



CITY of BRISBANE

City Council Meeting Agenda

Thursday, March 2, 2023 at 7:30 PM • Hybrid Meeting 50 Park Place, Brisbane, CA

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

TO ADDRESS THE COUNCIL

IN PERSON

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

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

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

REMOTE PARTICIPATION

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The agenda materials may be viewed online at brisbaneca.org at least 72 hours prior to a Regular Meeting, and at least 24 hours prior to a Special Meeting.

Remote Public Comments:

Remote meeting participants may address the City Council. We also encourage you to submit public comments in writing in advance of a meeting. Aside from commenting personally while in the Zoom Webinar, the following email and text line will be also monitored during the meeting and public comments received will be noted for the record during Oral Communications 1 and 2 or during an agenda item.

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

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

Webinar ID: 991 9362 8666

Call In Number: 1 (669) 900-9128

Note: Callers dial *9 to "raise hand" and dial *6 to mute/unmute.

SPECIAL ASSISTANCE

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

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

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

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

ROLL CALL

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

ADOPTION OF AGENDA

AWARDS AND PRESENTATION

- B. Women’s History Month

ORAL COMMUNICATIONS NO. 1

CONSENT CALENDAR

- C. Accept Investment Report as of December 2022
- D. Adopt an Ordinance, waiving second reading, amending Section 13.04.420 of Chapter 13.04 of the Brisbane Municipal Code pertaining to “Sewer System”

(Adoption of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2). The purpose of this ordinance is to update the municipal code chapter relating to joint sewer laterals.)
- E. Support the Brisbane School District Board of Trustees decision to name the baseball field at Lipman Middle School in recognition of the Brisbane Lions Club
- F. Update of Commercial Linkage Fee Nexus and Feasibility Study

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

OLD BUSINESS

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

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

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

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

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

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

STAFF REPORTS

- J. City Manager's Report on Upcoming Activities

MAYOR/COUNCIL MATTERS

- K. Update on Committee Recruitment
- L. Countywide Assignments and Subcommittee Reports
- M. Written Communications

ORAL COMMUNICATIONS NO. 2

ADJOURNMENT

C.

File Attachments for Item:

C. Accept Investment Report as of December 2022

CITY OF BRISBANE
CASH BALANCES & INVESTMENTS
SOURCE OF FUNDING
December 31, 2022

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		\$ 7,512,194	\$ 7,512,194	\$ 7,512,194	0.000		
STATE FUND (LAIF)	Deposit on call	continuous	\$ 1,983,204	\$ 1,983,204	\$ 1,983,204	1.980	on call	no rating
Other Investments								
	Comenity Capital Bank	4/28/2019	\$ 248,000	\$ 248,000	\$ 246,473	2.650	04/28/2023	
	Morgan Stanley	5/2/2019	\$ 245,000	\$ 245,000	\$ 243,278	2.650	05/02/2023	
	FFCB	3/8/2022	\$ 1,000,000	\$ 1,000,000	\$ 962,040	1.670	03/08/2024	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 967,200	2.400	04/22/2024	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 238,102	2.750	05/01/2024	
	FHLB	7/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 976,310	3.350	07/26/2024	
	Wells Fargo Bank	9/23/2022	\$ 250,000	\$ 250,000	\$ 244,879	3.750	09/23/2024	
	American Express	9/21/2022	\$ 250,000	\$ 250,000	\$ 244,889	3.750	09/24/2024	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 935,200	1.000	09/30/2024	
	FHLM	12/13/2022	\$ 1,000,000	\$ 1,000,000	\$ 1,001,070	5.140	12/13/2024	
	FHLB	3/24/2022	\$ 1,000,000	\$ 1,000,000	\$ 943,120	2.000	03/24/2025	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 959,510	2.750	04/22/2025	
	FHLB	7/28/2022	\$ 1,000,000	\$ 1,000,000	\$ 977,490	4.050	07/28/2025	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 916,480	1.300	09/30/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 999,420	4.750	10/27/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 997,290	5.000	10/27/2025	
	FFCB	9/12/2022	\$ 1,000,000	\$ 1,000,000	\$ 984,540	4.125	12/12/2025	
	FHLB	9/29/2022	\$ 1,000,000	\$ 1,000,000	\$ 984,770	4.150	09/29/2026	
	FHLB	3/25/2022	\$ 1,000,000	\$ 1,000,000	\$ 929,960	2.600	03/25/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 961,040	3.150	05/26/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 957,130	3.750	05/26/2027	
	FHLB	9/30/2022	\$ 1,000,000	\$ 1,000,000	\$ 992,450	5.000	09/30/2027	
BNY Mellon	Treasury Obligations	continuous	\$ 4,920,890	\$ 4,920,890	\$ 4,920,890	4.190	on call	110% collateral
Sub-total			\$ 23,159,890	\$ 23,159,890	\$ 22,583,530			
U.S. Bank	2014 BGPGA Bond (330)	Improvements	Fed Treas Obl	\$ -	10031			
		Reserve Fund	Fed Treas Obl	\$ 1	10032			
		Revenue Fund	Fed Treas Obl	\$ -	10034			
		Expense Fund	Fed Treas Obl	\$ -	10035			
		Principal	Fed Treas Obl	\$ 1	10036			
		Interest Fund	Fed Treas Obl	\$ 0	10037			
U.S. Bank	2015 Utility Capital (545)	Improvements	Fed Treas Obl	\$ -	10031			
		Reserve	Fed Treas Obl	\$ 157	10032			
		Expense Fund	Fed Treas Obl	\$ -	10035			
PARS	OPEB Trust	Trust Cash	Investments	\$ 3,485,827	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,220,471	13050			
Sub-total	Cash with Fiscal Agents			\$ 4,706,457				
Total other investments			\$ 23,159,890	\$ 27,866,347	\$ 22,583,530			
TOTAL INVESTMENTS & CASH BALANCES			\$ 32,655,287	\$ 37,361,744	\$ 32,078,928			

Outstanding Loans to Department Heads

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

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

Two year Treasury	4.41%	
Weighted Interest	2.59%	
Weighted maturity	1.74	Years

TREASURER'S CERTIFICATE

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

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

Carolina Yuen
CITY TREASURER

File Attachments for Item:

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

(Adoption of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2). The purpose of this ordinance is to update the municipal code chapter relating to joint sewer laterals.)



CITY COUNCIL AGENDA REPORT

Meeting Date: March 2, 2023

From: Director of Public Works/City Engineer

Subject: Municipal Code Changes to Sewer System Chapter

Recommendation

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

Background

This ordinance was introduced at the regular City Council meeting held on February 16, 2023, and was passed unanimously with no requested changes.

Attachments

1. February 16, 2023 staff report, including the introduced ordinance.

Handwritten signature of Randy Breault in blue ink.

Randy Breault, Public Works Director

Handwritten signature of Clayton L. Holstine in black ink.

Clay Holstine, City Manager



CITY COUNCIL AGENDA REPORT

Meeting Date: February 16, 2023

From: Director of Public Works/City Engineer

Subject: Municipal Code Changes to Sewer System Chapter

Community Goal/Result: Ecological Sustainability

Purpose

To introduce an ordinance that will update the municipal code chapter relating to joint sewer laterals; this action is consistent with the community's goals of making decisions based on stewardship of the environment, and reducing waste streams.

Recommendation

Introduce an Ordinance, waiving first reading, amending Section 13.04.420 of Chapter 13.04 of the Brisbane Municipal Code pertaining to "Sewer System ." Introduction and adoption of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2).

Background

Paragraph I of BMC §13.04.420 states:

- I. The city council may, by resolution, upon finding good cause therefor, grant approval for a private sewer lateral (one which traverses another's private property in order to connect to the public sewer main); provided, that each applicant therefor shall submit plans in advance to the director for approval. Any approval granted by the city council for a private sewer lateral is contingent on an access easement and maintenance agreement between the private parties, in a form acceptable to the director, being recorded with the county recorder.

BMC §13.04.430 provides detailed conditions under which the Director of Public Works may approve a joint sewer lateral, including paragraph "G", which is nearly identical to the language quoted above:

13.04.430 - Joint sewer lateral installation and maintenance.



The director may upon finding good cause therefor, grant approval for a joint sewer lateral (one that services two (2) or more properties); provided, that each property owner shall submit plans to the director for prior approval. Any approval granted by the director for a joint sewer lateral shall be in a form as approved by the city attorney and shall be generally subject to the following terms and conditions:

- A. Installation and maintenance costs of the joint sewer lateral shall be shared equally by the parties thereto. Any person who subsequently connects to the joint sewer lateral shall share in the cost thereof on a pro rata basis.
- B. Original installation and repairs must be pursuant to code, and approval of the plumbing or building inspector is required.
- C. One owner may hire a licensed plumber to make emergency repairs without the consent of the other owners, in the event they are not available, and the cost of the emergency repairs shall be shared on a pro rata basis.
- D. No user shall interrupt the continuity of the service or cause to have interrupted the continuity of the service of the joint sewer lateral, in such a manner as to cause damage or inconvenience to the other users, other than for a reasonable time required for repair.
- E. In the event that the owner or users fail to act and the director and/or health officer determines that conditions in the joint sewer lateral are such as to be a hazard to health or safety, then the city may, pursuant to written notice, order the work done and divide the cost, as specified in subsection A of this section, on the tax bill if it is not compensated within fifteen (15) days from the time of billing by registered mail to each of the users last known address or that shown on the last equalized assessment roll.
- F. The owners and users of the joint sewer lateral shall assume all responsibility and liability in connection therewith and they shall hold the city harmless.
- G. The owners of the property on which the joint sewer lateral is located shall grant and have recorded an easement of not less than ten (10) feet in width for the maintenance and repair of the joint sewer lateral.

Discussion

In discussion with legal counsel, there seems to be no added value to have the City Council approve by Resolution a private sewer lateral on another's property, when the exact same requirements (minus the passing of a Resolution) are also found in the conditions imposed on the Public Works Director. An argument might also be made that the requirement to obtain Council's approval is overly restrictive on the property rights of the landowner who would grant the easement.

In practice over the last 22 years, the Council has not questioned any request to approve a joint sewer lateral. When willing parties do desire to enter into a joint sewer lateral agreement, this action is to the benefit of the city because it provides specificity as to responsibility for repair and maintenance of sewer laterals, which has in past been problematic when a shared lateral overflowed without benefit of assigned responsibility.

The recommended action removes only the requirement for Council to approve joint sewer laterals by Resolution. All other existing requirements remain in effect. This action will expedite the processing of shared sewer lateral agreements.

Environmental Review

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

Fiscal Impact


None as a direct result of the recommended action.

Measure of Success

An updated sewer system municipal code chapter that expedites the processing of shared sewer lateral approvals.

Attachments

1. Proposed Ordinance
2. Red-line version comparing existing code section to proposed changes



Randy Breault, Public Works Director

Clay Holstine, City Manager

ORDINANCE NO. - - -

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTION 13.04.420 OF CHAPTER 13.04
OF THE BRISBANE MUNICIPAL CODE CONCERNING SEWER SYSTEM**

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

Section 1: Section 13.04.420 of the Brisbane Municipal Code is amended by deleting subsection I thereof and Section 13.04.420 to read as follows:

"13.04.420 - Sewer installation specifications and requirements.

Sewers to be installed in the city shall satisfy the following requirements:

- A. All sewers constructed in the public right-of-way shall be constructed in accordance with plans and specifications approved by the city council upon recommendation of the director. Sewer laterals shall be constructed in accordance with standard plans prepared by the director and approved by the city council.
- B. Minimum size of all sewer laterals shall be four (4) inches and shall require a cleanout at the property line.
- C. The minimum size of public sewers shall be eight (8) inches and standard manholes shall be placed at frequencies no greater than three hundred (300) feet or in places of change of direction or grade, except sewers twelve (12) inches in diameter or greater, under which circumstances the specific design shall be approved by the director.
- D. When sewers cannot be placed in the public right-of-way or in existing rights-of-way of ten (10) feet in width or greater, special easements shall be acquired a minimum of ten (10) feet in width and wherever possible shall straddle existing property lines.
- E. Wherever easements ten (10) feet in width or greater can be acquired, public sewers shall be extended in accordance with approved plans and specifications and in accordance with proper master planning for the area being served.
- F. Wherever a public sewer can be extended along public rights-of-way or standard easements, each service shall be extended to the public sewer by a sewer lateral serving only one unit of ownership unless the city council, by resolution, approves the service of more than one unit of ownership by a lateral.
- G. A cleanout shall be placed on each sewer lateral at the transition between the upper and lower portions of the lateral. The director may additionally require the installation of a backflow

prevention device on the sewer lateral when he or she reasonably believes backflow has or may occur.

H. Wherever a substandard extension of the public sewer exists, i.e., a line smaller than eight (8) inch or across private easements, no further extension of the sewer line can be made until such a time as an agreement for maintenance and rights of easement for all individuals using the line is recorded with the office of the county recorder."

Section 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 3: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Madison Davis, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Thomas R. McMorrow, City Attorney

“Redlined” proposed change to BMC §13.04.420

13.04.420 - Sewer installation specifications and requirements.

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B. Minimum size of all sewer laterals shall be four (4) inches and shall require a cleanout at the property line.

C. The minimum size of public sewers shall be eight (8) inches and standard manholes shall be placed at frequencies no greater than three hundred (300) feet or in places of change of direction or grade, except sewers twelve (12) inches in diameter or greater, under which circumstances the specific design shall be approved by the director.

D. When sewers cannot be placed in the public right-of-way or in existing rights-of-way of ten (10) feet in width or greater, special easements shall be acquired a minimum of ten (10) feet in width and wherever possible shall straddle existing property lines.

E. Wherever easements ten (10) feet in width or greater can be acquired, public sewers shall be extended in accordance with approved plans and specifications and in accordance with proper master planning for the area being served.

F. Wherever a public sewer can be extended along public rights-of-way or standard easements, each service shall be extended to the public sewer by a sewer lateral serving only one unit of ownership unless the city council, by resolution, approves the service of more than one unit of ownership by a lateral.

G. A cleanout shall be placed on each sewer lateral at the transition between the upper and lower portions of the lateral. The director may additionally require the installation of a backflow prevention device on the sewer lateral when he or she reasonably believes backflow has or may occur.

H. Wherever a substandard extension of the public sewer exists, i.e., a line smaller than eight (8) inch or across private easements, no further extension of the sewer line can be made until such a time as an agreement for maintenance and rights of easement for all individuals using the line is recorded with the office of the county recorder.

~~I. The city council may, by resolution, upon finding good cause therefor, grant approval for a private sewer lateral (one which traverses another's private property in order to connect to the public sewer main); provided, that each applicant therefor shall submit plans in advance to the director for approval. Any approval granted by the city council for a private sewer lateral is contingent on an access easement and maintenance agreement between the private parties, in a form acceptable to the director, being recorded with the county recorder.~~

File Attachments for Item:

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



CITY COUNCIL AGENDA REPORT

Meeting Date: 3/2/2023

From: Noreen Leek, Parks & Recreation Director

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

Community Goal/Result

Community Building

Purpose

Support local non-profit organizations.

Recommendation

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

Background

The Brisbane Lions Club was formed in 1947, and recently celebrated their 75th year as a Club. Traditionally, Lions clubs are places where individuals join together to give their valuable time and effort to improving their communities, and the world. Over the last 100 years, the kindness of Lions and Leos has multiplied across borders, oceans, and continents. With over 1.4 million members, they truly change the world.

Discussion

In April 2019, the Brisbane School District Board voted unanimously to approve the request to name the baseball field at Lipman Middle School in honor of the Lions Club. In the years leading up to this decision, the Lion's Club supported youth baseball teams in Brisbane by offsetting costs to purchase a storage shed onsite and new equipment for 3 separate teams. The Lion's Club requested to install a metal sign on the backstop fence acknowledging the designation as "Brisbane Lions Club Field". The Club had a dedication event tentatively scheduled in early 2020 but was forced to cancel due to Covid. They would like to now proceed with the dedication event and sign as previously planned.

It should be noted that although the City has a facility naming policy for parks & recreation facilities, that policy does not apply in this case given that the baseball field is School District-owned property.

Fiscal Impact

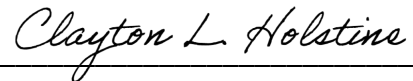
n/a

Attachments

n/a



Noreen Leek, Parks & Recreation Director



Clay Holstine, City Manager

File Attachments for Item:

F. Update of Commercial Linkage Fee Nexus and Feasibility Study

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



CITY COUNCIL AGENDA REPORT

Meeting Date: March 2, 2023

From: John Swiecki, Community Development Director

Subject: Updated Commercial Linkage Fee Nexus and Feasibility Study

Community Goal/Result

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

Purpose

Update the 2015 Commercial Linkage Fee Nexus and Feasibility Study to support future consideration of commercial linkage fees to generate local funds the City can program to preserve, rehabilitate, and construct new housing developments affordable to low-income households in Brisbane.

Recommendation

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

Background

Until their dissolution in 2012 by the State, Redevelopment Agencies were the primary financial tools cities had to develop affordable housing in their communities. Brisbane's Redevelopment Agency specifically funded development of 14 rental senior units (Bridge Housing) and eight for-sale homes (Habitat for Humanity). The loss of Redevelopment funds left the City with no dedicated source of ongoing funding for affordable housing development.

In the post-Redevelopment world, the primary financial tool available to cities for financing affordable housing development are nexus fees charged to new commercial development, based on a study that shows the "nexus" or connection between new development and an increased demand for affordable housing. Nexus fee studies are required by the California Government Code to support imposing a fee on new development.

In 2015, the City participated in a "Grand Nexus Study" convened by San Mateo County's 21 Elements collaborative prepared by economic consultants Strategic Economics and Vernazza Wolfe Associates. The resulting report for Brisbane analyzed the nexus between new commercial development and the resulting demand for affordable housing development, analyzed the maximum possible fee that could be legally supported, and analyzed the most feasible fee that could be levied without making development unaffordable. The nexus study was reviewed by a City Council

subcommittee in 2016 but no action was taken. The commercial nexus fee feasibility study was updated in 2020, at the beginning of the COVID –19 pandemic economic shutdown.

Discussion

The City has committed to adopting commercial nexus fees in its 2023-2031 Housing Element, a key strategy to collect local funds to develop new affordable housing. To support fee adoption in 2023, the original nexus study must be updated and a new feasibility analysis using current economic data and trends is required.

The City's consultant for the Affordable Housing Strategic Plan, ECONorthwest, is uniquely qualified to prepare such an update considering their existing scope of work evaluating the City's current affordable housing funds and viable ongoing sources of affordable housing funding through the AHSP. ECONorthwest has submitted a proposal to complete this work via an amendment of \$55,000 to their existing contract.

Fiscal Impact

The proposal would increase the City's contract with ECONorthwest from \$125,390 by \$55,000, or to \$180,390, paid from the low/moderate income housing fund balance (currently exceeding \$3 million).

Measure of Success

Adoption of a commercial nexus fee that will leverage anticipated commercial development to generate funds to build affordable housing.

Attachments

1. Draft scope of work and budget proposal from ECONorthwest

John Swiecki
John Swiecki, Community Development Director

Clayton L. Holstine
Clay Holstine, City Manager

DATE: January 29, 2023
 TO: Julia Ayres; City of Brisbane
 FROM: Chris Blakney, Katherine Buck; ECONorthwest
 SUBJECT: City of Brisbane Commercial Linkage Fee Nexus Study – Scope of Work

ECONorthwest is pleased to provide the City of Brisbane with this scope of work to lead a commercial linkage fee study. This study is based on the recommendations of the Affordable Housing Strategic Plan that highlighted the possibility that a commercial linkage fee could be a feasible tool for Brisbane to increase funding to support affordable housing production in the city. As part of a countywide effort, the City completed a feasibility study for a commercial linkage fee and housing impact fee in 2015 and this proposal is to complete an update to the previous study.

Scope of Work:

The updated Commercial Linkage Fee Nexus Study would establish the connection between new commercial development and an increase in need for affordable housing and would calculate an appropriate fee to be levied on the commercial development. This study will review the feasibility and risks of a linkage fee, establish the nexus, and propose a range of linkage fees per square foot of new commercial development in the city. The City has identified that they want to study a commercial linkage fee for the following specific commercial uses:

- Hotel
- Traditional office,
- Life sciences and research & development space,
- Industrial space.

The scope of work will be completed in three tasks, as described below.

Task 1 - Explore Market Feasibility & Risk Assessment

As part of the Affordable Housing Strategic Plan, ECONorthwest evaluated some of the considerations for a commercial linkage fee. The first task of this study will be to dive deeper into these considerations to highlight the feasibility of a linkage fee and address the potential benefits and risks of a new fee. We will determine if there is substantial market demand for new development in the city and will review case studies of other cities that have implemented commercial linkage fees to have a comprehensive understanding of the impacts of a linkage fee policy. We will create a comparative linkage fee matrix that includes the linkage fee rates in other cities in San Mateo County and for neighboring counties in the region. We will highlight any political or financial risks or barriers to implementation.

Funding Source	Ease of Implementation	Political Palatability	Revenue Potential	Flexibility	Adverse Impact Risk
Com Linkage	Moderate	Low Barrier	Potentially High	Mixed	High

Source: Potential Funding Streams for the City of Brisbane, ECONorthwest (July 14, 2022)

Task 2 - Establish the Nexus & Determine the Fee

In Task 2, we will research and establish the nexus between new commercial development and its impact on the demand for affordable housing in the community. We will employ the following steps to establish the nexus:

1. Determine the four land use categories that will be included as part of the study: hotels, traditional office, life sciences and research & development space, and industrial. We will assume a standard square footage of 100,000 SF across the four land use categories to complete the analysis.
2. Use the employment density per commercial use (based on current industry standards) to estimate the number of employees that will be supported by new development per category.
3. Identify the industry sectors and associated NAICS codes for each commercial use and use Bureau of Labor Statistics and Employment Development Department data to estimate the wages of these employees.
4. Use Census data to calculate the average workers per household ratio and use the ratio to translate the employee wage into a household income. The households' incomes will then be compared to local Area Median Income (AMI) to see the number of households that are categorized as very low income ($\leq 50\%$ AMI), Low Income (51-80% AMI), and Moderate Income (81-120% AMI) categories.
5. Estimate the affordability gap based on what these households can afford to pay for housing (assuming no more than 30% of household income is spent on housing) and the development cost of a new housing unit in Brisbane. Calculate the aggregate affordability gap created by each commercial use to establish whether the new development will increase the need for affordable housing options.
6. Divide the affordability gap by the 100,000 SF assumption per commercial use to calculate the per square foot maximum fee.

Task 3 - Refine the Fee Range

In the previous task, we will demonstrate if there is a nexus and the maximum commercial linkage fee by commercial use and in Task 3, we will refine the fee and determine a feasible linkage fee range by commercial use. The range will serve as the guardrails for the fee to ensure that it contributes to the affordable housing fund without discouraging new development. To identify the fee range, we will take a three-step approach:

1. We will create three scenarios and adjust the scenario inputs, including employment densities, income, and/or household assumptions, to test sensitivities related to the data assumptions. We will rerun the analysis in Task 2 to test the scenarios and calculate the per square footage fee needed to offset the affordability gap for each of the three scenarios, to create the baseline linkage fee range per commercial use.
2. Next, we will compare the calculated commercial linkage fee rates to the comparative linkage fee matrix created in Task 1 to ensure the range for Brisbane is competitive and within a reasonable range of its neighboring jurisdictions. We will calibrate the Brisbane

range so that it does not have the highest linkage fee rates in the region, or else it could disincentivize developers to build in Brisbane.

3. After right-sizing the fee range based on the regional context, we will create a pro forma and conduct sensitivity analysis to ensure the fee range will still allow for new commercial projects to pencil in each of the land use categories. Based on the pro forma analysis, we will recommend a fee range that balances the opportunities for revenue creation with impact of commercial development. We strongly recommend that the City selects a fee rate that is well below the maximum supportable rate to minimize the risk of market disruption.

We will also evaluate whether the City should consider a phasing schedule or any exemptions to the policy for specific development types.

Deliverable: Fee Analysis Memo including a feasible range for a commercial linkage fee by land use category; supporting data tables will be included in the Appendix.

Fee: Time and materials based on the attached rate schedule, with a not to exceed of \$55,000.

Schedule: February 2023 – May 2023

We look forward to supporting the City of Brisbane with this important study. Please let us know if you have any questions or would like to discuss the scope further.

Sincerely,

Chris Blakney, Project Director

blakney@econw.com

213-291-9444

File Attachments for Item:

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

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



CITY COUNCIL AGENDA REPORT

Meeting Date: March 2, 2023

From: Noreen Leek, Parks & Recreation Director

Subject: Sierra Point Open Space and Parks Master Plan process update

Community Goal/Result

Community Building

Purpose

Develop the City's park system and public spaces for community interactions, enhance connectivity, and provide additional opportunities for recreation through the master planning process.

Recommendation

Receive process update from consultant and provide additional direction to staff if needed.

Background

The impetus for the Sierra Point Open Space and Parks master plan came from a 2017 agreement between the City of Brisbane and developer Sierra Point LLC. The agreement released the private interest in a lease on what is commonly referred to as Parcel R at the Marina in favor of the City. It also caused the developer to pay the City a one-time fee of \$300,000 for park development at Parcel R and a fee paid at the time of building permit issuance of 50 cents per square foot, expected to generate another \$225,000.

Additionally, the City and Healthpeak negotiated an amendment to Healthpeak's project (referred to as The Shore) to allow approximately 20,904 square feet of additional construction by connecting on three floors two of their existing buildings. In exchange, Healthpeak paid the City a one-time park development fee of \$1.5 million. In total, the City expects to have a little over \$2 million to commence park improvements at Sierra Point.

Additional funding will come from a park development impact fee that the City Council will review soon, which will charge a fee against new development and proceeds can be for any location of the City's choosing. A master plan helps the City negotiate for the private investment of projects, still to be improved. Finally, the City's existing Public Art Fund could also support implementation of art-related projects within the master plan.

In June 2021, the City issued a solicitation for Letters of Interest (LOI) from qualified Landscape Architects and Park Planning firms to develop an open space and parks master plan at Sierra Point. The solicitation noted the City's aspiration to develop an open space and parks master plan at Sierra Point to meet the recreational needs of both Sierra Point tenants and the public and to promote integration with the surrounding areas like the City's Marina, the San Francisco Bay Trail, and neighboring businesses. The master planning effort serves to integrate new public spaces with existing and to-be-built private

areas. The vision for the project incorporates several acres of reimagined parks and open space on the eastern side of Sierra Point adjacent to the Marina.

Prospective firms were asked to demonstrate successful recent local experience in the design of open space and parks. Prior work with San Mateo County municipalities and/or one or more of the nine San Francisco Bay Area counties that resulted in a successfully developed park or open space plan of comparable size was preferred. Direct experience working with the Bay Conservation and Development Commission (BCDC) was noted highly desirable. A total of fifteen (15) LOI's were received. The Council subcommittee reviewed these responses in October 2021 and selected four firms to place on the short list to move forward in the process: CMG, Hargreaves Jones, SWA, and TS Studio.

The Council subcommittee directed staff to draft a formal RFP to issue to the short-listed firms. The project ambitions as laid out in the RFP recognize the opportunities for increasing public benefit, addressing climate change, and meeting the challenges of sea level rise for underutilized waterfront public property. The firms who submitted responsive proposals included CMG, SWA, and TS Studio. Hargreaves Jones ultimately did not submit a proposal for the project due to staffing/project capacity.

In Spring 2022, the Council subcommittee reviewed & discussed the proposals and elected to conduct interviews with all three short-listed firms to inform their decision-making process. Following interviews, staff was directed to negotiate terms with the preferred prospective consultant, CMG Landscape Architecture, to refine their project scope and eliminate subconsultants subsequently reducing the cost of services. In July 2022, the City Council awarded the contract for the master planning of Sierra Point open space and parks to CMG Landscape Architecture, in the amount of \$199,758.

Discussion

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

Task 1: Discovery Phase

The first task in this process was to conduct a comprehensive site analysis. Past studies and reports were reviewed, along with the Sierra Point Design Guidelines. City staff reviewed with the consultants various site constraints, including the SF Bay Conservation and Development Commission's (BCDC) regulations regarding the shoreline, the need to preserve parking, local weather/wind conditions, infrastructure and marina and yacht club operations to be maintained. In addition to meetings with the formal planning subcommittee, public outreach in this stage included a pop-up workshop at the annual Day in the Park event, as well as an online survey shared throughout the Brisbane community. The survey sought to understand how people currently engage with Sierra Point and their priorities for its future. Based on stakeholder engagement and community input, guiding principles and goals for the Sierra Point master plan were established to function as a framework for plan development to ensure proposals are aligned with client and stakeholder criteria.

The CMG team then drafted the first section of their report, Task 1: Discovery. The report collects, collates, and presents results of CMG's preliminary engagement with stakeholders, review of project

materials and resources, and site observations. While it does not and cannot capture every detail of the conditions of Sierra Point, it provides the basis for their development of the Sierra Point Open Space and Parks Master Plan. Technical constraints, stakeholder ambitions, and open space improvement opportunities have been defined, and the conversation with stakeholders will continue as the process advances.

Task 2: Exploration

The Discovery phase provided the basis of Task 2: Exploration. This phase of master planning hinges on public engagement and includes initial development of alternative approaches to open space master plan concepts and coordination with stakeholders. The draft alternative schemes are intended to illustrate opportunities within the scope and to solicit stakeholder feedback for the creation of a preferred plan in Task 3: Resolution. Based on stakeholder input and best practices, preliminary concept designs attempt to define a context specific, welcoming, and inclusive open space. While they incorporate a wide variety of flexible, multi-purpose elements, the schemes also reflect stakeholder input to leverage, improve, and augment valued existing conditions, including preservation and enhancement of the Marina. The schemes describe alternative character, program and experience scenarios for public consideration. The overarching framework integrates a more “naturalistic” approach from north to south, with a primarily “functional” environment that captures the marina facilities, Harbor Master’s building and yacht club at the south. Each alternative concept proposes key infrastructure and connection points at elevations considered safe by regulatory agencies such as BCDC and OneShoreline, generally above the existing 17’ elevation. The design alternatives also propose additional responses to sea level rise, including fringing wetland planting on the bay edge resilient to rising water levels and to mitigate future storm surge impacts.

Public engagement to date in the Exploration phase has included an open house workshop at City Hall on 1/31, an online survey which remains open, tabling at the Farmer’s Market on 2/16, and a meeting with the Sierra Point Yacht Club stakeholders on 2/21. The public participation plan for this phase incorporates additional future onsite engagement at Sierra Point, establishment of a marina facilities focus group comprised of Sierra Point Yacht Club members and Brisbane Marina berth holders, stakeholder meetings with Sierra Point business representatives, and expanded outreach to the broader Brisbane community.


The consultants will coalesce the input received in Tasks 1 & 2 to prepare for the third task: Resolution. Within that phase, CMG will recommend phased implementation of a preferred master plan. A master plan is the appropriate step to evaluate long term opportunities and constraints for public land to position the City to organize and pursue funding opportunities. The timing of phased implementation is driven by City priorities, access to funding, and technical and environmental necessity—primarily protection of facilities and infrastructure from sea level rise.

Fiscal Impact

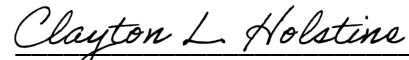
There is no additional fiscal impact resulting from the delivery of this process update.

Attachments

n/a



Noreen Leek, Parks & Recreation Director



Clay Holstine, City Manager

File Attachments for Item:**H. Consider Ample Battery's Proposed Temporary Lease of City-Owned Parking Spaces**

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



CITY COUNCIL AGENDA REPORT

Meeting Date: March 2, 2023

From: John Swiecki, Community Development Director

Subject: Ample Battery- Proposed Temporary Lease of City-Owned Parking Spaces

Community Goal/Result

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

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

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

Purpose

To consider a proposal by Ample Battery to temporarily lease a limited number of city-owned parking spaces at Sierra Point and the former Bank of America site to install EV battery changing stations.

Recommendation

That the City Council authorize the City Manager to execute the attached lease agreement (See Exhibit 1).

Background/Discussion

This matter was considered by the City Council in November 2022 and continued to allow for the lease agreement to be modified to address a number of concerns raised by the City Council, and to provide staff with the opportunity to visit another operational facility and take noise readings. The November 3 City Council report (Attachment 3) is provided for reference and provides information regarding the proposed facility.

The revised lease agreement is attached as Attachment 1. In response to concerns raised at the last City Council meeting it has been modified to establish a fixed payment schedule based on the areas leased, not tied to the number of stations installed. The agreement has further been revised to specify hours of operation (8am to 8pm), explicitly define the operator's maintenance obligations, and clarify that ancillary improvements such as lighting and fencing would be subject to city review and approval.

Additionally, Police Department staff performed a site visit to an operational Ample station in San Jose to take noise measurements and observe an operating facility. Their report included as

Attachment 2 concludes that facility operations do not generate excessive noise. The sound levels associated with operations are similar to background sound levels found in typical commercial areas. While not specifically mentioned in the attached report, Police Department staff who visited the site reported what it was clean and well maintained.

Fiscal Impact

Per the lease agreement Ample will pay the City \$2400/month for the Marina site and \$1600/month for the Old County Road (OCR) site, or \$48,000 over the 2-year lease term.

Measure of Success

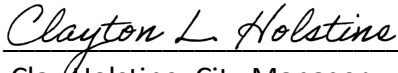
Allowing a local green business to demonstrate and deploy an innovative EV charging technology through the temporary use of a small number of underutilized city-owned parking spaces could be beneficial in a variety of ways. With transportation emissions representing ~60% of Brisbane's carbon footprint, it is imperative to enable the shift to cleaner transportation. Ample's technological solution could potentially provide an alternative to the longer dwell times of traditional EV charging and may be particularly appealing to fleet vehicles such as Uber/Lyft, trucking companies, or even the city's vehicle fleet. Supporting local business innovations that tackle the climate challenge will help meet the City's emissions reductions goals and is consistent with Brisbane's Climate Action Plan and Climate Emergency Declaration.

Attachments

1. Proposed Lease Agreement
2. Police Department Site Visit Report
3. November 3 City Council Report and Minutes



John Swiecki, Community Development Director



Clay Holstine, City Manager

LEASE AGREEMENT

This Lease Agreement (this “Agreement”) is entered into by and between the ***City of Brisbane, a California Municipal Corporation*** (“Landlord” or “City”) and ***Ample, Inc.*** (“Tenant”). Landlord and Tenant are sometimes individually referred to herein as a “Party” or together the “Parties” where context warrants such a designation.

The Parties agree as follows:

1. **PROPERTY:** Landlord leases to Tenant and Tenant leases from Landlord the real property and improvements in the City described as (i) a portion of the City’s Marina parking lot, located at 400 Sierra Point Parkway (“Marina Premises”), and ii) a portion of the parking area located on property owned by the City, located at 70 Old Country Road (“the OCR Premises”) (collectively, “the Premises”). See EXHIBIT A for a visual of the locations of the Premises.
2. **TENANT’S USE OF PROPERTY:**
 - a. Tenant shall install and maintain up to three electric vehicle battery swapping stations (each a “Station” and together the “Stations”) on each of the Premises for the duration of this Agreement. The Stations will be used by vehicles that will temporarily park inside the Station, refuel with energized batteries, and then exit the Premises. Vehicles entering the Premises to use the Station will not be required to pay Landlord to access the Premises.
 - b. Tenant will install a new electric service, including electric meter, panel, and additional electrical equipment as required by the distribution utility. The on-site electrical panel for each Station will be connected to the Station and any additional equipment installed on the Premises. Tenant will pay for all costs associated with the electrical installation and will establish a new customer account with the utility and be responsible to pay for all energy used to power the Premises. Tenant agrees to use its commercial best efforts to power the Stations using 100% renewable energy sources, which Tenant shall subscribe to and/or pay for. Tenant acknowledges that it must comply with other technical details of Landlord concerning installation of the Stations and the new electric service; such details concern, among other things, trench backfill and Tenant’s responsibility for participation in DigAlert notification. A list of the technical details is attached hereto as Exhibit B and incorporated herein by reference. Landlord will provide necessary permissions and otherwise cooperate with the electricity distribution utility, internet provider, and other utilities needed to operate the Stations.
 - c. Tenant will install new pavement and may install security fencing along the Premises leased by Tenant, provided, however, that the City must approve any fencing before it is installed. Tenant shall provide a phone number and an email address of Landlord for 24-hour customer support to address any issues associated with the use or operation of the Stations.
 - d. Tenant is permitted to operate the Stations at the Marina Premises from 8 a.m. to 8 p.m. initially. Tenant is permitted to operate the OCR Premises from 8 a.m. to 8 p.m. initially. Any change in the hours of operation must be approved by the City Manager, which shall not be unreasonably withheld.
 - e. The noise level from the operation of the Stations shall comply with the Noise Ordinance of the City, and the light from the operation of the Stations shall be the minimum necessary for security purposes as determined by the Brisbane Police Department.

- f. Only fleet or delivery vehicles not exceeding the weight of a Class 3 vehicle shall be serviced at the Stations. Any change in the type of vehicles or customer segment serviced at the Stations must be approved by the City Manager.
- g. Should any Station have mechanical or technological problems that cause a Station to not be usable, Tenant shall promptly dispatch personnel to address the problem.

3. TERM/TERMINATION:

- a. The term begins on _____, 2023 ("Commencement Date").
- b. The Agreement shall terminate on _____, 2025 (the "Termination Date"), unless extended in writing by the Parties. In the unlikely event that there is a need for a holdover period after the Termination Date, during which Tenant is permitted to operate the Stations without a new agreement or extension of this Agreement, the Termination Date will be extended by one month, during which period the rent shall be at a rate equal to the rent for the immediately preceding month for the relevant Premises, payable in advance. All other terms and conditions of this Agreement shall remain in full force and effect.
- c. This Agreement may be terminated by either Party upon delivery of 30 days' prior written notice, or if the termination is for cause, it may be terminated immediately. Cause includes but is not limited to safety violations.

4. BASE RENT:

- a. Tenant agrees to pay Base Rent at the monthly rate of \$2,400.00 for the Marina Premises and at a monthly rate of \$1,600.00 for the OCR Premises until the Termination Date.
- b. Base Rent is payable in advance on the first day of each calendar month and is delinquent on the 10th day of the calendar month, at which time a 10% administrative charge shall be added for each calendar week the rent is not paid.
- c. If the Commencement Date falls on any day other than the first day of the month, Base Rent for the first calendar month shall be prorated based on a 30-day period. If Tenant has paid one full month's Base Rent in advance of Commencement Date, Base Rent for the second calendar month shall be prorated based on a 30-day period.
- d. Rent shall be paid to Landlord by bank transfer or check, c/o the Finance Department of the City. The City and Tenant shall exchange the required back transfer information within 10 days of the Commencement Date if Tenant intends to pay the City by wire transfer.

5. REGULATORY APPROVALS:

- a. Landlord understands and agrees that Tenant's use of the Premises to operate the Stations may require authorization or approval from governmental offices or agencies other than the City. (Collectively any such required authorizations and approvals shall be referred to herein as "Regulatory Approvals.")
- b. Tenant shall be solely responsible for identifying the need for, applying, obtaining, and maintaining compliance with any Regulatory Approvals, including any costs incurred by Tenant or Landlord in connection with the same, including but not limited to commercially reasonable legal fees.
- c. Tenant shall be solely responsible to pay any fees, fines, penalties or other charges levied in connection with its failure to comply with the terms and conditions of any Regulatory Approvals and shall immediately pay and discharge any such charges.

- d. Tenant shall indemnify Landlord and its officers, employees, and agents from and against any charges levied in connection with any Regulatory Approvals, as well as any and all losses or expenses arising in connection with Tenant's failure to obtain or comply with the terms and conditions of any Regulatory Approvals.
- e. In the event Tenant is unable to secure all the Regulatory Approvals for the Stations, Tenant shall notify Landlord of the same in writing, including (i) an explanation of the reasons for Tenant's inability to secure the required Regulatory Approvals (ii) supported by any documentation related to its failure. Landlord shall review Tenant's explanation and supporting documentation and shall make a reasonable determination as to whether Tenant made a good faith effort to secure all Regulatory Approvals.
 - 1. If Landlord determines Tenant acted in good faith, Tenant shall not be required to make any *new* Base Rent payments to Landlord but shall be responsible for its then existing obligations under this Agreement, including but not limited to paying any Base Rent due and complying with its responsibilities under Section 8 hereof.
 - 2. If Landlord determines Tenant did not act in good faith, this Agreement shall not be deemed terminated until Tenant satisfies all of its obligations hereunder, including but not limited to paying Base Rent each month until all such obligations are fully satisfied.

6. CONDITION AND MAINTENANCE OF PREMISES:

- a. Tenant has examined the Premises and acknowledges that the Premises are clean, in operative condition, and suitable for installation and maintenance of the Stations. Tenant shall maintain the Premises in like condition, including but not limited to keeping the Premises secure 24 hours a day, 7 days a week and free of trash and other debris as well as maintaining the Stations in working order and in good condition.
- b. If Landlord believes Tenant has failed to perform any of its obligations under this section, Landlord shall notify Tenant of the nature of the failure and Tenant shall have 48 hours from delivery of such notice to correct/cure the failed performance to Landlord's reasonable satisfaction.
- c. If Landlord delivers notice to Tenant under subsection 2 and Tenant fails to correct/cure its failed performance within the required 48 hours, Landlord shall have the right to enter the Premises and perform the required obligations on Tenant's behalf. If Landlord performs on Tenant's behalf, Landlord shall notify Tenant of the costs Landlord incurred to return the Premises to the required condition, and Tenant shall immediately pay 125% of that amount to Landlord, thereby covering Landlord's direct and indirect costs.
- d. If Tenant fails to comply with subsection 2 three or more times in a calendar quarter, Landlord shall have the right to terminate this Agreement for cause.

- 7. SIGNS:** Tenant shall be permitted to place commercially reasonable signage on the Premise's with Landlord's prior review and approval, which shall not be unreasonably withheld. Commercially reasonable signage includes the display of Tenant's business name and/or logo. In addition, Tenant shall post signage requested and/or preapproved by Landlord to inform users of the Station where nearby restrooms are located.

- 8. TENANT'S OBLIGATIONS UPON VACATING PREMISES:** Upon termination of this Agreement as provided for herein, Tenant shall (i) vacate Premises and surrender it to Landlord empty of all Station(s) and other personal property, (ii) clean the Premises in a commercially reasonable manner, and (iii) restore the Premises to the conditions the Premises were in prior to this Agreement.
- 9. LANDLORD'S LIEN WAIVER:** It is contemplated that the Stations or other personal property now or hereafter installed by Tenant on the Premises is or may be either leased by Tenant or purchased by Tenant from a lessor or conditional seller, or otherwise hypothecated to a non-City "Third Party." No such personal property, now or hereafter located upon the Premises and owned by Tenant or any Third Party, shall be deemed to be a fixture of the Premises, and such personal property shall be and remain the personal property of Tenant or such Third Party. All such Stations or personal property of Tenant or any Third Party is herein referred to collectively as "Tenant's Equipment." Tenant or any Third Party shall have the right to remove Tenant's Station and other equipment from the Premises from time to time, provided, however, that if such removal shall injure or damage the Premises, Tenant shall repair the damage and place the Premises in the same condition as it would have been if Tenant's Equipment had not been installed. Landlord shall, upon request of Tenant, execute, or cause to be executed, a commercially reasonable waiver of Landlord's lien on either or both of the Stations or Tenant's Equipment.
- 10. INSURANCE:**
- a. Landlord shall not be responsible for insuring any of Tenant's personal, intellectual, or other property, including but not limited to the Premises, the Stations, fixtures, installations, equipment, software, inventory, or vehicles.
 - b. Tenant is to carry property and casualty insurance in an amount approved by and from a reputable casualty or insurance company acceptable to Landlord, to protect Tenant and Landlord, who shall be a named insured, from and against any loss or damage of any kind to Tenant's or Landlord's personal, intellectual, or other property, including but not limited to the Premises, the Stations, any fixtures, installations, equipment, software, inventory, or vehicles. Such insurance shall also cover Landlord's officers, employees, and agents.
 - c. Tenant shall acquire and provide to Landlord a certificate of insurance and an additionally insured endorsement that names Landlord and its officers, employees, and agents (e.g., CG2011 endorsement) as provided for herein. Tenant shall provide the same to Landlord at least annually on the anniversary of the Commencement Date, and also in any instance where Tenant changes insurance carriers. Tenant shall not occupy, work on, or otherwise use the Premises or Stations unless and until proof of the required insurance is provided to and acceptable to Landlord. Landlord's acceptance shall not be unreasonably withheld.
 - d. Tenant releases Landlord, and waives its respective rights to subrogation against Landlord, for loss and damage covered by insurance.
- 11. INDEMNIFICATION:**
- a. Except for the gross negligence and intentional misconduct of Landlord and/or any of the Landlord Parties (as hereinafter defined), Tenant shall indemnify and hold harmless Landlord and Landlord's officers, agents, employees, partners, successors, and assigns (collectively, the "Landlord Parties") from and against any and all claims arising from Tenant's use of the Premises, or from the conduct of Tenant's business or from any activity, work, or things done, permitted, or suffered by Tenant in, on, or about the Premises or elsewhere, and shall further

indemnify and hold harmless the Landlord Parties from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Agreement, or arising from any negligence of Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding shall be brought against Landlord Parties by reason of any such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel satisfactory to Landlord. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damages to property or injury to persons, in, on, or about the Premises arising from any cause, and Tenant hereby waives all claims in respect thereof against any of the Landlord Parties.

- b. Except for the negligence and intentional misconduct of Tenant and/or any of the Tenant Parties (as hereinafter defined), Landlord shall indemnify and hold harmless Tenant and Tenant's officers, agents, employees, partners, successors, and assigns (collectively, the "Tenant Parties") from and against any and all claims arising from Landlord's use of the Premises, if any, or from the conduct of any activity, work, or things done, permitted, or suffered by Landlord in, on, or about the Premises, and shall further indemnify and hold harmless the Tenant Parties from and against any and all claims arising from any material breach or default in the performance of any obligation on Landlord's part to be performed under the terms of this Agreement, or arising from any negligence of Landlord, the Landlord Parties, or any of Landlord's agents, contractors, or employees, and from and against all costs, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding shall be brought against Tenant by reason of any such claim, Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel satisfactory to Tenant.
- c. Tenant's and Landlord's respective indemnification obligations under this Agreement shall survive its termination.

12. CONFIDENTIALITY: Landlord will use its best efforts to stop the disclosure of any of Tenant's proprietary information to any other party over the term of this Agreement and for a period of three years after the Termination Date. Proprietary information includes but is not limited to nonpublic photos, video, or descriptions of Tenant's battery swapping station or its component pieces designated as being proprietary by Tenant, including any such information about the deployment or operation of Tenant's service.

13. GOVERNING LAW; VENUE: The laws of the State of California shall govern the validity, performance, and enforcement of this Agreement. The Parties consent to personal jurisdiction and venue in the state and judicial district in which the Premises are located. The courts of the State of California will have exclusive jurisdiction, and the Parties hereby agree to such exclusive jurisdiction.

14. SUCCESSORS: The provisions of this Agreement shall be binding upon and inure to the benefit of Landlord and Tenant, respectively, and their respective successors, assigns, heirs, executors, and administrators. Tenant agrees to become the tenant of Landlord's successor in interest under the same terms and conditions of its tenancy hereunder.

- 15. RELATIONSHIP OF PARTIES:** The Parties agree that the relationship between them is that of landlord and tenant and that Landlord is leasing space to Tenant. It is not the intention of the Parties to constitute, nor shall anything herein be construed as constituting, Landlord as a partner or joint venturer with Tenant.
- 16. AUTHORITY:** Landlord makes the following representations to Tenant, on which Tenant is entitled to rely in executing this Agreement: (i) Landlord is qualified to do business in the State of California and has the power to enter into this Agreement and the transactions contemplated hereby and to perform its obligations hereunder, and by proper resolution the signatory hereto has been duly authorized to execute and deliver this Agreement; and (ii) the execution, delivery, and performance of this Agreement and the consummation of the transactions herein contemplated shall not conflict with or result in a violation or breach of any indenture, mortgage, note, security agreement, or other agreement or instrument to which Landlord is a party or by which it is bound or to which any of its properties is subject.
- 17. PARTIAL INVALIDITY:** If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, the remainder of this Agreement shall not be affected thereby and there shall be added as part of this Agreement a replacement clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.
- 18. TAKING:** Should either of the Premises be taken, appropriated, or condemned for public purposes, or voluntarily transferred in lieu of condemnation, in whole or in such substantial part as to render either of the Premises unsuitable for Landlord's purposes or either of the Premises unsuitable for Tenant's purposes, including a material loss of access, the term of this Agreement shall, at the option of Landlord in the first instance and at the option of Tenant in the second instance, terminate when Tenant's right to possession is terminated. All compensation awarded for such taking of the fee and leasehold shall belong to and be the property of Landlord without any deduction therefrom for any present or future estate of Tenant, and Tenant hereby assigns to Landlord all its right, title, and interest to any such award. However, Tenant shall have the right to recover from the condemning authority, but not from Landlord, such compensation as may be awarded to Tenant on account of interruption of Tenant's business, for moving and relocation expenses, and for depreciation to and removal of Tenant's goods and trade fixtures.

Notwithstanding the foregoing, Tenant shall have the right to terminate this Agreement if the condemnation renders either of the Premises unsuitable for Tenant's purposes, including a material loss of vehicular access to either of the Premises, or if 10% or more of either of the Premises is impaired. If Tenant elects to exercise its termination right hereunder, Tenant shall provide written notice thereof to Landlord within 30 days after the condemnation acquisition (or voluntary transfer in lieu of condemnation) has occurred, whereupon this Agreement shall be terminated effective as of the date of condemnation acquisition (or voluntary transfer in lieu of condemnation) and neither Party shall have any further rights or obligations hereunder (except for any obligations that expressly survive the termination of this Agreement).

Tenant shall have the right to make a separate claim in the condemnation proceeding for (i) the unamortized portion of any expenditures by Tenant for its improvements or alterations to either of

or federal government, or any school, sanitary, fire, street, drainage, or other improvement district thereof, levied against any legal or equitable interest of Landlord in the Premises, buildings, the land, or any portion thereof. The term "Real Estate Taxes" shall also include any tax, fee, levy, assessment, or charge, or any increase therein, imposed by reason of events occurring, or changes in applicable zoning, municipal, county, state, and federal laws, ordinances, and regulations, and any covenants or restrictions of record taking effect during the term of this Agreement, including but not limited to a change in ownership of the Premises, buildings, the land, or the improvements thereon (or any portion thereof), the execution of this Agreement, or any modification, amendment, or transfer thereof, and whether or not contemplated by the Parties hereto. It is acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the June 1978 election and that assessments, taxes, fees, levies, and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk and road maintenance, and refuse removal, and for other governmental services formerly provided without charge to property owners or occupants. It is the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges and all similar assessments, taxes, fees, levies, and charges be included within the definition of Real Estate Taxes for purposes of this Agreement, including without limitation any increase in assessments, taxes, fees, levies, or charges resulting from a reassessment caused by or attributable to a change in ownership of the Premises, new construction, or any other cause. Tenant acknowledges that currently, no Real Estate Taxes are included in the Base Rent. If the County of San Mateo or any other taxing entity within San Mateo County imposes any form of Real Estate Taxes, such as a possessory interest tax, on either of the Premises due to this Agreement, Tenant shall pay such Real Estate Taxes.

- 22. NOTICE:** Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required or permitted hereunder shall be in writing and delivered to the addresses of Landlord and Tenant set forth below, by one of the following methods: (i) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (ii) a nationally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (iii) registered United States mail, signature required and postage prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (iv) electronic transmission by email, provided that the transmission is completed no later than 4:00 p.m. Pacific Time on a business day. Any Party shall change its address for purposes of this Agreement by giving written notice as provided in this paragraph, and notices shall only be valid if delivered in the manner provided. All notices and demands delivered by a Party's attorney on a Party's behalf shall be deemed to have been delivered by said Party. For purposes hereof, Landlord's address for electronic transmission is rbreault@ci.brisbane.ca.us, and Tenant's address for electronic transmission is sites@ample.com

TENANT:

Ample, Inc.
Attn: Eric Sorensen
100 Hooper St., Suite 25
San Francisco, CA 94107

LANDLORD:

City of Brisbane
50 Park Place
Brisbane, CA 94005

Attn: Director of Public Works

Such addresses may be changed from time to time by any Party by providing notice to the other interested Parties as described above.

23. DEFAULT, BREACH, REMEDIES: A “Default” is a failure by Tenant to comply with or perform any of the terms, obligations, or conditions under this Agreement. A “Breach” is the occurrence of one or more of the following Defaults, and the failure of Tenant to cure such Default within 10 business days: (i) Tenant’s failure to pay rent as provided in this Agreement; (ii) Tenant’s failure to use the Premises as provided in this Agreement; (iii) Tenant’s failure to maintain the Premises as provided in this Agreement; and (iv) Tenant’s failure to obtain and maintain insurance as provided in this Agreement. If Tenant fails to cure the Breach after reasonable notice from Landlord to do so, or if, over a reasonable period of time, there are Breaches, regardless of whether such Breaches are cured, Landlord may terminate Tenant’s right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and Tenant shall immediately surrender possession of the Premises.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth below.

AMPLE, INC. - TENANT

By: _____

Khaled Hassounah, CEO

CITY OF BRISBANE - LANDLORD

By: _____

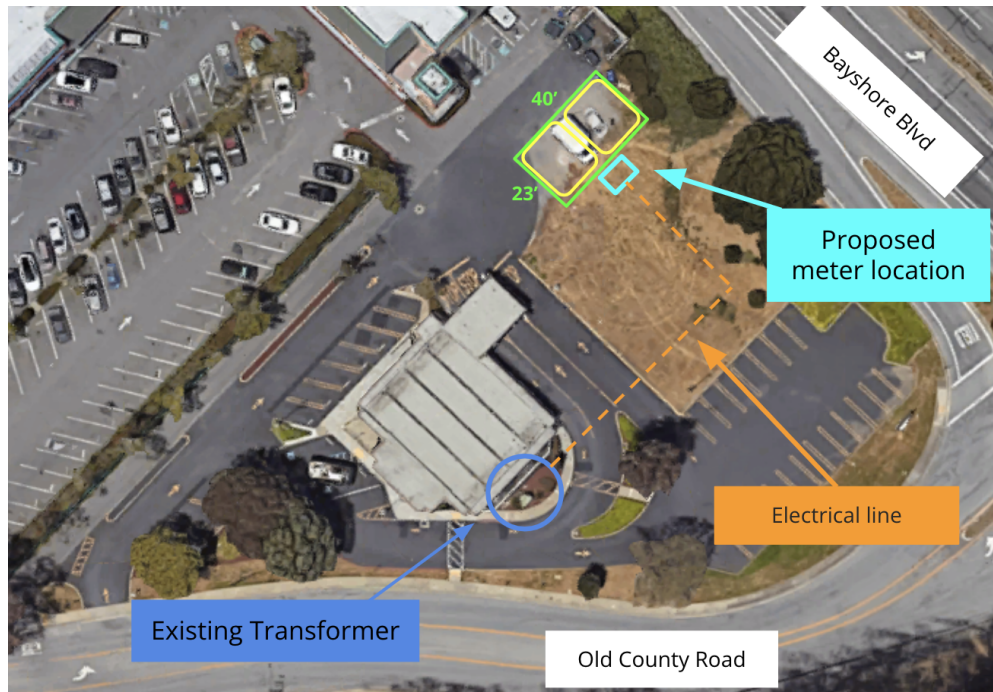
Clay Holstine, City Manager

Approved as to form:

By: _____

Thomas McMorrow, City Attorney

70 Old County Road, Brisbane, CA



Brisbane Marina, Brisbane, CA

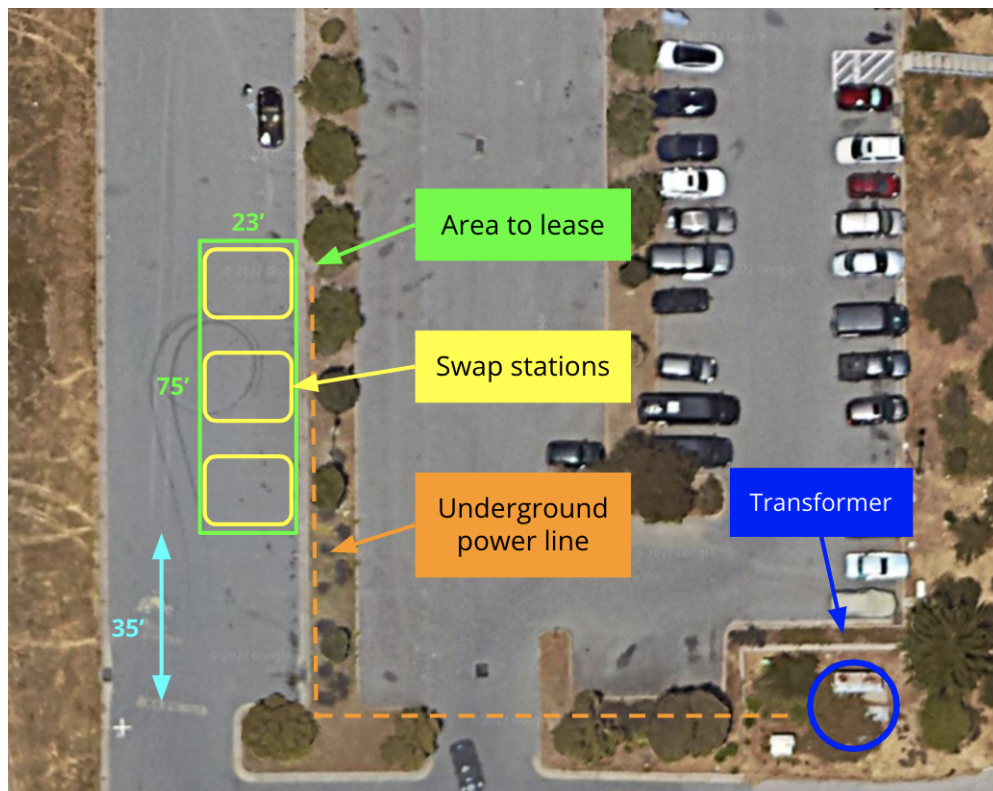


Exhibit B:

To the satisfaction of the City Engineer, Tenant shall:

Repair electrical utility trenches per City Standard Detail UT-1, except the backfill above the pipe zone shall be Class II slurry with added red oxide (or other approved pigment to indicate buried electrical conduit) .

Replaced asphalt section shall be equal to the existing AC thickness plus 1 inch (no less than 3 inches in any repair) and to the existing AB thickness.

Place above ground utility markers as required by the City Engineer.

Maintain active membership in Underground Service Alert and respond timely to requests for marking of underground utilities as required by Underground Service Alert and as required by Government Code, section 4216.



Brisbane Police Department

Memo

To: Honorable Mayor and City Council

From: Commander Mario Garcia

Date: February 7, 2023

Re: Ample Battery Site Visit

Staff Goal

- Determine if any ambient pollution occurs during a battery swap.

Purpose

During the visit, staff would observe a vehicle on an existing operational Ample site for a battery swap. The battery swap being videoed and monitored by a noise meter for any mechanical sound pollution to the ambient noise.

Background

Ample at previous council meeting requested to install several sites within the City of Brisbane. During the presentation, council directed staff to determine how much noise pollution took place during a battery swap of vehicle to aide the council in approving the installation request, amongst several other factors.

In order to complete the direction of the council, staff coordinated with Ample staff to visit a current site in another city where battery swaps have been occurring with customers. Brisbane Police Department staff members, which included Commander Mario Garcia and Code Enforcement Officer Wilfredo Munoz, met with Ample Deployment Strategy Senior Manager Eric Sorensen at their San Jose Site located at 1737 Junction Avenue.

The San Jose site was chosen as it was a site where it had the lowest ambient noise. The other sites were near freeway overpasses which had a high ambient content. This San Jose site was the quietest and as closest to a commercial ambient noise level. The commercial area where this site was located had the same ambient noise as if it was situated on Valley Drive. The vehicular traffic

consisted of delivery trucks along with vehicular traffic. There was no other ambient pollution such as large HVAC, construction, active loading docks, air traffic from planes to add to the ambient when we were present.

Fiscal Impact

There was no cost to the staff visit as it was conducted and coordinated within the hours of normal work for both members of the Brisbane Police Department. The equipment used was a noise meter and an iPhone 13 to capture video which are both city owned.

Findings

The process began with the vehicle already on the ramps ready for a battery swap. The process of the battery swap began with a hydraulic lift raising the vehicle off the vehicle ramp to obtain sufficient ground clearance for the batteries to be removed from underneath the vehicle. This was the highest the noise meter reading went up during the process which registered on the noise meter as 64 decibels. The average ambient in the area prior to the test was ranging between 58 to 60 decibels.

During the battery swap automated trays slide back and forth underneath the vehicle to lower batteries from the vehicle and vice versa raise them back into the vehicle. The sound of the trays moving back and forth registered between 56 to 58 decibels. It should be noted that the ambient in the area would fluctuate between 55 to 60 decibels.

The battery swap encountered an error during the visit. The error required a technician to respond to the site, as a result we concluded our visit. Prior to the error taking place we were able to observe all the major mechanical functions of a battery swap which included a vehicle lift, battery lower and raising of the mechanical robotic tray. The final determination was the battery swap added 4 decibels to the ambient level. The entire battery swap was estimated to take 10 to 12 minutes.



CITY COUNCIL AGENDA REPORT

Meeting Date: November 3, 2022

From: John Swiecki, Community Development Director

Subject: Ample Battery- Proposed Temporary Lease of City-Owned Parking Spaces

Community Goal/Result

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

Purpose

To consider a proposal by Ample Battery to temporarily lease a limited number of city-owned parking spaces at Sierra Point and the former Bank of America site to install EV battery changing stations.

Recommendation

That the City Council authorize the City Manager to execute the attached lease agreement (See Exhibit 2).

Background/Discussion

Ample, Inc. is a California-based company with a goal to accelerate the transition to electric mobility by offering a modular and rapidly deployable EV battery swap system. More information about Ample and their platform is attached as Exhibit 1. After seven years of development, Ample launched the first deployment of battery swap stations and swap-enabled electric vehicles in the San Francisco Bay Area in early 2021. Ample is proposing to expand its network of battery swap stations with two new sites in Brisbane.

Ample proposes to lease approximately 1,725 square feet in the Brisbane Marina parking lot and 920 square feet next to the former bank building at 70 Old County Road for two years. At these two locations, Ample will deploy up to five EV battery swap stations. Each battery swap station sits atop level concrete, occupies two parking stalls, requires 100 kW electrical service, and can be deployed in just 1-2 weeks. The proposal was reviewed in August 2022 by the Economic Development Subcommittee (CMs Cunningham and Lentz) which recommended that it be forwarded to the City Council for consideration.

The attached agreement (Exhibit 2) establishes the lease terms and obligations, and has been approved by City Legal Counsel and the Public Works Director who manages the city-owned properties. Per the agreement Ample is responsible for all improvements required to serve their facilities.

The proposal would encompass 6 parking spaces at Sierra Point, which would not adversely impact the availability of public parking. The city has initiated a public space master planning process for Sierra Point and will soon initiate a community visioning process for the former Bank of America site. Both of these public processes will take time to time to complete and implement . Staff does not believe the limited 2-year lease term would interfere with any future redevelopment activities the City may choose to undertake on either of these sites.

Fiscal Impact

Per the lease agreement Ample will pay the City \$800/month per station. Assuming they deploy all 5 stations that equates to \$4000/month or \$48,000 over the 2-year lease term.

Measure of Success

Allowing a local green business to demonstrate and deploy an innovative EV charging technology through the temporary use of a small number of underutilized city-owned parking spaces.

Attachments

1. Ample Company and Project Description
2. **Proposed Lease Agreement** NIC


 John Swiecki, Community Development Director

 Clay Holstine, City Manager

EXHIBIT 1

Ample, Inc.
100 Hooper St., Suite 25
San Francisco, CA 94107

Ample, Inc. Briefing to City of Brisbane City Council

Purpose

This document provides an overview of Ample's existing investments in the City of Brisbane and the proposed deployment of Ample battery swapping stations for electric vehicles at two locations managed by the City of Brisbane.

Overview of Ample

Ample owns and operates a repowering system for electric vehicles (EVs) that provides a superior alternative to fast charging EVs for many use cases. The system is built around a swappable battery pack and automated swapping stations that enable cleaner, faster, more efficient operation of EVs. Ample manufactures key components of the system (swappable battery packs, adaptor kits, and swapping stations) and operates a network of swapping stations that support a subscription-based repowering service for EV fleets. Ample launched operations in March 2021, providing swap-enabled Nissan Leaf and Kia Niro EVs to rideshare drivers in the Bay Area.

Background on Battery Swapping

Battery swapping is a replacement for fast charging that is as fast, economical and convenient as gasoline. Ample's battery swapping system robotically removes depleted batteries from EVs, racks them for external recharging and replaces them with charged batteries in just minutes. While battery swapping is functionally equivalent to a gasoline station in terms of speed and utility, it generates no greenhouse gas emissions or criteria pollutants. Battery swapping also has significant advantages over public charging. It is much faster, so swapping reduces dwell times (for both driver and vehicle); it increases utilization rates for capital intensive electrical generation, transmission and distribution assets; and it provides grid-scale storage for renewables, demand response functions and other grid services.

Ample's Investments in the City of Brisbane

Ample has invested significantly in the City of Brisbane. It is currently working with local stakeholders to carry out two projects within the City: 1) expansion of Ample's existing fabrication facility and 2) deployment of multiple battery swapping stations. These projects will drive economic growth, create jobs for local residents and expand the City's tax base.

Brisbane Plant

Ample opened its Brisbane modular battery pack production facility (based in the Crocker Industrial Park) in 2022. By 2024, Ample estimates that annual production at the Brisbane Plant will be equivalent to approximately 14,400 EVs. Currently, Ample employs 20 people at the Brisbane Plant. Headcount is expected to increase to 31 within two years. This growth will bring well-paid jobs to the city and generate associated tax revenue. Ample has worked with City staff

and elected officials to secure a competitive manufacturing grant through the California Energy Commission's GFO-21-605 Zero-Emission Transportation Manufacturing Grant Program. The proposed grant project would result in positive economic impacts on the Brisbane community stemming from construction-related employment (short term) and additional manufacturing employment (long term). As a result of Ample's existing investments and positive experience collaborating with City officials, Brisbane is also a top contender for future investments in facilities to support Ample's manufacturing and operations. In the coming years, Ample will require millions of square feet of industrial space for on-vehicle components, battery Swapping station subsystems, and inventory warehouses, which will employ hundreds of workers. Ample looks forward to continuing to collaborate with the City and growing our local presence.

Battery Swapping Stations

The City of Brisbane is an ideal swapping station deployment site due to proximity to both U.S. Route 101 and San Francisco International Airport. Deploying Battery swapping stations in the City will strengthen Ample's relationship with Brisbane and directly benefit the local economy. Ample swapping stations will support the electrification of local business transport and delivery vehicles, and benefit businesses through increased customer traffic. It will also establish public EV infrastructure that will eventually serve Brisbane residents. Each of the proposed locations can serve up to 80 drivers per day per station. These drivers will patronize businesses located in the Brisbane Village Center.

Station Specifications

Energy Storage:

- Energy Chemistry: Lithium-ion (NMC)
- Energy Storage Capacity: up to 440 kWh

Electrical Specifications:

- Power (AC): 100 kW
- Voltage (AC) 3-phase 208/240V - 480V
- Current: 3-phase: 200 A service, 125 A typical
- Frequency: 50 / 60 Hz +/- 1%

Mechanical Specifications:

- Dimensions: 19' 0" (5782mm) x 16' 8" (5074mm) x 9' 6" (2901mm)
- Weight: 1,912 kg (4,215 lbs)
- Grading: < 2 degrees inclination

Environmental Specifications:

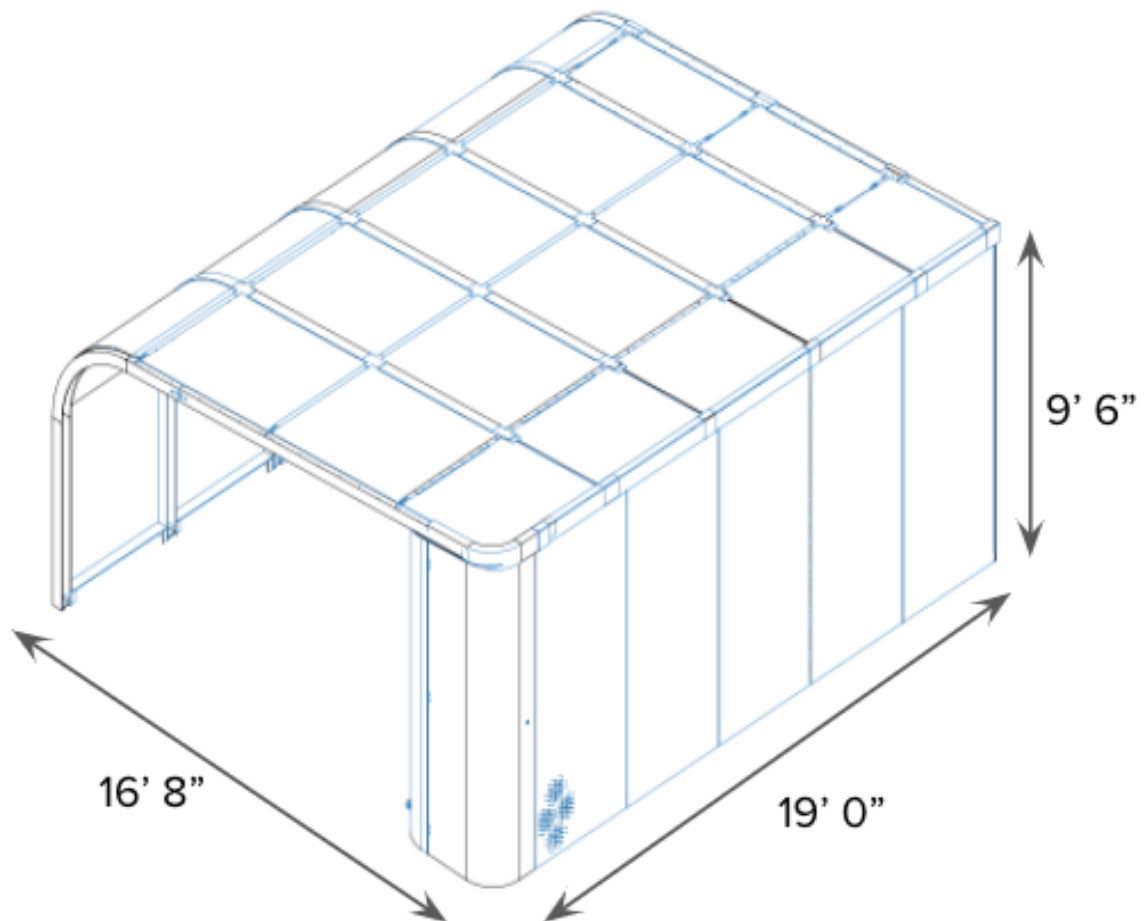
- Installation Location: Outdoor

Network and Compliance:

- Network Connection: Ethernet (preferred)/4G LTE
- Internet Speed: 10 mbps minimum

Adjacent space

- (Desired) 18' in front of station for easy turning radius
- 3" away from building structures or walls

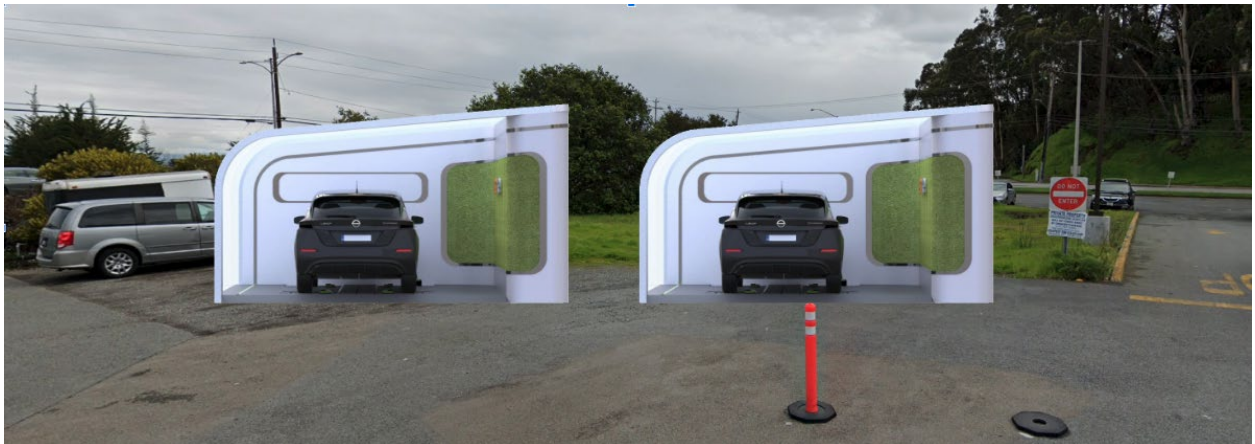


Visual Approximations

Brisbane Marina



70 Old County Rd





BRISBANE CITY COUNCIL**ACTION MINUTES**

CITY COUNCIL MEETING**THURSDAY, NOVEMBER 3, 2022***VIRTUAL MEETING***CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Mackin called the special meeting to order at 7:33 P.M. and led the Pledge of Allegiance.

ROLL CALL

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

Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, City Attorney McMorro, Community Development Director Swiecki, and Administrative Analyst Ibarra

REPORT OUT CLOSED SESSION

City Attorney McMorro reported that Liability Claim Item D and E were denied by Council at their Closed Session Meeting on 11/3/22. He also reported that staff was also given direction, and no action was taken, at the Closed Session Meetings of October 20th, October 25th and October 26th, 2022.

ADOPTION OF AGENDA

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

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

Noes: None

Absent: None

Abstain: None

AWARDS AND PRESENTATIONS

A. Native American Heritage Month Proclamation

Mayor Mackin declared November 2022 as Native American Heritage Month. And in tribute to the heritage of the Ohlone, called the greater community to learn to be wise and respectful stewards of this land.

ORAL COMMUNICATIONS NO. 1

No members of the public wished to make public comment.

CONSENT CALENDAR

B. Approve Adoption of a Resolution Declaring the Continued Need to Conduct City Council, Commission and Committee Meetings Remotely Due to Health and Safety Concerns for the Public

Councilmember O'Connell made a motion, seconded by Councilmember Lentz to approve Consent Calendar Item B. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

NEW BUSINESS

C. Authorize the City Manager to execute a temporary lease of City-Owned Parking Spaces with Ample Battery

(The purpose of this item is to consider a proposal by Ample Battery to temporarily lease a limited number of city-owned parking spaces at Sierra Point and the former Bank of America site to install EV battery changing stations. If approved, per the lease agreement, Ample will pay the City \$800/month per station. Assuming they deploy all 5 stations that equates to \$4000/month or \$96,000 over the 2-year lease term.)

Community Development Director Swiecki reported that the purpose of this item is to consider a proposal by Ample Battery to temporarily lease a limited number of city-owned parking spaces at Sierra Point and the former Bank of America site to install EV battery changing stations.

After council questions, Eric Sorenson from Ample Battery presented on the temporary lease proposal.

City Clerk Padilla noted for the record that written correspondence was received from Dana Dillworth regarding New Business Item C.

Michele Salmon shared her concerns about waste, restrooms and hours of operation.

After council discussion, the Council directed staff and the applicant to return to Council and address their concerns on decibel levels, waste, restrooms, hours of operation, one flat fee not based on deployment of stations, and lighting.

STAFF REPORTS

D. City Manager's Report on Upcoming Activities

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

MAYOR/COUNCIL MATTERS

E. Consider Letter of Support for SamTrans Route 141 and 142

Jeffrey Tong, Candidate SB City Council District 1, wrote the Council to consider a letter of support for Sam Trans Route 141 and 142.

F. Countywide Assignments and Subcommittee Reports

Mayor and Council reported on their countywide assignments and subcommittee meetings.

G. City Council Meeting Schedule

The next City Council Meeting is a Closed Session Special Meeting on November 9, 2022.

Also, City Council Meeting, Closed Session, and Special Meetings are scheduled for November 17, 2022.

H. Written Communications

Council received the following written communication between October 21, 2022 through November 3, 2022:

- Jeffrey Tong (10/25/22) SamTrans (new) Route 141 & 142
- Rani Fischer, Santa Clara Valley Audubon Society (10/28/22) Dark Sky Symposium, Light at Night: A Glowing Hazard
- Alexis Salandanan, San Mateo County Transit District (11/2/22) SamTrans (new) Route 141 & 142
- Dana Dillworth (11/3/22) Item C Ample Battery

ORAL COMMUNICATIONS NO. 2

No members of the public wished to speak.

ADJOURNMENT

Mayor Mackin adjourned the meeting at 9:52 P.M.



Ingrid Padilla, City Clerk

File Attachments for Item:

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

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



CITY COUNCIL AGENDA REPORT

Meeting Date: March 2, 2023

From: John Swiecki, Community Development Director

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

RECOMMENDATION

Receive second reading and consider adoption of an ordinance amending Chapter 17.18 of the Brisbane Municipal Code, to update existing research and development use provisions and related performance standards.

BACKGROUND

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

City Council also directed staff to conduct additional outreach, through the City's Economic Development Director, to the Sierra Point biotechnology tenants regarding the proposed changes to the animal testing use provisions. While this is underway no comments have been received as of the writing of this staff report. If any comments are received prior to tonight's hearing they will be relayed to the City Council for consideration.

ATTACHMENTS

1. Draft Ordinance Amending SP-CRO R&D Provisions, with redlined modification from the first reading
2. February 16, 2023 staff report

John Swiecki

 John Swiecki, Community Development Director

Clayton L. Holstine

 Clay Holstine, City Manager

ORDINANCE NO. 677
AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTIONS 17.18.020, 17.18.030 AND 17.18.045 AND
DELETING SECTION 17.18.035
OF THE BRISBANE MUNICIPAL CODE
CONCERNING RESEARCH AND DEVELOPMENT USES IN THE
SP-CRO SIERRA POINT COMMERCIAL DISTRICT

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

SECTION 1: Sections 17.18.020 and 17.18.030 are amended to read as follows:

17.18.020 - Permitted Uses

The following uses shall be allowed in the SP-CRO district:

1. Offices;
2. Hotels;
3. Retail sales and rental;
4. Restaurants;
5. Bars;
6. Financial institutions;
7. Personal services;
8. Commercial gyms and health facilities;
9. Meeting halls;
10. Marinas;
11. Research and development, unless the use is classified as a conditional use pursuant to Section 17.18.030.F. Research and development may include the use of live invertebrate animals, such as insects, or any of the following live vertebrate animals: fish, amphibians, reptiles or rodents. Research and development involving the use of other live animals not listed here is prohibited. All research and development uses are subject to the performance standards set forth in [Section 17.18.045](#).

17.18.030 – Conditional uses.

The following conditional uses may be allowed in the SP-CRO district, upon the granting of a use permit pursuant to [Chapter 17.40](#) of this title:

- A. Child care centers when:
 - a. Located more than five hundred (500) feet from the edge of the eastern-most lane of the Bayshore Freeway (U.S. 101);
 - b. Located within an area with a community noise equivalent level (CNEL) of not more than sixty (60) dB as determined by a professionally-prepared acoustical analysis report; or

located within an area with a community noise equivalent level (CNEL) of sixty to eighty (60—80) dB and designed with the noise insulation features identified in a professionally-prepared acoustical analysis report so as to comply with Figure 2 in Appendix C of the state of California General Plan Guidelines 2003; and

- c. Designed and operated so to comply with the noise levels specified in Brisbane Municipal Code [Section 8.28.040](#), as per the recommendations of a professionally-prepared acoustical analysis report.
- B. Medical facilities.
- C. Commercial recreation.
- D. Transit/transportation facilities.
- E. Temporary uses.
- F. Research and development utilizing biological agents exceeding Risk Group 3 or Biosafety Level 3 as defined by the National Institute of Health or the Center for Disease Control, **except that for such research and development uses the City Council shall act as the reviewing authority instead of the Planning Commission. All research and development uses are subject to the performance standards set forth in Section 17.18.045.**

SECTION 3: Section 17.18.035 is deleted in its entirety.

SECTION 4: Sections 17.18.045 is amended to read as follows:

17.18.045 - Performance standards.

- A. All research and development uses shall submit to the planning department a risk analysis performed by a qualified hazardous or biologic materials professional specifying all hazardous or biologic materials to be utilized and methods of safe handling and disposal prior to building permit or business license issuance.
- B. Research and development involving the use of live animals, specifically permitted in Section 17.18.020.K, shall be conducted in compliance with the Institute of Laboratory Animals Resources' Guide for the Care and Use of Laboratory Animals, and in compliance with all applicable federal, state and local laws and regulations as most recently amended.
- C. Research and development uses involving the use of biological agents shall comply with all design standards set forth in the most current Center for Disease Control (CDC) Office of Health and Safety document "Biosafety in Microbiological and Biomedical Laboratories."
- D. Research and Development involving cannabis is subject to the requirements set forth in [Chapter 17.33](#).
- E. Lighting shall be designed to avoid excessive glare as viewed from offsite locations, in compliance with the California Green Building Standards Code.

SECTION 11: 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 12: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____ 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Legal Counsel



CITY COUNCIL AGENDA REPORT

Meeting Date: February 16, 2023

From: John Swiecki, Community Development Director

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

COMMUNITY GOAL/RESULT

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

PURPOSE

To update the research and development (R&D) permitted and conditional use provisions contained in the SP-CRO Sierra Point Commercial District zoning, Brisbane Municipal Code Chapter 17.18.

RECOMMENDATION

Decide on the draft ordinance to amend the SP-CRO Sierra Point Commercial District R&D provisions (see Attachment 1).

BACKGROUND

BMC Section 17.02.675 defines research and development as *“a use engaged in studying, testing, designing, analyzing and experimenting with potential or existing products, processes or services, including cannabis and cannabis products.”*

On June 16, 2008, City Council adopted zoning provisions, via Ordinance 528, allowing for R&D uses as either permitted by-right or as conditional uses in the Sierra Point Commercial District. With regards to using live animals, the ordinance provisions permitted by-right, R&D on live insects, rodents, rabbits, fish, and amphibians. R&D involving the use of live dogs, cats or nonhuman primates was prohibited. Use of other live animals that are not named as permitted or prohibited are subject to a conditional use permit. Additionally, a provision was included

that City Council is named as the approving authority instead of the Planning Commission, as is the case with all other use permits.

In 2022, Bristol-Myers Squibb (BMS) applied for a use permit to conduct R&D using minipigs at 1400 Sierra Point Parkway. That has been the only R&D use permit application filed to date pursuant to the regulations described above. That application was heard by City Council on May 19, 2022, continued for further public hearing and then withdrawn by the applicant on August 26th, before a decision was made. Following the withdrawal of that application, the City Council directed staff to initiate a zoning code amendment to consider updates to the live animals testing provisions. An ad hoc City Council subcommittee (Councilmembers Cunningham and Mackin) met on October 31, 2022 and indicated a desire to consider prohibiting the use of all animals except those expressly permitted under the ordinance, thereby eliminating the category of conditionally permitted animal use. The subcommittee also expressed interest in considering the removal of rabbits from the R&D permitted uses list.

A public hearing was held at the Planning Commission on January 26, 2023 to consider the following draft amendments:

- Elimination of the use permit category of R&D using live animals. Thus, R&D using specifically named live animal groups would be permitted by right, and the use of all other animals would be prohibited.
- Rabbits would be removed from the permitted R&D uses category.
- Permitted R&D uses would be expanded beyond insects to the larger category of invertebrates (i.e. animals without a backbone such as insects, spiders, worms, etc.). Permitted uses would also be expanded from amphibians to also include reptiles.
- Aside from animal testing, use permits for R&D utilizing biological agents exceeding National Institute of Health (NIH) Risk Group 3 would still be required, but the approving authority would be the Planning Commission, instead of City Council, with Council still being the authority on appeal of a Planning Commission decision, as is the process for other use permits.
- An organizational cleanup of the performance standard provisions was also included in the draft ordinance.

The January 26, 2023 Planning Commission report and minutes are attached for reference. The Planning Commission, by a vote of 3-1, recommended that City Council deny the proposed ordinance. The Planning Commission resolution, draft minutes and agenda report are provided in Attachments 3, 4 and 5. Public correspondence to the Commission is provided in Attachment 6.

DISCUSSION:

A summary of the Planning Commission's discussion of the draft ordinance is provided in the draft minutes, Attachment 4. In summary, the Commissioners voting against the amendment expressed their concern over limiting R&D using live animals as proposed and expressed a desire to allow the scientific community to take the lead regarding the need for animal studies, while the dissenting Commissioner spoke in favor of further limiting animal testing as proposed.

There was also some discussion of FDA Modernization Act 2.0, passed by Congress in December 2022, which removed the requirement to use animal testing in drug development. It allows drug companies the option of using "nonclinical test" instead of tests on animals when making new drug submissions to the U.S. Food and Drug Administration (FDA). This allows for a shift away from mandated animal studies for FDA approval, but does not go so far as to prohibit animal studies. Note that animal care at R&D facilities is the purview of the U.S. Dept of Agriculture (USDA).

The City Council has a few options with this application.

1. Vote to deny the zoning text amendment, thereby affirming the Planning Commission's recommendation. This would keep the existing provisions of BMC Chapter 17.18 unchanged. Note that under the current ordinance, there are no special findings provided for R&D use permits, but rather the standard findings contained in BMC Section 17.40.060 apply. That is, *"In considering an application, the planning commission shall consider and give due regard to the nature and condition of all adjacent uses and structures, and to general and specific plans for the area in question. The planning commission shall determine whether or not the establishment, maintenance or operation of the use applied for will, under the circumstances of the particular case, be detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city. If the planning commission finds that the aforementioned conditions will not result from the particular use applied for, it may grant the use permit."* These findings focus on potential impacts to neighbors, but do not specifically address issues of animal use related to R&D work. It does not appear the current findings are well suited to address concerns regarding animal testing.
2. Council may reject the Commission's recommendation and adopt the zoning text amendment as proposed. Clean and redlined versions of the draft ordinance are provided in Attachments 1 and 2.

3. Council may adopt an amendment that is different from what has been provided. In this case, depending on Council's direction, staff may need to bring a revised draft ordinance back to Council for consideration. Council may provide direction and refer this matter back to the Planning Commission for further study.

FISCAL IMPACT

None.

MEASURE OF SUCCESS

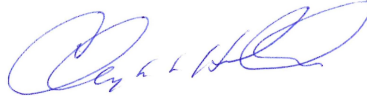
To provide clear R&D provisions in the BMC.

ATTACHMENTS

1. Draft Ordinance Amending SP-CRO R&D Provisions
2. Redlined Draft Ordinance
3. Planning Commission Resolution 2022-RZ-4
4. Draft Planning Commission Meeting Minutes, January 26, 2023
5. Planning Commission Agenda Report, January 26, 2023
6. Correspondence



John Swiecki, Community Development Director



Clay Holstine, City Manager