



# CITY of BRISBANE

## City Council Meeting Agenda

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Thursday, April 6, 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 respectively 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

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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.

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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

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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**

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

### **CONSENT CALENDAR**

- B. Approve Minutes of City Council Meeting of March 2, 2023
- C. Approve Minutes of City Council Meeting of March 16, 2023
- D. Approve Minutes of City Council Special Meeting of March 21, 2023
- E. Accept Investment Report as of January 2023
- F. Accept Investment Report as of February 2023
- G. Approve Resolutions Establishing the Classification of Building Permit Technician and Amending the Master Pay Schedule
- H. Approve the Settlement Agreement with BRE SH Brisbane Owner LLC (the operator of the Homewood Suites Hotel in Sierra Point)
- I. Adopt Resolutions for Inclusion, Diversity, Equity and Accountability Committee and the Public Art Advisory Committee Appointments
- J. Approve a Resolution in Support of SB 252 (Gonzalez) Fossil Fuel Divestment Act

- K. Introduce an Ordinance, Waiving First Reading, Amending Various Sections of the Brisbane Municipal Code Concerning Building Efficiency Program

(It is being recommended to introduce an Ordinance amending various sections of Chapter 15.77 of the Brisbane Municipal Code concerning Building Efficiency Program, including the finding that the introduction and adoption of the Ordinance is not subject to further review under the California Environmental Quality Act (CEQA) because it is not a “project”. (CEQA Guidelines, Section 15378 (b)(2))

## **AWARDS AND PRESENTATIONS**

- L. Administering the Oath of Office for Newly Appointed City Committee Members

## **PUBLIC HEARING**

- M. Consider Adoption of a Resolution for Water and Sewer Rate Increase

(Council will consider a Resolution increasing the charges for water and sewer services and setting the discount rate for the city’s low-income rate assistance plan at 25% for all services.)

## **NEW BUSINESS**

- N. Update on Proposed Residential Parking Permit Program for Central Brisbane

(The purpose of this item is to present Council with Complete Streets Safety Committee’s (CSSC) residential parking permit program recommendation to address the complex parking scarcity issue in Central Brisbane. It is being recommended to adopt CSSC recommended parking permit program guidelines and/or provide direction to staff.)

## **STAFF REPORTS**

- O. City Manager’s Report on Upcoming Activities
  - i. Update on Tree Maintenance Program

## **MAYOR/COUNCIL MATTERS**

- P. Countywide Assignments and Subcommittee Reports
  - Public Art Advisory Committee      Monday, 3/20 4:30pm      Cunningham, Davis
  - Infrastructure Subcommittee      Tuesday, 3/21 2:30pm      Lentz, Mackin

- Q. Written Communications

## **ORAL COMMUNICATIONS NO. 2**

## **ADJOURNMENT**

*B.*

**File Attachments for Item:**

B. Approve Minutes of City Council Meeting of March 2, 2023



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**BRISBANE CITY COUNCIL**

**ACTION MINUTES**

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**CITY COUNCIL MEETING**

**THURSDAY, MARCH 2, 2023**

*HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005*

**CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Davis called the meeting to order at 7:30 P.M. and led the Pledge of Allegiance.

**ROLL CALL**

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

Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, City Attorney McMorrow, Finance Director Yuen, Community Development Director Swiecki, City Engineer Breault, Parks and Recreation Director Leek, Senior Planner Johnson, Police Commander Garcia, Economic Development Director Bull, and Administrative Analyst Ibarra

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

No requests were made to consider.

**REPORT OUT CLOSED SESSION**

City Attorney McMorrow also reported that at the Closed Session Special Meeting updates were provided to Council, legal counsel was given direction and no action was taken at Closed Session regarding Item D and Item E.

City Attorney McMorrow reported that updates were provided to Council, legal counsel was given direction and no action was taken at Closed Session regarding Item D.

**ADOPTION OF AGENDA**

Councilmember Mackin made a motion, seconded by Councilmember Cunningham, to adopt the agenda as it stands. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

## **AWARDS AND PRESENTATION**

### **B. Women's History Month**

Mayor Davis read a Proclamation designating March 2023 as Women's History Month adding that the City of Brisbane City Council recognize the importance of Women's History Month as an opportunity to recognize and honor these brave, accomplished, and influential women who told – and continue to tell – our stories.

Vanessa Garcia owner of 7 Milehouse and author of the award winning book See You at the Seven: Stories from the Bay Area's Last Original Mile House, accepted the Proclamation.

## **ORAL COMMUNICATIONS NO. 1**

Michele Salmon commented on the need to see butterfly habitat protection in the quarry development's environmental impact reports.

Dana Dillworth commented that the City needs better than a granite path connection to Bay Trail.

## **CONSENT CALENDAR**

### **C. Accept Investment Report as of December 2022**

### **D. Adopt an Ordinance, waiving second reading, amending Section 13.04.420 of Chapter 13.04 of the Brisbane Municipal Code pertaining to "Sewer System"**

**(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). The purpose of this ordinance is to update the municipal code chapter relating to joint sewer laterals.)**

### **E. Support the Brisbane School District Board of Trustees decision to name the baseball field at Lipman Middle School in recognition of the Brisbane Lions Club**

### **F. Update of Commercial Linkage Fee Nexus and Feasibility Study**

(It is being recommended to authorize the City Manager to extend the scope of the City's current professional services agreement with ECONorthwest to include update of the 2015 commercial linkage fee nexus and feasibility study and authorize a one-time not to exceed amendment to the contract of \$55,000)

Councilmember Lentz made a motion, seconded by Councilmember Cunningham, to adopt consent calendar Items C-F. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

## OLD BUSINESS

### G. Sierra Point Open Space and Parks Master Plan Process Update

(Council will receive process update from consultant and provide additional direction to staff if needed)

Staff reported that CMG Landscape began their work in the Fall of 2022 by conducting a series of meetings with City staff and establishing a master planning subcommittee comprised of representatives from the Brisbane City Council, Parks and Recreation Commission, Open Space and Ecology Committee, Complete Streets Safety Committee, IDEA Committee, and Public Art Advisory Committee.

Willett Moss, Founding Partner of CMG Landscape Architecture, presented on the various draft Schemes. The schemes describe alternative character, program and experience scenarios for public consideration. The overarching framework integrates a more “naturalistic” approach from north to south, with a primarily “functional” environment that captures the marina facilities, Harbor Master’s building and yacht club at the south.

Councilmember Cunningham questioned how the scope of the project changed. After more Council questions, the following public comments were made:

Quincy Bragg commented that the plan ignores the Marina.

Dana Dillworth commented that the schemes should not have features that the City already has.

Tom Heinz said he is disappointed what he has seen so far. He wants recreation not circulation.

W. Clarke Conway said sea-level rise is the issue with two issues being how to regulate the water in the lagoon and the Marina.

Anthony Walker commented that he supports the continuation of the plan and process.

Michele Salmon like what she saw as concept plans and wants a plan for the Marina

Leesa Greenlee agreed that there are a lot of opportunities and the area is like a blank canvas

Michael Barnes commented that bicycling is also recreation

Paul Bouscal asked where in the Marina is the evacuation site and whether we can create a floating harbormaster office. He also added that we should take care of the habitats and the birds.

Ron Davis commented boaters wanted to be included and added we should plan our way back starting with sea level rise.

Mitch Bull added that we should also be future proofing Sierra Point such as transportation mitigation (hover crafts and water taxis)

Nancy Lacsamana commented that we should consider all the public land

City Clerk Padilla added that correspondence was received from Linda Dettmer about the plan should be from the original boundaries with parking needs and tenant needs addressed.

After a brief break, City Manager Holstine proposed to do the following:

Bring back to Council the Marina infrastructure plan for sea level rise issues

Bring back to Council a public participation plan for the Park planning

Bring back to Council a mapping of the subcommittees and how to bring back information to the Council

Councilmember Cunningham requested to make sure the plans are inclusive.

### H. Consider Ample Battery’s Proposed Temporary Lease of City-Owned Parking Spaces

(The purpose of this item is to consider a proposal by Ample Battery to temporarily lease a limited number of city-owned parking spaces at Sierra Point and the former Bank of America site to install EV battery changing stations. It is being recommended that the City Council authorize the City Manager to execute the lease agreement. Per the lease agreement, if approved, Ample will pay the City \$2400/month for the Marina site and \$1600/month for the Old County Road (OCR) site.)

Community Development Director Swiecki reported that in response to concerns raised at the November 2022 City Council meeting, the lease agreement has been modified to establish a fixed payment schedule based on the areas leased, not tied to the number of stations installed. The agreement has further been revised to specify hours of operation (8am to 8pm), explicitly define the operator's maintenance obligations, and clarify that ancillary improvements such as lighting and fencing would be subject to city review and approval.

After some clarifying questions of staff and applicant, Councilmember Mackin made the request to also add to the agreement that the lights will be downward facing and at the Old County Site tenant will not use the back parking lot.

After no public comment were made, Councilmembers Cunningham made the motion, seconded by Councilmember Lentz, to approve Ample Battery's Proposed Temporary Lease of City-Owned Parking Spaces and authorize the City Manager to execute the lease agreement with Councilmember Mackin's amendments regarding the downward facing lights and no use of the back parking lot at the Old County Site. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

**I. Second Reading to Consider SP-CRO Sierra Point Commercial District; Zoning Text Amendment 2022-RZ-4; Zoning text amendment to Title 17, Chapter 17.18 of the Brisbane Municipal Code (BMC) to update existing research and development use provisions and performance standards; and finding that this project is exempt from environment review under CEQA Guidelines Section 15183(a).**

(This item was introduced at the 2/16/23 City Council Meeting. It is being recommended to receive the second reading and consider adoption of an ordinance amending Chapter 17.18 of the Brisbane Municipal Code, to update existing research and development use provisions and related performance standards.)

Community Development Director Swiecki reported that this ordinance was introduced at the regular City Council meeting held on February 16, 2023 and passed 3-2, with a modification to continue to have City Council serve as the reviewing authority for conditional use permits rather than the Planning Commission, for facilities that would exceed National Institute of Health (NIH) Biosafety Level 3.

City Council also directed staff to conduct additional outreach, through the City's Economic Development Director, to the Sierra Point biotechnology tenants regarding the proposed changes to the animal testing use provisions.

Economic Development Director Bull, reached out to several biotechnology companies in the City and there was no negative feedback. The companies did not see the policy as a program.

Michele Salmon asked the Council to clarify what this policy is about.

After some Council discussion, Councilmember O'Connell made a motion, seconded by Councilmember Mackin, to a



receive the second reading and adopt an ordinance amending Chapter 17.18 of the Brisbane Municipal Code, to update existing research and development use provisions and related performance standards. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

## **STAFF REPORTS**

### **J. City Manager's Report on Upcoming Activities**

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

## **MAYOR/COUNCIL MATTERS**

### **K. Update on Committee Recruitment**

City Clerk Padilla received several applications for the committee recruitment for the Inclusion, Diversity, Equity and Accountability and the Public Art Advisory Committee. She will send out a scheduling poll to the Councilmembers to determine the date and time to interview the applicants.

### **L. Countywide Assignments and Subcommittee Reports**

City Manager stated that the OSEC Committee requested to review and comment on the Quarry Project Development. Councilmembers O'Connell and Lentz, the liaisons to the OSEC Committee, agree that it would be helpful to get the Committee's feedback.

The Council reported on their assignments and subcommittee meetings.

### **M. Written Communications**

Council received the following written communication from 2/17/23-3/2/23:

Dana Dillworth (3/2/23) Images to support my Public Comments

Steve Kerekes (3/2/23) Response to Emails

Dana Dillworth (2/28/23) Submission to Sierra Point Open Space Consultant and council

Nancy Tierney (2/27/23) local Sierra Club chapter wish to invite you to this upcoming webinar

Elaine Straw (2/24/23) Comments and/or Suggestions

## **ORAL COMMUNICATIONS NO. 2**

Michele Salmon commented that she was upset that the City is losing butterfly habitat to enable the quarry development.

Paul Bouscal commented to ask Recology to down turn their lights and stop light pollution. He also added that the City purchase the 23 Club property for senior housing.

Richard Katowski is a 43 year resident and got evicted. He asked the City to help him secure housing in the

City's Bridge Housing. Brisbane is his community.

## ADJOURNMENT

Mayor Davis adjourned the meeting at 10:36 P.M.

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Ingrid Padilla, City Clerk

DRAFT

C.

**File Attachments for Item:**

C. Approve Minutes of City Council Meeting of March 16, 2023



## BRISBANE CITY COUNCIL

### ACTION MINUTES

#### CITY COUNCIL MEETING

**THURSDAY, MARCH 16, 2023**

*HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005*

#### **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Davis called the meeting to order at 7:31 P.M. and led the Pledge of Allegiance.

#### **ROLL CALL**

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

Councilmembers absent: Councilmember Cunningham

Staff Present: City Manager Holstine, City Clerk Padilla, Legal Counsel Roush, Finance Director Yuen, Community Development Director Swiecki, Police Chief Macias, Associate Planner Robbins, and Administrative Analyst Ibarra

#### **A. Consider any request of a City Councilmember to attend the meeting remotely under the "Emergency Circumstances" of AB 2449**

There were no request made at this meeting.

#### **ADOPTION OF AGENDA**

Councilmember O'Connell made a motion, seconded by Councilmember Lentz, to adopt the agenda as it stands. The motion was carried unanimously by all present.

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

Noes: None

Absent: Councilmember Cunningham

Abstain: None

#### **AWARDS AND PRESENTATION**

#### **B. San Mateo County Health Presentation on Preventing Fentanyl Overdoses**

Edith Cabuslay, Todd Henderson and Mark Ross from the San Mateo County Health Department presented on the Opioid Epidemic, the dangers of Fentanyl and how to prevent Fentanyl overdoses.

After some council questions, Mayor Davis thanked them for their presentation.

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

Paul Bouscal spoke about his concern for the City being liable for dangerous sick and deceased trees in the city and schools.

Jesse (Steve) Kerekes thanked the council for the presentation and asked the Council to help the County find a better way to distribute Narcan.

Nancy Lacsamana asked the Council to push the County to get a good supply of Narcan to be made readily available.

#### **CONSENT CALENDAR**

**C. Approve Minutes of City Council Meeting of February 16, 2023**

**D. Approve Minutes of City Council Closed Session Meeting of March 2, 2023**

**E. Approve Minutes of Closed Session City Council Special Meeting of March 2, 2023**

**F. Approve Designation of Agent for Emergency Response Reimbursement**

**(It is being recommended to Approve California Office of Emergency Services Form 130, "Designation of Applicant's Agent Resolution for Non-State Agencies.")**

**G. Authorize Letter of Support for Property Tax In Lieu of Vehicle License Shortfall**

**(The purpose of this item is to offer support to the County of San Mateo and its cities; it is being recommended to authorize a Letter of Support to address the Property Tax in Lieu of Vehicle License Fee shortfall backfill that was omitted from the initial release of the Governor's 2023-24 State)**

Councilmember Lentz made a motion, seconded by Councilmember Mackin to adopt the Consent Calendar Items C, D, E, H and I. The motion was carried unanimously by all present.

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

Noes: None

Absent: Councilmember Cunningham

Abstain: None

**F. Authorize Submission of 2022 Annual General Plan Progress Report**

**(To comply with reporting requirements of State law, it is being recommended to Direct staff to submit the 2022 General Plan Annual Progress Report to the California Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research.)**

**G. Authorize Submission of 2022 Annual Housing Element Progress Report**

**(To comply with reporting requirements of State law, it is being recommended to direct staff to submit the 2022 Housing Element Annual Progress Report to the California Department of Housing and Community Development (HCD) and the Governor's Office of Planning and Research.)**

Community Development Director reported that Consent Calendar Items F and G are reports being submitted to the State as required by State Law to provide an implementation and progress update. There are no new City policies being added to the reports.

Paul Bouscal commented that the reports should add the need for senior housing in Brisbane especially at the 23 Club property.

Councilmember O'Connell made a motion, seconded by Councilmember Lentz to adopt the Consent Calendar Items F and G. The motion was carried unanimously by all present.

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

Noes: None

Absent: Councilmember Cunningham

Abstain: None

## **STAFF REPORTS**

### **H. City Manager's Report on Upcoming Activities**

The City Manager reported on the upcoming public meetings, and events in the City.

## **MAYOR/COUNCIL MATTERS**

### **I. Countywide Assignments and Subcommittee Reports**

Council had no reports.

### **J. Written Communications**

Council received the following correspondence between March 3, 2023- March 16, 2023:

Dana Dillworth (3/16/23) General Plan Progress Report

Dana Dillworth (3/13/23) Council Meeting 3/16/23

## **ORAL COMMUNICATIONS NO. 2**

Paul Bouscal asked the Council to agendaize the discussion of dangerous trees.

## **ADJOURNMENT**

Mayor Davis adjourned the meeting at 8:27 P.M.

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Ingrid Padilla, City Clerk

*D.*

**File Attachments for Item:**

D. Approve Minutes of City Council Special Meeting of March 21, 2023



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**BRISBANE CITY COUNCIL**

**ACTION MINUTES**

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**BRISBANE CITY COUNCIL SPECIAL MEETING**

**THURSDAY, MARCH 2, 2023**

*HYBRID MEETING, 50 PARK PLACE LARGE CONFERENCE ROOM,  
BRISBANE, CA*

**6:00 P.M. CALL TO ORDER**

Mayor Davis called the meeting to order at 6:00 P.M.

**PUBLIC COMMENT**

No member of the public wished to make public comment.

**COMMITTEE INTERVIEWS AND POSSIBLE APPOINTMENTS**

A. Interview applicants for 1 Inclusion, Diversity, Equity and Accountability (IDEA) Committee term through January 2024, and 2 IDEA Committee terms through January 2025

(Note: Per the IDEA Committee Bylaws, Committee Member Miyoko Nida is seeking reappointment for a seat through January 2025 without being re-interviewed)

6:05 pm Ashley Budelli

6:15 pm Anna Dennis

Councilmembers interviewed Ashely Budelli and Anna Dennis.

B. Discussion and Consider making an Appointment for 1 Inclusion, Diversity, Equity and Accountability Committee terms through January 2024, and 2 IDEA Committee terms through January 2025

After Council discussion, Mayor Davis made a motion, seconded by Councilmember O'Connell, to appoint to the Inclusion, Diversity, Equity and Accountability Committee Anna Dennis for an inaugural term through January 2025 and Ashley Budelli for an inaugural term through January 2024, and Miyoko Nida for reappointment for a term through January 2025. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None



C. Interview applicants for 3 Public Art Advisory Committee terms through January 2025

6:30 pm Michael Barnes

6:40 pm Diane Glazman

6:50 pm Kathryn Gooding

7:00 pm Danielle Kellstedt

7:10 pm Dan Ryan

7:20 pm Camille Salmon

Councilmembers interviewed Michael Barnes, Diane Glazman, Kathryn Gooding, Danielle Kellstedt, Dan Ryan and Camille Salmon.

D. Discussion and Consider making Appointments for 3 Public Art Advisory Committee terms through January 2025

(Note: The Community members must include one individual professionally engaged in the art community, one individual that is an employee or owner of a Brisbane business and the other may be either a resident of Brisbane or an owner/employee of a Brisbane business.)

After Council discussion, Councilmember O'Connell made a motion, seconded by Councilmember Cunningham to appoint to the Public Art Advisory Committee Camille Salmon (professional engaged in the Art Community), Diane Glazman (owner of a Brisbane business), and Danielle Kellstedt (resident of Brisbane) for terms through January 2025. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

City Clerk Padilla will draft Resolutions for the appointments for adoption at the next City Council Meeting.

**ADJOURNMENT**

The meeting was adjourned by Mayor Davis at 7:40 P.M.

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Ingrid Padilla, City Clerk

E.

**File Attachments for Item:**

E. Accept Investment Report as of January 2023

**CITY OF BRISBANE  
CASH BALANCES & INVESTMENTS  
SOURCE OF FUNDING  
January 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		\$ 8,059,902	\$ 8,059,902	\$ 8,059,902	0.000		110% collateral
STATE FUND (LAIF)	Deposit on call	continuous	\$ 2,006,767	\$ 2,006,767	\$ 2,006,767	2.430	on call	no rating
<b>Other Investments</b>								
	Comenity Capital Bank	4/28/2019	\$ 248,000	\$ 248,000	\$ 246,774	2.650	04/28/2023	
	Morgan Stanley	5/2/2019	\$ 245,000	\$ 245,000	\$ 243,671	2.650	05/02/2023	
	FFCB	3/8/2022	\$ 1,000,000	\$ 1,000,000	\$ 966,730	1.670	03/08/2024	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 972,080	2.400	04/22/2024	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 238,893	2.750	05/01/2024	
	FHLB	7/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 980,750	3.350	07/26/2024	
	Wells Fargo Bank	9/23/2022	\$ 250,000	\$ 250,000	\$ 245,630	3.750	09/23/2024	
	American Express	9/21/2022	\$ 250,000	\$ 250,000	\$ 245,639	3.750	09/24/2024	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 943,010	1.000	09/30/2024	
	FHLM	12/13/2022	\$ 1,000,000	\$ 1,000,000	\$ 999,310	5.140	12/13/2024	
	FHLB	3/24/2022	\$ 1,000,000	\$ 1,000,000	\$ 951,730	2.000	03/24/2025	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 965,100	2.750	04/22/2025	
	FHLB	7/28/2022	\$ 1,000,000	\$ 1,000,000	\$ 984,510	4.050	07/28/2025	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 927,320	1.300	09/30/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 995,600	4.750	10/27/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 996,250	5.000	10/27/2025	
	FFCB	9/12/2022	\$ 1,000,000	\$ 1,000,000	\$ 984,410	4.125	12/12/2025	
	FHLB	9/29/2022	\$ 1,000,000	\$ 1,000,000	\$ 981,260	4.150	09/29/2026	
	FHLB	3/25/2022	\$ 1,000,000	\$ 1,000,000	\$ 939,820	2.600	03/25/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 972,380	3.150	05/26/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 969,930	3.750	05/26/2027	
	FHLB	9/30/2022	\$ 1,000,000	\$ 1,000,000	\$ 990,410	5.000	09/30/2027	
BNY Mellon	Treasury Obligations	continuous	\$ 4,976,393	\$ 4,976,393	\$ 4,976,393	4.260	on call	110% collateral
Sub-total			\$ 23,215,393	\$ 23,215,393	\$ 22,717,600			
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	\$ 158	10032			
		Expense Fund	Fed Treas Obl	\$ -	10035			
PARS	OPEB Trust	Trust Cash	Investments	\$ 3,667,452	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,284,062	13050			
Sub-total	Cash with Fiscal Agents			\$ 4,951,674				
Total other investments			\$ 23,215,393	\$ 28,167,066	\$ 22,717,600			
<b>TOTAL INVESTMENTS &amp; CASH BALANCES</b>			\$ 33,282,061	\$ 38,233,735	\$ 32,784,269			

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	\$ 200,000	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	4.21%	
Weighted Interest	2.59%	
Weighted maturity	2.01	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. Accept Investment Report as of February 2023

CITY OF BRISBANE  
CASH BALANCES & INVESTMENTS  
SOURCE OF FUNDING  
February 28, 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		\$ 6,557,928	\$ 6,557,928	\$ 6,557,928	0.000		
STATE FUND (LAIF)	Deposit on call	continuous	\$ 2,006,767	\$ 2,006,767	\$ 2,006,767	2.520	on call	110% collateral no rating
<b>Other Investments</b>								
	Comenity Capital Bank	4/28/2019	\$ 248,000	\$ 248,000	\$ 247,123	2.650	04/28/2023	
	Morgan Stanley	5/2/2019	\$ 245,000	\$ 245,000	\$ 244,060	2.650	05/02/2023	
	FFCB	3/8/2022	\$ 1,000,000	\$ 1,000,000	\$ 964,050	1.670	03/08/2024	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 968,400	2.400	04/22/2024	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 238,035	2.750	05/01/2024	
	FHLB	7/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 974,410	3.350	07/26/2024	
	Wells Fargo Bank	9/23/2022	\$ 250,000	\$ 250,000	\$ 243,673	3.750	09/23/2024	
	American Express	9/21/2022	\$ 250,000	\$ 250,000	\$ 243,714	3.750	09/24/2024	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 936,880	1.000	09/30/2024	
	FHLM	12/13/2022	\$ 1,000,000	\$ 1,000,000	\$ 992,840	5.140	12/13/2024	
	FHLB	3/24/2022	\$ 1,000,000	\$ 1,000,000	\$ 940,290	2.000	03/24/2025	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 953,330	2.750	04/22/2025	
	FHLB	7/28/2022	\$ 1,000,000	\$ 1,000,000	\$ 973,900	4.050	07/28/2025	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 915,490	1.300	09/30/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 987,700	4.750	10/27/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 990,840	5.000	10/27/2025	
	FFCB	9/12/2022	\$ 1,000,000	\$ 1,000,000	\$ 977,830	4.125	12/12/2025	
	FHLB	9/29/2022	\$ 1,000,000	\$ 1,000,000	\$ 969,810	4.150	09/29/2026	
	FHLB	3/25/2022	\$ 1,000,000	\$ 1,000,000	\$ 919,780	2.600	03/25/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 958,740	3.150	05/26/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 952,980	3.750	05/26/2027	
	FHLB	9/30/2022	\$ 1,000,000	\$ 1,000,000	\$ 979,060	5.000	09/30/2027	
BNY Mellon	Treasury Obligations	continuous	\$ 5,995,449	\$ 5,995,449	\$ 5,995,449	4.490	on call	110% collateral
Sub-total			\$ 24,234,449	\$ 24,234,449	\$ 23,568,384			
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	\$ 106,700	10032			
		Expense Fund	Fed Treas Obl	\$ -	10035			
PARS	OPEB Trust	Trust Cash	Investments	\$ 3,578,461	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,252,904	13050			
Sub-total	Cash with Fiscal Agents			\$ 4,938,068				
Total other investments			\$ 24,234,449	\$ 29,172,517	\$ 23,568,384			
TOTAL INVESTMENTS & CASH BALANCES			\$ 32,799,144	\$ 37,737,212	\$ 32,133,079			

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	4.81%	
Weighted Interest	2.81%	
Weighted maturity	2.04	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

G.

**File Attachments for Item:**

G. Approve Resolutions Establishing the Classification of Building Permit Technician and Amending the Master Pay Schedule



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** April 6, 2023

**From:** Abby Partin, Human Resources Administrator

**Subject:** Approve Resolutions Establishing the Classification of Building Permit Technician and Amending the Master Pay Schedule.

### Community Goal/Result

Fiscally Prudent, Safe Community

### Purpose

To continue to provide high level of service from the Community Development Department and to ensure the community continues to receive excellent service by retaining and attracting exceptional employees in a financially prudent manner.

### Recommendation

Approve Resolutions to:

- Establish the classification of Building Permit Technician job description;
- Amend the Master Pay Schedule; and
- Add the Building Permit Technician classification to the General Employees Association unit.

### Background

With the current and proposed growth in residential, retail, hotel, commercial and biotechnology construction, including the Baylands development within the City of Brisbane, the City engaged Baker Tilly (previously Management Partners) to identify ways to improve the current development review process within the Community Development Department, in preparation for an expected increase in the number and complexity of development applications during the next three to five years.

### Discussion

In anticipation of this expected substantial change in the level of development, Baker Tilly was tasked to evaluate the current development review process and make recommendations about how the City could provide more efficient service. One of the recommendations was to create a new Building Permit Technician classification to allow for better customer service. Additionally, Baker Tilly interviewed staff and reviewed relevant background information, conducted a focus group with several customers, and prepared two process maps to understand the existing processes and identify opportunities for increased efficiency. It was found that one of the important elements to improve service is the selection and implementation of a comprehensive permit tracking system.

The proposed Building Permit Technician (Technician) classification will serve as the primary point of contact for building permit applicants, other city departments, and outside agencies for processing building permits. The Technician also will perform routine and complex tasks associated with the receipt, review and tracking of building permit applications through the entire permit process utilizing electronic permitting systems to ensure efficiency and compliance with departmental policies and procedures.

Staff performed an internal and external compensation review and recommends a salary range of \$6,258.97-\$7,605.78 monthly (\$36.11-\$43.88 hourly), equivalent to the Community Development Technician and Human Resources Technician salary range. The General Employees Association unit have reviewed the proposed job description and approved the addition of the proposed classification.

#### **Fiscal Impact**

The estimated yearly cost at top rate of the proposed Building Permit Technician classification is \$91,269. The estimated full year cost, including benefits for the position is \$136,904, which will be incorporated in the updated fiscal year 2022-23 budget and in the ensuing budget.

#### **Measure of Success**

The City is able to maintain a stable and high quality workforce.

#### **Attachments**

Resolution 2023-XX

Resolution 2023-XX



Abby Partin, Human Resources  
Administrator

*Clayton L. Holstine*  
Clay Holstine, City Manager



**RESOLUTION NO 2023-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE  
AMENDING RESOLUTION 2001-11 TO INCLUDE THE CLASSIFICATION OF  
BUILDING PERMIT TECHNICIAN IN THE CLASS SPECIFICATION MANUAL**

**WHEREAS**, on February 13, 2001, the City Council approved Resolution 2001-11 establishing the Classifications and Pay Plan and approving the class descriptions included in Exhibit “A” of said resolution for development of the Class Specification Manual; and

**WHEREAS**, the City Manager has established the need for a new classification of Building Permit Technician; and

**WHEREAS**, the class description for Building Permit Technician was developed in cooperation with and has been approved by the City Manager; and

**WHEREAS**, this newly developed class description for Building Permit Technician meets the requirements established Rule 6.02b of the City of Brisbane Personnel Rules and Regulations for the Class Specification Manual.

**NOW, THEREFORE**, the City Council of the City of Brisbane resolves as follows:

The class description for the classification of Building Permit Technician in Exhibit “A” is approved for inclusion in the Class Specification Manual.

---

Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2023-XX was duly and regularly adopted at a regular meeting of the Brisbane City Council on April 6, 2023, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

---

Ingrid Padilla, City Clerk

## CITY OF BRISBANE

### BUILDING PERMIT TECHNICIAN

#### **Definition**

Under general supervision, performs technical, paraprofessional support, customer service, and clerical work supporting the operations involved with the building permit review, issuance and inspection process.

#### **Class Characteristics**

There is a technical classification in which the incumbent will serve as the primary point of contact for building permit applicants in the processing of permits. The nature of the tasks requires the ability to organize and prioritize the workload, along with good public relations skills and the ability to handle customers with tact and good judgement. The incumbent will perform routine and complex tasks associated with the receipt, review and tracking of building permit applications through the entire permit process to ensure efficiency and compliance with departmental policies and procedures. The incumbent will serve as primary point of contact with other city departments and outside agencies for processing building permits.

#### **Supervision Received and Exercised**

Receives direction from the Chief Building Official and/or designee.

Exercises functional or technical supervision over other clerical positions.

**Examples of Important and Essential Duties** - *the duties described below are provided as examples and are not to be considered as exclusive or all inclusive:*

- Assist or provide direction to applicants with their submittal of required materials for building permit applications;
- Screen building permit applications for completeness and conformance to City policies and procedures;
- Efficiently process building permit applications and related permits;
- Route, coordinate, and monitor plans and associated information through various City departments and agencies for plan review and permit issuance;
- Proactively track and monitor building permit workflow to ensure timely permit processing;
- Respond to inquiries and confer with builders, engineers, contractors, architects, and the public concerning submittal requirements, building codes and permit regulations;
- Effectively communicate and resolve a variety of complex problems and complaints that may be encountered by staff and applicants regarding permit and plan submittals, processing and inspections;
- Utilize the City's computerized Permit Tracking System for the processing of all building permit applications, ensuring completeness and accuracy of data entry;
- Maintain and compile records, files, forms and reports concerning building inspection and plan review activities;
- Ensure that plan check and permit fees are accurately calculated and collected;
- Organize and maintain various departmental files and databases;
- Maintain and update the Building Division website on an ongoing basis;
- Process complex records requests associated with building permits, including research of permit and plans information as needed;

- Process building-related requests from other city departments or outside agencies;
- Develop and maintain procedure manuals;
- Operate standard office equipment; and
- Perform related duties as assigned.

### **Qualifications**

#### **Knowledge of:**

- Organization, procedures, and operating details of the Community Development Department;
- Applicable Federal, State, and local laws, rules, regulations, ordinances, and organizational policies and procedures relevant to building, engineering, land use, and/or urban planning, sufficient to answer questions and provide information to the public; applicable zoning and related laws and regulations;
- Business letter writing and basic report preparation;
- Modern equipment and communication tools used for business functions and program, project, and task coordination; and
- Computers, e-permitting systems and software programs (e.g., Microsoft software packages) to conduct, compile, and/or generate documentation.

#### **Ability to:**

- Read and review building plans and specifications;
- Read land use maps, assessor's maps, plot maps, specifications, civil, mechanical, electrical, plumbing drawings, energy calculations, and other related documents;
- Use architectural and engineering scales to calculate dimensions and features; calculate and assess fees, apply cash handling principles;
- Work using a computer for extended periods of time;
- Independently respond to and resolve day-to-day requests, problems and/or complaints from staff the public and others in the course of handling building permit-related issues;
- Explain, interpret and apply routine and specialized information, policies, and governmental guidelines and regulations to other City departments, staff, the public and/or others;
- Research complex data, compile statistical information, and prepare reports for management;
- Communicate clearly and concisely orally and in writing;
- Work with the public in a tactful and effective manner;
- Work independently within established policies and procedures;
- Organize work, set priorities and meet deadlines; and
- Learn and utilize various computer programs to perform tasks, including, but not limited to, the City's specialized Permit Tracking System.

### **Education and Experience**

*Any combination of training and experience that would provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the required qualifications would be:*

Equivalent to graduation from high school and two (2) years of experience as a Building Permit Technician is highly desirable.

**Licenses and Certifications:**

- Possession of a valid California Class C Driver's License and a good driving record, at the time of appointment.
- Possession of certification as an International Code Council Certified Permit Technician within six (6) months of date of hire.

**Physical Demands:**

Must possess mobility to work in a standard office setting and use standard office equipment, including a computer; vision to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone. Standing and walking in work areas if frequently required. Finger dexterity is needed to access, enter, and retrieve data using a computer keyboard or calculator and to operate standard office equipment. Positions in this classification occasionally bend, stoop, kneel, reach, push, and pull drawers open and closed to retrieve and file information. Employees must possess the ability to lift, carry, push, and pull materials and objects weighing up to 25 pounds.

Approved Date: April 6, 2023

Resolution:

Revised Date:

Resolution:

Bargaining Unit: General Employees Association

Resolution:

Former Titles:

Abolished:

## RESOLUTION NO 2023-XX

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE ADOPTING MASTER PAY SCHEDULE FOR ALL EMPLOYEES

**WHEREAS**, the City of Brisbane contracts with the California Public Employee's Retirement System (CalPERS) to provide retirement benefits for its employees; and

**WHEREAS**, pursuant to the California Code of Regulations, Title 2, Section 570.5 CalPERS requires governing bodies of local agencies contracting with CalPERS to approve and adopt a publicly available pay schedule in accordance with public meeting laws; and

**WHEREAS**, the pay schedule must identify the position title for every employee position, pay rate for each position title, and the applicable time base for the pay rate; and

**WHEREAS**, the City Council of the City of Brisbane desires to approve and adopt a publicly available Master Pay Schedule, showing all established employee positions and pay rates, in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5;

**NOW, THEREFORE**, the City Council of the City of Brisbane resolves as follows:

The Master Pay Schedule as set forth in Exhibit A is approved and is incorporated by reference as though fully set forth herein.

---

Madison Davis, Mayor

I hereby certify that the foregoing Resolution No. 2023-XX was duly and regularly adopted at a special meeting of the Brisbane City Council on April 6, 2023, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

---

Ingrid Padilla, City Clerk

## City of Brisbane Master Pay Schedule

Approved per Resolution No. 2023-XX

Job Classification	Hourly Grade A	Hourly Grade B	Hourly Grade C	Hourly Grade D	Hourly Grade E	Monthly	Fixed Hourly	Hourly Range	Effective Date	Bargaining Group	FLSA Status
Accounting Assistant I	\$ 26.75	\$ 28.09	\$ 29.50	\$ 30.98	\$ 32.53				1/2/2023	General Employees	Non-Exempt
Accounting Assistant II	\$ 29.45	\$ 30.93	\$ 32.48	\$ 34.09	\$ 35.80				1/2/2023	General Employees	Non-Exempt
Accounting Systems Analyst	\$ 40.44	\$ 42.57	\$ 44.70	\$ 46.93	\$ 49.28				1/2/2023	General Employees	Non-Exempt
Administrative Assistant	\$ 35.39	\$ 37.16	\$ 39.01	\$ 40.96	\$ 43.01				1/2/2023	General Employees	Non-Exempt
Administrative Management Analyst	\$ 45.04	\$ 47.28	\$ 49.66	\$ 52.13	\$ 54.75				1/2/2023	Confidential Employee	Exempt
Administrative Services Director	\$ 90.94	\$ 95.48	\$ 100.26	\$ 105.26	\$ 110.54				1/2/2023	Confidential Management	Exempt
Assistant Engineer I	\$ 41.20	\$ 43.27	\$ 45.43	\$ 47.71	\$ 50.09				1/2/2023	General Employees	Non-Exempt
Assistant Engineer II	\$ 45.33	\$ 47.58	\$ 49.97	\$ 52.46	\$ 55.09				1/2/2023	General Employees	Non-Exempt
Assistant City Manager	\$ 104.58	\$ 109.80	\$ 115.30	\$ 121.05	\$ 127.12				1/2/2023	Confidential Management	Exempt
Assistant to the City Manager	\$ 69.68	\$ 73.16	\$ 76.83	\$ 80.66	\$ 84.71				1/2/2023	Executive Management	Exempt
Assistant Fire Marshal	\$ 78.22	\$ 82.13	\$ 86.24	\$ 90.55	\$ 95.08				1/2/2023	Brisbane Fire Management	Exempt
Associate Civil Engineer	\$ 53.97	\$ 56.66	\$ 59.49	\$ 62.47	\$ 65.60				1/2/2023	Mid-Management/Professional	Exempt
Associate Planner	\$ 47.68	\$ 50.07	\$ 52.58	\$ 55.20	\$ 57.97				1/2/2023	General Employees	Non-Exempt
Building Permit Technician	\$ 36.11	\$ 37.91	\$ 39.81	\$ 41.80	\$ 43.88				4/6/2023	General Employees	Non-Exempt
Cashier	\$ 15.50	\$ 16.28	\$ 17.09	\$ 17.94	\$ 18.84				1/2/2023	Unrepresented	Non-Exempt
C/CAG Stormwater Program Director	\$ 71.29	\$ 74.86	\$ 78.60	\$ 82.54	\$ 86.66				1/2/2023	Mid-Management/Professional	Exempt
City Clerk	\$ 56.39	\$ 59.21	\$ 62.17	\$ 65.29	\$ 68.54				1/2/2023	Executive Management	Exempt
City Manager	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 142.14		1/2/2023	Unrepresented	Exempt
Code Enforcement Officer	\$ 38.45	\$ 40.38	\$ 42.39	\$ 44.51	\$ 46.74				1/2/2023	General Employees	Non-Exempt
Communications Digital and Media Coordinator	\$ 36.11	\$ 37.91	\$ 39.81	\$ 41.80	\$ 43.88				1/2/2023	General Employees	Non-Exempt
Communications Manager	\$ 52.68	\$ 55.45	\$ 58.36	\$ 61.43	\$ 64.67				1/2/2023	Mid-Management/Professional	Exempt
Community Development Director	\$ 87.94	\$ 92.34	\$ 96.96	\$ 101.81	\$ 106.91				1/2/2023	Executive Management	Exempt
Community Development Technician	\$ 36.11	\$ 37.91	\$ 39.81	\$ 41.80	\$ 43.88				1/2/2023	General Employees	Non-Exempt
Community Services Officer	\$ 31.48	\$ 33.51	\$ 35.19	\$ 36.95	\$ 38.79				1/2/2023	General Employees	Non-Exempt
Council Member	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 400.00			1/2/2023	Elected Position	
Crossing Guard	\$ 15.50	\$ 16.28	\$ 17.09	\$ 17.94	\$ 18.84				1/2/2023	Unrepresented	Non-Exempt
Deputy City Clerk/Executive Assistant	\$ 42.39	\$ 44.51	\$ 46.74	\$ 49.09	\$ 51.53				1/2/2023	Confidential	Exempt
Deputy Director of Public Works	\$ 79.65	\$ 83.63	\$ 87.82	\$ 92.21	\$ 96.82				1/2/2023	Mid-Management/Professional	Exempt
Deputy Finance Director	\$ 71.29	\$ 74.86	\$ 78.60	\$ 82.54	\$ 86.66				1/2/2023	Mid-Management/Professional	Exempt
Director of Marina/Aquatics Services	\$ 58.37	\$ 61.29	\$ 64.36	\$ 67.58	\$ 70.95				1/2/2023	Executive Management	Exempt
Engineering Technician	\$ 39.72	\$ 41.71	\$ 43.79	\$ 45.96	\$ 48.28				1/2/2023	General Employees	Non-Exempt
Executive Administrative Assistant	\$ 36.68	\$ 38.50	\$ 40.43	\$ 42.46	\$ 44.58				1/2/2023	General Employees	Non-Exempt
Facility Attendant	\$ 18.20	\$ 19.11	\$ 20.07	\$ 21.07	\$ 22.12				1/2/2023	Unrepresented	Non-Exempt
Finance Director	\$ 87.04	\$ 91.38	\$ 95.96	\$ 100.77	\$ 105.78				1/2/2023	Confidential Management	Exempt
Financial Services Manager	\$ 61.58	\$ 64.65	\$ 67.89	\$ 71.29	\$ 74.86				1/2/2023	Mid-Management/Professional	Exempt
Fire Captain	\$ 43.01	\$ 45.14	\$ 47.41	\$ 49.78	\$ 52.27				1/2/2023	IAFF Local 2400	Non-Exempt
Fire Prevention Officer	\$ 50.38	\$ 55.67	\$ 58.45	\$ 61.36	\$ 64.43				1/2/2023	IAFF Local 2400	Non-Exempt
Fire Trainee	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 25.06		1/2/2023	IAFF Local 2400	Non-Exempt
Firefighter	\$ 35.99	\$ 37.78	\$ 39.67	\$ 41.64	\$ 43.73				1/2/2023	IAFF Local 2400	Non-Exempt
Firefighter II	\$ 39.59	\$ 41.56	\$ 43.64	\$ 45.81	\$ 48.10				1/2/2023	IAFF Local 2400	Non-Exempt
Firefighter/Paramedic	\$ 35.99	\$ 37.78	\$ 39.67	\$ 41.64	\$ 43.73				1/2/2023	IAFF Local 2400	Non-Exempt
Firefighter/Paramedic II	\$ 39.59	\$ 41.56	\$ 43.64	\$ 45.81	\$ 48.10				1/2/2023	IAFF Local 2400	Non-Exempt
Geographic Information System Manager	\$ 52.68	\$ 55.45	\$ 58.36	\$ 61.43	\$ 64.67				1/2/2023	Mid-Management/Professional	Exempt
Habitat Restoration Lead Worker	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 15.50		1/2/2023	Unrepresented	Non-Exempt
Harbormaster	\$ 49.66	\$ 52.13	\$ 54.74	\$ 57.48	\$ 60.36				1/2/2023	Mid-Management/Professional	Exempt
Head Lifeguard	\$ 21.82	\$ 22.92	\$ 24.06	\$ 25.28	\$ 26.53				1/2/2023	Unrepresented	Non-Exempt
History Project Asst	\$ 36.94	\$ 38.79	\$ 40.72	\$ 42.75	\$ 44.90				1/2/2023	Unrepresented	Non-Exempt
Human Resources Administrator	\$ 72.75	\$ 76.39	\$ 80.21	\$ 84.22	\$ 88.43				1/2/2023	Confidential	Exempt
Human Resources Technician	\$ 36.11	\$ 37.91	\$ 39.81	\$ 41.80	\$ 43.88				1/2/2023	General Employees	Non-Exempt
Information Technology & Systems Administrator	\$ 54.29	\$ 57.00	\$ 59.85	\$ 62.85	\$ 66.00				1/2/2023	Mid-Management/Professional	Exempt
Intern	\$ -	\$ -	\$ -	\$ -	\$ -			\$ 15.50 - \$ 20.00	1/2/2023	Unrepresented	Non-Exempt
Lifeguard	\$ 16.56	\$ 17.39	\$ 18.26	\$ 19.17	\$ 20.12				1/2/2023	Unrepresented	Non-Exempt
Management Analyst (Part-time)	\$ 40.84	\$ 42.90	\$ 45.03	\$ 47.28	\$ 49.65				1/2/2023	Unrepresented	Non-Exempt
Marina Maintenance Worker I	\$ 30.96	\$ 32.50	\$ 34.13	\$ 35.84	\$ 37.64				1/2/2023	General Employees	Non-Exempt

Job Classification	Hourly Grade A	Hourly Grade B	Hourly Grade C	Hourly Grade D	Hourly Grade E	Monthly	Fixed Hourly	Hourly Range	Effective Date	Bargaining Group	FLSA Status
Marina Maintenance Worker II	\$ 34.05	\$ 35.75	\$ 37.54	\$ 39.41	\$ 41.38				1/2/2023	General Employees	Non-Exempt
Marina Maintenance Worker I ( Part-time)	\$ 31.57	\$ 33.15	\$ 34.80	\$ 36.56	\$ 38.38				1/2/2023	Unrepresented	Non-Exempt
Marina Maintenance Worker II ( Part-time)	\$ 34.71	\$ 36.48	\$ 38.27	\$ 40.17	\$ 42.21				1/2/2023	Unrepresented	Non-Exempt
Marina Services Director	\$ 54.56	\$ 57.29	\$ 60.16	\$ 63.16	\$ 66.32				1/2/2023	Executive Management	Exempt
Office Assistant	\$ 28.38	\$ 29.75	\$ 31.24	\$ 32.80	\$ 34.45				1/2/2023	General Employees	Non-Exempt
Office Assistant (Part-Time)	\$ 28.90	\$ 30.33	\$ 31.84	\$ 33.46	\$ 35.13				1/2/2023	Unrepresented	Non-Exempt
Office Specialist	\$ 33.27	\$ 34.92	\$ 36.68	\$ 38.50	\$ 40.43				1/2/2023	General Employees	Non-Exempt
Office Specialist (Part-Time)	\$ 33.94	\$ 35.62	\$ 37.40	\$ 39.28	\$ 41.24				1/2/2023	Unrepresented	Non-Exempt
Park/Beach/Recreation Commissioner	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100.00			1/2/2023	Appointed Position	
Parks & Recreation Director	\$ 83.85	\$ 88.06	\$ 92.45	\$ 97.07	\$ 101.93				1/2/2023	Executive Management	Exempt
Parks/Facilities Maintenance Worker I	\$ 30.96	\$ 32.50	\$ 34.13	\$ 35.84	\$ 37.64				1/2/2023	General Employees	Non-Exempt
Parks/Facilities Maintenance Worker I (Part-Time)	\$ 31.57	\$ 33.15	\$ 34.80	\$ 36.56	\$ 38.38				1/2/2023	Unrepresented	Non-Exempt
Parks/Facilities Maintenance Worker II	\$ 34.05	\$ 35.75	\$ 37.54	\$ 39.41	\$ 41.38				1/2/2023	General Employees	Non-Exempt
Payroll/Utility Billing Technician	\$ 36.11	\$ 37.91	\$ 39.81	\$ 41.80	\$ 43.88				1/2/2023	General Employees	Non-Exempt
Planning Commissioner	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100.00			1/2/2023	Appointed Position	
Police Chief	\$ 102.63	\$ 107.76	\$ 113.14	\$ 118.81	\$ 124.73				1/2/2023	Police Chief	Exempt
Police Commander	\$ 92.52	\$ 97.15	\$ 102.01	\$ 107.11	\$ 112.46				1/2/2023	Police Commander	Exempt
Police Officer	\$ 47.02	\$ 49.37	\$ 51.84	\$ 54.43	\$ 57.16				1/2/2023	Brisbane Police Officers Association*	Non-Exempt
Police Officer - 40 hour shift (Detective/SRO)	\$ 49.37	\$ 51.84	\$ 54.43	\$ 57.16	\$ 60.01				1/2/2023	Brisbane Police Officers Association*	Non-Exempt
Police Sergeant	\$ 56.65	\$ 59.48	\$ 62.46	\$ 65.58	\$ 68.86				1/2/2023	Brisbane Police Officers Association*	Non-Exempt
Police Trainee	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 34.80		1/2/2023	Unrepresented	Non-Exempt
Pre-School Teacher	\$ 18.31	\$ 19.24	\$ 20.19	\$ 21.22	\$ 22.28				1/2/2023	Unrepresented	Non-Exempt
Principal Analyst	\$ 63.00	\$ 66.16	\$ 69.46	\$ 72.92	\$ 76.58				1/2/2023	Confidential	Exempt
Principal Planner	\$ 67.10	\$ 70.46	\$ 73.98	\$ 77.68	\$ 81.57				1/2/2023	Mid-Management/Professional	Exempt
Program Manager - SMCWPPP	\$ 66.37	\$ 69.70	\$ 73.18	\$ 76.84	\$ 80.69				1/2/2023	Mid-Management/Professional	Exempt
Public Service Aide	\$ 16.29	\$ 17.12	\$ 17.96	\$ 18.85	\$ 19.81				1/2/2023	Unrepresented	Non-Exempt
Public Works Director/City Engineer	\$ 102.96	\$ 108.11	\$ 113.50	\$ 119.19	\$ 125.15				1/2/2023	Executive Management	Exempt
Public Works Inspector	\$ 50.81	\$ 53.36	\$ 56.02	\$ 58.81	\$ 61.76				1/2/2023	General Employees	Non-Exempt
Public Works Lead Maintenance Worker	\$ 40.87	\$ 42.91	\$ 45.04	\$ 47.31	\$ 49.66				1/2/2023	General Employees	Non-Exempt
Public Works Maintenance Worker I	\$ 30.96	\$ 32.50	\$ 34.13	\$ 35.84	\$ 37.64				1/2/2023	General Employees	Non-Exempt
Public Works Maintenance Worker I (Part-time)	\$ 31.57	\$ 33.15	\$ 34.80	\$ 36.56	\$ 38.38				1/2/2023	Unrepresented	Non-Exempt
Public Works Maintenance Worker II	\$ 34.05	\$ 35.75	\$ 37.54	\$ 39.41	\$ 41.38				1/2/2023	General Employees	Non-Exempt
Public Works Superintendent	\$ 66.05	\$ 69.35	\$ 72.82	\$ 76.47	\$ 80.29				1/2/2023	Mid-Management/Professional	Exempt
Public Works Supervisor	\$ 50.48	\$ 53.01	\$ 55.66	\$ 58.44	\$ 61.37				1/2/2023	Mid-Management/Professional	Exempt
Public Works Team Leader	\$ 45.80	\$ 48.21	\$ 50.75	\$ 53.42	\$ 56.23				1/2/2023	Mid-Management/Professional	Exempt
Receptionist	\$ 28.34	\$ 29.75	\$ 31.24	\$ 32.80	\$ 34.45				1/2/2023	General Employees	Non-Exempt
Receptionist (Part-time)	\$ 28.90	\$ 30.33	\$ 31.84	\$ 33.46	\$ 35.13				1/2/2023	Unrepresented	Non-Exempt
Recreation Leader	\$ 18.28	\$ 19.19	\$ 20.16	\$ 21.16	\$ 22.22				1/2/2023	Unrepresented	Non-Exempt
Recreation Leader Aide	\$ 15.50	\$ 16.28	\$ 17.09	\$ 17.94	\$ 18.84				1/2/2023	Unrepresented	Non-Exempt
Recreation Manager	\$ 62.13	\$ 65.23	\$ 68.49	\$ 71.92	\$ 75.51				1/2/2023	Mid-Management/Professional	Exempt
Recreation Program Coordinator	\$ 31.43	\$ 33.54	\$ 35.21	\$ 36.97	\$ 38.82				1/2/2023	General Employees	Non-Exempt
Recreation Supervisor	\$ 45.89	\$ 48.21	\$ 50.60	\$ 53.13	\$ 55.79				1/2/2023	Mid-Management/Professional	Exempt
Regional Compliance Program Manager	\$ 52.68	\$ 55.45	\$ 58.36	\$ 61.43	\$ 64.67				1/2/2023	Mid-Management/Professional	Exempt
Reserve Police Officer	\$ 33.59	\$ 35.27	\$ 37.03	\$ 38.88	\$ 40.83				1/2/2023	Unrepresented	Non-Exempt
Senior Accounting Assistant	\$ 33.36	\$ 35.04	\$ 36.78	\$ 38.63	\$ 40.54				1/2/2023	General Employees	Non-Exempt
Senior Civil Engineer	\$ 66.37	\$ 69.70	\$ 73.18	\$ 76.84	\$ 80.69				1/2/2023	Mid-Management/Professional	Exempt
Senior Human Resources Analyst	\$ 50.32	\$ 52.83	\$ 55.48	\$ 58.25	\$ 61.16				1/2/2023	Confidential	Exempt
Senior Management Analyst	\$ 49.33	\$ 51.79	\$ 54.38	\$ 57.10	\$ 59.94				1/2/2023	Mid-Management/Professional	Exempt
Senior Planner	\$ 56.75	\$ 59.59	\$ 62.57	\$ 65.71	\$ 68.98				1/2/2023	Mid-Management/Professional	Exempt
Senior Recreation Leader	\$ 23.46	\$ 24.63	\$ 25.86	\$ 27.15	\$ 28.52				1/2/2023	Unrepresented	Non-Exempt
Sustainability Manager	\$ 52.68	\$ 55.45	\$ 58.36	\$ 61.43	\$ 64.67				1/2/2023	Mid-Management/Professional	Exempt
Special Assistant	\$ -	\$ -	\$ -	\$ -	\$ -			\$15.50-\$75.00	1/2/2023	Unrepresented	Non-Exempt
Spe Coun-Maj Dev Pro	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 175.04		1/2/2023	Confidential Management	Exempt
Swim Instructor	\$ 18.06	\$ 18.97	\$ 19.92	\$ 20.92	\$ 21.97				1/2/2023	Unrepresented	Non-Exempt
Van Driver	\$ 16.99	\$ 17.85	\$ 18.75	\$ 19.69	\$ 20.67				1/2/2023	Unrepresented	Non-Exempt
Water Quality Technician	\$ 34.05	\$ 35.75	\$ 37.54	\$ 39.41	\$ 41.38				1/2/2023	General Employees	Non-Exempt

**File Attachments for Item:**

H. Approve the Settlement Agreement with BRE SH Brisbane Owner LLC (the operator of the Homewood Suites Hotel in Sierra Point)





## CITY COUNCIL AGENDA REPORT

**Meeting Date:** April 6, 2023

**From:** Thomas McMorrow, City Attorney and Clayton Holstine, City Manager

**Subject:** Settlement Agreement Concerning Fees Paid to the City

### **Community Goal/Result:**

Economic Development - Brisbane will work with the businesses and residents to provide for economic vitality/diversity

### **Recommendation:**

Approve the Settlement Agreement with BRE SH Brisbane Owner LLC (the operator of the Homewood Suites Hotel in Sierra Point)

### **Background**

In 2001, the City entered into an “Agreement to Provide Financial Incentives” with the owner of the property at 2000 Shoreline Court (in Sierra Point) concerning the construction of an extended stay hotel with 177 units. (The hotel is now operating as a Homewood Suites Hotel.) Under that Agreement, in order to provide an economic incentive to the hotel developer for the hotel’s construction, the City agreed to waive certain development impact fees (totaling \$171,009) and that other development impact fees (totaling \$110,665) that the developer would pay to the City would subsequently be reimbursed to the developer from the transient occupancy taxes (“TOT”) that the hotel operator would collect from its guests and would otherwise remit to the City. In relevant part, the Agreement provides, “It is expressly understood and agreed by the Developer that all of the 177 units in the Project shall be considered rented for transient occupancy and subject to the City’s Transient Occupancy Tax Ordinance, regardless of the length of time any individual unit may be rented by the same occupant or customer.”

Following the hotel’s construction and the hotel operator’s being reimbursed \$110,665 from the TOT generated by the hotel, for the past 20 + years the hotel operator has been remitting to the City, in addition to the TOT for stays of less than 30 days, an additional amount of money when stays have been greater than 30 days, consistent with the quoted language above. Although the amount of additional funds remitted under that sentence has varied from year to year based on various factors, such as occupancy rate and lengths of stay, generally the City has received about \$125,000 annually based on that provision of the Agreement.

In 2021, the hotel operator requested the Agreement be terminated on grounds that requiring that additional funds be collected and to be remitted for stays longer than 30 is contrary to State law and, in any event, could not have been the intention of the parties. The operator contended the continued remittance of these funds based on that provision once the development fees had been reimbursed is completely disproportional to the benefit the hotel developer received.

The City did not agree with the hotel operator pointing out that where there is a written contract, its meaning must be ascertained from the writing alone and the words of the Agreement are clear that the hotel is to collect and remit to the City funds equivalent to the TOT regardless of the length of stay. The City also noted that earlier operations honored the contract terms.

After discussion between City representatives and the hotel operator representatives did not resolve the disagreement, the hotel operator, BRE SH Brisbane Owner, LLC, stopped collecting the funds for stays longer than 30 days and filed a lawsuit against the City in March 2022. The lawsuit sought to declare the Agreement terminated and sought an award of attorney's fees. City staff has discussed in closed session with the City Council the strengths and weaknesses of the terms at issue in the litigation. They also discussed potential terms and conditions to settle the litigation. City Council is now asked to approve a settlement agreement.

### **Discussion**

The Settlement Agreement provides that the hotel operator will pay the City \$123,000 in exchange for the termination of the Financial Incentives Agreement. It is anticipated the hotel will continue to collect and remit TOT for the first 30 days of any stay, regardless of the length of the stay, but the hotel will not be required to remit additional funds for stays longer than 30 days. Each side will bear its own costs and attorneys' fees.

The City reasonably anticipates making up the \$125,000 that it otherwise would have received from this hotel by reason that the voters in November 2022 approved a separate business license tax on hotels—a daily rate of \$2.50 for each room rented. In that this hotel has 177 rooms, at an occupancy rate of even 50%, the City would receive annually over \$80,000. Accordingly, this settlement is a fair resolution of the dispute between the hotel operator and the City.

### **Financial Impact**

The City will receive \$123,000 as a result of this Settlement Agreement which will make up the difference between what the hotel should have remitted to the City between August 2021 (when it stopped collecting and remitting to the City funds for stays longer than 30 days) and December 2022. Going forward, although the Financial Incentives Agreement will no longer be in effect, the City's recently enacted business license tax on hotels should provide the funding that the Agreement previously provided. The City also expects the hotel operator to continue to collect and remit to the City TOT for the first 30 days of a stay, regardless of the length of the stay.



Thomas McMorrow, City Attorney



Clayton Holstine, City Manager

Attachment: Settlement Agreement

## SETTLEMENT AGREEMENT AND RELEASE

1. PARTIES: The parties to this Settlement Agreement and Release (“Settlement Agreement”) are BRE SH Brisbane Owner LLC (“BRE”), a Delaware limited liability company, and the City of Brisbane (the “City”), a California municipal corporation. The foregoing parties may be referred to each as a “Party” or collectively as the “Parties.”

2. RECITALS: This Settlement Agreement is made with reference to the following facts:

2.1 In or around June of 2001, the City entered into an Agreement to Provide Financial Incentives (the “Incentive Agreement”) with Hardin Capital, LLC, a Georgia limited liability company, and Embassy Investments Brisbane, LLC, a California limited liability company, to incentivize the construction of a hotel. The hotel that was the subject of the Incentive Agreement is currently known as the Brisbane Homewood Suites, located at 2000 Shoreline Court, Brisbane, California, 94005 (the “Hotel”). A true and correct copy of the Incentive Agreement is attached as Exhibit A to this Settlement Agreement.

2.2 BRE is the current owner of the Hotel and, as such, assumed the former owners’ rights and obligations under the Incentive Agreement.

2.3 Certain claims, demands and differences have heretofore existed between BRE and the City.

2.4 Such claims, demands and differences include the following allegations, facts or contentions of the Parties (the “Disputes”):

2.4.1 BRE contends that, under Cal. Rev. & Tax Code § 7280(a) and Section 3.24.040 of the City’s Municipal Code, the City may not levy Transient Occupancy Tax (“TOT”) on stays at hotel accommodations that exceed 30 days (“Long-Term Stays”). As a result, the Incentive Agreement cannot require BRE to collect TOT on Long-Term Stays at the Hotel. To the extent the Incentive Agreement is reasonably susceptible to an interpretation that would require BRE to collect TOT on Long-Term Stays, then such interpretation would require BRE to collect a tax that is beyond the power of the City to impose and is, thus, unenforceable.

2.4.2 BRE also contends that the Incentive Agreement was not intended to (and cannot reasonably be interpreted to) impose an obligation on the Hotel’s owner to pay fees in perpetuity equal to the amount of hypothetical TOT that would have been collected from Long-Term Stays at the Hotel.

2.4.3 BRE has been collecting and making payment on TOT for all stays at the Hotel, including the first 30 days of any stay, regardless of the length of stay, as the City has represented is required to be collected and paid under applicable law.

2.4.4 The City disputes BRE’s contentions set forth in paragraphs 2.4.1 and 2.4.2.

2.4.5 On May 14, 2022, BRE filed a complaint entitled *BRE SH Brisbane Owner LLC v. City of Brisbane*, in the Superior Court of the State of California for the County of San Mateo (Case No. 22-CIV-01112) (the “Action”) alleging causes of action for (i) declaratory relief; (ii) breach of contract; (iii) money had and received; and (iv) mistaken payment.

2.4.6 On April 5, 2022, BRE filed a First Amended Complaint (“FAC”) against the City. In the FAC, BRE asserts a single claim seeking a judicial declaration that, among other things, (i) the Incentive Agreement does not require BRE to collect TOT on Long-Term Stays at the Hotel and (ii) the Incentive Agreement does not require BRE to pay a “fee” equal to the amount of hypothetical TOT that would have been collected on Long-Term Stays at the Hotel.

2.4.7 On May 9, 2022, the City filed an Answer in the Action generally denying the allegations of the FAC and asserting various affirmative defenses.

2.5 It is the intention of the Parties hereto to settle and dispose of, fully and completely, any and all Parties’ claims, demands and causes of action, of any nature whatsoever, heretofore or hereafter arising, against each other, out of or related to the Incentive Agreement, Disputes, Action and/or FAC.

### 3. THE PARTIES’ MUTUAL DENIAL OF LIABILITY

3.1 This Settlement Agreement affects the settlement of claims which are denied and contested and nothing contained herein shall be construed as an admission by either Party of any liability of any kind to the other Party. Each Party has denied, in good faith, and continues to deny, in good faith, each and all of the claims and contentions alleged by the other, as well as any and all allegations of fault, liability, misconduct, wrongdoing, or damages whatsoever. The Parties have entered into this Settlement Agreement merely to avoid litigation and buy their peace.

3.2 Neither the Settlement Agreement itself nor any of the terms of this Settlement Agreement shall be construed or deemed for any purpose to be, and the Parties each affirmatively deny that this Settlement Agreement or any of the terms of this Settlement Agreement are, evidence of or constitute an admission, concession, or finding, of any fault, liability, wrongdoing, or damage whatsoever, or any infirmity in the claims or defenses that either Party has, or could have, asserted in the Action

#### 4. SETTLEMENT PAYMENT:

4.1 BRE shall pay the City the total amount of one hundred and twenty three thousand and 00/100 dollars (\$123,000.00) (the "Settlement Payment") no later than ten (10) days after receiving a complete copy of this Settlement Agreement fully executed by the City and its counsel. Payment shall be made by BRE via ACH or wire transfer to the City's account pursuant to the payment instructions below:

Name: The City of Brisbane  
Bank: Wells Fargo Bank, N.A.

Account Number: To be confidentially provided by counsel for the City of Brisbane

Routing Number (Wire Transfers): To be confidentially provided by counsel for the City of Brisbane

Routing Number (ACH payment): To be confidentially provided by counsel for the City of Brisbane

Address: To be confidentially provided by counsel for the City of Brisbane

4.2 For the avoidance of doubt, this Settlement Payment shall constitute the full consideration to be tendered by or on behalf of BRE under the Settlement Agreement, including all attorneys' fees and costs; provided, however, that nothing in this Settlement Agreement shall relieve BRE of its ongoing obligation to collect and/or pay any taxes due to the City including, without limitation the collection and remittance to the City of all TOT required to be collected and/or paid under applicable law.

5. DISMISSAL OF LAWSUIT WITH PREJUDICE: Within two (2) days of counsel for BRE's receipt of the Settlement Agreement fully executed by the City and its counsel, counsel for BRE shall file a "Request for Dismissal (CIV-110)," in the form attached as **Exhibit B** hereto dismissing the Action as to all parties and causes of action with prejudice, each Party bearing its own attorneys' fees and costs.

6. THE PARTIES' MUTUAL RELEASES:

6.1 Upon BRE's satisfaction of its obligations under Section 4.1 of this Settlement Agreement, the Parties grant each other the following releases:

6.1.1 The City, including as applicable, its assigns, successors-in-interest, employees, council members, appointed officials, agents, representatives, delegates, attorneys and anybody that can claim by or through the City fully and forever releases, relieves, waives, relinquishes, and discharges BRE and its past or present affiliates, parent and subsidiary companies and prior entities, divisions, executors, administrators, assigns, successors-in-interest, officers, directors, owners, shareholders, employees, agents, representatives, attorneys, and insurers of and from any and all claims, demands, causes of action, suits or liabilities at law or in equity arising out of or related to the Incentive Agreement, the Disputes, the Action, and/or the FAC, whether known or unknown, that exist or could exist on or prior to the Effective Date (defined below).

6.1.2 BRE and, as applicable, its past or present affiliates, parent and subsidiary companies and prior entities, divisions, executors, administrators, assigns, successors-in-interest, officers, directors, owners, shareholders, employees, agents, representatives, attorneys, insurers and anybody that can claim by or through BRE fully and forever releases, relieves, waives, relinquishes, and discharges the City and its assigns, successors-in-interest, employees, council members, appointed officials, agents, representatives, delegates, attorneys, and insurers of and from any and all claims, demands, causes of action, suits or liabilities at law or in equity arising out of or related to the Incentive Agreement, the Disputes, the Action, and/or the FAC, whether known or unknown, that exist or could exist on or prior to the Effective Date; provided, however, that BRE's release does not extend to any potential future claim by BRE against the City for contribution and/or indemnity as a result of a third-party initiating legal proceedings or arbitration against BRE to recover TOT collected on Long-Term Stays at the Hotel.



6.2 Each Party hereby acknowledges that it may hereafter discover facts different from, or in addition to, those which each of them, respectively, now claim or believe to be true regarding their dealings and interactions prior to the Effective Date. Each Party, nevertheless, knowingly and voluntarily waives its rights under Section 1542 of the California Civil Code to the fullest extent allowable under the law and acknowledges that it has consulted with its counsel regarding the consequences of such waiver. Each Party is familiar with the provisions of Section 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

6.3 For the avoidance of doubt and only to the extent the Incentive Agreement or any portion thereof could be construed to continue to be operative and/or to have legal effect, the Incentive Agreement shall be deemed irrevocably terminated and of no further legal effect as of the Effective Date.

## 7. REPRESENTATIONS AND WARRANTIES:

7.1 Each of the Parties to this Settlement Agreement represents, warrants and agrees as to itself as follows:

7.1.1 Independent Legal Advice: Each Party has had the opportunity to receive independent legal advice from its attorneys with respect to the advisability of making the

Settlement provided for herein, with respect to the advisability of executing this Settlement Agreement, and with respect to the meaning of California Civil Code section 1542.

7.1.2 Opportunity to Review: Each Party has read this Settlement Agreement and understands the contents hereof.

7.1.3 Authority to Execute: The individuals executing this Settlement Agreement on behalf of the Parties are empowered to do so.

7.1.4 Opportunity to Investigate: Each Party to this Settlement Agreement has made such investigation of the facts pertaining to this settlement and this Settlement Agreement and of all the matters pertaining thereto as it deems necessary. Each Party is aware that it may hereafter discover claims or facts in addition to or different from those it now knows or believes to be true with respect to the matters set forth herein. Nevertheless, it is the intention of the Parties that this Settlement Agreement shall be final and binding between the Parties hereto, regardless of any claims of misrepresentation, promise made without the intention of performing, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

7.1.5 No Reliance Upon Other Statements: In entering into this Settlement Agreement, the Parties do not rely upon any statement, representation, or promise other than those specifically stated in writing in this Settlement Agreement.

7.1.6 Settlement Agreement Read and Understood: The Parties have read this Settlement Agreement and understand its contents.

7.1.7 No Assignment: The Parties have not heretofore assigned, transferred, or granted, or purported to assign, transfer or grant, any of the claims, demands, and cause or causes of action disposed of by this Settlement Agreement.

8. MISCELLANEOUS:

8.1 Governing Law: This Settlement Agreement shall be deemed to have been executed and delivered in the City of Brisbane, California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.2 Integration: This Settlement Agreement, including the Exhibits hereto, constitutes the entire Settlement Agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. The Settlement Agreement may be amended only by an agreement in writing executed by all Parties hereto.

8.3 Drafting: Each Party has cooperated in the drafting and preparation of this Settlement Agreement. As a result, the Settlement Agreement shall not be construed against any Party.

8.4 Attorney's Fees and Costs: Each Party agrees to bear its own attorneys' fees and costs.

8.5 Binding Effect of Settlement Agreement / Signatures in Counterpart: This Settlement Agreement is binding upon and shall inure to the benefit of the Parties. This Settlement Agreement may be executed in counterparts. When each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one agreement. No counterpart shall be effective until all Parties hereto have executed and exchanged an executed counterpart hereof. The effective date of this Settlement Agreement ("Effective Date") shall be the date upon which all executed counterparts have been exchanged and BRE has satisfied its obligations under Section 4.1 of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto enter into this Agreement:

Dated: \_\_\_\_\_, 2023

THE CITY OF BRISBANE

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: March 30, 2023

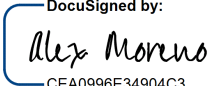
BRE SH BRISBANE OWNER LLC

By:  \_\_\_\_\_

Printed Name: Joseph Berger

Its: Chief Executive Officer

**APPROVED AS TO FORM**

Dated: _____, 2023	MANATT, PHELPS & PHILLIPS, LLP  By: _____ Christian Baker Attorney the City of Brisbane
Dated: _____, 2023 3/30/2023	SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  DocuSigned by:  By: _____ CEA0996E34904C3 Alejandro E. Moreno Attorney for BRE SH Brisbane Owner LLC

**File Attachments for Item:**

I. Adopt Resolutions for Inclusion, Diversity, Equity and Accountability Committee and the Public Art Advisory Committee Appointments



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** April 6, 2023

**From:** Ingrid Padilla, City Clerk

**Subject:** Adopt Resolutions Appointing Members to the Public Art Advisory Committee and the Inclusion, Diversity, Equity and Accountability Committee

### COMMUNITY GOAL/RESULT

Community Building

### RECOMMENDATION

Adopt Resolutions Appointing Members to the Public Art Advisory Committee and the Inclusion, Diversity, Equity and Accountability Committee.

### BACKGROUND

Resolutions were drafted to reflect the Council's direction given to the City Clerk at the City Council Special Meetings of March 21, 2023 which is to appoint the following community members to the following City Committees for various lengths of terms:

- Ashley Budelli, Inclusion, Diversity, Equity and Accountability Committee for an initial term through January 2024
- Anna Dennis, Inclusion, Diversity, Equity and Accountability Committee for an initial term through January 2025
- Miyoko Nida, Inclusion, Diversity, Equity and Accountability Committee term through January 2025
- Camille Salmon, Public Art Advisory Committee (Professional Engaged in the Art Community) term through January 2025
- Diane Glazman, Public Art Advisory Committee (Owner of a Brisbane Business) term through January 2025
- Danielle Kellstedt, Public Art Advisory Committee (Resident of Brisbane) term through January 2025

### DISCUSSION

Resolutions are on this agenda for consideration of adoption.

### FISCAL IMPACT

None.

### ATTACHMENTS

Resolutions

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Ingrid Padilla, City Clerk

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Clayton Holstine, City Manager



**RESOLUTION NO. 2023-XX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO  
A VACANT POSITION ON PUBLIC ART ADVISORY COMMITTEE**

**RESOLVED** by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Parks and Recreation Commission for the appointment period April 6, 2023 through January 31, 2025 until their successor is qualified and appointed.

**Camille Salmon**

(Professional Engaged in the Art Community)

---

Madison Davis, Mayor

\* \* \*

ADOPTED at a City Council Meeting held on April 6, 2023 by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

---

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



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Thomas McMorrow, City Attorney

**RESOLUTION NO. 2023-XX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO  
A VACANT POSITION ON PUBLIC ART ADVISORY COMMITTEE**

**RESOLVED** by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Parks and Recreation Commission for the appointment period April 6, 2023 through January 31, 2025 until their successor is qualified and appointed.

**Diane Glazman**

(Owner of a Brisbane Business)

---

Madison Davis, Mayor

\* \* \*

ADOPTED at a City Council Meeting held on April 6, 2023 by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

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Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



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Thomas McMorrow, City Attorney

**RESOLUTION NO. 2023-XX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO  
A VACANT POSITION ON PUBLIC ART ADVISORY COMMITTEE**

**RESOLVED** by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Parks and Recreation Commission for the appointment period April 6, 2023 through January 31, 2025 until their successor is qualified and appointed.

**Danielle Kellstedt**

(Resident of Brisbane)

---

Madison Davis, Mayor

\* \* \*

ADOPTED at a City Council Meeting held on April 6, 2023 by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

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Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



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Thomas McMorrow, City Attorney

**RESOLUTION NO. 2023-XX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO  
A VACANT POSITION ON THE INCLUSION, DIVERSITY, EQUITY AND ACCOUNTABILITY  
COMMITTEE**

**RESOLVED** by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Inclusion, Diversity, Equity and Accountability Committee for the initial appointment period April 6, 2023 through January 31, 2025 with an option to request to renew for an additional 2 year term until their successor is qualified and appointed.

**Anna Dennis**

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Madison Davis, Mayor

\* \* \*

ADOPTED at a City Council Meeting held on April 6, 2023, by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

---

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:




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Thomas McMorrow, City Attorney

**RESOLUTION NO. 2023-XX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO  
A VACANT POSITION ON THE INCLUSION, DIVERSITY, EQUITY AND ACCOUNTABILITY  
COMMITTEE**

**RESOLVED** by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Inclusion, Diversity, Equity and Accountability Committee for the initial appointment period April 6, 2023 through January 31, 2025 until their successor is qualified and appointed.

**Miyoko Nida**

---

Madison Davis, Mayor

\* \* \*

ADOPTED at a City Council Meeting held on April 6, 2023, by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

---

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:




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Thomas McMorrow, City Attorney

**RESOLUTION NO. 2023-XX****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO  
A VACANT POSITION ON THE INCLUSION, DIVERSITY, EQUITY AND ACCOUNTABILITY  
COMMITTEE**

**RESOLVED** by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Inclusion, Diversity, Equity and Accountability Committee for the initial appointment period April 6, 2023 through January 31, 2025 with an option to request to renew for an additional 2 year term until their successor is qualified and appointed.

**Ashley Budelli**

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Madison Davis, Mayor

\* \* \*

ADOPTED at a City Council Meeting held on April 6, 2023, by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

---

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



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Thomas McMorrow, City Attorney

**File Attachments for Item:**

J. Approve a Resolution in Support of SB 252 (Gonzalez) Fossil Fuel Divestment Act



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** April 6, 2023

**From:** Adrienne Etherton, Sustainability Manager

**Subject:** Resolution in support of state divestment bill

### Community Goal/Result

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

Fiscally Prudent - Brisbane's fiscal vitality will reflect sound decisions which also speak to the values of the community

### Purpose

Consider supporting SB 252 (Gonzalez) Fossil Fuel Divestment Act, which requires the California Public Employees' Retirement System (CalPERS) and California State Teachers' Retirement system (CalSTRS) to divest their portfolios from fossil fuel investments.

### Recommendation

Approve a resolution in support of SB 252 (Gonzalez) Fossil Fuel Divestment Act.

### Background

On June 19, 2014 the City Council, upon OSEC's recommendation, passed Resolution No. 2014-19 encouraging the state's pension funds to divest from fossil fuels. The resolution followed OSEC discussion of the matter and a presentation by OSEC member Glenn Fieldman to the City Council on April 21, 2014.

On April 21, 2022 the City Council, upon OSEC's recommendation, passed Resolution No. 2022-38 in support of SB 1173 (Gonzalez) Fossil Fuel Divestment Act. Last year's bill was held up in committee and has been reintroduced by Senator Gonzalez as SB 252. The Open Space and Ecology Committee (OSEC) discussed SB 252 and the merits of divestment at their March 22, 2023 meeting and recommended the City support the bill.

### Discussion

Senator Gonzalez's bill, if adopted into law, would prohibit CalPERS and CalSTRS from investing in the top 200 fossil fuel companies, and require that they divest any current investments in those fossil fuel companies by 2030, with an additional 5-year off-ramp if specified market conditions are encountered. The funds would be required to annually report on their divestment progress starting in 2025. The bill aligns with the City's 2014 and 2022 resolutions as well as the Climate Emergency Declaration adopted in July 2021.



**Fiscal Impact**

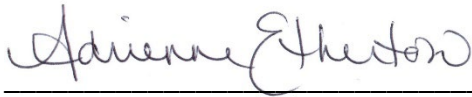
There is no direct financial impact to the City from passing this resolution.

**Measure of Success**

State pension funds are divested from fossil fuel companies contributing to climate change.

**Attachments**

1. Resolution in support of SB 252 (Gonzalez) Fossil Fuel Divestment Act
2. SB 1173 (Gonzalez) Fossil Fuel Divestment Fact Sheet



Adrienne Etherton, Sustainability Manager



Randy Breault, Public Works Director



Clay Holstine, City Manager

**RESOLUTION NO. 2023-XX****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE  
IN SUPPORT OF SB 252 (GONZALEZ) FOSSIL FUEL DIVESTMENT ACT**

**WHEREAS**, anthropogenic climate change, through rising sea levels, drought, heat waves, and increased wildfires is observably affecting human wellbeing, ecosystems, and biodiversity; and

**WHEREAS**, climate change is an issue of environmental justice, disproportionately affects Indigenous communities, communities of color, and low-income communities due to historical oppression, inadequate political power and access to resources for prevention and relief; and

**WHEREAS**, the International Panel on Climate Change concluded in 2018 that we have 12 years to make dramatic cuts in the use of fossil fuels (coal, oil, gas and tar sands) if we are to keep warming to 1.5° C and avoid more catastrophic change; and

**WHEREAS**, the fossil fuel industry is the single most powerful obstacle to addressing climate change, using its immense lobbying power in Washington D.C. and Sacramento to block climate legislation; and

**WHEREAS**, fossil fuel companies' own scientists knew as early as the 1970s that their products were causing climate change, but the companies kept it secret; and

**WHEREAS**, to effectively address climate change, most fossil fuel reserves must remain in the ground, never to be used. Such reserves held as investments are liable to become stranded assets. This makes fossil fuel stocks a risky investment; and

**WHEREAS**, a Corporate Knights study found if CalPERS and CalSTRS had divested in 2010, by 2019 their assets would have increased \$11.9 and \$5.5 billion, respectively; and

**WHEREAS**, independent studies by financial consulting firms Blackrock and Meketa have found divestment reduces risk and improves rather than weakens investment returns; and

**WHEREAS**, divestment in specific segments or business operations by CalPERS and CalSTRS is already standard practice and is specifically allowed by the California Constitution; and

**WHEREAS**, the “engagement” strategy preferred by CalPERS and CalSTRS has been largely ineffective in moving fossil fuel companies away from fossil fuel exploration, extraction and distribution; and

**WHEREAS**, divestment means selling directly held or commingled assets including fossil fuel public equities and corporate bonds; and

**WHEREAS**, the City of Brisbane declared a climate emergency in July 2021 which aspires to carbon neutrality by 2040 and commits the City to reducing emissions, coordinating climate mitigation and resiliency efforts, and accelerating a just transition; and

**WHEREAS**, the City’s Climate Emergency Declaration encourages “avoid[ing] further investment of public dollars in fossil-fuel reliant infrastructure when there are clean energy alternatives, support[ing] public sector employees, and ensur[ing] a climate resilient future for all Brisbane residents.”

**WHEREAS**, SB 252, introduced by State Senator Lena Gonzalez, will help meet the State’s climate action goals by prohibiting CalPERS and CalSTRS from investing in fossil fuel companies and to divest from such companies by 2030.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BRISBANE RESOLVES AS FOLLOWS:**

Section 1. The City of Brisbane calls upon CalPERS and CalSTRS to divest its holdings in fossil fuel companies immediately. Upon passage, a copy of this resolution will be sent to CalPERS and CalSTRS requesting that City of Brisbane be listed as an official supporter of fossil fuel divestment.

Section 2. The City of Brisbane hereby supports SB 252.

Section 3. That copies of this Resolution be sent to Governor Gavin Newsom, State Senators Josh Becker and Lena Gonzalez, and Assemblymember Diane Papan.

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Madison Davis, Mayor

\* \* \* \*

**PASSED AND ADOPTED** at a regular meeting of the City Council of the City of Brisbane held on the sixth day of April 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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Ingrid Padilla, City Clerk

J.



## SB 252 (Gonzalez) – Fossil Fuel Divestment Act

### SUMMARY

Senate Bill (SB) 252 will prohibit the California Public Employees Retirement System (CalPERS) and the California State Teachers Retirement System (CalSTRS) from investing in fossil fuel companies, and provide they divest any current holdings in these companies by 2030, with an additional 5-year off-ramp should the funds encounter specified market conditions.

### EXISTING LAW

SB 185 (De Leon, Chapter 605, Statutes of 2015) required CalPERS and CalSTRS to divest their investments in thermal coal companies, which has resulted in a positive \$598 million return to the CalPERS fund.

California Constitution Article 16, Section 17 – establishes that: “the Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board.”

### BACKGROUND/PROBLEM

Californians, along with states and nations around the globe, are facing the real and immediate threats of climate change and its ever-growing impacts on our health, safety, environment, and our ability to pass on a livable planet to future generations.

California has been a world leader in taking steps to combat the causes of climate change, setting historic carbon reduction goals, and taking meaningful actions to

help prevent environmental destruction and protect communities who bear the overwhelming brunt of carbon emissions.

Despite these forward-thinking actions, California’s multi-billion dollar retirement pension funds are actively investing billions of dollars in the very fossil fuel companies that are the primary cause of climate change.

CalPERS and CalSTRS, which invest the pension funds of state employees and teachers, have an investing power of \$469 billion and \$327 billion, respectively. Unfortunately, CalPERS estimates that they are currently investing \$9.4 billion of these dollars in fossil fuel companies, and CalSTRS is investing in 159 fossil fuel companies with a combined market value of approximately \$5.4 billion.

While California businesses and communities prepare to undertake the transformative changes necessary to meet our critical emissions reductions goals of 40% below 1990 levels by 2030 and 85% below by 2045, CalPERS is actively purchasing ownership in oil and gas companies such as \$1.3 billion in Exxon, \$817 million in Chevron, \$158 million in Saudi Aramco, \$61 million in PetroChina, \$55 million in China Petroleum & Chemical, and dozens of other fossil fuel companies.

With the explosion of investment and development in carbon-free technologies, consumer pressure, and governmental regulation forcing a move away from fossil fuels, it has become clear that the fossil fuel industry may be a risky and myopic financial investment. In fact, data from the last four decades shows that in 1980, the fossil fuel industry claimed 29% of the S&P 500, whereas today,

it only occupies 5.3%, the lowest level in more than 40 years.<sup>1</sup>

An estimated 1,500 institutions with over \$39 trillion in assets have already taken action to end direct financial support of climate destruction by committing to some form of fossil fuel divestment, including the University of California, the California State University, the State and City of New York, the State of Maine, the Vatican, and the province of Quebec.<sup>2</sup>

In October of 2021, Netherland's ABP, the fifth largest public employee pension fund in the world with \$600 billion in assets, announced it would divest its current \$17.4 billion of fossil fuels investments by the first quarter of 2023, citing corporate engagement as an ineffective strategy to change fossil fuel behavior.<sup>3</sup> These investment numbers dwarf that of CalPERS and CalSTRS, and is following a divestment timeline of under two years.

Major investment management firms, BlackRock and Meketa, have independently concluded that funds can divest from fossil fuels without weakening investment returns.<sup>4</sup> A further study has shown that if CalPERS and CalSTRS had divested from fossil fuels in 2010, they would have gained \$11.9 billion and \$5.5 billion in returns by 2019.<sup>5</sup>

In fact, CalPERS and CalSTRS have taken on divestments that have resulted in positive returns for the funds. CalPERS's active divestment from Thermal Coal has resulted in \$598 million in gains; divestment from Iran has resulted in \$256 million in gains; and divestment from firearms manufacturers has resulted in \$36 million in gains. Of CalPERS active divestments, only the divestment from tobacco companies has resulted in losses to the pension fund, and no one is arguing that CalPERS reinvest into such a dangerous product that runs afoul of the state's public interest.

The pension funds have already recognized the need to move investments out of dangerous carbon emitting companies. CalPERS and CalSTRS have committed to reach a goal of NetZero investments at some point over

<sup>1</sup> <https://ieefa.org/resources/fossil-fuel-investments-looking-backwards-may-prove-costly-investors-todays-market>

<sup>2</sup> <https://divestmentdatabase.org/>

<sup>3</sup> <https://apnews.com/article/climate-business-united-nations-netherlands-greenpeace-45f4a39e838667d032d2483956f01c9b>

<sup>4</sup> <https://ieefa.org/resources/major-investment-advisors-blackrock-and-meketa-provide-fiduciary-path-through-energy>

<sup>5</sup> <https://drive.google.com/file/d/1k27W2oTzaqueEZrvit4RLfve6pvakqMI/view>

the next 27 years. And while CalSTRS has taken steps in the last year to invest some of its assets in low carbon indexes and establish a partial NetZero goal by 2030, it still retains the ability to invest directly into the largest fossil fuel companies, such as: Gazprom (Russia), Rosneft (Russia), LukOil (Russia), Aramco (Saudi Arabia), and the state-owned PetroChina.

Many of the teachers and state employees whose retirement futures are invested by CalPERS and CalSTRS have passed resolutions calling for the divestment of fossil fuels, including the California Faculty Association, the California Federation of Teachers, associations representing higher education faculty, academic senates at California State University and the University of California, and local teachers' unions from Los Angeles to Oakland.

## SOLUTION

SB 252 seizes the momentum of the worldwide divestment movement and continues the bold and progressive actions that California must take to address climate change. SB 252 ends the contradictory and incongruous actions that position the state as a leader in the fight against climate change, while simultaneously investing billions directly in the fossil fuel companies that are causing climate change.

Specifically, SB 252 will prohibit CalPERS and CalSTRS from making any new investments in the top 200 fossil fuel companies, and provides an off-ramp of 7 years to divest any current investments; with an additional 5-year off-ramp should the funds encounter specified market conditions.

Additionally, SB 252 will require CalPERS and CalSTRS to annually report on their divestment progress beginning in 2025.

## SUPPORT

California Faculty Association (Sponsor)  
Fossil Free California (Sponsor)  
Harmony Union Teachers Association  
Breast Cancer Action  
CA Nurses for Environmental Health and Justice  
Cascadia Climate Action Now  
Health Professionals for Equality and Community Empowerment  
Physicians for Social Responsibility San Francisco Bay

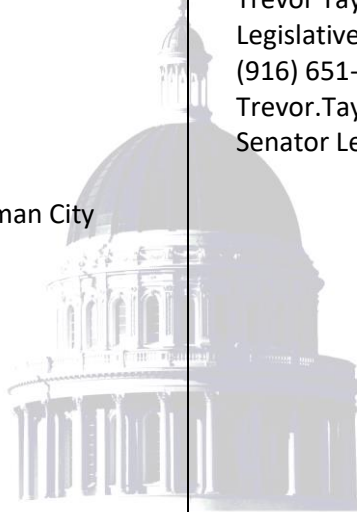
San Diego Physicians for Clean Air  
 Ban Single Use Plastics  
 Bay Area System Change Not Climate Change  
 CALPIRG  
 California Climate Voters  
 Center for Biological Diversity  
 Center for Community Energy  
 Center on Poverty, Race and the Environment  
 Change Begins With ME (Indivisible)  
 CleanEarth4Kids.org  
 Climate Action CA  
 Climate Action Campaign  
 Climate Action Campaign of the Humboldt Unitarian  
 Universalist Fellowship  
 Climate Action Now UCLA!  
 Climate Equity Policy Center  
 Climate First: Replacing Oil & Gas  
 Climate Organizing Hub  
 Climate Reality Project SFV  
 Coastside Jewish Community  
 Consumer Watchdog  
 Earth Guardians  
 Earth Guardians Bay Area Crew  
 East Valley Indivisibles  
 El Pueblo Para el Aire Y Agua Limpia de Kettleman City  
 Elders Climate Action  
 Environmental Working Group  
 Equity Transit  
 Extinction Rebellion SF  
 Feminists in Action Los Angeles  
 Food and Water Watch  
 Friends Committee on Legislation of California  
 Friends of the Earth  
 Green Team at Francis Parker School  
 Healthy Environment for All Lives (HEAL)  
 Lets Green CA  
 National Resources Defense Council  
 Oil and Gas Action Network  
 Protect Playa Now  
 Regenerating Paradise  
 Santa Barbara Standing Rock Coalition  
 Santa Cruz Climate Action Network  
 Saphron Initiative  
 SF Baykeeper  
 Schools for Climate Action  
 Sierra Club California  
 Social Compassion in Legislation  
 Social Eco Education Los Angeles  
 South Bay Progressive Alliance  
 Stand.earth  
 Sunflower Alliance

System Change Not Climate Change  
 The Climate Center  
 The River Project  
 Third Act Educators  
 UC Green New Deal Coalition  
 Youth Vs Apocalypse  
 1000 Grandmothers for Future Generations  
 350 Bay Area Action  
 350 Humboldt  
 350 Marin  
 350 San Diego  
 350 Sacramento  
 350 Southland Legislative Alliance  
 350 South Bay Los Angeles  
 350 Conejo San Fernando Valley

#### CONTACT

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Trevor Taylor  
 Legislative Director  
 (916) 651-4033  
 Trevor.Taylor@sen.ca.gov  
 Senator Lena Gonzalez



**File Attachments for Item:**

K. Introduce an Ordinance, Waiving First Reading, Amending Various Sections of the Brisbane Municipal Code Concerning Building Efficiency Program

(It is being recommended to introduce an Ordinance amending various sections of Chapter 15.77 of the Brisbane Municipal Code concerning Building Efficiency Program, including the finding that the introduction and adoption of the Ordinance is not subject to further review under the California Environmental Quality Act (CEQA) because it is not a “project”. (CEQA Guidelines, Section 15378 (b)(2))





## CITY COUNCIL AGENDA REPORT

**Meeting Date:** April 6, 2023

**From:** Adrienne Etherton, Sustainability Manager

**Subject:** Building Efficiency Program Ordinance Amendments

### Community Goal/Result

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

### Purpose

To amend the ordinance which established the Building Efficiency Program based on current needs, understanding and best practices.

### Recommendation

Introduce an Ordinance Amending Various Sections of Chapter 15.77 of the Brisbane Municipal Code Concerning Building Efficiency Program, including the finding that the introduction and adoption of the Ordinance is not subject to further review under the California Environmental Quality Act (CEQA) because it is not a “project”. (CEQA Guidelines, Section 15378 (b)(2)).

### Background

In late 2019, the City Council adopted Chapter 15.77 of the Brisbane Municipal Code thereby establishing the Brisbane Building Efficiency Program. The ordinance put in place annual energy and water benchmarking requirements for local buildings 10,000 square feet or larger with the first reports due in May 2021 for calendar year 2020 building data. In addition, the ordinance established “Beyond Benchmarking” requirements through which owners of buildings covered by the program must either demonstrate that the buildings are already high-performing (i.e. highly energy and water efficient) or the owners must take actions to improve the building’s efficiency, including performing energy and water audits followed by improvements, retro-commissioning, or green lease agreements between tenants and landlords (where applicable).

The Beyond Benchmarking requirements start in 2023 for commercial buildings and 2024 for industrial and multi-family buildings. Accordingly, in 2022 sustainability staff began working on additional guidance and documentation for the Beyond Benchmarking phase. Through this process, staff determined that certain aspects of the original ordinance posed challenges for implementation and is recommending these clean-up amendments to ensure that building owners and representatives are able to comply with both the letter and the spirit of the law and that staff is able to efficiently and effectively administer the ordinance.

### Discussion

The recommended changes to the code fall into four areas:

1. Updating and clarifying Beyond Benchmarking reporting timelines, including incorporating interim steps and ensuring that owners of the buildings have time to see the results from one cycle before moving into the next.
2. Providing more options for water use efficiency, including an option to demonstrate high-performance status by the water use intensity being 25% better than the property type median so already efficient buildings can be recognized as such, and referencing a common water audit guideline.
3. Updating the energy performance metric from GHG intensity to Energy Use Intensity, to match the readily available metrics in both Energy Star Portfolio Manager (the free benchmarking tool used by building owners/representatives) and TouchstoneIQ (the program management software used by City staff) and align with industry best practice.
4. Changing the City notification timeline so that staff may review and incorporate Energy Star Portfolio Manager's annual platform update and recommended metrics, generally in late February, before the start of the reporting cycle.

### **Fiscal Impact**

There is no cost associated with the proposed revision.

### **Environmental Determination**

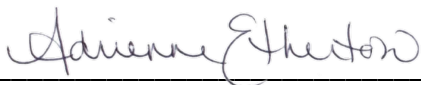
Introduction (and adoption) of this Ordinance is not subject to further environmental review under the California Environmental Quality Act (CEQA) because it is a continuing administrative activity of the City, i.e., general policy and procedure making, and therefore it is not a "project" under CEQA. (CEQA Guidelines, Section 15378 (b)(2)).

### **Measure of Success**

Building Efficiency Program participants can comply with the requirements and staff is able to effectively administer the Program.

### **Attachments**

- A. Proposed Ordinance
- B. Chapter 15.77 (BBEP) Ordinance - Redline



Adrienne Etherton, Sustainability Manager



Randy Breault, Public Works Director



Clay Holstine, City Manager

**ORDINANCE NO. - - -**

**AN ORDINANCE OF THE CITY OF BRISBANE  
AMENDING SECTIONS 15.77.40, 15.77.070, 15.77.080, AND 15.77.100  
OF CHAPTER 15.77 OF THE BRISBANE MUNICIPAL CODE CONCERNING  
BUILDING EFFICIENCY PROGRAM**

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

**Section 1: Section 15.77.040 of the Brisbane Municipal Code is revised to read as follows:**

**"15.77.040 - Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless the context indicates otherwise. Words and phrases not defined here shall be construed as defined in BMC Chapters 15.08, 15.70, 15.80, 15.81, and 15.82.

A. "Base building systems" means the systems and subsystems of a building that use or distribute energy and/or water and/or impact the energy and/or water consumption, including the building envelope; the heating, ventilating and air-conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; landscape irrigation systems and water features; energy generation and storage equipment; and electric vehicle charging infrastructure. Base building systems shall not include:

1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the energy and water bills according to usage and demand as measured by a meter or sub-meter.
2. Systems or subsystems owned by a residential unit owner that exclusively serve the residential unit of that owner.

B. "Baseline year" means the calendar year that a building shall use as its past energy and water usage year when comparing to its "reporting year" usage. For the beyond benchmarking cycle 1, the baseline year is the first year of in-compliance benchmarking, which is the calendar year data of 2020 reported in 2021 unless reporting was not completed that year or had unresolved data quality issues. In subsequent beyond benchmarking cycles, the baseline year resets to the calendar year evaluated in the previous beyond benchmarking cycle. The following table reflects the data and baseline years for a typical commercial property during the first three (3) beyond benchmarking cycles:

	Baseline	Calendar Evaluation Year Data to be compared against Baseline	Year 1 – (Reporting Year) - Performance Verification Report or Audit due	Year 3 – Check-in	Year 5 – RCx Report, Improvement Report, or Green Lease Attestation due

Cycle 1	2020	2022	2023	2025	2027
Cycle 2	2022	2028	2029	2031	2033
Cycle 3	2028	2034	2035	2037	2039

C. "Benchmarking report" means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual energy and water performance of a building.

D. "Commercial property" means a property that is defined by ENERGY STAR® Portfolio Manager with the exception of the property types listed on Portfolio Manager as multifamily or manufacturing/industrial plants. Commercial property includes warehouses and distribution centers.

E. "Covered building" means the current definition of "covered building" as set forth in state regulations.

F. "Decarbonized building" means any building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations.

G. "Demand flexibility" means the capability provided by building controls or distributed energy resources to reduce, shed, shift, modulate or generate electricity. Energy flexibility and load flexibility are often used interchangeably with demand flexibility.

H. "Department" means the City of Brisbane's Department of Public Works.

I. "Disclosable buildings" means the most current definition of "disclosable buildings" as set forth in state regulations that have ten thousand (10,000) square feet or more of gross floor area.

J. "Distributed Energy Resources (DER)" means distribution-connected distributed generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies, that are supported by a wide-ranging suite of California Public Utilities Commission policies.

K. "Energy" means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

L. "Energy audit" means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize energy in order to optimize a building's overall energy performance.

M. "ENERGY STAR® Portfolio Manager" means the United States Environmental Protection Agency's online tool for measuring, tracking, and managing a building's energy, water, and greenhouse gas emission data, and benchmarking the performance of the building.

N. "ENERGY STAR® Certified" means a building which has earned an ENERGY STAR® Score of seventy-five (75) or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings nationwide and the data has been verified by a professional engineer or registered architect.

O. "ENERGY STAR® Score" means a number ranging from one to one hundred (100) assigned by the U.S. EPA's Energy Star Portfolio Manager as a measurement of a building's energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by the U.S. EPA's ENERGY STAR® Portfolio Manager.

P. "Energy Use Intensity" (EUI) as defined by the U.S. EPA means all energy consumption divided by the gross floor area. A normalized EUI is adjusted for property characteristics, site energy factors and source energy factors as determined by the U.S. EPA's ENERGY STAR® Portfolio Manager.

Q. "Grid-Interactive Efficient Building (GEB)" means an energy efficient building with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.

R. "Gross floor area" means the total building square footage, as measured between the exterior walls of the building(s). Open-air stairwells, breezeways, and other similar areas that are not fully enclosed should not be included in the gross floor area. Gross floor area for a commercial property shall include all finished areas inside the building(s) including supporting areas, lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, storage rooms. Gross floor area for an industrial property shall include all space within the building(s) at the plant, including production areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts. Gross floor area for a multifamily property shall include all buildings that are part of a multifamily community or property, including any management offices or other buildings that may not contain living units, all fully-enclosed space within the exterior walls of the building(s), including living space in each unit (including occupied and unoccupied units), interior common areas (e.g. lobbies, offices, community rooms, common kitchens, fitness rooms, indoor pools), hallways, stairwells, elevator shafts, connecting corridors between buildings, storage areas, and mechanical space such as a boiler room.

S. "Industrial property" means a property that is defined by ENERGY STAR® Portfolio Manager as a manufacturing/industrial building used for producing, manufacturing, or assembling goods and includes, but is not limited to, a main production area that has high-ceilings and contains heavy equipment used for assembly line production.

T. "Multifamily property" means any multifamily building that contains two (2) or more residential living units. This includes high-rise buildings (ten (10) or more stories), mid-rise buildings (five (5) to nine (9) stories), or low-rise buildings (one to four (4) stories).

U. "Qualified auditor" means an individual whose job duties do not regularly occur at the property, who possesses such qualifications as determined by the department to perform or directly supervise individuals performing audits and to certify audit reports required by this chapter. A qualified auditor may be a contractor hired by the reporting entity, or an employee of a utility, so long as such person has two (2) or more years of auditing experience and possesses one or more of the following certifications:

1. Accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;

2. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);
3. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);
4. High Performance Building Design Professional (HBDP) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
5. For audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI);
6. Professional Engineer (PE) registered in the State of California;
7. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International; or
8. Additional qualified certifications as the Director of the Department deems appropriate.

V. "Qualified retro-commissioning professional" means an individual whose job duties do not regularly occur at the property, who possesses such qualifications as determined by the department to perform or directly supervise individuals performing the retuning work (i.e. adjusting system control parameters) required by this chapter. A qualified retro-commissioning professional may be a contractor hired by the reporting entity or an employee of a utility so long as such person has two (2) or more years of commissioning or retuning experience and possesses one or more of the following certifications:

1. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;
2. Accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;
3. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);
4. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);
5. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);
6. Certified professional certified by the National Environmental Balancing Bureau (NEBB);
7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
8. Professional Engineer (PE) registered in the State of California; or
9. Additional qualified certifications as the Director of the Department deems appropriate.

W. "Reporting Year" means the year in which a benchmarking or other report is submitted, based on the prior calendar year's data. For instance, for Reporting Year 2023, a building owner will submit energy and water data for calendar year 2022 (January 1 – December 31) with a deadline of May 15, 2023.

X. "Retro-commissioning" means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

Y. "Retro-commissioning measures" means work relating to retro-commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's energy and/or water performance.

Z. "Retrofit Measures" means upgrades or alterations of building systems involving the installation of energy and/or water efficiency and DER technologies that reduce energy and/or water consumption and improve the efficiency of such systems.

AA. "Solar thermal system" means the process of utilizing energy from the sun through the use of collectors to produce heat for a variety of applications including, but not limited to, heating water, providing process heating, space heating, absorption cooling and any combination of such applications.

BB. "Solar photovoltaic" means a technology that uses a semiconductor to convert sunlight directly into electricity.

CC. "Stationary Battery Electric Storage System (BESS)" means a rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, and associated electrical equipment designed to provide electrical power to a building, designed for service in a permanent location.

DD. "U.S. EPA Water Score" means a number ranging from one to one hundred (100) assigned by the U.S. EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole building's water use, normalized for that building's characteristics, operations, and weather, according to the methods established by the U.S. EPA's ENERGY STAR® Portfolio Manager.

EE. "Water audit" means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize water in order to optimize a building's overall water performance.

FF. "Water Use Intensity" (WUI) as defined by the U.S. EPA means all water consumption divided by the gross floor area (not including parking or irrigated area) and is not adjusted for any of the building use details (number of workers, weekly hours, etc.)."

## **Section 2: Section 15.77.070 of the Brisbane Municipal Code is revised to read as follows:**

### **"15.77.070 - Beyond benchmarking performance path.**

A. Owners of properties that are highly efficient, have demonstrated increased efficiency, or have adopted distributed energy resources may establish satisfactory energy and water efficiency by providing the documentation described below to the department in such a form as required by the department that demonstrates the following:

1. The building is new and has been occupied for less than five (5) years from its first compliance due date, based on its temporary certificate of occupancy or certificate of occupancy; or has achieved one or more of the energy standards and one or more of the water standards as set forth below for at least three (3) of the five (5) calendar years preceding the building's compliance due date.

2. Energy standards: The building has the latest version of the Leadership in Energy and Environmental Design (LEED™) existing buildings operations and maintenance certification; or qualified auditor or retro-commissioning professional certified at least at least one of the following:

- a. The building has received an ENERGY STAR® score of eighty (80) or greater from the U.S. EPA; or
- b. The building has improved its ENERGY STAR® score by twenty (20) points or more relative to its performance during the baseline year; or
- c. The building has a weather normalized site energy use intensity as calculated by the benchmarking tool that is twenty-five percent (25%) below the calculated median for that property type; or
- d. The building has reduced its weather normalized site energy use intensity by at least twenty percent (20%) relative to its performance during the baseline year.

3. If a building has installed one or more of the following distributed energy resources (DERs):

- a. Solar Photovoltaic. An onsite solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational. The greater of the two (2) following options satisfy the solar photovoltaic measure:
  - i. A minimum amount of solar photovoltaic capacity of five (5) kilowatts per Brisbane Municipal Code Section 15.82.050; or
  - ii. Sufficient capacity must be installed to offset equal to or greater than twenty percent (20%) of their annual electricity consumption, as calculated by ENERGY STAR® Portfolio Manager, or otherwise determined by the city department.
- b. Stationary Electric Storage. An onsite stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- c. Grid-interactive Efficient Building (GEB). The building currently has the ability to interact with the distribution system operator's grid to optimize its energy consumption and/or dispatch. GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.



d. Decarbonized Building. The building is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized in the current reporting year.

4. Water standards: A qualified auditor or qualified retro-commissioning professional has certified at least one of the following:

- a. The building has received a U.S. EPA water score of eighty (80);
- b. The building has improved its U.S. EPA water score by twenty (20) points or more relative to its performance during the baseline year;
- c. The building has reduced its water use intensity by at least twenty percent (20%) relative to its performance during the baseline year.
- d. The building has a water use intensity that is twenty-five percent (25%) below the calculated median for that property type as determined by the Department.

B. If a building has achieved both energy and water standards, the property owner is only required to submit an ENERGY STAR® performance verification report for that reporting year. If the building only meets one of the standards, the property owner shall submit a performance verification report for the satisfactory standard and shall comply with this section by completing one of two (2) prescriptive pathway options for the unmet standard as set forth in subsection G of section 15.77.080.

C. After the establishment of a DOE-recognized standard for a water auditor, the director may adopt the qualifications of the DOE-recognized standard with modifications as the director deems to be appropriate.”

**Section 3: Section 15.77.080 of the Brisbane Municipal Code is revised to read as follows:**

**“15.77.080 - Beyond benchmarking prescriptive path.**

A. If a building does not meet performance standards set forth in 15.77.070, a property owner shall meet the requirements of this chapter through one of two (2) alternative means:

- 1. For properties between ten thousand (10,000) and thirty-nine thousand nine hundred ninety-nine (39,999) square feet:
  - a. Conducting an asset score full report described in Section 15.77.080 B; and either
  - b. Performing retro-commissioning described in Section 15.77.080 D; or
  - c. Adopting improvement measures described in subsection F of Section 15.77.080; or
  - d. Adopting a green lease as described in subsection H of Section 15.77.080.
- 2. For properties forty thousand (40,000) square feet and more:

- a. Conducting a minimum of an ASHRAE audit Level II audit described in Section 15.77.080 B (Level III audits are also acceptable); and either
- b. Performing retro-commissioning described in Section 15.77.080 D; or
- c. Adopting efficiency and/or DER Improvement Measures described in subsection F of Section 15.77.080; or
- d. Adopting a green lease as described in subsection H of Section 15.77.080.

B. Energy and Water Audit Standards. Energy and water auditing standards shall comply with both of the following:

1. Energy Auditing.

Energy audits required by this chapter shall meet or exceed either the Department of Energy (DOE) asset score standards, American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II audit standards in conformance with the ASHRAE Standard 211-2018 (or latest version) "Standard for Commercial Building Energy Audits" and shall be performed under the direct supervision of a qualified auditor or qualified retro-commissioning professional. The DOE audit template shall be used to transmit data to the city for compliance with energy auditing and retro-commissioning. The city will publish an audit template on the building energy asset score website with standardized data collection fields to capture information about base energy systems and recommended retrofit opportunities. Section 15.77.080 A describes the applicability of each of the following audit standards based on gross floor area:

a. Asset Score Full.

- i. Collect building data: Use the data collection form "full" input mode version to gather information about the building's physical characteristics.
- ii. Review the data collection priority map to help focus on the most important building data given the building's use type and climate zone.
- iii. Enter the data on the audit template supplied on the DOE asset score website for the Brisbane Building Efficiency Program.

b. ASHRAE Level II Audit.

- i. Energy audits required by this chapter shall meet or exceed Level II audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 211-2018 "Standard for Commercial Building Energy Audits" and shall be performed under the direct supervision of a qualified auditor.

2. Water Auditing.

Water audits shall be performed in accordance with industry standard practices, including the latest version of the DOE Water Audit Guidance for Commercial Buildings or ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the department directs

the use of the latest version of ASHRAE Standard 230 the existing building commissioning process (EBCx process), and under the direct supervision of a qualified auditor or qualified retro-commissioning professional. The water audit of the base building systems shall include, at a minimum, the following:

- a. Potable water distribution systems;
- b. Landscape irrigation systems;
- c. Water reuse systems; and
- d. Water features.

C. Energy and Water Audit Report. A report of the energy and water audit, completed and signed by a qualified auditor, shall be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of subsection 15.77.080 B and shall include, at a minimum, the following:

- 1. The date(s) that the audit and retro-commissioning were performed;
- 2. Identifying information on the auditor and retro-commissioning provider;
- 3. Information on the base building systems and equipment;
- 4. A list of all retrofit measures that can reduce energy use and/or cost of operating the building, costs of each measure, and an estimate of the energy savings associated with each measure;
- 5. A list of all retrofit measures that can reduce water use and/or cost of operating the building; costs of each measure; and an estimate of the water savings associated with each measure;
- 6. Functional performance testing reports;
- 7. Operational training conducted;
- 8. Inventory of existing, planned, or desired electric vehicle (EV) charging stations on the property;
- 9. Inventory of existing, planned, or desired solar photovoltaic, solar water heating, other energy generation equipment;
- 10. Inventory of existing, planned, or desired stationary battery electric storage system or other energy storage equipment;
- 11. Inventory of existing, planned or desired building energy end-use electrification retrofits including electrical panel upgrades;
- 12. Inventory of existing, planned or desired water systems and equipment; and
- 13. Acknowledgment that an asset score full, or ASHRAE Level II audit was conducted.

D. Energy and Water Retro-Commissioning Standards.

1. Energy retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies. The department may consider updating the ASHRAE Guideline 0.2 with ASHRAE Standard 230 the existing building commissioning process (EBCx process) once the standard has been voted and approved by ASHRAE. These activities shall be conducted under the direct supervision of a qualified retro-commissioning professional. The retro-commissioning of base building systems shall include, at a minimum, the following:

- a. Heating, ventilation, air conditioning (HVAC) systems and controls;
- b. Indoor lighting systems and controls;
- c. Exterior lighting systems and controls;
- d. Water heating systems;
- e. Renewable energy systems;
- f. Stationary electric battery storage systems;
- g. Electric vehicle charging equipment; and
- h. Demand flexibility systems.

2. Water retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the department directs the use of the latest version of ASHRAE Standard 230 the existing building commissioning process (EBCx process), and under the direct supervision of a qualified retro-commissioning professional. The water retro-commissioning of the base building systems shall include, at a minimum, the following:

- a. Potable water distribution systems;
- b. Landscape irrigation systems;
- c. Water reuse systems; and
- d. Water features.

E. Energy and Water Retro-Commissioning Report. A report of the energy and water retro-commissioning, completed and signed by a qualified retro-commissioning professional, shall be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of Subsection 15.77.080 D and shall include, at a minimum, the following:

- 1. The date(s) that the retro-commissioning was performed;
- 2. Identifying information on the retro-commissioning provider;
- 3. Information on the base building systems and equipment;
- 4. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;

5. Functional performance testing reports; and

6. Operational training conducted.

F. Improvement Measures. A property owner may comply with the requirements of this chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement measures—one energy-related measure and one water-related measure listed below—were completed and by submitting an improvement measures report within the time set forth in Section 15.77.100.

1. Energy-related Improvement Measures.

a. Energy efficiency improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize energy efficiency in base building systems, decarbonized buildings, and building electrification. An owner may submit a request to the department to add measures not contained in the published list that are identified by a qualified auditor or retro-commissioning professional. Examples of energy systems include, but are not limited to:

i. Space heating and cooling.

ii. Ventilation.

lii. Building envelope measures such as insulation, air sealing and window upgrades.

iv. Water heating.

v. Lighting.

vi. Cooking.

Vii. Refrigeration.

viii. Office equipment and computing.

ix. Other loads.

b. Distributed energy resource improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize decarbonized buildings and building electrification. Examples of energy systems include, but are not limited to:

i. Solar Photovoltaic. An onsite solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.

li. Stationary Electric Storage. An onsite stationary battery electric storage system (BESS) has been installed in accordance with the California Building

Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.

iii. Grid-interactive Efficient Building (GEB). GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way that is currently operational.

iv. Electric Vehicle (EV) charging infrastructure. Electric vehicle charging infrastructure has been installed on the building site.

v. Decarbonized Building. A building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized.

## 2. Water-related Improvement Measures.

a. Water efficiency improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize water efficiency. Examples of energy systems include, but are not limited to:

i. Installation of plumbing such that all systems in the building are in compliance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational;

ii. Installation of outdoor landscaping and irrigation such that all systems on the property are in compliance with Brisbane Municipal Code Chapter 15.70, Water Conservation in Landscaping in effect at the time of the compliance cycle;

iii. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended and in effect at the time of installation and currently operational;

iv. Installation of insulation on all hot water pipes in accessible building locations; or

v. Participation in approved water utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades).

G. Improvement Measures Report. A report of the improvement measures implemented shall be submitted to the department and maintained by the property owner as required in Section 15.77.090. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

1. Descriptions of the measures including the date(s) that the improvement measures were implemented;

2. Identifying information on the person implementing the improvement measures;
3. Information on the base building systems and equipment; and
4. A list of all improvement measures that can reduce energy or water use and the cost of operating the building, and the costs of each measure.

H. Green Lease Attestation. A property owner may submit a letter of attestation that its lease or other rental agreement for the building contains sustainability or environmental provisions specifically related to energy and water as part of the agreement (a "green lease"). At a minimum, the owner shall provide reasonable evidence that the agreement includes provisions for:

1. Energy and water cost pass through requirements that do not exceed the actual reduction in building operating costs for the tenant;
2. Operational clauses that support overall energy and water reductions on the property; and
3. Reporting clauses that allow the owner and tenant to share data necessary to comply with this chapter.

I. Required Submittal to the Department.

1. For each building subject to this chapter, the property owner shall submit to the department an energy and water audit and report as described in Section 15.77.080 D, or proof of meeting one of the exemptions, in accordance with the schedule set forth in Section 15.77.100.
2. For each building subject to this chapter, the property owner shall submit to the department, in accordance with the schedule set forth in Section 15.77.100, one of the following:
  - a. An energy and water retro-commissioning report as described in Section 15.77.080 E;
  - b. An improvement measures report as described in Section 15.77.080 G; or
  - c. A green lease attestation as described in Section 15.77.080 H."

**Section 4: Section 15.77.100 of the Brisbane Municipal Code is revised to read as follows:**

**"15.77.100 - Schedule for compliance.**

A. Schedule for Benchmarking Report Compliance. A property owner shall submit to the department an annual benchmarking report in compliance with Section 15.77.050 according to the following schedule:

1. For properties owned by the city with a gross floor area of two thousand (2,000) square feet or more, the city must complete and submit the initial benchmarking report annually on or before May 15, beginning in 2020.
2. For all other properties subject to this chapter, the property owner must complete and submit the initial benchmarking report annually on or before May 15, beginning in 2021.

B. Schedule for Beyond Benchmarking Compliance for Performance and Prescriptive Paths. A property owner must comply with Section 15.77.060 once every six (6) years, based on the building type

(commercial, industrial or multi-family) which will be published on the city website for each building subject to this chapter under Section 15.77.060.

1. For commercial— Submit performance verification report or evidence of contract with qualified profession to complete energy and water audit for prescriptive path by May 15, 2023, or Year 1 of the cycle. The completed audit must be submitted by July 15 of the same year.

	Baseline	Calendar Evaluation Year Data to be compared against Baseline	Year 1 – (Reporting Year) - Performance Verification Report or Audit due	Year 3 – Check-in	Year 5 – RCx Report, Improvement Report, or Green Lease Attestation due
Cycle 1	2020	2022	2023	2025	2027
Cycle 2	2022	2028	2029	2031	2033
Cycle 3	2028	2034	2035	2037	2039

2. For industrial and multifamily— Submit performance report or evidence of contract with qualified profession to complete energy and water audit for prescriptive path by May 15, 2024 or Year 1 of the cycle. The completed audit must be submitted by July 15 of the same year.

	Baseline	Calendar Evaluation Year Data to be compared against Baseline	Year 1 – (Reporting Year) - Performance Verification Report or Audit due	Year 3 – Check-in	Year 5 – RCx Report, Improvement Report, or Green Lease Attestation due
Cycle 1	2020	2022	2023	2025	2027
Cycle 2	2022	2028	2029	2031	2033
Cycle 3	2028	2034	2035	2037	2039

3. For any newly constructed buildings receiving a certificate of occupancy less than five (5) years before the start (Year 0) of the cycle, the property owner shall comply with Sections 15.77.060, 15.77.070 and/or 15.77.080 at the time of the next cycle corresponding to the property type.

C. Timing of Audit and Retro-Commissioning. Except as otherwise provided in subsection 15.77.060 B, a property owner shall complete the audits and retro-commissioning within five (5) years of a building's compliance due date.

D. Early Compliance Pilots. The city may launch a voluntary early compliance pilot program to test the reporting infrastructure and refine the reporting requirements. The pilot program may begin prior to the reporting deadline in this Section 15.77.100.

E. Time Extensions. A property owner may be granted up to three (3) extensions of sixty (60) days each to file any submittal required by this chapter provided satisfactory proof is made to the department that one of the following conditions applies:

1. The property is under financial or legal distress, as verified by recent financial statements, legal filings and other relevant documents showing one or more of the following:



- a. The property is under the control of a court-appointed receiver as a result of financial distress;
- b. The property is owned by a financial institution as a result of borrower default;
- c. The property has been acquired by a financial institution via deed in lieu of foreclosure;
- d. The property is encumbered by a senior mortgage subject to a notice of default;
- e. The property is an asset subject to probate proceedings;
- f. The property is subject to a State of California Board of Equalization (BOE) Welfare Property Tax Exemption and the cost of complying with the reporting requirements will exceed or significantly deplete existing cash flow. The property owner must provide proof of a BOE-issued organizational clearance certificate and, where the property owner is a limited partnership, provide a supplemental clearance certificate.

2. The property owner, or tenant if applicable, is unable to timely comply due to substantial hardship. Substantial hardship shall mean circumstances by some verifiable level of adversity or difficulty from which the department determines a property owner, or tenant if applicable, would not be able reasonably to satisfy the obligations of this chapter.

3. Fifty percent (50%) or more of the gross floor area occupied by tenant(s) in the building has a lease ending within one year of the compliance deadline and the lease is not being renewed.

F. Notification. The department shall notify the property owner at least forty-five (45) days prior to the due dates specified in subsections A and B of this Section 15.77.100."

### **Section 5: CEQA Determination**

Introduction and adoption of this Ordinance is not subject to further review under the California Environmental Quality Act (CEQA) because it is a continuing administrative activity of the City, namely, general policy and procedure making and therefore it is not a "project" under CEQA. CEQA Guideline, Section 15378 (b) (2).

### **Section 6: Effective Date.**

This Ordinance shall be effective thirty days after its final 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:

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Madison Davis, Mayor

ATTEST:

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Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

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Thomas R. McMorrow, City Attorney

## **Proposed Amendments to Chapter 15.77 - BUILDING EFFICIENCY PROGRAM**

### **15.77.040 - Definitions.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section unless the context indicates otherwise. Words and phrases not defined here shall be construed as defined in BMC Chapters 15.08, 15.70, 15.80, 15.81, and 15.82.

A. "Base building systems" means the systems and subsystems of a building that use or distribute energy and/or water and/or impact the energy and/or water consumption, including the building envelope; the heating, ventilating and air-conditioning (HVAC) systems; air conveying systems; electrical and lighting systems; domestic hot water systems; water distribution systems; plumbing fixtures and other water-using equipment; landscape irrigation systems and water features; energy generation and storage equipment; and electric vehicle charging infrastructure. Base building systems shall not include:

1. Systems or subsystems owned by a tenant or for which a tenant bears full maintenance responsibility, that are within the tenant's leased space and exclusively serve such leased space, and for which the tenant pays all the energy and water bills according to usage and demand as measured by a meter or sub-meter.
2. Systems or subsystems owned by a residential unit owner that exclusively serve the residential unit of that owner.

B. "Baseline year" means the calendar year that a building shall use as its past energy and water usage year when comparing to its "reporting ~~data~~-year" usage. For the ~~first~~-beyond benchmarking cycle 1, the baseline year is the first year of in-compliance benchmarking, which is the calendar year data of 2020 ~~(the first year of mandatory benchmarking data)~~, reported in 2021 unless reporting was not completed that year or had unresolved data quality issues. In subsequent beyond benchmarking cycles, the baseline year resets to the calendar year reported-evaluated in the previous beyond benchmarking cycle. The following table reflects the data and baseline years for a typical commercial property during the first three (3) beyond benchmarking cycles:

~~Due Date, Reporting Data Year, Baseline Year~~

~~May 1, 2023, Calendar year 2022, Calendar year 2020~~

~~May 1, 2028, Calendar year 2027, Calendar year 2022~~

~~May 1, 2033, Calendar year 2032, Calendar year 2027~~

	<u>Baseline</u>	<u>Calendar Year Data to be evaluated against Baseline</u>	<u>Year 1 – (Reporting Year) Performance Verification Report or Audit due</u>	<u>Year 3 – Check-in</u>	<u>Year 5 – RCx Report, Improvement Report, or Green Lease Attestation due</u>
<u>Cycle 1</u>	<u>2020</u>	<u>2022</u>	<u>2023</u>	<u>2025</u>	<u>2027</u>
<u>Cycle 2</u>	<u>2022</u>	<u>2028</u>	<u>2029</u>	<u>2031</u>	<u>2033</u>
<u>Cycle 3</u>	<u>2028</u>	<u>2034</u>	<u>2035</u>	<u>2037</u>	<u>2039</u>

C. "Benchmarking report" means a report, generated by ENERGY STAR® Portfolio Manager, summarizing the annual energy and water performance of a building.

D. "Commercial property" means a property that is defined by ENERGY STAR® Portfolio Manager with the exception of the property types listed on Portfolio Manager as multifamily or manufacturing/industrial plants. Commercial property includes warehouses and distribution centers.

E. "Covered building" means the current definition of "covered building" as set forth in state regulations.

F. "Decarbonized building" means any building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations.

G. "Demand flexibility" means the capability provided by building controls or distributed energy resources to reduce, shed, shift, modulate or generate electricity. Energy flexibility and load flexibility are often used interchangeably with demand flexibility.

H. "Department" means the City of Brisbane's Department of Public Works.

I. "Disclosable buildings" means the most current definition of "disclosable buildings" as set forth in state regulations that have ten thousand (10,000) square feet or more of gross floor area.

J. "Distributed Energy Resources (DER)" means distribution-connected distributed generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies, that are supported by a wide-ranging suite of California Public Utilities Commission policies.

K. "Energy" means electricity, natural gas, steam, heating oil, or other products sold by a utility to a customer of a building, or renewable on-site electricity generation, for purposes of providing heat, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

L. "Energy audit" means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize energy in order to optimize a building's overall energy performance.

M. "ENERGY STAR® Portfolio Manager" means the United States Environmental Protection Agency's online tool for measuring, tracking, and managing a building's energy, water, and greenhouse gas emission data, and benchmarking the performance of the building.

N. "ENERGY STAR® Certified" means a building which has earned an ENERGY STAR® Score of seventy-five (75) or higher, indicating that it performs better than at least seventy-five percent (75%) of similar buildings nationwide and the data has been verified by a professional engineer or registered architect.

O. "ENERGY STAR® Score" means a number ranging from one to one hundred (100) assigned by the U.S. EPA's Energy Star Portfolio Manager as a measurement of a building's energy efficiency, normalized for a building's characteristics, operations, and weather, according to methods established by the U.S. EPA's ENERGY STAR® Portfolio Manager.

P. "Energy Use Intensity" (EUI) as defined by the U.S. EPA means all energy consumption divided by the gross floor area. A normalized EUI is adjusted for property characteristics, site energy factors and source energy factors as determined by the U.S. EPA's ENERGY STAR® Portfolio Manager.

Q. "Grid-Interactive Efficient Building (GEB)" means an energy efficient building with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.

R. "Gross floor area" means the total building square footage, as measured between the exterior walls of the building(s). Open-air stairwells, breezeways, and other similar areas that are not fully enclosed should not be included in the gross floor area. Gross floor area for a commercial property shall include all finished areas inside the building(s) including supporting areas, lobbies, tenant areas, common areas, meeting rooms, break rooms, atriums (count the base level only), restrooms, elevator shafts, stairwells, mechanical equipment areas, basements, storage rooms. Gross floor area for an industrial property shall include all space within the building(s) at the plant, including production areas, offices, conference rooms, employee break rooms, storage areas, mechanical rooms, stairways, and elevator shafts. Gross floor area for a multifamily property shall include all buildings that are part of a multifamily community or property, including any management offices or other buildings that may not contain living units, all fully-enclosed space within the exterior walls of the building(s), including living space in each unit (including occupied and unoccupied units), interior common areas (e.g. lobbies, offices, community rooms, common kitchens, fitness rooms, indoor pools), hallways, stairwells, elevator shafts, connecting corridors between buildings, storage areas, and mechanical space such as a boiler room.

S. "Industrial property" means a property that is defined by ENERGY STAR® Portfolio Manager as a manufacturing/industrial building used for producing, manufacturing, or assembling goods and includes, but is not limited to, a main production area that has high-ceilings and contains heavy equipment used for assembly line production.

T. "Multifamily property" means any multifamily building that contains two (2) or more residential living units. This includes high-rise buildings (ten (10) or more stories), mid-rise buildings (five (5) to nine (9) stories), or low-rise buildings (one to four (4) stories).

U. "Qualified auditor" means an individual whose job duties do not regularly occur at the property, who possesses such qualifications as determined by the department to perform or directly supervise individuals performing audits and to certify audit reports required by this chapter. A qualified auditor may be a contractor hired by the reporting entity, or an employee of a utility, so long as such person has two (2) or more years of auditing experience and possesses one or more of the following certifications:

1. Accredited certification that has been designated a "Better Buildings Recognized Program" by the U.S. Department of Energy ("DOE") meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Energy Auditors or Energy Managers;
2. Certified Energy Auditor (CEA) or Certified Energy Manager (CEM), issued by the Association of Energy Engineers (AEE);
3. Certified Facilities Manager (CFM), issued by the International Facility Management Association (IFMA);

4. High Performance Building Design Professional (HBDP) or Building Energy Assessment Professional (BEAP), issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
5. For audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), issued by the Building Performance Institute (BPI);
6. Professional Engineer (PE) registered in the State of California;
7. System Maintenance Administrator (SMA) or System Maintenance Technician (SMT), issued by Building Owners and Managers Institute (BOMI) International; or
8. Additional qualified certifications as the Director of the Department deems appropriate.

V. "Qualified retro-commissioning professional" means an individual whose job duties do not regularly occur at the property, who possesses such qualifications as determined by the department to perform or directly supervise individuals performing the retuning work (i.e. adjusting system control parameters) required by this chapter. A qualified retro-commissioning professional may be a contractor hired by the reporting entity or an employee of a utility so long as such person has two (2) or more years of commissioning or retuning experience and possesses one or more of the following certifications:

1. Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;
2. Accredited certification that has been designated a "Better Buildings Recognized Program" by the Department of Energy meeting the criteria set forth in the Better Buildings Workforce Guidelines (BBWG) for Building Commissioning Professionals;
3. Certified Building Commissioning Professional (CBCP) or Existing Building Commissioning Professional (EBCP), issued by the Association of Energy Engineers (AEE);
4. Certified Commissioning Professional (CCP), issued by the Building Commissioning Association (BCA);
5. Certified Commissioning Authority (CxA) or Certified Commissioning Technician (CxT), issued by the AABC Commissioning Group (ACG);
6. Certified professional certified by the National Environmental Balancing Bureau (NEBB);
7. Commissioning Process Management Professional (CPMP), issued by American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE);
8. Professional Engineer (PE) registered in the State of California; or
9. Additional qualified certifications as the Director of the Department deems appropriate.

W. "Reporting Year" means the year in which a benchmarking or other report is submitted, based on the prior calendar year's data. For instance, for Reporting Year 2023, a building owner will submit energy and water data for calendar year 2022 (January 1 – December 31) with a deadline of May 15, 2023.

~~X.~~ "Retro-commissioning" means a systematic process for optimizing existing systems relating to building performance through the identification and correction of deficiencies in such systems.

~~XY.~~ "Retro-commissioning measures" means work relating to retro-commissioning such as repairs, maintenance, adjustments, changes to controls or related software, or operational improvements that optimize a building's energy and/or water performance.

~~YZ.~~ "Retrofit Measures" means upgrades or alterations of building systems involving the installation of energy and/or water efficiency and DER technologies that reduce energy and/or water consumption and improve the efficiency of such systems.

~~ZAA.~~ "Solar thermal system" means the process of utilizing energy from the sun through the use of collectors to produce heat for a variety of applications including, but not limited to, heating water, providing process heating, space heating, absorption cooling and any combination of such applications.

~~AABB.~~ "Solar photovoltaic" means a technology that uses a semiconductor to convert sunlight directly into electricity.

~~BBCC.~~ "Stationary Battery Electric Storage System (BESS)" means a rechargeable energy storage system consisting of electrochemical storage batteries, battery chargers, controls, and associated electrical equipment designed to provide electrical power to a building, designed for service in a permanent location.

~~CEED.~~ "U.S. EPA Water Score" means a number ranging from one to one hundred (100) assigned by the U.S. EPA's ENERGY STAR® Portfolio Manager, and available to existing multifamily properties with twenty (20) or more units, as a measurement of a whole building's water use, normalized for that building's characteristics, operations, and weather, according to the methods established by the U.S. EPA's ENERGY STAR® Portfolio Manager.

~~DDEE.~~ "Water audit" means a systematic evaluation to identify potential modifications and improvements to a building's equipment and systems which utilize water in order to optimize a building's overall water performance.

~~EEFF.~~ "Water Use Intensity" (WUI) as defined by the U.S. EPA means all water consumption divided by the gross floor area (not including parking or irrigated area) and is not adjusted for any of the building use details (number of workers, weekly hours, etc.).

~~{Ord. No. 644, § 1, 12-12-19}~~

#### **15.77.070 - Beyond benchmarking performance path.**

A. Owners of properties that are highly efficient, have demonstrated increased efficiency, or have adopted distributed energy resources may establish satisfactory energy and water efficiency by providing the documentation described below to the department in such a form as required by the department that demonstrates the following:

1. The building is new and has been occupied for less than five (5) years from its first compliance due date, based on its temporary certificate of occupancy or certificate of occupancy; or has achieved one or more of the energy standards and one or more of the water standards as set

forth below for at least three (3) of the five (5) calendar years preceding the building's compliance due date.

2. Energy standards: The building has the latest version of the Leadership in Energy and Environmental Design (LEED™) existing buildings operations and maintenance certification; or qualified auditor or retro-commissioning professional certified at least at least one of the following:

- a. The building has received an ENERGY STAR® score of eighty (80) or greater from the U.S. EPA; or
- b. The building has improved its ENERGY STAR® score by twenty (20) points or more relative to its performance during the baseline year; or
- c. The building has a weather normalized site GHG-energy use intensity as calculated by the benchmarking tool that is twenty-five percent (25%) below the calculated ~~mean~~ median for that property type; or
- d. The building has reduced its weather normalized site GHG-energy use intensity by at least twenty percent (20%) relative to its performance during the baseline year.

3. If a building has installed one or more of the following distributed energy resources (DERs):

- a. Solar Photovoltaic. An onsite solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational. The greater of the two (2) following options satisfy the solar photovoltaic measure:
  - i. A minimum amount of solar photovoltaic capacity of five (5) kilowatts per Brisbane Municipal Code Section 15.82.050; or
  - ii. Sufficient capacity must be installed to offset equal to or greater than twenty percent (20%) of their annual electricity consumption, as calculated by ENERGY STAR® Portfolio Manager, or otherwise determined by the city department.
- b. Stationary Electric Storage. An onsite stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- c. Grid-interactive Efficient Building (GEB). The building currently has the ability to interact with the distribution system operator's grid to optimize its energy consumption and/or dispatch. GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and preferences, and cost reductions in a continuous and integrated way.
- d. Decarbonized Building. The building is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above



strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized in the current reporting year.

4. Water standards: A qualified auditor or qualified retro-commissioning professional has certified at least one of the following:

- a. The building has received a U.S. EPA water score of eighty (80);
- b. The building has improved its U.S. EPA water score by twenty (20) points or more relative to its performance during the baseline year;
- c. The building has reduced its water use intensity by at least twenty percent (20%) relative to its performance during the baseline year.

d. The building has a water use intensity that is twenty-five percent (25%) below the calculated median for that property type as determined by the Department.

B. If a building has achieved both energy and water standards, the property owner is only required to submit an ENERGY STAR® performance verification report for that reporting year. If the building only meets one of the standards, the property owner shall submit a performance verification report for the satisfactory standard and shall comply with this section by completing one of two (2) prescriptive pathway options for the unmet standard as set forth in subsection G of section 15.77.080.

C. After the establishment of a DOE-recognized standard for a water auditor, the director may adopt the qualifications of the DOE-recognized standard with modifications as the director deems to be appropriate.

~~{Ord. No. 644, § 1, 12-12-19}~~

#### **15.77.080 - Beyond benchmarking prescriptive path.**

A. If a building does not meet performance standards set forth in 15.77.070, a property owner shall meet the requirements of this chapter through one of two (2) alternative means:

1. For properties between ten thousand (10,000) and thirty-nine thousand nine hundred ninety-nine (39,999) square feet:

- a. Conducting an asset score full report described in Section 15.77.080 B; and either
- b. Performing retro-commissioning described in Section 15.77.080 D; or
- c. Adopting improvement measures described in subsection F of Section 15.77.080; or
- d. Adopting a green lease as described in subsection H of Section 15.77.080.

2. For properties forty thousand (40,000) square feet and more:

- a. Conducting a minimum of an ASHRAE audit Level II audit described in Section 15.77.080 B (Level III audits are also acceptable); and either
- b. Performing retro-commissioning described in Section 15.77.080 D; or

c. Adopting efficiency and/or DER Improvement Measures described in subsection F of Section 15.77.080; or

d. Adopting a green lease as described in subsection H of Section 15.77.080.

B. Energy and Water Audit Standards. Energy and water auditing standards shall comply with both of the following:

1. Energy Auditing.

Energy audits required by this chapter shall meet or exceed either the Department of Energy (DOE) asset score standards, American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Level II audit standards in conformance with the ASHRAE Standard 211-2018 (or latest version) "Standard for Commercial Building Energy Audits" and shall be performed under the direct supervision of a qualified auditor or qualified retro-commissioning professional. The DOE audit template shall be used to transmit data to the city for compliance with energy auditing and retro-commissioning. The city will publish an audit template on the building energy asset score website with standardized data collection fields to capture information about base energy systems and recommended retrofit opportunities. Section 15.77.080 A describes the applicability of each of the following audit standards based on gross floor area:

a. Asset Score Full.

- i. Collect building data: Use the data collection form "full" input mode version to gather information about the building's physical characteristics.
- ii. Review the data collection priority map to help focus on the most important building data given the building's use type and climate zone.
- lii. Enter the data on the audit template supplied on the DOE asset score website for the Brisbane Building Efficiency Program.

b. ASHRAE Level II Audit.

- i. Energy audits required by this chapter shall meet or exceed Level II audit standards in conformance with the American Society of Heating Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 211-2018 "Standard for Commercial Building Energy Audits" and shall be performed under the direct supervision of a qualified auditor.

2. Water Auditing.

Water audits shall be performed in accordance with industry standard practices, including the latest version of [the DOE Water Audit Guidance for Commercial Buildings or](#) ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the department directs the use of the latest version of ASHRAE Standard 230 the existing building commissioning process (EBCx process), and under the direct supervision of a qualified auditor or qualified retro-commissioning professional. The water audit of the base building systems shall include, at a minimum, the following:

- a. Potable water distribution systems;
- b. Landscape irrigation systems;
- c. Water reuse systems; and
- d. Water features.

C. Energy and Water Audit Report. A report of the energy and water audit, completed and signed by a qualified auditor, shall be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of subsection 15.77.080 B and shall include, at a minimum, the following:

- 1. The date(s) that the audit and retro-commissioning were performed;
- 2. Identifying information on the auditor and retro-commissioning provider;
- 3. Information on the base building systems and equipment;
- 4. A list of all retrofit measures that can reduce energy use and/or cost of operating the building, costs of each measure, and an estimate of the energy savings associated with each measure;
- 5. A list of all retrofit measures that can reduce water use and/or cost of operating the building; costs of each measure; and an estimate of the water savings associated with each measure;
- 6. Functional performance testing reports;
- 7. Operational training conducted;
- 8. Inventory of existing, planned, or desired electric vehicle (EV) charging stations on the property;
- 9. Inventory of existing, planned, or desired solar photovoltaic, solar water heating, other energy generation equipment;
- 10. Inventory of existing, planned, or desired stationary battery electric storage system or other energy storage equipment;
- 11. Inventory of existing, planned or desired building energy end-use electrification retrofits including electrical panel upgrades;
- 12. Inventory of existing, planned or desired water systems and equipment; and
- 13. Acknowledgment that an asset score full, or ASHRAE Level II audit was conducted.

D. Energy and Water Retro-Commissioning Standards.

- 1. Energy retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies. The department may consider updating the ASHRAE Guideline 0.2 with ASHRAE Standard 230 the existing building commissioning process (EBCx process) once the standard has been voted and approved by ASHRAE. These activities shall be conducted

under the direct supervision of a qualified retro-commissioning professional. The retro-commissioning of base building systems shall include, at a minimum, the following:

- a. Heating, ventilation, air conditioning (HVAC) systems and controls;
- b. Indoor lighting systems and controls;
- c. Exterior lighting systems and controls;
- d. Water heating systems;
- e. Renewable energy systems;
- f. Stationary electric battery storage systems;
- g. Electric vehicle charging equipment; and
- h. Demand flexibility systems.

2. Water retro-commissioning shall be performed in accordance with industry standard practices, including the latest version of ASHRAE Guideline 0.2 Commissioning Process for Existing Systems and Assemblies, unless the department directs the use of the latest version of ASHRAE Standard 230 the existing building commissioning process (EBCx process), and under the direct supervision of a qualified retro-commissioning professional. The water retro-commissioning of the base building systems shall include, at a minimum, the following:

- a. Potable water distribution systems;
- b. Landscape irrigation systems;
- c. Water reuse systems; and
- d. Water features.

E. Energy and Water Retro-Commissioning Report. A report of the energy and water retro-commissioning, completed and signed by a qualified retro-commissioning professional, shall be maintained by the property owner as required in Section 15.77.090. The report shall meet the requirements of Subsection 15.77.080 D and shall include, at a minimum, the following:

- 1. The date(s) that the retro-commissioning was performed;
- 2. Identifying information on the retro-commissioning provider;
- 3. Information on the base building systems and equipment;
- 4. All the retro-commissioning process activities undertaken and retro-commissioning measures completed;
- 5. Functional performance testing reports; and
- 6. Operational training conducted.

F. Improvement Measures. A property owner may comply with the requirements of this chapter for any unmet standard by demonstrating two (2) of the following corresponding efficiency improvement

measures—one energy-related measure and one water-related measure listed below—were completed and by submitting an improvement measures report within the time set forth in Section 15.77.100.

#### 1. Energy-related Improvement Measures.

a. Energy efficiency improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize energy efficiency in base building systems, decarbonized buildings, and building electrification. An owner may submit a request to the department to add measures not contained in the published list that are identified by a qualified auditor or retro-commissioning professional. Examples of energy systems include, but are not limited to:

- i. Space heating and cooling.
- ii. Ventilation.
- lii. Building envelope measures such as insulation, air sealing and window upgrades.
- iv. Water heating.
- v. Lighting.
- vi. Cooking.
- Vii. Refrigeration.
- viii. Office equipment and computing.
- ix. Other loads.

b. Distributed energy resource improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize decarbonized buildings and building electrification. Examples of energy systems include, but are not limited to:

- i. Solar Photovoltaic. An onsite solar photovoltaic system has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- li. Stationary Electric Storage. An onsite stationary battery electric storage system (BESS) has been installed in accordance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational.
- lii. Grid-interactive Efficient Building (GEB). GEBs are energy efficient buildings with smart technologies characterized by the active use of distributed energy resources to optimize energy use for grid services, occupant needs and

preferences, and cost reductions in a continuous and integrated way that is currently operational.

iv. Electric Vehicle (EV) charging infrastructure. Electric vehicle charging infrastructure has been installed on the building site.

v. Decarbonized Building. A building that is highly energy-efficient and produces onsite or procures carbon-free renewable energy in an amount sufficient to offset the annual carbon emissions associated with operations. Through a combination of the above strategies, demonstrate through EPA Portfolio Manager that the building is decarbonized.

## 2. Water-related Improvement Measures.

a. Water efficiency improvement measures will be provided by the department six (6) months before the compliance deadline on the city website and will continually be updated thereafter. The list of measures will include opportunities that prioritize water efficiency. Examples of energy systems include, but are not limited to:

i. Installation of plumbing such that all systems in the building are in compliance with the California Building Standards Code (California Code of Regulations, Title 24) in effect at the time of installation and currently operational;

ii. Installation of outdoor landscaping and irrigation such that all systems on the property are in compliance with Brisbane Municipal Code Chapter 15.70, Water Conservation in Landscaping in effect at the time of the compliance cycle;

iii. Installation of a greywater system in accordance with California Code of Regulations, Title 24, Sections 1502.6, 1502.10.3, or as amended and in effect at the time of installation and currently operational;

iv. Installation of insulation on all hot water pipes in accessible building locations; or

v. Participation in approved water utility retrofit program (e.g. taken advantage of rebate or incentive programs for upgrades).

G. Improvement Measures Report. A report of the improvement measures implemented shall be submitted to the department and maintained by the property owner as required in Section 15.77.090. The report shall be submitted with sufficient supporting data including receipts or other proof of compliance and shall include, at a minimum, the following:

1. Descriptions of the measures including the date(s) that the improvement measures were implemented;
2. Identifying information on the person implementing the improvement measures;
3. Information on the base building systems and equipment; and
4. A list of all improvement measures that can reduce energy or water use and the cost of operating the building, and the costs of each measure.

H. Green Lease Attestation. A property owner may submit a letter of attestation that its lease or other rental agreement for the building contains sustainability or environmental provisions specifically related to energy and water as part of the agreement (a "green lease"). At a minimum, the owner shall provide reasonable evidence that the agreement includes provisions for:

1. Energy and water cost pass through requirements that do not exceed the actual reduction in building operating costs for the tenant;
2. Operational clauses that support overall energy and water reductions on the property; and
3. Reporting clauses that allow the owner and tenant to share data necessary to comply with this chapter.

I. Required Submittal to the Department.

1. For each building subject to this chapter, the property owner shall submit to the department an energy and water audit and report as described in Section 15.77.080 D, or proof of meeting one of the exemptions, in accordance with the schedule set forth in Section 15.77.100.
2. For each building subject to this chapter, the property owner shall submit to the department, in accordance with the schedule set forth in Section 15.77.100, one of the following:
  - a. An energy and water retro-commissioning report as described in Section 15.77.080 E;
  - b. An improvement measures report as described in Section 15.77.080 G; or
  - c. A green lease attestation as described in Section 15.77.080 H.

~~{Ord. No. 644, § 1, 12-12-19}~~

**15.77.100 - Schedule for compliance.**

A. Schedule for Benchmarking Report Compliance. A property owner shall submit to the department an annual benchmarking report in compliance with Section 15.77.050 according to the following schedule:

1. For properties owned by the city with a gross floor area of two thousand (2,000) square feet or more, the city must complete and submit the initial benchmarking report annually on or before May 15, beginning in 2020.
2. For all other properties subject to this chapter, the property owner must complete and submit the initial benchmarking report annually on or before May 15, beginning in 2021.

B. Schedule for Beyond Benchmarking Compliance for Performance and Prescriptive Paths. A property owner must comply with Section 15.77.060 once every ~~five (5)~~six (6) years, based on the ~~federal-unique building identifier (UBID)~~building type (commercial, industrial or multi-family) which will be published on the city website for each building subject to this chapter under Section 15.77.060.

1. For commercial— Submit performance verification report or evidence of contract with qualified profession to complete energy and water audit for prescriptive path by May 15, 2023 or Year 1 of the cycle. The completed audit must be submitted by July 15 of the same year.

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	<u>Baseline</u>	<u>Calendar Year Data to be evaluated against Baseline</u>	<u>Year 1 – (Reporting Year) Performance Verification Report or Audit due</u>	<u>Year 3 – Check-in</u>	<u>Year 5 – RCx Report, Improvement Report, or Green Lease Attestation due</u>
<u>Cycle 1</u>	<u>2020</u>	<u>2022</u>	<u>2023</u>	<u>2025</u>	<u>2027</u>
<u>Cycle 2</u>	<u>2022</u>	<u>2028</u>	<u>2029</u>	<u>2031</u>	<u>2033</u>
<u>Cycle 3</u>	<u>2028</u>	<u>2034</u>	<u>2035</u>	<u>2037</u>	<u>2039</u>

2. For industrial and multifamily— Submit performance report or evidence of contract with qualified profession to complete energy and water audit for prescriptive path by May 15, 2024 or Year 1 of the cycle. The completed audit must be submitted by July 15 of the same year.

	<u>Baseline</u>	<u>Calendar Year Data to be evaluated against Baseline</u>	<u>Year 1 – (Reporting Year) Performance Verification Report or Audit due</u>	<u>Year 3 – Check-in</u>	<u>Year 5 – RCx Report, Improvement Report, or Green Lease Attestation due</u>
<u>Cycle 1</u>	<u>2020</u>	<u>2023</u>	<u>2024</u>	<u>2026</u>	<u>2028</u>
<u>Cycle 2</u>	<u>2023</u>	<u>2029</u>	<u>2030</u>	<u>2032</u>	<u>2034</u>
<u>Cycle 3</u>	<u>2029</u>	<u>2035</u>	<u>2036</u>	<u>2038</u>	<u>2040</u>

3. For any newly constructed ~~commercial or multifamily~~ buildings receiving a certificate of occupancy ~~after May 15, 2018, or industrial buildings after May 15, 2019~~ less than five (5) years before the start of the cycle, the property owner shall comply with Sections 15.77.060, 15.77.070 and/or 15.77.080 at the time of the next ~~reporting~~ cycle corresponding to the property type ~~(e.g. 2028 or 2029)~~.

C. Timing of Audit and Retro-Commissioning. Except as otherwise provided in subsection 15.77.060 B, a property owner shall complete the audits and retro-commissioning within five (5) years of a building's compliance due date.

D. Early Compliance Pilots. The city may launch a voluntary early compliance pilot program to test the reporting infrastructure and refine the reporting requirements. The pilot program may begin prior to the reporting deadline in this Section 15.77.100.

E. Time Extensions. A property owner may be granted up to three (3) extensions of sixty (60) days each to file any submittal required by this chapter provided satisfactory proof is made to the department that one of the following conditions applies:

1. The property is under financial or legal distress, as verified by recent financial statements, legal filings and other relevant documents showing one or more of the following:

- a. The property is under the control of a court-appointed receiver as a result of financial distress;
- b. The property is owned by a financial institution as a result of borrower default;
- c. The property has been acquired by a financial institution via deed in lieu of foreclosure;



d. The property is encumbered by a senior mortgage subject to a notice of default;

e. The property is an asset subject to probate proceedings;

f. The property is subject to a State of California Board of Equalization (BOE) Welfare Property Tax Exemption and the cost of complying with the reporting requirements will exceed or significantly deplete existing cash flow. The property owner must provide proof of a BOE-issued organizational clearance certificate and, where the property owner is a limited partnership, provide a supplemental clearance certificate.

2. The property owner, or tenant if applicable, is unable to timely comply due to substantial hardship. Substantial hardship shall mean circumstances by some verifiable level of adversity or difficulty from which the department determines a property owner, or tenant if applicable, would not be able reasonably to satisfy the obligations of this chapter.

3. Fifty percent (50%) or more of the gross floor area occupied by tenant(s) in the building has a lease ending within one year of the compliance deadline and the lease is not being renewed.

F. Notification. ~~For buildings with compliance dates of May 1, 2021 or later, t~~Ihe department shall notify the property owner ~~at least three (3) months~~forty-five (45) days prior to the due dates specified in subsections A and B of this Section 15.77.100.

~~{Ord. No. 644, § 1, 12-12-19}~~

**File Attachments for Item:**

M. Consider Adoption of a Resolution for Water and Sewer Rate Increase

(Council will consider a Resolution increasing the charges for water and sewer services and setting the discount rate for the city's low-income rate assistance plan at 25% for all services.)



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** 4/6/2023

**From:** Carolina Yuen, Finance Director

**Subject:** Public Hearing for the Proposed Water and Sewer Rate

Increases

### Community Goal/Result

Fiscally Prudent

Safe Community

Ecological Sustainability

### Purpose

Ensure the City's water and sewer rates reflect the full cost of providing clean water and effective wastewater disposal to the various users while encouraging conservation of resources.

### Recommendation

Adopt Resolution No. 2023-\_\_\_\_\_ approving the proposed rates in Attachment A including (a) an annual increase of 9% through 2026/2027 in the water fixed charge, (b) an annual increase of 7% annually through 2027/2028 in the water usage rate, and (c) a 25% annual increase through 2027/2028 in sewer charges, and setting the discount rate for the City's Low Income Rate Assistance (LIRA) Plan to a fixed rate across all services, starting at 25%, and finding that no further environmental review is required because water and sewer rates is not considered a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, Section 15378(b)(2) and (b)(4).

### Background

In August 2001 the City Council discussed Ordinance No. 458, which set the process for determining future water and sewer rates increases. Additionally, the proposed Ordinance recommended that all cost increases from San Francisco be passed onto customers to ensure that the City would not fall as far behind in water and sewer rates as it had by 2001.

Subsequent to passing Ordinance No. 458, the California Supreme Court has determined that water and sewer charges are "property related" and hence subject to Proposition 218, The Right to Vote on Taxes Act. As such, the City is required to notify property owners and others obligated to pay water and sewer charges regarding any increase to such charges, and to conduct a public hearing at least 45 days later to allow time for community input. As a courtesy to all City customers, staff has also notified all account holders, for example, tenants, of the

forthcoming change in rates, notwithstanding that not all of them will be responsible for such charges.

The last rate study for water and sewer charges that the City had performed was in 2000. The City hired FCSG and Carollo Engineers to complete a rate structure study and Capital Improvement Plan. The City has been working from this rates study for the last twenty years and the City has taken the rates recommended in the Plan and adopted them based on need. The last operational rate increase went into effect in 2012.

Additionally, the City has implemented its first capital improvement charge to pay for bonds issued in 2015. This was the first of an anticipated series of Capital Rate Charges in order to pay for the water and wastewater Capital Improvement Plan. The concept was to sell bonds approximately every five years over 20 years with an overall plan to cover costs of about \$20 million in capital improvements. The bonds would have a term of 20 years so that after 20 years the City would have in place a Capital Charge which would only be reviewed to ensure it was adequate to pay for ongoing necessary capital improvements.

In 2022, the City Council approved the second of four increases slightly behind schedule, and therefore being phased in over a 17-year period, to pay for improvements identified as part of the Capital Improvement Plan.

The City also implemented a drought reserve charge in 2019 to ensure that during a drought, the City would not need to raise rates as other water providers have done in light of during a drought customers lower their water usage as a result of their conservation efforts.

Since 2012, the amount the City's water purchases have increased from \$2.69 per unit to \$4.50 per unit, an increase of 67%. Wastewater treatment has gone from \$4.81 per unit to \$11.63 per unit, an increase of 242%. The City has been able to keep operation rates constant due to an increase in usage among users and the use of one-time revenue sources (i.e., connection fees).

In April 2021 the City retained the firm Lechowicz and Tseng to review the City's operation water and sewer rates.

For over 18 months, the City Council Infrastructure Subcommittee worked with Lechowicz and Tseng to develop the proposed rate increases and suggested rate increases were presented at the City Council meeting held on December 15, 2022. Council selected the rate option under consideration at this meeting and directed staff to proceed with the requirements of Proposition 218 in order for the Council to consider adopting the rate increases.

## Discussion

### Water and Sewer Rates

Water and sewer rates are collected to pay for the operations of the water and sewer systems. Following are the various line items on the City's bi-monthly water and sewer bill:

- **Water Service Charge** – This is the charge for having a meter connected to the system and for the City to ensure that it has enough treated water available to provide the full capacity of that meter and all other meters at a given time.
- **Water Usage Charge** – This charge is based on the number of units used during the billing period (two months). 1 unit = 100 cubic feet of water = approximately 748 gallons.
- **Sewer Charge** – For residential customers, this charge is based on the average water usage from October through January. The rate is reset every April based on the calculated average from the previous October to January period. For commercial customers, this charge is based on the actual water used during the billing period.
- **Capital Project Charge** - This is to pay for capital projects and the rate is based on the amount of water used between April and June. The initial charge was for the repayment of the 2015 water and sewer bonds that funded various capital projects. This charge increased in 2022 and is expected to increase every 5 years between 2025 and 2035 to continue to fund a Capital Improvement Plan previously approved by Council. This charge is expected to be the source of funding for capital projects over time to avoid large rate increases to cover projects as they occur.
- **Drought Contingency Fund Charge** – Where other agencies traditionally have raised rates during droughts to combat lower water usage, the City adopted this charge to create a reserve fund to cover loss of revenue during drought years as customers are asked to conserve water. Approximately 70% of the City's costs are fixed but 70% of revenue is currently dependent on water usage. Water conservation efforts may therefore decrease revenues to levels that would not cover the related costs. The City anticipates that the Drought Reserve will be fully funded by 2025 if a drought does not continue.

Lechowicz and Tseng reviewed the City's Water Service Charge, Water Usage, and Sewer Charge, analyzing the City's rates, customer usage and revenue produced from the rates. Their analysis confirmed that for FY2021 and FY2022, the City's Utility Fund was operating at a loss and using fund balance to cover these losses. A Utility Fund should be able to operate at least at a break-even or a net-positive position.

There were two main reasons the Utility Fund operated at a net loss over the past two years. First, there has been a decrease in water usage among our commercial accounts as a result of business closures in response to COVID-19 pandemic. Six of the City's largest 25 users reduced water usage by 12,300 units during FY2020. Simultaneously, the cost of wastewater treatment increased by 60% over the same period.

City Council and staff were aware of the decreasing revenues but decided not to propose rate increases during the pandemic. This has resulted in a decrease in net revenues (revenues less operating expenses) to levels below the City's debt coverage requirement of 1.25 times the annual debt service. Due to this, our credit rating for our utility bond was lowered from "AA-" to "A" which makes it challenging to obtain future debt to fund the Capital Improvement Plan.

As stated in the Background section above, the City has not increased its operational rates since 2012. By controlling costs, increases in usage in the early years of the rate change and one-time revenue sources, the City has been able to delay needed rate increases until this year. The City reviewed the rates and determined due to recessions, the pandemic, and increases for the drought contingency fund and capital projects, it was better policy to delay the water and sewer rate increases. If the City had increased the rates incrementally throughout the last 10 years, the average customer who uses 10 units of water every two months would have paid an additional \$5,100 over the decade.

The City decided in December 2022 to move forward with a public hearing for the proposed rate increases. The goal with the proposed increases is for the City to replenish its reserves by FY2028.

The City's consultant proposed to increase the base charge for water service, moving the City away from a variable rate for water usage to a more fixed position so that revenues will not be as impacted by reduced water usage in the future. The proposed water rate changes would in the first year increase the fixed charges based on meter size, from a range of \$22.67 to \$431.30 to a range of \$33.35 to \$448.19. After the first year, the fixed charges would increase annually 9% through 2026/2027.

In addition, the proposal is to also reduce the number of water usage tiers for variable consumption charges from six tiers to two. State law over the past 20 years has been interpreted by the courts to be stricter on the use of tier rates as tiering tends to benefit persons who use less water, and therefore pay less, thereby causing others to subsidize the cost of the overall system. As a result of this proposed change, proposed rates in the first year will range from \$6.30 to \$12.65 depending on water usage. Thereafter the rates will increase an additional 7% each year through 2027/2028.

Since the cost of wastewater treatment has increased significantly over the years, the need for a sewer rate increase is greater. Significantly, the proposed sewer rate changes will reduce the fixed charge in the first year from a range of \$68.87 to \$183.27 to one rate of \$64.20 but there would be an increase of 25% each year thereafter through 2027/2028.

The proposed sewer rate variable charge is to reduce the number of tiers to one tier and sewer rates will be based on "customer strength," (for example residential or commercial), instead of usage. The rates will increase from a range of \$2.81 to \$7.66 to one rate at \$8.29 per unit and

increase 25% each year thereafter through 2027/2028. The sewer bill for a residential customer who uses 10 units of water per billing cycle (every two months) would increase from \$106.67 to \$147.10 (an increase from \$640.02 to \$882.60 annually).

Because of the bi-monthly billing, the City does not intend to increase the rates until June 15<sup>th</sup>, 2023, where new rates will be reflected in the June – August bill which will be due in October.

#### Low Income Rate Assistance Program

The City offers all users who are enrolled in the PG&E Care program to enroll in the City's Low Income Rate Assistance (LIRA) Program. Over the years, the percentage reduction in rates has increased as the Council determined it did not want to increase water and sewer rates on low-income individuals. However, there is no LIRA reduction for either the Capital Charge or the Drought Contingency Fund Charge because these rates have been determined to raise an absolute dollar amount. According to State Law, some users cannot offset the cost for other users, and therefore the decrease in revenue due to the LIRA program is funded by the City's General Fund. Currently the City spends approximately \$40,000 each year from the General Fund for the LIRA program.

Service	Current Discount	Proposed Discount
Water Service	36.75%	One rate for all services Proposed at 25% to start
Water Use	49.90%	
Sewer	42.40%	
Fire Service	36.75%	

If the City Council wishes to allocate the same dollar amount (\$40,000) in the future, the consultants proposed a flat discount of 25% on these users' bill to accomplish this. If the Council wishes to allocate additional General Fund dollars to the LIRA program, it may increase the rate of the discount. Staff recommends setting a flat discount rate for the bill instead of different rates or each type of service.

#### Proposition 218 Process

Staff mailed letters dated February 17, 2023, to each Brisbane property owner and utility users to inform them about the proposed rate increase, details of the public hearing and instructions on how to submit a written protest and protest in person. As of this writing, less than 10 protests have been received by the City Clerk. There are at least 2000 property addresses connected to the City's water and sewer systems. If more than 50% of the property owners and utility users protest the rate increases, the City will not be able to increase the rates to ensure

the continued ability to provide clean drinking water and safe conveyance of wastewater to the treatment plant. If there is no majority protest, Council may determine the amount of the increases and when the increases will be implemented. As mentioned, staff recommends the rate increases to go into effect June 15, 2023.

### Fiscal Impact

The cost to the customers can be viewed through the following samples of billings based on usage:

Sample Usage	Current Bill	Proposed Rates - effective June 15, 2023
4 units	Water Charge - \$22.67 Water Usage - \$14.80 Sewer Charge - \$80.11 Drought Reserve - \$2.32 Capital Charge - \$40	Water Charge - \$33.35 Water Usage - \$18.89 Sewer Charge - \$97.36 Drought Reserve - \$2.32 Capital Charge - \$40
10 units	Water Charge - \$22.67 Water Usage - \$60.18 Sewer Charge - \$106.67 Drought Reserve - \$2.32 Capital Charge - \$70	Water Charge - \$33.35 Water Usage - \$56.68 Sewer Charge - \$147.09 Drought Reserve - \$2.32 Capital Charge - \$70
20 units	Water Charge - \$22.67 Water Usage - \$170.68 Sewer Charge - \$183.27 Drought Reserve - \$6.99 Capital Charge - \$100	Water Charge - \$33.35 Water Usage - \$183.18 Sewer Charge - \$229.98 Drought Reserve - \$6.99 Capital Charge - \$100
100 units irrigation – 2 inch meter	Water Charge - \$92.47 Water Usage - \$1,225.46 Sewer Charge - \$0 Drought Reserve - \$102.14 Capital Charge - \$130	Water Charge - \$88.95 Water Usage - \$1,131.64 Sewer Charge - \$0 Drought Reserve - \$102.14 Capital Charge - \$130

Adopting the resolution would enable the City to cover the costs through revenues collected over five years.

### Environmental Review

Adoption of this resolution increasing water and sewer rates is not subject to further environmental review under the California Environment Quality Act (CEQA) because it is a governmental fiscal activity that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment and/or it is general



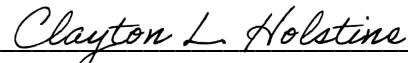
policy and procedure activity and hence, under either situation, not a “project,” CEQA Guidelines, Section 15378 (b)(2) and (4).

**Measure of Success**

The City is able to provide clean, safe drinking water and effectively dispose of wastewater as economically as possible while being financial sustainable.



Carolina Yuen, Finance Director



Clay Holstine, City Manager

Attachment: Resolution 2023-\_\_\_\_\_ and rate tables with proposed increases

**RESOLUTION NO. 2023-\_\_\_\_\_****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE INCREASING THE CHARGES FOR WATER AND SEWER SERVICES AND SETTING THE DISCOUNT RATE FOR THE CITY'S LOW INCOME RATE ASSISTANCE PLAN AT 25% FOR ALL SERVICES**

**WHEREAS**, Subsection 13.12.020.C of the Brisbane Municipal Code states that it is the policy of the City to adjust water service charges to reflect increases in the cost of living and the cost of water supplied to the City by San Francisco; and

**WHEREAS**, Subsection 13.08.020.D of the Brisbane Municipal Code states that it is the policy of the City to adjust sewer service charges to reflect increases in the cost of living and the cost of sewer treatment services furnished to the City by San Francisco; and

**WHEREAS**, the City Council finds and determines that increases in the cost of the providing water service and sanitary sewer service to customers in the City have made it necessary to increase the amounts charged by the City for providing such services; and

**WHEREAS**, a proposed schedule of rate increases over five years was presented to the City Council, a copy of which is attached hereto and incorporated herein by reference; and

**WHEREAS**, as required by law, notice of the proposed increased charges was given to the persons who are responsible for payment of such charges, as shown on the records of the City, which included notice of a public hearing to be conducted by the City Council at which time any protests to the proposed increases would be considered, such notice having been given at least 45 days prior to the hearing; and

**WHEREAS**, on April 6, 2023, the City Council conducted a public hearing on the proposed increases in water and sewer charges, at which time any person was given an opportunity to protest the same; and

**WHEREAS**, protests were not made by a majority of the persons who would be responsible for payment of the water and sewer charges,

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:**

1. The schedule of water service and sewer services charges attached hereto is approved (attachment A).
2. The discount rate for the City's Low Income Rate Assistance Plan shall be 25% for all service charges.
3. The increased water and sewer service charges shall be effective as of June 15, 2023, shall be implemented in the bimonthly bill which will be sent to customers in August 2023, and due in October 2023.

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 Mayor

I hereby certify that the foregoing Resolution No. 2023-\_\_\_\_\_ was duly and regularly adopted at the regular meeting of the Brisbane City Council on April 6, 2023, by the following vote:

AYES:

NOES:

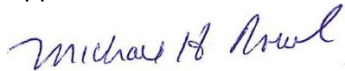
ABSTAIN:

ABSENT:

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Ingrid Padilla, City Clerk

Approved as to form:



Michael Roush, Legal Counsel

## Attachment A

**Proposed Bimonthly Water Rates**

<i>Rate Effective Date:</i>	PROPOSED WATER RATES				
	June 15, 2023	June 15, 2024	June 15, 2025	June 15, 2026	June 15, 2027
<b>FIXED CHARGES</b>					
<u>Meter Size</u>					
5/8"	\$33.35	\$36.17	\$39.23	\$42.55	\$46.28
3/4"	\$33.35	\$36.17	\$39.23	\$42.55	\$46.28
1"	\$41.90	\$45.45	\$49.29	\$53.46	\$58.12
1-1/2"	\$63.29	\$68.65	\$74.44	\$80.75	\$87.72
2"	\$88.95	\$96.49	\$104.62	\$113.49	\$123.24
3"	\$157.37	\$170.73	\$185.10	\$200.79	\$217.96
4"	\$234.35	\$254.25	\$275.64	\$299.01	\$324.52
6"	\$448.19	\$486.25	\$527.14	\$571.85	\$620.52
<b>CONSUMPTION CHARGES (per ccf) (1)</b>					
<u>All Usage over 1 ccf</u>					
Tier 1: 1- 20 ccf	\$6.30	\$6.76	\$7.26	\$7.79	\$8.36
Tier 2: Over 20 ccf	\$12.65	\$13.47	\$14.34	\$15.27	\$16.25

(1) 1 ccf = 1 hundred cubic feet = 748 gallons

### Proposed Bimonthly Sewer Rates

<i>Rate Effective Date:</i>	PROPOSED SEWER RATES				
	June 15, 2023	June 15, 2024	June 15, 2025	June 15, 2026	June 15, 2027
<b>RESIDENTIAL (1)</b>					
Flat Charge	\$64.20	\$79.86	\$99.32	\$123.54	\$153.66
Variable Charge (per ccf) (2)	\$8.29	\$10.15	\$12.43	\$15.23	\$18.67
<b>COMMERCIAL</b>					
<b>Standard</b>					
Flat Charge	\$64.20	\$79.86	\$99.32	\$123.54	\$153.66
Variable Charge (per ccf)	\$9.02	\$11.04	\$13.53	\$16.59	\$20.33
<b>Medium</b>					
Flat Charge	\$64.20	\$79.86	\$99.32	\$123.54	\$153.66
Variable Charge (per ccf)	\$11.12	\$13.61	\$16.68	\$20.45	\$25.07
<b>Heavy</b>					
Flat Charge	\$64.20	\$79.86	\$99.32	\$123.54	\$153.66
Variable Charge (per ccf)	\$13.21	\$16.18	\$19.83	\$24.32	\$29.81

(1) Residential bill is based on winter consumption (Oct, Nov, Dec & Jan)

(2) 1 ccf = 1 hundred cubic feet = 748 gallons

**File Attachments for Item:**

N. Update on Proposed Residential Parking Permit Program for Central Brisbane

(The purpose of this item is to present Council with Complete Streets Safety Committee's (CSSC) residential parking permit program recommendation to address the complex parking scarcity issue in Central Brisbane. It is being recommended to adopt CSSC recommended parking permit program guidelines and/or provide direction to staff.)



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** April 6, 2023

**From:** Karen Kinser, Deputy Director of Public Works

**Subject:** Proposed Residential Parking Permit Program for Central Brisbane

### Community Goal/Result

- (1) Safe Community
- (2) Community Building

**Purpose:** To present Council with Complete Streets Safety Committee's (CSSC) residential parking permit program recommendation to address the complex parking scarcity issue in Central Brisbane.

**Recommendation:** Adopt CSSC recommended parking permit program guidelines and/or provide direction to staff.

### Background

The Complete Streets Safety Committee often receives requests/feedback from members of the public. One of the most common requests the committee receives is for a solution to the parking scarcity throughout Central Brisbane. A 2021 survey implemented by the CSSC and staff found that around 70 percent of those surveyed wanted the city to take measures to improve street parking. A parking permit program was favored either strongly or somewhat by 64% of respondents.

At the April 7, 2022 City Council meeting, survey results were shared, and the committee through staff requested feedback from Council on their three part plan – 1) encourage residents to clean out and park in garages to improve street parking capacity, 2) implement a residential street sweeping program with enforcement, and 3) if 1 and 2 were not sufficient, to implement a residential parking permit program. At the meeting, the CSSC was directed by Council to focus on a residential parking permit program to be brought back to Council.

### Discussion

Over several meetings, the CSSC reviewed and came to agreement to recommend the implementation of a residential parking permit program in Central Brisbane with the following guidelines:

- The program will be in effect throughout Central Brisbane, including Visitacion Ave., excluding private roads and the backside of San Bruno Ave, for which no street parking exists.
- Each household (address) may apply for and receive up to two permits. Accessory dwelling units (ADUs) may be issued one additional permit.

- Guest parking should be included in a program, but CSSC did not decide upon a specific recommendation on the number to be allowed. Staff suggests 14 permits per year per household, and 7 per year for ADUs. Guest parking would be allowed whether the household obtains year-round parking permits or not.
- The permit program hours are recommended to be between 10PM-7AM, Sunday-Thursday. The program will also not be enforced on City recognized holidays.
- The program would include a reduced permit fee for qualifying low-income residents. The first year of the program is recommended to be free of charge.
- Implementation of a parking permit program should be subject to a public advisory vote.

### Fiscal Impact

To understand the fiscal impacts of a residential parking permit program, staff reached out to contractors who specialize in parking program management and parking enforcement. Staff recommends using consulting and contracting services for permit issuance and data collection as well as enforcement, because the work is detailed and will require proprietary software to organize data and allow for electronic applications.

The IPS Group specializes in permit issuance, management and citation tracking for local governments. They charge a one-time set up fee of \$5,000 to customize their software to the specifics of a permit program based on an agency's needs, plus around \$20 per permit issued or renewed annually. They can support mobile license plate reading, versus stickers or mirror hang tags, which is preferred by the Police administration staff. LAZ Parking is a parking enforcement company working in other peninsula cities and can provide enforcement services for around \$130,000 a year. This fee includes wages and payroll, vehicle costs, mobile license plate recognition, and uniforms and basic supplies.

With around 1,400 households and 100 ADUs, staff estimates issuing 2,900 total permits, if all qualified do obtain permits. Staff estimates the total permit cost to be around \$100 per permit, per year, including some staff time. Revenue from citations was not estimated nor included.

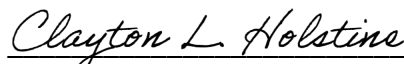
CSSC supports phasing in costs to residents, so that no one pays permit fees in the first year, to help adjust to the new program. They also recommend initially not increasing parking fines for the same reason, but they do support increasing the fine amount over time to improve compliance.



Karen Kinser, Deputy Director of Public Works



Randy Breault, Director of Public Works/City Engineer



Clay Holstine, City Manager



**File Attachments for Item:**

P. Countywide Assignments and Subcommittee Reports

-Public Art Advisory Committee	Monday, 3/20 4:30pm	Cunningham, Davis
-Infrastructure Subcommittee	Tuesday, 3/21 2:30pm	Lentz, Mackin



# CITY of BRISBANE

## Subcommittee Update

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From March 13<sup>th</sup>, 2023 to March 31<sup>st</sup>, 2023

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### Public Art Advisory Committee

Monday, 3/20 4:30pm

Cunningham, Davis

The Committee reviewed RFPs for a Public Art Master Plan from the City of Alameda, City of Belmont, City of Redwood City (RWC) and City of South San Francisco (SSF) in order to begin to building Brisbane's RFP. They shared their ideas with each other and allowed for a free-flowing process towards the goal of developing a final Request for Proposal. Some of their highlighted preferences from each city's RFP, include:

- Belmont - the conciseness of their RFP, their key elements section and consultant selection section (with modifications);
- SSF - their timeline, public participation plan and overarching goals (community involvement, diversity of art and a sense of place, but not "artist's participation" as this is not part of the Master Plan);
- RWC - the qualifications section and submittal requirements.

Aside from the elements listed above, the Committee wants the RFP to include these elements:

- Language about "art on loan" and temporary art;
- Large focus on a robust public outreach;
- Recommendations for language around collection, ownership & maintenance of art;
- Consultant to understand that Brisbane has large developments on the horizon that need to be considered (Baylands and Sierra Point Parkway).

The Committee reviewed the costs from the other cities: Belmont - \$25K; RWC - \$60K; SSF - \$80K; and Alameda \$60. The Committee would like to propose the RFP state their budget as "not to exceed \$75K". Staff will draft an RFP and bring it back to the Committee at the next meeting.

And finally, the Committee considered ideas for small interim projects, such as exhibit space to display temporary art, refresh the Helix and turtle sculptures at Firth Park or a decorative mailbox community engaged activity to name a few.

### Infrastructure Subcommittee

Tuesday, 3/21 2:30pm

Lentz, Mackin

The subcommittee reviewed the two preliminary facility assessment proposals from Siegel & Strain (S&S) Architects for the Community Center/Old Library and Mission Blue Center. As part of the CIP review by Council in 2021, staff proposed two projects related to maintenance and improvements of recreational facilities. Community members, Commissioners, and Councilmembers have been outspoken regarding infrastructure upgrades at both locations. In order to have a comprehensive understanding of future facility maintenance and improvement needs, an existing conditions analysis is

necessary, so staff hired S&S for a preliminary proposal for conducting this scope of work. The proposal for the Community Center/Old Library is \$39,843. The proposal for the Mission Blue Center is \$32,888.

The subcommittee discussed whether this cost is more about repairs or a redesign. Staff said that the work can be parsed out with immediate repairs set as a priority. Councilmembers Lentz and Mackin would like a Public Works internal review of existing conditions and the current repairs needed now. They also requested a rental analysis to compare the rental income versus upkeep costs. They also discussed how this would be funded, and whether they should get the plans rolling now, and then wait for future impact fees to take affect.

Councilmembers Lentz and Mackin would like to have this come back to the subcommittee for another review and then to Council for discussion.

### **Upcoming Subcommittees:**

**Fiscal & Administrative Polices Subcommittee**   **Monday 4/3 2pm**   **Cunningham, O'Connell**  
Discuss City Hall Annex Funding

**Affordable Housing Subcommittee**   **Monday, 4/10 3pm**   **Lentz, Mackin**

- Discuss Visitation Gardens senior housing ground lease renewal with Bridge Housing
- Affordable Housing Strategic Plan: Project Update
- Discussion of an Affordable Housing Project: Type, Location

**Public Art Advisory Committee**   **Monday, 4/17 4:30pm**   **Cunningham, Davis**  
Review Draft Public Art Master Plan RFP