



CITY of BRISBANE

City Council Meeting Agenda

Thursday, June 2, 2022 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 agenda materials may be viewed online at www.brisbaneca.org at least 24 hours prior to a Special Meeting, and at least 72 hours prior to a Regular Meeting.

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. Aside from commenting while in the Zoom webinar the following email and text line will be also monitored during the meeting and public comments received will be noted for the record during Oral Communications 1 and 2 or during an Item.

Email: ipadilla@brisbaneca.org

Text: 628-219-2922

Join Zoom Webinar: zoom.us (please use the latest version: zoom.us/download)
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Webinar ID: 991 9362 8666

Passcode: 123456

Call In Number: 1 (669) 900 9128

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WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

Any writings that are received after the agenda has been posted but before 2 p.m. of the day of the meeting will be available for public inspection at the front lobby in City Hall and on the internet (www.brisbaneca.org/meetings). Any writings that are received after the agenda has been posted but after 2 p.m. of the day of the meeting will be available on the internet at the start of the meeting (www.brisbaneca.org/meetings), at which time the materials will be distributed to the Council.

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

ROLL CALL

ADOPTION OF AGENDA

AWARDS AND PRESENTATIONS

- A. June 2022 as Pride Month Proclamation

ORAL COMMUNICATIONS NO. 1

CONSENT CALENDAR

- B. Approve Minutes of Joint City Council and Guadalupe Valley Municipal Improvement District Meeting of May 19, 2022
- C. Approve Minutes of City Council Closed Session of May 19, 2022
- D. Adopt Ordinance 579, Waiving Second Reading, Amending Chapters 15.01 (Grading Ordinance) and Section 17.32.220, Brisbane Municipal Code (Review of Grading Permits)
- E. Adopt a Resolution Declaring the Continued Need to Conduct City Council, Commission and Committee Meetings Remotely Due to Health and Safety Concerns for the Public
- F. Approve Award of 18 Solano Retaining Wall Construction Contract

(It is being recommended for Council to do the following:

1.Reject the bid received from Central Pacific Engineering LLC as non-responsive to material issues; 2. Waive the minor irregularities in the bid received from Michael Glynn Construction Inc.;3. Award the contract for 18 Solano Street Retaining Wall Project (Job No. 922B) to Michael Glynn Construction Inc.in the amount of \$217,250; 4. Authorize a supplemental appropriation of \$238,975 from the General Fund to Fund 400 for the purpose of constructing this wall.)

NEW BUSINESS

- G. Consider adoption of a Resolution Revising the Conflict of Interest Code to Include the Complete Streets Safety Committee, Open Space and Ecology Committee, Public Arts Advisory Committee, and the Communications Manager

STAFF REPORTS

- H. City Manager's Report on upcoming activities
 - i. High Speed Rail Update

MAYOR/COUNCIL MATTERS

- I. Committee Recruitment Update
- J. Countywide Assignments and Subcommittee Reports
- K. Written Communications

ORAL COMMUNICATIONS NO. 2

ADJOURNMENT

B.

File Attachments for Item:

B. Approve Minutes of Joint City Council and Guadalupe Valley Municipal Improvement District Meeting of May 19, 2022



BRISBANE CITY COUNCIL

ACTION MINUTES

CITY COUNCIL MEETING

THURSDAY, MAY 19, 2022

VIRTUAL MEETING

CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Mayor Mackin called the meeting to order at ____ P.M. and led the Pledge of Allegiance.

ROLL CALL

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

Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, City Attorney McMorro, Assistant City Manager Schillinger, Finance Director Yuen, City Engineer Breault, Deputy Director of Public Works Kinser, Community Development Director Swiecki, Senior Planner Johnson, Deputy City Clerk Ibarra, Police Commander Garcia and Legal Counsel Roush.

REPORT OUT OF CLOSED SESSION

City Attorney McMorro reported that updates were provided to Council, direction was given to staff and no action was taken at Closed Session regarding Closed Session Items D and E.

ADOPTION OF AGENDA

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

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

Noes: None

Absent: None

Abstain: None

AWARDS AND PRESENTATIONS

A. Proclaiming May 2022 as Mental Health Month

Mayor Mackin declared May 2022 as Mental Health Month, to increase public awareness, to help end the stigma, and encourage members of our community to utilize professional and self-help resources available in our county.

Chris Rasmussen, Commissioner for the San Mateo County Mental Health and Substance Abuse Recovery Commission accepted the proclamation and emphasized the important work the County is doing to increase Mental Health awareness.

B. Proclaiming May 2022 as Asian American Pacific Islander Heritage Month

Mayor Mackin declared May 2022 as Asian American and Pacific Islander Heritage Month and encouraged our residents, to explore Asian American Pacific Islander history, culture, and accomplishments and to support local events commemorating this rich heritage.

Ingrid Padilla, City Clerk for the City of Brisbane accepted the proclamation and her personal story of immigrating from the Philippines to the United States for more opportunities and for a safe and healthy community to call home. She shared she was grateful for the opportunity to proudly serve as the City Clerk of the City of Brisbane.

ORAL COMMUNICATIONS NO. 1

No member of the public wished to speak.

CONSENT CALENDAR

- C. Approve Minutes of City Council Meeting of May 5, 2022
- D. Approve Minutes of City Council Closed Session of May 5, 2022
- E. Adopt Ordinance, waiving second reading, to amend Brisbane Municipal Code Title 17 (Zoning Ordinance) to achieve consistency with housing-related state legislation

(Proposed amendments include: establishing objective design and development standards for housing development projects; allowing multiple family dwellings in the SCRO-1 District by right; and establishing procedures and requirements for an administrative Housing Development Permit for qualifying housing development projects. This Ordinance has been revised to eliminate proposed amendments to the NCRO-2 District.)

- F. Approve Plan for Community Park Festival Tree Replacement

(The recommendation is to plant a small grove of Douglas Fir trees. The fiscal impact of planting of the three recommended trees and modification of the irrigation system is expected to cost approximately \$6,000.)

- I. Approve Intended Use of FY 2022-23 TDA Article 3 Funding

(The purpose of this item is to adopt the resolution required by the Metropolitan Transportation

Commission (MTC) as a condition to receive transportation funding in the amount of \$240,000, from the Transportation Development Act Article 3 (TDA 3) to improve a section of the central Brisbane alley between Alvarado St. and San Benito Rd., and to obtain a supplemental appropriation of \$60,000 from the General Fund to provide the required local match)

- J. Approve Construction Contract for Sierra Point Parkway Cape Seal (Project No. 922D) to American Pavement Systems, Inc. in the amount of \$339,000, and Authorize the Mayor to Sign the Agreement
- K. Approve Project and Adopt a Resolution required by the San Mateo County Transportation Authority as a condition to receive Alternative Congestion Relief and Transportation Demand Management Measure A and Measure W funds for Shuttle Stop Improvements along Commute.org's Routes in Crocker Park, and to Obtain a Supplemental Appropriation of \$25,000 from the General Fund to Provide the Required local match.

Mayor Mackin added that members of the public wanted to pull Consent Items G and H for discussion.

CM O'Connell made a motion, seconded by CM Cunningham, to approve Consent Calendar Items C-F and I-K. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

- G. Adopt a City Resolution and a Guadalupe Valley Municipal Improvement District Resolution Approving the 2021 Amended and Restated Water Supply Agreement Between the City and County of San Francisco Wholesale Customers in Alameda County, San Mateo County, and Santa Clara County and authorize the City Mayor and the Board Chair to execute such Agreement
- H. Adopt a City Resolution and a Guadalupe Valley Municipal Improvement District Resolution Approving a Minimum Purchase Transfer from the City of Mountain View to the City of East Palo Alto

City Engineer Breault discussed Consent Calendar Items G and H and proceeded to answer council questions. CM Cunningham made a motion, seconded by CM Davis, to approve Consent Calendar Items G and H. The motion was carried unanimously by all present.

Ayes: Councilmembers/Board Members Cunningham, Davis, Lentz, O'Connell and Mayor/Chair Mackin

Noes: None

Absent: None

Abstain: None

PUBLIC HEARING

L. Applicant Appeal of the Planning Commission's April 4, 2022 Decision Denying the Modification of Interim Use Permit 2021-UP-3 to Allow the Use of a Vacant Site On the Baylands To Be Used For a Google Bus Staging Yard

(City Council will consider applicant appeal of the Planning Commission's April 4, 2022 decision denying the modification of Interim Use Permit 2021-Up-3 to allow the use of a vacant site on the Baylands to be used for a Google Bus staging yard (Planning Commission Resolution 2021-UP-3-M) and revoking Interim Use Permit 2021-UP-3 (Planning Commission Resolution 2021-UP-3-R); Eric Aronsohn, applicant; Oyster Point Properties Inc, applicant/owner.)

Councilmember Cunningham recused herself due to a conflict of interest and left the Zoom Webinar.

Senior Planner Johnson recapped the Planning Commission on April 4, 2022 denying the modification of Interim Use Permit 2021-Up-3 to allow the use of a vacant site on the Baylands to be used for a Google Bus staging yard (Planning Commission Resolution 2021-UP-3-M) and revoking Interim Use Permit 2021-UP-3 (Planning Commission Resolution 2021-UP-3-R).

After council questions, Mayor Mackin opened the public hearing.

Eric Aronsohn, Director - Strategic Finance, Sustainability, Asset Management of Baylands Development Inc. and Ross Benson, Transportation Manager from Google appealed to the Council to reverse the Planning Commission's decision.

City Clerk Padilla noted for the record that correspondence regarding this item was received from Dana Dillworth and a recent email was sent by Transdev Bus Operation.

Kim Follien was in support of the use permit asking the Council to decide based on facts.

Michele Salmon spoke in favor of the Planning Commission's decision to revoke the Interim Use Permit and showed video clips.

Prem Lal was concerned about light pollution and asked that the lights in the bus yard be pointed down to the concrete.

Mary Rogers stated that Google was given many chances to fix the issues and they have not fixed them.

Barbara Ebel supported the Commissions decision because the appellant was not good at keeping promises and proposed a bond program for fines.

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

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

Noes: None

Absent: None

Abstain: None

Recused: Councilmember Cunningham

After more clarifying questions directed to staff, Fehr and Peers the appellant's traffic consultants, and Mr. Aronsohn and Mr. Benson, Councilmember Lentz asked to continue the public hearing until Mr. Aronsohn can discuss with BDI about

Tunnel Road safety and upgrades.

Councilmembers agreed with Councilmember Lentz. CM O'Connell made a motion, seconded by CM Davis, to continue the public hearing until the July 14 and provide more information on implementing roadway improvements on Tunnel Avenue (including northern and southern routes as well as the possibility of incorporating a bicycle lane). The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

Recused: Councilmember Cunningham

CM O'Connell made a motion, seconded by CM Lentz to continue the Interim Use Permit for another 60 days. The motion was carried unanimously by all present. CM Davis also requested for the appellant to provide more current bus yard usage data during those 60 days.

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

Noes: None

Absent: None

Abstain: None

Recused: Councilmember Cunningham

M. Consider Approval of Use Permit 2022-UP-2; 1000 Sierra Point Parkway; SP-CRO Sierra Point Commercial District; Use Permit application to allow the use of minipigs in medical research and development (R&D) by Bristol-Myers Squibb in the existing, approximately 9,000 square foot vivarium; Ricardo Garcia, applicant; HCP LS Brisbane LLC, owner

Senior Planner Johnson reported that the purpose of this public hearing item is for the Council to consider the proposed use permit application for Bristol-Myers Squibb (BMS) to conduct research on minipigs for cardiovascular research. It is being recommended that the City Council approve the requested use permit application 2022-UP-2.

After council questions, Mayor Mackin opened the public hearing. Dr. Ricardo Garcia Senior Director, Cardiovascular Drug Discovery from Bristol Myers Squibb and Dr. Beth Geist, Senior Staff Veterinarian from Bristol Myers Squibb asked for Council to approve the Use Permit Application as they will conduct research following the Guide for the Care and Use of Laboratory Animals (Institute for Laboratory Animal Research, National Research Council).

Prem Lal was concerned about the smell coming from the facility.

Barbara Ebel was not in support of the use permit application because it is not consistent with the City's values.

Michele Salmon stated that this is a difficult decision for Council.

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

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

Noes: None
Absent: None
Abstain: None

After some clarifying questions and discussion, and with the applicant's consent, CM Cunningham made a motion, seconded by CM Lentz to continue the public hearing to June 16 to provide Council more information on how the minipigs were to be cared for (i.e., are they always alone and caged or do they get a chance to with other pigs?), especially the size of the proposed enclosure and the number of pigs to be housed in it, and additionally the specifics of the Guide for the Care and Use of Laboratory Animals (Institute for Laboratory Animal Research, National Research Council) regarding these matters. The motion was carried unanimously by all present.

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

Noes: None
Absent: None
Abstain: None
Recused: Councilmember Cunningham

N. Consider Introduction of an Ordinance Amending Chapters 15.01 (Grading Ordinance) and Section 17.32.220, Brisbane Municipal Code (Review of Grading Permits)

Legal Counsel Roush reported that the proposed changes to the Grading Ordinance was reviewed by the Infrastructure and Utilities Subcommittee and has recommended the Ordinance be introduced. The changes in the grading ordinance satisfy the recommendations coming out of the settlement of the lawsuit in 2007, continue the role of the Planning Commission and the public in reviewing certain grading permit applications, clarify the procedures to be followed when grading occurs in an HCP area, and provide financial incentives for persons not to violate the Grading Ordinance.

CM Cunningham, made a motion, seconded by CM Lentz to continue the meeting until 11:00 A.M. and take a five-minute break. The motion was carried unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, Lentz, O'Connell and Mayor Mackin
Noes: None
Absent: None
Abstain: None

After a brief break, Council questions and discussion, Councilmember O'Connell requested to modify the language in paragraph 2 of subsection A of Section 15.01.110 regarding when a public hearing will be triggered.

Mayor Mackin opened the public hearing and no member of the public wished to speak. CM O'Connell made a motion, seconded by CM Lentz to close the public hearing. The motion was carried unanimously by all present.

Ayes: Councilmembers Cunningham, Davis, Lentz, O'Connell and Mayor Mackin
Noes: None

Absent: None

Abstain: None

CM O'Connell made a motion, seconded by CM Davis, to introduce Ordinance Amending Chapters 15.01 (Grading Ordinance) and Section 17.32.220, Brisbane Municipal Code (Review of Grading Permits) with an amendment to modify the language revise paragraph 2 of subsection A of Section 15.01.110 accordingly:

More than fifty (50) cubic yards of material are to be moved or planned to be moved in any single grading or excavation operation and the parcel or parcels of land on which the grading or excavation is to be performed is located within any of the following zoning districts as defined by the City's most current Zoning Map--Brisbane Acres, Southwest Bayshore, Central Brisbane, Northeast Ridge, and Northwest Bayshore--or the Quarry.

The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

NEW BUSINESS

O. Receive Mid-Year Budget Report and Consider Adoption of Resolution Amending the Annual Budget for Fiscal Year 2021-22 and Making Appropriations for the Amount Budgeted

Finance Director Yuen reported that the Ending Fund Balance for FY 2021/22 is anticipated to be higher than originally projected and will be approximately \$16,185,795. Based on fund commitments and the Reserve Policy adopted by Council to set money aside for recessions, unanticipated events and annual fluctuations in the budget, the City will have \$1,954,701 in available reserves. Staff recommends rolling over these funds to be considered for use in FY22/23.

After some council questions and no public comment, CM Cunningham, made a motion, seconded by CM O'Connell to continue the meeting until 11:15 A.M. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

After some council questions and no public comment, CM Cunningham, made a motion, seconded by CM Davis to adopt a resolution amending the Annual Budget for Fiscal Year 2021-22 and making appropriations for the amount budgeted. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

STAFF REPORTS

P. City Manager's Report on upcoming activities

City Manager Holstine reported that there will be a special meeting on June 9, 2022 for a budget workshop. City Attorney McMorro provided an update on a legal issue pertaining to holding Monsanto Corporation accountable for the massive costs to remove polychlorinated biphenyls (PCBs) contamination from the San Mateo County jurisdictions and the San Francisco Bay.

MAYOR/COUNCIL MATTERS

Q. Updating the County-Wide and Subcommittee Assignments

Councilmember Cunningham will be the new representative for the Education Ad Hoc Subcommittee and the School /City Subcommittee 2x2 replacing Mayor Mackin. Mayor Mackin will be the new Council Liaison to the Open Space and Ecology Committee replacing Councilmember Cunningham.

R. Countywide Assignments and Subcommittee Reports

No reports were given due to the late hour.

S. Written Communications

Council received the following written correspondences from May 6-May 19, 2022:

Dana Dillworth (May 19, 2022) Comments on UP-2
Dana Dillworth (May 19, 2022) Items G and H Consent Calendar
Ross Benson (May 18, 2022) Written Comments for 5/19 Meeting
Dana Dillworth (May 9, 2022) For Lisa Macias, BPD, and council

ORAL COMMUNICATIONS NO. 2

No members of the public wished to speak.

ADJOURNMENT

Mayor Mackin adjourned the meeting at 11:11 P.M.

Ingrid Padilla, City Clerk

C.

File Attachments for Item:

C. Approve Minutes of City Council Closed Session of May 19, 2022



BRISBANE CITY COUNCIL**ACTION MINUTES**

BRISBANE CITY COUNCIL CLOSED SESSION MEETING**THURSDAY, MAY 19, 2022***VIRTUAL MEETING***6:00 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

C. Adjournment into Closed Session**D. CONFERENCE WITH LEGAL COUNSEL--EXISTING LITIGATION**

Government Code, Section 54956.9 (d) (1).

Number of Cases: One

- BRE SH Brisbane Owner, LLC v. City of Brisbane, San Mateo County Superior Court, Case No. 22-CIV-01112

E. CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code, section 54956.9

Number of Cases: One

ADJOURNMENT

Mayor Mackin called the meeting to order at 6:05 P.M.

No members of the public wished to make public comment.

Mayor Mackin adjourned the meeting into closed session.

REPORT OUT CLOSED SESSION

City Attorney McMorro reported that updates were provided to Council, direction was given to staff and no action was taken at Closed Session regarding Closed Session Items D and E.

ADJOURNMENT

The meeting was adjourned at 7:07 P.M.

Ingrid Padilla, City Clerk

File Attachments for Item:

D. Adopt Ordinance 579, Waiving Second Reading, Amending Chapters 15.01 (Grading Ordinance) and Section 17.32.220, Brisbane Municipal Code (Review of Grading Permits)



MEMO

Meeting Date: June 2, 2022

From: Ingrid Padilla, City Clerk

Subject: Adoption of Ordinance No. 579 Amending Chapter 15.01 and Section 17.32.220 of the Municipal Code Pertaining to Grading

Ordinance No.579 Amending Chapter 15.01 and Section 17.32.220 of the Municipal Code Pertaining to Grading was introduced at the City Council Meeting of May 19, 2022 as amended. It is on this agenda for consideration of adoption.

The approved amendments to the draft ordinance included the following:

Paragraph 2 of subsection A of Section 15.01.110 was revised to read:

More than fifty (50) cubic yards of material are to be moved or planned to be moved in any single grading or excavation operation and the parcel or parcels of land on which the grading or excavation is to be performed is located within any of the following zoning districts as defined by the City's most current Zoning Map--Brisbane Acres, Southwest Bayshore, Central Brisbane, Northeast Ridge, and Northwest Bayshore--or the Quarry; or

Attachments:

1. Staff Report from the City Council Meeting of May 19, 2022
2. Amended ordinance as introduced on May 19, 2022



CITY COUNCIL AGENDA REPORT

Meeting Date: May 19, 2022

From: Clay Holstine, City Manager and Michael Roush, Legal Counsel

Subject: Proposed Ordinance Amending Chapters 15.01 (Grading Ordinance) and Section 17.32.220, Brisbane Municipal Code (Review of Grading Permits)

RECOMMENDATION:

Introduce the attached Ordinance comprehensively updating the City's Grading Ordinance and amending Section 17.32.220, Brisbane Municipal Code. Note that the Infrastructure and Utilities has recommended the Ordinance be introduced/adopted.

BACKGROUND

The City's Grading Ordinance, codified in Chapter 15.01 of the Brisbane Municipal Code, was comprehensively revised in 1989. In 2012-2013 the City undertook a comprehensive update of the Grading Ordinance, partially in response to the settlement of a lawsuit arising out of the City's approval of a condominium project on Bayshore Boulevard in 2007.

Based on that settlement, specific provisions were recommended to be included in the Grading Ordinance including: (a) increasing the amount of the fines and penalties for violations; (b) prohibiting the removal of existing vegetation having habitat value without providing mitigation; and (c) requiring habitat restoration of graded areas within the boundaries of the Habitat Conservation Plan (HCP) where the grading would decrease the presence of exotic/non-native plant species. Additional revisions were proposed to reflect either best technical practices or to clarify procedures within the Ordinance.

In 2013, the Planning Commission recommended approval of the amendments but the draft ordinance was tabled by the City Council in 2013. The City Council discussed the amendments but never voted on them in light of potentially related matters, including a proposed development of the Baylands.

In April 2021, the City Council reconsidered the draft Grading Ordinance. Council did not have any concerns with the technical revisions to the Ordinance nor the amendments set forth in (a), (b) and (c) in the prior paragraph. The only area with which Council expressed concern was the

perception that the amendments would diminish the role of the community in having a voice about certain proposed grading permits, in particular where grading resulted in retaining walls that would be visible to the public. (The Planning Commission expressed a similar concern.) Because of that concern, Council deferred action on all the amendments to the Ordinance and requested that staff bring back the Ordinance for further consideration after having given due consideration to ensuring a role for the community when the Planning Commission was reviewing certain applications for grading permits.

Staff has reviewed the issue as directed by Council and is proposing revisions to the Ordinance to address that concern. Before scheduling the Ordinance for full Council consideration, however, staff presented the amendments to the Infrastructure and Utilities subcommittee (Mayor Mackin and Councilmember Lentz) on April 25. After review and discussion, the subcommittee recommended support for all the proposed amendments.

DISCUSSION

Planning Commission Review

Under the current Grading Ordinance, in addition to the City Engineer's review and approval of a grading permit, a permit (undefined) is also required from the Planning Commission under certain circumstances, for example, when more than 250 cubic yards of material are involved in a single operation. Section 15.01.081, Brisbane Municipal Code. (The Zoning Ordinance, at Section 17.32.220, has a parallel provision.) In addition, any person may appeal to the Planning Commission the issuance, denial, conditions, suspension or revocation of a grading permit. Section 15.01.130, BMC.

The amendments brought forward in 2021 continued the Planning Commission's review of certain grading permit applications but, because of legal concerns, eliminated appeals to the Planning Commission. That change caused concern that the community would not have an opportunity to be heard concerning certain grading permit applications. That was not staff's intent but the amendments now set forth in Sections 15.01.110 and 17.32.220 of the attached Ordinance now make clear that the community, as well as the Planning Commission, will continue to have a meaningful role concerning certain grading permit applications.

As proposed, the Ordinance would provide that in certain instances, before the City Engineer issues a grading permit, the Planning Commission, at a noticed public hearing, will review the application. (Sections 15.01.110 A and 17.32.220.) Those instances will be (a) where (as now)

more than 250 cubic yards of material are to be moved in any single grading/excavation operation, (b) where (somewhat different than now) in certain zoning districts (and the Quarry) more than 50 cubic yards of material are to be moved in a grading/excavation operation, or (c) where (new) grading is to be performed within the HCP. Section 15.01.110 A.

The amendments, moreover, unlike the current ordinance, will provide criteria for the Planning Commission to consider in its review. For example, will the proposed grading be designed to reflect or fit comfortably with the site and natural topography? Or, will the proposed grading be designed to ensure the retaining walls visible to the public are designed to be visually unobtrusive as possible? Section 15.01.110 B.

Finally, to ensure the Commission that its comments and concerns are given appropriate consideration, the amendments also provide the Commission may request that the grading permit application be “peer reviewed” by a professional engineer. In that way, the Commission will have assurances that its comments and concerns will be taken into account before the City Engineer makes a final decision whether to approve or deny a grading permit. Section 15.01.110 C.

The new section 15.01.110 is embodied in red line form in the attached revised Grading Ordinance. As a companion, an amended Section 17.32.220 (in red lined form) is also in the attached Ordinance (at the very end).

Appeals

As mentioned above, under the current Grading Ordinance, any person may appeal to the Planning Commission the issuance, denial, conditions, suspension or revocation of a grading permit. (A further appeal may be made to the City Council.)

In other contexts, for example, where the Building Official issues, denies, suspends or revokes a building permit, the Uniform Codes (which are incorporated into the Municipal Code by reference) provide that appeals not be heard by the Council, Commission or City staff but, instead, be heard by an “Appeals Board”, typically members of the trades or building officials from other jurisdictions. Decisions by those Boards are final but subject to judicial review.

Accordingly, staff recommends that appeals concerning grading permits be heard by a “Local Grading Permit Appeals Board”. That Board, similar to what occurs in the Uniform Code context, would consist of licensed professional engineers and/or City Engineers from other jurisdictions. That Board’s decision would likewise be final, subject only to judicial review.

The new section 15.01.290 is set forth in the attached Grading Ordinance. It shows the new material and deletions of the current section (currently, Section 15.01.130).

HCP Compliance

The draft 2013 ordinance specifies that Site Activity Review be obtained from the HCP Plan Operator prior to vegetation clearing within the HCP. In practice, the Plan Operator may authorize vegetative removal through various means, not limited to a Site Activity Review. It is recommended that the Grading Ordinance be revised to require Plan Operator approval without specifying the means by which such approval may be obtained.

On a related note, the 2013 version of the ordinance included a series of prescriptive requirements for revegetation plans intended to minimize impacts on habitat values. While well-intended, there are some practical difficulties with the language as proposed. It is likely that most areas with habitat value will lie with the HCP area which means that approval from the Plan Operator will be required. The prescriptive requirements set forth in the ordinance may not have any relationship to the requirements imposed by the Plan Operator. It is unclear what legal or technical basis the City would have to impose requirements that differ from what is required under the HCP. For example, while the draft ordinance specifies that on-site mitigation is preferred, the Plan Operator does not generally support the creation of isolated habitat islands that lack connectivity; the Plan Operator prefers the enhancement and creation of meaningful habitat that is contiguous to existing resources. It is therefore recommended that the prescriptive revegetation requirements be deleted. As stated above, Council did not express any concerns about this issue when it reviewed the amendments in 2021 and those amendments are set forth in the attached Ordinance.

Enforcement

The City Council’s policy direction has been that the fines for illegal grading provide a substantial financial incentive to encourage compliance, as opposed to representing a nominal penalty that constitutes the cost of doing business. Currently, the only fines for violating the Ordinance are set forth in Chapters 1.14, 1.16, and 1.18 of the Code. Fines under those

sections are not significant. For example, for a first offense, the fine is only \$100. The fees and penalties for violating the Grading Ordinance have been revised such that in addition to the fines under Chapters 1.14, 1.16 and 1.18, there would be “supplemental fines”, ranging from \$1500 where the violation involved grading between 6 and 50 cubic yards to a whopping \$250,000 fine for violations involving grading more than 200,000 cubic yards. Section 15.01.560. These increased fines should be sufficient to encourage compliance and to have financial significance for violators.

Other Jurisdictions

The subcommittee requested staff to review how other cities in San Mateo County review grading permit applications. Staff reviewed the Redwood City, San Mateo, Millbrae and Burlingame ordinances. All provide that the ultimate decision on whether to issue a grading permit, and its conditions, vest in the City Engineer/Public Works Director. To the extent the ordinances set forth an appeal procedure, the appeals, like the one presented this evening, are to an “Appeals Board” consisting of licensed professionals or other City Engineers. San Mateo has a similar, two step process as the proposed amendments. Where a project involving grading of 5000 cubic yards or more requires a site development permit, the Planning Commission weighs in on the planning issues. Thereafter—in Step Two—the Public Works Director considers the technical details of the grading permit applications and decides whether to issue or deny such permit. Accordingly, the proposed amendments provide for more, not less, public input on grading permit applications than most other jurisdictions in San Mateo County.

Street Trees

Under the City’s “Tree Ordinance”, trees on public property may be removed as determined by the city engineer. Section 12.12.030 B 2, Brisbane Municipal Code. The Planning Commission had expressed some concern whether that provision impermissibly intruded on the Commission’s purview under its authority under the General Plan when it reviews projects if such a project involves the removal of trees in the public right of way. The subcommittee requested staff to address that concern.

The proposed amendments retain the Commission’s review concerning the removal of street trees. In particular, when the Planning Commission reviews an application for a grading permit, the review specifically includes (a) whether the proposed grading is designed to minimize the removal of existing street trees, as well as certain species of trees, and trees of large

circumference and (b) where removal of existing trees is necessary, that the landscaping plan include replacement. See section 15.01.110 B (3) and (4).

CONCLUSION

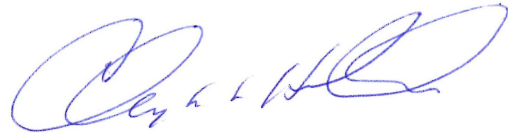
These changes satisfy the recommendations coming out of the settlement of the lawsuit, continue the role of the Planning Commission and the public in reviewing certain grading permit applications, clarify the procedures to be followed when grading occurs in an HCP area, and provide financial incentives for persons not to violate the Grading Ordinance.

Attachments

2022 Proposed Draft Ordinance



Michael Roush, Legal Counsel



Clay Holstine, City Manager

ATTACHMENT 2: DRAFT (AS INTRODUCED ON 5/19/2022)

ORDINANCE NO. 579

**AN ORDINANCE OF THE CITY OF BRISBANE
AMENDING CHAPTER 15.01 AND SECTION 17.32.220
OF THE MUNICIPAL CODE PERTAINING TO GRADING**

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

SECTION 1: Chapter 15.01 of the Municipal Code, entitled "Grading," is amended in its entirety to read as follows:

**Chapter 15.01
GRADING**

Sections:

15.01.010	Title
15.01.020	Purpose and objectives
15.01.030	Scope
15.01.040	Definitions
15.01.050	Precautions imposed by City Engineer
15.01.060	Discovery of prehistoric, historic, or unique archaeological resources, or human remains
15.01.070	Other laws
15.01.080	Severability and validity
15.01.090	Permit required
15.01.100	HCP Permission required
15.01.110	Planning Commission review of application for grading permit
15.01.120	Quarry operations
15.01.130	Application to annexed territory
15.01.140	Exemptions
15.01.150	Application for grading permit
15.01.160	Application form
15.01.170	Site map and grading plan
15.01.180	Interim erosion and sediment control plan (interim plan)
15.01.190	Final erosion and sediment control plan (final plan)
15.01.200	Revegetation plan
15.01.210	Soils engineering report (soils report)
15.01.220	Engineering geology report
15.01.230	Work schedule and transport routes
15.01.240	Security
15.01.250	Fees
15.01.260	Grading permit fee exemption

15.01.270	Action on application
15.01.280	Permit duration
15.01.290	Appeals
15.01.300	Revised plans
15.01.310	Cessation of operations
15.01.320	Assignment of permit
15.01.330	No improvements planned
15.01.340	Grading permit, paving
15.01.350	Grading permit, drainageway alteration
15.01.360	Excavation blasting permit
15.01.370	Truck haul permit
15.01.380	Issuance of grading permits
15.01.390	Time and noise limitations on grading operations
15.01.400	Implementation of permits - permittee's duties
15.01.410	Implementation of permits – requirements of City Engineer
15.01.420	Grading inspection
15.01.430	Completion of work
15.01.440	Removal of ground cover
15.01.450	Wet season grading
15.01.460	Cuts
15.01.470	Fills
15.01.480	Setbacks
15.01.490	Drainage and terracing
15.01.500	Import and export of earth material
15.01.510	Dust control
15.01.520	Protection of adjoining property
15.01.530	Removal of hazards
15.01.540	Post-grading procedures
15.01.550	Revocation or suspension of permits
15.01.560	Violation – penalties
15.01.570	Action against the security
15.01.580	Public nuisance abatement
15.01.590	Release of security
15.01.600	Cumulative enforcement procedures

§15.01.010 Title

This Chapter shall be known as the "City of Brisbane Grading Ordinance" and may be so cited.

§15.01.020 Purpose and objectives

A. The purpose of this Chapter is to provide for grading operations; to safeguard life, limb, health, property and public welfare; and to preserve and enhance the natural environment, including but not limited to water quality, by regulating and controlling clearing and grading of property within the City.

- B. This Chapter is intended to achieve the following objectives:
- (1) Grading plans shall be designed so that grading operations do not create or contribute to landslides, accelerated soil creep, settlement, subsidence, or hazards associated with strong ground motion and soil liquefaction.
 - (2) Grading plans shall contain reasonable provisions for the preservation of natural land and water features, vegetation, drainage, and other indigenous features of the site.
 - (3) Grading plans shall be designed to preserve and enhance the city's aesthetic character.
 - (4) Grading plans shall require compliance with all applicable laws, rules and regulations pertaining to air and water pollution, noise control, and preservation of archaeological remains.
 - (5) Grading operations shall be conducted so as to expose the smallest practical area of soil to erosion for the least possible time, consistent with an anticipated build-out schedule.

§15.01.030 Scope.

A. This Chapter amends the regulations pertaining to grading as set forth in the California Building Standards Code, as adopted in Chapter 15.04 of this Code. In the event of any conflict or inconsistency between the provisions of this Chapter and the provisions of Chapter 15.04 or any of the codes adopted by reference therein, the provisions of this Chapter shall be controlling.

B. This Chapter sets forth rules and regulations to control excavation, land disturbances, land fill, soil storage, and erosion and sedimentation resulting from such activities. This Chapter provides that all excavation or landfilling activities or soil storage shall be undertaken in a manner designed to minimize surface runoff, erosion, and sedimentation and to avoid or mitigate damage caused by grading activities to areas having habitat value. This Chapter also establishes procedures for the issuance, administration and enforcement of grading permits.

§15.01.040 Definitions

When used in this Chapter, the following words shall have the meanings ascribed to them in this Section:

- (1) **Applicant** means any person, corporation, partnership, association of any type, public agency or any other legal entity that submits an application to the City Engineer for a permit pursuant to this chapter.
- (2) **As-graded** means the surface conditions extant on completion of grading.

- (3). **BAAQMD CEQA Guidelines** means the recommended measures detailed in Table 8-1 of the Bay Area Air Quality Management District's "California Environmental Quality Act-Air Quality Guidelines, Updated May 2011", or any amendment, revision, or reissuance thereof and any additional measures, including those recommended in Table 8-2 of the reference, as determined necessary and appropriate by the City Engineer.
- (4) **Bedrock** means in-place solid rock.
- (5) **Bench** means a relatively level step excavated into earth material. Bench also includes terraces.
- (6) **Best management practices (BMPs)** means a technique or series of techniques which, when used in an erosion control plan, is proven to be effective in controlling construction-related runoff, erosion and sedimentation. Approved BMPs can be found in the California Stormwater Quality Association "Construction BMP Handbook/Portal", the State of California Department of Transportation March 2003 "Construction Site Best Management Practices (BMPs) Manual", the San Mateo Countywide Water Pollution Prevention Program Construction Best Management Practices" plan sheet, *Erosion & Sediment Control Handbook*, by Goldman, Jackson and Bursztynsky, and any amendment, revision or reissuance thereof.
- (7) **Borrow** means earth material acquired from an off-site location for use in grading on a site.
- (8) **City** means the City of Brisbane.
- (9) **City Engineer** means the Director of Public Works/City Engineer of the City of Brisbane and his/her duly authorized designees. The City Engineer may delegate any of his or her duties under this Chapter to his or her authorized agents or representatives.
- (10) **City street** means any public or private street in the city of Brisbane.
- (11) **Civil engineer** means a professional engineer registered in the state of California to practice in the field of civil engineering.
- (12) **Civil engineering** means the application of the knowledge of the forces of nature, principles of mechanics and the properties of materials to the evaluation, design and construction of civil works for the beneficial uses of humankind.
- (13) **Clearing and grubbing** means the removal of trees, shrubs, bushes, windfalls and all other materials from above and below the natural ground surface. This activity removes vegetative ground cover, removes top soil, and removes/disturbs root mat. Except in those cases where specifically approved

by a grading permit , “grubbing” for the removal of stumps and roots shall not exceed 18” below the original surface of the ground.

- (14) **Community Development Director** means the director of planning of the City of Brisbane.
- (15) **Compaction** means the densification of a fill by mechanical means.
- (16) **Contour rounding** means the rounding of cut and fill slopes in the horizontal and/or vertical planes to blend with existing contours or to provide horizontal variation to eliminate the artificial appearance of slopes. (See Figure 1)
- (17) **Drainageway** means natural or manmade channel that collects and intermittently or continuously conveys stormwater runoff.
- (18) **Dry season** means the period from April 15th to October 15th.
- (19) **Earth material** means any rock, natural soil, fill or combination thereof.
- (20) **Engineering geologist** means a geologist experienced and knowledgeable in engineering geology and qualified to practice engineering geology in the State of California.
- (21) **Engineering geology** means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.
- (22) **Erosion** means the wearing away of the ground surface as a result of the movement of wind or water.
- (23) **Excavation** means any act by which earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated, or bulldozed, including the conditions resulting therefrom.
- (24) **Fill/land fill** means any act by which earth, sand, gravel, rock or any other similar material is deposited, placed, pushed, pulled or transported to a place other than the place from which it was excavated, including the conditions resulting therefrom.
- (25) **Final erosion and sediment control plan (final plan)** means a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site after all other planned final structures and permanent improvements have been erected or installed.
- (26) **General Plan** means the General Plan adopted by the City of Brisbane and all amendments thereto.

- (27) **Grade** means the vertical location of the ground surface.
- (a) **Existing grade** means the grade prior to grading.
 - (b) **Rough grade** means the stage at which the grade approximately conforms to the approved plan.
 - (c) **Finish grade** means the final grade of the site which conforms to the approved plan.
- (28) **Grading** means any land disturbance or excavation or fill or any combination thereof and shall include the conditions resulting from any land disturbance, excavation or fill. Grading shall include trenching on public or private property including within public streets.
- (29) **Grading permit** means the formal approval required by this Chapter for any grading, filling, excavating, storage or disposal of soil or earth materials or any other excavation or land filling activity. Application to the City Engineer and the City Engineer's approval is required under the process of this Chapter.
- (30) **HCP** means the San Bruno Mountain Area Habitat Conservation Plan, as approved and adopted by the U.S. Fish and Wildlife Service in 1983, including subsequent amendments and updates.
- (31). **Interim erosion and sediment control plan (interim plan)** means a set of best management practices or equivalent measures designed to control surface runoff and erosion and to retain sediment on a particular site during the period in which construction-related excavations, fills and soil storage occur, and before the final plan is completed.
- (32) **Key** means a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.
- (33) **Permittee** means the applicant in whose name a valid permit is duly issued pursuant to this Chapter and his/her agents, employees and others acting under his/her direction.
- (34) **Plan Operator** is the Habitat Conservation Plan Manager, presently the San Mateo County Department of Parks, and also means any successor agency.
- (35) **Revegetation** means the replanting of disturbed natural ground surfaces on properties within the HCP and on properties that the Community Development Director has determined requires mitigation to restore habitat value.

- (36) **Sediment** means earth material deposited by water or wind.
- (37) **Site** means a parcel or parcels of real property owned by one or more than one person that is being or is capable of being developed as a single project, including phased construction. Site also includes any public or private property or rights-of-way on which excavation, fill or land disturbance occurs.
- (38) **Slope** means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.
- (39) **Soil** means naturally occurring superficial deposits overlying bedrock.
- (40) **Soils engineer** means a civil engineer experienced and knowledgeable in the practice of soils engineering. Soils engineer and geotechnical engineer are synonymous.
- (41) **Soils engineering** means the application of the principles of soil mechanics in the investigation, evaluation and design of improvements involving the use of earth materials and the inspection and testing of the construction thereof. Soils engineering and geotechnical engineering are synonymous.
- (42) **Structure** means anything built or constructed including pavement and pipelines.
- (43) **Temporary erosion control** consists of, but is not limited to, constructing such facilities and taking such measures as are necessary to prevent, control, and abate water, mud and wind erosion damage to public and private property during grading operations.
- (44) **Terrace** means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes. Terrace also includes benches.
- (45) **Truck haul** means the movement over public streets of any excavated material.
- (45) **Vertical slope rounding** means the rounding of the top and toes of cut and fill slopes.
- (47) **Weeding** means the removal of noxious, dangerous, or invasive plants. This activity also includes the removal of vegetation which attains such a large growth as to become a fire menace when dry, and further includes the removal of dry grass, grass cuttings, tree trimmings, vines, stubble or other growth material which endangers the public by creating a fire hazard, including any such hazard determination made by the fire department pursuant to the City's weed abatement ordinance. Any activity that disturbs more than 15% of the natural ground surface shall be classified as "clearing and grubbing."

(48) **Wet season** means the period from October 15th to April 15th.

§15.01.050 Precautions imposed by City Engineer

A. If, at any stage of grading, the City Engineer determines by inspection that conditions are such that further work as authorized by an existing grading permit is likely to endanger any property or public way, the City Engineer may require, as a condition to allowing the work to be continued, that reasonable safety precautions be formulated by the permittee and submitted to the City Engineer for his/her consideration and the grading permit be amended to avoid such danger. "Safety precautions" may include but shall not be limited to specifying a flatter exposed slope, construction of additional drainage facilities, berms, terracing, compaction, cribbing, or retaining walls, or planting of slopes.

B. The sole and primary responsibility for meeting the requirements of this Section and of this Chapter for any civil or criminal liability as a result of the performance of grading work pursuant to a grading permit shall be upon the permittee. Neither the City, the City Engineer, or any employees or agents of the City shall be responsible for any liability for issuance of a grading permit or the conduct of any inspections thereunder.

§15.01.060 Discovery of prehistoric, historic, or unique archaeological resources, or human remains.

A. In the event of the accidental discovery of prehistoric, historic, or unique archaeological resources, the permittee shall immediately cease work and follow the protocol established in the Guidelines for Implementation of the California Environmental Quality Act, as contained in California Code of Regulations, Title 14, Division 6, Chapter 3 ("CEQA Guidelines"), specifically, Section 15064.5(f) and any amendments thereto. This includes obtaining an evaluation from a qualified archaeologist to be forwarded to the Community Development Director for review/approval, and will include a finding as to the categorization of the discovery, any recommended avoidance measures or appropriate mitigation, and a statement as to what portions of the site, if any, are cleared for resumption of work while the recommended mitigation is being performed. If the find is determined to be significant, contingency funding and a time allotment sufficient to allow for implementation of appropriate mitigation or avoidance measures shall be provided.

B. In the event of the accidental discovery or recognition of any human remains, the permittee shall immediately cease work and implement the protocol established in the CEQA Guidelines, specifically, Section 15064.5(e)(1) et. seq. and any amendment thereto.

§15.01.070 Other laws

Neither this Chapter nor any administrative decision made under it:

A. Exempts the permittee from complying with other applicable laws or from procuring other required permits or complying with the requirements and conditions of such a permit; or

B. Limits the right of any person to maintain, at any time, any appropriate action, at law or in equity, for relief or damages against the permittee arising from the permitted activity; or

C. Exempts any person from complying with any applicable laws or allows any person to perform any grading without complying with such other applicable laws.

§15.01.080 Severability and validity

If any part of this Chapter is found not valid, the remainder shall remain in effect.

§15.01.090 Permit required

Except as exempted under Section 15.01.140, it shall be unlawful for any person to clear and grub, grade, fill, excavate, store or dispose of soil and earth materials or perform any other excavation or land-filling activity without first obtaining a grading permit as set forth in this Chapter. A separate grading permit shall be required for each site. With respect to subdivisions, a separate permit will be required for each phase of development. The grading permit issued for each site may also cover the utility construction associated with the site provided the required information for the utilities is included with the application. A building permit shall not be issued prior to the issuance of a grading permit, when required.

§15.01.100 HCP Permission required

No owner of property within the boundaries of the HCP shall weed, clear and grub, grade, fill, excavate, store, or dispose of soil and earth materials or perform any other excavation or land filling activity without first obtaining permission from the Plan Operator. Permission for the listed activities is presently obtained through submittal of a Site Activity Review Application; no grading permit will be issued by the City for any property within the HCP until the property owner has first complied with the requirements of the Plan Operator.

§15.01.110 Planning Commission review of application for grading permit

A. Where a grading permit is required by the provisions of this Chapter, it shall be issued by the City Engineer following the City Engineer's approval of the permit application. Before the City Engineer issues a grading permit, the permit application shall also be reviewed by the Planning Commission where:

1. More than two hundred fifty (250) cubic yards of material are to be moved or planned to be moved in any single grading or excavation operation and the parcel or parcels of land on which the grading is to be performed is located within any zoning district as defined by the City's most current Zoning Map; or
2. More than fifty (50) cubic yards of material are to be moved or planned to be moved in any single grading or excavation operation and the parcel or parcels of land on which the grading or excavation is to be performed is located within any of the following zoning districts as defined by the City's most current Zoning Map--Brisbane Acres, Southwest Bayshore, Central Brisbane, Northeast Ridge, and Northwest Bayshore--or the Quarry; or
3. Grading is to be performed on any parcel of land within the boundaries of the HCP; *provided, however,* review by the Planning Commission shall not be required if the only grading operation to be conducted is weeding, or clearing and grubbing, where such work is performed pursuant to an HCP site activity approval issued by the Plan Operator.

B. Where Planning Commission review of an application for a grading permit is required by subsection A of this Section 15.01.110, the review shall be based upon a consideration of the following potential impacts of the proposed grading:

- (1) Will the proposed grading be designed to reflect or fit comfortably with the site context and natural topography?
- (2) Will the proposed grading be designed to ensure that retaining walls visible to the public are designed to be as visually unobtrusive as possible by means including but not limited to:
 - (i) ensuring walls are architecturally integrated with proposed or existing structures on the site;
 - (ii) ensuring wall faces are decorative and treated with color, texture, architectural features, trelliswork or other means to visually break up the wall expanses;
 - (iii) screening with water conserving, non-invasive landscaping that at maturity will soften and reduce the visible expanse of walls?
- (3) Will the proposed grading be designed to minimize removal of:
 - (i) existing street trees (see Section 12.12.020);
 - (ii) any California Bay Laurel, Coast live Oak or California Buckeye trees;
 - (iii) three or more trees of any species on the same site having a circumference of at least 30 inches measured 24 inches above grade?

4. Where removal of existing trees is necessary, will the landscape plans for the project include the planting of appropriate replacement trees?

C. Where the Planning Commission's review of an application for a grading permit is required by subsection A of Section 15.01.110, the Planning Commission may request the City Engineer to have the application peer reviewed by a professional engineer, as defined in Business and Profession Code Section 6701, and, as part of that review, take into consideration any comments or concerns the Planning Commission has made under subsection B of this Section 15.01.110. Following that review, the City Engineer may approve, conditionally approve, or deny the grading permit application.

§15.01.120 Quarry operations

No grading permit for an excavation shall be issued if the excavation for which a grading permit is required shall allow for the operation of a quarry, where quarrying is otherwise prohibited by the provisions of the Zoning Ordinance of the City.

§15.01.130 Application to annexed territory

Activities regulated by this Chapter, whether operative or nonoperative, which are located in territory hereafter annexed to the City shall not operate from and after thirty (30) days following annexation to the City, unless, in the case of operative activities, or before recommencement of operations in the case of inoperative activities, a grading permit shall have been granted as provided herein.

§15.01.140 Exemptions

A grading permit shall not be required in the following instances:

A. Exploratory excavations and trenches under the direction of a soils engineer or engineering geologist, provided that these excavations and trenches comply with all of the following:

- (1) All earth material removed from the trenches or excavations that is not completely removed from the project site must be stored in a manner that prevents erosion, sedimentation, off-site migration, and smothering of natural vegetative ground cover;
- (2) All trenches and excavations are properly backfilled;
- (3) All excavations and trenches are subject to the applicable sections of Title 8 of the State Safety Order, Division of Industrial Safety.

B. An excavation which does not exceed five (5) cubic yards on any one site and is less than two (2) feet in vertical depth and which does not create a cut slope steeper than

two feet horizontal to one vertical (2:1). Such excavation, however, is not exempt from the requirements of Sections 15.01.340 and 15.01.350.

C. A fill less than one foot in depth placed on natural grade with a slope flatter than five horizontal to one vertical (5:1), which does not exceed five (5) cubic yards on any one site and does not obstruct a drainageway. Such fill, however, is not exempt from the requirements of Section 15.01.340.

D. Grading in connection with dredging operations in San Francisco Bay for which approval for such grading has been granted by the City under other permits or agreements.

E. Grading in connection with the operation of salvage, garbage and disposal dumps for which approval for such grading has been granted by the City under other permits or agreements.

F. Emergencies posing an immediate danger to life or property, or substantial flood or fire hazards, or interruption of utility services to the public, in which case a permit shall be obtained as soon as possible.

G. Excavation by public utilities in connection with the placement of facilities, including repair and maintenance of local utility distribution and service utilities, if such excavation is authorized by a valid street encroachment permit.

§15.01.150 Application for grading permit

The application for a grading permit shall be in writing and filed with the City Engineer in duplicate and must include all of the following items, unless otherwise waived by the City Engineer:

- A. Application form;
- B. Site map and grading plan;
- C. Interim erosion and sediment control plan;
- D. Final erosion and sediment control plan;
- E. Revegetation plan;
- F. Soils engineering report;
- G. Engineering geology report;
- H. Work schedule and transportation routes;
- I. Security;

J. Fees;

K. Confirmation of the proposed recycling or reuse of all rocks, soils, tree remains, trees and other vegetative matter resulting from the grading operations, which shall be satisfied by providing a copy of the Recycling and Diversion of Debris permit issued by the Building Department pursuant to Chapter 15.75 of this Code.

L. Any other material required by the City Engineer.

§15.01.160 Application form

The following information is required on the application form unless waived or modified by the City Engineer:

A. Name, address and telephone number of the applicant;

B. Names, addresses and telephone numbers of any and all contractors, subcontractors or persons actually doing the excavating and land-filling activities and their respective tasks;

C. Name(s), address(es) and telephone number(s) of the person(s) responsible for the preparation of the site map and grading plan;

D. Names(s), address(es) and telephone number(s) of the person(s) responsible for the preparation of the interim and/or final erosion and sediment control plan, and the revegetation plan;

E. Name, address and telephone number of the soils engineer and/or the engineering geologist responsible for the preparation of the soils and engineering geology reports;

F. A vicinity map showing the location of the site in relationship to the surrounding area's watercourses, water bodies and other significant geographic features, and roads and other significant structures;

G. Date of the application;

H. Title report confirming ownership;

I. Signature(s) of the owner(s) of the site or of an authorized representative.

§15.01.170 Site map and grading plan

The site map and grading plan shall contain all the following information unless waived or modified by the City Engineer:

A. Plan views and cross sections showing the existing and proposed topography of the site. The plan view shall show contours at an interval sufficiently detailed to define the topography over the entire site. The minimum contour interval shall be two feet where ground slope is less than fifteen (15) percent and five (5) feet where ground slope exceeds fifteen (15) percent;

B. Two contour intervals off-site and extension of the on-site contours a minimum of one hundred (100) feet off-site, and sufficient to show on and off-site drainage;

C. An accurate plat plan drawn by a registered civil engineer or licensed land surveyor showing the site's exterior boundaries in true location with respect to the plan's topographic information, all easements, boundaries of the "Habitat Conservation Plan" area, special districts, and any other pertinent information;

D. Location and graphic representation of all existing and proposed natural and manmade drainage facilities;

E. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams and other protective devices to be constructed with, or as a part of the proposed work, together with a map showing the drainage area and the estimated runoff of the area served by any drain;

F. Location and graphic representation of proposed excavation and fills, of on-site storage of soil and other earthen material, and of on-site disposal of soil and other earthen material;

G. Location of existing vegetation types and the location and type of vegetation to be left undisturbed;

H. Location of proposed final surface runoff, and of erosion and sediment control measures;

I. Quantity of soil or earthen materials in cubic yards to be excavated, filled, stored or otherwise removed from or utilized on-site;

J. Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners which are within fifteen (15) feet of the property or which may be affected by the proposed grading operations;

K. Location and slope of proposed streets and driveways. Driveways shall not exceed a centerline slope of twenty (20) percent and, unless specifically approved by the City Engineer, streets shall not exceed a centerline slope of fifteen (15) percent.

§15.01.180 Interim erosion and sediment control plan (interim plan)

A. An interim plan containing all of the following information shall be provided with respect to conditions existing on the site during excavation or filling activities or soil

storage and before the final plan is completed; furthermore, the plan submitted shall demonstrate compliance with the requirements of the Municipal Regional Permit, as defined in Section 13.06.040:

- (1) The location and amount of runoff discharging from the site, calculated using a method approved by the City Engineer;
- (2) A delineation and brief description of the measures to be undertaken to control erosion caused by surface runoff and by wind and to retain sediment on the site including, but not limited to, the design and specifications for berms and sediment detention basins, types and method of applying mulches, the design and specifications for diverters, dikes and drains, seeding methods, the type, location and extent of pre-existing and undisturbed vegetation types, and a schedule for maintenance and upkeep.

B. The location of all the measures listed by the applicant under subsection A(2) above shall be depicted on the site map and grading plan, or on a separate plan, at the discretion of the City Engineer.

C. An estimate of the cost of implementing and maintaining all interim erosion and sediment control measures shall be submitted in a form acceptable to the City Engineer.

D. The applicant may propose the use of any erosion and sediment control techniques in the interim plan provided such techniques are proven to be as or more effective than the equivalent best management practices contained in the manual of standards.

§15.01.190 Final erosion and sediment control plan (final plan)

A. A final plan containing all of the following information shall be provided with respect to conditions existing on the site after final structures and improvements (except those required under this section) have been completed; furthermore, the plan submitted shall demonstrate compliance with the requirements of the Municipal Regional Permit, as defined in Section 13.06.040:

- (1) The location and amount of runoff discharging from the site, calculated using a method approved by the City Engineer;
- (2) A description of and specifications for sediment retention devices;
- (3) A description of and specifications for surface runoff and wind erosion control devices;
- (4) A description of vegetative measures;
- (5) A graphic representation of the location of all items in subsections B through D above, and items A through K in 15.01.170 above.

B. An estimate of the costs of implementing all final erosion and sediment control measures must be submitted in a form acceptable to the City Engineer.

C. The applicant may propose the use of any erosion and sediment control techniques in the final plan provided such techniques are proven to be as or more effective than the equivalent best management practices contained in the manual of standards.

§15.01.200 Revegetation plan

A revegetation plan is designed to effectively mitigate impacts to the site's habitat values by restoring or replacing native vegetation to the maximum extent practical and reasonable to achieve. Sites subject to revegetation requirements shall submit a plan to replant and maintain disturbed surfaces for review and approval by the City Engineer and Community Development Director in accordance with the following:

A. Topsoil removed from the surface shall be stored on or near the site and protected from soil loss while the work is underway. Such storage shall not cause damage to root systems of onsite trees intended to be preserved.

B. Mulching, seeding, planting of groundcover, shrubs or trees, or other suitable stabilization measures shall be used to protect exposed soil, to minimize soil loss, and to maximize slope stability. Use of drought tolerant native plant species that are fire resistant is encouraged. Use of plant species identified as invasive in the most current HCP Vegetation Management Activities Report is prohibited, whether or not the project site is within the boundaries of the HCP.

C. The City Engineer may require the permittee to monitor revegetation for a period up to five years, to provide reports of such monitoring to the City Planning Department, to allow for third-party assessment of the success of the revegetation at the applicant's expense, and to provide security to correct, complete, or remediate the approved revegetation plan. The City Engineer and the Community Development Director shall each retain discretion as to whether the approved revegetation plan has been successfully implemented.

D. Onsite mitigation is preferred. In the event that the Community Development Director determines that adequate mitigation can not be reasonably achieved onsite, the City may approve an offsite revegetation plan to achieve the goals of restoring habitat value. Such offsite mitigation shall comply with the provisions of this Chapter that govern onsite mitigation.

E. For sites located within the HCP, the City may impose restoration/revegetation requirements in addition to those required by the Plan Operator, so long as a reasonable rationale is provided for the additional requirements. A decision to require more stringent measures may be based upon the biological features of the site, for example, if the site is an existing or potential wildlife corridor or part of a buffer zone between developed areas and existing habitat, or if the site has particular geological features, such as potential for erosion or susceptibility to seismic hazards.

§15.01.210 Soils engineering report (soils report)

A. A soils report, when required by the City Engineer, is to be prepared by an approved soils engineer and shall be based on adequate and necessary test borings, and shall contain all the following information, in addition to the minimum applicable requirements of the latest edition of the California Building Code adopted by the City:

- (1) Data regarding the nature, distribution, strength, and erodibility of existing soils;
- (2) Data regarding the nature, distribution, strength and erodibility of soil to be placed on the site, if any;
- (3) Conclusions and recommendations for grading procedures;
- (4) Conclusions and recommended designs for soil stabilization for interim conditions and after construction is completed;
- (5) Design criteria for corrective measures when necessary;
- (6) Foundation and pavement design criteria when necessary;
- (7) Opinions and recommendations covering suitability of the site for the proposed uses;
- (8) Other recommendations, as necessary, commensurate with the project grading and development.

B. Recommendations included in the report and approved by the City Engineer shall be incorporated in the grading plan.

C. Whenever a soils engineering report is required, the final submitted grading plans shall include a review letter from the soils engineer confirming that his/her recommendations have been incorporated into the plans.

§15.01.220 Engineering geology report

A. An engineering geology report, when required by the City Engineer, is to be prepared by a qualified engineering geologist and shall be based on adequate and necessary test borings and shall contain the following information, in addition to the minimum applicable requirements of the latest edition of the California Building Code adopted by the City:

- (1) An adequate description of the geology of the site, including identification of actual and potential geologic hazards;

- (2) Conclusions and recommendations regarding the effect of geologic conditions on the proposed development;
- (3) Recommendations for mitigation of identified hazards wherever appropriate;
- (4) An opinion as to the extent that instability on adjacent properties may adversely affect the project;
- (5) Opinions and recommendations covering suitability of the site for the proposed uses;
- (6) Other recommendations, as necessary, commensurate with the project grading and development.

B. Recommendations included in the report and approved by the City Engineer shall be incorporated in the grading plan.

C. Whenever an engineering geology report is required, the final submitted grading plans shall include a review letter from the engineering geologist confirming that his/her recommendations have been incorporated into the plans.

§15.01.230 Work schedule and transport routes

A. The applicant shall submit a master work schedule showing the following information:

- (1) Proposed grading schedule;
- (2) Proposed conditions of the site on each July 15th, August 15th, September 15th, October 1st, and October 15th during which the permit is in effect;
- (3) Proposed schedule for installation of all interim erosion and sediment control measures including, but not limited to, the stage of completion of erosion and sediment control devices and vegetative measures on each of the dates set forth in subsection A(2);
- (4) Schedule for construction of the proposed improvements on the site;
- (5) Schedule for installation of permanent erosion and sediment control devices where required.

B. The applicant shall also submit a description of the routes of travel to be used for access to and from the site for removing excavated material and bringing in fill or other materials.

§15.01.240 Security

A. The applicant shall provide a performance bond or other acceptable security for the performance of the work described and delineated on the approved grading plan and the approved revegetation plan prior to the issuance of the grading permit, in an amount to be set by the City Engineer but not less than one hundred ~~(100)~~ percent (100%) of the approved estimated cost of performing said work. The form of security shall be one or a combination of the following to be determined and approved by the City Engineer:

- (1) Bond or bonds issued by one or more duly authorized corporate sureties. The form of the bond or bonds shall be subject to the approval of the City Attorney;
- (2) Deposit, either with the City or a responsible escrow agent or trust company at the option of the City, of money, negotiable bonds of the kind approved for securing deposits of public moneys, or an unconditional irrevocable letter of credit other instrument of credit from one or more financial institutions subject to regulation by the state or federal government wherein said financial institution pledges funds are on deposit and guaranteed for payment;
- (3) Cash in U.S. currency.

B. The applicant shall provide security for the performance of the work described and delineated in the interim plan in an amount to be determined by the City Engineer, but not less than one hundred percent (100%) of the approved estimated cost of performing said work. The form of the security shall be as set forth in subsection A of this section.

C. The applicant shall provide security for the performance of the work described and delineated in the final plan in an amount to be determined by the City Engineer but not less than one hundred percent (100%) of the approved estimated cost of performing said work. The form of the security shall be as set forth in subsection A of this section.

D. The applicant shall provide a cash deposit in an amount established by resolution of the City Council to insure the repair of damage to public property or cleaning of public streets. In the event of failure by the applicant, after written notification if time permits, to maintain public property or right-of-way in a manner satisfactory to the City Engineer, the City Engineer may order repairs made or cleaning performed and deduct the cost from the deposit. Any unused balance shall be returned to the applicant upon completion of the grading.

§15.01.250 Fees

A. Before accepting a grading permit application and plans for checking, the City Engineer shall collect all applicable plan checking fees as established by resolution of the City Council and as provided in this Chapter.

B. Unless exempted under Section 15.01.260 of this Chapter, a fee for each grading permit shall be paid to the City prior to issuance of a grading permit, in such amount as established from time to time by resolution of the City Council.

C. Failure to pay fees and obtain a permit before commencing work shall be deemed a violation of this Chapter, except when it can be proven to the City Engineer's satisfaction that an emergency existed that made it impractical to first obtain the permit. A violation shall result in an assessment of double permit fees for work done prior to permit issuance. Payment of a double fee shall not relieve any person from complying with the requirements of this Chapter nor from any other penalties prescribed herein.

D. Additional fees approved by resolution of the City Council and contained in this Chapter shall be paid as required.

E.. If after written notification (if time allows) the City Engineer performs emergency work on private property, he shall charge the property owner all direct and indirect costs which are necessary to complete the work to his satisfaction. In addition, the City Engineer may charge a mobilization cost equal to ten percent (10%) of the cost for performing the work. Fees or deposits required for special purposes, e.g., cleanup, dust control, etc., collected but not expended for the purpose for which they are collected, will be refunded.

§15.01.260 Grading permit fee exemption

A. A fee for a grading permit shall not be required in the following instances: grading for the foundation, basement, and other features (e.g., walkways, patios, terracing) of a building or structure for which a building permit has been issued, provided that all grading, drainage, retaining wall, and ground cover work will be started and completed within a single dry season. A soils report and other information relating to such grading, and a performance bond or other acceptable security for the performance of the work, and a cash deposit to insure the repair of damage to public property or cleaning of public streets, may be required in connection with the issuance of the grading permit. The amount and form of such security and cash deposit shall be as set forth in Section 15.01.240.

B. Notwithstanding the provisions of paragraph A above, a grading permit fee will be required where the grading to be performed, other than that solely for the building and its foundation and driveway, is such as to require grading permit approval by the Planning Commission under Section 15.01.110.

§15.01.270 Action on application

A. No grading permit shall be issued by the City Engineer unless the applicant provides sufficient information for the City Engineer to find that the work, as proposed by the applicant, is likely not to endanger any person, property, public resource, or public way or detrimentally affect water quality. Factors to be considered by the City Engineer in making his finding shall include, but shall not be limited to, the soils engineering report, the engineering geology report, possible saturation by rains, earth movements, run-off of

surface waters, and subsurface conditions such as the stratification and faulting of rock, and the nature and type of soil or rock.

B. Applications shall be reviewed by the City Engineer in the order that they are received.

§15.01.280 Permit duration

Permits issued under this Chapter shall be valid for the period during which the proposed excavation or filling activities and soil storage take place or are scheduled to take place per Section 15.01.230. Permittee shall commence permitted activities within sixty (60) days of the scheduled commencement date for grading or the permittee shall resubmit all required application forms, fees, maps, plans, schedules and security to the City Engineer, except where an item to be resubmitted is waived by the City Engineer.

§15.01.290 Appeals

Any person may appeal to the local Grading Permit Appeals Board the issuance, denial, or conditions of a grading permit, the suspension after a hearing by the City Engineer, or the revocation of a grading permit, or the failure to suspend or revoke a grading permit. Any such appeal shall be in writing and shall be filed with the City Engineer within fifteen (15) days after the action complained of. The appeal shall be accompanied by a fee, as set forth by the City Council, and shall clearly state the reason for appeal. Members of the Appeals Board shall not be employees of the City and shall be professional engineers as defined in Business and Professions Code, Section 6701. Upon receipt of such an appeal, the City Engineer shall bring the appeal before the local Grading Permit Appeals Board within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the meeting at which the appeal will be heard. No other notice need be given, except such additional notice as may be required by state or other law. The local Grading Permit Appeals Board shall proceed to hear and determine the appeal at the same meeting or at such later meeting as it shall determine, and in connection therewith may continue the same from time to time. The action of the local Grading Permit Appeals Board shall be final, subject to timely judicial review.

§15.01.300 Revised plans

If the City Engineer finds the soil or other conditions to be different from those stated in the application for a grading permit, he or she may immediately suspend the grading permit, and permittee shall cease all work on the work site, excepting work to make the site safe, until approval is obtained from the City Engineer for revised plans which conform to the existing conditions.

§15.01.310 Cessation of operations

If the operation of any activity regulated by this Chapter is voluntarily ceased for a continuous period of more than ninety (90) days (which period is not stated in the approved work schedule per Section 15.01.230) then the grading permit shall be null and void and the operation of said activity shall not be recommenced until a new grading permit is obtained as provided herein.

§15.01.320 Assignment of permit

A permit issued pursuant to this Chapter may be assigned, provided all of the following conditions are satisfied:

- A. The permittee notifies the City Engineer of the proposed assignment;
- B. The proposed assignee:
 - (1) Submits an application form pursuant to Section 15.01.160; and
 - (2) Agrees in writing to all the conditions and duties imposed by the permit; and
 - (3) Agrees in writing to assume responsibility for all work performed prior to the assignment; and
 - (4) Provides security pursuant to Section 15.01.240; and
 - (5) Agrees to pay all applicable fees.

C. The City Engineer approves the assignment. The City Engineer may disapprove an assignment for cause and shall not unreasonably withhold approval.

§15.01.330 No improvements planned

Where an applicant does not plan to construct permanent improvements on the site, or plans to leave portions of the site graded but unimproved, applicant must meet all the requirements of this Chapter.

15.01.340 Grading permit, paving

No person shall construct pavement surfacing on natural or existing grade for the purpose of a private road, parking lot or travelway without a valid grading permit, unless waived by the City Engineer. Resurfacing or maintenance of existing paved surfaces shall be exempt from this requirement.

§15.01.350 Grading permit, drainageway alteration

No person shall alter an existing watercourse, channel, or revetment by excavating, or placing fill, rock protection or structural improvements without a valid grading permit, unless waived by the City Engineer, or unless the work is performed as interim protection under an emergency situation (Section 15.01.140.F).

§15.01.360 Excavation blasting permit

No person shall possess, store, sell, transport or use explosives and/or blasting agents in violation of any existing laws or ordinances or do any excavation by explosives or blasting without a grading permit and without a separate blasting permit issued by the City Fire Department.

§15.01.370 Truck haul permit

A truck haul permit shall be obtained from the City Engineer for the movement over a City street of any excavated or fill material to or from any property in the City or to or from any property outside the City which has direct access to a City street. This requirement shall not be applicable, however, to any quarrying operations nor to any transportation of materials not exceeding fifty (50) cubic yards from any one site. Before issuing a truck haul permit for moving excavated material over a City street, the City Engineer shall collect a fee as approved by resolution of the City Council.

§15.01.380 Issuance of grading permits

The City Engineer may issue a grading permit upon receipt and approval of the items listed in Section 15.01.150. Permits shall be issued subject to the following conditions:

A. The permittee shall maintain a copy of the permit and all approved plans and reports required under Sections 15.01.150 and 15.01.400.B, on the work site, and the permit, plans and reports shall be available for public inspection during all working hours;

B. The permittee shall, at all times, conduct operations in conformity with approved site map, grading plan, and other required plans and reports.

C. The permittee shall comply with other conditions imposed by the City Engineer as are reasonably necessary to prevent the proposed operations from being conducted in such a manner as to constitute or create a nuisance or a hazard to life, property, or the environment. Such conditions may include but are not limited to:

- (1) The route and time of travel over public streets so as to cause the least interference with general traffic and to cause the least damage to public streets;
- (2) The removal of rock, earth or other material that may be deposited on public streets by reason of said grading operations;

- (3) The payment to City of the cost of repairing damage to public streets caused by trucking operations in connection with said grading operations;
- (4) The installation of suitable fencing, barricades, signage, and lighting surrounding the grading operations.

D. The permittee shall implement temporary erosion control as necessary to protect public and private property, and as required in Section 15.01.180. Temporary erosion control shall be continuous throughout the work.

E. Permittee shall be knowledgeable of the conditions and/ or restrictions of the grading permit as outlined in applicable sections of this Chapter, and as contained on the approved site map, grading plan, and other required plans and reports.

§15.01.390 Time and noise limitations on grading operations

A. The time and noise limitations on all grading operations shall be those set forth for construction activities in Chapter 8.28, Noise Control, of this Code.

B. No grading work shall be performed during hours other than the normal working hours of the City Public Works Department's inspection and maintenance personnel without approval of the City Engineer and without first obtaining a special permit for such work from the City Engineer. Before issuing a special permit for such work, the City Engineer shall collect a fee as approved by resolution of the City Council. Permitted hours of operation may be shortened by the City Engineer's finding of a previously unforeseen effect on the health, safety or welfare of the surrounding community.

§15.01.400 Implementation of permits; permittee's duties

In addition to performing as required under Section 15.01.380:

A. The permittee shall request an inspection of the site by the City Engineer at each of the stages of the grading operation listed below. The City Engineer shall approve the work inspected or notify, in writing, the permittee or owner wherein it fails to comply with the approved grading plans or any other applicable requirement. Any portion of the work that does not comply with the grading plans or other applicable requirement shall be corrected. The stages of work at which inspections shall be requested are:

- (1) Initial: when the permittee is ready to begin grading work;
- (2) Rough grading: when all rough grading has been completed;
- (3) Interim erosion control: the installation of all interim erosion control devices and the completion of planting revegetation requirements;

- (4) Final: readiness of the site for final inspection, including, but not limited to, finished grading, installation of drainage devices and final erosion control measures.

B. Permittee shall submit status reports to the City Engineer with revised work schedules required by Section 15.01.230, or other reports as required by City Engineer, for the City Engineer's approval if:

- (1) There are delays in obtaining materials, machinery, services, or manpower necessary to the implementation of the grading, interim, or final plans as scheduled;
- (2) There are any delays in excavation, land-disturbing, filling activities, or soil storage;
- (3) The work is not being done in conformance with any approved grading plans;
- (4) There are any delays in the implementation of the interim or final plans.

C. Permittee shall submit recommendations for corrective measures, if necessary and appropriate, with the reports made under Subsection B of this Section, unless the City Engineer waives the requirement.

§15.01.410 Implementation of permits – requirements of City Engineer

A. The permittee shall submit all reports as may be required in this Section and in Sections 15.01.380 and 15.01.400 to the City Engineer for review. The City Engineer may require permittee to modify the site map and grading plan, interim or final plans, and maintenance methods and schedules. The City Engineer shall notify the permittee in writing of the requirement to modify and may specify a specific period of time within which permittee must comply. All modifications are subject to the City Engineer's approval.

B. The City Engineer may inspect the site:

- (1) Upon receipt of any report by permittee under provisions of Section 15.01.400.B;
- (2) To verify completion of modifications required under Subsection A of this Section;
- (3) During and following any rainfall;
- (4) At any other time, at the City Engineer's discretion.

C. Upon completion of the rough grading work and at the final completion of the work, the City Engineer may require the following reports and drawings and supplements thereto:

- (1) An as-graded grading plan prepared by the civil engineer who prepared the approved grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface and subsurface drainage facilities. The civil engineer shall provide a statement that the work was done in general conformance with the final approved grading plan;
- (2) A soil grading report prepared by the soils engineer including locations and elevations of field density tests, summaries of field and laboratory tests, and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. The soils engineer shall provide a statement as to compliance of the work with his/her recommendations and as to the adequacy of the site for the intended use;
- (3) An engineering geology report prepared by the geologist containing a final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The geologist shall provide a statement as to compliance of the work with his/her recommendations and as to the adequacy of the site for the intended use as affected by geologic factors.

D. No person shall in any way hinder or prevent the City Engineer or any of his/her authorized representatives from entering and inspecting any property on which grading has been or is being done.

§15.01.420 Grading inspection

A. All grading operations for which a permit is required shall be subject to inspection by the City Engineer. When required by the City Engineer, special inspection of grading operations and special testing shall be performed according to the provisions of Subsection B of this Section.

B. In addition to complying with all requirements of the California Building Code, as amended by this Chapter, "regular grading" and "engineered grading" applicants/permittees shall be subject to and comply with the following:

- (1) Engineered and Regular Grading Designation. Grading in excess of one thousand (1000) cubic yards and/or ten (10) feet vertical depth of cut and/or fill shall be performed according to approved grading plan prepared by a civil engineer, and shall be designated as "engineered grading." Grading involving less than one thousand (1000) cubic yards and/or less than ten (10) feet vertical depth of cut and/or fill shall be designated "regular grading" unless the applicant/permittee, with the City Engineer's approval, or the City Engineer, independently, chooses to have the grading performed as "engineered grading."

- (2) Engineered Grading Requirements. For engineered grading, it shall be the responsibility of the civil engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. He/she shall also be responsible for the professional inspection and approval of the grading within his area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade, and drainage of the development area. The civil engineer shall act as the coordinating agent if the need arises for liaison between the other professionals, the contractor and the City Engineer. The civil engineer shall also be responsible for the preparation of revised plans and the submission of as-graded grading plans and compliance statements upon completion of the work.
- (3) Soils Engineering and Engineering Geology Requirements. Soils engineering and engineering geology reports shall be required at the discretion of the City Engineer. During grading, all necessary reports, compaction data, soils engineering and engineering geology recommendations shall be submitted to the owner, the geologist, the civil engineer, and the City Engineer by the soils engineer and the engineering geologist. Areas of responsibility shall be as follows:
- (a) The soils engineer's area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes, and the design of buttress fills, where required, incorporating data supplied by the engineering geologist.
 - (b) The engineering geologist's area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters and the need for subdrains or other groundwater drainage devices. He/she shall report the findings to the owner, the soils engineer, the City Engineer and the civil engineer.
 - (c) The City Engineer shall inspect the project as required under Section 15.01.410 and at any more frequent interval necessary to determine that the professional consultants are exercising adequate control.
- (4) Regular Grading Requirements. The City Engineer may require the permittee to provide inspection and testing by a professional testing company acceptable to the City Engineer. The testing agency's responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills. When the City Engineer has reasonable cause to believe that geologic factors may be involved, the grading operation will be required to conform to "engineered grading" requirements.

- (5) Notification of Noncompliance. If, in the course of fulfilling their responsibility under this Section, the civil engineer, the soils engineer, the engineering geologist, or the testing agency finds that the work is not being done in conformance with this Section or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the City Engineer (see Section 15.01.400). Recommendations for corrective action measures, if necessary, shall be submitted.
- (6) Transfer of Responsibility for Approval. If the civil engineer, the soils engineer, the engineering geologist, or the testing agency of record is changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.

§15.01.430 Completion of work

A. Final Reports. Upon the completion of the rough grading work and at the final completion of the work, the City Engineer may require the following reports and drawings and supplements thereto:

- (1) An as-graded grading plan prepared by the civil engineer who prepared the approved grading plan, including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns and locations and elevations of all surface drainage facilities. The civil engineer shall state that to the best of his/her knowledge the work was done according to the final approved grading plan;
- (2) A soil grading report prepared by the soils engineer, including locations and elevations of field density tests, summaries of field and laboratory tests, and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soils engineering investigation report. The civil engineer shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors;
- (3) A geologic grading report prepared by the engineering geologist, including a final description of the geology of the site and any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The engineering geologist shall render a finding as to the adequacy of the site for the intended use as affected by geologic factors.

B. Notification of Completion. The permittee or his/her agent shall notify the City Engineer when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of drainage facilities and their protective devices and all erosion control measures have been completed according to the final approved grading plan and the required reports have been submitted.

§15.01.440 Removal of ground cover

A. All debris from clearing and grubbing shall be removed from the site within three (3) months from the completion of that activity.

B. During the dry season, the natural vegetative ground cover of any watershed shall not be destroyed or removed more than thirty (30) days prior to grading. During the wet season, such ground cover shall not be destroyed or removed more than five (5) days prior to such grading. The City Engineer may grant an extension of time when justified by the circumstances.

§15.01.450 Wet season grading

A. Commencement or continuation of any grading during the wet season is prohibited unless the City Engineer grants permission as provided in this Section.

B. The City Engineer may, at his or her discretion, grant permission to commence or continue grading during the wet season, on the basis of the information submitted by the applicant or permittee, weather forecasts, experience or any other factors which he or she may consider pertinent, so long as such grading will not cause a hazardous condition, erosion, or sedimentation to occur or continue.

C. For continuance of wet season grading activities other than installation, maintenance or repair of measures in the interim or final erosion control plan, applicant/permittee shall submit evidence to the City Engineer, as often as the City Engineer requires, demonstrating that erosion and sedimentation are being effectively controlled.

D. Applicant/permittee's failure to submit the required information to obtain permission for wet season grading activity shall result in suspension or revocation of the grading permit, action against the security, filing a lien on the property to recover City's costs, and/or prosecution as provided in Sections 15.01.550 through 15.01.580 of this Chapter.

§15.01.460 Cuts

A. General. Unless otherwise recommended in the approved soil engineering and/or engineering geology report, and specifically waived by the City Engineer, cuts shall conform to the provisions of this Section and in accordance with Figures 1 and Figure 2 of this Chapter.

B. Cut slopes. Cut slopes shall be no steeper than two to one (2:1 - two horizontal to one vertical) unless otherwise justified in the soil engineering or engineering geology report. Justification shall consist of a geotechnical slope stability analysis acceptable to the City Engineer, with factors of safety in proportion to the affected

structures and type of loading (e.g. earthquake). The factors of safety to be analyzed shall be those determined at the discretion of the City Engineer.

C. Slope adjustments. The City Engineer may require that the excavation be made with cut face flatter in slope than two (2) horizontal and one (1) vertical if he/she finds the material in which the excavation is to be made is unusually subject to erosion, or if other conditions make such flatter slope necessary for stability and safety.

D. Drainage and Terracing. Drainage and terracing shall be provided as required by Section 15.01.490.

§15.01.470 Fills

A. General. Unless otherwise recommended in the approved soil engineering report and/or engineering geology report, and specifically waived by the City Engineer, fills shall conform to the provisions of this Section and Figure 1 and Figure 2 of this Chapter. In the absence of an approved soils engineering report, these provisions may be waived for minor fills not intended to support structures.

B. Fill Location. Fill slopes shall not be constructed on natural slopes steeper than two to one (2:1), or where the fill slope terminates above a planned or existing cut slope, within a horizontal distance equal to one-third (1/3) of the vertical height of the fill, unless specifically addressed in the soils engineering report or the engineering geology report and approved by the City Engineer.

C. Preparation of Ground. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, top-soil and other unsuitable materials scarifying to provide a bond with the new fill and, where slopes are steeper than five to one (5:1), and the height is greater than five (5) feet, by benching into sound bedrock or other competent material as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than five to one (5:1) shall be at least ten (10) feet wide. The area beyond the toe of fill shall be sloped for sheet overflow, or a paved drain shall be provided. Where fill is to be placed over a cut, the bench under the toe of fill shall be at least ten (10) feet wide, but the cut must be made before placing fill and shall be approved by the soils engineer and engineering geologist as suitable foundation for fill. Unsuitable soil is soil that, in the opinion of the building official or the civil engineer or the soils engineer or the geologist, is not competent to support other soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.

D. Fill Material. Detrimental amounts of organic material shall not be permitted in fills. Except as permitted by the City Engineer, no rock or similar irreducible material with a maximum dimension greater than eight (8) inches shall be buried or placed in fills.

Exception: the City Engineer may permit placement of larger rock when the soils engineer properly devises a method of placement, continuously inspects its placement, and approves the fill stability. The following conditions shall also apply:

- (1) Prior to issuance of the grading permit, potential rock disposal areas shall be delineated on the grading plan.
- (2) Rock sizes greater than eight (8) inches in maximum dimension shall be ten (10) feet or more below grade, measured vertically.
- (3) Rocks shall be placed so as to assure filling of all voids with fines.

E. Compaction. All fills shall be compacted to a minimum of ninety (90) percent of maximum density as determined by Appendix J of the 2010 California Building Standards Code or equivalent, as approved by the City Engineer. Field density shall be determined according to Appendix J of the 2010 California Building Standards Code or equivalent, as approved by the City Engineer.

In addition to the inspections of fills, the City Engineer may require a statement from an approved soils engineer based on tests of the fill at selected stages. If favorable conditions exist, the City Engineer may, by prior approval, waive requirements for inspection of or soils tests by an approved soils engineer. The requirements of the City Engineer for the compaction of fills may include but shall not be limited to the following:

- (1) Preparation of the natural ground surface by removing top soil and vegetation and by compacting the fill upon a series of terraces;
- (2) Control of moisture content of the material used for the fill;
- (3) Limitation of the use of various kinds of materials;
- (4) Maximum thickness of the layers of the fill to be compacted;
- (5) Method of compaction;
- (6) Density requirements of the completed fill depending upon the location and use of the fill;
- (7) Compaction tests required during the process of filling.

F. Slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than two (2) horizontal to one (1) vertical (2:1). The City Engineer may require that the fill be made with a slope face flatter in slope than two to one (2:1) if he or she finds the material of which the fill is to be made is unusually subject to erosion, or if other conditions make such flatter slope necessary for stability and safety.

G. Drainage and Terracing. Drainage and terracing shall be provided and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section 15.01.490.

§15.01.480 Setbacks

A. General. The setbacks and other restrictions specified by this Section are minimum and may be increased by the City Engineer or by the recommendations of a civil engineer, soils engineer, or engineering geologist, if necessary for safety and stability or to prevent damage of adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the City Engineer.

B. Setbacks from Property Lines. The tops of cuts and toes of fill slopes shall be set back from the outer boundaries of the permit area, including slope-right areas and easements, in accordance with Figure 2 of this Chapter. The tops and toes of cut and fill slopes shall be set back from property lines and structures as far as necessary to provide for safety of adjacent property, safety of pedestrians and vehicular traffic, required slope rounding, adequate foundation support, required swales, berms, and drainage facilities, and applicable zoning requirements. Except for pier-type foundations or other special foundation design, setbacks shall not be less than as shown on Figure 2 of this Chapter.

§15.01.490 Drainage and terracing

A. General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this Section.

B. Terrace. Terraces at least six (6) feet in width shall be established at not more than thirty (30) feet vertical intervals on all cut or fill slopes to control surface drainage and debris, except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than sixty (60) feet and up to one hundred twenty (120) feet in vertical height, one terrace at approximately mid-height shall be twelve (12) feet in width. Terrace width and spacing for cut and fill slopes greater than one hundred twenty (120) feet in height shall be designed by the civil engineer who prepares the approved grading plan and approved by the City Engineer. Suitable access shall be provided to permit proper cleaning and maintenance. Swales and ditches shall comply with the following requirements:

- (1) Swales or ditches on terraces shall have a minimum gradient along and towards the ditch of five (5) percent unless approved by the City Engineer and must be paved with reinforced concrete not less than three (3) inches in thickness or an approved equal paving. They shall have a minimum depth at the deepest point of one (1) foot and a minimum, paved width of three (3) feet or as required by the City Engineer.
- (2) A single run of swale or ditch shall not exceed a length of one hundred fifty (150) feet or collect runoff from a tributary area exceeding thirteen thousand five hundred (13,500) square feet (projected) without discharging into a down drain, unless approved by the City Engineer.

C. Subsurface Drainage. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability.

D. Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainage way approved by the City Engineer and/or other appropriate jurisdiction as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of nonerosive down drains or other devices. Building pads shall have a drainage gradient of two (2) percent toward approved drainage facilities, unless waived by the City Engineer.

Exception: the gradient from the building pad may be one (1) percent if all the following conditions exist throughout the permit area:

- (1) No proposed fills are greater than ten (10) feet in maximum depth;
- (2) No proposed finish cut or fill slope faces have a vertical height in excess of ten (10) feet;
- (3) No existing slope faces, which have a slope face steeper than ten (10) horizontally to one (1) vertically, have a vertical height in excess of ten (10) feet;
- (4) A two (2) percent gradient is provided for the first five (5) feet adjacent to the structure.

E. Interceptor Drains. Adequate provision shall be made to prevent any surface waters from damaging the cut face of an excavation or the sloping surface of a fill. At the discretion of the City Engineer, paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than forty (40) feet measured horizontally. Interceptor drains shall be paved with a minimum of three (3) inches of concrete or gunite and reinforced. They shall have a minimum depth of twelve (12) inches and minimum paved width of thirty (30) inches measured horizontally across the drain or as required by the City Engineer. The slope of drain shall be subject to the City Engineer's approval.

§15.01.500 Import and export of earth material

On project sites where earth materials are moved on public roadways from or to the site, the following requirements shall apply:

A. Dust control shall be implemented as specified in Section 15.01.510 below. The permittee shall be responsible for maintaining public rights-of-way used for hauling purposes in a condition free of dust, earth, or debris attributable to the grading operation.

B. Loading and hauling of earth from or to the site must be accomplished within the limitations established in Section 15.01.390 of this Chapter.

C. Access roads to the premises shall be only at points designated on the approved grading plan. Access roads shall include stabilized construction entrances and/or other BMPs as required by the City Engineer.

D. The last fifty (50) feet of the access road, as it approaches the intersection with the public roadway, shall have a grade not to exceed three (3) percent. There shall be a clear, unobstructed sight distance of three hundred (300) feet to the intersection from both the public roadway and the access road. If the three hundred (300) feet sight distance cannot be obtained, flagmen and/or signs shall be posted.

E. A stop sign conforming to the requirements of the California Vehicle Code shall be posted at the entrance of the access road to the public roadway.

F. An advance warning sign, conforming to the requirements of the current California Manual for Uniform Traffic Control Devices, shall be posted on both sides of the access intersection. The advance warning sign shall be covered or removed when the access intersection is not in use.

§15.01.510 Dust control

The movement of earth materials either within, to, or from a site shall require the implementation of dust control measures in accordance with the BAAQMD CEQA Guidelines and any additional measures that the City Engineer deems to be necessary and appropriate. As determined by the City Engineer, a water truck shall be continuously present on-site to assure maximum control.

§15.01.520 Protection of adjoining property

In accordance with California Civil Code Section 832, each adjacent owner is entitled to the lateral and subjacent support that his/her land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction or improvement as provided by law.

§15.01.530 Removal of hazards

Whenever the City Engineer determines that any existing excavation, embankment, or fill on private property has become a hazard to any person, endangers property, or adversely affects the safety, use, or stability of a public way or drainage channel, the owner of the property upon which the excavation or fill is located, or other person or agent in control of such property, upon receipt of notice from the City Engineer, shall immediately repair or eliminate such excavation or embankment so as to remove the hazard and to conform with the requirements of this Chapter. Notice from the City Engineer to remove a hazard may be verbal if the hazard presents an immediate threat of injury or damage, and as soon as reasonably possible thereafter, the verbal notice shall be followed by a written notice from the City Engineer.

§15.01.540 Post-grading procedures

Upon completion of final grading and permanent improvements, where such permanent improvements are planned at the time grading is performed, permittee shall notify the City Engineer that the grading is completed. The City Engineer shall review the grading performed, and the final reports required in Section 15.01.430, and, if found in substantial conformance to the permit conditions, the City Engineer may release the unexpended and unencumbered amount of the cash deposit and initiate the release of the security bonds posted by the permittee in accordance with Section 15.01.590.

§15.01.550 Revocation or suspension of permits

A. The City Engineer may suspend any grading permit for the violation of any condition of the permit, the violation of any provision hereof or any other applicable law or ordinance, or the existence of any condition or the doing of any act constituting or creating a nuisance, threatening water quality, or endangering life, property, or the environment. Upon written notification of suspension of a permit, the permittee shall cease all work on the work site, except work necessary to remedy the cause of the suspension.

B. Following the suspension, the permittee shall be granted a hearing by the City Engineer within five (5) days of the written notice of suspension. The notice shall state, generally, the grounds of complaint and the time and place where such hearing will be held.

C. At the conclusion of said hearing, and within thirty (30) days thereafter, the City Engineer shall make his/her findings and notify, in writing, the permittee of the action taken.

D. If the permittee, after written notice of suspension, fails or refuses to cease work, as required under Subsection A of this Section, the City Engineer may revoke the permit.

E. The City Engineer may reinstate a suspended permit upon the permittee's correction of the cause of the suspension.

F. The City Engineer shall not reinstate a revoked permit.

§15.01.560 Violation - penalties

A. The violation of any of the provisions of this Chapter shall constitute a misdemeanor, punishable by the fines, penalties and enforcement provisions set forth in Chapters 1.14, 1.16 and 1.18 of this Code.

B. Where a violation of any of the provisions of this Chapter is determined by the City to have been willful, reckless, or grossly negligent, then in addition to the fines, penalties and enforcement provisions referenced in Paragraph A above or set forth elsewhere in this Code,

the City may impose a supplemental fine not to exceed the amounts listed below for each violation:

Grading Quantity	Supplemental Fine
6-50 cubic yards	\$1,500.00
51-100 cubic yards	\$2,500.00
101-1,000 cubic yards	\$5,000.00
1,001-10,000 cubic yards	\$10,000.00
10,001-100,000 cubic yards	\$25,000.00
100,001-200,000 cubic yards	\$50,000.00
Greater than 200,000 cubic yards	\$250,000.00

§15.01.570 Action against the security

The City Engineer may retain and/or execute security required by Section 15.01.240 if one of the conditions listed in Subsections A through D below exists. The City Engineer shall use funds from the appropriate security to finance remedial work undertaken by the City or private contractor under contract to the City, and to reimburse the City for all direct costs incurred in the process of the remedial work, including but not limited to the following conditions:

A. The permittee ceases land-disturbing activities and/or filling and abandons the work site prior to the completion of the work shown on the site map, grading plan and revegetation plan (if applicable) ;

B. The permittee fails to conform to the conditions of the grading permit as approved or as modified under Section 15.01.380 and has had his/her permit revoked under Section 15.01.550;

C. The techniques utilized under the interim or final erosion control plan fail within one (1) year of installation, or before a final erosion control plan is implemented for the site or portions of the site, whichever is later;

D. The City Engineer determines that action by the City is necessary to prevent excessive erosion from occurring on the site.

§15.01.580 Public nuisance abatement

A. The City Council finds and declares that any work site on which grading has been started and has been abandoned or is not completed according to the site plan, grading plan, and grading permit, or on which the interim or final erosion control facilities have failed, or where on-site grading and erosion control facilities either are not working properly or are inadequate or incomplete, creates a danger to public health, safety and welfare, and constitutes a public nuisance. All duties of the City Manager under this Chapter may be delegated to other officers, agents or employees of the City.

B. The public nuisance abatement procedures provided in this Section are, at the City's option, alternative or additional to the procedures provided in Sections 15.01.570 and 15.01.530 of this Chapter, or to any applicable procedures provided by this Code, including Chapters 1.14, 1.16, 1.18, 8.38, or any other City ordinance, or provided by state law.

C. The City Manager is authorized to abate each and every such nuisance or cause the same to be abated in the manner provided by the provisions of this Section.

D. Before abating any condition which is declared to be a public nuisance, the City Manager shall post upon or in front of the property on which such nuisance exists, a notice which shall be substantially in the following form:

NOTICE TO ABATE NUISANCE OR REMOVE HAZARD

Notice is hereby given that the following activity/condition on the property located at _____, in the City of Brisbane, County of San Mateo, State of California, identified as Assessors Parcel Number _____ constitutes a violation of the City of Brisbane Grading Ordinance or a violation of a permit or approval issued pursuant to such Ordinance:

Such condition creates a danger to the public health, safety, and welfare and is a public nuisance which must be abated by immediately by taking the following corrective action:

If said nuisance is not abated or said hazard is not removed within _____ days from and after the date of posting of this notice, or if good cause is not shown to the undersigned within said time why such corrective action should not be taken, the City will abate such nuisance by removing or causing to be removed said hazard and completing or causing to be completed the corrective action described above, and in such event, the cost and expense of such removal and abatement will be specifically assessed upon or against the parcel of land from which the hazard is removed and on which the corrective action is completed, and such assessment will constitute a lien upon the property until paid.

All interested persons having any objection to the above shall present such objections to the undersigned City Manager at City Hall, 50 Park Place, Brisbane, California 94005, within _____ days from and after the posting, herein specified, of this notice.

Posted/Mailed this _____ day of _____, 20____

CITY MANAGER OF THE
CITY OF BRISBANE

By: _____

E. Before abating any condition which is declared to be a public nuisance in this Section, the City Manager, in addition to posting of notice or notices as provided by Subsection (D) of this Section, may mail, or cause to be mailed, to the person or persons who are designated on the last equalized assessment roll of the county of San Mateo, as owner or owners of the parcel of land on which such nuisance exists, at their address or addresses as shown on the last equalized assessment roll, a written notice or notices which shall be substantially in the same form shown in Subsection (D) above.

F. The owner or owners of any private parcel of land within or upon which a public nuisance, as described in this Section, exists, have a duty to abate such nuisance at his, her or their own cost and expense by removing any hazard and completing any planned permitted grading within the time prescribed in the notice which is posted upon such property, or if notice is given by mail within the time prescribed in the mailed notice. If such owner or owners fail to abate such nuisance within said time, and if, in addition, they fail to show cause to the satisfaction of the City Manager why said nuisance should not be abated, then in that event the City may abate said nuisance or cause same to be abated.

G. In order to abate said nuisance, the City may cause the removal of said nuisance and complete the planned permitted work, or perform such other work as may be necessary or appropriate to abate the nuisance or may cause a licensed contractor to abate the nuisance in such manner for reasonable rates not in excess of prevailing rates for similar work within the City.

H. In the event the City Manager finds that any public nuisance, above described in this Section, within or upon any parcel of land is so serious and presents such an immediate menace or danger to the public health, safety and welfare that such nuisance should be immediately abated without first posting or mailing notices, as above provided, and without first giving the owner or owners of said parcel further time to abate the same, then in that event the City Manager may immediately abate said nuisance or cause the same to be abated in the manner provided in subsection (G) of this Section without first posting or mailing any notices and without giving the owner or owners of the parcel further time to abate the same. However, the City Manager, if he or she abates such nuisance, shall prepare and file in his or her office a written report describing the location, nature and extent of the public nuisance and setting forth the reasons why he or she had to abate it immediately, as aforesaid, and he or she shall cause a copy of said report to be mailed within ten (10) days from and after completion of such abatement, to the owner or owners of the parcel within or upon which nuisance existed, as such owner or owners are shown on the last equalized assessment roll of the county of San Mateo, at their addresses as shown on said roll.

I. The City Manager shall keep a record of the cost and expense incurred by him or her in abating or causing to be abated, pursuant to this Section, each public nuisance within or upon each separate parcel of land. To said costs and expenses, the City Manager shall add an amount for overhead and administration and incidental expenses and shall submit them to the City Council for confirmation of an itemized written report showing all costs and expenses incurred by the City in abating each public nuisance.

J. A copy of City Manager's report to the City Council shall be posted for at least ten (10) days prior to its submission to the City Council at the usual place where City notices are posted, together with a notice of the time and place when and where it will be submitted to the City Council for a hearing. The notice shall state a time and place when and where property owners may appear and object to any matter contained in the report.

K. At the time fixed for receiving and considering the report, the City Council shall hear it with any objections of the property owners liable to be assessed for the abatement. It may modify the report if it is deemed necessary. If the City Council finds the report to be acceptable, it shall confirm the report by resolution.

L. After confirmation of the report, a certified copy of the same shall be filed with the County of San Mateo. The description of the parcels reported shall be those used for the same parcels on the county's assessor's map books for the current year.

M. The cost of abatement within or upon each parcel of land, as confirmed, constitutes a special assessment against that parcel, and upon such confirmation it is a lien on the parcel. Laws relating to the levy, collection and enforcement of county taxes apply to such special assessment taxes. The appropriate county official shall enter each assessment on the county tax roll opposite the parcel of land. The amount of the assessment shall be collected at the time and in the manner of ordinary municipal taxes. If delinquent, the amount is subject to the same penalties and procedures of foreclosure and sale provided for ordinary municipal taxes.

N. As an alternate method, the county tax collector, in his or her discretion, may collect the assessments without reference to the general taxes by issuing separate bills and receipts for the assessments.

O. The City Finance Director may receive the amount due on the abatement cost and issue receipts at any time after confirmation of the report and until July 1st of the calendar year in which the report is confirmed. If the cost is paid in full, no report shall be filed with the County of San Mateo to levy a special assessment for such cost.

P. The City Council may order refunded all or part of a special assessment paid pursuant to this Section if it finds that all or part of the special assessment has been erroneously levied. A special assessment or part shall not be refunded unless a claim is filed on or before March 1st next following the date the tax became due and payable. The claim shall be verified by the person who paid the tax, or his or her duly authorized representative.

§15.01.590 Release of security

Security deposited with the City for faithful performance of the grading, revegetation (if applicable), and erosion control work, and to finance necessary remedial work shall be released according to the following schedule:

A. Securities held against the successful completion of the work shown on the site map, grading plan and the interim plan, shall be released to the permittee at the

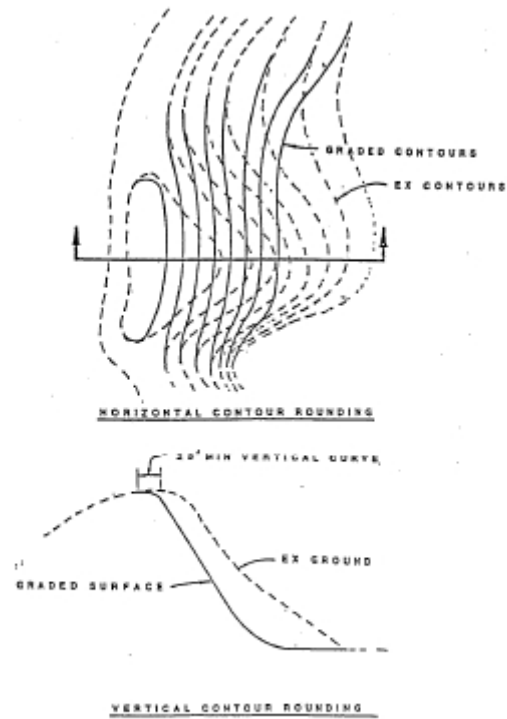
termination of the permit, or the satisfactory completion of the grading operations, provided no action against such security is filed prior to that date;

B. Securities held against the successful completion of the work shown on the final plan shall be released to the permittee either one (1) year after termination of the permit or when the final plan is approved as completed, or when the City Planning Department approves a final revegetation monitoring report, whichever is later, provided no action against such security has been filed prior to that date.

§15.01.600 Cumulative enforcement procedures

The procedures for enforcement of a permit, as set forth in this Chapter, are cumulative and not exclusive.

FIGURE 1



NOTE: No rounding at terraces.

FIGURE 2

Table A

Min. Setback From Adjacent Slope					
H (hgt) Feet	a	b	c	d	e
0 < 5	3'	7'	3'	5'	1'
6-14	5'	7'	H/2	H/2	H/5
14-30	5'	H/2 10' Max	H/2	H/2 10' Max	H/5
+30	5'	10'	15'	10'	6'

Table B

H (hgt) Feet	Max. Hw.	Min. Setback
0-5	3'	3' Min.
6-12	H/2	H/2
12-30	6'	H/2
+30	6'	15'

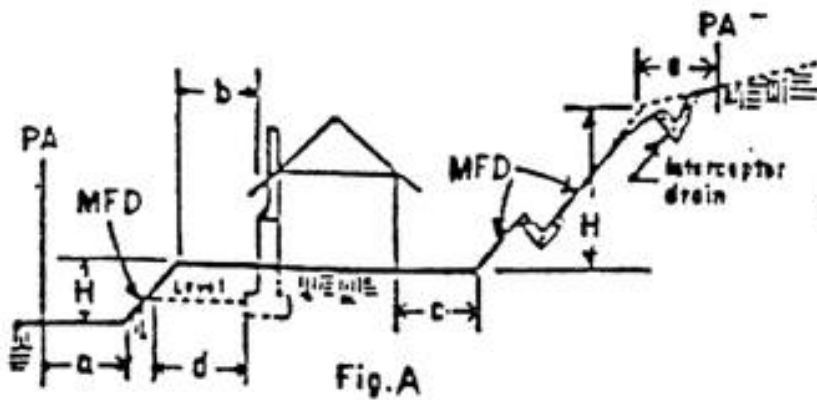


Fig. A

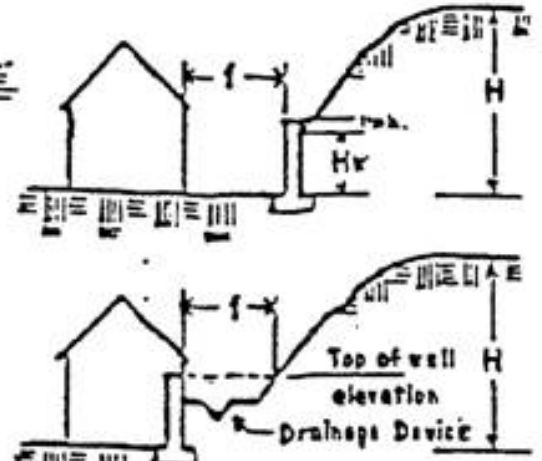


Fig. B

NOTES:

PA means permit area boundary and/or property line; 1. MFD means manufactured surface.

Setbacks shall also comply with applicable zoning 2. regulations.

Table A applies to manufactured slopes and 2:1 or 3. steeper natural slopes. Setbacks from natural slopes flatter than 2:1 shall meet the approval of the City Engineer.

"b" may be reduced to 5' minimum if an approved 4. drainage device is used; roof gutters and downspouts may be required.

"b" may be reduced to less than 5' if no drainage is 5. carried on this side and if roof gutters are included.

If the slope between "a" and "b" levels is replaced 6. by a retaining wall, "a" may be reduced to zero and "b" remains as shown in Table A. The height of the retaining wall shall be controlled by zoning regulations.

"b" is measured from the face of the structure to the 7. top of the slope.

"d" is measured from the lower outside edge of the 8. footing along a horizontal line to the face of the slope. Under special circumstances "d" may be reduced or recommended in the approved soil report and approved by the City Engineer.

The use of retaining walls to reduce setbacks (Fig. 9. B) must be approved by the City Engineer.

"f" may be reduced if the slope is composed of sound 10. rock that is not likely to produce detritus and is recommended by the soil engineer or engineering geologist and approved by the City Engineer.

"a" and "e" shall be 2' when PA coincides with 11. Arterial or local street right-of-way and when improved sidewalk is adjacent to right-of-way.

"e" shall be increased as necessary for interceptor 12. drains.

SECTION 2 Section 17.32.220 in Chapter 17.32 of the Municipal Code is amended to read as follows:

§17.32.220 Grading permit; when review by Planning Commission is required.

Grading permits to be issued by the Director of Public Works/City Engineer under Chapter 15.01 of this Code shall be reviewed by the Planning Commission, at a noticed public hearing, as provided in Section 15.01.110.

SECTION 3. This Ordinance shall be in full force and effect 30 days after its adoption.

Coleen Mackin, Mayor

Attest:

Ingrid Padilla, City Clerk

I hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the City Council of the City of Brisbane in a regular meeting on _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN

Ingrid Padilla, City Clerk

Approved as to form:

Thomas R. McMorrow, City Attorney

File Attachments for Item:

E. Adopt a Resolution Declaring the Continued Need to Conduct City Council, Commission and Committee Meetings Remotely Due to Health and Safety Concerns for the Public



CITY COUNCIL AGENDA REPORT

Meeting Date: June 2, 2022

From: Clay Holstine, City Manager

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

COMMUNITY GOAL RESULTS

Safe Community

Ensuring Public Meetings Remain Open to the Public

RECOMMENDATION

Staff recommends that the City Council adopt a resolution declaring the need to continue conducting the meetings of the City Council, Commissions, and Committees remotely due to health and safety concerns.

BACKGROUND

In 2020 and 2021, the Governor signed various Executive Orders that allowed meetings of public agencies to be conducted remotely due to the COVID-19 pandemic and the need to protect the public and governmental officials. In addition, County Health Officers issued Health Orders requiring masks indoors in public places, regardless of vaccination status and that social distancing be observed. As a result, the City has been conducting its public meetings via zoom, thereby ensuring the right of the public to participate in public meetings but keeping the public, City Council, Committees, and Commissions, and City staff safe. There have been no cancelled meetings due to technical or related difficulties arising out of conducting meetings remotely.

Notwithstanding the availability of a vaccine and boosters, and the reduction of COVID related cases in the Bay Area and the State, COVID-19 variants (Delta and Omicron) have continued to spread and infect individuals. To address the need to continue to allow public agencies to conduct meetings remotely, in September 2021, AB 361 was enacted. 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

In September, October and November 2021, and in January, February, March, April, and May 2022, the City Council found that the City met the requirements of AB 361, namely, the declared state of emergency proclaimed by the state (as well as one by the City) remained in place; state and local health officials continued to recommend that residents observe social distancing and take other protective measures, including requiring masks to be worn on public transportation and recommending masks be worn in confined spaces open to the public; and the City determined that there was a need to hold public meetings remotely due to imminent risks to the health and safety of attendees. The Council therefore adopted Resolutions directing that the City continue to conduct public meetings normally scheduled for City Hall via Zoom to protect the health and safety of the public.

The Brown Act as amended by AB 361 requires that every 30 days the City Council review its decision not to hold in-person public meetings at City Hall and to specifically determine whether holding remote and/or hybrid public meetings continues to meet the requirements of the Brown Act as amended.

City Council last made the necessary findings on May 5, 2022. Hence, this item is being placed on the Council's June 2, 2022 agenda for consideration.

DISCUSSION

The state of emergency issued by the Governor remains in place. San Mateo County's Health Officials have provided guidance to prevent the spread of COVID and keep people safe and have incorporated the Center for Disease Control's recommendations in that regard, e.g., social distancing is recommended for indoor public meetings where unvaccinated individuals may be present, especially for those who are at a higher risk of getting very sick from COVID. In addition, persons with health conditions may want to attend City Council meetings but would put themselves at risk of getting very sick if they had to attend in person. Therefore, the requirements to allow public meetings to be conducted remotely continue: there is a declared state of emergency; health officials have imposed measures to prevent the spread of the virus and to promote social distancing; and there continues to be a need to hold public meetings remotely due to imminent risks to the health and safety if Council meetings were not conducted remotely.

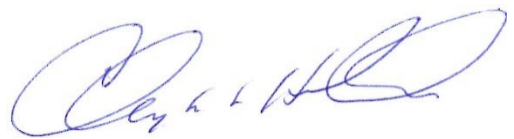
ACTION

Staff recommends that the City Council adopt the attached Resolution making the findings required under AB 361, to require the public meetings of the City Council, Commissions and Committees normally scheduled for City Hall through June 30, 2022 be held remotely or in a hybrid fashion to protect the health and safety of the public.

FISCAL IMPACT

There is no fiscal impact.

Attachment: 1. Resolution 2022-XX



Clay Holstine, City Manager

RESOLUTION NO. 2022-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE DECLARING THE NEED FOR THE CITY COUNCIL, COMMISSIONS AND COMMITTEES 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 and Omicron variant has emerged, causing a spike in COVID-19 cases throughout the state; and

WHEREAS, in 2021, in response to the Delta and Omicron 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, cases involving COVID 19, including the Delta and Omicron variant continue to exist, the City Council is 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 adopted Resolutions in 2021 and in

January, February, March, April, and May 2022 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; 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, San Mateo County and the City 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 many public spaces wear masks and socially distance and recommending that individuals in enclosed public spaces wear masks, 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 the City Council, City Commissions and City Committees must meet remotely due to imminent risks to the health and safety of attendees if the Council, Commissions or Committees were to meet in City facilities.
2. Based on the foregoing, the City Council declares that to protect the safety and health of the public, City Council, Commissions and Committees, 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.

Coleen Mackin, Mayor

PASSED, APPROVED AND ADOPTED by the Brisbane City Council at a regular meeting on June, 2022.

I hereby certify that the foregoing resolution was adopted by the City Council at a regular meeting held on June 2, 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas McMorrow, City Attorney



California

LEGISLATIVE INFORMATION

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:

F. Approve Award of 18 Solano Retaining Wall Construction Contract

(It is being recommended for Council to do the following: 1.Reject the bid received from Central Pacific Engineering LLC as non-responsive to material issues; 2. Waive the minor irregularities in the bid received from Michael Glynn Construction Inc.;3. Award the contract for 18 Solano Street Retaining Wall Project (Job No. 922B) to Michael Glynn Construction Inc.in the amount of \$217,250; 4. Authorize a supplemental appropriation of \$238,975 from the General Fund to Fund 400 for the purpose of constructing this wall.)



CITY COUNCIL AGENDA REPORT

Meeting Date: June 2, 2022
From: Director of Public Works/City Engineer
Subject: Award 18 Solano Retaining Wall Construction Contract

Community Goal/Result: Safe Community

Recommendation

1. Reject the bid received from Central Pacific Engineering LLC as non-responsive to material issues.
2. Waive the minor irregularities in the bid received from Michael Glynn Construction Inc.
3. Award the contract for 18 Solano Street Retaining Wall Project (Job No. 922B) to Michael Glynn Construction Inc. in the amount of \$217,250.
4. Authorize a supplemental appropriation of \$238,975 from the General Fund to Fund 400 for the purpose of constructing this wall.

Background

This project was previously bid on April 21, 2022, at which time the city received three bids of \$198,104, \$282,676, and \$531,800. Staff recommended and Council approved the rejection of all those bids so the project could be rebid with an expectation of receiving proposals from a larger pool of contractors.

Discussion

The City received five bids for this project on May 24, 2002:

Central Pacific Engineering LLC	\$169,695
<i>Engineer's Estimate</i>	<i>\$209,350</i>
Michael Glynn Construction Inc.	\$217,250
VNH Builders	\$229,495
Sandstone Environmental Engineering Inc.	\$242,195
Graniterock	\$259,760

After review of the submitted proposals with Legal Counsel, it was determined that the apparent low bidder had so many deficiencies in its submittal that it was found to be non-responsive as to material issues. (Five of the ten items reviewed in staff's bid checklist were either not provided or were incomplete.)

A similar review of the second apparent low bidder found that this company failed to sign the page for acknowledging receipt of addenda (there were no addenda issued during the bid

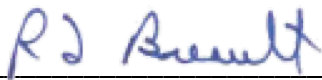
period for this project), and failed to provide the date that the work site was inspected. Legal Counsel determined that these were minor regularities that can be waived so that the contract may be awarded.

Fiscal Impact

The recommended transfer from the General Fund includes a ten percent contingency in case of discovering unknown conditions during construction. Any unused contingency funds will be returned to the General Fund after the project is completed.

Measure of Success

A properly installed retaining wall on the slope adjacent to 18 Solano that allows the City to reopen the sidewalk used by members of Silverspot Cooperative Nursery, the city pool, and Lipman Middle School.



Randy Breault, Public Works Director



Michael Roush, Legal Counsel

File Attachments for Item:

G. Consider adoption of a Resolution Revising the Conflict of Interest Code to Include the Complete Streets Safety Committee, Open Space and Ecology Committee, Public Arts Advisory Committee, and the Communications Manager



CITY COUNCIL AGENDA REPORT

Meeting Date: May 19, 2022

From: Thomas McMorrow, City Attorney, Clay Holstine, City Manager and Ingrid Padilla, City Clerk

Subject: Adoption of a Revised Conflict of Interest Code to Include the Complete Streets Safety Committee, Open Space and Ecology Committee, Public Arts Advisory Committee, and the Communications Manager

Recommendation:

Adopt the attached resolution revising the City's Conflict of Interest Code

Background

The State's Political Reform Act's conflict of interest prohibitions apply only to certain "public officials" and only to governmental decisions that have a financial effect. The Act applies specifically to members of the City Council and the Planning Commission, city managers, city attorneys and other public officials, such as finance directors and others who manage public investments.

In addition, the Act requires cities to adopt a conflict of interest code and include therein which "other" officials within the a city must comply with the disclosure and disqualification provisions of the Act. The City Council has adopted, via resolution, the City's Conflict of Interest Code. See attached Resolution. Currently, the City has identified 37 City staff positions, as well as the Park and Recreation Commission, that are subject to the Act, as is discussed below.

Similarly, while the Act specifies that planning commissioners are subject to its requirements, and the Council has included the Park and Recreation Commissions within the City's Conflict of Interest Code, the question of which other appointed, advisory bodies shall be subject to the Act is left to the City Council to decide in compliance with the Fair Political Practice Commission's Regulations. The Regulations provide that members of commissions or committees with "decision making authority" are subject to the Act, and that "decision making authority" exists where a commission or committee makes substantive recommendations to another governmental agency—here the City Council—and, over an extended period of time, those recommendations have been regularly approved without significant amendment. The members of commissions or committees not deemed to have decision making authority, as defined above, are not considered public officials and the conflict of interest provisions do not apply to them.

City of Brisbane's Conflict of Interest Code

The City's Conflict of Interest Code is adopted by resolution and sets forth those "other" positions held by City employees (and the Park and Recreation Commission) that are subject to the Act. There are currently 37 such employee positions, including the City Clerk and Deputy City Clerk, department heads and their deputies, the Police and Fire Chiefs and their command staff. As might be expected, these are positions

where individuals make critical decisions for the City and/or make recommendations to the City Council and its commissions and committees.

As to commissions and committees, the Regulations provide that members of the Planning Commission are subject to the Act and the City's Conflict of Interest Code designates that the Parks and Recreation Commission is also subject to the Act. The members of both commissions are therefore deemed public officials for purposes of the Act and must comply with it. This includes disclosing their financial interests and being disqualified from participating in governmental decisions when it is reasonably foreseeable that the decision will have a material financial effect on the members' interests.

The Regulations require cities to review their conflict of interest codes every two years. The City Council last reviewed the City's Conflict of Interest Code in 2020. If the Council determines that additional advisory bodies have decision making authority as the term is defined in the Regulations, those additional advisory bodies will be designated in the Conflicts of Interest Code and members will be advised that they are subject to the Act and therefore required to file Form 700 that discloses their financial interests, resulting in their disqualification from participating in governmental decisions when those decisions effect their financial interests.

DISCUSSION

The City has only two Commissions—the Planning Commission and the Parks and Recreation Commission—and, as discussed above, those members are already subject to the Act.

The City has four Committees—Complete Streets Safety (CSSC), Open Space and Ecology (OSEC), Public Arts Advisory, and the recently formed Inclusion, Diversity, Equality and Accountability (IDEA). None of these Committees are currently included in the City's Conflict of Interest Code.

There are good reasons to include the Complete Streets Safety Committee, the Open Space and Ecology Committee, and the Public Arts Advisory Committee in the City's Conflict of Interest Code because those three committees have "decision making authority" as defined in the Regulations. That is, unlike the IDEA Committee that has only been recently formed, the recommendations of those Committees have been over time regularly approved by the City Council without significant amendment.

Moreover, those Committees make recommendations on matters where a member's interest in real property or interest in a business entity could have a material financial effect on that interest. For example, the Complete Streets Safety Committee could recommend that a street that currently terminates be extended and a member of that Committee lives on that street. Certainly having additional traffic on that street could have a material effect on the value of that member's property. The Open Space and Ecology Committee could recommend that all businesses in Brisbane provide additional source separating that has a significant cost to the business. That cost could have a material financial effect on a Committee member who owns a business. And a source of income to a member of the Public Arts Advisory Committee may have artwork that the Committee will consider recommending that the City pay for.

Nevertheless, Council has the discretion to conclude that one or all of these Committees do not have the required decision making authority or that, given the scope and purpose of those Committees, the likelihood of decisions that materially affect the members' financial interests is too remote to necessitate adding these committees to the Conflict of Interest Code.

Staff also recommends that the newly created position of Communications Manager be added to Appendix A that lists the various positions subject to the Conflict of Interest Code. Note that not all positions on Appendix A are currently filled.

Attached is a resolution adopting a revised Conflict of Interest Code for designated positions and committees. The three committees mentioned above have been added to Appendix. If Council concludes any of these committee need not be included, it may so direct.

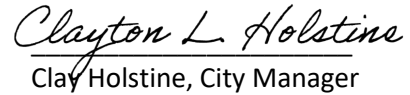
Attachment: Resolution adopting a revised Conflict of Interest Code



Thomas R. McMorrow, City Attorney



Ingrid Padilla, City Clerk



Clay Holstine, City Manager

RESOLUTION NO. 2022-xx**A RESOLUTION OF THE CITY OF BRISBANE ADOPTING A REVISED CONFLICT OF INTEREST CODE FOR DESIGNATED POSITIONS AND DECISION MAKING ADVISORY BODIES**

Whereas, the Political Reform Act, (Government Code, Section 87100 et seq.) establishes conflict of interest disclosure and disqualification requirements for public officials, including specified employees and decision making bodies; and

Whereas, the Political Reform Act requires state and local governmental agencies to adopt and promulgate conflict of interest codes for other employees and other advisory bodies with decision making authority; and

Whereas, the Fair Political Practices Commission has adopted Regulations in Title 2, Section 18730 of the California Administrative Code, to implement the provisions of the Political Reform Act and by incorporating by reference the terms of the Regulations it will save time and money by minimizing the actions required of the City Council to keep its Conflict of Interest Code in conformity with the Political Reform Act; and

Whereas, Appendix A to this Resolution sets forth certain designated positions within the City of Brisbane; and

Whereas, Appendix B to this Resolution sets forth certain advisory bodies of the City of Brisbane with decision making authority; and

Whereas, employees who are in those designated positions, and members of those designated advisory bodies, must file conflict of interest statements.

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

Section 1. The provisions of Title 2, Section 18730 of the California Administrative Code, attached as Exhibit 1, are hereby incorporated by reference and, together with the attached Appendix A and Appendix B, in which designated positions and designated advisory bodies with decision making authority, along with their disclosure categories, are set forth, are hereby adopted as the Conflict of Interest Code for the City of Brisbane.

Section 2. Employees in the designated positions, and members of designated advisory bodies, shall file with the City Clerk, the City's filing officer, statements of economic interests.

Section 3. All of the resolutions of the City of Brisbane that are in conflict with this Resolution are hereby repealed.

Section 4. This resolution shall be in full force and effect immediately upon its adoption.

Coleen Mackin, Mayor

I hereby certify that the foregoing Resolution No. 2022-XX was duly and regularly adopted at a regular meeting of the Brisbane City Council on _____, 2022.

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas McMorrow, City Attorney

APPENDIX A

Designated Positions	Disclosure Category
Administrative Management Analyst	All Categories
Administrative Services Director	All Categories
Assistant to the City Manager	All Categories
Associate Civil Engineer	All Categories
Associate Planner	All Categories
City Clerk	All Categories
Community Development Director	All Categories
Communications Manager	All Categories
Deputy Building Official	All Categories
Deputy City Attorney	All Categories
Deputy City Clerk/Executive Assistant	All Categories
Deputy Finance Director	All Categories
Deputy Fire Chief	All Categories
Deputy Public Works Director	All Categories
Economic Development Director	All Categories
Financial Services Manager	All Categories
Fire Chief	All Categories
Harbormaster	All Categories
Information Technology & Systems Administrator	All Categories
Management Analyst	All Categories
Marina Services Director	All Categories
Parks and Recreation Commissioners	All Categories
Parks and Recreation Director	All Categories
Police Chief	All Categories
Police Commander	All Categories
Principal Analyst	All Categories
Principal Planner	All Categories
Program Manager (San Mateo Countywide NPDES)	All Categories

Public Works Director/City Engineer	All Categories
Public Works Superintendent	All Categories
Public Works Supervisor	All Categories
Recreation Manager	All Categories
Recreation Supervisor	All Categories
Senior Civil Engineer	All Categories
Senior Management Analyst	All Categories
Senior Planner	All Categories
Special Assistant	All Categories
Special Counsel	All Categories

APPENDIX B

Advisory Bodies with Decision Making Authority	Disclosure Category
Complete Streets Safety Committee	All Categories
Open Space and Ecology Committee	All Categories
Public Art Advisory Committee	All Categories