



# CITY of BRISBANE

## City Council Meeting Agenda

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Thursday, September 21, 2023 at 7:30 PM • Hybrid Meeting 50 Park Place, Brisbane, CA

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

### TO ADDRESS THE COUNCIL

#### IN PERSON

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

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

#### REMOTE PARTICIPATION

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The agenda materials may be viewed online at [brisbaneca.org](https://brisbaneca.org) at least 72 hours prior to a Regular Meeting, and at least 24 hours prior to a Special Meeting.

#### Remote Public Comments:

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

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

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Webinar ID: 991 9362 8666

Call In Number: 1 (669) 900-9128

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

## **SPECIAL ASSISTANCE**

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

## **WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED**

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

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

### **ROLL CALL**

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

## **ADOPTION OF AGENDA**

## **AWARDS AND PRESENTATIONS**

- B. National Preparedness Month
- C. National Hispanic and Latinx Heritage Month
- D. San Mateo County Libraries' Annual Report
- E. Class of 2023 City of Brisbane Intern Presentation

## **ORAL COMMUNICATIONS NO. 1**

### **CONSENT CALENDAR**

- F. Approve Minutes of City Council Special Meeting of June 29, 2023
- G. Approve Minutes of City Council Special Meeting of Joint City Council, Brisbane GVMID Financing Authority, and Guadalupe Valley Municipal Improvement District Special Meeting of June 29, 2023
- H. Approve Minutes of City Council Special Meeting of July 6, 2023
- I. Approve Minutes of City Council Meeting of September 7, 2023
- J. Approve Minutes of City Council Closed Session Meeting of September 7, 2023
- K. Accept Investment Reports as of July 2023
- L. Approve Response to the 2022-2023 Grand Jury Report: “Bike Safety in San Mateo County: Making Cycling Safer in the County”
- M. Adopt an Ordinance, Waiving Second Reading, Repealing Chapter 8.44 of the Brisbane Municipal Code Enacting a New Chapter 8.44 to the Brisbane Municipal Code to Clarify Existing Definitions and to Enact Additional Requirements for Tobacco Retailer Permits,

and Finding that No Further Environmental Review is Required Concerning this Ordinance

- N. Adopt Resolution Establishing the Business License Tax on Recycling Establishments for Fiscal Year 2023/24
- O. Adopt a Resolution Authorizing Submission of Applications for all CalRecycle Grants and Payment Programs for which City of Brisbane is Eligible

#### **OLD BUSINESS**

- P. Revisit Sierra Point Open Space and Parks Process

#### **NEW BUSINESS**

- Q. Consider Introduction of an Ordinance, Waiving First Reading, Concerning the Timing of the Construction of Off-Site Improvements

(This Ordinance is exempt from review under the California Environmental Quality Act (CEQA) because it is not a project. CEQA Guidelines section, 15378 (b)(2))

#### **STAFF REPORTS**

- R. City Manager's Report on Upcoming Activities

#### **MAYOR/COUNCIL MATTERS**

- S. Review City Council Meeting Schedule and Proposed Meeting on December 14, 2023
- T. Countywide Assignments and Subcommittee Reports
- U. Written Communications

#### **ORAL COMMUNICATIONS NO. 2**

#### **ADJOURNMENT**

**File Attachments for Item:**

F. Approve Minutes of City Council Special Meeting of June 29, 2023





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**BRISBANE CITY COUNCIL****ACTION MINUTES**

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**CITY COUNCIL SPECIAL MEETING  
THURSDAY, JUNE 29, 2023**

*HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005*

**6:00 P.M. CALL THE SPECIAL MEETING TO ORDER**

Mayor Davis called the meeting to order at 6:00 P.M.

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

There were no requests from Councilmembers to attend the meeting remotely.

**B. Public Comment**

There were no members of the public wishing to make public comment.

**C. Select Executive Search Firms to be Interviewed**

City Manager Holstine reported that a total of seven Executive Search Firms applied to assist the City Council in the recruitment of a City Manager. The applications were reviewed by the Subcommittee, and they recommended that the full council interview four of the seven applicants.

After some Council questions and discussion with no public comment, Councilmember O’Connell made a motion, seconded by Councilmember Cunningham to adopt a resolution selecting four Executive Recruiting Firms to interview to assist the City Council in the recruitment of a City Manager. The recruiting firms selected to be interviewed included the following: Avery & Associates, Bob Murray & Associates, Peckham & McKenney, and W. Brown Creative Partners.

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

Noes: None

Absent: None

Abstain: None

## **ADJOURNMENT**

Mayor Davis Adjourned the meeting at 6:26 P.M.

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Ingrid Padilla  
City Clerk

DRAFT

**File Attachments for Item:**

G. Approve Minutes of City Council Special Meeting of Joint City Council, Brisbane GVMID Financing Authority, and Guadalupe Valley Municipal Improvement District Special Meeting of June 29, 2023



## BRISBANE CITY COUNCIL

### ACTION MINUTES

#### JOINT CITY COUNCIL, BRISBANE GVMID FINANCING AUTHORITY & GUADALUPE VALLEY MUNICIPAL IMPROVEMENT DISTRICT SPECIAL MEETING AGENDA THURSDAY, JUNE 29, 2023

*HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005*

#### 6:30 P.M. CALL TO ORDER – PLEDGE OF ALLEGIANCE

Mayor Davis called the meeting to order at 6:34pm and led the Pledge of Allegiance.

#### ROLL CALL

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

No Councilmembers made a request to attend the meeting remotely.

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

Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, Legal Counsel Roush, Finance Director Yuen, City Engineer Breault, Community Development Director Swiecki, Communications Manager Cheung, Parks and Recreation Director Leek, Economic Development Director Bull, Human Resources Administrator Partin, Senior Management Analyst Velilla, Deputy Fire Chief Johnson, Police Commander Garcia and Administrative Analyst Ibarra

#### ADOPTION OF AGENDA

Council made a request to discuss items in the following order: Q, S, M, N, O, P, R, K, and L and to close in memory of long-time residents Walt Long and Evangelina Delgadillo Macias. Mayor Davis made a motion, seconded by Councilmember O’Connell, to approve the agenda as amended. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

#### ORAL COMMUNICATIONS NO. 1

No member of the public wished to make public comment.

**CONSENT CALENDAR**

- B. Approve Minutes of City Council Closed Session Meeting of June 1, 2023**
- C. Approve Minutes of Joint City Council and GVMID Financing Authority Meeting of June 1, 2023**
- D. Approve Minutes of City Council Meeting of June 15, 2023**
- E. Approve Annual Military Equipment Report per AB 481**
- F. Acknowledge Termination of Drought Stage 1 Requirements**
- G. Adopt a Resolution Supporting the Central Brisbane Stairway Additions Project and Entering a Funding Agreement with the San Mateo County Transportation Authority for Cycle 6 Pedestrian and Bicycle Program Funding**

(It is being recommended to adopt a resolution of support and commitment, also requesting the San Mateo County Transportation Authority (TA) prepare a funding agreement for Cycle 6 Measures A and W Pedestrian and Bicycle Program funding in the amount of \$475,000 and approve the supplemental appropriation from the General Fund for the local project match in the amount of \$25,000.)

- H. Approve Co-Sponsorship Event with San Bruno Mountain Watch for a Celebration for David Schooley**
- J. Consider Adoption of Resolution establishing the Appropriation Limit for Fiscal Year 2023-2024**

Councilmember Cunningham made a motion, seconded by Councilmember Mackin, to approve Consent Calendar Items B-H and J. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

- I. Adopt Resolutions to Establish the Classifications of Human Resources Director and Police Corporal and Amend the Master Pay Schedule**

After Council questions with City Manager Holstine and Legal Counsel Roush and Council discussion, Councilmember Lentz made a motion, seconded by Mayor Davis, to adopt resolutions to establish the classifications of Human Resources Director and Police Corporal and amend the Master Pay Schedule. The motion passed with a 4-1 vote.

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

Noes: Councilmember Mackin

Absent: None

Abstain: None

## NEW BUSINESS

### **Q. Consider Adoption of a Resolution Granting Consent to the City of Burlingame to form the San Francisco Peninsula Tourism Marketing District (SFPTMD) to Include the City of Brisbane**

Economic Development Director Bull reported that this item is about granting consent to the City of Burlingame to form the San Francisco Peninsula Tourism Marketing District ("SFPTMD") to include the City of Brisbane in the SFPTMD. There will be no fiscal impact and the purpose is to promote tourism in the Peninsula.

After some Council questions, Council discussion and no public comment, Councilmember Lentz made the motion, seconded Councilmember Cunningham to adopt a Resolution granting consent to the City of Burlingame to form the San Francisco Peninsula Tourism Marketing District (SFPTMD) to include the City of Brisbane. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

### **S. Consider Authorizing City Manager to sign a Storm Drain Cleaning Contract**

(Council will consider Authorizing the City Manager to execute a contract to clean debris flow sediment deposited in the city's storm drain system as a result of the 2022 New Years Eve storm. The contract amount is estimated to be \$1.7M. A condition precedent to the City Manager executing this contract is the City Attorney's review and approval of same.)

City Engineer Randy Breault reported that the purpose of the recommended action is to establish procurement authority so the City may publish and receive bids, and then enter into a contract for, storm drain cleaning during the Council's summer recess.

After some Council questions, Council discussion and no public comment. Councilmember Lentz made a motion, seconded by Councilmember Mackin to authorize the City Manager to sign a Storm Drain Cleaning Contract. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

## PUBLIC HEARING

### **M. Consider Adoption of Resolution adopting a Master Fee Schedule**

Finance Director Yuen reported that the purpose of this public hearing item is to ensure the users of services as outlined in the City's Cost Recovery Policy pay for the services provided by the City. She added that it is being recommended to adopt a Resolution, which generally increases fees by 4%.

After some Council questions, Mayor Davis opened the public hearing.

Michele Salmon said the City needs to subsidize childcare and she appreciated the details in the budget.

Michael Barnes said the City does not have to raise fees for million dollar estimate for fields and swimming pool.

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

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

Noes: None

Absent: None

Abstain: None

After some Council discussion, Councilmember Lentz made a motion, seconded by Councilmember Cunningham, to adopt a Resolution adopting a Master Fee Schedule. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

#### **N. City of Brisbane Local Stormwater Program Fees**

- 1. Open the Public Hearing and take public comment. Close the Public Hearing, and if appropriate, overrule any objections to the imposition of fees related to the National Pollutant Discharge Elimination System (NPDES)**
- 2. Consider adoption Resolution, "A Resolution of the City Council of the City of Brisbane Imposing Charges for Funding the Local Brisbane Stormwater Program, Authorizing Placement of Said Charges on the 2023-2024 County Tax Roll and Authorizing the County Tax Collector to Collect Such Charges."**

City Engineer Breault reported on this item Council is considering imposition of annual tax roll charges that fund Brisbane's Local Stormwater Program, which minimizes discharge of pollutants to San Francisco Bay in accordance with federally mandated permit requirements. This program has a budget shortfall for this program of \$408,377 and Council may wish to pursue increasing assessments to begin to address the shortfall.

After Council questions, Mayor Davis opened the Public Hearing. No members of the public wished to speak.

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

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

Noes: None

Absent: None

Abstain: None

After some Council discussion, Councilmember Lentz made a motion, seconded by Councilmember Cunningham to pursue the research in increasing assessments to begin to address the shortfall and to adopt a Resolution imposing charges for funding the Local Brisbane Stormwater Program, authorizing placement of said charges on the 2023-2024 County Tax Roll and authorizing the County Tax Collector to collect such charges.

**O. Water Shortage Contingency Plan**

- 1. Consider Approving a Resolution of the City of Brisbane Adopting a Water Shortage Contingency Plan**
- 2. Consider Approving a Resolution of the GVMID Board of Directors Adopting a Water Shortage Contingency Plan**
- 3. Consider Introduction of an Ordinance, First reading of Ordinance revising Chapter 8.41, revising the Water Shortage Contingency Plan**

(If so approved, action taken on these Resolutions and introduction and adoption of the Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2).)

City Engineer Breault reported that this item will bring the City in compliance with California State Water Code §10609.50 et seq., and ensure the City has sufficient water supplies to meet the basic needs of human consumption, sanitation and fire protection; and to protect the health.

After some council questions, Mayor Davis opened the public hearing for the City of Brisbane and GVMID. No members of the public wished to speak.

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

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

Noes: None

Absent: None

Abstain: None

After some council discussion, Mayor Davis made a motion, seconded by Council Lentz, to adopt a Resolution Approving a Resolution of the City of Brisbane Adopting a Water Shortage Contingency Plan and a Resolution of the GVMID Board of Directors Adopting a Water Shortage Contingency Plan. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

Mayor Davis made a motion, seconded by Council O'Connell, to introduce an Ordinance, revising Chapter 8.41, revising the Water Shortage Contingency Plan. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

**P. Sierra Point Landscaping and Lighting District**

- 1. Hear Statement of Engineer of Record, Read Mayor's Statement, Hear City Clerk Statement, Open Public Hearing to hear any testimony, Close Public Hearing**
- 2. Consider adoption of Resolution overruling protests and ordering the improvements and confirming the diagram and assessments for Fiscal Year 23/24**



The Engineer of Record made a statement followed by an opening statement by the Mayor and the City Clerk, Mayor Davis opened the public hearing. No members of the public wished to speak.

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

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

Noes: None

Absent: None

Abstain: None

Councilmember O'Connell made a motion, seconded by Council Cunningham, to adopt a Resolution overruling protests and ordering the improvements and confirming the diagram and assessments for Fiscal Year 23/24. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

## NEW BUSINESS

### **R. Consider Authorizing the City Manager to Sign Agreements for Funding and for Purchase and Installation of Fiber Optic Facilities**

**(If authorized, the funding agreement with the City/County Association of Governments of San Mateo County (C/CAG) will provide that C/CAG pays for 100% of the cost of installation, including any amendments found necessary during construction. The current cost estimate for the install of C/CAG's and Brisbane's "filled" Fiber Optic conduit is \$831,924)**

City Engineer Randy Breault reported that the purpose of the recommended action is to grant the City Manager authority to execute a funding agreement for C/CAG to pay for fiber optic facilities, and a purchase and installation agreement for fiber optic facilities.

After Council questions, and no public comment. Council discussed their concerns about traffic signs' size and location and the City having a say whether the traffic signs are needed in the City.

Michele Salmon stated that the fiber optics are a good idea but is unsure about the traffic signs in the City.

After some council discussion, Councilmember Cunningham made a motion, seconded by Councilmember Lentz, to approve phase one which is a funding agreement between the City/County Association of Governments of San Mateo County and the City of Brisbane for conduit purchase and fiber installation for the smart corridor extension project given that City Engineer Breault clarifies with C/CAG that the City has the final say about the traffic signals in the City, i.e., size, location and whether it is needed. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

The Council took a brief break.

## OLD BUSINESS

### K. Continued Budget Workshop

**(This item is being continued from the City Council Meeting of June 15, 2023.)**

After a brief staff report from City Manager Holstine and Council questions with departments, Michelle Salmon cautioned that we need to tighten our belts and be fiscally conservative. She added that doing the City budget once a year is a good idea.

## PUBLIC HEARING

### L. Consider Adoption of Resolutions to approve the budget for Fiscal Year 2023/24

- 1. Adopt Resolution adopting the annual budget for Fiscal Year 2023-2024 and making appropriations for the amounts budgeted for the City, the Successor Agency and Housing Authority**
- 2. Adopt Guadalupe Valley Municipal Improvement District Resolution adopting the annual budget for Fiscal Year 2023-2024 and making appropriations for the amounts budgeted**

After no staff report and council questions, Mayor Davis opened the public hearing. No members of the public wished to speak.

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

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

Noes: None

Absent: None

Abstain: None

After some Council discussion and Council expressing their desire to evaluate the budget status after six months, Mayor Davis made a motion, seconded by Councilmember O'Connell, to adopt a Resolution adopting the annual budget for Fiscal Year 2023-2024 and making appropriations for the amounts budgeted for the City, the Successor Agency and Housing Authority. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

Chair Davis made a motion, seconded by Board member O'Connell, to adopt a Guadalupe Valley Municipal Improvement District Resolution adopting the annual budget for Fiscal Year 2023-2024 and making appropriations for the amounts budgeted. The motion was carried unanimously by all present.

Ayes: Board members Cunningham, Lentz, Mackin, O'Connell and Chair Davis

Noes: None

Absent: None

Abstain: None

## **STAFF REPORTS**

### **T. City Manager's Report on Upcoming Activities**

City Manager Holstine reported on the latest news. The next City Council meeting is scheduled for September 21, 2023.

## **MAYOR/COUNCIL MATTERS**

### **U. Countywide Assignments and Subcommittee Reports**

Councilmembers reported on their subcommittee meetings, Countywide assignments and the City events they have attended.

### **V. Written Communications**

Written Communication was received by Council between (6/15-6/29/23) from Jeremy Spitz, San Francisco Public Utilities Commission (6/20/23) regarding PG&E Power Asset Acquisition project - CEQA Update.

## **ORAL COMMUNICATIONS NO. 2**

Mayor Davis made a motion, seconded by Councilmember O'Connell, to extend the meeting to 10:35 P.M. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

Michelle Salmon felt the Council had too much business to have a three-month summer recess was too long.

## **ADJOURNMENT**

Mayor Davis adjourned at 10:37 P.M. in memory of Walt Long and Evangelina Delgadillo Macias.

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Ingrid Padilla  
City Clerk

**File Attachments for Item:**

H. Approve Minutes of City Council Special Meeting of July 6, 2023



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**BRISBANE CITY COUNCIL****ACTION MINUTES**

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**CITY COUNCIL SPECIAL MEETING  
THURSDAY, JULY 6, 2023**

*HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005*

**6:00 P.M. CALL THE SPECIAL MEETING TO ORDER**

Mayor Davis called the meeting to order at 6:07 P.M.

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

There were no requests from Councilmembers to attend the meeting remotely.

**B. Public Comment**

There were no members of the public wishing to make public comment.

**C. Interviews of Executive Search Firms**

Councilmember interviewed four Executive Recruiting Firms to assist the City Council in the recruitment of a City Manager. The recruiting firms interviewed included the following: Avery & Associates, Bob Murray & Associates, Peckham & McKenney, and W. Brown Creative Partners.

**D. Possible Selection of Executive Search Firm to recruit the for the position of the City Manager**

After Council questions, discussion and no public comment, Avery & Associates was selected as the Executive Search Firm to recruit for the position of the City Manager.

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

Noes: None

Absent: None

Abstain: None

**ADJOURNMENT**

Mayor Davis adjourned the meeting at 8:21 P.M.

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Ingrid Padilla. City Clerk

**File Attachments for Item:**

I. Approve Minutes of City Council Meeting of September 7, 2023



## BRISBANE CITY COUNCIL

### ACTION MINUTES

#### CITY COUNCIL MEETING AGENDA THURSDAY, SEPTEMBER 7, 2023

*HYBRID MEETING, 50 PARK PLACE, BRISBANE, CA 94005*

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

Mayor Davis called the meeting to order at 7:31 P.M. and led the Pledge of Allegiance

#### **ROLL CALL**

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

Mayor Davis stated that no requests have been made on Roll Call Item A.

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

Councilmembers absent: None

Staff Present: City Manager Holstine, City Clerk Padilla, Legal Counsel Roush, Finance Director Yuen, City Engineer Breault, Community Development Director Swiecki, Parks and Recreation Director Leek, Police Chief Macias and Administrative Analyst Ibarra

#### **REPORT OUT OF CLOSED SESSION**

Legal Counsel Roush reported that Council rejected Liability Claims D, E, and F. He added that no action was taken by Council regarding Closed Session Anticipated Litigation Item G and Pending Litigation Item H.

#### **ADOPTION OF AGENDA**

Staff had requested to move Consent Calendar Items I, J, and K to New Business. Councilmember O’Connell made a motion, seconded by Councilmember Cunningham, to approve the agenda as amended. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

## **AWARDS AND PRESENTATIONS**

### **B. September Recovery Happens Month**

Mayor Davis proclaimed September 2023 as Recovery Happens Month which promotes the importance of prevention, treatment, and recovery. In this spirit, this year's theme is: "Recovery is for Everyone: Every Person. Every Family. Every Community."

### **C. Suicide Prevention Month**

Mayor Davis designated September 2023 as Suicide Prevention Month and called upon everyone in our community to find their role in suicide prevention.

Sheri Boles, a volunteer with our San Mateo County Behavioral Health & Recovery Services Office of Diversity and Equity, thanked the City Council for their support and accepted both proclamations.

## **ORAL COMMUNICATIONS NO. 1**

No member of the public wished to make a public comment.

## **CONSENT CALENDAR**

- D. Accept Investment Reports as of May 2023
- E. Accept Investment Reports as of June 2023
- F. Adopt an Ordinance, waiving second reading, amending Chapter 8.41 of Title 8 of the Brisbane Municipal Code pertaining to "Water Conservation"
- G. Approve Response to Grand Jury Report, "Accessory Dwelling Units: Affordable Housing's Panacea or Prevarication"
- H. Introduce an Ordinance Repealing Chapter 8.44 of the Brisbane Municipal Code, Enacting a New Chapter 8.44 to the Brisbane Municipal Code to Clarify Existing Definitions and to Enact Additional Requirements for Tobacco Retailer Permits, and Finding that No Further Environmental Review is Required Concerning this Ordinance
- L. To Appoint Director of Public Works Randy Breault as Representative of the City's Water System to BAWSCA and RFA

Councilmember O'Connell made a motion, seconded by Councilmember Cunningham, to approve Consent Calendar Items D-H and L. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None



Mayor Davis announced that Items I, J and K will be moved to New Business. Items I, K and J involve groups in which Mayor Davis, Councilmember Lentz and Councilmember O'Connell have leadership positions outside of the Council and they will continue to individually abstain and move back from the dais during any discussion and action on the item. Then each item will be taken up individually without the participation of the involved Councilmember.

## OLD BUSINESS

### **M. Receive presentation by C/CAG staff and Consider Authorizing the City Manager to sign a Funding Agreement for the Initial Installation of Conduit and Fiber Optic Liners in Bayshore Blvd**

City Engineer Breault introduced C/CAG Executive Director Sean Charpentier. Mr. Charpentier presented on the C/CAG project of installation of conduit and fiber optic liners in Bayshore Boulevard.

After some Council questions, Dana Dillworth commented that she wanted to know whether construction will be at night, and who will be in charge of the posting of the traffic signs. She also added that no cell phone towers are allowed near schools.

After some Council discussion, Councilmember Lentz made a motion, seconded by Councilmember Cunningham, to authorize the City Manager to sign a funding agreement for the initial installation of conduit and fiber optic liners in Bayshore Blvd. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

## NEW BUSINESS

### **O. Consider the approval of the Phase 3 Proposal Package for Privately Installed Public Art**

Parks and Recreation Director Leek introduced Phase 3 representatives who provided a presentation on their proposal package for privately installed public art. Phase 3 is the developer of the Genesis Marina life sciences campus located at 3000-3500 Marina Blvd.

After Council questions, Tom Heinz commented that there was no public input and more residents should have received the public notice.

Kim Follien commented that the Carbon Dioxide statue is confusing.

Council took a brief break due to technical difficulties.

Dana Dillworth showed videos that contained public art that she would prefer in the space.

After Council discussion, Councilmember Cunningham made a motion, seconded by Councilmember O'Connell, to approve the Phase 3 Proposal Package for Privately Installed Public Art. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

## NEW BUSINESS

### I. Approve Brisbane Chamber's Event Co-sponsorship Application for Halloween and Anniversary events

Councilmember Lentz made a motion, seconded by Councilmember Mackin, to approve the Brisbane Chamber's Event Co-sponsorship Application for Halloween and Anniversary events. The application was approved by a 4-1 vote.

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

Noes: None

Absent: None

Abstain: Mayor Davis

### J. Approve Excelsior Running Club's Event Co-sponsorship Application for a Half Marathon event

Mayor Davis made a motion, seconded by Councilmember O'Connell, to approve the Excelsior Running Club's Event Co-sponsorship Application for a Half Marathon event. The application was approved by a 4-1 vote.

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

Noes: None

Absent: None

Abstain: Councilmember Lentz

### K. Approve Sierra Point Yach Club's Event Co-sponsorship Application for the 2023 Regatta

Councilmember Cunningham made a motion, seconded by Councilmember Mackin, to approve the Sierra Point Yach Club's Event Co-sponsorship Application for the 2023 Regatta. The application was approved by a 4-1 vote.

Ayes: Councilmembers Cunningham, Lentz, Mackin, and Mayor Davis

Noes: None

Absent: None

Abstain: Councilmember O'Connell

## OLD BUSINESS

### N. Information Report Concerning Development Impact Fees

City Manager Holstine provided a brief background on Old Business Item N. The purpose of it being to review the Information Report concerning Development Impact Fees and provide direction concerning such Fees, keeping in mind, as will be explained below, that it is not permissible to adopt one development impact fee that would cover a multitude of improvements.

Legal Counsel Roush provided information on Development Impact Fees, the Mitigation Fee Act, Feasibility Studies, and current Development Impact Fees in Brisbane and next steps.

After Council questions, Leesa Greenlee advocated for Council to use fees for use in Recreation and facilities to support kids, seniors and businesses.

City Clerk Padilla reported that Nancy Lacsamana wrote a comment urging the Council to use Development Impact Fees for use in Recreation and Park and also the need for affordable Housing Projects in Brisbane.

Mayor Davis made a motion, seconded by Councilmember Cunningham, to extend the meeting until 11:00 P.M. The motion was carried unanimously by all present.

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

Noes: None

Absent: None

Abstain: None

Council took a brief break.

After council discussion, staff were directed to return to Council with more information about Development Impact Fees and how it relates to affordable housing, parks facilities, city facilities, and other capital improvement projects.

## **STAFF REPORTS**

### **P. City Manager's Report on Upcoming Activities**

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

## **MAYOR/COUNCIL MATTERS**

### **Q. Countywide Assignments and Subcommittee Reports**

Councilmembers reported on their subcommittees and county assignments.

### **R. Written Communications**

#### **The Council received the following Written Correspondence (6/30-9/7/23):**

- Barbara Ebel (9/6/23) Public art
- Dana Dillworth (9/5/23) Comments on Public Art Proposal
- Dana Dillworth (9/7/23) Additional information for Art Installation 9/7 agenda
- Christina Florkowski (9/6/23) Complete Streets Safety Committee - and the safety of Brisbane
- Dr. Michael Abney (8/28/23) City Sign
- Dana Dillworth (8/23/23) Additional Comments for 8/24 PC Meeting
- Sarah Kinahan (8/7/23) Child care needs in Brisbane
- Dan Dudley (8/4/23 ) new business
- Steve Kerekes (7/8/23) code enforcement

## **ORAL COMMUNICATIONS NO. 2**

No member of the public wished to make public comment.

## **ADJOURNMENT**

Mayor Davis adjourned at 11:02 P.M.

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Ingrid Padilla  
City Clerk

**File Attachments for Item:**

J. Approve Minutes of City Council Closed Session Meeting of September 7, 2023



## BRISBANE CITY COUNCIL

### ACTION MINUTES

#### BRISBANE CITY COUNCIL CLOSED SESSION MEETING

**THURSDAY, September 7, 2023**

*HYBRID MEETING, 50 PARK PLACE LARGE CONFERENCE ROOM,  
BRISBANE, CA*

#### **6:00 P.M. CLOSED SESSION**

Mayor Davis called the meeting to order at 6:01 P.M.

#### **A. Approval of the Closed Session Agenda**

Councilmember O'Connell made a motion, seconded by Councilmember Cunningham, to approve the agenda as it stands.

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

Noes: None

Absent: None

Abstain: None

#### **B. Public Comment. Members Of The Public May Address the Councilmembers On Any Item On the Closed Session Agenda**

Roland Lebrun sent written correspondence to the City Council regarding Item H. Conference With Legal Counsel—Pending Litigation and Brightline West's Light Maintenance Facilities.

#### **C. Adjournment into Closed Session**

Mayor Davis adjourned into Closed Session.

**D. Liability Claim: Claimant Rees, pursuant to Government Code, section 54956.95**

**E. Liability Claim: Claimant Allstate (Rees), pursuant to Government Code, section 54956.95**

**F. Liability Claim: Claimant McCormick, pursuant to Government Code, section 54956.95**

**G. Conference with Legal Counsel—Anticipated Litigation**

Initiation of litigation pursuant to paragraph (4) of subsection (d) of Section 54956.9.

Number of cases: 1

**H. CONFERENCE WITH LEGAL COUNSEL—PENDING LITIGATION****Government Code, Section 54956.9 (d) (1). Number of Cases: One**

- **City of Brisbane v. CA High-Speed Rail Authority (Superior Court of Sacramento County, Case No. 80004010)**

**REPORT OUT OF CLOSED SESSION**

Legal Counsel Roush reported that Council rejected Liability Claims D, E, and F. He added that no action was taken by Council regarding Closed Session Anticipated Litigation Item G and Pending Litigation Item H.

**ADJOURNMENT**

The closed session meeting was adjourned at 7:15 P.M.

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Ingrid Padilla, City Clerk

**File Attachments for Item:**

K. Accept Investment Reports as of July 2023

CITY OF BRISBANE  
CASH BALANCES & INVESTMENTS  
SOURCE OF FUNDING  
July 31, 2023

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		\$ 4,025,298	\$ 4,025,298	\$ 4,025,298	0.000		110% collateral
STATE FUND (LAIF)	Deposit on call	continuous	\$ 2,036,142	\$ 2,036,142	\$ 2,036,142	3.310	on call	no rating
<b>Other Investments</b>								
	FFCB	3/8/2022	\$ 1,000,000	\$ 1,000,000	\$ 975,960	1.670	03/08/2024	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 976,140	2.400	04/22/2024	
	Goldman Sachs	5/1/2019	\$ 246,000	\$ 246,000	\$ 240,273	2.750	05/01/2024	
	FHLB	7/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 978,820	3.350	07/26/2024	
	Wells Fargo Bank	9/23/2022	\$ 250,000	\$ 250,000	\$ 244,032	3.750	09/23/2024	
	American Express	9/21/2022	\$ 250,000	\$ 250,000	\$ 244,048	3.750	09/24/2024	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 948,200	1.000	09/30/2024	
	FHLM	12/13/2022	\$ 1,000,000	\$ 1,000,000	\$ 990,340	5.140	12/13/2024	
	FHLB	3/24/2022	\$ 1,000,000	\$ 1,000,000	\$ 946,840	2.000	03/24/2025	
	FHLB	4/22/2022	\$ 1,000,000	\$ 1,000,000	\$ 957,260	2.750	04/22/2025	
	FHLB	7/28/2022	\$ 1,000,000	\$ 1,000,000	\$ 977,530	4.050	07/28/2025	
	FHLB	12/31/2021	\$ 1,000,000	\$ 1,000,000	\$ 925,850	1.300	09/30/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 991,530	4.750	10/27/2025	
	FHLB	10/27/2022	\$ 1,000,000	\$ 1,000,000	\$ 992,400	5.000	10/27/2025	
	FFCB	9/12/2022	\$ 1,000,000	\$ 1,000,000	\$ 974,540	4.125	12/12/2025	
	FHLB	9/29/2022	\$ 1,000,000	\$ 1,000,000	\$ 972,860	4.150	09/29/2026	
	FHLB	3/25/2022	\$ 1,000,000	\$ 1,000,000	\$ 924,110	2.600	03/25/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 963,100	3.150	05/26/2027	
	FHLB	5/26/2022	\$ 1,000,000	\$ 1,000,000	\$ 954,470	3.750	05/26/2027	
	FHLB	9/30/2022	\$ 1,000,000	\$ 1,000,000	\$ 979,530	5.000	09/30/2027	
BNY Mellon	Treasury Obligations	continuous	\$ 6,906,966	\$ 6,906,966	\$ 6,906,966	5.250	on call	110% collateral
Sub-total			\$ 24,652,966	\$ 24,652,966	\$ 24,064,798			
U.S. Bank	2014 BGPGA Bond (330)	Improvements	Fed Treas Obl	\$ -	10031			
		Reserve Fund	Fed Treas Obl	\$ 1	10032			
		Revenue Fund	Fed Treas Obl	\$ -	10034			
		Expense Fund	Fed Treas Obl	\$ -	10035			
		Principal	Fed Treas Obl	\$ 1	10036			
		Interest Fund	Fed Treas Obl	\$ 0	10037			
U.S. Bank	2015 Utility Capital (545)	Improvements	Fed Treas Obl	\$ -	10031			
		Reserve	Fed Treas Obl	\$ 94	10032			
		Expense Fund	Fed Treas Obl	\$ -	10035			
PARS	OPEB Trust	Trust Cash	Investments	\$ 3,815,427	13050			
PARS	Retirement Trust	Trust Cash	Investments	\$ 1,412,296	13050			
Sub-total	Cash with Fiscal Agents			\$ 5,227,818				
Total other investments			\$ 24,652,966	\$ 29,880,784	\$ 24,064,798			
TOTAL INVESTMENTS & CASH BALANCES			\$ 30,714,406	\$ 35,942,225	\$ 30,126,239			

Outstanding Loans to Department Heads

	Date of loan	Amount	Amount Remaining	Interest Rate
Stuart Schillinger	4/1/2002	318,750	\$ 318,750	Variable, LAIF + 1%
Clay Holstine (1)	7/8/2008	300,000	\$ -	Paid off Dec 2016
Clay Holstine (2)	9/10/2008	200,000	\$ 125,000	Variable, LAIF + 1%

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

Two year Treasury	4.88%	
Weighted Interest	3.31%	
Weighted maturity	1.85	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:**

L. Approve Response to the 2022-2023 Grand Jury Report: "Bike Safety in San Mateo County: Making Cycling Safer in the County"



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 21, 2023

**From:** Elizabeth Macias, Chief of Police, City Engineer Randy Breault and City Manager Clay Holstine

**Subject:** Response to 2023 Grand Jury Report, “Bike Safety in San Mateo County: Making Cycling Safer in the County.”

### COMMUNITY GOAL/RESULT

Safe Community

### PURPOSE

For the City Council to review the City’s draft response to the 2022-2023 Civil Grand Jury Report, “Bike Safety in San Mateo County: Making Cycling Safer in the County.”

### RECOMMENDATION

Approve the attached response letter to the Grand Jury Report on Bike Safety in San Mateo County.

### BACKGROUND

On July 10, 2023, the San Mateo Civil Grand Jury released a report entitled, “Bike Safety in San Mateo County: Making Bicycling Safer in the County.” The purpose of the report is to determine what can be done to improve bicycle safety in San Mateo County. The City of Brisbane must submit comments to Honorable Nancy L. Fineman and the response must indicate that it was approved by the City Council at a public meeting.

The Grand Jury request contains seven findings that the City must indicate if it wholly or partially agrees or disagrees with for each findings. The report also contains seven recommendations that the City must indicate, has been implemented, will be implemented, requires further analysis, or will not be implemented.

### DISCUSSION

The 2022-2023 Civil Grand Jury Report, “Bike Safety in San Mateo County: Making Cycling Safer in the County,” calls for expanded education and enforcement to improve bicycle safety for County residents. The draft response letter is provided in Attachment 1 and the Grand Jury Report is Attachment 2.

The nine findings are referenced as F1 through F9 in the Grand Jury Report, and cover the need for reporting, metrics, education and creating or updating bicycle plans.

The seven recommendations are referenced as R1 through R7 in the Grand Jury Report, and call for expanded reporting of incidents, greater enforcement, education programs, creating or updating a

bicycle plan, obtaining a report from a third party, and meeting with other jurisdictions about regional efforts.

In summary, staff agrees with the Grand Jury's concern that bicycle safety is important but disagrees with some of the recommendations due to legal concerns, effectiveness, resource availability and funding.

#### **FISCAL IMPACT**

None

#### **MEASURE OF SUCCESS**

Submission of a timely response to the San Mateo County Civil Grand Jury's report.

#### **ATTACHMENTS**

1. Response of Brisbane to the San Mateo County Civil Grand Jury Report
2. San Mateo County Civil Grand Jury Report

*Randy Breault*

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Randy Breault  
Public Works Director

*Elizabeth Macias*

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Elizabeth Macias  
Chief of Police

*Clay Holstine*

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Clay Holstine  
City Manager



**CITY OF BRISBANE**  
 Department of Public Works - 50 Park Place  
 Brisbane Police Department – 147 Valley Drive  
 Brisbane, CA 94005-1310

September 11, 2023

Hon. Nancy L. Fineman  
 Judge of the Superior Court  
 c/o Bianca Fasuescu  
 Hall of Justice  
 400 County Center; 2<sup>nd</sup> Floor  
 Redwood City, CA 94063-1655

Subject: Response to 2022-2023 Grand Jury 7/10/23 report, “Bike Safety in San Mateo County: Making Cycling Safer in the County”

Dear Judge Fineman,

Thank you for the opportunity to review and comment on the findings of the Grand Jury. This letter serves as the City of Brisbane’s response to the findings and recommendations found therein. Please note this report was approved by the Brisbane City Council at its September 21, 2023 meeting.

## **FINDINGS**

F1. Bicycle policy and the approach to ensuring/improving bicycle safety is not consistent across San Mateo County due, at least in part, to:

- a. Topography
- b. Urban vs. suburban environments
- c. Types of bicyclists (commuter, recreational)
- d. Varying levels of enforcement of bicycle laws
- e. Differing knowledge of bicycle laws and safe practices.

### City Response to F1:

The city has not independently conducted the same level of research as the Grand Jury. Based on the Grand Jury’s report we agree with the finding.

F2. Bicycle ridership as an alternative means of transportation (e.g., commuting to work, school, or transit hubs, running errands) is not increasing due, at least in part, to perceived safety issues.

City Response to F2:

The city has not independently conducted the same level of research as the Grand Jury. Based on the Grand Jury's report we agree with the finding.

F3. Bicycle accidents and incidents (such as near misses) are underreported, if reported at all.

City Response to F3:

The city has not independently conducted the same level of research as the Grand Jury. Based on the Grand Jury's report we agree with the finding.

F4. Only bicycle accidents or incidents that trigger a 911 call are consistently logged in the State (SWITRS) database and law enforcement agencies do not log bicycle accident data consistently.

City Response to F4:

The City of Brisbane, partially disagrees with the finding, at the Brisbane Police Department, all vehicle collisions occurring in our jurisdiction that qualify for entry into SWITRS following investigation are entered accordingly regardless of how they are reported to the department (911, Non-emergency lines, in person, website submission, anonymous tip line and text, etc.).

F5. The amount of enforcement of laws, as they pertain to bicyclists and how motorists and bicyclists interact, is inconsistent due to other priorities (e.g., criminal enforcement and general automobile traffic) and the requirement that a citation can generally only be written if the violation is witnessed by an officer.

City Response to F5:

The city has not independently conducted the same level of research as the Grand Jury. Based on the Grand Jury's report we agree with the finding.

F6. There is no official metric in San Mateo County and its cities to evaluate how safe it is to ride a bicycle.

City Response to F6:

The city has not independently conducted the same level of research as the Grand Jury. Based on the Grand Jury's report we agree with the finding.

F7. Bicycle safety education, for the bicyclist, pedestrians, and motorists, is not consistently offered across San Mateo County.

City Response to F7:

The city has not independently conducted the same level of research as the Grand Jury. Based on the Grand Jury's report we agree with the finding.

F8. Communication between various entities with responsibility for bicycle safety, including Bicycle and Pedestrian Advisory Committees (BPACs), Law Enforcement, City Transportation Planning, and Public Works departments, is not formalized, resulting in inefficiencies, and missed opportunities (e.g., funding for improvements, shared bike safety education, or improving signage).

City Response to F8:

The city agrees with this finding.

F9. City Bicycle and Pedestrian Master Plans or Active Transportation Plans, have not been adopted/created by all SMC cities.

City Response to F9:

The city has not independently conducted the same level of research as the Grand Jury. Based on the Grand Jury's report we agree with the finding.

## RECOMMENDATIONS

R1. By December 2023, all law enforcement agencies and the County Sheriff should submit bicycle related data to SWITRS monthly, and regularly post and update their websites with all reported bicycle accident data.

City Response to R1:

The City of Brisbane agrees with the recommendation. The Brisbane Police Department currently submits bicycle related data to SWITRS Monthly. By December 2023, the city will create a bicycle safety resource tab on the Brisbane Police Department website where we will regularly post all reported bicycle accident data.

R2. By December 2023, all law enforcement agencies should begin sending warning letters to motorists for violations of the 3 ft. law.

City Response to R2:

The City of Brisbane disagrees with the recommendation. While it is not expressly stated in the recommendation, it seems clear that the intention here is to have the Brisbane Police Department send violation warning letters to motorists based solely on reports by civilians. The practice of allowing civilians to report traffic infractions not witnessed by sworn peace officers, thus prompting some action by the Brisbane Police Department is unprecedented and would require substantial evaluation prior to any implementation. There are potential concerns involving legality, liability, rules of evidence, resource limitations, and potential abuses that need to be considered prior to implementing a change like this. It is also important to note that if this practice is appropriate for infractions related to bicycle safety, why would it not also be applicable for countless other violations? If civilians were able to submit complaints about all sorts of traffic infractions (speeding, cellphone use, stop signs, red lights, etc.), thus creating the expectation that the police department author and mail out warnings in all cases, this would be completely untenable from a resource perspective and could result in substantial abuses. In cases where sufficient evidence is provided, and the investigating officer believes that sending a warning notice is appropriate, the Brisbane Police Department will do so.

R3. By June 3, 2024, all law enforcement agencies should provide a means for citizens to report bicycle-related incidents that are not currently reported to law enforcement, similar to the SMC Sheriff's Department Online Crime Reporting portal.

City Response to R3:

The City of Brisbane agrees with the recommendation. The city currently has several methods of incident reporting to the Brisbane Police Department which includes a website submission site, an anonymous tip line and a non-emergency telephone number to our communications center. By June 3, 2024 we will look to include these

reporting methods on a bicycle safety resource and reporting page on the Brisbane Police Department website.

R4. By June 3, 2024 each city, town, and unincorporated SMC should offer a bike safety education program for riders and motorists about the laws and safety facts related to bicycles on the road.

City Response to R4:

The City of Brisbane agrees with the recommendation. The Brisbane Police department routinely attends a school bicycle rodeo day where the officers educate the students relating to bicycle safety as part of the event. By June 3<sup>rd</sup>, 2024 the Brisbane Police Department will offer motorist and rider education at all community outreach events attended and make these materials available on the department website.

R5. By June 3, 2024, each city, town, and unincorporated SMC should update or generate a new Bicycle and Pedestrian Master Plan (or Active Transportation Plan) if their current plan is older than five years; consistent with the 2021 C/CAG San Mateo County Comprehensive Bicycle and Pedestrian Plan.

City Response to R5:

The recommendation requires further analysis. Prior to July 1, 2024, city staff will review the latest Master Plan, its alignment with the C/CAG Master Plan, and if there have been changes to the city's transportation infrastructure and/or new developments that indicate the city's plan requires an update. Staff will then provide a report to the City Council, which will include the estimated cost for updating the Master Plan if that update is deemed necessary.

R6. By June 3, 2024, each city, town, and the county should apply (or reapply) online to generate the Bicycle Friendly Community Report Card.

City Response to R6:

The recommendation will not be implemented because it is not warranted. While the League of American Bicyclists does provide valuable resources, cycling education and bicycle friendly actions, this organization is not yet recognized as having



September 11, 2023  
Hon. Nancy L. Fineman  
Grand Jury Bicycle Safety Response

established a nationally applicable metric for determining how well individual municipalities respond to the bicycling needs of their community. Of the 482 cities and 58 counties in California, only 65 chose to participate in the 2022 “Report Card” application.

R7. By February 1, 2024, the County should meet with cities within the County that are willing to participate, to consider establishing a regional effort that integrates the cities’ bicycle plans and to discuss how the cities and County could work together to apply for grant opportunities as a region.

City Response to R7:

The city is willing to participate in such a meeting, but we note that we are unable to require the County to schedule such a meeting. The recommendation will be implemented if the County invites the city to such a discussion; the time frame for implementation of this recommendation is under the control of the County.

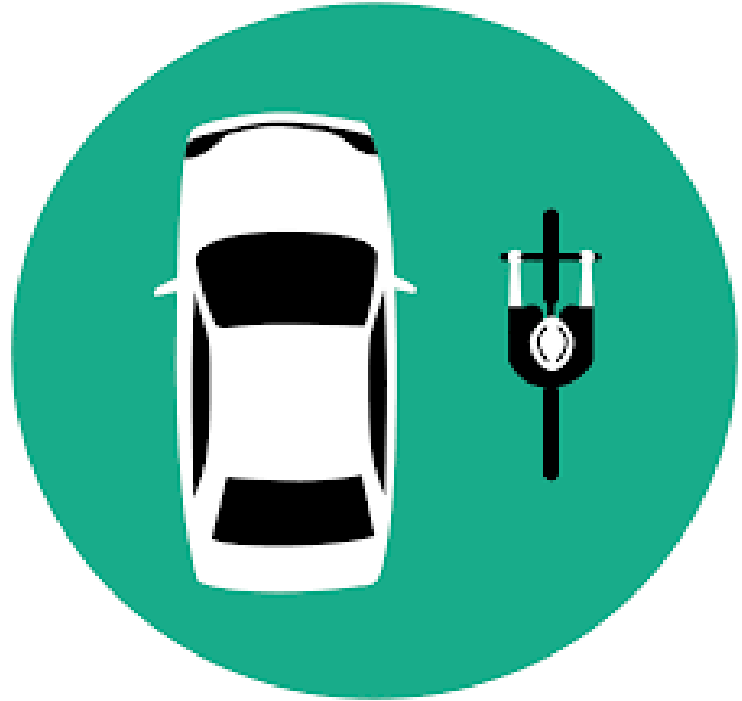
Please call Director Breault at (415) 508-2131 or Chief Macias at (415) 508-2177 if there are any questions regarding this matter.

Very truly yours,

Randy L. Breault, P.E.  
Director of Public Works/City Engineer

Lisa Macias  
Chief of Police

Cc: Grand Jury website (sent via email to [grandjury@sanmateocourt.org](mailto:grandjury@sanmateocourt.org) )  
Brisbane City Clerk



# Bike Safety in San Mateo County

## *Making Bicycling Safer in the County*

Release Date: July 10, 2023  
2022-23 San Mateo County Civil Grand Jury

*“Biking is one of the few activities that checks all the boxes at once — it’s active, practical, social, sustainable, stress-relieving, fun, and is a great family activity. Biking has the unique ability to elevate the mundane — it turns errands into adventures. More people on bikes keeps our streets safer, our air cleaner and our communities better connected.” Sonia Elkes, 2021 Bike Champion of the Year for San Mateo County Bay Area Bike to Work Website*

*“I often drive up Alpine Road near the Stanford golf course and I believe I would have a head-on crash with oncoming cars if I left a 3-foot margin between my car and the thoughtless bikers who ride out partially in the road. What is the best advice for that situation?” Comment on Bicyclists Can Now Report 3’ Rule Violations Online in The Almanac 5/12/2023.*

*“On the afternoon of Monday, April 10, bicyclist Lester Legarda was fatally struck by a driver on Cañada Road, a rural route popular among walkers, equestrians, and bicyclists. Details of the crash scene suggest that the collision speed was high. One solution to prevent future tragedies along Cañada is tantalizingly simple — reduce the 50-mph speed limit. Sure, drivers will likely continue to exceed the speed limit. But just like the paint on the road that defines where drivers are supposed to drive, posted speed limits set expectations for acceptable driver behavior.” Reduce the speed limit on Canada Road San Mateo Daily Journal 04/20/23.*

## **Bike Safety in San Mateo County: *Making Bicycling Safer in the County***

### **ISSUE**

As bicycle riding has become an ever more meaningful form of transportation, especially with the popularization of eBikes, the demand by County residents for safe micro-mobility solutions has soared. Are San Mateo County and its municipalities positioned to respond to safety concerns and meet those demands?

### **SUMMARY**

Whether for commuting or recreational purposes, residents in every jurisdiction of San Mateo County (SMC), as well as from the surrounding Bay Area counties, use bicycles. Because bicycles are widely available, for some the only mode of getting to and from work and jobs, and ridden in every jurisdiction, bicycle safety has become an increasingly important issue for SMC and its cities and towns. Without greater focus on bike safety, the number of riders will remain low, because people will avoid bicycling when they don't feel safe. The benefits of increasing bicycle riding are important to all residents of San Mateo County: reducing motor vehicles, healthy lifestyle and an inexpensive form of transportation. Accordingly, San Mateo County, and its cities and towns have a responsibility to make it safe for drivers and pedestrians, as well as bicyclists.

Due to differences in terrain, population density, and existing infrastructure, the 20 different municipalities and the unincorporated portions of the County have differing bicycle safety needs and requirements. Some cities are very hilly, making commuting to work, school, or transit stations nearly impossible. Others are more urban and accommodate many more commuting bicyclists. The County also has some areas that are primarily recreational biking destinations and areas that accommodate both commuting bicyclists and recreational bicyclists. As a result, each community also assigns a different level of importance to bicycle safety relative to other issues, such as crime, motor vehicle safety and public works improvement projects. And education and enforcement about bicycle laws varies from one jurisdiction to another.

Despite the differences among the jurisdictions, there are several commonalities. One is that cities and law enforcement do not consistently maintain records about bicycle near misses, accidents, or complaints; data is neither broadly available nor consistently maintained. Another commonality is that government entities focused on bicycling and/or improving bicycle safety do not communicate and collaborate with each other often enough, if at all. This makes it difficult to get accurate information on the number and severity of incidents and gauge how safe it is to bicycle in San Mateo County. Without data, and communication among the municipalities, San Mateo County and its cities and towns lose out on available state and local funding to improve bicycle safety through physical improvement projects.

To improve bicycle safety and thereby increase ridership, San Mateo County and its cities and towns need to:

1. Create effective ways to educate bicycle riders and motorists about bicycle rules of the road to enhance predictability.
2. Develop consistent communications among government organizations responsible for bike safety (e.g., between law enforcement and public works).
3. Conduct enforcement details in each jurisdiction to ensure enforcement leads to education.
4. Collect accurate data about accidents and incidents that is crucial to supporting and justifying grant applications and funding from State and local agencies for physical improvements to infrastructure for bicyclists (e.g., connectivity of bicycle routes from one city to another), needed signage, and other engineering improvements.

## BACKGROUND

Why is bike safety an important topic?

Statistically, the safer a person feels riding a bike, the more likely they will use it as regular transportation; both as a commuter and a recreational user.

Fifty-three percent of Americans worry about being hit by a motor vehicle when riding a bicycle; 47% say they would be more likely to ride a bike if pathways were physically separated from motor vehicles.<sup>1</sup>

However, bicycle accident statistics, though better than in 1998, averaged 231 fatalities and injuries over the last ten years. The average was 203 fatalities the last three years, but the drop includes the pandemic shutdown and more people working from home. The source of the recent data is the California Statewide Integrated Traffic Records System (SWITRS<sup>2</sup>) database, managed by the California Highway Patrol. All law enforcement agencies are required to submit accident data to the database on a regular basis.

A 2002-2003 SMC Civil Grand Jury titled, *Bike Safety in San Mateo County*<sup>3</sup>, questioned whether San Mateo County and the cities adequately consider and support safe bicycle travel? At that time, it was estimated that 46% of Americans bicycle for pleasure and 300,000 County residents bicycle at least occasionally. Commuting by bicycle was less than 1% in the County.

That year's Grand Jury found that bicycle infrastructure for safe travel needed improvement, but funding was an issue. It also found that communication and planning between the county and the cities on bicycle projects and safety could be improved. And that throughout SMC, bicycle safety was not a high priority. The primary recommendation of the report was the county, and all cities should develop a long-term strategic bicycle and safety plan.

<sup>1</sup> People for Bikes: <https://www.peopleforbikes.org/news/building-for-tomorrow>

<sup>2</sup> <https://iswitr.chp.ca.gov/Reports/jsp/logout.do>

<sup>3</sup> [https://www.sanmateocourt.org/court\\_divisions/grand\\_jury/2002reports.php?page=02SMC-Bicycle.html](https://www.sanmateocourt.org/court_divisions/grand_jury/2002reports.php?page=02SMC-Bicycle.html)

A few things have changed since then.

Over the years, the focus of cities and the county on improving bike and pedestrian forms of transportation has increased:

- Bicycle maps and routes are now generally available online.
- The City/County Association of Governments (C/CAG) updated their San Mateo County Comprehensive Bicycle and Pedestrian Plan in 2011<sup>4</sup> and 2021<sup>5</sup>.
- California enacted Assembly Bill 1358, **California Complete Streets Act of 2008**<sup>6</sup>, requiring all cities and counties to include complete streets policies as part of any substantial revision to the circulation element of their general plans; and cities and the County have adopted these complete streets policies, noting these policies in their Bicycle and Pedestrian Master Plans, or Active Transportation Plans.
- SMC and most of its municipalities have created and consistently upgraded their Bicycle and Pedestrian Master Plans.
- Unincorporated San Mateo County has created an Active Transportation Plan<sup>7</sup> (Active Transportation is a term often used to cover walking, bicycling, and other motorized devices as a primary mode of transportation).
- C/CAG, Unincorporated SMC and some cities have created Bike and Pedestrian Advisory Committees to address active transportation improvements, safety issues, and other citizen related requests.

Meanwhile, the number of bicyclists in San Mateo County has not increased since 2002, according to the California Household Travel Survey, which is regularly used for data on the number of bicyclists in a community, but is restricted to commuting.

The 2002 and 2012 surveys showed only 1% of SMC's population rides bicycles as a form of transportation. Looking at the various municipalities' Bicycle and Pedestrian Master Plans, and the surveys and counts discussed in the plans, bicycle commute ridership still hovers at approximately 1% within SMC.

It is important to note that the number of people in SMC using bicycles in lieu of a car has not increased in 20 years. This is in contrast to the estimated number of recreational bicyclists (46%) in SMC, who also use streets and bicycle paths and expect a safe ride<sup>8</sup>.

<sup>4</sup> [https://ccag.ca.gov/wp-content/uploads/2014/07/CBPP\\_Main-Report\\_Sept2011\\_FINAL.pdf](https://ccag.ca.gov/wp-content/uploads/2014/07/CBPP_Main-Report_Sept2011_FINAL.pdf)

<sup>5</sup> [https://ccag.ca.gov/wp-content/uploads/2021/05/6\\_A1\\_San-Mateo-County-Comprehensive-Bicycle-and-Pedestrian-Plan-Update-Final-Plan.pdf](https://ccag.ca.gov/wp-content/uploads/2021/05/6_A1_San-Mateo-County-Comprehensive-Bicycle-and-Pedestrian-Plan-Update-Final-Plan.pdf)

<sup>6</sup> [http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab\\_1351-1400/ab\\_1358\\_bill\\_20080930\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1351-1400/ab_1358_bill_20080930_chaptered.pdf)

<sup>7</sup> <https://www.smcsustainability.org/livable-communities/active-transportation/unincorporated-smc-active-transportation-plan/>

<sup>8</sup> [https://ccag.ca.gov/wp-content/uploads/2021/05/6\\_A1\\_San-Mateo-County-Comprehensive-Bicycle-and-Pedestrian-Plan-Update-Final-Plan.pdf](https://ccag.ca.gov/wp-content/uploads/2021/05/6_A1_San-Mateo-County-Comprehensive-Bicycle-and-Pedestrian-Plan-Update-Final-Plan.pdf)

However, even with roadway and signage improvements over the past 20 years, there is much San Mateo cities and the county can do to improve bicycle safety.

## DISCUSSION

The merits of bicycle riding may seem self-evident, but a wide range of research reveals often surprising benefits to local economies, personal health, the environment, traffic congestion, and pedestrian safety that are unique to bicycle friendly communities.

### Health Benefits

Bicycle riding contributes to both physical and mental health. Regular exercise such as cycling can help prevent heart issues<sup>9</sup> such as stroke, heart attack, high blood pressure, and may also help prevent and manage type 2 diabetes.<sup>10</sup> Riding a bicycle is good for cognitive health and emotional well-being and can ease feelings of stress, depression, or anxiety.<sup>11</sup>

All in all, bicycling for only 30 minutes a day reduces a person's chances of diabetes, dementia, depression, colon cancer, cardiovascular disease, anxiety and high blood pressure by 40 percent or more.<sup>12</sup>

The World Health Organization has found that "If every adult EU citizen walked or cycled for 15 extra minutes per day, we'd have 100,000 fewer people dying prematurely, each year."<sup>13</sup>

### Environmental Benefits

Among the most obvious benefits of cycling is its benign effects on the environment. A solo driver in an average car releases about 1.1 pounds of CO<sub>2</sub> per mile.<sup>14</sup> A standard compact to midsize car that travels 12,000 miles will emit 11,000 pounds of CO<sub>2</sub>.<sup>15</sup> The average car produces about 1.3 billion cubic yards of polluted air over the course of its lifespan plus worn tire particles, brake wear, and the emissions from other materials in the car also contribute to air pollution.<sup>16</sup> Recent research in Europe found that traveling by bicycle instead of by car once a day decreases your transportation carbon footprint by 67%.<sup>17</sup>

<sup>9</sup> <https://www.hopkinsmedicine.org/health/wellness-and-prevention/exercise-and-the-heart>

<sup>10</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4942105/>

<sup>11</sup> <https://www.psychologytoday.com/us/blog/minding-the-body/201505/bicycling-can-sharpen-your-thinking-and-improve-your-mood>

<sup>12</sup> [https://www.exerciseismedicine.org/assets/page\\_documents/EIMFactSheet\\_2014.pdf](https://www.exerciseismedicine.org/assets/page_documents/EIMFactSheet_2014.pdf)

<sup>13</sup> <https://ecf.com/news-and-events/news/walking-and-cycling-reduce-congestion>

<sup>14</sup> <https://www.sharetheroad.ca/what-are-the-environmental-traffic-congestion-benefits-of-cycling--s16223>

<sup>15</sup> <https://www.treehugger.com/cars-are-causing-air-pollution-we-breathe-new-study-finds-4856825>

<sup>16</sup> <https://www.scholaradvisor.com/essay-examples-for-college/bicycle-helps-reduce-air-pollution/>

<sup>17</sup> <https://www.sciencedirect.com/science/article/pii/S1361920921000687>

## Traffic

As active transportation choices like walking and bicycling gain attention and popularity, researchers are beginning to investigate the role these travel modes can play in reducing traffic congestion.<sup>18</sup> Studies show that measures taken to promote bicycling and walking have a positive effect on congestion.

Research in Washington, DC identified a causal effect of the presence of a bike-share station on traffic congestion. The result is a 2-to-3% reduction in traffic congestion that can be attributed to the bike-share station within the sample.<sup>19</sup>

## Economic Benefits

Among the more surprising findings is the positive economic impact from an increase in bicycle usage but studies show that the bicycle-related economy creates jobs, economic activity, and cost savings.<sup>20</sup>

Bicycle trails and facilities have a positive, statistically significant impact on home values; a 2006 study in Minneapolis found that the median home values rose \$510 for every quarter mile they were located closer to an off-street bikeway.<sup>21</sup>

Indianapolis' Cultural Trail, an 8-mile network of separated bike and pedestrian lanes, has reinvigorated a number of struggling business districts and sparked a whopping \$1 billion in increased property values.<sup>22</sup>

And in an era when streets and sidewalks across the county are in various states of disrepair, bicycle projects can significantly reduce the cost of maintaining and expanding our transportation systems.<sup>23</sup> Even protected bicycle lanes are "dirt cheap to build compared to road projects," says Gabe Klein, a partner at Fontinalis, a venture capitalist firm founded by Ford Motor Co. Chairman Bill Ford. Cities everywhere need to be more efficient about the money they spend to move people. "We need to get more use from the streets we already have."

Research indicates that investments in cycling infrastructure generate more jobs per dollar spent than investments in road-only infrastructure; cycling projects create a total of 11.4 local jobs for each \$1 million spent while road-only projects create 9.6 jobs per \$1 million.<sup>24</sup>

<sup>18</sup> <https://kawarthanow.com/2019/01/17/reduce-traffic-congestion-bikes-can-do-that>

<sup>19</sup> <https://www.resources.org/archives/commentary-does-bicycle-infrastructure-reduce-traffic-congestion/>

<sup>20</sup> <https://railyards.com/blog/7-benefits-of-bike-friendly-communities>

<sup>21</sup> <https://smartcity.press/bicycle-infrastructure-in-smart-city/>

<sup>22</sup> <https://indyculturaltrail.org/2015/07/23/economic-impact-figures-released/>

<sup>23</sup> <https://www.aarp.org/livable-communities/getting-around/info-2016/why-bicycling-infrastructure-is-good-for-people-who-dont-ride-bikes.html>

<sup>24</sup> <https://www.sharetheroad.ca/what-are-the-environmental-traffic-congestion-benefits-of-cycling--s16223>



Bicycle friendly communities are important to millennial job seekers and functional bicycle infrastructures help companies attract talent. “States and cities are competing for the most mobile generation ever and so the job creators and the innovators are really pushing for these amenities.”<sup>25</sup>

## **Safety**

The most comprehensive study of bicycle and road safety to date finds that building safe facilities for cyclists is one of the biggest factors in road safety for everyone. Bicycling infrastructure -- specifically, separated and protected bike lanes -- leads to fewer fatalities and better road-safety outcomes for all road users.<sup>26</sup>

Davis, CA was the first city to gain “platinum” status by the League of American Bicyclists and is often referred to as the “bicycle capital of America.” From 1996 to 2007, Davis only had nine fatal road crashes. Despite having the largest percentage of bike commuters in the United States, none of these accidents involved a bicyclist. With a fatal crash rate of less than 1.5 per 100,000 residents, far fewer people are killed on Davis’ roads than in the U.S. as a whole, which averaged 14.5 fatalities per 100,000 residents.

Portland, OR, another platinum bicycling city, saw a nearly 50% decrease in road fatalities as it increased its bicycle mode share from 1.2% in 1990 to 5.8% in 2000. Bike friendly communities are safer for all road users, no matter what type of transportation is being used.

## **Social Benefits**

Finally, bicycle riding as an alternative to car travel is associated with a number of social benefits, including increased social interaction, social networks, and social capital.<sup>27</sup> A bicycle rider has a completely different relationship with their environment than those who are cocooned in their cars.

When communities invest in bicycle infrastructure, everyone benefits. Overall, bicycle commuters are healthier and bicycle-friendly streets are safer for everyone on the road. Bicycle friendly communities reap economic benefits including more retail activity and increased home values. The evidence is clear: bicycling brings big benefits to communities who embrace it.

## **Status Today**

Twenty years after the first San Mateo Grand Jury report, significant gaps remain in jurisdictions’ approach to bicycle safety:

<sup>25</sup> <https://railyards.com/blog/7-benefits-of-bike-friendly-communities>

<sup>26</sup> [https://www.cnu.org/sites/default/files/marshallw\\_cnu18.pdf](https://www.cnu.org/sites/default/files/marshallw_cnu18.pdf)

<sup>27</sup> <https://www.peoplepoweredmovement.org/benefits-of-biking-walking/>

- San Mateo County and its municipalities’ characteristics make it difficult to create a consistent approach to bicycle safety.
- The use of bicycle safety education as a tool to increase safety for bicyclists and motorists is underutilized Countywide.
- Communication and coordinated planning across city lines is the exception, rather than the norm. Reporting of bicycle-related incidents is inconsistent throughout the county.
- Enforcement of bicycle laws, for motorists and bicyclists, is inconsistent and not prioritized.

### **Bicycle Safety in San Mateo County Cities**

Each city and town in San Mateo County is unique and has a different relationship with bicycle use and safety. These variations include:

- Topography
- Objectives and priorities re bicycles and ridership
- Safety Perception
- Infrastructure
- Impact of eBikes
- Role of enforcement in bicycle safety.

For example:

**Woodside and Portola Valley:** Woodside and Portola Valley are hill communities with narrow roads. Woodside has a very active Circulation Committee which keeps a close eye on large bicycling events in the community and Portola Valley is focused on managing bicyclists on the weekend. But in both cases, the communities concentrate on ensuring quality of life for residents. They both see mostly recreational bicyclists. Woodside has invested as much as \$1 million to ensure a “safe route to school” for the children. However, the communities don’t make a strong effort to track riders or accidents. In both communities the Sheriff’s Office, which is their policing arm, enforces rules at some problem locations, but not regularly.

**Hillsborough:** Hillsborough is a relatively insular community by nature of its location and topography. It has no commercial districts and is, to a large degree, rather hilly. The view on bicyclists is very much a neighborhood view: meaning the expectation is that if there are problems with bicyclists they are brought up by members of the neighborhoods. The primary focus on any kind of organized bicycling safety activity is efforts to teach children bicycle safety and safe routes to school at the beginning of the school year.

**Belmont:** Until quite recently, the City has been completely focused on ensuring that the community is comfortable for single family dwellings. However, areas close to El Camino Real are more commercial and have denser housing. The community now has both recreational and commuting bicyclists using the roads. While Belmont does have a bicycle master plan and holds an annual bike safety program for children and teenagers,

more needs to be done. The City needs to obtain funding from external Federal, State and County sources to do more.

**Half Moon Bay:** Possibly more than any other community in San Mateo County, Half Moon Bay has a sophisticated, complex relationship with bicyclists. On the one hand, Half Moon Bay attracts many visitors -- both vacationers and visitors from other Bay Area communities; and on the other hand, it has a robust population of residents who use their bicycles to get to work, school, and stores. Moreover, while Half Moon Bay has many surface streets, it is dominated by Highways 1 and 92 which have many challenging safety issues. As a result, the community has a bicycle master plan that focuses on bicycle safety and traffic planning. Despite this very proactive approach, the City deals with sometimes devastating safety issues. However, it appears that concern for bicycle safety is shared by many of the participants in the community.

**San Mateo:** The City of San Mateo updated its bicycle master plan in 2020. As a result, the City has focused on a variety of contemporaneous issues. These include working to develop a roadway network which could accommodate both bicycles and other types of active transportation. The City believes that it still skews toward recreational bicycling but is finding that more people want to use bicycles as a way of getting around. The master plan covers some education issues such as safe routes to school and safe bicycling for seniors. The plan does not talk about safety per se but addresses it from the vantage point of education. Though the City is focused on these matters it still recognizes that there's more education to be done about the rules of the road for bicyclists.

**Unincorporated San Mateo County:** Large areas of San Mateo County are small towns, private land, and open space, bisected, primarily, by two lane roads and highways. To address bicycle safety in these areas, the county created the Unincorporated San Mateo County Bicycle and Pedestrian Committee. Though there is no explicit Bicycle and Pedestrian Master Plan, they do contribute to the SMC Active Transportation plan. The Committee makes recommendations regarding bicycle and pedestrian related grants, but expressed frustration with money not being shared equitably. Additionally, the Committee inputs bicyclist's feedback. They are concerned with the number of incidents between motorists and bicyclists that are not addressed by law enforcement. The Committee has been working with the County Sheriff to address the problem.

These are just a few examples of San Mateo County and its municipalities' approach to bicycle safety. But because the communities are so diverse, thinking about bicycle safety needs to be broad-minded.

### **Bicycle Safety Education in SMC: Not just for cyclists**

Since bicycle safety is crucial to encouraging bicycle usage, it follows that bicycle safety education is an essential component of the bicycle safety equation.

According to the US Department of Transportation: “Educating people about safe bicycling and walking, enforcing laws that make it easier and safer for people to bicycle and walk, and encouraging people to bicycle and walk, may help increase walking and bicycling activity, especially when combined with infrastructure improvements.”<sup>28</sup>

Moreover, as noted on the National Highway Traffic Safety Administration’s Bicycle Safety web page, “A large percentage of crashes can be avoided if motorists and cyclists follow the rules of the road and watch out for each other.”<sup>29</sup>

In San Mateo County, much of the focus on bicycle safety and bicycle safety education is focused on ensuring safe routes to schools for children. Several communities, as detailed below, have much more comprehensive approaches to bicycle safety education in their Bicycle and Pedestrian Master Plans. Here are some examples:

- **Burlingame (Excerpt from the Bicycle and Pedestrian Master Plan)**

Policy 11: Educate people walking, bicycling, and driving, and the general public about roadway safety and the benefits of bicycling and walking.

11.1: Support the continuation and expansion of bicycle safety education programs such as those taught by Silicon Valley Bicycle Coalition and the San Mateo County Office of Education.

Policy 12: Encourage Burlingame public schools to participate in the Safe Routes to School program organized by the San Mateo County Office of Education.

- **Brisbane’s Master Bicycle and Pedestrian Plan examples:**

“Policy 4.A.5: Provide support for programs that educate drivers, bicyclists and pedestrians about their rights and responsibilities, as well as traffic education and safety programs for adults and youth.”

“Programs support bicycling and walking by providing encouragement to those considering bicycling and walking, education for motorists, bicyclists, and pedestrians about safe and appropriate sharing of streets and roads, and enforcement of traffic laws that help ensure the safety of vulnerable road users.”

- **County Sheriff:**

The San Mateo County Sheriff’s office publishes a pamphlet, *Bicycle Safety*<sup>30</sup>, on the California Vehicle Code sections related to bicycle safety. One City, Woodside, references this document, which could be used by all cities, schools and police

<sup>28</sup> [https://safety.fhwa.dot.gov/ped\\_bike/ped\\_focus/docs/fhwasa17050.pdf](https://safety.fhwa.dot.gov/ped_bike/ped_focus/docs/fhwasa17050.pdf)

<sup>29</sup> <https://www.nhtsa.gov/road-safety/bicycle-safety>

<sup>30</sup> [https://www.woodsidetown.org/sites/default/files/fileattachments/community/page/33495/bicycle\\_safety.pdf](https://www.woodsidetown.org/sites/default/files/fileattachments/community/page/33495/bicycle_safety.pdf)

departments to improve bicycle safety education. However, the document is not available on the SMC Sheriff website.

- **City of San Mateo:**

San Mateo has some support for bicycle use and safety on its City website. The pages are listed in the table below.

EXISTING		
Support Program	Description	Webpage
Bicycle Webpage	There is brief text about bike routes and using a bike with public transport on the City's webpage	<a href="http://www.cityofsanmateo.org/2125/Parking-and-Transportation">http://www.cityofsanmateo.org/2125/Parking-and-Transportation</a>
Bicycle Education Events	The city's Public Works Department hosts an annual bike rodeo	<a href="http://www.cityofsanmateo.org/3736/Bike-Rodeo">http://www.cityofsanmateo.org/3736/Bike-Rodeo</a>

### **Moving to Excellent Bike Safety Education in all SMC Cities**

Overall, the approach to bicycle safety education in SMC communities is inconsistent. Several of the master plans recognize that bicycle safety education is about teaching motorists and cyclists of all ages about the guidelines for bicycle safety. Other communities either don't focus much on education or are focused exclusively on "Safe Routes to School".

Nonetheless, there are a handful of programs identified in the table below that creatively address bicycle safety, which San Mateo County and its municipalities should consider adopting.

RECOMMENDED FOR ALL SMC CITIES		
Support Program	Description	Webpage
Establish child and adult education programs	Identify and implement education programs for children and adults that build bicyclists' confidence, done in coordination with the Parks and Recreation Department, Police or Local Schools.	<a href="https://www.portlandoregon.gov/transportation/article/565224">https://www.portlandoregon.gov/transportation/article/565224</a>  <a href="http://www.cityofsanmateo.org/2125/Parking-and-Transportation">http://www.cityofsanmateo.org/2125/Parking-and-Transportation</a>
Establish Safe Routes to School Funding	Establish a stable funding source for Safe Routes to School programming	<a href="https://www.metro.net/projects/sr_ts/fund-your-program">https://www.metro.net/projects/sr_ts/fund-your-program</a>
Implement and promote demonstration projects	Implement short-term, high-visibility bicycle demonstration or 'pop-up' projects to serve as models that can be applied throughout the city. Market bicycle safety.	<a href="https://transportation.bellevuewa.gov/UserFiles/Servers/Server_4779004/File/Transportation/Publications/PBII_Demo%20Bikeway%20Brochure_20180205.pdf">https://transportation.bellevuewa.gov/UserFiles/Servers/Server_4779004/File/Transportation/Publications/PBII_Demo%20Bikeway%20Brochure_20180205.pdf</a>
Provide safety education program for users of all modes	Provide safety education programs or communications campaigns for people driving, bicycling, walking, and using micro mobility devices that encourage safe travel behaviors.	<a href="http://www.pedbikeinfo.org/">http://www.pedbikeinfo.org/</a>
Create a robust bicycling webpage	Develop and maintain a content rich mobility webpage(s) on the County/City website and communicate how to reach city destinations by bike, on foot or on micro-mobility devices. Include information on these transportation options.	<a href="https://www.metro.net/riding/go-bike">https://www.metro.net/riding/go-bike</a>  <a href="http://www.cityofsanmateo.org/2125/Parking-and-Transportation">http://www.cityofsanmateo.org/2125/Parking-and-Transportation</a>

## **Bicycle & Pedestrian Master Plans and Advisory Committees: Planning Across the County**

The 2002 SMC Grand Jury Report recommended that all municipalities create Bicycle and Pedestrian Master Plans. As a best practice, the municipalities were encouraged to form Bicycle and Pedestrian Advisory Committees.

To date, almost all San Mateo County jurisdictions or cities have Bicycle and Pedestrian Master Plans, or Active Transportation Plans. Most, if not all of these plans, align with recommendations from the 2011 C/CAG's San Mateo County Comprehensive Bicycle and Pedestrian Plan. The 2021 update of C/CAG's plan enhances and adds to the 2011 C/CAG San Mateo County plan, but most of the cities and towns have not updated their plans to be consistent with the 2021 plan. (See Appendix D for a complete list of San Mateo County's Bicycle & Pedestrian Master Plans.)

The cities' bicycle and pedestrian master plans help each city by identifying strategies to improve bicycle and pedestrian safety. The plans recommend improvements for roadway connectivity for bicyclists and pedestrians, within each city as well as with neighboring cities. Numerous plans reference the Silicon Valley Bicycle Coalition and the League of American Bicyclists (LAB) as organizations that have certified instructors for bicycle safety education. At least several of the plans also discuss the LAB Bicycle Friendly Community Report Card to which five SMC cities and San Mateo County belong. The plans list potential State and Federal funding for projects that improve safety and roadway connectivity and make clear the importance of annually evaluating and tracking progress against objectives.

However, in SMC, County committees and municipalities do not always work together to generate consistent plans that meet C/CAG's goal for a Countywide bicycle backbone. Though C/CAG does have an advisory committee which includes representatives from municipalities, it does not have control over what individual municipalities decide to do regarding grant applications, infrastructure projects for better bicycle and pedestrian safety and education initiatives. If the municipalities endeavored to work together to prioritize projects and programs that are consistent with C/CAG's priorities, it would benefit all of San Mateo County, especially with respect to providing north-south connectivity between municipalities.

### **Metrics: If you don't measure it, you can't improve it.**

One important measure of bicycle safety is arriving safely at a destination. This is usually reflected in the negative; that is, the number of fatalities and injuries during a calendar year versus the number of successful bicycle trips.

In San Mateo County, the cities and county rely heavily on data supplied to the California Highway Patrol (CHP) to state the number of fatalities and injuries. The CHP then maintains a database, SWITRS (California Statewide Integrated Traffic Records System), which is accessible

to the public. And, UC Berkeley maintains a website, TIMS<sup>31</sup> (Transportation Injury Mapping System), which can further refine the raw data from SWITRS.

However, relying on this data to evaluate Bicycle Safety is problematic.

Law enforcement agencies in the County submit their bicycle accident data to SWITRS based on incidents that result in fatality or injury. However, there are bicycle accidents resulting in injury which don't make it into SWITRS because law enforcement is not called. Some examples are bicyclists being forced off the road by motor vehicles, collision near misses and, of course, bicyclist error. Consequently, the actual number of bicycle accidents is underreported and, more importantly, the list of accident locations is not complete. Cyclists that have an incident that does not involve either the police or the fire department do not have a consistent means to log their experience. That data goes unreported. And this goes both ways; there is no means for a motorist to complain about bicycle riders' unsafe behavior.

Countywide there is no uniform metric to measure Bicycle Safety. Without such a measure, it's impossible to assess progress while building infrastructure, enforcing laws, and educating everyone in safety principles.

An obvious metric is bicycle accidents as recorded by SWITRS and online reports, but there is another metric which evaluates the complex equation that results in safe bicycling: ***Bicycle Friendly America Certification***<sup>32</sup>.

The League of American Cyclists is a national organization dedicated to creating "safer roads, stronger communities and a Bicycle Friendly America for everyone." This is a grassroots organization dedicated since 1880 to protecting the right to safe and enjoyable bicycling. A valuable achievement of this organization is establishing the Bicycle Friendly America (BFA) certification for cities and counties. This consists of a very detailed application<sup>33</sup> that a city or county official fills out to get a comprehensive rating of bicycle safety. BFA defines bicycle safety using 5 E's:

- Equity and Accessibility: A bicycle-friendly America for everyone
- Engineering: Creating safe and creative places to ride and park
- Education: Giving people of all ages and abilities the skills and confidence to ride
- Encouragement: Creating a strong bike culture that welcomes and celebrates bicycling
- Evaluation and Planning: Planning for bicycling as a safe and viable transportation option [Note that Enforcement, a common element in the 5 E's of safety, is not included in the BFA definition.]

<sup>31</sup><https://tims.berkeley.edu/summary.php?showArea=city&expandTables=false&injury=3&yearRange=3&showMap=crashes>

<sup>32</sup> <https://bikeleague.org/bfa/>

<sup>33</sup> <https://bicycfriendly.secure-platform.com/a/organizations/main/home>



The application covers the BFA 5 E's and investigates what it calls the 10 building blocks of a Bicycle Friendly Community (BFC). Finally, the rating includes steps to reaching the next level of excellence. Oakland in 2022, for example, received a GOLD rating Report Card<sup>34</sup> having been BRONZE in 2010 and SILVER in 2014. The following cities and SMC have received the following ratings:

- Menlo Park<sup>35</sup>: GOLD: 2017
- Redwood City<sup>36</sup>: BRONZE: 2016
- San Carlos<sup>37</sup>: BRONZE: 2016
- San Mateo<sup>38</sup>: BRONZE: 2016
- South San Francisco<sup>39</sup>: BRONZE: 2018
- San Mateo County<sup>40</sup>: BRONZE: 2016

The BFC Report Card is a valuable metric that all cities and the County should make use of. If SMC cities develop the information necessary to answer objective and comprehensive questions about bicycle safety, each jurisdiction would have a consistent metric that can be used to measure bicycle safety progress across the County.

### **Law Enforcement and Bicycle Safety**

Laws regarding the operation of bicycles are in the California Vehicle Code (CVC), but in general, bicycles are governed by the same rules of the road as motor vehicles.

SMC law enforcement organizations are concerned that there is currently no way for them to track bicycle, pedestrian, and vehicle accidents, from near misses to actual contact, that did not require police involvement. And, even if an incident or infraction is reported, an officer may or may not go out to speak with the complainant.

Other than the initial report, there is no single repository in SMC to store and retrieve information regarding bicycle-related citations or enforcement of bicycle law so it can be used in the future.

And perhaps most importantly, the enforcement of laws, regarding motorists and bicyclists, is inconsistent due to competing priorities and the requirement that a citation requires an incident be witnessed by an officer.

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<sup>34</sup> [https://bikeleague.org/sites/default/files/bfareportcards/BFC\\_Fall\\_2022\\_ReportCard\\_Oakland\\_CA.pdf](https://bikeleague.org/sites/default/files/bfareportcards/BFC_Fall_2022_ReportCard_Oakland_CA.pdf)

<sup>35</sup> [https://bikeleague.org/sites/default/files/bfareportcards/BFC\\_Fall\\_2017\\_ReportCard\\_Menlo\\_Park\\_CA.pdf](https://bikeleague.org/sites/default/files/bfareportcards/BFC_Fall_2017_ReportCard_Menlo_Park_CA.pdf)

<sup>36</sup> [https://bikeleague.org/sites/default/files/bfareportcards/BFC\\_Spring\\_2016\\_ReportCard\\_Redwood\\_City\\_CA.pdf](https://bikeleague.org/sites/default/files/bfareportcards/BFC_Spring_2016_ReportCard_Redwood_City_CA.pdf)

<sup>37</sup> [https://bikeleague.org/sites/default/files/bfareportcards/BFC\\_Fall\\_2016\\_ReportCard\\_San\\_Carlos\\_CA.pdf](https://bikeleague.org/sites/default/files/bfareportcards/BFC_Fall_2016_ReportCard_San_Carlos_CA.pdf)

<sup>38</sup> [https://bikeleague.org/sites/default/files/bfareportcards/BFC\\_Fall\\_2016\\_ReportCard\\_San\\_Mateo\\_CA.pdf](https://bikeleague.org/sites/default/files/bfareportcards/BFC_Fall_2016_ReportCard_San_Mateo_CA.pdf)

<sup>39</sup> [https://bikeleague.org/sites/default/files/bfareportcards/BFC\\_Fall\\_2018\\_ReportCard\\_South\\_San\\_Francisco\\_CA.pdf](https://bikeleague.org/sites/default/files/bfareportcards/BFC_Fall_2018_ReportCard_South_San_Francisco_CA.pdf)

<sup>40</sup> [https://bikeleague.org/sites/default/files/bfareportcards/BFC\\_Spring\\_2016\\_ReportCard\\_San\\_Mateo\\_County\\_CA.pdf](https://bikeleague.org/sites/default/files/bfareportcards/BFC_Spring_2016_ReportCard_San_Mateo_County_CA.pdf)

## Conflicting Priorities

Law enforcement prioritizes assets based on the needs of the community, as well as their operating budget, when it comes to providing services. While public and political prioritization of bicycle safety issues may come up from time to time, calls for service are always prioritized. This results in minimal officer resources dedicated to bicycle safety.

Police forces will:

- Focus resources or staff on bicycle safety, if there is an uptick in accidents at a particular location, citizen requests/calls, or requests from a jurisdiction's public works or traffic departments to focus on certain locations; or
- Provide teams to schools and special events for bicycle safety education
- Much less often, assign their police officers to bicycle safety duty exclusively (some police departments do have officers that patrol on bicycles).

In addition, law enforcement agencies do not always enforce eBike laws, but this is mostly due to the popularity of eBikes being ahead of law enforcement policies.

Because of these conflicting priorities, and limited staff, enforcement of bicycle laws pertaining to motorists as well as bicyclists appears to be underreported.

## Policing Bicycles and eBikes

Law enforcement departments in the county are very aware of the importance of bicycle safety. Common sense says people generally want the streets to be safe for motor vehicles which translates to most officer resources going to motor vehicle enforcement.

It's possible that safer bicycle riding could lead to fewer cars and free up police resources for more pressing issues.

## The New 3' Law for Motorists and Bicycles

In January 2023, California amended the California Vehicle Code (CVC). The new law (AB. 1909) requires all motorists to give a bicyclist three feet of clearance when passing on the left-hand side of the bicyclist or (depending on the width of the road) reduce speed appropriately, when passing. (See CVC: 21750 (b) (c) (d)). This is particularly crucial on narrow two-lane roads where there are many reports of bicyclists being forced off the road or hit by motor vehicles.

Hampering the situation is the requirement that a citation can only be written if the incident is witnessed by the officer. With the advent of helmet-worn cameras, cyclists have attempted to record these incidents with the hope that the recording can be used as "visual evidence". But this evidence, post incident, cannot be used to issue a citation.

The San Mateo County Sheriff's Department recently announced it will allow the public to submit these incidents on the Sheriff's website.<sup>41</sup> These reports have since resulted in the

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<sup>41</sup><https://www.almanacnews.com/news/2023/05/12/bicyclists-can-now-report-3-foot-rule-violations-online-in-san-mateo-county>

department sending a violation letter to the offending motorist; this is not a citation. However, only incidents that occur in unincorporated San Mateo County, Woodside, Portola Valley, San Carlos, Half Moon Bay, and Millbrae can use this online resource.

### **Citations vs. Reprimands for Education Purposes:**

It is at the officer's discretion, when addressing a law infraction, to issue a citation or give a reprimand. One advantage of a reprimand is that it creates an opportunity to educate. With officers focusing on education, these brief encounters, cumulatively, can do a lot to improve bicycle safety, for bicyclists and motorists. But only if these reprimand stops are recorded officially can an accurate picture of bicycle safety be established.

### **FINDINGS**

F1. Bicycle policy and the approach to ensuring/improving bicycle safety is not consistent across San Mateo County due, at least in part, to:

- a. Topography
- b. Urban vs. suburban environments
- c. Types of bicyclists (commuter, recreational)
- d. Varying levels of enforcement of bicycle laws
- e. Differing knowledge of bicycle laws and safe practices.

F2. Bicycle ridership as an alternative means of transportation (e.g., commuting to work, school, or transit hubs, running errands) is not increasing due, at least in part, to perceived safety issues.

F3. Bicycle accidents and incidents (such as near misses) are underreported, if reported at all.

F4. Only bicycle accidents or incidents that trigger a 911 call are consistently logged in the State (SWITRS) database and law enforcement agencies do not log bicycle accident data consistently.

F5. The amount of enforcement of laws, as they pertain to bicyclists and how motorists and bicyclists interact, is inconsistent due to other priorities (e.g., criminal enforcement and general automobile traffic) and the requirement that a citation can generally only be written if the violation is witnessed by an officer.

F6. There is no official metric in San Mateo County and its cities to evaluate how safe it is to ride a bicycle.

F7. Bicycle safety education, for the bicyclist, pedestrians and motorists, is not consistently offered across San Mateo County.

F8. Communication between various entities with responsibility for bicycle safety, including Bicycle and Pedestrian Advisory Committees (BPACs), Law Enforcement, City Transportation Planning, and Public Works departments, is not formalized, resulting in inefficiencies, and missed opportunities (e.g., funding for improvements, shared bike safety education, or improving signage).

F9. City Bicycle and Pedestrian Master Plans or Active Transportation Plans, have not been adopted/created by all SMC cities.

## **RECOMMENDATIONS**

R1. By December 2023, all law enforcement agencies and the County Sheriff should submit bicycle related data to SWITRS monthly, and regularly post and update their websites with all reported bicycle accident data.

R2. By December 2023, all law enforcement agencies should begin sending warning letters to motorists for violations of the 3 ft. law.

R3. By June 3, 2024, all law enforcement agencies should provide a means for citizens to report bicycle-related incidents that are not currently reported to law enforcement, similar to the SMC Sheriff's Department Online Crime Reporting portal.

R4. By June 3, 2024 each city, town, and unincorporated SMC should offer a bike safety education program for riders and motorists about the laws and safety facts related to bicycles on the road.

R5. By June 3, 2024, each city, town, and unincorporated SMC should update or generate a new Bicycle and Pedestrian Master Plan (or Active Transportation Plan) if their current plan is older than five years; consistent with the 2021 C/CAG San Mateo County Comprehensive Bicycle and Pedestrian Plan.

R6. By June 3, 2024, each city, town, and the county should apply (or reapply) online to generate the Bicycle Friendly Community Report Card.

R7. By February 1, 2024, the County should meet with cities within the County that are willing to participate, to consider establishing a regional effort that integrates the cities' bicycle plans and to discuss how the cities and County could work together to apply for grant opportunities as a region.

## **REQUEST FOR RESPONSES**

Pursuant to Penal Code Section 933.05, the Civil Grand Jury requests responses from the San Mateo County Board of Supervisors, County Sheriff and all 20 cities and towns' governing bodies for each Finding and Recommendation.

The governing bodies should be aware that their comments or responses must be conducted subject to the Brown Act's notice, agenda, and open meeting requirements.

## **RESPONSE REQUIREMENTS**

California Penal Code Section 933.05, provides (emphasis added):

(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall report one of the following:

- (1) The respondent **agrees** with the finding.
  - (2) The respondent **disagrees** wholly or partially with the finding; in which case the response **shall specify the portion of the finding that is disputed and shall include an explanation of the reasons, therefore.**
- (b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, **with a summary regarding the implemented action.**
  - (2) The recommendation has not been implemented, but will be implemented in the future, **with a timeframe for implementation.**
  - (3) The recommendation requires further analysis, **with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report.**
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, **with an explanation, therefore.**

## METHODOLOGY

The Grand Jury used a variety of tools to obtain information regarding bicycle riding and safety in San Mateo County:

- **Documents:** The Bike and Pedestrian Master Plans that cities use to explain approaches to planning, prioritizing projects, and re-engineering their communities to make riding and walking easier and safer. These documents came with a variety of titles:
  - Bike and Pedestrian Master Plans
  - Active Transportation Plans
  - Micro-Mobility Plans
  - Transportation Plans
- **Internet:** Almost all the historical and current information (including the availability of documents) regarding bicycle safety came from internet searches. Information from those searches was verified.
- **Survey:** The Grand Jury sent a survey in December 2022 using Google Forms to understand whether the cities believe eBikes were an issue in their communities. The results helped in defining the broader issue of bicycle safety.
  - The survey questions and results are in Appendix A.
  - Participants: The survey was sent to all the cities in SMC and, specifically, the City Managers. Many chose to have the chief of police of their city fill out the survey. Two cities did not respond to the survey.
- **Interviews:** The survey helped the Grand Jury develop a list of individuals for interviews. The questions for the interview came as a result of the investigation's pivot to the state of bicycle safety in San Mateo County as a general topic.
  - Participants:
    - Cities: Belmont, Daly City, Half Moon Bay, Hillsborough, Pacifica, Portola Valley, San Mateo, Woodside
    - Unincorporated San Mateo County
    - Police Departments: Burlingame, Foster City, Hillsborough, Redwood City, South San Francisco
    - Sheriff of SMC
    - BPACs: CCAG, Unincorporated SMC
    - CyclistVideoEvidence.com: Craig Davis

## GLOSSARY

**3 ft. Rule** – Motorists must yield at least 3 feet between their vehicle and a bicyclist on all roadways. This rule was amended by State legislation through Assembly Bill 1909, approved by the Governor in 2022, and commencing January 2024. Additionally, this bill requires a vehicle that is passing or overtaking a vehicle to move over to an adjacent lane of traffic, as specified, if one is available, before passing or overtaking the bicycle.

**Active Transportation** - A means of getting around that is powered by human energy, primarily walking and bicycling.

**BFA** – Bike Friendly America. A program sponsored by the League of American Bicyclists to evaluate communities with respect to their support for bicycling. As of December 2022, 501 communities are certified.

**BFC** – Bike Friendly Community. A Bike Friendly Awards Report Card that is given to a community that applies for a ranking (i.e., Bronze, Silver, Gold, Platinum).

**BPAC** – Bicycle and Pedestrian Advisory Committee

**CATSIP** – California Active Transportation Safety Information Pages. An online resource for improving pedestrian and bicycle safety in California. This site is administered by UC Berkeley Safe Transportation Research and Education Center (SafeTREC)<sup>42</sup>. Funding for this program was provided by a grant from the California Office of Traffic Safety<sup>43</sup>, through the National Highway Traffic Safety Administration (NHTSA).

**C/CAG** – City County Association of Governments of San Mateo County

### Bicycle Roadways

- **Bike paths (Class I):** also termed shared-use or multi-use paths, are paved rights-of-way for exclusive use by bicyclists, pedestrians and those using non-motorized modes of travel. They are physically separated from vehicular traffic and can be constructed in roadway rights-of-way or exclusive rights-of-way. Bike paths provide critical connections in the city where roadways are absent or are not conducive to bicycle travel.
- **Bike lanes (Class II):** are defined by pavement striping and signage used to allocate a portion of a roadway for exclusive or preferential bicycle travel. Bike lanes are one-way facilities on either side of a roadway. Whenever possible, bike lanes should be enhanced with treatments that improve safety and connectivity by addressing site-specific issues, such as additional warning or wayfinding signage.
- **Bike routes (Class III):** provide shared use with motor vehicle traffic within the same travel lane. Designated by signs, bike routes provide continuity to other bike facilities or designate preferred routes through corridors with high demand. Whenever possible, bike

<sup>42</sup> <http://safetrec.berkeley.edu/>

<sup>43</sup> <http://www.ots.ca.gov/>

routes should be enhanced with treatments that improve safety and connectivity, such as the use of "Sharrows" or shared lane markings to delineate the road as a shared-use facility.

- Cycle tracks (Class IV): Also referred to as protected bikeways, are exclusive bike facilities that combine the user experience of a separated path with the on-street infrastructure of a conventional bike lane. A cycle track is physically separated from motor traffic and distinct from the sidewalk. The separation may be in the form of posts, parked cars or a combination of both.

eBike – motorized bicycle that comes in three different classes:

- Class I: Bicycle equipped with a motor that aids only when pedaling and ceases when 20 mph is reached.
- Class II: Same capability as a Class 1 eBike with a throttle-actuated motor. No pedaling required when operated with the throttle.
- Class III: Bicycle equipped with a motor that aids only when pedaling and ceases when 28 mph is reached.

GJ – Grand Jury

MTC – Metropolitan Transportation Commission is the transportation planning, financing, and coordinating agency for the nine-county San Francisco Bay Area.

SHARROW – Sharrows are pavement markings that have been installed on city streets to provide guidance for both bicyclists and vehicles on roadways when sharing the road.

SMC ATP: San Mateo County Active Transportation Plan is a comprehensive framework to guide the development of active transportation projects and programs for walking, bicycling, and other forms of human powered movement for people of all ages and abilities throughout unincorporated County communities.

SWITRS – California Statewide Integrated Traffic Records System.

TIMS – Transportation Injury Mapping System developed by the Safe Transportation Research & Education Center at the University of California, Berkeley.

TR-INST Form – Notice to Appear form used by law enforcement for law infractions.



## **APPENDIX A: Bicycle Safety Best Practices**

### **Bicycle Education Best Practices**

There are two excellent examples of California communities that are investing in Bike Safety education: Davis and San Diego.

#### **San Diego Bike Coalition:**

This is an excellent reference tool to see all the kinds of bicycle safety education that can be offered and the resources that can be used to teach those courses. Again, the classes range from those for a variety of ages of bicyclists, basic bicycling, bicycle friendly motorist safety, and others.

<https://sdbikecoalition.org/our-work/education/>

#### **Davis, California:**

The City of Davis, CA, which is one of the leading bicycle communities in the US, has several pages of information about bike safety education on its website.

<https://www.cityofdavis.org/city-hall/public-works-engineering-and-transportation/bike-pedestrian-program>

### **Two Cities Committed to Bicycling: Portland, Oregon and Davis, California**

Portland and Davis have become famous for their commitment to supporting bicycling, not only as recreational, but also as a true commuter alternative to motor vehicles and public transportation. Both have received the Platinum rating for a Bicycle Friendly Community from The League of American Bicyclists, while being quite different communities.

Portland is a large city of 622,000 residents with similar topography to the linked San Mateo County cities along El Camino Real: hilly and flat lands, urban centers, urban neighborhoods, suburbia, and major freeways. Portland advertises itself as “Bicycle Friendly” and claimed the highest percentage of bike commuters in US large cities in 2019 at 6% (Portland does annual bike ride census counts). Portland started investing in bicycle infrastructure with the acceptance of the 1973 Portland Bike Plan and the formation of a Bicycle Advisory Committee within the City Transportation Department. Since then, it has created:

- 385 miles of bikeways
- 36 miles of protected bike lanes
- A pedestrian and bicycle only bridge over the Willamette River and protected bike lanes on other bridges
- Intersections with bicycle specific traffic signals

- Bicycle boxes<sup>44</sup> at intersections to raise the visibility for motorists turning right
- A Safe Routes for Schools serving 100 schools
- 6500 bike racks to meet increased demand for safe stow of bicycles
- 3 bicycle plans over 40 years that establish policy, goals and a bikeway network
- \$60 M spent to 2008 on bicycle infrastructure (one mile of installed freeway costs \$60M)

Portland's safety record is very good for a large city: 4.3% of all traffic injury accidents from 2015-2019 are bicycle related. In comparison, San Francisco's number is 14% for the same period. Portland also does better than San Mateo County (8%) and a representative city, Redwood City (10%).

Davis in California is a small city between San Francisco and Sacramento with a population of 66,800. It has earned a nationwide reputation for supporting bicycles in its community (there is a bicycle on the city logo). The topography of Davis could not be flatter and more conducive to bicycle riding. The current statistics indicate that 20% of Davis's population commutes on bicycles. In 1967, Davis was the first community in the US to develop dedicated bicycle lanes (a total of 4!). The origins of this project were a couple that had visited the Netherlands, often cited as the most bicycle friendly nation in the world. They were so impressed with the bicycle infrastructure that they started a grassroots movement in Davis to promote safe bicycle riding. The group had to overcome CA law that did not support bike lanes on city streets, but once the law was revised, Davis proceeded to create bicycle infrastructure throughout the City:

- 63 miles of pathways
- 102 miles of bike lanes
- 75% of roads have a posted speed limit of 25 mph
- Of the 169 miles in the road network, 140 miles of roads are posted at 25 mph or less., 21 miles of roads are posted at between 25 mph and 35 mph, and 8 miles of roads posted over 35 mph
- 1 mile of bicycle boulevards
- 1 mile of cycle track
- 4 miles of buffered bike lanes
- 4,300 bike racks within the City and over 2,000 bike racks downtown
- 25 grade separated crossings. Four overpasses and 21 underpass crossings. Grade-separated crossings are used to move people on bikes and pedestrians over and under barriers like railroad tracks, busy roads, and the freeway.

Davis's bicycle accidents with injury (and fatalities) are high for a city of its size. However, the number of total accidents with injury is also very low compared to cities of comparable size. For

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<sup>44</sup> <https://nacto.org/publication/urban-bikeway-design-guide/intersection-treatments/bike-boxes/>

example: in 2019 there were 60 bicycle accidents with injury and 221 total vehicle injury accidents resulting in 27% of all vehicular accidents involving a bicycle. Redwood City's number is 4.8%, but their number of bicycle commuters is less than 1%. If you look at the percentage of accidents with respect to the biking population for 2019, Davis's percentage is .4% and Redwood City's percentage is 2.4%. Davis's safety statistics are very good, given the number of bicycle riders.

Both Portland and Davis are renowned environments for bicycle riders because they committed early to bicycle infrastructure and consistently improved it over the years. The city government and the school systems actively support bicycle education. Both cities conduct counts to determine bicycle use. They are both advocates of the Vision Zero policy to reduce accidents and fatalities. They use the Bicycle Friendly Community evaluation process to assess their progress towards their bicycle plans and goals.

Disclosure: Portland, beginning in 2020, noted a decline in bicycle commuter percentages. Thinking it was an aberration of the pandemic shutdown, it continued to do annual bike counts. As of 2022, its percentage had gone down to 3.1%. The current theory of why there has been a decline is assumed to be the increase of work from home. Regardless, Portland continues to make improvements to its bicycle infrastructure and safety.

**APPENDIX B: San Mateo County Bicycle and Pedestrian Master Plan List**

<b>Jurisdiction</b>	<b>Year</b>	<b>Name of Report</b>	<b>Link to Report</b>
Atherton	Jul 2014	Town of Atherton Bicycle and Pedestrian Master Plan	<a href="https://www.ci.atherton.ca.us/DocumentCenter/View/1381/Atherton-BPMP_Proposed-Final-July-2014?bidId=">https://www.ci.atherton.ca.us/DocumentCenter/View/1381/Atherton-BPMP_Proposed-Final-July-2014?bidId=</a>
Belmont	Nov 2016	City of Belmont Comprehensive Pedestrian & Bicycle Plan	<a href="https://www.belmont.gov/home/show/publisheddocument/14951/636179086799900000">https://www.belmont.gov/home/show/publisheddocument/14951/636179086799900000</a>
Brisbane	Feb 2017	Brisbane Pedestrian and Bicycle Master Plan	<a href="https://www.brisbaneca.org/sites/default/files/fileattachments/public_works/page/149/bikepedmasterplanappendices.pdf">https://www.brisbaneca.org/sites/default/files/fileattachments/public_works/page/149/bikepedmasterplanappendices.pdf</a>
Burlingame	Dec 2020	City of Burlingame Bicycle and Pedestrian Master Plan	<a href="https://www.burlingame.org/business_detail_T54_R154.php">https://www.burlingame.org/business_detail_T54_R154.php</a>
Colma	Feb 2021	Colma El Camino Real Bicycle and Pedestrian Improvement Plan	<a href="https://www.colma.ca.gov/documents/ecr-improvement-plan/">https://www.colma.ca.gov/documents/ecr-improvement-plan/</a>

<b>Jurisdiction</b>	<b>Year</b>	<b>Name of Report</b>	<b>Link to Report</b>
Daly City	Feb 2020	Walk Bike Daly City; City of Daly City Pedestrian and Bicycle Master Plan 2020	<a href="https://dalycity.org/1106/Daly-City-Pedestrian-and-Bicycle-Master-">https://dalycity.org/1106/Daly-City-Pedestrian-and-Bicycle-Master-</a>
East Palo Alto	Oct 2017	2017 East Palo Alto Bicycle Transportation Plan	<a href="https://www.cityofepa.org/sites/default/files/fileattachments/planning/page/2801/reso_4905_adopting_2017_bicycle_transportation_plan.pdf">https://www.cityofepa.org/sites/default/files/fileattachments/planning/page/2801/reso_4905_adopting_2017_bicycle_transportation_plan.pdf</a>
Half Moon Bay	Sep 2019	City of Half Moon Bay Bicycle and Pedestrian Master Plan	<a href="https://www.half-moon-bay.ca.us/DocumentCenter/View/2243/Bicycle-and-Pedestrian-Master-Plan-Final?bidId=">https://www.half-moon-bay.ca.us/DocumentCenter/View/2243/Bicycle-and-Pedestrian-Master-Plan-Final?bidId=</a>
Menlo Park	Nov 2020	City of Menlo Park Transportation Master Plan	<a href="https://beta.menlopark.org/Government/Departments/Public-Works/Transportation-Division/Bicycling">https://beta.menlopark.org/Government/Departments/Public-Works/Transportation-Division/Bicycling</a>
Millbrae	2021/2022	City of Millbrae Active Transportation Plan	<a href="https://www.ci.millbrae.ca.us/home/showpublisheddocument/25807/637787902014030000">https://www.ci.millbrae.ca.us/home/showpublisheddocument/25807/637787902014030000</a>

<b>Jurisdiction</b>	<b>Year</b>	<b>Name of Report</b>	<b>Link to Report</b>
Pacifica	Feb 2020	City of Pacifica Bicycle & Pedestrian Master Plan	<a href="https://www.cityofpacifica.org/departments/public-works/engineering/bicycle-pedestrian-master-plan">https://www.cityofpacifica.org/departments/public-works/engineering/bicycle-pedestrian-master-plan</a>
Redwood City	July 2018	Redwood City Moves, A Comprehensive Assessment of Transportation with Redwood City	
San Bruno	Jul 2016	City of San Bruno Walk 'n Bike Plan	<a href="https://sanbruno.ca.gov/DocumentCenter/View/1733/Adopted-San-Bruno-Walk-n-Bike-Plan-PDF">https://sanbruno.ca.gov/DocumentCenter/View/1733/Adopted-San-Bruno-Walk-n-Bike-Plan-PDF</a>
San Carlos	Jun 2020	City of San Carlos Bicycle and Pedestrian Master Plan Final	<a href="https://www.cityofsancarlos.org/home/showpublisheddocument/8139/638155282314370000">https://www.cityofsancarlos.org/home/showpublisheddocument/8139/638155282314370000</a>
San Mateo	Apr 2020	San Mateo Bicycle Master Plan April 2020 Final	<a href="https://www.cityofsanmateo.org/DocumentCenter/View/85445/2020-Bike-Master-Plan_Final_Updated-62021?bidId=">https://www.cityofsanmateo.org/DocumentCenter/View/85445/2020-Bike-Master-Plan_Final_Updated-62021?bidId=</a>

<b>Jurisdiction</b>	<b>Year</b>	<b>Name of Report</b>	<b>Link to Report</b>
South San Francisco	Mar 2022	Active South City: South San Francisco's Bicycle and Pedestrian Master Plan Draft	<a href="https://activesouthcity.com/wp-content/uploads/2022/03/SSF-ActiveSouthCity_PublicDraft_31March2022_plan_only.pdf">https://activesouthcity.com/wp-content/uploads/2022/03/SSF-ActiveSouthCity_PublicDraft_31March2022_plan_only.pdf</a>
San Mateo County	2021	2021 C/CAG San Mateo County Comprehensive Bicycle and Pedestrian Plan	<a href="https://ccag.ca.gov/wp-content/uploads/2021/06/San-Mateo-County-Comprehensive-Bicycle-and-Pedestrian-Plan-Update-Final-Plan.pdf">https://ccag.ca.gov/wp-content/uploads/2021/06/San-Mateo-County-Comprehensive-Bicycle-and-Pedestrian-Plan-Update-Final-Plan.pdf</a>

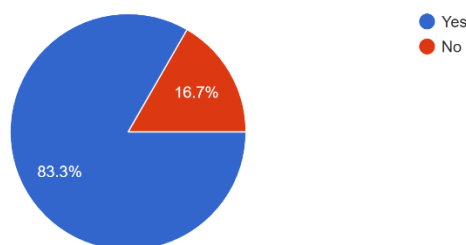
## **APPENDIX C: Survey Questions and Results**

This is a summary of the responses:

1. Cities and law enforcement do not track bicycle and eBike accident statistics separately; in fact, most respondents did not track eBike specific data at all (94%).
2. Complaints on Class I Bicycle Roadways include speeding and not yielding to pedestrians.
3. Complaints on Class II and III Bicycle Roadways include speeding, improper signaling, mixed use of bikes/eBikes and violation of the 3 ft. Rule.
4. Of 361 citations issued, only 11 were specifically for eBikes. It is impossible to know if there were more eBikes in violation as there is no requirement to ID the type of bicycle when filling out the form.
5. Class 3 eBikes are more powerful machines and have specific laws regarding usage. Only 50% of the respondents were enforcing the Class 3 eBike laws.
6. Complaints and incidents regarding bicycles (from riders or others) come mostly through police reports, but also from input to City Halls, Redwood City's "app", city planning, parks and recreation.
7. 1/3 respondents said there has been an increase in complaints regarding bicycles in the last three years (speeding, underage use, reckless behavior, vehicular code).
8. 2/3 of respondents said there had not been an increase in complaints regarding eBikes and 25% said they didn't know.
9. Civilian bicycle complaints are generally not available to the public (over 50% of respondents).
10. 44% of respondents said they don't provide bicycle safety education.
11. Enforcement of bicycle-related law is done where appropriate, with discretionary authority. Effort is made to educate at the time of the infraction. Additional enforcement is budget driven.
12. Future planning for the regulation of bicycles and eBikes varies greatly in the responses (see Question II-16 in Appendix A).

List of responses to questions (on the next page):

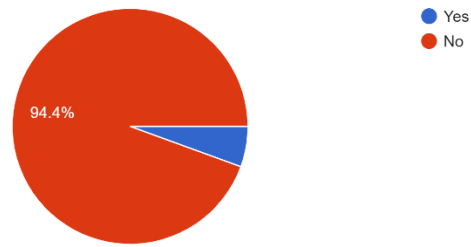
I-1: Do you track Bicycle accident statistics?  
18 responses





I-2: Do you maintain eBike specific statistics with regard to accidents?

18 responses

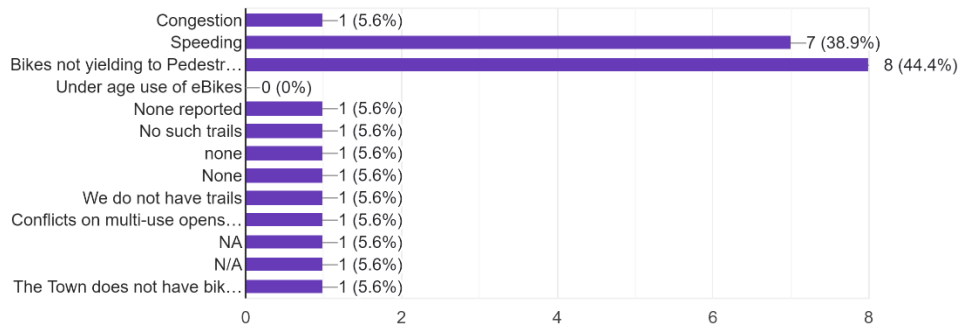


**Number of bicycle accidents in 2022? 212**

**Number of bicycle accidents in 2020 to the end of 2021? 307**

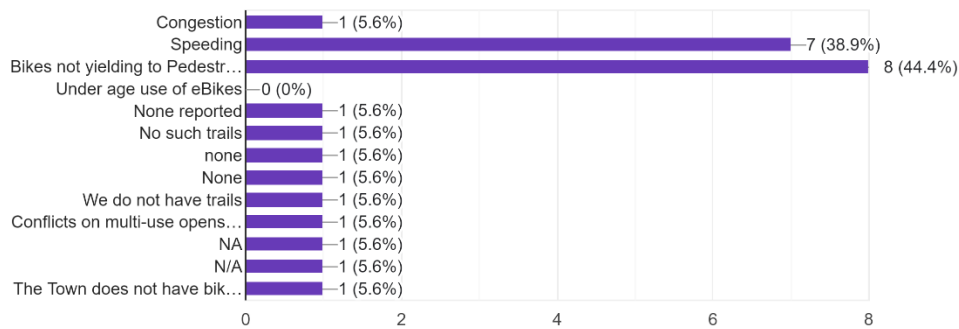
I-5: What are the safety issues on Bike/Ped Only Trails? Pick all that apply.

18 responses



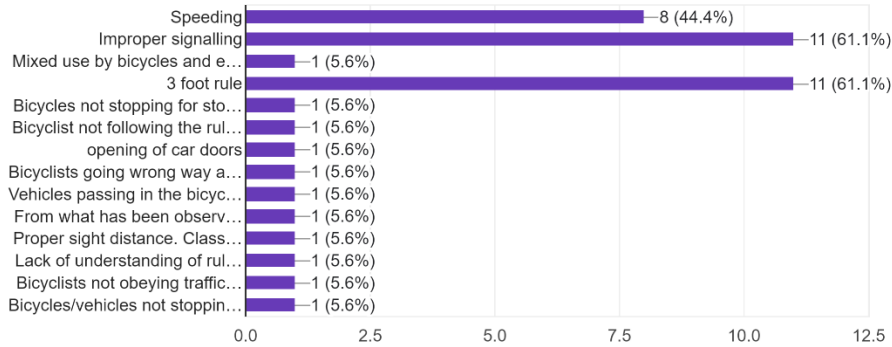
I-5: What are the safety issues on Bike/Ped Only Trails? Pick all that apply.

18 responses



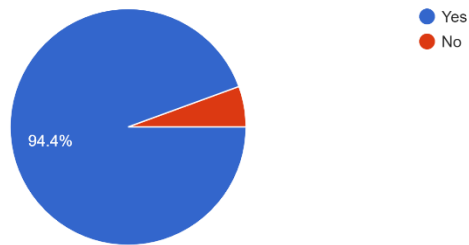
I-6: What are the safety issues for Bicycle Lanes shared with Vehicular Traffic? Pick all that apply.

18 responses



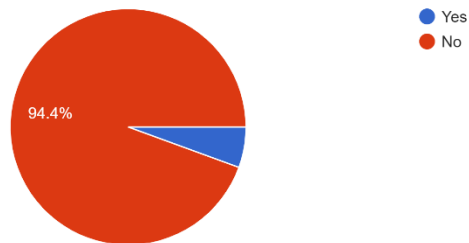
II-1: Are you aware of the laws governing Bicycles and eBikes?

18 responses



II-2: Do you have city codes governing eBikes only?

18 responses

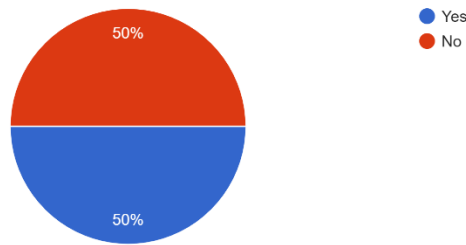


**How many Bicycle citations were issued in the last year? 361**

**How many eBike Citations were issued in the last year? 0** [Comments: this information is not tracked]

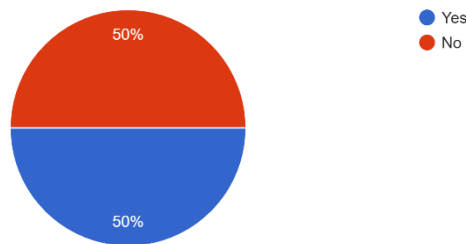
II-5: Currently, Class 3 eBikes are not allowed on Ped/Bike trails. Are you enforcing this law?

18 responses



II-6: Are you enforcing the age limit on Class 3 eBike usage (age 16 or older)?

18 responses



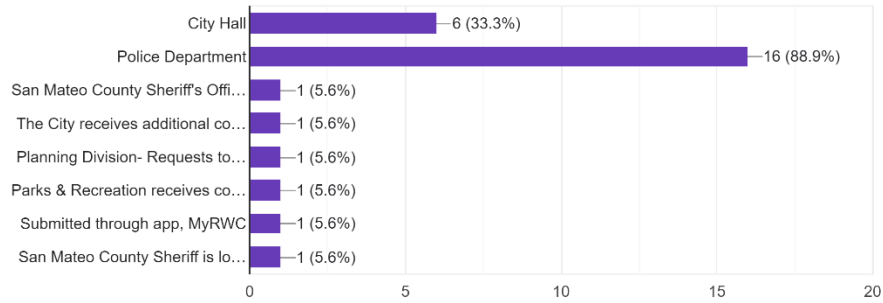
### **If you are enforcing bicycle/eBike law, how is it accomplished?**

- Nothing too specific. Enforcement during routine patrol if violations are witnessed. The PD has done a few details and targeted patrols in our downtown area specifically looking for bicycle violations (riding on sidewalks, helmet violations, reckless behavior, etc.).
- The Police Department enforces all laws as appropriate and with necessary and legal discretionary authority.
- Education and Enforcement
- All officers are trained to enforce Vehicle Code and Municipal Code law on bicycles and eBikes.
- On view and by complaint.
- On view and calls for service which result in Education or Enforcement.
- Traffic enforcement resulting in citations and/or verbal warnings/ education to the public.
- Through proactive patrols, directed enforcement and calls for service.
- Most bicycle stops are made for violations occurring on roadways, not on trails or sidewalks. Most bike stops result in education and not citations as evidenced by our low citation numbers.
- Primarily through education and warnings.
- We have not enforced the Bicycle/eBike law because we have not received any comments to date that have triggered the Police Department to enforce.

- By Sheriff patrol.
- We can't enforce much because of limitations in light of funding and staffing needs

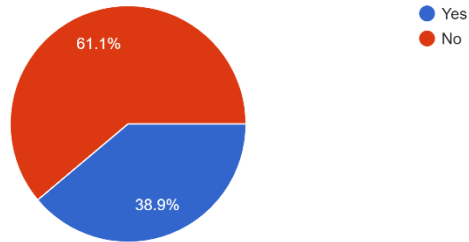
II-8: How are complaints regarding Bicycles/eBikes/eScooters logged in your city/town? Check all that apply.

18 responses



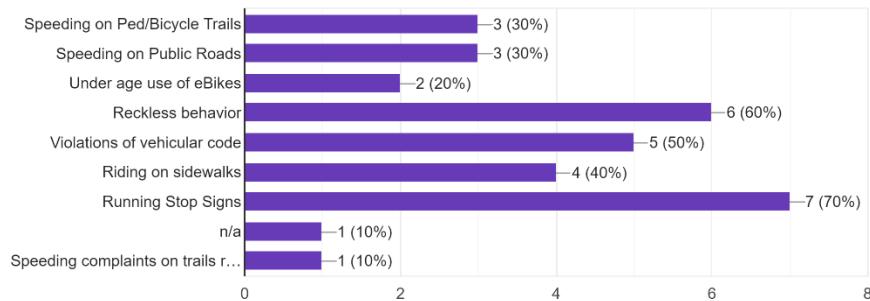
II-9: Has there been an increase in complaints regarding Bicycles in the last three years?

18 responses



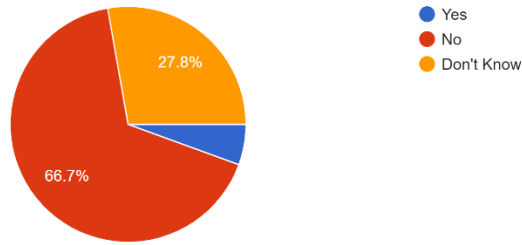
II-10: If yes, what kind of complaints about Bicycles? Check all that apply.

10 responses



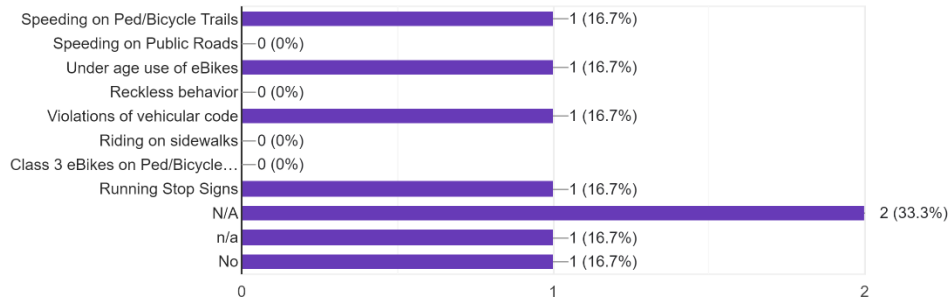
II-11: Has there been an increase in complaints regarding eBikes in the last three years?

18 responses



II-12: If yes, what kind of complaints about eBikes? Check all that apply.

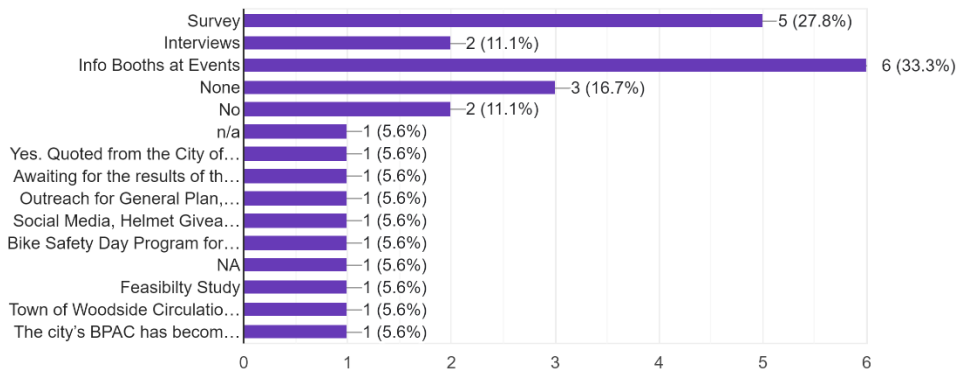
6 responses



II-13: Have you done anything to solicit information from citizens regarding bicycle/eBike safety?

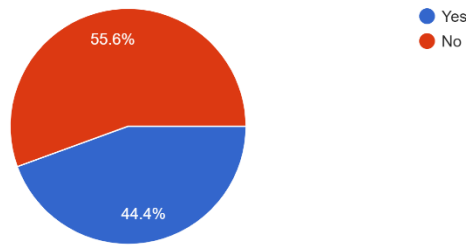
Check all that apply.

18 responses



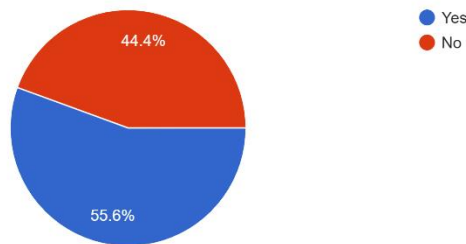
II-14: Is documentation relative to citizen complaints available?

18 responses



II-15: Do you provide Bicycle and eBike Safety Education?

18 responses



**Does your city/town have any future plans regarding the regulation of bicycles and eBikes?**

- Not at this time.
- Yes. Additional and improved bike lanes.
- Policies in the newly adopted General Plan supporting alternative modes of transportation, including bikes.
- Awaiting the results of the County-wide eBike pilot to determine best practices to implement.
- Not at this time.
- Not at this time. There have not been complaints/concerns regarding eBikes.
- Not at this time.
- Not that I am aware of.
- No, unless we start receiving complaints.
- Yes, The City of South San Francisco's Bicycle and Pedestrian Master Plan.
- No
- As the Town begins to understand various micro-mobility issues going forward, eBikes being part of that growth pattern, we will plan to prepare plans and outreach material to help educate the bike populations on eBike protocols and safety.
- With the growing development, more bike facilities are being provided for the general public. Public outreach and programs to help educate both current/new users are currently

being implemented citywide. Buildout of Bike & Pedestrian master plan is underway. Alameda de Las Pulgas and Ralston 4 designs are underway. Creation of a transportation master plan is also underway. Parks & Recreation Department is developing a Master Plan that also includes implementation of eBikes policies on open space trails.

- Yes
- Nothing specific regulatory changes planned at this time.
- City is currently drafting ordinance language to address the increasing number of electric mobility devices that are present on trails and paths. Many conversations have occurred at BPAC and council (among other committees and commissions) and will continue in 2024.

**File Attachments for Item:**

M. Adopt an Ordinance, Waiving Second Reading, Repealing Chapter 8.44 of the Brisbane Municipal Code Enacting a New Chapter 8.44 to the Brisbane Municipal Code to Clarify Existing Definitions and to Enact Additional Requirements for Tobacco Retailer Permits, and Finding that No Further Environmental Review is Required Concerning this Ordinance





**City of Brisbane**  
50 Park Place  
Brisbane, CA 94005-1310  
(415) 508-2100  
(415) 467-4989 Fax

# Memo

Meeting Date: June 15, 2023

From: Ingrid Padilla, City Clerk

Subject: Adoption of Amend the Electric Vehicle (EV) Charging Infrastructure Requirements for New Multifamily Residential Development

An Ordinance to Amend the Electric Vehicle (EV) Charging Infrastructure Requirements for New Multifamily Residential Development Within the City of Brisbane to Align with the State's New Minimum Requirements and Finding that this Ordinance Is Categorically Exempt from Environmental Review Under CEQA Guidelines Section 15308, Actions by Regulatory Agencies for Protection of the Environment was introduced at the City Council Meeting of June 1, 2023. It is on this agenda for consideration of adoption.

Attachments: 1. Staff Report from the City Council Meeting of June 1, 2023



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 7, 2023

**From:** City Manager and Legal Counsel

**Subject:** Ordinance Repealing Chapter 8.44 of the Brisbane Municipal Code, Enacting a New Chapter 8.44 to the Brisbane Municipal Code to Clarify Existing Definitions and to Enact Additional Requirements for Tobacco Retailer Permits, and Finding that No Further Environmental Review is Required Concerning this Ordinance

### Community Goal/Result

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

### **RECOMMENDATION:**

Introduce an ordinance repealing Chapter 8.44 of the Brisbane Municipal Code and adopting a new Chapter 8.44 to the Brisbane Municipal Code to clarify existing definitions and enact additional requirements for tobacco retailer permits; and

Find that the introduction and adoption of the Ordinance is not a project under the California Environmental Quality Act (CEQA Guidelines, Section 15378 (b)(5)) and therefore no further environmental review is required to introduce/adopt the Ordinance.

### **BACKGROUND:**

The San Mateo County (County) Board of Supervisors has enacted various legislation concerning tobacco retailers, such as requiring such retailers to have permits in order to sell tobacco products. In 2008, the City Council adopted an ordinance, codified in Chapter 8.44 of the Brisbane Municipal Code, incorporating the provisions of the County Ordinance concerning tobacco retailers and authorizing the County to enforce the City's Ordinance within the City.

In California, 67% of current and former smokers report that they started smoking by the age of 18. In a 2019-20 survey, 28.6% of California high school students reported having used a tobacco product, with 9.7% reporting they were current tobacco users. In the County, 8.7% of high school students use vape products. Despite San Mateo County's overall success in lowering tobacco use rates among all ages, youth are still able to access tobacco products. From April 2021 - June 2022, 11 of 74 tobacco retailers (15%) in San Mateo County sold to underage youth decoys during Sheriff's Office enforcement operations. Limiting youth access

to tobacco products in retail is a key component of a comprehensive tobacco prevention strategy.

Fourteen cities in San Mateo County, including Brisbane, have adopted tobacco retailer permit ordinances over the last 25 years, with varying degrees of inconsistency with the County's ordinance. Amendments to the County's and various cities' tobacco retailer permit ordinances and subsequent ordinances regarding flavored tobacco and e-cigarettes have increased the inconsistencies between the County's and various cities' ordinances.

As new data about youth tobacco use and access to tobacco products have emerged and the County learned of best practices from other jurisdictions, the need to update and strengthen the County ordinance became clear. In addition, the County was of the view that consolidation of the tobacco retail permit policies and regulations into a single Ordinance would promote more efficient administration and enforcement.

Accordingly, earlier this year the County Board of Supervisors enacted a new County Ordinance that consolidates all critical components pertaining to tobacco retail sales into a single Chapter of the County Code. This ordinance has a number of new provisions, discussed below, that are currently not in the City's ordinance but which, if adopted by the City, may impact existing tobacco retailers and will limit the locations where new tobacco retailers may locate.

The County Ordinance provides that the County may administer and enforce its Ordinance in the City if the City Council adopts without substantive change the County Ordinance into its Municipal Code and authorizes the County to administer and enforce the Ordinance on behalf of the City.

#### **DISCUSSION:**

As set forth in the County Ordinance and in the proposed City Ordinance, the following are key provisions are new:

- Updated definitions to align with similar model ordinances across California. For example, the "Tobacco Product" definition will now include synthetic nicotine, and align language, where appropriate, with the new Statewide ban of flavored tobacco products.
- Restrictions on where new retailers may be located: no new Tobacco Retailer Permit will be issued to a location within 1,000 of a Youth-Populated Area or within 500 feet of a location already occupied by another tobacco retailer. "Youth-Populated Areas" is broadly defined to public and private schools, a library, playgrounds, a youth center, a recreational facility (including swimming pools), and

a licensed day care facility. Also, any new retailer may not be located within 500 feet of an existing retailer.

- Prohibition on posting advertisements offering tobacco products unless the retailer has a valid permit to sell tobacco products.
- Increase in the age for those who sell tobacco products to match the minimum age allowed to purchase tobacco under State law, currently 21 years old.
- Increase in fines up to \$500 for the first violation, and up to \$1,000 for all subsequent violations within a 60-month period.
- Requirement that a permit be suspended if a business is found to have sold tobacco products to persons under the age of 21
- Required annual inspection of each tobacco retailer by an enforcement designee to monitor compliance with applicable laws.
- Increased permit suspension and revocation escalation period for cumulative violations from 12 to 60 months.

#### Impact on Existing Tobacco Retailers.

Currently there are three businesses in Brisbane that have tobacco retail licenses: Christy's Donuts located at 138 Old Country Road; Julie's Brisbane Liquor and Deli, located at 45 Visitacion; and Midtown Market, located at 249 Visitacion. These retailers are "grandfathered in", assuming they renew and retain their existing licenses. Attached is a map showing their locations. Also attached is a map showing where existing Youth Populated Areas are. As noted above, any new retailer would not be permitted to locate within 500 feet of an existing tobacco retailer nor within 1000 feet of any Youth Populated Area. What this means practically is that any new tobacco retailer would be restricted to certain areas of Sierra Point and a few locations within Crocker Park.

Also, the proposed Ordinance would ban the sale of any flavored tobacco products, such as menthol cigarettes and "flavored" cigars. It also bans the sale of "vaping products", i.e., electronic smoking devices any substances that may be aerosolized or vaporized by such device, whether or no the substance contains nicotine, and whether natural or synthetic.

City staff has visited the three retailers and confirmed that none of them are selling the tobacco products that under the Ordinance would be banned.

Staff recommends that the Ordinance be introduced, rather than adopted as an urgency ordinance to take effect immediately. In that way, the Ordinance would not go into effect until 30 days after the second reading of the Ordinance which would occur on September 21. This will provide time for the current tobacco retailers, if they do have tobacco products that would be banned, to dispose of the products. Staff will advise the County when the City Ordinance is in effect so that enforcement of Ordinance would not occur until that time. The retailers have been informed that this matter will be under consideration by the Council at its September 7 meeting.

The County's annual inspection for all tobacco retailers would increase the annual permitting fee from \$174 to \$423. Additionally, a \$249 one-time application fee would be assessed to review the application of a new business and assess various new location restrictions. The County has determined these fees are necessary to obtain full cost recovery for the administration of the permit.

Passing a new, comprehensive Ordinance, consistent with the County Ordinance, will eliminate both the current logistical challenges and the ambiguity regarding the County's authority in cities, for more efficient and consistent enforcement, permitting, and administration.

### **ENVIRONMENTAL REVIEW**

Introduction and adoption of this Ordinance is an administrative activity of the City that will not result in direct or indirect physical changes to the environment and therefore it is not a "project" under the California Environmental Quality Act (CEQA). CEQA Guidelines, Section 15378 (b) (5). Accordingly, no further environmental review is required in order to introduce and adopt this Ordinance.

### **FISCAL IMPACT:**

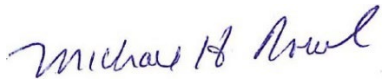
There is no direct fiscal impact to the City if this Ordinance is adopted. The County Health's Environmental Health Services Division permit fees are established by the County to fund the program.

Attachments:

Proposed Ordinance

Map Showing Locations of Existing Tobacco Retailers and 500 foot radius from such locations

Map showing Locations of Youth Populated Areas and 1000 foot radius from such Areas



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Michael Roush, Legal Counsel



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Clay Holstine, City Manager

## ORDINANCE NO. \_\_\_\_\_

\* \* \* \* \*

**AN ORDINANCE REPEALING CHAPTER 8.44 and AND ADOPTING A NEW  
CHAPTER 8.44 TO THE BRISBANE MUNICIPAL CODE TO CONSOLIDATE AND  
CLARIFY EXISTING DEFINITIONS AND ENACT ADDITIONAL REQUIREMENTS  
FOR TOBACCO RETAILER PERMITS**

---

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

**SECTION 1. Findings.**

The City Council finds and determines that:

- (a) A local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City Council, to protect the health, safety, and welfare of City of Brisbane residents.
- (b) Despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:
  - 1. In California, over 67% of current and former adult smokers started smoking by the age of 18;<sup>1</sup>
  - 2. In a survey taken in 2019-20, 28.6% of California high school students reported that they had used a tobacco product and 9.7% of students reported that they had used tobacco in the last 30 days;<sup>2</sup> and
  - 3. According to the 2019-20 California Student Tobacco Survey, for all of San Mateo County, the prevalence of the use of vaping devices among high school students was 8.7%.<sup>3</sup>
- (c) California retailers continue to sell tobacco to underage consumers, evidenced by the following:
  - 1. According to the 2019-20 California Student Tobacco Survey, among current underage vapers, 51.2% reported paying for their vapes. Of those who paid for their vapes, 27.1% reported buying them from a retail store;<sup>4</sup>
  - 2. In the Bay Area, 21.6% of licensed tobacco retailers sold tobacco products to underage decoys in 2019;<sup>5</sup> and

3. In 2019, the San Mateo County Sheriff's Office coordinated undercover enforcement operations and found that 25 out of 289 visits to retailers by underage decoys resulted in tobacco sales to youth decoys.
- (d) The tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, individuals who use price minimization strategies save an average \$1.04 per pack (or 18.6% off the total price per pack).<sup>6</sup>
  - (e) The density and proximity of tobacco retailers influence smoking behaviors, including the number of cigarettes smoked per day.<sup>7</sup>
  - (f) Adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller<sup>8</sup> and density is higher.<sup>9</sup>
  - (g) Policies to reduce tobacco retailer density have been shown to be effective<sup>10</sup> and may reduce or eliminate inequities in the location and distribution of tobacco retailers.
  - (h) Strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products.<sup>11</sup>
  - (i) Strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g., requiring identification checks) is necessary to achieve reductions in youth tobacco sales.<sup>12</sup>
  - (j) The City Council has a substantial interest in protecting youth and underserved populations from the harms of tobacco use.
  - (k) The City Council finds that a stronger local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City of Brisbane in order to protect the health, safety, and welfare of our residents.
  - (l) As lessons are learned with implementation of licensing systems throughout the State, it is appropriate to update existing City regulations to ensure that the City implements best practices in tobacco prevention.



**SECTION 2.** Chapter 8.44 of the Brisbane Municipal Code is hereby repealed and replaced in its entirety by a new Chapter 8.44 to be numbered and entitled and to read as follows:

## **Chapter 8.44 - TOBACCO RETAILER PERMIT**

### **8.44.010- Definitions.**

- A. "Characterizing Flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product. Characterizing flavors include, but are not limited to, tastes or aroma relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, as described in the first sentence of this definition, that constitutes a Characterizing Flavor.
- B. "Constituent" means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet that is added by the manufacturer to a Tobacco Product during the processing, manufacture, or packing of the Tobacco Product.
- C. "Consumer" means a person who purchases a Tobacco Product for consumption.
- D. "Coupon" means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.
- E. "Director" means the Chief of San Mateo County Health, or designee.
- F. "Distinguishable" means perceivable by either the sense of smell or taste.
- G. "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e- hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic. "Electronic Smoking Device" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic

purposes where such product is marketed and sold solely for such an approved purpose.

- H. "Flavored Tobacco Product" means any Tobacco Product that contains a Constituent that imparts a Characterizing Flavor.
- I. "Full Retail Price" means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.
- J. "Labeling" means written, printed, pictorial, or graphic matter upon any Tobacco Product or any of its packaging.
- K. "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a Tobacco Product is sold, or offered for Sale, to a Consumer.
- L. "Permit" or "Tobacco Retailer Permit" means a valid permit issued by the Director to a Person to act as a Tobacco Retailer.
- M. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other entity.
- N. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for Sale, regardless of whether the retail establishment Sells other retail goods in addition to prescription pharmaceuticals.
- O. "Sale" or "Sell" means transfer to, exchange, barter, or distribute for a commercial purpose.
- P. "Self-Service Display" shall be defined as the open display or storage of Tobacco Products in a manner that is physically accessible to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.
- Q. "Tobacco Paraphernalia" means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
- R. "Tobacco" or "Tobacco Product(s)" means:

1. any product containing, made of, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
  2. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic; or
  3. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, whether natural or synthetic, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.
  4. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.
- S. "Tobacco Product Flavor Enhancer" means a product designed, manufactured, produced, marketed or Sold to produce a Characterizing Flavor when added to a Tobacco Product.
- T. "Tobacco Retailer" means any Person who Sells, or offers for Sale, Tobacco Products. This definition is without regard to the quantity of Tobacco Products sold or offered for Sale.
- U. "Youth-Populated Area" means a parcel of real property that is occupied, in whole or in part, by any of the following:
1. a private or public school that educates children in grades kindergarten through high school;
  2. a library that is open to the public;
  3. a playground that is open to the public;
  4. a youth center, defined as a facility where children ages 6 to 17 come together for programs and activities;
  5. a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. "Recreation facility" includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;

6. a public or private college or university that serves as an institution for education beyond the high school level;
7. a licensed child-care facility or preschool, other than a small-family day care home or a large-family daycare home as defined in California Health & Safety Code § 1596.78.

#### **8.44.20 - Requirement for a Permit.**

- A. No Tobacco Retailer or other Person shall Sell or offer for Sale any Tobacco Product without a current and valid Tobacco Retailer Permit from San Mateo County for each location where such activities are conducted.
- B. Permits are valid for one year and must be timely renewed annually by the Permit holder in order to continue to sell or offer for sale any Tobacco Product. A Retailer must obtain a separate Permit for each location at which any Tobacco Product will be sold, offered for sale or distributed. A Permit that is not renewed in a timely manner shall expire at the end of its term, and the Tobacco Retailer must obtain a new Permit prior to any further sale, offer for sale, or distribution of any Tobacco Product.
- C. No Tobacco Retailer shall violate, or cause or allow the Tobacco Retailer's agents or employees to violate, any provision of this Chapter or any other local, state, or federal law applicable to Tobacco Products or Tobacco Retailing.
- D. Tobacco Retailers are responsible for the actions of their employees and agents relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer and the permit holder shall be responsible for any monetary penalties levied.
- E. Nothing in this Chapter shall be construed to penalize the purchase, use, or possession of a Tobacco Product by any Person not engaged in Tobacco Retailing.

#### **8.44.030 - Permit is Nontransferable.**

- A. Tobacco Retailer Permits are nontransferable as between Persons, locations, or otherwise. Any attempted transfer shall render the Permit null and void.
- B. Notwithstanding any other provision of this Chapter, prior violations of this Chapter at a location shall continue to be counted against that location and Permit ineligibility and suspension periods shall continue to apply to that location unless:

1. One hundred percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to the new owner(s); and
2. The County is provided with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction. An Arm's Length Transaction, for the purposes of this section, means a transaction in which two or more unrelated and unaffiliated parties agree on the transfer in question; the parties act independently and in their own self-interest; and the parties have equal bargaining power and symmetric information, leading the parties to agree upon fair-market terms.

#### **8.44.040 - Permit Conveys a Limited, Conditional Privilege.**

Nothing in this Chapter shall be construed to grant any Person or entity obtaining and maintaining a Permit any status or right other than the limited, conditional privilege to Sell Tobacco Products and act as a Tobacco Retailer at the location in the County identified on the face of the Permit for the period of time shown on the Permit. All Permits are issued subject to the County's right to amend this Chapter from time to time, and Retailers shall comply with all provisions of this Chapter, as amended.

#### **8.44.050- Application, Issuance and Renewal Procedure.**

- A. Application for a Tobacco Retailer's Permit or the renewal of a Tobacco Retailer Permit shall be submitted in the name of the Person proposing to conduct retail sales of Tobacco Products, referred to herein as the "Applicant," and shall be signed by such Person or an authorized agent thereof. All applications shall be submitted to the Director on a form supplied by the Director and contain, at a minimum, the following information:
  1. The name, address, and telephone number of the Applicant;
  2. The business name, address, and telephone number of the location where Tobacco Products are proposed to be sold, offered for sale or distributed by the Applicant; and
  3. Proof that the location for which a Tobacco Retailer's Permit is sought has been issued a valid state license for the sale of Tobacco Products, if the Tobacco Retailer sells products that require such license;
  4. A statement whether or not the Tobacco Retailer or any agent of the Retailer has been found to have violated this Chapter or other applicable law governing Tobacco Products or Tobacco Retailing and, if so, the dates and locations of all such violations within the previous five years; and

5. Such other information as the Director determines is necessary for implementation of this Chapter.
- B. An application for a new or renewal Permit will be denied if there are any outstanding fines or late fees issued by the Director, or during any period of suspension.
- C. It is the responsibility of each Permit holder to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer Permit. No Permit holder may rely on the issuance of a Permit as a determination by San Mateo County that the Permit holder has complied with all laws applicable to Tobacco Retailing. A Permit issued contrary to this Chapter or any other law, or on the basis of false or misleading information supplied by the Applicant, shall be revoked. Nothing in this Chapter shall be construed to vest in any person or entity obtaining or maintaining a Tobacco Retailer's Permit any status or right to act as a Tobacco Retailer in contravention of any provision of law.

#### **8.44.060 - Display of Permit.**

Upon receipt of an application for a Tobacco Retailer Permit in compliance with the requirements of this Chapter, the Director or designee may issue a Permit which, if issued, must be prominently displayed in a publicly visible location at the location where Tobacco Product Sales are conducted and permitted.

#### **8.44.070 - Prohibitions Regarding Coupons, Discounts, Pharmacies, Flavored Tobacco, and Electronic Smoking Devices.**

- A. No Tobacco Retailer shall do any of the following:
  1. Honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than Full Retail Price;
  2. Sell any Tobacco Product to a Consumer through a multiple package discount or otherwise provide any such product to a Consumer for less than the Full Retail Price in consideration for the purchase of any Tobacco Product or any other item; or
  3. Provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.
- B. No Person, Tobacco Retailer or other legal entity shall sell or distribute to a person any electronic smoking device that delivers natural or synthetic nicotine or any other substance(s) to the person inhaling from the device. This includes

any component, part, or accessory intended or reasonably expected to be used with the electronic device, whether or not sold separately.

- C. No Person or Tobacco Retailer shall sell or offer to sell any Flavored Tobacco Product or Tobacco Product Flavor Enhancer. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a Characterizing Flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a Characterizing Flavor.
- D. No Pharmacy or Pharmacy employee or agent shall sell or offer to sell any Tobacco Product. The Director shall not issue any new, or renew any existing, Tobacco Retailer Permit for any Pharmacy.

#### **8.44.080 - Packaging and Labeling.**

No Tobacco Retailer or other Person shall Sell or offer for Sale any Tobacco Product to any Consumer unless the Tobacco Product (1) is Sold in the original manufacturer's Packaging intended for Sale to Consumers; (2) conforms to all applicable federal Labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.

#### **8.44.90 - Self-Service Displays Prohibited; On-Site, In-Person Sales Required.**

- A. Tobacco Retailing by means of a Self-Service Display is prohibited
- B. All Sales of Tobacco Products and Tobacco Paraphernalia shall be conducted in-person, over the counter, in the permitted location.

#### **8.44.100 - Notice of Minimum Age for Purchase of Tobacco Products.**

Tobacco Retailers shall post conspicuously, at each point of purchase, a notice stating that Selling Tobacco Products to anyone under 21 years of age is illegal and subject to penalties. The form and content of such notice shall be subject to the approval of the Director.

#### **8.44.110 - Positive Identification Required.**

No Tobacco Retailer or other Person shall Sell or offer to Sell a Tobacco Product to another Person without first verifying by means of government-issued photographic

identification that the recipient is at least the minimum legal sales age required under state law to purchase a Tobacco Product.

#### **8.44.120 - Minimum Age for Individuals Selling Tobacco Products.**

No Tobacco Retailer shall allow, at its Retail location, any individual who is younger than 21 years of age to Sell or offer to Sell Tobacco Products.

#### **8.44.130 - Display or Offers to Sell Tobacco Products Without Tobacco Retailer Permit Prohibited.**

A Tobacco Retailer without a current valid Permit:

- A. Shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a Permit.
- B. Shall not display any advertisement relating to Tobacco Products that offers the Sale of such products from the Tobacco Retailer's location.

#### **8.44.140 - Limits on Eligibility for a Permit.**

- A. No Tobacco Retailer's Permit may be issued to authorize Tobacco Retailing at or from other than a fixed location. For example, Sales by Persons on foot or from vehicles or other forms of mobile vending are prohibited.
- B. No Tobacco Retailer's Permit may be issued to authorize Sales of Tobacco Products at a temporary event, such as flea markets and farmers' markets.
- C. No new Tobacco Retailer Permit may be issued to authorize Tobacco Product Sales at any location within 1,000 feet of a Youth-Populated Area, as measured by a straight line from the nearest point of the property line of any parcel on which a Youth-Populated Area is located and any point along the property line of the parcel on which the Permit applicant has or proposes to locate the business.
- D. No new Tobacco Retailer's Permit may be issued for a location which is within 500 feet of a location already occupied by another Tobacco Retailer, as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing Tobacco Retailer's business is located.
- E. Tobacco Retailers with a current and valid Permit as of the date of adoption of this ordinance shall be exempt from subsections C and D of this Section unless the existing Tobacco Retailer fails to timely renew the Permit prior to its annual expiration.



- F. The Sale of Tobacco Products and accessories is prohibited in City or County of San Mateo owned structures and in any area of a structure leased by the City or the County of San Mateo, wherever located.

#### **8.44.150 - Fees for Permit.**

Tobacco Retailers shall pay all applicable fees at the rates set forth in section 5.64.070 of the San Mateo County ordinance code. Fees shall be used by the Director to administer and enforce this Chapter.

#### **8.44.160 - Enforcement.**

- A. The Director or the Director's designee may enforce this Chapter by suspension of a Tobacco Retailer's Permit and /or imposition of administrative fines following the procedures and, in the amounts, set forth in this Chapter.
- B. Violations of this Chapter may be criminally prosecuted as infraction(s) or misdemeanor(s) at the discretion of the prosecuting attorney as the interests of justice require.
- C. This Section shall not be interpreted to limit the applicable civil or administrative remedies available under law.

#### **8.44.170 - Public Nuisance.**

Any violation of this Chapter is hereby declared a public nuisance, subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures of contained in the Brisbane Municipal Code and state law, including but not limited to, an action for abatement or injunctive relief

#### **8.44.180 - Compliance Monitoring.**

- A. Compliance with this Chapter shall be monitored by the Director. In addition, any peace officer may enforce the provisions of this Chapter. The Director may designate additional persons to monitor and facilitate compliance with this Chapter.
- B. Individuals designated to enforce the provisions of this Chapter shall inspect each Tobacco Retailer annually to determine if the Tobacco Retailer is complying with all applicable laws. Compliance checks shall take place during normal business hours, with or without notice. All permitted premises must be open to inspection by designated persons during regular business hours.
- C. Nothing in this section shall create a right of action in any Tobacco Retailer or other person or entity against the City, the County of San Mateo, or their agents.

#### **8.44.190      Suspension or Revocation of Permit**

##### **A. Grounds for Suspension or Revocation.**

1. A Tobacco Retailer Permit may be suspended or revoked, as set forth below in subdivision (b), if any court of a competent jurisdiction determines, or the Director finds, based on a preponderance of the evidence after notice and opportunity for the Tobacco Retailer to be heard, that either of the following violations have occurred:
  - a. After the Permit was issued it is determined that the Application for the Permit is incomplete or inaccurate.
  - b. The Tobacco Retailer or Tobacco Retailer's agent has violated any of the requirements, conditions, or prohibitions of this Chapter or any applicable local, state, or federal tobacco-related law.
2. Notwithstanding the foregoing, a Tobacco Retailer Permit shall be suspended or revoked, for the maximum time periods and as set forth in subdivision (b), if any court of competent jurisdiction determines, or the Director finds, based on a preponderance of evidence and after notice and opportunity for the Tobacco Retailer to be heard, that the Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has Sold Tobacco Products to any Person(s) under the age of 21 years.

##### **B. Time Period of Suspension of Permit.**

1. Upon the first violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to 30 days.
2. Upon the second violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to 90 days.
3. Upon the third violation within any sixty (60) month period, the Permit to Sell Tobacco Products may be suspended for up to one year.
4. Upon the fourth violation within any sixty (60) month period, the Permit to Sell Tobacco Products shall be revoked. If a Permit is revoked, the Retailer shall not be eligible for a new Permit for a period of five (5) years after the effective date of revocation.

##### **C. Effective Date of Suspension or Revocation.**

Within ten (10) calendar days of the hearing, the Director shall issue written findings and an order regarding the suspension or revocation, which order will be

effective ten (10) calendar days from the date such order was sent by certified

mail to the Retailer, unless a timely appeal is filed in accordance with subsection (d).

#### D. Appeal of Suspension or Revocation.

The decision of the Director is appealable to the San Mateo County Licensing Board and the procedural rules of the San Mateo County Licensing Board shall govern hearings on all appeals of suspensions and revocations.

1. An appeal must be in writing, be addressed to the Director and be hand- delivered to the offices of the Division of Environmental Health.
2. An appeal must be received by the Director before the effective date of suspension or revocation provided by subsection (c) in order to be considered.
3. The filing of a timely appeal will stay a suspension or revocation pending a decision on the appeal by the San Mateo County Licensing Board.
4. The decision of the San Mateo County Licensing Board shall be a final administrative order, with no further administrative right of appeal.

#### **8.44.200 - Administrative Fine.**

- A. Grounds for Fine. A fine may be imposed on a Tobacco Retailer upon findings made by the Director, based on a preponderance of the evidence, that any Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has violated any of the requirements, conditions, or prohibitions of this Chapter. A fine shall be imposed in the maximum amounts set forth in subsection B of this section upon findings made by the Director that the Tobacco Retailer, or any agent or employee of the Tobacco Retailer, has Sold any Tobacco Product to any Person(s) under the age of 21 years. Any administrative fine shall be imposed solely against the Tobacco Retailer, not the Tobacco Retailer's employees or agents.
- B. Amount of Fine. Upon written findings made by the Director under subsection A, the person or entity holding the Tobacco Retailer Permit shall be subject to an administrative fine for each such violation as follows:
  1. A fine not exceeding five hundred dollars (\$500) for a first violation within a sixty (60) month period; and
  2. A fine not exceeding one thousand dollars (\$1,000) for each subsequent violation within a sixty (60) month period.

- C. Each day that Tobacco Products are Sold or offered for Sale without a Permit or otherwise in violation of this Chapter shall constitute a separate violation. A finding of "offered for Sale" in violation of this Chapter will be made if Tobacco Products are either actually Sold and/or displayed in the retail establishment, or if advertisements offering to Sell Tobacco Products are visible to customers.

D. Fine Procedures. Notice of the fine shall be served on the Tobacco Retailer by certified mail. The notice shall contain a description of the facts upon which the asserted violation is based and an advisement of the right to request a hearing before the Director contesting the imposition of the fine. Said hearing must be requested within ten calendar days of the date appearing on the notice of the fine. The decision of the Director shall be a final administrative order, with no administrative right of appeal.

- E. Failure to Pay Fine. If a fine imposed pursuant to this Chapter is not paid within 30 calendar days from the date appearing on the notice of the fine or of the notice of determination of the Director after the review provided for under subdivision C of this Section, the fine may be referred to a collection agency within or external to the County. In addition, any outstanding fines must be paid prior to the issuance of any new Permit or renewal of a Permit.

**SECTION 2.** It is the intent of the City Council of the City of Brisbane to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any provision of this Chapter or the application of such provision to any person or in any circumstances

shall be held invalid, the remainder of this Chapter, or the application of such provision to person or in circumstances other than those as to which it is held invalid, shall not be affected thereby.

**SECTION 4.** This ordinance shall be effective thirty days after adoption.

Madison Davis, Mayor

Attest:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas R. McMorrow, City Attorney

I hereby certify that the foregoing Ordinance No. \_\_\_\_ was adopted by the Brisbane City Council at a regular meeting on September \_\_\_\_, 2023 by the following vote:

AYES;

NOES;

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

## SOURCES

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1. California Department of Public Health California Tobacco Control Program. California Tobacco Facts and Figures 2016. Sacramento, CA: California Department of Public Health. 2016. Available at:  
  
<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>
2. Zhu S-H, Braden K, Zhuang Y-L, Gamst A, Cole AG, Wolfson T, Li S. (2021). *Results of the Statewide 2019-20 California Student Tobacco Survey*. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California San Diego.  
  
[https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport\\_ADA.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport_ADA.pdf)
3. Zhu S-H, Braden K, Zhuang Y-L, Gamst A, Cole AG, Wolfson T, Li S. (2021). *Results of the Statewide 2019-20 California Student Tobacco Survey*. San Diego,

California: Center for Research and Intervention in Tobacco Control (CRITC), University of California San Diego.

[https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport\\_ADA.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport_ADA.pdf)

4. Zhu S-H, Braden K, Zhuang Y-L, Gamst A, Cole AG, Wolfson T, Li S. (2021). *Results of the Statewide 2019-20 California Student Tobacco Survey*. San Diego, California: Center for Research and Intervention in Tobacco Control (CRITC), University of California San Diego.  
  
[https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport\\_ADA.pdf](https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CSTS2019-20BiennialReport_ADA.pdf)
5. California Department of Public Health, California Tobacco Control Program. *California Tobacco Facts and Figures 2021*. Sacramento, CA: California Department of Public Health; November 2021.  
  
<https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CaliforniaTobaccoFactsAndFigures2021-V3A.pdf>
6. Xu X, Pesko MF, Tynan MA, Gerzoff RB, Malarcher AM, Pechacek TF. Cigarette price-minimization strategies by U.S. smokers. *Am J Prev Med*. 2013;44(5):472-476. doi: 10.1016/j.amepre.2013.01.019.
7. Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighborhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health*. 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.
8. Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.
9. Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction*. 2015;110(1):152-161. doi: 10.1111/add.12718.
10. Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine Tob Res*. 2017;19(2):239-244. doi: 10.1093/ntr/ntw185.



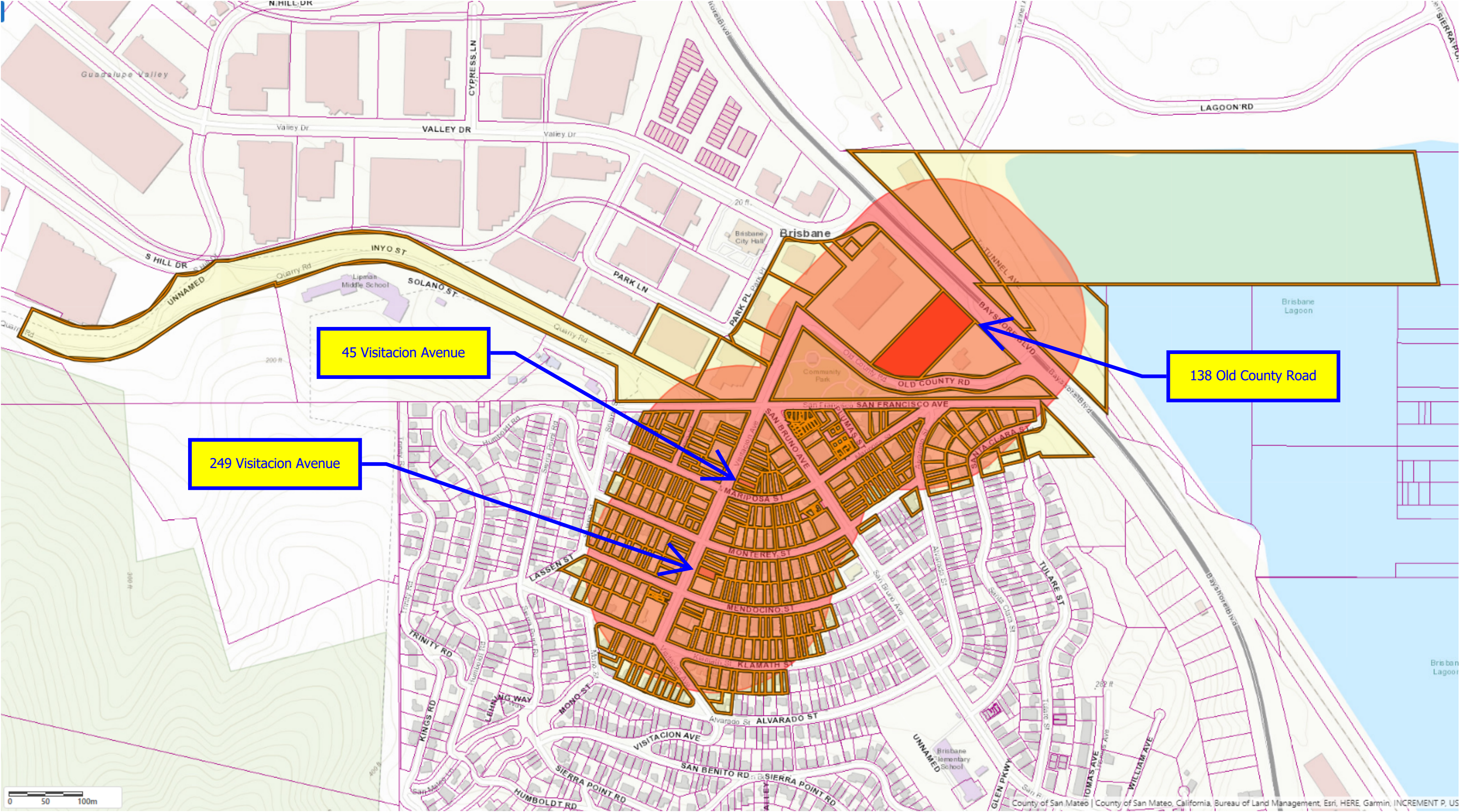
Myers AE, Hall MG, Isgett LF, Ribisl KM. A comparison of three policy approaches for tobacco retailer reduction. *Prev Med*. 2015; 74:67-73. doi: 10.1016/j.ypmed.2015.01.025.

Luke DA, Hammond RA, Combs T, et al. Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density. *Am J Public Health*. 2017;107(5):740-746. doi: 10.2105/AJPH.2017.303685.

11. U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at:  
  
<https://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/>.
- DiFranza JR. Which interventions against the sale of tobacco to minors can be expected to reduce smoking? *Tob Control*. 2012;21(4):436-442. doi: 10.1136/tobacco control - 2011-050145.
12. Macinko J, Silver D. Impact of New York City's 2014 Increased Minimum Legal Purchase Age on Youth Tobacco Use. *Am J Public Health*. 2018;108(5):669-675. doi: 10.2105/AJPH.2018.304340.



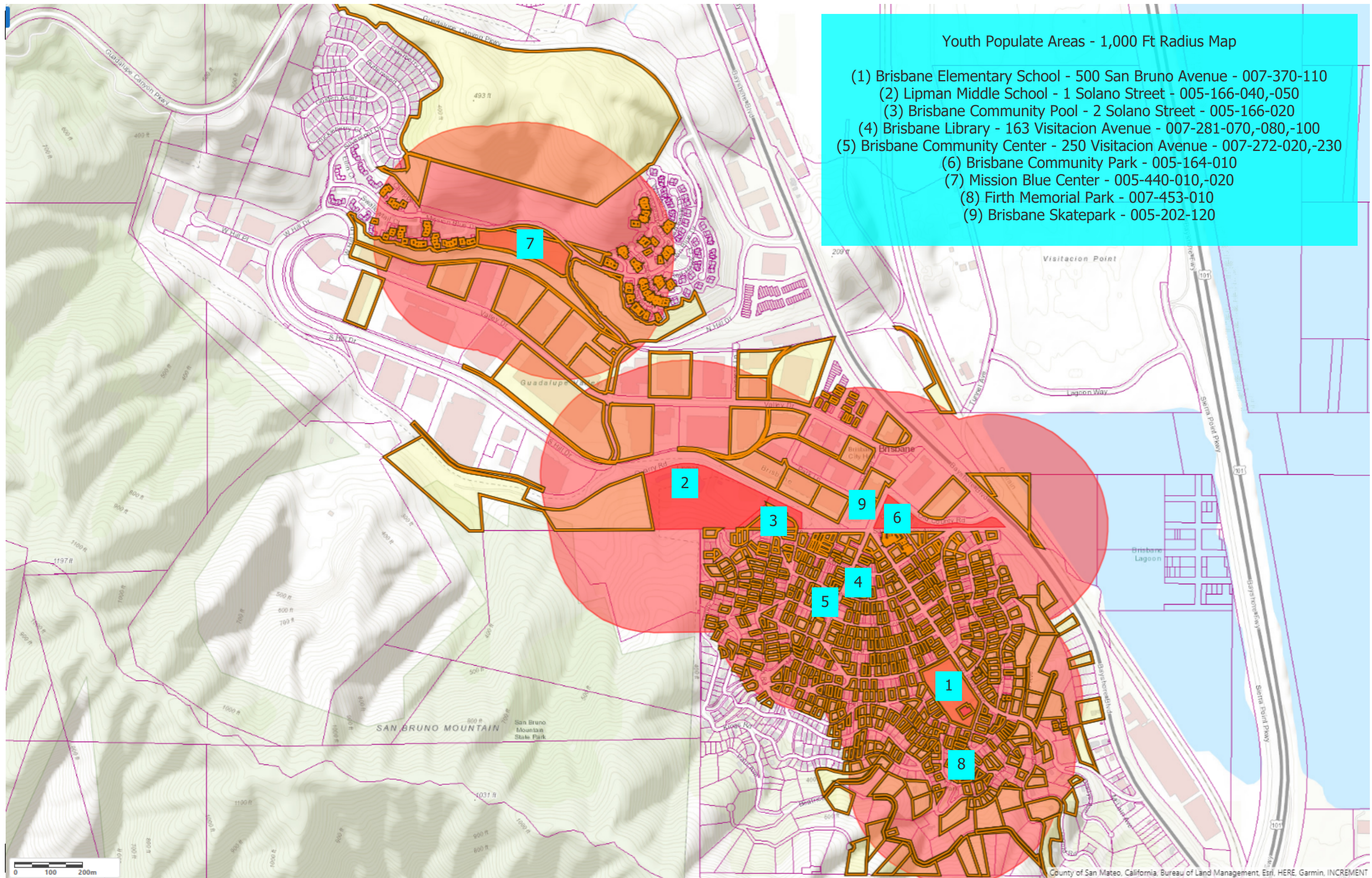
500 Ft Radius Map - 08.08.23  
138 Old County Road - 005-212-110  
45 Visitation Avenue - 007-222-130  
249 Visitation Avenue - 007-471-170





## Youth Populate Areas - 1,000 Ft Radius Map

- (1) Brisbane Elementary School - 500 San Bruno Avenue - 007-370-110
- (2) Lipman Middle School - 1 Solano Street - 005-166-040,-050
- (3) Brisbane Community Pool - 2 Solano Street - 005-166-020
- (4) Brisbane Library - 163 Visitacion Avenue - 007-281-070,-080,-100
- (5) Brisbane Community Center - 250 Visitacion Avenue - 007-272-020,-230
- (6) Brisbane Community Park - 005-164-010
- (7) Mission Blue Center - 005-440-010,-020
- (8) Firth Memorial Park - 007-453-010
- (9) Brisbane Skatepark - 005-202-120





**File Attachments for Item:**

N. Adopt Resolution Establishing the Business License Tax on Recycling Establishments for Fiscal Year 2023/24



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 21, 2023

**From:** Carolina Yuen

**Subject:** Resolution Establishing the Business License Tax on Recycling Establishments for Fiscal Year 2023/24

### Community Goal/Result

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

### Purpose

To provide for the long-term fiscal stability of the City of Brisbane

### Recommendation

Adopt a Resolution to establish the Business License Tax on Recycling Establishments for Fiscal Year 2023/24.

### Background

In 2011, the voters of the City passed an ordinance which imposed a business license tax on companies which carry out recycling operations within the City limits. For recycling establishments that recycle 100,000 tons or more, the tax authorized by that ordinance established a maximum tax of \$3,000,000 per year. In 2017, voters increased the maximum amount of the tax allowed by the ordinance to \$4,000,000, phased in over a period of time, with inflationary increases after the business license tax reached \$4,000,000.

Council sets the tax each year by resolution and the tax for recycling operations that recycled 100,000 or more tons was set as follows:

Fiscal Year	Amount of Tax
2016/17	\$2,100,000
2017/18	\$2,778,000
2018/19	\$2,979,000
2019/20	\$3,206,000
2020/21	\$3,700,000
2021/22	\$4,000,000
2022/23	\$4,272,000

This phased in approach was discussed with San Francisco Recology and agreed to in principle.

## Discussion

Since the maximum tax for FY2021/22 was \$4 million, starting in FY2022/23 and thereafter, the City Council is to set the tax annually as provided by the voter-approved ordinance that permits an increase to the \$4 million dollar tax by an inflation factor each year.

Per the ordinance, the business license tax payable shall be the greater of (1) the tax charged the previous year plus three percent (3%) of such tax, or (2) four million dollars plus an amount determined by a fraction, represented by the numerator of which shall be the Consumer Price Index published by the US Department of Labor Statistics, for Urban Wage Earners and Clerical Workers, All Items, for the San Francisco-Oakland-Hayward Statistical Area (CPI) published nearest to the adjustment date, and the denominator of which shall be the CPI published nearest to the date the business license tax was set at four million dollars per year.

Option 1 would be \$4,400,160 (i.e., \$4,272,000 + 3% = \$4,272,000 + 128,160 = \$4,400,160)

Option 2 would be:

$$\begin{array}{rclclcl} \text{numerator} & = & \text{CPI from 6/23 (nearest to adj date of 7/1/23)} & = & \frac{340.056}{309.497} & = & 1.099 \\ \text{denominator} & = & \text{CPI from 6/21 (nearest to adj date when set at \$4M)} & & & & \end{array}$$

$$\$4,000,000 + (\$4,000,000 \times .099) = \$4,396,000$$

The greater is \$4,400,160.

## Fiscal Impact

The City will invoice and collect from Recology the amount of \$4,400,160.

## Measure of Success

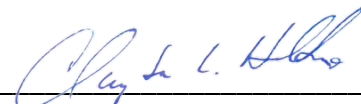
The City is able to continue to provide all of the services which have been budgeted for by the City.

## Attachments

1. Resolution No. 2023-\_\_\_\_



Carolina Yuen, Finance Director



Clay Holstine, City Manager

**RESOLUTION NO. 2023-\_\_****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE ESTABLISHING  
THE BUSINESS LICENSE TAX FOR RECYCLING ESTABLISHMENTS FOR FISCAL YEAR  
2023/24**

**WHEREAS**, Section 5.20.100 of the Brisbane Municipal Code imposes a business license fee on “recycling establishments,” which are defined as establishments engaged in the business of collecting, sorting, cleansing, treating, processing, or reconstituting waste or other discarded materials for the purpose of reuse in altered form; and

**WHEREAS**, the business license tax for recycling establishments in the City that recycle 100,000 tons or more of material during any single calendar year, as set forth in Section 5.20.100, beginning January 1, 2018 and each subsequent year may be increased to any amount within the authorized ceiling of four million dollars per year plus an inflation factor, in such a manner as established by resolution of the City Council; and

**WHEREAS**, the City Council has been presented with the calculation of the inflation factor, and has examined and approved same to be set as the business license tax for recycling establishments;

**NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Brisbane as follows:**

1. The annual business tax for recycling establishments recycling more than 100,000 tons of material in the City during any single calendar year is established at Four Million Four Hundred Thousand One Hundred Sixty Dollars (\$4,400,160) for fiscal year 2023/24. Such amount shall be payable as follows:

- (a) A payment of \$2,200,080 shall be made on or by December 31, 2023.
- (b) A payment of \$2,200,080 shall be made on or by June 30, 2024.

2. This Resolution shall become effective immediately upon its adoption.

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MADISON DAVIS,  
Mayor

I hereby certify that the foregoing Resolution No. 2023-\_\_\_\_ was duly and regularly adopted at a regular meeting of the Brisbane City Council on September 21, 2023 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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INGRID PADILLA,  
City Clerk



**File Attachments for Item:**

O. Adopt a Resolution Authorizing Submission of Applications for all CalRecycle Grants and Payment Programs for which City of Brisbane is Eligible



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 21, 2023

**From:** Adrienne Etherton, Sustainability Manager

**Subject:** CalRecycle Grant and Payment Resolution

### Community Goal/Result

Ecological Sustainability; Fiscally Prudent

### Purpose

To adopt a resolution authorizing submittal of applications for all CalRecycle grants and payment programs for which the City of Brisbane is eligible.

### Recommendation

Adopt a resolution Authorizing Submittal of Application(s) for all CalRecycle Grant and Payment Programs for which City of Brisbane is Eligible.

### Background

The California Department of Resources Recycling and Recovery, also known as CalRecycle, oversees the state's waste management, recycling, and waste reduction programs. In addition to regulatory actions, CalRecycle also provides funding for program implementation. In the past, the City has received funding from the annual Beverage Container Recycling City/County Payment Program. Resolution 2016-01 was adopted by the City Council on January 21, 2016 authorizing submittal of applications to CalRecycle payment programs. This authorization was able to be used for a recent grant for implementation of new requirements under SB 1383, the Short-Lived Climate Pollutants Act.

### Discussion

Over the summer, CalRecycle announced that an additional round of SB 1383 Local Assistance Grants would be forthcoming this fall. These grants will require Grant Resolutions, and Payment Program Resolutions will no longer be accepted. The non-competitive grant program is proposed to provide \$50,000 per jurisdiction base funding with remaining funds allocated based on population; staff expects the City to receive \$50,000. The proposed resolution will be used for both grants and payments for the next five years, the maximum allowable, and updates the signature authority to the Public Works Director for ease of administration.

### Fiscal Impact

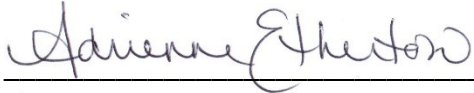
Adoption of this resolution will allow for the City to apply for CalRecycle grants, including an expected \$50,000 non-competitive grant in the near term and unknown potential future grants.

**Measure of Success**

Compliance with CalRecycle's requirements for submitting grant and payment program applications.

**Attachments**

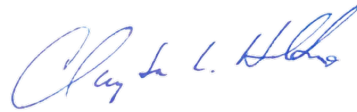
1. CalRecycle Grant and Payment Resolution



Adrienne Etherton, Sustainability Manager



Randy Breault, Public Works Director



Clay Holstine, City Manager

**RESOLUTION NO. 2023 - \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BRISBANE AUTHORIZING SUBMITTAL OF APPLICATION(S) FOR  
ALL CALRECYCLE GRANT AND PAYMENT PROGRAMS FOR  
WHICH CITY OF BRISBANE IS ELIGIBLE**

**WHEREAS**, Public Resources Code sections 48000 et seq., 14581, and 42023.1(g), authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant and payment programs in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

**WHEREAS**, in furtherance of this authority, CalRecycle is required to establish procedures governing the administration of the payment programs; and administration of the application, awarding, and management of the grants; and

**WHEREAS**, CalRecycle's procedures for administering payment and grant programs require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of the payment and grant program.

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:**

1. The City Council authorizes the submittal of application(s) to CalRecycle for any and all grant and payment programs offered.
2. The Director of Public Works, or his/her designee is hereby authorized and empowered to execute in the name of the City of Brisbane all documents, including but not limited to, applications, agreements, amendments and requests for payment, necessary to secure funds and implement the approved grant or payment project.
3. These authorizations are effective for five (5) years from the date of adoption of this resolution.

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Madison Davis, Mayor

I, Ingrid Padilla, City Clerk of the City of Brisbane, certify that the foregoing Resolution was introduced at the special meeting of the Brisbane City Council on the 21st day of September 2023, and was adopted thereafter by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Ingrid Padilla, City Clerk

**File Attachments for Item:**

P. Revisit Sierra Point Open Space and Parks Process



## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 21, 2023

**From:** Clay Holstine, City Manager, Noreen Leek, Parks & Recreation Director, Carolina Yuen, Finance Director

**Subject:** Revisit Sierra Point Open Space and Parks Process

### Community Goal/Result

Community Building

### Purpose

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

### Recommendation

Provide direction to staff regarding preferred next steps.

### Background

The Successor Agency of the Redevelopment Agency of the City of Brisbane (Successor Agency) owns certain undeveloped property located at the eastern end of the Sierra Point Parkway, commonly known as 400 Sierra Point Parkway in the City (Leased Property), consisting of approximately 3.4 acres. The City and the predecessor of developer, Sierra Point LLC, entered into a Ground Lease Agreement in March 1984 for what is known as Parcel R, to build a restaurant and other facilities. The developer provided funds in the approximate amount of \$2 million dollars to help build the Marina as part of the agreement. In June 2012, the Sierra Point LLC entered into a Development Agreement concerning the property commonly known as 3000-3500 Marina Boulevard, consisting of 8.87 acres. In 2017, the development agreement was restructured so that in exchange for the developer to repurpose its development plan in 3000-3500 Marina Boulevard to a life science development, the developer would terminate its interest in Leased Property to the Successor Agency and pay \$300,000 to the City to be used for site preparation to be developed for public purposes. Also, part of the agreement, each time the City issues a building permit for development of the property, the developer will pay \$.50 times the square footage of the building permit value to the City also to be used towards developing the Leased Property. To date the City has received \$528,000 towards Parcel R. It should be noted that these funds are restricted to Parcel R and there is no time frame for the use of these funds since they were negotiated as an amendment to the Development Agreement for that project.

In 2017, the City entered into a development agreement with Healthpeak where the developer agreed to pay \$1.5 million towards improvements for park planning at Sierra Point. These funds can be used anywhere at Sierra Point but are governed by the Mitigation Fee Act and have a five-year use limit that can be extended if justified. Although project approvals and conditions of approval occurred in 2019, the use time frame began when the funds were actually received by the City in 2020. If these funds

are not utilized within the 5-year timeframe, the City will be responsible for justifying an extension and identifying how the funds will be allocated within a reasonable time period.

These deposits and any future agreed-upon deposits make up the Park Development Fund. Funds have been expended to cover consulting costs for Sierra Point Parcel evaluations and most recently those related to the preparation of Sierra Point Open Space and Park Master Plan, and improvements of the Marina picnic area and Marina backflow devices for incoming tides. To date, costs related to the parcel transfer, grading to the picnic area to prepare for future improvements, and backflow devices for incoming tides have been charged to the Parcel R project. Also, 25% of the cost related to the CMG contract are being allocated to the Parcel R project, and the remaining 75% are being allocated to general park improvements at Sierra Point. A total of \$123,000 has been spent for Parcel R, and a total of \$89,000 has been spent for general park improvements.

The amounts received less amounts committed leave an available total fund balance of \$1,735,000 (\$385,000 allocated to Parcel R and \$1,350,000 allocated to the general park improvements). See Attachment 1.

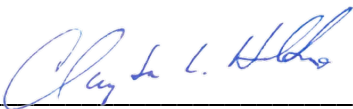
In 2022, the City Council awarded a contract to CMG in the amount of \$199,758 for master planning services for Sierra Point Open Space and Parks. To date, the City has compensated CMG \$118,932.12 for services rendered. (Attachment 2) The City Council agenda report from March 2, 2023 (Attachment 3) provides an overview of the initial two phases of the master planning effort through March 2023. On May 18, 2023, the City Council reviewed the process and discussed the preferred next course of action. Council comments from that meeting have been captured in Attachment 4.

### Discussion

On August 22, 2023, the City Council Ad hoc committee met with staff to conduct a detailed review of the financials pertaining to the site and its development. They discussed whether more robust community engagement was desired or whether the City should recommend a phased implementation approach contingent upon available funds.

### Attachments

1. Park Development Fund summary
2. Summary of payments made towards CMG master planning contract
3. City Council Agenda Report from March 2, 2023
4. Council comments from May 18, 2023 meeting



Clay Holstine, City Manager



Noreen Leek, Parks & Recreation Director



Carolina Yuen, Finance Director



**City of Brisbane**  
**Park Development Fund Summary**

**Revenues**

Date Rec'd	Payor	Amount	Parcel R	Mitigation Fee Act
5/4/2017	Omni	300,000.00	300,000.00	
8/30/2020	Healtpeak	1,500,000.00		1,500,000.00
7/6/2021	Skeehan & Co (BP3)	227,900.71	227,900.71	
		<u>2,027,900.71</u>	<u>527,900.71</u>	<u>1,500,000.00</u>

-

**Expenses**

Fiscal Yr	Vendor	Amount	Parcel R	Mitigation Fee Act	Description
FY20	CSG	(7,818.75)	(7,818.75)		SP Parcel Transfer
FY21	Kingdom Pipeline	(80,900.00)	(80,900.00)		MA Embankment Picnic Area
FY21	CLA-VAL Co	(4,107.80)	(4,107.80)		MA - Backflow devices for incoming tides
FY23	CMG	(118,932.12)		(118,932.12)	SP Open Space & Park Master Plan
FY24	CMG	(80,825.88)		(80,825.88)	committed remaining on PO
		<u>(292,584.55)</u>	<u>(92,826.55)</u>	<u>(199,758.00)</u>	

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**Cash available / non-committed**      1,735,316.16      435,074.16      1,300,242.00      Fund Balance

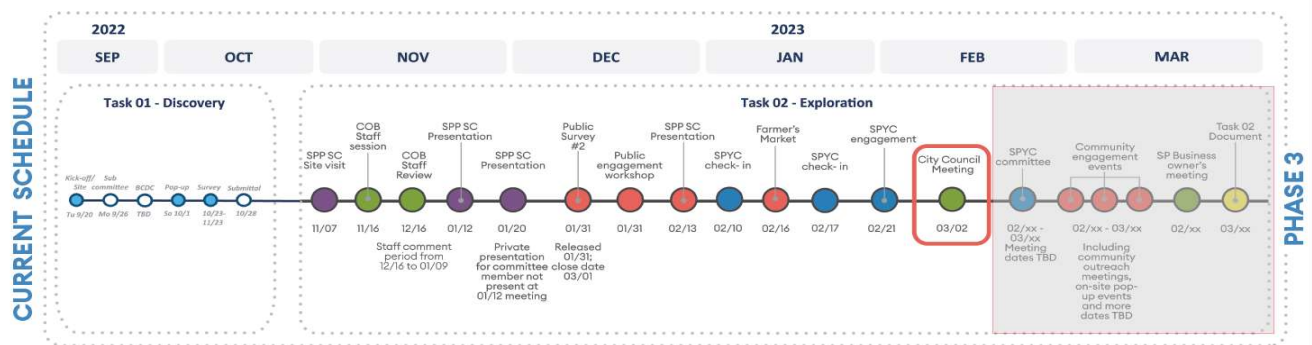
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# Sierra Point Parks & Open Space Master Plan

## Summary of payments made to CMG

Total contract amount awarded to CMG	\$199,758.00
Amount paid to date	<b>(\$118,932.12)</b>
<b>Remaining</b>	<b>\$80,825.88</b>

Paid Invoices	Amount
Sep-22	\$25,426.75
Oct-22	\$14,411.25
Nov-22	\$19,077.50
Dec-22	\$20,776.60
Jan-23	\$21,604.05
Feb-23	\$11,905.50
Mar-23	\$5,730.47
	<b>\$118,932.12</b>





## CITY COUNCIL AGENDA REPORT

**Meeting Date:** March 2, 2023

**From:** Noreen Leek, Parks & Recreation Director

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

### Community Goal/Result

Community Building

### Purpose

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

### Recommendation

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

### Background

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

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

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

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

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

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

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

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

### Discussion

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

### Task 1: Discovery Phase

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

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

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

### **Task 2: Exploration**

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

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

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

### **Fiscal Impact**

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

**Attachments**

n/a

  
\_\_\_\_\_  
Noreen Leek, Parks & Recreation Director

  
\_\_\_\_\_  
Clay Holstine, City Manager

# Council Comments from 5/18/23 meeting

## **Park Development Impact Fee Discussion:**

Terry: additional funding – park development fee: could we instead have a general use impact fee that goes to the general fund not just parks and open space (Clay will talk with attorneys about that).

Coleen: Park development impact fees includes what? Includes acquisition, construction and maintenance of parks and open space.

Cliff: Funds can be used where? Anywhere in town, not just SPP.

## **Public Participation Workshop Plan:**

Terry: Wants a workshop roundtable with open dialogue and not plans already crafted. It felt like the consultants were looking for general opinions and not so much back and forth about feasibility or what the consultants think is feasible - wish list vs what is possible. She doesn't like the idea of ad hoc pop-up events (only select types of people), rather prefers workshops. Start with what has to be done (sea level rise, saltwater intrusion), then what can we do to enhance that "modified" area. What would you like to see within these constraints?

Coleen: She felt that with the consultants leading with 3 plans did not give opportunity for other to feel they have other ideas. She asked CMG if they received other ideas from the community if they would draw mock-ups and they said yes. She would like to see ONE workshop first and see how that goes before booking another. What are the important considerations (important to you?), what services are important out there (kayaks, picnic), but being aware that we need major infrastructure to deal with groundwater intrusion. Perhaps let people be guided also in what they DON'T like. She is also concerned that we don't have to have every element all in this one place, we have the Baylands to add many more elements.

Cliff: He would prefer it be like a Parkside pop-up event with food, kid play and also a workshop style.

Madison: Agrees with one workshop first and then figuring out the next steps from there. She wants the workshop to be held in Council Chambers so that everything can be recorded. Perhaps leave it to the Subcommittee to rethink how to structure it like with sections: geared around scale, amenities; section on tranquility, kid play, then hone in on certain points of contention; then a dream big wall. What she liked about BDI's presentation is that they had chunked out pieces that you could place things to plan it out themselves around fixed items.

Karen: the feedback that she hears from people utilizing the marina is that they really want "peace and tranquility" and not elements that can only be used a few times a year (due to weather).

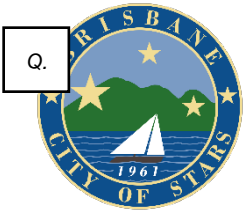
In conclusion, have a workshop here in the Council Chambers in the Fall if possible. Let the consultants work with the feedback they have received.

**File Attachments for Item:**

Q. Consider Introduction of an Ordinance, Waiving First Reading, Concerning the Timing of the Construction of Off-Site Improvements

(This Ordinance is exempt from review under the California Environmental Quality Act (CEQA) because it is not a project. CEQA Guidelines section, 15378 (b)(2))





## CITY COUNCIL AGENDA REPORT

**Meeting Date:** September 21, 2023

**From:** Director of Public Works/City Engineer

**Subject:** Ordinance Concerning the Timing of the Construction of Off Site Improvements

(This Ordinance is exempt from review under the California Environmental Quality Act (CEQA) because it is not a project. CEQA Guidelines, Section 15378 (b)(2).

### Purpose

To review a proposed ordinance that addresses community desires to mitigate the delays in public improvements required in conjunction with private development.

### Recommendation

Introduce an Ordinance, waiving first reading, adding Section 15.04.045 to Chapter 15 of the Brisbane Municipal Code, "Concerning the Timing of the Construction of Off Site Improvements."

### Background

Under the Building Code, a building permit is valid for one year but the permit may be extended six months at a time if, in the judgment of the building official, the property owner is making progress on the work allowed under the permit. Accordingly, work under a building permit may continue indefinitely so long as the property owner continues to do work.

This open ended timeframe, however, may cause, and has caused, neighborhood problems. For example, some permits require that offsite improvements, such as road widenings or off street parking spaces, be constructed in connection with the onsite work. Currently there is no requirement when, relative to the onsite work, that such off site work must be undertaken and completed. This leads to situations where the existing street is impacted, causing disruption of traffic patterns for those living in the neighborhood. Additionally, work onsite that does not get completed expeditiously leads to unfinished work that is a neighborhood eyesore and nuisance.

The Municipal Code currently does not have provisions that would require off site work to be completed before onsite work begins. Staff has drafted the attached ordinance the purpose of which is to eliminate or substantially reduce neighborhood concerns.

### Discussion

Where a building permit requires off site improvements, such as a street widening, parking spaces, or a retaining wall, the attached ordinance would require the applicant to construct such improvements under a schedule approved by the city engineer before beginning any onsite construction unless the city engineer specifically provided that certain onsite construction could be undertaken.

Concerning onsite work that is an eyesore or causes a neighborhood nuisance, the building code currently authorizes the building official to direct the applicant to eliminate the unsightly conditions or conditions that are causing the neighborhood nuisance. The applicant's failure to do as directed would lead to administrative citations to other enforcement action. Accordingly, there is no need to address these concerns by an amendment to the Code.

**Fiscal Impact**

There is no direct fiscal impact in enacting this ordinance.

**ENVIRONMENTAL REVIEW**

Adoption of this ordinance does not need further environmental review under the California Environmental Quality Act (CEQA) as it is general policy and procedure making and not applied to a specific instance and therefore it is not a "project". CEQA Guidelines, Section 15378 (b) (2).

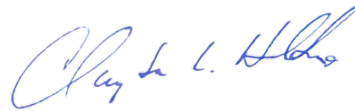
**Attachments**

1. Proposed Ordinance



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Randy Breault, Public Works Director



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Clay Holstine, City Manager

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE CITY OF BRISBANE  
 ADDING SECTION 15.04.045 TO THE BRISBANE MUNICIPAL CODE CONCERNING  
 THE TIMING OF THE CONSTRUCTION OF OFF SITE IMPROVEMENTS**

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

**Section 1. Section 15.04.045 is added to the Brisbane Municipal Code to read as follows:**

“Section 15.04.045. Timing of the construction of off site improvements.

Where a building permit requires that an applicant construct certain off site improvements including, but not limited, to road widening, retaining walls and/or parking spaces, the applicant shall construct all such improvements in a schedule approved by the city engineer before beginning any on site construction unless the city engineer authorizes specific on site construction before the enumerated off site improvements are completed.”

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

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

\* \* \* \*

The above Ordinance was regularly introduced and after waiting the time required by law was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on October 3. 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
 Madison Davis, Mayor

ATTEST:

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Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

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Thomas R. McMorrow, City Attorney

**File Attachments for Item:**

T. Countywide Assignments and Subcommittee Reports



# CITY of BRISBANE

## Subcommittee Update

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From September 2<sup>nd</sup>, 2023 to September 15<sup>th</sup>, 2023

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### **Liaison to the Park & Rec Commission Subcommittee 9/7 (Davis, Cunningham)**

The subcommittee reviewed Park & Recreation highlights from the past year. Then the liaisons discussed the upcoming goals for the year for the Commission. Chair Kern and Vice-Chair Sims talked about a P&R Commission retreat they had to discuss goals, budgets and funding, metrics and prioritizing Council's objectives. They discussed pulling inspiration for P&R projects from old Brisbane historical articles and talk with seniors at their Senior lunch. Cunningham also let the Commission liaisons know about the Jackie Speier Foundation and that there may be opportunities for grants and partnerships.

The subcommittee then reviewed the nominees for the Volunteer of the Year (VotY) and Youth VotY. They came to a consensus. There is yet to be a determined location to add names of Youth VotY who are selected. Some ideas are to have either a bench or rock at the community park and add their names each year. There was also discussion around how to celebrate them other than waiting until the following year at Day in the Park Derby Race.

### **Upcoming Subcommittees:**

**Public Art Advisory Committee**

**9/18 4:30pm**

**Cunningham, Davis**