



CITY of BRISBANE

Joint City Council and Guadalupe Valley Municipal Improvement District Meeting Agenda

Thursday, April 1, 2021 at 7:30 PM • Virtual Meeting

Amended: 3/31/21

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

The Council may take action on any item listed in the agenda.

PUBLIC MEETING VIDEOS

Members of the public may view the City Council Meeting by logging into the Zoom Webinar listed below. City Council Meetings can also be viewed live and/or on-demand via the City's YouTube Channel, www.youtube.com/brisbaneca, or on Comcast Channel 27. Archived videos can be replayed on the City's website, <http://brisbaneca.org/meetings>.

TO ADDRESS THE COUNCIL

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

Remote Public Comments:

Meeting participants are encouraged to submit public comments in writing in advance of the meeting. 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)
brisbaneca.org/cc-zoom

Webinar ID: 991 9362 8666

Passcode: 123456

Call In Number: 1 (669) 900 9128

SPECIAL ASSISTANCE

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

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

2. ROLL CALL

3. ADOPTION OF AGENDA

4. AWARDS AND PRESENTATIONS

A. Open Space Plan Presentation

5. ORAL COMMUNICATIONS NO. 1

6. CONSENT CALENDAR

B. Approve Minutes of City Council Closed Session Meeting of March 18, 2021

C. Accept Investment Report as of February 2021

D. Approve Resolutions No. 2021-26 and 2021-27 Establishing the Classification of CCAG Stormwater Program Director and Amending the Master Pay Schedule

7. PUBLIC HEARING

E. Consider Introduction of Ordinance 579- Proposed Amendment of Titles 15 and 17 of the Brisbane Municipal Code Pertaining to the Regulation of Grading

(This item will be continued to a future City Council Meeting and will not be discussed)

8. OLD BUSINESS

F. Short Term Rentals Ordinance Implementation Update

G. Consider Approval of an Agreement with Lechowicz and Tseng to complete the Water and Sewer Rate Study for the City of Brisbane and Guadalupe Valley Municipal Improvement District

H. Consider Approval of Resolution No. 2021-28 a Reimbursement Resolution for Water and Sewer 2021/22 Capital Improvement Plan

9. STAFF REPORTS

I. City Manager's Report on upcoming activities

10. MAYOR/COUNCIL MATTERS

J. Countywide Assignments and Subcommittee Reports

K. City Council Meeting Schedule

L. Written Communications

11. ORAL COMMUNICATIONS NO. 2

12. ADJOURNMENT

File Attachments for Item:

B. Approve Minutes of City Council Closed Session Meeting of March 18, 2021



BRISBANE CITY COUNCIL**ACTION MINUTES**

CITY OF BRISBANE CITY COUNCIL CLOSED SESSION MEETING AGENDA**THURSDAY, MARCH 18, 2021*****VIRTUAL MEETING*****7:00 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 – Anticipated Litigation; Consideration of initiation of litigation pursuant to Government Code Section 54956.9(c); 1 potential case

ADJOURNMENT

Mayor Cunningham called the Closed Session Meeting to order at 7:03 P.M. Mayor Cunningham adjourned the meeting into Closed Session. Mayor Cunningham adjourned the Closed Session Meeting of March 4, 2021 at 7:41 P.M.

REPORT OUT OF CLOSED SESSION

Interim City Attorney McMorro reported that Council gave staff direction regarding Closed Session Item D.

Ingrid Padilla
City Clerk

C.

File Attachments for Item:

C. Accept Investment Report as of February 2021

**CITY OF BRISBANE
CASH BALANCES & INVESTMENTS
SOURCE OF FUNDING
February 28, 2021**

NAME OF DEPOSITORY	INVESTMENT TYPE	DATE OF INVESTMENT	FACE VALUE OF INVESTMENT	CARRY VALUE OF INVESTMENT	MARKET VALUE OF INVESTMENT	COUPON INTEREST RATE %	MATURITY DATE	RATING/ COLLATERAL
WELLS FARGO	Checking A/C		\$ 5,913,734	\$ 5,913,734	\$ 5,913,734	0.000		
STATE FUND (LAIF)	Deposit on call	continuous	\$ 14,025,708	\$ 14,025,708	\$ 14,025,708	0.370	on call	no rating
Other Investments								
	Capital One National Association	11/23/2016	\$ 250,000	\$ 250,000	\$ 253,300	2.000	11/23/2021	
	Wells Fargo	11/30/2016	\$ 250,000	\$ 250,000	\$ 253,341	2.000	11/30/2021	
	Sallie Mae Bank	5/9/2019	\$ 245,000	\$ 245,000	\$ 251,743	2.550	05/09/2022	
	Morgan Stanley	6/6/2019	\$ 245,000	\$ 245,000	\$ 252,184	2.550	06/06/2022	
	Comenity Capital Bank	4/28/2019	\$ 248,000	\$ 248,000	\$ 260,823	2.650	04/28/2023	
	Morgan Stanley	5/2/2019	\$ 245,000	\$ 245,000	\$ 257,807	2.650	05/02/2023	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 263,996	2.750	05/01/2024	
BNY Mellon	Treasury Obligations	continuous	\$ 7,884,418	\$ 7,884,418	\$ 7,884,418	0.010	on call	110% collateral
Sub-total			\$ 9,613,418	\$ 9,613,418	\$ 9,677,613			
U.S. Bank	2014 BGPGA Bond (330)	Improvements	Fed Treas Obl		10031			
		Reserve Fund	Fed Treas Obl	\$ 1	10032			
		Revenue Fund	Fed Treas Obl		10034			
		Expense Fund	Fed Treas Obl		10035			
		Principal	Fed Treas Obl	\$ 3	10036			
		Interest Fund	Fed Treas Obl	\$ 0	10037			
BNY Mellon	2006 Pension Bonds (340)	Expense Fund	Fed Treas Obl	Matured 1/2021	10035			
U.S. Bank	2015 Utility Capital (545)	Improvements	Fed Treas Obl	\$ 0	10031			
		Reserve	Fed Treas Obl	\$ 126,325	10032			
		Expense Fund	Fed Treas Obl	\$ 0	10035			
PARS	OPEB Trust	Trust Cash	Investments	\$ 3,829,086	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,340,654	13050			
Sub-total	Cash with Fiscal Agents			\$ 5,296,069				
Total other investments			\$ 9,613,418	\$ 14,909,487	\$ 9,677,613			
TOTAL INVESTMENTS & CASH BALANCES			\$ 29,552,860	\$ 34,848,929	\$ 29,617,055			

Outstanding Loans to Department Heads

	Date of loan	Amount	Amount Remaining	Interest Rate
Stuart Schillinger	4/1/2002	318,750	\$ 318,750	Based on Sales Price
Clay Holstine (1)	7/8/2008	300,000	\$ -	Paid off 12/28/2016
Clay Holstine (2)	9/10/2008	200,000	\$ 200,000	Secured by other funds
Randy Breault	10/22/2001	320,000	\$ 38,263	2.47%

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

Two year Treasury	0.14%	
Weighted Interest	0.32%	
Weighted maturity	0.13	Years

TREASURER'S CERTIFICATE

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

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

Carolina Yuen
CITY TREASURER

File Attachments for Item:

D. Approve Resolutions No. 2021-26 and 2021-27 Establishing the Classification of CCAG Stormwater Program Director and Amending the Master Pay Schedule



CITY COUNCIL AGENDA REPORT

Meeting Date: April 1, 2021

From: Abby Partin, Human Resources Administrator

Subject: Approval of Resolutions No. 2021-26 and 2021-27

Establishing the Classification of C/CAG Stormwater Program Director and Amending the Master Pay Schedule.

Community Goal/Result

Fiscally Prudent

Purpose

To continue to provide support to the City/County Association of Governments.

Recommendation

Adopt Resolutions No. 2021-26 and 2021-27 by approving the following:

- Establish the C/CAG Stormwater Program Director classification;
- Amend the Master Pay Schedule;
- Add C/CAG Stormwater Program Director to Mid-Management/Professional Employees unit.

Background

In 2006, City/County Association of Governments (C/CAG) contracted with the City of Brisbane for a part-time service to support the C/CAG Stormwater Program. In 2010, the Stormwater Program expanded and needed full-time service, which lead to amending the contract between C/CAG and the City of Brisbane. Effective January 1, 2011, a City employee began working at full-time capacity on the C/CAG Stormwater Program and relocated to the C/CAG office in Redwood City. As part of the amended agreement, C/CAG contracted with the City, up to a five-percent administrative fee compensation to allow the City employee to work in a full-time capacity.

Discussion

The C/CAG Stormwater Program supports all twenty-one (21) jurisdictions in San Mateo County to meet the Municipal Regional Permit (MRP) requirements as promulgated by the San Francisco Bay Regional Water Quality Control Board. The MRP regulatory requirements have expanded over the years and required increased countywide program support, particularly in compliance actions related to reducing trash, mercury, and PCBs in stormwater runoff. More recently, MRP requirements expanded in the areas of green infrastructure planning, watershed and pollutant reduction modeling, and infrastructure-based stormwater treatment solutions. At present, the Regional Water

Quality Control Board is developing a new Draft MRP 3.0 which will increase regulatory requirements. Some of those requirements will be more cost-effectively addressed by the C/CAG Countywide Stormwater Program. To better align the increase in the scope of work in fulfilling the expanded Stormwater Program in response to the Municipal Regional Permit requirements, staff recommends establishing the classification of C/CAG Stormwater Program Director.

This position will provide technical and administrative support to C/CAG on stormwater and related issues; coordinate projects and programs with C/CAG's member agencies and outside agencies and stakeholders; manage budgets related to all assigned projects and programs; develop and execute C/CAG plans and objectives; exercise professional and technical leadership through staff supervision and consultant management.

This recommendation is rather a unique situation as the City does not foresee permitting any of its current employees, providing any services to another public entity or agency.

Staff provided the proposed job description to the Mid-Management/ Professional Employees Unit for review and approval to include of the classification into the bargaining group.

Fiscal Impact

There is no fiscal impact to the City. The City will continue to collect administrative fees from City/County Association of Governments.

Measure of Success

The City is able to maintain a good working relationship with the City/County Association of Governments.

Attachments

Resolution 2021-26

Resolution 2021-27



Abby Partin, Human Resources
Administrator



Clay Holstine, City Manager

RESOLUTION NO 2021- 26**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
AMENDING RESOLUTION 2001-11 TO INCLUDE THE CLASSIFICATION OF C/CAG
STORMWATER PROGRAM DIRECTOR IN THE CLASS SPECIFICATION MANUAL**

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

WHEREAS, the City Manager has established the need for the new classification of C/CAG Stormwater Program Director; and

WHEREAS, the class description for C/CAG Stormwater Program Director was developed in cooperation with and has been approved by the City Manager; and

WHEREAS, this newly developed class description for C/CAG Stormwater Program Director meet the requirements established Rule 6.02b of the City of Brisbane Personnel Rules and Regulations for the Class Specification Manual.

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

The class description for the classification of C/CAG Stormwater Program Director in Exhibit “A” is approved for inclusion in the Class Specification Manual.

Karen Cunningham, Mayor

I hereby certify that the foregoing Resolution No. 2021-26 was duly and regularly adopted at a regular meeting of the Brisbane City Council on April 1, 2021, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Ingrid Padilla, City Clerk

RESOLUTION NO 2021- 27**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
AMENDING THE MASTER PAY SCHEDULES FOR ALL EMPLOYEES**

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

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

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

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

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

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

Karen Cunningham, Mayor

I hereby certify that the foregoing Resolution No. 2021-27 was duly and regularly adopted at a regular meeting of the Brisbane City Council on April 1, 2021, by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Ingrid Padilla, City Clerk

CITY OF BRISBANE

C/CAG STORMWATER PROGRAM DIRECTOR (CITY/COUNTY ASSOCIATION OF GOVERNMENTS COUNTYWIDE STORMWATER PROGRAM)

Definition

Under general direction of the Executive Director of the City/County Association of Governments of San Mateo County (C/CAG), the C/CAG Stormwater Program Director plans, organizes, directs, and coordinates activities and programs related to stormwater management and the Countywide Stormwater Program. This position provides technical and administrative support to C/CAG on stormwater and related issues; coordinates projects and programs with C/CAG's member agencies and outside agencies and stakeholders; manages budgets related to all assigned projects and programs; designs and uses standard work, policies and procedures; develops and executes C/CAG plans and objectives; exercises professional and technical leadership through staff supervision and consultant management. Coordinates activities with other C/CAG programs; responsible for coordinating countywide activities related to municipal stormwater management requirements as promulgated by the San Francisco Bay Regional Water Quality Control Board.

Class Characteristics

Oversee the strategic planning, organizing, directing and coordinating for the Countywide Stormwater Program. Monitor and lead teams responsible for a wide variety of stormwater plans, programs, and projects. Manage contracts for a variety of projects and studies. Work to maximize the value of stormwater funding by managing various funding sources and assigning projects to the most appropriate fund source. Represent the agency in various environments, analyze stormwater and water policies related to funding and project delivery, and develop and implement goals, policies and priorities to support the overall quality of life for citizens as related to storm water runoff and its connections with transportation, climate resilience, urban greening, water supply and conservation, and other related issues. This is an advanced-level, professionally registered engineering classification that performs a wide variety of engineering duties that require exercising independent judgment and initiative in prioritizing, scheduling, assigning and coordinating work. This class is distinguished from other engineering classes in that it is specific to managing implementation of general program tasks required by C/CAG under the Countywide Stormwater Program for all local jurisdictions in San Mateo County.

Supervision Received and Exercised

Receive general direction from the C/CAG Executive Director. Exercise direct supervision over lower level professional personnel as well as direct and manage consultants and contract service providers.

Examples of Duties (Illustrative Only)

- Provide technical support and recommendations to the C/CAG Board in the formulation and implementation of stormwater program priorities, funding, programming, planning, and projects.

- Provide technical support and analysis to the C/CAG Board and Stormwater Committee on stormwater-related issues including climate resilience.
- Work on assignments that are highly complex and sensitive in nature, where substantial judgment and initiative is essential.
- Procure, manage, direct, and monitor consultant services, including contract negotiation and invoice processing.
- Monitor and ensure effective internal controls are in place for projects and programs to ensure compliance with all applicable federal, state, and local laws and regulations.
- Recruit, select, develop, supervise, motivate, and evaluate staff and ensure timely and quality of staff work product.
- Apply for and administer grants and manage grant funded projects.
- Represent CCAG and C/CAG member agencies in regional and local stormwater task forces, work groups, and committees, including the Bay Area Stormwater Management Agencies Association
- Work in collaboration with C/CAG member agencies and partner agencies to ensure customer satisfaction as well as represent C/CAG's best interests.
- Analyze stormwater-related policies and proposed legislation, recommend positions to be taken by C/CAG. Maintain liaison with officials in the legislative and other governmental offices to further C/CAG goals, objectives, and interests.
- Coordinate among C/CAG member agencies, the Bay Area Stormwater Management Agencies Association (BASMAA), California Stormwater Quality Association (CASQA) and relevant regional and state agencies regarding stormwater-related plans, projects, programming, and allocation of funds.
- Assist the Executive Director in strategic planning and organization management. Participate as a member of the senior management team in the development and implementation of organization-wide policies and programs that will contribute to its overall success.
- Manage C/CAG stormwater funds such as Measure M vehicle registration funds and the Countywide Program's stormwater property tax fees.
- Maintain and track program and project budgets; review accounting/financial reports from C/CAG Fiscal Agent and reconcile differences. Provide supporting information for financial audits on responsible programs/projects
- Develop and recommend strategies and priorities on stormwater, climate resilience, integration of stormwater management with transportation investments, and associated strategies as they relate to stormwater quality and quantity.
- Responsible for the development, implementation, and management of plans, projects, programs, and resources such as the Countywide Stormwater Resource Plan, Countywide Hydrology Model and Reasonable Assurance Analyses, Countywide Sustainable Streets Master Plan, Green Infrastructure Design Guide, web-based stormwater-related GIS resources, and the Countywide Program's website and online presence. Coordinate between the region and San Mateo County on evolving stormwater permit regulations and related activities.
- Coordinate with San Francisco Bay Regional Water Quality Control Board and U.S. Environmental Protection Agency on the development and implementation of policies, regulations, and requirements.
- Create goals and strategies that support C/CAG's vision and management philosophy.
- Plan, direct, manage and support C/CAG-sponsored stormwater or integrated projects to ensure timely and cost-effective delivery of projects by working with involved agencies and consultants.
- Coordinate with federal, state, regional and local agencies to ensure compliance with pertinent administrative requirements.

- Coordinate with C/CAG legal counsel regarding unfunded mandate test claims, permit appeals, and litigation issues.
- Oversee annual revenue program for the Countywide Stormwater Program, including facilitating consultant activities to ensure collection of annual fees on the property tax rolls by the County Assessor's Office.
- Performs related duties and responsibilities as assigned.

Qualifications

Knowledge of:

- Principles and practices of municipal management and public administration, including supervision and evaluation of personnel, budget planning, preparation, and implementation, and public affairs.
- Principles and practices of governmental procurement principles, contract negotiation, preparation and administration.
- Pertinent local, state and federal laws, rules, regulations and enforcement procedures.
- Practices and procedures as applied to the analysis and evaluation of programs, policies and operational needs.
- Local and state legislative processes and the key players within those processes.
- Basic principles and practices of C/CAG's operations and its administration and organization.
- Principles and practices of stormwater engineering and planning or urban planning.
- Technical, legal, financial and public relations aspects of municipal government.

Skill in:

- Research, analyze, and make recommendations on administrative and management practices and procedures.
- Communicate effectively both orally and in writing; prepare comprehensive administrative, fiscal and technical reports and correspondence.
- Represent C/CAG to other departments, agencies, and before public bodies.
- Establish and maintain effective and cooperative working relationships with others contacted in course of performing assigned responsibilities.
- Integrate a variety of activities and services to achieve program goals, objectives, and priorities.
- Apply principles and techniques of community engagement.
- Speak effectively to diverse audiences, including professional, civic, legislative, and citizen groups.
- Maintain cooperative working relationships with other agencies and staff.
- Prepare complex and detailed written reports, program policies, procedures and contracts.
- Interpret policies, guidelines and procedures.

Education and Experience:

Education:

Graduation from an accredited college or university with a Bachelor's Degree in environmental engineering or a closely related field.

Experience:

Eight years of increasingly responsible professional civil or environmental engineering experience involving program oversight, project or construction management, policy interpretation and implementation. Municipal managerial, professional engineering, and supervisory experience is highly desirable.

License:

Possession of or the ability to obtain a valid California Class C driver's license and have a satisfactory driving record. Possession of a valid certificate of registration as a Civil Engineer issued by the State's Department of Consumer Affairs, Board for Professional Engineers and Land Surveyors. Such licenses and certifications shall be maintained during employment.

Working Conditions:

Work in a standard office environment with some exposure to outdoors, mechanical hazards, traffic, and electrical hazards. Must be able to travel to various locations to fulfill job responsibilities.

Physical Demands:

Sufficient mobility and physical flexibility to negotiate difficult project sites and construction terrain where crouching, bending, stooping, climbing and/or kneeling would be required. Vision to adequately and quickly review plans and specifications, read printed materials, and a computer screen. Mental alertness and comprehension to learn and retain technical and administrative information, terminology, equipment, policies, procedures and safety practices. Physical stamina to work extended or irregular hours and attend lengthy meetings and attentively follow proceedings. Ability to maintain sustained posture in a seated position for prolonged periods of time. Hearing and speech to communicate in person and over the telephone. Ability to speak clearly and write clear and concise English.

Approved Date:
Resolution:

Revised Date:
Resolution:

Bargaining Unit:
Resolution:

Former Titles:

Abolished:

City of Brisbane Master Pay Schedule
Approved per Resolution No.

Job Classification	Hourly Grade A	Hourly Grade B	Hourly Grade C	Hourly Grade D	Hourly Grade E	Monthly	Fixed Hourly	Hourly Range	Effective Date	Bargaining Group	FLSA Status
Accounting Assistant I	\$ 24.96	\$ 26.22	\$ 27.53	\$ 28.91	\$ 30.35				1/4/2021	General Employees	Non-Exempt
Accounting Assistant II	\$ 27.48	\$ 28.86	\$ 30.31	\$ 31.81	\$ 33.41				1/4/2021	General Employees	Non-Exempt
Administrative Assistant	\$ 33.02	\$ 34.67	\$ 36.40	\$ 38.22	\$ 40.14				1/4/2021	General Employees	Non-Exempt
Administrative Management Analyst	\$ 42.03	\$ 44.12	\$ 46.34	\$ 48.64	\$ 51.09				1/4/2021	Confidential Employee	Exempt
Administrative Services Director	\$ 84.86	\$ 89.10	\$ 93.56	\$ 98.23	\$ 103.15				1/4/2021	Confidential Management	Exempt
Assistant Engineer I	\$ 38.45	\$ 40.38	\$ 42.39	\$ 44.52	\$ 46.74				1/4/2021	General Employees	Non-Exempt
Assistant Engineer II	\$ 42.30	\$ 44.40	\$ 46.63	\$ 48.96	\$ 51.41				1/4/2021	General Employees	Non-Exempt
Assistant City Manager	\$ 97.59	\$ 102.46	\$ 107.60	\$ 112.96	\$ 118.63				2/18/2021	Confidential Management	Exempt
Assistant to the City Manager	\$ 65.03	\$ 68.27	\$ 71.70	\$ 75.27	\$ 79.05				1/4/2021	Executive Management	Exempt
Associate Civil Engineer	\$ 50.36	\$ 52.87	\$ 55.52	\$ 58.30	\$ 61.22				1/4/2021	Mid-Management/Professional	Exempt
Associate Planner	\$ 44.49	\$ 46.73	\$ 49.07	\$ 51.52	\$ 54.10				1/4/2021	General Employees	Non-Exempt
Cashier	\$ 13.25	\$ 13.91	\$ 14.61	\$ 15.34	\$ 16.11				1/4/2021	Unrepresented	Non-Exempt
C/CAG Stormwater Program Director	\$ 66.53	\$ 69.86	\$ 73.35	\$ 77.02	\$ 80.87				4/1/2021	Mid-Management/Professional	Exempt
City Clerk	\$ 52.62	\$ 55.25	\$ 58.01	\$ 60.92	\$ 63.96				1/4/2021	Executive Management	Exempt
City Manager	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 122.97		1/4/2021	Unrepresented	Exempt
Code Enforcement Officer	\$ 35.88	\$ 37.68	\$ 39.56	\$ 41.53	\$ 43.62				1/4/2021	General Employees	Non-Exempt
Communications Manager	\$ 49.16	\$ 51.74	\$ 54.46	\$ 57.33	\$ 60.35				1/4/2021	Mid-Management/Professional	Exempt
Community Development Director	\$ 82.06	\$ 86.17	\$ 90.48	\$ 95.01	\$ 99.76				1/4/2021	Executive Management	Exempt
Community Development Technician	\$ 33.70	\$ 35.37	\$ 37.15	\$ 39.00	\$ 40.95				1/4/2021	General Employees	Non-Exempt
Community Services Officer	\$ 29.37	\$ 31.27	\$ 32.83	\$ 34.48	\$ 36.20				1/4/2021	General Employees	Non-Exempt
Council Member	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 400.00			1/4/2021	Elected Position	
Crossing Guard	\$ 13.31	\$ 13.97	\$ 14.68	\$ 15.41	\$ 16.18				1/4/2021	Unrepresented	Non-Exempt
Deputy City Clerk/Executive Assistant	\$ 39.56	\$ 41.54	\$ 43.62	\$ 45.81	\$ 48.09				1/4/2021	Confidential	Exempt
Deputy Director of Public Works	\$ 74.33	\$ 78.04	\$ 81.95	\$ 86.05	\$ 90.35				1/4/2021	Mid-Management/Professional	Exempt
Deputy Finance Director	\$ 66.53	\$ 69.86	\$ 73.35	\$ 77.02	\$ 80.87				1/4/2021	Mid-Management/Professional	Exempt
Director of Marina/Aquatics Services	\$ 54.47	\$ 57.20	\$ 60.06	\$ 63.06	\$ 66.21				1/4/2021	Executive Management	Exempt
Engineering Technician	\$ 37.06	\$ 38.92	\$ 40.86	\$ 42.89	\$ 45.05				1/4/2021	General Employees	Non-Exempt
Executive Administrative Assistant	\$ 34.23	\$ 35.93	\$ 37.73	\$ 39.62	\$ 41.60				1/4/2021	General Employees	Non-Exempt
Facility Attendant	\$ 16.99	\$ 17.83	\$ 18.72	\$ 19.67	\$ 20.64				1/4/2021	Unrepresented	Non-Exempt
Finance Director	\$ 81.22	\$ 85.27	\$ 89.54	\$ 94.03	\$ 98.71				1/4/2021	Confidential Management	Exempt
Financial Services Manager	\$ 57.47	\$ 60.33	\$ 63.35	\$ 66.53	\$ 69.86				1/4/2021	Mid-Management/Professional	Exempt
Fire Captain	\$ 39.94	\$ 41.92	\$ 44.03	\$ 46.22	\$ 48.54				1/4/2021	IAFF Local 2400	Non-Exempt
Fire Prevention Officer	\$ 49.22	\$ 51.70	\$ 54.28	\$ 56.98	\$ 59.83				1/4/2021	IAFF Local 2400	Non-Exempt
Fire Trainee	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 23.27		1/4/2021	IAFF Local 2400	Non-Exempt
Firefighter	\$ 33.42	\$ 35.09	\$ 36.84	\$ 38.67	\$ 40.61				1/4/2021	IAFF Local 2400	Non-Exempt
Firefighter/Paramedic	\$ 33.42	\$ 35.09	\$ 36.84	\$ 38.67	\$ 40.61				1/4/2021	IAFF Local 2400	Non-Exempt
Habitat Restoration Aide	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 12.00		1/4/2021	Unrepresented	Non-Exempt
Habitat Restoration Lead Worker	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 15.00		1/4/2021	Unrepresented	Non-Exempt

D.

Job Classification	Hourly Grade A	Hourly Grade B	Hourly Grade C	Hourly Grade D	Hourly Grade E	Monthly	Fixed Hourly	Hourly Range	Effective Date	Bargaining Group	FLSA Status
Harbormaster	\$ 46.34	\$ 48.65	\$ 51.08	\$ 53.64	\$ 56.32				1/4/2021	Mid-Management/Professional	Exempt
Head Lifeguard	\$ 20.37	\$ 21.39	\$ 22.45	\$ 23.59	\$ 24.76				1/4/2021	Unrepresented	Non-Exempt
History Project Asst	\$ 34.47	\$ 36.19	\$ 38.00	\$ 39.90	\$ 41.90				1/4/2021	Unrepresented	Non-Exempt
Human Resources Administrator	\$ 67.89	\$ 71.28	\$ 74.85	\$ 78.59	\$ 82.52				1/4/2021	Confidential	Exempt
Human Resources Technician	\$ 33.70	\$ 35.37	\$ 37.15	\$ 39.00	\$ 40.95				1/4/2021	General Employees	Non-Exempt
Information Technology & Systems Administrator	\$ 50.66	\$ 53.19	\$ 55.85	\$ 58.65	\$ 61.59				1/4/2021	Mid-Management/Professional	Exempt
Intern	\$ -	\$ -	\$ -	\$ -	\$ -			\$15.00 - \$20.00	1/4/2021	Unrepresented	Non-Exempt
Lifeguard	\$ 15.45	\$ 16.23	\$ 17.04	\$ 17.89	\$ 18.77				1/4/2021	Unrepresented	Non-Exempt
Management Analyst (Part-time)	\$ 38.11	\$ 40.03	\$ 42.02	\$ 44.12	\$ 46.33				1/4/2021	Unrepresented	Non-Exempt
Marina Maintenance Worker I	\$ 28.89	\$ 30.33	\$ 31.85	\$ 33.44	\$ 35.12				1/4/2021	General Employees	Non-Exempt
Marina Maintenance Worker II	\$ 31.78	\$ 33.36	\$ 35.04	\$ 36.77	\$ 38.62				1/4/2021	General Employees	Non-Exempt
Marina Maintenance Worker I (Part-time)	\$ 29.46	\$ 30.93	\$ 32.48	\$ 34.12	\$ 35.82				1/4/2021	Unrepresented	Non-Exempt
Marina Maintenance Worker II (Part-time)	\$ 32.39	\$ 34.05	\$ 35.71	\$ 37.48	\$ 39.39				1/4/2021	Unrepresented	Non-Exempt
Marina Services Director	\$ 50.91	\$ 53.46	\$ 56.14	\$ 58.94	\$ 61.89				1/4/2021	Executive Management	Exempt
Office Assistant	\$ 26.48	\$ 27.76	\$ 29.15	\$ 30.61	\$ 32.15				1/4/2021	General Employees	Non-Exempt
Office Assistant (Part-Time)	\$ 26.96	\$ 28.30	\$ 29.72	\$ 31.22	\$ 32.78				1/4/2021	Unrepresented	Non-Exempt
Office Specialist	\$ 31.04	\$ 32.59	\$ 34.23	\$ 35.93	\$ 37.73				1/4/2021	General Employees	Non-Exempt
Office Specialist (Part-Time)	\$ 31.67	\$ 33.24	\$ 34.90	\$ 36.65	\$ 38.49				1/4/2021	Unrepresented	Non-Exempt
Park/Beach/Recreation Commissioner	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100.00			1/4/2021	Appointed Position	
Parks & Recreation Director	\$ 78.25	\$ 82.17	\$ 86.27	\$ 90.58	\$ 95.12				1/4/2021	Executive Management	Exempt
Parks/Facilities Maintenance Worker I	\$ 28.89	\$ 30.33	\$ 31.85	\$ 33.44	\$ 35.12				1/4/2021	General Employees	Non-Exempt
Parks/Facilities Maintenance Worker I (Part-Time)	\$ 29.46	\$ 30.93	\$ 32.48	\$ 34.12	\$ 35.82				1/4/2021	Unrepresented	Non-Exempt
Parks/Facilities Maintenance Worker II	\$ 31.78	\$ 33.36	\$ 35.04	\$ 36.77	\$ 38.62				1/4/2021	General Employees	Non-Exempt
Payroll/Utility Billing Technician	\$ 33.70	\$ 35.37	\$ 37.15	\$ 39.00	\$ 40.95				1/4/2021	General Employees	Non-Exempt
Planning Commissioner	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100.00			1/4/2021	Appointed Position	
Police Chief	\$ 95.77	\$100.56	\$ 105.58	\$110.87	\$ 116.40				1/4/2021	Police Chief	Exempt
Police Commander	\$ 86.34	\$ 90.66	\$ 95.20	\$ 99.96	\$104.95				1/4/2021	Police Commander	Exempt
Police Officer	\$ 43.90	\$ 46.09	\$ 48.40	\$ 50.82	\$ 53.36				1/4/2021	Brisbane Police Officers Association*	Non-Exempt
Police Officer - 40 hour shift (Detective/SRO)	\$ 46.09	\$ 48.40	\$ 50.82	\$ 53.36	\$ 56.02				1/4/2021	Brisbane Police Officers Association*	Non-Exempt
Police Sergeant	\$ 52.89	\$ 55.53	\$ 58.31	\$ 61.22	\$ 64.28				1/4/2021	Brisbane Police Officers Association*	Non-Exempt
Police Trainee	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 32.47		1/4/2021	Unrepresented	Non-Exempt
Pre-School Teacher	\$ 17.08	\$ 17.95	\$ 18.84	\$ 19.80	\$ 20.79				1/4/2021	Unrepresented	Non-Exempt
Principal Analyst	\$ 58.79	\$ 61.74	\$ 64.82	\$ 68.05	\$ 71.46				1/4/2021	Confidential	Exempt
Principal Planner	\$ 62.62	\$ 65.75	\$ 69.04	\$ 72.49	\$ 76.12				1/4/2021	Mid-Management/Professional	Exempt
Program Manager - SMCWPPP	\$ 61.94	\$ 65.04	\$ 68.29	\$ 71.71	\$ 75.30				1/4/2021	Mid-Management/Professional	Exempt
Public Service Aide	\$ 15.20	\$ 15.97	\$ 16.76	\$ 17.59	\$ 18.48				1/4/2021	Unrepresented	Non-Exempt
Public Works Director/City Engineer	\$ 96.08	\$100.88	\$ 105.92	\$111.22	\$116.79				1/4/2021	Executive Management	Exempt
Public Works Inspector	\$ 47.41	\$ 49.79	\$ 52.28	\$ 54.88	\$ 57.63				1/4/2021	General Employees	Non-Exempt
Public Works Lead Maintenance Worker	\$ 38.14	\$ 40.04	\$ 42.03	\$ 44.14	\$ 46.34				1/4/2021	General Employees	Non-Exempt
Public Works Maintenance Worker I	\$ 28.89	\$ 30.33	\$ 31.85	\$ 33.44	\$ 35.12				1/4/2021	General Employees	Non-Exempt
Public Works Maintenance Worker I (Part-time)	\$ 29.46	\$ 30.93	\$ 32.48	\$ 34.12	\$ 35.82				1/4/2021	Unrepresented	Non-Exempt

D.

Job Classification	Hourly Grade A	Hourly Grade B	Hourly Grade C	Hourly Grade D	Hourly Grade E	Monthly	Fixed Hourly	Hourly Range	Effective Date	Bargaining Group	FLSA Status
Public Works Maintenance Worker II	\$ 31.78	\$ 33.36	\$ 35.04	\$ 36.77	\$ 38.62				1/4/2021	General Employees	Non-Exempt
Public Works Superintendent	\$ 61.64	\$ 64.72	\$ 67.96	\$ 71.36	\$ 74.92				1/4/2021	Mid-Management/Professional	Exempt
Public Works Supervisor	\$ 47.11	\$ 49.47	\$ 51.94	\$ 54.54	\$ 57.27				1/4/2021	Mid-Management/Professional	Exempt
Public Works Team Leader	\$ 42.74	\$ 44.99	\$ 47.36	\$ 49.85	\$ 52.47				1/4/2021	Mid-Management/Professional	Exempt
Receptionist	\$ 26.45	\$ 27.76	\$ 29.15	\$ 30.61	\$ 32.15				1/4/2021	General Employees	Non-Exempt
Receptionist (Part-time)	\$ 26.96	\$ 28.30	\$ 29.72	\$ 31.22	\$ 32.78				1/4/2021	Unrepresented	Non-Exempt
Recreation Leader	\$ 17.06	\$ 17.91	\$ 18.81	\$ 19.74	\$ 20.73				1/4/2021	Unrepresented	Non-Exempt
Recreation Leader Aide	\$ 13.25	\$ 13.91	\$ 14.61	\$ 15.34	\$ 16.11				1/4/2021	Unrepresented	Non-Exempt
Recreation Manager	\$ 57.97	\$ 60.87	\$ 63.91	\$ 67.11	\$ 70.47				1/4/2021	Mid-Management/Professional	Exempt
Recreation Program Coordinator	\$ 29.33	\$ 31.30	\$ 32.86	\$ 34.50	\$ 36.22				1/4/2021	General Employees	Non-Exempt
Recreation Supervisor	\$ 42.83	\$ 44.99	\$ 47.22	\$ 49.58	\$ 52.06				1/4/2021	Mid-Management/Professional	Exempt
Regional Compliance Program Manager	\$ 49.16	\$ 51.74	\$ 54.46	\$ 57.33	\$ 60.35				1/4/2021	Mid-Management/Professional	Exempt
Reserve Police Officer	\$ 31.34	\$ 32.91	\$ 34.55	\$ 36.28	\$ 38.10				1/4/2021	Unrepresented	Non-Exempt
Senior Accounting Assistant	\$ 31.13	\$ 32.70	\$ 34.32	\$ 36.05	\$ 37.83				1/4/2021	General Employees	Non-Exempt
Senior Civil Engineer	\$ 61.94	\$ 65.04	\$ 68.29	\$ 71.71	\$ 75.30				1/4/2021	Mid-Management/Professional	Exempt
Senior Human Resources Analyst	\$ 46.96	\$ 49.30	\$ 51.77	\$ 54.36	\$ 57.07				1/4/2021	Confidential	Exempt
Senior Management Analyst	\$ 46.03	\$ 48.33	\$ 50.75	\$ 53.28	\$ 55.94				1/4/2021	Mid-Management/Professional	Exempt
Senior Planner	\$ 52.96	\$ 55.60	\$ 58.38	\$ 61.32	\$ 64.37				1/4/2021	Mid-Management/Professional	Exempt
Senior Recreation Leader	\$ 21.89	\$ 22.98	\$ 24.13	\$ 25.34	\$ 26.61				1/4/2021	Unrepresented	Non-Exempt
Sustainability Manager	\$ 49.16	\$ 51.74	\$ 54.46	\$ 57.33	\$ 60.35				1/4/2021	Mid-Management/Professional	Exempt
Special Assistant	\$ -	\$ -	\$ -	\$ -	\$ -			\$12.00-\$75.00	1/4/2021	Unrepresented	Non-Exempt
Spe Coun-Maj Dev Pro	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 175.04		1/4/2021	Confidential Management	Exempt
Swim Instructor	\$ 16.85	\$ 17.70	\$ 18.59	\$ 19.52	\$ 20.50				1/4/2021	Unrepresented	Non-Exempt
Van Driver	\$ 16.85	\$ 17.70	\$ 18.59	\$ 19.52	\$ 20.50				1/4/2021	Unrepresented	Non-Exempt
Water Quality Technician	\$ 31.78	\$ 33.36	\$ 35.04	\$ 36.77	\$ 38.62				1/7/2021	General Employees	Non-Exempt

File Attachments for Item:

E. Consider Introduction of Ordinance 579- Proposed Amendment of Titles 15 and 17 of the Brisbane Municipal Code Pertaining to the Regulation of Grading

(This item will be continued to a future City Council Meeting and will not be discussed)



CITY COUNCIL AGENDA REPORT

Meeting Date: April 1, 2021

From: John Swiecki, Community Development Director

Subject: Proposed Ordinance No. 579 Amending Titles 15 and 17 of the Municipal Code to Comprehensively Update the City's Grading Ordinance

Community Goal/Result

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

Purpose

To update the City's grading ordinance.

Recommendation

That the City Council introduce Ordinance 579.

Background

In 2012/2013 the City initiated a comprehensive update of the grading ordinance, partially in response to a lawsuit settlement regarding approval of the Ng condominium project on Bayshore Boulevard in 2007. Based on the settlement, specific provisions were recommended to be incorporated into the grading ordinance including (a) enhancing existing fines and penalties for violations of the grading ordinance; (b) prohibiting removal of existing vegetation having habitat value without providing mitigation; and (c) requiring habitat restoration of graded areas within the jurisdiction of the Habitat Conservation Plan (HCP) that would decrease the presence of exotic / non-native plant species, as well as prevent erosion. A number of other revisions were proposed to reflect best technical practices and provide procedural clarity.

The draft ordinance was recommended for approval by the Planning Commission and went through multiple hearings by the City Council in 2013. It was tabled in 2013 as City efforts were focused on other issues, such as Brisbane Soil Processing and the Baylands. In order to finalize the ordinance it was reviewed and recommended for approval by the City Council Infrastructure Subcommittee in July, 2020 and has been scheduled for tonight's City Council hearing.

Discussion

While the draft ordinance is substantively the same as was last presented in 2013, there were a few revisions that were presented to the Infrastructure Subcommittee. These are described in detail in the attached subcommittee report.

The most notable relates to the Planning Commission's role in grading. The current ordinance requiring the Planning Commission to "approve a permit" is legally problematic as outlined in the memorandum from City Legal Counsel in the attached Infrastructure Subcommittee report. The solution proposed in 2013 was to make the Commission's review advisory to the City Engineer, limit the Commission's review to grading for projects with a related discretionary permit, and establish defined criteria to focus the

Commission's review. While the proposed revisions eliminate the overarching legal problem, procedural and perception issues remain.

For example it creates the unusual situation where a public-appointed body is advisory to city staff. Additionally, the review criteria are problematic for a variety of reasons, including lack of objective standards and inconsistency with other provisions of the Municipal Code. As such it is recommended that formal Planning Commission review of grading permit applications be eliminated from the grading ordinance. Note that if a project otherwise under the Commission's jurisdiction (design permit, use permit, etc) involves grading, the Commission retains the authority to consider grading in making a decision on the discretionary permit under their purview.

One proposed revision that was not discussed at the Infrastructure Subcommittee relates to the appeal process. Under the current ordinance all grading permits are appealable to the Planning Commission and subsequently to the City Council. The proposed 2013 ordinance revisions modified this cumbersome process by making permits appealable to the City Manager and subsequently to the City Council. The proposed revision still leaves the City Council in the untenable position of making decisions on technical (not public policy) matters that pursuant to state law are within the purview of licensed professionals. Given the technical nature of grading, it is recommended that the final decision on grading permit appeals rest with the City Manager. There are other precedents in the Municipal Code (Massage Permits, Tree Removal Permits) where this is the case.

Lastly, in recognition of the fact that grading permits are ministerial and the applicant will be the party affected by/aware of the City Engineer's decision, the ordinance clarifies the appeal procedures are applicable to the applicant.

The Planning Commission reviewed the draft ordinance at its meeting of September 10, 2020. In its correspondence (Attachment 3), the Commission expressed opposition to the proposed revisions concerning its role in the grading permit review process.

A summary of these concerns and staff's responses are provided below:

The Planning Commission's major objection to the proposed revisions stems from eliminating the Commission's role in oversight of grading permit applications. That oversight is embedded in a 2013 guideline that reserves to the Commission the right to consider alternative grading plans for certain grading permits and empowers the Commission to reject projects proposing "unnecessary amounts of excavation" when in the opinion of the Commission such grading is contrary to the General Plan.

The 2013 Guideline Conflicts with State Law.

Regrettably, the referenced guidelines conflict with State Law, the Professional Engineers Act (Business and Professions Code, Sections 6700 and following). That law was enacted in order to safeguard life, health, property and the public welfare and requires any person who practices professional engineering to be qualified and licensed by the State. B & P Code, section 6730. A professional engineer refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in the engineering services and the application of special knowledge of the mathematical, physical and engineering sciences in such professional work as investigation, evaluation, or design of public or private projects. B & P Code, section 6701. Such engineering embraces grading specifically and therefore requires only licensed engineers to submit, and other licensed engineers to

evaluate, designs, plans and specifications and engineering reports for grading projects. B & P Code, section 6731. Without putting too fine a point on it, any person who engages in professional engineering without the required license to do so violates the law. B & P Code, section 6787 (a).

There is no conflict between the Commission's review of grading in the context of its review of certain land use entitlement applications and eliminating its review of all grading permit applications.

The Commission also sees a conflict between the State law set forth above and other State law provisions that permits the Commission the authority to consider grading in context of its review of certain land use entitlement applications, such as a conditional use permit or a subdivision map.

There is a substantial body of procedural as well as substantive law that provides guidance to Planning Commissions when it is acting in a quasi-judicial capacity. Quasi-judicial actions are those that involve application of preexisting laws or standards to a specific project, such as the Commission's consideration of a conditional use permit or a subdivision map. In those cases, certain procedural and due process requirements, such as notice and an opportunity to be heard--apply. Decision makers must be neutral and unbiased. Importantly, when these types of matters are before the Commission, it must make written findings to support its decision; the record must contain substantial evidence to support the findings, and the findings must in turn support the decision and be sufficiently detailed so as to bridge the analytical gap between the evidence and the final decision. Typically, such entitlements will be granted if the general welfare standards are not implicated, for example, the proposed use would not create noise, dust, odors, or other undesirable effects.

It is, therefore, in this much broader context that the Commission may properly consider proposed grading as part of its overall review of a particular project, including imposing conditions to mitigate any adverse impacts. Such review, however, does not entail the Commission's technical review of the grading permit application, which review currently is set forth in the guideline discussed above and comes into play as to any grading that exceeds 50 cubic yards. Accordingly, there is no conflict between the Commission's role when it is looking at the grading when it is acting in a quasi-judicial capacity and the State law provisions that prohibit the Commission from serving as a reviewer of the City's professional engineer's judgment.

City law grants decision making authority to remove City trees to the City Engineer.

As to trees in the public right of way, the Commission contends its general land use authority grants it the authority to review the City Engineer's determination as to whether a street tree must be removed. The ordinance, however, that the City Council has adopted makes clear that whether such trees should be removed is solely in the determination of the City Engineer, based on concerns of public safety. Section 12.12.030, Brisbane Municipal Code. The Commission's position as to why it should be involved in that decision is contrary to the ordinance.

Appeals to the Planning Commission concerning grading permit applications is also contrary to State law.

Finally, the Commission contends that appeals concerning the City Engineer's decision on grading permit applications should be heard by the Planning Commission/City Council. That contention, however, likewise places the Commission and Council in the same role as acting as professional engineers that, for the reasons set forth above, neither is authorized to do. Moreover, outside the land use context, the

Municipal Code routinely has appeals directed to the City Manager. See, for example, Section 8.10.160, BMC (revocation of massage establishment registration); Section 12.12.060, BMC (denial of tree removal permit on private property). This is fundamentally no different.

Staff recognizes the valuable role that the Planning Commission plays for the community and the City in evaluating land use projects. Removing the Commission's review of grading permit applications does not diminish that role and indeed the Commission will continue to have purview concerning grading when it is context of an overall land use entitlement application. For the reasons expressed above, staff continues to recommend the revisions to the grading ordinance concerning the Commission's role in reviewing grading permit applications.

Fiscal Impact

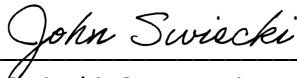
None

Measure of Success

Adoption of an updated grading ordinance

Attachments

1. Draft Ordinance 579
2. Infrastructure Subcommittee Report 7/29/20



John Swiecki, Community Development Director



Clay Holstine, City Manager

DRAFT 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	Quarry operations
15.01.120	Application to annexed territory
15.01.130	Exemptions
15.01.140	Application for grading permit
15.01.150	Application form
15.01.160	Site map and grading plan
15.01.170	Interim erosion and sediment control plan (interim plan)
15.01.180	Final erosion and sediment control plan (final plan)
15.01.190	Soils engineering report (soils report)
15.01.200	Engineering geology report
15.01.210	Work schedule and transport routes
15.01.220	Security
15.01.230	Fees
15.01.240	Grading permit fee exemption
15.01.250	Action on application
15.01.260	Permit duration
15.01.270	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.
- (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 and no grading permit shall be issued by the City, without first complying with the requirements of the Plan Operator.

§15.01.110 Quarry operations

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

§15.01.120 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.

§15.01.130 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.

§15.01.140 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. Soils engineering report;
- F. Engineering geology report;
- G. Work schedule and transportation routes;
- H. Security;
- I. Fees;
- J. Confirmation of compliance with Chapter 15.75 (Recycling and Diversion of Debris) of this Code.
- K. Any other material required by the City Engineer.

§15.01.150 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.

§15.01.160 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.

§15.01.170 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.

§15.01.180 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 revegetation plan;
- (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.

§15.01.190 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.

§15.01.200 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.

§15.01.210 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.

§15.01.220 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 ~~(100)~~ 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.

§15.01.230 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.

§15.01.240 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.

§15.01.250 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.

§15.01.260 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.

§15.01.270 Appeals

A. The applicant for a grading permit may appeal to the City Manager (1) the denial of the application or the conditions of a grading permit, (2) the suspension of a grading permit after a hearing by the City Engineer, or (3) the revocation of a grading

permit after a hearing by the City Engineer. The applicant must file the appeal in writing with the City Clerk within 15 calendar days of the written notice to the applicant of items (1), (2), or (3) in the prior sentence.

B. The City Manager shall consider the appeal and may conduct an informal hearing to receive documentary or oral evidence from the applicant/appellant and the City Engineer. The City Manager may affirm, reverse, or modify the action of the City Engineer and shall provide a written decision on the appeal to the applicant/appellant and the City Engineer. The decision of the City Manager shall be final.

§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 the City has issued a grading permit and there has been a violation of any of the provisions of this Chapter that the City has determined to have been willful, reckless, or grossly negligent, then in addition to the fines, penalties and enforcement provisions referenced in subsection A of this Section 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	\$55,000.00

C. Where the City has not issued a grading permit and there has been a violation of any of the provisions of this Chapter, then in addition to the fines, penalties and enforcement provisions referenced in subsection A of this Section 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	\$7850
51-100 cubic yards	\$9200
101-1000 cubic yards	\$25,000
1001-10,000 cubic yards	\$43,000
10,001-100,000 cubic yards	\$108,000
100,001-200,000 cubic yards	\$188,000
Greater than 200,000 cubic yards	\$195,000

§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:

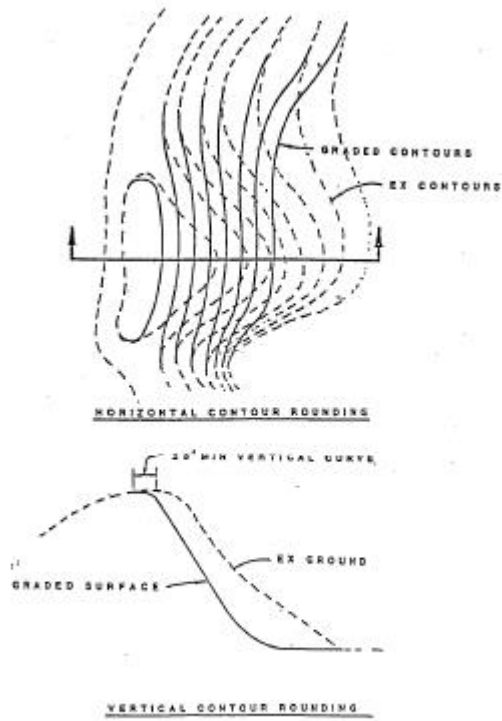
A. Securities held against the successful completion of the work shown on the site map, grading plan and the interim plan, shall be released to the permittee at the termination of the permit, or the satisfactory completion of the grading operations, provided no action against such security is filed prior 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'

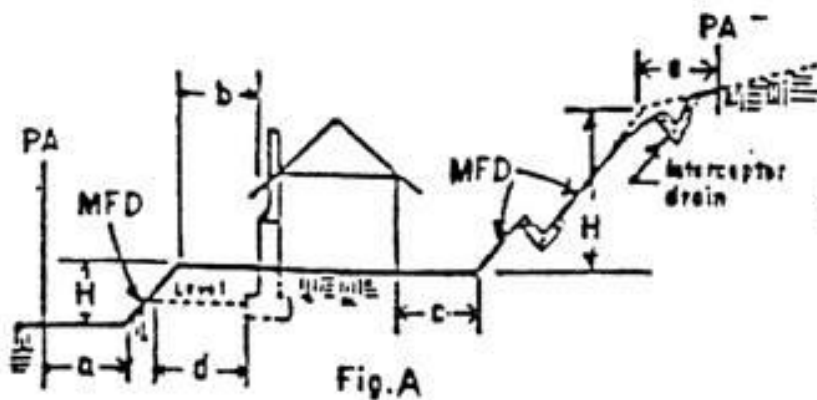


Fig. A

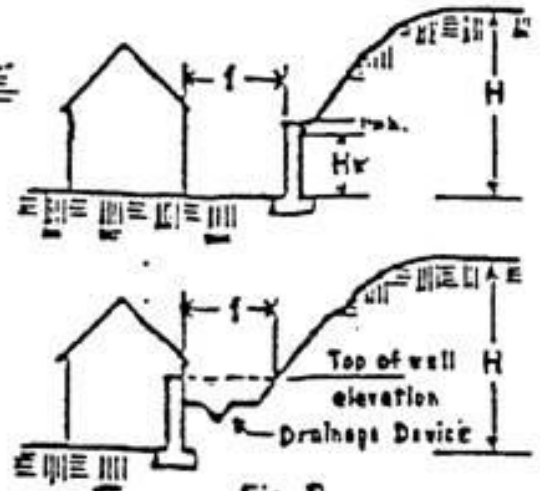


Fig. B

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 deleted.

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

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

* * * *

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

AYES:

NOES:

ABSENT:

ABSTAIN:

_ Karen Cunningham, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas McMorrow, Interim City Attorney



MEMORANDUM

DATE: 29 July 2020

TO: Infrastructure Subcommittee

FROM: Clay Holstine, City Manager

SUBJECT: **Grading Ordinance Update**

BACKGROUND

In 2012-2013 the City undertook a comprehensive update of the grading ordinance, partially in response to a lawsuit settlement regarding approval of the Ng condominium project on Bayshore Boulevard in 2007. Based on the settlement, specific provisions were recommended to be incorporated into the grading ordinance including (a) enhancing existing fines and penalties for violations of the grading ordinance; (b) prohibiting removal of existing vegetation having habitat value without providing mitigation; and (c) requiring habitat restoration of graded areas within the jurisdiction of the Habitat Conservation Plan (HCP) that would decrease the presence of exotic / non-native plant species, as well as prevent erosion. A number of other revisions were proposed to reflect best technical practices and provide procedural clarity.

The draft ordinance was recommended for approval by the Planning Commission and went through multiple reviews by the City Council in 2013. It was tabled in 2013 as City efforts were focused on other issues, such as Brisbane Soil Processing and the Baylands.

Staff believes it is now timely to complete the process and adopt a revised ordinance. While staff remains supportive of the draft ordinance from 2013, there are several recommended revisions which are discussed below. Most of these are based on changes to procedures and regulations that have taken effect since 2013, or a second look at the statutory authority for the Planning Commission to review grading plans. Attached for reference are the ordinance last presented to the City Council in 2013 and a clean copy of the draft ordinance now proposed for adoption.

DISCUSSION

Planning Commission Review

The current ordinance requiring the Planning Commission to approve a permit is legally questionable for reasons outlined in the attached memo from City Legal Counsel. Experience also has shown practical difficulties as well as frequent confusion among the public and Planning Commissioners in understanding the scope of the Commission's review authority when grading permits are subject to Planning Commission review. The draft 2013 ordinance changed the procedure to limit the Planning Commission's role to making a recommendation to the City Engineer and establishing defined criteria to focus its review. While the proposed revisions eliminate the overarching legal problem, procedural and perception issues remain. Additionally,

as pointed out in the attached memo from legal counsel, the proposed review criteria are problematic for a variety of reasons, such as the lack of objective criteria. As such staff recommends that Planning Commission review of grading permit applications be eliminated from the grading ordinance. Note that if a project under the Commission's jurisdiction (design permit, use permit, etc) involves grading, the Commission retains the authority to consider grading in making a decision on the overall project.

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 Section 15.01.100 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.

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. City legal counsel is reviewing the penalty provisions set forth in the draft ordinance and will report back if revisions are recommended.

Attachments

City Legal Counsel Memo

2013 Redlined Ordinance

2020 Proposed Draft Ordinance **NIC**

MEMORANDUM

Date: July 23, 2020

To: Members of the City Council Infrastructure Committee

From: Michael Roush, Legal Counsel

Subject: **Amendments to the Grading Ordinance Concerning the Planning Commission's Review of Grading Permit Applications**

Under the City's Grading Ordinance, the Planning Commission is to review and must approve certain grading permit applications. Staff is recommending that this provision of the Grading Ordinance be deleted because it conflicts with State law concerning who is authorized to review these types of applications. In addition, various revisions to the Grading Ordinance have been under discussion for several years now, including imbedding into the Ordinance the review criteria that the Planning Commission has (by policy) been applying and therefore in the future would apply when called upon to review a grading permit. Staff is recommending that these criteria not be included because the standards are vague, conflict with recent State legislation that require objective design standards relative to the City's review of residential projects, and/or are dealt with more comprehensively in other parts of the Municipal Code

The relevant section of the Grading Ordinance provides as follows:

"Where a grading permit is required by the provisions of this Chapter, it shall be obtained from the city engineer, except that grading permit approval by the planning commission shall be required in the event:

A. More than two hundred fifty (250) cubic yards of material is to be moved or planned to be moved in any single grading or excavation operation or if more than fifty (50) cubic yards of materials is to be exported from any single parcel of land."

Conflict with State Law

California law, (Business and Professions Code, sections 6700 – 6799; "Professional Engineers Act"), enacted in order to safeguard life, health, property and public welfare, ensures and requires any person practicing engineering to be qualified and licensed to practice engineering. A professional engineer includes a wide category of engineers including civil, electrical and mechanical. Only a professional engineer may, under law, evaluate public or private utilities and structures, as well as engineering submittals concerning grading permit applications.

Under the Brisbane Municipal Code, certain submittals are to be included with a grading permit application and those submittals must be prepared by a professional engineer licensed by the State. Those submittals include: a grading plan; soils engineering report (including hydrology reports), engineering geology reports (also including hydrology reports) and interim and final erosion control plans, including the calculation of pre- and post-development runoff. Section 15.01.090, BMC.

As set forth above, the Municipal Code also requires a grading permit from the planning commission under certain circumstances. The Code creates a very real situation where the Commission is called upon to evaluate or make decisions on the submittals prepared by a professional engineer. By requiring the Commission to make that type of evaluation and decision, it compels the Commission to engage in an activity that the Business and Professions Code expressly makes unlawful. Bus. & Prof. Code, sections 6785-6787 (a). The Code should not require the Commission to act in an unlawful manner and therefore this section of the Grading Ordinance must be deleted.

Grading permit submittals will continue to be thoroughly and carefully reviewed by the City Engineer to ensure that any significant amount of grading will be in compliance with sound engineering principles. That review, however, will properly be performed by someone who has the requisite training, skill, and license to do so.

Lack of Standards in the Proposed Amendments to the Grading Ordinance

The proposed amendments set forth certain review criteria that the Planning Commission is to apply when it reviews grading permit applications. Those standards are currently being applied by a policy that the Commission adopted some years ago. Those criteria, however, are vague and lack objective standards and therefore run contrary to the objective design standards that state law now requires when local agencies review residential development projects. For example, one criterion is that the grading must “fit comfortably” into the natural topography. Clearly, this is a highly subjective determination that would apply only in hillside residential areas and would certainly lead to claims that decisions were arbitrary and capricious.

Similarly, another design review criterion that the amendment would imbed in the Ordinance is the Planning Commission’s design review of retaining wall appearances and visual impacts. Leaving aside that no objective design standards are set forth for how the Commission is to make such determination, requiring the Commission to make that determination on a stand alone basis when the actual construction project is not before it is counter intuitive and, again, leads inexorably to decisions that are arbitrary and capricious.

Conflicting Authority

The proposed amendments also provide that in the Commission’s review of a grading permit application, it will consider retention and/or removal of trees on private property and street trees. Those matters, however, have been thoroughly vetted by the City Council in its earlier, comprehensive adoption of a separate ordinance concerning the preservation of trees in the community. Adding another layer of review is unnecessary, redundant and could lead to conflicting results. Moreover, the Commission has no authority over trees in the public right of way and therefore could create an unrealistic expectation of the Commission’s authority to retain (or remove) a street tree.

Retention of Planning Commission Authority

It should be noted that the proposed revisions address grading permits for projects that are otherwise not subject to Planning Commission review. For projects otherwise subject to Planning Commission review (design permits, use permits, variances, etc) that involve grading, the Commission retains the ability to consider grading in the context of the broader approval and required findings. This reflects a holistic and logical review process, as opposed to piecemeal review of grading on a stand alone basis.

Conclusion

Involving the Planning Commission in the review process of grading permit applications conflicts with State law and to eliminate that conflict, the section of the Grading Ordinance that provides for the Commission's review of such applications should be deleted. In addition, the proposed review criteria fail to meet the objective standards now required for review of residential development projects and/or are more comprehensively addressed elsewhere in the Code.

If the Committee has any questions or concerns on these matters before the Committee's meeting, please let me know.

REDLINE VERSION OF DRAFT GRADING ORDINANCE

Changes in the current Municipal Code recommended by staff and the Planning Commission are indicated by ~~red strike-through~~ (deletions) and **red text** (additions). Recommendations from the Council Subcommittee are shown in **blue**. Recommendations from 9/16/13 Council Meeting are shown in **green**.

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	<u>Discovery of prehistoric, historic, or unique archaeological resources, or human remains</u>
15.01.0 7 60	Other laws
15.01.0 8 70	Severability and validity
15.01.0 9 80	Permit required
15.01.100	<u>HCP Permission required</u>
15.01. 11 0 81	Planning Commission approval review of <u>application for</u> grading permit
15.01. 12 0 82	Quarry operations
15.01. 13 0 83	Application to annexed territory
15.01. 14 0 84	Exemptions
15.01. 15 0 90	Application <u>for grading permit</u>
15.01. 16 0 91	Application form
15.01. 17 0 92	Site map and grading plan
15.01. 18 0 93	Interim erosion and sediment control plan (interim plan)

15.01.19094	Final erosion and sediment control plan (final plan)
15.01.200	<u>Revegetation plan</u>
15.01.21095	Soils engineering report (soils report)
15.01.22096	Engineering geology report
15.01.23097	Work schedule and transport routes
15.01.24098	Security
15.01.12500	Fees
15.01.12605	Grading permit fee exemption
15.01.11270	Action on application
15.01.1280	Permit duration
15.01.13290	Appeals
15.01.14300	Revised plans
15.01.15310	Cessation of operations
15.01.16320	Assignment of permit
15.01.17330	No improvements planned
15.01.18340	Grading permit, paving
15.01.19350	Grading permit, drainageway alteration
15.01.20360	Excavation blasting permit
15.01.23705	Truck haul permit
15.01.21380	Issuance of grading permits
15.01.22390	Time and noise limitations on grading operations
15.01.23400	Implementation of permits - permittee's duties
15.01.2410	Implementation of permits – <u>requirements of City Engineer</u>
15.01.4250	Grading inspection
15.01.255430	Completion of work
15.01.26440	Removal of ground cover
15.01.27450	Wet season grading
15.01.28460	Cuts
15.01.29470	Fills
15.01.30480	Setbacks
15.01.31490	Drainage and terracing
15.01.32500	Import and export of earth material
15.01.33510	Site-d Dust control
15.01.34520	Protection of adjoining property
15.01.3530	Removal of hazards
15.01.36540	Post-grading procedures
15.01.37550	Revocation or suspension of permits
15.01.38560	Violation – penalties
15.01.39570	Action against the security
15.01.39580	Public nuisance abatement
15.01.45900	Release of security
15.01.41600	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 ~~Chapter 70 of the Uniform Building Code by the addition thereto of 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 ~~and~~ sets forth rules and regulations to control excavation, land disturbances, land fill, ~~and~~ 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 ~~chapter~~ 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)3. **"Bedrock"** means in-place solid rock.
- (5)4. **"Bench"** means a relatively level step excavated into earth material. Bench also includes terraces.
- (6)5. **"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)6. **"Borrow"** means earth material acquired from an off-site location for use in grading on a site.
- (8)7. **"City"** means the city of Brisbane.
- (9)8. **"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)9. **"City street"** means any public or private street in the city of Brisbane.
- (11)10. **"Civil engineer"** means a professional engineer registered in the state of California to practice in the field of civil engineering.

- (124): **"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.
- (152): **"Compaction"** means the densification of a fill by mechanical means.
- (163): **"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)
- (174): **"Drainageway"** means natural or manmade channel ~~which~~ that collects and intermittently or continuously conveys stormwater runoff.
- (185): **"Dry season"** means the period from April 15th to October 15th.
- (196): **"Earth material"** means any rock, natural soil, fill or combination thereof.
- (2047): **"Engineering geologist"** means a geologist experienced and knowledgeable in engineering geology and qualified to practice engineering geology in the State of California.
- (2148): **"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.
- (2249): **"Erosion"** means the wearing away of the ground surface as a result of the movement of wind or water.
- (230): **"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.
- (241): **"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.

~~(252)~~ **"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.

~~(273)~~ **"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.

~~(284)~~ **"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.

~~(295)~~ **"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)26.~~ **"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)27.~~ **"Key"** means a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.

~~(33)28.~~ **"Manual of standards"** means ABAG Manual of Standards for Surface Runoff Control Measures (Latest Revision).

~~(334)29.~~ **"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.

~~(345)~~ **Plan Operator** is the Habitat Conservation Plan Manager, presently the San Mateo County Department of Parks, and also means any successor agency.

~~(356)~~ **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.

~~(367)30.~~ **"Sediment"** means earth material deposited by water or wind.

~~(378)31.~~ **"Site"** means a parcel or parcels of real property owned by one or more than one person ~~which-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 ~~is provided occurs.~~

~~(389)32.~~ **"Slope"** means an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

~~(4039)33.~~ **"Soil"** means naturally occurring superficial deposits overlying bedrock.

~~(404)34.~~ **"Soils engineer"** means a civil engineer experienced and knowledgeable in the practice of soils engineering. Soils engineer and geotechnical engineer are synonymous.

~~(412)35.~~ **"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.

~~(423)36.~~ **"Structure"** means anything built or constructed including pavement and pipelines.

~~(434)37.~~ **"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.

~~(445)38.~~ **"Terrace"** means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes. Terrace also includes benches.

~~(456)39.~~ **"Truck haul"** means the movement over public streets of any excavated material.

~~(457)40.~~ **"Vertical slope rounding"** means the rounding of the top and toes of cut and ~~fi~~ull slopes.

~~(478)~~ **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."

~~(489)41.~~ **"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 ~~of for~~ meeting the requirements of this Section and of this Chapter for any civil or criminal liability as a result of the ~~exercise of this performance of grading work pursuant to a grading~~ permit shall be upon the permittee. ~~Neither T~~he City, ~~the~~ City Engineer, ~~its or any~~ employees or agents ~~of the City~~ shall ~~in no way~~ be responsible for ~~said 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.

§15.01.0760 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.

§15.01.0870 Severability and validity

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

§15.01.0980 Permit required

Except as exempted under Section 15.01.084140, 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.

§15.01.11081 Planning Commission ~~approval-review~~ of application for grading permit

A. Where a grading permit is required by the provisions of this Chapter, it shall be ~~obtained from issued by~~ the City Engineer following his/her approval of the permit application, ~~except that grading permit approval by the Planning Commission shall be required in the event~~ The permit application shall also be reviewed by the Planning Commission where:

(1) All of the following circumstances are applicable:

(a) More than two hundred fifty (250) cubic yards of material is to be moved or planned to be moved in any single grading or excavation operation; and

(b) ~~The parcel or parcels of land on which the grading will be performed is located within any of the following zoning districts as defined by the City's most current Zoning Map; or if more than fifty (50) cubic yards of materials is to be exported from any single parcel of land; or Brisbane Acres, Southwest Bayshore, Central Brisbane, Northeast Ridge, Northwest Bayshore or the Quarry; and~~

(b) The parcel or parcels of land on which the grading shall be performed is located within any zoning district as defined by the City's most current Zoning Map

(c) The grading is being performed as part of a project for which an application for a permit, approval, or other land use entitlement is being considered by the Planning Commission as the approving authority for such application.

(2) ~~Benches or terraces are required in cut and/or fill slopes, in which case landscaping for screening may be required by the City, to soften the visual impact. (See Section 17.32.220.)~~ 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 15.01.110.A above, the review shall be based upon a consideration of the following potential impacts of the proposed grading:

- (1) Will the proposed grading be ~~minimized~~ and designed to reflect or fit comfortably with the site context and natural topography?
- (2) Will the proposed grading be designed to ~~avoid large exposed retaining walls~~ 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?

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

C. The Planning Commission may provide comments and recommendations to the City Engineer concerning mitigation or avoidance of any potential adverse impacts of the proposed grading considered by the Commission pursuant to this Section.

§15.01.~~120~~82 Quarry operations

No grading permit for an excavation shall be issued if the excavation for which a grading permit is required shall ~~involve~~ allow for the operation of a quarry ~~as defined in the zoning ordinance, which quarry~~ where quarrying is otherwise prohibited ~~until a use permit therefor has first been granted pursuant to by~~ the provisions of the Zoning Ordinance of the City.

§15.01.~~130~~83 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.

§15.01.14084 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 ~~all 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 ~~such~~ 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 15.01.340180 and 15.01.350190.

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 15.01.340180.

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~~90~~ 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 eCity eEngineer:

- 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;
- FE. Soils engineering report;
- GF. Engineering geology report;
- HG. Work schedule and transportation routes;
- IH. 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.
- LJ. Any other material required by the City Engineer.

§15.01.160~~91~~ 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~~92~~ Site map and grading plan

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

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.

§15.01.18093 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)A. The location and amount of runoff discharging from the site, calculated using a method approved by the City eEngineer;

(2)B. 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)(B) 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.

§15.01.19094 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)A. The location and amount of runoff discharging from the site, calculated using a method approved by the City Engineer;

(2)B. A description of and specifications for sediment retention devices;

(3)C. A description of and specifications for surface runoff and wind erosion control devices;

(4)D. A description of vegetative measures;

(5)E. A graphic representation of the location of all items in subsections B through D above, and items A through K in 15.01.17092 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.

§15.01.21095 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 Chapter 70~~ of the latest edition of the California Building Code adopted by the City ~~of the Uniform Building Code~~:

- (1)A. Data regarding the nature, distribution, strength, and erodibility of existing soils;
- (2)B. Data regarding the nature, distribution, strength and erodibility of soil to be placed on the site, if any;
- (3)C. Conclusions and recommendations for grading procedures;

~~(4)D.~~ Conclusions and recommended designs for soil stabilization for interim conditions and after construction is completed;

~~(5)E.~~ Design criteria for corrective measures when necessary;

~~(6)F.~~ Foundation and pavement design criteria when necessary;

~~(7)G.~~ Opinions and recommendations covering suitability of the site for the proposed uses;

~~(8)H.~~ 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.

§15.01.22096 Engineering geology report

A. An engineering geology report, when required by the ~~e~~City ~~e~~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 Chapter 70~~ of the latest edition of the California Building Code adopted by the City ~~of the Uniform Building Code~~:

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

~~(2)B.~~ Conclusions and recommendations regarding the effect of geologic conditions on the proposed development;

~~(3)C.~~ Recommendations for mitigation of identified hazards wherever appropriate;

~~(4)D.~~ An opinion as to the extent that instability on adjacent properties may adversely affect the project;

~~(5)E.~~ Opinions and recommendations covering suitability of the site for the proposed uses;

~~(6)F.~~ 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.~~23097~~ Work schedule and transport routes

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

~~(1)A.~~ Proposed grading schedule;

~~(2)B.~~ 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)C.~~ 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 BA(2);

~~(4)D.~~ Schedule for construction of the proposed improvements on the site;

~~(5)E.~~ 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.~~24098~~ 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 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)F.~~ 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)F.~~ 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 (100) percent 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.

§15.01.12500 Fees

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

B. Unless exempted under Section 15.01.260405 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 ~~code Chapter~~, except when it can be proven to the ~~City Engineer's~~ satisfaction ~~of the City Engineer~~ that an emergency existed ~~which-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 ~~code-Chapter~~ nor from any other penalties prescribed herein.

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

~~E.D.~~ 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 ~~as provided in Section 15.01.098(D)~~. In addition, the City Engineer may charge a mobilization cost equal to ten ~~(10)~~ percent (10%) of the cost for performing the work. Fees or deposits required for special purposes, ~~i.e.g.~~ cleanup, dust control, etc., collected but not expended for the purpose for which they are collected, will be refunded.

§15.01.~~12605~~ 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.~~24098~~.

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.~~11081~~.

§15.01.~~11270~~ 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.~~1280~~ Permit duration

Permits issued under this Chapter shall be valid for the period during which the proposed excavation or filling activities and soil storage takes place or ~~is-are~~ scheduled to take place per Section 15.01.~~23097~~. 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.

§15.01.13290 Appeals

A. Any person may appeal to the ~~Planning Commission~~ City Manager 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 ~~Planning Department~~ City Clerk within fifteen (15) days after the action complained of. ~~The appeal shall be accompanied by a fee, as set by the City Council, and shall clearly state the reason for appeal.~~

B. ~~Upon receipt of such an appeal, the planning department, acting under the direction of the Planning Director, shall bring the appeal before the Planning Commission within thirty (30) days and shall notify the appellant and (if different) the applicant of the date and time of the Planning Commission 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 Planning Commission 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 City Manager shall consider the appeal and may conduct an informal hearing to receive oral and documentary evidence from the appellant and the City Engineer. The City Manager may affirm, reverse or modify the action of the City Engineer and shall provide a written decision on the appeal to the appellant, with a copy to the City Engineer, City Council, and to the applicant if a different party has appealed.~~

C. The ~~action~~ City Manager's decision of the Planning Commission may be appealed to the City Council in the same manner as an appeal from a decision of the Planning Commission, as set forth in ~~Chapter 17.52 Sections 17.52.020 and 17.52.040~~ of this Code.

§15.01.14300 Revised plans

If the City Engineer finds the soil or other conditions to ~~not be as 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.

§15.01.15310 Cessation of operations

~~In the event~~ If the operation of any activity regulated by this Chapter is voluntarily ceased ds for a continuous period of more than ninety (90) days (which period is not stated in the approved work schedule per Section 15.01.23097) then, ~~in that event~~, 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.

§15.01.16320 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 eCity eEngineer of the proposed assignment;
- B. The proposed assignee:
 - (1)- Submits an application form pursuant to Section 15.01.09160; 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 15.01.24098; 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.

§15.01.17330 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.

15.01.18340 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. ~~Refer to Section 15.01.100(B) and (C) for fees.~~

§15.01.19350 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 15.01.14084.(HF)). ~~Refer to Section 15.01.100(B) and (C) for fees.~~

| §15.01.~~20360~~ 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 ~~f~~Fire ~~d~~Department.

| §15.01.~~23705~~ 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 ~~and as provided in this chapter.~~

| §15.01.~~21380~~ Issuance of grading permits

The City Engineer may issue a grading permit upon receipt and approval of the items listed in Section 15.01.~~09150~~. 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.~~09150~~ and 15.01.~~23400~~, (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, ~~or~~ 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 ~~code~~ Chapter, and as contained on the approved site map, grading plan, and other required plans and reports.

§15.01.~~223~~90 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, ~~n~~Noise eControl, of this Code.

B. ~~In addition, n~~No grading work shall be performed during hours other than the normal working hours of the City ~~p~~Public w~~Works~~ ~~d~~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 ~~and as provided in this chapter~~. 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.~~234~~00 Implementation of permits; permittee's duties

In addition to performing as required under Section 15.01.~~213~~80:

A. The permittee shall request an inspection of the site by the City Engineer at each of the following 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 law any approved grading plans or any other applicable requirement. Any portion of the work ~~which-that~~ does not comply with the law-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, ~~status reports~~ with revised work schedules ~~which are~~ required by Section 15.01.23097, 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 ~~the any~~ approved grading ~~plan, interim or final~~ 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 ~~is waived by the City Engineer~~.

§15.01.2410 Implementation of permits – requirements of City Engineer

A. The permittee shall submit all reports as may be required in this Section and in Sections 15.01.21380 and 15.01.23400 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 ~~within a reasonable period of time~~ of the requirement to modify and may specify a reasonable 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 15.01.23400.(B);
- (2)- To verify completion of modifications required under Subsection A of this Section ~~15.01.240(A)~~;
- (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.

§15.01.4250 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 ~~in accordance with~~ according to the provisions of Subsection B of this Section.

B. In addition to complying with all requirements of ~~Chapter 70 of the Uniform 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)~~A.~~ 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 ~~in accordance with the~~ 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 ~~of the City Engineer~~, or the City Engineer, independently, chooses to have the grading performed as "engineered grading."

~~(2)B.~~ 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 ~~in the event 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 ~~his-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.~~24~~10 and at any more frequent interval necessary to determine that the professional consultants are exercising adequate control, ~~is being exercised by the professional consultants.~~

~~(4)C.~~ 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)D.~~ 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.~~2340~~0). Recommendations for corrective action measures, if necessary, shall be submitted.

~~(6)E.~~ 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.~~2554~~30 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 ~~in accordance with~~ 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 ~~in accordance~~

~~with-according to~~ the final approved grading plan and the required reports have been submitted.

§15.01.~~26440~~ 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.~~27450~~ Wet season grading

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

B. The City ~~Engineer manager~~ 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, ~~during the wet season~~, applicant/permittee shall submit evidence to the City ~~Engineer manager~~, as often as ~~said the~~ City ~~Engineer manager~~ 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.~~37550~~ through 15.01.~~395580~~ of this Chapter.

§15.01.~~28460~~ 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 - (2)-two~~ horizontal to one ~~(1)-vertical~~ ~~(2:1)~~ unless otherwise justified in the soil engineering or engineering geology report. Justification shall consist of an ~~accepted~~ 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). ~~Aaccepted-The factors of safety to be analyzed analysis~~ shall be those determined ~~by-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.~~37-190~~.

§15.01.~~29-470~~ 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 ~~which 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 ~~isn~~ 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 ~~Building Code Standard No. 70-1~~ Appendix J of the 2010 California Building Standards Code or equivalent, as approved by the City Engineer. Field density shall be determined ~~in accordance with~~ according to Appendix J of the 2010 California Building Standards Code ~~Building Code Standard No. 70-2~~ 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 ~~(2) horizontal~~ to one ~~(1) vertical~~ (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.~~31490~~.

§15.01.~~30480~~ 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.~~31490~~ 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 approved by the City Engineer's approval.

§15.01.32500 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. ~~Either water or dust palliative or both must be applied for the alleviation or prevention of excessive dust resulting from the loading or transportation of earth from or to the project site on public roadways. 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 15.01.22390 of this ~~grading code~~ 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 ~~must~~ shall be ~~three hundred (300) feet 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 ~~must be posted on the public roadway four hundred (400) feet on either side of the access intersection, carrying the words "Truck Crossing."~~ The sign shall be diamond shape, each side being thirty (30) inches in length, shall have a yellow background, and the letters thereon shall be five (5) inches in height. The sign shall be placed six (6) feet from the edge of the pavement and the base of the sign shall be five (5) feet above the pavement level. The advance warning sign shall be covered or removed when the access intersection is not in use.

§15.01.33510 Site ~~d~~Dust control

The movement of earth materials either within, to, or from a site shall require the ~~periodic~~ 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. ~~On projects as~~ determined by the ~~e~~City ~~e~~Engineer, a water truck shall be continuously present on-site to assure maximum control.

§15.01.34520 Protection of adjoining property

In accordance with California Civil Code Section 832. Each adjacent owner is entitled to the lateral and subjacent support ~~which 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.

§15.01.3530 Removal of hazards

Whenever the City Engineer determines that any existing excavation, ~~or~~ 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 ~~in writing~~ from the City Engineer, shall immediately repair or eliminate such excavation or embankment so as to remove the hazard and ~~be in conformance 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.~~365~~40 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.~~405~~90.

§15.01.~~375~~50 Revocation or suspension of permits

A. The City Engineer may suspend ~~A~~any grading permit ~~may be suspended by the City Engineer~~ 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, ~~the lives or property of others~~. 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 ~~said~~ the City Engineer within five (5) days of the written notice of suspension. The ~~written~~ 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 ~~shall may~~ reinstate a suspended permit upon the permittee's correction of the cause of the suspension.

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

§15.01.~~385~~60 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	\$????????

§15.01.~~395~~70 Action against the security

The City Engineer may retain and/or execute security required by Section 15.01.~~240~~98 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~~s~~ land-disturbing activities and/or filling and abandons the work site prior to the completion of the work shown on the site map, ~~and~~ 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.~~24~~380 and has had his/her permit revoked under Section 15.01.~~235~~50;

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.

§15.01.39580 Public nuisance abatement

A. The City Council of the city of Brisbane finds and declares that any work site on which grading has been started, and has been abandoned or is not completed ~~in accordance with~~ 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 ~~considered~~ 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.

BA. The public nuisance abatement procedures provided in this Section are, at the City's option, ~~an alternative~~ or additional to the procedures provided in Sections 15.01.39570 and 15.01.3530 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 or any other ordinance of the City.

CB. 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.

DC. 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 ~~grading 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 _____ has been started and (has been abandoned. (not in conformance with the site plan, grading plan and grading permit.) the) on-site grading and interim or final erosion control facilities have failed. (erosion control facilities are not complete, and that constitutes a violation of the City of Brisbane Grading Ordinance or a violation of a permit or approval issued pursuant to such Ordinance:~~

~~s~~Such condition creates a danger to the public health, safety, and welfare and is a public nuisance which must be abated by immediately ~~removing the hazard and/or by completing the planned permitted work, by taking the following corrective action:~~

If said nuisance is not abated or said hazard is not removed within ~~three~~ _____ days from and after the date of posting of this notice, or if good cause is not shown to

the undersigned within said ~~three days time~~ why such corrective action should not be ~~done taken~~, the City will abate such nuisance by removing or causing to be removed said hazard and completing or causing to be completed the ~~planned permitted work~~ 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 ~~planned permitted work~~ corrective action is completed, and such assessment will constitute a lien upon the property until paid.

~~The above mentioned parcel of land on which said public nuisance exists is situated in the City of Brisbane, County of San Mateo, State of California which is described in the last equalized assessment roll of the county of San Mateo as:~~

APN _____

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

Posted/Mailed this _____ day of _____, 1920

CITY MANAGER OF THE
CITY OF BRISBANE

By: _____

ED. 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 (DE) 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 (DE) above.

FE. ~~1~~ 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. ~~2~~ If such owner or owners fail to abate such nuisance ~~as above prescribed~~ within said time, and if, in addition, they fail to show cause to the satisfaction of the City ~~engineer~~ Manager why said nuisance should not be abated, then in that event the City may abate said nuisance or cause same to be abated.

GF. 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.

HG. 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 GF 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 ~~transmitted to the city manager and 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.

IH. 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.

JH. 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.

KJ. 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 T~~the City Council finds the report to be acceptable, it shall ~~then~~ confirm the report by ~~motion or~~ resolution.

LK. 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.

ML. 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. ~~M~~Laws relating to the levy, collection and enforcement of county taxes apply to such special assessment taxes. ~~N~~The appropriate county official shall enter each assessment on the county tax roll opposite the parcel of land. ~~O~~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.

NP. 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.

QQ. 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 ~~August-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.

PR. 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 ~~guardian, executor or administrator~~ duly authorized representative.

§15.01.45900 Release of security

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

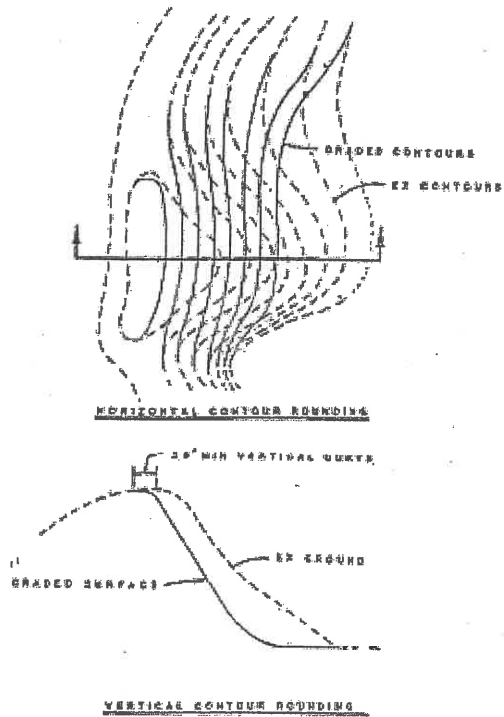
A. Securities held against the successful completion of the work shown on the site map, grading plan and the interim plan, shall be released to the permittee at the termination of the permit, or the satisfactory completion of the grading operations, provided no action against such security is filed prior 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.

§15.01.41600 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 benches.

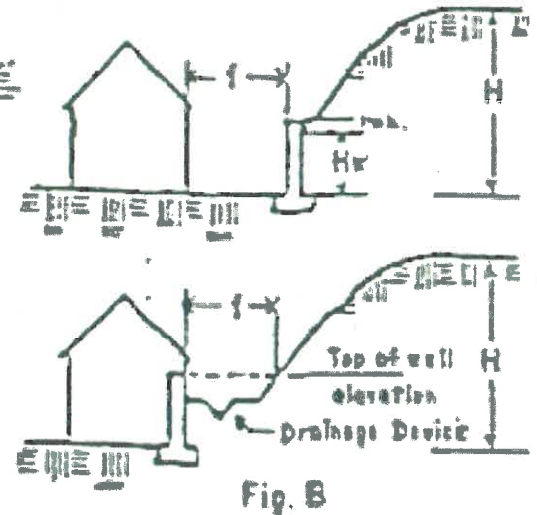
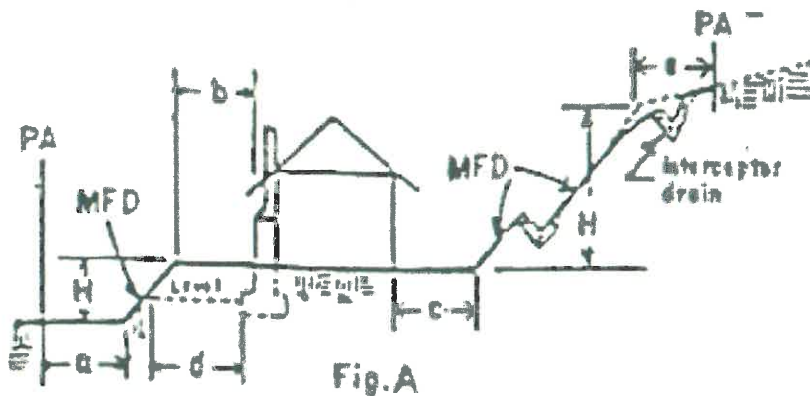
FIGURE 2

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'

**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 eCity eEngineer.

"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 eCity eEngineer.

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

"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 eCity eEngineer.

"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.

A. Any grading, as defined in Section 12.08.020, shall require a permit from the Planning Commission when more than two hundred fifty (250) cubic yards of material are involved in any single operation, or if more than fifty (50) cubic yards of material is to be removed from any single parcel of land, or when grading is not otherwise approved in connection with issuance of a building permit. (Reference: Section 12.08.120.) Grading permits to be issued by the Director of Public Works/City Engineer pursuant to Chapter 15.01 of this Code shall be subject to review by the Planning Commission when required by the provisions of Subsection 15.01.110.A of this Code. The review shall be based upon a consideration of the following potential impacts of the proposed grading:

- (1) Will the proposed grading be minimized and designed to reflect or fit comfortably with the site context and natural topography?
- (2) Will the proposed grading be designed to avoid large exposed retaining walls? 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?

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

B. The Planning Commission may provide comments and recommendations to the City Engineer concerning mitigation or avoidance of any potential adverse impacts of the proposed grading considered by the Commission pursuant to this Section.

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

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

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ray Miller, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

September 15, 2020

To: Hon. Mayor O'Connell and City Council
 From: Planning Commission Chairperson Sayasane
 Re: Planning Commission Comments on Draft Grading Ordinance Revisions

Dear Hon. Mayor and Council:

The changes in procedure outlined in the draft Grading Ordinance represent such a significant departure from present procedure that the Planning Commission feels compelled to bring specific items to your attention.

The City Engineer's Role

At present, grading projects exceeding a certain threshold require Planning Commission review.

This would be eliminated.

The draft ordinance proposes **all** grading permits, *no matter how large the project*, would be reviewed **only** by the City Engineer.

Accepting the draft ordinance, you will be removing the important oversight role of the Planning Commission that the 2013 guidelines explained: *The Planning Commission reserves the right to consider alternative grading plans for any Grading permit subject to its review and may reject projects proposing unnecessary amounts of excavation contrary to the policies and programs in the City's General Plan.*

You will also be eliminating public hearings that were required on large grading projects.

Those hearings put the public on notice about large grading projects, allowed for public input, and provided an opportunity for other professional testimony to be heard. We believe those hearings should be retained.

The Planning Commission's Role

While grading permits would be the purview of the City Engineer, grading permits **would** come before the Commission but **only** on projects requiring Planning Commission review where there is a Design Permit, Use Permit, Variance etc.

This doesn't make sense, especially when . . .

A memo from the City Manager: . . . *the Commission will have the opportunity to review grading as part of the overall project. No unique findings for grading are required, rather the Commission may consider grading in making the findings for the requested permit.*

And the City Attorney wrote: *Staff is recommending that this provision of the Grading Ordinance be deleted because it conflicts with State law concerning who is authorized to review these types of applications.*

This is confusing and needs to be reconciled.

Engineering reviews should be performed by our City Engineer. The Planning Commission does *not* conflict with State law because we do not practice engineering.

We *do* perform analysis using all the information made available to us to determine compatibility with the General Plan and suitability of a project. This includes the evaluation of the City Engineer, staff reports, and public testimony.

Engineering studies required by the City Engineer should be completed and reviewed, with an opinion rendered, **before** a public hearing is scheduled for the Planning Commission. The public could then review reports and comment or bring forth their own credentialed experts to testify at the public hearing.

The 2013 draft ordinance also had this provision: *The Planning Commission may provide comments and recommendations to the City Engineer concerning mitigation or avoidance of any potential adverse impacts of the proposed grading considered by the commission pursuant to this section.*

This provision should be retained. During public hearings, valuable facts previously unavailable to the City Engineer may be brought to light.

The City Attorney has written: . . . *the section of the Grading Ordinance that provides for the Commission's review of such applications should be deleted. In addition, the proposed review criteria fail to meet the objective standards now required for review of residential development projects . . .*

If new requisite standards are required, then simply draw up new guidelines for the Planning Commission.

Finally, regarding trees, the City Attorney stated: . . . *the Commission has no authority over trees in the public right of way . . .*

Naturally, trees on public land fall under the General Plan considerations the Planning Commission utilizes to review the entire project. This is consistent with the City Attorney's recommendation that the Planning Commission adopt a holistic and logical review process.

Appeals

The draft ordinance makes a procedural change with appeals of the City Engineer's action on a grading permit going to the City Manager. We suggest appeals *continue* to go before the Commission (see BMC Section 15.01.130) and be further appealable to the City Council to ensure appeals are heard at a public hearing.

Conclusion

The Institute of Local Government treatise "Land Use and Local Planning: Guide to Local Planning" asserts that the Planning Commission, "Through public hearings and other means, provides a key venue for residents and other community stakeholders to learn about planning issues and project proposals and provide their views." And further, "Public participation in local decision-making is fundamental to democracy. The public often evaluates the service of local officials based not only on the wisdom of their decisions, but also on their commitment to involving the public in decision making."

Thank you for considering our comments.

Respectfully submitted,



Pamala Sayasane

Chairperson

Brisbane Planning Commission

File Attachments for Item:

F. Short Term Rentals Ordinance Implementation Update



CITY COUNCIL AGENDA REPORT

Meeting Date: April 1, 2021

From: John Swiecki, Community Development Director

Subject: Short Term Rental Ordinance Implementation Update

Community Goal/Result

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

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

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

Purpose

Update the City Council on the current status of short term rental (STR) activity monitoring, permitting, and tax collection by vendor Host Compliance, and request direction from the City Council on the collection of taxes.

Recommendation

That the City Council direct staff to work with the City's vendor to collect back taxes for STRs in operation since September 15, 2020.

Background

Effective September 15, 2020, the Brisbane Municipal Code (BMC) has required hosts of STRs to obtain a permit from the City, pay transient occupancy taxes, and comply with various performance standards. (Ref.: Ordinance 655). Since that time, only one STR permit application has been submitted, which was ultimately rejected as it did not meet eligibility requirements. Staff continues to actively investigate complaints regarding suspected unpermitted STRs.

In December 2020, at the Council's direction, the City signed a professional services agreement with Host Compliance, a STR service provider that provides proactive code enforcement support to cities, as well as STR permitting and tax collection. Use of Host Compliance will allow the City to shift from its current complaint-based enforcement model for STRs to a proactive model. While Host Compliance initially agreed to an April 2021 launch date for their system, due to delays on Host Compliance's end the launch is now anticipated for early May 2021.

Discussion

The Planning Issues subcommittee (Mayor Cunningham and Councilmember Mackin) met in February to discuss the implementation status of the STR program and whether the City should pursue the collection of back taxes (to September 15, 2020) for both legal and illegal STRs

operating since that time. The subcommittee recommended that the full Council authorize collection of back taxes, in addition to active enforcement for STRs operating without a permit. Going forward, Host Compliance will also be proceeding with tax collection for all operating STRs, whether or not they have a city permit.

Fiscal Impact

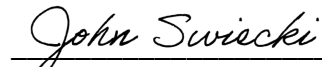
Minimal. Any TOT collected for STRs- permitted or not- would be a net increase to the City's TOT revenue. Due to the small number of suspected STRs in operation, it is unlikely that TOT revenues would be significant. The existing agreement with Host Compliance already provides for the collection of back taxes without an increase in contract cost.

Measure of Success

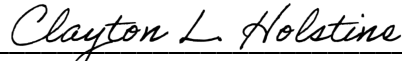
A tax collection policy for STRs that is equitable and holds STR operators accountable for their activity.

Attachments

None.



John Swiecki, Community Development Director



Clay Holstine, City Manager

G.

File Attachments for Item:

G. Consider Approval of an Agreement with Lechowicz and Tseng to complete the Water and Sewer Rate Study for the City of Brisbane and Guadalupe Valley Municipal Improvement District



CITY COUNCIL AGENDA REPORT

Meeting Date: 4/1/2021

From: Stuart Schillinger, Assistant City Manager

Subject: Retain Lechowicz and Tseng to Complete the City of Brisbane and Guadalupe Valley Municipal Improvement District Water and Sewer Rate Study

Community Goal/Result

Community Prudent

Safe Community

Ecological Sustainability

Purpose

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

Recommendation

Direct the City Manager to sign an agreement with Lechowicz and Tseng to complete the water and sewer rate study for the City of Brisbane and Guadalupe Valley Municipal Improvement District.

Background

On August 13, 2001, the City Council discussed Ordinance No. 458, which set the process for determining future water and sewer rate increases.

Subsequent to passing Ordinance No. 458, the California Supreme Court ruled that water and sewer charges are property related and subject to Proposition 218, the Right to Vote on Taxes Act. As such, we are required to notify property owners regarding any increase and hold a public hearing at least 45 days later to allow time for community input. As a courtesy to our customers, we also notify renters of the forthcoming change in rates.

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

Retain Lechowicz and Tseng to Complete the City of Brisbane and Guadalupe Valley Municipal Improvement District Water and Sewer Rate Study

charge to pay for bonds issued in 2015. This was the first of an anticipated series of Capital Rate Charges in order to pay for the water and wastewater Capital Improvement Plan. The plan is to sell bonds approximately every five years over 20 years. The bonds would have a duration of 20 years so after 20 years there will be a set Capital Charge that will only be reviewed to ensure it can continue to pay for the necessary Capital Improvements.

A drought reserve charge was implemented in 2019. This would ensure that during a drought the City would not need to raise rates as customers lowered their water usage as other water providers do.

The City has been able to keep operational rates constant due to an increase in usage among users and the use of one-time revenue sources (i.e. Connection fees).

City Council directed staff to begin the process of contracting for a new water and wastewater rate study on September 3, 2020. The anticipated cost of the study is \$65,000.

Staff received five proposals back and the Infrastructure Subcommittee interviewed the three firms which best met the needs of the City. Based on these interviews the Subcommittee is recommending that the firm of Lechowicz and Tseng will be able to meet the needs of the community the best.

Discussion

Staff reviewed the firm's proposal and based on discussion at the subcommittee worked with the firm to refine the proposal to meet our required time frame and needs for public meetings. The project is anticipated to be completed in September of 2021 in order to be able to begin the necessary Proposition 218 process and public outreach. It is anticipated that there will be two subcommittee meetings to discuss the progress of the study, two Council meetings to review the draft recommendations and the presentation of the final report. Prior to the presentation of the final report there will be a Public Workshop in order to ensure the study is adequately explained to the public prior to going to City Council. The firm will also be at the Proposition 218 Rate Hearing in order to answer any remaining public questions. The subcommittee felt that the selected firm would work best with our community.

The focus of this study is the water and sewer rate needed to cover the on-going operations of the utility. The City has an on-going plan to pay for its Capital Improvement Program. In 2015, the City Council adopted a plan to sell a series of \$5,000,000 bonds once every 5 years to be paid for through an installment of capital charges. The first of the four sets of bonds were sold in 2015 and the first of the four parts of the Capital Charge was approved by the City Council. Later this year the City anticipates selling the second of the series of bonds and place the second installment of the Capital Charge on the bill. After the 20 years the City will have placed

Retain Lechowicz and Tseng to Complete the City of Brisbane and Guadalupe Valley Municipal Improvement District Water and Sewer Rate Study

all four parts of the Capital Charge on the bill after that point the City will be able to fund its on-going Capital plan without significant increases in rates.

After the Study is completed, staff will present it to the City Council. If a rate increase is needed to pay for the on-going costs of the utility system, we will need to begin the Proposition 218 process. The process includes notifying all landowners and utility users of the proposed increase. There will be a 45-day waiting period between when we mail out the notification and when the City Council would hold a public hearing on the proposed rate. The public is able to speak at this hearing regarding the proposed rate. After the hearing, the Council will determine what will be done with the rate going forward.

Fiscal Impact

The agreement is for \$45,930, which will be paid for from the Utility Fund.

Measure of Success

The City is able to provide clean-safe drinking water and effectively disposes of wastewater as economically as possible while being financially sustainable.

Stuart Schillinger

Stuart Schillinger, Deputy City Manager

Clayton L. Holstine

Clay Holstine, City Manager

Attachment

Lechowicz and Tseng Proposal



March 19, 2021

CITY OF BRISBANE

Proposal for a Water and Sewer Comprehensive Utility Rate Study

PO Box 3065 | Oakland, CA 94609 | (510) 545-3182 | www.LTmuniconsultants.com





PO Box 3065
Oakland, CA 94609
(510) 545-3182
LTmuniconsultants.com

March 21, 2021

Dear City of Brisbane (City),

Lechowicz & Tseng Municipal Consultants (L&T) is pleased to submit a proposal for the City's Water and Sewer Comprehensive Utility Rate Study. Lechowicz & Tseng provides financial planning, rate and fee studies, and management consulting to California utilities. We are a small firm that focuses on rate and fee studies for public agencies serving populations of 30,000 or fewer. Recent examples in Northern California include the Cities of Anderson, Chowchilla, Waterford, and the Town of Discovery Bay.

L&T understands how to manage the rate study process to avoid administrative burdens. Gathering documents, educating Board members, and overseeing public approval can be challenging. We will be your partner throughout the rate study and take the lead for each of these activities. Our staff members have completed dozens of studies for small agencies and are well-versed in the Proposition 218 approval process.

Funding the full cost of service is the primary concern of many public agencies. The last rate increases were in 2013, but the City has not completed a comprehensive rate study since 2001. Our study will focus on providing a justification for the water and wastewater rate structures while ensuring rates are adequate to provide for operating costs as well as the long-term rehabilitation of infrastructure. Our recommendations will set aside funds for capital needs while ensuring that revenues are sufficient to recover the full costs of providing water and sewer service.

Our clients appreciate the administrative support that we provide. We take the lead in data collection and analysis so as not to burden City staff. L&T emphasizes meeting legal requirements (propositions and court rulings) and the financial needs of utilities. We will provide draft recommendation tables and charts that are easy to understand and easy to implement. L&T will be your partner throughout the Proposition 218 process.

If you have any questions, please contact us.

Sincerely,
Lechowicz & Tseng Municipal Consultants, LLC

A handwritten signature in black ink, appearing to read "Catherine Tseng".

Catherine Tseng
Lechowicz & Tseng Municipal Consultants
510-858-9228

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SECTION I: EXECUTIVE SUMMARY

WHO WE ARE

Lechowicz & Tseng Municipal Consultants is a women-owned firm founded by Alison Lechowicz and Catherine Tseng. Our objective is to provide financial consulting and management services to local governments. Alison and Catherine have over 20 years combined experience in municipal consulting and public finance. Catherine has a background in urban planning and worked for the City of Oakland before becoming a consultant. Alison has experience working for a civil engineering firm and a background in public administration.

We have completed over 100 studies compliant with Propositions 218 and 26. Our recent experience includes completing similar projects for the Cities of Kerman, Chowchilla, San Fernando, and Waterford, the Town of Discovery Bay and the Templeton Community Services District, among others.

Nature of firm: women-owned firm serving utilities exclusively located in California

Type of ownership: limited liability company (LLC)

Services: Utility Rate & Fee Studies, Financial Planning, Capacity Fee Studies, Utility Appraisal, Expert Witness, Public Approval Process

Size of firm: three staff members

Location of office: Oakland, CA

Management staff: Alison Lechowicz and Catherine Tseng

Registrations: Small business enterprise

Women-owned business

Municipal advisory firm registered with the Municipal Securities Rulemaking Board and the Securities and Exchange Commission

Other languages spoken by staff: Spanish

Environmental practices: default duplex printing, printer ink refilling (i.e. no new cartridges), LED lighting, and “sleep” mode for electronics

PROJECT OVERVIEW

L&T's objective for this rate study is to provide compliance with legal requirements while ensuring that the City's water and wastewater utilities are self-sufficient. We are proponents of simplicity and respecting the current financial and political climate. The City's last water and sewer rate studies were completed over 20 years ago with the last rate increases implemented in 2013. Since then, changes in legislation have resulted in many agencies having to make modifications their rate structures. Moreover, more stringent regulations and aging infrastructure require increased operating expenses and capital investment.

Our study will also include a comprehensive review of each utility's finances, including operating costs, reserves funds, and capital funding needs to ensure that the water and sewer rates cover the full cost of providing service. We understand that the City would like a thorough review of its water and sewer rates for the City's utilities as well as the Guadalupe Valley Municipal Improvement District (GVMID). We will focus on establishing a cost basis for the water tiers to ensure that the City is recovering its costs for purchasing SFPUC water. For sewer, we will update the sewage strength amounts and customer categories. We will evaluate rate structure modifications, assess the financial and other impacts of any changes, including the impacts to customers, and recommend adjustments if warranted. In addition, we will develop water and sewer rates for the Bayland Community once the Specific Plan is complete.

Our approach to our work is simple – we roll up our sleeves and get the job done. When initiating a project, it's impossible to know every twist and turn an assignment may take. Unexpected issues may arise, out of scope tasks may be required, and political sensitivities may become uncovered. L&T strives to be flexible and responsive to our clients. We remain available to take on additional tasks, coordinate between departments, agencies, and contractors, attend evening meetings, make presentations, and provide clerical support such as printing and mailing of public notices. Successful projects consist of both major deliverables and many small administrative tasks. Lechowicz & Tseng maintains high client satisfaction because we take responsibility for all aspects of our assignments.

RECENT EXPERIENCE WITH SIMILAR AGENCIES

L&T staff have delivered rate studies to a wide range of water and wastewater utilities throughout the State. Provided below is a selection of our staff's recent experience serving agencies of similar size and project scope to Brisbane. Detailed project references are provided in Section 6 of this proposal.

AGENCY	ACCOUNTS OR PARCELS	PROJECT
Nipomo CSD (Blacklake)	560	Blacklake Sewer Rate Study (2018)
McMullin Area GSA	1,150	Groundwater Fee Study (2018)
City of Winters	2,200	Water and Sewer Rate Study (ongoing)
City of Waterford	2,500	Sewer Rate Study (2019)
Templeton CSD	2,800	Water and Sewer Rate Study (2018)
City of Tehachapi	3,000	Water and Sewer Connection Fee Study (2020)
City of Anderson	3,500	Water Rate Study
City of Kerman	3,800	Water and Sewer Rate Study (2018)
City of Chowchilla	3,900	Utilities Rate Study (2020)
Rio Linda/Elverta CWD	4,600	Water Rate Study (ongoing)
City of San Fernando	5,000	Water and Sewer Rate Study (2019)
Town of Discovery Bay CSD	6,200	Water and Wastewater Rate Study (2020)
Root Creek Water District	6,800	Multiple studies since 2017

CSD – Community Services District; CWD – Community Water District, GSA – Groundwater Sustainability Agency

CONTACT INFORMATION

Catherine Tseng will serve as the Principal-in-Charge and main contact person. All other staff is available to assist with the project. Lechowicz & Tseng is registered with the Municipal Securities Rulemaking Board (MSRB) and Securities and Exchange Commission (SEC) as a municipal financial advisory firm. Alison holds the Series 50 and Series 54 Municipal Advisor Representative and Principal qualifications.

Catherine Tseng, Principal
Lechowicz & Tseng Municipal Consultants
PO Box 3065
Oakland, CA 94609
510-858-9228
catherine@LTmuniconsultants.com

Our attached proposal to conduct the utility rate study is valid for 90 days. If you have any questions, please contact us. Thank you for your consideration.

Sincerely,



Catherine Tseng
Principal and Authorized Representative



SECTION 2: KEY PERSONNEL

Catherine Tseng will serve as the Principal-in-Charge and main contact person. Alison Lechowicz will provide peer review and Sophia Mills will serve as financial analyst. Detailed past project lists and resumes are included. No subconsultants are needed for this assignment.

Catherine Tseng

PRINCIPAL – MAIN CONTACT PERSON



QUALIFICATIONS

15 years consulting experience
Master of Urban Planning
Bachelor of Architecture

Project Manager

Funding alternatives and cash flow projection
Rate and capacity charge recommendations
Public presentations

Alison Lechowicz

PRINCIPAL

QUALIFICATIONS

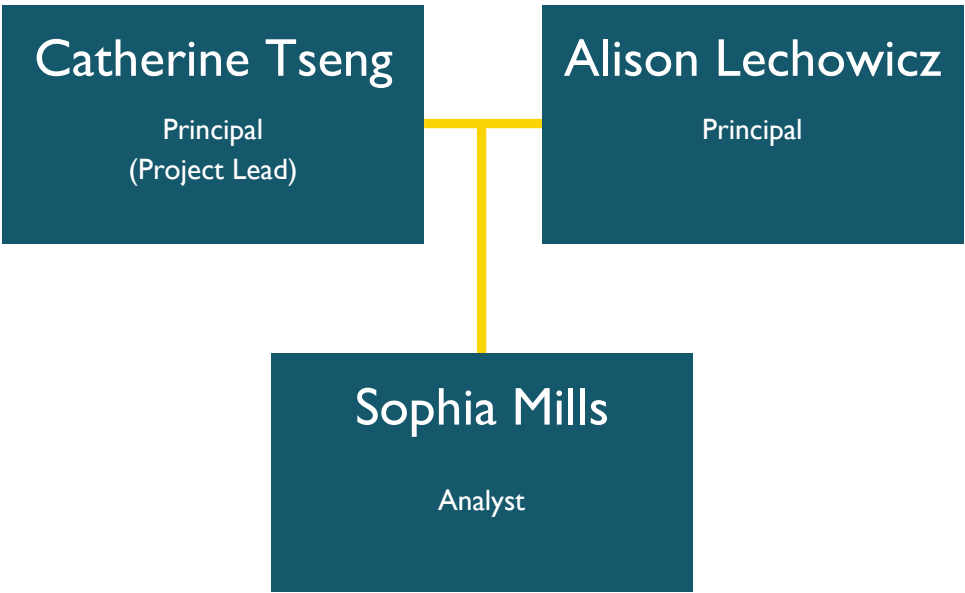
14 years consulting experience
Master of Public Administration
Testified as an expert witness at the CA Public Utilities Commission
Series 50 – Municipal Advisor Representative Qualification
Series 54 – Municipal Advisor Principal Qualification

Peer Review

Methodological review
Debt capacity review
Review of draft and final reports



Organizational Chart



Catherine Tseng



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PO Box 3065
Oakland, CA 94609

EXPERIENCE

- 4 years Co-founder and Principal at L&T Municipal Consultants
- 10 years prior consulting experience: Vice President at Bartle Wells Associates
- 2 years civil servant: City of Oakland
- Specializes in utility rates, capacity charge, and financing plans for public works projects, and Proposition 218 compliance

EDUCATION

- **Columbia University**
Master of Urban Planning
- **University of California, Berkeley**
Bachelor of Arts
Architecture

REPRESENTATIVE ASSIGNMENTS

City of San Fernando: Water and sewer financial plan and rate study and Proposition 218 printing and mailing. Offered rate options to meet affordability criteria including funding of only high priority projects.

City of Davis: Water financial plan and rate study assessing various conservation-oriented water rate structures and developed drought surcharge. Worked closely with citizens' advisory committee to develop recommendations to City Council.

City of Vacaville: Cost of service water rate study to eliminate operating deficit and implemented water conservation surcharge to recover lost revenue.

City of Chowchilla: Completed a water, sewer, storm drain, and solid waste rate study. Rates will support the City's recent bond issuances and overcome prior deficit spending for the solid waste enterprise.

Sausalito-Marin City Sanitary District: Wastewater Facilities Financial Plan to fund capital projects and reconcile past expenses. Developed multiple funding strategies for contract negotiations with a partner agency.

City of Menlo Park: Water rate study to fund wholesale water rate increases and drought surcharge implementation. Water capacity charge study.

Provided below is a sampling of Catherine Tseng's project experience since 2006.

CLIENT	PROJECT	DATE COMPLETED
Alameda County Water District	Water Development Fee Study	January 2012
City of Anderson	Water and Sewer Rate Study	February 2021
Armona Community Services District	Water and Sewer Rate Study	March 2008
City of Benicia	Raw Water Rate Study and Update Water Rate and Connection Fee Study and Update Drought Rate Study	August 2013 and Sept 2015 February 2013 September 2014
Big Bear Area Regional Wastewater Agency	Wastewater Rate Study	
Big Bear City Community Services District	Water, Sewer, and Solid Waste Rate Study	May 2015
City of Chowchilla	Water, Sewer, Storm Drain, and Solid Waste Rate Study	June 2020
Coastside County Water District	Water Financing Plan Water Rate Study	August 2009 January 2010
Crestline Sanitation District	Wastewater Rate Study	June 2015
City of Davis	Water Rate Study Water Rate Study Update	March 2013 September 2014
Diablo Water District	Water Bond Financing Bond Refinancing	August 2010 April 2013
El Dorado Irrigation District	Development Impact Fee Study Water Rate Study	October 2008 January 2009
Elk Grove Water District	Water Financial Plan and Rate Study	December 2007
Fairbanks North Star Borough	Bond Refinancing	November 2011 and September 2013
City of Glendale	Water Rate Study	May 2015
Town of Hillsborough	Water and Sewer Rate Study	December 2006
City of Hanford	Water Financing	December 2007
Humboldt Bay Municipal Water District	Water Financial Plan	April 2011
Indian Wells Valley Water District	Water Rate Study Bond Financing Water Rate Cost of Service and Development Impact Fee Study	January 2007 August 2009 January 2012 and 2015
City of Menlo Park	Water Rate Study Recycled Water Analysis	May 2015 October 2015
Mid-Peninsula Water District	Water Rate Study	June 2015

CLIENT	PROJECT	DATE COMPLETED
Montara Water & Sanitary District	Water and Sewer Rate Studies	Multiple studies since 2006
Montecito Water District	Drought Rate Study	February 2015
Novato Sanitary District	Bond Financing	October 2011
Olivehurst Public Utilities District	Water Rate Study and Updates	2007, 2009 and 2014
City of Patterson	Water and Sewer Rate and Capacity Fee Studies	Multiple studies since 2010
Riverdale Public Utilities District	Water and Sewer Rate Study	June 2008
Root Creek Water District	Financial Policy Manual	July 2017
Running Springs Water District	Water, Sewer, Fire and Ambulance Rate Studies	July 2010
City of San Bruno	Water and Sewer Rate Study	April 2012
City of San Fernando	Water and Sewer Rate Study	December 2019
Sanitary District No. 5 - Tiburon	Financial Review	September 2013
Sausalito-Marín City Sanitary District	Wastewater Facilities Financing Plan	May 2016
Selma Kingsburg Fowler Sanitation District	Capital Improvements Program Study	March 2008
Solano County Water Agency	Reserve Fund Study	May 2007
Sonoma County Water Agency	Sewer Service Charge and Volumetric Sewer Rate Study	August 2012
City of Tulare	Bond Financing	2010, 2012, 2013, and 2015
Union Sanitary District	Sewer Capacity Fee Study	October 2010
City of Vacaville	Water and Drought Rate Study	October 2015
Town of Yountville	Water and Sewer Rate Study Recycled Water Rate Study	February 2011 April 2012

Alison Lechowicz



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PO Box 3065
Oakland, CA 94609

EXPERIENCE

- 14 years consulting experience: 4 years Co-founder and Principal at L&T Municipal Consultants, 7 years as Principal and Financial Analyst at Bartle Wells Associates, 3 years as Financial Analyst at Carollo Engineers
- Testified as an expert witness at the CA Public Utilities Commission in electric rate cases of Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric
- Municipal Securities Rulemaking Board, Series 50 – Municipal Advisor Representative
Series 54 – Municipal Advisor Principal

EDUCATION

- **Columbia University**
Master of Public Administration
- **University of California, Berkeley**
Bachelor of Science
Conservation & Resource Studies

REPRESENTATIVE ASSIGNMENTS

City of Kerman: Completed a water and sewer rate study for the City. Updated winter water use estimates for single family residential sewer rates. Phased-out discounts for multifamily sewer customers.

Town of Discovery Bay: Long-serving financial consultant for the Town having conducted multiple water and sewer rate studies and capacity fee studies. Assisted the Town in recovering costs for new wastewater regulatory requirements.

Root Creek Water District (Madera County): Financial plan for the District's groundwater basin and agricultural water service. Water, sewer, and storm drain rates and development fees for municipal service.

Stege Sanitary District (Contra Costa County): Sewer rate and connection fee study. Conducted extensive review of water usage patterns to determine flow rates of customer classes. Proposed a 5-year phase-in for a new multifamily rate.

Templeton CSD (San Luis Obispo County): Completed a water and sewer rate study. Conducted an analysis of the District's four water sources, determined the marginal cost of each source, and assigned each source to a water rate tier. Evaluated the transition of the District from regional wastewater treatment to local treatment.

City of Tehachapi: Water and wastewater connection fee study. The wastewater fee study included localized fees for various sewer trunk lines throughout the City. Currently conducting a parks and recreation development impact fee study as well as a civic impact fee study based on a 20 year planning horizon.

Provided below is a sampling of Alison Lechowicz's project experience since 2010. Prior to 2010, Ms. Lechowicz worked for a civil engineering firm conducting financial analysis for master plans.

CLIENT	PROJECT	DATE COMPLETED
City of Alameda	Sewer Financial Plan and Rate Study	May 2015
City of Anderson	Water and Sewer Rate Study	Ongoing
Town of Apple Valley	Water System Acquisition Feasibility Analysis	July 2011
City of Berkeley	Sanitary Sewer Rate Study	June 2015
City of Carmel-by-the-Sea	Bond Refinancing	October 2010
CA City County Street Light Association	Rate economist and expert witness	March 2010 to present (ongoing)
City of Chowchilla	Water, Sewer, Storm Drain, and Solid Waste Rate Study	June 2020
City of Chula Vista	Wastewater Capacity Fee Study Salt Creek Sewer Basin Impact Fee Study Depreciation Review	May 2014 June 2015 July 2018
City of Clovis	Water User Rates and Fee Study	February 2016
City of Colfax	Sewer Rate Affordability Review	June 2010
City of Colusa	Development Impact Fee Study Water System Valuation	June 2011 September 2014
Contra Costa Water District	Water Rate Study	February 2015
City of Cotati	Water and Sewer Rate Study	February 2013
Town of Discovery Bay	Water and Sewer Rate and Capacity Fee Studies	Multiple studies since 2012
City of Emeryville	Sewer Rate Study	November 2016
City of Hemet	Water and Sewer Rate Studies and System Valuations Water Fund Rental Fee Analysis	July 2015 August 2018
Home Gardens Sanitary District	Sewer Rate and Capacity Fee Study	May 2015
Indian Wells Valley Water District	Bond Refinancing	December 2012
Irish Beach Water District	Capital Improvement Assessment	March 2011
City of Kerman	Water and Sewer Rate Study	October 2018
Kings River E. GSA	Groundwater Fee Study	February 2018
City of Lancaster	Streetlight Valuation	June 2014
City of Lindsay	Water Rate Study	June 2015
McMullin Area GSA	Groundwater Fee Study	June 2018

CLIENT	PROJECT	DATE COMPLETED
Napa Berryessa Resort Improvement District	Water and Sewer Assessment	July 2012
Newhall County Water District	Water Rate Litigation Support	November 2012
Nipomo CSD	Blacklake Sewer Rate Study	January 2019
Novato Sanitary District	Capacity Fee Study Sewer Rate Study	March 2016 April 2016
City of Palmdale	Sewer Service Charge Analysis	May 2011
City of Rio Dell	Wastewater Rate Study	May 2014
Rio Linda Elverta Community Water District	Water Rate Study	Ongoing
Root Creek Water District	Water, Sewer, and Storm Drain Rate Study and Financial Plan On-call consulting services	April 2016 Ongoing
San Diego County Water Authority	Cost Allocation Review	May 2011
City of San Fernando	Water and Sewer Rate Study	December 2019
San Joaquin County	Utility Appraisal	November 2018
City of Santa Clarita	Sewer Maintenance Feasibility Study	June 2014
Saticoy Sanitary District	Bank Loan Financing	September 2013
South Tahoe Public Utility District	Sewer Bond Refunding	September 2012
Stege Sanitary District	Multiple sewer rate and connection fee studies	Multiple studies since 2010
Sunnyslope County Water District	Water and Sewer Bond Refinancing	October 2014
Tahoe Truckee Sanitation Agency	Sewer Fee Ordinance Review	May 2010
City of Tehachapi	Water and Sewer Connection Fee Study Parks and Civic Impact Fee Study	February 2020 ongoing
Templeton CSD	Water and Sewer Rates and Capacity Fee Study Parks and Fire Impact Fees	November 2018
Triunfo Sanitation District	Water Infrastructure Financing Automated Meter Financing	February 2011 May 2014
Tulare Lake Drainage District	Project Financing Project Financing	March 2012 January 2013
City of Waterford	Sewer Rate Study	June 2019
City of Winters	Water and Sewer Rate Study	Ongoing

Sophia Mills



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Oakland, CA 94609

EDUCATION

- **Davidson College**
Bachelor of Arts
Economics, Spanish
- **Foothill College**
Certificate in GIS Technology
Expected Fall 2020

OTHER SKILLS

- Fluent in Spanish
- Proficient in Python 2.7, SAS (statistical analysis software), ArcGIS, HTML, and CSS

REPRESENTATIVE ASSIGNMENTS

Town of Discovery Bay CSD: Water and sewer rate study. Assisted the Town in rate updates to accommodate new wastewater regulatory requirements and capital project funding.

City of Winters: Currently completing a water and sewer rate study to fund capital projects and meet ongoing debt service obligations. Developing new sewer rate structure to facilitate rate collection from various customer classes.

City of Anderson: Conducting a water rate study to address depleting reserves. Analyzing multiple rate scenarios to minimize impacts to customers.

Rio Linda Elverta CWD: Currently conducting a water rate study to develop new conservation-oriented water rate structure.

City of Tehachapi: Currently conducting a parks and recreation development impact fee study as well as a civic impact fee study based on a 20 year planning horizon.

SECTION 3: PROPOSED FEE

BUDGET

The following table outlines Lechowicz & Tseng Municipal Consultants' proposed budget for this study. We remain flexible to add or subtract tasks and adjust the budget accordingly.

PROJECT TASKS	HOURS				BUDGET
	Tseng	Lechowicz	Mills	Total	
	Project Mgr	Peer Review	Financial Analyst		
	\$195/hour	\$195/hour	\$95/hour		
1. Data Gathering	10	0	16	26	\$3,470
2. Financial Plan	20	4	18	42	\$6,390
3. Cost Allocation	20	4	28	52	\$7,340
4. Rate Design	34	6	40	80	\$11,600
5. Report & Model	22	8	32	62	\$8,890
6. Meetings & Presentations	24	4	24	52	\$7,740
Subtotal	130	26	158	314	\$45,430
Estimated Expenses					\$500
TOTAL PROJECT BUDGET					\$45,930

BILLING RATE SCHEDULE 2021

Lechowicz & Tseng's hourly rate is \$195 for principals and \$95 for staff analysts. No subconsultants are needed for this assignment. The professional time rate includes all overhead and indirect costs. Direct expenses incurred on behalf of the client will be billed at cost. Direct expenses include, but are not limited to:

- Travel, meals, lodging
- Printing and report binding
- Outside software development
- Automobile mileage (IRS rate)
- Courier services and mailing costs
- Special legal services

SECTION 4: SCOPE OF SERVICES & SCHEDULE

PROJECT APPROACH

We have an excellent track record of completing assignments on-time. All work will be conducted by Alison Lechowicz and Catherine Tseng. No subconsultants are needed for this assignment. L&T will be responsible for all project analysis and the preparation of meeting and presentation materials for project team and Council meetings.

During project initiation, we will finalize the schedule and set deliverables by working backwards from your desired Proposition 218 hearing date. Our project management approach is to provide regular check-ins to present draft calculations to staff. As the project moves into the public sphere, L&T will coordinate closely with staff, City Councilmembers, and legal counsel to finalize our documents. Our requested interaction with the project team is as follows:

- Response to L&T's data request
- Response to follow-up questions
- Review of reports and presentations
- Attendance at kickoff and progress meetings
- Input regarding L&T's methodological approach
- Coordination of public workshops

SCOPE OF SERVICES

For the sake of brevity, we have provided a high-level overview of our scope of services below. We used the City's scope as a starting point and this section elaborates on our workflow and project approach.



Task 1:
Data Gathering



Task 2:
Financial Plan



Task 3:
Cost Allocation



Task 4:
Rate Design



Task 5:
Baylands
Community



Task 6:
Report &
Model



Task 7:
Meetings &
Presentations



Task 8:
Public
Outreach

Task 1 – Project Kickoff and Data Gathering

Kickoff Meeting

L&T will meet (via telephone or video conference) with City staff for a project kickoff meeting to review study goals, milestones, identify project team members, and determine roles and responsibilities.

Data Gathering

Assemble the necessary data to complete the study. The goal is to understand each utility's financial standing, current rate structure, and utility billing information. A data needs list will be provided to the City prior to the kickoff meeting including (but not limited to):

- Recent budgets and audits
- Existing debt service schedules
- Current fund balances
- Agreements with SFPUC and other agencies
- 3 years of utility billing data
- Projected capital improvement costs

Task 2 – Financial Plan

Determine Annual Revenue Requirements

As a first step, L&T will review current revenues. With staff input, we will estimate future operating and capital expenditures to estimate annual revenue needs. We will factor in projections of growth, repairs and replacements, cost escalation, sewer flows, conservation, regulatory compliance, and operational changes to ensure that all future expenses are included. L&T will work with staff to determine appropriate inflationary increases. Key items for review include retirement contributions and staffing costs, regulatory-driven projects, deferred maintenance, and rate stabilization funding.

Review Reserve Fund Targets

This subtask involves reviewing the current operating reserve balances and reserve targets. Our analysis will focus on the operating reserve and will review projected operating expenses, costs related to emergencies, and debt service reserves. If requested by the City, our study can also review the capital reserve fund targets which would include a review the age and condition of the system, annual depreciation costs, and estimated replacement expenses.

Evaluate Debt Service Coverage

L&T will review budgets, audits, and bond disclosure documents to understand current debt obligations. We will determine current coverage ratios based on net operating revenues compared to annual debt service expenses. Our final rate recommendations will include projections for the City to meet its coverage requirements each year.



Review Capital Improvement Needs

If requested by the City, our cash flow analysis will incorporate infrastructure projects identified by Capital Improvement Plans, including repairs and replacements and deferred maintenance.

Develop Cash Flow Projections & Rate Increases

Annual revenue requirements and capital funding needs will be used to develop long-term cash flow projections summarizing the financial position of each utility over the next 5 years. The cash flow projections will estimate annual rate increases needed to meet annual revenue requirements, debt obligations, and reserve fund targets. L&T will incorporate rate sensitivity analysis to determine financial impacts under various scenarios, including modeling the impact of drought conditions and cash versus debt funding projects.

Sensitivity Analysis

Based on input from the project team, L&T will incorporate rate sensitivity analysis to determine affordability. We will determine rate impacts under various scenarios, possibly including cash funding of projects, debt funding of projects, high sewer treatment costs vs. low treatment costs, water cutbacks, etc. Sensitivity analysis can often become an iterative process. L&T is flexible to run additional scenarios as needed.

Task 3 – Cost Allocation

Evaluate Customer Billing Data

The evaluation of customer billing data is a critical task that will inform our final rate design recommendations. We will evaluate historical and current water consumption patterns, wastewater

flow, pollutant loading, and other billing data to estimate future use of the utilities. Key subtasks include the evaluation of:

- Amount of water use in each tier
- Water consumed in the base fee/water allotment
- Revenue collected from fixed vs. volume rates
- Potential impacts of future conservation or drought conditions
- Comparison of water usage statistics between the two service areas

Functionalize Costs

Functionalization is the allocation of expenses and asset data by major operating activities for each utility, including water supply, peak pumping, treatment, storage, transmission, overhead, and administration. Sewer categories will consist of customer service, flow, BOD and TSS. Another aspect to this task is the allocation of costs to fixed and variable categories – this will help us make rate recommendations regarding revenue collection from fixed vs. volume rates.



Allocation to Customer Classes

After costs have been categorized by function, the costs are then allocated to each customer class based on water demand and sewer flow and loading characteristics. The result produces fixed and variable revenue requirements for each class which can be recovered via fixed charges and volume rates. If there are distinct differences in water and sewer usage patterns between the two service areas, L&T may recommend separate rate structures for

each. The allocation to customer classes will be based on American Water Works Association best practices and meet the proportionality requirements of Proposition 218.

Survey of Local Rates

We will prepare a survey comparing each utility's current and proposed bills for each service area to other local agencies. The survey will be summarized in tables and charts that can be used for outreach, presentations, and the final report.

We will also prepare a bill comparison for different levels of water use and different customer classes. The final list of surveyed agencies will be determined by the project team.

Task 4 – Rate Design

Assess Current Rate Structure and Customer Classifications

Review current rate structures and customer classifications for each zone to assess the advantages and disadvantages of the existing systems and to determine compliance with industry standards, court rulings, and statewide water conservation goals.

While compliance with Proposition 218 will guide all our recommendations, additional criteria may include: the impact on customer bills, public understanding, revenue stability, ease of implementation, compatibility with the existing billing system, and staff effort needed for administration.

Identify Rate Alternatives

Based on the criteria developed with staff and the cost of service analysis, we will identify alternatives or modifications to the current water and wastewater rate structures. Water rate options could include adjusting the number of tiers and/or modifying the tier breakpoints. Additionally, we will evaluate the impact of increasing the fixed monthly charges. Wastewater options could include increasing the variable charges and updating the commercial strength categories. L&T will fully document all underlying flow and pollutant loading estimates used in our analysis. We will also compare our estimates and recommendations with those used by other local entities. We will discuss the advantages and disadvantages of each option.

Bill Impacts

Based on the recommended rates, we will calculate bill impacts for a sample of typical customers including both residential and non-residential customers and low and high water use/discharge customers. We will calculate the impacts to ratepayers, and if needed, develop an implementation plan to phase-in adjustments.

Develop Rate Recommendations

Based on the recommended rates, we will calculate the bill impacts for a sample of typical customers including both residential and non-residential customers and low and high water use customers. We will calculate the impacts to ratepayers, and if needed, develop an implementation plan to phase-in adjustments.

Task 5 – Report and Model

Submit a draft summary report for City staff to review based on preliminary findings. The report will summarize recommendations and discuss key alternatives when applicable. The final report will reflect input received on drafts. Our reports are intended to serve as the administrative record for the City and will be compliant with Propositions 218 and 26. All study materials including the final Excel-based financial model will be submitted to the City in their native format (Word, Excel, Powerpoint, etc.). L&T focuses on straightforward reports and models that easily convey information. L&T's materials do not contain any proprietary information or specialized software.

Task 6 – Meetings & Presentations

L&T proposes six (6) in-person meetings for the rate study, including meetings with subcommittees, workshops/presentations to the City Council, and attendance at the Proposition 218 hearing. L&T will provide draft PowerPoint files to staff for review before our presentation materials are made public. Topics will include rate study methodology, draft results, funding challenges, and legal requirements. Additionally, we propose one kickoff meeting and two progress meetings with the project team via remote meetings and/or teleconferences. Supplementary in-person meetings can be included at an additional cost.

Task 7 – Proposition 218 Public Outreach

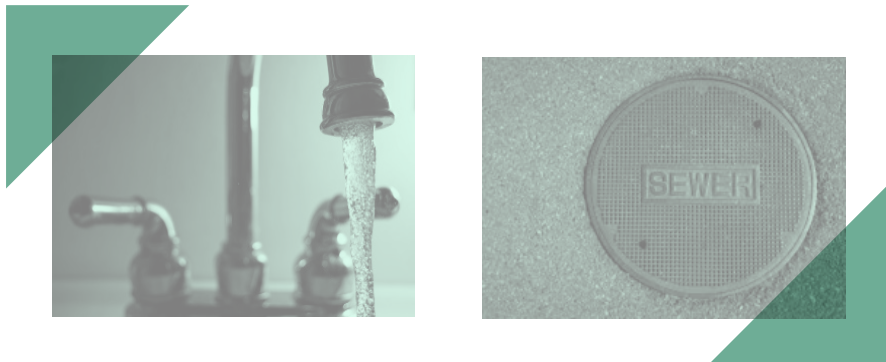
Public Outreach

Work with the project team on public outreach strategy. We recommend meeting with interested stakeholders early in the process to hear concerns and clearly explain the need for fees. We find that when the ratepayers understand the need for the fees and the basis of costs they are more accepting of

increases. As requested, we will draft public notices, newsletters, and web or social media postings as appropriate. L&T is happy to assist staff and lead public presentations.

DELIVERABLES

- Data request list
- Kickoff meeting
- Virtual progress meetings with staff and action items distributed to the project team
- Identification of capital improvement expenses and allocation of costs
- Debt coverage projection
- Cost estimates for wholesale water purchases from the SFPUC
- Review of prudent operating reserves and recommended reserve fund levels
- Cash flows with anticipated funding sources and cost recovery
- Analysis of fixed and variable operating and capital costs
- Evaluation of customer characteristics including water use/sewer flow, strength loading, and number of accounts for each service area
- Rate design alternatives including fixed charges and tiered rates
- Final five-year rate projections
- Bill impacts and rate survey of local agencies
- Draft and final reports
- Proposition 218 public notices and/or educational materials
- Six (6) in-person meetings/presentations with the City Council and subcommittees



SCHEDULE

Provided below is Lechowicz & Tseng's draft schedule for the Water and Sewer Comprehensive Utility Rate Study. We are happy to adjust the schedule based on the project team's input and objectives.

PROJECT TASKS	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV
1. Data Gathering								
2. Financial Plan								
3. Cost Allocation								
4. Rate Design								
5. Report & Model								
6. Meetings & Presentations	V	V	*	*	V	*	*	*

V – virtual meeting or presentation; * - in-person meeting or presentation

Provided below is a sample meeting schedule. For the time-being, we assume that the project team meetings will be conducted virtually. Additional virtual meetings can be added at no extra cost. Our proposal includes six (6) in-person Council meetings/presentations, meetings with subcommittees, and/or public workshops. Additional in-person meetings can be included as an additional service.

- Meeting #1** Project Team Kickoff Meeting (*Virtual*)
- Meeting #2** Project Team Progress Meeting: Review draft recommendations (*Virtual*)
- Meeting #3** Subcommittee Meeting: Review draft recommendations
- Meeting #4** City Council Meeting: Presentation of draft recommendations
- Meeting #5** Project Team Progress Meeting: Review final recommendations (*Virtual*)
- Meeting #6** Subcommittee Meeting: Review final recommendations
- Meeting #7** Public Workshop
- Meeting #8** City Council Meeting: Presentation of the final report & Council initiates the Proposition 218 process
- Meeting #9** City Council Meeting: Proposition 218 Rate Hearing

SECTION 5: FIRM QUALIFICATIONS

L&T is fully qualified to provide a comprehensive utility rate study for the City of Brisbane's water and sewer funds. Provided below is L&T's specialized knowledge regarding a few key areas.

Utility Rate & Fee Studies

Utility rate studies deriving both traditional and innovative rate structures that comply with cost of service principles and Proposition 218 requirements. Address policy goals, customer acceptance, and social influences.

Impact Fee/Capacity Charge Studies

Development impact fees and capacity charge studies that offset the cost of expanding infrastructure to serve new development without placing a burden on existing customers.

Financial Planning & Modeling

Comprehensive financial plans focused on immediate needs as well the long-term viability of agencies. Our financial models are flexible and user-friendly to allow for cash flow sensitivity analysis and to illustrate the impacts of policy decisions.

Public Approval Process

Lead informational workshops to educate the public about municipal finance. We provide start-to-finish assistance in the rate and fee approval process, including presentations to decision makers, publication of reports, and printing and mailing of notices (as applicable).

Utility Appraisal

Develop an inventory of utility assets and determine fair market value. We assist public agencies with negotiating the purchase or sale of utility property.

Expert Witness

Testify on behalf of public agencies to defend against lawsuits. We also represent public agencies as streetlight customers of California's electric utility providers in rate cases at the CA Public Utilities Commission.

FINANCIAL PLANNING

Meeting the cost of service and funding the City's infrastructure needs are the fundamental goals of the Water and Sewer Comprehensive Utility Rate Study. Our financial planning task will project costs over five years and determine the revenue requirements for each utility.

Cash Flow & Modeling

We strive to develop models that easily convey information and meet all requirements of Proposition 218. We propose to organize our cash flow based on existing budget categories to allow for the easy import or export of data between documents and to ensure that all costs of service are being fully accounted for. Our financial model is designed to provide tables and charts that can be exported into presentations to give visual representations of our work. At the conclusion of the study, L&T will provide an electronic copy of our Excel-based model to the City. Our materials are straightforward to use and contain no proprietary software.



The content of the model will include a dashboard of appropriate variables – inflationary cost increases, retirement or staff healthcare cost increases, customer growth, water conservation and drought conditions, contribution to reserves, level of capital expenditures, wastewater operational changes, new water treatment, and other factors to be determined by the project team. These variables will feed into cash flow tables that will calculate revenue requirement increases. This stream-lined model allows us to run iterative scenarios following input from staff and City Council.

Registered Municipal Advisor

Lechowicz & Tseng Municipal Consultants is registered with the Municipal Securities Rulemaking Board (MSRB) and the Securities Exchange Commission (SEC). We are able to provide detailed advice regarding the timing and structure of debt (if needed for this study) and the adequacy of rate revenues to meet debt coverage requirements. As a registered advisor, Principal Alison Lechowicz is well-versed in capital improvement financing mechanisms including bonds, lease back arrangements, private or State loans, community facilities districts, and grants. She can provide a detailed comparison of these options and make recommendations to fund the City's projects.

Rate Design

L&T conducted an initial review of the City's current water and sewer rate structure. The water rates consist of a fixed meter charges based on meter size plus a three-tiered volumetric rate that varies based on service zone. The water rates also include a Capital Projects Charge based on bi-monthly water consumption and a flat rate for a Drought Contingency Charge. The sewer rate structure includes the same fixed charge for all customers and a volumetric rate based on water use that varies based on customer class. If modifications to the current rate structures are needed to comply with legal requirements, we will work with the project team to phase in modifications, clearly explain why the changes are needed, and to minimize the impact on ratepayers. Additionally, we will take into consideration staff's time and capabilities to administer any changes.

IMPACTS OF WATER CONSERVATION

Due to the San Juan Capistrano court case, water rates are under increased scrutiny in California. Agencies may no longer adopt usage rates to meet conservation objectives without a supporting cost analysis. However, public agencies are under increased pressure to conserve water while maintaining stable revenues. Under AB 1668 and SB 606, water purveyors could face fines and penalties by 2027 for failure to reduce indoor water consumption.

Our approach is to evaluate current usage patterns, model the impacts of conservation, and appropriately recover variable from usage rates and fixed costs from fixed charges. L&T will conduct an in-depth analysis of the City's operating and capital expenses to determine cost recovery from volume rates. Most likely, volume rates will recover only supply and transmission expenses while fixed charge increases recover most other cost categories. We will provide a sensitivity analysis to determine impacts on ratepayer groups. Moreover, L&T will model the impacts of lower water demand on sewer flows and expenses.

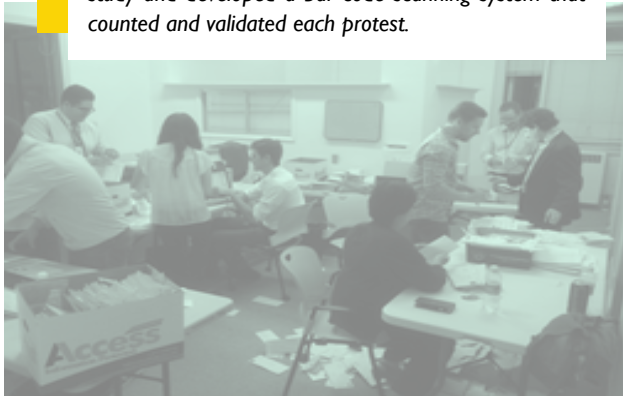
PUBLIC APPROVAL

L&T has a breadth of experience with controversial rate, fee, and tax increases. We are equipped to handle many of the administrative tasks such as drafting, printing, and mailing notices, if appropriate.

Alison and Catherine performed similar services for the cities of Alameda, Berkeley, Emeryville, Modesto, Waterford, and the McMullin Area Groundwater Sustainability Agency.

Outreach is particularly important for smaller public agencies as they have a greater risk of ratepayers garnering a 50% majority protest to deny a rate adjustment. We find that when the ratepayers understand the need for the fees and the basis of costs they are more accepting of increases. Our approach is to understand any “hot button” issues in your service area such as impacts to fixed income residents, impacts on businesses, politically active developer groups, etc. Meetings with City Council members are instrumental to this understanding. Our final documents will stress the value of the City’s services, explain why costs are increasing, and describe cost saving measures. We can draft public notices, newsletters, and web or social media postings as appropriate. L&T is happy to lead public workshops, presentations, and Proposition 218 hearings.

Pictured below: Proposition 218 sewer rate protest ballot tabulation for the City of Berkeley. Alison Lechowicz served as project manager for the City’s rate study and developed a bar code scanning system that counted and validated each protest.



If warranted, L&T will meet with interested stakeholders early in the assignment to hear concerns and clearly explain the need for fees.

This process has been extremely beneficial in other studies that we’ve completed. As example, Alison conducted Public Works workshops for the Cities of Berkeley and Modesto. She also met with developers regarding rate and fee studies conducted for the Town of Discovery Bay and the Templeton Community Services District.

Catherine Tseng worked with the 15-member

Water Advisory Committee in the City of Davis. The objective is to demonstrate the value of the City’s services to ratepayers. We will draft public notices, newsletters, and web or social media postings as appropriate. L&T is happy to lead public presentations.

SECTION 6: REFERENCES

This section provides recent completed projects. L&T staff have completed many studies over the past five years and can provide additional references as needed.

City of San Fernando

Water and Sewer Rate Study

November 2019, Lechowicz and Tseng completed a Water and Sewer Rate Study for the City of San Fernando located in Los Angeles County (population 25,000). Catherine Tseng served as project manager and Alison Lechowicz served as financial analyst. The City had not conducted a rate study since 2011. Since then, the City completed additional engineering studies that identified capital and infrastructure improvements, including replacing hydraulically deficient sewer mains. Additionally, the City requested an evaluation of the rates to ensure compliance with Proposition 218 and recent legal rulings.

Kenneth Jones, MPA
Management Analyst
KJones@sfcity.org
(818) 898-1240

Affordability is a major concern of the City. L&T's report included two rate options to account for various levels of funding for capital improvements. L&T provided a bare bones capital funding option and a fully funded infrastructure plan to demonstrate the impact on rates. Ms. Tseng also evaluated implementation of a low-income rate assistance program. To comply with Proposition 218, Ms. Tseng identified non-rate revenues to fund the program and suggested

customer eligibility consistent with other local assistance programs.

L&T coordinated the printing and mailing of the Proposition 218 noticing process. Along with drafting the notice, L&T aggregated ratepayer and property owner mailing lists to develop a master mailing list. The notices were translated into Spanish.

Highlights:

- Low income rate assistance program
- Printing and mailing of Proposition 218 notices
- **Project completed on-budget**

City of Chowchilla

Water, Sewer, Solid Waste, and Storm Rate Study

June 2020, L&T finalized a comprehensive utilities rate study for the City of Chowchilla's water, sewer, solid waste, and storm water enterprises.

Alison Lechowicz served as co-financial analyst and Catherine Tseng served as co-financial analyst and project manager. Located in Madera

County, the City operates and maintains the water, sewer, and storm water utilities for a population of roughly 18,500. The last water and sewer rate study was conducted in 2012 in which the City adopted water and sewer rates through 2021. However, rates for the solid waste and storm drain utilities had not been increased in over 10 years.



L&T developed three rate options based on varying levels of capital funding for water, sewer, and storm water. The rate options for solid waste were based on repayment of an interfund loan to the General Fund. Since the last water and sewer rate study, the City had completed metering all customers, and the non-metered rates had been phased out. Because the City is only in the second year of being fully metered, historical consumption data was limited. The study included updated cost of service analysis and recommended rate adjustments through FY2024/25. L&T also managed the drafting, printing, and mailing of the Proposition 218 notice.

The City Council approved rate increases for the water, sewer, and solid waste utilities but will reconsider the storm drain rates in the future once the procedure for adopting storm drain rates has been successfully implemented by other agencies in the State.

Jason Rogers

Director of Public Works
jrogers@cityofchowchilla.org
(559) 665-8615, x300

Highlights:

- Multiple rate options based on various capital funding levels for each utility
- Printing and mailing of Proposition 218 notices
- **Project completed under-budget**

Town of Discovery Bay

Water and Sewer Rate Studies

Water and Sewer Capacity Fee Studies

Alison Lechowicz has served as the Town of Discovery Bay Community Services District's (Town) financial and administrative consultant since 2012. The Town is located in the Bay-Delta region and provides water and wastewater services to a population of 14,000. Ms. Lechowicz has conducted two water and sewer rate studies compliant with Proposition 218. The studies evaluated operating and capital expenditures, financing alternatives including cash, bonds, and State Loans, cash flow, rate design, and bill impacts. Alison also conducted several development impact fee studies for the Town and met with developers in their office to explain the fees.



Alison completed an update of the 2013 study. The 2016 update was needed to reflect current drought conditions, growth projections, and a new meter roll-out program. The final report provided a more comprehensive review of the Town's fire protection service charges and fixed vs. volume cost allocation to comply with legal rulings.

Dina Breitstein

Assistant General Manager
dbreitstein@todb.ca.gov
(925) 634-1131

In 2020, L&T completed a 2020 Utility Rate Study. The Town recently completed its meter roll-out program and is transitioning all customers to metered service. Ms. Lechowicz reviewed water usage patterns of the newly metered customers and impacts on the utility's variable revenues. For the sewer utility, L&T developed new rates to recover costs of upgrading the Town's treatment facilities.

Highlights:

- Designed new water rates for metered consumption
- Multiple funding scenarios developed to prioritize capital projects and assess affordability
- Printing and mailing of Proposition 218 notices
- **Project completed on-budget**

City of Kerman

Water and Sewer Rate Study

Kerman is a city of about 14,000 people located in Fresno County about 15 miles west of the City of Fresno. October 2018, L&T completed a Water and Sewer Rate Study for the City. Alison Lechowicz served as lead analyst and project manager.



The rate study corresponded with the City's water metering project. A key element was to project water use for newly metered customers (about half the service area). We compared the characteristics of the fully metered and newly metered customers to conservatively estimate water consumption. As part of the study, Ms. Lechowicz advocated for ongoing pipeline replacement funding. Prior to this effort, City policy was to forego main replacements to keep rates as low as possible. L&T was successful in raising the rates to reinvest in infrastructure to avoid costly future repairs.

Rate design was a key issue for the sewer rates. The City's prior rate study assigned significantly lower cost to multifamily customers compared to single family customers. Staff was concerned that multifamily customers were not paying their fair share of customer service and maintenance expenses. L&T conducted a cost allocation and flow analysis to justify a rate adjustment for multifamily customers.

Carolina Camacho
Finance Director
ccamacho@
cityofkerman.org
(559) 846-9389

Ms. Lechowicz assisted the City with Proposition 218 implementation. Activities included drafting the public notice, reviewing edits with the City Attorney, answering procedural questions, attending the public hearing, and certifying the protest vote tabulation.

Highlights:

- Projected water use for newly metered customers
- Focused on customer service and administrative cost allocation for customer classes
- **Project completed under-budget**

SECTION 7: FORM OF AGREEMENT

Lechowicz & Tseng agrees to the use of the City's standard form of agreement. We do not require any deviations or edits to the agreement.

SECTION 8: INSURANCE

L&T's insurance certificate is included below. If selected, we will provide an additional insured endorsement consistent with the City's standard agreement.

ACORD®		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 02/13/2020			
THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.							
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).							
PRODUCER Hiscox Inc. d/b/a/ Hiscox Insurance Agency in CA 520 Madison Avenue 32nd Floor New York, NY 10022			CONTACT NAME: PHONE (A/C, No, Ext): (888) 202-3007 FAX (A/C, No): E-MAIL: contact@hiscox.com ADDRESS: contact@hiscox.com				
INSURED Lechowicz and Tseng Municipal Consultants 4811 Telegraph Ave #204 Oakland, CA 94609			INSURER(S) AFFORDING COVERAGE INSURER A: Hiscox Insurance Company Inc NAIC # 10200 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:				
COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:			
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	N	Y	UDC-1936686-CGL-20	03/22/2020	03/22/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ S/T Gen. Agg \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Professional Liability	N		UDC-1936686-EO-20	03/22/2020	03/22/2021	Each Claim Aggregate \$2,000,000 \$2,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)							
CERTIFICATE HOLDER Lechowicz & Tseng Municipal Consultants				CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE			

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SECTION 9: DISCLOSURES

CONFLICTS OF INTEREST

The firm of Lechowicz & Tseng Municipal Consultants and its employees have no personal or professional financial or other interests which could be a conflict of interest.

MUNICIPAL SECURITIES RULEMAKING BOARD

Depending on the extent of services provided under the financial planning task, the study may include municipal advisory activities subject to Municipal Securities Rulemaking Board (MSRB) oversight. Our duties as a Municipal Advisor are listed below:

- Lechowicz & Tseng Municipal Consultants will notify the client in writing, if and when, our services transition into municipal advisory services as categorized by the MSRB. Municipal advisory services will cease when the final report is presented to the client.
- Lechowicz & Tseng Municipal Consultants will provide advice and conduct activities with a “duty of care” and a “fiduciary duty” to the client. Our role and responsibilities during this engagement will continue through the completion of the project.
- Lechowicz & Tseng Municipal Consultants is a registered Municipal Advisor with the Securities and Exchange Commission (SEC Registration No. 867-02374) and the Municipal Securities Rulemaking Board (MSRB ID K1236).
- Lechowicz & Tseng Municipal Consultants has never been cited for any legal or disciplinary action regarding municipal advisory activities.
- Lechowicz & Tseng Municipal Consultants has not and will not receive any compensation from any third party seeking to provide services, municipal securities transactions, or municipal financial products related to this assignment. L&T or any of its employees will not engage in any activities that would produce a direct or indirect financial gain for the firm other than compensation for our services identified in this proposal.

The website address for the Municipal Securities Rulemaking Board (MSRB) is www.MSRB.org.

The MSRB’s website provides a municipal advisory client brochure that describes the protections that may be provided by the MSRB rules and how to file a complaint with an appropriate regulatory authority. The municipal advisory client brochure is accessible via a link on www.MSRB.org or can be downloaded from <http://www.msrb.org/~media/Files/Resources/MSRB-MA-Clients-Brochure>.



THANK YOU



PO Box 3065 | Oakland, CA 94609 | (510) 545-3182 | www.LTmuniconsultants.com

File Attachments for Item:

H. Consider Approval of Resolution No. 2021-28 a Reimbursement Resolution for Water and Sewer 2021/22 Capital Improvement Plan



CITY COUNCIL AGENDA REPORT

Meeting Date: April 1, 2021

From: Carolina Yuen, Finance Director

Subject: Reimbursement Resolution for Water and Sewer
2021/22 Capital Improvement Plan

Community Goal/Result

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

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

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

Purpose

To provide a safe and secure water and wastewater system to the community which is financially viable.

Recommendation

Adopt Resolution 2021-28 which expresses the official intent of the City regarding certain capital expenditures for the water and sewer system to be reimbursed with proceeds from future bond obligations.

Background

In 2014, City Council adopted a Capital Project Implementation Plan for the Utility Fund. This plan called for the City to complete the presented Capital Project list over a 20 year period. The funding for this plan would be covered by a series of four bond issues of approximately \$5 million each every five years. It was also determined that the City Council would look at setting a Capital Charge rate for each new bond issue. The first bond was sold in 2015 and the first rate increase went into effect at that time.

Later this year, staff will present and propose the Capital Improvement Plan (CIP) for City Council's approval. Included in the CIP will be projects for the water and sewer system with a budgeted cost not to exceed \$6 million. The City has not begun work on these projects since the funding source identified for these projects are future bond proceeds.

Prior to selling the second round of bonds to fund these projects, we will need to draft bond documents, determine the Capital Charge needed to pay for the debt service, present the new rate to the rate-payers through a Proposition 218 process and have Council approve the new rate. In order to begin the projects prior to the sale of the bonds, the City can adopt a

reimbursement resolution which would allow the City to reimburse itself for any expenditures made for these projects prior to the sale of the bonds.

The City did a similar process in October 2014 when City Council adopted resolution 2014-36 to authorize certain capital expenditures for the water and sewer systems to be reimbursed with proceeds from future bond obligations. In April 2015, City Council approved documents for the sale of the 2015 Utility Bond Sale.

In November 2014, the City Council adopted Resolution 2014-46 to implement the Capital Facilities Fee for the Utility Fund which set the rate for a Capital Charge for water and sewer services. This charge has been used towards repayment of the debt service of bonds sold to cover the cost of the capital projects. Since interest rates are similar to what they were when we sold bonds in 2015, staff anticipates the Capital Charge for this round of bonds will be similar to the current charge. The current Capital Charge ranges from \$10 to \$65 every two months. Following are samples of the Capital Charge:

- \$30 for a customer who uses eight units of water per billing cycle, which is a typical amount for a family of two
- \$38 for a customer who uses 16 units, which is typical for a family of four

Considering the current interest rate environment, the new charge may be similar and possibly doubling the current charge to the customer. Over the next 10 years, we would anticipate implementing two additional charges increasing the Capital Charge on the bill up to a range of possibly \$40 to \$260 per billing period. The exact charges will be determined at the time of the sale of the bonds.

Discussion

The proceeds to cover projects associated with the 2015 bond sale have been exhausted and several of the projects were completed. The City is ready to commence with the second set of projects.

The projects are:

- Glen Park Pump Station Upgrade
- Supervisory Control and Data Acquisition (SCADA) Upgrade
- New 6" Water Main Interconnection between Mariposa and San Bruno
- New PRV on Humboldt/San Benito (abandon Placer PRV)
- Water Advanced Metering Infrastructure (AMI) System
- Replace 250' of 6" Water Main between Alvarado and San Benito (walkway improvements)
- Pipe burst 270' of existing 6" Sanitary Main w/ 8" on West Hill Drive
- Pipe burst 290' of existing 6" Sanitary w/ 8" on Upper Bicentennial Walkway
- Replace 25' of 6" Sanitary Main between 120 Solano and 124 Solano with new manhole

In order to begin projects during this upcoming year, soon after the bonds are sold, the City will need to begin the design process of the various projects. A reimbursement resolution needs to be adopted in order to repay ourselves for any cost of the design of the projects done prior to the sale of the bonds this calendar year. The City's bond counsel has drafted the attached resolution for the City Council's approval.

Fiscal Impact

There is no fiscal impact to the City's Utility Fund if the reimbursement resolution is adopted. Any money spent prior to the sale of the bonds will be reimbursed by the bond proceeds. If the resolution is not adopted, then the City will not be able to reimburse itself and there will be a decrease in the Utility Fund reserve. The reserve is used for a variety of purposes including meeting the Council policy of having a level of 20% of operating expenditures in reserve, providing a financial cushion for emergencies (i.e. Earthquakes), and stabilize rates for short periods of decreased water usage (i.e. Short-term droughts, or large water users reducing their needs). As of December 31, 2020, there is \$7.5 million in cash in the Utility Fund which meets these three basic needs. The City Fiscal and Administrative Policies Subcommittee last reviewed the Fund Balance policies of the City to determine long-term reserve requirements in 2015.

Measure of Success

The design of the projects have begun prior to the Sale of the Bonds.

Attachments

Resolution 2021-28

Carolina Yuen

Carolina Yuen, Finance Director

Clayton L. Holstine

Clay Holstine, City Manager

CITY OF BRISBANE**RESOLUTION NO. 2021-28****RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
EXPRESSING OFFICIAL INTENT REGARDING CERTAIN CAPITAL
EXPENDITURES TO BE REIMBURSED WITH PROCEEDS OF AN OBLIGATION**

RESOLVED, by the City Council (the "Council") of the City of Brisbane (the "City"), as follows:

WHEREAS, the City has developed a capital project (the "Project") described in Exhibit A hereto;

WHEREAS, all or a portion of the expenditures relating to the Project (the "Expenditures") (i) have been paid within the sixty days prior to the passage of this Resolution or (ii) will be paid on or after the passage of this Resolution;

WHEREAS, the City reasonably expects to reimburse itself for the Expenditures with the proceeds of an obligation the interest on which will be excluded from the gross income of the owner or owners of such obligation;

NOW, THEREFORE, it is hereby DECLARED and ORDERED, as follows:

Section 1. The City reasonably expects to reimburse all or a portion of the Expenditures with the proceeds of an obligation.

Section 2. The maximum principal amount of the obligations expected to be issued for the Project is \$6,000,000.

Section 3. This Resolution is a declaration of official intent to reimburse expenditures pursuant to Treasury Regulations Section 1.150-2.

Section 4. All actions of the officers, agents and employees of the City that are in conformity with the purposes and intent of this Resolution, whether taken before or after the adoption hereof, are hereby ratified, confirmed and adopted.

Section 5. This Resolution shall be in full force and effect immediately upon its adoption.

* * * * *

I hereby certify that the foregoing resolution was duly adopted at a meeting of the City Council of the City of Brisbane held on the 1st day of April, 2021, by the following vote:

AYES, and in favor of, Council Members:

NOES, Council Members:

ABSENT, Council Members:

By _____
City Clerk

EXHIBIT A

DESCRIPTION OF THE PROJECT

The Project consists of the following:

Glen Park Pump Station Upgrade. This project will expand the pump station capacity to satisfy maximum-day demands and fire-flow storage refill criteria and replace aging equipment to improve service reliability and optimize energy efficiency.

SCADA Upgrade. This project will replace the antiquated citywide utility telemetry system with a modern and more reliable Supervisory Control and Data Acquisition (SCADA) system.

6" Water Main Interconnection between Mariposa Street and San Bruno Avenue. This project will interconnect the existing 6" Water Main on Mariposa Street with the 8" Water Main on San Bruno Avenue.

New PRV at Humboldt Road and San Benito Road. This project will replace the existing PRV located on a hazardous location along Placer Drive with a 10" PRV in a more serviceable location on Humboldt Road.

Water Meter AMI System. This project will replace an aging meter infrastructure with an Advanced Metering Infrastructure (AMI). This project will replace all water meters and install individual meter interface units along with an AMI system server and a meter data management system that will work together with the City's billing system and customer interface.

Water Main Replacement between Humboldt Road and San Benito Road (beneath future walkway). This project will replace an aging water main along a proposed walkway from Alvarado Street and San Benito Road with a new 6" main.

Pipe burst 270' of 6" Sanitary Main w/ 8" on West Hill Drive. This project will replace 270' of existing 6" Sanitary Main on West Hill Drive with 8" Main by pipe bursting.

Pipe burst 290' of existing 6" Sanitary Main with 8" on Upper Bicentennial Walkway. This project will replace the existing 6" main on Upper Bicentennial Walkway with an 8" main by pipe bursting.

Replace Sanitary Main on 100 Block of Solano Street. This project will include replacing 25' of existing 6" main between 120 and 124 Solano Street with new 8" main and adding a new manhole.