



CITY of BRISBANE

City Council Meeting Agenda

Thursday, June 18, 2020 at 7:30 PM • Virtual Meeting

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

TO ADDRESS THE COUNCIL

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

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. The following email and text line will be monitored during the meeting and public comments received will be read into the record during Oral Communications 1 and 2 or during an Item.

Email: ipadilla@brisbaneca.org

Text: 628-219-2922

Oral Comments for the Public Hearing Only: Dial: 1 (669) 900 9128 Meeting ID: 923 8343 7907

PUBLIC MEETING VIDEOS

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SPECIAL ASSISTANCE

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

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

2. ROLL CALL

3. ADOPTION OF AGENDA

4. PRESENTATION AND AWARDS

- A. Consider Adoption of Resolution 2020-47 Affirming the City's Commitment to Stand in Solidarity with the Black Community and Condemn Racism

5. ORAL COMMUNICATIONS NO. 1

6. CONSENT CALENDAR

- B. Accept Investment Report as of May 2020
- C. Adopt Ordinance No. 652, Waiving Second Reading, Adding chapter 5.70 to the Brisbane Municipal Code Concerning the Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License
- D. Adopt Resolution No. 2020-48 calling a General Municipal Election to be held on Tuesday, November 3, 2020 and adopting procedures pertaining to the conduct and administration of such election including requesting the San Mateo County Clerk-Recorder to provide specified election services.
- E. Adopt Resolution No. 2020-49 Affirming the Continuation of the Proclamation of the Existence of a Local Emergency in Response to the Covid-19 Pandemic
- F. Adopt Resolution No. 2020-50, Revising the 2020 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP and Rescinding Resolution 2020-42
- G. Receive Solid Waste Franchise Rate Update
 - 1. Acknowledge South San Francisco Scavenger's 2020 rate increase of 2.04%, and their request to delay said increase until at least October 1, 2020.
 - 2. Acknowledge Recology Brisbane's 2020 rate increase of 2.22%, with an effective date of July 1, 2020.

- H. Approve the Encroachment Agreement for Installation of Fiber Optic Network Facilities Within the Public Right-of-Way with Intermountain Infrastructure Group, LLC.
- I. Authorize the Mayor to sign Memorandum of Understanding to join the San Mateo County Weed Management Area

7. PUBLIC HEARING

- J. Sierra Point Landscaping and Lighting District

1. Hear Statement of Engineer of Record, Read Mayor's Statement, Hear City Clerk Statement, Open Public Hearing to hear any testimony, Close Public Hearing

2. Consider adoption of Resolution No. 2020-46 address protests and ordering the improvements and confirming the diagram and assessments for Fiscal Year 19/20

- K. City of Brisbane Local Stormwater Program Fees

1. Open the Public Hearing and take public comment. Close the Public Hearing, and if appropriate, address any objections to the imposition of fees related to the NPDES Program

2. Consider adoption Resolution No. 2020-45, "A Resolution of the City Council of the City of Brisbane Imposing Charges for Funding the Local Brisbane Stormwater Program, Authorizing Placement of Said Charges on the 2020-2021 County Tax Roll, and Authorizing the County Tax Collector to Collect Such Charges."

(The purpose of this item is to provide a public hearing and consider imposition of annual tax roll charges that fund Brisbane's Local Stormwater Program, which minimizes discharge of pollutants to San Francisco Bay in accordance with federally mandated permit requirements.)

- L. Short Term Rental Regulations- Draft Ordinance 655 and Urgency Ordinance 656

1. Consider introduction of Ordinance No. 655, and adoption of Urgency Ordinance No. 656

2. Direct the City Manager to develop a program and/or regulations to administer and enforce the adopted ordinance, including the establishment of appropriate application fees to cover administrative costs.

(The City Council will consider zoning amendments to allow for and regulate rentals of residential property for periods of less than 30 days (short term rentals). The zoning amendments would allow for hosted rentals (i.e., rentals where the permanent resident is on-site) subject to a permit process and performance standards related to occupancy limits, parking, good neighbor practices, and payment of transit occupancy tax. Unhosted rentals (i.e., rentals where the permanent resident is not on-site) would be prohibited. Ordinance 655 is being recommended to be introduced on a first reading and also adopted as Urgency Ordinance 656 to take effect immediately upon adoption by a four-fifths vote.)

- M. Consider Introduction of Ordinance No. 653 Amending title 17 of the Brisbane Municipal Code to Regulate Accessory Dwelling Units and Junior Accessory Dwelling Units and Floor Area Ratio Exemption for Garages on Small Lots and Amending Title 15 of the Brisbane Municipal Code to Regulate Alterations and Additions to Existing Structures

(This item will be continued at a future City Council Meeting and will not be heard on June 18, 2020).

8. NEW BUSINESS

- N. Consider adoption of Resolution No. 2020-25 establishing the Appropriation Limit for Fiscal Year 2020-2021

9. STAFF REPORTS

- O. City Manager's Report on upcoming activities
1. Update on November 3, 2020 General Elections
 2. State Budget Update
 3. Equity and Equal Opportunity Status & Update

10. MAYOR/COUNCIL MATTERS

- P. Countywide Assignments and/Subcommittee Reports
- Q. City Council Meeting Schedule
- R. Written Communications

11. ORAL COMMUNICATIONS NO. 2

12. ADJOURNMENT

File Attachments for Item:

Consider Adoption of Resolution 2020-47 Affirming the City's Commitment to Stand in
Solidarity with the Black Community and Condemn Racism



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: Clay Holstine, City Manager

Subject: Resolution No. 2020-47 Affirming the City's Commitment to Stand in Solidarity with the Black Community and Condemn Racism

Community Goal/Result

Community Building & Safe Community

Recommendation

Adopt Resolution Affirming the City's Commitment to Stand in Solidarity with the Black Community and Condemn Racism

Discussion

At the June 4, 2020 City Council meeting, councilmembers and Mayor O'Connell closed the meeting in memory of George Floyd, an African American man who was killed by police on May 25, 2020, in Minneapolis, Minnesota. In response to Floyd's death, protests calling an end to police brutality and racial discrimination quickly spread across the country and abroad. On June 6, 2020, a group of local Brisbane residents also wanted to speak out against Floyd's death and organized a vigil in the Brisbane Community Park.

Council felt that the City needed to issue a resolution affirming the City's commitment to stand in solidarity with the black community and condemn racism. It is recommended that Council adopt the proposed resolution.

Fiscal Impacts

None

Attachments

1. Resolution 2020-47

Clay Holstine, City Manager

RESOLUTION NO. 2020-47
A RESOLUTION OF THE BRISBANE CITY COUNCIL
AFFIRMING THE CITY'S COMMITMENT TO STAND IN SOLIDARITY WITH THE BLACK COMMUNITY
AND CONDEMN RACISM

WHEREAS, our country is mourning the senseless killing of George Floyd that occurred in Minneapolis on May 25, 2020. The actions and inactions of the police officers involved were deplorable, horrific, and unacceptable; and

WHEREAS, the most basic form of injustice and inequity occurs when a group of people feels their safety is placed into jeopardy by the very people entrusted with ensuring their safety; and

WHEREAS, police brutality and racism against the Black community has been persistent in our larger society, with the unrest regarding racial injustice, particularly towards the Black community, building up for decades; and

WHEREAS, the murders of George Floyd, Breonna Taylor, David McAttee, Tony McDade, Ahmaud Arbery, Yassin Mohammed, Finan H Berhe, Sean Reed, Steven Demarco Taylor, Ariane McCree, Terrance Franklin, Miles Hall, Darius Tarver, William Green, Samuel David Mallard, Kwame Jones, De'von Bailey, Atatiana Jefferson, Christopher Whitfield, Anthony Hill, Eric Logan, Jamarion Robinson, Kayla Moore, Gregory Hill Jr., JaQuavion Slaton, Ryan Twyman, Brandon Webber, Jimmy Atchinson, Willie McCoy, Emantic Fitzgerald Bradford Jr., D'etrick Griffin, Jemel Roberson, DeAndre Ballard, Botham Shem Jean, Robert Lawrence White, Anthony Lamar Smith, Sandra Bland, Ramarley Graham, Manuel Loggins Jr, Trayvon Martin, Wendell Allen, Kendrec McDade, Pamela Turner, Larry Jackson Jr, Johnathan Ferrell, Jordan Baker, Victor White III, Dontre Hamilton, Eric Garner, John Crawford III, Michael Brown, Ezell Ford, Dante Parker, Kajieme Powell, Laquan McDonald, Akai Gurley, Tamir Rice, Romain Brisbon, Korryn Gaines, Jerame Reid, Charly Keunang, Tony Robinson, Walter Scott, Freddie Gray, Brendon Glenn, Samuel DuBose, Christian Taylor, Jamar Clark, Mario Woods, Quintonia LeGrier, Gregory Gunn, Akiel Denkins, Alton Sterling, Philando Castile, Terrence Sterling Crutcher, Natasha Terence, Keith Lamont Scott, Alfred Olango, Jordan Edwards, Stephon Clark, Danny Ray Thomas, DeJuan Guillory, Patrick Harmon, Johnathan Hart, Maurice Granton, Julius Johnson, Jamee Johnson, Nia Wilson, Oscar Grant and Michael Dean represent just a few of the black lives that were taken as a result of racial discrimination. Their lives mattered and black lives matter; and

WHEREAS, it is important that the City take the lead, speak out against racial injustices, and stand in solidarity with Black communities across the country; and

WHEREAS, the City of Brisbane is a diverse and multiracial community that supports positive relationships and mutual respect in order to build healthy and safe neighborhoods; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Brisbane does hereby affirm its commitment to stand in solidarity with the Black community, and resolves as follows:

The City of Brisbane condemns racism in all forms and violence against the Black community by law enforcement in particular; and

The City of Brisbane does not tolerate discrimination, racial injustice, or police brutality; and

The City of Brisbane will oppose any attempts to undermine the safety, security, and rights of members of our community and will work proactively to ensure the rights and privileges of everyone in the City—regardless of race; and

The City of Brisbane will promote safety, a sense of security, and equal protection of constitutional and human rights, leading by example through equitable treatment of all by City officials and departments; and

The City of Brisbane encourages the community to stand together through peaceful exchange and discourse to enact change and move forward towards a future with more equity and inclusion in Brisbane, California, and our country.

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution No. 2020-47 was duly and regularly adopted at the regular meeting of the Brisbane City Council on June 18, 2020 by the following vote:

AYES:

NOES

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk

B.

File Attachments for Item:

B. Accept Investment Report as of May 2020

CITY OF BRISBANE
CASH BALANCES & INVESTMENTS
SOURCE OF FUNDING
May 31, 2020

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		\$ 2,223,472	\$ 2,223,472	\$ 2,223,472	0.000		
STATE FUND (LAIF)	Deposit on call	continuous	\$ 10,929,879	\$ 10,929,879	\$ 10,929,879	1.660	on call	no rating
Other Investments								
	Capital One Bank CD	10/15/2015	\$ 250,000	\$ 250,000	\$ 251,880	2.200	10/21/2020	
	Discover Bank CD	10/15/2015	\$ 250,000	\$ 250,000	\$ 251,880	2.200	10/21/2020	
	Capital One National Association	11/23/2016	\$ 250,000	\$ 250,000	\$ 255,632	2.000	11/23/2021	
	Wells Fargo	11/30/2016	\$ 250,000	\$ 250,000	\$ 255,976	2.000	11/30/2021	
	Sallie Mae Bank	5/9/2019	\$ 245,000	\$ 245,000	\$ 255,881	2.550	5/9/2022	
	Morgan Stanley	6/6/2019	\$ 245,000	\$ 245,000	\$ 256,489	2.560	6/6/2022	
	Comenity Capital Bank	4/28/2019	\$ 248,000	\$ 248,000	\$ 265,404	2.650	4/28/2023	
	Morgan Stanley	5/2/2019	\$ 245,000	\$ 245,000	\$ 262,240	2.650	5/2/2023	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 269,778	2.650	5/1/2024	
	FFCB	11/27/2019	\$ 1,000,000	\$ 1,000,000	\$ 1,007,070	1.890	11/27/2024	
	FHLB	12/19/2019	\$ 1,000,000	\$ 1,000,000	\$ 1,000,740	2.000	12/19/2024	
BNY Mellon	Treasury Obligations	continuous	\$ 10,331,567	\$ 10,331,567	\$ 10,331,567	0.010	on call	110% collateral
Sub-total			\$ 14,560,567	\$ 14,560,567	\$ 14,664,536			
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	\$ 3	10036			
		Interest Fund	Fed Treas Obl	\$ 1	10037			
BNY Mellon	2006 Pension Bonds (340)	Expense Fund	Fed Treas Obl	\$ 17	10035			
U.S. Bank	2015 Utility Capital (545)	Improvements	Fed Treas Obl	\$ 2,350,765	10031			
		Reserve	Fed Treas Obl	\$ 39	10032			
		Expense Fund	Fed Treas Obl	\$ 0	10035			
BNY Mellon	2013 NER Refinance (796)		Fed Treas Obl		10030			
		Improvements	Fed Treas Obl		10031			
		Reserve	Fed Treas Obl	\$ 260,413	10032			
		Redemption	Fed Treas Obl		10035			
		Debt Service	Fed Treas Obl	\$ -	10036			
PARS	OPEB Trust	Trust Cash	Investments	\$ 2,822,630	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,139,033	13050			
Sub-total	Cash with Fiscal Agents			\$ 6,572,902				
Total other investments			\$ 14,560,567	\$ 21,133,468	\$ 14,664,536			
TOTAL INVESTMENTS & CASH BALANCES			\$ 27,713,917	\$ 34,286,819	\$ 27,817,886			

Outstanding Loans to Department Heads

	Date of loan	Amount	Amount Remaining	Interest Rate
Stuart Schillinger	4/1/2002	318,750	\$ 318,750	Based on Sales Price
Clay Holstine (1)	7/8/2008	300,000	\$ -	Paid off 12/28/2016
Clay Holstine (2)	9/10/2008	200,000	\$ 200,000	Secured by other funds
Randy Breault	10/22/2001	320,000	\$ 57,832	3.34%

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

Two year Treasury	0.20%	
Weighted Interest	0.99%	
Weighted maturity	0.65	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) and that 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.

Stuart Schillinger

CITY TREASURER

File Attachments for Item:

C. Adopt Ordinance No. 652, Waiving Second Reading, Adding chapter 5.70 to the Brisbane Municipal Code Concerning the Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License

**MEMO****Meeting Date:** June 18, 2020**From:** Ingrid Padilla, City Clerk**Subject:** Adopt Ordinance No. 652, Waiving Second Reading, Adding chapter 5.70 to the Brisbane Municipal Code Concerning the Determination of Public Convenience or Necessity for an Alcoholic Beverage Control License

The Ordinance listed above was introduced at the City Council Meeting of June 4, 2020. It is on this agenda for consideration of adoption.

Attachment:

Staff report from City Council Meeting of June 4, 2020



CITY COUNCIL AGENDA REPORT

Meeting Date: June 4, 2020

From: John Swiecki, Community Development Director

Subject: Public Convenience or Necessity – Draft Ordinance No. 652

Community Goal/Result

Economic Development, Safe Community

Purpose

To amend the Brisbane Municipal Code (BMC) to establish a process for determining whether there is a public convenience or necessity (PCN) for certain types of alcoholic beverage licenses issued by the California Department of Alcoholic Beverage Control (ABC).

Recommendation

That the City Council introduce Ordinance No. 652 (Attachment 1).

Background

The California Department of Alcoholic Beverage Control (ABC) regulates the granting of licenses for the sale of alcoholic beverages within the state. An “on-sale” license authorizes the sale of alcoholic beverages for consumption on the premises where sold, while an “off-sale” license authorizes the sale of alcoholic beverages for consumption off the premises.

As part of the ABC’s licensing process, ABC contacts cities to confirm the proposed use is permitted by local zoning regulations. Additionally, where the ABC has determined a requested license is located in an area of “undue concentration” of similar licenses (based upon countywide averages), cities must make a PCN determination in order for ABC to grant the license. If the city finds that granting the license would serve the public convenience or necessity, it would make an affirmative PCN determination and the license would be issued. If the city does not make an affirmative PCN determination, ABC would deny the requested license. If the city takes no action, the ABC will allow the applicant to justify an affirmative PCN determination as part of their review of the license. Per Business and Professions Code Section 23958.4 a PCN determination may be required for the issuance of all off-sale liquor licenses and certain on-sale liquor licenses in an area of undue concentration.

Discussion

The City of Brisbane does not currently have an established process for making a PCN determination, meaning there are no prescribed findings or procedure in place to process any requests received for a PCN determination. Lacking established procedures, any PCN request would require the City Council to make a determination within 90 days from when ABC notifies

the City. In the event the Council does not make a determination within 90 days, the ABC would perform their own investigation before making a decision to issue the liquor license.

The City was recently contacted by ABC regarding an application for an off-sales license for a business in Crocker Park for which a PCN determination is required due to an overconcentration of similar licenses in the census tract.

In light of this pending request, the draft Ordinance (Attachment 1) proposes a new chapter to the Brisbane Municipal Code that authorizes the Community Development Director or their designee to review applications for PCN determinations and grant a PCN determination when findings set forth in the ordinance are met. The findings address whether the granting of a license would enhance a commercial area or provide a convenience to an underserved part of the community without being detrimental to public health, safety and welfare. The property owner of the subject establishment and owner(s) within 300 feet of the site shall receive mailed notice of the director's determination. The director's action may be appealed to the city manager, who may act on the appeal or refer it to the City Council for final action. For applications that require Planning Commission approval of a related discretionary approval (such as a use permit), the Planning Commission would make the PCN determination. The Commission's decision would be appealable to the City Council.

Fiscal Impact

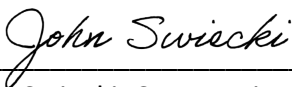
None. The City's fee schedule will be updated to cover staff time for processing PCN determinations.

Measure of Success

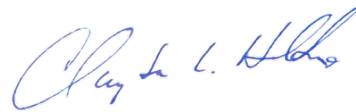
Adoption of a procedure for determining public convenience and necessity for certain liquor licenses consistent with state law.

Attachments

1. Draft Ordinance No. 652
2. Government Code Section [23958.4](#), relating to PCN determinations of ABC licenses



John Swiecki, Community Development Director



Clay Holstine, City Manager

ATTACHMENT 1
DRAFT ORDINANCE NO. 652

**Draft
ORDINANCE 652**

**AN ORDINANCE OF THE CITY OF BRISBANE
ADDING CHAPTER 5.70 TO THE BRISBANE MUNICIPAL CODE
CONCERNING THE DETERMINATION OF PUBLIC CONVENIENCE OR
NECESSITY FOR AN ALCOHOLIC BEVERAGE CONTROL LICENSE**

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

SECTION 1: Chapter 5.70 is hereby added to the Brisbane Municipal Code to read as follows:

Chapter 5.70 - DETERMINATION OF PUBLIC CONVENIENCE OR NECESSITY FOR AN ALCOHOLIC BEVERAGE CONTROL LICENSE

5.70.010 - Applicability.

The purpose of this chapter is to execute the City's authority to review applications for the City's determination of public convenience or necessity for alcohol beverage sales for all retail licenses of on-premises sale or off-premises sale establishments, excluding retail licenses for on-sale bona fide eating places, hotels, motels, or other lodging establishments, or retail licenses issued in conjunction with a beer manufacture or a wine grower's license, when such applications are referred to the City by the California Department of Alcohol Beverage Control in those areas that are deemed to be over-concentrated with on-sale or off-sale outlets or those areas that are considered high crime, as specified in Business and Professions Code Section 23958.4, and following, as the same may be amended from time to time.

5.70.20 - Authority.

- A. The Community Development Director shall review and take action on applications for the determination of public convenience or necessity except as provided in subsection B of this section 5.70.020. The Director's action on the application shall be final unless appealed as provided in Section 5.70.060 of this Chapter.
- B. In any case where the applicant is required to obtain a separate use permit, variance, design permit, planned development permit, zoning ordinance amendment, or other land use permit(s) that otherwise would be considered by the planning commission, then the application for the determination for public convenience or necessity shall be reviewed and action taken on such application by the planning commission in conjunction with the separate land use permit(s). The planning commission's action shall be final unless appealed in accordance with Chapter 17.52.

5.70.030 - Definitions.

For the purposes of this chapter, the following definitions apply:

- A. "Determination" means a decision of public convenience or necessity by the City of Brisbane to assist the State of California in the issuance of a license for the on-premises sale and off-premises sale of alcoholic beverages by the California Department of

Alcoholic Beverage Control in those areas that are deemed to be over-concentrated with on-sale or off-sale outlets or those areas that are considered high crime, as specified in Business and Professions Code 23958.4, and following, as the same may be amended from time to time.

- B. “Decision-making body” shall mean the Community Development Director, the City Manager, the Planning Commission of the City, of the City Council of the City, as such terms are defined in this Section and in Title 2 of this Municipal Code.
- C. “Director” means the Community Development Director or the Director’s designee.
- D. “On-premises sale” means the same as on-sale outlet and refers to the sale of alcoholic beverages for consumption on and off the premises.
- E. “Off-premises sale” means the same as off-sale outlet and refers to the sale of alcoholic beverages for consumption off the premises in original, sealed containers from an alcoholic beverage company.

5.70.040 - Notice of Action on the Application.

Within 90 days of receipt of a complete application for a determination of public convenience or necessity, the Director shall either grant or deny the application pursuant to the findings in Section 5.70.050 of this Chapter. Notice of the Director’s action on the application shall be mailed to the applicant, the subject property owner, and to all owners of property within three hundred (300) feet of the subject property. Any person may appeal the director’s action on the application as provided in Section 5.70.060 of this Chapter.

5.70.050 – Findings.

Subject to this section 5.70.050, the decision-making body shall review an application for a determination and may issue a determination of public convenience or necessity in connection with an application for a license from the California Department of Alcoholic Beverage Control for the on-premises sale or off-premises sale only after making all of the following findings:

- A. The property for which the alcoholic beverage license is requested has no active Building Code or Health Code violations of record, and on-premises sale or off-premises sale is a permitted use; and
- B. The proposed on-premises sale or off-premises sale use is not located within an area that the proposed use would:
 - 1. Be detrimental to the public health, safety, or welfare of persons located in the area; or
 - 2. Increase the severity of existing law enforcement or public nuisance problems in the area; and
- C. At least one of the following additional findings:
 - 1. The proposed outlet for the on-premises sale or off-premises sale would act as a convenience to an underserved portion of the community; or

2. The proposed outlet for the on-premises sale or off-premises sale would enhance or facilitate the vitality of an existing commercial area; or
3. The proposed on-premises sale or off-premises sale is incidental and appurtenant to a larger retail use and provides for a more complete and convenient shopping experience.

5.70.060 - Appeals.

- A. Appeal of Director action. An appeal of the Director's action shall be made to the City Manager in writing and filed with the city clerk within ten (10) calendar days after the final action of the Director. The appeal shall be accompanied by a fee, as set by the city council, and shall clearly state the reason for appeal. The City Manager shall conduct a review of the application and may affirm, modify or reverse the action of the Director, or refer the matter to the City Council for action. If the City Manager refers the matter to the City Council, Section 5.70.050 shall apply.
- B. Appeal of planning commission action. An appeal of the planning commission's action to the City Council shall be made in accordance with Chapter 17.52 of Title 17.

SECTION 2: Adoption of this Ordinance does not require environmental review because it represents general policy making that would not result in a direct or indirect physical change in the environment and therefore it is not a project under the California Environmental Quality Act. CEQA Guidelines, Section 15378 (b)(2).

SECTION 3: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

SECTION 4: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ATTACHMENT 2
GOVERNMENT CODE SECTION 23958.4

State of California

BUSINESS AND PROFESSIONS CODE

Section 23958.4

23958.4. (a) For purposes of Section 23958, “undue concentration” means the case in which the applicant premises for an original or premises-to-premises transfer of any retail license are located in an area where any of the following conditions exist:

(1) The applicant premises are located in a crime reporting district that has a 20 percent greater number of reported crimes, as defined in subdivision (c), than the average number of reported crimes as determined from all crime reporting districts within the jurisdiction of the local law enforcement agency.

(2) As to on-sale retail license applications, the ratio of on-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

(3) As to off-sale retail license applications, the ratio of off-sale retail licenses to population in the census tract or census division in which the applicant premises are located exceeds the ratio of off-sale retail licenses to population in the county in which the applicant premises are located.

(b) Notwithstanding Section 23958, the department may issue a license as follows:

(1) With respect to a nonretail license, a retail on-sale bona fide eating place license, a retail license issued for a hotel, motel, or other lodging establishment, as defined in subdivision (b) of Section 25503.16, a retail license issued in conjunction with a beer manufacturer’s license, or a winegrower’s license, if the applicant shows that public convenience or necessity would be served by the issuance.

(2) With respect to any other license, if the local governing body of the area in which the applicant premises are located, or its designated subordinate officer or body, determines within 90 days of notification of a completed application that public convenience or necessity would be served by the issuance. The 90-day period shall commence upon receipt by the local governing body of (A) notification by the department of an application for licensure, or (B) a completed application according to local requirements, if any, whichever is later.

If the local governing body, or its designated subordinate officer or body, does not make a determination within the 90-day period, then the department may issue a license if the applicant shows the department that public convenience or necessity would be served by the issuance. In making its determination, the department shall not attribute any weight to the failure of the local governing body, or its designated subordinate officer or body, to make a determination regarding public convenience or necessity within the 90-day period.

(c) For purposes of this section, the following definitions shall apply:

(1) “Reporting districts” means geographical areas within the boundaries of a single governmental entity (city or the unincorporated area of a county) that are identified by the local law enforcement agency in the compilation and maintenance of statistical information on reported crimes and arrests.

(2) “Reported crimes” means the most recent yearly compilation by the local law enforcement agency of reported offenses of criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny, theft, and motor vehicle theft, combined with all arrests for other crimes, both felonies and misdemeanors, except traffic citations.

(3) “Population within the census tract or census division” means the population as determined by the most recent United States decennial or special census. The population determination shall not operate to prevent an applicant from establishing that an increase of resident population has occurred within the census tract or census division.

(4) “Population in the county” shall be determined by the annual population estimate for California counties published by the Demographic Research Unit of the Department of Finance.

(5) “Retail licenses” shall include the following:

(A) Off-sale retail licenses: Type 20 (off-sale beer and wine) and Type 21 (off-sale general).

(B) On-sale retail licenses: All retail on-sale licenses, except Type 43 (on-sale beer and wine for train), Type 44 (on-sale beer and wine for fishing party boat), Type 45 (on-sale beer and wine for boat), Type 46 (on-sale beer and wine for airplane), Type 53 (on-sale general for train and sleeping car), Type 54 (on-sale general for boat), Type 55 (on-sale general for airplane), Type 56 (on-sale general for vessels of more than 1,000 tons burden), and Type 62 (on-sale general bona fide public eating place intermittent dockside license for vessels of more than 15,000 tons displacement).

(6) A “premises-to-premises transfer” refers to each license being separate and distinct, and transferable upon approval of the department.

(d) For purposes of this section, the number of retail licenses in the county shall be established by the department on an annual basis.

(e) The enactment of this section shall not affect any existing rights of any holder of a retail license issued before April 29, 1992, whose premises were destroyed or rendered unusable as a result of the civil disturbances occurring in Los Angeles from April 29 to May 2, 1992, to reopen and operate those licensed premises.

(f) This section shall not apply if the premises have been licensed and operated with the same type license within 90 days of the application.

(Amended by Stats. 2019, Ch. 29, Sec. 46. (SB 82) Effective June 27, 2019.)

File Attachments for Item:

D. Adopt Resolution No. 2020-48 calling a General Municipal Election to be held on Tuesday, November 3, 2020 and adopting procedures pertaining to the conduct and administration of such election including requesting the San Mateo County Clerk-Recorder to provide specified election services.



CITY COUNCIL AGENDA REPORT

Meeting Date: Meeting of June 18, 2020

From: Ingrid Padilla, City Clerk

Subject: November 3, 2020 General Municipal Election

COMMUNITY GOAL/RESULT:

Community Building

RECOMMENDATION:

Adopt Resolution No. 2020-48 calling a General Municipal Election to be held on Tuesday, November 3, 2020 and adopting procedures pertaining to the conduct and administration of such election including requesting the San Mateo County Clerk-Recorder to provide specified election services.

BACKGROUND:

City Council adopted Ordinance No. 620 in June 2017 to comply with state legislation—the California Voter Participation Rights Act (Senate Bill 415)—that requires generally City Council elections be held in conjunction with statewide elections in even numbered years to increase voter participation. In part, Ordinance No. 620 provides that a City Councilmember’s term of office for those persons elected in the November 2017 and November 2019 will be only three years. Persons elected in November 2020 and 2022 and so on will serve four-year terms. The San Mateo County Board of Supervisors also approved the changes to terms of office as adopted by the City Council in Ordinance No. 620 by adopting Resolution No. 075324 on July 11, 2017.

This year the San Mateo County Elections Division will hold a General Election on November 3, 2020. The November 3, 2020 election will be an All-Mailed Ballot/Vote Center Election under the California Voter’s Choice Act (Senate Bill 450). Every registered voter in Brisbane will receive through the mail a Vote by Mail Ballot. The Vote by Mail Ballot may be returned by mail (postage prepaid) or dropped off at any Vote Center or Ballot Drop-off Box located throughout the county.

Vote Centers replace traditional polling places and are open for voting during the 29-day period prior to Election Day and on Election Day. Vote Centers provide expanded voter services such as voter registration, multilingual assistance, and disabled access voting options. Brisbane City Hall is scheduled to be a San Mateo County Vote Center and will be open 3 days prior to Election and on Election Day, i.e., October 31, November 1, 2, and 3, 2020.

DISCUSSION:

The attached Resolution calls for an election to fill three City Councilmember terms currently held by Councilmember Conway, Lentz and Mayor Pro-Tem Cunningham for a term of four years each.

Citizens (including current members of the City Council) who are interested in running for City Council may pick up a nomination packet from the City Clerk between July 13 and August 7, 2020. If an incumbent chooses not to or fails to file the nomination paper during the filing period, the filing period will be extended to August 12, 2020. Nomination papers must include 20-30 signatures of Brisbane registered voters. There is also paperwork to file regarding campaign disclosures and disclosure of economic interests. While there is no filing fee, there is a cost to print candidate statements in the voter pamphlet, which is estimated to be \$300, to be paid after the election. Candidate statements are, however, optional.

Lastly, in light of COVID-19 and the stay at home order issued by Governor Newsom, there will be social distancing protocols at Vote Centers and when working with the City Clerk's Office staff. There will also be remote options available for candidate nomination paper filing to reduce the risk of transmitting coronavirus. Candidates will also be encouraged to hold remote events, wear a face covering, practice physical distancing of at least 6 feet and frequent hand washing when collecting signatures for their nomination papers and campaigning.

FISCAL IMPACT:

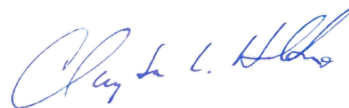
The cost to conduct the election is determined by the number of registered voters at the time of election. The election cost is currently budgeted at \$20,000 which will be included in the City Clerk's Budget for 2020/2021.

ATTACHMENTS:

Resolution 2020-48



Ingrid Padilla, City Clerk



Clayton Holstine, City Manager

DRAFT**RESOLUTION NO. 2020-48**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE CALLING A GENERAL MUNICIPAL ELECTION TO BE HELD ON NOVEMBER 3, 2020 IN CONJUNCTION WITH A UNIFORM DISTRICT ELECTION AND ADOPTING PROCEDURES PERTAINING TO THE CONDUCT AND ADMINISTRATION OF SUCH ELECTION INCLUDING REQUESTING THE SAN MATEO COUNTY CLERK-RECORDER TO PROVIDE SPECIFIED ELECTION SERVICES

WHEREAS, pursuant to the requirements of the laws of the State of California relating to General Law Cities within said State, a regular general municipal election shall be held in Brisbane on the 3rd day of November, 2020 for the purpose of electing three members of the City Council of Brisbane; and

WHEREAS, the November 3, 2020 election will be conducted as a General Election, i.e., an All-Mailed Ballot/Vote Center Election under the California Voter's Choice Act (Senate Bill 450) by which every registered voter will be receiving a Vote by Mail Ballot through the mail and which ballot may be returned by mail or dropped off at any Vote Center or Ballot Drop-off Box located throughout the county during the 29 day period prior to the Election Day and on Election Day; and

WHEREAS, the City Council adopted Ordinance 620 on June 1, 2017, and the San Mateo County Board of Supervisors approved the changes to comply with state legislation—the California Voter Participation Rights Act (Senate Bill 415)—that requires generally City Council elections be held in conjunction with statewide elections in even numbered years to increase voter participation; and

WHEREAS, under Ordinance 620, the electors will elect three members of the City Council of Brisbane for a term of four years; and

WHEREAS, the Elections Code of the State of California authorizes the governing body of any local agency to adopt procedures pertaining to materials prepared by any candidate for a municipal election, including costs thereof;

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Brisbane, San Mateo County, California, as follows:

1. That pursuant to the requirements of the laws of the State of California relating to General Law Cities within said State, there shall be, and there is hereby called and ordered, held in Brisbane, County of San Mateo, State of California, on Tuesday, the 3rd day of November, 2020, a regular general municipal election of the qualified electors of Brisbane for the purpose of electing three members of the City Council of Brisbane for a term of four years,

which election shall be conducted as a General District Election (an All Mailed Ballot/Vote Center Election) under the California Voter's Choice Act and as authority by San Mateo County.

2. That, pursuant to the Elections Code of the State of California, each candidate for elective office to be voted for at the general municipal election to be held in Brisbane on November 3, 2020 may prepare a candidate's statement on an appropriate form provided by the City Clerk, such statement shall be limited to 400 words, each candidate filing a candidate's statement shall be billed for the services rendered a sum not greater than the actual prorated costs of printing, handling and translating, and such bill shall be due and payable immediately upon receipt thereof.

3. Said Election shall be held and conducted, the votes thereof canvassed, the returns thereof made, and the results thereof ascertained and determined as herein provided; and in all other particulars not prescribed by this resolution, the Election shall be held and conducted and the votes canvassed as provided in the Elections Code of the State of California.

4. The Board of Supervisors of the County of San Mateo is hereby requested to permit the Registrar of Voters of said County to render services relating to the conduct of said Election to be held within the City of Brisbane on Tuesday, November 3, 2020.

5. The All Mail and Vote Center coordination and officers of election shall be established, designated, and appointed as usual by the Registrar of Voters, San Mateo County, who shall also canvass the returns and prepare and mail a statement of the results thereof, all as provided by the appropriate provisions of the Elections Code of the State of California.

6. All qualified voters residing within the City of Brisbane, upon the date of the Election herein provided for, shall be qualified to vote at said Election and allowed to cast their ballot during the 29-day period prior to Election Day and on Election Day via mail, or at a Vote Center within the County.

7. The Registrar of Voters of San Mateo County shall be responsible for procuring the rosters and all other supplies necessary to properly and lawfully conduct the Election.

8. The Vote Center in Brisbane at City Hall shall be kept open from 9:00 a.m. -5:00 p.m. on October 31, November 1, and 2nd and at 7:00 a.m. on Election Day- November 3rd, and shall be kept open until 8:00 p.m., except as to voters in line as provided in the Elections Code.

9. That this City Council shall, and does hereby, accept the usual and customary terms and conditions of the performance of said election services by said Registrar of Voters; and the City Council further agrees to make payments therefor as may be set forth in a billing to the City of Brisbane from the Registrar of Voters prescribing the amount due for costs incurred from the rendering of election services, all as provided by the provisions of the Elections Code of the State of California.

10. Notice of election shall be posted pursuant to Elections Code.

Terry O'Connell

Mayor

I hereby certify that the foregoing Resolution No. 2020-48 was duly and regularly adopted at the regular meeting of the Brisbane City Council on June 18, 2020 by the following vote:

AYES:

NOES:

ABSENT:

Ingrid Padilla

City Clerk

File Attachments for Item:

E. Adopt Resolution No. 2020-49 Affirming the Continuation of the Proclamation of the Existence of a Local Emergency in Response to the Covid-19 Pandemic



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: Clay Holstine, City Manager

Subject: Resolution Continuing the Proclamation of the Existence of a Local Emergency in Response to the COVID-19 Pandemic, Consistent with Government Code Section 8630(c).

Community Goal Result: Safe Community

Recommendation: Adopt the attached Resolution continuing the Proclamation of the Existence of a Local Emergency in response to the COVID-19 Pandemic

Background and Discussion:

A novel coronavirus (named COVID-19 by the World Health Organization) was first detected in December 2019. The Center for Disease Control and Prevention (CDC) has stated that COVID-19 is a serious public health threat, based on current information. The exact modes of transmission of COVID-19, the factors facilitating human to human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate all remain active areas of investigation. There are no vaccine or specific anti-viral treatment for COVID-19 at this time. As a result of this pandemic, the Governor declared a State of Emergency.

On March 19, 2020, the City Council ratified and confirmed the Director of Emergency Service's proclamation of a local emergency which allowed staff to expeditiously respond to the emergency circumstances caused by the pandemic. Since that time staff has regularly informed the City Council about items related to the City's response to the COVID-19 pandemic. In addition, the Health Officer of the County of San Mateo has issued several directives and orders to address efforts to curb the spread of the disease. Although such efforts show signs of promise, the COVID-19 pandemic continues to impact communities around the world, including Brisbane.

Government Code Section 8630(c) requires that, "the governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency." As such, at this time, staff is recommending that the City Council adopt a resolution continuing the proclamation of a local emergency in response to the COVID-19 pandemic, and directing staff to continue to respond appropriately to such declaration.

Financial impact

There is no direct financial impact from the City Council continuing to proclaim a local emergency in response to the COVID-19 pandemic and authorizing staff to respond appropriately. Moreover, the proclamation of a local emergency could enhance the City's ability to recover funds that are expended in response to the pandemic.

Clayton Holstine, City Manager

Exhibit 1. Resolution 2020-49

RESOLUTION NO. 2020-49

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE AFFIRMING THE CONTINUATION OF THE PROCLAMATION OF THE EXISTENCE OF A LOCAL EMERGENCY IN RESPONSE TO THE COVID- 19 PANDEMIC

WHEREAS, the Brisbane Municipal Code, Section 2.28.020, defines a local emergency as “the actual or threatened existence of conditions of disaster or of extreme peril to safety of persons and property within a jurisdiction”; and

WHEREAS, Government Code Section 8630 empowers the City Council to proclaim a local emergency when the City of Brisbane is affected by a public calamity and/or serious threat to the public health, safety and welfare; and

WHEREAS, on March 19, 2020 the Council made findings that due to the COVID-19 pandemic, conditions of extreme peril to the health, safety and welfare of persons have arisen in the City of Brisbane and, based thereon, adopted a resolution (Resolution No. 2020-20) ratifying and confirming the Director of Emergency Service’s proclamation of a local emergency existing in the City of Brisbane as a result of the COVID-19 pandemic and that the local emergency should continue to exist until the City Council proclaims its termination; a

WHEREAS, the State of California’s COVID-19 Pandemic Emergency Declaration remains in effect at this time; and

WHEREAS, between March and June of 2020, the City Council has engaged in frequent and regular review of the COVID-19 local emergency, including staff presentations; and

WHEREAS, Government Code Section 8630(c) requires that, “the governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency”; and

NOW, THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF BRISBANE DOES RESOLVE, DECLARE, DETERMINE, AND ORDER THE FOLLOWING:

Section 1. The City Council finds and determines that the foregoing recitals to be true and correct and hereby incorporates them into this resolution.

Section 2. The City Council declares that the continuation of the previously proclaimed local emergency is appropriate as a result of the COVID-19 pandemic and that this proclamation of local emergency shall continue until the State's declaration of emergency relating to COVID-19 is rescinded, or sooner should it be appropriate to lift the local emergency declaration prior to State action, and staff shall continue to update the Council on the status of the local emergency declaration every 60 days, consistent with Government Code Section 8630(c).

Section 3. This resolution is effective immediately upon its passage and adoption.

PASSED, APPROVED AND ADOPTED by the Brisbane City Council at a regular meeting on June 18, 2020.

Terry O'Connell, Mayor

I hereby certify that the foregoing resolution was adopted by the City Council at a regular meeting held on June 18, 2020 by the following vote:

AYES

NOES

ABSENT

ABSTAIN

Ingrid Padilla, City Clerk

Approved as form:



Thomas McMorro, Interim City Attorney

File Attachments for Item:

F. Adopt Resolution No. 2020-50, Revising the 2020 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP and Rescinding Resolution 2020-42



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: Clay Holstine, City Manager

Subject: Revised Resolution Establishing the 2020 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP

City Council Goal/Results

Fiscally Prudent & Economic Development

Purpose

To establish for calendar year 2020 the amount of the business license tax charged to Kinder Morgan/SFPP for its liquid storage facilities in Brisbane under Section 5.20.011 of the Brisbane Municipal Code

Recommendation

Adopt Resolution No. 2020-50 imposing a business license tax in the amount of \$400,000 as to Kinder Morgan/SFPP and rescinding Resolution No. 2020-42.

Background

At the general election in November 2013 Brisbane voters approved an annual business license tax on persons engaged in the business of operating, leasing, supplying or providing a liquid storage facility in the City of Brisbane. The ballot measure added Section 5.20.011 to the Brisbane Municipal Code, allowing the City to impose up to a maximum business license tax of \$115.28 per year for each 1000 cubic feet of liquid storage capacity.

In 2014 and 2015, the City Council imposed by resolution a business license tax of \$38.91 for each 1000 cubic feet of storage capacity. In 2016 and 2017, the Council imposed by resolution a business license tax of \$115.28 for each 1000 cubic feet of storage capacity. As to Kinder Morgan/SFPP, LP, the owner of the only liquid storage facility currently in Brisbane, this rate translated to a tax of \$135,000 in 2014 and 2015 and to a tax of \$400,000 in 2016 and 2017. The company paid the \$135,000 for 2014 under protest in December 2014, paid the \$135,000 for 2015 in January 2016 under protest, and paid the \$400,000 in December 2016 under protest. The company did not pay the license tax for 2017 but filed a civil suit against the City in the San Mateo County Superior Court seeking reimbursement for the taxes paid in 2014, 2015 and 2016.

The litigation was settled in 2017. Under the terms of the settlement agreement, the City and Kinder Morgan/SFPP agreed that for 2017, the liquid fuel storage tax rate would be set by the Brisbane City Council at an amount that is equivalent to 3.5 cents per barrel of liquid fuel transported through the Brisbane Terminal for delivery at the terminal (“over the rack”), that for 2018, the tax rate would be equivalent to 4 and 1/3 cents per barrel and for 2019, the tax rate would be 5 and 1/3 cents per barrel.

Accordingly, based on the number of barrels “over the rack”, Kinder Morgan/SFPP paid \$261,093 for 2017, \$323,332 for 2018 and \$365,458 for 2019.

The settlement agreement also provides that at the November 2019 municipal election, Council would place before the voters a revision to the then current business license tax concerning liquid storage facilities that would provide that the tax rate will be up to 6 cents per barrel, with the exact rate to be determined annually by the Council. If the voters so approve, that liquid storage tax formula would then be applied for subsequent years but in no event would the tax be greater than \$400,000. The voters approved the revision to the business license tax as described.

On June 4, 2020, Council adopted Resolution No. 2020-42 imposing a business license tax for the Kinder Morgan/SFPP facility in the amount of \$351,040. That amount was based on information that had been reported to the City by SFPP that the number of barrels “over the rack” was 5,850,678. That number, however, was incorrect. SFPP has advised the City that the correct number of barrels was substantially higher—8,326,342 (apparently missing originally were the ethanol barrels).

Discussion

Kinder Morgan/SFPP has provided the City with revised bill of lading (“BOL”) reports for 2019. These show that in 2019 there were 8,326,342 of barrels “over the rack”. These numbers are consistent with the estimates that are reflected in the settlement agreement. The ordinance provides the tax rate may be up to 6 cents per barrel but the settlement agreement caps the tax at \$400,000. Adoption of the attached resolution will set the tax rate at 0.04804 cents per barrel and impose for 2020 a business license tax for Kinder Morgan/SFPP at the maximum, \$400,000. The resolution also rescinds the resolution adopted on June 4 imposing a tax in the amount of \$351,040.

Fiscal Impact

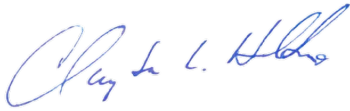
As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$400,000 for calendar year 2020.

Measure of Success

Kinder Morgan's/SFPP's payment of \$400,000 to the City, which is expected by June 30, 2020.

Attachment

Resolution No. 2020-50



Clay Holstine, City Manager

RESOLUTION NO. 2020-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE ESTABLISHING THE BUSINESS LICENSE TAX CHARGED TO KINDER MORGAN/SFPP LLC FOR CALENDAR YEAR 2020 UNDER SECTION 5.20.011 OF THE BRISBANE MUNICIPAL CODE AND RESCINDING RESOLUTION NO. 2020-42

WHEREAS, Section 5.20.011 of the Brisbane Municipal Code imposes an annual business license tax on persons engaged in the business of operating, leasing, supplying or providing a liquid storage facility in the City; and

WHEREAS, Kinder Morgan/SFPP LLC, a business in Brisbane engaged in the business of operating, leasing, supplying or providing a liquid storage facility, and the City have agreed that for calendar year 2020 the liquid fuel storage tax will be set by the City Council based on a formula in an amount of six cents per barrel of liquid fuel transported through the Brisbane Terminal for delivery at the terminal (“over the rack”) during calendar year 2019; and

WHEREAS, for calendar year 2019, Kinder Morgan/SFPP LLC provided revised data to the City indicating that the number of barrels “over the rack” for calendar year 2019 were 8,326,342; and

Whereas, the Section 5.20.011 provides the City Council may set a tax rate for these facilities up to six cents per barrel, so long as the overall tax amount does not exceed \$400,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE AS FOLLOWS:

1. For 2020, the City Council sets the business license tax rate for the Kinder Morgan/SFPP liquid storage facility in Brisbane at 0.04804 cents per barrel and the annual business license tax charged to Kinder Morgan/SFPP LLC for 2020 shall be \$400,000.
2. Payment of the business license taxes for 2020 shall be due and payable in full by June 30, 2020.
3. Resolution No. 2020-42 is hereby rescinded.

Terry O’Connell, Mayor

I hereby certify that the foregoing Resolution No. 2020-50 was duly and regularly adopted at the regular meeting of the Brisbane City Council on June 18, 2020 by the following vote:

AYES:

NOES

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk



SUPPLEMENTAL AGENDA REPORT

Meeting Date: June 18, 2020

To: Mayor O’Connell and Members of the Brisbane City Council

From: Clay Holstine, City Manager

Subject: Revised Resolution Establishing a Business License Tax for Kinder Morgan/SFPP
for 2020

The agenda report and resolution concerning the above subject that was issued on Friday, June 12, had an error concerning the tax rate to be applied to the “over the barrel” liquids that were delivered to the Kinder Morgan/SFPP facility in 2019. The agenda report and resolution reflected a tax rate of 0.04804 cents per barrel. The correct tax rate is 4.804 cents per barrel. The overall amount of the tax to be imposed--\$400,000—is the same. A revised resolution reflecting the correct tax rate is attached.

RESOLUTION NO. 2020-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE ESTABLISHING THE BUSINESS LICENSE TAX CHARGED TO KINDER MORGAN/SFPP LLC FOR CALENDAR YEAR 2020 UNDER SECTION 5.20.011 OF THE BRISBANE MUNICIPAL CODE AND RESCINDING RESOLUTION NO. 2020-42

WHEREAS, Section 5.20.011 of the Brisbane Municipal Code imposes an annual business license tax on persons engaged in the business of operating, leasing, supplying or providing a liquid storage facility in the City; and

WHEREAS, Kinder Morgan/SFPP LLC, a business in Brisbane engaged in the business of operating, leasing, supplying or providing a liquid storage facility, and the City have agreed that for calendar year 2020 the liquid fuel storage tax will be set by the City Council based on a formula in an amount of six cents per barrel of liquid fuel transported through the Brisbane Terminal for delivery at the terminal (“over the rack”) during calendar year 2019; and

WHEREAS, for calendar year 2019, Kinder Morgan/SFPP LLC provided revised data to the City indicating that the number of barrels “over the rack” for calendar year 2019 were 8,326,342; and

Whereas, the Section 5.20.011 provides the City Council may set a tax rate for these facilities up to six cents per barrel, so long as the overall tax amount does not exceed \$400,000.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRISBANE AS FOLLOWS:

1. For 2020, the City Council sets the business license tax rate for the Kinder Morgan/SFPP liquid storage facility in Brisbane at 4.804 cents per barrel and the annual business license tax charged to Kinder Morgan/SFPP LLC for 2020 shall be \$400,000.
2. Payment of the business license taxes for 2020 shall be due and payable in full by June 30, 2020.
3. Resolution No. 2020-42 is hereby rescinded.

Terry O’Connell, Mayor

I hereby certify that the foregoing Resolution No. 2020-50 was duly and regularly adopted at the regular meeting of the Brisbane City Council on June 18, 2020 by the following vote:

AYES:

NOES

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk

File Attachments for Item:**G. Receive Solid Waste Franchise Rate Update**

1. Acknowledge South San Francisco Scavenger's 2020 rate increase of 2.04%, and their request to delay said increase until at least October 1, 2020.
2. Acknowledge Recology Brisbane's 2020 rate increase of 2.22%, with an effective date of July 1, 2020.



CITY COUNCIL AGENDA REPORT

Meeting Date: Jun 18, 2020

From: Director of Public Works/City Engineer

Subject: Solid Waste Collection Rate Adjustment

Community Goal/Result

Ecological Sustainability

Purpose

To review pending rate adjustments as submitted by the city's two solid waste franchisees.

Recommendation

1. Acknowledge South San Francisco Scavenger's 2020 rate increase of 2.04%, and their request to delay said increase until at least October 1, 2020.
2. Acknowledge Recology Brisbane's 2020 rate increase of 2.22%, with an effective date of July 1, 2020.

Background

The city has two Franchise Agreements dated November 20, 2014 for the provision of waste collection services, one with South San Francisco Scavenger Company in Solid Waste Collection Zones 1(A&B) and 2, and one with Recology Brisbane in Solid Waste Collection Zone 3. Both agreements have language specifying under what conditions a rate increase may occur.

Each Agreement has slightly different calculations for rate adjustments as shown in those sections that have been redacted from the originals and incorporated behind the correspondence from each company.

Discussion

Both companies did submit a request for rate increase, and they both received confirmation from the City Manager that their proposed rates were in accordance with their franchise agreement. Pursuant to each agreement, "... not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year."

With each company completing their calculation per the agreement, there is no discretionary action for the Council to take.

This information was provided via memorandum to the Infrastructure, Utilities & Franchise Subcommittee (Councilmember Conway and Mayor O'Connell) on June 2, 2020.

Fiscal Impact

The proposed new rates are attached behind each company's correspondence to the city.

As noted in Recommendation, Scavenger has requested their rate increase be delayed until at least October 1, 2020, "... so our customers will have a chance to return to some sort of normalcy that we all hope will be coming soon."

Measure of Success

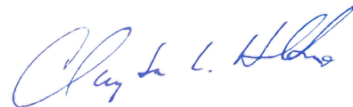
Compliance with the previously agreed upon terms and conditions for rate adjustments.

Attachments

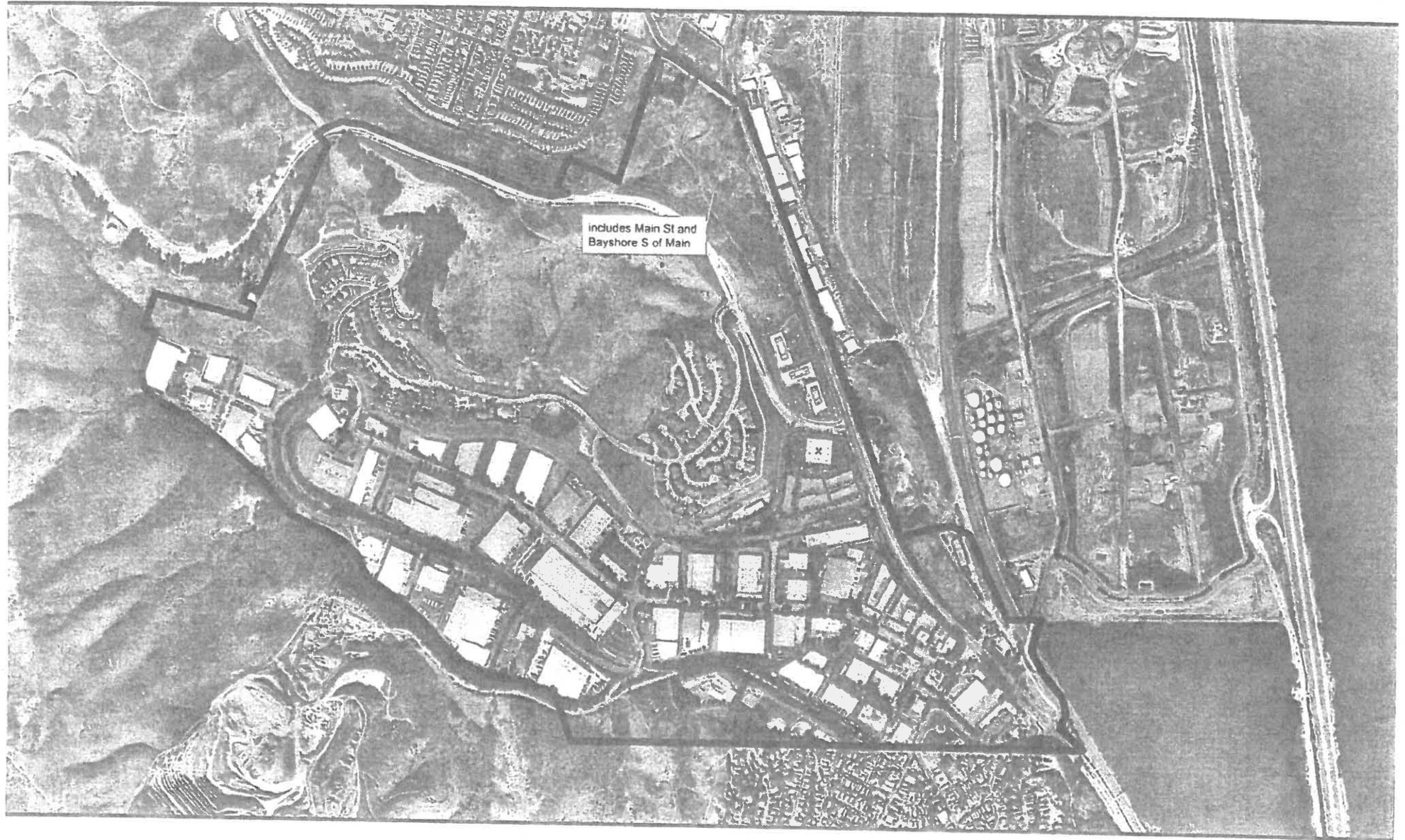
1. Solid Waste Collection Zone Maps
2. South San Francisco Scavenger letter of 3/27/20, and redacted rate adjustment language
3. Recology letter of 3/24/20, and redacted rate adjustment language



Randy Breault, Public Works Director



Clay Holstine, City Manager



0 375 750 1500 Feet



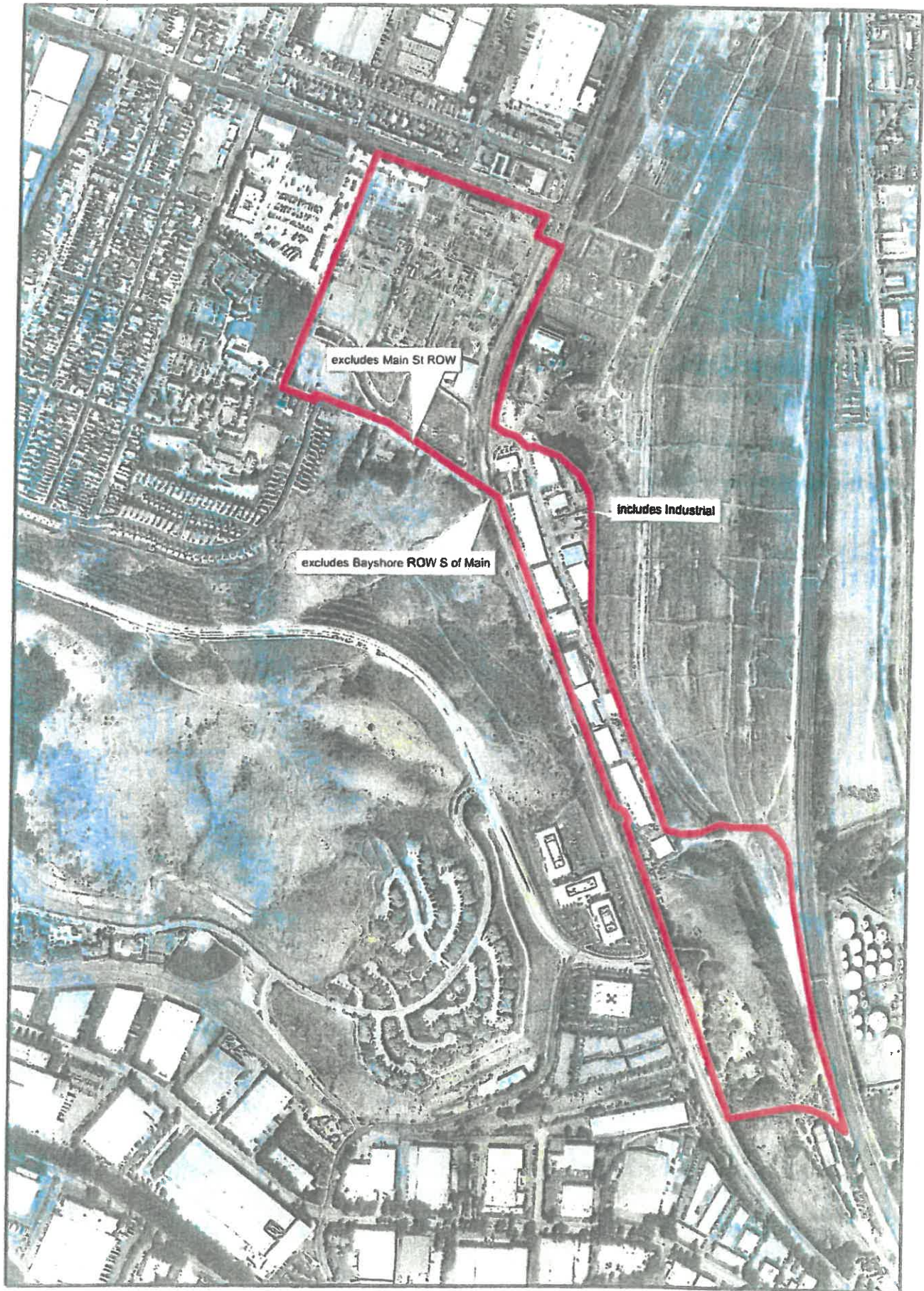
**City of Brisbane
Solid Waste Collection Zone
1 - A**



0 375 750 1,500 Feet



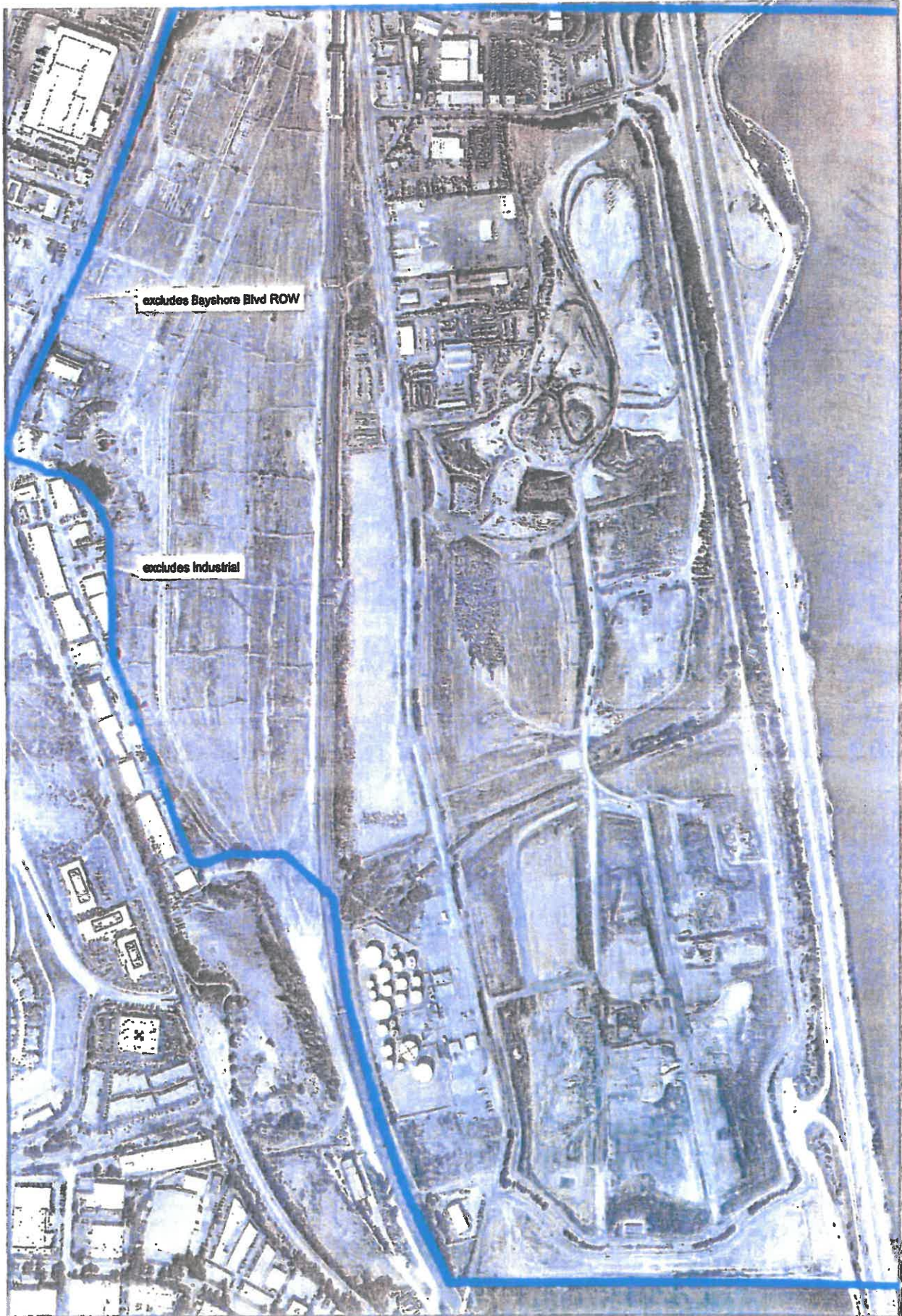
**City of Brisbane
Solid Waste Collection Zone
1 - B**



City of Brisbane
Solid Waste Collection Zone
2

0 250 500 1,000 Feet





SOUTH SAN FRANCISCO
SCAVENGER
COMPANY, INC.

RECEIVED

APR 01 2020

Public Works Department
Brisbane, CA

March 27, 2020

Director Randy Breault, P.E.
Public Works-Marina Services-Emergency Services
City of Brisbane
50 Park Lane
Brisbane, CA 94005

Dear Director Breault,

In accordance with the terms of Section 6.2 of the Franchise Agreement, please accept this letter as the required Notice of Intent to adjust the current rates in Brisbane.

We are applying for a rate adjustment equal to 80% of the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as described in section 6.2. The calculation for this year yields an increase of 2.04%.

Copies of the calculation, the relevant CPI data, and a proposed rate schedule, are attached for your consideration. The new rates will take effect July 1, 2020, if approved.

Please be advised that, should it be necessary, we may be applying in the near future for extraordinary rate relief in connection with the Coronavirus outbreak. We will keep you apprised.

Thank you for your consideration of these matters. If you have any questions, please contact me at (650) 589-4020 at your earliest convenience. We are, of course, available to meet with you to discuss any concerns or issues, at your convenience.

Sincerely,



Paul Formosa, CFO
South San Francisco Scavenger Co., Inc.

**SOUTH SAN FRANCISCO SCAVENGER, INC.
RATES AND CHARGES EFFECTIVE JULY 1, 2020
CITY OF BRISBANE, CALIFORNIA**

		<u>Current Rates</u>	<i>Proposed change</i>	<u>Proposed Maximum Rates</u>
1. RESIDENTIAL PROPERTY SERVICE -				
Single family, and up to four units. As per section 2.13				
Rate is per month, one pickup per week				
Includes 64 gallon weekly curbside recycling toter service				
Includes weekly mixed organic materials / yardwaste toter service				
20	Gallon Trash Toter	21.25		21.68
32	Gallon Trash Toter	33.99	2.04%	34.68
64	Gallon Trash Toter	67.98		69.36
2. COMMERCIAL AND MULTIPLE UNIT RESIDENTIAL PROPERTY CAN SERVICE-				
Multiple Unit Residential Property, 5 or more units, as per section 2.14				
Rate is per month, one pickup per week, for Solid Waste				
and / or Source Separated Organic Materials				
Includes Source Separated Recyclable Materials				
0 - 30	Gallons	30.02		30.63
31 - 32	Gallons	32.06	2.04%	32.71
33 - 40	Gallons	40.01		40.83
41 - 45	Gallons	45.09		46.01
46 - 50	Gallons	55.04		56.16
51 - 64	Gallons	64.05		65.36
3. COMPACTED YARDAGE				
Residential, Multi Unit Residential, Commercial, Industrial Customers				
Per Cubic Yard, per pickup		69.07	2.04%	70.48
4. DEBRIS BOXES				
Temporary / One Time Use				
Residential, Multi Unit Residential, Commercial, Industrial Customers				
Rate is for each pickup				

**SOUTH SAN FRANCISCO SCAVENGER, INC.
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		<u>Current Rates</u>	<i>Proposed change</i>	<u>Proposed Maximum Rates</u>
5 yard	Container, 1 ton limit	283.39		289.17
7 yard	Container, Dirt - Rock - Concre	618.73		631.35
14 yard	Container, 3 ton limit	618.73	2.04%	631.35
20 yard	Container, 5 ton Limit	842.26		859.44
30 yard	Container, 6 ton limit	1,214.87		1,239.65
Rental Charge (per day, over 3 days for 5 yard and over 7 days for others)				
		27.91		28.48
Permanent Commercial and Industrial use				
7 yard	Container, Dirt - Rock - Concre	521.65		532.29
14 yard	Container, 3 ton limit	521.65		532.29
20 yard	Container, 5 ton Limit	745.27		760.47
30 yard	Container, 6 ton limit	1,117.91		1,140.72
Overweight Charge				
Per ton over limit		161.37		164.66

5. CONTAINER SERVICE

Residential, Multi Unit Residential, Commercial, Industrial Customers
Rate is per month, one pickup per week, for Solid Waste
and / or Source Separated Organic Materials
Includes Source Separated Recyclable Materials

A) Regular Pickup (Rate per month, one pickup per week)

1/2 - yard (96 gal)	Container	131.34		134.02
1 - yard	Container	262.65		268.01
2 - yard	Container	323.92	2.04%	330.53
3 - yard	Container	485.85		495.76
4 - yard	Container	647.70		660.91
5 - yard	Container	809.64		826.16
6 - yard	Container	971.57		991.39

B) On Call Pick-up Per yard

Per pick-up, per yard	37.42	38.18
Plus Container Rental per Month		

**SOUTH SAN FRANCISCO SCAVENGER, INC.
RATES AND CHARGES EFFECTIVE JULY 1, 2020
CITY OF BRISBANE, CALIFORNIA**

	<u>Current Rates</u>	<i>Proposed change</i>	<u>Proposed Maximum Rates</u>
Rental charges (per month)			
1 - yard Container	58.45		59.64
2 - yard Container	63.20		64.49
3 - yard Container	67.95		69.34
4 - yard Container	73.01		74.50
5 - yard Container	82.66		84.35
6 - yard Container	87.73		89.52

6. In the case of any additional service not described in the Agreement, Scavenger Company shall charge such amount as is agreed to by the customer.

7. Trash Container Management Policy Fees

Maximum fees allowed pursuant to approved Policy, as per Section 5.1.

Residential, Multi Unit Residential, Commercial, Industrial Customers

<u>Container Size</u>	<u>Admin fee</u>	<u>Extra Trip Fee</u>		<u>Total Fee</u>
30 gallon	30.00	-	\$	30.00
32 gallon	30.00	-	\$	30.00
40 gallon	30.00	-	\$	30.00
45 gallon	30.00	-	\$	30.00
55 gallon	30.00	-	\$	30.00
64 gallon	30.00	-	\$	30.00
96 gallon	30.00	-	\$	30.00
1 yard	30.00	61.85	\$	91.85
1.5 yard	30.00	92.77	\$	122.77
2 yard	30.00	76.28	\$	106.28
3 yard	30.00	114.41	\$	144.41
4 yard	30.00	152.52	\$	182.52
5 yard	30.00	190.65	\$	220.65
6 yard	30.00	228.78	\$	258.78

South San Francisco Scavenger Co.

City of Brisbane

Rate Computation
March 31, 2020

CPI Index February 2019	284.758
CPI Index February 2020	292.010
Numerical change	7.252
Percentage change	2.55%
80% of change	2.04%

Index Used -

Consumer Price Index
Urban Wage Earners and Clerical Workers
San Francisco-Oakland-Hayward, CA
All Items
1982-84 = 100
New Series ID - CWURS49BSAO
Previous Series ID - CWURA422SAO
(replaced as of January 2018)



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☐ Include graphs ☐ Include annual averages

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Data extracted on: March 26, 2020 (6:02:38 PM)

CPI for Urban Wage Earners and Clerical Workers (CPI-W)

Series Id: CWURS49BSA0

Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, urban wage earners and clerical w

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Base Period: 1982-84=100

Download: .xlsx

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2010		222.049		223.821		224.185		224.195		224.352		224.152	223.624	223.012	224.236
2011		226.638		231.600		230.605		231.445		232.371		231.109	230.337	229.074	231.600
2012		234.648		236.626		236.890		238.445		240.864		236.454	237.097	235.572	238.622
2013		240.262		241.764		243.052		242.903		243.711		242.602	242.125	241.141	243.109
2014		245.148		247.932		250.085		249.877		250.508		247.680	248.326	247.097	249.555
2015		249.809		252.875		254.736		256.060		256.107		255.492	253.910	252.041	255.780
2016		257.141		259.386		261.017		262.326		264.026		263.222	260.830	258.715	262.946
2017		265.569		268.896		269.508		269.827		271.272		271.342	268.990	267.426	270.555
2018		275.699		278.039		280.219		281.536		283.183		283.278	279.572	277.035	282.110
2019		284.758		288.266		288.581		288.514		291.707		289.456	288.192	286.615	289.770
2020		292.010													

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South San Francisco Scavenger Company Rates and Adjustments Thereto

6.1 Establishment of Rates. The maximum service rates specified in Exhibit B to this Agreement have been agreed upon by City and Scavenger Company and shall take effect on the effective date of the franchise as set forth in Section 3 above. Such maximum service rates shall be subject to review and revision as set forth in Section 4.1 above, Sections 6.2, 6.3 and 6.4 below and other relevant provisions of this Agreement. Scavenger Company shall not charge any amount in excess of the approved rates for services required by or permitted under this Agreement.

6.2 Modification Based on Consumer Price Index. The maximum rates specified under this Agreement shall be adjusted July 1st every year (beginning in 2016, but excluding the year 2015 and every third year thereafter) by an amount equal to eighty percent (80%) of the percentage change, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published and maintained by the United States Bureau of Labor Statistics for the San Francisco-Oakland Metropolitan Area (1982-84=100), for the prior year, using the Index most recently published before March 31st of such year and before the prior March 31st. For example, if the Index should decrease by two percent (2%) as of March 31, 2016 as compared with March 31, 2015, each of the maximum rates set forth on Exhibit B, as previously adjusted, would be decreased as of July 1, 2016 by one and six-tenths percent (1.6%) [negative .02 multiplied by .8]. Likewise, if the Index should increase by three percent (3%) as of March 31, 2019 as compared with March 31, 2018, each of the maximum rates set forth on Exhibit B, as previously adjusted, would be increased as of July 1, 2019 by two and four-tenths percent (2.4%) [.03 multiplied by .8]. The procedure for rate adjustments under this Section 6.2 shall be as follows:

- (a) Not later than March 31st of each year that is subject to a rate adjustment under this Section 6.2, Scavenger Company shall file with City a written Notice of Intention to increase each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if Scavenger Company believes such an increase to be called for, or City shall provide to Scavenger Company a written Notice of Intention to decrease each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if City believes such a decrease to be called for.
- (b) Within thirty (30) days of the filing of the Notice of Intention, the City Manager shall review the Notice of Intention with Scavenger Company, and either confirm that the proposed rates are within the limit of Section 6.2(a) above or establish by mutual agreement with Scavenger Company any necessary changes to the proposed maximum rates to make such confirmation.
- (c) The City Manager shall immediately inform the City Council in writing of the new maximum rates determined in accordance with this Section 6.2 and, not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year.

G.



March 24, 2020

BY EMAIL

Clay Holstine
City Manager
City of Brisbane
50 Park Lane
Brisbane, CA 94005

RE: Notice of Intention to Increase Rates & Related Matters

Dear Mr. Holstine:

The purpose of this letter is to notify the City of Brisbane of Recology's intention to increase rates effective July 1, 2020 pursuant to the refuse rate index methodology set forth in the Franchise Agreement between the City and Recology.

RRI Rate Adjustment

Section 6.2 of the Franchise Agreement provides that maximum rates shall be adjusted each July 1 using a refuse rate index consisting of the weighted average of certain index items as specified below. The annual percentage change in each index item and the calculation of the RRI Adjustment Percentage are also set forth below. Accordingly, maximum rates shall be increased by 2.22% effective July 1, 2020 under Section 6.2.

<u>Cost Category</u>	<u>Weighting</u>	<u>Source/Index</u>	<u>Annual % Change in Source/Index</u>	<u>Weighted % Change</u>
Fixed Labor	0.60	As per CBAs	3.00%	1.80%
Variable/Processing Costs	0.25	CPI(U)	2.45%	0.61%
Biodiesel Fuel	0.05	Fuel Index	-3.78%	-0.19%
RRI Adjustment Percentage:				2.22%

Franchise Fee Payment

Under Section 4.1 of the Franchise Agreement Recology must make an annual franchise fee payment to the City on or before April 30 of each year. The franchise fee is 14% of Recology's gross revenues during the proceeding calendar year from the collection and disposal of solid waste within Zone 3. For calendar year 2019, these revenues amounted to \$102,048.99. The franchise fee is therefore \$14,286.86. We will remit payment before April 30.

Diversion Rate

Section 8.4 of the Franchise Agreement requires Recology to provide the City with an annual written report setting forth Recology's best estimate of the diversion rate for its Zone 3 customers.

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We estimate based on volume and type of service, that the diversion rate for our Zone 3 customers was approximately 60% for the calendar year 2019.

Thank you for your consideration. We would be happy to meet with City staff to discuss these matters at your earliest convenience.

Sincerely,

John Porter

John Porter
Vice President and Group Manager
San Francisco Region
(415) 715-6241

cc: Randy Breault, Public Works Director, City Engineer
Dan Negron, Recology Brisbane Group Manager
Nick Roberts, Recology SF Region Controller

RATE BOOK

COMMERCIAL RATES

Commercial rates include the following components:

- Volumetric charges shown are for trash service.
- Recycling services are charged at 25% of the volumetric rate for trash. *
- Composting services are charged at 75% of the volumetric rate for trash. *
- There are separate charges for premium services, such as key, distance and elevation.

* Except for roll-off compactors, which are charged at 25% (recycling) or 75% (composting) of the calculated rate.

COMMERCIAL RATES

32 GALLON CARTS

NOTE: These rates apply to Carts located outside.
 Carts located inside:
 - Less than 100 feet from the curb will be charged 10% more.
 - More than 100 feet from the curb will be charged 25% more.
 Carts located 4 feet or more above or below ground level
 will be charged 25% more.

Rates listed below are for carts up to 45 pounds. Any weight exceeding 45 pounds will be charged an additional \$0.1031 per pound.

Key Charges:

1 Per Week =	\$17.78
2 Per Week =	\$31.30
3 Per Week =	\$44.52
4 Per Week =	\$57.27
5 Per Week =	\$70.09
6 Per Week =	\$89.31
7 Per Week =	\$109.97
Saturday =	\$19.23
Sunday =	\$20.67

PICKUPS	1 CART
1 Per Week =	\$65.08
2 Per Week =	\$130.17
3 Per Week =	\$195.21
4 Per Week =	\$260.30
5 Per Week =	\$325.39
6 Per Week =	\$400.46
7 Per Week =	\$485.60
Saturday =	\$75.08
Sunday =	\$85.15

FOR ADDITIONAL CANS: MULTIPLY TIMES PER WEEK BY THE NUMBER OF CARTS.

For recycling carts, charge is 25% of the charge shown above
 For composting carts, charge is 75% of the charge shown above

COMMERCIAL RATES

64 GALLON CARTS

NOTE: These rates apply to Carts located outside.
 Carts located inside:
 - Less than 100 feet from the curb will be charged 10% more.
 - More than 100 feet from the curb will be charged 25% more.
 Carts located 4 feet or more above or below ground level
 will be charged 25% more.

Rates listed below are for carts up to 90 pounds. Any weight
 exceeding 90 pounds will be charged an additional \$0.1031 per
 pound.

Key Charges:

1 Per Week =	\$17.78
2 Per Week =	\$31.30
3 Per Week =	\$44.52
4 Per Week =	\$57.27
5 Per Week =	\$70.09
6 Per Week =	\$89.31
7 Per Week =	\$109.97
Saturday =	\$19.23
Sunday =	\$20.67

EXTRA PICK-UPS:

Regular = \$41.57 Saturday = \$56.11 Sunday = \$74.85

ADD'L CARTS

PICKUPS	1 CART	2 CARTS	3 CARTS	4 CARTS	5 CARTS	6 CARTS	(EACH)
1 Per Week =	\$133.34	\$246.94	\$360.57	\$473.62	\$587.70	\$701.26	\$113.59
2 Per Week =	\$253.56	\$480.71	\$707.87	\$934.55	\$1,161.75	\$1,388.34	\$227.16
3 Per Week =	\$373.75	\$714.00	\$1,054.69	\$1,395.45	\$1,735.73	\$2,076.42	\$340.73
4 Per Week =	\$493.87	\$948.24	\$1,402.04	\$1,855.88	\$2,310.22	\$2,764.02	\$454.28
5 Per Week =	\$614.08	\$1,181.48	\$1,748.90	\$2,316.78	\$2,883.75	\$3,451.65	\$567.84
6 Per Week =	\$761.16	\$1,453.23	\$2,159.58	\$2,838.49	\$3,529.76	\$4,222.38	\$692.54
7 Per Week =	\$934.57	\$1,774.25	\$2,628.15	\$3,454.59	\$4,293.43	\$5,133.53	\$840.03
Saturday =	\$147.07	\$271.76	\$410.69	\$521.72	\$646.02	\$770.72	\$124.71
Sunday =	\$173.41	\$321.01	\$468.55	\$616.09	\$763.68	\$911.17	\$147.47

For recycling carts, charge is 25% of the charge shown above
 For composting carts, charge is 75% of the charge shown above

COMMERCIAL RATES

96 GALLON CARTS

NOTE: These rates apply to Carts located outside.
 Carts located inside:
 - Less than 100 feet from the curb will be charged 10% more.
 - More than 100 feet from the curb will be charged 25% more.
 Carts located 4 feet or more above or below ground level
 will be charged 25% more.

Rates listed below are for carts up to 135 pounds. Any weight
 exceeding 135 pounds will be charged an additional \$0.1031 per
 pound.

Key Charges:

1 Per Week =	\$17.78
2 Per Week =	\$31.30
3 Per Week =	\$44.52
4 Per Week =	\$57.27
5 Per Week =	\$70.09
6 Per Week =	\$89.31
7 Per Week =	\$109.97
Saturday =	\$19.23
Sunday =	\$20.67

EXTRA PICK-UPS:

Regular = \$53.49 Saturday = \$72.23 Sunday = \$96.28

ADD'L CARTS

PICKUPS	1 CART	2 CARTS	3 CARTS	4 CARTS	5 CARTS	6 CARTS	(EACH)
1 Per Week =	\$171.58	\$316.79	\$463.42	\$609.06	\$755.24	\$900.94	\$145.63
2 Per Week =	\$326.04	\$617.93	\$909.70	\$1,201.10	\$1,492.96	\$1,784.75	\$291.33
3 Per Week =	\$480.50	\$918.05	\$1,355.52	\$1,793.59	\$2,231.06	\$2,668.59	\$437.00
4 Per Week =	\$634.94	\$1,218.24	\$1,801.83	\$2,385.55	\$2,969.20	\$3,552.89	\$582.65
5 Per Week =	\$789.51	\$1,518.86	\$2,248.20	\$2,977.55	\$3,706.88	\$4,436.74	\$728.30
6 Per Week =	\$978.24	\$1,867.84	\$2,758.10	\$3,647.70	\$4,537.41	\$5,428.08	\$889.13
7 Per Week =	\$1,201.15	\$2,280.45	\$3,360.35	\$4,439.67	\$5,519.03	\$6,599.35	\$1,078.77
Saturday =	\$188.73	\$348.98	\$509.90	\$670.14	\$830.54	\$991.34	\$160.84
Sunday =	\$222.93	\$412.62	\$602.26	\$791.97	\$981.62	\$1,171.28	\$189.63

For recycling carts, charge is 25% of the charge shown above
 For composting carts, charge is 75% of the charge shown above

COMMERCIAL RATES

CONTAINER RATES

NOTE: These rates apply to containers located outside.
Containers located inside:
- Less than 100 feet from the curb will be charged 10% more.
- More than 100 feet from the curb will be charged 25% more.
Containers located 4 feet or more above or below ground level
will be charged 25% more.

EXTRA PICK-UPS (per yard):

Regular = \$99.32 Saturday = \$134.12 Sunday = \$178.69

Key Charges:

1 Per Week = \$17.78
2 Per Week = \$31.30
3 Per Week = \$44.52
4 Per Week = \$57.27
5 Per Week = \$70.09
6 Per Week = \$89.31
7 Per Week = \$109.97
Saturday = \$19.23
Sunday = \$20.67

Uncompacted weight: 300 pounds per yard, plus \$10.31 per 100 pounds (\$0.1031 per pound) over 300 pounds.

PICKUPS	1 YD	1.5 YDS	2 YDS	2.5 YDS	3 YDS	4 YDS	6 YDS	7 YDS
1 Per Week =	\$391.00	\$601.39	\$696.19	\$870.67	\$971.04	\$1,213.94	\$1,724.05	\$2,011.04
2 Per Week =	\$696.19	\$1,063.33	\$1,311.29	\$1,639.85	\$1,869.57	\$2,395.90	\$3,398.92	\$3,965.79
3 Per Week =	\$1,044.09	\$1,594.69	\$1,966.93	\$2,459.29	\$2,767.63	\$3,544.92	\$5,026.11	\$5,863.32
4 Per Week =	\$1,391.92	\$2,126.15	\$2,622.57	\$3,279.24	\$3,641.80	\$4,661.54	\$6,604.14	\$7,704.99
5 Per Week =	\$1,740.29	\$2,657.56	\$3,278.22	\$4,099.20	\$4,492.22	\$5,746.17	\$8,134.04	\$9,489.35
6 Per Week =	\$2,268.16	\$3,469.36	\$4,218.34	\$5,271.54	\$5,802.51	\$7,385.07	\$10,228.73	\$12,204.73
7 Per Week =	\$2,971.48	\$4,551.97	\$5,471.31	\$6,838.92	\$7,549.92	\$9,570.06	\$13,331.53	\$15,375.97
Saturday =	\$527.87	\$811.82	\$940.12	\$1,172.33	\$1,310.29	\$1,638.90	\$2,094.70	\$2,715.39
Sunday =	\$703.31	\$1,082.60	\$1,252.97	\$1,567.38	\$1,747.43	\$2,184.99	\$3,102.81	\$3,171.24

For recycling containers, charge is 25% of the charge shown above
For composting containers, charge is 75% of the charge shown above

COMPACTOR RATES

FRONT LOAD COMPACTOR RATES

PER YARD

Compacted = \$127.80 Saturday = \$140.50 Sunday = \$154.64

Compacted weight: 450 lbs. per yard, plus \$10.31 per each 100 lbs. over 450lbs.

Rate Calculation Formula: Compacted Yards x Rate x 4.33

Yards	Regular	Saturday	Sunday
0.5	\$276.69	\$304.18	\$334.80
0.75	\$415.03	\$456.27	\$502.19
1	\$553.37	\$608.37	\$669.59
1.5	\$830.06	\$912.55	\$1,004.39
2	\$1,106.75	\$1,216.73	\$1,339.18
2.5	\$1,383.44	\$1,520.91	\$1,673.98
3	\$1,660.12	\$1,825.10	\$2,008.77
4	\$2,213.50	\$2,433.46	\$2,678.36
4.5	\$2,490.18	\$2,737.64	\$3,013.16
5	\$2,766.87	\$3,041.83	\$3,347.96
6	\$3,320.24	\$3,650.19	\$4,017.55

ROLL-OFF COMPACTOR RATES

Transportation Charge

\$632.86 per pull

Disposal Charge

\$206.12 per ton

\$206.12 per ton Overweight Charge

Container Rotation Charge

\$354.56 per pull

Rate Calculation Formula:

Transportation Chg. + Disposal Chg. + 10% + Rotation Chg.* = Per Pull Compactor Rate

* If applicable

For recycling compactors charge is 25% of the charge shown above

For composting compactors charge is 75% of the charge shown above

DEBRIS BOX RATES

Debris Box Size	Monday-Friday	Saturday	Max. Weight
	Price	Price	
6yd	\$757.92	\$870.85	Clean fill only
9yd	\$808.26	\$929.36	Clean fill only
15yd	\$757.92	\$870.85	4,000 lbs.
20yd	\$864.07	\$993.32	6,000 lbs.
30yd	\$1,064.08	\$1,223.28	7,000 lbs.
40yd	\$1,170.22	\$1,347.11	8,000 lbs.
14yd covered	\$815.06	\$938.89	4,000 lbs.
20yd covered	\$936.18	\$1,074.98	6,000 lbs.

Overweight charged at \$206.12 per/ton in excess of allowed weight.

6 & 9yd dirt/concrete boxes must be clean fill only-no bricks, wood, metal or trash.

NO serpentine rock, metal, organic debris, or trash. Such loads must be dumped as general debris.

Recology Brisbane Rates and Adjustments Thereto

6.1 Modification Based on Refuse Rate Index.

- (a) The maximum rates specified under this Agreement shall be adjusted July 1st every year (beginning in 2016) by a percentage amount equal to the RRI Adjustment Percentage, which shall be calculated as follows:

Step 1: For each Source/Index listed in Table 1 below, calculate the annual percentage change in the Source/Index over the most recent 12- month period for which data are available at the time Recology submits the Notice of Intention described in Section 6.2(c) below.

Step 2: For each Cost Category listed in Table 1 below, multiply the Weighting for such Cost Category set forth in Table 1 below by the percentage change in the Source/Index for such Cost Category calculated in Step 1 above.

Step 3: Add the percentages calculated in Step 2 above. The result is the RRI Adjustment Percentage. For example, if the annual percentage change is 3.0% for CPI(U), 9.0% for the Fuel Index, and 4.0% under the CBAs, then the RRI Adjustment Percentage equals 3.60% ($(.60 \times 4.0\%) + (.25 \times 3.0\%) + (.05 \times 9.0\%)$).

Table 1. Refuse Rate Index

Cost Category	Weighting	Source/Index
Fixed Labor	0.60	As per CBAs
Variable/Processing Costs	0.25	CPI(U)
Biodiesel Fuel	0.05	Fuel Index
Total:	0.90	

- (b) For purposes of this Section 6.2:
- (i) "CBAs" means the collective bargaining agreement(s) in effect from time to time applicable to the employees performing collection services under this Agreement. In connection with any adjustment under this Section 6.2, the annual percentage change calculations shall be based on the changes in wage rates required by the CBAs, and Recology shall make available to the City Manager the portions of the CBAs necessary to confirm such changes.

- (ii) "CPI(U)" means the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, Not Seasonally Adjusted, Series ID:CUURA422SAO, published by the U.S. Department of Labor, Bureau of Labor Statistics.

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- (iii) "Fuel Index" means the Total G-NGVI Charge set forth in Schedule G-NGVI, Natural Gas Service for Compression on Customers' Premises, published by Pacific Gas & Electric Company.

- (c) The procedure for rate adjustments under this Section 6.2 shall be as follows:

- (i) Not later than March 31st of each year that is subject to a rate adjustment under this Section 6.2, Recology shall file with City a written Notice of Intention to increase each of the then current rates effective as of July 1st of the same year in accordance with the above- specified formula, if Recology believes such an increase to be called for, or City shall provide to Recology a written Notice of Intention to decrease each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if City believes such a decrease to be called for.
- (ii) Within thirty (30) days of the filing of the Notice of Intention, the City Manager shall review the Notice of Intention with Recology, and either confirm that the proposed rates are within the limit of Section 6.2(a) above or establish by mutual agreement with Recology any necessary changes to the proposed maximum rates to make such confirmation.
- (iii) The City Manager shall immediately inform the City Council in writing of the new maximum rates determined in accordance with this Section 6.2 and, not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year.

File Attachments for Item:

H. Approve the Encroachment Agreement for Installation of Fiber Optic Network Facilities Within the Public Right-of-Way with Intermountain Infrastructure Group, LLC.



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: Director of Public Works/City Engineer

Subject: Encroachment Agreement with Intermountain Infrastructure Group

Community Goal/Result

Economic Development

Purpose

To review the terms of a proposed agreement establishing conditions under which a telecommunications provider may perform construction in the city's streets.

Recommendation

Approve the Encroachment Agreement for Installation of Fiber Optic Network Facilities Within the Public Right-of-Way with Intermountain Infrastructure Group, LLC.

Background

Pursuant to the CA Public Utilities Code, parties wishing to become a communications service provider in the state are required to obtain approval from the California Public Utilities Commission. Dependent upon the type of service authority requested, one of the more common forms of authority to operate is the issuance of a Certificate of Public Convenience and Necessity (CPCN).

While this authority does allow a telecommunications company to operate the restricted service in the state, it does not automatically grant them the right to encroach in or upon municipality-owned public streets. That authority is negotiated between the party holding the CPCN and the City, and typically documented in a Right-of-Way Use Agreement or an Encroachment Agreement.

The city has entered into multiple such agreements in the past (e.g., Astound [originally RCN] in 1999, opticAccess in 2014, MCI/Verizon in 2018, etc.), with the majority of the agreements being for encroachment Bayshore Boulevard.

Discussion

Intermountain Infrastructure Group (IIG) is the holder of a CPCN, and has requested the city enter into the attached Encroachment Agreement for their future planned installation of fiber optic in Bayshore Boulevard, as shown in Exhibit A of the agreement.

IIG will be required to obtain an Encroachment Permit from the City Engineer prior to any work being performed in the public right-of-way. Additionally, Section 2.015 of the agreement gives the city a future option to have conduit or fiber optic cable installed across the contractor's route to a city-designated location, along with a 10-year license. At the end of 10-years, the license may be renewed for an additional term at 20% of the then-current market rate.

The City Attorney has reviewed and approved the attached agreement.

Fiscal Impact

Other than avoided future costs for installation of a short reach of conduit or fiber optic, none.

Measure of Success

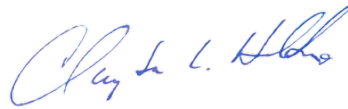
An appropriate mechanism established for the city to manage fiber optic installation within its streets by a CPCN holder.

Attachments

1. Encroachment Agreement



Randy Breault, Public Works Director



Clay Holstine, City Manager

**ENCROACHMENT AGREEMENT
FOR INSTALLATION OF FIBER OPTIC NETWORK FACILITIES
WITHIN THE PUBLIC RIGHT-OF-WAY**

THIS AGREEMENT dated _____, by and between the CITY OF BRISBANE, a municipal corporation ("City") and Intermountain Infrastructure Group, LLC, ("Contractor"), is made with reference to the following facts:

A. Pursuant to Decision No. 19-02-013 rendered by the California Public Utilities Commission ("PUC") on February 21, 2019, Contractor received a Certificate of Public Convenience and Necessity authorizing Contractor to provide 1) full facilities-based and resold competitive local exchange telecommunications services; and 2) full facilities-based and resold interexchange service in California.

B. Contractor desires to construct, install and maintain Fiber Optic Network Facilities within the Public Right-of-Way and City is willing to allow such activity to be conducted, subject to compliance by Contractor with all of the terms, conditions and requirements as set forth in this Agreement.;

NOW, THEREFORE, the parties agree as follows:

**ARTICLE 1
DEFINITIONS**

1.01 "Agency" means any local, county, state or federal governmental agency or quasi-governmental body other than the City, including, without limitation, the PUC and the Federal Communications Commission.

1.02 "Agreement" means this ENCROACHMENT AGREEMENT FOR INSTALLATION OF FIBER OPTIC NETWORK FACILITIES WITHIN THE PUBLIC RIGHT-OF-WAY.

1.03 "Business Day" means any calendar day, except a Saturday, Sunday, and any Day observed as a legal holiday by City. For the purposes hereof, if the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as an official holiday by City, the time for performance shall be extended to the following Business Day.

1.04 "City Council" means the City Council of the City of Brisbane.

1.05 "City Engineer" means the City Engineer of the City of Brisbane, or his or her authorized representative.

1.06 "Day" means any calendar day, unless a Business Day is specified.

1.07 "Fee" means any assessment, license, charge, fee, imposition, tax (excluding any utility users tax), or levy lawfully imposed by any governmental body.

1.08 "Fiber Optic Network Facilities" or "Facilities" means without limitation any and all fiber optic cables, conduits, converters, amplifiers, splice boxes, cabinets, manholes, vaults, equipment, drains, appurtenances, and related facilities owned, leased or licensed by Contractor, located or to be located in the Public Right-of-Way of City and used or useful for and in connection with the transmission of telecommunication messages.

1.09 "GVMID" means the Guadalupe Valley Municipal Improvement District, which is a public utility district providing water and sanitary sewer service and operating as a subsidiary district of City. For the purposes of this Agreement, the term "City" shall be deemed and construed to include GVMID, unless expressly stated otherwise.

1.10 "LATA" means "local access and transport area."

1.11 "Law" or "Laws" means any judicial or administrative decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, certificate, order, or other requirement of any municipal, county, state, federal, or other Agency having joint or several jurisdiction over the parties to this Agreement, in effect either at the time of execution of this Agreement or at any time during the location of the Facilities in the Public Right-of-Way. A reference to "Laws" shall include the Standard Drawings and Standard Specifications.

1.12 "Person" means an individual, a corporation, a partnership, a limited liability company, a sole proprietorship, a joint venture, a business trust, and any other form of business association.

1.13 "Provision" means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Agreement or under any Law that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

1.14 "Public Right-of-Way" means in, upon, along, across, under and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including, without limitation, all public utility easements and public service easements, as the same now or may hereafter exist, that are owned, occupied, leased, or otherwise under the jurisdiction and control of City. This term shall not include any property owned by any Person or Agency other than City except as provided by applicable Laws or pursuant to an agreement between City and any Person or Agency.

1.15 "Standard Drawings and Standard Specifications" means the general terms and conditions, specifications, and requirements of City which govern the design, construction, installation, and maintenance of any improvement within the Public Right-of-Way. CalTrans' Standard Plans and Specifications (1992) as periodically updated, shall be used unless City has other standards which shall then prevail. This term shall include any and all documents entitled "General Conditions" or words of similar import, now or hereafter existing, which directly pertain to all aspects of general construction work.

1.16 "Telecommunications Services" means the transmission of voice, data, and information in rendering teleconferencing and other services which are permitted to be offered by Contractor under applicable Laws. Video services, including, without limitation, community antennae television systems services, shall not be offered by Contractor except as authorized by applicable Laws or pursuant to a certificate of public convenience and necessity issued by the PUC authorizing Contractor to provide dedicated interLATA or intraLATA telecommunications services within the State of California.

1.17 “Interchange Carrier (IXC)” means the provision of long distance telecommunications services substantially through switches or circuits owned or leased by the carrier.

1.18 “Local Reseller” means a carrier who provides local exchange or fixed telecommunications services by reselling services of other carriers.

ARTICLE 2

ENCROACHMENT PERMIT WITH LIMITATIONS AND RESTRICTIONS

2.01 City hereby agrees to permit Contractor to construct, reconstruct, install, reinstall, maintain and operate, replace, relocate and remove Fiber Optic Network Facilities used for Telecommunications Services within the Public Right-of-Way, such right being expressly made subject to all reservations, covenants, conditions, restrictions and requirements contained in this Agreement and the issuance by City and any other Agency or Person of all permits and approvals required for performance of the work.

2.015 Contractor agrees that as additional consideration for City's approval of Contractor's Fiber Optic Network Facility installed pursuant to this Agreement, the City shall have the option, at no expense to the City, the right for a ten (10) year license to either: 1) one (1) pair of fiber optic cable; or 2) a maximum of 1,000 feet of conduit. Both option 1) and 2) are limited to Contractor's existing routes which is attached in Exhibit A. This option for conduit or fiber across the Contractor's existing network, shall be available for the City's exercise for a period of 15 years from the executed date of this Agreement. At the conclusion of the City's 10-year term, the parties will renew the agreement for an additional 10-year term at a price which is 20% of the then-current market value.

2.02 This Agreement is not a grant by City of any property interest but is made subject and subordinate to the prior and continuing right of City and its assigns to lawfully use any or all of the Public Right-of-Way for public facilities, including but not limited to, public use as a street and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, electroliners, cable television and other utility and municipal uses together with appurtenances thereof and with right of ingress and egress, along, over, across and in said Public Right-of-Way. No use of any Public Right-of-Way or other interest or property under this Agreement shall create or vest in Contractor or any other public utility any ownership interest in the Public Right-of-Way, streets or other property or interest of City. Nothing in this Agreement shall be deemed to grant, convey, create, or vest a perpetual real property interest in land in Contractor, including any fee or leasehold interest in land, easement, nor shall anything in this Agreement be deemed or construed to grant or create any franchise rights.

2.03 This Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the Public Right-of-Way, and it is understood that Contractor, at its own cost and expense, shall obtain such permission as may be necessary, consistent with any other existing rights. Subject to the Provisions of this Agreement, City hereby licenses and permits Contractor to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove, and replace the Facilities underground or on existing poles, to the extent Contractor may gain access to these poles consistent with the rights of third parties under applicable Laws and all existing and future agreements, within the Public Right-of-Way for the purposes of providing Telecommunications Services. Any work performed pursuant to the rights granted to Contractor under this Agreement shall be subject to the prior review and approval of the City Engineer.

2.04 The construction, installation, operation, maintenance and removal of said Fiber Optic Network Facilities shall be accomplished without any cost or expense to City and in such a manner as not to endanger persons or property, or unreasonably obstruct travel on any road, walk or other access thereon within said Public Right-of-Way, or interfere in any manner with any existing or proposed public or private utilities or any facilities of City installed or to be installed therein.

ARTICLE 3 COMPLIANCE WITH STANDARDS

3.01 Contractor agrees to keep said Fiber Optic Network Facilities in good and safe condition and free from any nuisance, to the reasonable satisfaction of the City Engineer.

3.02 Contractor shall construct, install, operate and maintain all Fiber Optic Network Facilities in accordance and in conformity with all applicable City, State, Federal and regulatory agency laws, ordinances, rules and regulations.

ARTICLE 4 SERVICE CHANGE

4.01 Contractor represents that the Facilities will be used for the sole purpose of rendering the Telecommunication Services consistent with the certificate of public convenience and necessity issued to Contractor by the PUC. If the nature or character of Contractor's service changes to include additional or alternative services that directly affects the regulatory authority of City, including but not limited to, community antenna television systems or commercial video programming, Contractor shall give City as much advance written notice as practicable, and will give at least six (6) months prior notice, of its intent to change the service provided by way of the Fiber Optic Network Facilities installed under this Agreement, and comply with the City's lawful fee and/or franchise requirements. Contractor acknowledges that any expansion or change in the character or nature of the Telecommunications Services may increase City's regulatory authority over such services, and this may require Contractor to enter into a new Agreement consistent with the requirements of a hereinafter-enacted City ordinance regulating such services or the expansion or change in services, if such service changes fall under the lawful regulation, jurisdiction or authority of City.

ARTICLE 5 RESERVATION OF RIGHTS

5.01 City reserves any and all rights it may have now or in the future to legally regulate or otherwise condition the use of the fiber optics infrastructure and technology and related activities and services to be provided pursuant to the installation subject to this Agreement.

5.02 City's agreement hereto is not a waiver of and is without prejudice to any right City may have under law to regulate, tax or impose fees or charges on Contractor or any right Contractor may have under the law to provide services through the fiber optic infrastructure pursuant to state or federal laws, rules or regulations. Contractor shall be subject to any future taxes, fees or charges that the City lawfully imposes on the fiber optics infrastructure and fiber optic services in the future, including, but not limited to a rental or other charge for use of the public right of way and/or a utility user tax. Nothing herein shall

affect in any way City's power or right to impose or collect any tax or fee on users or providers of the services to be provided by Contractor. Nothing herein is intended to impose regulations or conditions on Contractor that City is preempted from imposing by state or federal laws.

ARTICLE 6 REMOVAL AND RELOCATION

6.01 Contractor shall remove or relocate, without cost or expense to City, any of its Fiber Optic Network Facilities installed, used and maintained under this Agreement if and when made necessary by any change of grade, alignment or width of any street, sidewalk or other public facility, including the construction, maintenance or operation of any underground or aboveground facilities by City. In the event all or any portion of said Public Right-of-Way occupied by said Fiber Optic Network Facilities shall be needed by City, or in the event the existence of said Fiber Optic Network Facilities shall be considered detrimental to governmental activities, including but not limited to, interference with City construction projects, or is in conflict vertically and/or horizontally with any proposed City installation, Contractor shall remove and relocate said Fiber Optic Network Facilities to such other location or locations on said Public Right-of-Way as may be designated by City. Said removal or relocation shall be completed within one hundred twenty (120) days of notification by City unless exigencies dictate a shorter period for removal or relocation. In the event said Fiber Optic Network Facilities are not removed or relocated within said period of time, City may cause the same to be done at the expense of Contractor and Contractor shall reimburse the City any and all expenses, including administrative overhead. If Contractor shall fail to vacate or otherwise remove the Facilities as required by City, City shall be entitled to vacate or otherwise remove the Facilities at Contractor's sole cost and expense. Contractor shall execute such documents of title as will convey all right, title, and interest in the dedicated Facilities, or any part thereof, to City. As used in this paragraph only "City" shall include any other Agency having a permit or jurisdiction to place Facilities within the Public Right-of-Way. In case of conflict, approval from City to proceed shall be mandatory.

6.02 Contractor shall, at its sole cost and expense, replace aerial and/or aboveground Fiber Optic Network Facilities, if any, with underground facilities in accordance with the same rules applicable to Pacific Bell or Pacific Gas and Electric Company, as now existing or hereinafter amended.

6.03 If any portions of the Fiber Optic Network Facilities covered under this Agreement are no longer used by Contractor, or are not used, or abandoned for a continuous period in excess of six (6) months, Contractor shall notify City and shall either promptly vacate and remove the Facilities at its own expense or, at City's discretion, may be allowed to abandon some or all of the Facilities in place. If Contractor is permitted by City to abandon its Facilities in place, any such abandoned Facilities shall be deemed conveyed to City and Contractor shall have no further obligation to remove, relocate or maintain said Facilities; *provided, however*, that nothing herein shall affect Contractor's obligation to perform any repairs required under Article 9 of this Agreement. Unless specifically permitted in writing by City to remain in place, which permission shall not be unreasonably withheld or delayed, all boxes or other Facilities exposed to the surface will be required to be removed and the surface restored.

6.04 When removal or relocation is required under this Agreement, Contractor shall, after the removal or relocation of the Fiber Optic Network Facilities, at its own cost, repair and return the Public-Right-of-Way on which the Facilities were located to a safe and satisfactory condition in accordance with the construction-related conditions and specifications established by City according to its standard practice. Should Contractor remove the Fiber Optic Network Facilities from the Public Right-of-Way, Contractor shall, not less than ten (10) days before such removal, give notice thereof to City specifying

the right-of-way affected and the location thereof as well as the preferred date of removal. Before proceeding with removal or relocation work, Contractor shall obtain an Encroachment Permit from the City Engineer. If Contractor does not return the affected site to a safe and satisfactory condition, then City shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of Contractor and charge the actual costs incurred to Contractor. Upon the receipt of a demand for payment by City, Contractor shall reimburse City for such costs.

ARTICLE 7 ENCROACHMENT PERMIT AND FEES

7.01 Contractor shall apply for a project specific Encroachment Permit for all work within the Public Right-of-Way and any other regulatory permits. Contractor shall furnish detailed plans of the work prepared by a registered professional engineer and other such information as required by the City Engineer, including a detailed map showing the layout of the proposed Facilities and all existing facilities located in or immediately adjacent to the area subject to the Encroachment Permit. Prior to issuance of the permit, Contractor shall pay or deposit with City all applicable costs such as processing fees, field marking, plan review, engineering and inspection fees related to the proposed work, and City's actual legal fees (including fees charged to City for the preparation of this Agreement), in accordance with the rates in effect at the time the application for permit is submitted to City. All work within the Public Right-of-Way shall be performed by Contractor in accordance with the plans and specifications approved by the City Engineer, and in compliance with all general and specific conditions set forth in the Encroachment Permit and all conditions and requirements contained in this Agreement.

7.02 The Encroachment Permit shall set forth the description of the Fiber Optic Network Facilities to be installed and the Public Right-of-Way in which such Facilities are to be located. Contractor shall utilize contractors licensed in the State of California to accomplish any work. Contractor and any of its agents working in the City shall obtain a current City business license. Upon the completion of construction work, Contractor promptly shall furnish to City accurate "as-built" plans and record drawings prepared and certified by a registered professional engineer showing in detail, to the reasonable satisfaction of the City Engineer, the exact location, depth, and size of the Facilities in the Public Right-of-Way, including, without limitation, the profiles of all street crossings. These plans and drawings shall be incorporated in one set of 3 mil minimum thickness, good quality transparent mylar drawings. Contractor shall furnish to City electronic disks which utilize AutoCAD containing the full set of plans and record drawings. To the extent directional boring or other similar methods are used to construct or install the Facilities, Contractor also shall pothole all City mains and customer services lines prior to crossing, over, under, or between such Underground Facilities. Contractor shall identify the Fiber Optic Network Facilities installed in each Public-Right-of-Way by means of an identification method mutually agreed upon by City and Contractor. Such identification shall be detectable from ground level without opening the street.

ARTICLE 8 PERFORMANCE BOND

8.01 Prior to the issuance of an Encroachment Permit, Contractor shall provide City with a performance bond naming City as obligee in the amount equal to one hundred percent (100%) of the cost of the work to be performed by or on behalf of Contractor within and affecting the Public Right-of-Way to guarantee and assure the faithful performance of Contractor's obligations under this Agreement. City shall have the right to draw against the surety bond in the event of a default by Contractor or in the event

that Contractor fails to meet and fully perform any of its obligations under this Agreement; provided that Contractor is first given written notice of any intent to draw against the bond and an opportunity to cure within a reasonable period of time. Following completion of the work by Contractor, and its inspection and acceptance by the City Engineer, the performance bond shall remain in effect to the extent of ten percent (10%) of the cost of the work to guarantee and assure the faithful performance of Contractor's obligations under this Agreement for a period of one year from the City's acceptance of the work. City shall have the right to draw against the bond in the event of a default by Contractor or in the event that Contractor fails to meet and fully perform any of its obligations. The form and content of the performance bond, and the surety issuing such bond, shall be subject to approval by City.

ARTICLE 9 DAMAGE TO FACILITIES IN PUBLIC RIGHT-OF-WAY OR ON PRIVATE PROPERTY

9.1 Contractor shall be responsible for any damage to City street pavements, existing utilities, curbs, gutters, sidewalks or to any private property or improvements to the extent attributable to its installation, maintenance, repair or removal of its Fiber Optic Network Facilities in Public Right-of-Way and shall repair, replace and restore in kind any such damaged facilities at its sole expense and to the approval of the City Engineer.

9.2 Any premature deterioration of the surface or subsurface improvements, as determined by the City Engineer shall be the responsibility of Contractor to the extent attributable to Contractor's activities. This responsibility shall survive this Agreement or any abandonment of the Facilities for a period of two (2) years from the date of Contractor's most recent installation of or improvements on the Facilities. Contractor shall commence the performance of all necessary repairs immediately upon receipt of written notice from the City Engineer to do so and shall cause the same to be completed within a reasonable period of time; however, under no circumstances may such period of time exceed 30 days. In the event the repairs are not made in the manner and within the time prescribed herein, the City may elect to perform the repair work and charge all costs incurred by City in connection therewith to Contractor.

9.3 If the Public Right-of-Way to be used by Contractor has preexisting installation(s), Contractor shall assume the responsibility to verify the location of the preexisting installation and notify City and any third party of Contractor's proposed installation. The cost of any work required of such third party or City to provide adequate space or required clearance to accommodate Contractor's installation shall be borne solely by Contractor.

ARTICLE 10 PARTICIPATION WITH OTHER UTILITIES

10.1 Contractor agrees to cooperate in the planning, locating and constructing of its Fiber Optic Network Facilities in joint utility trenches or common duct banks with other similar utilities and to participate in cost-sharing for the joint trench and ducts, when such joint utility installations are being planned for or such opportunities exist in any area; provided that such activities do not impair or disrupt Telecommunications Services of Contractor.

ARTICLE 11 RECORDS AND FIELD LOCATIONS

11.1 Contractor shall maintain accurate maps and improvement plans of said Fiber Optic Network Facilities located within the City. The maps and plans are to accurately show in detail the location, size, depth and description of all facilities as constructed. Prior to City acceptance of the work, Contractor shall deliver to the office of the City Engineer free of charge, and at any subsequent time, upon request, to other third parties interested in performing work within Public Right-of-Way for a reasonable charge upon request and within thirty (30) days after such request, such maps and plans of all Fiber Optic Network Facilities installed within said Public Right-of-Way. When required by the City for the purpose of confirming the location of Facilities to accomplish the design or construction of public facilities, Contractor shall, at its sole cost and expense, expose by potholing to a depth of one-foot below the bottom of its subsurface, Fiber Optic Network Facilities, within thirty (30) days of receipt of a written request from City to do so.

11.2 Contractor shall install a locator wire in conjunction with the construction of the Fiber Optic Network Facilities pursuant to this Agreement.

11.3 Contractor shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground Fiber Optic Network facilities upon notification in accordance with the requirements of Section 4216 of the California Government Code, as it now reads or may hereinafter be amended.

ARTICLE 12 HOLD HARMLESS AND INDEMNIFICATION

12.1 Contractor, for itself, its successors, agents, contractors and employees, hereby agrees to release, defend (with counsel satisfactory to City) and indemnify City, and its officers, officials, volunteers, employees and agents (all of the above hereinafter collectively, known as "Indemnitees"), from and against all claims, causes of action, proceedings, losses, damages, liability, cost, and expense (including, without limit, any fines, penalties, judgments, litigation costs, attorneys' fees and consulting, engineering and construction costs) for actual loss of or damage to property and for injuries to or death of any person (including, but not limited to, the property and employees of each party) ("Liability") when caused by, arising out of or related to the activities or Facilities described in this Agreement. The duty of Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. It is the express intent of the parties that Contractor will indemnify and hold harmless Indemnitees from any and all claims, suits or actions arising from any cause whatsoever as set forth above regardless of the existence or degree of fault or negligence on the part of City, Contractor, or any subcontractor or employee of any of these, except to the extent the Liability was the result of the negligence, willful misconduct or criminal acts of the City, or its directors, officers, officials employees and agents.

12.2 Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the Public Right-of-Way attributable to Contractor's use or occupancy, Contractor at its expense, shall clean all affected property to the reasonable satisfaction of City and any governmental body having jurisdiction. Removal and disposal of all excavation materials, hazardous, toxic, or not, shall be the sole responsibility of Contractor. Contractor shall indemnify, hold harmless and defend Indemnitees (with counsel satisfactory to City) against all claims, courts or administrative proceedings seeking to impose liability on City as a result of Contractor's breach of this section or as a result of any such discharge,

leakage, spillage, emission or pollution, regardless of whether such liability, cost or expense arises during or after the term of this Agreement.

12.3 The obligations of Contractor under this Article 12 to indemnify and hold harmless shall survive termination of this Agreement.

12.4 Except to the extent of City's gross negligence, willful misconduct or criminal acts, under no circumstances shall City be liable or otherwise responsible to Contractor or its customers for any loss of service, downtime, lost revenue or profits, third-party damages, or any other damage, loss or liability of any kind occurring by reason of anything done or omitted to be done by City or by any third party, including, without limitation, damages, losses, or liability arising from the issuance or approval by City of a permit to any third party or any interruption in Telecommunications Services.

ARTICLE 13 INSURANCE

13.1 Any person, firm or corporation Contractor authorizes to work upon the Public Right-of-Way, including any subcontractor, shall be deemed to be Contractor's agent and shall be subject to all the applicable terms of this Agreement and the Encroachment Permit issued pursuant hereto. Prior to entry upon the Public Right-of-Way by such agents, Contractor shall provide City with satisfactory evidence (e.g. in the form of a Certificate of Insurance) that it and its contractors or other agents who will obtain access to the Public Right-of-Way pursuant to this Agreement or the Encroachment Permit are insured in accordance with the following, which insurance shall remain in effect throughout the term of this Agreement and shall be at the sole cost and expense of Contractor (or its agents). Prior to the start of the work or entry onto the Public Right-of-Way, Contractor agrees to procure and maintain, and to require its contractor(s) to procure and maintain, at its (or its contractors') sole cost and expense (and to prove to City's reasonable satisfaction that it remains in effect throughout the work), the kinds of insurance described below:

- (a) Workers' Compensation and Employers' Liability Insurance. Contractor shall secure the payment of Workers' Compensation in accordance with the provisions of Section 3700 of the California Labor Code (and any amendments thereto or successor acts or statutes) and Contractor shall furnish City with a certificate evidencing such coverage together with a verification thereon as follows:

"I am aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against a liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of work under this Agreement."

Contractor shall also maintain Employer's Liability coverage with minimum limits of \$1,000,000.

Whether FELA or Workers' Compensation applies, Contractor shall furnish the City with the Certificate(s) of Insurance required hereunder prior to the commencement of work. The Certificate shall also provide that Contractor's policy will not be canceled or have coverage changed in any way without thirty (30) days' prior written notice to City.

- (b) Commercial General Liability insurance. Contractor shall, at its own cost and expense, also procure and maintain Commercial General Liability insurance which shall include as additional insureds the City and GVMID, and their respective elected and appointed councilmembers, directors, officers, officials, employees and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.

Insurance shall provide bodily injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and a general aggregate limit of at least \$2,000,000. Claims-made policies are not acceptable. This insurance shall include but not be limited to premises and operations; contractual liability covering the indemnity provisions contained in this Agreement; personal injury; explosion, collapse and underground coverage, products and completed operations, and broad form property damage. Prior to commencing work or entering onto the Property, Contractor shall file an endorsement and Certificate(s) of Insurance with the City Manager evidencing coverage, and upon request, a certified duplicate original of the policy. Each Certificate shall indicate that the insurance policy provides or has been endorsed to provide:

- (1) That the insurance company issuing such policy shall give written notice to the City Manager of any material alteration, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation; and
- (2) That the policy is primary insurance and the insurance company providing such policy shall be liable thereunder for the full amount of any loss or claim which Contractor is liable for under this Section, up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the City or GVMID; and

- (c) Automobile Liability Insurance. Contractor shall, at its own cost and expense, procure and maintain Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least \$2,000,000 per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance. Such insurance shall include as an additional insured the City and GVMID, and their respective officers, officials, employees and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly or severally.

- (d) Property Insurance. Contractor shall, at its own cost and expense, procure and maintain property insurance to protect its interest in the equipment to be used in performance of this Agreement and the City's interest in materials or property to be installed, covering all risks of physical loss or damage to such equipment. The coverage under such policy shall have limits of liability adequate to protect the value of the equipment and property to be installed. If desired, Contractor may choose to self-insure this exposure, but in no instance shall the City be responsible for such loss or damage, unless caused by its sole negligence.

13.2 Any insurance company providing coverage required by this Agreement shall be authorized to do business in the State of California and shall be rated at least A:VI in Best's Key Rating Guide.

13.3 Prior to the commencement of work under this Agreement, any deductibles or self-insured retentions must be stated on the Certificate(s) of Insurance and approved by the City Engineer.

13.4 All insurance specified in this Article 13 shall remain in force until all work to be performed is satisfactorily completed, all of Contractor's personnel and equipment have been removed from the Public Right-of-Way, and the work has been formally accepted by the City Engineer. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

ARTICLE 14 NOTIFICATIONS

14.1 Contractor shall, prior to the issuance of an Encroachment Permit or consistent with other provisions of the Encroachment Permit, certify to City that it has provided or will provide written notification of its intent to perform work to the property owners, residents and business operators of all properties adjacent to streets and/or right(s)-of-way where Contractor will be excavating. Unless otherwise agreed by City, said notice, shall be mailed to the property owner as listed on the most recent assessor's tax roll at least seven (7) days prior to the issuance of an Encroachment Permit, and delivered to the residents and business operators.

ARTICLE 15 ASSIGNMENT

15.1 This Agreement shall not be assignable by Contractor without the explicit written approval of City, which approval shall not be unreasonably withheld, provided, however, that Contractor may assign the rights granted herein to a parent, successor, subsidiary or affiliate of Contractor, now or hereinafter existing, by only providing notice to City of such assignment. However, this Agreement shall be binding on successors and assigns and shall be disclosed to assignee. Assignee shall unconditionally assume all of the duties and obligations of Contractor hereunder and agree in writing to be bound by all of the terms and provisions of this Agreement within ninety (90) days of assignment or this Agreement shall terminate without further action by City.

ARTICLE 16 ENTIRE AGREEMENT

16.1 This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this Agreement which are not fully expressed herein. This Agreement may not be amended except pursuant to a written instrument signed by all parties.

ARTICLE 17 SEVERABILITY

17.1 If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable

or unenforceable, such covenant or covenants, such agreement or agreements, or such portions thereof shall be null and void and shall be deemed separable from the remaining covenants or agreements or portions thereof and shall in no way affect the validity or enforceability of the remaining portions of this Agreement, and the parties shall negotiate in good faith to replace any such covenant, agreement or portion found to be null and void.

ARTICLE 18 TERMINATION

18.1 This Agreement may be terminated by City upon thirty (30) days written notice to Contractor if City determines that the provisions herein interfere with the use or disposal of said Public Right-of-Way or any part thereof by City. Where only a portion of Contractor's Fiber Optic Network Facilities interferes with the use or disposal of said Public Right-of-Way, City, at its sole discretion, may elect to require Contractor to relocate the said portion in accordance with Article 6 of this Agreement. This Agreement may be terminated by City for failure, neglect or refusal by Contractor to fully and promptly comply with any and all of the conditions of this Agreement, or for nonuse of the Facilities, upon thirty (30) days written notice, unless Contractor confirms within thirty (30) days of receipt of the notice that the cited condition has ceased, been corrected or, subject to City's agreement, is diligently being pursued by Contractor.

18.2 Upon termination of this Agreement, and upon written request by City, Contractor, at its own cost and expense agrees to remove or, at City's discretion, abandon in place some or all of its Fiber Optic Network Facilities from the Public Right-of-Way and restore the Public Right-of-Way as set forth in the Removal and Relocation provisions of this Agreement. Should Contractor in such event fail, neglect or refuse to make such removals or restoration within ninety (90) days of City's written request, at the sole option of City, such removal and restoration may be performed by City at the expense of Contractor, which expense Contractor agrees to pay to City upon demand.

ARTICLE 19 NOTICE

19.1 All notices given or which may be given pursuant to this Agreement shall be in writing and transmitted by United States mail or by private delivery systems or by facsimile if followed by United States mail or by private delivery systems as follows:

To City:	City of Brisbane Attention: Director of Public Works/City Engineer 50 Park Place Brisbane, CA 94005
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To Contractor:	Intermountain Infrastructure Group, LLC Attention: Jeff Yount, Chief Operating Officer 533 Airport Blvd., Suite 400 Burlingame, CA 94010
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Any notice sent by mail shall be deemed received on the third Business Day after deposit of the notice in the U.S. Mail with proper postage prepaid thereon.

ARTICLE 20
ATTORNEY FEES AND LITIGATION

20.1 In the event of litigation between the Parties hereto, the prevailing party shall be entitled to reasonable attorney fees and costs.

20.2 All actions involving this Agreement shall be brought and pursued in the Superior Court of California in and for the County of San Mateo. Each party hereto agrees to stipulate and execute such documents as may be necessary to carry out the provisions of this Section.

ARTICLE 21
MOST FAVORED JURISDICTION

21.1 Should Contractor enter into a similar Agreement with another governmental entity in the area comprised by the Counties of San Francisco, Alameda, San Mateo, Santa Clara, Contra Costa, and Marin, containing financial or service related benefits (excluding fees or taxes imposed by such other governmental entity) for such governmental entity which, when reviewed together with the obligations imposed on such governmental entity, are superior to those in this Agreement, Contractor and City, at City's option, shall modify this Agreement to incorporate such benefits. Such benefits shall be made applicable to City retroactive to the date Contractor entered into such superior agreement with the other governmental entity.

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

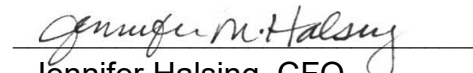
CITY OF BRISBANE,
a municipal corporation

By: _____
Mayor

Attest: _____
City Clerk

CONTRACTOR:
Intermountain Infrastructure Group, LLC


Jeff Young, COO


Jennifer Halsing, CFO

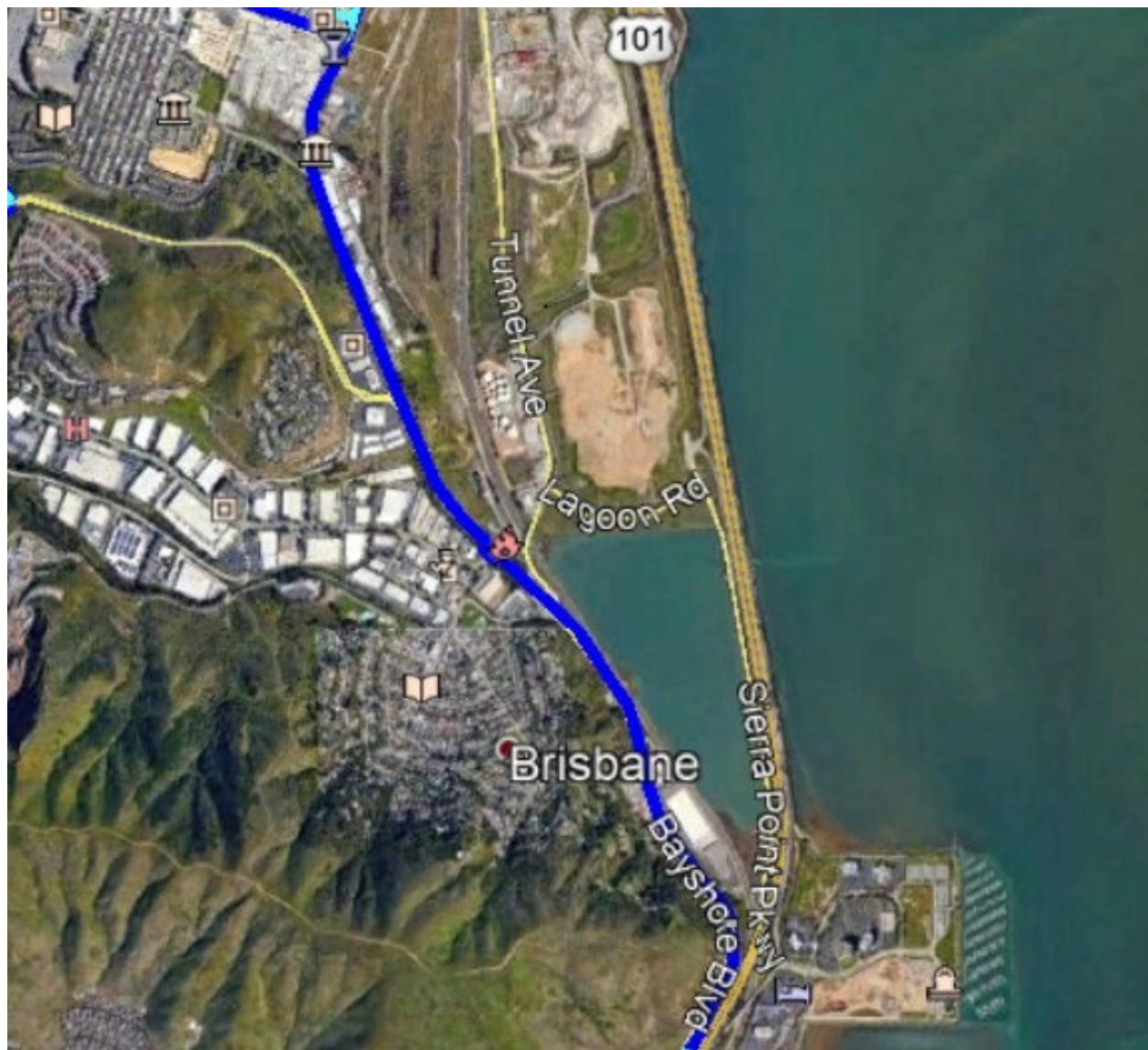
APPROVED AS TO FORM:

Michael Roush

City Attorney

Exhibit “A”

Proposed Facility Routes



File Attachments for Item:

I. Authorize the Mayor to sign Memorandum of Understanding to join the San Mateo County Weed Management Area



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: Karen Kinser, Deputy Public Works Director

Subject: Membership in San Mateo County Weed Management Area

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

In joining the San Mateo County Weed Management Area (WMA), the City would become a member of a county-wide working group of land managers with a focus on and interest in controlling invasive plant species. Brisbane would be able to partner with the San Mateo County Department of Agriculture and other agencies to apply for grants for invasive plant removal, for which membership in the WMA is a requirement.

Recommendation

Staff, together with the Open Space and Ecology Committee, which reviewed the proposal in 2019, recommend that the City Council authorize the Mayor to sign the attached Memorandum of Understanding to join the WMA.

Background

A Weed Management Area (WMA) is a local organization that brings together landowners and managers (private, city, county, state, and federal) in a county, multi-county, or other geographical area for the purpose of coordinating and combining action and expertise in combating common invasive weed species. It is intended to be at the grassroots level where participants in the group are actually the people who are directly controlling weeds or doing education work with those who do.

Groups in California have been initiated by either the leadership of the County Agricultural Commissioner's Office or a Federal Agency employee. WMAs are unique in that they attempt to address agricultural (regulatory) weeds and "wildland" weeds under one local umbrella of organization.

Discussion

San Bruno Mountain, one of the largest public open spaces in urban America, is an essential component in the biodiversity of the Bay Area. Its hillsides provide critical habitat for native plants and insects. By joining this regional group of working land managers, City staff will be

better suited to plan and implement the vegetation management of the City owned acres and canyons.

The benefits of WMA membership include:

- Enhanced Cooperation & Sharing
- Weed Education & Awareness
- Access to Local Demonstrations of weed management methods
- More Effective Solutions through Cooperative Projects
- Eligibility to apply for grants jointly and on an annual basis

Fiscal Impact

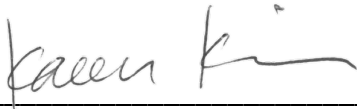
There is no fiscal impact to the City as a result of joining the WMA, other than the benefit of becoming eligible for grants, exclusive to WMA members, to control invasive plant species. The statewide grant amount available to all WMAs in the state is currently \$3,000,000 per year.

Measure of Success

The City of Brisbane will participate in the bi-monthly meetings and work in cooperation with the other member agencies to better control invasive plant species on the slopes of San Bruno Mountain.

Attachments

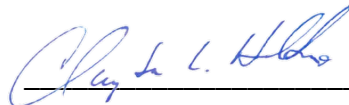
1. San Mateo County Weed Management Area MOU
2. Signatory Form Needed to Join the San Mateo County WMA (Attachment A)



Karen Kinser, Deputy Director of Public Works



Randy Breault, Director of Public Works/City Engineer



Clay Holstine, City Manager

Memorandum of Understanding San Mateo County Weed Management Area

Participants

This Memorandum of Understanding (MOU) is made and entered into by the California Department of Parks and Recreation, California Department of Transportation (Caltrans), California Native Plant Society, City of Brisbane, Coastside Land Trust, County of San Mateo, Creekside Center for Earth Observation (DBA Creekside Science), Friends of Edgewood Natural Preserve, Golden Gate National Recreation Area, Grassroots Ecology, Green Foothills, Midpeninsula Regional Open Space District, Pacifica Land Trust, Pacific Beach Coalition, Peninsula Open Space Trust, San Bruno Mountain Watch, San Gregorio Environmental Resource Center, San Francisco Public Utilities Commission, San Mateo County Farm Bureau, San Mateo Resource Conservation District, University of California Cooperative Extension

Authority

The parties are entering into this MOU pursuant to the California Food and Agricultural Code, Section 7272(b), which states:

"A 'weed management area' is a local organization that brings together all interested landowners, land managers (private, city, county, state, and federal), special districts, and the public in a county or other geographical area for the purpose of coordinating and combining their actions and expertise to deal with their common weed control problems. The organization shall function under the authority of a mutually developed memorandum of understanding and subject to statutory and regulatory requirements. A weed management area may be voluntarily governed by a chairperson or a steering committee."

Purpose

The purpose of this MOU is to establish a weed management area and define the terms and conditions under which the San Mateo County Weed Management Area will cooperate and coordinate activities necessary to prevent the introduction, establishment and spread of noxious weeds in San Mateo County. These activities shall focus upon the exclusion, detection, eradication and suppression of designated noxious weeds and invasive exotic plants using an integrated approach.

Overview

Integrated weed management is a system used to plan and recommend selected methods of management to prevent contain or control undesirable plant species or group of species using all available strategies and techniques. Together these strategies and techniques are economically and

environmentally more effective than any single option. The elements of integrated management include:

- Education and Awareness
- Prevention, Early Detection and Prioritization
- Inventory
- Control (physical/mechanical, biological, chemical, cultural)
- Monitoring and Evaluation

A number of noxious weeds and invasive exotic plants are found in San Mateo County. An integrated strategy to manage these populations could minimize their negative effects and prevent future infestations of undesirable plant species.

Agreement

It is mutually agreed upon and understood by and among the parties to this MOU that:

- A. There shall be a steering committee established among the parties to this MOU. The steering committee shall be comprised of a maximum of ten (10) representatives interested in the control of noxious weeds within San Mateo County. As membership allows, the committee shall consist of the San Mateo County Agricultural Commissioner or his/her designee, one (1) at-large member, and not more than the following number of representatives from these interests: livestock production (1), agricultural production (1), parks and public land management (2), water and natural resources (1), transportation/utilities (1), education/research (1), and environmental advocacy (1).
- B. Steering committee members shall serve for a term of one year. Steering committee members shall be selected by the parties at the first meeting of each calendar year. Terms may be renewed annually. The steering committee shall establish bylaws governing the manner in which business is to be conducted.
- C. The steering committee shall make decisions on matters affecting the weed management area, by majority vote. At least fifty-percent (50%) of committee members must be present for any action to be taken. The steering committee shall consider input from all parties to this MOU in these decisions. Steering Committee Meetings shall be open to all parties.
- D. The parties will meet at least three times per year to provide input to the steering committee.
- E. The steering committee shall meet to develop and document a coordinated Strategic Plan to control noxious weed infestations within San Mateo County using the elements of integrated weed management.
- F. This MOU may be revised as necessary, by mutual consent of the parties, by issuance of a written amendment signed and dated by all parties.
- G. This MOU in no way restricts any party from participation in similar agreements and/or activities with other public or private entities.
- H. Interested landowners, land managers (private, city, county, state and federal), special districts, and the public in San Mateo County may become part of the San Mateo County Weed Management Area by execution of the signature page entitled "Agreement to Join the Memorandum of Understanding Establishing the San Mateo County Weed Management Area" included as Attachment A. Subsequent to the initial implementation of the "Memorandum of Understanding", any party may become part of the San Mateo County Weed Management Area by execution of the signature page entitled "Agreement to Join the Memorandum of Understanding Establishing the San Mateo County Weed Management Area" included as Attachment B. The executed signature page shall be returned to the steering committee for

distribution to all parties to this MOU. The return shall be accomplished by mail to the steering committee in care of the Agricultural Commissioner, County of San Mateo, P.O. Box 999 Redwood City, CA 94064-0999.

- I. This MOU shall be effective upon execution by a minimum of two (2) parties. **This MOU expires on June 30, 2030.** Any party may terminate their participation in this MOU at any time by providing written notice to all other parties.
- J. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with the laws, regulations, and procedures applicable to each governmental agency, private landowner, or other participant, including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
- K. Each party shall maintain its own general liability insurance coverage, through commercial insurance, self insurance or a combination thereof, against any claim, expense, cost, damage or liability arising out of the performance of its responsibilities pursuant to this MOU. Proof of insurance coverage shall be required at the time specific contracts for grant funding is awarded.
- L. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the parties agree that each of the parties hereto shall fully indemnify, defend and hold harmless each of the other parties from any claim, expense or cost, damage or liability arising out of, or in connection with, performance or nonperformance of its responsibilities pursuant to this MOU or arising out of the negligent or intentional acts or omissions of its employees, agents or contractors.
- M. Each party shall perform its responsibilities and activities described herein as an independent contractor and not as an officer agent, servant, or employee of any of the other parties hereto. Each party shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the parties.
- N. This MOU may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute one and the same instrument.
- O. **Conditions:** In consideration of the above promises, the parties agree to perform the activities as follows:

County of San Mateo:

Agricultural Commissioner/Sealer Division

1. Work with public agencies and private landowners to control noxious weed infestations on properties in the County.
2. Cooperate with the California Department of Food and Agriculture (CDFA) to release and monitor biological control organisms throughout San Mateo County.
3. Cooperate with individuals and agencies on control and prevention programs for noxious weeds.
4. Conduct surveys and identify noxious weed sites throughout the County. Develop maps and a Calflora Weed Manager inventory.
5. Educate the public, growers and agencies about noxious weeds, their identification, and methods of control and prevention.

6. Provide information about the safe use of pesticides. Procure continuing education hours from the California Department of Pesticide Regulation (CDPR) for WMA meetings, when applicable.
7. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
8. Cooperate in the development of grant proposals to fund local weed management programs.

Department of Parks

1. Educate the public, Parks employees, and land tenants about noxious weeds, their identification, and methods of control and prevention.
2. Identify high-risk pathways of noxious weed introduction onto parklands.
3. Coordinate the control of noxious weed infestations on park lands with the San Mateo County Agricultural Commissioner's office.
4. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
5. Cooperate in the development of grant proposals to fund local weed management programs.

Department of Public Works

1. Educate Public Works Department employees about noxious weeds, their identification, and methods of control and prevention.
2. When available, provide data on noxious weed infestations on County maintained road right-of-ways to the San Mateo County Agricultural Commissioner's office.
3. Identify high-risk pathways of noxious weed introduction onto county roads.
4. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
5. Cooperate with agencies and landowners in joint programs and projects to prevent, control, and eradicate noxious weeds.
6. Provide assistance with grant proposals to fund noxious weed control programs.

California Department of Parks and Recreation (Santa Cruz District)

1. Educate visitors, concessionaires, employees, and others about noxious weeds, their identification, and methods of control and prevention.
2. When available, provide data on noxious weed infestations on park property to the San Mateo County Agricultural Commissioner's office.
3. Coordinate the control of noxious weed infestations on park lands with the San Mateo County Agricultural Commissioner's office.
4. Identify high-risk pathways of noxious weed introduction onto parklands.
5. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
6. Cooperate in the development of grant proposals to fund local weed management programs.

California Department of Transportation (Caltrans)

1. Educate Caltrans employees about noxious weeds, their identification, methods of control and prevention.
2. When available, provide data on noxious weed infestations on Caltrans rights-of way property to the San Mateo County Agricultural Commissioner's office.
3. When possible, identify high-risk pathways of noxious weed introduction onto Caltrans maintained roads and highways.
4. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
5. Cooperate with agencies and landowners in joint programs and projects to prevent, control, and eradicate noxious weeds.

6. When possible, provide assistance with grant proposals to fund noxious weed control programs.

California Native Plant Society (CNPS)

1. Educate the public and CNPS volunteers about noxious weed identification, and the importance of control and prevention.
2. When available, provide data on noxious weed infestations to the San Mateo County Agricultural Commissioner's office.
3. Cooperate with public agencies and private landowners in efforts to prevent, control, and eradicate noxious weed infestations in the County.
4. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
5. Cooperate in the development of grant proposals to fund local weed management programs.
6. Promote and support legislation which encourages national, state and local level support of noxious weed control efforts.
7. Research integrated weed management methods to eradicate, control and prevent the spread of noxious weeds in San Mateo County.
8. Research the impacts, and methods to quantify the impacts, of weeds to local ecosystems.

City of Brisbane

1. Educate City staff and residents about noxious weeds, their identification, and methods of control and prevention..
2. When available, provide data on noxious weed infestations on City owned property to the San Mateo County Agricultural Commissioner's office.
3. Cooperate with other agencies and landowners to prevent, control, and eradicate noxious weeds.
4. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
5. Cooperate in the development of grant proposals to fund local weed management programs.

Coastside Land Trust

1. When available, provide data on noxious weed infestations on Coastside Land Trust property to the San Mateo County Agricultural Commissioner's office.
2. Cooperate with other agencies and landowners to prevent, control, and eradicate noxious weeds.
3. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
4. Cooperate in the development of grant proposals to fund local weed management programs.

Creekside Center for Earth Observation (DBA Creekside Science)

1. Educate landowners, agencies, groups, and/or general public about noxious weeds, their identification, and methods of prevention and control.
2. Cooperate in research methods to control noxious weeds.
3. Promote and develop integrated pest management programs to prevent the establishment and spread of noxious weeds.
4. Cooperate in the development of grant proposals to fund local weed management programs.

Friends of Edgewood Natural Preserve

1. When available, provide data on noxious weed infestations and control measures in Edgewood Park and Natural Preserve property to the San Mateo County Agricultural Commissioner's office through the San Mateo County Department of Parks.
2. Cooperate with public agencies and private landowners in efforts to prevent, control, and eradicate noxious weed infestations on properties in the County.
3. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
4. Cooperate in the development of grant proposals to fund local weed management programs through the San Mateo County Department of Parks.
5. At the discretion of the Friends of Edgewood board of directors, promote and support legislation which encourages national, state and local level support of noxious weed control efforts.
6. Educate the public, employees, members, donors, land tenants, concessionaires and visitors about noxious weeds, their identification and methods of control and prevention.

Golden Gate National Recreation Area

1. Educate visitors, concessionaires, employees, and land tenants about noxious weeds, their identification, and methods of control and prevention.
2. When available, provide data on noxious weed infestations on park property to the San Mateo County Agricultural Commissioner's office.
3. When possible, coordinate the control of noxious weed infestations on park lands with the San Mateo County Agricultural Commissioner's office.
4. Identify high-risk pathways of noxious weed introduction onto parklands.
5. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
6. Cooperate in the development of grant proposals to fund local weed management programs.

Grassroots Ecology

1. Educate visitors, stewardship volunteers and employees about noxious weeds, their identification and methods of control and prevention.
2. Identify noxious weed infestations on the lands stewarded by Grassroots Ecology and report them on CalFlora.
3. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
4. Cooperate in the development of grant proposals to fund local weed management program

Green Foothills

1. Educate landowners, agencies, groups, and general public about noxious weeds, their identification, and methods of prevention and control.
2. When available, provide data on noxious weed infestations to the San Mateo County Agricultural Commissioner's office.
3. Promote elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
4. Cooperate in the development of grant proposals to fund local weed management programs.
5. Promote and support legislation which encourages national, state, and local support of noxious weed control efforts.

Midpeninsula Regional Open Space District (MROSD)

1. Educate the public, MROSD employees, volunteers, and land tenants about noxious weeds, their identification, and methods of control and prevention.

2. Identify, inventory, and provide Global Positioning System (GPS) data on noxious weed infestations on open space properties. Publish data to CalFlora to share with the Santa Clara County Agricultural Commissioner's Office, WMA members and the public.
3. Research integrated pest management methods to eradicate, control, and prevent the spread of noxious weeds in San Mateo County.
4. Coordinate the control of noxious weed infestations on open space lands with members of the San Mateo Weed Management Area.
5. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
6. Cooperate in the development of grant proposals to fund local weed management programs.

Pacifica Land Trust

1. Educate the public and Pedro Point Headlands Stewards about noxious weed identification, and the importance of control and prevention.
2. When available, provide data on noxious weed infestation to the San Mateo County Agricultural Commissioner's office.
3. Cooperate with public agencies and private landowners in efforts to prevent, control and eradicate noxious weed infestations in the County.
4. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
5. Cooperate in the development of grant proposals to fund local weed management programs.

Pacific Beach Coalition

1. When available, provide data on noxious weed infestations on Linda Mar Beach, Rockaway Headland, and Rockaway Switchbacks in Pacifica.
2. Cooperate with other agencies to prevent, control, and eradicate noxious weeds.
3. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
4. Cooperate in the development of grant proposals to fund local weed management programs.
5. Engage and educate volunteers, members and the public about noxious weeds and work together to remove them and restore the habitat with native plants.

Peninsula Open Space Trust (POST)

1. When available, provide data on noxious weed infestations on POST property to the San Mateo County Agricultural Commissioner's office.
2. Cooperate with agencies and landowners in efforts to prevent, control, and eradicate noxious weeds.
3. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
4. Cooperate in the development of grant proposals to fund local weed management programs.

San Bruno Mountain Watch

1. When available, provide data on noxious weed infestations and control measures on San Bruno Mountain State & County Park and the San Bruno Mountain Ecological Reserve to the San Mateo County Agricultural Commissioner's office through the San Mateo County Department of Parks.
2. Educate students, restoration program volunteers, and community members about noxious weeds, their identification and methods of control and prevention.
3. Cooperate with public agencies and private landowners in efforts to prevent, control, and eradicate noxious weed infestations.

4. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
5. Educate visitors of the Mission Blue Nursery about the benefits of local native plant diversity.
6. Cooperate in the development of grant proposals to fund local weed management programs through the San Mateo County Department of Parks.

San Gregorio Environmental Resource Center

1. Educate landowners, agencies, groups and the general public about noxious weeds, their identification, and methods of prevention and control.
2. Cooperate with agencies and landowners in efforts to prevent, control, and eradicate noxious weeds.
3. When available, provide data on noxious weed infestation to the San Mateo County Agricultural Commissioner's office.

San Francisco Public Utilities Commission (SFPUC) Water Department

1. Educate the public, SFPUC employees, and land tenants about noxious weeds, their identification, and methods of control and prevention, with an emphasis on maintenance and enhancement of water quality. To implement this, SFPUC conducts an annual program of IPM and pesticide safety training.
2. When available, provide data on noxious weed infestations on county watershed property to the San Mateo County Agricultural Commissioner's office.
3. Cooperate with agencies and landowners in joint programs and projects to prevent, control, and eradicate noxious weeds.
4. Identify high-risk pathways of noxious weed introduction onto SFPUC properties.
5. Coordinate the control of noxious weed infestations on watershed lands with the San Mateo County Agricultural Commissioner's office and land tenants.
6. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County. The SFPUC practices integrated weed management through the IPM program administered by the Department of Environment of the City of San Francisco.
7. Cooperate in the development of grant proposals to fund local weed management programs.

San Mateo County Farm Bureau

1. Educate the public and members about noxious weed identification, methods of prevention, and their effect on agriculture.
2. Work with the California Farm Bureau and the American Farm Bureau to ensure that effective herbicides for noxious weed control will remain registered for use in California.
3. Educate and encourage members to cooperate and work with the San Mateo County Agricultural Commissioner's Office or the Cooperative Extension Service for assistance in identifying noxious weeds and effective control methods.
4. Promote and support legislation, which encourages national, state, and local level support of noxious weed control efforts.
5. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
6. Cooperate in the development of grant proposals to fund local weed management programs.

San Mateo Resource Conservation District

1. When available, provide data on noxious weed infestations within the district.
2. Assist in the long-range planning of noxious weed management.
3. Host and coordinate weed management workshops for landowners and managers within the County.

4. Promote and implement elements of integrated weed management to prevent the establishment and spread of noxious weeds in San Mateo County.
5. Assist with public outreach and education regarding concerns for loss of resources due to noxious weeds, alternative methods of control, management, and restoration.
6. Assist with mapping locations of noxious weeds within the District.
7. Coordinate hands-on demonstrations with public agencies, private landowners, and managers when possible.
8. Cooperate in the development of grant proposals to fund local weed management programs.

University of California Cooperative Extension

1. Educate landowners, agencies, and the general public about noxious weeds, their identification, and methods of prevention and control.
2. Provide technical assistance to individuals and agencies on identification, control, and prevention programs for noxious weeds.
3. Provide information about the proper and safe use of pesticides.
4. Promote and develop integrated pest management programs to prevent the establishment and spread of noxious weeds.
5. Cooperate in the development and implementation of grant proposals to fund local weed management programs.

Attachment A

Agreement to Join the Memorandum of Understanding Establishing the San Mateo County Weed Management Area

In consideration of the mutual promises, covenants and conditions contained therein,

_____(name of party)

hereby agrees to be part of the San Mateo County Weed Management Area created on December 11, 2000, and agrees to comply with and be bound by the terms of the Memorandum of Understanding - San Mateo County Weed Management Area attached hereto and incorporated herein by reference.

In witness whereof, the party hereto has executed this agreement as of the date written below.

Signature: _____

Printed Name and Title: _____

Date: _____

Name/Address of Party to Receive Notices:

File Attachments for Item:

J. Sierra Point Landscaping and Lighting District

1. Hear Statement of Engineer of Record, Read Mayor's Statement, Hear City Clerk Statement, Open Public Hearing to hear any testimony, Close Public Hearing
2. Consider adoption of Resolution No. 2020-46 address protests and ordering the improvements and confirming the diagram and assessments for Fiscal Year 19/20



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: Karen Kinser, Deputy Director of Public Works

Subject: Public Hearing on Imposition of Fiscal Year 2020-2021 Tax Roll Charges for the Sierra Point Landscaping and Lighting District

Community Goal/Result Economic Development

Purpose To complete the process via a public hearing for the imposition of annual tax roll charges that fund Sierra Point's Landscape and Lighting Assessment District, which provides for maintenance of the landscaping, irrigation and lighting installed in 1989.

Recommendation - The following procedures and actions are recommended:

1. Statement of the Engineer of Record as to the nature of the project.
2. Mayor's statement and declaration that the Public Hearing is open (see Attachment 1).
3. Statement by the City Clerk verifying that the Certificate of Posting and the Resolution of Intention is on file (see Attachment 2), followed by the reading of any written protests by the City Clerk.
4. Hearing of oral testimony and comments.
5. Closure of Public Hearing.
6. By motion, adoption of Resolution No. 2020-46, Addressing Objections and Ordering the Improvements and Confirming the Diagram and Assessment for Fiscal Year 2020-2021 for the Sierra Point Landscaping and Lighting District.

Background

At its May 21st meeting, the City Council adopted Resolution No. 2020-28, a Resolution of Preliminary Approval of Engineer's Report, and Resolution No. 2020-29, a Resolution of Intention to Order the Levy and Collection of Assessments Pursuant to the Landscaping and Lighting Act of 1972, pertaining to the Sierra Point Landscaping and Lighting District, Fiscal Year 2020-2021. The fiscal year 2020–2021 Engineer's Report maintains the previous year's assessment amount.

In accordance with state law, joint notice of both the public meeting and the public hearing was mailed to all affected property owners and was posted at City Hall, Brisbane Community

Center, Brisbane Public Library and Mission Blue Center. The preliminarily approved Engineer's Report is attached. As of June 8, 2020, no written protests had been received.

Discussion

In addition to the routine maintenance provided within the district, the revenue funds non-annual projects such as palm and stone pine tree maintenance. In the coming fiscal year, aging and rusting light poles will be replaced and/or repaired and treated with rust inhibitor as needed once assessed.

Minor corrections to the Engineer's Report may be made by staff after adoption of the resolution if final county assessor data received after this action differs from draft data.

Fiscal Impact

This is an annually occurring process that provides the funding mechanism for the work completed within the landscaping and lighting district. If the Council declines to order and levy the collection of assessments, there will be no identified revenue source for the work scheduled in this District. The FY 20-21 budget adopted by Council for Department 4009 (Sierra Point Landscaping and Lighting District) is in the amount of \$611,342. The assessments to be collected via the recommended action are \$591,719. The budgeted amount includes a \$19,623 supplement from fund reserves.

Measure of Success

Continuing acceptable maintenance levels in the Sierra Point Landscape and Lighting District.

Attachments


1. Opening Statement by the Mayor of the City of Brisbane
2. Clerk's Statement
3. Resolution No. 2020-46
4. Engineer's Report, including Zone 1 and Zone 2 Assessment Diagrams



Karen Kinser, Deputy Director of Public Works



Randy Breault, Director of Public Works



Clay Holstine, City Manager

**OPENING STATEMENT BY THE MAYOR
OF THE CITY OF BRISBANE**

JUNE 18, 2020

SIERRA POINT LANDSCAPING AND LIGHTING DISTRICT

This is the time and place set for hearing on the Engineer's Report and the levy and collection of the proposed assessment for Fiscal Year 2020-2021 for the Sierra Point Landscaping and Lighting District. These proceedings were undertaken pursuant to the Landscaping and Lighting Act of 1972.

The Engineer's Report prepared by the Engineer of Work consists of the proposed improvements, the boundaries of the Assessment District and any zones therein, the proposed diagram, the estimate of cost thereof and the proposed assessments upon assessable lots and parcels of land within the District. Any one of these items may be the subject of protests or endorsements.

You are asked to clearly identify yourself and the property owned by you so that your statements may be correctly recorded.

The hearing is declared open and I will ask the City Clerk to report on the various notices given in connection with the hearing.

CLERK'S STATEMENT

JUNE 18, 2020

**SIERRA POINT
LANDSCAPING AND LIGHTING DISTRICT**

Notices have been mailed and posted as required by the Landscaping and Lighting Act of 1972. Proofs of mailing and posting are on file in my office. A copy of the Engineer's Report prepared by the Engineer of Work was filed in my office on May 11, 2020, and has been available for public inspection since that time.

RESOLUTION NO. 2020-46**A RESOLUTION OVERRULING PROTESTS AND ORDERING THE
IMPROVEMENTS AND CONFIRMING THE DIAGRAM AND ASSESSMENTS****FISCAL YEAR 2020-2021****SIERRA POINT
LANDSCAPING AND LIGHTING DISTRICT**

RESOLVED, by the City Council of the City of Brisbane, California, as follows:

WHEREAS, the Engineer's Report for Fiscal Year 2020-2021 for the Sierra Point Landscaping and Lighting District Pursuant to the Landscaping and Lighting Act of 1972 was duly made and filed with the Clerk of said City, whereupon said Clerk presented it to the City Council for its consideration;

WHEREAS, said Council thereupon duly considered said report and each and every part thereof and found that it contained all the matters and things called for by the provisions of said Act, including (1) plans and specifications of the existing improvements and the proposed new improvements; (2) estimate of costs; (3) diagram of the District; and (4) an assessment according to benefits; all of which were done in the form and manner required by said Act;

WHEREAS, said Council found that said report and each and every part thereof was sufficient in every particular detail and determined that it should stand as the report for all subsequent proceedings under said Act, and thereby Preliminarily Approved said report via Resolution 2020-28; whereupon said Council, pursuant to the requirements of said Act, appointed Thursday, the 18th day of June, 2020, at the hour of 7:30 p.m. of said day in a virtual online meeting as the time and place for hearing protests in relation to the levy and collection of the proposed assessments for said improvements, including the maintenance or servicing, or both, thereof, for Fiscal Year 2020-2021 and directing said Clerk to give notice of said hearing as required by said Act;

WHEREAS, it appears that notices of said hearing were duly and regularly mailed, published and posted in the time, form and manner required by said Act, as evidenced by the Affidavits and Certificates on file with said Clerk, whereupon said hearing was duly and regularly held at the time and place stated in said notice;

WHEREAS, persons interested, objecting to said improvements, including the maintenance or servicing, or both, thereof, or to the extent of the assessment district, or any zones therein, or to the proposed assessment or diagram or to the Engineer's estimate of costs thereof, filed written protests with the Clerk of said City at or before the conclusion of said hearing, and all persons interested desiring to be heard were given an opportunity to be heard, and all matters and things were pertaining to the levy and collection of the assessments for said improvements, including the maintenance or servicing, or both, thereof, were fully heard and considered by said Council; and

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED and ORDERED, as follows:

1. That protests against said improvements, including the maintenance or servicing, or both, thereof, or to the extent of the assessment district or any zones therein, or to the proposed assessment or diagram, or to the Engineer's estimate of costs thereof, for Fiscal Year 2020-2021 be, and each of them are, hereby overruled.
2. That the public interest, convenience and necessity require and said Council does hereby order the levy and collection of assessments pursuant to said Act, for the construction or installation of the improvements, including the maintenance or servicing, or both, thereof, more particularly described in said Engineer's Report and made a part hereof by reference thereto.
3. That the Sierra Point Landscaping and Lighting District and the boundaries thereof benefited and to be assessed for said costs for the construction or installation of the improvements, including the maintenance or servicing, or both, thereof, are more particularly described by reference to a map thereof on file in the Office of the Clerk of said City. Said map indicates by a boundary line the extent of the territory included in said district and of any zone thereof and the general location of said District.
4. That the plans and specifications for the existing improvements and for the proposed improvements to be made within the assessment district or within any zone thereof contained in said report, be, and they are, hereby finally adopted and approved.
5. That the Engineer's estimate of the itemized and total costs and expenses of said improvements, maintenance and servicing thereof, and of the incidental expenses in connection therewith, contained in said report, be, and it is hereby, finally adopted and approved.
6. That the public interest and convenience require, and said Council does hereby order the improvements to be made as described in and in accordance with said Engineer's Report, reference to which is hereby made for a more particular description of said improvements.
7. That the diagram showing the exterior boundaries of the assessment district referred to and described in said Resolution No. 2020-28, and also the boundaries of any zones therein and the lines and dimensions of each lot or parcel of land within said District as such lot or parcel of land is shown on the County Assessor's maps for the fiscal year to which it applies, each of which lot or parcel of land has been given a separate number upon said diagram, as contained in said report, be, and it is hereby, finally approved and confirmed.
8. That the assessment of the total amount of the costs and expenses of the said improvements upon the several lots or parcels of land in said District in proportion to the estimated benefits to be received by such lots or parcels, respectively, from said improvements, and the maintenance or servicing, or both, thereof and of the expenses incidental thereto contained in said report be, and the same is hereby, finally approved and confirmed.

9. That said Engineer's Report for Fiscal Year 2020-2021 be, and the same is, hereby finally adopted and approved as a whole.

10. That the City Clerk shall forthwith file with the Auditor of San Mateo County the said assessment, together with said diagram thereto attached and made a part thereof, as confirmed by the City Council, with the certificate of such confirmation thereto attached and of the date thereof.

11. That the order for the levy and collection of assessment for the improvements and the final adoption and approval of the Engineer's Report as a whole, and of the plans and specifications, estimate of the costs and expenses, the diagram and the assessment, as contained in said Report, as modified, as hereinabove determined and ordered, is intended to and shall refer and apply to said Report, or any portion thereof, as amended, modified, revised or corrected by, or pursuant to and in accordance with any resolution or order, if any, heretofore duly adopted or made by this Council.

12. That the San Mateo County Controller and the San Mateo County Tax Collector apply the Sierra Point Landscaping and Lighting District assessments to the tax roll and have the San Mateo County Tax Collector collect said assessments in the manner and form as with all other such assessments collected by the San Mateo County Tax Collector.

Terry O'Connell
Mayor

I, the undersigned, hereby certify that the foregoing Resolution No. 2020-46, was adopted by the City Council of the City of Brisbane, at a regular meeting thereof held on the 18th day of June, 2020, by the following roll call vote:

AYES:

NOES:

ABSENT:

Ingrid Padilla
City Clerk

CITY OF BRISBANE

SIERRA POINT

LANDSCAPING AND LIGHTING DISTRICT

ENGINEER'S REPORT

on the
Levy of an Assessment
for the
2020 - 2021 Fiscal Year

Prepared by

Karen Kinser, P.E.
Deputy Director of Public Works

May 11, 2020

I. BACKGROUND

In 1983, the Brisbane City Council determined to undertake proceedings under the provisions of Division 15, Part 2, of the California Streets and Highways Code, entitled “Landscaping and Lighting Act of 1972”, for the formation of an assessment district for the purpose of constructing, installing, maintaining and servicing the following facilities within said district:

- a) Public landscaping, including trees, shrubs, grass, other vegetation, and irrigation facilities.
- b) Public lighting facilities, including standards, poles, and electric current or energy.

The proposed district was designated the “Sierra Point Landscaping and Lighting District”.

This report was prepared as part of an annually occurring process to detail the assessment charges and district expenses covering the 2020 - 2021 fiscal year.

II. PLANS AND SPECIFICATIONS

The original plans and specifications for this assessment district have been separately bound but are incorporated herein by this reference thereto.

III. ESTIMATE OF COSTS

The costs of this assessment district for the 2020 - 2021 fiscal year are estimated to be as follows:

ZONE 1 & 2 CONSTRUCTION & MAINTENANCE COSTS

		FY 20/21
	Employee costs	126,924
	Supplies and services	410,670
	Administrative costs	73,748
	TOTAL ZONE 1 & 2	\$611,342

Supplies and services includes safety clothing, maintenance of vehicles and equipment, small tools and supplies, landscape and irrigation maintenance including materials, electricity, and water.

Administrative charges are indirect, overhead costs to manage the district.

A detailed breakdown of these costs is available to assessees upon request.

Costs associated with this assessment district for the 2020 - 2021 fiscal year are to be paid as follows:

ZONE 1 & 2 FUNDING SOURCES

	FY 20/21
Assessment charges	591,719
Supplement from Reserves	19,623
TOTAL ZONE 1 & 2	\$611,342

IV. DIAGRAM

The assessment diagrams for Zones 1 and 2 are attached hereto and are a part of this report.

V. ASSESSMENT

The assessments to be made against the assessable lots and parcels of land within this assessment district are attached hereto and are a part of this report.

Respectfully submitted,

Dated _____

Karen Kinser, P.E.
Deputy Director of Public Works

Filed in the office of the City Clerk of the City of Brisbane, San Mateo County,
California, this _____ day of _____, 2020.

Ingrid Padilla
City Clerk

Filed in the office of the County Controller-Auditor of the County of San Mateo,
California, this _____ day of _____, 2020.

Juan Raigoza
County Controller

ASSESSMENT ROLL

<u>ASSESSMENT NUMBER</u>	<u>ASSESSOR'S PARCEL NUMBER</u>	<u>PARCEL AREA, AC.</u>	<u>ASSESSMENT</u>
<u>ZONE 1</u>			
A 1	007—165—010	4.52	\$25,180
A 2	007—165—020	8.87	49,414
A 3	007—165—110	3.44	19,164
A 4	007—165—050	6.13	34,148
A 5	007—164—020	5.66	31,530
A 6	007—164—010	10.20	56,823
A 7	007—165—130	9.78	54,483
A 8	007—165—140	7.13	39,720
A 9	007—165—150	5.93	33,035
A 10	007—163—030	3.52	19,609
A 11	007—163—040	3.08	17,158
A 12	007—165—120	4.56	25,404
C 1	015—010—530	Note ¹	0
C 2	015—010—560	6.92	38,551
C 3	015—010—570	8.57	47,742
C 4	015—010—580	8.56	47,686
C 5	015—010—610	2.41	13,427
Subtotal Zone 1		99.29	\$553,074

¹ Although previously assessed, this parcel is owned by California State Lands Commission, which is exempt from local assessments.

ZONE 2

B 1	None (placeholder only)		-0-
B 2	005—162—430 (Ptn)	15.2	7,189
B 3	005—162—300	66.5	31,456
B 4	005—162—400 (Ptn)	Note ²	-0-
B 5	005—162—410 (Ptn)	0.2 ³	-0-
B 6	005—162—390	Note ⁴	-0-
B 7	005—162—420 (Ptn)	Note ⁴	-0-
	Subtotal Zone 2	81.7	\$ 38,645
	Total	180.99	\$591,719

METHOD OF ASSESSMENT SPREAD

The amounts to be assessed against the parcels of property to pay the costs and expenses of the work and improvements shall be based on the estimated benefits to be derived by the various properties within the assessment district.

Construction and maintenance costs shall be segregated by zone, and then spread to the parcels within each zone in proportion to the area of the benefited parcels within the zone.

Incidental expenses shall be spread proportional to the area of benefited parcels within the assessment district.

Due to the County Auditor's requirement that individual parcel assessments be rounded to the nearest even cent, the total of said individual assessments may not exactly equal the total estimate of costs.

² This portion of this parcel is private land over which the public has been granted access for use as the street, Tunnel Avenue.

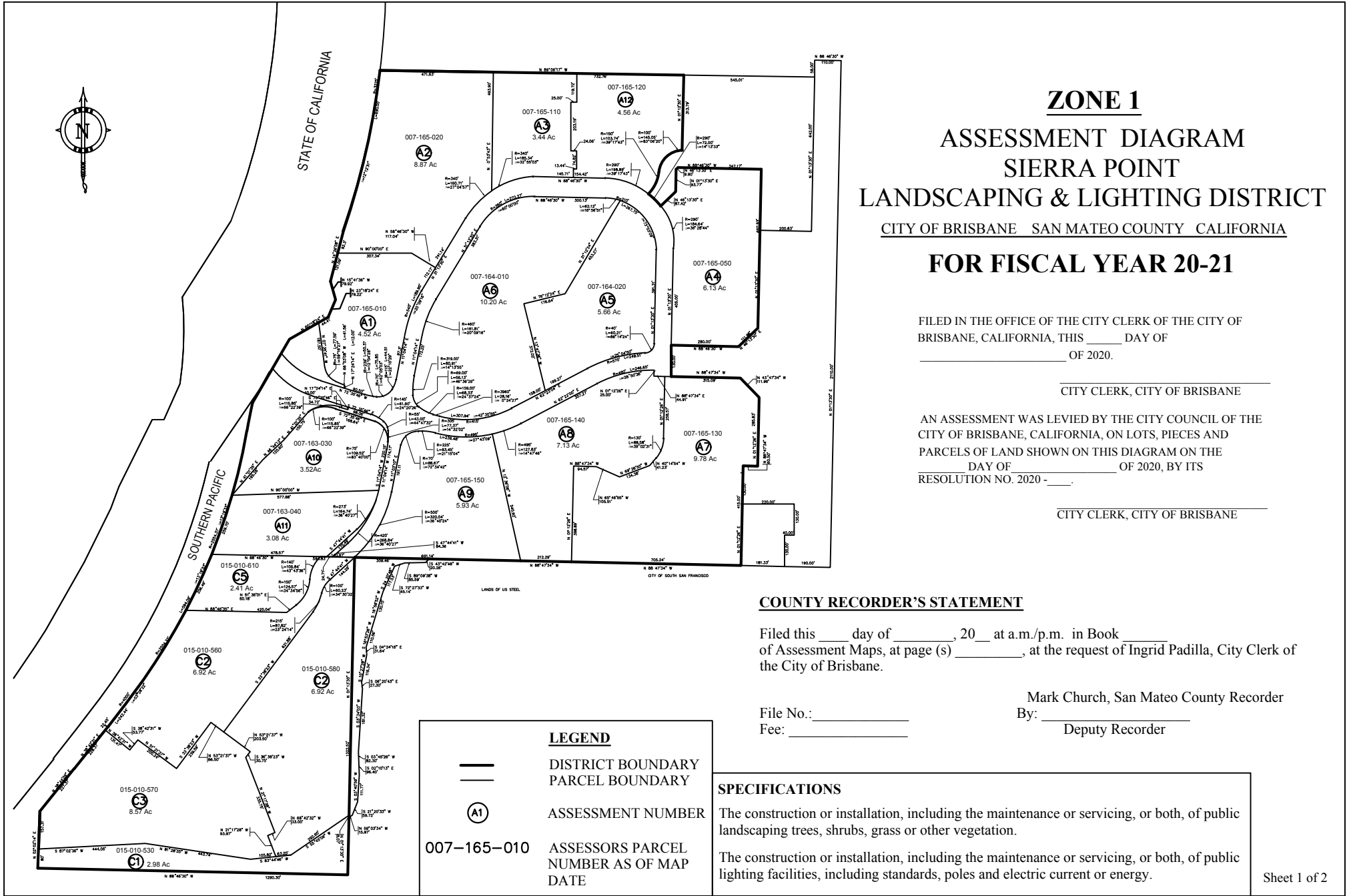
³ No assessment has been imposed for a value less than \$100.

⁴ B6 and B7 are publicly owned portions of Tunnel Avenue.

NAMES AND ADDRESSES OF OWNERS

ASSESSMENT NUMBER	APN NUMBER	ASSESSEE
A-1	007-165-010	BP3 SF4 1000 Marina LLC 4380 La Jolla Village Dr. Suite 230 San Diego, CA 92122
A-2	007-165-020	BP3 SF5 3000 3500 Marina LLC 4380 La Jolla Village Dr. Suite 230 San Diego, CA 92122
A-3	007-165-110	SNH Brisbane Ca LLC 255 Washington St Newton, MA 02458
A-12	007-165-120	PPF OFF 7000 Marina Blvd LP C/O Morgan Stanley Real Estate Advisor 555 California St. 21 st Floor San Francisco, CA 94101
A-4	007-165-050	Grand Sierra Properties, Inc. 150 Executive Park Blvd. #4000 San Francisco, CA 94134
A-5	007-164-020	HCP Life Science REIT, Inc. 1920 Main St, Suite 1200 Irvine, CA 92614
A-6	007-164-010	HCP Life Science REIT, Inc. 1920 Main St, Suite 1200 Irvine, CA 92614
A-7 A-8 A-9	007-165-130 007-165-140 007-165-150	Slough Brisbane LLC 1920 Main St. Suite 1200 Irvine, CA 92614
A-10	007-163-030	Summit Hospitality 114 LLC 12600 Hill Country Blvd., #R-100 Austin, TX 78738
A-11	007-163-040	Bre Sh Brisbane Owner LLC PO Box A-3956 Chicago, IL 60690-3956

B-2 B-3 B-4 B-5	005-162-430 005-162-300 005-162-400 005-162-410	Oyster Point Properties, Inc. 150 Executive Park Blvd. #4200 San Francisco, CA 94134-3332
B-6 B-7	005-162-390 005-162-420	City of Brisbane 50 Park Place Brisbane, CA 94005
C-1	015-010-530	State of California C/O State Lands Commission Attn: Title Unit 100 Howe Ave., Ste. 100 Sacramento, CA 95825
C-2	015-010-560	HCP Life Sciences REIT, Inc. 3000 Meridian Boulevard #200 Franklin, TN 37067
C-3	015-010-570	ARE San Francisco No. 17 LLC C/O Deloitte & Touche Attn: Shanna Lehman PO Box 847 Carlsbad, CA 92018
C-4	015-010-580	Areus Inc. 1125 Trenton Harbourton Rd. Titusville, NJ 08560
C-5	015-010-610	AP3 - SF1 4000 Shoreline LLC PO Box 927729 San Diego, CA 92192



ZONE 1

**ASSESSMENT DIAGRAM
SIERRA POINT
LANDSCAPING & LIGHTING DISTRICT**

CITY OF BRISBANE SAN MATEO COUNTY CALIFORNIA

FOR FISCAL YEAR 20-21

FILED IN THE OFFICE OF THE CITY CLERK OF THE CITY OF
BRISBANE, CALIFORNIA, THIS ____ DAY OF
____ OF 2020.

CITY CLERK, CITY OF BRISBANE

AN ASSESSMENT WAS LEVIED BY THE CITY COUNCIL OF THE
CITY OF BRISBANE, CALIFORNIA, ON LOTS, PIECES AND
PARCELS OF LAND SHOWN ON THIS DIAGRAM ON THE
____ DAY OF ____ OF 2020, BY ITS
RESOLUTION NO. 2020 - ____.

CITY CLERK, CITY OF BRISBANE

COUNTY RECORDER'S STATEMENT

Filed this ____ day of ____, 20__ at a.m./p.m. in Book ____
of Assessment Maps, at page (s) ____, at the request of Ingrid Padilla, City Clerk of
the City of Brisbane.

File No.: ____
Fee: ____
Mark Church, San Mateo County Recorder
By: ____
Deputy Recorder

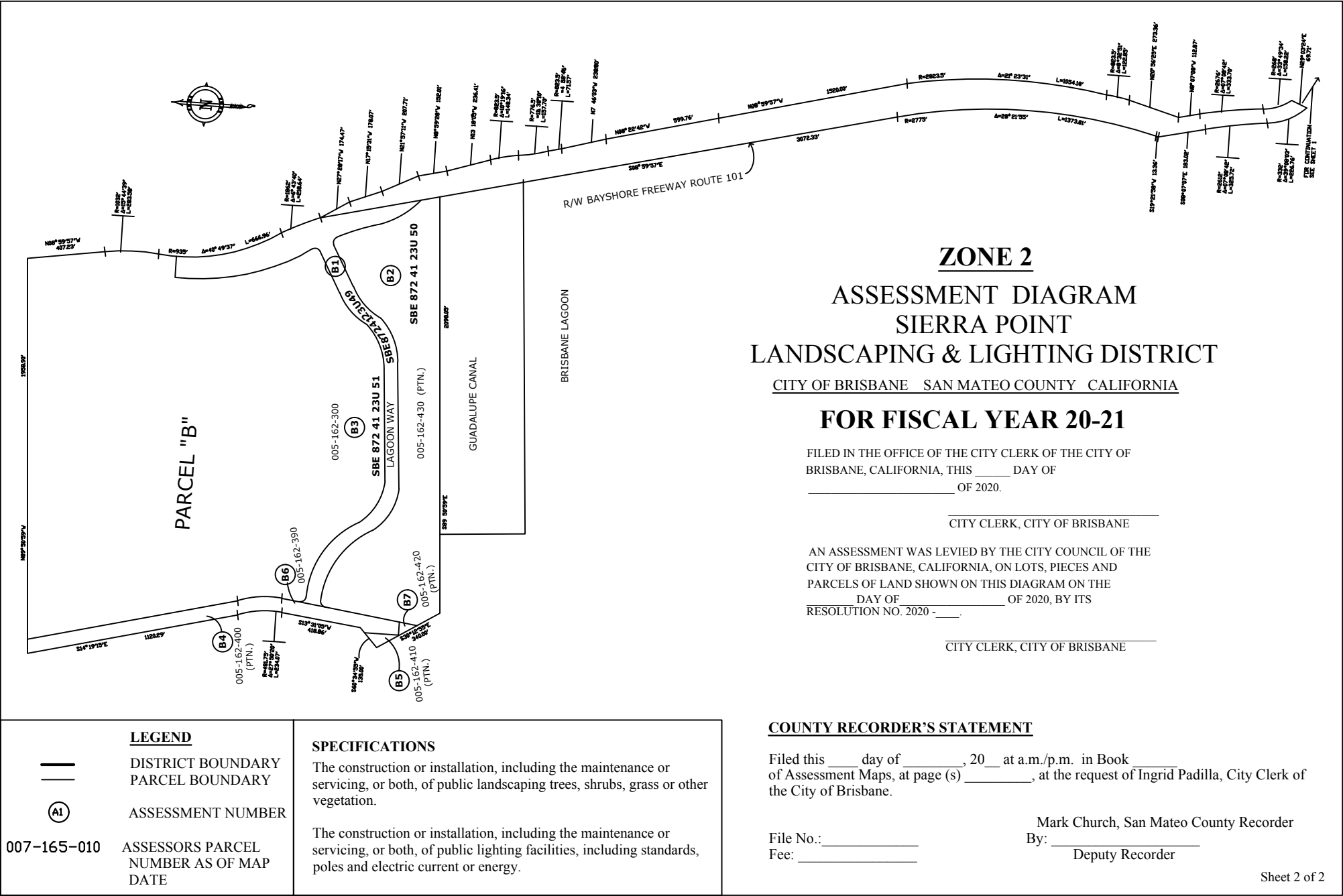
LEGEND

- DISTRICT BOUNDARY
- PARCEL BOUNDARY
- (A1) ASSESSMENT NUMBER
- 007-165-010 ASSESSORS PARCEL NUMBER AS OF MAP DATE

SPECIFICATIONS

The construction or installation, including the maintenance or servicing, or both, of public landscaping trees, shrubs, grass or other vegetation.

The construction or installation, including the maintenance or servicing, or both, of public lighting facilities, including standards, poles and electric current or energy.



File Attachments for Item:

K. City of Brisbane Local Stormwater Program Fees

1. Open the Public Hearing and take public comment. Close the Public Hearing, and if appropriate, address any objections to the imposition of fees related to the NPDES Program
2. Consider adoption Resolution No. 2020-45, "A Resolution of the City Council of the City of Brisbane Imposing Charges for Funding the Local Brisbane Stormwater Program, Authorizing Placement of Said Charges on the 2020-2021 County Tax Roll, and Authorizing the County Tax Collector to Collect Such Charges."

(The purpose of this item is to provide a public hearing and consider imposition of annual tax roll charges that fund Brisbane's Local Stormwater Program, which minimizes discharge of pollutants to San Francisco Bay in accordance with federally mandated permit requirements.)



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: Karen Kinser, Deputy Director of Public Works

Subject: City of Brisbane Local Stormwater Program Fees

Community Goal/Result

Ecological Sustainability

Purpose

To provide a public hearing and consider imposition of annual tax roll charges that fund Brisbane's Local Stormwater Program, which minimizes discharge of pollutants to San Francisco Bay in accordance with federally mandated permit requirements.

Recommendation

1. Open the Public Hearing and take public comment. Close the Public Hearing, and if appropriate, address any objections to the imposition of fees related to the NPDES Program.
2. Adopt Resolution No. 2020-45, "A Resolution of the City Council of the City of Brisbane Imposing Charges for Funding the Local Brisbane Stormwater Program, Authorizing Placement of Said Charges on the 2020-2021 County Tax Roll, and Authorizing the County Tax Collector to Collect Such Charges."

Background

In 1987, the Environmental Protection Agency, under amendments to the 1972 Clean Water Act, imposed regulations that mandate control and reduction of pollutants in stormwater runoff through the National Pollutant Discharge Elimination System (NPDES) permitting program. In the Bay Area, under the authority of the Porter-Cologne Water Quality Control Act, the San Francisco Bay Regional Water Quality Control Board (Water Board) issues and enforces municipal stormwater NPDES permits.

A revised Municipal Regional Stormwater Permit (MRP 2.0), which applies to all municipalities throughout San Mateo, Santa Clara, Alameda, and Contra Costa counties, as well as the cities of Fairfield, Suisun City, and Vallejo, was approved by the Water Board in late 2015. This permit mandates specific actions, implementation levels, and reporting requirements that each municipality must meet. Failure by municipalities to comply with these new permit requirements may result in significant enforcement action by the Water Board.

Discussion

There are two programs that provide stormwater management locally; the **Countywide Stormwater General Program** (which assesses Basic Fees and Additional Fees) overseen by the City/County Association of Governments of San Mateo County (C/CAG), and the City of Brisbane's own **Local Stormwater Program**.

The proposed Resolution imposes charges only for the City of Brisbane Local Stormwater Program, and authorizes the County Tax Collector to place such charges on the property tax roll.

City Council Resolution 2005-29 previously authorized the San Mateo County Flood Control District to collect the Basic Fees of the Countywide Stormwater General Program directly from property owners in Brisbane. These charges are also placed on the property tax roll.

The City Council elected to pay the Additional Fees of the Countywide Stormwater General Program directly to C/CAG when these fees were first imposed, rather than placing these charges on the property tax roll. (Since its inception, the Additional Fee amount increases annually based on the Consumer Price Index; this year's amount is expected to be approximately \$10,315)

The total fee assessment (charges) per the 2020 Engineer's Report is approximately \$52,000. The annual charge per parcel is not changed from previous years. Based on previous years' actual collections, the estimate of fees that will be collected is \$50,000.

For detailed information on both of these overall programs, including the calculation of charges, please see the 2020 Engineer's Report, included as Attachment B.

Fiscal Impact

The city's recommended local NPDES program budget for 2020-2021 is:	\$566,042
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The 2020 Engineer's Report for Stormwater Management Fees estimated a previous years' actual property tax revenue for the City's Local Stormwater Program of approximately:	\$50,000
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Revenues from solid waste franchise fees (designated for trash capture activities, both increased street cleaning and sweeping and maintenance of trash capture devices)	\$100,000
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Anticipated revenues from Measure M (\$10 vehicle registration fee)	\$22,000
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The budget shortfall for this program is therefore:	\$394,042
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The City's costs to maintain compliance with the various clean water requirements (frequently referred to as NPDES) have increased significantly since the Water Board's 2015 issuance of the Municipal Regional Permit (MRP 2.0).

The following general description indicates the large number of city employees who participate both in daily/weekly activities to comply with the MRP, and who also attend regular meetings with C/CAG to address permit requirements:

- Director of Public Works/City Engineer – overall permit compliance, illicit discharge control, construction controls, serves as Chairperson of C/CAG Stormwater Committee
- Regional Compliance/Maintenance Program Manager – facilities inspections, trash capture program, corporation yard site controls, and new MRP 2.0 requirements such as PCB and mercury regulations and green infrastructure requirements
- Senior Planner – new development controls, copper controls
- Senior Civil Engineer (utilities) – monitoring potable water discharges, storm drain maintenance
- Deputy Director of Public Works – street sweeping
- Team Leader (Buildings & Grounds) – pesticides toxicity control
- Team Leader (Utilities) – storm drain cleaning, potable water discharge monitoring
- Public Works Inspector – construction controls
- Administrative Assistant – assists with overall permit compliance, public information and outreach, compiles annual report

Pending implementation of the recently passed SB231 Stormwater Capture bill (D- Herzberg), Council may wish to pursue increasing assessments to begin to address the above listed shortfall.

Measure of Success

Approval of the Engineer's Report will allow for the ongoing compliance with the California State Water Resources Control Boards Municipal Regional Permit.

Attachments

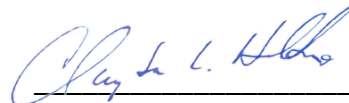
1. Resolution No. 2020-45
2. 2020 Engineer's Report for Stormwater Management Fees



Karen Kinser, Deputy Director of Public Works



Randy Breault, Director of Public Works/City Engineer



Clay Holstine, City Manager

ATTACHMENT 1

RESOLUTION NO. 2020-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE IMPOSING CHARGES FOR FUNDING THE LOCAL BRISBANE STORMWATER PROGRAM, AUTHORIZING PLACEMENT OF SAID CHARGES ON THE 2020-2021 COUNTY TAX ROLL, AND AUTHORIZING THE COUNTY TAX COLLECTOR TO COLLECT SUCH CHARGES

WHEREAS, the Environmental Protection Agency, under the 1987 amendments to the Federal Clean Water Act, imposed regulations that mandate local governments to control and reduce the amount of storm water pollutant runoff into receiving waters; and

WHEREAS, under the authority of the California Porter-Cologne Water Quality Control Act, the State Water Resources Control Board has delegated authority to its Regional Water Quality Control Boards to invoke permitting requirements upon counties and cities; and

WHEREAS, in 1993 and 1999, the San Francisco Bay Regional Water Quality Control Board issued countywide National Pollutant Discharge Elimination System (NPDES) stormwater permits to all municipalities within San Mateo County; and

WHEREAS, in fall of 2015, the San Francisco Bay Regional Water Quality Control Board issued a new NPDES stormwater permit, the Municipal Regional Stormwater Permit MRP 2.0 that applies to all municipalities within San Mateo County and other portions of the Bay Area; and

WHEREAS, the efforts for the control of stormwater pollution under the Municipal Regional Stormwater Permit require a Local Brisbane Stormwater Program; and

WHEREAS, Section 5471 of the California Health and Safety Code and Section 13.06.060 of the City's Storm Water Ordinance authorize imposition of charges for a Local Brisbane Stormwater Program; and

WHEREAS, said Local Brisbane Stormwater Program has been submitted to the City Council pursuant to the 2020 Engineer's Report for Stormwater Management Fees, which includes mandated tasks and associated costs, and an estimated amount to be collected of \$52,000; and

WHEREAS, the City held a public hearing to consider imposition of annual tax roll charges that fund the Local Brisbane Stormwater Program; and

WHEREAS, the San Mateo County Tax Collector has agreed to place such charges on the 2020-2021 County Tax Roll.

NOW, THEREFORE, BE IT RESOLVED THAT

1. The City Council of the City of Brisbane hereby adopts the 2020 Engineer's Report for Stormwater Management Fees as filed with the City Clerk, and overrules any objections or protests to the Engineer's estimate of costs and user fee structure, or to the implementation of the stormwater management program described therein.

2. The County Controller is hereby authorized to place the City of Brisbane Local Stormwater Management Fees on the fiscal year 2020-2021 County Tax Roll, and that the County Tax Collector be and hereby is authorized to collect such charges in the same manner, by the same person, and at the same time as, together with and not separately from, the general taxes applicable to real property in the City of Brisbane, as follows:

Single Family (R-1&2)	\$9.48
Multi Family (R-3)	\$21.64
Commercial/Industrial (1)	\$19.94
Commercial/Industrial (2)	\$254.20
Vacant Land (3)	\$18.34
Vacant Land (4)	\$55.16
Vacant Land (5)	\$212.18
Vacant Land (6)	\$927.80

- (1) Land use designation generally within Central Brisbane and Southwest Bayshore.
 (2) Land use designation generally within all other areas except areas included in (1).
 (3) Vacant land with an area less than 1 acre.
 (4) Vacant land with an area greater than 1 acre but less than 5 acres.
 (5) Vacant land with an area greater than 5 acres but less than 20 acres.
 (6) Vacant land with an area greater than 20 acres.
3. The cost for such service, \$1.35 per parcel, is hereby authorized to be retained by the County from such collections, the balance of which is to be remitted to the City of Brisbane.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to forward a copy of this Resolution to the San Mateo County Board of Supervisors.

Regularly passed and adopted this 18th day of June, 2020.

 Terry O'Connell
 Mayor

I hereby certify that the foregoing Resolution No. 2020-45 was duly and regularly adopted at a regular meeting of the Brisbane City Council on June 18, 2020, by the following vote:

AYES:
 NOES:
 ABSENT:

 Ingrid Padilla
 City Clerk

ATTACHMENT 2

2020 ENGINEER'S REPORT for STORMWATER MANAGEMENT FEES

Purpose

The purpose of this report is to define the City of Brisbane stormwater management program and the method utilized in determining the user fee structure to be applied by Assessor's Parcel Number (APN) and to appear on the County Tax Roll for Fiscal Year 2020/2021.

History

The Environmental Protection Agency, under the 1987 amendments to Section 402(p) of the Clean Water Act, imposed regulations mandating local governments manage stormwater discharges as a means of reducing pollution in public bodies of water. The California State Water Resources Control Board delegated enforcement authority to the Regional Water Quality Control Boards (RWQCB) to ensure compliance with the Clean Water Act. The San Francisco Bay RWQCB, under Section 13370 *et seq* of the California Water Code, requires the City of Brisbane and all other municipal stormwater dischargers in San Mateo, Santa Clara, Alameda, and Contra Costa counties, as well as the cities of Fairfield, Vallejo, and Suisun City to control significant sources of stormwater pollution as co-permittees under a Municipal Regional Stormwater Permit 2.0, referenced as Order R2-2015-0049 and National Pollutant Discharge Elimination System (NPDES) Permit No. CAS612008.

As a condition of the Municipal Regional Stormwater Permit, the City of Brisbane and other municipal stormwater dischargers are required to meet specific requirements in a variety of program areas that address the multiple potential pollutant sources that can impact a municipal storm drain system. Compliance efforts in San Mateo County are implemented in two ways: those that have countywide benefit or significance are implemented by the City/County Association of Governments of San Mateo County (C/CAG) through its San Mateo Countywide Water Pollution Prevention Program (Countywide Program), and those that are specific to a local jurisdiction are implemented through municipality-specific programs. Administration of Brisbane's local program is primarily managed by the City's Public Works Department.

STORMWATER MANAGEMENT PROGRAM

Background Information

The process of urbanization increases rainwater runoff. As trees and grass are cleared, pervious ground cover is frequently replaced by impervious concrete, asphalt, or brick. Rainwater can no longer seep into the ground. If this stormwater is not properly managed, flooding may result. Often, municipal drainage systems are designed for flows resulting from pre-development runoff, and become undersized when impervious area is increased by building structures, driveways, and parking lots. Further, increased stormwater runoff makes areas not covered by impervious

materials more susceptible to erosion, and as a result, sediment may discharge to the storm drain system.

Stormwater runoff flowing over man-made surfaces such as roads and parking lots can also contribute to water quality degradation. The natural purification that occurs when water flows through the subsurface is lost. As rainwater flows over impervious surfaces, it can pick up pollutants such as engine oils, pesticides, fertilizers, and trace metals like lead, copper, or zinc. These contaminants are frequently toxic to humans and aquatic life.

Stormwater pollution can come from point and non-point sources. Point sources are attributable to a distinct point of discharge, such as a pipe into a water body. Point source pollution can include illegal storm drain connections at industrial facilities or cross connections between sanitary and storm sewer systems. Non-point source pollution, such as overland flow or sheet runoff, is not attributable to a distinct point of discharge, and is a major contributor to water quality degradation in California. Problems that magnify non-point source pollution include channel erosion, sedimentation due to construction and land development, hydrologic modification, physical habitat alteration, excessive or poorly timed application of pesticides and fertilizers, natural or engineered agricultural subsurface drainage, septic systems, livestock grazing, and urban runoff. Oil and grease from parking lots and driveways, nutrients, littering, animal waste, accidental spills, soil erosion and air pollution all contribute to non-point source discharges in urban areas. Urban runoff is the focus of stormwater pollution prevention regulations in Brisbane.

Program Structure

The Municipal Regional Permit requirements implemented at both the Countywide Program and municipality-specific levels fall into seven main program areas, the central focus of each being summarized as follows:

1. Municipal Government Maintenance Activities - Ensure development and implementation of appropriate Best Management Practices by all municipalities to control and reduce non-stormwater discharges and polluted stormwater to storm drains and watercourses during operation, inspection, and routine repair and maintenance activities of municipal facilities and infrastructure.
2. New Development and Construction Controls – Use planning authorities to include appropriate source control, site design, and stormwater treatment measures in new development and redevelopment projects to address both soluble and insoluble stormwater runoff pollutant discharges and prevent increases in runoff flows from new development and redevelopment projects. This goal is to be accomplished primarily through the implementation of low impact development techniques. Municipalities also implement a construction site inspection and control program at all construction sites, with follow-up and enforcement consistent with an enforcement response plan, to prevent construction site discharges of pollutants and impacts on beneficial uses of receiving waters.

3. Industrial, Commercial, and Illicit Discharge Controls

- A. Industrial and Commercial Site Controls – Implement an industrial and commercial site control program at all sites which could reasonably be considered to cause or contribute to pollution of stormwater runoff, with inspections and effective follow-up and enforcement to abate actual or potential pollution sources consistent with an enforcement response plan to prevent discharge of pollutants and impacts on beneficial uses of receiving waters.
 - B. Illicit Discharge Detection and Elimination – Implement illicit discharge prohibitions and ensure illicit discharges are detected and controlled. Municipalities shall develop and implement an illicit discharge program that includes an active surveillance component and a centralized complaint collection and follow-up component to target illicit discharge and non-stormwater sources.
4. Public Information and Outreach – Increase the knowledge of the target audiences regarding the impacts of stormwater pollution on receiving water and potential solutions to mitigate the problems caused, change the waste disposal and runoff pollution generation behavior of the target audiences by encouraging implementation of appropriate solutions, and involve various citizens in mitigating the impacts of stormwater pollution.
5. Water Quality Monitoring – Perform water quality monitoring activities to address specific management questions related to the health of San Francisco Bay and local receiving waters, including status and trends monitoring and pollutants of concern/long-term trends monitoring. Additional specific monitoring projects are required, including projects addressing water quality stressor/source identification, Best Management Practices effectiveness evaluations for stormwater treatment or hydrograph modification control, and geomorphic analyses to identify how and where creeks can be restored or protected to cost-effectively reduce the impacts of pollutants, increased flow rates, and increased durations of urban runoff.
6. Pollutants of Concern
- A. Pesticides Toxicity Control – Implement control programs to prevent the impairment of urban streams by pesticide-related toxicity. The control programs addresses municipalities' and others' use of pesticides within municipal jurisdictions that pose a threat to water quality and have the potential to enter the municipal storm drain system. Pesticides of concern include organophosphorous pesticides, pyrethroids, carbamates, and fipronil.
 - B. Trash Load Reduction – Implement control measures and other actions to reduce trash loads from municipal storm sewers by 70% by 2017, and 100% or no adverse impacts to receiving waters from trash by 2022. This includes developing and implementing Short-Term Trash Load Reduction Plans, which includes installation and maintenance of trash capture devices within the storm drain system and cleanup and abatement progress on trash hot spots.

- C. Mercury and Polychlorinated Biphenyls (PCBs) – Initiate control programs for mercury and PCBs to implement the urban runoff requirements of the San Francisco Bay mercury and PCBs Total Maximum Daily Loads (TMDLs) and reduce mercury and PCB loads to make substantial progress toward achieving the urban runoff load allocations established in the mercury and PCBs TMDLs. These programs include pilot projects to investigate and abate mercury and PCB sources in drainages, including public rights-of-way, and stormwater conveyances with accumulated sediment that contain elevated mercury and PCB concentrations, to evaluate and enhance municipal sediment removal and management practices, to evaluate on-site stormwater treatment via retrofit, and diversion of dry weather and first flush flows to publicly owned treatment works.
 - D. Copper Controls – Implement control measures identified in the Regional Water Quality Control Board's Basin Plan to support approved copper site-specific objectives for San Francisco Bay. Control measures include managing waste generated from cleaning and treating copper architectural features, managing discharges from pools, spas, and fountains that contain copper-based chemicals, engage in efforts to reduce copper discharged from automobile brake pads to surface waters via urban runoff, and ensuring proper management of copper by industrial sources.
 - E. Polybrominated Diphenyl Ethers (PBDEs), Legacy Pesticides, and Selenium – Implement programs to gather concentration and loading information for PBDEs, legacy pesticides, and selenium to identify, assess, and manage controllable sources of these pollutants in urban runoff, if any.
7. Exempted and Conditionally Exempted Discharges – Implement programs to ensure discharges to the storm drain system with minimal pollutant concern, such as uncontaminated groundwater, diverted stream flows, and pumped groundwater from foundation drains are properly managed and monitored to eliminate adverse impacts to receiving waters.

COUNTYWIDE PROGRAM

The Countywide Program centrally manages the efforts that provide overall benefits to the County and all cities and towns within the county involved with implementation of the Municipal Regional Permit requirements. The seven permit components described above delineate work tasks to be undertaken and completed during the 2020/2021 fiscal year.

The 2020/2021 C/CAG Stormwater Program Budget is scheduled for adoption by C/CAG on June 11, 2020 in the amount of \$3,319,697. The City of Brisbane is required to contribute proportionate funding to the Countywide Program. This funding is divided into two categories, the Basic and the Additional Fees. The Basic Fee was established to fund the original Countywide Program activities when the NPDES permit was first adopted. The Additional Fees were established to fund additional Countywide Program activities required by the Regional Board subsequent to establishment of the Basic Fees.

The Basic and Additional Fees are calculated as follows:

Basic Annual Charges:

- Single Family Residence: \$3.44/parcel
- Miscellaneous, Agriculture, Vacant and Condominium: \$1.72/parcel
- All Other Land Uses: \$3.44/parcel for the first 11,000 square feet plus \$0.3127 per 1,000 additional square feet of parcel area

Additional Annual Charge (Adjusted Annually by Consumer Price Index):

- Single Family Resident: \$3.6530/parcel
- Miscellaneous, Agriculture, Vacant and Condominium: \$1.8265/parcel
- All Other Land Uses: \$3.6530/parcel for the first 11,000 square feet plus \$0.3321 per 1,000 additional square feet of parcel area

The Countywide Program's Basic and Additional Fees for 2020/2021 that will be charged to the City of Brisbane are estimated at approximately \$9,115 and \$10,315, respectively. The City of Brisbane has historically authorized the Countywide Program to assess and collect the Basic Fees directly through separate property tax assessments, whereas the Additional Fees are paid to C/CAG out of the City's General Fund. This approach prevents the Additional Fees from being billed to property owners.

CITY OF BRISBANE LOCAL PROGRAM

City Facilities

The City of Brisbane is responsible for all public drainage facilities within its jurisdiction that collect stormwater and convey it to San Francisco Bay. Brisbane's facilities include the City's streets, curbs and gutters, catch basins, pipelines, culverts, and open channels.

Stormwater is collected from private property and public streets in two open channels; the Guadalupe Valley Municipal Improvement District (GVMID) Basin Channel and the Bayshore Storm Drain Basin Channel. This stormwater is generally conveyed through these channels to underground box culverts which ultimately outfall to the Bay. The GVMID Basin Channel outfall delivers stormwater via the Lagoon box culvert. This outfall receives water from most of Central Brisbane as well as the Guadalupe Valley and discharges this water into the Lagoon. Stormwater that enters the Lagoon eventually flows to the Bay through two box culverts under US 101. The Bayshore Storm Drain Basin Channel receives stormwater mainly from the undeveloped land in northern Brisbane as well as portions of Daly City and discharges this water to the Bay through a single box culvert under US 101. Stormwater from Sierra Point generally outfalls to the Bay through multiple culverts located along the perimeter of the Sierra Point Peninsula.

During normal rainfall, flooding potential in Brisbane is low. During heavy rains, however, localized flooding can and has occurred in some areas. Some trunk lines, drain pipes, catch basins and other structures are undersized, and additional catch basins are needed. The City's 2003 Storm Drainage Master Plan proposed Capital Improvement Projects to address these issues.

Local Program Elements

The following is a description of City-specific actions that will be implemented to meet the Municipal Regional Stormwater Permit requirements that were generally described previously in this report. These descriptions detail the City-specific efforts that will be performed to address these requirements. Following this description is a summary of the City's stormwater budget for 2020/2021.

1. Municipal Government Maintenance Activities - This program is intended to prevent pollution of stormwater runoff through improvements in municipal government maintenance activities and associated programs. This program focuses on preventing non-stormwater discharges or polluted stormwater associated with street and road repair and maintenance activities, sidewalk/plaza maintenance and pavement washing, bridge and structure maintenance and graffiti removal, and implementing management measures at the City corporation yard. This program includes contractual street sweeping services, development and implementation of a Stormwater Pollution Prevention Plan for the corporation yard, management of the City's maintenance contractors, and participation in Countywide Program subcommittees and activities related to municipal maintenance.
2. New Development and Construction Controls – This program focuses on controlling stormwater pollution from construction sites, new developments, and redevelopment areas. Tasks include developing and implementing planning, inspection, and enforcement procedures, developing and implementing requirements for post-construction controls, inspecting stormwater treatment measures to ensure proper operation and maintenance, and providing education and training to construction site operators. The Municipal Regional Stormwater Permit require municipalities to ensure applicable new and redevelopment projects manage stormwater runoff using Low Impact Development techniques, primarily focused on harvesting and use, evapotranspiration, and infiltration to groundwater. This program includes implementation of planning procedures to ensure all applicable projects incorporate appropriate site design, source control, and stormwater treatment measures.
3. Industrial, Commercial, and Illicit Discharge Controls
 - a. Industrial and Commercial Site Controls – This element of the program is designed to control pollutants discharged to municipal storm drains from commercial and industrial facilities. Specific focus is placed upon facility inspection, providing information and assistance to facility managers about reducing pollutants in stormwater from these facilities, and implementing escalating enforcement responses for instances of non-compliance. This program includes staff participation in Countywide Program subcommittees and compliance with the requirements to develop and implement an information/inspection program, in coordination with existing County Health department commercial/industrial inspection programs.

- b. Illicit Discharge Detection and Elimination – This program element focuses on identifying and eliminating illicit discharges to the storm drain system by identifying major outfalls, conducting inspections of the storm drain system, identifying and eliminating illicit connections, inspecting for evidence of illegal dumping and tracking illicit discharges to their sources, providing information to the public about proper disposal alternatives, and implementing an effective enforcement response plan. This program includes staff participation in Countywide Program activities, City staff monitoring of illicit discharges in coordination with County Hazardous Waste Inspectors, and compliance with inspection procedures and enforcement activities.
- 4. Public Information and Outreach – This program is intended to inform the public about sources of stormwater pollution, how it reaches local waterways, types of common activities that contribute to stormwater pollution, its effects on receiving waters, and to encourage public involvement in reducing the amount of pollutants entering the City's storm drain system. The public information component of this program overlaps with other program elements described below. This program includes participation in Countywide Program activities, dissemination of educational materials, including the preparation of periodic notices to be placed in the local media, and the planning and implementation of local community volunteer activities.
- 5. Water Quality Monitoring – This element of the program on the City level is to support Countywide Program staff in performing required monitoring activities as part of a Regional Monitoring Collaborative with other Bay Area stormwater permittees. This program element includes participation in Countywide Program activities and providing input to Countywide Program staff on proposed monitoring activities and programs.
- 6. Pollutants of Concern
 - a. Pesticides Toxicity Control – This element of the program includes implementation of the City's adopted Integrated Pest Management resolution and ensuring less toxic methods of pest control in all City operations, including activities performed through contractors. City staff also provides outreach materials on less-toxic methods of pest control to the public. This program element includes participation in Countywide Program activities and supporting the Our Water Our World program implementation in local retailers selling pest control materials.
 - b. Trash Load Reduction – This element of the program includes developing and implementing Short and Long-Term Trash Load Reduction plans, identification and annual cleanup/assessment of one trash hot spot, and implementation of various control measures to reduce trash loadings in the City's storm drain system. This program also includes participation in Countywide Program's trash control subcommittee.

- c. Mercury and Polychlorinated Biphenyls (PCBs) – This program element includes providing support to Countywide Program staff on implementation of the required programs and pilot projects for addressing mercury and PCBs. These program elements are primarily managed at the Countywide Program level; however this program element includes funding for City staff participation in relevant Pollutant of Concern subcommittees and activities. The City will investigate opportunities for Green Infrastructure installations to meet our portion of San Mateo County’s mercury reduction goals.
 - d. Copper Controls – This program element includes participation and support of Countywide Program efforts directed at regional copper management issues, such as the statewide Brake Pad Partnership, and implementation of local planning, inspection, education, and enforcement efforts to address stormwater discharges from any permitted architectural copper installations or pool, spa, and fountain discharges containing copper algaecides. This program includes City participation in Countywide Program subcommittees and activities related to copper controls.
 - e. Polybrominated Diphenyl Ethers (PBDEs), Legacy Pesticides, and Selenium – This program is primarily managed at the Countywide Program level and includes City staff participation in relevant Countywide Program subcommittees and activities.
7. Exempted and Conditionally Exempted Discharges – This program element includes management and oversight of exempted and conditionally exempted discharges to the City's storm drain system to ensure compliance with permit conditions. This includes City staff implementing management measures for potable water discharges to the storm drain system and ensuring appropriate conditions of approval on new and redevelopment projects to properly manage any exempted or conditionally exempted discharges. This program includes City participation in Countywide Program subcommittees and activities related to exempted and conditionally exempted discharges.
 8. Establish Program and Collect Fees – Implementation of the program requires the City’s Finance Department to manage the NPDES Fund and the County Flood Control District to collect the City's Local Program fee in the same manner as the Countywide Program fee. This program includes the Additional Annual Fee collected by C/CAG and funded from the City’s General Fund.

Summary of Budget Department 6140 (NPDES)

1. Salaries and Benefits	\$ 391,270
2. Services and Supplies (excluding anticipated Additional Fees)	\$ 101,435
3. Annual C/CAG NPDES Additional Fees (from General Fund)	\$ 10,315
4. Indirect Costs	<u>\$ 63,022</u>
TOTAL	\$ 566,042

USER FEE FORMULA

Method

The City of Brisbane developed a formula for calculating stormwater fees that remains unchanged since it was first utilized after stormwater fees were authorized by the Council in July 1994. The user fee formula is based on two distinct concepts: (1) an administrative fee should be shared equally by all parcels to cover program administration costs; and (2) an assessment fee should be charged in proportion to the storm drainage service utilized and the amount of pollutants or sediment generated by each type of parcel. Average parcel square footage and assumptions explained below regarding the types of land uses for each zone were used to develop an equitable assessment fee structure.

Generally speaking, residential properties contribute equal amounts of water to the storm drain system. For this reason, the formula charges single-family residential properties a uniform user fee based on estimated runoff from an average single-family property. This practice is common in other cities and is equitable because these properties benefit equally from City-wide services such as public streets, sidewalks and parking.

On average, 50% impervious cover per parcel is generally accepted as the typical impervious area for a single-family residential dwelling. Using an average single-family parcel area of 4,823 square feet and 50% impervious cover, a standard impervious area of 2,411 square feet was defined as an Equivalent Single-family Unit (ESU). In determining the assessment portion of the stormwater user fee for the various parcels in the City, the following formula is used:

$$\text{User Fee} = \text{Single Family Fee} \times (\text{Number of ESUs})$$

The impervious area for non-residential properties and vacant land was devised by use of runoff area and general land characteristics and use. As shown on Exhibit A, entitled "Storm Drain Program Rate Analysis," small commercial and industrial land uses are estimated to have approximately 100% runoff area, large commercial and industrial land uses are estimated to have approximately 80% runoff area, and vacant land is estimated to have 20-50% runoff area, as opposed to single family residential properties, which are estimated to have approximately 50% impervious area. These estimates, along with the other land use runoff area estimates on the attachment, are all consistent with the general runoff coefficients used in standard engineering practices.

For the storm drain user fee formula, current land use classifications are generally consolidated into the following four categories and further broken down to group commercial/industrial and vacant land by average lot size:

1. Single-Family Residential (R-1 and R-2) - This classification is based upon 50% impervious area which equate to a runoff coefficient of 0.5.

2. Multi-Family High Density (R-3) - All the remaining residential classifications are based upon the assumption that the higher density properties, which generally consist of the apartments along San Bruno and Visitacion Avenues and the trailer park, have approximately 100% impervious surface area, as opposed to 50% for single-family properties. This 100% impervious surface area equates to a runoff coefficient of 1.0.

3. Commercial/Industrial (1) & (2) - These classifications are based upon the assumption that most small commercial/industrial land uses in Brisbane (Commercial (1)) have a 100% impervious surface area and larger commercial/industrial land uses, (Commercial (2)) have an 80% impervious surface area, as opposed to 50% for single-family properties. These impervious surface areas equate to runoff coefficients of 1.0 for Commercial (1) and 0.8 for Commercial (2).

4. Vacant Land (3), (4), (5) & (6) - Vacant Land (3) accounts for smaller lots with an area less than 1 acre and with increased runoff coefficients. Vacant Land (4) accounts for mid-sized lots with an area greater than 1 acre but less than 5 acres. Vacant Land (5) accounts for larger lots with an area greater than 5 acres but less than 20 acres. Vacant Land (6) accounts for larger lots with an area greater than 20 acres. These classifications are based upon the assumptions that the smaller parcels have higher runoff coefficients based upon their size and proximity and the larger parcels have little or no impervious surfaces and a typical runoff coefficient of 0.2 to 0.5, as opposed to 0.5 for single-family properties.

In developing the total ESUs, the following uses were designated exempt from fee collection: City Government Activities, Federal and State Government Activities, and Unclassified.

As previously indicated, the City's user fee formula remains unchanged from inception. The charges per parcel include an administrative fee of \$4.50 and the additional fee per ESU of \$4.98. The following table details the total annual charges per parcel based on land use type, which remain unchanged from previous years:

	<u>ESU</u>	<u>Annual Charge</u> <u>Per Parcel**</u>
Single Family Residential	1.00	\$9.48
Multi-Family High Density Residential	3.44	\$21.64
Commercial/Industrial (1)	3.10	\$19.94
Commercial/Industrial (2)	50.14	\$254.20
Vacant Land (3)*	2.78	\$18.34
Vacant Land (4)*	10.17	\$55.16
Vacant Land (5)*	41.70	\$212.18
Vacant Land (6)*	185.40	\$927.80

(1) Land use designation generally within Central Brisbane and Southwest Bayshore

(2) Land use designation generally within all other areas except areas included in (1)

(3) Vacant land with an area less than 1 acre.

(4) Vacant land with an area greater than 1 acre but less than 5 acres.

(5) Vacant land with an area greater than 5 acres but less than 20 acres.

(6) Vacant land with an area greater than 20 acres.

* Additional vacant land designations were added to equally distribute charges based upon land area and runoff generated. The vacant land areas were divided into groups so that the average parcel size more closely reflected the parcel area and distribution within that designation. This was done by creating new limits as identified in notes 3 through 6 inclusive so that a parcel in the “Acres” was not charged the same as a parcel in the Baylands or in Northwest Bayshore sub-areas.

** Annual charge includes an administrative fee of \$4.50 per parcel.

Please note annual charges have been rounded by \$0.01 in some cases to allow fees to be evenly divided into semi-annual tax bills received by property owners.

Fee Summary

Exhibit A, entitled "User Classification Fee Summary," presents the anticipated fees to be collected for fiscal year 2020/2021. These fees remain unchanged from previous years. As shown, the anticipated income from special assessments is \$51,955.78 which funds approximately half of the services and supplies category of the 2020/2021 NPDES budget

EXHIBIT A to 2020 ENGINEER'S REPORT FOR STORMWATER MANAGEMENT FEES
STORM DRAIN PROGRAM RATE ANALYSIS

CATEGORY	# OF PARCELS	TOT. AREA (ACRES)	AVG. AREA (SF)	RUNOFF COEFF.	RUNOFF AREA (SF)	ESU PER CATEGORY
SINGLE FAMILY RESIDENTIAL (R-1)	1,564	109.15	3,040	0.5	1,520	1.00
MULTI-FAMILY RESIDENTIAL (R-3)	43	6.48	6,564	1.0	6,564	3.44
COMMERCIAL/ INDUSTRIAL (1)	172	23.46	5,941	1.0	5,941	3.10
COMMERCIAL/ INDUSTRIAL (2)	73	238.45	142,286	0.8	113,829	50.14
VACANT LAND (3)	109	24.29	9,707	0.5	4,854	2.78
VACANT LAND (4)	33	37.76	49,843	0.4	19,937	10.17
VACANT LAND (5)	14	71.73	223,183	0.3	66,955	41.70
VACANT LAND (6)	8	277.95	1,513,438	0.2	302,688	185.40
TOTALS	2,016	789.27				

- (1) LAND USE DESIGNATION GENERALLY WITHIN CENTRAL BRISBANE, AND SOUTHWEST BAYSHORE
(2) LAND USE DESIGNATION GENERALLY WITHIN ALL OTHER AREAS EXCEPT AREAS INCLUDED IN (1)
(3) VACANT LAND WITH AN AREA LESS THAN 1 ACRE
(4) VACANT LAND WITH AN AREA GREATER THAN 1 ACRE BUT LESS THAN 5 ACRES
(5) VACANT LAND WITH AN AREA GREATER THAN 5 ACRES BUT LESS THAN 20 ACRES
(6) VACANT LAND WITH AN AREA GREATER THAN 20 ACRES

CATEGORY	# OF PARCELS	ADMIN. FEE	ESU	TOTAL ESUs	ASSMT/ PARCEL	ASSMT. FEE TOT.	TOT. FEE/ PARCEL	TOTAL FEES
SINGLE FAMILY RESIDENTIAL (R-1)	1564	\$7,038.00	1.00	1564.00	\$4.98	\$7,788.72	\$9.48	\$14,826.72
MULTI-FAMILY RESIDENTIAL (R-3)	43	\$193.50	3.44	147.92	\$17.14	\$737.02	\$21.64	\$930.52
COMMERCIAL/ INDUSTRIAL (1)	172	\$774.00	3.10	533.20	\$15.44	\$2,655.68	\$19.94	\$3,429.68
COMMERCIAL/ INDUSTRIAL (2)	73	\$328.50	50.14	3660.22	\$249.70	\$18,228.10	\$254.20	\$18,556.60
VACANT LAND (3)	109	\$490.50	2.78	303.02	\$13.84	\$1,508.56	\$18.34	\$1,999.06
VACANT LAND (4)	33	\$148.50	10.17	335.61	\$50.66	\$1,671.78	\$55.16	\$1,820.28
VACANT LAND (5)	14	\$63.00	41.70	583.80	\$207.68	\$2,907.52	\$212.18	\$2,970.52
VACANT LAND (6)	8	\$36.00	185.40	1483.20	\$923.30	\$7,386.40	\$927.80	\$7,422.40
TOTALS	2,016	\$9,072.00				\$42,883.78		\$51,955.78
TOTAL FEES =	\$51,955.78							
CARRY OVER (estimated) =	\$0.00							

ADMIN. FEE / PARCEL = \$4.50
ASSMT. FEE / ESU = \$4.98

File Attachments for Item:

L. Short Term Rental Regulations- Draft Ordinance 655 and Urgency Ordinance 656

1. Consider introduction of Ordinance No. 655, and adoption of Urgency Ordinance No. 656
2. Direct the City Manager to develop a program and/or regulations to administer and enforce the adopted ordinance, including the establishment of appropriate application fees to cover administrative costs.

(The City Council will consider zoning amendments to allow for and regulate rentals of residential property for periods of less than 30 days (short term rentals). The zoning amendments would allow for hosted rentals (i.e., rentals where the permanent resident is on-site) subject to a permit process and performance standards related to occupancy limits, parking, good neighbor practices, and payment of transit occupancy tax. Unhosted rentals (i.e., rentals where the permanent resident is not on-site) would be prohibited. Ordinance 655 is being recommended to be introduced on a first reading and also as Urgency Ordinance 656 to take effect immediately upon adoption by a four-fifths vote.)



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: John Swiecki, Community Development Director

Subject: Short Term Rental Regulations- Draft Ordinance 655 and Urgency Ordinance 656

Community Goal/Result

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

Community Building - Brisbane will honor the rich diversity of our city (residents, organizations, businesses) through community engagement and participation

Purpose

To amend the Brisbane Municipal Code (BMC) to allow for and regulate short term rentals of residential properties in Brisbane.

Recommendation

1. That the City Council introduce Ordinance No. 655 (Attachment 1), and adopt urgency Ordinance No. 656 (Attachment 2).
2. Direct the City Manager to develop a program and/or regulations to administer and enforce the adopted ordinance, including the establishment of appropriate application fees to cover administrative costs.

Background

On February 7, 2019, the City Council formally initiated zoning text amendments to allow limited short term rentals (STRs) of residential dwellings, subject to a permit requirement and operating limitations. The Council's action to initiate the amendments was the result of numerous Planning Commission and City Council meetings, community surveys, and community dialogue on the topic since 2015.

Following the Council's action, the Planning Commission held a public workshop in June 2019 and a smaller stakeholder meeting in August 2019 to discuss policy issues of particular interest, including whether to allow unhosted rentals, parking requirements, and whether STRs should be allowed in accessory dwelling units (ADUs). The feedback from these workshops informed the draft ordinance considered by the Planning Commission at public hearings on January 9 and February 27, 2020. The attached draft Ordinance 655 (Attachment 1) was unanimously recommend for Council adoption at the February 27, 2020 Commission meeting. The Commission's resolution of approval, agenda reports and minutes from the January 9 and February 27 meetings are attached for Council's reference (Attachment 3).

Discussion

Ordinance Provisions

The attached Ordinances would allow permanent residents of single-family dwellings to offer unlimited hosted rentals following Zoning Administrator approval of an STR permit and subject to operating standards, renewal requirements, and suspension/revocation standards outlined in the draft ordinance. The draft ordinance provisions are described in detail in the attached January 9 and February 27, 2020 Planning Commission agenda reports (Attachment 3). Modifications to the draft ordinance made by the Planning Commission at their February 27, 2020 meeting are shown in track changes in the attached Ordinance No. 655 (Attachment 1). The below ordinance provisions are highlighted for the Council's consideration this evening:

- Allow long-term renters to host STRs with property owner authorization

The question of whether to allow long-term renters of single-family dwellings to host STRs with property owner permission has been debated throughout the City's discussions regarding STR regulation. At least one of the City's active STRs is hosted by a long-term tenant of a single-family dwelling. While most long-term tenants have a vested interest in maintaining the quality of life of their neighborhood, the Police Department continues to have concerns with this provision of the ordinance due to potential conflicts with neighborhood quality of life and accountability for resolution of issues should they arise. The alternative would be to limit STRs to owner-occupied residences.

- Ban unhosted STRs with exceptions for City-approved "emergency" host absences

The Planning Commission recommended this provision be explicitly stated in the ordinance to allow hosts who may have legitimate unforeseen reasons to leave the property during a scheduled hosted rental to do so, with authorization from City staff (see Section 17.35.020.C). However, the Council may want to consider implementing this provision as an administrative practice in implementation, rather than establish a formal process in the ordinance itself, especially given that the circumstances surrounding such a request could vary widely. Police and Community Development staff would work with hosts to manage emergency situations on a case by case basis.

Implementation, Monitoring, and Enforcement

Ongoing monitoring and enforcement of STR activity could be taken on by current staff in the Police and Community Development Departments; however, it would be time intensive and would direct staff time and resources away from other projects and programs. There are several consulting firms who are familiar with the nuances and challenges of STR regulation and provide compliance and monitoring services specifically for STR ordinances. Based on preliminary conversations staff has had with one such firm, Host Compliance, the cost of services would be scaled to the number of active rentals in the City and could be passed through to permit applicants through payment of application fees and permit renewal fees.

Urgency Ordinance

Typically an ordinance if introduced by the City Council must have one additional reading before it is adopted. Then the ordinance becomes effective 30 days after final adoption. In certain circumstances,

however, the City Council may adopt an ordinance as an urgency ordinance to take effect immediately upon its adoption when for reasons of public health, safety or welfare if there is an immediate need to do so. Staff believes such reasons exist in this case, which are enumerated in the attached draft urgency Ordinance No. 656 and include the significant parking and noise impacts short term rentals generate in the community.

Adopting an urgency ordinance and, at the same time, introducing a non-urgency ordinance is not typical but not unusual. If, for example, the urgency ordinance were challenged on grounds that sufficient reasons did not exist to warrant the urgency ordinance, in all likelihood by the time such challenge were adjudicated, the non-urgency ordinance would be in effect. When the non-urgency ordinance is effective, the City Council may rescind the urgency ordinance.

Moreover, the urgency Ordinance No. 656 contains the same language and provisions as Ordinance No. 655, with the exception of a 90-day amnesty period provided for in the urgency Ordinance No. 656. The amnesty period is intended to allow for any operating STRs to file, obtain approval, and satisfy the conditions of approval of the required permits from the City. Any STRs operating without required City permits after the amnesty period will be subject to Code enforcement action. Again, should the urgency ordinance be challenged, the amnesty period will have expired and persons who wish to engage in short term rentals will need to comply immediately with the provisions of the non-urgency ordinance.

Fiscal Impact

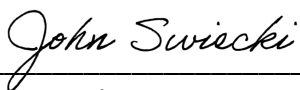
Adoption of the ordinance would likely realize a neutral to slightly positive fiscal impact to the City. Permit application and renewal fees would fund staff time and potential consultant firm fees. The City may realize slight increases in transient occupancy tax (TOT) returns as the draft ordinance requires that hosts pay TOT.

Measure of Success

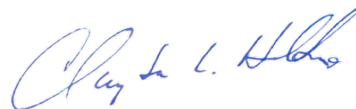
Short term rental regulations that protect the quality of life in Brisbane's residential neighborhoods, allow residents to make economic use of their property, and benefit the City's tourism economy.

Attachments

1. Draft Ordinance No. 655
2. Urgency Ordinance No. 656
3. Planning Commission agenda reports and minutes for January 9 and February 27, 2020 meetings



John Swiecki, Community Development Director



Clay Holstine, City Manager

RESOLUTION NO. RZ-2-19

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BRISBANE
RECOMMENDING APPROVAL OF ZONING TEXT AMENDMENT RZ-2-19
AMENDING THE BRISBANE MUNICIPAL CODE
TO REGULATE SHORT TERM RESIDENTIAL RENTALS
TO THE CITY COUNCIL

WHEREAS, rentals of residential dwellings for periods of 30 days or less, known as short term rentals, are currently prohibited by the Brisbane Municipal Code; and

WHEREAS, the prevalence of unpermitted short term rentals in Brisbane has increased significantly with the rise of web-based hosting platforms and other factors, which has led to increase enforcement activity and nuisance conditions in residential neighborhoods; and

WHEREAS, considering the foregoing, in January 2015, the City Council directed the Planning Commission to study the regulation of short term rentals, conduct public outreach, and make a recommendation to the City Council on short term rental regulations in Brisbane; and

WHEREAS, the Planning Commission conducted two public workshops and released a community survey, which collectively engaged over two hundred residents, and on April 23, 2015 recommended to the Council to retain the prohibition on short term rentals and recommended the question of whether to allow short term rentals in Brisbane be put to the voters; and

WHEREAS, on July 16, 2015, the City Council tasked the Planning Commission liaisons to conduct additional research with staff regarding impacts of short term rentals to quality of life and additional information on how other jurisdictions have regulated short term rentals; and

WHEREAS, from July 16, 2015 to November 28, 2018 staff conducted additional research and presented the information to the Planning Commission liaisons; and

WHEREAS, on February 7, 2019, the City Council considered the information and data collected to date and voted to initiate zoning text amendments to regulate short term rentals in residential dwellings; and

WHEREAS, on June 27, 2019, the Planning Commission held a public workshop to discuss regulatory options and issues related to short term rentals; and

WHEREAS, a nonscientific community survey was published from July 16 to August 31, 2019, which received 188 unique responses, and the Planning Commission hosted a stakeholder conversation attended by eight residents representing short term rental operators and residents; and

WHEREAS, on January 9, 2020 and February 27, 2020, the Planning Commission conducted a hearing of a draft ordinance regulating short term rentals, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the minutes of the Planning Commission meetings of January 9, 2020 and February 27, 2020 are attached and incorporated by reference as part of this resolution; and

WHEREAS, the project is categorically exempt from CEQA per State CEQA Guidelines Section 15301, and the exceptions to this categorical exemption referenced in Section 15300.2 of the CEQA Guidelines do not apply.

NOW, THEREFORE, based upon the evidence presented, both written and oral, the Planning Commission of the City of Brisbane hereby RECOMMENDS that the City Council adopt the attached ordinance.

AYES: Gooding, Mackin, Patel, Sayasane

NOES: None.

ABSENT: Gomez

Pamala Sayasane
PAMALA SAYASANE
Chairperson

ATTEST:

John Swiecki

JOHN SWIECKI, Community Development Director

ORDINANCE NO. 655

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING TITLE 17 OF THE BRISBANE MUNICIPAL CODE
TO REGULATE SHORT TERM RESIDENTIAL RENTALS**

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

SECTION 1: Section 17.02.235 – Dwelling of Chapter 17.02 of the Zoning Ordinance is amended to read as follows:

17.02.235 - Dwelling.

"Dwelling" means a place that is used as the personal residence of the occupants thereof, including transitional housing as defined in California Health and Safety Code Section 50675.2(h) and supportive housing as defined in California Health and Safety Code Sections 50675.14(b)(2) and (3). The term includes factory-built or manufactured housing, such as mobilehomes, but excludes trailers, campers, tents, recreational vehicles, hotels, motels, boarding houses and temporary structures.

- A. "Dwelling group" means a group of two (2) or more detached buildings located upon the same site, each of which contains one or more dwelling units.
- B. "Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for permanent residency by one household. Permanent residency shall mean continuous occupancy of the dwelling unit for a period of thirty (30) days or more.
- C. "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two (2) rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two (2) persons.
- D. "Accessory dwelling unit" means a separate dwelling unit created upon a site that contains a single-family dwelling or a multiple-family dwelling and for which an accessory dwelling unit permit or building permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the accessory dwelling unit may be within, attached to, or detached from the single-family or multiple-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "secondary dwelling unit" shall have the same meaning throughout this title.
- E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

SECTION 2: A new Chapter 17.35- Short term residential rentals is added to the Zoning Ordinance to read as follows:

17.35.010 - Purpose

The purpose of this Chapter is to regulate the short term rental of dwelling units to allow property owners to make economically viable use of their property, to provide diverse tourist lodging options in Brisbane, and to preserve the quality of life in Brisbane's residential neighborhoods.

17.35.020 - Definitions

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section:

- A. "Dwelling unit" shall have the same meaning as in Section 17.02.235 of Chapter 17.02 of this Title.
- B. "Host" shall mean the permanent resident of a dwelling unit who offers the dwelling unit for short term rental of less than thirty (30) days. A host must be a natural person who is either the owner of record of the dwelling unit offered for short term rental, an authorized trustee should the property be held in trust, a named lessee of the dwelling unit pursuant to a written agreement for the lease of such real property, or otherwise a natural person who can provide evidence that the dwelling unit is the person's permanent residence.
- C. "Hosted stay" shall mean a short term rental of a permanent residence by the host while the host is present from 8 p.m. to 8 a.m. during the entire term of the rental. Hosted stays include situations where the host has obtained City approval to leave the premises during a scheduled hosted stay to address an unforeseen emergency.
- D. "Hosting platform" shall mean any person or business entity, including but not limited to websites or mobile applications, that provides services to hosts for advertising, administering, collecting payment, and/or facilitating the collection of payment for short term rentals, whether the short term renter pays rent directly to the host or to the hosting platform.
- E. "Notice of violation" shall mean any code enforcement citation, order, ticket or similar notice of violation of this Chapter and all other provisions of the Brisbane Municipal Code relating to the condition of or activities at the subject property, issued by the Brisbane Community Development Department, Brisbane Police Department, or North County Fire Authority pursuant to Chapter 17.58 of this Title and Chapter 1.14, Chapter 1.16, and Chapter 1.18 of this Code.
- F. "Permanent resident" shall mean the resident of a dwelling unit who resides in the dwelling unit for at least 275 days out of a given, consecutive twelve (12) month period.
- G. "Permanent residence" shall mean the dwelling unit in which the permanent resident resides for at least two hundred seventy five (275) days out of a given, consecutive twelve (12) month period, the documentation of which may be confirmed by, but not be limited to, a driver's license, a vehicle registration certificate, State or Federal income tax statements, a statement from a banking institution or any other institution which has issued a credit card, or an executed residential lease for the dwelling unit.
- H. "Short term rental" shall mean the permanent residence of the host offered to a short term renter for financial compensation for the purpose of the short term renter's residing, sleeping or lodging purposes at the permanent residence for periods of less than thirty (30) consecutive calendar days. Portions of days shall be counted as full calendar days. Rooms or suites within hotels, transitional or supportive housing, or single-room-occupancy units, as such terms are defined in Chapter 17.02 of this Title, shall not be considered short term rentals.

Ord. No. 655

- I. “Short term renter” shall mean a person who rents a dwelling unit from the host for a period of less than thirty (30) consecutive calendar days. Portions of calendar days shall be counted as full calendar days.
- J. “Unhosted stay” shall mean any short term rental that is not a hosted stay as defined in 17.35.020.C.

17.35.030 – Short Term Rental Permit Procedures

- A. Permit Required. After ninety (90) calendar days from the effective date of this ordinance that adopts Chapter 17.35, no host shall conduct short term rental activity in the City of Brisbane without an approved short term rental permit issued by the City, pursuant to this Chapter.
- B. Permit Application. A host shall apply for a short term rental permit using forms provided by the City. At a minimum, the application shall provide the following information:
 - 1. The address of the permanent residence being used for short term rental;
 - 2. The name and contact information of the host;
 - 3. A statement indicating whether the host is the property owner or permanent resident;
 - 4. Evidence of the host’s permanent residence at the subject property;
 - 5. Notarized property owner authorization to conduct short term rental activity if the host is not the property owner;
 - 6. The number of habitable rooms to be provided for short term rental ;
 - 7. The number and location of existing parking spaces on the property;
 - 8. Evidence the host has acquired liability insurance in the amount of at least five hundred thousand dollars (\$500,000) specifically for short term rental activity within a permanent residence.
 - 9. An acknowledgement of compliance with the requirements of the City’s Zoning Ordinance, Municipal Codes, applicable health and safety standards;
 - 10. Authorization from the property owner for City staff to enter the dwelling unit proposed to be offered for short term rental to confirm compliance with life safety standards prior to permit issuance;
 - 11. Acknowledgment and authorization for the City to provide the address of the short term rental and the host’s contact information on a public registry; and
 - 12. Any other information as may be determined necessary by the Zoning Administrator.

The application shall be accompanied by a filing fee in an amount as established by resolution of the City Council.

- C. Permit Application Review by Zoning Administrator. The Zoning Administrator shall review the application for a short term rental. Once a complete application is received, the Zoning Administrator shall provide written notice of the application to occupants and owners of property to either side of, to the rear, and in front of the subject property. Additionally, notification of the application shall be sent to occupants and owners of property on both sides of the block in which the property is located. The notice shall state the details of the application and shall provide a twenty-one (21) day period commencing from the notice mailing date for written comments on the application to be submitted.
- D. Action on Permit Application by Zoning Administrator. Following closure of the twenty-one (21) day noticing period, the Zoning Administrator may issue the short term rental permit and shall notify all

parties who are named in subsection C of this Section 17.35.030 of permit issuance if the Zoning Administrator finds and determines that:

1. The application meets all operating standards and requirements of this Chapter;
 2. The dwelling unit to be offered for short term rental complies with life safety standards as certified by the applicant and confirmed by an on-site inspection by Building Department and/or North County Fire Authority staff; and
 3. The dwelling unit to be offered for short term rental is not the subject of an active code enforcement action or administrative citation from the City in the past twelve (12) months.
- E. Permit Validity. An issued short term rental permit shall be valid for an initial one-year period commencing from the date of final action on the permit application. An issued permit shall be valid only for the host or hosts named in the application and shall automatically expire upon sale or transfer of the subject property, or at such a time as the dwelling unit is no longer the permanent residence of the host. An issued short term rental permit may not be assigned, transferred, or loaned to any other person.
- F. Permit Suspension and Revocation. An issued short term rental permit may be suspended or revoked by the Zoning Administrator if the host or the conduct of the short term rental activity violates this Chapter or any other city, state, or federal regulation, ordinance or statute.
1. Suspension. The Zoning Administrator shall suspend a short term rental permit for a minimum of thirty (30) days, or as long as at least one notice of violation is open and unresolved, whichever is longer, upon issuance of two (2) notices of violation within a twelve (12) month period. Additionally, a permit may be suspended should the host fail to submit an annual certificate of insurance to the Community Development Department. The suspension shall become effective 15 days after the Zoning Administrator mails a notice of intent to suspend the permit to the host and to all such parties who are named in subsection C of this section 17.35.030. The violation(s) shall be processed in the manner described in Chapter 1.14 of this Code. Appeals of permit suspensions shall be processed in the manner described in Chapter 17.52 of this Title. Short term rental activity may commence after thirty (30) days or until the notice(s) of violation is/are resolved, whichever is longer.
 2. Revocation. The Zoning Administrator shall revoke a short term rental permit should three or more violations be sustained (after exhaustion of any related remedies) within any twelve (12) month period. The revocation shall become effective fifteen (15) calendar days after the mailing of a notice of intent to revoke to the permit to the host and to all such parties who are named in subsection C of this section 17.35.030. Appeals of permit revocations shall be processed in the manner described in Chapter 17.56 of this Title. Short term rentals may not be conducted at a dwelling unit following revocation of an issued permit for one (1) year from the date of final action on the revocation and the City's approval of a new short term rental permit.
- G. Permit Renewal.
1. The first short term rental permit issued shall expire one year after the date of final action on the initial permit application unless a permit renewal application is approved by the Zoning Administrator prior to the expiration date. A renewed permit shall be renewed for a subsequent two year period, except that the Zoning Administrator may renew the permit for a shorter period of time for factors including but not limited to the history of notices of violation and/or sustained suspensions during the life of the permit.
 2. The permit renewal application shall be accompanied by a filing fee in an amount as established by resolution of the City Council.

3. The host shall submit such information concerning the short term rental activity as may be required to enable the tax administrator to verify that the amount of tax paid complies with Chapter 3.24.
4. A safety inspection shall be conducted by the Building Department and/or North County Fire Authority prior to approval of each short term rental permit renewal to ensure the dwelling unit complies with the safety requirements of this Chapter and with general life safety standards under State law.
5. The Zoning Administrator shall approve a permit renewal application if it is found that the host has complied with all provisions of this Chapter, including requirements for tax payment, and the dwelling has passed a safety inspection. Notice of permit renewal shall be given to occupants and owners of property to either side of, to the rear, and in front of the subject property. Additionally, notification shall be sent to occupants and owners of property on both sides of the block in which the property is located.

17.35.040 Short term rental operational standards.

The following standards shall apply to the operation of short term rentals:

- A. **Unhosted Stays Prohibited.** This ordinance authorizes only hosted stays and prohibits unhosted stays, as such terms are defined in Section 17.35.020 of this Chapter.
- B. **Single-Family or Accessory Dwelling Units.** Short term rentals may only occur within legal single-family or accessory dwelling units, subject to the restrictions established in subsection C of this section 17.35.040. Notwithstanding the foregoing, short term rentals shall be prohibited on properties occupied by single-family dwellings with legal accessory dwelling units established on or after April 1, 2017.
- C. **Accessory Dwelling Units.** Short term rentals may not operate in accessory dwelling units established on or after April 1, 2017; provided, however, permanent residents of accessory dwelling units legally established prior to April 1, 2017 may apply to host a short term rental subject to all operational standards and limitations established by this Chapter.
- D. **Hosted Stays Unlimited.** There shall be no limit on the number of days habitable rooms within a permanent residence may be occupied as a short term rental during a hosted stay. The host shall be responsible for any nuisance complaints arising during short term rental activities during hosted stays. No more than two habitable rooms may be rented at any given time during a hosted stay, subject to the limitation on bookings as provided in subsection G of this section 17.35.040.
- E. **Short Term Rental Permit Number on Listings and Guest Materials.** Any listing advertising a short term rental and all materials provided to short term renters regarding applicable rules and regulations pertaining to their stay shall prominently display the permit number of the issued permit.
- F. **Insurance.** The host shall maintain adequate liability insurance in the amount of at least five hundred thousand dollars (\$500,000) specifically for short term rental activity within a permanent residence while the short term rental is occupied. The host shall annually submit insurance certificates to the Community Development Department.
- G. **Limitation on Bookings.** Individual rooms within a short term rental shall not be booked to separate, unrelated rental parties. If multiple listings are provided for the same residence, only one such listing may be booked on any given day, with the exception that check-out and check-in periods for separate bookings may occur on the same day.
- H. **Check-out and Check-in Times.** Short term renter check-out and check-in times shall typically occur after 7 AM and before 10 PM. Exceptions to the check-out and check-in times may be allowed only

in extenuating circumstances, including unforeseen changes or delays in a short term renter's travel schedule or illness of the host or the short term renter. At all times, the host shall ensure that short term renter check-in and check-out is conducted in such a manner as to not result in unreasonable noise or disturbance to neighboring properties.

- I. **Parking.** At least one parking space shall be made available per on-site per habitable room available to rent as a short term rental. Existing on-site parking spaces shall be made available to short term renters. No additional on-site parking shall be required for short-term rentals.
- J. **Occupancy Limits.** No more than two (2) overnight short term renters (not including children) between the hours of 10 PM and 7 AM are allowed per habitable room provided in the short term rental. No more than four (4) daytime persons (not including children) between the hours of 7 AM and 10 PM are allowed per habitable room provided in the short term rental.
- K. **Noise Prohibited.** There shall be no use of sound amplifying equipment. There shall be no evening outdoor congregations of more than eight (8) people (excluding children), regardless of the number of habitable rooms provided, after 10:00 pm. Short term rental stays are subject to the noise regulations in the Chapter 8.28 of the Municipal Code.
- L. **Safety.** Every host shall provide and maintain working fire extinguishers, smoke detectors, and carbon monoxide detectors, in compliance with fire, life and safety codes, and information related to emergency exit routes on the property.
- M. **Guide for Short Term Renters.** Every host shall provide a rental guide to short term renters that includes the operational standards listed in this Chapter, the contact information for the host , and other information to address behavioral, safety, security, and other standards.
- N. **Special Events Prohibited.** Weddings, corporate events, commercial functions, and any other similar events which have the potential to cause traffic, parking, noise or other problems in the neighborhood are prohibited from occurring at the short term rental property, as a component of short term rental activities.
- O. **Transient Occupancy Tax (TOT).** Short term rentals shall be subject to transient occupancy taxes pursuant to Chapter 3.24 of this Code. The host shall be responsible for collecting transient occupancy taxes and remitting them to the City, unless the host exclusively lists on hosting platforms that have signed a voluntary collection agreement (or equivalent) with the City.
- P. **Records of Compliance.** The host shall retain records documenting compliance with the requirements of this Chapter for each short term rental for a period of three (3) years, including but not limited to records showing payment of transient occupancy taxes by a hosting platform on behalf of a host. Upon reasonable notice, the host shall provide any such documentation to the Community Development Director or the Tax Administrator upon request for the purpose of inspection or audit.
- Q. **Public Registry.** The City shall maintain a registry accessible to the public of issued short term rental permits, including their address, the host name, and host contact information.

17.35.050 – Penalties

Failure to comply with any provisions of this Chapter will constitute a violation of this Chapter, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code, and will subject the holder of a short term rental permit to the suspension and revocation proceedings described in Section 17.35.030 of this Chapter.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not

Ord. No. 655

required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

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

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

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the 18th day of June, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

ORDINANCE NO. 656**AN URGENCY ORDINANCE OF THE CITY OF BRISBANE TO TAKE EFFECT
IMMEDIATELY UPON ITS ADOPTION
AMENDING TITLE 17 OF THE BRISBANE MUNICIPAL CODE
TO REGULATE SHORT TERM RESIDENTIAL RENTALS**

WHEREAS, the rental of residential dwellings for 30 or fewer days, known as short term rentals, is currently prohibited in Brisbane; and

WHEREAS, notwithstanding the current prohibition of short term rentals, the number of unpermitted, short term rentals in Brisbane has increased significantly due to web-based platforms and other factors, which has led to complaints from neighbors about noise, the parking of numerous vehicles on narrow streets in residential areas that has the potential to restrict access by emergency vehicles, and other public health, safety and welfare issues in Brisbane neighborhoods; and

WHEREAS, due to these complaints and parking impacts, the City has had to engage in increased enforcement activity and respond to nuisance conditions in residential neighborhoods; and

WHEREAS, the Planning Commission conducted a public workshop and two public hearings to discuss regulatory options concerning short term rentals and has made recommendations to the City Council; and

Whereas, the City Council conducted its own public hearing on proposed short term regulations on June 18, 2020, at which time it considered such testimony, the minutes and recommendations of the Planning Commission, and the City staff agenda report; and

WHEREAS, Government Code, Section 36937 allows a city to adopt an urgency ordinance to take effect immediately upon its adoption for the preservation of the public health, safety or welfare based on a finding of facts constituting the urgency thereof; and

WHEREAS, such an urgency ordinance requires a four-fifths vote (4 votes) of the City Council for adoption; and

WHEREAS, the City Council finds that without adopting this Ordinance residents in Brisbane neighborhoods will continue to be negatively impacted by the noise and parking caused by short term rentals, notwithstanding that short term rentals are not permitted; and

WHEREAS, unregulated short term rentals create immediate and unacceptable disruptions to the health, safety or welfare of Brisbane residents, especially those in residential neighborhoods; and

WHEREAS, based on the foregoing findings and other evidence presented to the City Council at its meeting, the City Council finds and determines that this Ordinance is urgently needed for the immediate preservation of the public health, safety or welfare and to avoid a current, immediate direct threat to the community; and

WHEREAS, adoption of this Ordinance is categorically exempt from the California Environmental Quality Act and CEQA Guidelines, Section 15301 and the exceptions to this categorical exemption referenced in Section 15330.2 do not apply.

NOW, THEREFORE, the City Council of the City of Brisbane hereby ordains as follows:

SECTION 1: Section 17.02.235 – Dwelling of Chapter 17.02 of the Zoning Ordinance is amended to read as follows:

17.02.235 - Dwelling.

"Dwelling" means a place that is used as the personal residence of the occupants thereof, including transitional housing as defined in California Health and Safety Code Section 50675.2(h) and supportive housing as defined in California Health and Safety Code Sections 50675.14(b)(2) and (3). The term includes factory-built or manufactured housing, such as mobilehomes, but excludes trailers, campers, tents, recreational vehicles, hotels, motels, boarding houses and temporary structures.

- A. "Dwelling group" means a group of two (2) or more detached buildings located upon the same site, each of which contains one or more dwelling units.
- B. "Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for permanent residency by one household. Permanent residency shall mean continuous occupancy of the dwelling unit for a period of thirty (30) days or more.
- C. "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two (2) rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two (2) persons.
- D. "Accessory dwelling unit" means a separate dwelling unit created upon a site that contains a single-family dwelling or a multiple-family dwelling and for which an accessory dwelling unit permit or building permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the accessory dwelling unit may be within, attached to, or detached from the single-family or multiple-family dwelling. An accessory dwelling unit shall include permanent provisions for living, sleeping, eating, cooking, and sanitation. The term "secondary dwelling unit" shall have the same meaning throughout this title.
- E. "Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established accessory dwelling unit that may be located within the same structure on upon the same site). The term includes employee housing for six (6) or fewer persons, residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.

SECTION 2: A new Chapter 17.35- Short term residential rentals is added to the Zoning Ordinance to read as follows:

17.35.010 - Purpose

The purpose of this Chapter is to regulate the short term rental of dwelling units to allow property owners to make economically viable use of their property, to provide diverse tourist lodging options in Brisbane, and to preserve the quality of life in Brisbane's residential neighborhoods.

17.35.020 - Definitions

For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms, and phrases set forth in this section have the meanings given to them in this section:

- A. “Dwelling unit” shall have the same meaning as in Section 17.02.235 of Chapter 17.02 of this Title.
- B. “Host” shall mean the permanent resident of a dwelling unit who offers the dwelling unit for short term rental of less than thirty (30) days. A host must be a natural person who is either the owner of record of the dwelling unit offered for short term rental, an authorized trustee should the property be held in trust, a named lessee of the dwelling unit pursuant to a written agreement for the lease of such real property, or otherwise a natural person who can provide evidence that the dwelling unit is the person’s permanent residence.
- C. “Hosted stay” shall mean a short term rental of a permanent residence by the host while the host is present from 8 p.m. to 8 a.m. during the entire term of the rental. Hosted stays include situations where the host has obtained City approval to leave the premises during a scheduled hosted stay to address an unforeseen emergency.
- D. “Hosting platform” shall mean any person or business entity, including but not limited to websites or mobile applications, that provides services to hosts for advertising, administering, collecting payment, and/or facilitating the collection of payment for short term rentals, whether the short term renter pays rent directly to the host or to the hosting platform.
- E. “Notice of violation” shall mean any code enforcement citation, order, ticket or similar notice of violation of this Chapter and all other provisions of the Brisbane Municipal Code relating to the condition of or activities at the subject property, issued by the Brisbane Community Development Department, Brisbane Police Department, or North County Fire Authority pursuant to Chapter 17.58 of this Title and Chapter 1.14, Chapter 1.16, and Chapter 1.18 of this Code.
- F. “Permanent resident” shall mean the resident of a dwelling unit who resides in the dwelling unit for at least 275 days out of a given, consecutive twelve (12) month period.
- G. “Permanent residence” shall mean the dwelling unit in which the permanent resident resides for at least two hundred seventy five (275) days out of a given, consecutive twelve (12) month period, the documentation of which may be confirmed by, but not be limited to, a driver’s license, a vehicle registration certificate, State or Federal income tax statements, a statement from a banking institution or any other institution which has issued a credit card, or an executed residential lease for the dwelling unit.
- H. “Short term rental” shall mean the permanent residence of the host offered to a short term renter for financial compensation for the purpose of the short term renter’s residing, sleeping or lodging purposes at the permanent residence for periods of less than thirty (30) consecutive calendar days. Portions of days shall be counted as full calendar days. Rooms or suites within hotels, transitional or supportive housing, or single-room-occupancy units, as such terms are defined in Chapter 17.02 of this Title, shall not be considered short term rentals.
- I. “Short term renter” shall mean a person who rents a dwelling unit from the host for a period of less than thirty (30) consecutive calendar days. Portions of calendar days shall be counted as full calendar days.
- J. “Unhosted stay” shall mean any short term rental that is not a hosted stay as defined in 17.35.020.C.

17.35.030 – Short Term Rental Permit Procedures

- A. **Permit Required.** After ninety (90) calendar days from the effective date of this ordinance that adopts Chapter 17.35, no host shall conduct short term rental activity in the City of Brisbane without an approved short term rental permit issued by the City, pursuant to this Chapter.
- B. **Permit Application.** A host shall apply for a short term rental permit using forms provided by the City. At a minimum, the application shall provide the following information:
1. The address of the permanent residence being used for short term rental;
 2. The name and contact information of the host;
 3. A statement indicating whether the host is the property owner or permanent resident;
 4. Evidence of the host's permanent residence at the subject property;
 5. Notarized property owner authorization to conduct short term rental activity if the host is not the property owner;
 6. The number of habitable rooms to be provided for short term rental ;
 7. The number and location of existing parking spaces on the property;
 8. Evidence the host has acquired liability insurance in the amount of at least five hundred thousand dollars (\$500,000) specifically for short term rental activity within a permanent residence.
 9. An acknowledgement of compliance with the requirements of the City's Zoning Ordinance, Municipal Codes, applicable health and safety standards;
 10. Authorization from the property owner for City staff to enter the dwelling unit proposed to be offered for short term rental to confirm compliance with life safety standards prior to permit issuance;
 11. Acknowledgment and authorization for the City to provide the address of the short term rental and the host's contact information on a public registry; and
 12. Any other information as may be determined necessary by the Zoning Administrator.
- The application shall be accompanied by a filing fee in an amount as established by resolution of the City Council.
- C. **Permit Application Review by Zoning Administrator.** The Zoning Administrator shall review the application for a short term rental. Once a complete application is received, the Zoning Administrator shall provide written notice of the application to occupants and owners of property to either side of, to the rear, and in front of the subject property. Additionally, notification of the application shall be sent to occupants and owners of property on both sides of the block in which the property is located. The notice shall state the details of the application and shall provide a twenty-one (21) day period commencing from the notice mailing date for written comments on the application to be submitted.
- D. **Action on Permit Application by Zoning Administrator.** Following closure of the twenty-one (21) day noticing period, the Zoning Administrator may issue the short term rental permit and shall notify all parties who are named in subsection C of this Section 17.35.030 of permit issuance if the Zoning Administrator finds and determines that:
1. The application meets all operating standards and requirements of this Chapter;
 2. The dwelling unit to be offered for short term rental complies with life safety standards as certified by the applicant and confirmed by an on-site inspection by Building Department and/or North County Fire Authority staff; and
 3. The dwelling unit to be offered for short term rental is not the subject of an active code enforcement action or administrative citation from the City in the past twelve (12) months.

Urgency Ord. No. 656

- E. **Permit Validity.** An issued short term rental permit shall be valid for an initial one-year period commencing from the date of final action on the permit application. An issued permit shall be valid only for the host or hosts named in the application and shall automatically expire upon sale or transfer of the subject property, or at such a time as the dwelling unit is no longer the permanent residence of the host. An issued short term rental permit may not be assigned, transferred, or loaned to any other person.
- F. **Permit Suspension and Revocation.** An issued short term rental permit may be suspended or revoked by the Zoning Administrator if the host or the conduct of the short term rental activity violates this Chapter or any other city, state, or federal regulation, ordinance or statute.
1. **Suspension.** The Zoning Administrator shall suspend a short term rental permit for a minimum of thirty (30) days, or as long as at least one notice of violation is open and unresolved, whichever is longer, upon issuance of two (2) notices of violation within a twelve (12) month period. Additionally, a permit may be suspended should the host fail to submit an annual certificate of insurance to the Community Development Department. The suspension shall become effective 15 days after the Zoning Administrator mails a notice of intent to suspend the permit to the host and to all such parties who are named in subsection C of this section 17.35.030. The violation(s) shall be processed in the manner described in Chapter 1.14 of this Code. Appeals of permit suspensions shall be processed in the manner described in Chapter 17.52 of this Title. Short term rental activity may commence after thirty (30) days or until the notice(s) of violation is/are resolved, whichever is longer.
 2. **Revocation.** The Zoning Administrator shall revoke a short term rental permit should three or more violations be sustained (after exhaustion of any related remedies) within any twelve (12) month period. The revocation shall become effective fifteen (15) calendar days after the mailing of a notice of intent to revoke to the permit to the host and to all such parties who are named in subsection C of this section 17.35.030. Appeals of permit revocations shall be processed in the manner described in Chapter 17.56 of this Title. Short term rentals may not be conducted at a dwelling unit following revocation of an issued permit for one (1) year from the date of final action on the revocation and the City's approval of a new short term rental permit.
- G. **Permit Renewal.**
1. The first short term rental permit issued shall expire one year after the date of final action on the initial permit application unless a permit renewal application is approved by the Zoning Administrator prior to the expiration date. A renewed permit shall be renewed for a subsequent two year period, except that the Zoning Administrator may renew the permit for a shorter period of time for factors including but not limited to the history of notices of violation and/or sustained suspensions during the life of the permit.
 2. The permit renewal application shall be accompanied by a filing fee in an amount as established by resolution of the City Council.
 3. The host shall submit such information concerning the short term rental activity as may be required to enable the tax administrator to verify that the amount of tax paid complies with Chapter 3.24.
 4. A safety inspection shall be conducted by the Building Department and/or North County Fire Authority prior to approval of each short term rental permit renewal to ensure the dwelling unit complies with the safety requirements of this Chapter and with general life safety standards under State law.
 5. The Zoning Administrator shall approve a permit renewal application if it is found that the host has complied with all provisions of this Chapter, including requirements for tax payment, and the

dwelling has passed a safety inspection. Notice of permit renewal shall be given to occupants and owners of property to either side of, to the rear, and in front of the subject property. Additionally, notification shall be sent to occupants and owners of property on both sides of the block in which the property is located.

17.35.040 Short term rental operational standards.

The following standards shall apply to the operation of short term rentals:

- A. **Unhosted Stays Prohibited.** This ordinance authorizes only hosted stays and prohibits unhosted stays, as such terms are defined in Section 17.35.020 of this Chapter.
- B. **Single-Family or Accessory Dwelling Units.** Short term rentals may only occur within legal single-family or accessory dwelling units, subject to the restrictions established in subsection C of this section 17.35.040. Notwithstanding the foregoing, short term rentals shall be prohibited on properties occupied by single-family dwellings with legal accessory dwelling units established on or after April 1, 2017.
- C. **Accessory Dwelling Units.** Short term rentals may not operate in accessory dwelling units established on or after April 1, 2017; provided, however, permanent residents of accessory dwelling units legally established prior to April 1, 2017 may apply to host a short term rental subject to all operational standards and limitations established by this Chapter.
- D. **Hosted Stays Unlimited.** There shall be no limit on the number of days habitable rooms within a permanent residence may be occupied as a short term rental during a hosted stay. The host shall be responsible for any nuisance complaints arising during short term rental activities during hosted stays. No more than two habitable rooms may be rented at any given time during a hosted stay, subject to the limitation on bookings as provided in subsection G of this section 17.35.040.
- E. **Short Term Rental Permit Number on Listings and Guest Materials.** Any listing advertising a short term rental and all materials provided to short term renters regarding applicable rules and regulations pertaining to their stay shall prominently display the permit number of the issued permit.
- F. **Insurance.** The host shall maintain adequate liability insurance in the amount of at least five hundred thousand dollars (\$500,000) specifically for short term rental activity within a permanent residence while the short term rental is occupied. The host shall annually submit insurance certificates to the Community Development Department.
- G. **Limitation on Bookings.** Individual rooms within a short term rental shall not be booked to separate, unrelated rental parties. If multiple listings are provided for the same residence, only one such listing may be booked on any given day, with the exception that check-out and check-in periods for separate bookings may occur on the same day.
- H. **Check-out and Check-in Times.** Short term renter check-out and check-in times shall typically occur after 7 AM and before 10 PM. Exceptions to the check-out and check-in times may be allowed only in extenuating circumstances, including unforeseen changes or delays in a short term renter's travel schedule or illness of the host or the short term renter. At all times, the host shall ensure that short term renter check-in and check-out is conducted in such a manner as to not result in unreasonable noise or disturbance to neighboring properties.
- I. **Parking.** At least one parking space shall be made available per on-site per habitable room available to rent as a short term rental. Existing on-site parking spaces shall be made available to short term renters. No additional on-site parking shall be required for short-term rentals.
- J. **Occupancy Limits.** No more than two (2) overnight short term renters (not including children) between the hours of 10 PM and 7 AM are allowed per habitable room provided in the short term

rental. No more than four (4) daytime persons (not including children) between the hours of 7 AM and 10 PM are allowed per habitable room provided in the short term rental.

- K. Noise Prohibited. There shall be no use of sound amplifying equipment. There shall be no evening outdoor congregations of more than eight (8) people (excluding children), regardless of the number of habitable rooms provided, after 10:00 pm. Short term rental stays are subject to the noise regulations in the Chapter 8.28 of the Municipal Code.
- L. Safety. Every host shall provide and maintain working fire extinguishers, smoke detectors, and carbon monoxide detectors, in compliance with fire, life and safety codes, and information related to emergency exit routes on the property.
- M. Guide for Short Term Renters. Every host shall provide a rental guide to short term renters that includes the operational standards listed in this Chapter, the contact information for the host , and other information to address behavioral, safety, security, and other standards.
- N. Special Events Prohibited. Weddings, corporate events, commercial functions, and any other similar events which have the potential to cause traffic, parking, noise or other problems in the neighborhood are prohibited from occurring at the short term rental property, as a component of short term rental activities.
- O. Transient Occupancy Tax (TOT). Short term rentals shall be subject to transient occupancy taxes pursuant to Chapter 3.24 of this Code. The host shall be responsible for collecting transient occupancy taxes and remitting them to the City, unless the host exclusively lists on hosting platforms that have signed a voluntary collection agreement (or equivalent) with the City.
- P. Records of Compliance. The host shall retain records documenting compliance with the requirements of this Chapter for each short term rental for a period of three (3) years, including but not limited to records showing payment of transient occupancy taxes by a hosting platform on behalf of a host. Upon reasonable notice, the host shall provide any such documentation to the Community Development Director or the Tax Administrator upon request for the purpose of inspection or audit.
- Q. Public Registry. The City shall maintain a registry accessible to the public of issued short term rental permits, including their address, the host name, and host contact information.
- R. Amnesty Period for Short-Term Rentals. Notwithstanding any other provision of law, any host conducting short term rental activity on or before the enactment of this ordinance shall be considered an unpermitted use. An amnesty period of ninety (90) days after the effective date of this ordinance is being offered to allow any unpermitted uses to be permitted by conforming to the requirements of this Chapter including obtaining a permit, complying with operating standards, and meeting recordkeeping obligations. Transient Occupancy Tax payments continue to be required at all times for short term rentals and must be collected and paid during the amnesty period. Applications to bring an existing, unpermitted short term rental use into compliance shall be made within ninety (90) days of the effective date of this ordinance.

17.35.050 – Penalties

Failure to comply with any provisions of this Chapter will constitute a violation of this Chapter, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code, and will subject the holder of a short term rental permit to the suspension and revocation proceedings described in Section 17.35.030 of this Chapter.

SECTION 3: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not

Urgency Ord. No. 656

required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

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

SECTION 5: URGENCY ORDINANCE: EFFECTIVE IMMEDIATELY. This Ordinance is an urgency ordinance shall be in full force and effect immediately upon adoption.

* * *

The above and foregoing Ordinance was regularly passed and adopted on an urgency basis by a super majority of the Council of the City of Brisbane at a regular meeting of the City Council of the City of Brisbane held June 18, 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 2/27/2020

SUBJECT: **Zoning Text Amendment RZ-2-19;** Zoning Text Amendments to adopt regulations for short term residential rentals by adding a new Chapter 17.35 to the Brisbane Municipal Code; Citywide; City of Brisbane, applicant.

SUPPLEMENTAL REPORT

BACKGROUND: This application was continued from the meeting of January 9, 2020 to allow staff to follow up on questions on the draft regulations posed by the Planning Commission as well as members of the public. The January 9 staff report is attached for reference.

During the public hearing, the public and Commission both raised questions regarding: current code enforcement status; implementation and enforcement of the draft ordinance; how new State laws regarding rental control and just cause eviction could impact the long term rental market; and hosting platforms' policies regarding transferring fiscal penalties from the City to guests. These issues are further discussed below.

Code Enforcement Issues

- Current Code Enforcement Status

In December 2014, a citizen complaint was filed against all properties in Brisbane with an active Airbnb listing (seven at the time the complaint was filed). These properties were issued a Notice to Correct as short term rentals are not permitted in residential districts, with the correction being to remove their listing on Airbnb. On January 15, 2015, the City Council directed the Planning Commission to study the issue and make recommendations to the Council. The Council also directed staff to put current enforcement efforts in abeyance until such a time as the Council made a final decision on whether or not to regulate short term rentals. The cited parties were contacted in writing to inform them of the abeyance in enforcement activity.

As the study of the issue has continued to this day, enforcement of the prohibition of short term rentals remains in abeyance until the Council provides direction otherwise. However, quality of life issues associated with short term rentals, such as noise/party complaints, illegal parking, trash and debris overflow, **are actively enforced.** In regard to inquiries regarding the establishment of short term rentals, staff responds that such uses are not permitted under the Municipal Code.

- Implementation and Enforcement of Proposed Ordinance

RZ-2-19

February 27, 2020 Meeting

Page 2 of 4

Quality of Life and Neighborhood Compatibility

Concerns were raised regarding how the ordinance would protect the neighborhood from nuisances, including loud and disruptive noise or illegal or excessive parking. Section 17.35.040.H of the draft ordinance requires the host (permanent resident; either property owner or long-term tenant with permission of property owner to operate short term rentals) to provide current contact information for the host, or a local contact person (in the case of unhosted rentals) who can respond within 30 minutes to resolve any complaints from neighbors. This contact information would be included on the notice sent to occupants and owners of property to either side of, to the rear, and in front of the subject property, and occupants and owners of property on both sides of the block in which the property is located. The contact information would also be provided to the Police Department and code enforcement staff. Neighbors would be able to call the host or local contact person directly, or call the Police Department to report any immediate or on-going issues.

According to the Police Chief, the Police Department has responded to calls in the past five years related to short term rental activity; primarily noise, parking, and trash/debris, falling under the “quality of life” category. There have been **no documented cases or calls related to criminal activity**, including sex trafficking or other illicit activity. Quality of life complaints are kept confidential and the complainant may remain anonymous or may provide their name and contact information if they want a call back from the responding officers.

The Police Department will remain available to respond 24 hours a day, seven days per week to these types of complaints, regardless of who is responsible for the disturbance (short term renters, long term renters, property owners, or guests). Additionally, while the Community Development Department does not have direct access to the Police Department’s call logs or case logs, the Police Department routinely shares its call and enforcement activity with the Community Development Department for follow-up as necessary. Call and enforcement activity would be integrated into the permit record for a short term rental permit using existing City systems and procedures. As discussed further below, the City could potentially contract with an outside company (vendor) to administer its approved short term rental program. Such a contract could involve the vendor providing a “hotline” for complainants to call if they do not want to call the Police Department directly. Under this approach, the vendor acts as the point of contact for neighbors and contacts the host or local contact person directly.

Limitations on Listings and Rooms

The draft ordinance includes a 60-night limitation on unhosted rentals, limitation of the number of rooms rented during a hosted stay, tax collection requirements, and other performance standards that will be fairly resource intensive, but feasible, for staff to administer manually, with the costs partially offset by permit fees and taxes. As noted above, a vendor administering the program on behalf of the City could provide a suite of robust enforcement services, including a “hotline” for complainants as noted above, as well as automated data collection for listing and booking activity to confirm whatever limitations are set forth in the ordinance are being adhered to. The vendor could also monitor and administer tax collection. The fees for such

RZ-2-19

February 27, 2020 Meeting

Page 3 of 4

services would be recouped by charging annual registration or renewal fees for short term rental permits. If a short term rental ordinance is adopted the City Council would ultimately determine how such a program is administered.

Suspending or Revoking a Permit, Plus Financial Penalties

- Permit Suspension or Revocation

Section 17.35.030.F of the draft ordinance outlines recommendations for suspending an issued short term rental permit (two sustained violations within a given six month period) and revocation (three sustained violations within a given 12 month period). The Commission could modify those provisions to be less lenient. Should the permit be revoked, the host must wait at least one year before re-applying for a permit. Additionally, per Section 17.35.030.G of the draft ordinance specifies that when considering an application for renewal of a short term rental permit, staff may renew permits for a shorter time if warranted by past sustained complaints or permit suspension activity.

- Penalties and Fees for Code Violations

Financial penalties for violations of the Municipal Code are established in BMC Chapter 1.14. Violations of the zoning ordinance are considered infractions per BMC Chapter 17.58. Infractions are fined at \$100 for a first offense, \$200 for a second offense of the ordinance within 12 consecutive months, and \$500 for each additional offense within 12 consecutive months. Chapter 1.14 allows infractions to be charged as misdemeanors if the defendant has three or more violations within 12 consecutive months, or four or more violations within 24 consecutive months. (BMC Section 1.14.020) Misdemeanors are fined at up to \$1,000. The draft ordinance could specify a different or higher amount of fines for violations of the short term rental regulations per BMC Section 1.14.030.

- Relationship between Fines and Hosting Platforms

A question was raised whether penalties imposed on a host could be passed on by the host to the guest, assuming the issue was related to guest behavior. Staff was unable to locate clear written guidelines addressing this specific issue. However, it can be clearly stated that Airbnb, or any other hosting platform, would not be involved in the assessment and collection of fines or penalties by the City. The City would fine the host, and the host would be responsible for fine payment. Airbnb policies discourage hosts and guests to conduct any financial activity outside of Airbnb, and there does not appear to be a clear mechanism to extract an additional fee from a guest after the stay is completed. It appears the host could submit a claim to the guest through Airbnb, which would be mediated by Airbnb.

Tenant Protection Act and Short Term Rental Market

A question was raised on January 9 whether the new Tenant Protection Act of 2019 (AB 1482) provisions for rent control and just cause eviction in rental properties could inspire more

RZ-2-19

February 27, 2020 Meeting

Page 4 of 4

landlords to pivot from long-term rentals into short term rentals. Staff cannot speculate on the widespread impacts of AB 1482 for landlords and the long-term rental market in general, but can provide some clarifying information on the law's provisions.

AB 1482 **does not apply** to rentals in owner-occupied properties, including single-family dwellings or duplexes. It also **does not apply** to single-family homes or condominiums that are owned by a natural person - not a corporation - that are solely tenant occupied. The law requires property owners to notify their tenants in writing of the exemption from AB 1482. Because the draft ordinance would restrict short term rentals to be hosted only by permanent residents of the property (either the property owner or long-term renter with permission of the owner), the draft ordinance would not allow property owners to rent out their properties exclusively for short term rental use.

Written Correspondence

Written correspondence received prior to publication of this agenda report is attached for the Commission's reference.


RECOMMENDATION: Recommend City Council approval of the draft ordinance via adoption of Resolution RZ-2-19.

Other alternatives available to the Planning Commission include:

- Recommend City Council approval of the draft ordinance as modified by the Commission per the Commission's deliberation this evening.
- Recommend City Council denial of the draft ordinance in its entirety and maintain the current prohibition on short term residential rentals.

ATTACHMENTS:

- ~~Draft Resolution RZ-2-19 and draft ordinance (including ordinance revisions in redline to correct typographical errors from the January 9, 2020 staff report)~~
- January 9, 2020 Planning Commission staff report ~~and draft meeting minutes~~
- Written communications


Julia Ayres, Senior Planner


John Swiecki, Community Development Director



MEMORANDUM

DATE: 1/09/2020
 TO: Planning Commission
 FROM: John Swiecki, Community Development Director, via Julia Ayres, Senior Planner
 SUBJECT: **RZ-2-19 Errata Sheet**

Staff is recommending the following changes to the draft resolution attached to the agenda report for Zoning Text Amendment RZ-2-19:

- Draft Ordinance Title (page G.1.11)
 - o Correct title of draft ordinance to read as follows:

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING TITLE 17 OF THE
 BRISBANE MUNICIPAL CODE TO REGULATE SHORT TERM RESIDENTIAL
 RENTALS

- Subsection 17.35.040.B of the draft ordinance (page G.1.15)
 - o Amend subsection to read as follows:

B. Accessory Dwelling Units. Short term rentals may not operate in accessory dwelling units established on or after April 1, 2017; provided, however, permanent residents of accessory dwelling units legally established prior to ~~January 1, 2020~~ April 1, 2017 may apply to host a short term rental subject to all operational standards and limitations established by this Chapter.

These amendments should be referenced in any motion to adopt the draft resolution, with or without any additional amendments per the Commission's discussion this evening.

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 1/9/2020

SUBJECT: Zoning Text Amendment RZ-2-19; Zoning Text Amendments to adopt regulations for short term residential rentals by adding a new Chapter 17.35 to the Brisbane Municipal Code; City of Brisbane, applicant; Citywide.

REQUEST: Recommend City Council adoption of proposed zoning text amendments to adopt short term rental regulations.

RECOMMENDATION: Approve Zoning Text Amendment RZ-2-19 via adoption of Resolution RZ-2-19 containing the findings and conditions of approval.

ENVIRONMENTAL DETERMINATION: The project is categorically exempt from the provisions of the California Environmental Quality Act per Section 15301 of the CEQA Guidelines. The exceptions to this categorical exemption referenced in Section 15300.2 do not apply.

APPLICABLE CODE SECTIONS: “Dwelling” is defined in Chapter 17.02, Definitions, of the Brisbane Municipal Code (BMC). Zoning districts that allow residential dwellings are the R-1 Residential District (BMC Chapter 17.06), R-2 Residential District (BMC Chapter 17.08), R-3 Residential District (BMC Chapter 17.10), R-BA Residential District (BMC Chapter 17.12), Neighborhood Commercial District (BMC Chapter 17.14), and Southwest Bayshore District (BMC Chapter 17.16).

ANALYSIS AND FINDINGS:

Background

Under current Brisbane Municipal Code regulations, rentals of rooms or entire dwellings for less than 30 days (short term rentals, or STRs) are not permitted in residential zoning districts. Initially arising as a code enforcement complaint in 2014, with the advent of web-based short term rental listing sites such as Airbnb.com and VRBO.com and subsequent increase in operations of such rentals in Brisbane, the Brisbane City Council and Planning Commission have studied the issue through workshops, community surveys, stakeholder conversations, and public meetings.

On February 7, 2019, the City Council formally initiated zoning text amendments to allow limited short term rentals in residential dwellings subject to a permit requirement and operating limitations (refer to Attachment B). The draft ordinance before the Commission tonight incorporates direction from the City Council, as well as feedback from the Commission’s June 27, 2019 workshop, the summer 2019 community survey, and August 2019 community stakeholder conversation.

RZ-2-19

January 9, 2020 Meeting

Page 2 of 5

Draft Ordinance

➤ Who May Host?

Discussion: There has been robust debate whether long-term renters should be able to host STRs and whether STRs should be allowed in multiple-family dwellings. Concerns include lack of property owner oversight and amplified impacts of transient guests in dwellings with shared walls, floors, and ceilings. Several STR hosts in Brisbane are long-term renters who would be impacted should the ordinance ban short term rentals by long-term renters. No known STR hosts are residents of multiple-family dwellings.

Draft Ordinance: The draft ordinance would allow STRs only in single-family dwellings by permanent occupants of the dwelling, who reside there for at least six months out of the year. To allow responsible tenants to operate or continue to operate STRs, the draft ordinance would require hosts to provide notarized authorization by the property owner to apply for a short term rental permit. The ordinance requires the host to provide evidence that the dwelling is their permanent residence, such as a utility bill, driver's license, credit card statement, or other such documentation.

➤ How Does a Host Obtain a Permit?

Discussion: At the Commission's June 27, 2019 workshop, the Commission recommended that short term rental permit applications be subject to Zoning Administrator review.

Draft Ordinance: The Zoning Administrator would review and approve or deny a short term rental permit application. The host would submit a permit application (along with a fee as adopted by the City Council) containing detailed information about the proposed STR activity and demonstrating their permanent residency in the dwelling. The Zoning Administrator would mail a notice of the application to occupants and owners of property on either side, behind, and in front of the subject property, as well as the block the property is on. Neighbors would have 21 days to provide written comments to the Zoning Administrator before the Zoning Administrator would take action on the permit. The Zoning Administrator would approve a permit if:

- The application meets all the requirements of the ordinance;
- The dwelling complies with life safety standards, confirmed by an on-site inspection before approving the permit; and
- The dwelling has not been the subject of an active code enforcement action or administrative citation from the City at least one year prior to the application submittal.

➤ How Long is a Permit Valid? Can it be Suspended or Revoked?

Discussion: The Commission and community want STR hosts be held accountable for quality of life standards and the safety of both renters and community members.

Draft Ordinance: An STR permit would be valid for two years. The Zoning Administrator could renew the permit if the host had complied with the ordinance in the initial two year period and if the dwelling passed a safety reinspection. The Zoning Administrator may renew the permit for another two years, or a lesser period of time at their discretion, depending on the conduct of the

RZ-2-19

January 9, 2020 Meeting

Page 3 of 5

host during the initial two year period. Notice of the renewal would be mailed to all neighbors originally notified of the permit.

The Zoning Administrator may suspend a permit if two code enforcement citations, orders, tickets or other notice of violation of any chapters of the BMC were issued to the host within six months. The permit would be suspended for 30 days or until the violation is cured, whichever is longer. If three or more notices of violation are issued to the host within a twelve month period, the Zoning Administrator would initiate proceedings to revoke the permit. The proposed permit renewal, suspension, and revocation procedures provide accountability and allow the City to take a proactive approach in remedying repeated violations of the City's noise, health and safety, and zoning regulations.

➤ **Would Short Term Rentals be Allowed in Accessory Dwelling Units?**

Discussion: In initiating the zoning text amendments, the City Council directed that ADUs should not be rented primarily as STRs, due to the conflict between STRs providing transient occupancy and the City's intent for ADUs to provide long-term housing. The Commission and many community members have echoed that concern, while other community members have voiced concern with limiting the rights of property owners. It should be noted that the State of California has preemptively prohibited short term rentals in most ADUs established after January 1, 2020, depending on the size and type of ADU.

Draft Ordinance: STRs would be allowed only in ADUs that were legally established before April 1, 2017, the date the first amendments to the City's ADU laws became effective pursuant to new State laws intended to encourage ADUs to provide long-term housing. In order to operate an STR in an ADU established legally before that date, the host would have to be the permanent resident of the ADU. This means the ordinance would not allow a property owner residing in the main dwelling to offer an ADU exclusively for STRs.

➤ **How Many Days May STRs Operate?**

Discussion: Hosted stays refer to STRs where the host is present on the property throughout the rental period. Unhosted stays refer to STRs where the host is not present on the property. Concerns with unhosted stays include lack of accountability for noise and other public nuisance and quality of life complaints, as well as the possibility of large events or parties. In initiating the zoning text amendments, the City Council preliminarily directed consideration be given to allow for unlimited hosted stays with unhosted stays capped at no more than 90 days per calendar year.

Draft Ordinance: The draft ordinance would cap unhosted stays at no more than 60 days a year. A host applying for an STR permit for unhosted stays would be required to provide at least one local contact person who would be responsible for receiving and responding to complaints, to be at the property within 30 minutes of receiving a complaint, and to resolve all complaints in the host's absence. Lack of response by a local contact person pursuant to these requirements would constitute a violation of the ordinance.

➤ **What Rules would Apply to Hosts and Guests?**

Discussion: In order to maintain the quality of life for residents in the vicinity, most STR ordinances include "good neighbor" policy requirements for hosts and guests.

RZ-2-19

January 9, 2020 Meeting

Page 4 of 5

Draft Ordinance: The ordinance would address quality of life concerns in the following manner:

- No more than two habitable rooms may be rented at any given time during a hosted stay. No limit would apply to unhosted stays. On-site parking requirements would apply to both hosted or unhosted stays, as noted below.
- At least one on-site parking space per habitable room available for rent. Existing on-site parking spaces shall be made available to short term renters.
- At least one local contact person must be designated, who can respond to and resolve all nuisance calls and complaints within thirty minutes during unhosted stays.
- No more than two listings for the same permanent residence on the same days, and only one such listing may be booked on any given day.
- Guest check-out and check-in times between 7 AM and 10 PM, with limited exceptions in extenuating circumstances. The host is responsible to ensure that check-in and check-outs do not disturb neighbors.
- A maximum of two overnight guests (not including children) and a maximum of four daytime guests (not including children) per habitable room provided in the short term rental.
- Quiet hours beginning at 10 PM.
- Provide fire extinguishers, smoke detectors, and carbon monoxide detectors, and information related to emergency exit routes.
- Renter guide with good neighbor policies, host and local contact person contact information.
- Prohibit special events (weddings, corporate events, commercial functions, etc.)
- Payment of transient occupancy tax (currently 14%) would be required.

➤ **What Penalties would Apply to Violations of the Ordinance?**

Discussion: Penalties incentivize compliance with the provisions of an STR ordinance.

Draft Ordinance: The draft ordinance establishes that violation of the ordinance is an infraction under Title 1 of the BMC, subject to the fines and provisions for enhancement to misdemeanors contained in Chapter 1.14. These existing fines are sufficient to discourage violations of the ordinance.

➤ **How would the Ordinance be Enforced?**

Discussion: Enforcement of STR ordinances can be challenging due to the relative lack of cooperation between the large web-based hosting platforms and cities. Hosting platforms have demonstrated a commitment to protecting the privacy of their users by withholding data on the number of days a rental is rented and the identity of the host, along with other information most cities need to have in order to enforce compliance with their regulations. Some larger cities have negotiated data sharing agreements with web hosting platforms. Staff can pursue such an agreement with the major web hosting platforms, but notes that the small market share of Brisbane may likely impede such negotiations. Currently only large metropolitan cities such as New York have data sharing agreements in place.

Draft Ordinance: Unless otherwise directed by the City Council, staff would continue to approach STR enforcement similarly to other complaint-based code enforcement activities. Due to the City's small size, it may be reasonable for staff to confirm the location and operation of unpermitted STRs using information publicly available on web hosting platforms without unduly burdening staff time and resources. As drafted, the requirement to obtain a permit would be effective 90 days

RZ-2-19

January 9, 2020 Meeting

Page 5 of 5

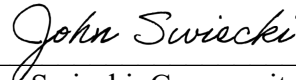
after the ordinance was adopted, to allow existing and potential STR hosts adequate time to comply with the permit application requirements.

ATTACHMENTS:

- A. ~~Draft Resolution RZ-2-19 (including draft ordinance)~~
- B. June 27, 2019 Planning Commission study session staff memo (with attachments)
- C. Summer 2019 nonscientific community survey summary results



Julia Ayres, Senior Planner



John Swiecki, Community Development Director

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MEMORANDUM

DATE: 06/27/2019
 TO: Planning Commission
 FROM: Julia Ayres, Associate Planner, and Emilio Flamenco, Planning Intern, via John Swiecki, Community Development Director
 SUBJECT: **Workshop: Short Term Rental Ordinance**

BACKGROUND

In late 2014, code enforcement complaints were filed against all short term rental (STRs) listings in Brisbane listed on Airbnb.com. STRs are regulated in the Brisbane Municipal Code (BMC) as commercial hotel land uses (BMC Section 17.02.420), permitted to operate only within commercial zoning districts (SP-CRO, SCRO-1, and C-1 districts), and subject to the Transient Occupancy Tax under the Revenue and Finance Code. STRs are currently not permitted in residential zoning districts.

Subsequent to receiving the complaints, in January 2015, City Council directed staff and the Planning Commission to study the issue of STR regulation in other jurisdictions and ultimately make a recommendation to Council regarding whether STRs should be permitted. Following two well-attended public workshops by the Planning Commission and a community survey that yielded 188 unique responses, community feedback indicated a 50/50 split in community opinions regarding whether the City should adopt regulations to allow STRs or continue to prohibit them. As a result, the Planning Commission in April 2015 made no land use recommendation, instead suggesting that the matter be decided by the voters.

In July 2015, the City Council directed staff to do more research on STR regulations in other jurisdictions. Following additional staff research and direction from the City Council's Planning Issues Subcommittee, in February 2019 the City Council directed the Commission to initiate a zoning text amendment to create a STR ordinance (STRO) permitting STRs to operate in the City's residential districts, subject to certain regulations, as discussed below.

DISCUSSION

The purpose of tonight's workshop is to review the City Council's direction as to the desired components of a STR ordinance (STRO), and to discuss other policy components the Council did not provide specific direction on. Tonight's discussion will inform staff's preparation of a draft ordinance for future review by the Commission and the public at a public hearing.

City Council direction on specific policy components

- Occupancy Requirement – The STRO must contain a residency requirement

clause, per Council's direction. This means that operators of STRs must reside on the property as their primary place of residence. This requirement is intended to ensure more orderly operation of STRs and minimize common neighborhood nuisance concerns that may arise from STRs.

- Hosted vs non-hosted- *Hosted rentals* occur when rooms are rented by the owner while the owner is physically occupying the property. The City Council has directed that the STR ordinance allow hosted rentals with no time limits. Hosted rentals are usually associated with fewer noise complaints or other issues, due to the presence of the owner on-site.

Unhosted rentals, conversely, are rentals of entire homes or dwelling units with no owner physically occupying the site. Council has directed that whole home, unhosted rentals shall be limited to anywhere between 30-90 days per calendar year. This provision is intended to allow reasonable rentals of entire homes or dwelling units in the owner's absence (e.g., while on vacation) while preventing business entities or investors from buying dwelling units and converting them exclusively to STR use and thereby removing a housing unit from the City's permanent housing supply.

- Revenue-Capture Mechanisms- Council has directed that STRs be subject to revenue-capture mechanisms, including business licenses and Transient Occupancy Tax (TOT).
- Notice to Neighbors/"Good Neighbor" Policies- The STRO must require neighbor notification at some point during the STR approval process. The particular time and manner in which the notification should be provided is subject to the Commission's discussion. Many cities require a notice radius on adjacent buildings of 300 feet from the STR unit, which may be required either before or after the issuance of a permit. This can take the form of displaying the permit in a conspicuous location on-site, or mailing neighbors directly. Additionally, Council directed that the ordinance require ongoing compliance with "Good Neighbor" policies/practices (noise, parking, garbage, etc.) with failure to comply with these measures as grounds for permit revocation.
- Homeowner Insurance Requirement- Council directed any adopted STRO to contain requirements for homeowners to prove they are adequately insured, such as property liability insurance documents.

Other Policy Considerations for STRs

While City Council provided very specific directives on what they would like Brisbane's STRO to contain, it is appropriate for the Planning Commission to discuss and provide feedback on other issues commonly addressed in STROs. Staff has summarized several policy components the Commission may want to consider, based on a comprehensive review of STR ordinances in other jurisdictions (see Attachment B), as

summarized below:

- Allow or Prohibit Operation in ADUs- At the February 7, 2019 Council meeting, public comment was given in support of allowing STRs to operate in accessory dwelling units (ADUs). These comments referenced the perceived benefit of having property owners on-site to reduce common nuisance issues, as well as to recognize the fact that many existing or hopeful STR operators in town would be precluded from operating STRs should they be banned in ADUs. The Planning Issues subcommittee had previously recommended prohibiting STRs to operate in ADUs to preserve ADUs for use by long-term renters as a permanent part of Brisbane's rental housing stock.
- Permit Process- STR applications could be processed either ministerially (staff level/administrative review), or on a discretionary basis. The former would consist of a permit issued by City staff, subject to compliance with defined standards, while the latter could be a conditional use permit or other special discretionary permit from the Planning Commission. Most cities surveyed issue ministerial permits that are renewed every one or two years.
- Parking- Adequate parking is a challenge in most of Central Brisbane's residential neighborhoods. While many other jurisdictions did not require any additional parking spaces beyond those already available on-site, the Commission may want to consider whether requiring additional parking may be warranted.
- Occupancy Limits- The City Council directed the Commission to study occupancy limits, whereby a permitted STR is restricted as to how many occupants can sleep or occupy the property during the time it is rented. Most jurisdictions establish occupancy limits at no more than two people per bedroom, plus two additional people, if more than one room is being rented. Some cities allow for twice this number during daytime (8am- 10pm) hours.
- Allow in Multi-Family Dwellings- Some jurisdictions limit the types of housing units that STRs may be operated from (e.g., allowed in single-family dwellings but not in multi-family dwellings). While the Council has provided clear direction on prohibiting STRs to be operated from ADUs, additional discussion is warranted regarding other types of housing that STRs could be operated from. In 2015, the majority of workshop participants advocated for limiting the types of housing where STRs may operate STRs to single-family homes only.
- Permit Expiration/Revocation/Penalties- Where STROs have been adopted, penalties, fines, and revocations are explicitly outlined in cities' municipal codes. Based on staff's review of other jurisdictions' ordinances, permits are typically valid for one to two years before requiring renewal, unless complaints are filed and substantiated during that time to warrant revocation.


- Management- Almost every jurisdiction studied requires a manager, owner, or other responsible party to respond on-site within a given time limit, such as within fifteen minutes or up to one hour. This designee may additionally be required to be available 24 hours a day, seven days a week, to respond to neighbor or City calls.
- Noise- As with permit revocation and penalties, all matters pertaining to noise complaints and violations are explicitly outlined in the BMC, Title 8. STRs are expected to be compliant with the adopted noise regulations of whichever zoning district they are located in.
- Inspections for Compliance with Current Health and Safety Codes- Many jurisdictions require inspections of proposed STR facilities to confirm compliance with current health and safety codes prior to permit issuance. St. Helena requires an annual inspection by the fire department; Millbrae requires one by the Building Department; and Encinitas only performs inspections if there have been complaints. Bend, Oregon suggests voluntary self-inspections, while Pacifica requires a self-inspection checklist as part of permit approval.

NEXT STEPS

The Commission's discussion tonight will inform staff's drafting of a short term rental ordinance. Staff anticipates the draft ordinance will be scheduled for public hearing at the Commission in August.

ATTACHMENTS

- A. February 7, 2019 City Council agenda report and minutes
- ~~B. Comparison matrix of STR regulations~~
- ~~C. 4/12/2015 Planning Commission Workshop presentation~~


Julia Ayres, Associate Planner


John Swiecki, Community Development
Director

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Community Development Director via City Manager

SUBJECT: Short Term Residential Rental Regulations

DATE: February 7, 2019

City Council Goals:

To promote economic development that stabilizes and diversifies the tax base. (#4)
To provide public service that assures the safety of property and citizens residing, working or visiting in Brisbane. (#9)
To preserve and enhance livability and diversity of neighborhoods. (#14)
To encourage community involvement and participation. (#15)
To preserve the unique current character of Brisbane. (#16)

Purpose:

For the City Council to consider the input from the City Council Planning Issues Subcommittee (CMs Cunningham and O'Connell) and provide further policy direction regarding the regulation of short term residential rentals.

Recommendation:

That City Council provide policy direction and refer the matter back to the Planning Commission for consideration of zoning ordinance changes as needed.

Background:

“Short term residential rentals” (STR’s), or rental of a room or an entire home for a period of less than 30 days, is currently prohibited in Brisbane’s residential zoning districts. In 2015, following Planning Commission and City Council study of the issue, the City Council directed its Planning Issues subcommittee to study the issue further. At subsequent subcommittee meetings in 2016, directed staff to consider potential STR regulations. Staff reports from 2015 and 2016 are attached to this report for reference purposes.

In November 2018, the Planning Issues subcommittee (Councilmembers Cunningham and O'Connell) reconvened to consider the previous subcommittee direction and provide updated direction to staff.

Discussion:

At the November 2018 Planning Issues subcommittee meeting, the subcommittee supported the concept of allowing STRs subject to regulatory program addressing the following components, at a minimum:

- Allow for hosted rentals (homeowner stays in the unit) with no time limits
- Allow for non-hosted rentals; (homeowner not in the unit) with time limits (duration TBD, subcommittee discussed maximum limits of 60-90 days)
- Require “Good Neighbor” policies/practices (noise, parking, garbage, etc.) with failure to comply with these measures as grounds for permit revocation
- Owner to demonstrate insurance/liability coverage
- Reasonable tax structure- transient occupancy tax, business license tax, and planning permit fee shouldn’t be overly burdensome to homeowners
- Prohibit STRs in accessory dwelling units

If the City Council wishes to consider permitting STRs subject to these standards and/or others that that might be discussed at tonight’s hearing, it would be appropriate for the City Council to refer the matter back to staff to prepare a draft ordinance which would be subject to public review before the Planning Commission.

Fiscal Impact:

Limited. If an ordinance is ultimately adopted which requires STRs to obtain planning permits, the permit fees shall cover city staff time to process such permits. On an ongoing basis, transit occupancy tax or other revenues accruing to the city from allowing STRs are not expected to be substantial.

Measure of Success:

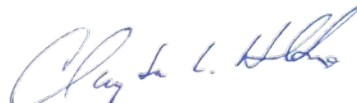
City Council policy direction on STRs which enables the City’s applicable ordinances to be updated accordingly.

Attachments:

1. November 28, 2018 staff memorandum to subcommittee
2. March 15, 2016 staff memorandum to subcommittee



 Community Development Director



 City Manager



MEMORANDUM

DATE: November 28, 2018
 TO: City Council Liaisons to the Planning Commission
 FROM: John Swiecki, Community Development Director via Clay Holstine, City Manager
 SUBJECT: Short-term Residential Rental Regulation Update

Background

In early 2015 at the City Council's direction, the Planning Commission studied the issue of "short term residential rentals" (STR's), or rentals of a room or an entire home for a period of less than 30 days, which is presently prohibited in Brisbane's residential zoning districts. After conducting several workshops on the issue, the Planning Commission ultimately recommended that it be placed on the ballot.

In July 2015, the City Council considered the Commission's recommendation and ultimately opted not to move forward with a ballot measure, instead directing staff to research the legal ramifications of such an ordinance, other cities' ordinances, and to conduct additional public outreach.

In February 2016, staff presented their findings to the City Council liaisons to the Planning Commission, at which time the subcommittee directed staff to consider potential STR regulations (detailed in the March 15, 2016 subcommittee report, attached).

At a subsequent subcommittee meeting on March 15, 2016, the subcommittee directed staff to bring back information on other jurisdictions' ordinances that had not been summarized in staff's research to date.

Simultaneously, the regional housing policy working group 21 Elements- of which the City is a member- began a comprehensive Countywide study on the issue, including conversations with Airbnb and other hosting platforms, to formulate broader policy recommendations. Staff opted to wait to bring the item back to the Council subcommittee pending completion of the 21 Elements study. The results of the 21 Elements study did not suggest that a Countywide approach (from either a regulatory or financial standpoint) to regulating STRs would be appropriate.

Discussion

As summarized above, the subcommittee in 2016 indicated support for adopting regulations to allow short term vacation rentals in Brisbane, subject to compliance with certain performance standards. Staff requests that the subcommittee review the subcommittee's prior direction and confirm if that remains the subcommittee's preference. Staff will bring back a summary of the

11/28/2018
 City Council Liaisons to the Planning Commission
 Page 2

subcommittee's recommendation, whether in support of or against adoption of short term rental regulations, to the full Council for action.

Should the Council ultimately wish to adopt an ordinance to regulate short-term rentals, the matter would go back to the Planning Commission for initial public hearings and a recommendation to Council. No further action would be required if the Council opts not to regulate short term rentals, as they are currently prohibited under the Municipal Code.

An issue previously raised by the subcommittee was the potential opportunity for the city to generate revenue from short term rentals via transient occupancy tax (TOT) or other means. The Finance Director will be attending the subcommittee meeting to further discuss this matter.

Attachments

1. March 15, 2016 staff memorandum with attachments



MEMORANDUM

DATE: March 15, 2016
 TO: City Council Liaisons to the Planning Commission
 FROM: John Swiecki, Community Development Director via Clay Holstine, City Manager
 SUBJECT: Short-term Residential Rental Regulation Update

Summary of February 24, 2016 Meeting

At its February 24, 2016 meeting, the Planning Commission liaisons gave preliminary direction to staff on the next steps for considering potential short-term residential rental (STR) regulations.

Specifically, a number of items were identified for consideration in any future proposed STR ordinance. These include:

- Including a mechanism to capture revenue (e.g., transient occupancy tax, business license, etc.);
- Limiting STRs to owner-occupied single family residences which is a homeowner's primary residence (as demonstrated through proof of homeowners property tax exemption or other similar);
- Homeowners must be "natural person", i.e. not a corporate entity;
- Prohibit use of secondary dwelling units for STR;
- Incorporate "Good Neighbor" requirements and educational materials;
- Include some form of neighbor notification;
- Limit maximum number of guests based on Building Code-defined bedrooms in the home and ensure that information is readily available for verification and/or enforcement purposes;
- Require proof of homeowners insurance specifically for STR use.

Items for Consideration

Staff has also identified several other items that were not previously discussed, or that the liaisons discussed without reaching final policy direction. The Liaisons can provide further direction at this time, or wait for these issues to be addressed in a forthcoming draft ordinance.

On-site Parking

Any future STR ordinance will need to address parking requirements. Specifically should additional on-site parking be provided above and beyond what is required for a single family

ATTACHMENT 1

ATTACHMENT 1

residence? If so, how much additional parking? What about cases where the existing parking is non-conforming? Jurisdictions with STR regulations vary in their treatment of parking, typically based on the general availability of parking in neighborhoods (refer to the staff memorandum and attachments of February 24, 2016).

Limit Number of STR's

Another issue that was discussed was whether a cap or numeric limit on the number of STR's potentially allowed to operate would be desirable. A few of the jurisdictions researched by staff use this tool in their permitting process. If there is going to be a finite number, how will these permits be allocated?

Permit Process

Another important consideration is the permitting process itself. The jurisdictions researched by staff illustrate a variety of both ministerial and discretionary processes that the city could consider.

Public Outreach

As discussed previously, when the full City Council last considered this issue there was a desire expressed that staff undertake further community outreach on the issue of short-term rentals. For the reasons outlined in the February 24 report, staff does not believe that further outreach absent more definitive policy direction or a draft ordinance for the public to review and comment on will generate substantial new public input, or identify new issues that were not previously considered. Any input the Liaisons have in regard to desired further community outreach (form and timing) would be important.

Next Steps

Subject to the concurrence of the liaisons, staff will schedule a follow-up meeting with the Planning Commission liaisons in April in order to finalize a recommendation back to the full City Council on how to proceed with potential regulations of short-term rentals.

Attachments

1. February 24, 2016 staff memorandum



MEMORANDUM

DATE: February 24, 2016
 TO: City Council Liaisons to the Planning Commission
 FROM: John Swiecki, Community Development Director via Clay Holstine, City Manager
 SUBJECT: Short-term Residential Rentals Regulations Update

Background

On January 15, 2015, the City Council directed the Planning Commission to study the issue of "short-term residential rentals" (STR's), which are defined as rentals of a room or an entire home for a period of less than 30 days. Under the City's current Municipal Code regulations, this use is considered a hotel use, and is not permitted in residential zoning districts. In response, the Planning Commission held two public workshops during which over a dozen individuals highlighted the far-reaching impacts that regulating short-term residential rentals could have on the community, for better or for worse. Additionally, the Commission considered the results of a non-scientific survey to raise public awareness of the issue and solicit community feedback which received 188 responses.

On April 23, 2015 the Planning Commission voted to recommend to the City Council that the issue be placed on the ballot to determine whether a majority of Brisbane residents favored adoption of an ordinance to allow for and regulate short-term residential rentals, or whether they preferred to leave the current prohibition in place.

On July 16, 2015, the City Council considered the Commission's recommendation and ultimately opted not to move forward with a ballot measure at that time. Council directed staff to conduct research on the following topics to bring back for consideration at a future Council meeting:

1. Consult with the City Attorney to determine how an ordinance regulating STR's could be enforced by the City, and to discuss other legal ramifications of adopting such an ordinance.
2. Research successful STR ordinances, such as that in Bend, OR.
3. Conduct additional public outreach to determine if the use is appropriate in the community, with an emphasis on online engagement through the City's virtual "Town Hall."

ATTACHMENT 1

ATTACHMENT 1

STR Memo
 Planning Commission Liaisons
 Page 2

It should be noted that as of November 2015 the 21 Elements Group- comprised of all cities and the county of San Mateo- is moving forward with its own research regarding STR regulation. Their anticipated work products include a background report, comparison of existing legislation, data on number, location, and other characteristics of STRs in the county, and eventually a model ordinance to regulate STRs. Planning staff provided their research to 21 Elements to aid in their preparation of these deliverables. 21 Elements' consultants Baird + Driskell anticipate finalizing the model ordinance in spring 2016.

Legal Review

Staff has contacted other cities with STR ordinances to gain insight on how burdensome enforcement of those ordinances has been on their staff (see attachments and discussion below). Staff has not moved forward in requesting additional research from the City Attorney's Office. The research completed to date reveals there are numerous approaches to regulating short term rentals, and each approach offers unique legal issues related to implementation and enforcement. Instead of researching the issue in a generic fashion, staff believes it would be appropriate for the City Council to provide basic policy direction so the City Attorney's research can be focused on how to best implement the Council-desired approach.

Other STR Ordinances

The City of Bend, Oregon (pop. 76,639) was specifically named by Council as an example of an STR ordinance perceived as being successful. Planning staff contacted the Community Development Department of Bend, OR with targeted questions to determine how the ordinance was developed in regards to public outreach, as well as the success of its implementation. We learned that Bend employed a robust public engagement program, including appointment of a 23-member advisory committee with diverse representation of various stakeholders. The advisory committee meetings were open to the public, and structured Planning Commission "listening sessions" and online engagement forums were also used to collect detailed feedback from a variety of stakeholders. Bend staff describes the resulting ordinance as a true compromise between competing interests. They are in the process of collecting statistical performance data on the program and their City Council has indicated that it intends to revisit the regulations regularly if any issues arise. Enforcement is funded partially through hotel taxes and from General Fund revenues.

Planning staff also conducted additional research of short-term rental ordinances in California cities Encinitas (pop. 59,518), Newport Beach (pop. 85,186), and San Luis Obispo (pop. 45,119). That research is included in the attached memo. The purpose of staff's analysis in these research efforts was to identify different potential regulatory paths for short-term rentals and common elements of those ordinances.

Of the eight cities researched by planning staff, only one was of comparable size to Brisbane: St. Helena in Napa County, pop. 5,814. Staff followed up with St. Helena planners and found that City is in the midst of reconsidering certain aspects of their STR ordinance, originally adopted in 2012. Part of the Council's focus was on data analysis, specifically code enforcement complaints

STR Memo
Planning Commission Liaisons
Page 3

ATTACHMENT 1

received by their police department. Of the 22 permitted STRs in the city, a majority (63%) had no calls for service during the 3 years they have been operating. Similar results were found in an analysis of suspected unpermitted STRs. Their staff has concluded that the majority of STR operators are “good neighbors,” and only a few properties generate issues in their neighborhoods that warrant calls for Police Department response. The 22 permitted STR operators provide approximately \$144,000 in TOT to the city’s General Fund annually.

Public Outreach Efforts

In March 2015, planning staff launched a non-scientific survey available on SurveyMonkey as well as in hard copy (mailed to every household in the STAR, and available at City Hall and Library). 188 unique responses to the survey were received that indicated an almost 50/50 split between respondents who support permitting the use of STRs and those opposing STRs.

Due to the launching of the Parkside Precise Plan process as well as the Baylands Final EIR and Specific Plan public hearings, staff held off on conducting new public outreach on this issue. The citywide Baylands survey distributed by the city in September included short-term rentals as a potential response to a question of what issues are of community concern (Question 3). Of the 580 survey respondents, 25% (145 respondents) thought it was extremely to very important to address the issue of short-term rentals, while almost half of respondents (273 respondents) thought it was not very important at all. The remaining respondents found it to have some importance (151). This particular survey question gauges only community interest in the topic as a whole; it did not provide direction regarding the respondent’s personal feeling towards STR regulation.

Brisbane Town Hall does provide a new online engagement forum that staff can use for additional public outreach. Since its launch in November 2015, the primary discussion topics have focused on the Parkside Precise Plan process. Participation in Town Hall has been fairly low, although staff is constantly working to entice more users. The most popular discussion topic used a survey, as opposed to the other topics that requested written comments which have seen at most 3 responses per topic. Given the relatively low community interest in the issue overall, staff believes it is unlikely that another round of community engagement on this issue will garner a level of participation approaching what was achieved through the original survey.

Attachments

1. Q&A with Bend, OR Community Development Department
2. Baylands survey question 3 data
3. Updated staff research memo on STR regulation in other communities
4. [July 16, 2015 staff report to City Council](#) (link to PDF on City website; hard copy not provided.)

Attachment 1

ATTACHMENT 1

Q&A with Bend, OR Community Development Staff

Q: How did the City conduct community outreach in developing the ordinance?

A: A 23-member Vacation Home Rental Task Force, representing a diverse set of viewpoints, met every two weeks over the course of several months. All meetings were open to the public and allowed time for public comment. Public comment was also encouraged via the City’s project website, Bend Voice (which is an online conversation platform), a public listening session held by the Planning Commission, and two public hearings. All written or emailed public comment was posted on the City’s project website. This was a very hot topic in the city, so both TV and print media covered this story quite closely. Staff gave presentations to the Central Oregon Association of Realtors and city Neighborhood Associations. Also, as required by Oregon state land use law, all property owners impacted by the new program were sent a mailed notice about the first public hearing (I believe it was 15,000 postcards).

Q: How has the new STR program been received by the community? Does the community and city staff perceive it as successful?

A: The City Council established a 23-member Vacation Home Rental Task Force to seek a balanced approach between protecting neighborhood livability and economic vitality. The end result is a compromise, which means that the neighborhood and livability advocates would have liked to see more restrictions and the economic use of property advocates would have liked to see fewer restrictions. The Planning Commission and City Council both remarked that only time will tell if this approach is successful and they were very clear about their intention to review this program to see how it is working. As the program rolls out, staff are tracking a number of statistics on the program – including how many new permits are issued, how many properties give up or void their licenses, and the volume and validity of complaints and subsequent code enforcement of violations.

Q: How has enforcement been managed in regards to staff time and resources?

A: Code enforcement (for land use complaints and violations) is funded through the General Fund; City Council allocated additional resources to Code Enforcement this year to assist with increased call volume on all code complaints, including but not limited to short-term rentals. A portion of the Room Tax remitted to the City is allocated to Police and Fire. The cost of getting the new program up and running has been covered by Room Tax remittances; fortunately, Room Tax remittances have been on the rise, so there were unallocated funds that could be used for this project. The cost of permits and licenses are intended to cover the staff time to administer the permits and licenses, not the cost of enforcement.

Contact: Rachel Ruppel, Associate Planner
541-693-2111
rruppel@bendoregon.gov

FM3 RESEARCH

320-580-WT

ATTACHMENT 1
PAGE 3

3. Next, below is a list of issues facing Brisbane residents. For each one, please indicate how important it is to you personally that Brisbane City government do something to address that issue.

		EXT IMPT	VERY IMPT	SMWT IMPT	NOT TOO IMPT	NOT AT ALL IMPT	DK/NA /REF	EXT/ VERY IMPT	TOTAL NOT IMPT
a.	Parking on local streets -----	17%	23%	31%	21%	8%	1%	40%	28%
b.	Open space preservation and enhancement -----	33%	32%	20%	10%	4%	1%	65%	14%
c.	Replacing the old library -----	9%	16%	34%	28%	11%	1%	25%	39%
d.	Potholes and street repair -----	12%	34%	36%	14%	3%	1%	46%	17%
e.	Crime -----	28%	27%	24%	16%	4%	1%	55%	20%
f.	The future of the Brisbane Baylands -----	51%	26%	17%	4%	1%	1%	77%	5%
g.	Park maintenance -----	20%	46%	28%	4%	1%	1%	66%	5%
h.	Maintaining Brisbane's small town character -----	43%	26%	18%	9%	3%	1%	69%	12%
i.	Energy efficiency -----	32%	36%	23%	6%	2%	1%	68%	8%
j.	Providing more housing alternatives -----	13%	18%	35%	21%	11%	1%	31%	33%
k.	Recreational activities and programs -----	15%	33%	35%	14%	2%	1%	48%	16%
l.	Water conservation -----	39%	35%	19%	5%	1%	1%	74%	6%
m.	Short-term residential rentals, such as Airbnb -----	12%	13%	26%	25%	22%	2%	25%	47%
n.	Creating more retail shopping and dining options -----	24%	20%	25%	18%	11%	2%	44%	29%

Memorandum

To: John Swiecki, Community Development Director

From: Julia Capasso, Associate Planner and Quinn Haaga, Intern to the City Manager

Date: December 10, 2015

Re: Regulating Short-term Residential Rentals- Updated Memo

Background

Short-term residential (STR) rentals are typically defined as rentals of residentially-zoned properties for a period of less than 30 days. STR rentals fall into two general categories: those owned and operated by a permanent resident of the home (“homeshare”; owner/lessee may or may not be present during rental period), and those owned and operated by an individual or entity not living on-site (typically second homes or dedicated vacation rentals). Homeshare STR rentals have grown significantly as an industry since the advent of online hosting and advertising platforms, the most popular of which are Airbnb.com and HomeAway, Inc. (including VRBO.com and HomeAway.com). The industry has raised concern in municipalities due to its largely unregulated nature, loss of tax revenue, and incompatibility of transient rental uses in established single-family neighborhoods (e.g., parking and noise). In tourist-destination cities such as San Francisco and New York, housing advocacy groups have also lobbied for restrictions on STR rentals as long-term rental units become converted to such uses, further diminishing already strained housing supply.

Under current Brisbane Municipal Code zoning regulations, STR rentals are considered commercial hotel uses as defined in BMC Section 17.02.420.¹ Hotel uses include “...a building or group of buildings containing guest rooms or suites offered, for compensation, to the general public as transient lodging accommodations. The term includes...bed and breakfast establishment or similar use...” In the fall of 2014, Community Development staff sent code violation notices to seven owners of property listed on Airbnb.com in residential zoning districts, following up on a code enforcement complaint. Based on a cursory review of Brisbane listings on Airbnb.com (9 listings) and VRBO.com (2 listings, also posted on Airbnb) conducted in January 2015, STR rental listings in Brisbane fit in the “homeshare” category, where primary residences are offered by the owner/lessee for occasional occupation by transient users.

Transient Occupancy Tax

The City collects uniform transient occupancy tax (TOT) as outlined in BMC Section 3.24. TOT is assessed based on use of any structure occupied by transient users for compensation. For TOT purposes, *hotel* is defined as “any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any...tourist home or house,...lodginghouse, [or] roominghouse.” *Transient* is defined as “any person who exercises occupancy or is entitled to occupancy of a specific room in a hotel by reason of concession, permit, right of access, license or other agreement.” Under this definition, operation of STR rentals would be subject to TOT tax should the use be legalized.

¹ Per City Attorney opinion provided to City staff.

Trends in Regulating Short-Term Rentals

As the STR rental industry has grown, online hosting platforms and users of the service have increasingly advocated for its legalization in jurisdictions where the service is prohibited in residential zoning districts. Some of the benefits of municipal regulation of the industry include increased TOT revenue, minimization of undesirable neighborhood impacts, and increased tourist activity. Below is a summary of recent ordinances adopted by jurisdictions in California and Texas that allow the operation of STR rentals in residential zoning districts.

City of San Francisco, CA (pop. 805,235)
Approval process: Ministerial

- Perhaps the most administratively complex of recently-adopted legislation is San Francisco’s Ordinance 218-14 adopted by the Board of Supervisors in November 2014. The ordinance amends the City’s Residential Unit Conversion Ordinance and Planning Code to define STR rentals as a subcategory of residential use, which may only be permitted if the following requirements are met:
- Only permanent residents may provide STR rentals. A permanent resident must be a natural person (i.e., not a corporation) who has resided in the unit for at least 60 consecutive days with the intent of establishing it as his/her primary residence. A permanent resident may be an owner or lessee.
 - The permanent resident must reside in the unit for at least 275 days out of the calendar year during which the unit will be rented; or, if occupied less than a year, no less than 75% of the time during which the permanent resident has occupied the unit.
 - The unit must be registered with the City’s Short Term Residential Rental Registry. All advertisements for the unit must include the registration number.
 - Liability insurance of at least \$500K required; may be provided by a Hosting Platform (e.g. Airbnb.com).
 - Unit may not have any outstanding code violations or ongoing enforcement; violations will suspend ability to rent unit.
 - Unit may not be a designated affordable (below-market rate) unit.
 - Business license is required.

The registry will be a publicly viewable database of information on permanent residents permitted to offer short-term residential rental units. Only one unit may be registered for each permanent resident. Registration costs \$50 and is valid for two years.

The ordinance also requires hosting platforms (i.e., Airbnb, VRBO, etc.) to collect and remit TOT taxes to the city from users. Hosting platforms must provide notice to users listing units in San Francisco of the codes governing STR rentals and requirements for payment of TOT. If the Hosting Platform does not comply with these regulations, the City will levy fines against them. Enforcement of the law will be complaint based and must come from an “Interested Party,” defined by the ordinance as a permanent resident, homeowner’s association, the owner of the unit (if offered by a lessee), the City and County of San Francisco, or housing preservation non-profits.

Shortly after the ordinance was approved, HomeAway, Inc. sued the City and County of San Francisco, as well as the Planning Director (in his official capacity) and several Does on the basis that the ordinance violates the Commerce clause of the US Constitution by granting Airbnb and other similar “agency” hosting platforms a legal monopoly in the STR rental market. As HomeAway users are typically owners of second homes or vacation rentals, most cannot meet the permanent residency requirement. Additionally, HomeAway’s business model differs from Airbnb in that all financial transactions occur privately between renter and owner, at the discretion of the owner; the platform charges fees only to advertise the listing. Without a radical change to the company’s business model, it would be impossible to collect and remit TOT as required by the ordinance.

The outcome of the legal challenge likely will not be seen for some time, and may set a precedent for municipal regulation of the industry. As of this memo, no injunction on the ordinance (meant to go into effect on February 1, 2015) had been issued.

City of Palm Desert, California (pop. 48,445)

Approval process: Ministerial

The City of Palm Desert adopted Ordinance 1236 in 2012, which defines a STR rental as a property rented for 27 days or less. Rather than defining STR rentals as a subcategory of residential uses, the ordinance defines the use as a hotel use subject to discrete regulation under the City’s Revenue and Finance Code and Business Taxes, Licenses, and Regulations Code. The ordinance requires all STR rentals to obtain a permit from the City, to be renewed annually on the anniversary date of the initial application. The ordinance establishes minimum rental periods of no fewer than two consecutive nights and a maximum of two persons per bedroom. On-site parking is required, and occupants must comply with the City’s noise ordinance. Responsibility for responding to noise complaints or other violation of adopted “good neighbor” policies is assigned to the property owner, who must make themselves available within 60 minutes of notification of a disturbance at the property. The permit number must be included in any advertisements for the unit.

Administrative or infraction citations may be issued by the City to the property owners, occupants, or operators of the STR rental for failure to comply with the requirements of the ordinance. It also establishes violation of the ordinance as a public nuisance.

This ordinance is remarkable in that it regulates STR rentals through the tax code rather than through the zoning code. STR rentals are not defined as any kind of use in the zoning code.

City of St. Helena, California (pop. 5,814)

Approval process: Discretionary

The City of St. Helena adopted STR rental regulations in 2012, adding a new chapter 17.134 to the Zoning Ordinance. The ordinance requires a permit to operate STRs of less than 30 days, and caps the total permits active at one time at 25 permits. The ordinance restricts STR to single-family homes only, expressly prohibiting multi-family units or second dwelling units to be offered as STR rentals. Applicants for an STR rental permit must own the property and must designate a party who can respond to the STR rental for any reason within 30 minutes. The property owner is responsible for collecting and remitting TOT to the City, and must maintain a valid business license.

The application is subject to review and discretionary approval by the Planning Director. Following receipt of a qualified application, notices are mailed to neighboring properties within a 300-foot radius of the subject property. If 30% or more neighbors submit written protest, or if the property owner is not a natural person (i.e., a corporate entity), the application is subject to review by the Planning Commission for consistency with findings of approval for a conditional use permit (though no CUP is applied for or issued). Both the Planning Director and Planning Commission’s decisions may be appealed to the City Council. If approved, a permit is valid for two years, after which the owner must go through the application process once more.

This process provides more discretionary oversight than the previously described ordinances in terms of determining the appropriateness of the STR rental use to the site, and may allow for more active regulation of “problem” properties. By capping the number of issued permits, the City may be able to better allocate resources to monitor the program and assess and mitigate problems that may occur. Though it possesses the same owner-occupancy requirement as the City of San Francisco, it has not faced similar litigation likely due its small market-share of STR rentals.

City of Austin, Texas (pop. 790,390)

Approval process: Ministerial

The City of Austin’s Ordinance 20130926-144 permits STR rentals in all residential districts and certain commercial districts. The ordinance permits STR rentals to be offered by an entity or individual, with operational requirements tailored to different ownership profiles and subject to approval of a permit. Permits are valid for one year and may be renewed upon expiration. Proof of insurance and a certificate of occupancy or building inspection are required prior to permit approval. Neighbor notification is required, but neighbor input is not considered in the permit approval process.

The ordinance establishes the following limits for STR rentals in any district:

District	Limitation
Single-family district	
Owner-occupied	No limitation
Not owner-occupied	3% of the single-family units within a census tract
Multi-family district	3% of the buildings on the property and 3% of the units in any building
Commercial district	25% of the units on a property and 25% of the units in any building

These restrictions are geared toward limiting the density of STR rentals commensurate with the local impact to the neighborhood or community, rather than capping the total number of rentals.

City of Bend, OR (pop. 76,639)

Approval Process: Ministerial

In April of 2015, a dramatic increase in short-term rentals prompted the City Council the City of Bend to update their short term rental regulations to more strictly regulate STR for the sake of the community. Short term rentals are defined by the City of Bend as rentals for 29 or fewer days per tenant. To guide

the update process, the Council established a 23 person Vacation Home Rental Task Force. They met every two weeks over the course of several months and they also utilized “Bend Voice”, an online conversation platform for other members of the public who could not attend the meetings. The City allocated additional resources to Code Enforcement to assist with increased call volume on all code complaints (including STR). The Task Force recommended that the City adopt amendments in the existing Development Code and to adopt a land use licensing program to regulate ongoing operation of STR. The City also adopted a set of Good Neighbor Guidelines for the renters and dwellers to follow.

STR rentals include whole-house rentals and the rental of up to 2 individual rooms in a house while the owner is present. In order to operate an STR, the property owner must obtain both a land use permit and operating license. STR’s located in residential zoning districts must be located at least 250 feet away from other licensed STR’s unless owner-occupied. The short-term rental must comply with specified performance standards including on-site parking. The ministerial review process is conducted by the Community Development Department.

Once granted, the land use permit remains valid in perpetuity until the use is abandoned (not rented for a period of at least 12 months) or the home is sold, with specified exemptions for unavoidable hardships. The operating license must be renewed annually, is non-transferable, and must be in the name of the property owner. The land use permit is voided if the operating license is not maintained. The property owner must prove that the property has been rented at least once in the past 12 months. The property owner or representative must be available 24/7 to address any concerns with the property. They must notify all neighbors within a 250 radius by mail or post a small placard that advises neighbors and tenants of the owner or authorized representative’s contact information.

Encinitas, CA (pop. 59,518)

Approval process: Ministerial

The City of Encinitas defines a short term rental as renting a single-family home or duplex for “occupancy for dwelling, lodging, or sleeping purposes of 30 consecutive days or less.” STR’s may be operated on in single-family and duplex homes (including accessory structures) in residential districts and in condominium and multi-family developments in non-residential zones. STR’s are prohibited in condominiums or multi-family developments in residential zones.

The short term rental property must have a permit that is renewed every year and is reviewed and issued by the office of the City Clerk. The permit application fee is \$150 and must include a floor plan. The STR must comply with defined performance standards including on-site parking. TOT payments are collected quarterly. The homeowner or responsible party designated by the property owner must respond to complaints in a timely manner and be available by phone 24/7. Although the responsible party can respond to complaints, it is ultimately up to the property owner to make sure that all laws and regulations are being followed. The short term rental unit must have an interior and exterior notice display for dwellers and the public. It is also required that adjacent property owners be notified of the STR use and contact information of the responsible party. The City Manager reserves the right to impose additional standards/or conditions to STR permits and can also investigate whenever there is reason to believe that a property owner has failed to comply with the provisions.

When the City of Encinitas adopted the Short Term Rental Ordinance they did not have an extensive community outreach component and the process was fairly straightforward. The City Council decided to regulate short term rentals because the City was received a lot of complaints related to STR regarding

noise, disorderly conduct, illegal parking, vandalism, overcrowding, and traffic congestion. The STR ordinance was adopted in 2006 and in January of 2009 TOT became collectable and enforceable.

Newport Beach, CA (pop. 85,186)

Approval Process: Ministerial

Chapter 5.95 of the Newport Municipal Code requires a STR permit for rental of a residential unit for 30 days or less. Newport’s current STR regulations allow STR’s to operate in duplex and multi-family districts only. STR’s in single-family zones that were permitted prior to 2004 may continue to operate. The STR permits are reviewed and issued by the Finance Department, with supplementary review by the Planning Department. All short term rentals are subject to business license and TOT (TOT includes a 1% Visitor’s Service Fee). The permit is valid for two years and must be placed in a conspicuous area with a contact (property owner or responsible party) who is available to deal with any issues or complaints 24/7. There is a disturbance advisement process through the Police Department that handles all loud and unruly gatherings that are sometimes common at short term rental properties.

Newport is unique compared to other cities reviewed because of the strength of its tourism industry; several thousand units are rented annually on a short term basis. The City of Newport recently initiated a review of its existing STR regulations in response to complaints from community members against short-term rental sites such as AirBNB that have increased demand for city services such as parking. In the summer of 2015 the City hired a temporary employee to inventory all of the short term rentals in the Newport area posted on various hosting websites. City staff will make a recommendation on what changes may be warranted to the existing STR regulations after the inventory and other background research is completed. There has been no targeted community outreach component in this review process.

City of San Luis Obispo, CA (pop. 45,119)

Approval Process: Ministerial

In January 2015 the City of San Luis Obispo adopted Ordinance no. 1611 that altered established Municipal Code Chapter 17.08 regarding a certain class of STR’s referred to as “home stays”. A home stay is defined as an owner-occupied dwelling unit (primary residence) where bedrooms are provided for compensation for fewer than 30 consecutive days with a maximum of four adult overnight guests. Regulation of only this specific class of STR is unique compared to other jurisdictions surveyed.

The City initiated a review of STR regulations in 2013 following numerous citizen complaints about short term rentals and their impact on the character of existing residential neighborhoods. At the time rentals less than 30 days were not defined under the land use code and therefore were not allowed. A new ordinance regulating home stays was crafted following a community engagement process that took a few months and incorporated SLO stake holders and the general public.

In order to operate a home stay the owner must obtain a ministerial permit and a business license through the department of Community Development. They also have to pay the TOT as well as a Tourism Business Improvement District tax. The owner has to provide evidence that this is their primary residence each year, such as a copy of the homeowner’s tax bill indicating the homeowner’s exemption at the subject property or other documentation. There is one parking space required in addition to their required residential parking. The Ordinance allows a maximum of four adult guests at any time. There must be a responsible party within a 15 minute drive of the property and available by phone 24/7 to

Page 7

ATTACHMENT 1

ATTACHMENT 1

deal with any complaints or problems. The contact information of the responsible party must be provided to the guests as well as the adjacent neighbors. Home stays are not permitted in guest houses or guest quarters. Any violation of the requirements and standards will result in a revocation of the permit. At any time the permit can be referred to the Administrative Review Hearing where the permit can be revoked for code violations and/or infractions.

Path to Approval

Should the City Council wish to pursue legalization of STR rentals in residential districts in Brisbane, the regulatory programs described above set helpful precedents depending on the level of discretion desired. With the exception of St. Helena, most programs are ministerial in nature with clearly defined eligibility criteria and operation standards. Other common components include a public registry of permitted rentals and capping the number of permits issued based on varying criteria. Requirements for owner-occupancy may help protect the community character and/or public welfare and safety, with adequate explanation of why the restriction is necessary to achieve that objective.

In the event that legalization is desired, it may be helpful to conduct a workshop process with stakeholder groups to identify the concerns of neighborhood residents and STR rental operators and inform the breadth and components of a regulatory program for consideration by the City Council.

~~Attachments:~~

- ~~1. City of Palm Desert "Good Neighbor" brochure~~
- ~~2. City of St. Helena application packet~~
- ~~3. City of Austin, TX FAQ~~
- ~~4. City of Bend, OR FAQ~~

Not included.

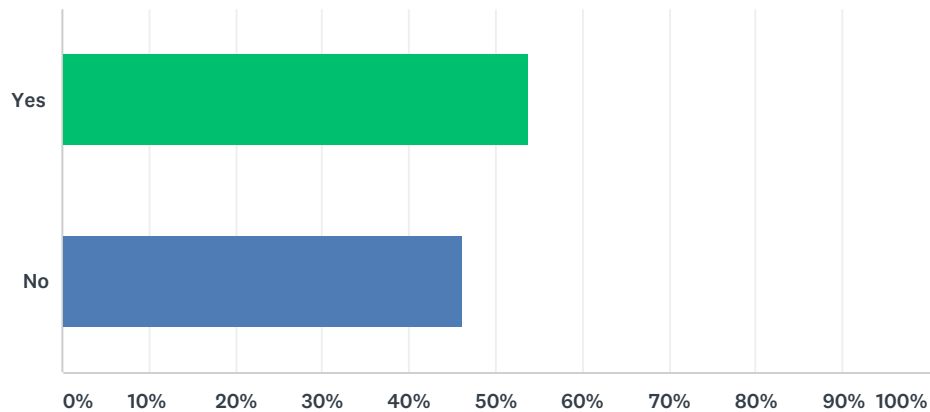
URL for July 16, 2015 City Council agenda report on City website:

<http://www.brisbaneca.org/sites/default/files/Short%20Term%20Rentals.pdf>

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Q1 The ordinance could limit the number of STRs permitted to operate at any time. This could help the City to manage the program and conduct enforcement actions. Should a limit be imposed in the ordinance, it could be amended by the City Council in the future if the program implementation shows over time that either more or fewer STRs would be appropriate for the community.Should the City cap the number of STRs permits issued?

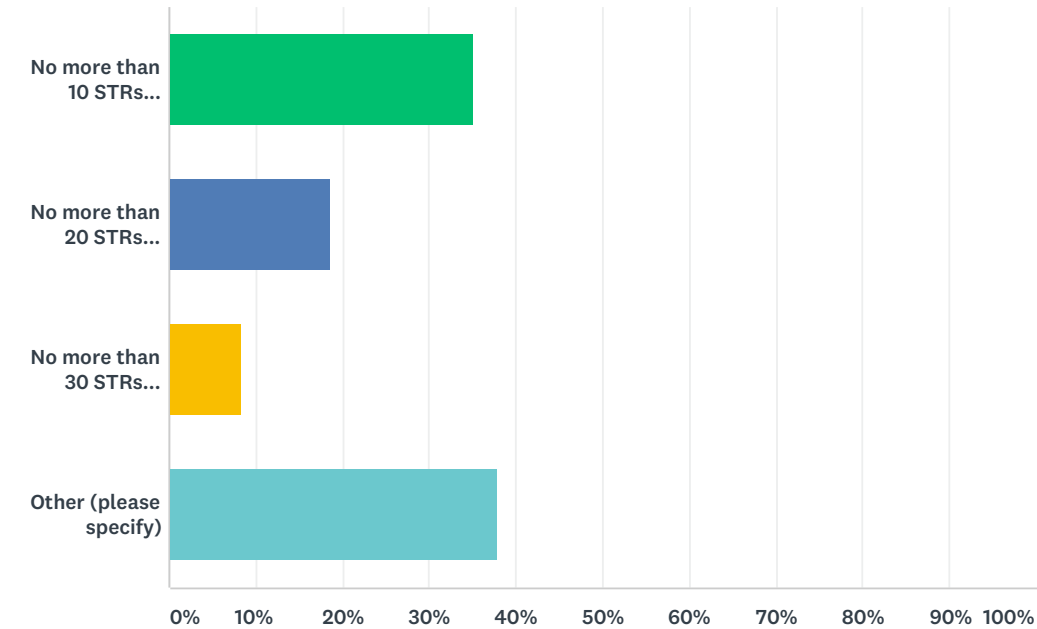
Answered: 175 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	53.71%	94
No	46.29%	81
TOTAL		175

Q2 If you answered “yes” to question 1 above, please share what you believe is a reasonable cap or maximum number of STRs in Brisbane.

Answered: 108 Skipped: 67



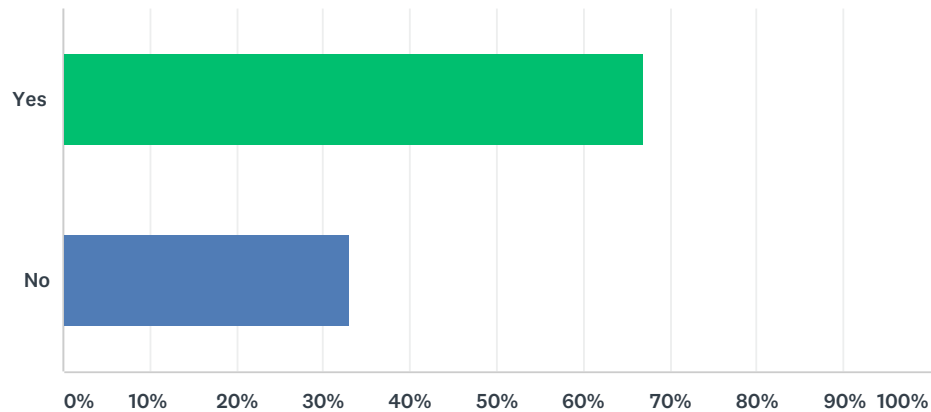
ANSWER CHOICES		RESPONSES	
No more than 10 STRs permitted at any time		35.19%	38
No more than 20 STRs permitted at any time		18.52%	20
No more than 30 STRs permitted at any time		8.33%	9
Other (please specify)		37.96%	41
TOTAL			108

#	OTHER (PLEASE SPECIFY)	DATE
1	No Cap	8/29/2019 2:46 AM
2	I'd prefer that STRs are not permitted in this small community	8/24/2019 5:33 AM
3	Do not want STR at all	8/21/2019 1:09 AM
4	Should be a % of totally housing, something like 1%	8/20/2019 10:58 AM
5	no days, short term rentals lead to many problems and will not be good for Brisbane	8/20/2019 3:30 AM
6	50	8/19/2019 11:37 PM
7	0	8/19/2019 12:49 PM
8	No more than 1 rental per unit, per month, maximum 35 total in town with license.	8/16/2019 12:14 PM
9	0	8/14/2019 10:17 AM
10	0 STRs permitted at any time	8/12/2019 5:58 AM
11	50	8/9/2019 7:29 AM
12	40	8/7/2019 6:59 AM

L.	Short Term Rental Survey 2019	ATTACHMENT 3	SurveyMonkey
13	100		8/7/2019 1:11 AM
14	No cap.		8/7/2019 12:33 AM
15	No cap		8/6/2019 12:22 PM
16	Why cap it?		8/6/2019 12:11 AM
17	50		8/5/2019 7:59 AM
18	none		8/5/2019 2:08 AM
19	no cap		8/4/2019 1:08 PM
20	0, none		8/4/2019 8:40 AM
21	50		8/3/2019 6:02 PM
22	Na		8/3/2019 12:00 AM
23	Less than 10, on emergency basis only		8/2/2019 6:50 PM
24	Too vague		8/2/2019 10:48 AM
25	None at all		8/2/2019 9:51 AM
26	Caps are unfair to those who don't register in time		8/2/2019 9:14 AM
27	I don't think there should be a cap		8/2/2019 8:49 AM
28	Determine based on impact		8/2/2019 8:29 AM
29	None		8/2/2019 5:15 AM
30	A permanent cap. Such as 200 over all. If someone drops out you can bring it back to 200.		8/2/2019 3:56 AM
31	50-75		8/2/2019 3:08 AM
32	100		8/2/2019 2:39 AM
33	~25, ~1/10th of total housing.		8/2/2019 1:11 AM
34	30		8/1/2019 10:07 PM
35	100		8/1/2019 4:12 PM
36	I believe the 3rd choice should read 30 STRs		8/1/2019 3:34 PM
37	45		8/1/2019 3:15 PM
38	I think that the number should be higher - more like 50		8/1/2019 2:09 PM
39	The number of STRs is a concern a cap of the total amount is not. It is more important to cap the amount of STRs in any square block area.		8/1/2019 1:08 PM
40	NOTE: 2 of your options are for no more than 10 STRs permitted at any time. No more than 10 STRs at any time is reasonable.		8/1/2019 12:19 PM
41	No str without off street parking		8/1/2019 11:07 AM

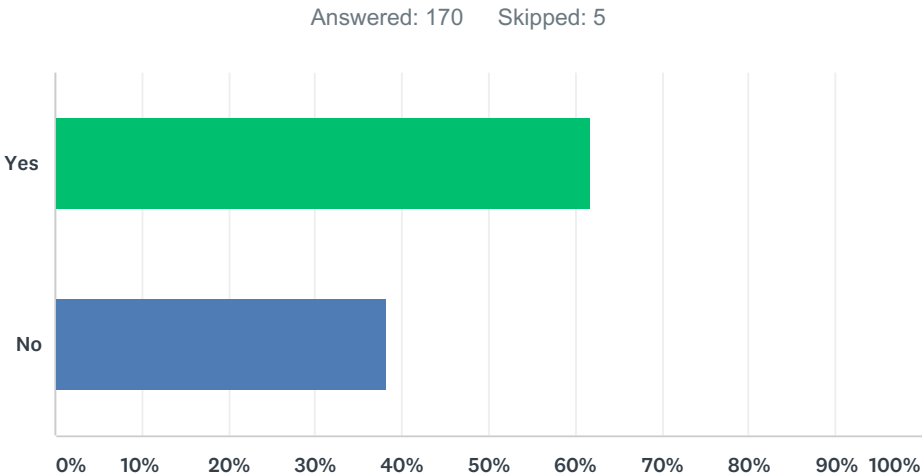
Q3 Accessory dwelling units (ADUs) are smaller, secondary units on the same lot occupied by a single family dwelling. Examples include garden/backyard cottages, “granny flats,” or in-law units. The State of California has adopted laws and policies to make ADU development easier for homeowners in order to address the State’s affordable housing needs, which the City has implemented in its ADU ordinances. In Brisbane, ADUs may be established on any lot with a single-family home (max. one ADU per single-family home), and do not require dedicated parking spaces.Should STRs be allowed to operate in ADUs?

Answered: 172 Skipped: 3



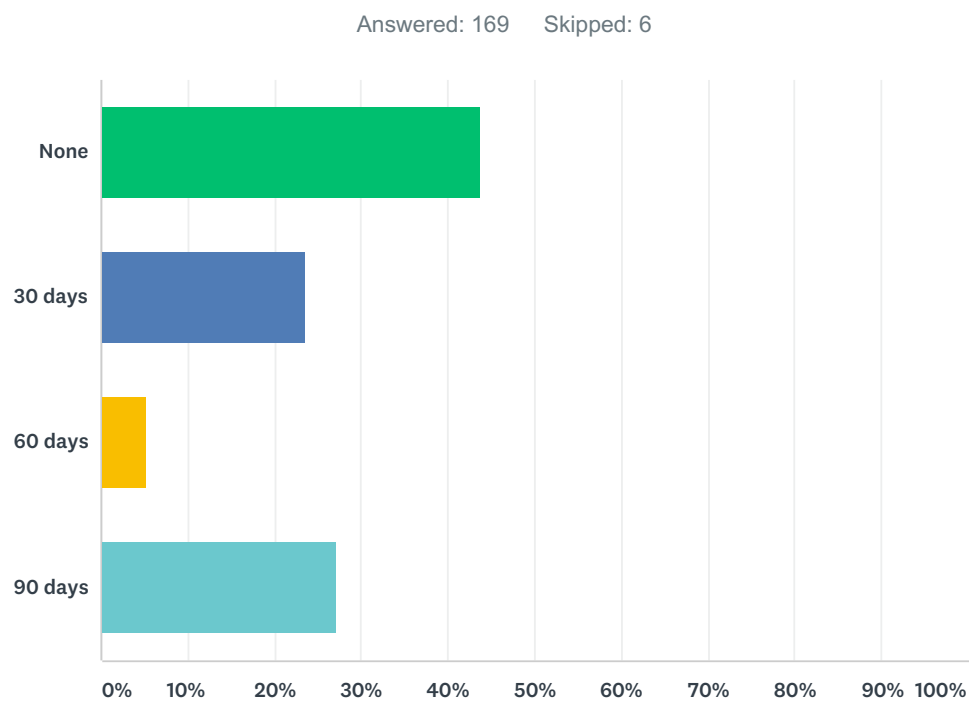
ANSWER CHOICES		RESPONSES	
Yes		66.86%	115
No		33.14%	57
TOTAL			172

Q4 Current parking requirements in Brisbane’s residential districts are one to two on-site spaces for dwellings under 1800 square feet, and three to four on-site spaces for dwellings over 1800 sq. ft. (Brisbane Municipal Code Section 17.34.020).Should the City require a dedicated parking space on the property to serve the STR separate from the parking spaces required for the main dwelling?



ANSWER CHOICES	RESPONSES	
Yes	61.76%	105
No	38.24%	65
TOTAL		170

Q5 Hosted rentals are rentals of a room or portion of a home when the owner or permanent resident of a property is residing on the property. The City Council has indicated that to preserve the residential character of neighborhoods, the City’s STR regulations should limit unhosted rentals to prevent businesses or investors from buying dwellings and converting them exclusively to STR use. How many days per calendar year should STRs be permitted to be rented “unhosted,” without any permanent resident or property owner on-site?



ANSWER CHOICES	RESPONSES	
None	43.79%	74
30 days	23.67%	40
60 days	5.33%	9
90 days	27.22%	46
TOTAL		169

Q6 Do you have any other concerns regarding STRs that were not addressed in the previous questions?

Answered: 90 Skipped: 85

#	RESPONSES	DATE
1	The cost of long-term rental units in Brisbane, as in the Bay Area as a whole, has skyrocketed and made this area unaffordable to many, many people. Permitting airbnb type rentals in Brisbane will further limit available long term rentals in Brisbane and contribute to the rise in rental prices. In normal times, I wouldn't be opposed to short term rentals in town as a way for people to generate income, but given the shortage in affordable and available housing in the area, I don't think more long term rental units should be taken off the market.	8/26/2019 6:54 AM
2	Safety of the neighborhood.	8/24/2019 5:36 AM
3	No	8/24/2019 2:35 AM
4	Do not want STR period. Has nothing to do with housing shortage. STR will negatively affect our quiet and peaceful community	8/21/2019 1:18 AM
5	Safety of the city when units are rented out short term	8/20/2019 3:56 PM
6	By far the most critical thing is to required hosted-rentals. If you want to STR, then you need to live on that property.	8/20/2019 11:01 AM
7	No, but I've seen how STR have destroyed neighborhoods when living in SF. Do not allow STR's at all in Brisbane	8/20/2019 3:32 AM
8	They should be required to register with the city and be fined if there is a violation.	8/16/2019 12:50 PM
9	I would like to see STRs licensed like they do in NY and Chicago. Just because it's a small town doesn't mean that wouldn't be applicable.	8/16/2019 12:16 PM
10	Since Brisbane is not a tourist destination, it seems unreasonable to expect that it will face the same issues with STRs that places like Lake Tahoe face. (Full house rentals with large groups, etc.) It seems this would be a wonderful way for neighbors to meet their neighbor's friends and families, as that would probably be a large section of the renters. It would also be a great way for residents to generate income with people flying out of SFO.	8/16/2019 4:26 AM
11	Limit the number operating in any one neighborhood at the same time. Regulate check in time. We're have people pulling up in front of our house at 2:30 3 o'clock in the morning unloading their guest. Should be owner occupied. Not people renting houses and then running all the rooms out to make a profit.	8/15/2019 10:08 AM
12	I am totally opposed to allowing STRs in residential neighborhoods. Transitory visitors have no incentive to be considerate of neighbors or to follow normal rules of behavior. Brisbane has plenty of hotel space. If someone has an extra living unit they can rent it to someone in need of affordable housing. BTW, the current ordinance is not enforced. How are you going to enforce restrictions?	8/14/2019 10:22 AM
13	I think my concerns are addressed but I want to make sure that STRs have no opportunity to supplant residential housing opportunities for full time renters.	8/13/2019 7:35 AM
14	Town of Brisbane is unique and still remains a small community and at best as of August 2019..we are feeling the crunch of more cars on our streets be it some Airbnbs, commercial, Lyft and Uber leaving cars/trucks while home owners look for a space in front of their homes. Permitting a new ordinance to regulate STRs is not in the best interest of me and Brisbane. Surveys with yes and no answers are hard to answer with so many variables....this one especially. Some people may miss speaking on this very important issue electronically and I personally hope the Planning Commission has more input for Brisbane residents and provide another way to share concerns. It was not easy to connect to this link and hopefully all voices with be heard.	8/12/2019 6:19 AM
15	Yes. This survey asks citizens to give opinions about a subject that most citizens know very little about. Then these opinions will most likely be used to establish policies. It seems like a flawed process.	8/12/2019 4:58 AM

16	I am VERY concerned that UNhosted STRs could negatively affect the community feel and composition of Brisbane. I love knowing my neighbors and interacting with them on a near daily basis. I would be open to considering hosted rentals. I think these are very different, and that they inspire interaction with guests by the host, and ensure that hosts remain Brisbane residence And this members of the community.	8/11/2019 3:35 PM
17	I think a tax on these units is beneficial. I also believe that how Napa has handled this is terrible. Do not limit the STR licensing to specific homes. If I needed the extra income from renting out rooms short or long term I'd want the choice to do so. They also don't particularly bother me, especially because housing is so expensive.	8/11/2019 12:06 PM
18	No	8/9/2019 2:22 PM
19	Will STRs be limited to commercial districts? Will the City be collecting hospitality taxes on STRs?	8/9/2019 8:49 AM
20	they should not be allowed at all.	8/9/2019 8:36 AM
21	It may be necessary to address extreme parties that disturb neighborhood families.	8/9/2019 8:18 AM
22	No, thank you.	8/8/2019 4:18 PM
23	Worried about how enforcement would take place. There are STRs currently operating in city limits without any regard it seems. How will it be tracked?	8/8/2019 3:07 PM
24	We are having to leave Brisbane and the bay area due to absurdly high home prices and rent prices. STRs often take up dwellings that could instead accommodate long-term renters, driving down supply and increasing costs. I'm glad Brisbane is considering STRs not because I have any direct issue with STRs, but because housing prices must be addressed. I also think that the city of Brisbane, and the state of California, should strongly consider limiting or banning the sale of residential homes to foreign investors. When we considered buying a home in Brisbane, we quickly realized it would not be possible for us after house after house sold for cash, over asking price, to foreign investors. It is driving young families like ours out of Brisbane.	8/8/2019 12:41 PM
25	the same nuisance regulations that apply to STRs should apply to LTRs. There are noise and parking issues with LTS for neighbors and we have no recourse.	8/7/2019 1:18 AM
26	Yes there should be a limit to time check in so we don't have people showing up at Kate hours	8/7/2019 12:35 AM
27	My mother was diagnosed with cancer and a maximum of 3 years left to live. It's been very hard on our family. After my friend encouraged me to try Airbnb I found a way to spend more time with her, taking 1 - 2 months off a few times per year that I can spend with her, making her remaining time with us more enjoyable. I could NEVER have done this without the extra income from my guests. Why do we have to limit this for future cases like mine? Let's agree that guests need to be respectful, hosts need to make it clear that no parties or any other disturbances are allowed and allow for a forum to receive complaints for irresponsible hosting. Besides that, what is the issue with people like me opening our homes to guests who choose to stay in this beautiful part of the world? Thanks for considering!	8/6/2019 12:25 PM
28	STR create noise, vandalism, parking issues. Please keep our neighborhoods safe, clean and quiet. Thanks!	8/6/2019 7:37 AM
29	If renting out your house is not "commercial activity", how is renting out for a short period of time different? It's a transaction either way	8/6/2019 6:22 AM
30	Yes - my neighbor who is renting is also illegally hosting str rentals. They double park all the time. Who should I notify?	8/6/2019 3:00 AM
31	Not at this time.	8/6/2019 2:49 AM
32	STRs are a great option for owners to improve their financial situation. Let's not allow the outliers punish those acting in the spirit of the rules and regulations.	8/6/2019 1:48 AM
33	I depend on this income for my retirement. Please don't force me to leave this beautiful town.	8/6/2019 12:12 AM
34	Brisbane does not need regulations	8/5/2019 1:03 PM
35	Yes you should not tell people what to do with their property and remove all limitations of short term rental	8/5/2019 1:02 PM

36	I don't believe there shouldn't be many limits on how private property owners can use their property. These seem like reasonable regulations though, if you have to have any at all. Except the parking one is dumb because if people are renting out their houses then they've probably left and took their cars with them, LOL. Also it's not fair to limit the number of rentals in town, because that just benefits people who get in early and lock down their permit. If you have to have a limit it should be much higher. 10?? in all of Brisbane?!? Anyway, please keep it light -- we don't want to end up miserable with over-regulation like in the city.	8/5/2019 4:37 AM
37	If we are truly in a housing crisis - enough to justify the huge amount of building planned in Brisbane, SSF and Southern SF these units should not be used for short term housing but for long term rentals. I am not generally opposed to short term rentals, I have used them. However in our town where it cost over 3500. to rent a 700 sq. ft. house it makes no sense to make fewer units available for housing. Let's ease the housing shortage in simple ways, the city has loosened restrictions on secondary units so let's use them to house people and reduce the outrageous costs so our parents and children can live in their own community. It is hypocritical to do otherwise. It is hypocritical to say we need to build and then ignore the housing stock we have - one should include the other.	8/5/2019 2:17 AM
38	Given the housing crisis, everything that should be done to encourage responsible and safe expansion of housing supply MUST be taken.	8/4/2019 1:10 PM
39	While I understand the desire (and sometimes the need) to generate extra money, the STR's in my part of Brisbane have at times been out-of-control party houses. This is unacceptable. Additionally, while the safeguards the City is proposing are good, it will be nearly impossible to enforce them. Will the City regularly inspect every STR for compliance? Will the City review every rental occurrence for compliance? How will the City ensure the tax is properly paid? Will the projected tax revenue cover the expected City costs for compliance? How will the City ensure that the cap is adhered to? (Note: there are many STR websites and some are closed to the public). I am in favor of keeping the current STR ban in Brisbane. Thank you	8/4/2019 8:51 AM
40	I'm not at all concerned by a single STR on a property whether the owner is there or not. I think it's more important to limit the total STRs on any given property, as this has much greater impact on parking, noise, etc.	8/4/2019 5:43 AM
41	Corporations buying property should not be allowed.	8/3/2019 6:04 PM
42	Please focus on up-zoning the city to allow for more housing instead of focusing on curing a symptom of the housing shortage.	8/3/2019 5:58 AM
43	Maybe they would be addressed in the Residents with STRs located in close proximity will need a process to submit formal complaints, and requiring STRs to be permitted can facilitate this, so this is a good step. However, I am concerned that the City will take its usual hands-off approach, as they do with building permits, by forcing residents impacted by their neighbors' construction projects to have to settle things on their own, as the city regards these as civil disputes. This is a big concern in relation to STRs. If we as a community value the rights of residents to operate STRs, then we as a community have a shared need for protection from the impact on our safety, property, and peace.	8/3/2019 3:42 AM
44	There should probably be penalties if owners allow their guests to create disruptions in the neighborhoods, either by noise or too many cars. A car limit would be good.	8/3/2019 3:30 AM
45	Since these are commercial enterprises they should be held to the same Building, Fire and Safety codes as all other businesses in Brisbane. The permit to operate should include regular inspections from the Building Department and the Fire Department.	8/3/2019 2:19 AM
46	Guests from STR smoking outside neighbor's Windows.	8/3/2019 2:15 AM
47	No	8/3/2019 1:44 AM
48	STRs are good for the local economy.	8/3/2019 1:23 AM
49	Enforcement, including policing and inspections	8/2/2019 6:53 PM
50	I wouldn't have a problem with the STRs if it came with its own parking spots... BRISBANE has a bigger issue with parking on the streets as it is now and really have not come up with a solution for this and it just keeps getting worse	8/2/2019 3:57 PM
51	No	8/2/2019 2:01 PM

52	STRs have destroyed the ability of people to find rentals. People who visit, especially unhosted, don't care about their surrounding neighbors. Too many destroy the character of the neighborhood an sense of community. Look at San Francisco!	8/2/2019 11:22 AM
53	STR should not be able to use all the parking - need to park in the garage or in driveway	8/2/2019 10:31 AM
54	STRs must be regulated like hotels, including building codes, taxes, inspections, etc. BEFORE approval.	8/2/2019 10:05 AM
55	In the city of Brisbane there are and exceptional number of "nosy neighbors". The current laws only require a neighbor to complain repeatedly to shut down an STR. This may lead to many STR's being shut down by a vindictive/nosy neighbor.	8/2/2019 10:05 AM
56	I have been told by neighbors that someone that rents out their home has loud guests and created parking problems. I firmly believe that if you put in an in-law it should be for permanent renters who are desperate for housing, not for vacationers !!!!	8/2/2019 9:55 AM
57	Most guests don't need the parking spot, so requiring an extra spot is not necessary, especially when home larger than 1800 sqft already have 4 spots....	8/2/2019 9:16 AM
58	Please consider the help that STRs provide to homeowners who due to hardship or other reasons depend on the income!	8/2/2019 8:51 AM
59	No	8/2/2019 8:31 AM
60	What about STRs that aren't "registered" through the city? How will those be managed? There are a lot of these happening now with no plan to ever let anyone know about it	8/2/2019 6:44 AM
61	Don't like them, as they cheapen a town which all ready has enough residential problems.	8/2/2019 6:36 AM
62	Noise, garbage, parking, unknown people running around, crime children's safety	8/2/2019 5:22 AM
63	Should we have some tax implications or ordinances about other problems that arise due to STRs such as increased production of Trash, STRs not recycling or taking sustainability measures. And there should be noise restrictions for STRs.	8/2/2019 5:09 AM
64	Larger garage cans, instead of filling neighbors can with very dirty garbage.	8/2/2019 3:59 AM
65	STRs should not be allowed at Viewpoint at the Ridge. It turns the area into a hotel / motel environment instead of a "permanent home" neighborhood.	8/2/2019 3:49 AM
66	I felt question 5 needed to have an other option. I am uncomfortable with the options presented on that question and felt it was biased towards limitation. I selected 90 days but would have preferred an "other" option where I could have written in a different answer.	8/2/2019 3:10 AM
67	no	8/2/2019 2:57 AM
68	No	8/2/2019 2:40 AM
69	Just parking. STR parking is a problem on my street.	8/2/2019 2:21 AM
70	Yes, there should be a time limit for check In like 10:00pm, we have 3 air B & bs within a block Of our house & 2:30 am is not ok	8/2/2019 2:21 AM
71	STRs are currently prohibited in Brisbane, but this prohibition is not enforced. What guarantee is there that any new limitations WILL be enforced?	8/2/2019 1:39 AM
72	None.	8/2/2019 1:13 AM
73	How to manage when guests disrupt neighborhood (e.g. parties, trash etc)	8/1/2019 10:10 PM
74	I'm not sure that 90 days should be an answer. I think more like it could be unhosted no more than 6 months or a year. But then again maybe the owner must actually live in it for at least a year before they can rent it out short term.	8/1/2019 4:32 PM
75	Mainly the impact on already strained parking. People in my area report cars to the police frequently. On fellow neighbors.	8/1/2019 4:08 PM
76	increase in crime, and traffic.	8/1/2019 3:47 PM
77	No	8/1/2019 3:38 PM
78	Unhosted rental days should be unlimited. People should be able to earn a living in the way they see fit and do what they wish with their own property.	8/1/2019 3:32 PM

L.	Short Term Rental Survey 2019	ATTACHMENT 3 SurveyMonkey
79	Parking and security are the most important. I also am concerned with making sure that there are affordable long term rentals available. Not sure how to regulate that.	8/1/2019 3:08 PM
80	No	8/1/2019 2:59 PM
81	No. I believe that residents should be allowed to do as they wish with their own homes. Guests enrich the neighborhood and bring money to local businesses Short term rentals make affording mortgages possible in this expensive economy	8/1/2019 2:46 PM
82	Go slow on this! People/families NEED permanent housing. I feel residents will opt to make more money by having overnights and very short term places to rent!	8/1/2019 2:31 PM
83	STRs, while banned in Brisbane, are happening in town. We have numerous on my street. They impact parking, have a negative effect on the neighborhood and take housing out of the market for potential renters. The lack of housing for renters is my number one concern.	8/1/2019 2:26 PM
84	Although I do not think that STRs should require extra parking, we should still require enough parking for ADUs and large houses. We grant too many variances on parking.	8/1/2019 2:14 PM
85	#5 should have unlimited to get an honest unbiased survey. I understand that to many non hosted STRs can be a problem but stepping on property rights are a problem too. Property rights & economic impact should be the two top concerns followed by parking.	8/1/2019 1:30 PM
86	Enforcement of the regulations (especially parking) and the process for reporting bad hosts or bad short term renters. My concern is that enforcement will fall on residents that don't operate STRs. It seems the majority of residents have the burden of enforcement and get nothing out of this. STRs are no benefit for the majority of the community, which will not be operating an STR. Also, concerned that this survey is considering including ADUs as STRs. The removal of parking requirements for ADUs was done with the rationale that ADUs would help more people in the area afford a place to live. Allowing ADUs to be used as an STR is a direct conflict with the whole purpose of ADUs.	8/1/2019 12:52 PM
87	1. Immediate neighbors of STR applicants should be able to petition city government to prevent the STR from reaching fruition, and if a majority of the immediate neighbors vote against the applicant the STR should be banned. 2. Who monitors STR compliance with Brisbane's regulations? The police? Neighbors? 3. If neighbors complain to Brisbane's City Council about STRs which are not compliant with STR regulations and the STR owner begins threatening his/her neighbors or filing frivolous lawsuits against them, what action will City Council (or the Brisbane Police Department or any other governmental entity) take against such threats and frivolous lawsuits? 4. How does the City of Brisbane plan to enforce collection of its proposed transient taxes from either the STR owner or the online platform (Airbnb, VRBO, etc.)? What does the City plan to do to penalize parties or platforms which refuse to pay any transient taxes? How much money will it cost the City in attorney fees to pursue parties/platforms refusing to pay transient taxes, and if the revenue from the taxes would be less than the attorney fees necessary for pursuing collection, then what?	8/1/2019 12:35 PM
88	Parking	8/1/2019 11:11 AM
89	N/A	8/1/2019 11:06 AM
90	If STRs are allowed & if there are problems with them, how fast and effective will enforcement be?	7/30/2019 7:48 AM

Joe + Jenni Sulley
4 Margaret Ave
Brisbane, Ca 94005

2-10-20

RECEIVED

FEB 11 2020

Comm. Dev. Dept. Brisbane

Brisbane Planning Commission
50 Park Place
Brisbane, Ca 94005

Dear Planning Commission Members:

Thank you for working on plans for Air B+B regulations in Brisbane. On Friday night 2/7 we were awakened at 2:30 AM by people trying to locate the Air B+B located at 250 Kings with driveway access at 250 Margaret across from our house. We would appreciate if you could set a time limit for guests to check in rather than leaving a lock box. We are seniors, we live on a quiet private road that is not so private anymore. Ten O'clock would be a good check-in limit.

Sincerely,

Joe + Jenni Sulley

Ayres, Julia

From: Viana, Alberto
Sent: Thursday, February 20, 2020 8:10 AM
To: Ayres, Julia
Subject: FW: Short Term Rentals

-----Original Message-----

From: Kathleen Enright Salvia [mailto:ksalvia@comcast.net]
Sent: Monday, February 17, 2020 3:07 PM
To: Planning Commissioners
Subject: Short Term Rentals

Gentlepersons:

My name is Kathleen Salvia. I have lived at 300 San Bruno Avenue in Brisbane for nearly 24 years. I am writing in solidarity with my fellow neighbors who have been negatively impacted by short term rentals like the one on Humboldt that advertises that it can sleep 25 people. This would seem to be counter to the R1 zoning area in which the house sits. I know you have been grappling with this problem for quite some time, so forgive me if i state the obvious. I would come to the meeting but will be out of the country on the date it is scheduled.

I urge you to ban units that do not provide adequate parking for the short term tenants. Do not allow street parking. As we all know, the streets are already packed and parking spaces are at a premium.

I urge you to limit the number of individuals to whom a home or room may be rented.

I also suggest a licensing process which will allow for revocation of one's license should they be cited for a specified number of violations of City requirements, set by you, such as garbage control, parking, and noise levels.

Ok. That's my two cents. Thank you for listening.

Kathleen Salvia
300 San Bruno Avenue
Brisbane, CA 94004
415 606 9697
ksalvia@comcast.net

Barbara Ebel, Brisbane resident, spoke against the project.

Michele Salmon, Brisbane resident, spoke against the project.

Joe Sulley, Brisbane resident, spoke against the project.

With no one else coming forward to address the Commission, Commissioner Patel moved to close the public hearing. Commissioner Gooding seconded the motion and it was approved 4-0.

The Planning Commission commenced deliberation and identified concerns with the street tree removal and street improvements required by the City Engineer, as well as the potential impact to site hydrology.

Chairperson Sayasane recognized audience members wishing to speak after the public hearing was closed.

Barbara Ebel, Brisbane resident, spoke against the project.

Prem Lall, Brisbane resident, spoke against the project.

The Commission resumed deliberation. Following deliberation, Commissioner Patel moved to deny the permit. Commissioner Mackin seconded the motion and the motion was approved 4-0. *(Administrative note: no findings of denial were adopted; therefore, final action on this item must be continued to the next regular meeting.)*

H. OLD BUSINESS

1. **CONTINUED PUBLIC HEARING: Zoning Text Amendment RZ-2-19;** Zoning Text Amendments to adopt regulations for short term residential rentals (STRs) by adding a new Chapter 17.35 to the Brisbane Municipal Code; Citywide; City of Brisbane, applicant.

Senior Planner Ayres gave the staff presentation and answered questions from the Commission to clarify the ordinance's provisions regarding citations, renting of accessory dwelling units (ADUs) by permanent residents of the ADU, limitations on listings and bookings, and neighbor notification.

Chairperson Sayasane opened the public hearing.

David McWaters spoke against non-hosted rentals and suggested a cap on number of people per habitable bedroom.

Dennis Busse spoke against the STR ordinance, and thought the insurance requirements were too low.

Lori Lacsamana spoke against the STR ordinance, with concerns about parking.

Sharon Boggs spoke against non-hosted rentals and allowing ADUs to be STRs.

Julia Babiarz spoke against the STR ordinance, with concerns about non-hosted rentals and occupancy limits under the ordinance.

Peter Bockrath spoke against non-hosted rentals, with concerns about traffic and parking on narrow roads.

Joe Sulley spoke against the STR ordinance, with concerns about enforcement.

Nancy Lacsamana spoke against the STR ordinance, with concerns about non-hosted rentals and housing supply lost to STRs and read a petition signed by many residents.

Jodi Borghesi voiced concerns about parking, noise, and non-hosted rentals and support for hosted rentals.

Prem Lall spoke against the STR ordinance, with concerns about quality of life.

Barbara Ebel spoke in favor of non-hosted rentals with limitations and against renters being permitted to host STRs.

Linda Seekins spoke against the STR ordinance, specifically non-hosted rentals.

Michele Salmon spoke in favor of the STR ordinance but against non-hosted rentals.

Willy Chang spoke in favor of the STR ordinance with limits on occupancy.

Aaron Klevin, spoke in favor of the STR ordinance and for allowing limited non-hosted rentals.

Philipp Reichardt spoke in favor of the STR ordinance.

Dean Gough spoke against the STR ordinance, with concerns about parking and noise.

Radu Mihaila spoke in favor of the STR ordinance.

With no one else coming forward to address the Commission, Commissioner Mackin moved to close the public hearing. Commissioner Gooding seconded the motion and it was approved 4-0.

Following deliberation, Commissioner Mackin moved adoption of Resolution RZ-2-19 recommending Council approval of Zoning Text Amendment RZ-2-19 with modifications, including:

- Impose a 275-day residency requirement for hosts.
- Publish a public STR registry.
- Extend window for complaints relative to suspending a permit to 12 months.
- Initial permits valid for 1 year and renewed permits valid for 2 years or less.
- Ban unhosted rentals with exceptions for unplanned host absences.
- Ban STRs completely on any property that has an ADU built on or after 4/1/2017.

Commissioner Gooding seconded the motion and it was approved 4-0.

I. ITEMS INITIATED BY STAFF

BRISBANE PLANNING COMMISSION
Action Minutes of January 9, 2020
Regular Meeting

A. CALL TO ORDER

Chairperson Sayasane called the meeting to order at 7:30 p.m.

B. ROLL CALL

Present: Commissioners Gomez, Gooding, Mackin, Patel and Sayasane.

Absent: None.

Staff Present: Senior Planner Johnson

C. ADOPTION OF AGENDA

Commissioner Gomez moved adoption of the agenda. Commissioner Gooding seconded the motion and it was approved 5-0.

D. CONSENT CALENDAR

Commissioner Patel moved adoption of the consent calendar. Commissioner Mackin seconded the motion and it was approved 5-0.

E. ORAL COMMUNICATIONS

There were none.

F. WRITTEN COMMUNICATIONS

Chairperson Sayasane acknowledged written communications from Sarah Duffy and Sher Gias regarding cannabis retail storefront regulations and the Bay Area Monitor.

G. NEW BUSINESS

1. **PUBLIC HEARING: Zoning Text Amendment RZ-2-19; Zoning Text Amendments to adopt regulations for short term residential rentals by adding a new Chapter 17.35 to the Brisbane Municipal Code; Citywide; City of Brisbane, applicant.**

Senior Planner Johnson gave the staff presentation.

Chairperson Sayasane opened the public hearing.

Prem Lall opposed the ordinance due to concerns with sex trafficking, prostitution, and other criminal behavior at short term rentals.

Jeri Sulley asked for a limit for check-in hours to prevent neighborhood disturbances.

Joe Sulley shared the disturbances he experienced with short term rental guests in his neighborhood regarding noise, parties, and parking, and asked for a limit on check-in hours such as 10 PM.

Senior Planner Johnson said the draft ordinance included a check-in cut off of 10 PM.

James Seto shared the noise disturbances, lack of parking, trash, and other nuisances he has experienced with short term rentals in his neighborhood. He asked for a two-night minimum to prevent one-night parties.

Mr. Sulley shared the disturbances caused by short term rentals regarding garbage cans in the street.

Philippe Reichardt addressed the concerns voiced by prior speakers about short term rentals and family events at his home, and information about requirements for identify verification. He opposed the requirement for renting out accessory dwelling units for long-term renters due to infeasibility for his family and the cap on guests allowed per bedroom and the number of bedrooms that could be rented at the same time.

Mr. Lall asked why city staff would inform the public that short term rentals were allowed. He asked if the draft regulations would prevent a homeowner with an ADU from moving from their home into their ADU and then renting out their home as a short term rental.

Mr. Seto asked if the draft regulations would limit the size of the house that could be offered for short term rental.

Olga Alexander said she had managed short term rentals in other states and supported regulating and permitting them which generated revenue for the City and the homeowners. She suggested establishing a hotline for neighbors to report issues.

Chairperson Sayasane said the public hearing would be continued to February 27, 2020.

Commissioner Gomez and Commissioner Patel requested information on enforcement options to relieve neighbors from the burden of complaining to the homeowner or other contact person.

Commissioner Patel stated staff members should monitor short term rental listing websites and should proactively fine illegal listings without neighbors needing to complain. He requested fees that support that level of monitoring.

Chairperson Sayasane requested that complaints and citations related to short term rentals be logged in a system that police and other staff could access. She asked for clarity on fees and penalties.

Senior Planner Johnson provided references to the fees and penalties in the Municipal Code.

Mr. Lall asked if permits were revocable and if so if there was a list of criteria. When the Commission confirmed that was the case, Mr. Lall asked if illegal rentals after a permit has been revoked could be even more heavily fined.

Deb Horen shared she previously received a notice that her short term rental was illegal in 2014, followed by another letter in 2015 that said the City was not enforcing the rules during the time it discussed how to regulate them. She opposed allowing unhosted rentals.

Mr. Seto asked if the homeowner could pass the fine or violation to be pushed onto the rental guests.

Mr. Reichardt said hosts on Airbnb could not pass on fines to guests. He supported the owner and operator to be liable for any guest violations. He asked for higher penalties to be considered and make permit revocation automatic. He said Airbnb may have an option to block rentals from displaying unless they have a registered permit number on the listing.

It was the consensus of the Commission to table further discussion on the matter until the meeting of February 27, 2020.

File Attachments for Item:

N. Consider adoption of Resolution No. 2020-25 establishing the Appropriation Limit for Fiscal Year 2020-2021



CITY COUNCIL AGENDA REPORT

Meeting Date: 6/9/2020

From: Stuart Schillinger, Administrative Services Director

Subject: Fiscal Year 2020/21 Appropriation Limit

Community Goal/Result

Fiscal Sustainability

Purpose

Ensure that the City's taxes are not too great a burden on the Community.

Recommendation

Adopt Resolution 2020-25 establishing the Appropriation Limit for Fiscal Year 2020/21.

Background

Proposition 4 was adopted by California voters in November of 1979. This measure codified Article XIII B of the California Constitution, (Government Code 7901). This section specifies that governmental entities must calculate and adopt annually an appropriation limit beginning with fiscal year 1978-79.

In June of 1990, California voters approved Proposition 111, which amended Government Code Section 7901 as it applies to the Appropriation Limit. According to Proposition 111, cities are permitted to adjust their appropriation limit annually by the following two factors:

1. Either the percentage change in the California per capita personal income for the preceding year or the percentage change in the growth of non-residential assessed valuation due to non-residential construction; and
2. Either the percentage change in population of the City or the County.

Attached is the calculation of the appropriation limit as allowed by Proposition 111.

Fiscal Impact

The City's appropriation limit for FY 2020/21 is \$22,908,736. The City will receive \$15,494,640 in taxes, including the Guadalupe Valley Municipal Improvement District. Therefore, the City will receive about \$7,414,096 less in taxes than is allowed under the appropriation limit.

Measure of Success

The City is able to meet the needs of the Community while abiding by the Gann Limit.

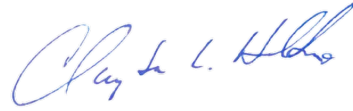
Attachments

Proposed Resolution

Appropriation Limit Calculation

Stuart Schillinger

Stuart Schillinger, Administrative Services Director



Clay Holstine, City Manager

RESOLUTION NO. 2020-25**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
ESTABLISHING THE APPROPRIATION LIMIT FOR THE FISCAL YEAR
2020/2021 PURSUANT TO ARTICLE XIII B AS AMENDED OF THE
CALIFORNIA STATE CONSTITUTION**

WHEREAS, Proposition 4 was approved by the California voters on November 6, 1979, thereby adding Article XIII B of the California State Constitution; and

WHEREAS, on June 4, 1990 the California Voters amended Article XIII B and the California Constitution by approving Proposition 111 which became effective July 1, 1990; and

WHEREAS, it is the desire of the City Council of the City of Brisbane to establish the Appropriation Limit for the Fiscal Year 2020/21 pursuant to Article XIII B as amended of the California State Constitution; and

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Brisbane hereby finds and determines;

1. That during the Fiscal Year 2020/21 the California Per Capita Income (CPCPI) increased by 3.73% and that the Non-Residential Construction growth factor was not available from the County Assessor.
2. That during Fiscal Year 2020/21 the percentage increase in the County of San Mateo and the City of Brisbane population was -0.13% and -0.56% respectively.
3. That the higher percentage shown in 1 and 2 above be applied to determine the appropriation limit for Fiscal Year 2020/21.
4. That the 2020/210 appropriation limit for the City of Brisbane is calculated to be \$22,908,736.
5. The 2020/21 budget anticipates tax revenues of \$16,494,640, which is \$7,414,096 less than the appropriation limit.

BE IT FURTHER RESOLVED THAT any revenues from proceeds of taxes and user fees in excess of costs received during the Fiscal Year 2020/21 over and above the appropriated limit of \$22,908,736 must be returned to the taxpayers of the City of Brisbane in accordance with the procedure to be adopted by the City Council of the City of Brisbane when such amount of refund is determined.

Terry O'Connell
Mayor

I hereby certify that the foregoing Resolution No. 2020-25 was duly and regularly adopted at a meeting of the Brisbane City Council on June 18, 2020 by the following vote:

AYES:

NOES:

ABSENT:

Ingrid Padilla
City Clerk

**CITY OF BRISBANE
COMPUTATION OF APPROPRIATION LIMIT
FOR FISCAL YEAR 2020/21**

	(1)	(2)	(3)
	% Change in CPCPI	% Change in Non-Residential Construction	The Greater % Change
1 % Change in CPCPI or Non-Residential Construction	3.73%	NA	3.73%
	% Change In County Population	% Change In City Population	The Greater % Change
2 % Change in County or City Population	-0.13%	-0.56%	-0.13%

C A L C U L A T I O N S

a	Prior year's Appropriation Limit	\$22,113,715
b	Multiply 1+Line 1 by 1 + Line 2	103.60%
c	Multiply Line (a) by Line (b), and subtract Line (a)	\$795,021
d	Add Lines (a), and (c) and enter total here	\$22,908,736
e	APPROPRIATION LIMIT FOR 2020/21	\$22,908,736
	Estimated tax proceeds as budgeted for fiscal year 2020/21	\$15,494,640
	Estimated Excess Limit Capacity or (Tax Proceeds)	\$7,414,096

File Attachments for Item:

O. City Manager's Report on upcoming activities

1. Update on November 3, 2020 General Elections
2. State Budget Update
3. Equity and Equal Opportunity Status & Update



CITY COUNCIL AGENDA REPORT

Meeting Date: June 18, 2020

From: City Manager

Subject: Equity & Equal Opportunity Status & Update –CM Report Item #3

Background

As very serious events have unfolded throughout our Country, it is timely to review what we do locally and seek opportunities to improve. The purpose of this report is to provide for transparency in our programs, policies and efforts in areas of Equity and Equal Opportunity both internal to our organization and in our interactions with the community of Brisbane which we serve.

I have attached overviews from our Public Safety departments as well as a Crime Statistic Sheet. (Attachment A, B & C).

The City of Brisbane bi-annually requires all of our employees to attend “Harassment Training” which covers topics including gender, race and ethnicity and age. We have an adopted policy, which I have attached (Attachment D) which both outlines the policy as well as steps an employee can take to make a complaint. All complaints are handled with utmost care and attention to issues of privacy.

Employees may also file complaints either internally in their department or to Human Resources if there are concerns outside of the items covered by this policy. Additionally, applicants for city positions may also file a complaint. Complaints almost always require the review of our legal team and as facts and conditions dictate the City management will take steps to either correct or modify decisions. Each case is unique unto itself and it is a disservice to the seriousness of the issue to try and generalize. Over time the number of complaints we address average 1 or 2 a year.

In addition, all City Employee labor agreements outline procedures for filing grievances and the process for hearing and adjudicating disputes. Disputes may be on interpretation of a labor agreement or potentially discipline of an employee. Grievances are very low in number for our City. Over a decade we may have had 2 or 3.

Police Department

Development and oversight of Police Department Policies is outlined in Attachment A. Crime Statistics are listed on Attachment C.

As to the later many calls for service for Police fall into several categories. For example, a call may come in as an individual acting in a menacing manner. The underlying cause could be a

combination of issues such as homelessness, drug addiction and mental health. At the time of a call an Officer is dealing with an exhibited behavior and potentially a violation of the criminal code. It is very difficult to cull out calls and simply say that Police should not be responding but rather social workers and/or mental health experts should respond instead. Certainly, these professionals need to be involved if our society is going to be able to address the underlying causes. Of interest in the calls for service less than 1% fit into a purely social service or mental health criteria. Our Officers work with various social service agencies in San Mateo County to provide services to people and direct them into appropriate programs or resources.

A great majority of Police interaction with people are a result of calls that come in through dispatch. One category of calls in Brisbane are of the nature of someone viewing an individual who in their experience or opinion does not belong or fit in town. The Officers job is to contact the individual and determine if there is criminal activity or another issue is involved. The recipient of this type of call may feel as though the Officer is harassing them, but from the Officer's perspective, he or she is simply responding for a call for service from the Community. All of this is to say that the day to day activities of a Police Officer even in a small town is complex and multi-layered.

Over the past 30 years we have not had a credible sustained complaint regarding excessive use of force by a Brisbane Police Officer.

Social Service Funding

As a small City we have limited funding for social services. Brisbane is not an entitlement City for Community Development Block Grant funding from the Federal Government. Our funds are directed to the County who does the majority of government funding of social services. We do however budget funds annually for the San Mateo County HOT program that serves the Homeless; Star Vista/First Chance; YMCA, Youth Counseling @ our schools; CORA, Domestic Violence Services; San Mateo County Keller Center for Victims of Child Abuse and Victims of Sexual Assault.

Next Steps

Many employees of the City have been making various suggestions to address the larger societal issue around racism and equity in our society. Over the years, we have developed a series of internal working groups to address issues such as Social Media (BSMUG), Innovation, Technology, etc. In that spirit we are developing an Equity Working Group to address issues that the employees believe need changing or new approaches. Recently the Parks and Recreation staff came forward with the ideas of Posters to address both COVID-19 as well as Racism. They also did the "detail" work of developing the Black Lives Matter, George Floyd Memorial that was placed on our Community Sign Board. I anticipate that the Working Group will come up with ideas that both have an internal focus as well as an external focus. As appropriate we will bring those items to the Council.

Chief Macias will also orally discuss how her department is addressing the various issues facing Police Departments that are relevant to what we are hearing in the media. These include:

- Policy development through Lexipol (what is Lexipol and how does it work)
- Training including:

Anti-bias
Cultural Diversity
Critical Incident
De-escalation
Sexual Harassment

- In car cameras
- Body worn cameras
- Quarterly audits of the Camera Program
- Required Use of Force of Department of Justice
- Department of Justice mandated STOP data collection program (2021)
- Citizen Complaint Process

1 Citizen complaint in the last 3 years

No sustained Use of Force complaint in the last 30 years

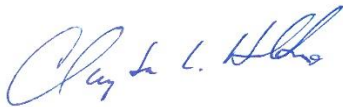
- Department equality/diversity

Recruitment

POST Bi-Annual Audit

Attachments:

- A. Police Programs and Policies
- B. NCFA Fire Diversity & Inclusion Efforts, Oversight & Governance
- C. Crime Statistics
- D. Discrimination and Harassment Policy



Clay Holstine, City Manager

ATTACHMENT A:

BRISBANE POLICE DEPARTMENT PROGRAMS AND POLICIES

The Brisbane Police Department along with all San Mateo County law enforcement agencies, use Lexipol Law Enforcement Solution to develop policies based on best practices guidelines. Lexipol ensures that all agencies are aligned with State and Federal law and they stay current with legislative changes, and training mandates, maintaining positive community relations, and ensuring officer and citizen safety.

The Brisbane Police Department provides equal opportunities for applicants and employees, regardless of actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, marital status or any other protected class or status.

(Recruitment and Selection Policy 1000)

We recruit applicants by attending various job fairs throughout the county, college and high school job fairs and list our opening positions through CalOpps, a website listing all public job openings. When applicants apply for jobs for our department, we encourage them to go on a ride along to learn about our community oriented policing philosophy and get a feel for our community.

Hiring Process for Law Enforcement positions:

- Application – CalOpps – Screened by HR for meeting the department’s minimum qualifications
- Oral Board Panel – Passing required
- Administrative Interview – Chief /Commander
- Background Investigation- outside background investigator – to verify his/her personal integrity and high ethical standards and to identify any past behavior that may be indicative of the candidate’s unsuitability to perform duties relevant to the operation of law enforcement position.
- Polygraph Test
- Cognitive screening – Psychological screening
- Medical screening – Meet the minimum requirements from Peace Officer Standards & Training
- Field Training Program – 12-16 weeks

Lateral Officer – 12-16 week Field Training Program

Entry Level Officer – PASS/6 months Police Academy
12-16 week Field Training Program

- 1 year probation

Trainings:

We invest heavily in training and keeping well above the minimum California Peace Officer Standards and Training requirements for law enforcement.

- All of the officers (100%) are CIT - Crisis Intervention Team - trained. "In every interaction we have, and during every call for service, the safety of all involved parties is our top priority."
- Our officers train Bi-monthly on topics such as the appropriate use of tools and tactics, legal updates, de-escalation efforts, and a variety of other skills,
- Officers receive annual Anti-bias/Cultural Diversity training
- Officers receive annual training on sexual harassment/discrimination/workplace violence training
- Officers are required to complete Daily Bulletin Trainings - Even the best policy manual isn't effective if it's not backed by ongoing training. Not only do we have officers read and sign off on our department policies and updates, but we also train on these policies, through a brief, scenario-based lessons and includes a test question at the end to measure comprehension of the policy. This is a way to enhance officer's understanding of our policies and how to apply these policies in real situations and improve their ability to make well-reasoned decisions.
- We have a Training Topics page on BPD's section of the website: <https://www.brisbaneca.org/police/page/training-topics>

Policies: We have all of our policies on our BPD website for the public view.

- Bias-Based Policing Policy (Policy 402)
- Discriminatory/Harassment Policy (Policy 328)
- Personnel Complaint Policy (Policy 1020)

Personnel Complaint process: We take all complaints regarding service provided by the Brisbane Police Department seriously.

Complaint forms are available on our BPD website or hard copy at the station

- Complaint form filled out by Complainant, received by Supervisor/Watch Commander
- Complaint given to Commander for review and assigned an Internal Review Investigator
- Completed investigation/disposition, returned to the Commander for review/disposition.
 - If allegation of misconduct is sustained/Commander imposes discipline
- Discipline can range from written/suspension/termination.
- Goal of discipline is to change behavior. Imposed discipline can depend on prior complaints in officer's personnel file/progressive discipline.

Brisbane Police Department believes in having a department that is diverse and reflective of those that live, work and visit our community that we call home.

ATTACHMENT B

North County Fire Authority

Diversity and Inclusion Efforts

NCFA female firefighters are provided for annual female camps to encourage women in the fire service

Annual California Firefighter Joint Apprenticeship Committee (CAL-JAC) firefighter statewide recruitment events with participation by NCFA female and male diverse firefighters staffing a NCFA information booth – Livermore & Sacramento

NCFA is a member of the California Firefighter Joint Apprenticeship Committee (CAL-JAC) Women in the Fire Service Task Force

NCFA Fire Chief Appointed as a board member of the statewide California Firefighter Joint Apprenticeship Committee (CAL-JAC) overseeing the training, education programs, recruitment, retention, physical abilities testing, women in the fire service task force and other beneficial to the fire service

NCFA utilization of the CAL-JAC verified testing process and establishment of a hiring list, which provides for fire departments to select diverse candidates to be interviewed for firefighter job openings

NCFA on-going goal of hiring female and other diverse firefighters has resulted in placement of female firefighters and other diversity into the organization, which is a continual effort

NCFA participation in local elementary, junior high and high school job fair day promoting the fire service as a career to young people of diversity

NCFA annual fire service day open to the communities and of all ages with a special emphasis in promoting diversity in hiring in the fire service

NCFA annual fire safety school visitation program, which also promotes the fire service as a career and encourages diversity in firefighter hiring

NCFA on-going goal of hiring female and other diverse candidates when completing firefighter recruitments

NCFA annual review of personnel diversity and hiring needs - working towards an inclusive fire organization culture

NCFA has hired female firefighters whenever they are available on the list

NCFA training and education opportunities are available to all in the organization with goal of improving promotional advancement, especially focusing on diversity of personnel when possible as a priority

Oversight and Governance

NCFA required annual harassment and discrimination training & education program

NCFA required annual harassment and discrimination supervisor and employee policy review & acknowledgment documentation – During review emphasis placed on letting personnel know and encouraging each to go to anyone in the fire organization or outside the organization should someone feel or is being harassed, discriminated against or being treated unfairly

NCFA conducts internal investigations following the Firefighter Bill of Rights procedural requirements for any suspected, potential or actual disciplinary matters or issues, including discrimination, harassment or other workplace inappropriate behavior

ATTACHMENT C

Crime Statistic 2019

<u>Total calls for Service</u>	82,490
Property Crimes	63,920
Crimes against Persons	8,030
Miscellaneous	10,450
 <u>Social Service Calls</u>	 776
Elder Abuse	54
Child Protective Services	5
Homelessness	607
Mental Illness (suicides/attempted suicides & 72 hour Psychological evaluation	110

Crime Statistics 2020 (through 5/31)

Total calls for Service	34,319
Property Crimes	27,004
Crimes against Persons	4,620
Miscellaneous	2,695
 <u>Social Service Calls</u>	 280
Elder Abuse	1
Child Protective Services	10
Homelessness	225
Mental Illness (suicides/attempted suicides & 72 hour Psychological evaluation	

Property crimes include: vehicle burglary, vandalism, fraud, embezzlement, stolen vehicle, theft

Crimes against persons include: assault/battery, disturbance, domestic violence, harassment, sexual assault, robbery

Misc./Calls: collisions, DUI's (alcohol/drug), health/social service calls, suspicious persons, parking calls, BMC violations.

ATTACHMENT D

City of Brisbane PERSONNEL PROCEDURES

Effective Date: January 14, 2004

Revised: March 1, 2019

Approved by: Clayton Holstine, City Manager

Legal Review by:

Subject: Policy Against Discrimination and Harassment in the Workplace

I. PURPOSE

The City of Brisbane is committed to providing a work environment free of discrimination and discriminatory harassment. This policy defines discrimination and discriminatory harassment and sets forth a procedure for the investigation and resolution of complaints of such conduct by or against City personnel including but not limited to elected official, appointed official, employee, volunteer or applicant or from a person providing services to the City pursuant to a contract.

II. POLICY

Discrimination and discriminatory harassment violates this Policy¹ and Section 3 of the City's Personnel Rules and Regulations, and will not be tolerated. To violate this policy, discrimination and discriminatory harassment of an applicant, employee or person providing services pursuant to a contract are conduct based on the following actual or perceived protected characteristics including but not limited to: race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person or association with a person on the basis of that person's actual or perceived protected characteristic.

Retaliation against any individual for making a complaint of discrimination or discriminatory harassment or for participating in an investigation or disciplinary proceeding thereto also violates this policy. All employees who violate this policy may be subject to disciplinary action, up to and including termination.

This policy applies to all terms and conditions of employment, including but not limited to hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, training opportunities and compensation.

¹ A violation of this policy does not necessarily constitute a violation of state and/or federal law, although discriminatory harassment is prohibited by both. A violation of this policy, although not necessarily a violation of the law, may result in discipline including and up to termination.

III. DEFINITION

A. Discrimination

Discrimination includes but is not limited to:

1. Any behavior or practice which treats a person differently because of that person's actual or perceived protected characteristic or association with a person on the basis of that person's actual or perceived protected characteristic as enumerated in section II- "Policy" of this policy;
2. Systematic exclusion of a person because of that person's actual or perceived protected characteristic;
3. Ignoring, failing to take seriously, blaming a person who reports or complains of conduct prohibited by this policy, or suggesting that he/she is "thin skinned," "too sensitive" or that he/she does not have a sense of humor;
4. Continuing behavior directed at a person's protected characteristic; and/or
5. Engaging in harassment, as more specifically defined below.

B. Discriminatory Harassment

Harassment can consist of virtually any form or combination of verbal, physical, visual or environmental conduct. It need not be explicit nor even specifically directed at the victim. Sexually harassing conduct can occur between people of the same or different genders. Harassment includes, but is not limited to, the following misconduct:

1. Verbal: Inappropriate or offensive remarks, slurs, jokes or innuendoes based on a person's actual or perceived protected characteristic. This may include, but is not limited to, inappropriate comments regarding an individual's body, physical appearance, attire, sexual prowess, marital status, pregnancy, childbirth or sexual orientation; unwelcome flirting or propositions; demands for sexual favors; verbal abuse, threats or intimidation of a sexual nature; or sexist, patronizing or ridiculing statements that convey derogatory attitudes about a particular gender.
2. Physical: Inappropriate or offensive touching, assault or physical interference with free movement when directed at an individual on the basis of that person's actual or perceived protected characteristic. This may include, but is not limited to, kissing, patting, lingering or intimate touches, grabbing, massaging, pinching, leering, staring, unnecessarily brushing against or blocking another person, whistling or sexual gestures.
3. Visual or Written: The display or circulation of offensive or derogatory visual or written material related to the enumerated classes listed in section II of this policy. This may include, but is not limited to, posters, cartoons, drawings, graffiti, reading materials, notes, letters, invitations, computer graphics or electronic media transmissions.

4. Environmental: A work environment that is permeated with sexually-oriented talk, innuendo, insults or abuse not relevant to the subject matter of the job. A hostile environment can arise from an unwarranted focus on sexual topics or sexually suggestive statements. An environment may be hostile if unwelcome sexual behavior is directed specifically at an individual or if the individual merely witnesses unlawful harassment in his/her immediate surroundings. The determination of whether an environment is hostile depends on the totality of the circumstances, including such factors as the frequency of the conduct, the severity of the conduct, whether the conduct is humiliating or physically threatening and whether the conduct unreasonably interferes with an individual's work.

Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

By definition, sexual harassment is not within the course and scope of an individual's employment with the City of Brisbane.

C. Sexual Harassment

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct is used as the basis for employment decisions or such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment.

Sexual harassment occurs when unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature:

1. Is made explicitly or implicitly a term or condition of employment.
2. Is used as a basis for an employment decision.
3. Unreasonably interferes with an employee's work performance or creates an intimidating, hostile or otherwise offensive environment.

Sexual harassment may take different forms. The following examples of sexual harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

1. Verbal sexual harassment includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor (this includes repeated, unwelcome requests for dates); and verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.

2. Nonverbal sexual harassment includes the distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; content in letters, notes, facsimiles, e-mails, photos, text messages, tweets and Internet postings; or other forms of communication that are sexual in nature and offensive.
3. Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, and forced sexual intercourse or assault.

Courteous, mutually respectful, pleasant, non-coercive interactions between employees that are appropriate in the workplace and acceptable to and welcomed by both parties are not considered to be harassment, including sexual harassment.

IV. RETALIATION

The City prohibits supervisors, managers and employees from taking any adverse action, as defined below, against an employee because they, in good faith, engaged in a protected activity. Retaliation is strictly prohibited and complaints of retaliation will be promptly and thoroughly investigated in accordance with the City's investigation procedures. Violations of this policy may result in disciplinary action, up to and including termination of employment.

A. Definition of Protected Activity

"Protected Activity" may include, but is not limited to, any of the following:

1. Reporting any incidents of harassment or discrimination, or perceived harassment or discrimination;
2. Participating in any investigation relating to a complaint of harassment or discrimination;
3. Filing a complaint with a federal or state agency;
4. Participating in or cooperating with a federal or state enforcement agency that is conducting an investigation of the City regarding alleged unlawful activity;
5. Testifying as a party or witness regarding alleged unlawful activity;
6. Associating with another employee who is engaged in a Protected Activity;
7. Making or filing a complaint regarding alleged unlawful activity;
8. Calling a governmental agency's "Whistleblower hotline."

B. Definition of Adverse Action

“Adverse Action” may include, but is not limited to, any of the following:

1. Real or implied threats of intimidation to attempt or prevent an individual from reporting alleged wrongdoing;
2. Refusing to hire an individual because of Protected Activity;
3. Denying promotion to an individual because of Protected Activity;
4. Taking any form of disciplinary action because of Protected Activity;
5. Altering work schedules or work assignments because of Protected Activity.

V. PROHIBITED BEHAVIOR BY SUPERVISORS/MANAGERS

- A. No supervisor, manager or other authority figure may condition any employment, employee benefit or continued employment in this City on an applicant’s or employee’s acquiescence to any of the behavior defined above.
- B. Also, all supervisors and managers are required to maintain confidentiality to the extent possible in communicating or investigating any claim of alleged discrimination or discriminatory harassment. No person shall destroy evidence relevant to an investigation conducted pursuant to this policy. All documents including but not limited to complaints, evidence and investigative documents shall be turned over to Human Resources.

VI. PROHIBITED BEHAVIOR BY ALL PERSONS

- A. No supervisor, manager or any other person in this City shall create a hostile or offensive work environment for any other person by engaging in any discriminatory or retaliatory conduct or by tolerating such on the part of any employee.
- B. No supervisor, manager or any other person in this City may retaliate against any applicant or employee because that person has opposed a practice prohibited by this policy or has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing conducted pursuant to this policy.
- C. No supervisor, manager or any other person in the City shall assist any individual in doing any act which constitutes discrimination, discriminatory harassment or retaliation against any employee.
- D. Both supervisory and non-supervisory employees may be held individually liable for civil damages for engaging in any harassing conduct or for aiding and abetting harassment.
- E. The law also prohibits third parties with whom employees come into contact with from engaging in this conduct. This would include but is not limited to volunteers, unpaid interns, individuals in apprenticeships or training programs, third party contractors or vendors who have business with the City and members of the public.

VII. HUMAN RESOURCES RESPONSIBILITIES AND OBLIGATIONS

- A. A copy of this policy shall be provided to all employees when they are first hired and on an annual basis, as well as displayed in prominent locations throughout the City as well as on the City's ESS website.
- B. A copy of the information sheet on sexual harassment prepared by the Department of Fair Employment and Housing is available to all employees upon request to the Human Resources Department. Also, further information from the Department of Fair Employment and Housing is available at its website, www.dfeh.ca.gov.
- C. Human Resources shall also provide training and assistance to supervisors, managers and employees in preventing and addressing discrimination and harassment as well as investigate, resolve and, when appropriate, make recommendations for prompt corrective and remedial actions of complaints. Human Resources shall take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint. As appropriate, Human Resources shall forward a Determination Letter to complainant and person charged. Human Resources shall also take action to remedy the effects of discrimination/harassment.

VIII. SUPERVISORS/MANAGERS RESPONSIBILITIES AND OBLIGATIONS

- A. All supervisors and managers must participate in mandatory sexual harassment prevention training (including but not limited to training about kinds of harassing behavior, protected traits such as gender identity, gender expression, and sexual orientation, bullying, liability and complaint procedure) once every two years.
- B. Supervisors/Managers shall be responsible for contacting Human Resources immediately upon receiving a complaint or when aware of situation involving potential violations of this policy.
- C. Supervisors/Managers who know or should have known of discrimination or harassment and fail to report such conduct and fail to take immediate corrective action are also subject to disciplinary action up to and including termination from City service.

IX. EMPLOYEES' RESPONSIBILITIES AND OBLIGATIONS

- A. Whenever possible, any employee who believes that he or she is experiencing discrimination or harassment is encouraged to inform the person that the particular conduct is unwelcome, offensive, unprofessional or highly inappropriate. If this does not resolve the matter or if the employee feels uncomfortable, threatened or has difficulty expressing their concern, the employee should report the matter to a supervisor, as set forth below.
- B. All employees shall report any conduct which fits the definition of discrimination or discriminatory harassment to their direct supervisor, Department head or the Administrative Services Director and/or his or her Designee. This includes conduct of non-employees, such as sales representatives or service vendors or harassing conduct toward such contractors. Also, all employees may make a report through the Employee Protection Line which is monitored by an independent third party. An anonymous report may be made at any time, 24 hours a day,

7 days a week, through the Employee Protection Line at 1-800-576-5262 (organization code number 10126), or an employee may file a complaint with the Equal Employment Opportunity Commission at 415-356-5100 or the Fair Employment and Housing Commission at 1-800-884-1684.

- C. All persons shall report to their direct supervisor, the Department head or the Administrative Services Director and/or his or her Designee any instances of abusive conduct, discrimination or discriminatory harassment which they have directly observed, whether or not reported by the employee who is the object of the discrimination or harassment.
- D. All employees shall cooperate with any authorized investigation of alleged discrimination or discriminatory harassment.
- E. Any employee who makes a report or complaint which the employee knows or should know is false, under this policy, shall be subject to disciplinary action, up to and including termination.
- F. All employees shall attend mandatory harassment and discrimination training and education on an annual basis or as required by the City.

X. CONFIDENTIALITY

All complaints and investigations are treated confidentially to the extent possible, and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation, and the Administrative Services Director or their designee will take adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a complaint or investigation under this policy will be maintained in secure files within the Human Resources Department.

XI. REPORTING HARASSMENT/DISCRIMINATION: COMPLAINT PROCESS

- A. All persons shall immediately report to their direct supervisor, the Department Head or the Administrative Services Director or their designee any evidence or complaints of discrimination or discriminatory harassment made to them. Any supervisor or manager who receives a complaint regarding discrimination or discriminatory harassment shall immediately report it to the Human Resources. Complaints should be submitted as soon as possible after an incident has occurred, preferably in writing.
- B. The Administrative Services Director or their designee shall authorize the investigation or conduct the investigation of any incident of alleged discrimination or discriminatory harassment reported to them. All complaints that are reported will be investigated as promptly as possible. The investigation shall be conducted in a way which ensures, to the extent feasible, the privacy of the parties involved, consistent with the need to conduct an adequate investigation. Complaints will be investigated by impartial and qualified investigator(s). The process will be documented and tracked for reasonable progress, and all investigations will be completed in a timely manner.

- C. The person designated to investigate shall immediately report, in writing, the findings of fact to the Administrative Services Director or their designee who, in turn, will determine whether the policy has been violated and communicate that conclusion to the complainant. Disciplinary action shall be decided in accordance with City policy and after consultation with the City Manager and the Human Resources Department.
- D. Under no circumstances shall an employee who believes that he/she has been the victim of discrimination or discriminatory harassment be required to first report that complaint to a supervisor if that person is the individual who has engaged in the alleged discriminatory or harassing conduct.
- E. No employee shall retaliate against another employee who reports an incident pursuant to this policy. Employees found to have violated this section may be subject to disciplinary action, up to and including termination.

XII. FILING A COMPLAINT WITH THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING AND/OR EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Nothing in this policy will preclude an individual from filing a complaint with the California Department of Fair Employment and Housing (DFEH) and/or the Equal Employment Opportunity Commission (EEOC). Any form of retaliation is prohibited against an individual who pursues administrative relief through either agency, in addition to seeking relief under internal administrative procedures afforded by this policy. For more information on filing a complaint with the DFEH or the EEOC, please refer to the following information:

DFEH

Website: <https://www.dfeh.ca.gov/complaint-process/file-a-complaint/>

Phone: 800-884-1684

Email: contact.center@dfeh.ca.gov

Write to: 2218 Kausen Drive, Suite 100, Elk Grove, CA 95758

EEOC

Website: <https://www.eeoc.gov/employees/charge.cfm>

Phone: 800-669-4000

Email: info@eeoc.gov