



CITY of BRISBANE

City Council Meeting Agenda

Thursday, October 21, 2021 at 7:30 PM • Virtual Meeting

This meeting is compliant with the Ralph M. Brown act as amended by California Assembly Bill No. 361 effective September 16, 2021 providing for a public health emergency exception to the standard teleconference rules required by the Brown Act. The purpose of this is to provide a safe environment for the public, staff and Councilmembers, while allowing for public participation. The public may address the Council using exclusively remote public comment options. The Council may take action on any item listed in the agenda.

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TO ADDRESS THE COUNCIL

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

Remote Public Comments:

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SPECIAL ASSISTANCE

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

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

2. ROLL CALL

3. ADOPTION OF AGENDA

4. AWARDS AND PRESENTATIONS

- A. Volunteer of the Year Presentation

5. ORAL COMMUNICATIONS NO. 1

6. CONSENT CALENDAR

- B. Approve Minutes of City Council Meeting of June 17, 2021
- C. Approve Minutes of City Council Meeting of July 15, 2021
- D. Approve Minutes of City Council Closed Session Meeting of September 23, 2021
- E. Adopt Ordinance No. 667, Waiving Second Reading, Amending Chapter 13.04 of the Brisbane Municipal Code pertaining to “Sewer System”
- F. Adopt Resolution No. 2021-69 to Continue Conducting City Council and Commission Meetings Remotely Due to Health and Safety Concerns for the Public

7. PUBLIC HEARING

- G. Consider Introduction of Ordinance No. 665 to amend Brisbane Municipal Code Title 17 (Zoning Ordinance) to Allow Large Family Daycare Homes by Right in Zoning Districts That Permit Residential Uses, Consistent with the Requirements of State Law

8. OLD BUSINESS

- H. Short Term Rental Ordinance Implementation Update

9. NEW BUSINESS

- I. Update on Committee By-Laws

10. STAFF REPORTS

- J. City Manager’s Report on upcoming activities

11. MAYOR/COUNCIL MATTERS

K. Countywide Assignments and Subcommittee Reports

L. City Council Meeting Schedule

M. Written Communications

12. ORAL COMMUNICATIONS NO. 2

13. ADJOURNMENT

B.

File Attachments for Item:

B. Approve Minutes of City Council Meeting of June 17, 2021



BRISBANE CITY COUNCIL

ACTION MINUTES

BRISBANE CITY COUNCIL MEETING AGENDA

THURSDAY, JUNE 17, 2021

VIRTUAL MEETING

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Cunningham called the meeting to order at 7:41 P.M. and led the Pledge of Allegiance.

ROLL CALL

Councilmembers present: Councilmembers Davis, Lentz, Mackin, O'Connell and Mayor Cunningham
Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, City Attorney McMorrow, Assistant City Manager Schillinger, Finance Director Yuen, City Engineer Breault, Police Chief Macias, Human Resources Administrator Partin, and Administrative Management Analyst Ibarra

REPORT OUT OF CLOSED SESSION

City Attorney McMorrow reported that action was taken by Council and denied Liability Claim Item D.

ADOPTION OF AGENDA

Council Member Mackin requested to discuss Consent Calendar Items H and I.
CM O'Connell made a motion, seconded by CM Lentz to adopt the agenda as it stands. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

AWARDS AND PRESENTATIONS

A. PG&E Presentation

Bill Chiang and Frank Fraone from PG&E presented on PG&E's Wildfire Safety Work in San Mateo County. After some Council questions, Mr. Chiang and Mr. Fraone were thanked by Council for the information presented.

B. San Bruno Mountain Watch Presentation

Ariel Cherbowsky Corkidi and Reina Kahn made a presentation on the San Bruno Mountain Watch's activities and accomplishments. Councilmembers thanked the San Bruno Mountain Watch for their work and were excited about attending future events.

C. Juneteenth Proclamation

Mayor Cunningham read the Juneteenth Proclamation encouraging all community members to observe June 19, 2021 as Juneteenth with activities and reflections on freedom and justice.

ORAL COMMUNICATIONS NO. 1

Roland Lebrun made public comment about the new Governor's Executive Order on remote public meetings.

CONSENT CALENDAR

D. Sierra Point Lighting and Landscaping District

1. Approve Resolution No. 2021-53, "Appointing Attorney for the Sierra Point Landscaping and Lighting District for the Fiscal Year 2021-2022."
2. Approve Resolution No. 2021-54, "Appointing Engineer for the Sierra Point Landscaping and Lighting District for the Fiscal Year 2021-2022."
3. Approve Resolution No. 2021-55, "A Resolution of Preliminary Approval of Engineer's Report - Fiscal Year 2021-2022 - Sierra Point Landscaping and Lighting District"
4. Approve Resolution No. 2021-56, "A Resolution of Intention to order the levy and collection of assessments pursuant to the Landscaping and Lighting Act of 1972 - Fiscal Year 2021-2022 - Sierra Point Landscaping and Lighting District"

E. Adopt Resolution No. 2021-51 Agreement with Turbo Data Systems, Inc. for Parking Citation Processing and Adjudication Services

F. Adopt Resolution 2021-39 establishing the Appropriation Limit for Fiscal Year 2021/22

G. Approve Resolution No. 2021-57 adopting one (1) project, the overlay of Visitacion Ave between San Francisco Ave and Monterey St, for fiscal year 2021-2022 funded by Senate Bill 1 (SB 1): the Road Repair and Accountability Act of 2017.

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

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

Noes: None

Absent: None

Abstain: None

H. Approve Capital Improvement Projects (DPW 77 and DPW 87- DPW91) that were not included in the June 3, 2021 Council Packet

After Council questions and discussion with staff about the Capital Improvement Projects that were not included in the June 3, 2021 Council Packet, CM O'Connell made a motion, seconded by CM Lentz to approve Capital Improvement Projects DPW 88, 89, 90 and 91. The motion passed with a 4 to 1 vote.

Ayes: Councilmember Davis, Lentz, O'Connell, and Mayor Cunningham

Noes: Councilmember Mackin

Absent: None

Abstain: None

I. Introduce Ordinance No. 662 to Require the Safe Storage of Firearms in a Residence

After some Council questions and discussion with staff about the ordinance, CM Lentz made a motion, seconded by CM Davis to introduce Ordinance No. 662 to Require the Safe Storage of Firearms in a Residence. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

PUBLIC HEARING

J. Consider Adoption of Resolution No. 2021-38 Amending the Master Fee Schedule Adopted on June 4, 2020.

Finance Director Yuen reported that it is being recommended to Adopt Resolution 2021-38, which generally increases fees by 2%. After Council questions, Mayor Cunningham opened the public hearing.

No members of the public wished to make public comment.

CM Lentz made a motion, seconded by CM Mackin to close the public hearing. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

CM Lentz made a motion, seconded by CM O'Connell to adopt Resolution No. 2021-38 Amending the Master Fee Schedule Adopted on June 4, 2020. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

OLD BUSINESS

K. Consider Approval of the Implementation Guidelines for the Public Art Ordinance with Any Changes Approved by City Council

Assistant City Manager Schillinger reported that the Public Art Committee suggested changes to the Implementation Guidelines for the Public Art Ordinance. The changes suggested by the Public Art Committee is to remove the Parks and Recreation Commission as an Oversight Board of the Public Art Committee and allow the Public Art Committee to make recommendations on final installations directly to the City Council. The other change is to formally remove the Public Art Selection Committee from the Guidelines.

After Council questions, Michael Barnes stated that the process worked. The guidelines does not need to be changed because more civic engagement is important.

Kim Follien stated that there was prejudice against skateboarders from the start and felt that created a toxic environment.

After Council discussion and further questions, CM O'Connell made a motion, seconded by CM Davis to adopt Resolution No. 2021-38 Amending the Master Fee Schedule Adopted on June 4, 2020. The motion passed by a 3 to 2 vote.

Ayes: Councilmember Davis, O'Connell, and Mayor Cunningham

Noes: Councilmember Lentz and Mackin

Absent: None

Abstain: None

NEW BUSINESS

L. Consider Approval of Resolution Nos. 2021-41-50 and 2021-52, Adopting Pay Schedules and Master Pay Schedules for Fiscal Year (FY) 2021-22

Human Resources Administrator Partin provided highlights of updates to the upcoming pay schedules that have been approved in the current labor agreements which are as follows:

- Confidential Management Employees: The positions in this group will receive 2% pay increases in both July and January. The current filled positions in this group and their respective top step pay rates include: Assistant City Manager at \$121.00 and \$123.42 per hour and Finance Director at \$100.69 and \$102.70 per hour.
- Executive Management: The pay schedule will reflect 2% pay increases in both July and January. The current filled positions in this group and their respective top step pay rates include: City Clerk at \$65.24 and \$66.54 per hour, Community Development Director at \$101.76 and \$103.79 per hour, Parks and Recreation Director at \$97.02 and \$98.96 per hour and Public Works Director/City Engineer at \$119.12 and \$121.50 per hour.
- Police Chief: The pay schedule will reflect 2% pay increases in July and January. The new pay rate will be \$118.73 and \$121.10 per hour at the top step.
- Confidential Employees Group, General Employees Association Group, Mid-Management and Professional Employees Group, and Police Commander: The pay schedule will reflect 2% pay increases for all covered positions in July and January.
- Brisbane Police Officers Association: The pay schedule will reflect a 4% increase for all covered positions in July.
- International Association of Firefighters, Local 2400: The pay schedule will reflect a 2.5% pay increase in July and a 2% increase in January for all covered positions.

Also, Human Resources Administrator Partin added staff is asking council to approve a similar 2.0% increase to the pay scales for hourly employees, with the exception of the Intern, Habitat Restoration Aide, Habitat Restoration Lead Worker and Special Assistant positions, in FY 2021-22.

After Council discussion, CM O'Connell made a motion, seconded by CM Lentz to adopt Resolution Nos. 2021-41-50 and 2021-52, Adopting Pay Schedules and Master Pay Schedules for Fiscal Year (FY) 2021-22. The motion passed unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

M. Consider Approval of Resolution No. 2021-40 Confirming Pay Schedule for the City Manager Under the City Manager Employment Agreement and Authorizing the Mayor to Sign a Second Amendment to the Employment Agreement

Mayor Cunningham read a statement for New Business Item M. She read: "In accordance with Government Code Section 54953 (c)(3), a summary of the City Manager's s

Salary and benefits is reported as follows:

The bi-weekly salary for the City Manager will be \$10,132.73 bi-weekly, beginning July 2021.

The City Manager will receive 80 hours of administrative leave in 2021 and 2022 but such leave must be used within 12 months from the time the leave is granted.

Through the City's contract with the Public Agency Retirement Service (PARS), City will pay for Mr. Holstine all required contributions under the 1% at 63 Formula.

Consistent with the benefits provided to Department Heads of the City, the City Manager will receive paid time off for holidays and vacation leave and is eligible for health benefits which include vision, dental, and comprehensive medical insurance. Other benefits include life and disability insurance as well as workers' compensation.

The Employment Agreement also reflects a City equity loan to Mr. Holstine for his personal residence in Brisbane, in the amount of \$200,000. Interest in the amount of \$51,500 has accrued (through 2020) and will continue to accrue. The loan and interest will be repaid within six months of the Manager's retirement. Upon retirement from the City, anticipated to be December 31, 2022, the City Manager will receive a monthly stipend consistent with other retired Executive Management employees who started working for the City prior to July 2008 and retired after 2000."

After Council discussion, CM O'Connell made a motion, seconded by CM Lentz to adopt Resolution No. 2021-40 Confirming Pay Schedule for the City Manager Under the City Manager Employment Agreement and Authorizing the Mayor to Sign a Second Amendment to the Employment Agreement. The motion passed unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

N. Consider Approval of Agreement to Pay Consultants' Costs Concerning a Proposed Project in Sierra Point

Community Development Director Swiecki reported it is being recommended to approve the attached Agreement for HCP Life Science REIT, Inc. ("Healthpeak") to pay Consultants' Costs concerning Healthpeak's proposal to redevelop a 16 acre site in Sierra Point and authorize the execution of the Agreement. He added that there is no predetermination to agreeing to this project in Sierra Point.

After Council questions, it was noted for the record that Dana Dillworth wrote correspondence to the Council regarding this item.

After Council discussion, CM Davis made a motion, seconded by CM O'Connell to approve the Agreement to Pay Consultants' Costs Concerning a Proposed Project in Sierra Point. The motion passed unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

Council requested to take a break and CM Lentz made a motion, seconded by CM O'Connell to extend the meeting till 11:30 p.m. The motion passed unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

O. Baylands Planning Process Update and Consideration of Preliminary Comments

Community Development Director Swiecki reported that the Baylands Subcommittee worked with MIG to define a list of observations/questions with the draft plan, as well as other goals or features they would encourage the developer Baylands Development Inc., "BDI" to consider incorporating into the draft plan.

Mukul Malhotra of MIG presented the broad overview on the Baylands Planning Process.

After Council discussion, Council directed staff to bring back the item at the City Council Meeting of July 15, 2021 to finalize comments on the Baylands Planning Process.

Public comment was received from Dana Dillworth regarding the Baylands Planning Process and Roland Lebrun regarding the Bayshore Caltrain Station.

Roland Lebrun made public comment about remediation and the Caltrain station.

Mayor Cunningham made a motion, seconded by CM Lentz to continue this item to the July 15, 2021. The motion passed unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

STAFF REPORTS

P. City Manager's Report on upcoming activities

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

MAYOR/COUNCIL MATTERS

Q. Creation of Ad-hoc Subcommittee for Transportation Demand Management Policy

Due to the late hour, this item was not discussed and will be scheduled for discussion at the City Council Meeting of July 15, 2021.

R. Countywide Assignments and Subcommittee Reports

Due to the late hour, no reports were made by Council.

S. City Council Meeting Schedule

The July 1, 2021 City Council Meeting will be cancelled and the next City Council Meeting is scheduled for July 15, 2021.

T. Written Communications

Due to the late hour, this item was not reported on.

Written Communication was received by the Council (from June 2, 2021 through June 17, 2021) from the following members of the public:

- SMC Stonewall (6/2/21) You're Invited to our LGBTQ+ Training
- Christine Wang (6/3/21) Public comment for Brisbane Housing Authority Workshop on June 3
- Elaine Straw (6/5/21) Open Items Fwd: Trucks on Valley – Chronic
- Tony Verreos (6/9/21) Brisbane Fire Safety
- Kevin Fryer (6/16/21) Comments for tomorrow's Council Meeting, A further request
- Renee Marmion (6/16/21) Letter to City Council 6/17/2021
- Dana Dillworth (6/16/21) Sierra Point 14-Story Project
- Dana Dillworth (6/16/21) Comments on Baylands Planning Process Item "O"
- Dana Dillworth (6/17/21) Correction on Baylands document

ORAL COMMUNICATIONS NO. 2

Roland Lebrun commented on the importance of tracking legislation about remote public meetings and the Brown Act.

ADJOURNMENT

Mayor Cunningham adjourned the City Council Meeting of June 17, 2021 at 11:34 P.M.

Ingrid Padilla
City Clerk

C.

File Attachments for Item:

C. Approve Minutes of City Council Meeting of July 15, 2021



BRISBANE CITY COUNCIL**ACTION MINUTES**

BRISBANE CITY COUNCIL MEETING AGENDA**THURSDAY, JULY 15, 2021***VIRTUAL MEETING***CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Cunningham called the meeting to order at 8:15 P.M. and led the Pledge of Allegiance.

ROLL CALL

Councilmembers present: Councilmembers Davis, Lentz, Mackin, O'Connell and Mayor Cunningham
Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, City Attorney McMorro, Assistant City Manager Schillinger, Finance Director Yuen, City Engineer Breault, Police Commander Garcia, Parks and Recreation Director Leek, Senior Planner Ayres, Sustainability Manager Etherton, Communications Manager Cheung, and Administrative Management Analyst Ibarra

REPORT OUT OF HOUSING AUTHORITY CLOSED SESSION

City Attorney McMorro reported that action was taken and direction was given to staff.

ADOPTION OF AGENDA

Mayor Cunningham stated she will abstain from Consent Calendar Item M vote due to perceived conflict of interest.

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

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

Noes: None

Absent: None

Abstain: None

AWARDS AND PRESENTATIONS

A. Presentation on New Hybrid Meeting Format

Caroline Cheung, Communications Manager demonstrated the new hybrid meeting format as a possible option for public meetings. This new format will allow both remote and in person participation of staff, council and members of the public. She added that this new hybrid format aims to encourage more public participation.

B. Proclamation Recognizing July as Parks and Recreation Month

Mayor Cunningham read the proclamation recognizing July as Parks and Recreation Month and recognized the benefits derived from Parks and Recreation resources.

C. Proclamation Recognizing Renee Marmion for her Service to the City

Mayor Cunningham and Councilmembers recognized Renee Marmion for her many years of service to the City with a Mayoral Proclamation. Ms. Marmion thanked the Council for their support and appointments. Bruno Marmion thanked his mom, Renee Marmion, for her dedication and service to the community.

D. Coastal Conservancy Grant Presentation

Inspector Preston and Deputy Chief Kavanaugh presented on the Coastal Conservancy Wildfire Resilience Program Grant. They reported the following:

- North County Fire Authority applied for the grant in April 2021 for wildfire preparedness
- Grant funds to hire a contractor to complete egress and ingress roadway fuel reduction
- Trim back & limb up trees that encroach the public right way and improve travel route safety
- Remove invasive, overgrown, dead and flammable vegetation from public streets
- Clearing vegetation around fire hydrants.
- May 2021, grant awarded - \$67,500.00
- August 2021, start date of work

5. ORAL COMMUNICATIONS NO. 1

Roland Lebrun praised the hybrid meeting format and asked for closed captioning and transcription support.

Kim Follien stated that she was insulted at the last council meeting. She added that public comment should be safe. And she's relieved that the public art committee meetings are now being recorded

6. CONSENT CALENDAR

E. Approve Minutes of City Council Meeting of April 1, 2021

F. Approve Minutes of City Council Closed Session Meeting of April 15, 2021

G. Approve Minutes of City Council Closed Session Meeting of May 6, 2021

H. Accept Investment Report as of May 2021

I. Adopt Resolution No. 2021-63 Confirming and Ratifying the Proclamations Declaring the Continued Existence of a Local Emergency in the City of Brisbane in Response to the COVID-19 Pandemic

J. Adopt Ordinance No. 662, Waiving Second Reading, to Require the Safe Storage of Firearms in a Residence

K. Affordable Housing Strategic Plan Request for Proposals and Consultant Selection

(It is being recommended to authorize the Housing Subcommittee to select the successful affordable housing consultant, and authorize the City Manager to negotiate and sign a professional services agreement with the successful consultant)

L. Acknowledge Drought Stage 1 Declaration

N. Approve Resolutions No. 2021-58 and 2021-59 Establishing the Classification of Communications and Digital Media Coordinator and Amending the Master Pay Schedule

O. Approve Contract with San Mateo Credit Union for an ATM machine at City Hall

CM Lentz made a motion, seconded by CM Davis to approve Consent Calendar Items E-L and N-O. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

M. Revoke Original Award of Contract and Approve award the contract to the second lowest bidder, Southwest Greens, for the Dog Park Restoration Project

After some council questions, CM O'Connell made a motion seconded by CM Mackin to approve Consent Calendar Item M. The motion passed unanimously with one abstention.

Ayes: Councilmember Davis, Lentz, Mackin, and O'Connell

Noes: None

Absent: None

Abstain: Mayor Cunningham

7. PUBLIC HEARING

P. Sierra Point Landscaping and Lighting District

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

After a statement of the Engineer of Record, City Engineer Breault, Mayor Cunningham made an opening statement regarding the Sierra Point Landscaping and Lighting District.

City Clerk Padilla made a statement regarding notices and reports, Mayor Cunningham opened the public hearing.

No members of the public wished to speak. No written correspondence was received.

CM O'Connell made a motion, seconded by CM Davis to close the public hearing. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

2. Consider adoption of Resolution No. 2021-60 overruling protests and ordering the improvements and confirming the diagram and assessments for Fiscal Year 21/22

CM O'Connell made a motion, seconded by CM Davis to adopt Resolution No. 2021-60 overruling protests and ordering the improvements and confirming the diagram and assessments for Fiscal Year 21/22.

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

Noes: None

Absent: None

Abstain: None

Q. City of Brisbane Local Stormwater Program Fees

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

City Engineer Breault reported that the purpose of this item is to provide a public hearing and consider imposition of annual tax roll charges that fund Brisbane's Local Stormwater Program, which minimizes discharge of pollutants to San Francisco Bay in accordance with federally mandated permit requirements. Mayor Cunningham opened the public hearing.

No members of the public wished to speak. No written correspondence was received.

CM O'Connell made a motion, seconded by CM Davis to close the public hearing. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

2. Consider adoption Resolution No. 2021-61, "A Resolution of the City Council of the City of Brisbane Imposing Charges for Funding the Local Brisbane Stormwater Program, Authorizing Placement of Said Charges on the 2021-2022 County Tax Roll, and Authorizing the County Tax Collector to Collect Such Charges."

CM O'Connell made a motion, seconded by CM Davis to adopt Resolution No. 2021-61, "A Resolution of the City Council of the City of Brisbane Imposing Charges for Funding the Local Brisbane Stormwater Program, Authorizing Placement of Said Charges on the 2021-2022 County Tax Roll, and Authorizing the County Tax Collector to Collect Such Charges.". The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

8. OLD BUSINESS

R. Baylands Planning Process Update and Consideration of Preliminary Comments

(This item was discussed at the City Council Meeting of June 17, 2021 and discussion will be continued at this meeting.)

Community Development Director Swiecki invited Council to provide observation on the preliminary comments to the Baylands Planning Process.

After Council questions, Roland Lebrun commented to add the Baylands Subcommittee in the City Website's drop-down menu.

Mayor Cunningham thanked consultants for attending the meeting and stated that staff is being directed to forward the following comments and suggestions to the developer Brisbane Development Inc.

9. NEW BUSINESS

S. Receive Quarry Development Project Presentation

Community Development Director Swiecki reported that the City Council approved a reimbursement agreement with Orchard Partners, LLC, to allow the City to recover the costs associated with processing applications for redevelopment of the quarry property. Any formal applications for the Quarry Development Project will be subject to public hearings before the Planning Commission and City Council.

Tyler Higgins and Ernie Knodel of Orchard Partners provided an informational overview of their conceptual development plan.

After Council questions, Barbara Ebel asked whether this project will exacerbate the work housing balance.

Mary Rogers commented that she liked the design but is concerned about traffic and noise.

After some council discussion, Mayor Cunningham thanked Mr. Higgins and Mr. Knodel for their presentation.

T. Residential Objective Design and Development Standards (ODDS) Study Session

Senior Planner Ayres reported that the purpose of this item is to update the City's design and development zoning standards applicable to new residential and residential mixed-use development to frontload the City's discretionary authority and to comply with State law.

Aaron Akin and Nicholas Hamilton of Good City Company presented on the Residential Objective Design and Development Standards. Consultants Good City Co. were hired for the ODDS project, with a work program emphasizing community outreach, evaluating opportunities and constraints to residential development in zoning districts with subjective development standards, and drafting updated zoning ordinance language that will be subject to Planning Commission review and City Council adoption later this year.

After Council questions and comments, Barbara Ebel commented she liked the Art Nouveau design and a comprehensive design in Visitacion Ave.

U. Consider Approval of Resolution No. 2021-62 "Declaring a Climate Emergency and Initiating Immediate and Accelerated Action to Address the Climate Crisis and Limit Global Warming to 1.5 Degrees Celsius"

Sustainability Manager Etherton reported that adopting a Climate Emergency Declaration in Brisbane will declare the City's commitment to climate action and environmental justice and establish high-level goals despite the lack of an updated Climate Action Plan.

She added the proposed resolution was developed by staff and the Open Space and Ecology Committee's Climate Action Plan subcommittee, and was modeled on those passed by the County of San Mateo and the City of San Francisco. Current state targets include 40% GHG reductions below 1990 levels by 2030, which is roughly equivalent to 50% reduction below 2005 levels (the City's baseline inventory) by 2030, and carbon neutrality by 2045. The suggested "stretch goals" of 66% reduction by 2030 and carbon neutrality by 2040 show leadership by being more ambitious but achievable.

After Council questions, CM Davis made a motion, seconded by CM Lentz to approve Resolution No. 2021-62 Declaring a Climate Emergency and Initiating Immediate and Accelerated Action to Address the Climate Crisis and Limit Global Warming to 1.5 Degrees Celsius. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

CM O'Connell made a motion, seconded by CM Lentz to extend the meeting until 11 p.m. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

V. Discuss SB 1383 Implementation

(Senate Bill 1383 is a prescriptive organic waste reduction mandate)

City Engineer Breault reported that Senate Bill 1383 is a prescriptive organic waste reduction mandate and the efforts required of the city and its solid waste franchisees are as follows:

1. Provide organic collection to ALL residents and businesses
2. Participate in an edible food recovery program
3. Conduct education and outreach
4. Procure recyclable and recovered organic products
5. Monitor compliance and conduct enforcement

After some Council questions and discussion. Council thanked City Engineer Breault for the report.

STAFF REPORTS

W. City Manager's Report on upcoming activities

City Manager Holstine reported on the latest City news and upcoming community activities.

MAYOR/COUNCIL MATTERS

X. Creation of Ad-hoc Subcommittee for Transportation Demand Management Policy

(Due to the late hour this item was not discussed at the City Council Meeting of June 17, 2021 and is being continued at this meeting.)

City Manager Holstine reported that Transportation Demand Management plans are proposed to be required as condition of approval of any major development in the City. These plans may include a variety of measures to reduce traffic congestion and enhance alternative forms of transportation to and from places of employment. Staff is recommending to create an Ad hoc Subcommittee for Transportation Demand Management Policy with two members from Council.

After some Council discussion, CM O'Connell made a motion, seconded by CM Davis to create an Ad-hoc Subcommittee for Transportation Demand Management Policy with Mayor Cunningham and CM Lentz as members.

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

Noes: None

Absent: None

Abstain: None

Y. Designation of Voting Delegates and Alternates to the League of California Cities Annual Conference September 22-24, 2021

CM O'Connell made a motion, seconded by CM Davis to designate Mayor Cunningham as the voting delegate and CM Lentz as the alternate to the League of California Cities Annual Conference. The motion passed unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

Z. Countywide Assignments and Subcommittee Reports

Council reported on their recent county assignment and subcommittee meetings.

AA. City Council Meeting Schedule

The City Council Meetings of August 5, August 19, September 2, are cancelled as planned.

Council also approved the proposal to cancel our September 16 meeting in observance of Yom Kippur and hold our next City Council meeting on September 23.

BB. Written Communications

Council received the following correspondence from June 17, 2021 to July 15, 2021:

- Roland Lebrun (6/17/21) Executive Order N-8-21 Paragraph 42
- Karen Lentz (6/23/21) With Gratitude
- Renee Marmion (6/30/21) Resignation of P&R Commission
- Karen Lentz (7/6/21) Library Installation
- Juliana Romero (7/8/21) YMCA Community Information
- Linda Dettmer (7/12/21) Bank of America
- Ernest Ibarra (7/13/21) Resignation from CSSC
- Linda Dettmer (7/13/21) Bank of America
- John Cawley (7/14/21) Drought State of Emergency
- Sepi Wood (7/15/21) Water Update

ORAL COMMUNICATIONS NO. 2

No members of the public wished to speak.

ADJOURNMENT

Mayor Cunningham adjourned the City Council meeting of July 15, 2021 at 10:51 P.M.

Ingrid Padilla
City Clerk

D.

File Attachments for Item:

D. Approve Minutes of City Council Closed Session Meeting of September 23, 2021



BRISBANE CITY COUNCIL
ACTION MINUTES

BRISBANE CITY COUNCIL CLOSED SESSION MEETING AGENDA
THURSDAY, SEPTEMBER 23, 2021
VIRTUAL MEETING
6:30 P.M. CLOSED SESSION
A. Approval of the Closed Session Agenda
B. Public Comment. Members of the public may address the Councilmembers on any item on the closed session agenda

Mayor Cunningham called the meeting to order at 6:32 p.m.

No members of the public were in attendance virtually and no public comment was received.

Mayor Cunningham adjourned the meeting into closed session.

C. Adjournment into Closed Session
D. Liability Claim: Claimant Estate of Edward Gogel, Edward Dean Gogel, Eileen Gogel, and Lynn
D. Lieber pursuant to Government Code, section 54956.95
E. CONFERENCE WITH REAL PROPERTY NEGOTIATOR UNDER GOVERNMENT CODE SECTION 54956.8
Property: 25 Park Place, Brisbane, CA
City Negotiator: Clay Holstine, City Manager
Negotiating Party: Elena Court
Under negotiation: Price and terms of payment

REPORT OUT OF CLOSED SESSION

City Attorney McMorro reported that Liability Claim Item D was denied by the Council and direction was given to staff regarding Item E.

ADJOURNMENT

The meeting was adjourned at 7:23 p.m.

Ingrid Padilla, City Clerk

File Attachments for Item:

E. Adopt Ordinance No. 667, Waiving Second Reading, Amending Chapter 13.04 of the Brisbane Municipal Code pertaining to “Sewer System”



CITY COUNCIL AGENDA REPORT

Meeting Date: October 21, 2021

From: Director of Public Works/City Engineer

Subject: Municipal Code Changes to Sewer System Chapter

Recommendation

Adopt Ordinance No. 667, waiving second reading, amending 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 October 7, 2021, and was passed unanimously with no requested changes.

Attachments

1. October 7, 2001 staff report, including Ordinance No. 667

A handwritten signature in blue ink that reads "Randy Breault".

Randy Breault, Public Works Director

A handwritten signature in blue ink that reads "Clayton Holstine".

Clay Holstine, City Manager



CITY COUNCIL AGENDA REPORT

Meeting Date: October 7, 2021

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 Ordinance No. 667, waiving first reading, amending Chapter 13.04 of the Brisbane Municipal Code pertaining to "Sewer System."

Background

Remnants of the city's pre and early incorporation days include the presence of joint sewer laterals serving one or more properties. Many of the shared laterals were placed without the recordation of an easement for the served properties. These laterals have been treated as pre-existing nonconforming conditions, and under certain circumstances are required to be upgraded to city standards.

There are two challenges with these pre-existing nonconforming laterals; first, is that when there is no agreement in place to allocate repair costs, there can be significant delays in fixing sanitary sewer overflows on private property while the parties connected to the lateral negotiate who should pay how much. The second challenge is that a new generation of owners are buying homes served by a joint lateral, and this information is not disclosed to them upon sale.

At present, public works staff is aware of 38 joint sewers without formal approval. These shared laterals serve 141 residences.

Discussion

The revisions proposed in Ordinance 667 are intended to make it less difficult for properties owner to obtain a shared sewer lateral agreement, and to make disclosure of a property connected to a shared lateral a requirement at the time of sale.

The major change to existing §13.04.430 is to allow the Director of Public Works, working in concert with the City Attorney, to approve a joint sewer lateral, rather than taking the matter

to Council. Over the last two decades, these agreements have been placed on Council's Consent Calendar, and never removed for discussion. As these can be handled administratively, the most time efficient way to process them is to have staff complete that effort. An interesting note to this discussion is that the request for shared lateral agreements came up three (3) times during Council's most recent summer break.

A second change to existing §13.04.430 is the addition of the word "generally" in front of "... subject to ... terms and conditions" The reason for this change is that in some circumstances the desired conditions cannot be met. For example, many of these legacy shared laterals are placed in conditions where a ten-foot easement would not be possible, as the adjoining house would encroach into that easement. In past cases where this has occurred, the Public Works Director required the plans to specify a fusion-welded form of high-density polyethylene pipe to minimize the possibility for future maintenance.

The addition of new §13.04.431 simply requires sellers and their agents/brokers to notify buyers that the property's sewer is served by a shared lateral. Any discussions on whether or not the lateral is to be formally approved by the city is left to the negotiating parties. Note that this disclosure is nearly identical to the required disclosure that a sewer lateral certificate program is available within the city (codified by Ordinance No. 591, 3/19/15 at §13.04.452 and §13.04.453)

Fiscal Impact

The staff time that will be utilized to draft the brochure required by the ordinance and to process requests for approval of shared sewer laterals can be accommodated with existing resources. No additional cost is envisioned because of the recommended action.

Measure of Success

An updated sewer system municipal code chapter, which expedites the processing of shared sewer lateral approvals, and which notifies buyers ahead of closing if the purchase property is served by a joint sewer.

Attachments

1. Ordinance No. 667
2. Red-line version comparing existing code section to proposed changes

Randy Breault, Public Works Director

Clay Holstine, City Manager

ORDINANCE NO. 667

AN ORDINANCE OF THE CITY OF BRISBANE AMENDING SECTION 13.04.430 AND ADDING SECTION 13.04.431 TO THE MUNICIPAL CODE PERTAINING TO JOINT SEWER LATERALS

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

SECTION 1: Section 13.04.430 of Chapter 13.04 “Sewer System” of Title 13 of the Municipal Code is hereby amended to read as follows:

§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.

SECTION 2: Section 13.04.431 is hereby added to Chapter 13.04 “Sewer System” of Title 13 of the Municipal Code:

§13.04.431 Disclosure and joint sewer lateral agreement; when required.

A. All property owners whose property or properties are served by a joint sewer lateral and who have received approval for a joint sewer lateral under Section 13.04.430 shall enter into and record a joint sewer lateral agreement before the City will issue a final building permit when the property owner has undertaken work that:

1. Triggers the requirements of Chapter 15.10 of this code;
2. Is associated with a change in water service (e.g., change in meter size or the addition of a meter; or
3. Results in maintenance on the existing joint sewer lateral, whether routine or emergency.

B. Beginning January 1, 2022, except as provided in subsection C, any property owner intending to sell or transfer a fee interest in real property must disclose the requirements of this section 13.04.431 to each of the following:

1. The property owner’s real estate broker or agent, if any;
2. The person to whom the real property is intended to be sold or transferred;
3. The real estate broker or agent, if any, of the person to whom the real property is intended to be sold or transferred;
4. The escrow company or holder involved in the real property sale or transfer, if any.

C. Subsection B of this Section 13.04.431 shall not apply to:

1. Sales or transfers of individual units within a condominium as defined in Section 17.02.150 of this code;
2. Sales or transfers of less than a fee interest, e.g., a leasehold;
3. Sales or transfers to a fiduciary in the course of the administration of a decedent's estate, a guardianship or a conservatorship;
4. Transfers from one co-owner to one or more other co-owners;
5. Transfers to a revocable trust if the trust is for the benefit of the grantor(s);
6. Transfers made by a trustor to an intervivos trust;
7. Transfers between spouses or between registered domestic partners;

8. Transfers to a financial institution, trust deed holder, or trustee of a deed of trust, as part of foreclosure or similar process.

D. The director shall prepare a handout or other written material, to be made available to the public, describing the requirements of this Section. A person may satisfy the disclosure requirements of subsection B by providing a then current copy of the handout or other written material to those parties identified in subsection B.

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

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

* * * *

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

AYES:

NOES:

ABSENT:


ABSTAIN:

Karen Cunningham, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas R. McMorrow, City Attorney

13.04.430 Joint sewer lateral installation and maintenance.

The ~~city council~~director may, ~~by resolution~~, upon finding good cause therefor, grant approval for a joint sewer lateral (one ~~that services two~~ ~~used by two~~ (2) or more ~~properties~~persons); provided, that each ~~property owner~~ ~~applicant therefor~~ shall submit plans to the director for prior approval. Any approval granted by the ~~city council~~director for a joint sewer lateral ~~is 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.

13.04.431 Disclosure and joint sewer lateral agreement; when required.

A. All ~~property owners whose property or properties~~persons ~~are served by a joint sewer lateral and who have received approval for a joint sewer lateral under Section 13.04.430 shall enter into and record~~ ~~possess or obtain~~ a joint sewer lateral agreement ~~issued under Section 13.04.430~~ before the ~~City~~ will issue a final building permit when the ~~property owner~~ person has undertaken work that:

1. ~~Triggers the requirements of Chapter 15.10 of this code; or~~
2. ~~Is associated with a change in water service (e.g., change in meter size or the addition of a meter; or~~

3. Results in ~~Is routine or emergency~~ maintenance on the existing joint sewer lateral, whether routine or emergency.

B .Beginning DATE TBD, except as provided in subsection C, any property owner~~person~~ intending to sell or transfer a fee interest in real property must disclose the requirements of this section 13.04.431 to each of the following, ~~except as provided in subsection C~~:

1. The ~~property owner's~~ person's real estate broker or agent, if any;
2. The person to whom the real property is intended to be sold or transferred;
3. The real estate broker or agent, if any, of the person to whom the real property is intended to be sold or transferred;
4. The escrow company or holder involved in the real property sale or transfer, if any.

C. Subsection B of this Section 13.04.431 shall~~does~~ not apply to:

1. Sales or transfers of individual units within a condominium as defined in Section 17.02.150 of this code;
2. Sales or transfers of less than a fee interest, e.g., a leasehold;
3. Sales or transfers to a fiduciary in the course of the administration of a decedent's estate, a guardianship or a conservatorship;
4. Transfers from one co-owner to one or more other co-owners;
5. Transfers to a revocable trust if the trust is for the benefit of the grantor(s);
6. Transfers made by a trustor to an intervivos trust;
7. Transfers between spouses or between registered domestic partners;
8. Transfers to a financial institution, trust deed holder, or trustee of a deed of trust, as part of foreclosure or similar process.

D. The director shall prepare a handout or other written material, to be made available to the public, describing the requirements of this ~~S~~section. A person may satisfy the disclosure requirements of subsection B~~7~~ by providing a then current copy of the handout or other written material to those parties identified in subsection B.

File Attachments for Item:

F. Adopt Resolution No. 2021-69 to Continue Conducting City Council and Commission Meetings Remotely Due to Health and Safety Concerns for the Public



CITY COUNCIL AGENDA REPORT

Meeting Date: 10/21/2021

From: Clay Holstine, City Manager

Subject: Adoption of a Resolution No. 2021-69 to Continue
Conducting City Council and Commission Meetings
Remotely Due to Health and Safety Concerns for the Public

COMMUNITY GOAL RESULTS

Safe Community

Ensuring Public Meetings Remain Open to the Public

RECOMMENDATION

Staff recommends that the City Council adopt a resolution to continue conducting the City Council's meetings and Committee and Commission meetings remotely due to health and safety concerns for the public.

BACKGROUND

COVID-19 (Coronavirus) was declared a global pandemic in March 2020 by the World Health Organization. Then President Donald Trump declared a national emergency in response. President Trump also called on states and localities to take action to help protect their residents from the spread of the Coronavirus. On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency in response to the Coronavirus pandemic, and on March 5, 2020, San Mateo County's Health Officer, Dr. Scott Morrow, declared a local health emergency in response to the Coronavirus. The San Mateo County Board of Supervisors ratified Dr. Morrow's declaration on March 10, 2020. On March 19, 2020, the City Council ratified the City's Director of Emergency Service's proclamation of a local emergency, which allowed staff to expeditiously respond to the emergency circumstances caused by the pandemic.

On March 17, 2020, as part of the state's response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20. The order suspended certain provisions of the Ralph M. Brown Act to allow local legislative bodies to conduct meetings remotely, by telephone, interactive video or similar means. Additionally, governor issued a shelter-in-place order, requiring all non-essential personnel to work from home.

Staff worked to set up Zoom meetings for all public City Council, Committee and Commission meetings. The use of Zoom for public meetings allows the City to ensure the public's continued access to government meetings while also ensuring the public's safety. The City has been utilizing Zoom to conduct public meetings since March 2020 and no meeting has had to be cancelled due to technical or related difficulties.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21 rescinding Executive Order N-29-20 and requiring that as of October 1, 2021, localities must hold public meetings in full compliance with the Brown Act. In preparation for the return to in-person meetings, and in order to keep people safe, staff acquired audio and visual upgrades for the Council Chambers to conduct hybrid meetings. Hybrid meetings allow the public to continue participating in public meetings remotely, while councilmembers, committee members, commissioners, and staff meet in person.

Subsequent to the Governor's issuance of Executive Order N-08-21, the Delta variant emerged and caused a spike in Coronavirus cases throughout the state and county. In response, on August 2, 2021, the County Health Officer issued a Health Order requiring masks indoors in public places, regardless of vaccination status. Despite the Order, the Delta variant continued to spread in the county, leading to questions about whether even hybrid meetings should be held. Staff advised that the state legislature was considering legislation, Assembly Bill 361, that would permit meetings subject to the Brown Act to continue to be held via video and telecommunications. AB 361 was signed into law on September 16, 2021.

AB 361 amends the Brown Act to permit local legislative bodies to continue to meet remotely until January 1, 2024 provided:

- The local legislative body is meeting during a declared state of emergency.
- State or local health officials have imposed or recommended measures to promote social distancing.
- The local legislative body has determined that there is a need to hold public meetings remotely due to imminent risks to the health or safety of attendees.

On September 23, 2021, the City Council found that the City meets the requirements of AB 361 -- the City is still under a state of emergency, the County requires that individuals in public take safety precautions like social distancing, and the City cannot maintain social distancing requirements in City Hall's meeting spaces -- and adopted Resolution No. 2021-66 directing that the City shall continue to conduct public meetings in City Hall via Zoom to protect the health and safety of the public.

DISCUSSION

The Brown Act as amended by AB 361 requires that the City Council review its decision not to hold traditional Brown Act meetings every 30 days, determine whether the requirements of the Brown Act as amended by AB 361 are still present, and determine whether holding large public meetings in City Hall in person remains unsafe for the public due to public safety requirements like social distancing.

ACTION

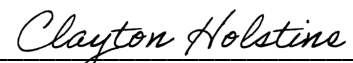
Staff recommends that the City Council declare that the findings required under AB 361 are satisfied and that the council's, committees' and commissions' meetings through November 19, 2021, must be held remotely or in hybrid fashion to protect the health and safety of the public.

FISCAL IMPACT

There is no fiscal impact.

Attachments:

- Resolution No. 2021-69
- AB 361, as enacted into law



Clay Holstine, City Manager

RESOLUTION NO. 2021-69

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE DECLARING THE NEED FOR THE CITY COUNCIL, COMMITTEES AND COMMISSIONS TO CONTINUE TO MEET REMOTELY IN ORDER TO ENSURE THE HEALTH AND SAFETY OF THE PUBLIC

WHEREAS, on March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of COVID-19; and

WHEREAS, on March 19, 2020, the City Council ratified and confirmed the Director of Emergency Service's proclamation of a local emergency which allowed staff to expeditiously respond to the emergency circumstances caused by the pandemic; and

WHEREAS, on March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other means; and

WHEREAS, as a result of Executive Order N-29-20, staff set up Zoom meetings for all City Council, Committee and Commission meetings; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which placed an end date of September 30, 2021, for agencies to meet remotely; and

WHEREAS, since issuing Executive Order N-08-21, the Delta variant has emerged, causing a spike in COVID-19 cases throughout the state; and

WHEREAS, on August 3, 2021, in response to the Delta variant, the San Mateo County Health Department ordered all individuals to wear masks when inside public spaces and maintain social distancing; and

WHEREAS, on September 16, 2021, Governor Newsom signed Assembly Bill 361 into law, amending the Brown Act to permit local legislative bodies, including the City Council, to meet remotely provided it is meeting during a declared state of emergency, state or local officials have imposed or recommended measures to promote social distancing, and the Council believes there is a need to meet remotely to protect against imminent risks to the health and safety of potential public attendees; and

WHEREAS, because of the rise in cases due to the Delta variant, the state, San Mateo County and the City Council are concerned about and desire to protect the health and safety of individuals who might otherwise attend Council, Committee and Commission

meetings;

WHEREAS, the City Council of the City of Brisbane approved Resolution No. 2021-66 on September 23, 2021 declaring the need for the City Council, Committees, and Commissions to continue to meet remotely in order to ensure the health and safety of the public through October 22, 2021; and

WHEREAS, the City Council does hereby find that the above described conditions of serious threat to the public health, safety, and welfare continue at this time; and

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

1. In compliance with AB 361, the City Council has reviewed and makes the following findings:
 - a. The state and San Mateo County have each proclaimed a state of emergency due to the Coronavirus pandemic;
 - b. San Mateo County has issued a public health order requiring that individuals in public spaces wear masks and socially distance, but the City cannot maintain social distancing for the public, staff, councilmembers, commissioners, and committee members in its meeting spaces; and
 - c. The City Council has considered these circumstances and concludes that it, City Committees and City Commissions must meet remotely due to imminent risks to the health and safety of attendees if the Council, Committees or Commissions meet in City Hall.
2. Based on the foregoing, the City Council declares that to protect the safety and health of the public, City Council, Committee and Commission meetings will continue to be conducted remotely for the next 30 days in compliance with AB 361.
3. The City Council will revisit the need to conduct public meetings remotely within 30 days of the adoption of this resolution.

Karen Cunningham, Mayor

PASSED, APPROVED AND ADOPTED by the Brisbane City Council at a regular meeting on October 21, 2021.

I hereby certify that the foregoing resolution was adopted by the City Council at a regular meeting held on October 21, 2021 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ingrid Padilla, City Clerk

Approved as to form:

A handwritten signature in blue ink, appearing to read 'T. McMorrow', written over a horizontal line.

Thomas McMorrow, Interim City Attorney



ENROLLED SEPTEMBER 15, 2021

PASSED IN SENATE SEPTEMBER 10, 2021

PASSED IN ASSEMBLY SEPTEMBER 10, 2021

AMENDED IN SENATE SEPTEMBER 03, 2021

AMENDED IN SENATE AUGUST 30, 2021

AMENDED IN SENATE JULY 06, 2021

AMENDED IN ASSEMBLY MAY 10, 2021

AMENDED IN ASSEMBLY APRIL 06, 2021

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 361

Introduced by Assembly Member Robert Rivas

February 01, 2021

An act to add and repeal Section 89305.6 of the Education Code, and to amend, repeal, and add Section 54953 of, and to add and repeal Section 11133 of, the Government Code, relating to open meetings, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 361, Robert Rivas. Open meetings: state and local agencies: teleconferences.

(1) Existing law, the Ralph M. Brown Act requires, with specified exceptions, that all meetings of a legislative body of a local agency, as those terms are defined, be open and public and that all persons be permitted to attend and participate. The act contains specified provisions regarding the timelines for posting an agenda and providing for the ability of the public to directly address the legislative body on any item of interest to the public. The act generally requires all regular and special meetings of the legislative body be held within the boundaries of the territory over which the local agency exercises jurisdiction, subject to certain exceptions. The act allows for meetings to occur via teleconferencing subject to certain requirements, particularly that the legislative body notice each teleconference location of each member that will be participating in the public meeting, that each teleconference location be accessible to the public, that members of the public be allowed to address the legislative body at each teleconference location, that the legislative body post an agenda at each teleconference location, and that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction. The act provides an exemption to the jurisdictional requirement for health authorities, as defined. The act authorizes the district attorney or any interested person, subject to certain provisions, to commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that specified actions taken by a legislative body are null and void.

Existing law, the California Emergency Services Act, authorizes the Governor, or the Director of Emergency Services when the governor is inaccessible, to proclaim a state of emergency under specified circumstances.

Executive Order No. N-29-20 suspends the Ralph M. Brown Act's requirements for teleconferencing during the COVID-19 pandemic provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 1, 2024, would authorize a local agency to use teleconferencing without complying with the teleconferencing requirements imposed by the Ralph M. Brown Act when a legislative body of a local agency holds a meeting during a declared state of emergency, as that term is defined, when state or local health officials have imposed or recommended measures to promote social distancing, during a proclaimed state of emergency held for the purpose of determining, by majority vote, whether meeting in person would present imminent risks to the health or safety of attendees, and during a proclaimed state of emergency when the legislative body has determined that meeting in person would present imminent risks to the health or safety of attendees, as provided.

This bill would require legislative bodies that hold teleconferenced meetings under these abbreviated teleconferencing procedures to give notice of the meeting and post agendas, as described, to allow members of the public to access the meeting and address the legislative body, to give notice of the means by which members of the public may access the meeting and offer public comment, including an opportunity for all persons to attend via a call-in option or an internet-based service option, and to conduct the meeting in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body. The bill would require the legislative body to take no further action on agenda items when there is a disruption which prevents the public agency from broadcasting the meeting, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments, until public access is restored. The bill would specify that actions taken during the disruption are subject to challenge proceedings, as specified.

This bill would prohibit the legislative body from requiring public comments to be submitted in advance of the meeting and would specify that the legislative body must provide an opportunity for the public to address the legislative body and offer comment in real time. The bill would prohibit the legislative body from closing the public comment period and the opportunity to register to provide public comment, until the public comment period has elapsed or until a reasonable amount of time has elapsed, as specified. When there is a continuing state of emergency, or when state or local officials have imposed or recommended measures to promote social distancing, the bill would require a legislative body to make specified findings not later than 30 days after the first teleconferenced meeting pursuant to these provisions, and to make those findings every 30 days thereafter, in order to continue to meet under these abbreviated teleconferencing procedures.

Existing law prohibits a legislative body from requiring, as a condition to attend a meeting, a person to register the person's name, or to provide other information, or to fulfill any condition precedent to the person's attendance.

This bill would exclude from that prohibition, a registration requirement imposed by a third-party internet website or other online platform not under the control of the legislative body.

(2) Existing law, the Bagley-Keene Open Meeting Act, requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body. The act requires at least one member of the state body to be physically present at the location specified in the notice of the meeting.

The Governor's Executive Order No. N-29-20 suspends the requirements of the Bagley-Keene Open Meeting Act for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the state body at the meeting, and that a state body has a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities, as specified.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a state body to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public

seeking to observe and to address the state body. With respect to a state body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the state body at each teleconference location. Under the bill, a state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the state body allow members of the public to attend the meeting and offer public comment. The bill would require that each state body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge state bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(3) Existing law establishes the various campuses of the California State University under the administration of the Trustees of the California State University, and authorizes the establishment of student body organizations in connection with the operations of California State University campuses.

The Gloria Romero Open Meetings Act of 2000 generally requires a legislative body, as defined, of a student body organization to conduct its business in a meeting that is open and public. The act authorizes the legislative body to use teleconferencing, as defined, for the benefit of the public and the legislative body in connection with any meeting or proceeding authorized by law.

This bill, until January 31, 2022, would authorize, subject to specified notice and accessibility requirements, a legislative body, as defined for purposes of the act, to hold public meetings through teleconferencing and to make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body. With respect to a legislative body holding a public meeting pursuant to these provisions, the bill would suspend certain requirements of existing law, including the requirements that each teleconference location be accessible to the public and that members of the public be able to address the legislative body at each teleconference location. Under the bill, a legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically would satisfy any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. The bill would require that each legislative body that holds a meeting through teleconferencing provide notice of the meeting, and post the agenda, as provided. The bill would urge legislative bodies utilizing these teleconferencing procedures in the bill to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to existing law, as provided.

(4) This bill would declare the Legislature's intent, consistent with the Governor's Executive Order No. N-29-20, to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future emergencies by allowing broader access through teleconferencing options.

(5) This bill would incorporate additional changes to Section 54953 of the Government Code proposed by AB 339 to be operative only if this bill and AB 339 are enacted and this bill is enacted last.

(6) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

(7) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

DIGEST KEY

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 89305.6 is added to the Education Code, to read:

89305.6.

(a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a legislative body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the legislative body.

(b) (1) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the legislative body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a legislative body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the legislative body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the legislative body be physically present at the location specified in the notice of the meeting.

(c) A legislative body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the legislative body allow members of the public to attend the meeting and offer public comment. A legislative body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a legislative body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the legislative body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each legislative body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a legislative body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the legislative body's internet website.

(f) All legislative bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to legislative body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 2.

Section 11133 is added to the Government Code, to read:

11133.

(a) Notwithstanding any other provision of this article, and subject to the notice and accessibility requirements in subdivisions (d) and (e), a state body may hold public meetings through teleconferencing and make public meetings accessible telephonically, or otherwise electronically, to all members of the public seeking to observe and to address the state body.

(b) (1) For a state body holding a public meeting through teleconferencing pursuant to this section, all requirements in this article requiring the physical presence of members, the clerk or other personnel of the state body, or the public, as a condition of participation in or quorum for a public meeting, are hereby suspended.

(2) For a state body holding a public meeting through teleconferencing pursuant to this section, all of the following requirements in this article are suspended:

(A) Each teleconference location from which a member will be participating in a public meeting or proceeding be identified in the notice and agenda of the public meeting or proceeding.

(B) Each teleconference location be accessible to the public.

(C) Members of the public may address the state body at each teleconference conference location.

(D) Post agendas at all teleconference locations.

(E) At least one member of the state body be physically present at the location specified in the notice of the meeting.

(c) A state body that holds a meeting through teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements in subdivisions (d) and (e), shall have satisfied any requirement that the state body allow members of the public to attend the meeting and offer public comment. A state body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

(d) If a state body holds a meeting through teleconferencing pursuant to this section and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the state body shall also do both of the following:

(1) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the federal

Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), and resolving any doubt whatsoever in favor of accessibility.

(2) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to paragraph (2) of subdivision (e).

(e) Except to the extent this section provides otherwise, each state body that holds a meeting through teleconferencing pursuant to this section shall do both of the following:

(1) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by this article, and using the means otherwise prescribed by this article, as applicable.

(2) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in the means of public observation and comment, or any instance prior to the effective date of this section in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of the means of public observation and comment, a state body may satisfy this requirement by advertising the means of public observation and comment using the most rapid means of communication available at the time. Advertising the means of public observation and comment using the most rapid means of communication available at the time shall include, but need not be limited to, posting such means on the state body's internet website.

(f) All state bodies utilizing the teleconferencing procedures in this section are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the otherwise applicable provisions of this article, in order to maximize transparency and provide the public access to state body meetings.

(g) This section shall remain in effect only until January 31, 2022, and as of that date is repealed.

SEC. 3.

Section 54953 of the Government Code is amended to read:

54953.

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the

meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 3.1.

Section 54953 of the Government Code is amended to read:

54953.

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency in person, except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section

6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) (1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3. In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to Section 54960.1.

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding Section 54953.3, an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G) (i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the

opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, "state of emergency" means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 commencing with Section 8550) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 4.

Section 54953 is added to the Government Code, to read:

54953.

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall

participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public’s right under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 4.1.

Section 54953 is added to the Government Code, to read:

54953.

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, in person except as otherwise provided in this chapter. Local agencies shall conduct meetings subject to this chapter consistent with applicable state and federal civil rights laws, including, but not limited to, any applicable language access and other nondiscrimination obligations.

(b) (1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivision (d). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to Section 54954.3 at each teleconference location.

(4) For the purposes of this section, "teleconference" means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c) (1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in subdivision (d) of Section 3511.1, during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with Section

6250) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d) (1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code, any joint powers authority created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 for the purpose of contracting pursuant to Section 14087.3 of the Welfare and Institutions Code, and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e) This section shall become operative January 1, 2024.

SEC. 5.

Sections 3.1 and 4.1 of this bill incorporate amendments to Section 54953 of the Government Code proposed by both this bill and Assembly Bill 339. Those sections of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, but this bill becomes operative first, (2) each bill amends Section 54953 of the Government Code, and (3) this bill is enacted after Assembly Bill 339, in which case Section 54953 of the Government Code, as amended by Sections 3 and 4 of this bill, shall remain operative only until the operative date of Assembly Bill 339, at which time Sections 3.1 and 4.1 of this bill shall become operative.

SEC. 6.

It is the intent of the Legislature in enacting this act to improve and enhance public access to state and local agency meetings during the COVID-19 pandemic and future applicable emergencies, by allowing broader access through teleconferencing options consistent with the Governor's Executive Order No. N-29-20 dated March 17, 2020, permitting expanded use of teleconferencing during the COVID-19 pandemic.

SEC. 7.

The Legislature finds and declares that Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, further, within the meaning of paragraph (7) of

subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

This act is necessary to ensure minimum standards for public participation and notice requirements allowing for greater public participation in teleconference meetings during applicable emergencies.

SEC. 8.

(a) The Legislature finds and declares that during the COVID-19 public health emergency, certain requirements of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) were suspended by Executive Order N-29-20. Audio and video teleconference were widely used to conduct public meetings in lieu of physical location meetings, and public meetings conducted by teleconference during the COVID-19 public health emergency have been productive, have increased public participation by all members of the public regardless of their location in the state and ability to travel to physical meeting locations, have protected the health and safety of civil servants and the public, and have reduced travel costs incurred by members of state bodies and reduced work hours spent traveling to and from meetings.

(b) The Legislature finds and declares that Section 1 of this act, which adds and repeals Section 89305.6 of the Education Code, Section 2 of this act, which adds and repeals Section 11133 of the Government Code, and Sections 3 and 4 of this act, which amend, repeal, and add Section 54953 of the Government Code, all increase and potentially limit the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(1) By removing the requirement that public meetings be conducted at a primary physical location with a quorum of members present, this act protects the health and safety of civil servants and the public and does not preference the experience of members of the public who might be able to attend a meeting in a physical location over members of the public who cannot travel or attend that meeting in a physical location.

(2) By removing the requirement for agendas to be placed at the location of each public official participating in a public meeting remotely, including from the member's private home or hotel room, this act protects the personal, private information of public officials and their families while preserving the public's right to access information concerning the conduct of the people's business.

SEC. 9.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that state and local agencies can continue holding public meetings while providing essential services like water, power, and fire protection to their constituents during public health, wildfire, or other states of emergencies, it is necessary that this act take effect immediately.

File Attachments for Item:

G. Consider Introduction of Ordinance No. 665 to amend Brisbane Municipal Code Title 17 (Zoning Ordinance) to Allow Large Family Daycare Homes by Right in Zoning Districts That Permit Residential Uses, Consistent with the Requirements of State Law



CITY COUNCIL AGENDA REPORT

Meeting Date: October 21, 2021

From: John Swiecki, Community Development Director

Subject: Large Family Day Care Homes – Draft Ordinance No. 665

Community Goal/Result

Community Building

Purpose

To amend Title 17 of the Brisbane Municipal Code (BMC) consistent with the requirements of state law to permit large family day care homes consistent with how single family residences are permitted in those zoning districts which allow residential uses.

Recommendation

That the City Council introduce Ordinance No. 665.

Background

In 2019, the Governor signed into law Senate Bill 234 – Family Day care Homes (SB 234) that became effective January 1, 2020. The bill requires large family day care homes, day care homes licensed to care for seven to fourteen children, to be treated as a residential use of property for purposes of all local ordinances. Specifically, SB 234 prohibits municipalities from requiring a discretionary use permit for both small and large family day care homes. The City's current zoning regulations permit small family day care homes (less than eight children) by right in those zones which permit residential uses while large family day care homes are required to obtain a conditional use permit.

The Planning Commission considered and unanimously recommended approval of this amendment at the July 22, 2021 Planning Commission meeting. Staff report and minutes are attached.

Discussion

The draft ordinance would amend certain definitions contained within BMC Chapter 17.02 and applicable BMC sections prescribing "Permitted uses" and "Conditional uses" for any zoning district that currently permits residential uses, either by-right or with approval of a Conditional Use Permit. Below is a brief summary of the proposed amendments:

- **Update terminology.** Definitions provided within BMC Chapter 17.02 will be updated to be consistent with SB 234, including “Day Care Center”, “Day Care Home”, and “Family Day care Home”.
- **Achieve consistency with state law.**
 - In zoning districts that permit residential uses by right (R-1, R-2, R-3, R-MHP, and R-BA Residential Zoning Districts) “Large Family Day care Home” will be reclassified from conditionally permitted uses to permitted uses.
 - In zoning districts that conditionally permit residential uses (NCRO-2 Downtown Brisbane Neighborhood Commercial District and SCRO-1 Southwest Bayshore Commercial District and PAOZ-1 and PAOZ-2 Parkside Overlay Districts), “Large Family Day care Home” will be reclassified from conditionally permitted uses to permitted uses, provided they are within a conforming and permitted residential dwelling.

Fiscal Impact

None.

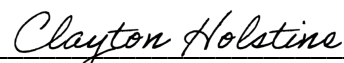
Measure of Success

Adoption of zoning amendments that brings Title 17 into compliance with current State law.

Attachments

1. Draft Ordinance No. 665
2. Planning Commission staff report and minutes dated July 22, 2021
3. Redline Copy of proposed Zoning Text Amendments


 John Swiecki, Community Development Director


 Clay Holstine, City Manager

**draft
ORDINANCE NO. 665**

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING SECTIONS 17.02.190, 17.02.195, 17.02.290, 17.06.020, 17.06.030, 17.08.020,
17.08.030, 17.10.020, 17.10.030, 17.11.020, 17.12.020, 17.12.030, 17.14.020, 17.14.040,
17.16.020, 17.16.030, and 17.27.020 OF THE BRISBANE MUNICIPAL CODE
CONCERNING LARGE FAMILY DAY CARE HOMES**

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

SECTION 1: Sections 17.02.190, 17.02.195, and 17.02.290 are amended to read as follows:

17.02.190 - Day care center.

“Day care center,” “child care center,” and “child day care facility” mean a facility licensed pursuant to Health and Safety Code Section 1596.951, other than a family day care home as defined in this Chapter, that provides nonmedical care to children under eighteen (18) years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four (24) hour basis. Day care center includes:

- A. Employer-sponsored day care centers;
- B. Infant centers;
- C. Preschools;
- D. Extended day care centers;
- E. School-age day care centers; and
- F. Day care centers.

17.02.195 - Day care home.

“Day care home” means a family day care home, as such term is defined in this chapter.

17.02.290 – Family day care home.

"Family day care home" means a facility licensed pursuant to Health and Safety Code Section 1597.54, that regularly provides care, protection, and supervision for fourteen (14) or fewer children, in the licensee's own home, for periods of less than 24 hours per day, while the parents or guardians are not present. A licensee's residence includes property in which the licensee is a tenant, and includes the following:

- A. “Small family day care home” means a family day care home that provides care, protection, and supervision for more than six (6) children and up to eight (8) children, as set forth in Health and Safety Code Section 1597.44 and as defined in applicable State regulations;
- B. “Large family day care home” means a family day care home that provides care, protection, and supervision for more than twelve (12) children and up to and including

fourteen (14) children, as set forth in Health and Safety Code Section 1597.465 and as defined in applicable State regulations.

SECTION 2: Sections 17.06.020 and 17.06.030 are amended to read as follows:

17.06.020 – Permitted uses.

The following permitted uses shall be allowed in the R-1 district:

- A. Single-family dwellings.
- B. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.
- C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- D. Small family day care homes.
- E. Large family day care homes.
- F. Accessory dwelling units and junior accessory dwelling units, in accordance with Chapter 17.43 of this title.

17.06.030– Conditional uses.

The following conditional uses may be allowed in the R-1 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.
- E. Meeting halls.
- F. Mobile home parks.
- G. Places of worship.

SECTION 3: Sections 17.08.020 and 17.08.030 are amended to read as follows:

17.08.020 – Permitted uses.

The following permitted uses shall be allowed in the R-2 district:

- A. Single-family dwellings.
- B. Duplexes.
- C. Multiple family dwellings containing not more than six (6) dwelling units.
- D. Dwelling groups.

- E. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- G. Small family day care homes.
- H. Large family day care homes.
- I. Accessory dwelling units and junior accessory dwelling units, in accordance with Chapter 17.43 of this title.

17.08.030– Conditional uses.

The following conditional uses may be allowed in the R-2 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.
- E. Mobile home parks.
- F. Multiple family dwellings containing seven (7) or more dwelling units.
- G. Meeting halls;
- H. Places of worship.

SECTION 4: Sections 17.10.020 and 17.10.030 are amended to read as follows:

17.10.020 – Permitted uses.

The following permitted uses shall be allowed in the R-3 district:

- A. Multiple-family dwellings.
- B. Single-family dwellings.
- C. Duplexes.
- D. Dwelling groups.
- E. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- G. Small family day care homes.
- H. Large family day care homes.

- I. Accessory dwelling units and junior accessory dwelling units, in accordance with Chapter 17.43 of this title.

17.10.030– Conditional uses.

The following conditional uses may be allowed in the R-3 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.
- E. Mobile home parks.
- F. Meeting halls.
- G. Places of worship.

SECTION 5: Section 17.11.020 is amended to read as follows:

17.11.020 – Permitted uses.

The following permitted uses shall be allowed in the R-MHP district:

- A. Mobile home parks.
- B. Mobile homes.
- C. Accessory structures, including structures used for administration, maintenance or other community services.
- D. Small family day care homes.
- E. Large family day care homes.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- G. Accessory dwelling units, when authorized by a permit granted pursuant to Chapter 17.43 of this title.

SECTION 6: Sections 17.12.020 and 17.12.030 are amended to read as follows:

17.12.020 – Permitted uses.

The following permitted uses shall be allowed in the R-BA district:

- A. Single-family dwellings.
- B. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.

- C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- D. Small family day care homes.
- E. Large family day care homes.
- F. Accessory dwelling units and junior accessory dwelling units, when authorized by a permit under Chapter 17.43 of this title.

17.12.030– Conditional uses.

The following conditional uses may be allowed in the R-BA district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Group care homes.

SECTION 7: Sections 17.14.020 and 17.14.040 are amended to read as follows:

17.14.020 – Permitted uses.

The following uses are permitted uses in the NCRO-1 and NCRO-2 districts, if conducted in accordance with the performance standards set forth in 17.14.070 of this chapter:

- A. Financial institutions.
- B. Medical facilities.
- C. Offices.
- D. Personal services.
- E. Restaurants.
- F. Retail sales and rental.
- G. Home occupations, in the NCRO-2 District only.
- H. Accessory dwelling units and junior accessory dwelling units associated with an existing or proposed single-family dwelling, duplex, or multiple-family dwelling in compliance with the provisions of Chapter 17.43 of this title, in the NCRO-2 District only.
- I. Small family day care homes in a dwelling unit if part of a mixed-use development and when the day care home is located above or behind nonresidential uses.
- J. Large family day care homes in a dwelling unit if part of a mixed-use development and when the day care home is located above or behind nonresidential uses.

17.14.040– Conditional uses.

The following conditional uses are allowed in the NCRO-2 District, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

- A. Bars.

- B. Commercial recreation-commercial gym and health facilities.
- C. Cultural facilities.
- D. Educational facilities.
- E. Meeting halls.
- F. Mixed use in single-family dwellings.
- G. Outdoor sales and rental, when associated with an adjacent use within a structure.
- H. Places of worship.
- I. Temporary uses.
- J. Veterinary clinics.
- K. The following conditional uses are allowed only when part of a mixed-use and when located above or behind nonresidential uses:
 - 1. Day care centers.
 - 2. Dwelling units.
 - 3. Group care homes.

SECTION 8: Sections 17.16.020 and 17.16.030 are amended to read as follows:

17.16.020 – Permitted uses.

- A. The following are permitted uses in the SCRO-1 district:
 - 1. Emergency shelters in compliance with Section 17.16.040.
 - 2. Accessory dwelling units and junior accessory dwelling units associated with an existing or proposed single-family dwelling, duplex, or multiple-family dwelling in compliance with the provisions of Chapter 17.43 of this title.
 - 3. Small family day care homes in a dwelling unit.
 - 4. Large family day care homes in a dwelling unit.

17.16.030– Conditional uses.

- A. Allowable Conditional Uses. The following conditional uses, not otherwise permitted per Section 17.16.020(A), may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter:
 - 1. Commercial recreation/commercial gym and health facilities;
 - 2. Contractor's yards;
 - 3. Convalescent homes;
 - 4. Cultural facilities;

5. Duplex dwelling units;
6. Educational facilities;
7. Emergency shelters with more than twelve (12) beds;
8. Financial institutions;
9. Food production;
10. Group care homes;
11. Hotels;
12. Light fabrication;
13. Live/work developments;
14. Media studios;
15. Medical facilities;
16. Meeting halls;
17. Mobile home parks in compliance with Section 17.32.110;
18. Motels;
19. Multiple-family dwellings and dwelling groups;
20. Offices;
21. Outdoor sales and rental;
22. Personal services;
23. Places of worship;
24. Printing;
25. Product showrooms;
26. Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will not constitute a major component of the research and development activities to be conducted on the site. Research and development involving cannabis is additionally subject to the requirements in Chapter 17.33;
27. Restaurants;
28. Retail sales and rental;
29. Single-family dwellings and single-family dwellings with accessory dwelling units in compliance with the provisions of Chapter 17.43 of this Title;
30. Storage;

- 31. Veterinary clinics;
- 32. Warehousing;
- 33. Single-room occupancy units.

- B. **Mixed Uses.** A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses.
- C. **Night Operations.** Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

SECTION 9: Section 17.27.020 is amended to read as follows:

17.27.020 – Permitted uses.

The following are permitted uses in the PAOZ-1 and PAOZ-2 districts:

PAOZ-1	PAOZ-2	Permitted Uses
X	Not permitted	Single-family dwellings
X	X	Multiple-family dwellings
X	X	Dwelling groups
X	X	Accessory structures
X	X	Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44
X	X	Small family day care homes in a dwelling unit
X	X	Large family day care homes in a dwelling unit
X	X	Accessory dwelling units, in compliance with Chapter 17.43 of this title.

PAOZ-1	PAOZ-2	Permitted Uses
X	Not permitted	Junior accessory dwelling units, in compliance with Chapter 17.43 of this title.

SECTION 10: Where a use permit, design permit or variance approval has been issued through final action by the City prior to the effective date of this Ordinance, or where such planning permit approval is not required and a complete building permit application has been submitted prior to the effective date of this Ordinance, the holder of such use permit, design permit or variance approval or complete building permit application may proceed to construct the improvements or establish the use authorized by such permit or approval and the same shall be exempted from any conflicting regulations that may be contained in this Ordinance.

SECTION 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 [REDACTED] day of [REDACTED] 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission

For the Meeting of 7/22/2021

SUBJECT: **Zoning Text Amendment RZ-1-21;** Zoning text amendments to Title 17 of the Brisbane Municipal Code (BMC) to update allowed uses in residential zoning districts; City of Brisbane, applicant; Citywide.

REQUEST: Recommend City Council adoption of proposed zoning text amendments to allow large family day care homes by-right in the R-1, R-2, R-3, R-MHP, R-BA, NCRO-2, SCRO-1, PAOZ-1, and PAOZ-2, Zoning Districts, and update related definitions consistent with State law.

RECOMMENDATION: Recommend City Council adoption of Zoning Text Amendment RZ-1-21 via adoption of Resolution RZ-1-21.

ENVIRONMENTAL DETERMINATION: The project is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15274 of the CEQA Guidelines that exempts the establishment or operation of small and large family day care homes to CEQA.

APPLICABLE CODE SECTIONS:

- “Day Care Center”, “Day Care Home”, and “Family Day care Home” defined in [Chapter 17.02](#)
- R-1 Residential District ([BMC Chapter 17.06](#))
- R-2 Residential District ([BMC Chapter 17.08](#))
- R-3 Residential District ([BMC Chapter 17.10](#))
- R-MHP Mobile Home Park District ([BMC Chapter 17.11](#))
- R-BA Residential District ([BMC Chapter 17.12](#))
- Downtown Brisbane Neighborhood Commercial District ([BMC Chapter 17.14](#))
- Southwest Bayshore Commercial District ([BMC Chapter 17.16](#))
- Parkside Overlay District ([BMC Chapter 17.27](#))

ANALYSIS AND FINDINGS:

Background

In 2019, the Governor signed into law Senate Bill 234 – Family Day care Homes (SB 234) that became effective January 1, 2020 (See attachment C). The bill requires large family day care homes, day care homes licensed to care for seven to fourteen children, to be treated as a residential use of property for purposes of all local ordinances; more specifically, SB 234 prohibits municipalities from requiring a discretionary use permit or levying any type of business license fee or tax on both small and large family day care homes. The City’s current zoning regulations

only treat small family day care homes, day care homes with less than eight children, as a residential use of property, and large family day care homes are required to obtain a conditional use permit prior to establishment or operation.

Draft Ordinance

The draft ordinance would amend certain definitions contained within BMC Chapter 17.02 and applicable BMC sections prescribing “Permitted uses” and “Conditional uses” for any zoning district that currently permits residential uses, either by-right or with approval of a Conditional Use Permit (see Attachments A and B). While no amendments are proposed to the text of BMC Chapter 17.28 – PD Planned Development District, small and large family day care homes would be permitted within residential dwellings in any PD Zoning Districts, consistent with State law.

Below is a brief summary of the proposed amendments:

- **Update terminology.** Definitions provided within BMC Chapter 17.02 will be updated to be consistent with SB 234, including “Day Care Center”, “Day Care Home”, and “Family Day care Home”.
- **Achieve consistency with state law.**
 - In zoning districts that permit residential uses by right (R-1, R-2, R-3, R-MHP, and R-BA Residential Zoning Districts) “Large Family Day care Home” will be reclassified from conditionally permitted uses to permitted uses.
 - In zoning districts that conditionally permit residential uses (NCRO-2 Downtown Brisbane Neighborhood Commercial District and SCRO-1 Southwest Bayshore Commercial District and PAOZ-1 and PAOZ-2 Parkside Overlay Districts), “Large Family Day care Home” will be reclassified from conditionally permitted uses to permitted uses, provided they are within a conforming and permitted residential dwelling.

ATTACHMENTS:

- A. Draft Resolution RZ-1-21 (including draft ordinance)
- B. Redline copy of proposed zoning text amendments (N.I.C.)
- C. Government Code Sections [1596.72, 1596.73, 1596.78, 1597.30, 1597.40, 1597.41, 1597.42, 1597.45, 1597.455, 1597.46, 1597.54 and 1597.543](#) of the Health and Safety Code, relating to family day care homes (SB 234).


Jeremiah Robbins, Associate Planner


John Swiecki, Community Development Director

RESOLUTION RZ-1-21

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AMENDMENT RZ-1-21
AMENDING REGULATIONS WITHIN TITLE 17 OF THE BRISBANE MUNICIPAL CODE
CONCERNING LARGE FAMILY DAY CARE HOMES

WHEREAS, the State Legislature finds that child day care facilities can contribute positively to a child's emotional, cognitive, and educational development, that good quality childcare services are an essential service for working parents, and California has a tremendous shortage of regulated childcare, the State intends to provide a comprehensive, quality system for licensing child day care facilities to ensure a quality childcare environment; and

WHEREAS, effective January 1, 2020, Senate Bill 234 (Skinner), amended Sections 1596.72, 1596.73, 1596.78, 1597.30, 1597.40, 1597.41, 1597.42, 1597.45, 1597.46, 1597.54 and 1597.543 of the Health and Safety Code and changed the requirements for local governments relating large family day care homes; and

WHEREAS, the City's current zoning ordinance regarding large family day care homes must be updated to comply with current State law; and

WHEREAS, the draft ordinance attached as Exhibit A to this resolution proposes amendments to Title 17 (Zoning) of the Brisbane Municipal Code in order to comply with current State law regarding large family day care homes; and

WHEREAS, on July 22, 2021, the Planning Commission conducted a hearing of the application, publicly noticed in compliance with Brisbane Municipal Code Chapters 1.12 and 17.54, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the Planning Commission reviewed and considered the staff memorandum relating to said application, and the written and oral evidence presented to the Planning Commission in support of and in opposition to the application; and

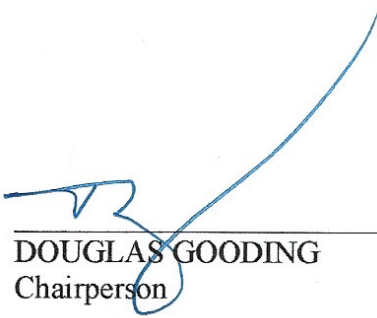
WHEREAS, the draft ordinance is statutorily exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15274 of the CEQA Guidelines; and

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

AYES: Gooding, Patel, Sayasane

NOES: None

ABSENT: Funke, Gomez



DOUGLAS GOODING
Chairperson

ATTEST:



JOHN SWIECKI, Community Development Director

BRISBANE PLANNING COMMISSION
Action Minutes of July 22, 2021
Virtual Regular Meeting

CALL TO ORDER

Chairperson Gooding called the meeting to order at 7:30 p.m.

ROLL CALL

Present: Commissioners Gooding, Patel, and Sayasane.
Absent: Commissioners Funke, Gomez
Staff Present: Director Swiecki, Senior Planner Johnson, and Associate Planner Robbins

ADOPTION OF AGENDA

Commissioner Patel moved to adopt the agenda. Commissioner Sayasane seconded the motion and it was approved 3-0.

CONSENT CALENDAR

Commissioner Sayasane moved to adopt the consent calendar (agenda item A). Commissioner Patel seconded the motion and it was approved 3-0.

ORAL COMMUNICATIONS

There were no oral communications.

WRITTEN COMMUNICATIONS

Chairperson Gooding acknowledged one written communication from Dana Dillworth in opposition of agenda item B.

NEW BUSINESS

~~B. PUBLIC HEARING. 800-1800 Sierra Point Parkway, Sign Program Modification
SR 1-20; SP CRO Sierra Point Commercial District; Sign program modification to “The
Shore at Sierra Point Sign Program” (SR 7-19) for the Healthpeak Biotechnology Research
and Development Campus, Kevin Norman, DES Architects + Engineers, Inc., Applicant;
Scott Robn, Healthpeak Properties, owner~~

~~Senior Planner Johnson gave the staff presentation and answered questions from the Commission
regarding anticipated increases in light pollution, performance standards meant to reduce glare and
public nuisances, and how the City would enforce the sign program performance standards and
conditions of approval to ensure individual signs comply with the sign program.~~

~~Kevin Norman, applicant, addressed the Commission in support of the application, and explained how complaints of light pollution from the City and/or residents would be addressed.~~

~~Senior Planner Johnson read the written correspondence from Dana Dillworth into the record.~~

~~With no others wishing to address the Commission, Commissioner Sayasane moved to close the public hearing. Commissioner Patel seconded the motion and it was approved 3-0.~~

~~After deliberation, Commissioner Sayasane moved to approve the application via adoption of Resolution SR 1-20. Commissioner Patel seconded the motion and it was approved 5-0. Chairperson Gooding read the appeals procedure.~~

C. PUBLIC HEARING: Zoning Text Amendment RZ-1-21; Various zoning districts; Zoning text amendments to Title 17 of the Brisbane Municipal Code to allow large family daycare homes by-right in residential zoning districts, consistent with State law; City of Brisbane, applicant; Citywide.

Associate Planner Robbins gave the staff presentation and answered questions from the Commission pertaining to the reason why the amendments are necessary and if they comply with State law.

Barbara Ebel, Brisbane resident, asked Associate Planner Robbins to identify any differences between the draft ordinance and State law and he provided the requested clarification.

With no others wishing to address the Commission, Commissioner Sayasane moved to close the public hearing. Commissioner Patel seconded the motion and it was approved 3-0.

After deliberation, Commissioner Patel moved to recommend City Council adoption of the draft ordinance by adopting Resolution RZ-1-21. Commissioner Sayasane seconded the motion and it was approved 3-0.

~~ITEMS INITIATED BY STAFF~~

~~Director Swiecki reported that the City Council received presentations on hybrid public meetings, the development of objective design and development standards (ODDS) for new residential development, and the Quarry redevelopment project at their July 15, 2021 meeting. He also announced Senior Planner Ayres and Associate Planner Robbins will each be going on parental leave, coming back late fall and early winter.~~

~~ITEMS INITIATED BY THE COMMISSION~~

~~There were none.~~

ADJOURNMENT

SECTION 1

17.02.190 Day care center.

~~"Day care center," also known known as "child care center," means an establishment licensed by the state, not located in the licensee's own home, where non-medical care and supervision are provided for children in a group setting for periods of less than twenty-four (24) hours. The term includes nurseries, nursery schools, preschools, play groups, and after school group care, but does not include a family day care home operated in the provider's own home.~~

"Day care center," "child care center," and/or a "child day care facility," means a facility licensed pursuant to Health and Safety Code Section 1596.951, other than a family daycare home as defined in this Chapter, that provides nonmedical care to children under eighteen (18) years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four (24) hour basis. Day care center includes:

- A. Employer-sponsored day care centers;
- B. Infant centers;
- C. Preschools;
- D. Extended day care centers;
- E. School-age day care centers; and
- F. Day care centers.

17.02.195 Day care home.

"Day care home" means a family day care home, as such term is defined in this chapter.

17.02.290 Family day care home.

"Family day care home" means a facility licensed by the State that regularly provides care, protection, and supervision for fourteen (14) or fewer children, in the licensee's residence for periods of less than 24 hours per day, while the parents or guardians are not present. A licensee's residence includes property in which the licensee is a tenant, means an establishment operated by the provider in the provider's own home as a accessory use incidental to the residential occupancy and licensed by the state to provide care, protection and supervision to children for periods of less than twenty-four (24) hours per day while the parents or guardians are away, and includes the following:

- A. "Small family day care home" means a family day care home that provides care, protection, and supervision for eight (8) or fewer children, including children under the age of ten (10) years who reside at the home, as set forth in Health and Safety Code Section 1597.44 and as defined in State regulations;
- B. "Large family day care home" means a family day care home that provides care, protection, and supervision for ~~nine-seven~~ (79) to fourteen (14) children, inclusive, including children under the age of ten (10) years who reside at the home, as set forth in Health and Safety Code Section 1597.465 and as defined in State regulations.

SECTION 2

17.06.020 – Permitted uses.

The following permitted uses shall be allowed in the R-1 district:

- A. Single-family dwellings.
- B. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.
- C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.
- ~~D.~~ D. Small family day care homes.
- ~~D.E.~~ D.E. Large family day care homes.
- ~~E.F.~~ E.F. Accessory dwelling units and junior accessory dwelling units, in accordance with Chapter 17.43 of this title.

17.06.030 – Conditional uses.

The following conditional uses may be allowed in the R-1 district, upon the granting of a use permit pursuant to Chapter 17.40 ~~or 17.43~~ of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.
- ~~E.~~ E. Large family day care homes.
- ~~F.E.~~ F.E. Meeting halls.
- ~~G.F.~~ G.F. Mobile home parks.
- ~~H.G.~~ H.G. Places of worship.

SECTION 3

17.08.020 – Permitted uses.

The following permitted uses shall be allowed in the R-2 district:

- A. Single-family dwellings.
- B. Duplexes.
- C. Multiple family dwellings containing not more than six (6) dwelling units.
- D. Dwelling groups.

- E. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.

G. Small family day care homes.

G.H. ~~Large family day care homes.~~

H.I. Accessory dwelling units and junior accessory dwelling units, in accordance with Chapter 17.43 of this title.

17.08.030 – Conditional uses.

The following conditional uses may be allowed in the R-2 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.

~~E. Large family day care homes.~~

F.E. Mobile home parks.

G.F. Multiple family dwellings containing seven (7) or more dwelling units.

H.G. Meeting halls;

I.H. Places of worship.

SECTION 4

17.10.020 – Permitted uses.

The following permitted uses shall be allowed in the R-3 district:

- A. Multiple-family dwellings.
- B. Single-family dwellings.
- C. Duplexes.
- D. Dwelling groups.
- E. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.
- F. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.

G. Small family day care homes.

~~G.H.~~ Large family day care homes.

~~H.I.~~ Accessory dwelling units and junior accessory dwelling units, in accordance with Chapter 17.43 of this title.

17.10.030 – Conditional uses.

The following conditional uses may be allowed in the R-3 district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

- A. Cultural facilities.
- B. Day care centers.
- C. Educational facilities.
- D. Group care homes.

~~E.~~ Large family day care homes.

~~F.E.~~ Mobile home parks.

~~G.F.~~ Meeting halls.

~~H.G.~~ Places of worship.

SECTION 5

17.11.020 – Permitted uses.

The following permitted uses shall be allowed in the R-MHP district:

- A. Mobile home parks.
- B. Mobile homes.
- C. Accessory structures, including structures used for administration, maintenance or other community services.

~~D.~~ Small family day care homes.

~~D.E.~~ Large family day care homes.

~~E.F.~~ Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.

~~F.G.~~ Accessory dwelling units, when authorized by a permit granted pursuant to Chapter 17.43 of this title.

SECTION 6

17.12.020 – Permitted uses.

The following permitted uses shall be allowed in the R-BA district:

- A. Single-family dwellings.

B. Accessory structures and uses incidental to a permitted use, including personal cultivation of cannabis in compliance with Title 8, Chapter 8.12.

C. Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44 of this title.

D. Small family day care homes.

~~D.E.~~ Large family day care homes.

~~E.F.~~ Accessory dwelling units and junior accessory dwelling units, when authorized by a permit under Chapter 17.43 of this title.

17.12.030 – Conditional uses.

The following conditional uses may be allowed in the R-BA district, upon the granting of a use permit pursuant to Chapter 17.40 of this title:

A. Group care homes.

~~B. Large family day care homes.~~

SECTION 7

17.14.020 – Permitted uses.

The following uses are permitted uses in the NCRO-1 and NCRO-2 districts, if conducted in accordance with the performance standards set forth in 17.14.070 of this chapter:

A. Financial institutions.

B. Medical facilities.

C. Offices.

D. Personal services.

E. Restaurants.

F. Retail sales and rental.

G. Home occupations, in the NCRO-2 District only.

H. Accessory dwelling units and junior accessory dwelling units associated with an existing or proposed single-family dwelling, duplex, or multiple-family dwelling in compliance with the provisions of Chapter 17.43 of this title, in the NCRO-2 District only.

I. Small family daycare homes in a dwelling unit if part of a mixed-use development and when the day care home is located above or behind nonresidential uses.

H.J. Large family daycare homes in a dwelling unit if part of a mixed-use development and when the day care home is located above or behind nonresidential uses.

17.14.040 – Conditional uses.

The following conditional uses are allowed in the NCRO-2 District, subject to obtaining a use permit and if conducted in accordance with the performance standards set forth in Section 17.14.070 of this chapter:

- A. Bars.
- B. Commercial recreation-commercial gym and health facilities.
- C. Cultural facilities.
- D. Educational facilities.
- E. Meeting halls.
- F. Mixed use in single-family dwellings.
- G. Outdoor sales and rental, when associated with an adjacent use within a structure.
- H. Places of worship.
- I. Small family day care homes.
- J. Temporary uses.
- K. Veterinary clinics.
- L. The following conditional uses are allowed only when part of a mixed-use and when located above or behind nonresidential uses:
 - 1. Day care centers.
 - 2. Dwelling units.
 - ~~3. Family day care homes.~~
 - ~~4.3.~~ Group care homes.

SECTION 8**17.16.020 – Permitted uses.**

- A. The following are permitted uses in the SCRO-1 district:
 - 1. Emergency shelters in compliance with Section 17.16.040.
 - ~~2.~~ Accessory dwelling units and junior accessory dwelling units associated with an existing or proposed single-family dwelling, duplex, or multiple-family dwelling in compliance with the provisions of Chapter 17.43 of this title.
 - ~~3. Small family daycare homes in a dwelling unit.~~
 - ~~2.4.~~ Large family daycare homes in a dwelling unit.

17.16.030 – Conditional uses.

A. Allowable Conditional Uses. The following conditional uses, not otherwise permitted per Section 17.16.020(A), may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter:

1. Commercial recreation/commercial gym and health facilities;
2. Contractor's yards;
3. Convalescent homes;
4. Cultural facilities;
5. Duplex dwelling units;
6. Educational facilities;
7. Emergency shelters with more than twelve (12) beds;
8. Financial institutions;
9. Food production;
10. Group care homes;
11. Hotels;
- ~~12. Large family day care homes;~~
- ~~13.~~12. Light fabrication;
- ~~14.~~13. Live/work developments;
- ~~15.~~14. Media studios;
- ~~16.~~15. Medical facilities;
- ~~17.~~16. Meeting halls;
- ~~18.~~17. Mobile home parks in compliance with Section 17.32.110;
- ~~19.~~18. Motels;
- ~~20.~~19. Multiple-family dwellings and dwelling groups;
- ~~21.~~20. Offices;
- ~~22.~~21. Outdoor sales and rental;
- ~~23.~~22. Personal services;
- ~~24.~~23. Places of worship;
- ~~25.~~24. Printing;

~~26.25.~~ Product showrooms;

~~27.26.~~ Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will not constitute a major component of the research and development activities to be conducted on the site. Research and development involving cannabis is additionally subject to the requirements in Chapter 17.33;

~~28.27.~~ Restaurants;

~~29.28.~~ Retail sales and rental;

~~30.29.~~ Single-family dwellings and single-family dwellings with accessory dwelling units in compliance with the provisions of Chapter 17.43 of this Title;

~~31.30.~~ Storage;

~~32.31.~~ Veterinary clinics;

~~33.32.~~ Warehousing;

~~34.33.~~ Single-room occupancy units.

- B. Mixed Uses. A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses.
- C. Night Operations. Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

SECTION 9

17.27.020 – Permitted uses.

The following are permitted uses in the PAOZ-1 and PAOZ-2 districts:

PAOZ-1	PAOZ-2	Permitted Uses
X	Not permitted	Single-family dwellings
X	X	Multiple-family dwellings
X	X	Dwelling groups

PAOZ-1	PAOZ-2	Permitted Uses
X	X	Accessory structures
X	X	Home occupations, conducted in accordance with the regulations prescribed in Chapter 17.44
X	X	Small family day care homes <u>in a dwelling unit</u>
<u>X</u>	<u>X</u>	<u>Large family day care homes in a dwelling unit</u>
X	X	Accessory dwelling units, in compliance with Chapter 17.43 of this title.
X	Not permitted	Junior accessory dwelling units, in compliance with Chapter 17.43 of this title.

File Attachments for Item:

H. Short Term Rental Ordinance Implementation Update



CITY COUNCIL AGENDA REPORT

Meeting Date: October 21, 2021

From: John Swiecki, Community Development Director

Subject: Short Term Rental Ordinance Implementation Update

Community Goal/Result

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

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

Purpose

To update the City Council regarding ongoing implementation of the City's short term rental (STR) ordinance.

Recommendation

That the City Council receive and file this report and provide additional direction it deems appropriate.

Background

The City of Brisbane adopted an ordinance which took effect in summer 2020 permitting short term rentals subject to a number of operational and performance standards. In early 2021 the City entered into a contract with a vendor (Host Compliance) to automate the STR permit process and monitor STR activity on multiple listing sites, allowing the City to initiate code enforcement as needed and pursue the collection of transient occupancy tax (TOT).

Discussion

The system went live in early summer 2021 and the City has been systematically and proactively monitoring STR rental listings, initiating code enforcement and TOT collection as warranted. While data is limited given that the system has only been live for approximately 4 months, STR activity has been relatively modest. Twelve (12) STRs were identified in June 2021, and the latest data from mid-October identified 6 STR units. The number of active code enforcement cases has dropped from 12 to 4. Compliance has been achieved in a variety of ways. Listings have been removed and some STRs have been changed to long term (30-day plus) stays which are allowed. The City recently received its first short term rental permit application, which is currently in process.

Fiscal Impact

As of September 30, 2021, the City has collected approximately \$4,500 in TOT from STRs.

Measure of Success


Successful implementation of the City's STR Ordinance by permitting STRs consistent with the City's ordinance, eliminating unpermitted STRs and generating and collecting TOT.

Attachments

None



John Swiecki, Community Development Director



Clay Holstine, City Manager

File Attachments for Item:

I. Update on Committee By-Laws



CITY COUNCIL AGENDA REPORT

Meeting Date: October 21, 2021

From: Clay Holstine, City Manager

Subject: By laws and rules regarding meetings that do not achieve a Quorum

Background

I have recently met with the Council Liaison's to the Complete Streets Committee. In August of this year the Complete Streets Committee met and did not achieve a quorum.

By laws for the Complete Streets Committee (CSC) state the following:

"A quorum is necessary for a Complete Streets Safety Committee meeting to be held. A majority of the voting members of the committee shall constitute a quorum. In the event that there is no quorum, any discussion which are held by those assembled shall be regarded as informal and non-binding".

Although rare there have been occasions when a quorum was not reached. In those circumstance if the remaining committee members wish to hear and review items on the agenda they are allowed to proceed. But no formal votes are allowed or direction to staff on any item. Minutes for the meeting reflect that no quorum was achieved and therefore no votes and actions are recorded.

Similar language is written into the By-laws for the Open Space and Ecology Committee.

Discussion

Council liaisons are concerned that having items heard and discussed when quorums are not achieved may be confusing to the public. They are recommending that we amend Committee By-laws to restrict meetings so that only meetings that achieve a quorum may continue.

In addition to the By-laws of these two committees the City has an adopted "Rules and Procedures for City of Brisbane Commissions and Committees" that governs all of our Commissions and Committees. This document is silent as to issue of quorums.

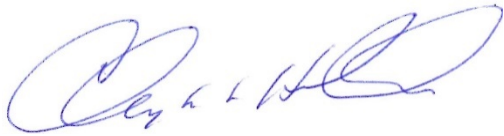
If it is the desire of the City Council to change its quorum rule then amendment to the By-laws of both OSEC and CSC as well as adding language to our Rules and Procedures should be accomplished. The later of which will govern all Commissions and Committees.

Currently the City has the following Commissions and Committees:

- Planning Commission
- Parks & Recreation Commission
- Complete Streets Committee

- Open Space and Ecology Committee
- Public Arts Committee
- Inclusion, Diversity, Equity and Accountability Committee (new)

The City also supports a group we refer to as the History Committee. This is not an appointed committee and does not operate under the Brown Act.



Clay Holstine, City Manager