of Brisbane to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any provision of this Chapter or the application of such provision to any person or in any circumstances

shall be held invalid, the remainder of this Chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

**SECTION 4.** This ordinance shall be effective thirty days after adoption.

Madison Davis, Mayor

Attest:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas R. McMorrow, City Attorney

I hereby certify that the foregoing Ordinance No. \_\_\_\_ was adopted by the Brisbane City Council at a regular meeting on September \_\_\_\_, 2023 by the following vote:

AYES;

NOES;

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

## SOURCES

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1. California Department of Public Health California Tobacco Control Program. California Tobacco Facts and Figures 2016. Sacramento, CA: California Department of Public Health. 2016. Available at:  
  
<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>
2. Zhu S-H, Braden K, Zhuang Y-L, Gamst A, Cole AG, Wolfson T, Li S. (2021). *Results of the Statewide 2019-20 California Student Tobacco Survey*. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California San Diego.  
  
[https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport\\_ADA.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport_ADA.pdf)
3. Zhu S-H, Braden K, Zhuang Y-L, Gamst A, Cole AG, Wolfson T, Li S. (2021). *Results of the Statewide 2019-20 California Student Tobacco Survey*. San Diego,



California: Center for Research and Intervention in Tobacco Control (CRITC), University of California San Diego.

[https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport\\_ADA.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport_ADA.pdf)

4. Zhu S-H, Braden K, Zhuang Y-L, Gamst A, Cole AG, Wolfson T, Li S. (2021). *Results of the Statewide 2019-20 California Student Tobacco Survey*. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California San Diego.  
  
[https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport\\_ADA.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport_ADA.pdf)
5. California Department of Public Health, California Tobacco Control Program. *California Tobacco Facts and Figures 2021*. Sacramento, CA: California Department of Public Health; November 2021.  
  
<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CaliforniaTobaccoFactsAndFigures2021-V3A.pdf>
6. Xu X, Pesko MF, Tynan MA, Gerzoff RB, Malarcher AM, Pechacek TF. Cigarette price-minimization strategies by U.S. smokers. *Am J Prev Med*. 2013;44(5):472-476. doi: 10.1016/j.amepre.2013.01.019.
7. Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighborhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health*. 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.
8. Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.
9. Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction*. 2015;110(1):152-161. doi: 10.1111/add.12718.
10. Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine Tob Res*. 2017;19(2):239-244. doi: 10.1093/ntr/ntw185.

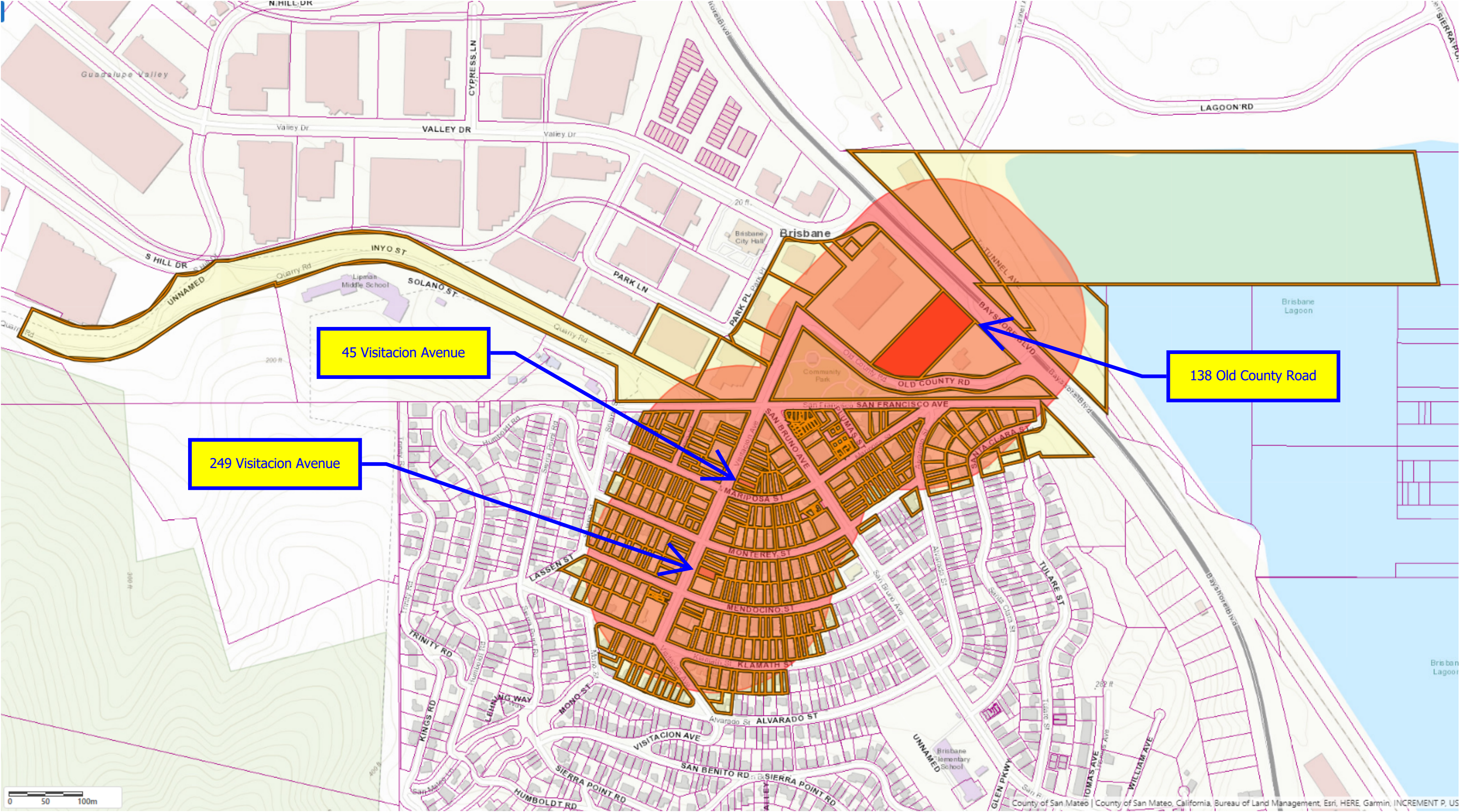
Myers AE, Hall MG, Isgett LF, Ribisl KM. A comparison of three policy approaches for tobacco retailer reduction. *Prev Med*. 2015; 74:67-73. doi: 10.1016/j.ypmed.2015.01.025.

Luke DA, Hammond RA, Combs T, et al. Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *Am J Public Health*. 2017;107(5):740-746. doi: 10.2105/AJPH.2017.303685.

11. U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at:  
  
<https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/>.
- DiFranza JR. Which interventions against the sale of tobacco to minors can be expected to reduce smoking? *Tob Control*. 2012;21(4):436-442. doi: 10.1136/tobacco control - 2011-050145.
12. Macinko J, Silver D. Impact of New York City's 2014 Increased Minimum Legal Purchase Age on Youth Tobacco Use. *Am J Public Health*. 2018;108(5):669-675. doi: 10.2105/AJPH.2018.304340.



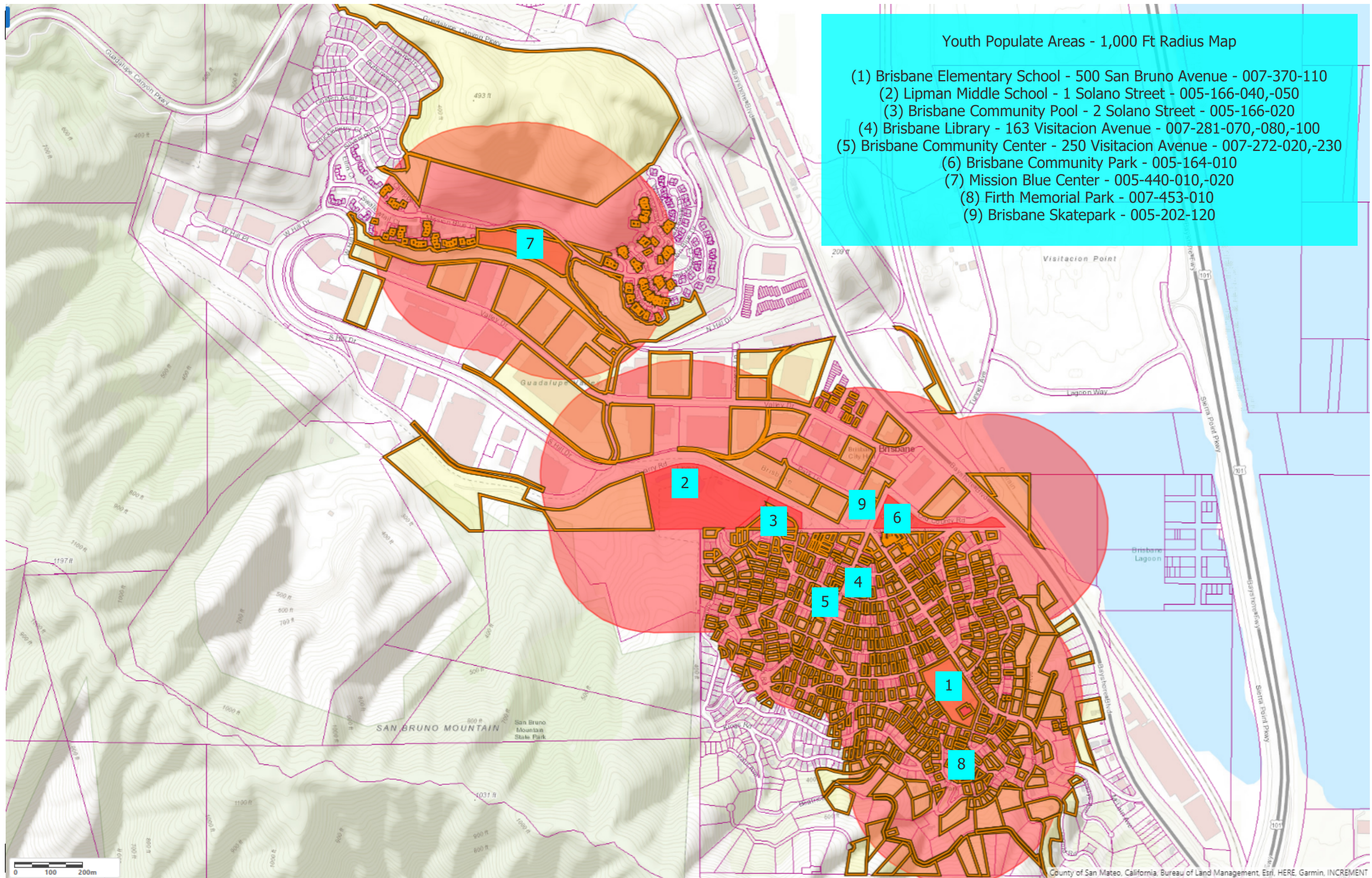
500 Ft Radius Map - 08.08.23  
138 Old County Road - 005-212-110  
45 Visitation Avenue - 007-222-130  
249 Visitation Avenue - 007-471-170





## Youth Populate Areas - 1,000 Ft Radius Map

- (1) Brisbane Elementary School - 500 San Bruno Avenue - 007-370-110
- (2) Lipman Middle School - 1 Solano Street - 005-166-040,-050
- (3) Brisbane Community Pool - 2 Solano Street - 005-166-020
- (4) Brisbane Library - 163 Visitacion Avenue - 007-281-070,-080,-100
- (5) Brisbane Community Center - 250 Visitacion Avenue - 007-272-020,-230
- (6) Brisbane Community Park - 005-164-010
- (7) Mission Blue Center - 005-440-010,-020
- (8) Firth Memorial Park - 007-453-010
- (9) Brisbane Skatepark - 005-202-120





**File Attachments for Item:**

I. Approve Brisbane Chamber's Event Co-sponsorship Application for Halloween and Anniversary events



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** 9/7/2023

**From:** Sara Nahass, Recreation Coordinator  
Noreen Leek, Parks & Recreation Director

**Subject:** Application for Event Cosponsorship

### Community Goal/Result

Community Building & Fundraising

### Purpose

Promote cultural and social events that encourage community engagement and provide assistance to local non-profit organizations.

### Recommendation

Approve Brisbane Chamber of Commerce's Halloween-themed variety show and 75<sup>th</sup> anniversary cabaret performance as cosponsored events.

### Background

The Brisbane Chamber of Commerce is Non-profit 501(c)(6) organization created through a partnership of businesses, civic leaders, and residents working together to enhance Brisbane's economic landscape. The Chamber assisted small businesses throughout the COVID-19 pandemic with critical information about protocols and funding opportunities, as well as partnered with the City of Brisbane to distribute grants. The Chamber continues to print The Luminary (Brisbane's only newspaper), offer scholarships to college students, partner with Lipman Middle School on a job shadowing day, create wooden holiday stars for residents, and sponsor the Brisbane Garden Show. Both the Halloween-themed Variety Show & the 75th Anniversary Cabaret Performance will raise funds through ticket sales to support the Brisbane Chamber of Commerce and its scholarship fund. Ticket sales will range in price from \$50-\$100. These events also support Council's goal of providing aid to Non-profit organizations.

### Discussion

The Halloween Variety Show will be held on Saturday, October 28<sup>th</sup>, 2023 from 6:30-9:00pm and the Anniversary Cabaret Performance will be held on Saturday, December 30<sup>th</sup>, 2023 from 7:00-9:30pm at the Mission Blue Center. Additional use of Mission Blue is requested on 10/27 and 12/29 for rehearsals and set up. The Chamber of Commerce qualifies under the Group III category for recreation facilities indoor use permits as a non-profit group serving the Brisbane community. Meeting the Group III requirements with the events open to the general public qualifies them for free use of the facility and waives the deposit requirement.

### Fiscal Impact

The Brisbane Chamber of Commerce is requesting support from the City as summarized in the table below. They have requested use of the Mission Blue Center for both events. Although use of the facility

and the deposit are waived as part of their Group III designation, they are also asking the City to waive costs associated with setting up and breaking down the theatre risers as well as event insurance.

FINANCIAL IMPACT SUMMARY BASED ON APPLICATION		
Hourly Rental of Mission Blue Center	Approximately 20 hours @ \$350/hour = \$7,000 <i>(including rehearsal/set up)</i>	Waived per City policy for Non-profit use
Rental Deposit	\$500 <i>(Typically refundable absent damages)</i>	Waived per City policy for Non-profit use
Staff time to set up and break down theatre risers	Approximately 10 staff labor hours @ \$40/hour = \$400	Requesting to be waived
Event Insurance	Approximately \$100-\$250/event. <i>(Renters are typically required to procure insurance on their own and provide a copy to the city.)</i>	Requesting requirement be waived
Use of existing theatre lighting at Mission Blue	Waived	
Lighting Technician	The City does not traditionally cover this cost and therefore it is the responsibility of the Non-profit organization to hire and pay a lighting technician.	
Promotional and Marketing Support	Waived	
ABC License for alcoholic beverage sales	The City does not traditionally cover this cost and therefore it is the responsibility of the Non-profit organization to pay associated fees.	

### Attachments

1. Co-sponsorship application

*Sara Nahass*

Sara Nahass, Recreation Coordinator

*Noreen Leek*

Noreen Leek, Parks & Recreation Director

*Clay Holstine*

Clay Holstine, City Manager



# CITY OF BRISBANE COSPONSORSHIP APPLICATION

This application must be submitted to the Parks & Recreation Department at least **(90) working days** prior to the requested event.

**Phone: (415) 508-2140 | Email: [brisbanerec@brisbaneca.org](mailto:brisbanerec@brisbaneca.org) | Office: 50 Park Place, Brisbane, CA 94005**

## APPLICANT INFORMATION

**Name of Contact Person:** Madison Davis **Phone:** 415-706-5276

**Email:** madison@brisbanechamber.org

**Name of Organization:** Brisbane Chamber of Commerce **Organization Website:** brisbanechamber.org

**Organization Address or P.O. Box:** 50 Park Place, Brisbane

Circle **ONE** of the following descriptions below that best describes your organization:

**a. Brisbane Non-Profit Organization**

- b. Non-resident, Non-Profit Organization (Outside of Brisbane)
- c. School District, School, or School Affiliated Group (ex. PTO)
- d. Private Group, Club, or Organization

**What year did your organization begin serving the Brisbane community?** 1948

**How has your organization added value to the Brisbane community in the past?**

The Brisbane Chamber assisted small businesses throughout COVID with critical information about protocols and funding opportunities, partnered

with the City of Brisbane to distribute grants, prints Brisbane's only newspaper-The Luminary, gives college scholarships to students, partners with

Lipman on a job shadowing day, creates Holiday stars for residents, and sponsors the garden show. These are just a few of our programs.

**What is your organization's mission and/or purpose?**

The Brisbane Chamber of Commerce is non-profit 501(c)(6) organization created through a partnership of businesses, civic leaders, and residents working together to enhance Brisbane's economic landscape.

## EVENT DETAILS

(If you are requesting multiple days & times, please attach those details on a separate sheet of paper.)

**Name of Event:** 10/28: Midnight Madness: A Spooktacular Revue  
12/30 Event Name TBD

**Event Set-up Start Time:** 3pm

**Event Date (mm/dd/yy):** 10/28 and 12/30

**Event Start Time:** 6:30/7pm

**Event Day of Week:** Saturday

**Event End Time:** 9/9:30pm

**Event Location:** Mission Blue

**Describe what can be expected at this event?** (ex. Performance, Dinner, Activities, etc.)

On 10/28 we will be hosting a Halloween themed variety show featuring circus-style acts (contortionist, juggler, bubble blower etc) which will be MC'd by Leanne Borghesi. Seating will consist of cabaret-style tables and risers. Some performers will be Brisbane residents. On 12/30 we are celebrating the Chamber's 75th anniversary and Leanne Borghesi's 50th birthday with a benefit cabaret performance.

**Will there be any fundraising at this event?** Yes **If yes, what will the funds raised be used for?** Chamber & it's Scholarship fund

**Are there any admission fees for this event?** Yes **If yes, please list them here:** Tickets will range from about \$50-\$100 +/-

**If this event is NOT open to the general public, what are the restrictions for who may attend?** (ex. age, membership, residency, etc.)

Guests should be 13+ in age

100



## INDOOR FACILITY ACCESS REQUEST

I. Staff must be present to accommodate the use of any indoor facilities. The below requested times will be used to ensure staff will be available when you need to access the facility. (If you are not requesting indoor facility use, you may skip to the next section.)

Date of Facility Access (mm/dd/yy): 10/27 (room set up and rehearsal) Opening Time: TBD Closing Time: TBD  
Date of Facility Access (mm/dd/yy): 12/29 (room set up and rehearsal) Opening Time: TBD Closing Time: TBD  
Date of Facility Access (mm/dd/yy): \_\_\_\_\_ Opening Time: \_\_\_\_\_ Closing Time: \_\_\_\_\_

## EQUIPMENT USE REQUEST

If you would like to request any equipment for an **outdoor event**, please include those details below. (If your event is at one of our indoor facilities, you may indicate your equipment needs on the rental layout.)

Quantity:	Item:
_____	6ft Long Rectangle Tables
_____	Chairs
_____	10ft x 10ft Canopy/Pop-up Tent
_____	Weighted Sandbags

### Mission Blue Center ONLY

If your event will be at the Mission Blue Center, please indicate if you wish to request any of the equipment listed below.

Bluetooth Speaker? \_\_\_\_\_ with Microphone? \_\_\_\_\_  
Projector & Screen? \_\_\_\_\_  
\*Theatrical Lighting? Yes with \*Lighting Technician? Yes  
\*Theater Risers? Yes

\*Any additional fees associated with reservation of special equipment will be the responsibility of the applicant, and may require additional planning time.

## PERMITS

### Alcoholic Beverage Permit

Will alcoholic beverages (beer/wine) be sold at your event? Yes If yes, you must attach a copy of an [Alcoholic Beverage Permit](#)

\*Full Liquor Liability: If beer or wine is available for consumption and money is transacted in any form (i.e. for donation, for a ticket, for a meal, for entry to the event, for the beverage) then full liquor liability premiums are necessary.

### Food & Beverage Permits - Outdoor Events Only

Will any food or non-alcoholic beverages be sold at your event? \_\_\_\_\_ If yes, this permit is required [smchealth.org/food-program](http://smchealth.org/food-program)

### Traffic Permits

Will this event require any street or parking closures? No If yes, you must obtain a [Brisbane Encroachment Permit](#)

### Amplified Sound Permits - Outdoor Events Only

Do you wish to use amplified sound at this event? \_\_\_\_\_ If yes, you must submit an [Brisbane Amplified Sound Permit Application](#)

### Brisbane Business License

Do you intend to sell goods of any kind at your event? Yes If yes, you must have a valid [Brisbane Business License](#)

## ADDITIONAL SUPPORT

To request promotional support, please circle the specific areas you would like support with. (Please note: promotional support is not guaranteed. Any graphics or content for your event are expected to be provided by the applicant.)

a. Brisbane Signboards   b. Social Media   c. City Website   d. City Publications   Other: \_\_\_\_\_

## USE AGREEMENT & LIABILITY RELEASE

To the fullest extent allowed by law, I agree to indemnify and defend the City of Brisbane, its directors, officers, agents, employees and volunteers and hold them harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of the use or occupancy described in this application. I agree to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from the use or occupancy described in this application.

Applicant Signature  Date 8/21/23

## ADMINISTRATIVE SECTION

101

Facility Application? \_\_\_\_\_ Permit # \_\_\_\_\_ CC Report Due \_\_\_\_\_ CC Meeting Date: \_\_\_\_\_

**File Attachments for Item:**

J. Approve Excelsior Running Club's Event Co-sponsorship Application for a Half Marathon event



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** 9/7/2023

**From:** Sara Nahass, Recreation Coordinator  
Noreen Leek, Parks & Recreation Director

**Subject:** Application for Event Cosponsorship

### Community Goal/Result

Community Building & Fundraising

### Purpose

Promote cultural and social events that encourage community engagement and provide assistance to local non-profit organizations.

### Recommendation

Approve Excelsior Running Club's 5<sup>th</sup> Annual Star City San Bruno Mountain Half Marathon as a cosponsored event.

### Background

The Excelsior Running Club has promoted health & wellness in Brisbane through running since 2013. Their organization has received a permit from the County to use San Bruno Mountain trails for the majority of its Star City San Bruno Mountain Half Marathon (course map included as Attachment 3) on October 7<sup>th</sup>, 2023 between 7:00am and 2:00pm. The run will begin on Visitacion Avenue at 9:00am and will conclude on Quarry Road Trail near the park. It is anticipated that the fastest runners should be done by 10:30am and last of the runners will be done by approximately 2:00pm. Registration for the event is \$90/runner. A portion of the registration fee will support the San Mateo County Parks Department and San Bruno Mountain Watch.

### Discussion

The City will need to partially close a number of streets at the beginning of the event. This includes all of Visitacion Avenue from San Francisco to Mariposa (8:45am-9:15am), then the westbound lane only to Mendocino, Mendocino from Visitacion Avenue to Solano (8:45am-9:15am), from the top of the stairway at Humboldt turning left to San Mateo, then right on San Mateo, then left on Kings, right on Margaret, and right on Paul to the trailhead (9:00am-9:30am). Staff time from the Public Works team will be necessary to place public notices onsite prior and to conduct the closure itself on the day of the event. A permit for doing so will be routed by City staff in accordance with the City's policies for traffic encroachment permits. Event registration will take place on Old Quarry Road. The Club is also requesting support from the Public Works Department to place the American flags along Visitacion Avenue before the start of the race, and for "No Parking" signs to be placed in front of both stairway entrances at Huckleberry Ct. Finally, the Club is requesting to borrow tables and chairs from the P&R department.

The staffing needs of the City are for one Public Works employee to oversee the set-up of the lane closures, set-up American flags, and then oversee taking down the lane closures and removing the

American flags. This will require approximately 6 hours of labor. 2 police officers will also be needed in the area from 7:00am when the set-up starts until 10:00am when the traffic lanes are reopened.

Finally, the City will need to post public notices informing the community of the street closures and the impact the event will have on travel within the community. Given that this event will be taking place at the same time as the annual Day in the Park and Derby, City staff intend to advertise to the entire City and not just those who are located along the race route. This information will be shared on the City's social media accounts and in printed materials where possible.

### Fiscal Impact

Excelsior Running Club is requesting support from the City as summarized in the table below.

FINANCIAL IMPACT SUMMARY BASED ON APPLICATION		
Public Works Staff OT for set up/take down of flags on Visitation & street closures	Approximately 6 hours on OT @ \$52.50/hour = \$315	Requesting to be waived
Police Department support	2 police officers for 3 hours on OT @ \$81.56/hour = \$489.36	Requesting to be waived
Borrowing City Equipment (7 tables, 14 chairs)	Requesting to be waived	
Event Insurance	Already provided by Non-profit organization	
Promotional and Marketing Support	Waived	

### Attachments

1. Cosponsorship event application
2. Event Flyer
3. Course Map & written description – street monitoring
4. Insurance certificate

*Sara Nahass*

Sara Nahass, Recreation Coordinator

*Noreen Leek*

Noreen Leek, Parks & Recreation Director

*Clay Holstine*

Clay Holstine, City Manager



# CITY OF BRISBANE COSPONSORSHIP APPLICATION

This application must be submitted to the Parks & Recreation Department at least (90) working days prior to the requested event.  
 Phone: (415) 508-2140 | Email: brisbanerec@brisbaneca.org | Office: 50 Park Place, Brisbane, CA 94005

## APPLICANT INFORMATION

Name of Contact Person: Cliff Lentz Phone: 650-219-0293  
 Email: cliff.lentz@gmail.com  
 Name of Organization: Excelsior Running Club Organization Website: \_\_\_\_\_  
 Organization Address or P.O. Box: 311 Lexington Way, Burlingame, CA 94010

Circle ONE of the following descriptions below that best describes your organization:

- a. Brisbane Non-Profit Organization
- ☒ b. Non-resident, Non-Profit Organization (Outside of Brisbane)
- c. School District, School, or School Affiliated Group (ex. PTO)
- d. Private Group, Club, or Organization

What year did your organization begin serving the Brisbane community? 2013

How has your organization added value to the Brisbane community in the past?  
contributed financially to Brisbane organizations such as SB Mt. Watch and Brisbane Lions Club - promoted health and wellness through our races in the community

What is your organization's mission and/or purpose?  
to inspire people to be active through running

## EVENT DETAILS

(If you are requesting multiple days & times, please attach those details on a separate sheet of paper.)

Name of Event: Star City San Bruno Mt. Half Marathon Event Set-up Start Time: 7 AM  
 Event Date (mm/dd/yy): 10/7/23 Event Start Time: 9 AM  
 Event Day of Week: Sat Event End Time: 1 PM  
 Event Location: Quarry Rd

Describe what can be expected at this event? (ex. Performance, Dinner, Activities, etc.)  
people running in Brisbane and on SB Mt

Will there be any fundraising at this event? ☒ If yes, what will the funds raised be used for? El Caminos, Brisbane Lions  
 Are there any admission fees for this event? ☒ If yes, please list them here: \$90.00

If this event is NOT open to the general public, what are the restrictions for who may attend? (ex. age, membership, residency, etc.)  
the event is open to the public

## INDOOR FACILITY ACCESS REQUEST

C. J. If must be present to accommodate the use of any indoor facilities. The below requested times will be used to ensure staff will be available when you need to access the facility. (If you are not requesting indoor facility use, you may skip to the next section.)

Date of Facility Access (mm/dd/yy): \_\_\_\_\_ Opening Time: \_\_\_\_\_ Closing Time: \_\_\_\_\_  
Date of Facility Access (mm/dd/yy): \_\_\_\_\_ Opening Time: \_\_\_\_\_ Closing Time: \_\_\_\_\_  
Date of Facility Access (mm/dd/yy): \_\_\_\_\_ Opening Time: \_\_\_\_\_ Closing Time: \_\_\_\_\_

## EQUIPMENT USE REQUEST

If you would like to request any equipment for an outdoor event, please include those details below. (If your event is at one of our indoor facilities, you may indicate your equipment needs on the rental layout.)

Quantity:	Item:
7	6ft Long Rectangle Tables
14	Chairs
	10ft x 10ft Canopy/Pop-up Tent
	Weighted Sandbags

### Mission Blue Center ONLY

If your event will be at the Mission Blue Center, please indicate if you wish to request any of the equipment listed below.

Bluetooth Speaker? \_\_\_\_\_ with Microphone? \_\_\_\_\_  
Projector & Screen? \_\_\_\_\_  
\*Theatrical Lighting? \_\_\_\_\_ with \*Lighting Technician? \_\_\_\_\_  
\*Theater Risers? \_\_\_\_\_

\*Any additional fees associated with reservation of special equipment will be the responsibility of the applicant, and may require additional planning time.

## PERMITS

### Alcoholic Beverage Permit

Will alcoholic beverages (beer/wine) be sold at your event? no If yes, you must attach a copy of an Alcoholic Beverage Permit

\*Full Liquor Liability: If beer or wine is available for consumption and money is transacted in any form (i.e. for donation, for a ticket, for a meal, for entry to the event, for the beverage) then full liquor liability premiums are necessary.

### Food & Beverage Permits - Outdoor Events Only

Will any food or non-alcoholic beverages be sold at your event? no If yes, this permit is required smchealth.org/food-program

### Traffic Permits

Will this event require any street or parking closures? ☒ If yes, you must obtain a Brisbane Encroachment Permit

### Amplified Sound Permits - Outdoor Events Only

Do you wish to use amplified sound at this event? no If yes, you must submit an Brisbane Amplified Sound Permit Application

### Brisbane Business License

Do you intend to sell goods of any kind at your event? no If yes, you must have a valid Brisbane Business License

## ADDITIONAL SUPPORT

To request promotional support, please circle the specific areas you would like support with. (Please note: promotional support is not guaranteed. Any graphics or content for your event are expected to be provided by the applicant.)

a. Brisbane Signboards b. Social Media c. City Website d. City Publications Other: \_\_\_\_\_

## USE AGREEMENT & LIABILITY RELEASE

To the fullest extent allowed by law, I agree to indemnify and defend the City of Brisbane, its directors, officers, agents, employees and volunteers and hold them harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of the use or occupancy described in this application. I agree to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from the use or occupancy described in this application.

Applicant Signature \_\_\_\_\_

Date 8/25/23

## ADMINISTRATIVE SECTION

Facility/Application#: \_\_\_\_\_ Permit#: \_\_\_\_\_ (EC Report Due) \_\_\_\_\_ (CC Meeting Date) \_\_\_\_\_ Page 2/2





# SMILES AND MILES



**10.07.23**

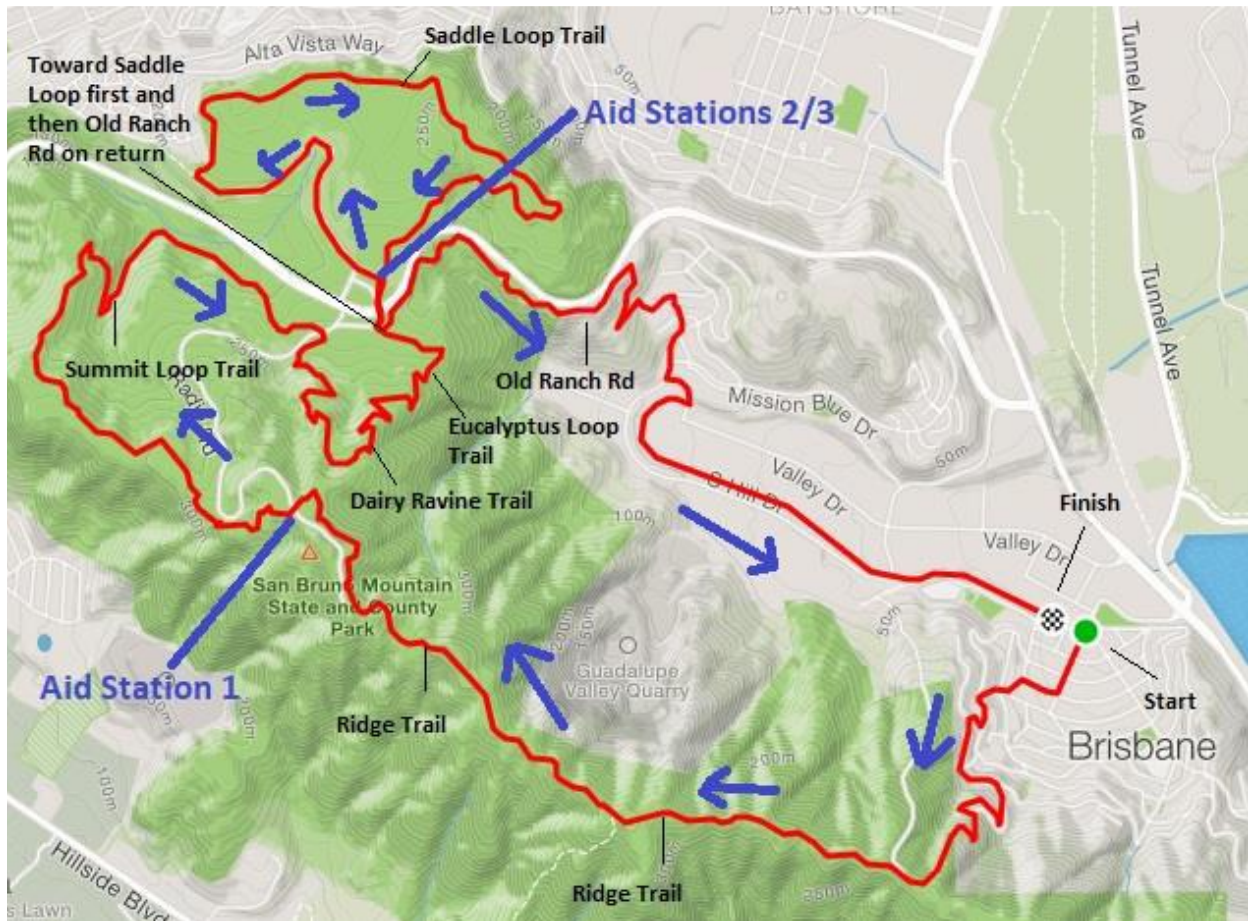
**9AM**



**STAR CITY SAN  
BRUNO MT  
HALF MARATHON**



## Course map & written description – street monitoring



## 2023 Star City San Bruno Mountain Half Marathon

### Additional Requests:

1. Place American flags on Visitation Ave
2. No parking signs for October 7<sup>th</sup>, 6AM-3PM in front of both stairway entrances at Huckleberry Ct.
3. Borrow 7 tables, 14 chairs from P&R for race registration near Quarry Park.

### Street Monitoring

- Race Central opens at 7:00 AM at open area below Quarry Road
- Course Monitor Captains (TBD) to get cones, flags and safety vests for volunteers.
- Lay out cones on right side of Mendocino, Humboldt, Kings at 7:30 AM.
- Lay out cones on right side of Mariposa, Solano and road to Lipman, next to Lipman, walkway down to Quarry Rd and over to ramp.
- At 8:30 AM take volunteers to half marathon monitoring locations, laying out cones on right side of Visitation from Mariposa.
  - o 7 Flaggers at half marathon locations: Visitation and Mariposa, Visitation and Mendocino, Mendocino and Solano, Sierra Pt at stairway, Humboldt at stairway, Trinity and Kings, Kings and Margaret.



- Half Marathon starts at 9:00 AM. Just prior to the start, cones will be laid down on Visitacion, angled to the right side of the street and the line of cones starting at Mariposa.
- After the last half marathon runner turns on to stairway, cones will be removed on Mendocino and Solano. Course monitor at stairway will walk to Solano and Mariposa.
- Around 9:30 AM, dispatch course monitor volunteers to the Ridge
  - o 4 Flaggers at the following locations: roadway crossing at Huckleberry stairway, top of stairway at Golden Aster, sidewalk on Golden Aster at trail, Old Ranch Road Trail and utility road junction.
- Approximately at 2 PM, the last half marathon runner should be on the Crocker Park Trail and heading towards the finish line.
- Once the last half marathon racer has been determined, course monitors will be relieved of duties when that runner passes their location. The course monitors will take away ribbons and cones in their area.

At the link, you will find a map and written description of the race course:

<https://starcityhalfmarathon.wordpress.com/course/>

For questions, please contact Cliff Lentz 650-219-0291 or Chikara Omine 415-269-1022.

J.	<b>CERTIFICATE OF INSURANCE</b>		<b>PRINT DATE:</b> 11/23/2022		
			<b>CERTIFICATE NUMBER:</b> 20221123943432		
<b>AGENCY:</b>					
Edgewood Partners Insurance Center 5909 Peachtree Dunwoody Road, Suite 800 Atlanta, GA 30328 678-324-3300 (Phone), 678-324-3303 (Fax)			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.		
<b>NAMED INSURED:</b>			<b>INSURERS AFFORDING COVERAGE:</b>		
USA Track & Field, Inc.                      Excelsior Running Club 130 East Washington Street, Suite 800 Indianapolis IN 46204			INSURER A: Accredited Surety and Casualty Company, Inc. NAIC# 26379 INSURER B: Allied World National Assurance Company NAIC# 19489		
<b>EVENT INFORMATION:</b>					
Star City San Bruno Mountain Half Marathon (10/7/2023 - 10/7/2023)					
<b>POLICY/COVERAGE INFORMATION:</b>					
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
<b>INS</b>	<b>TYPE OF INSURANCE:</b>	<b>POLICY NUMBER(S):</b>	<b>EFFECTIVE:</b>	<b>EXPIRES:</b>	<b>LIMITS:</b>
A	GENERAL LIABILITY				
	<input checked="" type="checkbox"/> Occurrence	1-TRE-IN-17-01338542-00	11/1/2022 12:01 AM	11/1/2023 12:01 AM	GENERAL AGGREGATE (Applies Per Event)                      \$4,000,000
	<input checked="" type="checkbox"/> Participant Legal Liability				EACH OCCURRENCE                      \$2,000,000
					DAMAGE TO RENTED PREMISES (Each Occ.)                      \$2,000,000
					MEDICAL EXPENSE (Any one person)                      EXCLUDED
					PERSONAL & ADV INJURY                      \$2,000,000
					PRODUCTS-COMP/OP AGG                      \$2,000,000
A	UMBRELLA/EXCESS LIABILITY				
	<input checked="" type="checkbox"/> Occurrence	1-TRE-IN-17-01338543-00	11/1/2022 12:01 AM	11/1/2023 12:01 AM	EACH OCCURRENCE                      \$3,000,000
					AGGREGATE                      \$3,000,000
B	OTHER				
	<input checked="" type="checkbox"/> EXCESS LIABILITY	0313-1301	11/1/2022 12:01 AM	11/1/2023 12:01 AM	EACH OCCURRENCE                      \$7,000,000
					AGGREGATE                      \$7,000,000
<b>DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS:</b>					
Coverage applies to USA Track & Field sanctioned events and registered practices, including any directly related activities, such as event set-up and tear-down, participant check-in and award ceremonies.					
The certificate holder is an additional insured per the following endorsement: Blanket Additional Insured (RSCG 03 03)					
The General Liability policy is primary and non-contributory with respect to the negligence of the Named Insureds (Form CG 20 01)					
The General Liability policy contains a blanket Waiver of Subrogation as required by contract per Waiver of Transfer of Rights of Recovery Against Others (Form CG 24 04).					
Excess policy follows form of underlying General Liability.					
<b>CERTIFICATE HOLDER:</b>			<b>NOTICE OF CANCELLATION:</b>		
City of Brisbane 50 Park Place Brisbane CA 94005			Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.		
			<b>AUTHORIZED REPRESENTATIVE:</b>		
					

**File Attachments for Item:**

K. Approve Sierra Point Yach Club's Event Co-sponsorship Application for the 2023 Regatta



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** 9/7/2023

**From:** Sara Nahass, Recreation Coordinator  
Noreen Leek, Parks & Recreation Director

**Subject:** Application for Event Cosponsorship

### Community Goal/Result

Community Building

### Purpose

Promote cultural and social events that encourage community engagement.

### Recommendation

Approve the Sierra Point Yacht Club's 2023 Regatta as a cosponsored event.

### Background

The Sierra Point Yacht Club was established in 1984 to promote social interaction among the membership and other yacht clubs, with the intent of encouraging safe, enjoyable pleasure-boating.

### Discussion

The Regatta is scheduled to be held at the Brisbane Marina on September 29<sup>th</sup> from 12:00-5:00pm. The event will be open to the public with no admission fees. The event will feature 2 live bands, food, drinks, games, and races. The Coast Guard will also do a search & rescue demonstration. The purpose of the event is to promote responsible boating and community engagement in Brisbane.

The City has been asked to supply 6 six-foot tables, 20 chairs, 10 pop-up tents and sandbags. Sierra Point Yacht Club has also requested to block the lower parking lot at 500 Sierra Point Way, to use sound amplifying equipment, anticipates more than 100 participants/spectators, and intends to allow for the sale and consumption of alcohol.

The staffing needs of the City are for one Public Works employee to set out "No Parking" signs and remove them after the event. One Police Officer will also be needed in the area from when the event begins at 12:00pm until its ends at 5:00pm. One Parks & Recreation employee will need to gather the requested equipment the day before the event, transport and set up the equipment at the requested set-up time of 9:00am, break down and transport the equipment after the event at 5:00pm, and unload equipment to their original locations.

### Fiscal Impact

Sierra Point Yacht Club is requesting support from the City as summarized in the table below.

## FINANCIAL IMPACT SUMMARY BASED ON APPLICATION

Parks & Recreation staff time	Approximately 10 hours of labor @ OT \$50/hour = \$500	Requesting to be waived
Borrowing City Equipment (6 tables, 20 chairs, 10 pop-up tents and sandbags)	Requesting to be waived	
Promotional and Marketing Support	Waived	
Public Works Staff OT for "No Parking" closures	Approximately 1 hour of OT @ \$52.50/hour = \$52.50	Requesting to be waived
Police Department support	1 police officer for 5 hours on OT @ \$81.56/hour = \$407.80	Requesting to be waived

### Attachments

1. Cosponsorship event application
2. Sound Amplification Permit
3. Encroachment Permit
2. Event Flyer

*Sara Nahass*

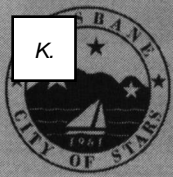
Sara Nahass, Recreation Coordinator

*Noreen Leek*

Noreen Leek, Parks & Recreation Director

*Clay Holstine*

Clay Holstine, City Manager



# CITY OF BRISBANE COSPONSORSHIP APPLICATION

This application must be submitted to the Parks & Recreation Department at least **(90) working days** prior to the requested event.

Phone: **(415) 508-2140** | Email: **brisbanerec@brisbaneca.org** | Office: **50 Park Place, Brisbane, CA 94005**

## APPLICANT INFORMATION

Name of Contact Person: E. Megan Chandler Phone: 415-730-7030  
Email: emchandler1227@gmail.com  
Name of Organization: SPYC Sierra Point Yacht Club Organization Website: www.sierrapointyc.org  
Organization Address or P.O. Box: 500 Sierra Point Parkway, Brisbane, CA. 94005

Circle **ONE** of the following descriptions below that best describes your organization:

- a. Brisbane Non-Profit Organization
- b. Non-resident, Non-Profit Organization (Outside of Brisbane)
- c. School District, School, or School Affiliated Group (ex. PTO)
- ☒ d. Private Group, Club, or Organization

What year did your organization begin serving the Brisbane community? 1984/1987

How has your organization added value to the Brisbane community in the past?

The Sierra Point Yacht Club

What is your organization's mission and/or purpose?

to promote responsible boating + community in Brisbane

## EVENT DETAILS

(If you are requesting multiple days & times, please attach those details on a separate sheet of paper.)

Name of Event: SPYC Regatta 2023

Event Set-up Start Time: 9am

Event Date (mm/dd/yy): 9/23/23

Event Start Time: 12 noon

Event Day of Week: Saturday

Event End Time: 5pm

Event Location: Sierra Point Yacht Club

Describe what can be expected at this event? (ex. Performance, Dinner, Activities, etc.)

2 live Bands, Food, libation, games, races, coast guard dingy search & rescue demonstration

Will there be any fundraising at this event? no If yes, what will the funds raised be used for?

Are there any admission fees for this event? no If yes, please list them here:

If this event is NOT open to the general public, what are the restrictions for who may attend? (ex. age, membership, residency, etc.)

open to general public

## INDOOR FACILITY ACCESS REQUEST

**K.** Staff must be present to accommodate the use of any indoor facilities. The below requested times will be used to ensure staff will be available when you need to access the facility. (If you are not requesting indoor facility use, you may skip to the next section.)

Date of Facility Access (mm/dd/yy): \_\_\_\_\_ Opening Time: \_\_\_\_\_ Closing Time: \_\_\_\_\_  
Date of Facility Access (mm/dd/yy): \_\_\_\_\_ Opening Time: \_\_\_\_\_ Closing Time: \_\_\_\_\_  
Date of Facility Access (mm/dd/yy): \_\_\_\_\_ Opening Time: \_\_\_\_\_ Closing Time: \_\_\_\_\_

## EQUIPMENT USE REQUEST

If you would like to request any equipment for an **outdoor event**, please include those details below. (If your event is at one of our indoor facilities, you may indicate your equipment needs on the rental layout.)

Quantity:	Item:
<u>6</u>	6ft Long Rectangle Tables
<u>20</u>	Chairs
<u>10</u>	10ft x 10ft Canopy/Pop-up Tent
<u>40</u>	Weighted Sandbags

### Mission Blue Center ONLY

If your event will be at the Mission Blue Center, please indicate if you wish to request any of the equipment listed below.

Bluetooth Speaker? \_\_\_\_\_ with Microphone? \_\_\_\_\_  
Projector & Screen? \_\_\_\_\_  
\*Theatrical Lighting? \_\_\_\_\_ with Lighting Technician? \_\_\_\_\_  
\*Theater Risers? \_\_\_\_\_

\*Any additional fees associated with reservation of special equipment will be the responsibility of the applicant, and may require additional planning time.

## PERMITS

### Alcoholic Beverage Permit

Will alcoholic beverages be served or sold at your event? yes If yes, you must attach a copy of an Alcoholic Beverage Permit

\*Full Liquor Liability: If beer or wine is available for consumption and money is transacted in any form (i.e. for donation, for a ticket, for a meal, for entry to the event, for the beverage) then full liquor liability premiums are necessary.

### Food & Beverage Permits - Outdoor Events Only

Will any food or non-alcoholic beverages be sold at your event? na If yes, this permit is required smchealth.org/food-program

### Traffic Permits

Will this event require any street or parking closures? no If yes, you must obtain a Brisbane Encroachment Permit

### Amplified Sound Permits - Outdoor Events Only

Do you wish to use amplified sound at this event? yes If yes, you must submit an Brisbane Amplified Sound Permit Application

already granted

## ADDITIONAL SUPPORT

To request promotional support, please circle the specific areas you would like support with. (Please note, promotional support is not guaranteed. Any graphics or content will need to be provided by the applicant.)

- ☒ a. Brisbane Signboards
- ☐ b. Social Media
- ☐ c. City Website
- ☐ d. City Publications

Other: \_\_\_\_\_

discussed with Carolyn Cheung

## USE AGREEMENT & LIABILITY RELEASE

To the fullest extent allowed by law, I agree to indemnify and defend the City of Brisbane, its directors, officers, agents, employees and volunteers and hold them harmless from and against any and all loss, liability, expense, claims, costs, suits, and damages, including attorneys' fees, arising out of the use or occupancy described in this application. I agree to waive all rights of subrogation against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from the use or occupancy described in this application.

Applicant Signature \_\_\_\_\_

Date \_\_\_\_\_

8/31/23

## ADMINISTRATIVE SECTION

115

Application? \_\_\_\_\_ Permit # \_\_\_\_\_ CC Report Due \_\_\_\_\_ CC Meeting Date: \_\_\_\_\_





August 18, 2023

Sarah FitzGerald  
117 Lake Street  
Brisbane, CA 94005  
[Asarahfitz@gmail.com](mailto:Asarahfitz@gmail.com)

Re: **SPYC Regatta Day, Authorization to Use Sound Amplifying Equipment  
(Permit No. 2023-AMP-5)**

Dear Ms. FitzGerald:

This letter is provided in response to your request to use sound amplifying equipment on Saturday, September 23rd, 2023 for the above referenced event, to be located on the Brisbane Marina property. Use of sound amplifying equipment is approved for this event based on your registration statement filed with the City, dated August 1, 2023, and subject to conditions of approval, consistent with Brisbane Municipal Code (BMC) Chapter 8.28. Both the registration statement and conditions of approval are attached.

If you have any questions regarding this matter, please call me at 415-527-7801, or email me at [kjohnson@brisbaneca.org](mailto:kjohnson@brisbaneca.org)

Sincerely,

Ken Johnson  
Senior Planner

Attachments

1. Conditions of Approval
2. Registration Statement

cc: Clay Holstine, City Manager  
John A. Swiecki, Community Development Director  
Mario Garcia, Police Commander  
Randy Breault, Public Works Director  
Andrew Rehberg, Harbormaster



**SPYC Regatta Day at the Brisbane Marina Parking Lot  
September 23, 2023  
Authorization to Use Sound Amplifying Equipment  
Permit No 2023-AMP-5  
Conditions of Approval**

Approval is granted for the referenced event, with the following conditions of approval:

1. An encroachment permit shall be obtained from the Dept. of Public Works to conduct the event on City property. This is for use of the parking lot east of the Sierra Point Yacht Club, which is on City property.
2. The event is a non-profit event with no admission being charged, as characterized by the applicant, and has been determined by the Planning Director to be for “noncommercial” purposes. See Brisbane Municipal Code Section 8.28.070.B.4, BMC Section 8.28.070.F.2, and BMC Section 8.28.020.B & G.
3. The operator shall have a copy of this approval and the encroachment permit on-site during the event.
4. The hours of operation of the equipment are allowed between **Noon and 5 pm on Saturday, September 23, 2023**, as requested by the applicant. Modification to these hours must be requested at least 72 hours in advance of the event and in writing to the Planning Director.
5. The amplified sound shall not exceed 83 dBA within 25 feet of the source, per BMC Sections 8.28.070.G and 8.28.060.
6. In addition to condition #5, the volume of sound shall be so controlled that the sound will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to reasonable persons of normal sensitivity within the area of audibility.
7. Only human speech and music may be amplified.
8. The owner/operator of the equipment will be Michael Chandler, 117 Lake Street, Brisbane, CA 94005 and he may be reached by phone at (720) 641-1595. If there is any substitution, written notice with new contact information shall be provided to the City Planning Dept. in writing, in advance of the event.



**City of Brisbane  
Community Development Dept.  
50 Park Place  
Brisbane, CA 94005  
(415) 508-2120**

## **Human Speech and Music Outdoor Amplified Sound Registration Form/Request**

➤ **ELECTRONIC SUBMITTAL REQUIRED.** PLEASE SUBMIT THIS FORM WITH YOUR [PLANNING APPLICATION](#) AS A PDF.

The City of Brisbane requires that a registration statement be filed for review and approval by the Planning Director at least 15 days prior to the event where an outdoor loudspeaker or other sound-amplifying equipment would be used. The Amplified Sound provisions are found in Brisbane Municipal Code (BMC) Chapter 8.28.070 and can be referenced from the City's website at <https://brisbaneca.org/brisbane-municipal-code>. This form and any required supplemental materials, to be attached with this form, shall serve as the registration statement.

A copy of this form, as approved, along with any conditions of approval shall be kept on site during the event where amplified sound is to occur and made available to the City upon request. Additional permits or City authorizations may also be required prior to holding an event where amplified sound would occur. Contact the City well in advance of your intended event to determine whether other approvals may also be required or if additional information is required for this registration statement. Insufficient information on this statement or other required approvals may extend the processing time.

### **GENERAL INFORMATION**

Name of Event SPYC Regatta Day

Name of Applicant (First Name, Last Name) Sarah FitzGerald

Mailing Address (Number, Street, Apt/Unit, City, State, Zip)

119 San Benito Road Brisbane CA 94005

Email ASarahFitz@gmail.com

Business Phone \_\_\_\_\_ Mobile Phone 415 412 7510 Fax \_\_\_\_\_

Business Organization Name SPYC

#### **Prescreening Questions:**

Is the amplification equipment for: ☒ Human speech ☒ Music ☐ Other  
(If "Other", stop and contact the Community Development Dept.)

Will the activity take place within 200 feet of a church, school or hospital? ☐ Yes ☒ No  
(If "Yes", stop and contact the Community Development Dept.)

Are you applying on behalf of another person, organization, or company responsible for the event (i.e., the Event Sponsor)? ☐ Yes ☒ No

If yes, provide Contact Name, Company/Organization, Address, Email, Business Phone, Mobile Phone

Business License copy is attached ☒ Yes If not, indicate reason SPYC  
(If business license application is not yet in process, contact the Finance Dept. for business license application information, at 415- 508-2150.)

Amplified Sound Dates: 9 / 23 / 2023 Hours 12 A.M./P.M. to 5 A.M./P.M.  
     /      /      Hours      A.M./P.M. to      A.M./P.M.  
     /      /      Hours      A.M./P.M. to      A.M./P.M.

Expected number of Attendees 120

500 Sierra Point Parkway, Brisbane CA 94005

Full Name (First Name, Last Name) Michael Chandler

Mobile phone 720 641 1595 Business phone \_\_\_\_\_

### Sound Amplifying Equipment Band amps and speakers

Maximum Power Output (watts) 1000 watts

(Note that noise emanating from sound amplifying equipment shall not exceed 15 dBA above the local ambient, except that where the event is to be in a public park, the noise level shall not exceed 83 dBA at a distance of 25 feet from the source, or 86 dBA at the park's edge.)

The vehicle make, model and license, if a sound truck is to be used

If the amplification equipment is to be vehicle mounted, what measures are to be employed to prevent the equipment from being a detriment to traffic safety?

How will the sound equipment and pedestrian movement around it be controlled such that it would not constitute a detriment to traffic safety? Show on Site Map, if needed.

**Area is blocked to traffic for the event**

I understand that the volume of sound shall be so controlled that it will not be unreasonably loud, raucous, jarring, disturbing or a nuisance to reasonable persons of normal sensitivity within the area of audibility.

(Applicant's Initials) SF

**I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.  
I UNDERSTAND THAT ANY FALSE OR INCOMPLETE  
INFORMATION PROVIDED BY ME, RELATIVE TO THIS APPLICATION, MAY BE CONSIDERED  
CAUSE TO EITHER DENY THE REQUESTED PERMIT OR REVOKE THE PERMIT THAT IS GRANTED.**

Please note that this document is a public record. Do not include contact information that you wish to keep private or confidential.

Signatures and dates required below:

Sarah FitzGerald

PRINTED NAME/SIGNATURE OF APPLICANT

8 1 2023

DATE

Encroachment Permit Requ

PRINTED NAME/SIGNATURE OF PROPERTY OWNER

DATE

(Note; If proposed on City property [i.e.: city park or public right-of-way], contact the City Engineer or Parks Dept. for use approvals.)

**To be completed by City:**

APPROVED BY:

Ken Johnson



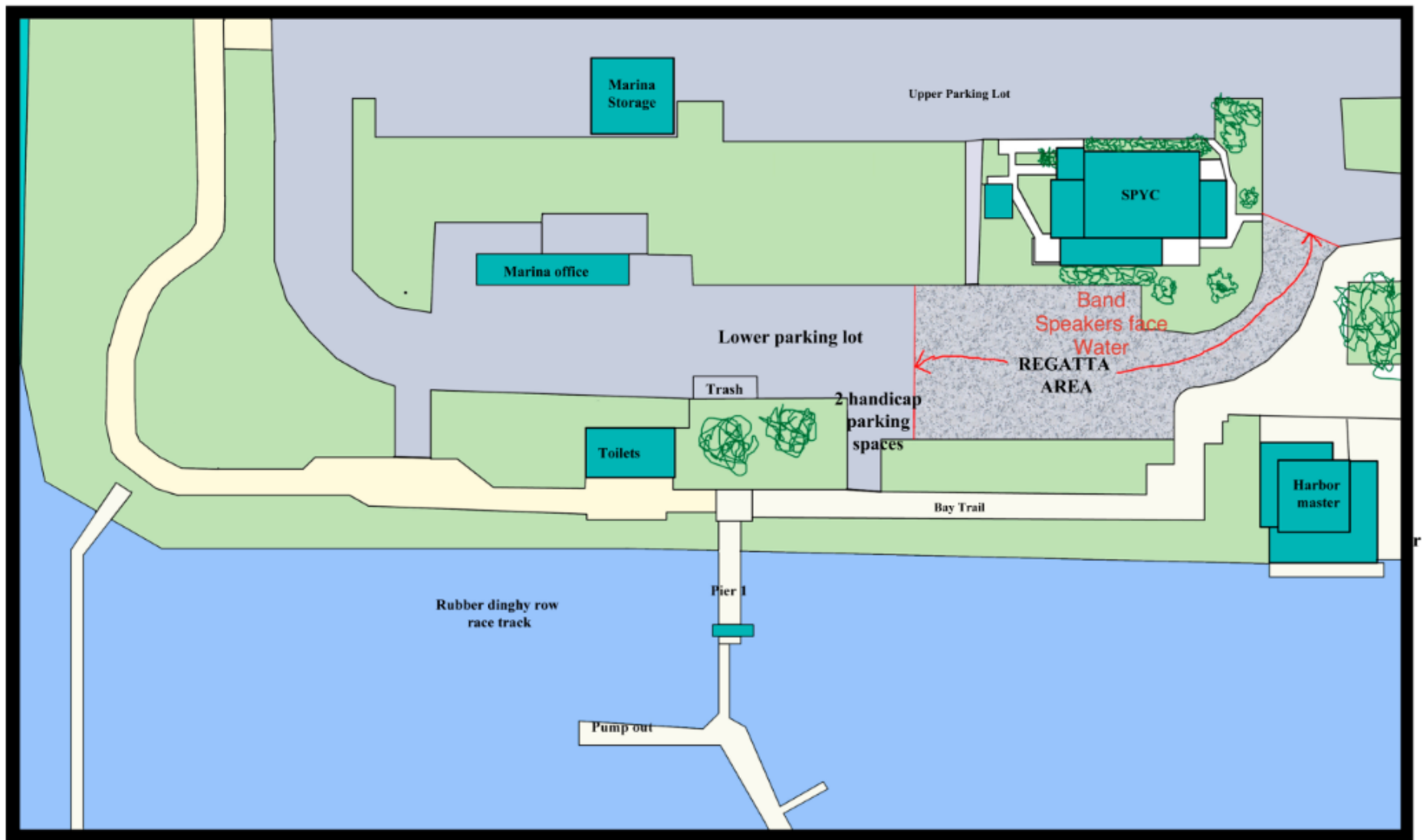
Senior Planner

PRINTED NAME / SIGNATURE / TITLE

8/18/23

DATE

CONDITIONS OF APPROVAL: Attached



**REGATTA DAY  
MARINA SKETCH PLAN**


**ENCROACHMENT PERMIT  
(TRAFFIC)**

DEPARTMENT OF PUBLIC WORKS  
50 PARK PLACE  
BRISBANE, CA 94005  
PHONE (415) 508-2130  
**INSPECTOR: 415.760.3053**

DATE: 23  
PROJECT LOCATION: 500 Sierra Point Pkwy  
PERMIT NO. TCP- 2023-08-22-01

**ENCROACHMENT PERMIT APPLICATION (TRAFFIC)**

(SEE BRISBANE MUNICIPAL CODE SECTION 12.04 FOR APPLICATION PACKET REQUIREMENTS)

THIS PERMIT IS NOT VALID UNTIL SIGNED BY THE CITY OF BRISBANE

APPLICANT NAME	<b>Sarah FitzGerald</b>	CONTRACTOR NAME	
COMPANY	<b>Sierra Point Yacht Club</b>	COMPANY	
ADDRESS	<b>119 San Benito Road</b>	ADDRESS	
	<b>Brisbane</b>		
TELEPHONE	<b>415 412 7510</b>	TELEPHONE	
TELEPHONE		24 HOUR TELEPHONE	

Project related to current Building Permit: ☐ YES ☒ NO If YES, Building Permit No.: \_\_\_\_\_  
 Project related to current Planning application: ☐ YES ☒ NO If YES, Planning App. No.: \_\_\_\_\_  
 Project related to current Encroachment Permit: ☐ YES ☒ NO If YES, Permit Date: \_\_\_\_\_

**APPLICATION IS HEREBY MADE TO:**

WORK IN: ☐ STREET ☐ SIDEWALK ☐ PLANTER STRIP ☐ MANHOLES ☒ OTHER - DESCRIBE BELOW

PURPOSE: ☒ BLOCK PARKING ☐ BLOCK SIDEWALK ☐ PLACE DUMPSTER ☐ CLOSE LANE OF TRAFFIC

- ☐ CLOSE SAN FRANCISCO AVENUE NEAR PARK FOR CAR WASH, ETC. (REQUIRES P & R CLEARANCE)  
☒ UTILIZE ANY PORTION OF SHARED USE PARKING AT SIERRA POINT (REQUIRES HARBORMASTER CLEARANCE)  
☒ USE OF SOUND AMPLIFYING EQUIPMENT (REQUIRES PLANNING DIRECTOR REVIEW PER BMC 8.28.070)  
☒ MORE THAN 100 PARTICIPANTS/SPECTATORS ANTICIPATED (REQUIRES BRISBANE POLICE DEPARTMENT CLEARANCE)  
☐ RETAIL SALES OF ANY KIND OR ANY SOLICITATION IS PROPOSED (REQUIRES BRISBANE POLICE DEPARTMENT CLEARANCE)  
☒ SALE AND/OR CONSUMPTION OF ALCOHOL IN PUBLIC IS REQUESTED (REQUIRES BRISBANE POLICE DEPARTMENT CLEARANCE)

**AND OTHERWISE ENCROACH BY:**

Hold an event in lower parking lot. 500 Sierra Point Pkwy

PER ☐ PLANS ☒ DIAGRAM

ESTIMATED START DATE: 9 23 23 ESTIMATED COMPLETION DATE: 9 23 23 WORKING HOURS REQUESTED: 9 - 8

I HEREBY AGREE TO ACCEPT AND ABIDE BY THE GENERAL ENCROACHMENT PERMIT PROVISIONS; THE CONDITIONS OF APPROVAL LISTED ON THIS PERMIT AND CHAPTER 12.04 OF THE BRISBANE MUNICIPAL CODE.

PERMITEE: [Signature] DATE: 7 31 22  
 TITLE: \_\_\_\_\_ COMPANY: SPYC

PARKS & RECREATION CLEARANCE FOR SAN FRANCISCO AVENUE CLOSURE ☐ APPROVED ☐ DENIED  
 DATE: \_\_\_\_\_ BY: \_\_\_\_\_  
 MARINA CLEARANCE FOR SHARED USE PARKING AT SIERRA POINT ☐ APPROVED ☐ DENIED  
 DATE: \_\_\_\_\_ BY: \_\_\_\_\_  
 BRISBANE POLICE DEPARTMENT CLEARANCE ☒ APPROVED ☐ DENIED Mario Garcia  
 DATE: 07/18/2023 BY: \_\_\_\_\_

THIS PERMIT IS TO BE STRICTLY CONSTRUED AND NO WORK OTHER THAN THAT SPECIFICALLY MENTIONED ABOVE IS AUTHORIZED HEREBY. PERMIT EXPIRES IN 90 CALENDAR DAYS IF WORK IS NOT STARTED. FIELDS BELOW FOR CITY USE ONLY.

DATE GRANTED: 8/22/23 BY: [Signature]

DATE EXPIRES: 9/23/23 DATE EXTENDED BY: \_\_\_\_\_ DATE EXTENDED BY: \_\_\_\_\_

DATE WORK COMPLETED \_\_\_\_\_

FINAL INSPECTION: \_\_\_\_\_ DATE: \_\_\_\_\_ INSPECTED BY: \_\_\_\_\_

CC: Police Department, Fire Department, Public Works Inspector, Recreation Department, Marina

## **GENERAL TRAFFIC PERMIT PROVISIONS**

### 1. TRAFFIC CONTROL PLANS

#### All City Highways

No work will be performed during other than normal work hours of 8:00 a.m. to 5:00 p.m. Monday through Friday. For work hours other than specified, a special request in writing must be submitted for approval and the appropriate fees will be collected.

No work will be done on the weekend without a special weekend permit issued by the Director of Public Works/City Engineer.

Contractor's traffic control plan shall provide two-way traffic on all two-way streets at all times. If required to maintain two-way traffic, contractor shall provide flaggers with radios at each end of construction detour.

"Standard" plans may be used when the activity site is consistent with typical work zone layouts shown in the latest edition of the Work Area Traffic Control Handbook or with typical applications shown in the latest edition of the California Manual for Uniform Traffic Control Devices.

Dependent on the location of the work, the City may require the submittal of typical plans with site-specific details including street names, existing traffic control signals/devices, intersections, driveways, etc.

Advance warning signs for parking restrictions and lane closures/detours shall be placed 72 hours in advance of implementing traffic control.

#### Highways with Restricted Work Hours (work is permitted only between 9 AM and 4 PM)

No work, traffic control, lane closures, or traffic detours will be allowed within traffic lanes of the following highways before 9:00 a.m. or after 4:00 p.m.:

Bayshore Boulevard  
Guadalupe Canyon Parkway  
Valley Drive  
North Hill Drive  
Tunnel Avenue  
Lagoon Way  
Sierra Point Parkway

#### Highways with Designated Class I, II, or IV Bike Lanes

Traffic control plans that propose closing all or a portion of the above bike lanes may not utilize W16-1 (Share the Road) and W11-1 (bicycle graphic) at speeds > 35 MPH.

When the total available travelway outside the road closure is  $\geq 15'$  in width, then the TCP may implement a speed reduction to 35 MPH and utilize the W16-1 and W11-1.

When the total available travelway outside the road closure is  $\geq 13'$  in width, then the TCP may implement a speed reduction to 25 MPH and utilize the W16-1 and W11-1.

When the total available travelway outside the road closure is < 13' in width, the TCP shall implement a bicycle detour plan.

Where the existing bike lanes include a rumble strip section, the width of that section may not be counted towards "total available travelway".

Restricted Conditions (TCP must be prepared by a licensed professional)

Traffic control plans for the following highways and for the listed conditions shall be signed and stamped plans prepared by a California licensed civil engineer or traffic engineer:

Bayshore Boulevard  
Guadalupe Canyon Parkway  
Valley Drive  
Lagoon Way  
Sierra Point Parkway

Night Work  
Full Road Closure

2. City reserves the right to adjust or require additional traffic control measures if in the City Engineer's sole judgment such adjustment or additional measures are necessary.
3. Construction noise limitations shall be as specified in BMC 8.28.60 A and 8.28.60 B.
4. All Contractors and subcontractors shall obtain a City of Brisbane business license prior to performing any work within the City.
5. Staging, including the storage of equipment and stockpiling of materials, shall not be allowed within the public right-of-way. Upon demand of City, Permittee shall provide written proof of permission to utilize private property within City limits for staging.
6. Construction equipment will be allowed to transit the public right-of-way with proper traffic control, including flagging, in order to access the jobsite. Permittee shall provide proper safety measures at all times.
7. Trucks delivering materials shall not block public traffic at any time except for deliveries incorporated into an approved traffic control plan.
8. Only non-permanent markings are permitted to be placed on city rights-of-way. Depending on the nature of the permitted activity, the applicant may be required to provide a \$1500 deposit for street cleaning and/or removal of markings. The permittee shall promptly cause all markings in the public right-of-way to be removed after the approved activity, or will forfeit the deposit.
9. All work shall be done in conformance with the approved plans.
10. This permit shall be kept on the premises at all times.

**CONDITIONS OF APPROVAL**



# Sierra Point Yacht Club

is pleased to invite you to

# REGATTA 23

FOOD, LIVE MUSIC  
TOURNAMENT of DINGHIES  
FUN & GAMES

Brisbane Marina  
Saturday Sept 23rd  
12 till 5

Cruise ins welcome

Slip Info Contact  
Harbormaster : Andrew Rehberg  
(650) 583-6975

SPYC Fleet Captain : Ron Davis  
(415) 846 3077

**File Attachments for Item:**

L. To Appoint Director of Public Works Randy Breault as Representative of the City's Water System to BAWSCA and RFA



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023

**From:** City Manager

**Subject:** Bay Area Water Supply & Conservation Agency (BAWSCA) and Bay Area Regional Water System Financing Authority (RFA) Appointments

**Community Goal/Result** Safe Community

**Purpose** To appoint a representative for the City's water system to BAWSCA and RFA.

### Recommendation

1. Appoint Director of Public Works Randy Breault to represent the City of Brisbane as a member of the BAWSCA and RFA Board of Directors for a four-year term (July 1, 2023 – June 30, 2027).
2. Direct the City Clerk to provide the BAWSCA office with a record of the Council's action making the appointments.

### Background

The attached letter addressed to Mayor Davis identifies the issues associated with the recommended actions.

Former Councilmember Richardson (now, Ms. Wood) was appointed to represent the City of Brisbane in 2012 when Councilmember Bologoff's term on the Council ended. As Ms. Wood has sold her home in Brisbane, she no longer meets the BAWSCA requirement of being a resident of the service area. Accordingly, she has submitted her resignation from representing the City with an effective date of May 19, 2023.

### Discussion

As the Council's Thursday night meeting schedule conflicts with the six annual BAWSCA meetings, appointing a Councilmember to this board is not a viable option. Public Works Director Breault has represented the Guadalupe Valley Municipal Improvement District (GVMID) on the BAWSCA board since its inception in 2003.

BAWSCA's legal counsel was asked to offer an opinion as to whether the same person can serve as BAWSCA board member for two agencies (i.e., the City of Brisbane and GVMID). In short, the response was, "We have found no legal authority prohibiting the same person from simultaneously representing both jurisdictions."

### Fiscal Impact

None as a direct result of the actions recommended herein.

**Measure of Success**

Continued representation on the BAWSCA and RFA Boards, which strive to ensure the following three goals are met with regards to their member agencies' drinking water; a reliable supply, high quality water, and a fair price for the water.

**Attachments**

BAWSCA 1/26/23 letter addressed to Mayor Davis



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Clayton L. Holstine  
City Manager



January 26, 2023

The Hon. Madison Davis, Mayor  
City of Brisbane  
50 Park Place  
Brisbane, CA 94005

**Subject: Appointment of a Director to the Boards of the Bay Area Water Supply & Conservation Agency and the Bay Area Regional Water System Financing Authority**

Dear Mayor Davis,

The four-year term of Sepi Wood on the board of directors of the Bay Area Water Supply & Conservation Agency (BAWSCA) will end on June 30, 2023, as will her term on the Bay Area Regional Water System Financing Authority (RFA). Action by your Council must be taken promptly.

The enabling acts for both special districts allow the city to reappoint its director for an unlimited number of terms or to appoint a new director at the end of each term. The appointment will be for a four-year term. While BAWSCA and RFA are special districts, they are not a Joint Powers Authority (JPA); therefore, the term and duty is independent of the appointee's home agency. Hence, whoever is appointed will have a term that ends on June 30, 2027.

The enabling acts for both special districts require that a vacancy on their boards be filled no later than 90 days from the date the vacancy occurs. However, we encourage your city to make the appointments before June 30, effective July 1, 2023, so that a quorum of both boards can be ensured.

**Statutory qualifications:**

- The appointee must be a resident of, and a registered voter in, the City.
- The appointee may, but need not, be a member of your City Council.

**Mechanics of the appointment process:**

- The appointments must be made at a public meeting of the City Council and be properly agendized.
- The appointments must be made by action of the full City Council, rather than by unilateral action of the Mayor.
- The appointments do not need to be memorialized in a resolution; a motion duly passed and recorded in the minutes of the meeting is sufficient.
- A copy of the record of the council actions making the appointment should be sent to BAWSCA. The oaths of office must be administered prior to the appointee's first meeting as a director on the BAWSCA and RFA Boards.

Madison Davis, Mayor  
January 26, 2023  
Page 2 of 2

The two questions most frequently asked about an appointment are:

- Should the appointee be an elected member of the appointing agency's governing board?
- Should the same person be appointed to the boards of both agencies?

Both of these are matters of policy left entirely to the discretion of your council. I offer the following observations, based on BAWSCA's experience.

- The great majority of cities and districts which are participants in BAWSCA and the RFA do select a member of their governing body to serve on the BAWSCA and RFA boards.

One advantage of appointing a currently serving or former elected member of your council to the board is the stature that his or her presence gives BAWSCA in its dealings with San Francisco, regulatory agencies and legislators. Another is the familiarity and experience the appointee already has in addressing policy matters for the City. The governing body of each individual agency is, of course, in the best position to evaluate these, and other relevant considerations.

- With no exceptions, cities and districts have appointed the same individual to both the BAWSCA and RFA boards.

Appointing one person on both boards offers an advantage because, although the two special districts have distinct roles, they are closely related. The familiarity with the issues gained through service on one board will be useful in participating on the other. Additionally, having the same person appointed to both boards assure greater continuity.

Please see that your council places this matter on an agenda for action by the end of June 30, 2023. I may be reached at (650) 349-3000 or [nsandkulla@bawasca.org](mailto:nsandkulla@bawasca.org) if you have any questions.

Sincerely,



Nicole Sandkulla  
Chief Executive Officer/General Manager

cc via email:

Sepi Wood, BAWSCA Board Member  
Randy Breault, BAWSCA Water Management Representative  
Jerry Flanagan, BAWSCA Water Management Representative

**File Attachments for Item:**

M. Receive presentation by C/CAG staff and Consider Authorizing the City Manager to sign a Funding Agreement for the Initial Installation of Conduit and Fiber Optic Liners in Bayshore Blvd





## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023  
**From:** Director of Public Works/City Engineer  
**Subject:** Consider Language for Funding Agreement with C/CAG

### Community Goal/Result

Safe Community

### Purpose

To consider alternative language proposed by the City/County Association of Governments of San Mateo County (C/CAG) to be included in a funding agreement between C/CAG and the City for the initial installation of conduit and fiber optic lines in Bayshore Boulevard

### Recommendation

Receive presentation by C/CAG staff and consider authorizing the City Manager to sign a funding agreement.

### Background

At its 6/29/23 regularly scheduled meeting, Council received a presentation from staff requesting authority for the City Manager to sign a funding agreement with C/CAG for installation of conduits and fiber optics, and to also sign a bill of sale agreement with a contractor for the installation of these items.

As noted by staff, the intent of the funding agreement was for C/CAG to pay the full installed cost of the conduit and fiber install, with the expectation of future installation of components of an intelligent transportation system (ITS) to guide overflow traffic winding through Brisbane during freeway closures. The Smart Corridor Project would include wayfinding changeable message signs (CMS) located at critical decision points for drivers.

Council expressed significant concerns over the placement and operating scenarios of the CMS and directed the City Attorney to place language in the funding agreement that clarified the city had no duty to allow the future installation of the CMS.

### Discussion

To comply with City Council direction, the City Attorney proposed this language to C/CAG:



4. → **Trailblazer/arterial Dynamic Message Signs.** The installation of the fiber in the conduits will facilitate the installation of trailblazer/arterial dynamic message signs (“Message Signs” within the City limits of Brisbane. Prior to the installation of any Message Signs, City shall in its sole discretion determine if such Message Signs are to be installed within the City limits and, if so, their location, size, and all operating features. Nothing in this Agreement shall require the City to allow the Message Signs to be installed within the City limits.¶

As the eventual installation of CMS is integral to the Smart Corridor project, and to the purpose of the funding source from which the grant money for the installation of conduit and fiber is obtained, C/CAG staff proposed the following language:

4. → **Trailblazer/arterial Dynamic Message Signs.** The installation of the fiber in the conduits will facilitate the installation of trailblazer/arterial dynamic message signs (“Message Signs” within the City limits of Brisbane. The parties acknowledge the primary purposes of the message signs are to display information about traffic conditions, assist with incident management, and broadcast safety and emergency messages. The signs are an integral component of the Project. The parties will coordinate regarding the installation of signs, their locations, sizes, and all operating features.¶

C/CAG will present to Council the current plan for future locations of CMS, the available sizes of CMS that might be installed as part of the ITS, and their understanding of the additional benefits to the City of Brisbane and its residents as a result of obtaining filled fiber optic conduit the entire length of Bayshore at no cost to the City.

### Fiscal Impact

Under the Funding Agreement between the City and C/CAG concerning the Smart Corridor Extension Project, C/CAG is the source of the funds (through Local Measure M funds) for the purchase of conduit and fiber and the installation of fiber in the conduit, with C/CAG reimbursing the City as the City receives and C/CAG approves invoices from the contractor (Intermountain Infrastructure Group). In the proposed Funding Agreement Council reviewed on 6/29/23, unless the Funding Agreement was amended to provide a larger number, C/CAG’s funding commitment to the City was capped. Council was concerned that because contractors on these types of projects may encounter differing site conditions, supply chain issues, or construction delays—all of which could lead to claims for additional money—the City was at risk of being solely responsible for such costs over the capped amount. Accordingly, Council directed staff to propose revisions to that portion of the Agreement to eliminate or reduce that risk to the City.

Just as the City does not want to be solely responsible for costs above the capped amount, C/CAG understandably does not want to agree that, regardless of the reasons, it will be responsible for costs above the capped amount. Staff proposes to resolve this conundrum as follows.

Neither party will authorize the contractor to purchase and install fiber in the conduit the cost of which exceeds the capped amount (\$1,156,949) unless a funding source for that purpose is secured and the Funding Agreement amended. If either party does provide such authorization without the other party's agreement, then if a funding source cannot be secured, the authorizing party will be responsible for the additional costs.

If the contractor without authorization purchases and/or installs fiber in the conduit the cost of which exceeds the capped amount, files a claim for the additional cost that the parties contest, and prevails through arbitration or other legal proceedings, C/CAG will use its best efforts to secure additional funding to satisfy the claim. If those efforts are not successful, however, the City and C/CAG will meet and confer in good faith to determine how to allocate the additional costs between them.

Assuming the City itself has not authorized the contractor to incur additional costs without an additional funding source identified, these revisions do not eliminate entirely the possibility that the City may have some financial responsibility for costs above the capped amount but substantially reduce the risk. Moreover, the revisions make clear that if additional funding is needed to satisfy a claim, C/CAG will use its best efforts to secure such funding.

The complete revised language regarding funding and payment is attached to this report. Staff is satisfied that these revisions sufficiently address Council's concerns about this portion of the Funding Agreement and recommend that the attached language be incorporated into the Agreement. C/CAG has approved these revisions and joins in the recommendation.

**Measure of Success** - Unchanged from 6/29/23 report.

#### Attachments

1. C/CAG Provision of Funding and Method of Payment language
2. 6/29/23 staff report to Brisbane City Council

*R.L. Breault*

---

Randy Breault, Public Works Director

---

Clay Holstine, City Manager

***C/CAG Provision of Funding and Method of Payment.*** *C/CAG shall reimburse the City for the purchase of conduits and for the installation of fiber in those conduits. At the time of the execution of this Agreement, the purchase price of the conduits and the installation of fiber in those conduits is \$1,156,949. The parties recognize that due to a variety of factors including, but not limited to, differing site conditions, supply chain issues and construction delays, the cost to purchase and/or install fiber in the conduits may exceed \$1,156,949. Except as provided in this section, in no event shall C/CAG's total funding commitment under this Agreement exceed \$1,156,949 without an amendment to this Agreement as provided in Section 13.*

*The City shall submit an invoice reflecting the purchase price of the conduits, accompanied by documentation showing the boring and trenching footages, as well as the locations of the conduits. Upon receipt and approval of the invoices and accompanying documentation, which approval shall not be unreasonably withheld, C/CAG shall pay the amount claimed under invoice, up to the maximum amount available under this Agreement, within 30 days of C/CAG's approval of the invoice. Neither City nor C/CAG shall authorize Intermountain to purchase conduit or install fiber in the conduits, the cost of which exceeds \$1,156,949, without first entering into an amendment to this Agreement that includes additional funding. If either party becomes aware that Intermountain intends to make, or has made, a request to purchase conduit and/or install fiber in the conduits, the cost of which will exceed \$1,156,949, that party will notify the other party within five business days. If either party becomes aware that without both parties' authorization Intermountain has purchased conduit and/or installed fiber in the conduits, the cost of which exceeds \$1,156,949, that party will notify the other party within five business days. If either party, without the other party's authorization, has authorized Intermountain to purchase conduit and/or install fiber in the conduits, the cost of which exceeds \$1,156,949, that authorizing party shall be responsible for such costs. If Intermountain's costs to purchase conduit and/or install fiber in the conduits exceed \$1,156,949, and the parties have not entered into an amendment to this Agreement that includes additional funding but, through arbitration or other legal proceedings, Intermountain's claim for costs in excess of \$1,156,949 is upheld, C/CAG shall use its best efforts to secure additional funding for such costs. If C/CAG is not successful in securing such additional funding, City and C/CAG shall meet and confer in good faith to determine how to allocate such costs between them.*



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** June 29, 2023  
**From:** Director of Public Works/City Engineer  
**Subject:** Authorize City Manager to Sign Agreements for Funding and for Purchase and Installation of Fiber Optic Facilities

### **Community Goal/Result** - Safe Community

#### **Purpose**

The purpose of the recommended action is to grant the City Manager authority to execute a funding agreement for C/CAG to pay for fiber optic facilities, and a purchase and installation agreement for fiber optic facilities.

#### **Recommendation**

Authorize the City Manager to sign two agreements on the city's behalf:

1. A funding agreement between the City/County Association of Governments of San Mateo County and the City of Brisbane for conduit purchase and fiber installation for the smart corridor extension project.
2. A bill of sale agreement between Intermountain Infrastructure Group and the City of Brisbane for purchase and installation of fiber optic conduits and dark fiber.

A condition precedent to the City Manager executing these agreements is the City Attorney's review and approval of same.

#### **Background**

The City/County Association of Governments of San Mateo County has been leading the effort on a County Smart Corridor project that is designed to improve the mobility of local arterial streets by installing Intelligent Transportation System (ITS) equipment, such as an interconnected traffic signal system, close circuit television (CCTV) cameras, dynamic message signs, and vehicle detection system, on predefined designated local streets and state routes. The ITS infrastructure will provide local cities and Caltrans with day-to-day traffic management capabilities in addressing recurring and non-recurring traffic congestion.

A key aspect of this project is the installation of fiber optic (FO) lines to provide the telecommunication conduit backbone for the described ITS components. The Smart Corridor project is mostly complete in south and central San Mateo County, and the project that started in South San Francisco in 2021 is also complete.

To complete the northern portion of San Mateo County ITS, C/CAG engaged an engineering firm to design the fiber optic conduit and the ITS components for Daly City, Colma, and Brisbane.

Somewhat in parallel with C/CAG's efforts on the Smart Corridor, Intermountain Infrastructure Group (IIG) has been processing an encroachment permit application with Brisbane to run a new bank of fiber optic conduits in Bayshore Boulevard from the northern city limits to the southern city limits.

C/CAG recognized the advantage in "piggybacking" off IIG's proposed project, and IIG willingly entered into 3-party negotiations as part of an effort to minimize the number of excavations in a single street for telecommunications facilities. While Brisbane does not have a "dig once" policy in effect, the mutually agreed upon negotiations generally follow the practices recommended by the Federal Highway Administration (FHWA).

Assuming these negotiations, the final agreements, and construction all come to fruition, at the end of this effort C/CAG and Brisbane will each own a fiber optic conduit with "dark fiber" in the new bank of FO conduits proposed to be installed in Bayshore by IIG.

### **Discussion**

Staff and the City Attorney have reviewed and generally approved plans, specifications and the two agreements that are the subject of this staff report. The one issue that has delayed finalizing these agreements has been the tenuous nature of the public funds from which C/CAG hoped to fund its portion of the project. In early June, C/CAG was able to convince the California Transportation Commission to approve its requested allocation.

At this point in time, staff believes that final funding approval from C/CAG and final approval of IIG's plans will occur during Council's summer recess. IIG's permit from the City is anticipated to be issued in the next 30-60 days; if Brisbane and C/CAG are to have their FO conduit and dark fiber installed by IIG, these two agreements must be finalized prior to August.

### **Fiscal Impact**

The funding agreement with C/CAG will provide that C/CAG pays for 100% of the cost of installation, including any amendments found necessary during construction. The current cost estimate for the install of C/CAG's and Brisbane's "filled" FO conduit is \$831,924.

The city's only contribution to this project is engineering and field inspection staffing to oversee the work in our jurisdiction.

### **Measure of Success**

A backbone FO system installed at no cost to the city in Bayshore Boulevard and ready for connection to ITS network components.



Randy Breault, Public Works Director



Clay Holstine, City Manager

**File Attachments for Item:**

N. Information Report Concerning Development Impact Fees



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023

**From:** Legal Counsel and City Manager

**Subject:** Information Report Concerning Development Impact Fees

### RECOMMENDATION

Review the Information Report concerning Development Impact Fees and provide direction concerning such Fees, keeping in mind, as will be explained below, that it is not permissible to adopt one development impact fee that would cover a multitude of improvements.

### BACKGROUND

The City of Brisbane imposes a number of “fees”. Many of those fees are set forth in the City’s Master Fee Schedule. These fees include fees for processing land use applications (Planning), use of City facilities (Parks and Recreation), water services (Finance), copies of police reports (Police), inspections (Fire) and processing grading permits (Public Works). There are also “property related fees”, as defined in Proposition 218, such as ordinary water and sewer charges. In addition, there are development impact fees (“DIF”) that are fees imposed on new development primarily to alleviate the impact such development has on the community.

Regardless of the type of fee, such fees may not exceed the estimated reasonable cost of providing the service or regulatory act for which the fee is charged. If they do, the fees would be considered a special tax and need voter approval. To adopt or increase such fees, the City must (a) hold at least one public hearing, (b) publish notice of the public hearing, (c) send notice to anyone who requested such notice, and (d) make available to the public data indicating the amount of the estimated cost to provide the service for which the fee is charged and the revenue source anticipated to provide the service.

### DISCUSSION

#### Development Impact Fees and Dedications

Cities and counties throughout California charge development impact fees (“DIF”). These fees, imposed on new development, are charges for service or to alleviate impacts that will result from new development. Cities and counties may establish DIF for a broad range of projects by legislation of general applicability or impose DIF on specific projects on an ad hoc basis. If local agencies did not impose DIF, the cost to provide services or to improve existing infrastructure and facilities would fall on existing taxpayers, notwithstanding that the need for such services and improvements were the result of new development. The types of DIF vary from community to community but most often local agencies impose DIF to mitigate the impacts that new development has on traffic, affordable housing, parks, and capital facilities.

Under State law, DIF may include costs attributable to the increased demand for public facilities reasonably related to the development project in order to (1) refurbish existing facilities to maintain the existing level of service or (2) achieve an adopted level of service that is consistent with the General Plan.

In addition to imposing a fee, a city may, as mitigation, require a “dedication” in connection with the development of real property whereby a property owner/developer must transfer ownership of the property, whether in fee or an easement, to the city.

The authority to exact fees and dedications stems from the city’s police powers under the State Constitution. In addition, several state statutes grant authority to local jurisdictions to impose exactions, for example the Mitigation Fee Act (AB 1600), discussed in more detail below.

There are limits, of course, to imposing DIF and/or dedication. If an exaction “goes too far”, it results in a “taking” for which compensation would need to be paid. In order to avoid that, courts have established what is called a “nexus” test to determine whether a DIF or dedication does not constitute an impermissible taking.

To establish nexus, generally three “reasonable relationship” findings must be made: need, benefit and proportionality.

Concerning need, it must be shown that new development will create a need for the item to be funded by the DIF and without this infusion of fees from new development, the availability of, for example, public facilities throughout the community would be negatively impacted. A DIF, of course, may be imposed only to the extent that new development creates the additional need.

Concerning benefit, it must be shown that new development will benefit from the item to be funded by DIF. To accomplish that, the DIF must be used in a timely manner.

Concerning proportionality, it must be shown that the DIF are proportional to the impact created by a particular development. To make that determination, different methodologies are employed to allocate costs and calculate the fees, depending on the type of infrastructure or facilities at issue. For example, a park improvement fee may be used to upgrade the kitchen facilities at Mission Blue, install a new roof at the Community Center, or replace playground equipment at the Community Park, assuming the nexus study, using an appropriate methodology, determines that the fee is necessary in order to maintain a level of service or achieve a level of service consistent with the General Plan.

#### The Mitigation Fee Act.

State law—the Mitigation Fee Act—often referred to as AB 1600—provides the procedural and substantive provisions that sets forth the requirements for establishing, increasing and imposing many DIF. The Act does not limit the type of infrastructure or facilities



for which DIF may be imposed but broadly defines “public facilities” to include public improvements, public services and community amenities. DIF may not be used, however, for maintenance or operating costs. Moreover, certain fees, such as fees in a development agreement, are not subject to the Act.

For the city to establish, increase or impose DIF under the Act, it must (a) identify the purpose of the fee, (b) identify the use of the fee, and determine issues of reasonable relationship.

As to purpose, imposing DIF is to protect the health, safety and welfare of the community by funding public facilities made necessary by new development and, more specifically, identifying improvements to mitigate the impact of new development.

As to use of the fees, the facilities must be identified in a “capital improvement plan”, for example a General Plan or other public documents, which plan must be updated annually.

As to reasonable relationship, as discussed previously, the use of the DIF and the type of development must be reasonably related; the need for the public facility and the type of development must be reasonably related; and the amount of the DIF and the cost of the public facility attributable to the development must be reasonably related.

*Because each type of DIF has its own peculiarities as to purpose, use, reasonable relationship and proportionality, it is not permissible to adopt a one size fits all DIF. Each category of public facilities—park land, park facilities, affordable housing, traffic impacts, etc.—must be evaluated separately in determining what impact new development has on such facilities. Then, as discussed in the next section, the totality of the DIF must be considered in context of how “feasible” such fees are.*

### Feasibility Studies

In addition to undertaking a nexus study to support imposing DIF, many communities also will undertake a DIF feasibility study to determine whether a DIF, either by itself or in conjunction with other DIF’s, render development within a community “infeasible” for all practical purposes. In other words, even if a nexus study or studies show that a city could impose certain amount of DIF’s, if such DIF’s were imposed, developers would be unlikely to pay such DIF’s. Under those circumstances, a city may want to consider reducing the amount of permissible DIF in order to encourage development in the community.

### Current DIF Within Brisbane

Currently the only DIF that Brisbane imposes on development is the parkland dedication fee on residential development. See Sections 16.24.020 and 16.24.030, Brisbane Municipal Code.

Where the residential development is for more than 50 lots and where land within the proposed subdivision will properly accommodate public recreational facilities, the subdivider must dedicate an area for such purposes on the basis of three acres for each 1000 population within the subdivision, assuming 2.35 persons per household. For example if there were a 100 lot subdivision and the property to be subdivided could accommodate a neighborhood park, the subdivider would be required to dedicate .71 acres ( $100 \times 2.35 = 235/1000 = .235 \times 3 = .71$ )

Where the residential development is for 50 lots or fewer, the subdivider is to pay a fee based on the following formula: the number of proposed units times 2.35 persons per household, divided by 1000 times three acres times the fair market value of one acre of the subject property as determined by the planning director. For example, if there were a 10 lot subdivision and the fair market value of the land to be divided was \$1,000,000 per acre, the fee would be \$90,000 ( $10 \times 2.35 = 23.5/1000 = .0235 \times 3,000,000 = \$70,500$ ).

Although not necessarily a DIF, developers of certain residential and commercial property must also contribute to the City's Public Art Fund. See Section 15.85.050, Brisbane Municipal Code.

For commercial projects that have building development costs between \$1 M and \$5 M, the developer must contribute one percent of such costs to the public art fund. For commercial projects that have development costs above \$5 M, the developer must either contribute one percent of such costs or devote a comparable amount for the acquisition and installation of publicly accessible art.

For residential projects with ten to 20 units, the developer must contribute one half of one percent of building development costs to the fund. For residential projects with more than 20 units, the developer must contribute one percent of the building development costs to the fund. Moreover, regardless of the number of units, if the development costs are above \$10 M, the developer must contribute one percent of the development costs or devote a comparable amount for the acquisition and installation of publicly available art. Building developments designated as low or moderate income housing are exempt from these provisions.

#### DIF in the "Pipeline"

There are currently two DIF in the pipeline: a fee for parks, recreation facilities, open space and trails and an affordable housing fee. The DIF for parks, recreational activities, open space and trails would be applicable to residential and non-residential projects and because it includes a component for parkland, presumably the current provisions in the Municipal Code concerning the dedication of land for parks or payment of an in lieu fee for residential projects would be deleted. The affordable housing fee would be applicable only to non-residential projects in that the City's existing inclusionary housing ordinance requires including affordable housing in certain residential projects.

Also forthcoming will be a Traffic Demand Management Ordinance. That Ordinance, if adopted, may well lead to consideration of a Traffic DIF that could be used, for example, for

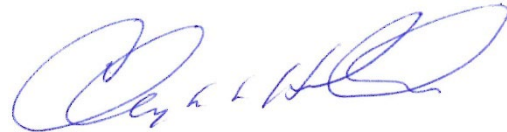
intersection improvements, traffic signals, traffic calming devices, etc. Preparation of the study for a Traffic DIF would likely not occur until late this or early next year.

#### Next steps

As stated above, because the need, benefit and proportionality of any particular DIF must be considered on its own terms, it is not feasible to have an overall DIF that covers a host of public facilities. Accordingly, Staff seeks direction from City Council how it wishes to proceed with DIF in general and, in particular, with the two DIF that are in the pipeline. Concerning the two that are in the pipeline, a feasibility study is underway and staff is prepared to the nexus studies, the feasibility study and proposed DIF to the Council before the end of the year. Unless directed otherwise by Council, staff anticipates preparing additional nexus/feasibility studies for other DIF, such as traffic and capital facilities.



Michael Roush, Legal Counsel



Clay Holstine, City Manager

**File Attachments for Item:**

O. Consider the approval of the Phase 3 Proposal Package for Privately Installed Public Art



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023

**From:** Noreen Leek, Parks & Recreation Director

**Subject:** Phase 3 – Privately installed Public Art Proposal

### Community Goal/Result

Community Building

### Purpose

To increase citizens' appreciation of art, improve quality of life, and to enhance Brisbane's identity as a unique community within the greater Bay Area.

### Recommendation

Consider approval of the Phase 3 proposal package for privately installed public art.

### Background

The City of Brisbane's public art implementation guidelines provide direction to developers regarding the City's Art in Public Places Program. Private non-residential and non-live-work building developments with building development costs above five million dollars (\$5,000,000.00) shall contribute an amount equal to at least one percent of their building development costs into the Brisbane public art fund as an in-lieu contribution. Alternatively, at the discretion of the owner or developer, such projects may devote an amount equal to at least one percent of their building development costs for the acquisition and installation of publicly accessible art on the development site, subject to the provisions of Section 15.85.060 of the Brisbane Municipal Code. This section applies to both new projects and building alterations/additions. In accordance with the public art implementation guidelines, the Public Art Advisory Committee is responsible for reviewing and making decisions on conceptual design plans submitted by a developer for a project subject to the public art requirement.

### Discussion

Phase 3, the developer of the Genesis Marina life sciences campus located at 3000-3500 Marina Blvd, submitted a proposal to the City for privately installed public art on their property. Their complete proposal package is provided in Attachment 1 which identifies the artists, includes concept plans and renderings, and a budget valuation. The City provided public notices to all properties located within 1,000 feet of their property and posted as required by law. To date, no formal responses have been received as a result of the public notice.

The Public Art Committee reviewed the proposal and considered the artistic quality (vision, originality, and craftsmanship); context (architectural, historical, geographical, and socio-cultural context of the site); quality and permanency of materials; maintenance; safety; diversity of artists; the current collection of publicly-accessible art; and diversity of art (media, scale, style, intention) in the existing collection of publicly accessible artworks. After reviewing the proposal, receiving a formal presentation

from the developer, and providing input on the artwork, the Public Art Advisory Committee voted at their July 17, 2023 meeting to unanimously recommend the installation to the City Council. If the Council does not approve the proposed project, it can refer the item back to the Public Art Advisory Committee for reconsideration.

**Fiscal Impact**

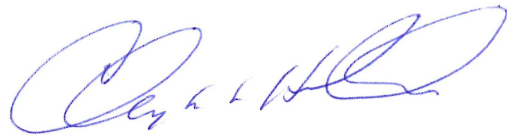
There is no fiscal impact imposed on the city as a result of this project proposal. All costs associated with installing and maintaining privately installed public artwork are the expense of the private entity.

**Attachments**

1. Phase 3 privately installed public art proposal package



Noreen Leek, Parks & Recreation Director



Clay Holstine, City Manager

GENESIS MARINA, BRISBANE CA  
PHASE 3 REAL ESTATE

<div>1</div> <div>Genesis Marina</div> <div>Context Architecture</div>	<div>2</div> <div>Artists</div> <div>Ivan McLean Curt Brill</div>	<div>3</div> <div>Artwork</div> <div>Construction Materials Maintenance</div>	<div>4</div> <div>Budget</div> <div>Cost Estimate</div>
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# Genesis Marina

Context  
Architecture

0.

TE ACCESS

101

150

3000-3500 MARINA BLVD  
MORE OWINGS & MERRILL LLC

### LEGEND

- FREEWAY ACCESS
- - - BAY TRAIL
- ... PROPOSED BAY TRAIL
- SIERRA POINT SHUTTLE
- OYSTER POINT FERRY

0. **te Plan**

Proposed Bay Trail extension  
in 3500 Marina Blvd

Existing Bay Trail (on street)

Proposed Bay Trail extension  
in 1000 Marina Blvd

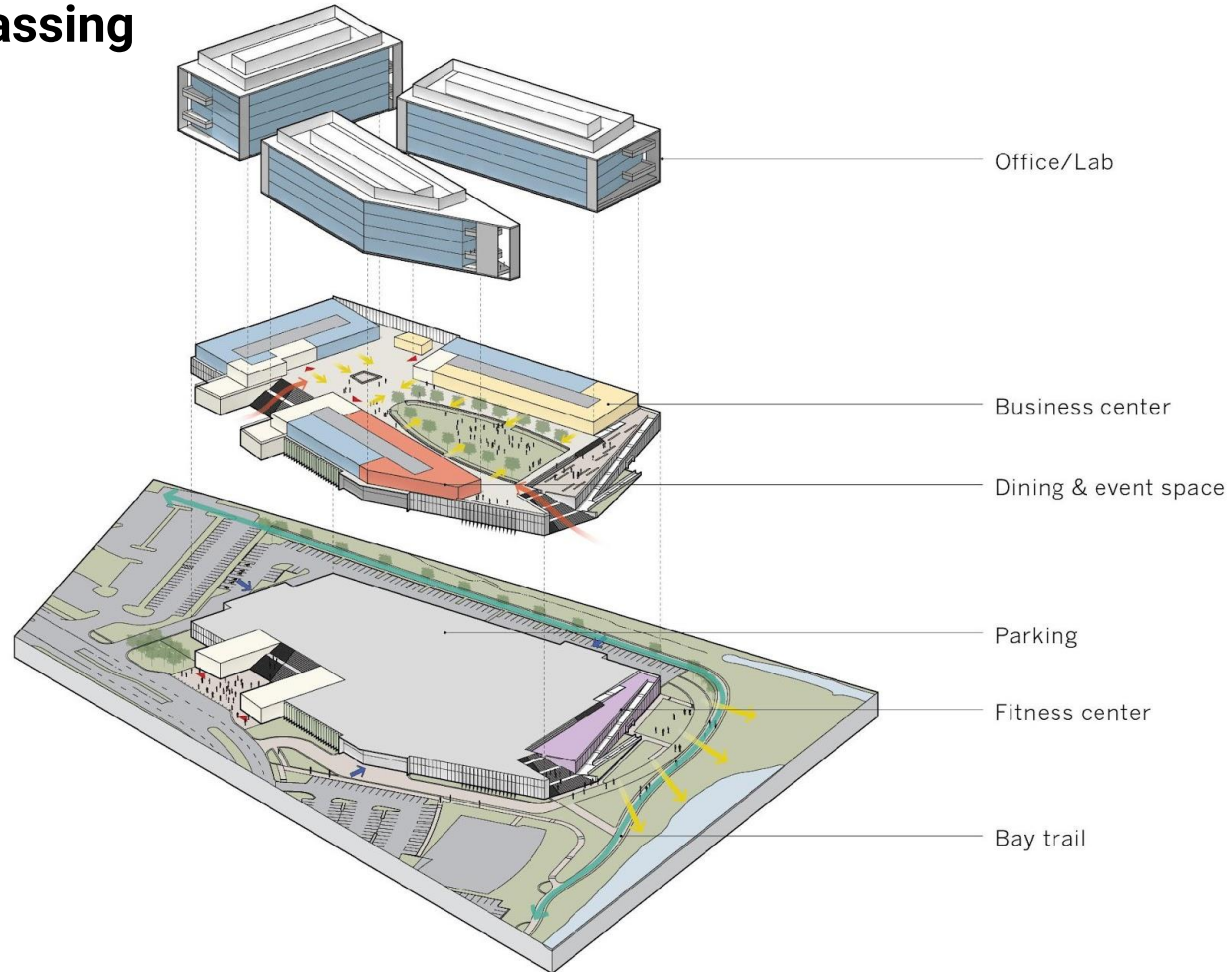
Existing Bay Trail

**LEGEND**

- Existing Bay Trail
- - Existing Bay Trail (on street)
- - Proposed Bay Trail Extension



# 0. Program & Massing









O.

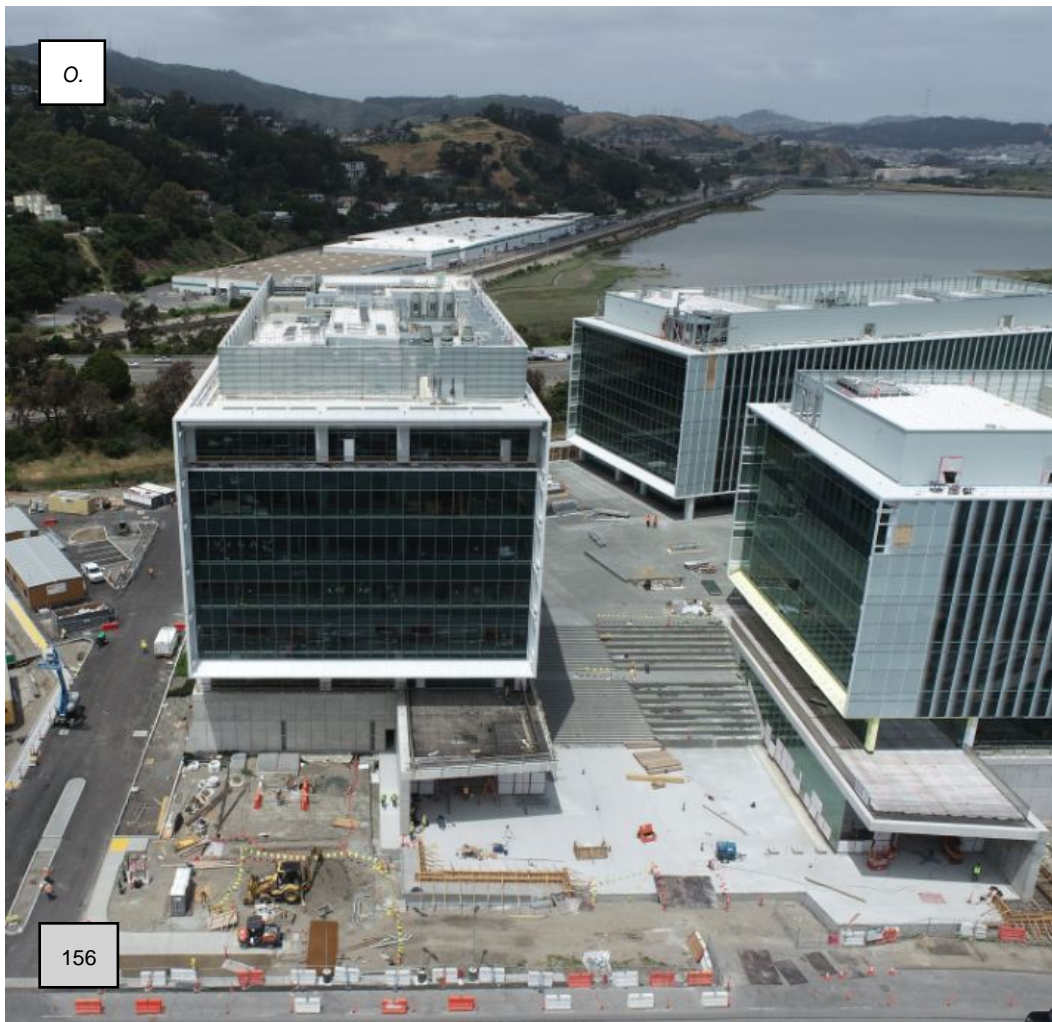








O.



156





# Artists

2

Ivan McLean  
Curt Brill



I grew up in Point Reyes Station, a rural environment which helps explain my interest in agriculture. This led to raising livestock, working with orchards, vineyards, culminating in a degree in Farm Management from Cal Poly, San Luis Obispo. A stint in the Peace Corps followed in the Southern Philippines followed by time in the Australian outback and travel through Asia.

Returning home I switched my focus to welding, making furniture and small sculpture to sell in the flea market in Sausalito, right off 101. The success there encouraged me to continue my self taught career as a sculptor and over the last 30 years made thousands of pieces in a variety of materials that have found homes all over the world, just last year I was in Riyadh, Saudi Arabia installing a 10' disco ball. I look to create beautiful, original sculptures that will hopefully convey joy and perhaps, when it's a 20' sphere, a bit of awe.



160

GENESIS MARINA  
SKIDMORE, OWINGS & MERRILL LLP



Born in 1952 in the Bronx, New York, Curt began his serious pursuit of an art career while attending Cornell University. It began with exhibitions at Cornell that showcased his drawings, ceramic work and silk screening. Even though drawing has been his first and enduring love, professionally he has been most noted for his 3 dimensional work. His ceramic pieces have been widely collected across the United States since the mid 1970's. He began his career in bronze in 1980, with pieces that were a direct outgrowth of his history with clay. The work has always been sensual, a direct response to the feel of the materials he has chosen to use. Being a people watcher with a keen eye by nature, and having a potent sense of humor and an easy demeanor, it is easy to see how his personal style has evolved. His work has now been met with wide appeal by individual collectors within the United States, Europe and Japan.

# Artwork

Construction  
Materials  
Maintenance

3



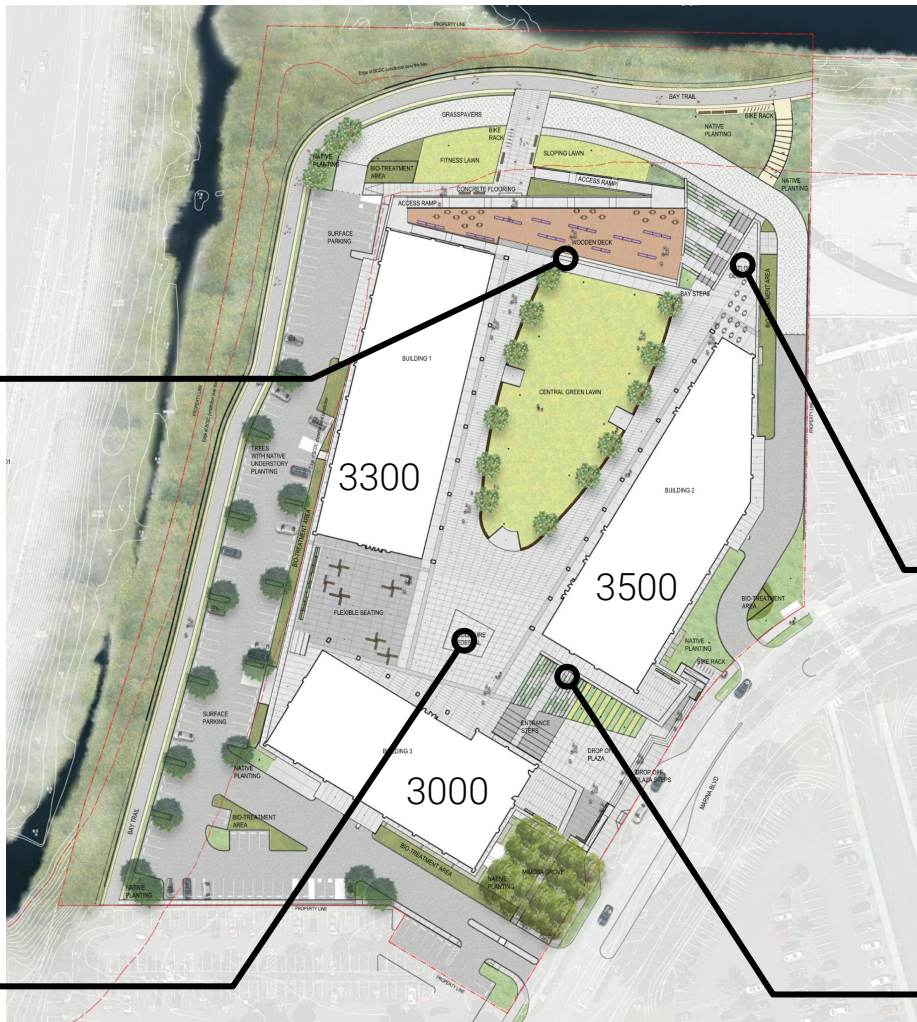


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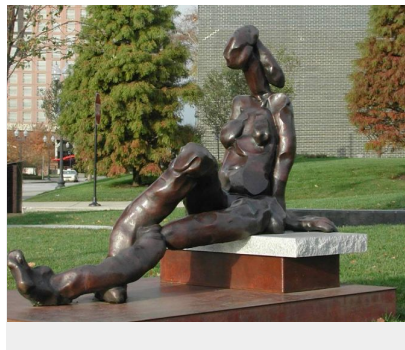
**B. Curt Brill - Seated Diana**



**A 163 McLean - CO<sub>2</sub>**



**C. Curt Brill - Michelle**



**D. Curt Brill - Katia**



The sculpture will be made up of three spheres representing Carbon Dioxide, placed in a planter on the podium level of Genesis Marina. The location is the apex of the lawn overlooking the bay, centered between the three buildings, and visible from Marina Boulevard.

The 20' sphere representing Carbon, will be made from arced lengths of 3/16" x 2" Cor Ten flat bar. The flat bar segments are random lengths ranging from 3" to 10" and will be welded together in random pattern creating a sphere that's "transparent" from all sides while having a defined outline.

#### CO<sub>2</sub>

Materials

Size

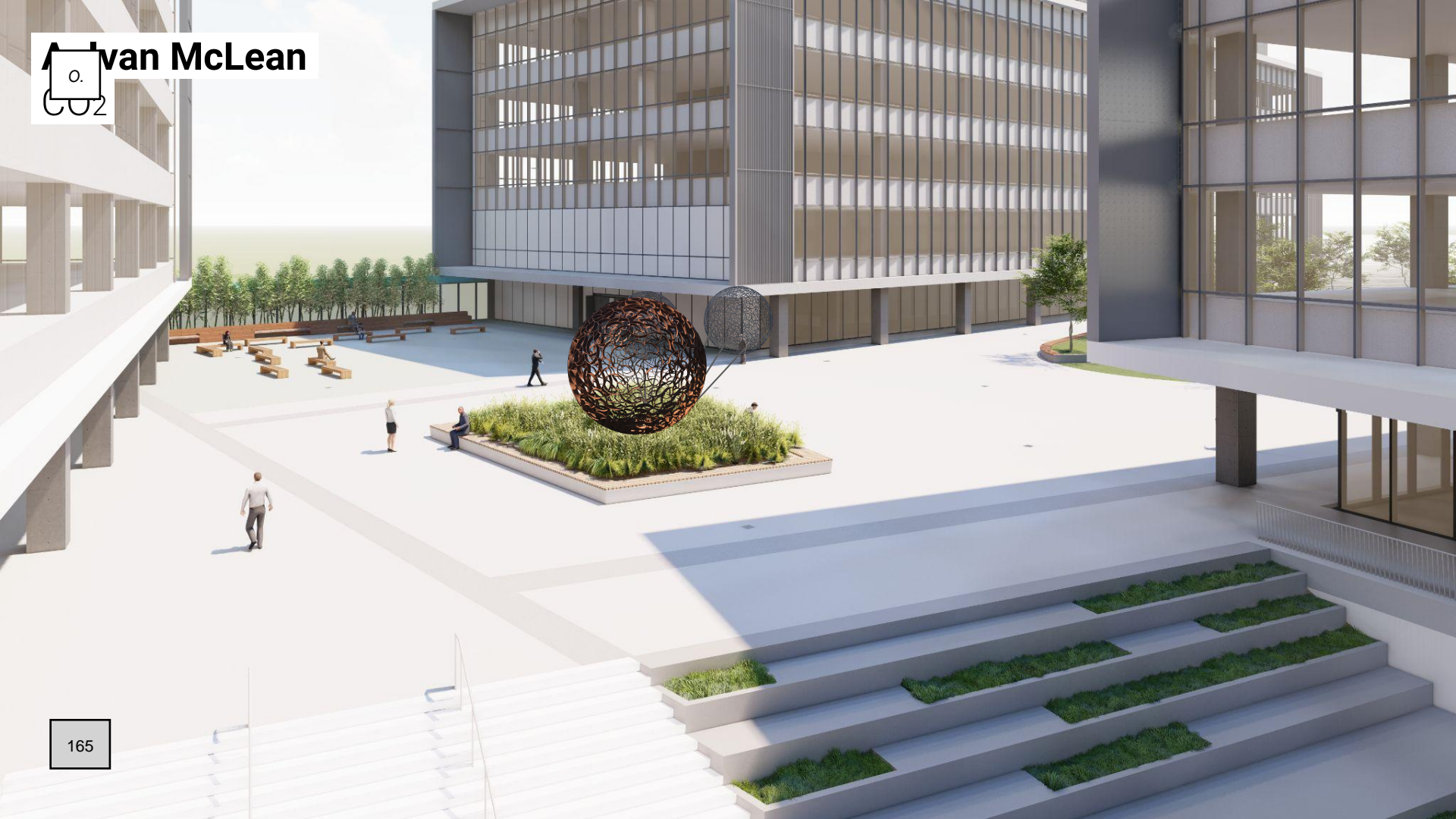
164

GENESIS MARINA

SKIDMORE, OWINGS & MERRILL LLP

The two 8' spheres representing Oxygen will be made from 5/16" stainless round bar. Using a pattern that I used for a another sculpture for Phase-3, an overlapping series of "+" will give these a slightly uneven, choppy exterior that still reads as a true sphere. These will be supported by a column made from three lengths of stainless pipe, providing enough strength for support while not looking too imposing.

Sculptures will be lit by multiple luminaire types and potentially from various angles including potential uplighting depending on the artwork. Any potential uplighting will be turned off at midnight.



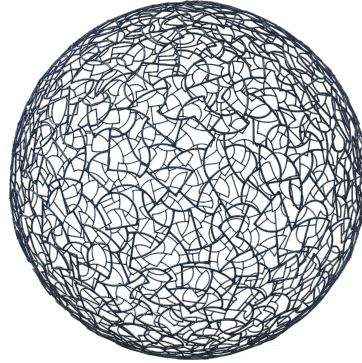






### Weathering Steel

Cor Ten, A588 steel is an alloy that maintains its strength while allowing surface rusting for an attractive, maintenance free finish.



### Stainless Steel

316 stainless steel is a corrosion resistant alloy that will be able to withstand the local weather conditions.



### Maintenance

The maintenance for this piece should be fairly minimal. Recommend an annual pressure washing using a mild soap to remove any dust or spider webs.

# Robert Curt Brill Seated Diana



## Seated Diana

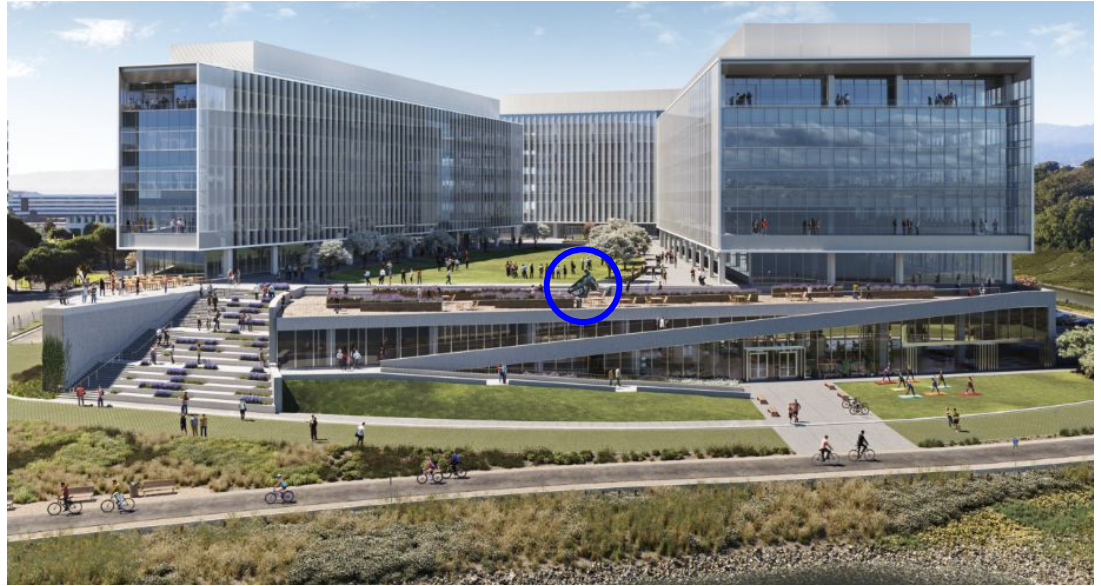
Bronze

75" x 57" x 98"

168

GENESIS MARINA

SKIDMORE, OWINGS & MERRILL LLP



# Curt Brill

## Seated Diana



### Seated Diana

Bronze

75" x 57" x 98"

169

GENESIS MARINA

SKIDMORE, OWINGS & MERRILL LLP







**Michelle**

Bronze

102" x 47" x 52"

170

GENESIS MARINA

SKIDMORE, OWINGS & MERRILL LLP







**Michelle**

Bronze

102"x 47"x 52"

171

GENESIS MARINA

SKIDMORE, OWINGS & MERRILL LLP





**Katia**

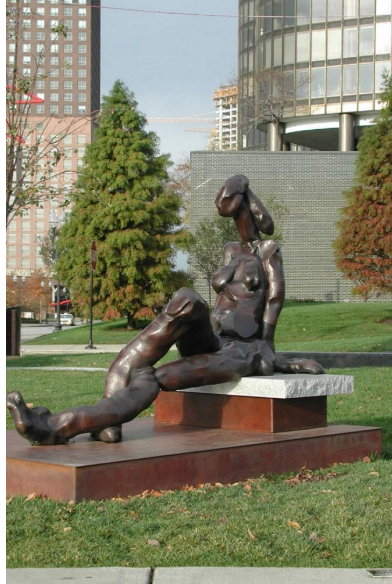
Bronze

60" x 48" x 87"

172

GENESIS MARINA

SKIDMORE, OWINGS & MERRILL LLP



**Katia**

Bronze

60" x 48" x 87"

173

GENESIS MARINA

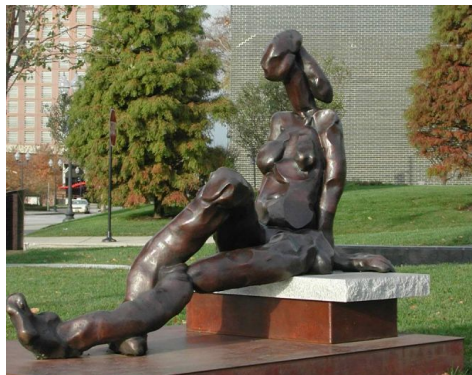
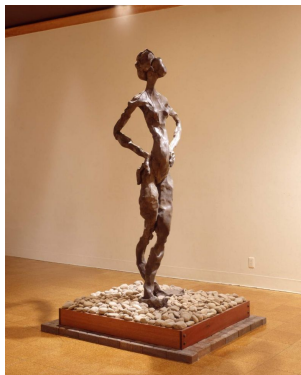
SKIDMORE, OWINGS & MERRILL LLP





# **D. Curt Brill**

## Materials and Maintenance



## Bronze

[www.gsa.gov](http://www.gsa.gov) Bronze: Characteristics, Uses And Problems

Statuary bronze is typically used in outdoor sculpture. Its forms are almost limitless since it may be cast in any shape for which a mold can be devised. Bronze is an alloy of copper which can vary widely in its composition. It is often used as a material harder than copper is required, and its strength and corrosion resistance is required and for ornamental purposes.

## Maintenance

[www.gsa.gov](http://www.gsa.gov) Cleaning And Oiling Statuary Bronze Surfaces

- Wash the surfaces with mild soap and a soft cloth rubbing with the grain of the metal. Clean surface dirt and grease only, do not rub down to bright metal. Rinse thoroughly with clear water.
- Remove all stains, oxides, sulfides or corrosion products with abrasive and standard solvent. Refinish areas of bright metal work with oxidizing agent, to match the existing cleaned statuary finish.
- Remove cleaning residue with two applications of a standard solvent using a soft cloth. Apply oil to the surface, rubbing with a soft clean cloth, followed by a brisk rubbing with a second clean soft cloth to remove all excess oil. On irregular, molded surfaces, a soft fiber brush may be used as an applicator.

# Budget

## Cost Estimate

# 4

# Project Cost Estimate

\$195,000	A. CO2
\$165,000	B. Seated Diana
\$70,000	C. Michelle
\$85,000	D. Katia
\$40,000	Design
\$10,000	Structural Engineering
\$12,000	Lighting Design
\$6,500	Conduit repairs and added lights at underside of benches
\$17,500	Added WP patching & Striping in
\$75,000	Added below slab irrigation/stub-up and added drain lines
\$45,000	Added wood seating and brackets
\$90,000	Saw Cut & Demo slab, foam, and pedestal. Add new stem walls
\$59,000	Foam, soil, irrigation, drain bodies, planting allowance
\$35,000	FRP Strengthening
\$10,000	Larger Pedestal
\$50,000	Art Lighting
\$20,000	Bases for CO2 Sculpture
\$13,500	Crane/Traffic Control
\$11,500	Crane/Traffic Control
\$15,000	Install/Statue Base
\$20,000	Structural Reinforcement & Scanning

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= **\$1,045,000**





**File Attachments for Item:**

Q. Countywide Assignments and Subcommittee Reports



# CITY of BRISBANE

## Subcommittee Update

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From June 10<sup>th</sup>, 2023 to September 1<sup>st</sup>, 2023

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### **Affordable Housing Subcommittee**

**8/31**

**Davis, Lentz**

The subcommittee reviewed the Affordable Housing Strategic Plan (AHSP) prepared by staff and ECONorthwest (ECONW). The document is a guide for the City on how to fund affordable housing, reduce costs, increase production, preserve existing housing stock, provide access to those with special needs, leverage private and outside investments, and increase implementation capacity. The subcommittee felt the document was very thorough but did ask for some analysis on how to capture revenue from large corporations that bring in many jobs but do not contribute to the housing crisis. Staff is currently working on the commercial linkage fee that has developers contribute, but staff and ECONW will analyze ways for large companies to contribute and include this in the AHSP prior to Council review in September or October.

### **Economic Development Subcommittee**

**8/9**

**Cunningham, Lentz**

The subcommittee discussed the approximately 1.27-acre former Bank of America site at 70 Old County Road. They started with discussing the area and expanding it to include the adjacent Brisbane Village Shopping Center. They would also at some point, have the Parkside zoning to all of Crocker Park. Perhaps Good City could do a Parkside analysis. The subcommittee would like Mitch to talk with Prologis about their future plans as many buildings will need to be updated anyway. The subcommittee would also like to set meeting for them to meet with Prologis, the Brisbane Village owners and Randy Keller (Developer). Meetings will be set for the end of September.

### **Affordable Housing Subcommittee**

**8/2**

**Davis, Lentz**

BRIDGE Housing manages the Visitation Garden Senior Housing development and they have said that the property's operating expenses are on track to eclipse rental revenue within the current lease term. BRIDGE has requested that the City/Housing Authority subsidize the property's operations to neutralize the impact and avoid untenable rent increases. The requested amount is approximately \$945,000 over the next five years. BRIDGE will provide a detailed formal request outlining the exact subsidy request and supporting revenue and operational expenses through 2028. Two City/Housing Authority loans totaling approximately \$2.34 million plus an additional \$1.5 million in accrued interest are required to be repaid in 2028. BRIDGE has asked that these loans be forgiven.

The Subcommittee asked questions that BRIDGE would need to clarify, including: rental rates to new tenants seems low, how much BRIDGE has paid on loans, tenant income reporting should occur every couple years, and many others. The subcommittee also asked staff to explore whether it would be feasible to bring in the management in-house. There would need to be a dedicated new staff person to take this over as part of their job.

As there are too many questions and concerns, this will come back to the subcommittee at a later date.

**Public Art Advisory Committee****7/17****Cunningham, Davis**

Representatives from Phase 3 presented their privately installed public art project to the Committee. They are proposing a 20' sphere and two 8' smaller spheres to represent a CO<sub>2</sub> molecular compound designed by Ivan McLean as well as three Curt Brill original statues that will be placed throughout the property. The Committee requested that there be artist statement signage for each piece and a more detailed budget sheet. Phase 3 suggested moving one of the art pieces. The Committee agreed to that change. The Committee made a motion to make a formal recommendation to the City Council to recommend the installation as proposed with the modifications suggested. This will be presented to Council in September.

The committee discussed possible ideas and locations for the 20-22 plugs that could be relocated throughout the city. The committee also discussed potential opportunities at Firth Park, such as restoring the park's turtle and helix statues as well as the brick mural with the park's name on it. Both items will be discussed further at the next Public Art meeting.

**Public Art Advisory Committee****6/26****Cunningham, Davis**

The committee discussed possible ideas and locations for the Plugs. They suggested sponsor a retired plug fundraiser to hire professionals to rehabilitate and repaint plugs in need of care. Another suggestion was to hire a professional to design the spaces (e.g., benches, sitting area to chat and enjoy the plugs). Possible locations suggested were: Group a few plugs and place in Firth Park; Quarry Park entrance; behind Gazebo/flagpole; and Festival of Lights Tree area.

**Brisbane SD / City of Brisbane 2x2 Subcom****6/12****Cunningham, Davis**

The subcommittee met with Board members Sarah Duffy and Sharon Boggs to discuss the City's partnership with the Brisbane School District. Board Member Duffy requested more outreach to the schools and families about activities, such as sports and after school classes. Staff let her know the multiple outreach ways: social media, on-campus recruiting, school's Thursday folders and bulletin boards, flyers, etc. The City contributes \$20K to K-5<sup>th</sup> Enrichment programs, and around \$60K to Club Lipman. Board Member Duffy asked about any programs for children prior to entering pre-school that the City does. The City does not but does contribute to families with children in many other ways as discussed, and the City has many other residents with other needs that also need to be considered and balanced for programming and support. Board representatives requested P&R Director Leek present this to the Board in the Fall.

**Upcoming Subcommittees:****Liaison to P&R Subcommittee****9/7 1:30pm****Cunningham, Davis****Public Art Advisory Committee****9/18 4:30pm****Cunningham, Davis**