



CITY of BRISBANE

City Council Meeting Agenda

Thursday, July 7, 2022 at 7:30 PM • Virtual Meeting

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

PUBLIC MEETING VIDEOS

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

TO ADDRESS THE COUNCIL

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

Remote Public Comments:

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

Email: ipadilla@brisbaneca.org

Text: 628-219-2922

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

Webinar ID: 991 9362 8666

Passcode: 123456

Call In Number: 1 (669) 900 9128

SPECIAL ASSISTANCE

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

WRITINGS THAT ARE RECEIVED AFTER THE AGENDA HAS BEEN POSTED

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

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

ROLL CALL

ADOPTION OF AGENDA

ORAL COMMUNICATIONS NO. 1

AWARDS AND PRESENTATIONS

- A. Proclamation Recognizing July as Parks and Recreation Month

CONSENT CALENDAR

- B. Accept Investment Report as of April 2022
- C. Adopt Resolutions to Appoint Committee Members of the Inclusion, Diversity, Equity, and Accountability Committee, and the Complete Streets Safety Committee
- D. Adoption of a Resolution Declaring the Continued Need to Conduct City Council, Commission and Committee Meetings Remotely Due to Health and Safety Concerns for the Public
- E. Adopt Resolution Establishing the Business License Tax for Liquid Storage Facilities for 2022 as to Kinder Morgan/SFPP
- F. Adoption of a Revised Conflict of Interest Code to Include the Assistant City Manager, the Communications Manager, and the Assistant Fire Marshal and Deleting Park and Recreation Commission
- G. Adoption of Ordinance to Impose a Business License Tax on Hotels and Resolution Amending the Ballot Question for the Measure/Ordinance to be Submitted to the Voters Imposing a Business License Tax on Hotels
- H. Adopt an Ordinance Adding a New Chapter 3.22 to the Brisbane Municipal Code Imposing a Transactions and Use Tax to be Administered by the California Department of Tax and Fee Administration and Resolution Amending the Ballot Question for the Ordinance to be Submitted to the Voters levying a half cent Transaction and Use Tax

AWARDS AND PRESENTATIONS CONTINUED

- I. Administer Oath of Office to Newly Appointed Committee Members

1. Gregory J. Strecker, Complete Streets Safety Committee for a term through January 2026
2. Christian Allan Bustos, Inclusion, Diversity, Equity and Accountability Committee for an initial term through January 2023
3. Miyoko Nida, Inclusion, Diversity, Equity and Accountability Committee for an initial term through January 2023

PUBLIC HEARING

- J. Consideration of Entering into Energy Service Contract Pursuant to the Provisions of the California Government Code Section 4217.10, Et Seq. for the City of Brisbane Community Pool Electrification Project
- K. 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 22/23
- L. 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 2022-2023 County Tax Roll, and Authorizing the County Tax Collector to Collect Such Charges."

CONTINUED PUBLIC HEARING

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

(This public hearing item was continued from the City Council Meeting of May 19, 2022. City Council will consider applicant appeal of the Planning Commission's April 4, 2022 decision denying the modification of Interim Use Permit 2021-Up-3 to allow the use of a

vacant site on the Baylands to be used for a Google Bus staging yard (Planning Commission Resolution 2021-UP-3-M) and revoking Interim Use Permit 2021-UP-3 (Planning Commission Resolution 2021-UP-3-R); Eric Aronsohn, applicant; Oyster Point Properties Inc, applicant/owner.)

NEW BUSINESS

- N. Authorize the City Manager to Enter into an Agreement with Flock Safety Group for the installation of Automated License Plate Readers within the City of Brisbane

(If approved, the agreement with Flock Safety Group will be in the amount of \$39,700 for FY 2022-2023. The funding this year and moving forward will be funded from the Police Department's budget.)

STAFF REPORTS

- O. City Manager's Report on Upcoming Activities

MAYOR/COUNCIL MATTERS

- P. Countywide Assignments and Subcommittee Reports

- Q. Written Communications

ORAL COMMUNICATIONS NO. 2

ADJOURNMENT

File Attachments for Item:

B. Accept Investment Report as of April 2022

**CITY OF BRISBANE
CASH BALANCES & INVESTMENTS
SOURCE OF FUNDING
April 30, 2022**

| NAME OF DEPOSITORY | INVESTMENT TYPE | DATE OF INVESTMENT | FACE VALUE OF INVESTMENT | CARRY VALUE OF INVESTMENT | MARKET VALUE OF INVESTMENT | COUPON INTEREST RATE % | MATURITY DATE | RATING/ COLLATERAL |
|--|----------------------------|--------------------|--------------------------|---------------------------|----------------------------|------------------------|---------------|--------------------|
| WELLS FARGO | Checking A/C | | \$ 4,653,128 | \$ 4,653,128 | \$ 4,653,128 | 0.000 | | |
| STATE FUND (LAIF) | Deposit on call | continuous | \$ 18,895,436 | \$ 18,895,436 | \$ 18,895,436 | 0.530 | on call | no rating |
| Other Investments | | | | | | | | |
| | Sallie Mae Bank | 5/9/2019 | \$ 245,000 | \$ 245,000 | \$ 245,123 | 2.550 | 05/09/2022 | |
| | Morgan Stanley | 6/6/2019 | \$ 245,000 | \$ 245,000 | \$ 245,468 | 2.550 | 06/06/2022 | |
| | Comenity Capital Bank | 4/28/2019 | \$ 248,000 | \$ 248,000 | \$ 248,356 | 2.650 | 04/28/2023 | |
| | Morgan Stanley | 5/2/2019 | \$ 245,000 | \$ 245,000 | \$ 245,051 | 2.650 | 05/02/2023 | |
| | FFCB | 3/8/2022 | \$ 1,000,000 | \$ 1,000,000 | \$ 982,920 | 1.670 | 03/08/2024 | |
| | FHLB | 4/22/2022 | \$ 1,000,000 | \$ 1,000,000 | \$ 994,360 | 2.400 | 04/22/2024 | |
| | Goldman Sachs | 5/1/2019 | \$ 246,000 | \$ 246,000 | \$ 244,702 | 2.750 | 05/01/2024 | |
| | FHLB | 12/31/2021 | \$ 1,000,000 | \$ 1,000,000 | \$ 962,730 | 1.000 | 09/30/2024 | |
| | FHLB | 3/24/2022 | \$ 1,000,000 | \$ 1,000,000 | \$ 979,700 | 2.000 | 03/24/2025 | |
| | FHLB | 4/22/2022 | \$ 1,000,000 | \$ 1,000,000 | \$ 992,390 | 2.750 | 04/22/2025 | |
| | FHLB | 12/31/2021 | \$ 1,000,000 | \$ 1,000,000 | \$ 951,670 | 1.300 | 09/30/2025 | |
| | FHLB | 3/25/2022 | \$ 1,000,000 | \$ 1,000,000 | \$ 973,990 | 2.600 | 03/25/2027 | |
| BNY Mellon | Treasury Obligations | continuous | \$ 1,428,158 | \$ 1,428,158 | \$ 1,428,158 | 0.210 | on call | 110% collateral |
| Sub-total | | | \$ 9,657,158 | \$ 9,657,158 | \$ 9,494,619 | | | |
| 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 | \$ 0 | 10031 | | | |
| | | Reserve | Fed Treas Obl | \$ 1 | 10032 | | | |
| | | Expense Fund | Fed Treas Obl | \$ 0 | 10035 | | | |
| PARS | OPEB Trust | Trust Cash | Investments | \$ 3,681,218 | 13050 | | | |
| PARS | Retirement Trust | Trust Cash | Investments | \$ 1,288,882 | 13050 | | | |
| Sub-total | Cash with Fiscal Agents | | | \$ 4,970,102 | | | | |
| Total other investments | | | \$ 9,657,158 | \$ 14,627,260 | \$ 9,494,619 | | | |
| TOTAL INVESTMENTS & CASH BALANCES | | | \$ 33,205,723 | \$ 38,175,825 | \$ 33,043,184 | | | |

Outstanding Loans to Department Heads

| | Date of loan | Amount | Amount Remaining | Interest Rate |
|--------------------|--------------|---------|------------------|------------------------|
| Stuart Schillinger | 4/1/2002 | 318,750 | \$ 318,750 | Based on Sales Price |
| Clay Holstine (1) | 7/8/2008 | 300,000 | \$ - | Paid off 12/28/2016 |
| Clay Holstine (2) | 9/10/2008 | 200,000 | \$ 200,000 | Secured by other funds |
| Randy Breault | 10/22/2001 | 320,000 | \$ 5,376 | 1.20% |

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

| | | |
|-------------------|-------|-------|
| Two year Treasury | 2.70% | |
| Weighted Interest | 0.82% | |
| Weighted maturity | 0.71 | 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:

C. Adopt Resolutions to Appoint Committee Members of the Inclusion, Diversity, Equity, and Accountability Committee, and the Complete Streets Safety Committee



CITY COUNCIL AGENDA REPORT

Meeting Date: June 7, 2022

From: Ingrid Padilla, City Clerk

Subject: Adopt Resolutions Appointing Members to the Complete Streets Safety Committee, and the Inclusion, Diversity, Equity and Accountability Committee

COMMUNITY GOAL/RESULT

Community Building

RECOMMENDATION

Adopt Resolutions Appointing Members to the Complete Streets Safety Committee, and the Inclusion, Diversity, Equity and Accountability Committee.

BACKGROUND

Resolutions were drafted to reflect the Council's direction given to the City Clerk at the City Council Special Meetings of June 23, 2022 which is to appoint the following community members to the following Committees for various lengths of terms:

- Gregory J. Strecker, Complete Streets Safety Committee for a term through January 2026
- Christian Allan Bustos, Inclusion, Diversity, Equity and Accountability Committee for an initial term through January 2023
- Miyoko Nida, Inclusion, Diversity, Equity and Accountability Committee for an initial term through January 2023

DISCUSSION

Resolutions are on this agenda for consideration of adoption.

FISCAL IMPACT

None.

ATTACHMENTS

Resolutions

Ingrid Padilla, City Clerk

Clayton Holstine, City Manager

RESOLUTION NO. 2022-XX**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO
A VACANT POSITION ON THE COMPLETE STREETS SAFETY COMMITTEE**

RESOLVED by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Complete Streets Safety Committee for the appointment period July 7, 2022 through January 31, 2026 until their successor is qualified and appointed.

Gregory J. Strecker

Coleen Mackin, Mayor

* * *

ADOPTED at a City Council Meeting held on July 7, 2022, by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas McMorrow, City Attorney

RESOLUTION NO. 2022-XX**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO
A VACANT POSITION ON THE INCLUSION, DIVERSITY, EQUITY AND ACCOUNTABILITY
COMMITTEE**

RESOLVED by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Inclusion, Diversity, Equity and Accountability Committee for the initial appointment period July 7, 2022 through January 31, 2023 with an option to request to renew for an additional 2 year term until their successor is qualified and appointed.

Christian Allan Bustos

Coleen Mackin, Mayor

* * *

ADOPTED at a City Council Meeting held on July 7, 2022, by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas McMorrow, City Attorney

RESOLUTION NO. 2022-XX**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE MAKING AN APPOINTMENT TO
A VACANT POSITION ON THE INCLUSION, DIVERSITY, EQUITY AND ACCOUNTABILITY
COMMITTEE**

RESOLVED by the City Council of the City of Brisbane that the following citizen is hereby appointed as a Member of the Brisbane Inclusion, Diversity, Equity and Accountability Committee for the initial appointment period July 7, 2022 through January 31, 2023 with an option to request to renew for an additional 2 year term until their successor is qualified and appointed.

Miyoko Nida

Coleen Mackin, Mayor

* * *

ADOPTED at a City Council Meeting held on July 7, 2022, by the City of Brisbane City Council by the following vote:

Ayes:

Noes:

Absent:

Abstain:

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas McMorrow, City Attorney

D.

File Attachments for Item:

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



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Clay Holstine, City Manager

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

COMMUNITY GOAL RESULTS

Safe Community

Ensuring Public Meetings Remain Open to the Public

RECOMMENDATION

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

BACKGROUND

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

Notwithstanding the availability of a vaccine and boosters, and the reduction of COVID related cases in the Bay Area and the State, COVID-19 variants (Delta and Omicron) have continued to spread and infect individuals. To address the need to continue to allow public agencies to conduct meetings remotely, in September 2021, AB 361 was enacted. AB 361 amends the Brown Act to permit local legislative bodies to continue to meet remotely until January 1, 2024 provided:

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

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

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

City Council last made the necessary findings on June 16, 2022, but after its meeting on July 7, it will not meet again until September. Commissions and Committees, however, will continue to meet during July. Hence, this item is being placed on the Council's July 7, 2022 agenda for consideration.

DISCUSSION

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

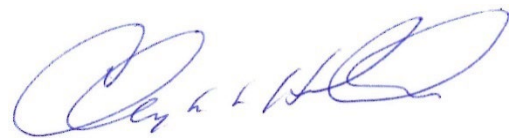
ACTION

Staff recommends that the City Council adopt the attached Resolution making the findings required under AB 361, to require the public meetings of the City Council, Commissions and Committees normally scheduled for City Hall through August 6, 2022 be held remotely or in a hybrid fashion to protect the health and safety of the public.

FISCAL IMPACT

There is no fiscal impact.

Attachment: 1. Resolution 2022-XX



Clay Holstine, City Manager

RESOLUTION NO. 2022-XX

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

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

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

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

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

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

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

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

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

WHEREAS, cases involving COVID 19, including the Delta and Omicron variant continue to exist, the City Council is concerned about and desire to protect the health and safety of individuals who might otherwise attend Council, Committee and Commission meetings;

WHEREAS, the City Council of the City of Brisbane adopted Resolutions in 2021 and in

January, February, March, April, May, and June 2022 declaring the need for the City Council, Committees, and Commissions to continue to meet remotely in order to ensure the health and safety of the public; and

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

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

1. In compliance with AB 361, the City Council has reviewed and makes the following findings:
 - a. The State, San Mateo County and the City have each proclaimed a state of emergency due to the Coronavirus pandemic;
 - b. San Mateo County has issued a public health order requiring that individuals in many public spaces wear masks and socially distance and recommending that individuals in enclosed public spaces wear masks, but the City cannot maintain social distancing for the public, staff, councilmembers, commissioners, and committee members in its meeting spaces; and
 - c. The City Council has considered these circumstances and concludes that the City Council, City Commissions and City Committees must meet remotely due to imminent risks to the health and safety of attendees if the Council, Commissions or Committees were to meet in City facilities.
2. Based on the foregoing, the City Council declares that to protect the safety and health of the public, City Council, Commissions and Committees, meetings will continue to be conducted remotely for the next 30 days in compliance with AB 361.
3. The City Council will revisit the need to conduct public meetings remotely as soon as possible after August 6, 2022.

Coleen Mackin, Mayor


PASSED, APPROVED AND ADOPTED by the Brisbane City Council at a regular meeting on July 7, 2022.

I hereby certify that the foregoing resolution was adopted by the City Council at a regular meeting held on July 7, 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas McMorrow, City Attorney



California

LEGISLATIVE INFORMATION

ENROLLED SEPTEMBER 15, 2021

PASSED IN SENATE SEPTEMBER 10, 2021

PASSED IN ASSEMBLY SEPTEMBER 10, 2021

AMENDED IN SENATE SEPTEMBER 03, 2021

AMENDED IN SENATE AUGUST 30, 2021

AMENDED IN SENATE JULY 06, 2021

AMENDED IN ASSEMBLY MAY 10, 2021

AMENDED IN ASSEMBLY APRIL 06, 2021

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 361

Introduced by Assembly Member Robert Rivas

February 01, 2021

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This bill would make legislative findings to that effect.

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

This bill would make legislative findings to that effect.

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

DIGEST KEY

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

BILL TEXT

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

SECTION 1.

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

89305.6.

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

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

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

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

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

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

(D) Post agendas at all teleconference locations.

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

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

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

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

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

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

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

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

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

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

SEC. 2.

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

11133.

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

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

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

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

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

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

(D) Post agendas at all teleconference locations.

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

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

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

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

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

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

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

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

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

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

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

SEC. 3.

Section 54953 of the Government Code is amended to read:

54953.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Any of the following circumstances exist:

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

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

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

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

SEC. 3.1.

Section 54953 of the Government Code is amended to read:

54953.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Any of the following circumstances exist:

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

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

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

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

SEC. 4.

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

54953.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 4.1.

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

54953.

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 5.

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

SEC. 6.

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

SEC. 7.

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

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

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

SEC. 8.

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

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

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

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

SEC. 9.

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

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

File Attachments for Item:

E. Adopt Resolution Establishing the Business License Tax for Liquid Storage Facilities for 2022 as to Kinder Morgan/SFPP



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Carolina Yuen

Subject: Resolution Establishing the 2022 Business License Tax for Liquid Storage Facilities as to Kinder Morgan/SFPP

Community Goal/Result

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

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

Purpose

To establish for calendar year 2022 the amount of the business license tax charged to Kinder Morgan/SFPP for its liquid storage facilities in Brisbane under Section 5.20.011 of the Brisbane Municipal Code. The City receives revenues from diverse sources in order to provide the necessary high-quality services the community expects.

Recommendation

Adopt the attached resolution imposing a business license tax in the amount of \$324,327 as to Kinder Morgan/SFPP for calendar year 2022.

Background

At the general election in November 2013, Brisbane voters approved an annual business license tax on persons engaged in the business of operating, leasing, supplying or providing a liquid storage facility in the City of Brisbane. The ballot measure added Section 5.20.011 to the Brisbane Municipal Code, allowing the City to impose up to a maximum business license tax of \$115.28 per year for each 1000 cubic feet of liquid storage capacity.

In 2014 and 2015, the City Council imposed by resolution a business license tax of \$38.91 for each 1000 cubic feet of storage capacity. In 2016 and 2017, the Council imposed by resolution a business license tax of \$115.28 for each 1000 cubic feet of storage capacity. As to Kinder Morgan/SFPP, LP, the owner of the only liquid storage facility currently in Brisbane, this rate translated to a tax of:

| | |
|-------------------|-------------------|
| \$135,000 in 2014 | \$135,000 in 2015 |
| \$400,000 in 2016 | \$400,000 in 2017 |

The company paid the for 2014, 2015, and 2016 under protest. The company did not pay the license tax for 2017 but filed a civil suit against the City in the San Mateo County Superior Court seeking reimbursement for the taxes paid in 2014, 2015, and 2016.

The litigation was settled in 2017. Under the terms of the settlement agreement, the City and Kinder Morgan/SFPP agreed that for 2017, the liquid fuel storage tax rate would be set by the Brisbane City Council at an amount that is equivalent to 3.5 cents per barrel of liquid fuel transported through the Brisbane Terminal for delivery at the terminal (“over the rack”), that for 2018, the tax rate would be equivalent to 4 and 1/3 cents per barrel and for 2019, the tax rate would be 5 and 1/3 centers per barrel. Accordingly, based on the number of barrels “over the rack,” Kinder Morgan/SFPP paid:

\$261,093 for 2017

\$323,332 for 2018

\$356,458 for 2019

The settlement agreement also provided that at the November 2019 municipal election, Council would place before the voters a revision to the then current business license tax concerning liquid storage facilities that would provide that the tax rate will be up to 6 cents per barrel, with the exact rate to be determined annually by the Council. If the voters so approve, that liquid storage tax formula would then be applied for subsequent years, but in no event would the tax be greater than \$400,000. The voters approved the revision to the business license tax as described.

Since 2020, the City was able to collect based on the revised rate. Kinder Morgan/SFPP reported the number of over the rack barrels and accordingly paid as follows:

2020 – \$400,000 maximum allowed based on 8,326,342 barrels from 2019

2021 – \$288,586 based on 4,809,771 barrels from 2020

Discussion

Kinder Morgan/SFPP has provided the City with its bill of lading (“BOL”) reports for 2021. These show that in 2021 there were 5,405,448 barrels “over the rack.” This number is more than the previous year reflecting a recovery from the pandemic year as anticipated, but not yet to pre-pandemic levels. The ordinance provides the tax rate may be up to 6 cents per barrel, with a cap of \$400,000. Adoption of the attached resolution will set the tax rate at 6 cents per barrel and impose for 2022, a business license tax for Kinder Morgan/SFPP at \$324,327.

Fiscal Impact

As to Kinder Morgan/SFPP, Council’s adoption of the attached resolution will result in a business license tax of \$324,327 for calendar year 2022.

Measure of Success

Kinder Morgan/SFPP to make payment of \$324,327 to the City for 2022.

Attachment

Resolution Establishing the Business License Tax to Kinder Morgan/SFPP LLC for Calendar Year 2022

Carolina Yuen

Carolina Yuen, Finance Director

Clayton L. Holstine

Clay Holstine, City Manager

RESOLUTION NO. 2022-_____**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE
ESTABLISHING THE BUSINESS LICENSE TAX CHARGED TO KINDER
MORGAN/SFPP LLC FOR CALENDAR YEAR 2022 UNDER SECTION
5.20.011 OF THE BRISBANE MUNICIPAL CODE**

WHEREAS, Section 5.20.011 of the Brisbane Municipal Code imposes an annual business license tax on persons engaged in the business of operating, leasing, supplying or providing a liquid storage facility in the City; and

WHEREAS, Kinder Morgan/SFFPP LLC, a business in Brisbane engaged in the business of operating, leasing, supplying or providing a liquid storage facility, and the City have agreed that for calendar year 2022 the liquid fuel storage tax will be set by the City Council based on a formula in an amount of six cents per barrel of liquid fuel transported throughout the Brisbane Terminal for delivery at the terminal (“over the rack”) during calendar year 2021; and

WHEREAS, Kinder Morgan/SFPP LLC provided data to the City indicating that the number of barrels “over the rack” for calendar year 2021 was 5,405,448; and

WHEREAS, the Section 5.20.011 provides the City Council may set a tax rate for these facilities up to six cents per barrel, so long as the overall tax amount does not exceed \$400,000.

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

1. For 2022, the City Council sets the business license tax rate for the Kinder Morgan/SFPP liquid storage facility in Brisbane at 6.00 cents per barrel and the annual business license tax charged to Kinder Morgan/SFPP LLC for 2022 shall be \$ 324,327.

2. Payment of the business license taxes for 2022 shall be due and payable in full by July 31, 2022.

Coleen Mackin, Mayor

I hereby certify that the foregoing Resolution No. 2022-_____ was duly and regularly adopted at a regular meeting of the Brisbane City Council on July 7, 2022 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ingrid Padilla, City Clerk

File Attachments for Item:

F. Adoption of a Revised Conflict of Interest Code to Include the Assistant City Manager, the Communications Manager, and the Assistant Fire Marshal and Deleting Park and Recreation Commission



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Ingrid Padilla, City Clerk

Subject: Adoption of a Revised Conflict of Interest Code to Include the Assistant City Manager, the Communications Manager, and the Assistant Fire Marshal and Deleting Park and Recreation Commission

Community Goal/Result

Community Building - Brisbane will honor the rich diversity of our city (residents, organizations, businesses) through community engagement and participation

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

Recommendation:

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

Background

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

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

On June 2, 2022, staff recommended that the City Council revise the City's Conflict of Interest Code by adding the recently created classification of Communications Manager as a listed position and consider revising the Code to add three of the Council created Committees.

After discussion, Council concluded that adding the Committees to the Conflict of Interest Code was not warranted and, moreover, that the Park and Recreation Commission should be deleted from the list. Council agreed that the Communications Manager should be added and it was brought to Council's attention that two other recently created classifications—Assistant City Manager and the Assistant Fire Marshal—should also be added to the list. Staff is now returning this item to the City Council for final action.

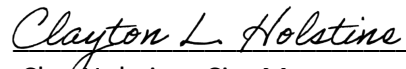
Discussion

Attached is a resolution adopting a revised Conflict of Interest Code for designated positions including the Assistant City Manager, Communications Manager, and the Assistant Fire Marshal. The Park and Recreation Commission has been deleted from the list and those members will no longer be required to file Form 700 nor will the conflict of interest rules and regulations apply to that Commission.

Attachment: Resolution adopting a revised Conflict of Interest Code



Ingrid Padilla, City Clerk



Clay Holstine, City Manager

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

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

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

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

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

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

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

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

Section 2. Employees in the designated position shall file with the City Clerk, the City's filing officer, statements of economic interests.

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

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

Coleen Mackin, Mayor

I hereby certify that the foregoing Resolution No. 2022-XX was duly and regularly adopted at a regular meeting of the Brisbane City Council on July 7, 2022.

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas McMorrow, City Attorney

APPENDIX A

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

File Attachments for Item:

G. Adoption of Ordinance to Impose a Business License Tax on Hotels and Resolution Amending the Ballot Question for the Measure/Ordinance to be Submitted to the Voters Imposing a Business License Tax on Hotels



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Michael Roush, Legal Counsel
Clayton Holstine, City Manager

Subject: Adoption of Ordinance to Impose a Business License Tax on Hotels and Resolution Amending the Ballot Question for the Measure/Ordinance to be Submitted to the Voters Imposing a Business License Tax on Hotels

COMMUNITY GOAL/RESULT

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

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

RECOMMENDATION

Adopt an Ordinance, to take effect immediately, to impose a business license tax on hotels, as defined, subject to voter approval at the November 8, 2022 election.

Re-adopt Resolution No. 2022-57 with a revised ballot question.

BACKGROUND

At the City Council's meeting on June 23, 2022, it adopted a resolution calling a special election to submit to the voters a ballot measure concerning a proposed ordinance to impose a business license tax on hotels as that term is defined in the ordinance. In that resolution, the full text of the ordinance was set forth and Section 6 of the Resolution provides:

"If a majority of the voters voting upon the ballot measure vote in its favor, the proposed ordinance shall become a valid and binding ordinance of the City of Brisbane. The ordinance shall be considered as adopted on the date that the vote is declared by the City Council and shall go into effect on that date or such other date as may be specified by the City Council."

At the meeting, however, Council did not adopt the ordinance itself.

In 2020, there was a change in the Elections Code that now provides that when a proposed measure imposes a tax or raises a rate of tax, the ballot shall include in the statement of the

measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.

The ballot question in the resolution that the City Council adopted on June 23, 2022 concerning the proposed business license tax on hotels set forth the rate of the tax to be levied but not the amount of money to be raised annually or the duration of the tax. The ballot question therefore needs to be revised.

This revision does not change the text of the Ordinance itself or other portions of the Resolution.

DISCUSSION

Although the language in the resolution does provide the ordinance would be considered adopted when the City Council declares the vote (assuming there was majority approval), in an abundance of caution, staff recommends Council adopt the attached ordinance which tracks the ordinance in the resolution and the ordinance that the voters will consider at the November 2022 election. As mentioned, the ordinance would not go into effect unless a majority of the voters approve it.

The ordinance may be adopted on July 7 (without a first reading) because ordinances relating to taxes for the usual and current expenses of the City and/or relating to elections take effect immediately. Government Code, section 36937 (a) and (d).

The ballot question is revised to read:

To pay for general municipal expenses, shall an ordinance be adopted imposing on hotels and other places designed for overnight stays by guests a business license tax of \$2.50 per room for each day such room is rented, generating approximately \$250,000 annually until ended by the voters?

Fiscal Impact


There will be no fiscal impact in adopting this ordinance but the ordinance will be submitted to the voters in November 2022. Since the City will have an election for Councilmembers in November 2022, there will be an additional cost of approximately \$5,000 (based on prior years' experience) to place the measure on the ballot. The measure, if approved by the voters, would impose a business license tax on hotels and staff estimates that the City will receive \$250,000 annually from such tax.

Environmental Review

Adoption of the attached ordinance is not subject to environmental review under the California Environmental Quality Act (CEQA). Imposing the business license tax on hotels is exempt from CEQA under CEQA Guidelines, Section 15378 as it does not constitute a project within the meaning of CEQA because it does not have a potential for resulting in a direct physical change in the environment nor a reasonably foreseeable indirect physical change in the environment. As a separate and independent basis, this action is also exempt under CEQA Guidelines Section 15061 (b)(3) (no significant environmental impact).

Attachment: Ordinance Imposing a Business License Tax on Hotels

Resolution 2022-57 with revised ballot question



Michael Roush, Legal Counsel,



Clay Holstine, City Manager

ORDINANCE NO. 2022-XX

AN ORDINANCE OF THE CITY OF BRISBANE TO ADD
SECTION 5.20.035 TO THE BRISBANE MUNICIPAL CODE
TO IMPOSE A BUSINESS LICENSE TAX ON HOTELS AND
OTHER PLACES DESIGNED FOR OCCUPANCY BY
TRANSIENTS"

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

Section 1. Section 5.20.035 is added to the Brisbane Municipal Code to read as follows:

“Section 5.20.035 Hotels and Other Places Designed for Occupancy by Transients

- A. Definitions. The definitions used in this Section 5.20.035 shall be the same as the definitions in Section 3.24.020 of the Brisbane Municipal Code, as said Section may be amended from time to time.
- B. Every Operator shall pay a daily business license tax of two dollars and fifty cents (\$2.50) for every room in a Hotel for which a Transient has paid Rent.
- C. The business license tax under this Section 5.20.035 shall be paid in four installments, due no later than January 1, April 1, July 1 and October 1 of each year.
- D. Beginning January 1, 2024 and on January 1 of each subsequent year (“the adjustment date”), the two dollars and fifty cents (\$2.50) referred to in subsection B of this section may be increased by multiplying the two dollars and fifty cents (\$2.50) by a fraction, the numerator of which shall be the Consumer Price Index published by the United States Department of Labor, Bureau 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 denominator of which shall be the CPI published nearest to the date the business license tax was set at two dollars and fifty cents (\$2.50).

Section 2. This Ordinance relates to taxes for the usual and current expenses of the City of Brisbane and/or relating to elections and shall take effect immediately, but it shall not become operative until approved by a majority of the voters voting at the general municipal election to be held November 8, 2022.

Section 3. The City Clerk shall publish this Ordinance according to law.

Coleen Mackin, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas R. McMorrow, City Attorney

--oOo--

I hereby certify that foregoing Ordinance No. _____ was adopted by the Brisbane City Council at a regular meeting on July 7, 2022 by the following vote:

AYES: Councilmembers:

NOES:

ABSENT:

Ingrid Padilla, City Clerk

RESOLUTION NO. 2022-57

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE, CALIFORNIA CALLING A SPECIAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE GENERAL ELECTION ON NOVEMBER 8, 2022, FOR SUBMISSION TO THE VOTERS A BALLOT MEASURE CONCERNING A PROPOSED ORDINANCE TO IMPOSE/INCREASE A BUSINESS LICENSE TAX ON HOTELS AND OTHER PLACES DESIGNED FOR OCCUPANCY BY TRANSIENTS

WHEREAS, the City has established a business license tax, as set forth in Chapter 5.20 of the Brisbane Municipal Code, that imposes a gross receipts business license tax on any person within the City engaged in conducting business in the City, including the operation of hotels and other places designed for occupancy by transients; and

WHEREAS, the City Council desires to place a ballot measure before the voters at the November 8, 2022 election to impose/increase a business license tax specifically on hotels and other places designed for occupancy by transients in order to provide additional revenue for general municipal expenses; and

WHEREAS, the City's business license tax is a general tax and any increase thereof is subject to approval of a majority of the voters voting upon the proposed tax or tax increase at a regularly-scheduled election at which members of the Brisbane City Council will be elected; and

WHEREAS, November 8, 2022 is the next regularly scheduled election at which members of the Brisbane City Council will be elected and it is desirable to consolidate this special election with that general election.

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

SECTION 1. ELECTION CALLED

The City Council of the City of Brisbane hereby calls a special municipal election, to be consolidated with the general election on Tuesday, November 8, 2022, at which there shall be submitted for approval by the voters of the City of Brisbane a proposed ordinance amending Chapter 5.20 of the Brisbane Municipal Code by adding Section 5.20.035 to the Brisbane Municipal Code to impose and/or increase a business license tax on hotels and other places designed for occupancy by transients.

SECTION 2. FULL TEXT OF PROPOSED ORDINANCE

The complete text of the propose ordinance shall read as follows:

“AN ORDINANCE OF THE CITY OF BRISBANE TO ADD SECTION 5.20.035 TO THE BRISBANE MUNICIPAL CODE TO IMPOSE A BUSINESS LICENSE TAX ON HOTELS AND OTHER PLACES DESIGNED FOR OCCUPANCY BY TRANSIENTS”

The People of the City of Brisbane hereby ordain as follows:

Section 1. Section 5.20.035 is added to the Brisbane Municipal Code to read as follows:

“Section 5.20.035 Hotels and Other Places Designed for Occupancy by Transients

- A. Definitions. The definitions used in this Section 5.20.035 shall be the same as the definitions in Section 3.24.020 of the Brisbane Municipal Code, as said Section may be amended from time to time.
- B. Every Operator shall pay a daily business license tax of two dollars and fifty cents (\$2.50) for every room in a Hotel for which a Transient has paid Rent.
- C. The business license tax under this Section 5.20.035 shall be paid in four installments, due no later than January 1, April 1, July 1 and October 1 of each year.
- D. Beginning January 1, 2024 and on January 1 of each subsequent year (“the adjustment date”), the two dollars and fifty cents (\$2.50) referred to in subsection B of this section may be increased by multiplying the two dollars and fifty cents (\$2.50) by a fraction, the numerator of which shall be the Consumer Price Index published by the United States Department of Labor, Bureau 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 denominator of which shall be the CPI published nearest to the date the business license tax was set at two dollars and fifty cents (\$2.50).

SECTION 3. TEXT OF BALLOT MEASURE

The proposed ordinance to impose and/or increase the business license tax charged to hotels shall be presented for approval by the voters as the following ballot measure:

| | | |
|--|-----|--|
| To pay for general municipal expenses, shall an ordinance be adopted imposing on hotels and other places designed for overnight stays by guests a business license tax of \$2.50 per room for each day such room is rented, generating | YES | |
| | NO | |

| | | |
|---|--|--|
| approximately \$250,000 annually until ended by the voters? | | |
|---|--|--|

The ballot measure shall be designated on the ballot by a letter printed on the left margin of the square containing the description of the measure, as provided in California Election Code Section 13116.

SECTION 4. REQUEST TO CONSOLIDATE, CONDUCT ELECTION AND CANVASS RETURNS

The Board of Supervisors of the County of San Mateo is hereby requested to authorize the County Clerk;/Registrar of Voters to render all services necessary and proper for the conduct of the special municipal election called by the Resolution. Pursuant to California Elections Code Section 10403, the City Council hereby requests that the San Mateo County Board of Supervisors consolidate that election with the election to be held on November 8, 2022, and order the special municipal election to be conducted by the Registrar of Voters. The San Mateo County Elections Department is authorized to canvass the returns of the special election.

The City Clerk's Office shall submit a certified copy of this Resolution to County Elections Division and the City Clerk's Office is authorized, instructed and directed to work with the County Elections Division as needed in order to properly and lawfully conduct the election. The ballots to be used in the election shall be in the form and content as required by law. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 5: PUBLICATION OF MEASURE

The City Clerk's Office is directed to cause notice of the measure to be published once in accordance with Section 12111 of the State Elections Code.

SECTION 6: REQUIRED VOTER APPROVAL AND EFFECTIVE DATE

If a majority of the voters voting upon the ballot measure vote in its favor, the proposed ordinance shall become a valid and binding ordinance of the City of Brisbane. The ordinance shall be considered as adopted on the date that the vote is declared by the City Council and shall go into effect on that date or such other date as may be specified by the City Council.

SECTION 7. PROCEDURES FOR ARGUMENTS AND REBUTTALS

The City Council authorizes the following members to draft and then file written arguments not exceeding 300 words in length for or against the measure described above:

Argument In Favor and Rebuttal: Subcommittee of Mayor Mackin and Mayor Pro Tem Lentz

Argument Against and Rebuttal: Subcommittee of Mayor Mackin and Mayor Pro Tem Lentz

If not all of the members of the City Council have been authorized to draft the written arguments for or against the measure, or the rebuttal, other Council members may sign such argument/rebuttal. If not all City Councilmembers have signed the argument/rebuttal, those Councilmembers that have drafted the argument/rebuttal may choose any individual voter who is eligible to vote on the measure or bona fide association of citizens or combination of voters and associations to sign the argument/rebuttal. Any individual voter who is eligible to vote on the measure or bona fide association of citizens or combination of voters and associations may also submit a written argument for or against the measure.

Such argument, whether For or Against, shall not exceed 300 words and be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers, in accordance with Article 4, Chapter 3, Division 9 of the Election Code of the State of California.

Primary arguments For or Against the measure must be submitted to the City Clerk by 12:00 p.m. on August 19, 2022 and shall not exceed 300 words. The Rebuttal arguments must be submitted to the City Clerk by 12:00 p.m. on August 29, 2022 and shall not exceed 250 words.

SECTION 8: IMPARTIAL ANALYSIS

Pursuant to Elections Code Section 9280, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The analysis shall be printed preceding the arguments For and Against the measure. The analysis shall not exceed 500 words in length. The impartial analysis shall be filed by the date set by this resolution for the filing of primary arguments.

SECTION 9: FULL TEXT OF ORDINANCE

The full text of the Ordinance shall be printed in the Voter Information Pamphlet.

SECTION 10: CONDUCT OF ELECTION

The election on said ballot measure shall be consolidated with the general municipal election to be held on November 8, 2022.

SECTION 11. CEQA

The approval of this Resolution is exempt from the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., "CEQA," and 14 Cal Code Reg. Sections 15000 et seq., "CEQA Guidelines"). The tax to submitted to the voters is a general tax that can be used for any legitimate governmental purpose; it is not a commitment to any particular action or actions. As such, under CEQA Guidelines Section

15378(b)(4) the tax is not a project within the meaning of CEQA because it creates a government funding mechanism that does not involve any commitment to any specific project that may result in a potentially significant impact on the environment. If revenue from the tax were used for a purpose that would have such effect, the City would undertake the required CEQA review for that particular project. Therefore, Guidelines Section 15060 review under CEQA is not required.

SECTION 12: PASSAGE OF THIS RESOLUTION

This business license tax is a general tax requiring the approval of a majority of qualified electors casting votes. This Resolution must be approved by a two-thirds vote of the Council.

Coleen Mackin, Mayor

I hereby certify that the foregoing Resolution No. 2022-57 was duly and regularly adopted at the meeting of the Brisbane City Council on ____, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ingrid Padilla, City Clerk

File Attachments for Item:

H. Adopt an Ordinance Adding a New Chapter 3.22 to the Brisbane Municipal Code Imposing a Transactions and Use Tax to be Administered by the California Department of Tax and Fee Administration and Resolution Amending the Ballot Question for the Ordinance to be Submitted to the Voters levying a half cent Transaction and Use Tax



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Michael Roush, Legal Counsel
Clayton Holstine, City Manager

Subject: Ordinance Adding a New Chapter 3.22 to the Brisbane Municipal Code Imposing a Transactions and Use Tax to be Administered by the California Department of Tax and Fee Administration and Resolution Amending the Ballot Question for the Ordinance to be Submitted to the Voters levying a half cent Transaction and Use Tax

COMMUNITY GOAL/RESULT

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

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

RECOMMENDATION

Adopt by a 2/3 vote the Ordinance and re-adopt Resolution 2022-58 with a revised ballot question.

BACKGROUND

On June 23, 2022 Council introduced an ordinance adding a new Chapter 3.22 to the Brisbane Municipal Code imposing a Transaction and Use Tax (commonly known as a sales tax) to be administered by the California Department of Tax and Fee Administration. Council also adopted a resolution calling for the ordinance to be submitted to the voters for consideration at the November 8, 2022 election. The resolution, in part, set forth a ballot question to be submitted to the voters.

In 2020, there was a change in the Elections Code that now provides that when a proposed measure imposes a tax or raises a rate of tax, the ballot shall include in the statement of the measure to be voted on the amount of money to be raised annually and the rate and duration of the tax to be levied.

The ballot question in the resolution that the City Council adopted on June 23, 2022 concerning the proposed transaction and use tax set forth the rate of the tax to be levied (1/2 cent) and

the duration of the tax (until ended by the voters) , but not the amount of money to be raised annually.

DISCUSSION

Council should now adopt the ordinance adding Chapter 3.22 to the Brisbane Municipal Code, subject to voter approval.

The ballot question should be revised as follows:

Shall the City of Brisbane's measure to fund City services/facilities, such as neighborhood police patrols, fire prevention services, urban wildfire protection, crime suppression/investigation, pothole/street repair, parks and other city facilities, and to support other city services, by levying a ½ cent sales tax, generating approximately \$2,000,000 annually until ended by the voters, be adopted?

This revision does not change the text of the Ordinance itself nor other portions of the Resolution.

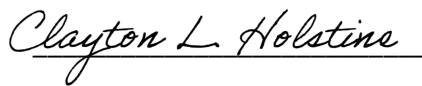
From the City Council meeting of June 23, 2022, staff also wanted to confirm the correct district rate percentage. The proposed tax in this ordinance is a “transactions and use tax” which most people would refer to as a “sales” tax. Technically, it is a “district” tax according to the California Department of Tax and Fee Administration (CDTFA). Transactions and use taxes have similarities and differences when compared to sales tax regulations in California. The combined district rate cannot exceed 9.875%. This limits the combined sales, transactions and use tax rate to 0.5%. A local agency may form more than one district but the total tax levy, including the rate of any countywide districts, must not exceed the 0.5% limit unless special legislation has been enacted to allow a higher limit.

Lastly, Staff deleted a few lines in the introductory words of the Ordinance to make it more concise and applicable to Brisbane.

Attachments Ordinance Adding Chapter 3.22 to the Brisbane Municipal Code
Resolution 2022-58, with a revised ballot question



Michael Roush, Legal Counsel



Clayton Holstine, City Manager

ORDINANCE NO. _____**AN ORDINANCE OF THE CITY OF BRISBANE ADDING A NEW CHAPTER 3.22 TO THE BRISBANE MUNICIPAL CODE IMPOSING A TRANSACTIONS AND USE TAX TO BE ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION**

Section 1. The City Council of the City of Brisbane hereby makes the following findings in connection with the adoption of this ordinance:

WHEREAS, a local, Brisbane-approved funding measure would provide local control over local funds, for local needs; and

WHEREAS, voter-approved local funding will help to address priorities in the City such as increasing street repair and maintenance, pothole, and hazard repair programs, maintaining police patrols, maintaining and attracting local businesses, upgrading the City's parks, playgrounds, and play structures for children and youth; and

WHEREAS, voter-approved funding will provide funds for Brisbane that by law cannot be taken by Sacramento.

Section 2. The City Council of the City of Brisbane ordains that a new Chapter 3.22 shall be added to Title 3, Revenue and Finance, subject to voter approval as set forth herein, as follows:

Chapter 3.22 Transactions and Use Tax**Section 3.22.010 Title**

This ordinance shall be known as the City of Brisbane Transactions and Use Tax Ordinance. The City of Brisbane hereinafter shall be called "City." This ordinance shall be applicable in the incorporated territory of the City.

Section 3.22.020 Operative Date

"Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being as set forth below.

Section 3.22.030 Purpose

This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285.9 of Part 1.7 of Division 2 which authorizes the City to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the California Department of Tax

and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

Section 3.22.040 Contract with State

Prior to the operative date, the City shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the City shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

Section 3.22.050 Transactions Tax Rate

For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated territory of the City at the rate of one half of one percent (0.50%) of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

Section 3.22.060 Place of Sale

For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or the retailer's agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

Section 3.22.070 Use Tax Rate

An excise tax is hereby imposed on the storage, use or other consumption in the City of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of one half of one percent (0.50%) of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

Section 3.22.080 Adoption of Provisions of State Law

Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

Section 3.22.090 Limitations on Adoption of State Law and Collection of Use Taxes

In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this City shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this City or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "City" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

1. A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

Section 3.22.100 Permit not required

If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

Section 3.22.110 Exemptions and Exclusions

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons

or property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the City which is shipped to a point outside the City, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the City shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-City address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-City and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this City of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal

property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the City shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the City or participates within the City in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the City or through any representative, agent, canvasser, solicitor, subsidiary, or person in the City under the authority of the retailer.

7. "A retailer engaged in business in the City" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the City.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a district imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

Section 3.22.120 Amendment

A. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

B. The City Council may amend this chapter without voter approval only to make minor technical adjustments consistent with the purposes set forth in this ordinance and applicable laws or as necessary to comply with the law.

Section 3.22.130 Enjoining Collection Forbidden

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the City, or against any officer of the State or the City, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

Section 3.22.140 Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 3.22.150 Use of Proceeds

The proceeds from the transactions and use tax imposed by this ordinance shall be deposited in the general fund of the City and available for any lawful governmental purpose.

Section 3.22.160 Fiscal Accountability Provisions

The amount generated by this new general purpose revenue source shall be included in the annual audit of the City's financial operations by an independent certified public accountant.

Section 3.22.170 Termination

The authority to levy the tax imposed by this Ordinance shall continue until ended by the voters.

Section 3. This Ordinance relates to the levying and collecting of the City transactions and use taxes and shall take effect immediately, but it shall not become operative until approved by a majority of the voters voting at the general municipal election to be held November 8, 2022.

Section 4. The City Clerk shall publish this Ordinance according to law.

Coleen Mackin, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:



Thomas R. McMorrow, City Attorney

--oOo--

I hereby certify that foregoing Ordinance No. _____ was introduced at a special meeting of the Brisbane City Council on _____, 2022, and adopted by the Brisbane City Council at a regular meeting on _____, 2022 by the following vote:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

RESOLUTION NO. 2022-58**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE SUBMITTING A
TRANSACTIONS AND USE TAX MEASURE TO THE VOTERS AT THE NOVEMBER 8, 2022
GENERAL MUNICIPAL ELECTION AND TAKING CERTAIN RELATED ACTIONS**

WHEREAS, a local, Brisbane-approved funding measure would provide local control over local funds, for local needs; and

WHEREAS, voter-approved local funding will help to address priorities such as increasing street repair and maintenance, pothole, and hazard repair programs, maintaining neighborhood police patrols, maintaining and attracting local businesses, upgrading Brisbane's parks, playgrounds, and play structures for children and youth; and

WHEREAS, voter-approved funding will provide funds for Brisbane that by law cannot be taken by Sacramento; and

WHEREAS, the City Council has, by separate resolution, called a general municipal election for Tuesday, November 8, 2022 (the "Election"); and

WHEREAS, the City Council has requested that the Election be consolidated with the statewide election held on that date, and the City Council has requested the assistance of San Mateo County in the conduct of the Election; and

WHEREAS, Revenue & Taxation Code Section 7285.9 authorizes the City Council to levy a transactions and use tax for general purposes if the ordinance proposing that tax is approved by a two-thirds vote of all members of the City Council and the tax is approved by a majority vote of the qualified voters of the city voting in an election on the issue; and

WHEREAS, the City Council has adopted an Ordinance, entitled, "An Ordinance of the City of Brisbane Adding a new Chapter 3.22 to the Brisbane Municipal Code Imposing a Transactions and Use Tax To Be Administered by the California Department of Tax and Fee Administration" (the "Tax Ordinance"); and

WHEREAS, the City Council desires to submit the Tax Ordinance to electorate at the Election; and

WHEREAS, arguments for and against said measure, as well as rebuttals, may be filed in accordance with applicable provisions of the law pursuant to Elections Code and the text of the measure shall be printed on the ballot in the voter information portion of the sample ballot.

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

1. The City Council hereby orders, pursuant to Section 9222 of the Elections Code, that the Tax Ordinance, which is attached hereto as Exhibit "A" and incorporated herein by reference, be submitted to the voters at the Election. Adoption of the ordinance requires a majority vote of those voting on the matter.
2. The question submitted shall appear on the ballot as follows:

| | | |
|---|-----|--|
| Shall the City of Brisbane's measure to fund city services/facilities, such as neighborhood police patrols, fire prevention services, urban wildfire protection, crime suppression/investigation, pothole/street repair, parks and other city facilities, and to support other city services, by levying a ½¢ sales tax, generating approximately \$2,000,000 annually until ended by voters, be adopted? | YES | |
| | NO | |

3. The City Clerk is instructed to transmit the Tax Ordinance to the City Attorney along with a request that an impartial analysis be prepared for inclusion in the Voters' Pamphlet materials. Pursuant to Elections Code section 9280, the City Attorney shall prepare an impartial analysis, which shall be filed with the City Clerk's office no later than August 29, 2022 by 12:00 P.M.
4. The City Council authorizes a Subcommittee of Mayor Mackin and Mayor Pro Tem Lentz to draft and then file written arguments not exceeding 300 words in length for or against the measure described above.
5. Arguments for and against the Measure may be submitted to the City Clerk's office, until 12 p.m. on August 19, 2022. Rebuttal arguments will be permitted and must be received in the City Clerk's office by 12:00 pm on August 29, 2022.
6. That in all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections.
7. Notice of the time and place of holding of the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election in the time, form, and manner as required by law.
8. Pursuant to Section 10400 et seq. of the Elections Code, the Board of Supervisors of San Mateo County is requested to consolidate the election on this ballot measure with other elections held on the same day in the County.
9. The Board of Supervisors is authorized to canvass the returns of the Election pursuant to Section 10411 of the Elections Code.
10. Pursuant to Section 10002 of the Elections Code, the Board of Supervisors is requested to permit the County Clerk to render all services specified by Section 10418 of the Elections Code relating to the election, for which services the City agrees to reimburse the County, in accordance with current County pro-rations and allocation procedures.
11. The City Clerk shall file a certified copy of this Resolution with the County Clerk.
12. The City Clerk is hereby authorized to do all things necessary and proper to implement the provisions of this Resolution, including certifying the passage and adoption of this Resolution and entering it into the book of original Resolutions.

Coleen Mackin, Mayor

I hereby certify that foregoing Resolution No. 2022-58 was adopted by the Brisbane City Council at a special meeting on _____, 2022 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Ingrid Padilla
City Clerk

Approved as to form:



Thomas R. McMorrow, City Attorney

File Attachments for Item:

J. Consideration of Entering into Energy Service Contract Pursuant to the Provisions of the California Government Code Section 4217.10, Et Seq. for the City of Brisbane Community Pool Electrification Project



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Karen Kinser, Deputy Director of Public Works

Subject: Energy Service Contract with Willdan Energy Solutions

Community Goal/Result - Ecological Sustainability

Purpose

To complete the process necessary for entering into a sole source energy service contract with Willdan Energy Solutions.

Recommendation

1. Conduct the public hearing required by California Government Code sections 4217.10 et seq. (see Attachment 1 for procedural steps), and if appropriate, adopt a Resolution "Approving an Energy Service Contract with Willdan Energy Solutions."
2. Transfer \$183,394 from the General Fund to pay the city's share of project funds.

Background

City sustainability staff participated in a Zero Net Energy (ZNE) Study through BayREN (Bay Area Renewable Energy Network) in 2018 for the Community Pool, as it represents one of the City's largest uses of fossil fuels. The study indicated that pool heating needs could primarily be met with electric heat pump water heaters with an ultimately reduced energy cost.

As the existing gas boiler is near the end of its useful life, Parks & Recreation and Public Works Maintenance staff worked cooperatively on its replacement. Sustainability staff contacted San Mateo County Energy Watch and their partner Willdan Energy Solutions (WES), implementer of the PG&E Government and K-12 program (GK12 Program), for technical assistance.

The team scoped the project, which is described in Attachment 2, Exhibit A. PG&E offered the City a sizeable GK12 Energy Efficiency program incentive and On-Bill Financing (OBF) for the majority of the project costs. Note that California Public Utility Commission's Energy Division has final approval of the project. Staff is bringing this to Council in advance of that anticipated approval to accommodate Council's summer recess.

Due to WES's unique role as the sole implementer of the GK12 Program, its integral role in developing the project, and its ability to provide turnkey design-build services, staff recommends utilizing CA Government Code 4217 to award a contract with WES to undertake the project. In accordance with state law, notice of the public hearing was posted at City Hall, Brisbane Community Center, Brisbane Public Library and Mission Blue Center on June 23, 2022.

This Design-Build Contract with WES is structured in two parts, since WES will not only design the project but thereafter construct the project as the general contractor, after the design is approved. The design phase will commence following Council and CPUC approval. At or near the completion of the design phase, staff and WES will negotiate a Design-Build Amendment which will incorporate detailed specifications and final costs. No further Council action will be required so long as the cost of the design and the construction does not exceed \$718,393.

Discussion

Utilizing electric heat pump water heaters for a large outdoor pool is a relatively new endeavor; while several other agencies in the area are also embarking on similar projects, none to staff's knowledge have been completed in the state. Accordingly, the project team has worked through a variety of challenges to move the project forward, including:

- Receiving special permission to utilize OBF for a fuel-conversion project.
- Sizing the equipment to keep the pool at the required temperature (80 degrees) during the coldest times of the year. In the short term, the existing gas boiler will remain as backup. Longer term, City staff hopes to fully electrify the facility, which may require further electrical upgrades. In the interim, staff will evaluate the heat pump units' operating capabilities and backup needs, especially as climate change results in overall warmer temperatures.
- Managing the noise levels when three heat pump units are running simultaneously through strategic placement of the units to keep levels at nearby residences below allowable levels per City noise ordinance.

Fiscal Impact

The total project cost is estimated at \$653,393; the final cost will be detailed in a Design-Build Amendment. Funding sources include:

- \$285,000 incentive from PG&E
- \$249,999 OBF loan to be paid back to PG&E over 10 years on PG&E bills to the City
- \$118,394 from City's General Fund

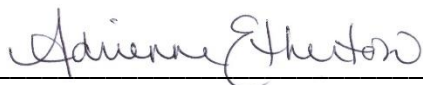
The recommended transfer from the General Fund is a total of \$183,394, which includes a 10% contingency of the total project cost (i.e., \$65,000), in the event that final costs in the Design Build Amendment are higher than expected. The completed project will provide estimated energy savings in the first year of \$26,036, and payback (in terms of savings) is estimated between 10 - 14 years, depending on utility escalation rates. Subsequently, the City would see significant savings for the remaining life of the unit, which is expected to be 20 years or more.

Measure of Success

Heat pump water heaters installed to provide primary heating for the community pool with a significant reduction of GHG emissions and long-term cost savings.

Attachments

1. Procedural steps for Public Hearing
2. Resolution No. 2022-XX including Exhibit A
3. Design-Build Contract with WES including Schedules A-C and Exhibits 1-3



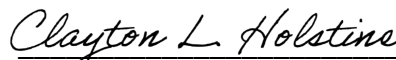
Adrienne Etherton, Sustainability Manager



Karen Kinser, Deputy Director of Public Works



Randy Breault, Director of Public Works



Clay Holstine, City Manager

Recommended Steps for Public Hearing

1. City staff report.
2. Council clarifying questions.
3. Mayor's declaration that the Public Hearing "On Consideration of Entering into Energy Service Contract Pursuant to the Provisions of the California Government Code Section 4217.10 et seq. for the City of Brisbane Community Pool Electrification Project" is open.
4. Statement by the City Clerk verifying the posting of the Notice of Public Hearing, followed by the reading of any written protests by the City Clerk.
5. Hearing of oral testimony and comments.
6. Closure of Public Hearing.
7. Council deliberation and action.

RESOLUTION NO. 2022-__**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING
AN ENERGY SERVICE CONTRACT WITH WILLDAN ENERGY SOLUTIONS**

WHEREAS, the Brisbane City Council has demonstrated its commitment to a sustainable and resilient future through its policy goals and actions, including energy reduction, and clean energy programs; and

WHEREAS, the City of Brisbane is a public agency authorized by California Government Code sections 4217.10-4217.18 to enter into contracts for design, construction, and financing of alternate energy equipment or energy conservation measures; and

WHEREAS, in order to enter into an energy service contract or facility financing contract, notice must be given, and the City must make specific findings, consistent with Sections 4217.12; and

WHEREAS, the City Council has held a regularly scheduled public hearing, public notice of which was given at least two (2) weeks in advance; and

WHEREAS, the City Council has received and reviewed the information in Exhibit “A” attached hereto, which is sufficient to allow it to make the requisite findings set forth below; and

WHEREAS, the City of Brisbane desires to engage Willdan Energy Services (Willdan) in a design-build energy service contract for the installation of an electric heat pump unit (“energy conservation facility”) to serve as the primary water heater for the Community Pool; and

WHEREAS, the design-build services are separate from the ongoing energy savings analysis, on-bill financing support incentive acquisition/management and engagement between the City and Pacific Gas & Electric, all provided by Willdan at no cost to the city as the authorized implementer of Pacific Gas & Electric Company’s Government K-12 (GK12) Energy Efficiency Program.

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

Section 1. The anticipated cost to the City for electrical energy services provided by the energy conservation facility under the design-build energy service contract will be less than the anticipated marginal cost to the City for the other energy that would have been consumed in the absence of this energy service contract.

Section 2. The City Manager and designees, and each of them individually, for and in the name of and on behalf of the City, are authorized to do any and all things and to execute and deliver any and all documents that they may deem necessary or advisable in order to complete the execution and delivery of the Energy Service Contract and otherwise to carry out, give effect to, and comply with the terms and intent of this resolution. All actions heretofore taken by such officers and agents that are in conformity with the purposes and intent of this resolution are hereby ratified, confirmed and approved in all respects.

Section 3. The City Manager is authorized to execute the Design-Build Energy Service Contract in an amount not to exceed \$653,393.

Coleen Mackin, Mayor

* * * *

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Brisbane held on the 7th day of July 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Ingrid Padilla, City Clerk

EXHIBIT A

This energy conservation project will install electric air-source heat pumps as the primary heating system for the City's community pool, replacing the existing gas-fired pool heater currently in use as the primary heating source. The existing gas-fired pool heater will be retained to provide supplemental heating when outdoor temperatures fall below 50°F.

The outdoor pool is approximately 4,000 square feet, and an average depth of approximately six feet. The pool is in use throughout the year, and a pool cover is in use during non-operating hours. The pool is heated to approximately 80°F throughout the year.

The existing gas fired hot water boiler is located inside the Mechanical Building. It is rated for 1,826 kBtu/hr input, 1,497 kBtu/hr output, and a rated thermal efficiency of 82%. The system has onboard controls that fire the boiler, as needed, to maintain the pool temperate at the desired 80 degrees Fahrenheit year around. The unit has a fractional HP induced draft fan installed in the flue. The savings from operating this fan less in the proposed measure configuration has been neglected from the savings analysis to be conservative.

The main pool pump is also located in the Mechanical Building and is retrofit with a variable speed drive with pool specific controls. The pool pump operation will not change with the implementation of the project.

The proposed electric heat pump pool heaters have approximately 527 kBtu/hr output ratings each. Three units will be installed in parallel to match the required heat load with a total output capacity of 1,581 kBtu/hr. The three heat pumps will be installed outdoors, adjacent to the Mechanical Building. The proposed heat pumps have a coefficient of performance (COP) that vary with outside air conditions.

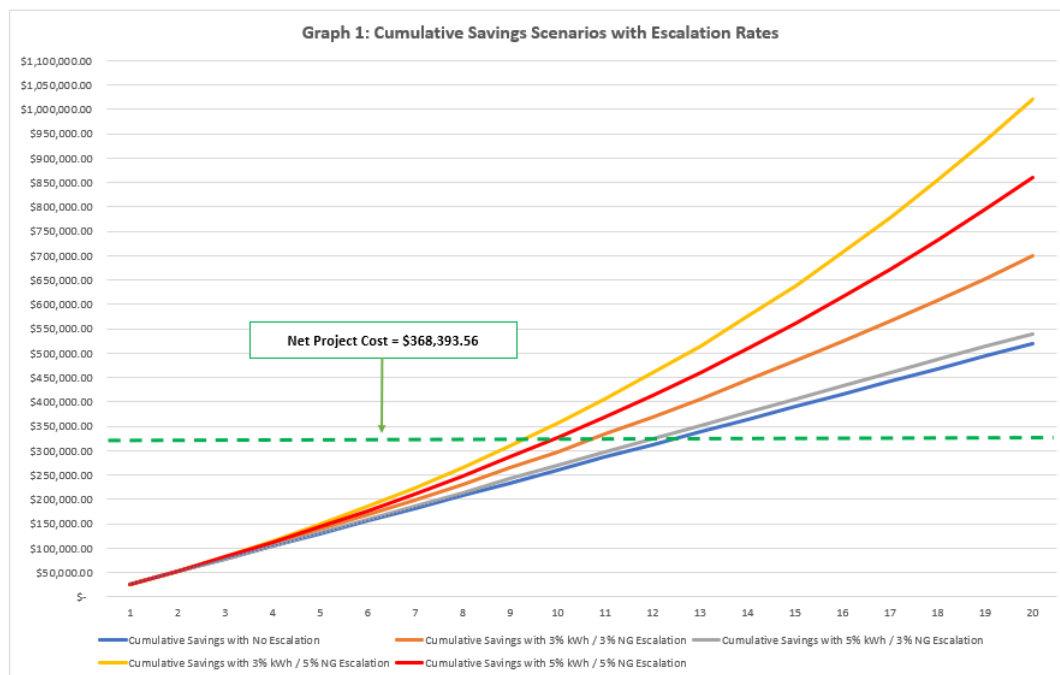
The existing gas-fired pool heater will be retained to support the load when daily average outdoor air temperatures are below 50°F. The site location sees average daily outdoor air temperatures below 50°F for about four weeks during a typical meteorological year. During months where lower outside air temperatures are expected, the gas-fired boiler will be enabled, but in a "lag" configuration with the heat pump system as "lead". During these colder days, the heat pumps will attempt to maintain the pool at the desired temperature of 80F, and the gas-boiler will be configured to come on only if the pool temperature drops to a lower setpoint, e.g., 78F. The existing gas-fired boiler will only be used during these low temperature conditions. At all other times, the newly installed heat pump system is expected to fully support the load. The energy savings calculations account for this operation.

For the purposes of Government Code 4217.12, the effective useful life of the project has been determined to be 20 years and the not to exceed net project cost has been set to \$368,000 or the

gross cost less the Pacific Gas and Electric Company incentive payable to the City on the successful completion of the work.

Table 1 and Graph 1 below present marginal cost findings where first year energy savings have been calculated at \$26,036.25 and where varying utility escalation rate scenarios were examined. The anticipated cost to the City of Brisbane for energy services under the contract, across all scenarios, will be less than the anticipated marginal energy costs in the absence of the project.

| Year | Cumulative Savings with No Escalation | Cumulative Savings with 3% kWh / 3% NG Escalation | Cumulative Savings with 5% kWh / 3% NG Escalation | Cumulative Savings with 3% kWh / 5% NG Escalation | Cumulative Savings with 5% kWh / 5% NG Escalation |
|------|---------------------------------------|---|---|---|---|
| 1 | \$ 26,036.25 | \$ 26,036.25 | \$ 26,036.25 | \$ 26,036.25 | \$ 26,036.25 |
| 2 | \$ 52,072.50 | \$ 52,853.59 | \$ 52,335.29 | \$ 53,892.61 | \$ 53,374.31 |
| 3 | \$ 78,108.75 | \$ 80,475.45 | \$ 78,879.09 | \$ 83,675.64 | \$ 82,079.28 |
| 4 | \$ 104,145.00 | \$ 108,925.96 | \$ 105,647.78 | \$ 115,497.68 | \$ 112,219.49 |
| 5 | \$ 130,181.25 | \$ 138,229.99 | \$ 132,619.53 | \$ 149,477.17 | \$ 143,866.72 |
| 6 | \$ 156,217.50 | \$ 168,413.14 | \$ 159,770.44 | \$ 185,739.00 | \$ 177,096.30 |
| 7 | \$ 182,253.75 | \$ 199,501.78 | \$ 187,074.39 | \$ 224,414.76 | \$ 211,987.37 |
| 8 | \$ 208,290.00 | \$ 231,523.08 | \$ 214,502.88 | \$ 265,643.19 | \$ 248,622.99 |
| 9 | \$ 234,326.25 | \$ 264,505.03 | \$ 242,024.93 | \$ 309,570.48 | \$ 287,090.39 |
| 10 | \$ 260,362.50 | \$ 298,476.43 | \$ 269,606.89 | \$ 356,350.70 | \$ 327,481.15 |
| 11 | \$ 286,398.75 | \$ 333,466.97 | \$ 297,212.25 | \$ 406,146.19 | \$ 369,891.46 |
| 12 | \$ 312,435.00 | \$ 369,507.23 | \$ 324,801.51 | \$ 459,128.00 | \$ 414,422.29 |
| 13 | \$ 338,471.25 | \$ 406,628.70 | \$ 352,332.00 | \$ 515,476.35 | \$ 461,179.65 |
| 14 | \$ 364,507.50 | \$ 444,863.81 | \$ 379,757.60 | \$ 575,381.09 | \$ 510,274.88 |
| 15 | \$ 390,543.75 | \$ 484,245.97 | \$ 407,028.65 | \$ 639,042.20 | \$ 561,824.88 |
| 16 | \$ 416,580.00 | \$ 524,809.60 | \$ 434,091.63 | \$ 706,670.34 | \$ 615,952.37 |
| 17 | \$ 442,616.25 | \$ 566,590.14 | \$ 460,889.00 | \$ 778,487.38 | \$ 672,786.24 |
| 18 | \$ 468,652.50 | \$ 609,624.09 | \$ 487,358.91 | \$ 854,726.98 | \$ 732,461.80 |
| 19 | \$ 494,688.75 | \$ 653,949.07 | \$ 513,434.97 | \$ 935,635.24 | \$ 795,121.14 |
| 20 | \$ 520,725.00 | \$ 699,603.79 | \$ 539,045.96 | \$ 1,021,471.27 | \$ 860,913.45 |



DESIGN-BUILD CONTRACT

This Design-Build Contract (the "Contract") is made and entered into as of this day of July, 2022, between the Design-Builder: Willdan Energy Solutions ("WES"), and the City of Brisbane, California ("Customer"), for the purpose of installing certain improvements on the Customer's property and buildings (the "Premises") described in SCHEDULE A (SCOPE OF WORK).

RECITALS

WHEREAS, Customer desires to retain WES to purchase and install certain equipment of the type or class described in SCHEDULE A (SCOPE OF WORK), attached hereto and made part hereof; and

WHEREAS, WES is willing to perform Design and Preconstruction Phase Services as described in SCHEDULE A.2 (DESIGN AND PRECONSTRUCTION SERVICES) but at the conclusion of the Design and Preconstruction Phase, WES, at its sole option, may elect not to proceed with services described in SCHEDULE A.3 (CONSTRUCTION PHASE).

WHEREAS, Customer is authorized under the Constitution and the laws of the State of California to enter into this Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Customer and WES hereto covenant and agree as follows:

SECTION 1 DESIGN-BUILD DOCUMENTS

- Section 1.1 The Design-Build Documents consist of this Agreement between Customer and WES and its attached Schedules and Exhibits (hereinafter, the "Contract"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, (3) a Change Directive, or (4) a written order for a minor change in the Work issued by the Customer.
- Section 1.2 The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Customer and WES.
- Section 1.3 Attachments, Schedules, Exhibits and Appendices: WES has prepared and Customer has approved and accepted the Schedules as set forth below, copies of which are attached hereto and made parts of this Contract by reference.

Schedules

SCHEDULE A. SCOPE OF WORK

SCHEDULE B. COMPENSATION TO WES

SCHEDULE C. ADDITIONAL RESPONSIBILITIES

Exhibits

EXHIBIT 1. DESIGN-BUILD AMENDMENT

EXHIBIT 2. CERTIFICATE OF ACCEPTANCE – PROJECT COMPLETION

EXHIBIT 3. SUPPLEMENTAL AND OTHER CONDITIONS OF THE DESIGN AND PRE-CONSTRUCTION PHASE SERVICES

SECTION 2 THE WORK OF THE DESIGN-BUILD CONTRACT

- Section 2.1 The term "Work" means the design, construction and related services required to fulfill WES's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by WES.
- Section 2.2 WES shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.
- Section 2.3 WES shall perform all Work through Contractors or through the WES's own forces.
- Section 2.4 WES shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities in affect at the time of Contract or Amendment execution as applicable. If WES

performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, WES shall assume responsibility for such Work and shall bear the costs attributable to correction.

SECTION 3 PHASES OF THE WORK

- Section 3.1 Work shall be performed in two phases: The Design and Pre-Construction Phase and the Construction Phase as outlined in SCHEDULE A (SCOPE OF WORK). WES will commence work for the Design Pre-Construction Phase upon execution of this Design-Build Agreement. The Construction Phase will commence at the conclusion of the Design and Pre-Construction Phase upon the execution of EXHIBIT 1 (DESIGN-BUILD AMENDMENT).
- Section 3.2 The Scope of Work and Fee for each phase is defined in SCHEDULE A (SCOPE OF WORK) and SCHEDULE B (COMPENSATION TO WES) respectively.

SECTION 4 COMMENCEMENT DATE AND TERMS

- Section 4.1 Commencement Date: The effective date of this agreement is the date of agreement's last signature.
- Section 4.2 Construction and Installation Period: The Construction and Installation Period will be a term set forth in the Design-Build Amendment.
- Section 4.3 Weather disruptions, availability of necessary equipment, remediation of hazardous materials, and other delays beyond the control of WES shall not count toward the Construction and Installation Period.

SECTION 5 CONTRACT SUM

- Section 5.1 The Contract Sum is the amount to be paid to WES for the performance of the Work. This amount includes a Stipulated Sum for the Design and Pre-Construction Phase services and a Stipulated Sum for the Construction Phase as identified in SCHEDULE B (COMPENSATION TO WES).

SECTION 6 PAYMENTS TO WES

- Section 6.1 WES Compensation and Fees: WES's fees and compensation are set forth in SCHEDULE B (COMPENSATION TO WES).
- Section 6.2 Billing Information Procedure: Payments due to WES shall be calculated each month and paid in accordance with SCHEDULE B (COMPENSATION TO WES).
- Section 6.3 Payment: Customer shall pay WES within 30 days of receipt of WES's application for payment.
- Section 6.4 Effective Date of Payment Obligation: See SCHEDULE B (COMPENSATION TO WES).

SECTION 7 FISCAL FUNDING

- Section 7.1 Non-appropriation of Funds: In the event no Customer or other funds or insufficient Customer or other funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due WES under this Contract, then the Customer will, not less than 30 days prior to the end of such applicable fiscal period, in writing, notify WES of such occurrence and this Contract shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the Customer of any kind whatsoever, except as to the portions of payments herein agreed upon for which Customer and/or other funds shall have been appropriated and budgeted or are otherwise available.

SECTION 8 CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

- Section 8.1 Construction Schedule: Construction and equipment installation shall proceed in accordance with the construction period in SECTION 4 (COMMENCEMENT DATE AND TERMS). A detailed schedule of construction will be submitted to Customer following Commencement of the Design-Build Amendment. This schedule will be updated regularly to reflect ongoing progress on the Project.
- Section 8.2 Systems Startup: WES shall provide startup of the installed equipment in accordance with any procedures specified in SCHEDULE C and prior to acceptance of the project by Customer. WES shall provide notice to the Customer of any scheduled test(s) and the Customer and/or its designees shall have the right to be present at any or all such tests conducted by WES and/or manufacturers of the equipment.

SECTION 9 EQUIPMENT WARRANTIES

- Section 9.1 WES covenants and agrees that all equipment installed as part of this Contract is new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. WES further agrees to deliver warranty documentation to Customer for inspection and approval; to pursue rights and remedies

against manufacturer and supplier of the equipment under the warranties in the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, to notify the Customer whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by WES. The cost of any risk of damage or damage to the equipment and its performance, including damage to property and equipment of the Customer or the Premises, due to WES's failure to exercise its warranty rights shall be borne solely by WES.

- Section 9.2 All warranties shall be transferable and extend to the Customer. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.
- Section 9.3 All warranties required hereunder shall be in force for a minimum of one year from the commencement date as defined in Section 4.1 hereof.
- Section 9.4 Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve WES from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

SECTION 10 TRAINING BY WES

- Section 10.1 Any training provided by WES shall be as described in SCHEDULE C hereto. The training specified in SCHEDULE C must be completed prior to acceptance of the equipment installation.

SECTION 11 PERMITS AND APPROVALS; COORDINATION

- Section 11.1 Permits and Approvals: Customer shall use its best efforts to assist WES in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Customer, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by WES shall at all times conform to all federal, state and local code requirements. WES shall furnish copies of each permit or license which is required to perform the work to the Customer before WES commences the portion of the work requiring such permit or license.
- Section 11.2 Coordination During Installation: The Customer and WES shall coordinate the activities of WES's equipment installers with those of the Customer, its employees, and agents. WES shall not commit or permit any act which will interfere with the performance of business activities conducted by the Customer or its employees without prior written approval of the Customer. Customer will require a minimum of two weeks' notice before any shutdown of facilities to facilitate the tie-in of new equipment.

SECTION 12 PERFORMANCE BY WES

- Section 12.1 WES shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems. WES shall repair and restore to its original condition any area of damage caused by WES's performance under this Contract. The Customer reserves the right to review the work performed by WES and to direct WES to take certain corrective action if, in the opinion of both parties, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by WES's performance of the work shall be borne by WES.
- Section 12.2 WES shall remain responsible for the professional and technical accuracy of all services performed, whether by WES or its subcontractors or others on its behalf, throughout the term of this Contract.

SECTION 13 OWNERSHIP

- Section 13.1 Ownership of Certain Proprietary Property Rights: Customer shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. WES shall grant to the Customer a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Customer to continue to operate, maintain, and repair the equipment.
- Section 13.2 Ownership of Existing Equipment: Ownership of the equipment and materials presently existing at the Premises at the time of execution of this Contract shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by WES pursuant to this Contract. If applicable, WES shall advise the Customer in writing of all equipment and materials to be replaced at the Premises and the Customer shall within 30 days designate in writing to WES which equipment and materials should not be disposed of off-site by WES. It is understood and agreed to by both Parties that the Customer shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. WES shall be responsible for the disposal of all equipment and materials designated by the Customer as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

Section 13.3 New Equipment: All new equipment or materials supplied to the Customer shall become the property of the Customer.

SECTION 14 LOCATION AND ACCESS

Section 14.1 The physical address of the property as related to the scope of work under this contract is:

Brisbane Community Pool Facility
2 Solano Street
Brisbane, CA 94005

Section 14.2 Customer shall provide sufficient space on the Premises for the installation and operation of the Equipment and shall take reasonable steps to protect such Equipment from harm, theft and misuse. Customer shall provide access to the Premises for WES to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by WES and acceptable to the Customer. WES's access to Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Customer.

SECTION 15 INDEMNIFICATION

Section 15.1 WES shall be responsible for (i) any damage to the Equipment or other property on the Premises and (ii) any personal injury where such damage or injury occurs as a result and to the extent of WES's negligence or other wrongful conduct in its performance under this Contract.

Section 15.2 WES shall save and hold harmless Customer and its officers, agents and employees or any of them from any and all claims, demands, actions or liability of any nature based upon or arising out of WES's negligence or other wrongful conduct in any services performed by WES, its agents or employees under this Contract.

SECTION 16 CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 16.1 If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of Nature, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days' notice to the performing party, in which event neither party shall have any further liability to the other.

SECTION 17 EVENTS OF DEFAULT

Section 17.1 Events of Default by Customer: Each of the following events or conditions shall constitute an "Event of Default" by Customer:

- (i) any failure by Customer to pay WES any sum due for a service and maintenance period of more than 30 days after written notification by WES that Customer is delinquent in making payment and provided that WES is not in default in its performance under the terms of this Contract; or
- (ii) any other material failure by Customer to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty days after notice to Customer demanding that such failures to perform be cured or if such cure cannot be effected in thirty days, Customer shall be deemed to have cured default upon the commencement of a cure within thirty days and diligent subsequent completion thereof;
- (iii) any representation or warranty furnished by Customer in this Contract which was false or misleading in any material respect when made.

Section 17.2 Events of Default by WES: Each of the following events or conditions shall constitute an "Event of Default" by WES:

- (i) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in SCHEDULE A (SCOPE OF WORK) and SECTION 4 (COMMENCEMENT DATE AND TERMS);
- (ii) any failure by WES to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within 30 days after written notice by the Customer to WES demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;
- (iii) any lien or encumbrance upon the equipment by any subcontractor, laborer or material man of WES;

- (iv) the filing of a bankruptcy petition whether by WES or its creditors against WES which proceeding shall not have been dismissed within 30 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of WES;

SECTION 18 REMEDIES UPON DEFAULT

Section 18.1 Remedies upon Default: All disputes shall be submitted to the individuals listed in SECTION 29 (NOTICE) for resolution. In the event that a remedy acceptable to both Customer and WES cannot be found, either party may seek remedy as outlined in SECTION 19 (MEDIATION).

SECTION 19 MEDIATION

Section 19.1 Any Claim arising out of or related to the Contract shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

Section 19.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

Section 19.3 The parties shall share the mediator's fee and any filing fees equally.

Section 19.4 The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

Section 19.5 Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

SECTION 20 REPRESENTATIONS AND WARRANTIES

Section 20.1 Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

SECTION 21 ADDITIONAL REPRESENTATIONS OF THE PARTIES

Section 21.1 WES hereby warrants, represents and promises that:

- (i) it shall use qualified subcontractors and delegates, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;
- (ii) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

SECTION 22 COMPLIANCE WITH LAW AND STANDARD PRACTICES

Section 22.1 WES shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Customer relative to the Premises. WES shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

SECTION 23 INDEPENDENT CAPACITY OF THE CONTRACTOR

Section 23.1 The parties hereto agree that WES, and any agents and employees of WES, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the Customer.

SECTION 24 NO WAIVER

Section 24.1 The failure of WES or Customer to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of WES or Customer.

SECTION 25 SEVERABILITY

Section 25.1 In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

SECTION 26 COMPLETE CONTRACT

Section 26.1 This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties hereto.

SECTION 27 FURTHER DOCUMENTS

Section 27.1 The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

SECTION 28 APPLICABLE LAW

Section 28.1 This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of California.

SECTION 29 NOTICE

Section 29.1 Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO WES:

Willdan Energy Solutions
Attention: Micah Chen
2401 E. Katella Ave, #300
Anaheim, CA 92806

TO CUSTOMER:

City of Brisbane
Attention: Tom McMorro
50 Park Place
Brisbane, CA 94005

SECTION 30 HEADINGS

Section 30.1 Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

SECTION 31 BONDS

Section 31.1 Any and all bonds obtained by WES for this project shall specifically exclude coverage for those portions of the Contract or the Work pertaining to design services and any other part of this Contract and the Contract Documents which do not relate specifically to construction management and supervision of Work for purchasing and installing of Equipment, or for work to be accomplished by the Customer.

SECTION 32 INSURANCE

Section 32.1 WES shall procure and maintain in effect insurance coverage in amounts not less than the following.

- (i) Workers' Compensation and Employer's Liability Insurance with limits of not less than \$1,000,000 per occurrence.

- (ii) Commercial General Liability Insurance for personal and bodily injury, including death, and property damage with limits not less than \$2,000,000 combined single limit each occurrence and \$4,000,000 general aggregate.
- (iii) Automobile Liability Insurance for personal and bodily injury, including death and property damage in the amount of not less than \$1,000,000 per occurrence.
- (iv) Professional Liability Insurance for damages incurred by reason of any negligent act, error or omission committed by WES in performing professional services with limits of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate.
- (v) Builders All-Risk Insurance: WES, at Customer's expense, shall maintain "All Risk Insurance" for all equipment, and property obtained by or for WES which is to become a part of the work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the project from such temporary locations. WES shall also be responsible for insuring Subcontractor's owned, rented, or borrowed equipment.

Section 32.2 WES will provide Customer with certificates of insurance evidencing coverage required above. Each certificate shall provide that the coverage shall not be canceled except with at least thirty days prior written notice to Customer, ten days' notice if cancellation is due to nonpayment of premium. Should this occur, WES shall procure and furnish to Customer prior to such effective date new certificates conforming to the above coverage requirement.

SECTION 33 TERMINATION

Section 33.1 WES shall have the right at any time by written notice to the Customer, to terminate this Agreement with or without cause. In the event of such a termination for convenience, WES shall be entitled to full payment pursuant to the terms of SCHEDULE A.2 (DESIGN AND PRECONSTRUCTION SERVICES) for all Design and Preconstruction Services performed as of the date of termination. CUSTOMER waives any claim for costs, fees, losses directly or indirectly related to services described in SCHEDULE A.3 (CONSTRUCTION PHASE) in the event WES exercises this clause. CUSTOMER shall have the right to terminate for cause by written notice to WES.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized officers on the date last below written.

Willdan Energy Solutions (WES)

City of Brisbane (Customer)

Signed _____
Name Anthony Sclafani_____
Title Vice President of Engineering_____
Date _____

Signed _____
Name _____
Title City Manager_____
Date _____

California Contractors License No. 1065713

Willdan Energy Solutions
2401 E. Katella Ave, #300
Anaheim, CA 92806

City of Brisbane
50 Park Place
Brisbane, CA 94005

SCHEDULE A. SCOPE OF WORK

1. DESIGN-BUILD PROGRAM REQUIREMENTS:

a) General Scope and Intent:

- (1) Electrify the City of Brisbane's Community Pool ("Pool") heating system by installing heat pump heating equipment including site electrical upgrades ("new equipment") that may be required to accommodate the new equipment. The new equipment will be the primary heating source for the Pool, while the existing natural gas hot water heater will remain for supplemental heat when needed.
- (2) Provide grading, paving and excavation services that may be required to install a new electrical system to accommodate the new equipment. Coordinate with PG&E, including for example preparation of a new service application, engineering field meetings, and installation of upgraded service. Provide a new concrete pad for new heat pump heating equipment. Excavation scope includes excavation with standard soil conditions, free of rock, debris, water, or any other item which would prolong or complicate the excavation process.
- (3) Provide electrical and plumbing equipment, materials, and installation as required to install the new equipment as an operational system.
- (4) Furnish and install an operable heat pump water heating system that achieves a level of service comparable to the existing natural gas heating system. It is understood and acknowledged by both Customer and WES that usage of the existing natural gas heating system may still be required after installation of the heat pump units; particularly during cold weather extremes (defined as times when the outdoor air temperature is 52°F or lower) or if the pool temperature setpoint exceeds 80°F.
- (5) The target budget for the work is \$653,000. This includes the WES Contract Sum as well as any other costs or fees paid by Customer to entities other than WES.

b) Scope Exclusions:

- (1) Hazardous Materials Removal.
- (2) Any work related to the Wading Pool.
- (3) Environmental impact studies of any kind; including noise studies.
- (4) Trenching by any means other than backhoe; for example, if excavation of hard rock is required.

2. DESIGN AND PRE-CONSTRUCTION PHASE SERVICES:

a) General:

- (1) WES shall progress the design and engineering of the proposed new equipment consistent with the Design-Build Program Requirements. WES shall also provide the Customer with recommendations, consistent with the Design-Build Program Requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, and possible cost reductions.

b) Engineering and Design: During the Design and Pre-Construction Phase Services phase, WES shall perform:

- (1) Conceptual design required to develop the scope and project solution that meets Design-Build Program Requirements as identified in SCHEDULE A.1. Conceptual design is to be reviewed and accepted by Customer, as with material submittals
- (2) Develop design that is sufficient to procure subcontractors and materials and develop the Contract Sum to be included in the Design-Build Amendment. Customer to review conceptual design before WES requests bids.

c) Preparation of the Design-Build Amendment:

- (1) When the Drawings and Specifications are sufficiently complete, WES shall prepare a Design-Build Amendment as outlined in Exhibit 1. This Amendment shall include:

- (a) Contract Sum
 - (b) Contract Time
 - (c) Construction Schedule
 - (d) Information Upon Which Amendment is Based, including:
 - (i) Scope of Work
 - (ii) Drawings
 - (iii) Specifications
 - (iv) Supplementary and other Conditions of the Contract
 - (v) Deviations from the Design-Build Program Requirements as identified in SCHEDULE A.1.
 - d) Supplemental and other Conditions of the Design and Pre-Construction Phase Services are attached as Exhibit 3. As used in that Exhibit, "City" is "Customer" and "WES" is "Consultant". If there are conflicts between the terms and conditions of the Design-Build Contract and the terms and conditions in Exhibit 3, the terms and conditions of Exhibit 3 shall prevail.
3. CONSTRUCTION PHASE:
- a) Construction Documents:
 - (1) As the Drawings and Specifications, while developed as described in Section 2 b) (2) above, may not be finished at the time the Design-Build Amendment is prepared, WES may provide, in the amendment, for further development of the Drawings and Specifications for construction. Such further development does not include such things as changes in scope, systems, kinds, and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.
 - b) Design-Builder's Responsibility:
 - (1) WES shall supervise and direct the Work, using the WES's best skill and attention. WES shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.
 - (2) WES shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
 - c) Labor and Materials
 - (1) Unless otherwise provided in the Design-Build Documents, WES shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work.
 - d) Project Implementation Scope of Work:
 - (1) Final, more detailed scope of work will be specified in the Design-Build Amendment.
4. TIME:
- a) WES and Customer will work together to develop construction schedules that minimize disruption to Customer operations while allowing for completion of Scope of Work in a timely fashion. All construction will be completed in accordance with SECTION 4 (COMMENCEMENT DATE AND TERMS).

SCHEDULE B. COMPENSATION TO WES

The Customer shall compensate and make payments to WES for both Design and Preconstruction Phase services and Construction Phase Services as follows:

1. DESIGN AND PRECONSTRUCTION PHASE SERVICES. The Customer shall compensate and make payments to WES for Design and Preconstruction Phase services as follows:
 - a) Sum of **\$66,785.00**.
2. CONSTRUCTION PHASE SERVICES. For WES's performance of Construction, Customer shall pay WES the Contract Sum after the execution of the Design-Build Amendment. The Contract Sum shall be identified in the Design-Build Amendment.
3. PAYMENT PROCEDURES
 - a) Design and Pre-construction Phase Payments:
 - (1) WES shall provide a monthly Application for Payment to Customer for Design and Preconstruction Phase services completed during the previous month. The Customer shall make payment in the manner and within the time provided in Section 6.3.
 - b) Construction Phase Payments:
 - (1) Progress Payments: WES shall provide a monthly Application for Payment to Customer for work completed during the previous month. The Customer shall make payment in the manner and within the time provided in Section 6.3. Until the total cumulative amount paid from Customer to WES equals \$118,394, less any other costs or fees paid by Customer to entities other than WES, Customer will pay one hundred percent (100%) of the amount due to WES on account of progress payments for each line item. After the total cumulative amount paid from Customer to WES equals \$118,394, less any other costs or fees paid by Customer to entities other than WES, Customer may cease making progress payments and WES will receive the balance of the Contract Sum as the payee of the PG&E On-Bill Finance disbursement check.
 - (2) Schedule of Values: WES will prepare and submit a complete schedule of values in advance of the initial Application for Payment. Projects listed as line items in the Schedule of Values will be treated as individual projects for the purposes of Progress Payments and Project Completion.
 - (3) Final payment application: After completing all project closeout requirements, Customer and WES shall execute the Certificate of Acceptance – Project Completion as presented in Exhibit 2; which shall not be unreasonably withheld. WES will then submit a final Application for Payment. Final payment to WES shall come from PG&E in the form of the On-Bill Financing (OBF) check disbursement. WES shall be the sole payee of the check.

Failure of Payment: If the Customer does not pay WES within seven days after the date established in Section 6.3, then WES may, upon written notice to the Customer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the WES's reasonable costs of shut-down, delay and start-up, plus interest.

SCHEDULE C. ADDITIONAL RESPONSIBILITIES

1. Customer Responsibilities

a) PG&E On-Bill Financing Program

- (1) Customer shall promptly comply with all PG&E On-Bill Financing (OBF) program requirements including, but not limited to:
 - (a) Sign and return the Loan Agreement to PG&E.
 - (b) Sign and return the Loan Modification Agreement (if necessary) to PG&E.
 - (c) Designate WES as the payee for the OBF check disbursement.

b) Equipment Noise Levels

- (1) WES shall provide equipment data sheets indicating operational noise levels of proposed equipment. WES shall make commercially reasonable efforts to facilitate physical inspection of similar equipment, operating in similar conditions to the proposed project, by Customer.
- (2) Customer shall be responsible for approving the use of the proposed equipment or alternatives via submittal. By providing this approval:
 - (a) Customer confirms that the proposed equipment is acceptable for use in the proposed location.
 - (b) Customer confirms that the proposed equipment complies with Brisbane Municipal Code Chapter 8.28 – Noise Control and related sections; or
 - (c) Customer agrees that the work is exempt per Brisbane Municipal Code 8.28.050.C; or
 - (d) Customer assumes full responsibility for any and all noise related issues associated with new equipment. Under no circumstances will WES be responsible for additional engineering or construction required to document or abate any noise related issues without receiving compensation.

c) Data and Records

- (1) Customer hereby warrants, represents and promises that it has provided or shall provide timely to WES, all records relating to energy usage and energy-related maintenance of Premises requested by WES and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects.
- (2) Providing descriptions of property boundaries and existing service and utility lines. This includes any existing surveys describing underground utilities or concealed conditions at the project site.
- (3) As-built and record drawings of existing structures at the project site.
- (4) Existing environmental requirements or studies applicable to the project site.

d) Retained Equipment

- (1) Customer shall be responsible for, and designate the location and storage for, any equipment and materials that should not be disposed of off-site.

e) Differing Site Conditions

- (1) The conditions at the site are the property of the Customer regardless of whether or not they could be identified by an investigation or exploration conducted according to the professional standard of care. A “Differing Site Condition” is a subsurface, hidden, latent, or physical condition at a project site/building not revealed by the site exploration, site investigation, or other information provided to the Customer and which cannot be reasonably anticipated. Special risks occur whenever engineering is applied to identifying site/building conditions. Even a comprehensive investigation according to the professional standard of care may not detect all subsurface or site/building conditions. WES shall not be liable for site/building conditions which could not be identified by such an investigation or exploration. Accordingly, the Customer agrees to indemnify, including all costs and fees, and hold WES harmless from all claims for Differing Site Conditions.

f) Site Preparation

- (1) Customer is responsible for removal and relocation of the shipping container currently being used as temporary storage that is currently located within the proposed project footprint.
- (2) Providing for scheduling and shutdown of affected areas.

g) Customer Information Technology Responsibilities

- (1) Customer is responsible for providing network connection(s) for wireless connection of proposed demand-response capable controllers/controls and required internet accessibility.
- (2) Customer shall engage its IT representative familiar with the Customer's network to work with WES and its subcontractors to establish internet connectivity, at no cost to the project, to assure proper operation of the proposed demand-response capable controllers/controls

h) Maintenance

- (1) Customer is responsible for performing all maintenance on new work as recommended in the manufacturer's written instructions. This includes maintaining water chemistry within acceptable parameters and maintaining adequate records to pursue any warranty claims if required.
- (2) Customer is responsible for maintaining groundskeeping around the new equipment to ensure proper operation.
- (3) WES is not responsible for performance of any maintenance on equipment or premises.
- (4) Pursuing repairs or replacement of new equipment covered by manufacturer warranty after the warranty period of this agreement expires (refer to SECTION 9). After this period, WES is not obligated to provide for repair or replacement of work under warranty. Customer shall seek repair or replacement from manufacturer and arrange for installation labor.

2. WES Responsibilities

a) System Start-up

- (1) WES will perform start-up of new equipment in accordance with manufacturer's written instructions.

b) Operating parameters of installed equipment

- (1) WES will provide operating parameters in the Operation and Maintenance Manuals. These manuals will be provided to Customer prior to Project Completion.
- (2) Operation and Maintenance Manuals will include as-built drawings of all new equipment. As-builts will also be included in digital format.

c) Training Requirements

- (1) WES will provide four (4) hours of dedicated training to City maintenance staff prior to Project Completion to ensure proper understanding of installed systems. The training may be provided in-person and on-premises, or remotely via Webex, Microsoft Teams, or equivalent.

EXHIBIT 1. DESIGN-BUILD AMENDMENT (DRAFT, TO BE PROVIDED AT THE CONCLUSION OF THE DESIGN AND PRECONSTRUCTION PHASE)

This Amendment is incorporated into the accompanying Design-Build Contract dated the ____ day of July, 2022, (the “Agreement”) for the following:

PROJECT: Brisbane Community Pool Heating System Electrification, 2 Solano St., Brisbane, CA 94005

THE CUSTOMER: City of Brisbane, 50 Park Place, Brisbane, CA 94005

THE DESIGN-BUILDER: Willdan Energy Solutions, Inc.

Customer and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

1. CONTRACT SUM
2. CHANGES IN THE CONTRACT SUM
3. CONTRACT TIME
4. CONSTRUCTION SCHEDULE
5. INFORMATION UPON WHICH AMENDMENT IS BASED

1. CONTRACT SUM

a) Stipulated Sum:

- (1) The Stipulated Sum for Construction Phase Services shall be (\$XXX,XXX), subject to authorized adjustments as provided in the Design-Build Documents.

2. CHANGES IN THE CONTRACT SUM:

- a) Any overage in the cost of the Scope of Work in SCHEDULE A (SCOPE OF WORK) shall be the responsibility of WES.
- b) Changes to the contract sum are warranted for, but are not limited to: Hazardous materials, additions or modifications to the Scope of Work, and Differing Site Conditions as defined in SCHEDULE C. All additional costs associated with these items shall be the responsibility of Customer.

3. CONTRACT TIME

- a) The date of Substantial Completion upon which this proposal is based is [TBD].
- b) The date of Final Completion is [TBD].
- c) Weather disruptions, documented availability of necessary equipment, remediation of hazardous materials, and other delays beyond the control of WES shall not count toward the construction timeframe in SECTION 4 (COMMENCEMENT DATE AND TERMS).

4. CONSTRUCTION SCHEDULE

- d) [TBD]

5. INFORMATION UPON WHICH AMENDMENT IS BASED

a) Scope of Work

- (1) [TBD]

b) Drawings

- (1) [TBD]
- c) Specifications
 - (1) [TBD]
- b) Supplementary and other Conditions of the Contract
 - (1) [TBD]
- c) Deviations from the Design-Build Program Requirements as identified in SCHEDULE A.3:
 - (1) [TBD]

This Amendment to the Agreement entered into as of the day and the year last written below.

Willdan Energy Solutions (WES)

City of Brisbane (Customer)

Signed _____
Name Anthony Sclafani_____
Title Vice President of Engineering_____
Date _____

Signed _____
Name _____
Title City Manager _____
Date _____

California Contractors License No. 1065713

Willdan Energy Solutions
2401 E. Katella Ave, #300
Anaheim, CA 92806

City of Brisbane
50 Park Place
Brisbane, CA 94005

EXHIBIT 2. CERTIFICATE OF ACCEPTANCE – PROJECT COMPLETION

This is to certify that a final inspection of the Project has been conducted jointly by WES and the City of Brisbane, California, and that the parties have determined that the Project has been fully completed in accordance with the Contract Documents. All guarantees and warranties that have not commenced previously shall commence as of the date last written below.

Customer accepts the Project as being fully completed and assumes responsibility for maintenance, custodial care, and utilities for the premises. WES remains responsible to correct errors and omissions discovered subsequent to the execution of this document and to respond to claims made under applicable warranties.

Willdan Energy Solutions (WES)

City of Brisbane (Customer)

Signed _____

Signed _____

Name Anthony Sclafani_____

Name _____

Title Vice President of Engineering_____

Title Public Works Director/City Engineer__

Date _____

Date _____

California Contractors License No. 1065713

Willdan Energy Solutions
2401 E. Katella Ave, #300
Anaheim, CA 92806

City of Brisbane
50 Park Place
Brisbane, CA 94005

EXHIBIT 3. SUPPLEMENTAL AND OTHER CONDITIONS OF THE DESIGN AND PRE-CONSTRUCTION PHASE SERVICES

5. **Maintenance and Inspection of Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, timecards, and other records or documents relating to charges for services or expenditures charged to City solely and exclusively related to this Agreement, for a minimum of three years from the date of the City's final payment to Consultant for the Park Place Project and for a minimum of three years from the date of any payment for Other Projects. Consultant shall make the same available to City or its authorized representatives for inspection and audit, at any time during regular business hours, upon written request by City. The right of inspection shall include the right to make extracts and copies of the documents solely and exclusively related to this Agreement.

7. **Correction of Work.** Consultant shall promptly correct any defective, inaccurate or incomplete tasks, deliverables, services or other work, without additional cost to the City. The City's acceptance of Consultant's services shall not relieve Consultant from the obligation to correct subsequently discovered defective, inaccurate or incomplete services.

8. **Ownership of Documents.** All plans, studies, documents, and other written materials that Consultant prepares in the course of providing services, except working notes and internal documents, shall become the City's property upon the City's payment for the services/work associated with such materials. City shall have the right to use such materials in its sole discretion without further compensation to Consultant or to any other party. Consultant shall provide, at Consultant's sole expense, such written materials upon City's written request. Consultant shall not be responsible for any reuse of such documents by City which is unrelated to the Project and City agrees to indemnify, defend, and hold Consultant and subcontractors harmless against any claims of liability arising from such reuse or modification made to the documents by City

9. **Independent Contractor.** Consultant is, and at all times shall remain, an independent contractor, and not agent, officer or employee of City. As such an independent contractor, neither Consultant nor any of Consultant's agents or employees shall be entitled

to any salary, fringe benefits, worker's compensation, retirement contributions, sick leave, insurance or other benefit or right connected with employment by City, or any compensation other than as provided in this Agreement. Consultant shall have no power or authority to bind City to any contract or otherwise to incur any obligation or liability for, or on behalf, or in the name of City.

10. **Licenses.** Consultant represents and warrants to City that Consultant has all licenses, permits, qualifications, insurance and approvals of whatsoever nature that are legally required of Consultant to practice its profession. Consultant shall, at its sole cost and expense, keep and maintain such licenses, permits, qualifications, insurance and approvals in full force and effect at all times during the term of this Agreement. Consultant shall maintain a City of Brisbane business license.

11. **Compliance with Laws.** Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations in connection with providing its services under this Agreement.

12. **Indemnity.** Consultant shall indemnify, defend, and hold City, its officers, officials, employees and volunteers, harmless from and against any and all direct claims, losses, damages, injuries, expenses and liabilities, including the reimbursement of attorney's fees, to the extent caused by the negligent performance or willful misconduct by Consultant of its services under this Agreement or its failure to comply with any of the its obligations contained in this Agreement, and City shall not be liable for any negligent acts or omissions or willful misconduct of Consultant. The duty to defend obligation of the Consultant shall be limited to the proportionate percentage of any claim arising directly from Services performed by the Consultant under this Agreement.

13. **Insurance.** Consultant, at its own expense, shall procure and maintain, for the duration of this Agreement, insurance policies, which satisfy the following requirements:

(a) Type of policies and coverage:

- (1) *General Liability Coverage.* Consultant shall maintain commercial general liability insurance in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage.
- (2) *Automobile Liability Coverage.* Consultant shall maintain automobile liability insurance in an amount not less than \$1,000,000 combined single limit for each occurrence, for bodily injury and property damage.
- (3) *Workers' Compensation and Employer's Liability Coverage.* Consultant shall maintain workers' compensation insurance as required by the State of California and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, for any and all persons employed by Consultant in connection with the performance of services under this Agreement.
- (4) *Professional Liability Coverage.* Consultant shall maintain professional errors and omissions liability coverage in an amount not less than \$1,000,000 per claim, covering negligent acts and errors or omissions.

- b) Endorsements: Each general liability policy shall contain the following provisions:
- (1) The City, its officers, officials, employees, agents and volunteers are to be included as additional insureds as respects: liability arising out of activities performed by Consultant solely and exclusively under this Agreement; products and completed operations of Consultant solely and exclusively provided under this Agreement; premises owned, occupied or used by Consultant; or automobiles, leased, hired or borrowed by Consultant.
 - (2) For any claims related to the services being provided by Consultant solely and exclusively under this Agreement, Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents or volunteers shall be excess of Consultants' insurance and shall not contribute with it.
 - (3) Consultant shall provide City with thirty (30) days prior written notice by email in the event any of the insurance coverage is canceled..
- c) Acceptability of Insurers. Insurance is to be placed with insurers having a current A.M. Best rating of no less than A:VII, unless otherwise approved by City in writing.
- d) Verification of coverage. Consultant shall provide certificates of insurance including the City as additional insured as evidence of the insurance coverage required by this Agreement. Certificates of such insurance shall be filed with City before commencement of work by Consultant. At the request of City, Consultant shall provide complete, certified copies of all required insurance policies required by this Agreement.

14. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be either personally delivered or sent by certified mail, return receipt requested, addressed to the other party as follows:

To City

City of Brisbane
50 Park Place
Brisbane, CA 94005
Attn.: Public Works Director

To Consultant

Willdan Energy Solutions
Attention: Micah Chen
2401 E. Katella Ave, #300
Anaheim, CA 92806

- 15 . **Resolution of Disputes.** If any dispute between the parties concerning this Agreement arises, the parties shall in good faith attempt to resolve it through mediation before commencing any legal action.

16. **Termination of Agreement.** This Agreement may be terminated immediately by either party, effective upon written notice, should the other party commit any material default in the performance of its obligations hereunder. This Agreement may be terminated by either party, for any reason, upon thirty (30) day's prior written notice to the other party. In the event this Agreement is terminated by City, Consultant shall be compensated for all services performed to the date of termination.

17. **Equal Opportunity Employment.** Consultant warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal opportunity employment.

File Attachments for Item:

K. 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 22/23



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Karen Kinser, Deputy Director of Public Works

Subject: Public Hearing on Imposition of Fiscal Year 2022-2023 Tax Roll Charges for the Sierra Point Landscaping and Lighting District

Community Goal/Result - Economic Development

Purpose - To complete the process via a public hearing for the imposition of annual tax roll charges that fund Sierra Point's Landscape and Lighting Assessment District, which provides for maintenance of the landscaping, irrigation and lighting installed in 1989.

Recommendation - The following procedures and actions are recommended:

1. Statement of the Engineer of Record as to the nature of the project.
2. Mayor's statement and declaration that the Public Hearing is open (see Attachment 1).
3. Statement by the City Clerk verifying that the Certificate of Posting and the Resolution of Intention is on file (see Attachment 2), followed by the reading of any written protests by the City Clerk.
4. Hearing of oral testimony and comments.
5. Closure of Public Hearing.
6. By motion, adoption of the proposed Resolution Addressing Objections and Ordering the Improvements and Confirming the Diagrams and Assessment for Fiscal Year 2022-2023 for the Sierra Point Landscaping and Lighting District.

Background

At its June 16th meeting, the City Council adopted Resolution No. 2022-52, a Resolution of Preliminary Approval of Engineer's Report, and Resolution No. 2022-53, a Resolution of Intention to Order the Levy and Collection of Assessments Pursuant to the Landscaping and Lighting Act of 1972, pertaining to the Sierra Point Landscaping and Lighting District, Fiscal Year 2022-2023. The fiscal year 2022–2023 Engineer's Report maintains the previous year's total assessment amount.

In accordance with state law, joint notice of both the public meeting and the public hearing was mailed to all affected property owners and was posted at City Hall, Brisbane Community

1

Public Hearing on Imposition of FY 22-23 Tax Roll Charges for the Sierra Point Landscaping and Lighting District

Center, Brisbane Public Library and Mission Blue Center. The preliminarily approved Engineer's Report is attached. As of June 29, 2022, no written protests had been received.

Discussion

In addition to the routine maintenance provided within the district, the revenue funds non-annual projects such as deep root watering trees in drought years. In the coming fiscal year, aging and rusting street light poles will be replaced and/or repaired and treated with rust inhibitor as needed.

Minor corrections to the Engineer's Report may be made by staff after adoption of the resolution if final county assessor data received after this action differs from draft data.

Fiscal Impact

This is an annually occurring process that provides the funding mechanism for the work completed within the landscaping and lighting district. If the Council declines to order and levy the collection of assessments, there will be no identified revenue source for the work scheduled in this District. The FY 22-23 budget adopted by Council for Department 6035 (Sierra Point Landscaping and Lighting District) is in the amount of \$577,137. The assessments to be collected via the recommended action are \$591,719. The collected amount includes a \$14,582 addition to fund reserves.

Measure of Success

Continuing acceptable maintenance levels in the Sierra Point Landscape and Lighting District.

Attachments

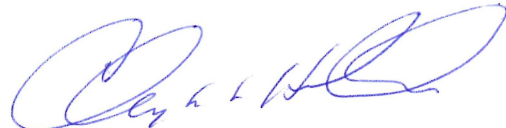
1. Opening Statement by the Mayor of the City of Brisbane
2. Clerk's Statement
3. Proposed Resolution Addressing Objections, Ordering the Improvements and Confirming the Diagrams and Assessment for Fiscal Year 2022-23
4. Engineer's Report, including Zone 1 and Zone 2 Assessment Diagrams



Karen Kinser, Deputy Director of Public Works



Randy Breault, Director of Public Works



Clay Holstine, City Manager

**OPENING STATEMENT BY THE MAYOR
OF THE CITY OF BRISBANE**

JULY 7, 2022

SIERRA POINT LANDSCAPING AND LIGHTING DISTRICT

This is the time and place set for hearing on the Engineer's Report and the levy and collection of the proposed assessment for Fiscal Year 2022-2023 for the Sierra Point Landscaping and Lighting District. These proceedings were undertaken pursuant to the Landscaping and Lighting Act of 1972.

The Engineer's Report prepared by the Engineer of Work consists of the proposed improvements, the boundaries of the Assessment District and any zones therein, the proposed diagram, the estimate of cost thereof and the proposed assessments upon assessable lots and parcels of land within the District. Any one of these items may be the subject of protests or endorsements.

You are asked to clearly identify yourself and the property owned by you so that your statements may be correctly recorded.

The hearing is declared open and I will ask the City Clerk to report on the various notices given in connection with the hearing.

CLERK'S STATEMENT

JULY 7, 2022

**SIERRA POINT
LANDSCAPING AND LIGHTING DISTRICT**

Notices have been mailed and posted as required by the Landscaping and Lighting Act of 1972. Proofs of mailing and posting are on file in my office. A copy of the Engineer's Report prepared by the Engineer of Work was filed in my office on June 6, 2022 and has been open to public inspection since that time.

RESOLUTION NO. 2022-XX**A RESOLUTION OVERRULING PROTESTS AND ORDERING THE IMPROVEMENTS
AND CONFIRMING THE DIAGRAM AND ASSESSMENTS****FISCAL YEAR 2022-2023****SIERRA POINT
LANDSCAPING AND LIGHTING DISTRICT****RESOLVED**, by the City Council of the City of Brisbane, California, as follows:

WHEREAS, the Engineer's Report for Fiscal Year 2022-2023 for the Sierra Point Landscaping and Lighting District Pursuant to the Landscaping and Lighting Act of 1972 was duly made and filed with the Clerk of said City, whereupon said Clerk presented it to the City Council for its consideration;

WHEREAS, said Council thereupon duly considered said report and each and every part thereof and found that it contained all the matters and things called for by the provisions of said Act, including (1) plans and specifications of the existing improvements and the proposed new improvements; (2) estimate of costs; (3) diagram of the District; and (4) an assessment according to benefits; all of which were done in the form and manner required by said Act;

WHEREAS, said Council found that said report and each and every part thereof was sufficient in every particular detail and determined that it should stand as the report for all subsequent proceedings under said Act, and thereby Preliminarily Approved said report via Resolution 2022-52; whereupon said Council, pursuant to the requirements of said Act, appointed Thursday, the 7th day of July, 2022, at the hour of 7:30 p.m. of said day in the Brisbane Community Meeting Room, 50 Park Place, Brisbane, California, 94005 as the time and place for hearing protests in relation to the levy and collection of the proposed assessments for said improvements, including the maintenance or servicing, or both, thereof, for Fiscal Year 2022-2023 and directing said Clerk to give notice of said hearing as required by said Act;

WHEREAS, it appears that notices of said hearing were duly and regularly mailed, published and posted in the time, form and manner required by said Act, as evidenced by the Affidavits and Certificates on file with said Clerk, whereupon said hearing was duly and regularly held at the time and place stated in said notice;

WHEREAS, persons interested, objecting to said improvements, including the maintenance or servicing, or both, thereof, or to the extent of the assessment district, or any zones therein, or to the proposed assessment or diagram or to the Engineer's estimate of costs thereof, filed written protests with the Clerk of said City at or before the conclusion of said hearing, and all persons interested desiring to be heard were given an opportunity to be heard, and all matters and things were pertaining to the levy and

collection of the assessments for said improvements, including the maintenance or servicing, or both, thereof, were fully heard and considered by said Council; and

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED and ORDERED,
as follows:

1. That protests against said improvements, including the maintenance or servicing, or both, thereof, or to the extent of the assessment district or any zones therein, or to the proposed assessment or diagram, or to the Engineer's estimate of costs thereof, for Fiscal Year 2022-2023 be, and each of them are, hereby overruled.
2. That the public interest, convenience and necessity require and said Council does hereby order the levy and collection of assessments pursuant to said Act, for the construction or installation of the improvements, including the maintenance or servicing, or both, thereof, more particularly described in said Engineer's Report and made a part hereof by reference thereto.
3. That the Sierra Point Landscaping and Lighting District and the boundaries thereof benefited and to be assessed for said costs for the construction or installation of the improvements, including the maintenance or servicing, or both, thereof, are more particularly described by reference to a map thereof on file in the Office of the Clerk of said City. Said map indicates by a boundary line the extent of the territory included in said district and of any zone thereof and the general location of said District.
4. That the plans and specifications for the existing improvements and for the proposed improvements to be made within the assessment district or within any zone thereof contained in said report, be, and they are, hereby finally adopted and approved.
5. That the Engineer's estimate of the itemized and total costs and expenses of said improvements, maintenance and servicing thereof, and of the incidental expenses in connection therewith, contained in said report, be, and it is hereby, finally adopted and approved.
6. That the public interest and convenience require, and said Council does hereby order, the improvements to be made as described in and in accordance with said Engineer's Report, reference to which is hereby made for a more particular description of said improvements.
7. That the diagram showing the exterior boundaries of the assessment district referred to and described in said Resolution No. 2022-53, and also the boundaries of any zones therein and the lines and dimensions of each lot or parcel of land within said District as such lot or parcel of land is shown on the County Assessor's maps for the fiscal year to which it applies, each of which lot or parcel of land has been given a separate number upon said diagram, as contained in said report, be, and it is hereby, finally approved and confirmed.

8. That the assessment of the total amount of the costs and expenses of the said improvements upon the several lots or parcels of land in said District in proportion to the estimated benefits to be received by such lots or parcels, respectively, from said improvements, and the maintenance or servicing, or both, thereof and of the expenses incidental thereto contained in said report be, and the same is hereby, finally approved and confirmed.

9. That said Engineer's Report for Fiscal Year 2022-2023 be, and the same is, hereby finally adopted and approved as a whole.

10. That the City Clerk shall forthwith file with the Auditor of San Mateo County the said assessment, together with said diagram thereto attached and made a part thereof, as confirmed by the City Council, with the certificate of such confirmation thereto attached and of the date thereof.

11. That the order for the levy and collection of assessment for the improvements and the final adoption and approval of the Engineer's Report as a whole, and of the plans and specifications, estimate of the costs and expenses, the diagram and the assessment, as contained in said Report, as modified, as hereinabove determined and ordered, is intended to and shall refer and apply to said Report, or any portion thereof, as amended, modified, revised or corrected by, or pursuant to and in accordance with any resolution or order, if any, heretofore duly adopted or made by this Council.

12. That the San Mateo County Controller and the San Mateo County Tax Collector apply the Sierra Point Landscaping and Lighting District assessments to the tax roll and have the San Mateo County Tax Collector collect said assessments in the manner and form as with all other such assessments collected by the San Mateo County Tax Collector.

Coleen Mackin, Mayor
City of Brisbane

* * * *

I, the undersigned, hereby certify that the foregoing Resolution No. 2022-XX was adopted at a regular meeting of the City Council of the City of Brisbane on the 7th day of July, 2022 by the following vote:

AYES:

NOES:

ABSENT:

Ingrid Padilla, City Clerk
City of Brisbane

CITY OF BRISBANE

SIERRA POINT

LANDSCAPING AND LIGHTING DISTRICT

ENGINEER'S REPORT

on the
Levy of an Assessment
for the
2022 - 2023 Fiscal Year

Prepared by

Karen Kinser, P.E.
Deputy Director of Public Works

June 6, 2022

I. BACKGROUND

In 1983, the Brisbane City Council determined to undertake proceedings under the provisions of Division 15, Part 2, of the California Streets and Highways Code, entitled “Landscaping and Lighting Act of 1972”, for the formation of an assessment district for the purpose of constructing, installing, maintaining and servicing the following facilities within said district:

- a) Public landscaping, including trees, shrubs, grass, other vegetation, and irrigation facilities.
- b) Public lighting facilities, including standards, poles, and electric current or energy.

The proposed district was designated the “Sierra Point Landscaping and Lighting District”.

This report was prepared as part of an annually occurring process to detail the assessment charges and district expenses covering the 2022 - 2023 fiscal year.

II. PLANS AND SPECIFICATIONS

The original plans and specifications for this assessment district have been separately bound but are incorporated herein by this reference thereto.

III. ESTIMATE OF COSTS

The costs of this assessment district for the 2022 - 2023 fiscal year are estimated to be as follows:

ZONE 1 & 2 CONSTRUCTION & MAINTENANCE COSTS

| | | FY 22/22 |
|--|-----------------------------|------------------|
| | Employee costs | 53,124 |
| | Supplies and services | 401,931 |
| | Administrative costs | 122,082 |
| | | |
| | TOTAL ZONE 1 & 2 | \$577,137 |

Supplies and services includes safety clothing, maintenance of vehicles and equipment, small tools and supplies, landscape and irrigation maintenance including materials, electricity, and water.

Administrative charges are indirect, overhead costs to manage the district.

A detailed breakdown of these costs is available to assessees upon request.

Costs associated with this assessment district for the 2022 - 2023 fiscal year are to be paid as follows:

ZONE 1 & 2 FUNDING SOURCES

| | | FY 21/22 |
|--|-----------------------------|------------------|
| | Assessment charges | 591,719 |
| | Addition to Reserves | -14,582 |
| | | |
| | TOTAL ZONE 1 & 2 | \$577,137 |

IV. DIAGRAM

The assessment diagrams for Zones 1 and 2 are attached hereto and are a part of this report.

V. ASSESSMENT

The assessments to be made against the assessable lots and parcels of land within this assessment district are attached hereto and are a part of this report.

Respectfully submitted,

Dated 06/29/22



Karen Kinser, P.E.
Deputy Director of Public Works

Filed in the office of the City Clerk of the City of Brisbane, San Mateo County, California, this _____ day of _____, 2022.

Ingrid Padilla
City Clerk

Filed in the office of the County Controller-Auditor of the County of San Mateo, California, this _____ day of _____, 2022.

Juan Raigoza
County Controller

ASSESSMENT ROLL

| <u>ASSESSMENT NUMBER</u> | <u>ASSESSOR'S PARCEL NUMBER</u> | <u>PARCEL AREA, AC.</u> | <u>ASSESSMENT</u> |
|------------------------------|-------------------------------------|-----------------------------|-------------------|
| <u>ZONE 1</u> | | | |
| A 1 | 007—165—210 | 4.41 | \$23,117 |
| A 2 | 007—165—230 | 8.97 | 51,477 |
| A 3 | 007—165—110 | 3.44 | 19,164 |
| A 4 | 007—165—050 | 6.13 | 34,148 |
| A 5 | 007—164—020 | 5.66 | 31,530 |
| A 6 | 007—164—010 | 10.20 | 56,823 |
| A 7 | 007—165—130 | 9.78 | 54,483 |
| A 8 | 007—165—140 | 7.13 | 39,720 |
| A 9 | 007—165—150 | 5.93 | 33,035 |
| A 10 | 007—163—030 | 3.52 | 19,609 |
| A 11 | 007—163—040 | 3.08 | 17,158 |
| A 12 | 007—165—120 | 4.56 | 25,404 |
| C 1 | 015—011—090 | Note ¹ | 0 |
| C 2 | 015—011—100 | 6.92 | 38,551 |
| C 3 | 015—011—110 | 8.57 | 47,742 |
| C 4 | 015—011—120 | 8.56 | 47,686 |
| C 5 | 015—011—140 | 2.41 | 13,427 |
| Subtotal Zone 1 | | 99.28 | \$553,074 |

¹ Although previously assessed, this parcel is owned by California State Lands Commission, which is exempt from local assessments.

ZONE 2

| | | | | |
|---|---|-------------------------|-------------------|-----------|
| B | 1 | None (placeholder only) | | -0- |
| B | 2 | 005—162—430 (Ptn) | 15.2 | 7,189 |
| B | 3 | 005—162—300 | 66.5 | 31,456 |
| B | 4 | 005—162—400 (Ptn) | Note ² | -0- |
| B | 5 | 005—162—410 (Ptn) | 0.2 ³ | -0- |
| B | 6 | 005—162—390 | Note ⁴ | -0- |
| B | 7 | 005—162—420 (Ptn) | Note ⁴ | -0- |
| | | Subtotal Zone 2 | 81.7 | \$ 38,645 |
| | | Total | 180.99 | \$591,719 |

METHOD OF ASSESSMENT SPREAD

The amounts to be assessed against the parcels of property to pay the costs and expenses of the work and improvements shall be based on the estimated benefits to be derived by the various properties within the assessment district.

Construction and maintenance costs shall be segregated by zone, and then spread to the parcels within each zone in proportion to the area of the benefited parcels within the zone.

Incidental expenses shall be spread proportional to the area of benefited parcels within the assessment district.

Due to the County Auditor's requirement that individual parcel assessments be rounded to the nearest even cent, the total of said individual assessments may not exactly equal the total estimate of costs.

² This portion of this parcel is private land over which the public has been granted access for use as the street, Tunnel Avenue.

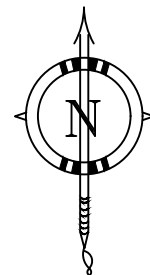
³ No assessment has been imposed for a value less than \$100.

⁴ B6 and B7 are publicly owned portions of Tunnel Avenue.

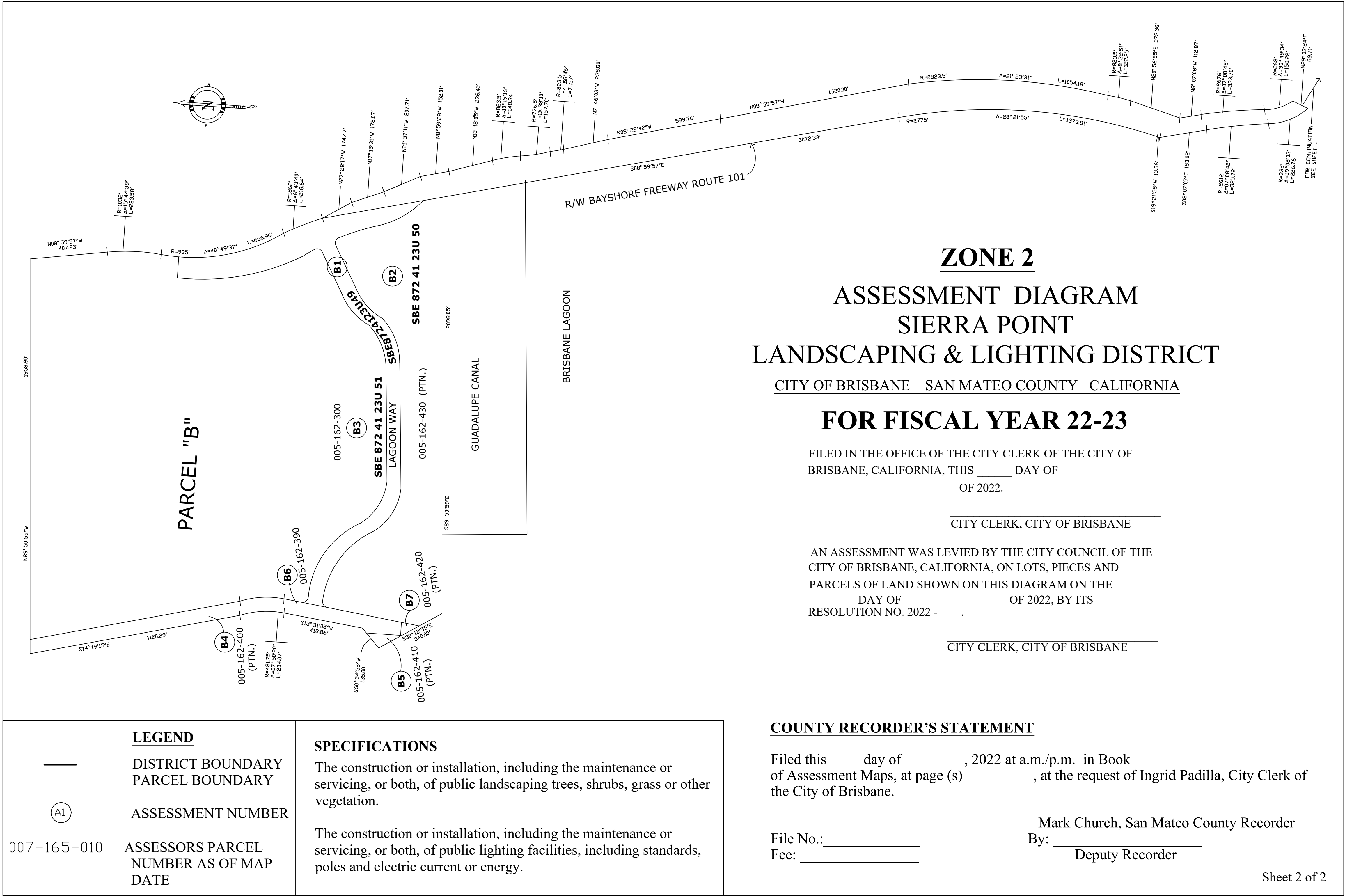
NAMES AND ADDRESSES OF OWNERS

| ASSESSMENT NUMBER | APN NUMBER | ASSESSEE |
|----------------------|---|---|
| A-1 | 007-165-210 | BP3 SF4 1000 Marina LLC 4380 La Jolla Village Dr. Suite 230 San Diego, CA 92122 |
| A-2 | 007-165-230 | BP3 SF5 3000 3500 Marina LLC 4380 La Jolla Village Dr. Suite 230 San Diego, CA 92122 |
| A-3 | 007-165-110 | SNH Brisbane Ca LLC 255 Washington St Newton, MA 02458 |
| A-12 | 007-165-120 | PPF OFF 7000 Marina Blvd LP C/O Morgan Stanley Real Estate Advisor 555 California St. 21 st Floor San Francisco, CA 94101 |
| A-4 | 007-165-050 | Grand Sierra Properties, Inc. 150 Executive Park Blvd. #4000 San Francisco, CA 94134 |
| A-5 A-6 | 007-164-020 007-164-010 | HCP Life Science REIT, Inc. 1920 Main St, Suite 1200 Irvine, CA 92614 |
| A-7 A-8 A-9 | 007-165-130 007-165-140 007-165-150 | Slough Brisbane LLC 1920 Main St. Suite 1200 Irvine, CA 92614 |
| A-10 | 007-163-030 | Summit Hospitality 114 LLC 12600 Hill Country Blvd., #R-100 Austin, TX 78738 |
| A-11 | 007-163-040 | Bre Sh Brisbane Owner LLC PO Box A-3956 Chicago, IL 60690-3956 |

| | | |
|--------------------------|--|--|
| B-2 B-3 B-4 B-5 | 005-162-430 005-162-300 005-162-400 005-162-410 | Oyster Point Properties, Inc. 150 Executive Park Blvd. #4200 San Francisco, CA 94134-3332 |
| B-6 B-7 | 005-162-390 005-162-420 | City of Brisbane 50 Park Place Brisbane, CA 94005 |
| C-1 | 015-011-090 | State of California C/O State Lands Commission Attn: Title Unit 100 Howe Ave., Ste. 100 Sacramento, CA 95825 |
| C-2 | 015-011-100 | HCP Life Sciences REIT, Inc. 3000 Meridian Boulevard #200 Franklin, TN 37067 |
| C-3 | 015-011-110 | ARE San Francisco No. 17 LLC C/O Deloitte & Touche Attn: Shanna Lehman PO Box 847 Carlsbad, CA 92018 |
| C-4 | 015-011-120 | DW LSP 5000 Shoreline LLC 301 Howard St, Ste. 2100 San Francisco, CA 94105 |
| C-5 | 015-011-140 | GNS Shoreline LP 500 N Hurstbourne Pkwy Ste 200 Louisville, KY 40222 |



Sheet 1 of 2



File Attachments for Item:**L. 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 2022-2023 County Tax Roll, and Authorizing the County Tax Collector to Collect Such Charges."



CITY COUNCIL AGENDA REPORT

Meeting Date: June 7, 2022

From: Keegan Black, Regional Compliance Program Manager

Subject: City of Brisbane Local Stormwater Program Fees

Community Goal/Result

Ecological Sustainability

Purpose

To provide a public hearing and consider imposition of annual tax roll charges that fund Brisbane's Local Stormwater Program, which minimizes discharge of pollutants to San Francisco Bay in accordance with federally mandated permit requirements.

Recommendation

1. Open the Public Hearing and take public comment. Close the Public Hearing, and if appropriate, address any objections to the imposition of fees related to the NPDES Program.
2. Adopt Resolution No. 2022-XX, "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 2022-2023 County Tax Roll, and Authorizing the County Tax Collector to Collect Such Charges."

Background

In 1987, the Environmental Protection Agency, under amendments to the 1972 Clean Water Act, imposed regulations that mandate control and reduction of pollutants in stormwater runoff through the National Pollutant Discharge Elimination System (NPDES) permitting program. In the Bay Area, under the authority of the Porter-Cologne Water Quality Control Act, the San Francisco Bay Regional Water Quality Control Board (Water Board) issues and enforces municipal stormwater NPDES permits.

A revised Municipal Regional Stormwater Permit (MRP 2.0), which applies to all municipalities throughout San Mateo, Santa Clara, Alameda, and Contra Costa counties, as well as the cities of Fairfield, Suisun City, and Vallejo, was approved by the Water Board in late 2015. This permit mandates specific actions, implementation levels, and reporting requirements that each municipality must meet. Failure by municipalities to comply with these new permit requirements may result in significant enforcement action by the Water Board.

Discussion

There are two programs that provide stormwater management locally; the **Countywide Stormwater General Program** (which assesses Basic Fees and Additional Fees) overseen by the City/County Association of Governments of San Mateo County (C/CAG), and the City of Brisbane's own **Local Stormwater Program**.

The proposed Resolution imposes charges only for the City of Brisbane Local Stormwater Program, and authorizes the County Tax Collector to place such charges on the property tax roll.

City Council Resolution 2005-29 previously authorized the San Mateo County Flood Control District to collect the Basic Fees of the Countywide Stormwater General Program directly from property owners in Brisbane. These charges are also placed on the property tax roll.

The City Council elected to pay the Additional Fees of the Countywide Stormwater General Program directly to C/CAG when these fees were first imposed, rather than placing these charges on the property tax roll. (Since its inception, the Additional Fee amount increases annually based on the Consumer Price Index; this year's amount is expected to be approximately \$10,588)

The total fee assessment (charges) per the 2022 Engineer's Report is approximately \$52,000. The annual charge per parcel is not changed from previous years. Based on previous years' actual collections, the estimate of fees that will be collected is \$52,000.

For detailed information on both of these overall programs, including the calculation of charges, please see the 2022 Engineer's Report, included as Attachment B.

Fiscal Impact

| | |
|---|-----------|
| The city's recommended local NPDES program budget for 2022-2023 is: | \$461,600 |
|---|-----------|

| | |
|---|----------|
| The 2022 Engineer's Report for Stormwater Management Fees estimated a previous years' actual property tax revenue for the City's Local Stormwater Program of approximately: | \$52,000 |
|---|----------|

| | |
|---|-----------|
| Revenues from solid waste franchise fees (designated for trash capture activities, both increased street cleaning and sweeping and maintenance of trash capture devices) | \$100,000 |
|---|-----------|

| | |
|---|----------|
| Anticipated revenues from Measure M (\$10 vehicle registration fee) | \$22,000 |
|---|----------|

| | |
|---|-----------|
| The budget shortfall for this program is therefore: | \$309,578 |
|---|-----------|

The City's costs to maintain compliance with the various clean water requirements (frequently referred to as NPDES) have increased significantly since the Water Board's 2015 issuance of the Municipal Regional Permit (MRP 2.0).

The following general description indicates the large number of city employees who participate both in daily/weekly activities to comply with the MRP, and who also attend regular meetings with C/CAG to address permit requirements:

- Director of Public Works/City Engineer – overall permit compliance, illicit discharge control, construction controls, serves as Chairperson of C/CAG Stormwater Committee
- Regional Compliance/Maintenance Program Manager – facilities inspections, trash capture program, corporation yard site controls, and new MRP 2.0 requirements such as PCB and mercury regulations and green infrastructure requirements
- Senior Planner – new development controls, copper controls
- Deputy Director of Public Works (Utilities) – monitoring potable water discharges, storm drain maintenance
- Deputy Director of Public Works – street sweeping
- Team Leader (Buildings & Grounds) – pesticides toxicity control
- Team Leader (Utilities) – storm drain cleaning, potable water discharge monitoring
- Public Works Inspector – construction controls
- Administrative Assistant – assists with overall permit compliance, public information and outreach, compiles annual report

Pending implementation of the recently passed SB231 Stormwater Capture bill (D- Herzberg), Council may wish to pursue increasing assessments to begin to address the above listed shortfall.

Measure of Success

Approval of the Engineer's Report will allow for the ongoing compliance with the California State Water Resources Control Boards Municipal Regional Permit.

Attachments

1. Resolution No. 2022-XX
2. 2022 Engineer's Report for Stormwater Management Fees

Keegan Black
Keegan Black, Regional Compliance Program Manager

Randy Breault
Randy Breault, Director of Public Works/City Engineer

Clayton L. Holstine
Clay Holstine, City Manager

ATTACHMENT 1

RESOLUTION NO. 2022-XX

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 2022-2023 COUNTY TAX ROLL, AND AUTHORIZING THE COUNTY TAX COLLECTOR TO COLLECT SUCH CHARGES

WHEREAS, the Environmental Protection Agency, under the 1987 amendments to the Federal Clean Water Act, imposed regulations that mandate local governments to control and reduce the amount of storm water pollutant runoff into receiving waters; and

WHEREAS, under the authority of the California Porter-Cologne Water Quality Control Act, the State Water Resources Control Board has delegated authority to its Regional Water Quality Control Boards to invoke permitting requirements upon counties and cities; and

WHEREAS, in 1993 and 1999, the San Francisco Bay Regional Water Quality Control Board issued countywide National Pollutant Discharge Elimination System (NPDES) stormwater permits to all municipalities within San Mateo County; and

WHEREAS, in fall of 2015, the San Francisco Bay Regional Water Quality Control Board issued a new NPDES stormwater permit, the Municipal Regional Stormwater Permit MRP 2.0 that applies to all municipalities within San Mateo County and other portions of the Bay Area; and

WHEREAS, the efforts for the control of stormwater pollution under the Municipal Regional Stormwater Permit require a Local Brisbane Stormwater Program; and

WHEREAS, Section 5471 of the California Health and Safety Code and Section 13.06.060 of the City's Storm Water Ordinance authorize imposition of charges for a Local Brisbane Stormwater Program; and

WHEREAS, said Local Brisbane Stormwater Program has been submitted to the City Council pursuant to the 2021 Engineer's Report for Stormwater Management Fees, which includes mandated tasks and associated costs, and an estimated amount to be collected of \$52,000; and

WHEREAS, the City held a public hearing to consider imposition of annual tax roll charges that fund the Local Brisbane Stormwater Program; and

WHEREAS, the San Mateo County Tax Collector has agreed to place such charges on the 2021-2022 County Tax Roll.

NOW, THEREFORE, BE IT RESOLVED THAT

1. The City Council of the City of Brisbane hereby adopts the 2022 Engineer's Report for Stormwater Management Fees as filed with the City Clerk and overrules any objections or protests to the Engineer's estimate of costs and user fee structure, or to the implementation of the stormwater management program described therein.

2. The County Controller is hereby authorized to place the City of Brisbane Local Stormwater Management Fees on the fiscal year 2022-2023 County Tax Roll, and that the County Tax Collector be and hereby is authorized to collect such charges in the same manner, by the same person, and at the same time as, together with and not separately from, the general taxes applicable to real property in the City of Brisbane, as follows:

| | |
|---------------------------|----------|
| Single Family (R-1&2) | \$9.48 |
| Multi Family (R-3) | \$21.64 |
| Commercial/Industrial (1) | \$19.94 |
| Commercial/Industrial (2) | \$254.20 |
| Vacant Land (3) | \$18.34 |
| Vacant Land (4) | \$55.16 |
| Vacant Land (5) | \$212.18 |
| Vacant Land (6) | \$927.80 |

- (1) Land use designation generally within Central Brisbane and Southwest Bayshore.
 (2) Land use designation generally within all other areas except areas included in (1).
 (3) Vacant land with an area less than 1 acre.
 (4) Vacant land with an area greater than 1 acre but less than 5 acres.
 (5) Vacant land with an area greater than 5 acres but less than 20 acres.
 (6) Vacant land with an area greater than 20 acres.
3. The cost for such service, \$1.35 per parcel, is hereby authorized to be retained by the County from such collections, the balance of which is to be remitted to the City of Brisbane.

BE IT FURTHER RESOLVED that the City Clerk is hereby directed to forward a copy of this Resolution to the San Mateo County Board of Supervisors.

Regularly passed and adopted this 7th day of July, 2022.

Coleen Mackin
Mayor

I hereby certify that the foregoing Resolution No. 2022-XX was duly and regularly adopted at a regular meeting of the Brisbane City Council on July 7, 2022, by the following vote:

AYES:
NOES:
ABSENT:

Ingrid Padilla
City Clerk

ATTACHMENT 2

2022 ENGINEER'S REPORT for STORMWATER MANAGEMENT FEES

Purpose

The purpose of this report is to define the City of Brisbane stormwater management program and the method utilized in determining the user fee structure to be applied by Assessor's Parcel Number (APN) and to appear on the County Tax Roll for Fiscal Year 2022-2023.

History

The Environmental Protection Agency, under the 1987 amendments to Section 402(p) of the Clean Water Act, imposed regulations mandating local governments manage stormwater discharges as a means of reducing pollution in public bodies of water. The California State Water Resources Control Board delegated enforcement authority to the Regional Water Quality Control Boards (RWQCB) to ensure compliance with the Clean Water Act. The San Francisco Bay RWQCB, under Section 13370 *et seq* of the California Water Code, requires the City of Brisbane and all other municipal stormwater dischargers in San Mateo, Santa Clara, Alameda, and Contra Costa counties, as well as the cities of Fairfield, Vallejo, and Suisun City to control significant sources of stormwater pollution as co-permittees under a Municipal Regional Stormwater Permit 2.0, referenced as Order R2-2015-0049 and National Pollutant Discharge Elimination System (NPDES) Permit No. CAS612008.

As a condition of the Municipal Regional Stormwater Permit, the City of Brisbane and other municipal stormwater dischargers are required to meet specific requirements in a variety of program areas that address the multiple potential pollutant sources that can impact a municipal storm drain system. Compliance efforts in San Mateo County are implemented in two ways: those that have countywide benefit or significance are implemented by the City/County Association of Governments of San Mateo County (C/CAG) through its San Mateo Countywide Water Pollution Prevention Program (Countywide Program), and those that are specific to a local jurisdiction are implemented through municipality-specific programs. Administration of Brisbane's local program is primarily managed by the City's Public Works Department.

STORMWATER MANAGEMENT PROGRAM

Background Information

The process of urbanization increases rainwater runoff. As trees and grass are cleared, pervious ground cover is frequently replaced by impervious concrete, asphalt, or brick. Rainwater can no longer seep into the ground. If this stormwater is not properly managed, flooding may result. Often, municipal drainage systems are designed for flows resulting from pre-development runoff, and become undersized when impervious area is increased by building structures, driveways, and parking lots. Further, increased stormwater runoff makes areas not covered by impervious materials more susceptible to erosion, and as a result, sediment may discharge to the storm drain system.

Stormwater runoff flowing over man-made surfaces such as roads and parking lots can also contribute to water quality degradation. The natural purification that occurs when water flows through the subsurface is lost. As rainwater flows over impervious surfaces, it can pick up pollutants such as engine oils, pesticides, fertilizers, and trace metals like lead, copper, or zinc. These contaminants are frequently toxic to humans and aquatic life.

Stormwater pollution can come from point and non-point sources. Point sources are attributable to a distinct point of discharge, such as a pipe into a water body. Point source pollution can include illegal storm drain connections at industrial facilities or cross connections between sanitary and storm sewer systems. Non-point source pollution, such as overland flow or sheet runoff, is not attributable to a distinct point of discharge, and is a major contributor to water quality degradation in California. Problems that magnify non-point source pollution include channel erosion, sedimentation due to construction and land development, hydrologic modification, physical habitat alteration, excessive or poorly timed application of pesticides and fertilizers, natural or engineered agricultural subsurface drainage, septic systems, livestock grazing, and urban runoff. Oil and grease from parking lots and driveways, nutrients, littering, animal waste, accidental spills, soil erosion and air pollution all contribute to non-point source discharges in urban areas. Urban runoff is the focus of stormwater pollution prevention regulations in Brisbane.

Program Structure

The Municipal Regional Permit requirements implemented at both the Countywide Program and municipality-specific levels fall into seven main program areas, the central focus of each being summarized as follows:

1. Municipal Government Maintenance Activities - Ensure development and implementation of appropriate Best Management Practices by all municipalities to control and reduce non-stormwater discharges and polluted stormwater to storm drains and watercourses during operation, inspection, and routine repair and maintenance activities of municipal facilities and infrastructure.
2. New Development and Construction Controls – Use planning authorities to include appropriate source control, site design, and stormwater treatment measures in new development and redevelopment projects to address both soluble and insoluble stormwater runoff pollutant discharges and prevent increases in runoff flows from new development and redevelopment projects. This goal is to be accomplished primarily through the implementation of low impact development techniques. Municipalities also implement a construction site inspection and control program at all construction sites, with follow-up and enforcement consistent with an enforcement response plan, to prevent construction site discharges of pollutants and impacts on beneficial uses of receiving waters.
3. Industrial, Commercial, and Illicit Discharge Controls
 - A. Industrial and Commercial Site Controls – Implement an industrial and commercial site control program at all sites which could reasonably be considered to cause or

contribute to pollution of stormwater runoff, with inspections and effective follow-up and enforcement to abate actual or potential pollution sources consistent with an enforcement response plan to prevent discharge of pollutants and impacts on beneficial uses of receiving waters.

- B. Illicit Discharge Detection and Elimination – Implement illicit discharge prohibitions and ensure illicit discharges are detected and controlled. Municipalities shall develop and implement an illicit discharge program that includes an active surveillance component and a centralized complaint collection and follow-up component to target illicit discharge and non-stormwater sources.
4. Public Information and Outreach – Increase the knowledge of the target audiences regarding the impacts of stormwater pollution on receiving water and potential solutions to mitigate the problems caused, change the waste disposal and runoff pollution generation behavior of the target audiences by encouraging implementation of appropriate solutions, and involve various citizens in mitigating the impacts of stormwater pollution.
5. Water Quality Monitoring – Perform water quality monitoring activities to address specific management questions related to the health of San Francisco Bay and local receiving waters, including status and trends monitoring and pollutants of concern/long-term trends monitoring. Additional specific monitoring projects are required, including projects addressing water quality stressor/source identification, Best Management Practices effectiveness evaluations for stormwater treatment or hydrograph modification control, and geomorphic analyses to identify how and where creeks can be restored or protected to cost-effectively reduce the impacts of pollutants, increased flow rates, and increased durations of urban runoff.
6. Pollutants of Concern
 - A. Pesticides Toxicity Control – Implement control programs to prevent the impairment of urban streams by pesticide-related toxicity. The control programs addresses municipalities' and others' use of pesticides within municipal jurisdictions that pose a threat to water quality and have the potential to enter the municipal storm drain system. Pesticides of concern include organophosphorous pesticides, pyrethroids, carbamates, and fipronil.
 - B. Trash Load Reduction – Implement control measures and other actions to reduce trash loads from municipal storm sewers by 70% by 2017, and 100% or no adverse impacts to receiving waters from trash by 2022. This includes developing and implementing Short-Term Trash Load Reduction Plans, which includes installation and maintenance of trash capture devices within the storm drain system and cleanup and abatement progress on trash hot spots.
 - C. Mercury and Polychlorinated Biphenyls (PCBs) – Initiate control programs for mercury and PCBs to implement the urban runoff requirements of the San Francisco Bay mercury and PCBs Total Maximum Daily Loads (TMDLs) and reduce mercury and PCB loads to make substantial progress toward achieving the urban runoff load allocations established in the mercury and PCBs TMDLs. These programs include

- pilot projects to investigate and abate mercury and PCB sources in drainages, including public rights-of-way, and stormwater conveyances with accumulated sediment that contain elevated mercury and PCB concentrations, to evaluate and enhance municipal sediment removal and management practices, to evaluate on-site stormwater treatment via retrofit, and diversion of dry weather and first flush flows to publicly owned treatment works.
- D. Copper Controls – Implement control measures identified in the Regional Water Quality Control Board's Basin Plan to support approved copper site-specific objectives for San Francisco Bay. Control measures include managing waste generated from cleaning and treating copper architectural features, managing discharges from pools, spas, and fountains that contain copper-based chemicals, engage in efforts to reduce copper discharged from automobile brake pads to surface waters via urban runoff, and ensuring proper management of copper by industrial sources.
- E. Polybrominated Diphenyl Ethers (PBDEs), Legacy Pesticides, and Selenium – Implement programs to gather concentration and loading information for PBDEs, legacy pesticides, and selenium to identify, assess, and manage controllable sources of these pollutants in urban runoff, if any.
7. Exempted and Conditionally Exempted Discharges – Implement programs to ensure discharges to the storm drain system with minimal pollutant concern, such as uncontaminated groundwater, diverted stream flows, and pumped groundwater from foundation drains are properly managed and monitored to eliminate adverse impacts to receiving waters.

COUNTYWIDE PROGRAM

The Countywide Program centrally manages the efforts that provide overall benefits to the County and all cities and towns within the county involved with implementation of the Municipal Regional Permit requirements. The seven permit components described above delineate work tasks to be undertaken and completed during the 2022-2023 fiscal year.

The 2022-2023 NPDES Countywide Program Budget was adopted by C/CAG on June 9, 2022 in the amount of \$3,444,216. The City of Brisbane is required to contribute proportionate funding to the Countywide Program. This funding is divided into two categories, the Basic and the Additional Fees. The Basic Fee was established to fund the original Countywide Program activities when the NPDES permit was first adopted. The Additional Fees were established to fund additional Countywide Program activities required by the Regional Board subsequent to establishment of the Basic Fees.

The Basic and Additional Fees are calculated as follows:

Basic Annual Charges:

- Single Family Residence: \$3.9527/parcel
- Miscellaneous, Agriculture, Vacant and Condominium: \$1.9763/parcel
- All Other Land Uses: \$3.44/parcel for the first 11,000 square feet plus \$0.3593 per 1,000 additional square feet of parcel area

Additional Annual Charge (Adjusted Annually by Consumer Price Index):

- Single Family Resident: \$3.9527/parcel
- Miscellaneous, Agriculture, Vacant and Condominium: \$1.9763/parcel
- All Other Land Uses: \$3.6530/parcel for the first 11,000 square feet plus \$0.3593 per 1,000 additional square feet of parcel area

The Countywide Program's Basic and Additional Fees for 2022-2023 that will be charged to the City of Brisbane are estimated at approximately \$9,115 and \$11,281, respectively. The City of Brisbane has historically authorized the Countywide Program to assess and collect the Basic Fees directly through separate property tax assessments, whereas the Additional Fees are paid to C/CAG out of the City's General Fund. This approach prevents the Additional Fees from being billed to property owners.

CITY OF BRISBANE LOCAL PROGRAM

City Facilities

The City of Brisbane is responsible for all public drainage facilities within its jurisdiction that collect stormwater and convey it to San Francisco Bay. Brisbane's facilities include the City's streets, curbs and gutters, catch basins, pipelines, culverts, and open channels.

Stormwater is collected from private property and public streets in two open channels; the Guadalupe Valley Municipal Improvement District (GVMID) Basin Channel and the Bayshore Storm Drain Basin Channel. This stormwater is generally conveyed through these channels to underground box culverts which ultimately outfall to the Bay. The GVMID Basin Channel outfall delivers stormwater via the Lagoon box culvert. This outfall receives water from most of Central Brisbane as well as the Guadalupe Valley and discharges this water into the Lagoon. Stormwater that enters the Lagoon eventually flows to the Bay through two box culverts under US 101. The Bayshore Storm Drain Basin Channel receives stormwater mainly from the undeveloped land in northern Brisbane as well as portions of Daly City and discharges this water to the Bay through a single box culvert under US 101. Stormwater from Sierra Point generally outfalls to the Bay through multiple culverts located along the perimeter of the Sierra Point Peninsula.

During normal rainfall, flooding potential in Brisbane is low. During heavy rains, however, localized flooding can and has occurred in some areas. Some trunk lines, drain pipes, catch basins and other structures are undersized, and additional catch basins are needed. The City's 2003 Storm Drainage Master Plan proposed Capital Improvement Projects to address these issues.

Local Program Elements

The following is a description of City-specific actions that will be implemented to meet the Municipal Regional Stormwater Permit requirements that were generally described previously in this report. These descriptions detail the City-specific efforts that will be performed to address these requirements. Following this description is a summary of the City's stormwater budget for 2022-2023.

1. Municipal Government Maintenance Activities - This program is intended to prevent pollution of stormwater runoff through improvements in municipal government maintenance activities and associated programs. This program focuses on preventing non-stormwater discharges or polluted stormwater associated with street and road repair and maintenance activities, sidewalk/plaza maintenance and pavement washing, bridge and structure maintenance and graffiti removal, and implementing management measures at the City corporation yard. This program includes contractual street sweeping services, development and implementation of a Stormwater Pollution Prevention Plan for the corporation yard, management of the City's maintenance contractors, and participation in Countywide Program subcommittees and activities related to municipal maintenance.
2. New Development and Construction Controls – This program focuses on controlling stormwater pollution from construction sites, new developments, and redevelopment areas. Tasks include developing and implementing planning, inspection, and enforcement procedures, developing and implementing requirements for post-construction controls, inspecting stormwater treatment measures to ensure proper operation and maintenance, and providing education and training to construction site operators. The Municipal Regional Stormwater Permit require municipalities to ensure applicable new and redevelopment projects manage stormwater runoff using Low Impact Development techniques, primarily focused on harvesting and use, evapotranspiration, and infiltration to groundwater. This program includes implementation of planning procedures to ensure all applicable projects incorporate appropriate site design, source control, and stormwater treatment measures.
3. Industrial, Commercial, and Illicit Discharge Controls
 - a. Industrial and Commercial Site Controls – This element of the program is designed to control pollutants discharged to municipal storm drains from commercial and industrial facilities. Specific focus is placed upon facility inspection, providing information and assistance to facility managers about reducing pollutants in stormwater from these facilities, and implementing escalating enforcement responses for instances of non-compliance. This program includes staff participation in Countywide Program subcommittees and compliance with the requirements to develop and implement an information/inspection program, in coordination with existing County Health department commercial/industrial inspection programs.
 - b. Illicit Discharge Detection and Elimination – This program element focuses on identifying and eliminating illicit discharges to the storm drain system by identifying major outfalls, conducting inspections of the storm drain system, identifying and eliminating illicit connections, inspecting for evidence of illegal dumping and tracking illicit discharges to their sources, providing information to the public about proper disposal alternatives, and implementing an effective enforcement response plan. This program includes staff participation in Countywide Program activities, City staff monitoring of illicit discharges in coordination with County Hazardous Waste Inspectors, and compliance with inspection procedures and enforcement activities.

4. Public Information and Outreach – This program is intended to inform the public about sources of stormwater pollution, how it reaches local waterways, types of common activities that contribute to stormwater pollution, its effects on receiving waters, and to encourage public involvement in reducing the amount of pollutants entering the City's storm drain system. The public information component of this program overlaps with other program elements described below. This program includes participation in Countywide Program activities, dissemination of educational materials, including the preparation of periodic notices to be placed in the local media, and the planning and implementation of local community volunteer activities.
5. Water Quality Monitoring – This element of the program on the City level is to support Countywide Program staff in performing required monitoring activities as part of a Regional Monitoring Collaborative with other Bay Area stormwater permittees. This program element includes participation in Countywide Program activities and providing input to Countywide Program staff on proposed monitoring activities and programs.
6. Pollutants of Concern
 - a. Pesticides Toxicity Control – This element of the program includes implementation of the City's adopted Integrated Pest Management resolution and ensuring less toxic methods of pest control in all City operations, including activities performed through contractors. City staff also provides outreach materials on less-toxic methods of pest control to the public. This program element includes participation in Countywide Program activities and supporting the Our Water Our World program implementation in local retailers selling pest control materials.
 - b. Trash Load Reduction – This element of the program includes developing and implementing Short and Long-Term Trash Load Reduction plans, identification and annual cleanup/assessment of one trash hot spot, and implementation of various control measures to reduce trash loadings in the City's storm drain system. This program also includes participation in Countywide Program's trash control subcommittee.
 - c. Mercury and Polychlorinated Biphenyls (PCBs) – This program element includes providing support to Countywide Program staff on implementation of the required programs and pilot projects for addressing mercury and PCBs. These program elements are primarily managed at the Countywide Program level; however this program element includes funding for City staff participation in relevant Pollutant of Concern subcommittees and activities. The City will investigate opportunities for Green Infrastructure installations to meet our portion of San Mateo County's mercury reduction goals.
 - d. Copper Controls – This program element includes participation and support of Countywide Program efforts directed at regional copper management issues, such as the statewide Brake Pad Partnership, and implementation of local planning, inspection, education, and enforcement efforts to address stormwater discharges from any permitted architectural copper installations or pool, spa, and fountain

discharges containing copper algicides. This program includes City participation in Countywide Program subcommittees and activities related to copper controls.

- e. Polybrominated Diphenyl Ethers (PBDEs), Legacy Pesticides, and Selenium – This program is primarily managed at the Countywide Program level and includes City staff participation in relevant Countywide Program subcommittees and activities.
7. Exempted and Conditionally Exempted Discharges – This program element includes management and oversight of exempted and conditionally exempted discharges to the City's storm drain system to ensure compliance with permit conditions. This includes City staff implementing management measures for potable water discharges to the storm drain system and ensuring appropriate conditions of approval on new and redevelopment projects to properly manage any exempted or conditionally exempted discharges. This program includes City participation in Countywide Program subcommittees and activities related to exempted and conditionally exempted discharges.
8. Establish Program and Collect Fees – Implementation of the program requires the City's Finance Department to manage the NPDES Fund and the County Flood Control District to collect the City's Local Program fee in the same manner as the Countywide Program fee. This program includes the Additional Annual Fee collected by C/CAG and funded from the City's General Fund.

Summary of Budget Department 6140 (NPDES)

| | |
|--|-------------------|
| 1. Salaries and Benefits | \$ 243,583 |
| 2. Services and Supplies (excluding anticipated Additional Fees) | \$ 78,601 |
| 3. Annual C/CAG NPDES Additional Fees (from General Fund) | \$ 11,281 |
| 4. Indirect Costs | <u>\$ 128,135</u> |
| TOTAL | \$ 461,600 |

USER FEE FORMULA

Method

The City of Brisbane developed a formula for calculating stormwater fees that remains unchanged since it was first utilized after stormwater fees were authorized by the Council in July 1994. The user fee formula is based on two distinct concepts: (1) an administrative fee should be shared equally by all parcels to cover program administration costs; and (2) an assessment fee should be charged in proportion to the storm drainage service utilized and the amount of pollutants or sediment generated by each type of parcel. Average parcel square footage and assumptions explained below regarding the types of land uses for each zone were used to develop an equitable assessment fee structure.

Generally speaking, residential properties contribute equal amounts of water to the storm drain system. For this reason, the formula charges single-family residential properties a uniform user fee based on estimated runoff from an average single-family property. This practice is common in other cities and is equitable because these properties benefit equally from City-wide services such as public streets, sidewalks and parking.

On average, 50% impervious cover per parcel is generally accepted as the typical impervious area for a single-family residential dwelling. Using an average single-family parcel area of 4,823 square feet and 50% impervious cover, a standard impervious area of 2,411 square feet was defined as an Equivalent Single-family Unit (ESU). In determining the assessment portion of the stormwater user fee for the various parcels in the City, the following formula is used:

$$\text{User Fee} = \text{Single Family Fee} \times (\text{Number of ESUs})$$

The impervious area for non-residential properties and vacant land was devised by use of runoff area and general land characteristics and use. As shown on Exhibit A, entitled “Storm Drain Program Rate Analysis,” small commercial and industrial land uses are estimated to have approximately 100% runoff area, large commercial and industrial land uses are estimated to have approximately 80% runoff area, and vacant land is estimated to have 20-50% runoff area, as opposed to single family residential properties, which are estimated to have approximately 50% impervious area. These estimates, along with the other land use runoff area estimates on the attachment, are all consistent with the general runoff coefficients used in standard engineering practices.

For the storm drain user fee formula, current land use classifications are generally consolidated into the following four categories and further broken down to group commercial/industrial and vacant land by average lot size:

1. Single-Family Residential (R-1 and R-2) - This classification is based upon 50% impervious area which equate to a runoff coefficient of 0.5.
2. Multi-Family High Density (R-3) - All the remaining residential classifications are based upon the assumption that the higher density properties, which generally consist of the apartments along San Bruno and Visitacion Avenues and the trailer park, have approximately 100%

impervious surface area, as opposed to 50% for single-family properties. This 100% impervious surface area equates to a runoff coefficient of 1.0.

3. Commercial/Industrial (1) & (2) - These classifications are based upon the assumption that most small commercial/industrial land uses in Brisbane (Commercial (1)) have a 100% impervious surface area and larger commercial/industrial land uses, (Commercial (2)) have an 80% impervious surface area, as opposed to 50% for single-family properties. These impervious surface areas equate to runoff coefficients of 1.0 for Commercial (1) and 0.8 for Commercial (2).

4. Vacant Land (3), (4), (5) & (6) - Vacant Land (3) accounts for smaller lots with an area less than 1 acre and with increased runoff coefficients. Vacant Land (4) accounts for mid-sized lots with an area greater than 1 acre but less than 5 acres. Vacant Land (5) accounts for larger lots with an area greater than 5 acres but less than 20 acres. Vacant Land (6) accounts for larger lots with an area greater than 20 acres. These classifications are based upon the assumptions that the smaller parcels have higher runoff coefficients based upon their size and proximity and the larger parcels have little or no impervious surfaces and a typical runoff coefficient of 0.2 to 0.5, as opposed to 0.5 for single-family properties.

In developing the total ESUs, the following uses were designated exempt from fee collection: City Government Activities, Federal and State Government Activities, and Unclassified.

As previously indicated, the City's user fee formula remains unchanged from inception. The charges per parcel include an administrative fee of \$4.50 and the additional fee per ESU of \$4.98. The following table details the total annual charges per parcel based on land use type, which remain unchanged from previous years:

| | <u>ESU</u> | <u>Annual Charge</u> <u>Per Parcel**</u> |
|---------------------------------------|------------|---|
| Single Family Residential | 1.00 | \$9.48 |
| Multi-Family High Density Residential | 3.44 | \$21.64 |
| Commercial/Industrial (1) | 3.10 | \$19.94 |
| Commercial/Industrial (2) | 50.14 | \$254.20 |
| Vacant Land (3)* | 2.78 | \$18.34 |
| Vacant Land (4)* | 10.17 | \$55.16 |
| Vacant Land (5)* | 41.70 | \$212.18 |
| Vacant Land (6)* | 185.40 | \$927.80 |

(1) Land use designation generally within Central Brisbane and Southwest Bayshore

(2) Land use designation generally within all other areas except areas included in (1)

(3) Vacant land with an area less than 1 acre.

(4) Vacant land with an area greater than 1 acre but less than 5 acres.

(5) Vacant land with an area greater than 5 acres but less than 20 acres.

(6) Vacant land with an area greater than 20 acres.

* Additional vacant land designations were added to equally distribute charges based upon land area and runoff generated. The vacant land areas were divided into groups so that the average parcel size more closely reflected the parcel area and distribution within that designation. This was done by creating new limits as identified in notes 3 through 6 inclusive so that a

parcel in the “Acres” was not charged the same as a parcel in the Baylands or in Northwest Bayshore sub-areas.

** Annual charge includes an administrative fee of \$4.50 per parcel.

Please note annual charges have been rounded by \$0.01 in some cases to allow fees to be evenly divided into semi-annual tax bills received by property owners.

Fee Summary

Exhibit A, entitled "User Classification Fee Summary," presents the anticipated fees to be collected for fiscal year 2022-2023. These fees remain unchanged from previous years. As shown, the anticipated income from special assessments is \$52,003.78 which funds more than half of the services and supplies category of the 2022-2023 NPDES budget.

EXHIBIT A to 2022 ENGINEER'S REPORT FOR STORMWATER MANAGEMENT FEES
STORM DRAIN PROGRAM RATE ANALYSIS

| CATEGORY | # OF PARCELS | TOT. AREA (ACRES) | AVG. AREA (SF) | RUNOFF COEFF. | RUNOFF AREA (SF) | ESU PER CATEGORY |
|---------------------------------|--------------|-------------------|----------------|---------------|------------------|------------------|
| SINGLE FAMILY RESIDENTIAL (R-1) | 1,562 | 109.15 | 3,044 | 0.5 | 1,522 | 1.00 |
| MULTI-FAMILY RESIDENTIAL (R-3) | 45 | 6.48 | 6,273 | 1.0 | 6,273 | 3.44 |
| COMMERCIAL/ INDUSTRIAL (1) | 172 | 23.46 | 5,941 | 1.0 | 5,941 | 3.10 |
| COMMERCIAL/ INDUSTRIAL (2) | 74 | 238.45 | 140,363 | 0.8 | 112,291 | 50.14 |
| VACANT LAND (3) | 108 | 24.29 | 9,797 | 0.5 | 4,898 | 2.78 |
| VACANT LAND (4) | 33 | 37.76 | 49,843 | 0.4 | 19,937 | 10.17 |
| VACANT LAND (5) | 13 | 71.73 | 240,351 | 0.3 | 72,105 | 41.70 |
| VACANT LAND (6) | 8 | 277.95 | 1,513,438 | 0.2 | 302,688 | 185.40 |
| TOTALS | 2,015 | 789.27 | | | | |

(1) LAND USE DESIGNATION GENERALLY WITHIN CENTRAL BRISBANE, AND SOUTHWEST BAYSHORE
(2) LAND USE DESIGNATION GENERALLY WITHIN ALL OTHER AREAS EXCEPT AREAS INCLUDED IN (1)
(3) VACANT LAND WITH AN AREA LESS THAN 1 ACRE
(4) VACANT LAND WITH AN AREA GREATER THAN 1 ACRE BUT LESS THAN 5 ACRES
(5) VACANT LAND WITH AN AREA GREATER THAN 5 ACRES BUT LESS THAN 20 ACRES
(6) VACANT LAND WITH AN AREA GREATER THAN 20 ACRES

| CATEGORY | # OF PARCELS | ADMIN. FEE | ESU | TOTAL ESUs | ASSMT/ PARCEL | ASSMT. FEE TOT. | TOT. FEE/ PARCEL | TOTAL FEES |
|---------------------------------|--------------|-------------------|--------|------------|---------------|--------------------|------------------|--------------------|
| SINGLE FAMILY RESIDENTIAL (R-1) | 1,562 | \$7,029.00 | 1.00 | 1562.00 | \$4.98 | \$7,778.76 | \$9.48 | \$14,807.76 |
| MULTI-FAMILY RESIDENTIAL (R-3) | 45 | \$202.50 | 3.44 | 154.80 | \$17.14 | \$771.30 | \$21.64 | \$973.80 |
| COMMERCIAL/ INDUSTRIAL (1) | 172 | \$774.00 | 3.10 | 533.20 | \$15.44 | \$2,655.68 | \$19.94 | \$3,429.68 |
| COMMERCIAL/ INDUSTRIAL (2) | 74 | \$333.00 | 50.14 | 3710.36 | \$249.70 | \$18,477.80 | \$254.20 | \$18,810.80 |
| VACANT LAND (3) | 108 | \$486.00 | 2.78 | 300.24 | \$13.84 | \$1,494.72 | \$18.34 | \$1,980.72 |
| VACANT LAND (4) | 33 | \$148.50 | 10.17 | 335.61 | \$50.66 | \$1,671.78 | \$55.16 | \$1,820.28 |
| VACANT LAND (5) | 13 | \$58.50 | 41.70 | 542.10 | \$207.68 | \$2,699.84 | \$212.18 | \$2,758.34 |
| VACANT LAND (6) | 8 | \$36.00 | 185.40 | 1483.20 | \$923.30 | \$7,386.40 | \$927.80 | \$7,422.40 |
| TOTALS | 2,015 | \$9,067.50 | | | | \$42,936.28 | | \$52,003.78 |

TOTAL FEES = \$52,003.78
CARRY OVER (estimated) = \$0.00

ADMIN. FEE / PARCEL = \$4.50
ASSMT. FEE / ESU = \$4.98

File Attachments for Item:

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

(This public hearing item was continued from the City Council Meeting of May 19, 2022. City Council will consider applicant appeal of the Planning Commission's April 4, 2022 decision denying the modification of Interim Use Permit 2021-Up-3 to allow the use of a vacant site on the Baylands to be used for a Google Bus staging yard (Planning Commission Resolution 2021-UP-3-M) and revoking Interim Use Permit 2021-UP-3 (Planning Commission Resolution 2021-UP-3-R); Eric Aronsohn, applicant; Oyster Point Properties Inc, applicant/owner.)



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: John Swiecki, Community Development Director

Subject: 600 Tunnel Avenue; Appeal of the Planning Commission's Decision to revoke Interim Use Permit 2021-UP-3 and to deny the requested modification for continued staging of up to 90 Google Commuter buses on an approximately 3-acre vacant site on the Baylands.

SUPPLEMENTAL REPORT

Community Goal/Result

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

Purpose

Continued public hearing on the appeal by BDI, on behalf of Google Inc., of the Planning Commission's decision to revoke Interim Use Permit 2021-UP-3 and to deny the requested modification for continued staging of up to 90 Google Commuter buses on an approximately 3-acre vacant site on the Baylands.

Recommendation

That the City Council make a decision on the appeal. Two draft resolutions are provided for Council's reference, one granting the applicant's appeal and modifying the permit conditions of approval (Attachment 2), or alternatively affirming the Planning Commission's decision to revoke the interim use permit (Attachment 3).

Background

On May 19, 2022, City Council held a public hearing on the appeal of the Planning Commission's decision to revoke the above referenced permit and deny the applicant's requested modification. Following the public hearing, Council continued the matter to allow BDI time to address safety concerns that were raised regarding Tunnel Ave's narrow roadway conditions and the risks that errant buses travelling south of the site may pose, especially to bicyclists. Further background details may be referenced from the May 19th minutes and agenda report (Attachments 4 and 5).

On June 28th, BDI provided a proposal set forth in Attachment 1 in an effort to address Council's concerns.

Discussion

In response to the concerns raised at the previous City Council meeting, BDI has proposed the following measures and Tunnel Ave improvements (see further detail in Attachment 1):

1. Removal or relocation of the concrete barricades that are currently located along Tunnel Ave.
2. Improvement of the existing roadway shoulder on the east side of Tunnel Ave to include an 8 ft wide approximately 4,500 ft long compacted, decomposed granite (“DG”) path, to improve the existing bicycle/pedestrian access.
3. Provide crossings at the Tunnel Ave and Lagoon Way intersection.
4. Installation of plastic delineators along the east side of Tunnel Avenue. These would provide separation between the roadway and the new DG bike path.
5. Add 4 new “no dumping” signs along Tunnel Ave.
6. BDI will routinely patrol the area and commit to removing any trash dumped within 24-hours when identified by BDI, City or members of the public.
7. For dust mitigation, the yard surface would be treated with a calcium-based binder, which would binder the surface gravel while allowing the surface to remain pervious to rainwater.
8. BDI has proposed to implement fines on Google for drivers violating the prohibition on using Tunnel Ave south of the site.

The applicant has provided a map and cross section depicting the proposed DG path and plastic delineators relative to the existing roadway. Given the capital investment to complete the proposed improvements, BDI is also requesting a 5-year term be granted from the date of City Council approval. This would be consistent with the maximum term allowed for interim use permits on the Baylands, per BMC Section 17.41.080.A. Otherwise, if the appeal were granted without an extension of the date, it would be set to expire in November of this year. Note that BDI has committed to completing the improvements within 180 days.

The City Engineer and Planning staff have reviewed the proposed measures and believe they would improve vehicular and bicycle safety along Tunnel Ave. They have been included as draft conditions of approval in the event the City Council chooses to grant the appeal. Staff further recommends an additional condition of approval requiring plastic bollards on the west side of Tunnel Ave, to discourage dumping. Staff further recommends a condition of approval requiring that the on-site dust mitigation binder to be applied to the site within 30 days of City Council approval.

As noted previously staff has prepared alternate draft resolutions for the City Council’s consideration to either approve the interim use permit revision (including extended term) with

revised conditions of approval (Attachment 2), or to uphold the Planning Commission's decision for permit revocation (Attachment 3).

Fiscal Impact

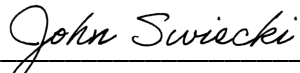
None.

Measure of Success

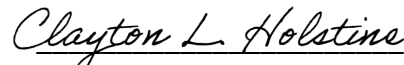
Processing of an appeal application consistent with Brisbane's Municipal Code.

Attachments

1. Applicant's Proposal, dated June 28, 2022
2. Draft City Council Resolution Granting the Appeals and Conditionally Approving 2021-UP-3-M (Modified)
3. Draft City Council Resolution Affirming the Planning Commission Revocation of Interim Use Permit 2021-UP-3 and Denying the Applicant's Requested Modification
4. City Council Minutes, May 19, 2022
5. City Council Agenda Report, May 19, 2022



John Swiecki, Community Development Director



Clay Holstine, City Manager

ATTACHMENT 1 BDI PROPOSAL For Google Bus Yard

Interim Use Permit 2021-UP-3: Appeal and Request for Extension

Date: 6/28/22

Attn: Ken Johnson – Senior Planner, City of Brisbane

Summary

Baylands Development Inc (“BDI”) and its tenant Google are requesting a 5-year extension to the current use permit currently under appeal and otherwise set to expire in November, 2022. In response to City Council’s and Brisbane community members, we are proposing enhancements to Tunnel Avenue intended to improve safety for both cyclists and drivers, and enhance the area as a means of reducing illegal dumping. Along with these efforts, BDI and Google commit to complying with the conditions of the current use permit including but not limited to hours of operation, bus routing, and dust mitigation.

In consultation with traffic consultant Fehr & Peers and City staff, a list of improvements for implementation are described below. While we think these measures are appropriate and can be implemented in a short period of time, we remain open to further comments and suggestions from Council.

Tunnel Ave

1. Concrete barricades will be removed or reconfigured
2. Construct an 8’ wide and approximately 4,500’ long decomposed granite (“DG”) path on east side of Tunnel Ave (from Lagoon to Beatty)
3. Add crosswalks at north end of the path and also crossing Tunnel Ave and crossing Lagoon Rd at the intersection of those two roads (see Exhibit A. Exhibit 1, Plan view of crosswalks and path length)
4. Add 4 new “no dumping” signs along Tunnel Ave
5. Install vertical delineators along the east side of Tunnel, protecting the DG path from vehicles and illegal dumping (See Exhibit A. Figure 1, Cross sections of Tunnel Road with path)

Parking Surface

For dust mitigation purposes, a calcium-based additive can be applied via water truck. The additive is designed to bind the fine materials while drawing in moisture from the surrounding air to the existing surface cover thereby reducing or eliminating dust.

Route Violation Fine Program

While our goal remains to eliminate the violations all together, we recognize the mitigating incentive a fine provides. BDI is proposing a sizable fine per violation to the tenant based on the monthly, self-reporting routing data from Google. All fines will go towards maintaining and enhancing the traffic safety improvements proposed for Tunnel Ave.

Additional Measures to Prevent Dumping

Moving the concrete barricades from the road may lead to illegal dumping issues. By all accounts, the barricades were effective in mitigating this issue. In order to keep this issue at bay, BDI will routinely patrol the area and commit to removing any trash dumped in the area within 24-hours when identified by BDI, City, or members of the public.

Implementation

BDI is working expeditiously to find a set of solution that are sufficient, economically viable, and environmentally responsible. We believe within 90-180 days of approval the above recommended measures can be completed

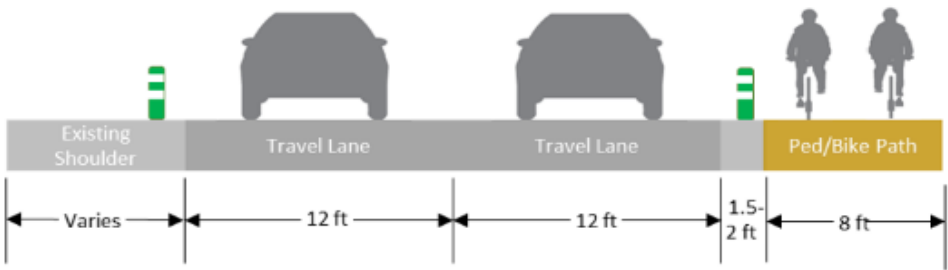
pending grading permit and other steps deemed necessary by stakeholders including the City of Brisbane, the DTSC, and the Water Board.

Conclusion

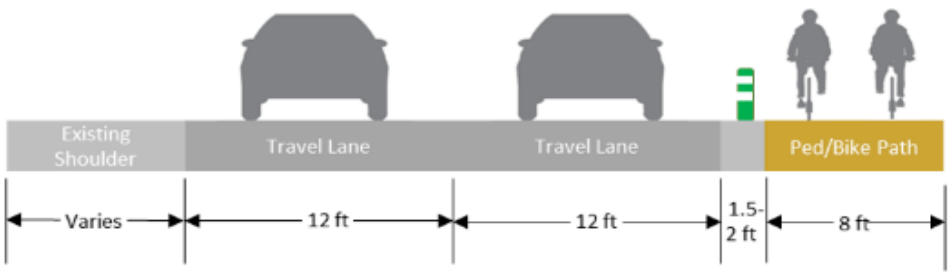
BDI and Google have spent significant time evaluating the conditions at the site and addressing the concerns of the community. Providing a 5-year use permit allows BDI and Google to make enhancements to the operation and improvements to Tunnel Ave and demonstrate our commitment to the Brisbane community.

EXHIBIT A

Figure 1: Tunnel Avenue Cross-section with Pedestrian/Bicycle Path



Tunnel Avenue Looking North



Tunnel Avenue Looking North



Exhibit 1: Illustrative Bicycle / Pedestrian Path Alignment & Crosswalk Improvements

ATTACHMENT 2

Draft - RESOLUTION 2022-~~XX~~
A RESOLUTION OF THE CITY COUNCIL OF BRISBANE
GRANTING THE APPEALS AND
CONDITIONALLY APPROVING INTERIM USE PERMIT 2021-UP-3-M (MODIFIED)
TO ALLOW FOR THE CONTINUATION OF THE
GOOGLE BUS STAGING YARD AT 600 TUNNEL AVE

WHEREAS, on November 16, 2021, following a duly noticed public hearing, the Planning Commission conditionally approved Interim Use Permit 2021-UP-3, which allowed for continuation of Google's staging of commuter buses at 600 Tunnel Ave for a period of one year; and

WHEREAS, following a report to the Commission on March 10, 2022 detailing Google's bus movements, the Commission requested that the application be placed on an agenda for a public hearing for potential revocation; and

WHEREAS, Eric Aronsohn of BDI, on behalf of Google, applied to the City of Brisbane for Modification to Interim Use Permit 2021-UP-3 to allow continued outdoor staging of Google buses with a revised schedule for bus trips, with operations generally 4 am to 10 pm, versus the previous schedule of 3 to 7 am and 3 to 9 pm; and

WHEREAS, on April 14th, 2022, the Planning Commission conducted a hearing to consider both revocation and the applicant's requested modification of Interim Use Permit 2021-UP-3, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, following the public hearing, the Planning Commission denied the requested modification and revoked the interim use permit on the finding that Google had violated condition of approval #4 which states, "Routing of Google buses shall be to and from the north along Tunnel Ave and Beatty Ave to connect to U.S. 101. Buses shall not use Tunnel Avenue south of the site"; and

WHEREAS, Eric Aronsohn appealed the Planning Commission's decisions to deny the requested modification and to revoke the permit to the City Council; and

WHEREAS, City Council held duly noticed public hearings on May 19th, 2022 and July 7th, 2022 on the appeals, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the City Council of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Interim Use Permit.

NOW THEREFORE, BE IT RESOLVED by the City Council that:

Section 1.

- A. The above recitals are true and correct and incorporated herein by reference as if set forth in full.
- B. The City Council hereby overturns the Planning Commission's decision to revoke the permit and approves Use Permit 2021-UP-2-M based on the findings and with the conditions of approval attached herein as Exhibit A.

Section 2.

This Resolution shall take effect immediately upon its adoption.

COLEEN MACKIN, Mayor

I hereby certify that the foregoing Resolution No. 2022-XX was duly and regularly adopted at the regular meeting of the Brisbane City Council on July 7th, 2022 by the following vote:

AYES:

NOES:

ABSENT:

INGRID PADILLA, City Clerk

Draft - EXHIBIT A

Action Taken: Conditionally approve Use Permit 2021-UP-3-M per the staff memorandum with attachments, via adoption of Resolution 2022-XX.

Findings:

1. The proposed interim use and the conditions under which it would be operated will not be detrimental to the public health, safety or welfare, or injurious to properties or improvements in the vicinity.
2. The proposed interim use and conditions related to roadway improvements are categorically exempt from environmental review pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines and will not result in any significant adverse environmental impacts.
3. The proposed interim use will not obstruct, interfere with, or delay the intended redevelopment of the property in accordance with the uses anticipated in the General Plan or any adopted specific plan applicable to the site, inasmuch as there are no permanent structures proposed.
4. There are no required public utilities since the use is for bus staging only. The infrastructure of Tunnel Avenue provide for roadway access and lavatories and recycling are contained on the buses, so that the interim use will operate in a safe, sanitary, and lawful manner.
5. The use will benefit the property and/or the public in that it would be used to facilitate bus ridership for Google employees thereby reducing greenhouse gas emissions that will benefit the public throughout the region.
6. The use would encourage the employment of Brisbane residents to the extent it is reasonably possible to do, inasmuch as Google utilizes vendor partners for bus driver services and has indicated that they will encourage those vendors to post job openings in the City's Chamber of Commerce publication, the Luminary.

Conditions of Approval:

1. Lighting shall be programmed to turn on no earlier than 4 am and to turn off no later than 9 pm.
2. Routine hours of bus arrivals and departures shall generally be between 4 am to 10 pm, Monday through Friday. While circumstances outside the drivers' control may necessitate occasional trips outside these hours, or other occasional trips may occur as needed, such as sending buses for maintenance, changes to the routine hours are to be requested in writing to the Planning Director in advance of such change. The Director may approve the request as a minor modification or refer the matter for public hearing per BMC 17.41.090.
3. The yard's ground surface shall be maintained to prevent airborne dust generation to the satisfaction of the City. Within 30 days of this permit being granted (by August 6th, 2022), a calcium-based binder shall be applied to treat the yard surface to prevent airborne dust, to the satisfaction of the City Engineer.
4. Routing of Google buses shall be to and from the north along Tunnel Ave and Beatty Ave to connect to U.S. 101. Buses shall not use Tunnel Avenue south of the site. Google shall provide reliable, daily bus movement data to the Planning Director on a monthly basis. Data shall be provided in a form to the satisfaction of the Planning Director.
5. Within 180 days of the date of this approval (by January 3rd, 2023) the following improvements shall be made along Tunnel Ave, to the satisfaction of the City Engineer, subject to Department of Public Works Issued Encroachment and Grading permits:
 - a. Removal or relocation of the concrete barricades that are currently located along Tunnel Ave.
 - b. Improvement of the existing roadway shoulder on the east side of Tunnel Ave to include an 8 ft wide approximately 4,500 ft long compacted, decomposed granite ("DG"), to improve the existing bicycle access, consistent with the exhibits provided in the July 7th, 2022 City Council report and included in this condition by reference.
 - c. Provide crossings at the Tunnel Ave and Lagoon Way intersection.
 - d. Installation of plastic delineators along both the east and west sides of Tunnel Avenue, to provide separation between the roadway and the new DG bike path and to help to deter vehicles from pulling off the roadway to dump trash.
 - e. Add 4 new "no dumping" signs along Tunnel Ave.

6. BDI will routinely patrol the above referenced section of Tunnel Ave and remove any trash dumped within 24-hours when identified by BDI, City or members of the public.
7. No storage is permitted on site other than the Google bus parking and parking of the drivers' vehicles used to retrieve buses.
8. The site shall be maintained free of trash and debris. Trash and recycling shall be contained on the buses for disposal at an authorized off-site location.
9. Per the City Engineer, all vehicles utilizing the yard shall be in compliance with vehicle weight requirements specified in California Vehicle Code Sections 35550-35558. Storage of any vehicles over these weight requirements shall be subject to approval by the City Engineer, who may impose additional conditions.
10. The site and surrounding area shall be maintained for the duration of the use in compliance with North County Fire Authority requirements. This includes, flammable vegetation must be kept a minimum of 30 feet away from the property line, around the exterior of the lot being used, to provide a fuel break from the Baylands vegetation, except that vegetation within the nearby wetlands areas shall not be removed without approval by the project biologist.
11. Maintenance of vehicles is not permitted on the site.
12. Per the Bayshore Sanitary District requirements:
 - No onsite wastewater facilities, other than those on the buses are permitted.
 - No SFPUC water connection is permitted without prior approval.
 - No wastes from the buses into the District's wastewater collection system shall be permitted.
13. If the City determines that the interim use would interfere or obstruct planned public improvements, within a 90-day written notice by the City the permittee shall abandon the interim use and remove improvements at its own expense.
14. The operator shall maintain a business license through the City's Finance Dept.

Mandatory Conditions, per BMC Section 17.41.070:

15. Since the use is being operated by a person other than the owner of the property, the owner and the operator are furnish the city with an agreement (or a copy of a lease containing such agreement) that: (i) the operator's right to possession of the premises for the purpose of conducting the interim use is dependent upon the interim use permit having been granted and maintained in full force and effect; and (ii) the operator's right to possession of the premises for the purpose of conducting the interim use will terminate upon any expiration or revocation of the interim use permit; and (iii) it shall be the responsibility of the owner to terminate the operator's possession of the premises upon any expiration or revocation of the interim use permit if the operator continues to utilize the premises for the conduct of such interim use.
16. The permittee shall be jointly and severally liable for all costs and expenses, including attorneys' fees, the city may incur to enforce the conditions of the interim use permit upon any breach thereof by the permittee, or to abate and remove the interim use upon any failure by the permittee to discontinue such use, or to evict the operator of such use, upon the expiration or revocation of the interim use permit.

Other Conditions and Project Close Out:

17. Vehicles, fencing and lighting shall be removed from the site by the close of the interim use permit period or upon other vacation of the use.
18. This Use Permit is subject to the revocation procedures established in Brisbane Municipal Code Chapter 17.41.100.
19. Minor modifications to this use permit may be approved by the Planning Director upon written request.
20. This Interim Use Permit shall expire **five years** from the date of City Council's approval. **That expiration date is July 7th, 2027.**

ATTACHMENT 3

Draft - RESOLUTION 2022-~~XX~~
A RESOLUTION OF THE CITY COUNCIL OF BRISBANE
UPHOLDING THE PLANNING COMMISSION'S DECISIONS TO
DENY THE REQUESTED MODIFICATION AND TO REVOKE
INTERIM USE PERMIT 2021-UP-3-M
FOR GOOGLE BUS STAGING YARD AT 600 TUNNEL AVE

WHEREAS, on November 16, 2021, following a duly noticed public hearing, the Planning Commission conditionally approved Interim Use Permit 2021-UP-3, which allowed for continuation of Google's staging of commuter buses at 600 Tunnel Ave for a period of one year; and

WHEREAS, following a report to the Commission on March 10, 2022 detailing Google's bus movements, the Commission requested that the application be placed on an agenda for a public hearing for potential revocation; and

WHEREAS, Eric Aronsohn of BDI, on behalf of Google, applied to the City of Brisbane for Modification to Interim Use Permit 2021-UP-3 to allow continued outdoor staging of Google buses with a revised schedule for bus trips, with operations generally 4 am to 10 pm, versus the previous schedule of 3 to 7 am and 3 to 9 pm; and

WHEREAS, on April 14th, 2022, the Planning Commission conducted a hearing to consider both revocation and the applicant's requested modification of Interim Use Permit 2021-UP-3, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, following the public hearing, the Planning Commission denied the requested modification and revoked the interim use permit on the finding that Google had violated condition of approval #4 which states, "Routing of Google buses shall be to and from the north along Tunnel Ave and Beatty Ave to connect to U.S. 101. Buses shall not use Tunnel Avenue south of the site"; and

WHEREAS, Eric Aronsohn appealed the Planning Commission's decisions to deny the requested modification and to revoke the permit to the City Council; and

WHEREAS, City Council held duly noticed public hearings on May 19th, 2022 and July 7th, 2022 on the appeals, at which time any person interested in the matter was given an opportunity to be heard; and

WHEREAS, the City Council of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Interim Use Permit.

NOW THEREFORE, BE IT RESOLVED by the City Council that:

Section 1.

- C. The above recitals are true and correct and incorporated herein by reference as if set forth in full.
- D. The City Council hereby affirms the Planning Commission's decisions to revoke Interim Use Permit 2021-UP-2 and deny the requested modification, given violation of Condition #4, as indicated by the Planning Commission and traffic safety concerns that this raises.

Section 2.

This Resolution shall take effect within 30 days of its adoption. That effective date being August 6th, 2022.

COLEEN MACKIN, Mayor

I hereby certify that the foregoing Resolution No. 2022-XX was duly and regularly adopted at the regular meeting of the Brisbane City Council on July 7th, 2022 by the following vote:

AYES:

NOES:

ABSENT:

INGRID PADILLA, City Clerk

PUBLIC HEARING

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

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

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

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

After council questions, Mayor Mackin opened the public hearing.

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

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

Kim Follien was in support of the use permit asking the Council to decide based on facts. Michele Salmon spoke in favor of the Planning Commission's decision to revoke the Interim Use Permit and showed video clips.

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

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

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

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

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

Noes: None

Absent: None

Abstain: None

Recused: Councilmember Cunningham

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

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

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

Noes: None

Absent: None

Abstain: None

Recused: Councilmember Cunningham

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

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

Noes: None

Absent: None

Abstain: None

Recused: Councilmember Cunningham

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

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

~~After council questions, Mayor Mackin opened the public hearing. Dr. Ricardo Garcia Senior Director, Cardiovascular Drug Discovery from Bristol Myers Squibb and Dr. Beth Geist, Senior Staff Veterinarian from Bristol Myers Squibb asked for Council to approve the Use Permit Application as they will conduct research~~



CITY COUNCIL AGENDA REPORT

Meeting Date: May 19, 2022

From: John Swiecki, Community Development Director

Subject: 600 Tunnel Avenue; Appeal of the Planning Commission's Decision to revoke Interim Use Permit 2021-UP-3 and to deny the requested modification for continued staging of up to 90 Google Commuter buses on an approximately 3-acre vacant site on the Baylands.

Community Goal/Result

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

Purpose

To hear the appeal by Google Inc. of the Planning Commission's decision to revoke Interim Use Permit 2021-UP-3 and to deny the requested modification for continued staging of up to 90 Google Commuter buses on an approximately 3-acre vacant site on the Baylands.

Recommendation

That the City Council make a decision on the appeals and provide direction to staff regarding the preparation of final resolutions.

Background

In 2019, the Planning Commission approved Interim Use Permit UP-4-19, which allowed for the establishment of a parking/staging yard for up to 90 Google commuter buses on the subject site, an approximately 3-acre vacant site on the Baylands, between Tunnel Avenue and the CalTrain rail lines. While the request was for 5 years, the Planning Commission approved a term of 2 years. In their project description, Google had characterized the use as routing trips to the north to access the U.S. 101 freeway via Beatty Avenue with hours of operation generally between 3 am and 7 am and 3 pm and 9 pm, Monday through Friday. At the time of approval, the Commission added a condition of approval prohibiting bus routing to or from the south of the yard, but the conditions did not address hours of operation. The Commission also advised that a future application should include actual traffic routing and trip count data. The approved bus routing map is provided as Attachment 5.

The yard was established and began operations in late 2019. Operations were then ceased from March 2020 to the Summer of 2021 due to the Covid-19 pandemic. During its operational period in early 2020, complaints were raised regarding lighting, dust and buses being seen south of the yard.

In late 2021, the property owner applied, on behalf of Google, to extend the use via Interim Use Permit 2021-UP-3, which the Planning Commission approved on November 16th, 2021, for a one-year term. By the time of approval of the continuation of the use Google and BDI had demonstrated to the satisfaction of the Commission that the lighting and dust issues had been resolved. However, the Commission expressed concern about whether bus routing was complying with the permit and added a condition requiring Google to track the bus movements and these results be reported back to the Commission after 90 days. That report was provided to the Commission on February 24, 2022 and Google reported that the time-of-day trips did not match their previously provided schedule and some southern trips had occurred. Google reported that less than one-tenth of one percent (less than 1 per 1,000) of the trips had been in violation of the condition prohibiting southern trips.

At the February 24th meeting, the Commission directed that the permit should be scheduled for a revocation hearing, but the Commission also indicated that it would consider a modification to the permit, if requested by the applicant. The applicant subsequently filed for a modification to the interim use permit to reflect actual and anticipated time-of-day vehicle trips, which spread the trips out through the day, but did not change the total number of trips. Google also noted that they had been working on their communications, especially with new or substitute drivers, to prevent southbound trips, but acknowledged that their success rate had not been 100 percent. They did not request a modification to the northern routing, but requested allowance of a small margin of noncompliance to account for human error and unforeseen traffic situations which might preclude use of the northerly route for a limited time.

The Planning Commission held a public hearing on April 14th 2022, to consider the requested modification or revocation of the interim use permit. The Commission voted 3 to 1 to deny the requested modification and to revoke the permit.

An appeal of the Planning Commission's decision, on April 14th, 2022, to revoke the interim use permit and deny the requested modification was filed by the property owner/applicant Oyster Point Properties Inc. (aka: BDI), on behalf of its tenant Google. The appeals are provided in Attachments 1 and 2.

Agenda reports and minutes from all Planning Commission hearings referenced above are provided in the attachments to this report.

Following the appeal of the Planning Commission's decision, the applicant retained Fehr & Peers, a transportation planning and engineering consultant, to assess the traffic on Tunnel Ave. That work was done between May 3rd and May 5th. Fehr & Peers provided a description and analysis of road and traffic conditions along Tunnel Ave, with conclusions provided on page 6 of their report (see Attachment 6).

Discussion

The Commission denied the applicant's permit modification request based on the finding that the bus movements along Tunnel Avenue pose a safety risk to the public and revoked Interim Use Permit 2022-UP-3 based on the finding that Google had violated condition of approval #4 which states, "Routing of Google buses shall be to and from the north along Tunnel Ave and Beatty Ave to connect to U.S. 101. Buses shall not use Tunnel Avenue south of the site." These are reflected in Planning Commission Resolution 2021-UP-3-M and Resolution 2021-UP-3-R.

Referring to the southern trips, the applicant stated that the appeals were based on the Planning Commission's "unreasonable expectations that human error can be 100% avoided" and that it was "not willful violation". They also requested more flexibility on the bus schedule to match the needs of Google employees, post Covid-19.

The Brisbane Municipal Code (BMC) Section 17.52.040 regarding Council action on appeals states that, *"The city council shall conduct a de novo hearing on the appeal. At the close of the public hearing, the city council may affirm, reverse or modify the decision of the planning commission, either at the same meeting or at such later meeting as the council may determine, for any basis permitted by law....."* While the public record from the Planning Commission hearings is provided for reference, as a de novo hearing, Council may consider new information in its deliberations. This includes the attached traffic assessment by Fehr and Peers as well as additional information that may be entered into the record through correspondence to the Council or during the public hearing.

The options before the City Council are, per BMC Section 17.52.040:

- 1) Affirm the Planning Commission's decisions to revoke Interim Use Permit 2021-UP-3 and to deny the application to modify that permit. If this is the chosen option, Council should also specify the length of time that will be allowed before Google's cessation of operations.
- 2) Grant the applicant's appeal, reversing the decision of the Planning Commission to revoke the permit and approving the applicant's request to modify Interim Use Permit 2021-UP-3.
- 3) Modify the decision of the Planning Commission. (i.e. conditions of approval may be modified.)
- 4) Continue this matter to a future date if the City Council requires additional time and/or information in order to make a decision on this matter.

Once the City Council provides direction as outlined in Options 1-3 above, staff will prepare the appropriate resolution(s) which will be scheduled for City Council adoption on the consent calendar at the next available meeting.

Fiscal Impact

None.

Measure of Success

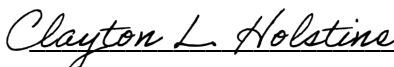
Processing of an appeal application consistent with Brisbane's Municipal Code.

Attachments

1. Appeal of the Planning Commission's Decision on Resolution 2021-UP-3-M
2. Appeal of the Planning Commission's Decision on Resolution 2021-UP-3-R
3. Planning Commission Resolution 2021-UP-3-M – denial of modification
4. Planning Commission Resolution 2021-UP-3-R – revocation of 2021-UP-3
5. Bus Routing Aerial
6. Fehr & Peers Traffic Assessment Report, dated May 9, 2022
7. Modification Denial/Revocation
 - a) 4/14/2022 Agenda Report
 - b) 4/14/2022 Minutes (Draft)
8. Interim Use Permit 2021-UP-3 (1-year extension of UP-4-19)
 - a) 10/28/2021 Agenda Report
 - b) 10/28/2021 Minutes
 - c) 11/16/2021 Agenda Report
 - d) 11/16/2021 Minutes
 - e) Resolution 2021-UP-3
9. Interim Use Permit UP-4-19 Documentation:
 - a) 10/24/2019 Agenda Report
 - b) 10/24/2019 Minutes
 - c) Resolution UP-4-19/EX-3-19



John Swiecki, Community Development Director



Clay Holstine, City Manager

For office use only
 Date Submitted: _____
 Fee: _____
 Receipt No.: _____

A P P E A L

I/We hereby appeal the action by the

☒ Planning Commission
☐ Zoning Administrator
☐ Planning Director

on April 14, 2022

[Action or Meeting Date]

regarding Application No. Resolution 2021-UP-3-M

for Modification of Interim Use Permit 2021 UP-3

[Project Description]

at 600 Tunnel Avenue

[Property Address]

The reasons for the appeal are:

Modification request met the requests of the Commission at previous meetings while complying with the Conditions of Approval. Modifications included more flexible bus schedule and more flexibility in the zero-tolerance policy for southbound buses which the Planning Staff recommended supporting for modification. An appeal to City Council is requested on the grounds that the modification was denied based on an unreasonable expectations that human error can be 100% avoided.

[Attach additional pages if necessary]

Name(s): Eric Aronsohn

Phone Number: 954-612-0307

Email Address: EAronsohn@bdisf.com

Mailing Address: 2201 Bayshore Blvd. San Francisco, CA 94134

Signature(s): *Eric Aronsohn*

Date: 4/21/22

A P P E A L

I/We hereby appeal the action by the

☒ Planning Commission
☐ Zoning Administrator
☐ Planning Director

on April 14, 2022

[Action or Meeting Date]

regarding Application No. RESOLUTION 2021-UP-3-R

for REVOKING INTERIM USE PERMIT 2021-UP-3

[Project Description]

at 600 Tunnel Avenue

[Property Address]

The reasons for the appeal are:

Applicant does not believe that a small number of buses out thousands of trips (< 1%) traveling south on Tunnel is a reasonable reason for revocation. It was explained to the Commissioners that the handful of buses that traveled south were attributable to new drivers and substitute drivers not willful violation. An appeal to City Council is requested on the grounds that the revocation is unreasonable given the circumstances and extent of the routing issue

[Attach additional pages if necessary]

Name(s): Eric Aronsohn

Phone Number: 954-612-0307

Email Address: EAronsohn@bdisf.com

Mailing Address: 2201 Bayshore Blvd. San Francisco, CA 94134

Signature(s): *Eric Aronsohn*

Date: 4/21/22

RESOLUTION 2021-UP-3-M
A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
DENYING THE MODIFICATION OF INTERIM USE PERMIT 2021-UP-3
TO ALLOW THE USE OF A VACANT SITE ON THE BAYLANDS TO BE USED FOR
A GOOGLE BUS STAGING YARD

WHEREAS, Interim Use Permit 2021-UP-3 (PERMIT), to allow continued outdoor staging of up to 90 Google buses on an approximately 3-acre vacant site on the Baylands, at 600 Tunnel Avenue, between Tunnel Avenue and the CalTrain rail lines, was approved by the Planning Commission on November 16, 2021; and

WHEREAS, a report was provided to the Planning Commission on March 10, 2022 in which Google's bus movement data was detailed for the period of November 2021 through January 2022; and

WHEREAS, following receipt of the report of bus movements, the Planning Commission directed that the PERMIT should be placed on a future agenda for a revocation hearing and/or to consider modification of the PERMIT; and

WHEREAS, Eric Aronsohn, on behalf of Google, applied to the City of Brisbane for Modification to Interim Use Permit 2021-UP-3 to allow continued outdoor staging of Google buses with a revised schedule for bus trips, with operations generally 4 am to 10 pm, versus the previous schedule of 3 to 7 am and 3 to 9 pm; and

WHEREAS, on April 14th, 2022, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

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

NOW THEREFORE, based upon the finding set forth below, the Planning Commission of the City of Brisbane, at its meeting of April 14, 2022 did resolve as follows:

Modification of Interim Use Permit 2021-UP-3 is DENIED based on the finding that the bus movements along Tunnel Avenue pose a safety risk to the public. The effective date for this decision is April 22nd, 2022, unless an appeal is filed to City Council by close-of-business on April 21st, 2022, per BMC Section 17.40.060.C.

ADOPTED this fourteenth day of April, 2022, by the following vote:

AYES: Lau, Patel and Sayasane
NOES: Gooding
ABSENT: Funke


DOUGLAS GOODING
Chairperson

ATTEST:


JOHN A. SWIECKI
Community Development Director

RESOLUTION 2021-UP-3-R
A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
REVOKING INTERIM USE PERMIT 2021-UP-3

continued

WHEREAS, Interim Use Permit 2021-UP-3 (PERMIT), to allow continued outdoor staging of up to 90 Google buses on an approximately 3-acre vacant site on the Baylands, at 600 Tunnel Avenue, between Tunnel Avenue and the CalTrain rail lines, was approved by the Planning Commission on November 16, 2021; and

WHEREAS, a report was provided to the Planning Commission on March 10, 2022 in which Google's bus movement data was detailed for the period of November 2021 through January 2022; and

WHEREAS, following receipt of the report of bus movements, the Planning Commission directed that the PERMIT should be placed on a future agenda for a revocation hearing and/or to consider modification of the PERMIT; and

WHEREAS, on April 14th, 2022, the Planning Commission conducted a duly noticed public hearing in accordance with Brisbane Municipal Code (BMC) Section 17.41.100 and 17.41.050(B), at which time any person interested in the matter was given an opportunity to be heard; and

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

WHEREAS, the Planning Commission of the City of Brisbane hereby finds that Google has violated condition of approval #4 which states, "Routing of Google buses shall be to and from the north along Tunnel Ave and Beatty Ave to connect to U.S. 101. Buses shall not use Tunnel Avenue south of the site."

NOW THEREFORE, based upon this finding, the Planning Commission of the City of Brisbane, at its meeting of April 14, 2022 did resolve as follows:

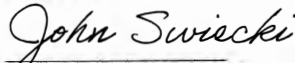
Interim Use Permit 2021-UP-3 is revoked. The effective date for this decision is April 30st, 2022, unless an appeal is filed to City Council by close-of-business on April 29th, 2022 in accordance with the procedures provided in BMC Section 17.52.020.

ADOPTED this fourteenth day of April, 2022, by the following vote:

| | |
|---------|-------------------------|
| AYES: | Lau, Patel and Sayasane |
| NOES: | Gooding |
| ABSENT: | Funke |


DOUGLAS GOODING
Chairperson

ATTEST:


JOHN A. SWIECKI
Community Development Director

Google Bus Parking: Proposed Route Mapping

Red represents inbound buses
 Blue represents outbound buses

*Cars belonging to drivers will be instructed to use this routing as well



Memorandum

Date: May 9, 2022
To: Randy Breault, City of Brisbane
From: Ryan Caldera, PE and Robert Eckols, PE
Subject: **Traffic Assessment of Tunnel Avenue in Brisbane, California**

SJ21-2062.02

This memorandum summarizes the traffic volumes, speeds, and vehicle classifications on Tunnel Avenue south of Beatty Avenue in Brisbane, California. This memorandum also describes the existing geometric conditions on Tunnel Avenue and the typical operations of the temporary corporate bus yard located at 600 Tunnel Avenue.

Existing Conditions

Tunnel Avenue

Tunnel Avenue is a north-south, two-lane minor arterial in northern Brisbane. The Circulation Element of the City of Brisbane's *General Plan*, amended in 2020, defines minor arterials as major streets that primarily serve through traffic and, on a limited basis, access to abutting properties. Specifically, the Circulation Element identifies Tunnel Avenue as an alternative to Bayshore Boulevard that will be improved upon development of the Baylands.

On the approximately 1,700-foot portion of Tunnel Avenue south of Beatty Avenue, the curb-to-curb width is approximately 42 feet. Along this portion, Tunnel Avenue is a Class III bicycle route with painted sharrows and has both formal and informal off-street parking areas on both sides of the roadway. There are some time-restricted parking signs (tow-away between 2:00 AM and 4:00 AM) on the east side of this section of Tunnel Avenue.

Further south extending to the intersection at Lagoon Road, Tunnel Avenue is approximately 26 feet wide with unpaved shoulders on both sides. On the east side of Tunnel Road, concrete blocks are regularly spaced in the unpaved shoulder approximately four feet off the paved roadway. These concrete blocks reduce the shoulder to approximately four feet wide, and signs prohibiting



stopping on this portion of Tunnel Avenue are places at regular intervals. Tunnel Avenue has no bicycle facilities or on street parking on this portion.

No pedestrian facilities are provided on Tunnel Avenue between Beatty Avenue and Lagoon Road.

Temporary Corporate Bus Yard

The undeveloped site at 600 Tunnel Avenue on the west side of the street is currently leased to corporate shuttle operators to store commuter shuttles when not in use. Corporate shuttles stored at the yard travel to/from US Highway 101 via the Harney Way-Beatty Avenue interchange. Shuttle drivers are instructed to not use any other interchanges to access US Highway 101.

The corporate shuttle operator provided shuttle data for the period between Tuesday, May 3 and Thursday, May 5, 2022. For the dates observed, between 197 and 211 daily shuttle trips (inbound and outbound) occurred at the temporary corporate bus yard.

Data Collection and Summary

Traffic Volumes

Roadway segment counts were collected on Tunnel Avenue north of the temporary corporate bus yard between Wednesday, May 4 and Friday, May 6, 2022. **Attachment A** includes charts documenting the northbound, southbound, and total volumes each day of data collection, and **Attachment B** includes the raw count data.

Table 1 below presents the peak northbound, southbound, and total hourly volumes for each count day.

Table 1: Peak Hourly Traffic on Tunnel Avenue

| Date | Northbound (Time) | Southbound (Time) | Total 2-way (Time) |
|--------------------------|--|--|--|
| Wednesday, May 4 | 193 (8:00-9:00A) | 107 (8:00-9:00A) | 300 (8:00-9:00A) |
| Thursday, May 5 | 191 (7:00-8:00A) | 102 (9:00-10:00A) | 284 (7:00-8:00A) |
| Friday, May 6 | 192 (7:00-8:00A) | 100 (7:00-9:00A) | 292 (7:00-8:00A) |
| Highest Peak Hour | 193 (8:00-9:00A, Wednesday) | 107 (8:00-9:00A, Wednesday) | 300 (8:00-9:00A, Wednesday) |

Source: Fehr & Peers, 2022.



The highest hourly two-way volume on Tunnel Avenue (300 vehicles) occurred on Wednesday, May 4 between 8:00 AM and 9:00 AM. Based on estimates from the Transportation Research Board's (TRB) *Highway Capacity Manual* (HCM), two-lane minor arterials, like Tunnel Avenue, have an hourly capacity of approximately 1,760 vehicles before traffic operations degrade from Level of Service (LOS) D to LOS E, which is the City's adopted standard. Based on the traffic volume counts, the vehicle demand on Tunnel Avenue is well below its hourly vehicle capacity at all times of the day.

Corporate Shuttle Volumes

Shuttle buses have a greater effect on roadway operations and asphalt maintenance than personal automobiles. The corporate shuttle operator provided shuttle data for the period between Tuesday, May 3 and Thursday, May 5, 2022. **Attachment C** includes line charts documenting the hourly shuttle volumes for each day.

Table 2 below presents the percent of corporate shuttles for the peak hours of Tunnel Avenue on Wednesday, May 4 and Thursday, May 5. (Corporate shuttle data for Friday, May 6 was unavailable for analysis at the time this memorandum was prepared.)

Table 2: Corporate Shuttle Percent Share of Traffic – Peak Hour

| Date (Time) | Total Traffic | Corporate Shuttles | % Share of Corporate Shuttles |
|----------------------------------|---------------|--------------------|----------------------------------|
| Wednesday, May 4 (8:00-9:00A) | 300 | 7 | 2% |
| Thursday, May 5 (7:00-8:00A) | 284 | 21 | 7% |

Source: Fehr & Peers, 2022.

During both days where concurrent data was available, corporate shuttle traffic composed up to seven percent of total traffic on Tunnel Avenue during the peak hour. As stated above, the vehicle demand on Tunnel Avenue is well below its hourly vehicle capacity (1,760 vehicles) at all times including during the peak hour. Corporate shuttle traffic comprised up to two percent of total roadway capacity during the peak hour and did not have a significant effect on documented roadway operations.

Table 3 below presents the percent of corporate shuttle trips of the total daily trips on Tunnel Avenue for Wednesday, May 4 and Thursday, May 5.

Table 3: Corporate Shuttle Percent Share of Traffic - Daily

| Date | Total Traffic | Corporate Shuttles | % Share of Corporate Shuttles |
|------------------|---------------|--------------------|-------------------------------|
| Wednesday, May 4 | 2,091 | 211 | 10% |
| Thursday, May 5 | 2,100 | 197 | 9% |

Source: Fehr & Peers, 2022.

During both days where concurrent data was available, corporate shuttle traffic comprised up to ten percent of total daily traffic on Tunnel Avenue. Based on estimates from the HCM, two-lane arterials, like Tunnel Avenue, have a daily capacity of approximately 17,600 vehicles before traffic operations degrade from LOS D to LOS E. As a percentage of daily vehicle capacity, corporate shuttle traffic comprised up to two percent of total daily roadway capacity.

Speed Surveys

Speed survey data was collected at the same time as the roadway segment counts. **Attachment D** includes the raw speed survey data.

Table 4 below presents the average speed and 85th-percentile speed for each day of observation. Data is presented for northbound vehicles, southbound vehicles, and total two-way vehicles on Tunnel Avenue.

Table 4: Summary of Speed Survey Data on Tunnel Avenue

| Date | Average Speed (mph) | | | 85 th -Percentile Speed (mph) | | |
|------------------|---------------------|-------------|-------------|--|-------------|-------------|
| | Northbound | Southbound | Total 2-way | Northbound | Southbound | Total 2-way |
| Wednesday, May 4 | 30.2 | 29.7 | 30.0 | 38.5 | 37.1 | 38.0 |
| Thursday, May 5 | 29.9 | 28.7 | 29.5 | 37.7 | 35.8 | 37.1 |
| Friday, May 6 | 30.6 | 29.0 | 30.1 | 38.2 | 36.1 | 37.5 |
| Overall | 30.2 | 29.1 | 29.8 | 38.1 | 36.2 | 37.5 |

Source: Fehr & Peers, 2022.

During the three days of speed surveys, vehicles on Tunnel Avenue traveled 29.8 miles per hour on average. Additionally, the 85th-percentile speed is 37.5 miles per hour, meaning 85% of vehicles travel at 37.5 miles per hour or slower. This statistical value is typically used when setting posted speed limits. Where the 85th-percentile speed is higher than the posted speed limit, either traffic calming measures are considered to reduce vehicle speeds, or the posted speed limit is increased.

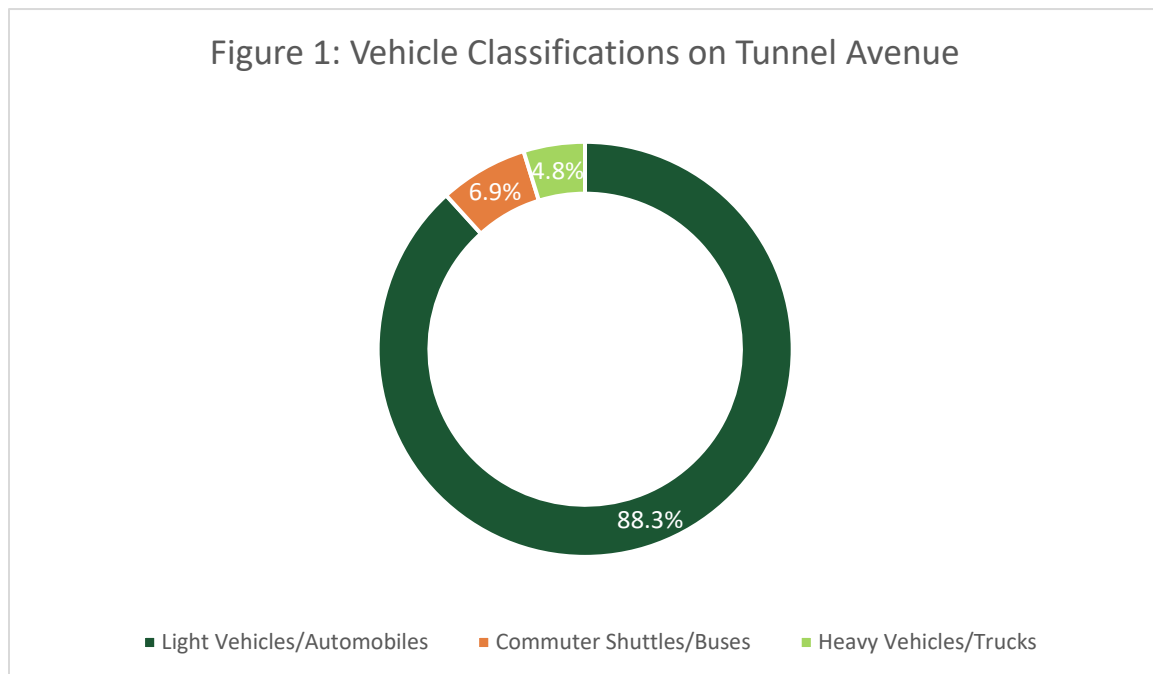
Tunnel Avenue does not have a posted speed limit between Beatty Avenue and Lagoon Road. The posted speed limit on Tunnel Avenue south of Lagoon Road is 35 miles per hour, although that section does not have any painted sharrows for mixed traffic with bicyclists.

Vehicle Classification

Vehicle classification data was collected at the same time as the roadway segment counts. The vehicle classification data is presented with the raw vehicle count data in **Attachment B**.

The Federal Highway Administration (FHWA) identifies thirteen vehicle classifications, ranging from motorcycles (Class 1) to seven-plus axle multi-trailer trucks (Class 13). **Attachment E** describes the thirteen vehicle classifications in detail. For this memorandum, Classes 1, 2, and 3 are considered "light vehicles/automobiles," Class 4 is considered "commuter shuttles/buses," and the remaining eight classes are considered "heavy vehicles/trucks."

Figure 1 below presents the percentages of each vehicle type during the three days of data collection.



As shown in the figure above, approximately 88.3% of vehicles observed on Tunnel Avenue were classified as light vehicles and automobiles, 6.9% were classified as commuter shuttles and buses, and 4.8% were classified as heavy vehicles and trucks.

It is noted that the vehicle classifications observed through roadway counts are slightly different from the data provided by the commuter shuttle operators summarized in **Table 2** and



Attachment C. The data provided by the commuter shuttle operators shows a higher proportion of commuter shuttles and buses than the roadway segment counts. This discrepancy typically occurs when vehicles cross the data collection tubes at angles which affects the recorded distance between vehicle axles. As a whole, the total share of non-light vehicles/automobiles is consistent with the data provided by the commuter shuttle operator.

The observed vehicle classification profile is consistent with Tunnel Avenue's proximity to light-industrial and industrial uses and its utility as an alternative to Bayshore Boulevard and US Highway 101.

Conclusions

The following conclusions are made based on the data collected:

- The hourly volume on Tunnel Avenue is well below its hourly vehicle capacity throughout the day.
- During both days with traffic count and shuttle data are available, corporate shuttle daily trips comprise ten percent or less of the total daily trips on Tunnel Avenue.
- The 85th-percentile speed on Tunnel Avenue was observed to be 37.5 miles per hour. There is no posted speed limit on the observed section of Tunnel Avenue.
- Approximately 11% of vehicles on Tunnel Road are commuter shuttles/buses or heavy vehicles/trucks. The remaining 89% of vehicles are light vehicles/automobiles.

Attachment A: Tunnel Avenue Hourly Volume Figures

Figure A-1: Tunnel Avenue Northbound Hourly Volumes

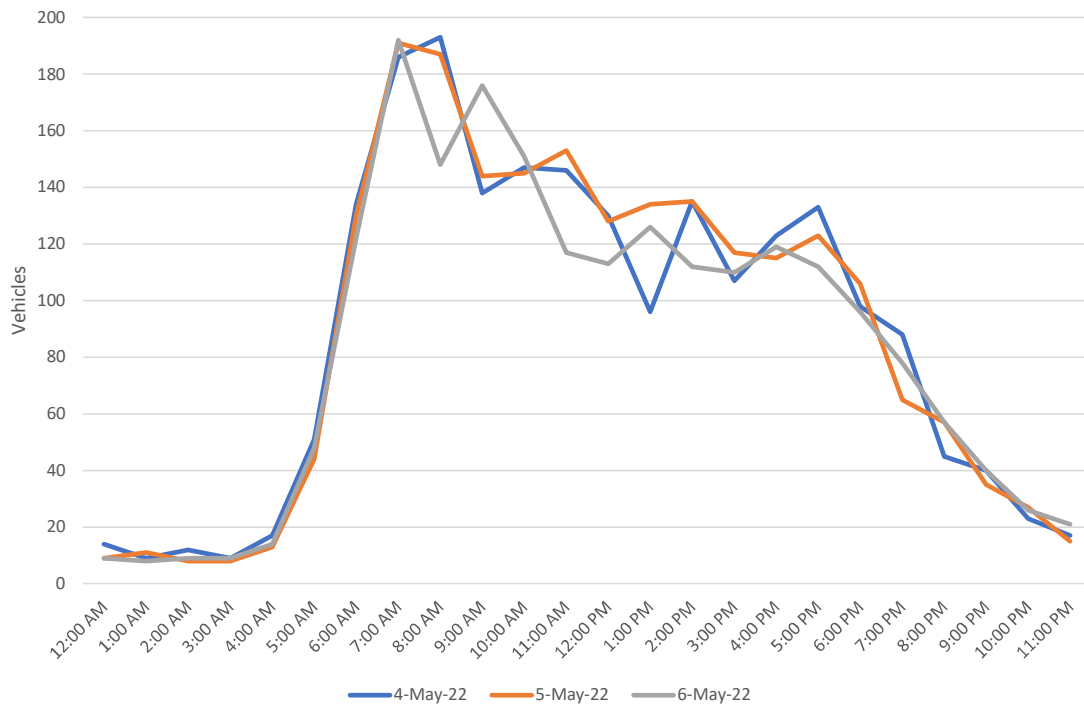
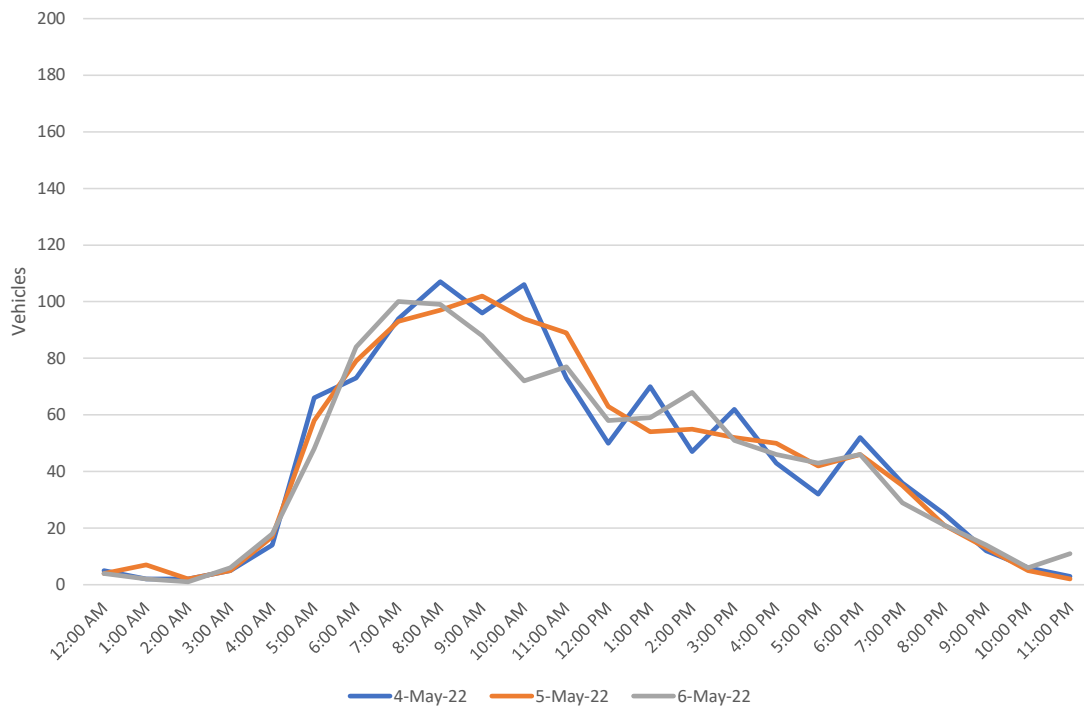
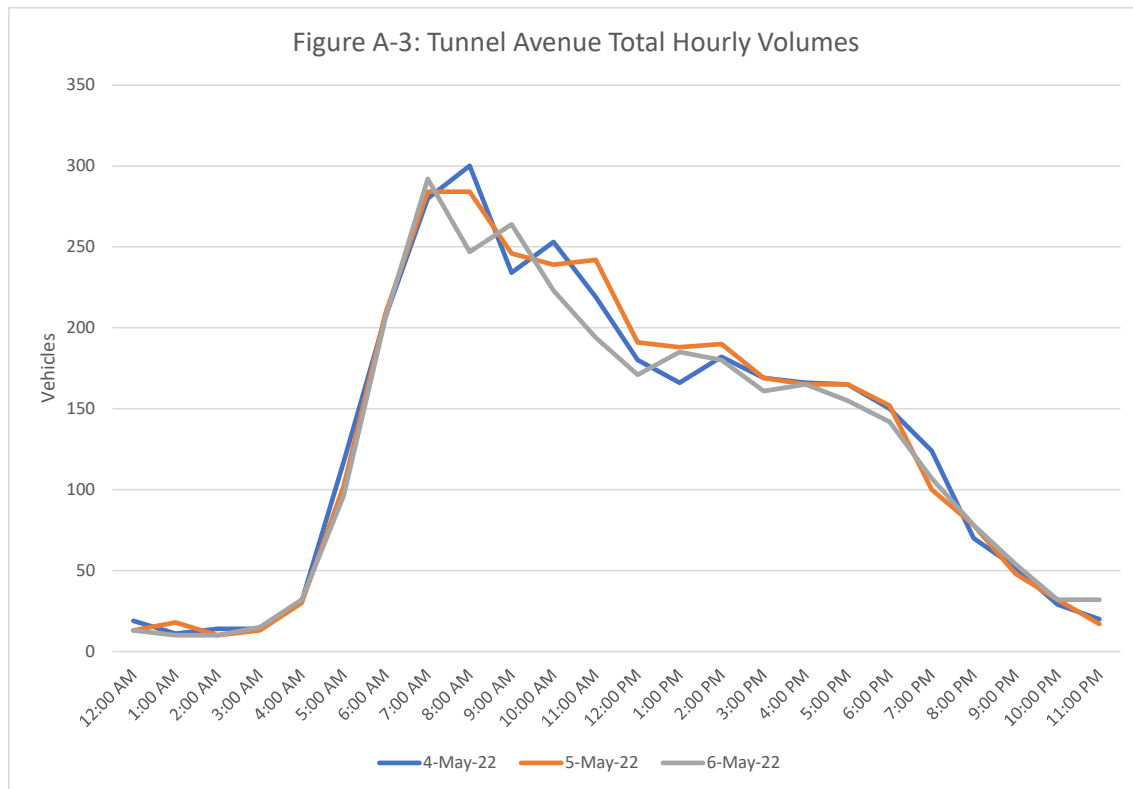


Figure A-2: Tunnel Avenue Southbound Hourly Volumes





Attachment C: Corporate Shuttle Hourly Volume Figure

M.

Traffic Data Service Class Report

ATTACHMENT 5 continued

Datasets:

Site: [1] 600 TUNNEL AVE
Algorithm: Factory default axle (v5.02)
Data type: Axle sensors - Paired (Class/Speed/Count)

Profile:

Included classes: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
Speed range: 0 - 100 mph.
Direction: North (bound), P = North, Lane = 0-16
Scheme: Vehicle classification (Scheme F)
Units: Non metric (ft, mi, ft/s, mph, lb, ton)

Column Legend:

0 [Time] 24-hour time (0000 - 2359)
1 [Total] Number in time step
2 [Cls] Class totals

*** Wednesday, May 4, 2022**

| Time | Total | Cls 1 | Cls 2 | Cls 3 | Cls 4 | Cls 5 | Cls 6 | Cls 7 | Cls 8 | Cls 9 | Cls 10 | Cls 11 | Cls 12 | Cls 13 |
|-------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|
| 0000 | 14 | 0 | 12 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0100 | 9 | 1 | 7 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0200 | 12 | 1 | 9 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0300 | 9 | 0 | 6 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0400 | 17 | 2 | 9 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0500 | 51 | 2 | 21 | 7 | 20 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| 0600 | 134 | 5 | 55 | 32 | 31 | 2 | 6 | 0 | 0 | 3 | 0 | 0 | 0 | 0 |
| 0700 | 186 | 4 | 79 | 71 | 23 | 2 | 5 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 0800 | 193 | 5 | 100 | 73 | 7 | 1 | 3 | 0 | 0 | 4 | 0 | 0 | 0 | 0 |
| 0900 | 138 | 2 | 64 | 55 | 4 | 2 | 6 | 0 | 2 | 1 | 0 | 2 | 0 | 0 |
| 1000 | 147 | 7 | 66 | 63 | 1 | 4 | 5 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 1100 | 146 | 6 | 72 | 59 | 0 | 3 | 4 | 0 | 0 | 1 | 1 | 0 | 0 | 0 |
| 1200 | 130 | 2 | 57 | 61 | 2 | 1 | 6 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 1300 | 96 | 2 | 53 | 32 | 1 | 3 | 2 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| 1400 | 135 | 2 | 71 | 52 | 5 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1500 | 107 | 2 | 69 | 29 | 5 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1600 | 123 | 7 | 76 | 27 | 8 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1700 | 133 | 9 | 106 | 13 | 2 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| 1800 | 98 | 11 | 77 | 8 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1900 | 88 | 1 | 80 | 5 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 2000 | 45 | 1 | 41 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 2100 | 40 | 1 | 36 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2200 | 23 | 0 | 19 | 1 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 2300 | 17 | 0 | 15 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 07-19 | 1632 | 59 | 890 | 543 | 60 | 25 | 36 | 1 | 5 | 10 | 1 | 2 | 0 | 0 |
| 06-22 | 1939 | 67 | 1102 | 585 | 91 | 27 | 42 | 1 | 6 | 15 | 1 | 2 | 0 | 0 |
| 06-00 | 1979 | 67 | 1136 | 586 | 92 | 28 | 44 | 1 | 6 | 16 | 1 | 2 | 0 | 0 |
| 00-00 | 2091 | 73 | 1200 | 606 | 112 | 28 | 45 | 1 | 7 | 16 | 1 | 2 | 0 | 0 |

Peak step 8:00 (193) AM Peak step 8:00 (193) PM Peak step 14:00 (135)

ATTACHMENT 5

continued

M.

rsday, May 5, 2022

| Time | Total | Cls 1 | Cls 2 | Cls 3 | Cls 4 | Cls 5 | Cls 6 | Cls 7 | Cls 8 | Cls 9 | Cls 10 | Cls 11 | Cls 12 | Cls 13 |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|--------|--------|
| 0000 | 9 | 0 | 7 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0100 | 11 | 0 | 8 | 1 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 0200 | 8 | 1 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 0300 | 8 | 0 | 7 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0400 | 13 | 2 | 8 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0500 | 44 | 2 | 16 | 7 | 19 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0600 | 130 | 4 | 51 | 34 | 34 | 0 | 5 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| 0700 | 191 | 8 | 84 | 68 | 20 | 4 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0800 | 187 | 5 | 100 | 69 | 5 | 4 | 3 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 0900 | 144 | 0 | 71 | 62 | 7 | 0 | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| 1000 | 145 | 2 | 73 | 60 | 1 | 4 | 2 | 0 | 1 | 2 | 0 | 0 | 0 | 0 |
| 1100 | 153 | 6 | 75 | 57 | 2 | 1 | 9 | 0 | 0 | 1 | 0 | 2 | 0 | 0 |
| 1200 | 128 | 6 | 69 | 45 | 5 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1300 | 134 | 4 | 71 | 48 | 1 | 5 | 4 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 1400 | 135 | 2 | 77 | 49 | 4 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1500 | 117 | 4 | 74 | 30 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1600 | 115 | 3 | 75 | 29 | 4 | 2 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 1700 | 123 | 8 | 93 | 17 | 2 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| 1800 | 106 | 3 | 86 | 14 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 1900 | 65 | 2 | 59 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2000 | 57 | 4 | 47 | 4 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 2100 | 35 | 1 | 28 | 4 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2200 | 27 | 0 | 21 | 1 | 1 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2300 | 15 | 0 | 11 | 2 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| 07-19 | 1678 | 51 | 948 | 548 | 60 | 24 | 33 | 0 | 4 | 7 | 1 | 2 | 0 | 0 |
| 06-22 | 1965 | 62 | 1133 | 594 | 94 | 25 | 39 | 0 | 5 | 10 | 1 | 2 | 0 | 0 |
| 06-00 | 2007 | 62 | 1165 | 597 | 95 | 27 | 42 | 0 | 6 | 10 | 1 | 2 | 0 | 0 |
| 00-00 | 2100 | 67 | 1214 | 613 | 114 | 27 | 44 | 0 | 6 | 12 | 1 | 2 | 0 | 0 |

Peak step 7:00 (191) AM Peak step 7:00 (191) PM Peak step 14:00 (135)

* Friday, May 6, 2022

| Time | Total | Cls 1 | Cls 2 | Cls 3 | Cls 4 | Cls 5 | Cls 6 | Cls 7 | Cls 8 | Cls 9 | Cls 10 | Cls 11 | Cls 12 | Cls 13 |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|--------|--------|
| 0000 | 9 | 0 | 8 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0100 | 8 | 0 | 5 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0200 | 9 | 0 | 6 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0300 | 9 | 0 | 7 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0400 | 14 | 2 | 8 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0500 | 48 | 1 | 24 | 1 | 19 | 0 | 1 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| 0600 | 122 | 4 | 42 | 35 | 34 | 1 | 3 | 0 | 2 | 1 | 0 | 0 | 0 | 0 |
| 0700 | 192 | 5 | 86 | 70 | 19 | 2 | 7 | 0 | 1 | 2 | 0 | 0 | 0 | 0 |
| 0800 | 148 | 4 | 71 | 53 | 10 | 3 | 5 | 0 | 0 | 1 | 0 | 1 | 0 | 0 |
| 0900 | 176 | 2 | 83 | 77 | 9 | 2 | 0 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| 1000 | 151 | 3 | 86 | 52 | 3 | 2 | 3 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 1100 | 117 | 7 | 54 | 45 | 3 | 0 | 7 | 0 | 0 | 0 | 0 | 1 | 0 | 0 |
| 1200 | 113 | 0 | 55 | 50 | 1 | 4 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1300 | 126 | 2 | 74 | 40 | 2 | 3 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1400 | 112 | 1 | 71 | 32 | 5 | 0 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 |
| 1500 | 110 | 2 | 78 | 25 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1600 | 119 | 4 | 86 | 23 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1700 | 112 | 5 | 97 | 6 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1800 | 96 | 6 | 83 | 4 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1900 | 78 | 3 | 67 | 7 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 2000 | 57 | 1 | 47 | 7 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2100 | 40 | 0 | 35 | 2 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2200 | 26 | 2 | 21 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2300 | 21 | 0 | 20 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 07-19 | 1572 | 41 | 924 | 477 | 65 | 20 | 32 | 1 | 5 | 5 | 0 | 2 | 0 | 0 |
| 06-22 | 1869 | 49 | 1115 | 528 | 99 | 23 | 38 | 1 | 7 | 7 | 0 | 2 | 0 | 0 |
| 06-00 | 1916 | 51 | 1156 | 531 | 99 | 23 | 39 | 1 | 7 | 7 | 0 | 2 | 0 | 0 |
| 00-00 | 2013 | 54 | 1214 | 542 | 118 | 24 | 42 | 1 | 7 | 9 | 0 | 2 | 0 | 0 |

Peak step 7:00 (192) AM Peak step 7:00 (192) PM Peak step 13:00 (126)

M.

Traffic Data Service Class Report

ATTACHMENT 5 continued

Datasets:

Site: [1] 600 TUNNEL AVE
Algorithm: Factory default axle (v5.02)
Data type: Axle sensors - Paired (Class/Speed/Count)

Profile:

Included classes: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
Speed range: 0 - 100 mph.
Direction: South (bound), P = North, Lane = 0-16
Scheme: Vehicle classification (Scheme F)
Units: Non metric (ft, mi, ft/s, mph, lb, ton)

Column Legend:

0 [Time] 24-hour time (0000 - 2359)
1 [Total] Number in time step
2 [Cls] Class totals

*** Wednesday, May 4, 2022**

| Time | Total | Cls 1 | Cls 2 | Cls 3 | Cls 4 | Cls 5 | Cls 6 | Cls 7 | Cls 8 | Cls 9 | Cls 10 | Cls 11 | Cls 12 | Cls 13 |
|-------|-------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|
| 0000 | 5 | 0 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0100 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0200 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0300 | 5 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 0400 | 14 | 0 | 11 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0500 | 66 | 2 | 43 | 15 | 0 | 0 | 0 | 1 | 1 | 4 | 0 | 0 | 0 | 0 |
| 0600 | 73 | 2 | 31 | 38 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 0700 | 94 | 4 | 35 | 48 | 4 | 0 | 1 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| 0800 | 107 | 10 | 39 | 51 | 3 | 0 | 0 | 1 | 0 | 3 | 0 | 0 | 0 | 0 |
| 0900 | 96 | 3 | 36 | 46 | 2 | 4 | 2 | 0 | 0 | 2 | 1 | 0 | 0 | 0 |
| 1000 | 106 | 3 | 37 | 52 | 6 | 4 | 1 | 0 | 1 | 2 | 0 | 0 | 0 | 0 |
| 1100 | 73 | 3 | 27 | 34 | 2 | 1 | 3 | 0 | 0 | 3 | 0 | 0 | 0 | 0 |
| 1200 | 50 | 2 | 18 | 23 | 1 | 3 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 1300 | 70 | 0 | 36 | 30 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1400 | 47 | 2 | 18 | 22 | 1 | 2 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 1500 | 62 | 3 | 31 | 22 | 2 | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1600 | 43 | 1 | 27 | 13 | 0 | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 1700 | 32 | 0 | 21 | 5 | 5 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1800 | 52 | 4 | 19 | 3 | 24 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| 1900 | 36 | 2 | 12 | 1 | 21 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2000 | 25 | 0 | 9 | 0 | 14 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 2100 | 12 | 0 | 4 | 1 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2200 | 6 | 0 | 4 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2300 | 3 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 07-19 | 832 | 35 | 344 | 349 | 52 | 18 | 14 | 1 | 3 | 15 | 1 | 0 | 0 | 0 |
| 06-22 | 978 | 39 | 400 | 389 | 94 | 18 | 15 | 1 | 4 | 17 | 1 | 0 | 0 | 0 |
| 06-00 | 987 | 39 | 406 | 389 | 97 | 18 | 15 | 1 | 4 | 17 | 1 | 0 | 0 | 0 |
| 00-00 | 1081 | 42 | 470 | 408 | 97 | 18 | 15 | 3 | 5 | 22 | 1 | 0 | 0 | 0 |

Peak step 8:00 (107) AM Peak step 8:00 (107) PM Peak step 13:00 (70)

M.

ATTACHMENT 5

continued

Thursday, May 5, 2022

| Time | Total | Cls 1 | Cls 2 | Cls 3 | Cls 4 | Cls 5 | Cls 6 | Cls 7 | Cls 8 | Cls 9 | Cls 10 | Cls 11 | Cls 12 | Cls 13 |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|--------|--------|
| 0000 | 4 | 0 | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0100 | 7 | 0 | 4 | 2 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0200 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0300 | 5 | 1 | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0400 | 17 | 1 | 9 | 5 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0500 | 58 | 3 | 38 | 13 | 0 | 0 | 2 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| 0600 | 79 | 4 | 38 | 32 | 1 | 0 | 0 | 1 | 0 | 3 | 0 | 0 | 0 | 0 |
| 0700 | 93 | 5 | 32 | 52 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0800 | 97 | 4 | 35 | 52 | 4 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| 0900 | 102 | 4 | 39 | 45 | 4 | 6 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1000 | 94 | 4 | 32 | 47 | 6 | 1 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1100 | 89 | 4 | 30 | 47 | 3 | 2 | 0 | 1 | 0 | 1 | 1 | 0 | 0 | 0 |
| 1200 | 63 | 1 | 20 | 33 | 4 | 2 | 1 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| 1300 | 54 | 1 | 24 | 26 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1400 | 55 | 1 | 26 | 24 | 0 | 2 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 1500 | 52 | 1 | 24 | 23 | 1 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1600 | 50 | 2 | 31 | 14 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1700 | 42 | 2 | 26 | 10 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1800 | 46 | 2 | 17 | 3 | 22 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 |
| 1900 | 35 | 0 | 9 | 0 | 25 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 2000 | 21 | 1 | 7 | 1 | 12 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2100 | 13 | 0 | 4 | 2 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2200 | 5 | 0 | 1 | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2300 | 2 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 07-19 | 837 | 31 | 336 | 376 | 53 | 18 | 12 | 4 | 1 | 5 | 1 | 0 | 0 | 0 |
| 06-22 | 985 | 36 | 394 | 411 | 98 | 18 | 12 | 5 | 1 | 9 | 1 | 0 | 0 | 0 |
| 06-00 | 992 | 36 | 395 | 413 | 102 | 18 | 12 | 5 | 1 | 9 | 1 | 0 | 0 | 0 |
| 00-00 | 1085 | 42 | 453 | 433 | 102 | 19 | 17 | 6 | 1 | 11 | 1 | 0 | 0 | 0 |

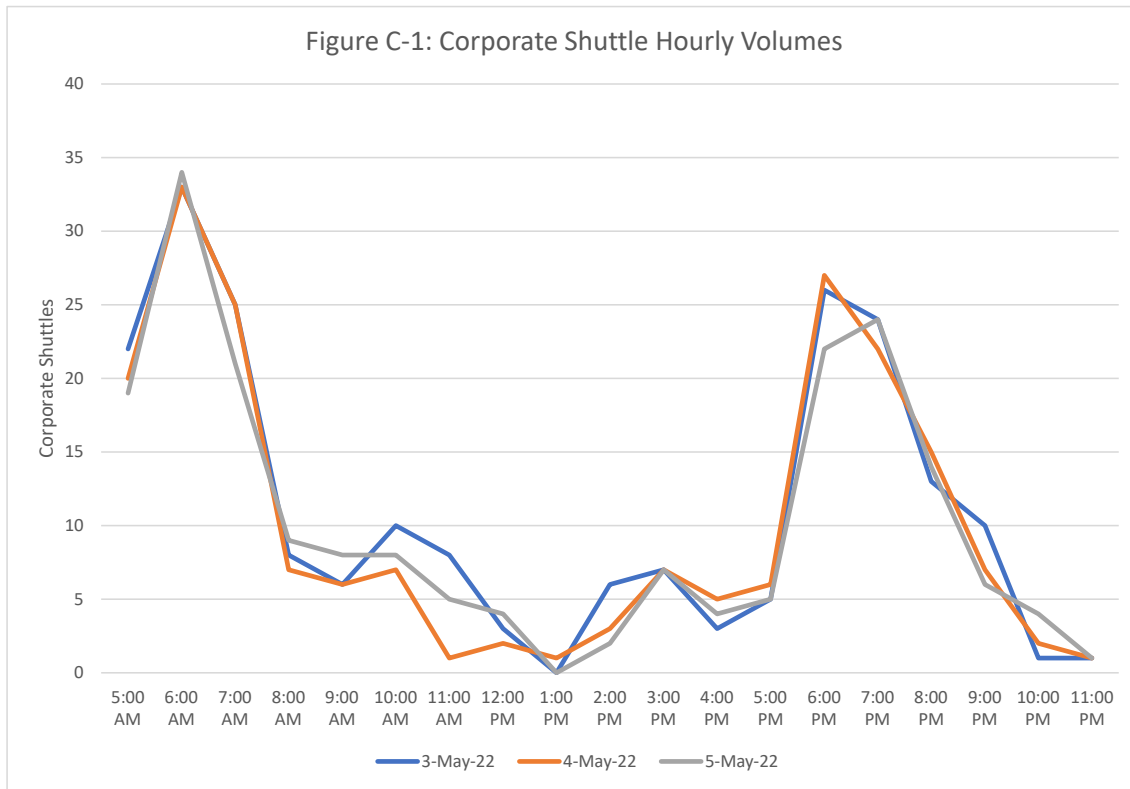
Peak step 9:00 (102) AM Peak step 9:00 (102) PM Peak step 12:00 (63)

* Friday, May 6, 2022

| Time | Total | Cls 1 | Cls 2 | Cls 3 | Cls 4 | Cls 5 | Cls 6 | Cls 7 | Cls 8 | Cls 9 | Cls 10 | Cls 11 | Cls 12 | Cls 13 |
|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|--------|--------|
| 0000 | 4 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0100 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0200 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0300 | 6 | 1 | 3 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 0400 | 18 | 0 | 13 | 2 | 0 | 0 | 1 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| 0500 | 48 | 1 | 38 | 8 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 0600 | 84 | 6 | 38 | 30 | 5 | 0 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 1 |
| 0700 | 100 | 4 | 36 | 48 | 3 | 0 | 3 | 0 | 1 | 5 | 0 | 0 | 0 | 0 |
| 0800 | 99 | 2 | 36 | 51 | 6 | 2 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 0900 | 88 | 4 | 24 | 49 | 8 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 |
| 1000 | 72 | 2 | 23 | 35 | 5 | 4 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 |
| 1100 | 77 | 4 | 32 | 32 | 3 | 3 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 |
| 1200 | 58 | 3 | 19 | 30 | 1 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1300 | 59 | 0 | 28 | 28 | 1 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| 1400 | 68 | 1 | 37 | 26 | 1 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 |
| 1500 | 51 | 0 | 28 | 17 | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1600 | 46 | 3 | 27 | 14 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1700 | 43 | 2 | 29 | 2 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1800 | 46 | 1 | 14 | 5 | 26 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 1900 | 29 | 0 | 13 | 2 | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2000 | 21 | 1 | 5 | 1 | 14 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2100 | 14 | 0 | 7 | 2 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 2200 | 6 | 0 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 |
| 2300 | 11 | 0 | 9 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 07-19 | 807 | 26 | 333 | 337 | 68 | 16 | 11 | 1 | 3 | 12 | 0 | 0 | 0 | 0 |
| 06-22 | 955 | 33 | 396 | 372 | 106 | 16 | 13 | 2 | 3 | 13 | 0 | 0 | 0 | 1 |
| 06-00 | 972 | 33 | 408 | 374 | 107 | 16 | 13 | 2 | 3 | 15 | 0 | 0 | 0 | 1 |
| 00-00 | 1051 | 37 | 467 | 385 | 107 | 16 | 15 | 2 | 3 | 18 | 0 | 0 | 0 | 1 |

Peak step 7:00 (100) AM Peak step 7:00 (100) PM Peak step 14:00 (68)

Attachment D: Tunnel Avenue Hourly Speed Data



Attachment E: Federal Highway Administration Vehicle Classification Descriptions

M.

Traffic Data Service Speed Report

ATTACHMENT 5 continued

Datasets:

Site: [1] 600 TUNNEL AVE
Algorithm: Factory default axle (v5.02)
Data type: Axle sensors - Paired (Class/Speed/Count)

Profile:

Included classes: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
Speed range: 0 - 100 mph.
Direction: North (bound), P = North, Lane = 0-16
Scheme: Vehicle classification (Scheme F)
Units: Non metric (ft, mi, ft/s, mph, lb, ton)

Column Legend:

0 [Time] 24-hour time (0000 - 2359)
1 [Total] Number in time step
2 [Vbin] Speed bin totals
3 [vPace] Speed at start of pace
4 [Pace%] Percent in pace
5 [Mean] Average speed
6 [Vpp] Percentile speed

*** Wednesday, May 4, 2022**

| Time | Total | Vbin 0 | Vbin 5 | Vbin 10 | Vbin 15 | Vbin 20 | Vbin 25 | Vbin 30 | Vbin 35 | Vbin 40 | Vbin 45 | Vbin 50 | Vbin 55 | Vbin 60 | Vbin 65 | Vbin 70 | Vbin 75 | Vbin 100 | vPace 10 | Pace% 10 | Mean | Vpp 85 |
|-------|-------|-----------|-----------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|-------------|-------------|------|-----------|
| 0000 | 14 | 0 | 1 | 0 | 1 | 0 | 2 | 4 | 4 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 28.5 | 64.29 | 32.4 | 42.6 |
| 0100 | 9 | 0 | 0 | 0 | 0 | 1 | 2 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.6 | 66.67 | 32.3 | - |
| 0200 | 12 | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 3 | 1 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 39.6 | 50.00 | 41.0 | 49.6 |
| 0300 | 9 | 0 | 0 | 0 | 0 | 1 | 2 | 3 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 32.3 | 66.67 | 33.4 | - |
| 0400 | 17 | 0 | 2 | 0 | 0 | 1 | 2 | 4 | 1 | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 31.7 | 52.94 | 33.5 | 42.6 |
| 0500 | 51 | 0 | 2 | 0 | 5 | 8 | 11 | 7 | 8 | 7 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20.1 | 41.18 | 30.3 | 42.1 |
| 0600 | 134 | 0 | 1 | 8 | 8 | 19 | 43 | 24 | 23 | 5 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 25.7 | 53.73 | 28.8 | 36.4 |
| 0700 | 186 | 0 | 2 | 8 | 10 | 32 | 49 | 46 | 31 | 6 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 24.0 | 52.69 | 28.8 | 36.1 |
| 0800 | 193 | 0 | 4 | 5 | 14 | 45 | 35 | 39 | 41 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 29.2 | 45.08 | 28.8 | 37.6 |
| 0900 | 138 | 0 | 5 | 6 | 12 | 38 | 22 | 28 | 20 | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 20.1 | 44.20 | 27.2 | 35.6 |
| 1000 | 147 | 1 | 1 | 10 | 8 | 30 | 36 | 41 | 13 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22.0 | 55.10 | 27.7 | 34.8 |
| 1100 | 146 | 0 | 1 | 6 | 11 | 38 | 35 | 35 | 10 | 9 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 19.6 | 52.05 | 27.7 | 34.7 |
| 1200 | 130 | 0 | 1 | 8 | 10 | 17 | 38 | 26 | 20 | 9 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 25.1 | 50.00 | 28.8 | 37.6 |
| 1300 | 96 | 0 | 3 | 3 | 9 | 13 | 26 | 28 | 11 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23.8 | 58.33 | 27.9 | 35.0 |
| 1400 | 135 | 0 | 2 | 4 | 18 | 18 | 24 | 41 | 20 | 6 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 25.8 | 52.59 | 28.9 | 36.2 |
| 1500 | 107 | 0 | 1 | 1 | 5 | 14 | 19 | 25 | 33 | 8 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 28.4 | 57.01 | 31.6 | 38.5 |
| 1600 | 123 | 0 | 4 | 3 | 2 | 9 | 31 | 37 | 30 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 27.9 | 62.60 | 31.0 | 37.8 |
| 1700 | 133 | 0 | 0 | 6 | 1 | 7 | 22 | 26 | 39 | 31 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 32.1 | 60.15 | 34.0 | 41.0 |
| 1800 | 98 | 0 | 1 | 3 | 4 | 4 | 12 | 15 | 35 | 18 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 32.0 | 58.16 | 34.8 | 41.8 |
| 1900 | 88 | 0 | 0 | 0 | 1 | 1 | 12 | 28 | 22 | 19 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 28.5 | 56.82 | 35.9 | 42.9 |
| 2000 | 45 | 0 | 0 | 0 | 2 | 0 | 10 | 17 | 12 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 27.5 | 68.89 | 33.2 | 38.5 |
| 2100 | 40 | 0 | 0 | 2 | 1 | 3 | 3 | 10 | 13 | 5 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 28.1 | 60.00 | 34.0 | 41.1 |
| 2200 | 23 | 0 | 0 | 0 | 0 | 3 | 1 | 6 | 8 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 32.7 | 69.57 | 35.2 | 42.1 |
| 2300 | 17 | 0 | 0 | 0 | 0 | 3 | 2 | 7 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 29.9 | 58.82 | 32.5 | 40.7 |
| 07-19 | 1632 | 1 | 25 | 63 | 104 | 265 | 349 | 387 | 303 | 118 | 15 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 25.7 | 46.94 | 29.6 | 37.9 |
| 06-22 | 1939 | 1 | 26 | 73 | 116 | 288 | 417 | 466 | 373 | 149 | 24 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 25.7 | 47.55 | 30.0 | 38.1 |
| 06-00 | 1979 | 1 | 26 | 73 | 116 | 294 | 420 | 479 | 384 | 153 | 27 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 25.7 | 47.45 | 30.0 | 38.3 |
| 00-00 | 2091 | 1 | 31 | 73 | 122 | 305 | 440 | 502 | 405 | 168 | 36 | 6 | 2 | 0 | 0 | 0 | 0 | 0 | 25.7 | 46.96 | 30.2 | 38.5 |

Peak step 8:00 (193) AM Peak step 8:00 (193) PM Peak step 14:00 (135)

M.

continued

Thursday, May 5, 2022

| Time | Total | Vbin 0 5 | Vbin 5 10 | Vbin 10 15 | Vbin 15 20 | Vbin 20 25 | Vbin 25 30 | Vbin 30 35 | Vbin 35 40 | Vbin 40 45 | Vbin 45 50 | Vbin 50 55 | Vbin 55 60 | Vbin 60 65 | Vbin 65 70 | Vbin 70 75 | Vbin 75 100 | vPace 10 | Pace% 10 | Mean | Vpp 85 |
|-------|-------|----------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|-------------|-------------|------|-----------|
| 0000 | 9 | 0 | 0 | 0 | 0 | 1 | 2 | 1 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 31.8 | 66.67 | 34.0 | - |
| 0100 | 11 | 0 | 0 | 0 | 0 | 2 | 1 | 5 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 31.4 | 72.73 | 32.9 | 41.0 |
| 0200 | 8 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 1 | 0 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 28.1 | 50.00 | 38.7 | - |
| 0300 | 8 | 0 | 0 | 0 | 0 | 0 | 1 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30.8 | 75.00 | 36.1 | - |
| 0400 | 13 | 0 | 3 | 0 | 0 | 0 | 2 | 1 | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 31.1 | 46.15 | 30.7 | 44.8 |
| 0500 | 44 | 0 | 1 | 1 | 3 | 7 | 10 | 6 | 3 | 9 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 22.1 | 45.45 | 32.0 | 44.4 |
| 0600 | 130 | 0 | 4 | 5 | 12 | 18 | 43 | 24 | 13 | 10 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 25.1 | 53.08 | 27.8 | 35.8 |
| 0700 | 191 | 0 | 6 | 11 | 17 | 36 | 49 | 36 | 25 | 7 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 21.9 | 51.31 | 27.4 | 36.2 |
| 0800 | 187 | 0 | 4 | 9 | 19 | 37 | 33 | 49 | 29 | 6 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 27.5 | 49.20 | 27.9 | 36.1 |
| 0900 | 144 | 0 | 4 | 4 | 4 | 34 | 37 | 31 | 26 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 24.4 | 51.39 | 28.4 | 36.4 |
| 1000 | 145 | 0 | 0 | 1 | 14 | 30 | 41 | 41 | 14 | 1 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 25.4 | 59.31 | 28.3 | 34.7 |
| 1100 | 153 | 0 | 4 | 5 | 8 | 26 | 32 | 55 | 14 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23.4 | 57.52 | 28.8 | 35.3 |
| 1200 | 128 | 0 | 0 | 10 | 11 | 21 | 26 | 40 | 17 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 26.3 | 56.25 | 27.8 | 35.1 |
| 1300 | 134 | 0 | 1 | 2 | 17 | 25 | 35 | 34 | 13 | 4 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 21.2 | 55.97 | 28.1 | 35.0 |
| 1400 | 135 | 0 | 0 | 3 | 6 | 24 | 37 | 31 | 24 | 6 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 22.0 | 52.59 | 30.3 | 37.7 |
| 1500 | 117 | 0 | 1 | 2 | 9 | 11 | 32 | 29 | 28 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 29.2 | 57.26 | 30.2 | 38.0 |
| 1600 | 115 | 0 | 1 | 2 | 6 | 11 | 26 | 26 | 30 | 9 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 28.1 | 56.52 | 31.7 | 38.5 |
| 1700 | 123 | 0 | 0 | 3 | 9 | 5 | 21 | 28 | 38 | 17 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 29.9 | 55.28 | 32.8 | 40.2 |
| 1800 | 106 | 0 | 0 | 1 | 1 | 2 | 10 | 30 | 39 | 17 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 32.5 | 69.81 | 35.7 | 41.6 |
| 1900 | 65 | 0 | 0 | 0 | 4 | 2 | 6 | 21 | 21 | 7 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 28.5 | 66.15 | 34.0 | 41.0 |
| 2000 | 57 | 0 | 0 | 2 | 1 | 3 | 14 | 14 | 18 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 26.8 | 59.65 | 32.1 | 38.6 |
| 2100 | 35 | 0 | 0 | 1 | 1 | 4 | 3 | 8 | 12 | 4 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 32.7 | 62.86 | 33.7 | 40.9 |
| 2200 | 27 | 0 | 0 | 0 | 2 | 5 | 3 | 4 | 10 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 30.5 | 55.56 | 32.3 | 38.5 |
| 2300 | 15 | 0 | 0 | 1 | 0 | 0 | 4 | 6 | 2 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 25.1 | 66.67 | 32.8 | 39.4 |
| 07-19 | 1678 | 0 | 21 | 53 | 121 | 262 | 379 | 430 | 297 | 84 | 27 | 3 | 1 | 0 | 0 | 0 | 0 | 25.8 | 48.99 | 29.5 | 37.1 |
| 06-22 | 1965 | 0 | 25 | 61 | 139 | 289 | 445 | 497 | 361 | 110 | 33 | 3 | 2 | 0 | 0 | 0 | 0 | 26.6 | 49.16 | 29.7 | 37.3 |
| 06-00 | 2007 | 0 | 25 | 62 | 141 | 294 | 452 | 507 | 373 | 112 | 35 | 4 | 2 | 0 | 0 | 0 | 0 | 26.8 | 49.28 | 29.7 | 37.4 |
| 00-00 | 2100 | 0 | 29 | 63 | 144 | 305 | 469 | 525 | 386 | 129 | 41 | 5 | 4 | 0 | 0 | 0 | 0 | 26.8 | 48.62 | 29.9 | 37.7 |

Peak step 7:00 (191) AM Peak step 7:00 (191) PM Peak step 14:00 (135)

* Friday, May 6, 2022

| Time | Total | Vbin 0 5 | Vbin 5 10 | Vbin 10 15 | Vbin 15 20 | Vbin 20 25 | Vbin 25 30 | Vbin 30 35 | Vbin 35 40 | Vbin 40 45 | Vbin 45 50 | Vbin 50 55 | Vbin 55 60 | Vbin 60 65 | Vbin 65 70 | Vbin 70 75 | Vbin 75 100 | vPace 10 | Pace% 10 | Mean | Vpp 85 |
|-------|-------|----------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|-------------|-------------|------|-----------|
| 0000 | 9 | 0 | 0 | 0 | 0 | 0 | 7 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.9 | 77.78 | 35.1 | - |
| 0100 | 8 | 0 | 0 | 1 | 0 | 3 | 1 | 1 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21.5 | 62.50 | 28.7 | - |
| 0200 | 9 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 4 | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 28.8 | 66.67 | 39.3 | - |
| 0300 | 9 | 0 | 0 | 0 | 0 | 1 | 1 | 3 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 29.8 | 77.78 | 33.2 | - |
| 0400 | 14 | 0 | 2 | 0 | 0 | 1 | 2 | 2 | 3 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 26.1 | 42.86 | 33.2 | 46.6 |
| 0500 | 48 | 0 | 1 | 1 | 2 | 11 | 12 | 8 | 5 | 5 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 20.7 | 52.08 | 29.9 | 40.8 |
| 0600 | 122 | 0 | 1 | 5 | 7 | 18 | 41 | 28 | 15 | 6 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 23.8 | 60.66 | 28.8 | 36.9 |
| 0700 | 192 | 0 | 3 | 3 | 15 | 40 | 49 | 46 | 31 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 24.0 | 53.13 | 28.4 | 35.6 |
| 0800 | 148 | 0 | 1 | 8 | 5 | 18 | 41 | 42 | 28 | 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 26.7 | 59.46 | 29.7 | 36.6 |
| 0900 | 176 | 0 | 0 | 0 | 11 | 41 | 50 | 46 | 21 | 5 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 23.9 | 56.82 | 29.0 | 35.1 |
| 1000 | 151 | 0 | 1 | 8 | 11 | 30 | 35 | 37 | 22 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.6 | 50.99 | 28.3 | 36.4 |
| 1100 | 117 | 0 | 4 | 2 | 8 | 18 | 25 | 37 | 16 | 6 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 24.8 | 52.99 | 29.1 | 36.9 |
| 1200 | 113 | 0 | 1 | 2 | 12 | 16 | 32 | 25 | 18 | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 23.2 | 53.98 | 29.1 | 36.6 |
| 1300 | 126 | 0 | 0 | 4 | 11 | 21 | 29 | 37 | 18 | 5 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 27.4 | 53.97 | 29.1 | 36.6 |
| 1400 | 112 | 0 | 2 | 2 | 9 | 12 | 33 | 30 | 19 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 26.1 | 58.93 | 29.3 | 36.1 |
| 1500 | 110 | 0 | 0 | 0 | 6 | 8 | 28 | 32 | 31 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 28.3 | 60.91 | 31.9 | 38.4 |
| 1600 | 119 | 0 | 0 | 1 | 2 | 13 | 26 | 32 | 30 | 10 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 25.8 | 54.62 | 32.5 | 39.3 |
| 1700 | 112 | 0 | 0 | 0 | 3 | 6 | 21 | 28 | 34 | 17 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 29.5 | 58.93 | 34.1 | 41.2 |
| 1800 | 96 | 0 | 0 | 2 | 4 | 3 | 8 | 18 | 31 | 25 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 33.8 | 67.71 | 35.7 | 42.4 |
| 1900 | 78 | 0 | 0 | 1 | 1 | 2 | 8 | 29 | 21 | 13 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 31.3 | 66.67 | 34.9 | 41.2 |
| 2000 | 57 | 0 | 0 | 0 | 2 | 4 | 10 | 15 | 20 | 4 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 27.8 | 63.16 | 33.3 | 39.4 |
| 2100 | 40 | 0 | 0 | 0 | 0 | 4 | 5 | 4 | 19 | 6 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 32.4 | 65.00 | 35.3 | 40.9 |
| 2200 | 26 | 0 | 2 | 2 | 0 | 1 | 6 | 3 | 9 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 27.8 | 57.69 | 30.7 | 39.6 |
| 2300 | 21 | 0 | 0 | 0 | 0 | 0 | 1 | 7 | 10 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 29.9 | 80.95 | 36.2 | 40.3 |
| 07-19 | 1572 | 0 | 12 | 32 | 97 | 226 | 377 | 410 | 299 | 92 | 22 | 5 | 0 | 0 | 0 | 0 | 0 | 27.2 | 51.34 | 30.2 | 37.7 |
| 06-22 | 1869 | 0 | 13 | 38 | 107 | 254 | 441 | 486 | 374 | 121 | 29 | 6 | 0 | 0 | 0 | 0 | 0 | 27.2 | 51.15 | 30.5 | 38.1 |
| 06-00 | 1916 | 0 | 15 | 40 | 107 | 255 | 448 | 496 | 393 | 125 | 31 | 6 | 0 | 0 | 0 | 0 | 0 | 27.2 | 51.30 | 30.6 | 38.1 |
| 00-00 | 2013 | 0 | 18 | 42 | 109 | 271 | 466 | 517 | 409 | 136 | 36 | 8 | 1 | 0 | 0 | 0 | 0 | 27.2 | 50.92 | 30.6 | 38.2 |

Peak step 7:00 (192) AM Peak step 7:00 (192) PM Peak step 13:00 (126)

* Grand Total

| Time | Total | Vbin 0 5 | Vbin 5 10 | Vbin 10 15 | Vbin 15 20 | Vbin 20 25 | Vbin 25 30 | Vbin 30 35 | Vbin 35 40 | Vbin 40 45 | Vbin 45 50 | Vbin 50 55 | Vbin 55 60 | Vbin 60 65 | Vbin 65 70 | Vbin 70 75 | Vbin 75 100 | vPace 10 | Pace% 10 | Mean | Vpp 85 |
|------|-------|----------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|-------------|-------------|------|-----------|
| -- | 6204 | 1 | 78 | 178 | 375 | 881 | 1375 | 1544 | 1200 | 433 | 113 | 19 | 7 | 0 | 0 | 0 | 0 | 26.8 | 48.48 | 30.2 | 38.1 |

M.

Traffic Data Service Speed Report

ATTACHMENT 5 continued

Datasets:

Site: [1] 600 TUNNEL AVE
Algorithm: Factory default axle (v5.02)
Data type: Axle sensors - Paired (Class/Speed/Count)

Profile:

Included classes: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13
Speed range: 0 - 100 mph.
Direction: South (bound), P = North, Lane = 0-16
Scheme: Vehicle classification (Scheme F)
Units: Non metric (ft, mi, ft/s, mph, lb, ton)

Column Legend:

0 [Time] 24-hour time (0000 - 2359)
1 [Total] Number in time step
2 [Vbin] Speed bin totals
3 [vPace] Speed at start of pace
4 [Pace%] Percent in pace
5 [Mean] Average speed
6 [Vpp] Percentile speed

*** Wednesday, May 4, 2022**

| Time | Total | Vbin 0 | Vbin 5 | Vbin 10 | Vbin 15 | Vbin 20 | Vbin 25 | Vbin 30 | Vbin 35 | Vbin 40 | Vbin 45 | Vbin 50 | Vbin 55 | Vbin 60 | Vbin 65 | Vbin 70 | Vbin 75 | Vbin 100 | vPace 10 | Pace% 10 | Mean | Vpp 85 |
|-------|-------|-----------|-----------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|-------------|-------------|------|-----------|
| 0000 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 34.8 | 80.00 | 39.9 | - |
| 0100 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 26.6 | 100.0 | 32.4 | - |
| 0200 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5.2 | 50.00 | 23.1 | - |
| 0300 | 5 | 0 | 0 | 0 | 1 | 3 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 14.0 | 80.00 | 23.1 | - |
| 0400 | 14 | 0 | 0 | 0 | 0 | 0 | 2 | 6 | 2 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 30.4 | 64.29 | 36.6 | 44.3 |
| 0500 | 66 | 0 | 1 | 2 | 1 | 10 | 15 | 15 | 17 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 26.2 | 50.00 | 31.1 | 39.1 |
| 0600 | 73 | 0 | 0 | 1 | 3 | 8 | 25 | 14 | 13 | 4 | 4 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 26.3 | 63.01 | 31.4 | 37.1 |
| 0700 | 94 | 0 | 0 | 0 | 7 | 14 | 28 | 25 | 16 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 25.3 | 58.51 | 29.5 | 37.7 |
| 0800 | 107 | 0 | 0 | 4 | 11 | 18 | 28 | 28 | 12 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 25.2 | 55.14 | 28.5 | 35.2 |
| 0900 | 96 | 0 | 2 | 4 | 7 | 13 | 26 | 28 | 13 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 26.2 | 58.33 | 28.3 | 35.7 |
| 1000 | 106 | 0 | 1 | 6 | 4 | 17 | 36 | 33 | 7 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.3 | 67.92 | 27.9 | 33.4 |
| 1100 | 73 | 0 | 0 | 4 | 5 | 12 | 30 | 15 | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23.5 | 67.12 | 27.5 | 33.4 |
| 1200 | 50 | 0 | 0 | 2 | 4 | 10 | 11 | 12 | 9 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22.3 | 50.00 | 28.8 | 36.0 |
| 1300 | 70 | 0 | 0 | 2 | 2 | 9 | 26 | 16 | 9 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.1 | 62.86 | 30.0 | 37.1 |
| 1400 | 47 | 0 | 0 | 2 | 3 | 8 | 19 | 9 | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23.1 | 61.70 | 27.6 | 34.4 |
| 1500 | 62 | 0 | 2 | 0 | 7 | 3 | 16 | 14 | 9 | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 25.3 | 50.00 | 30.9 | 41.2 |
| 1600 | 43 | 0 | 0 | 1 | 1 | 3 | 8 | 9 | 18 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 29.4 | 67.44 | 32.8 | 38.1 |
| 1700 | 32 | 0 | 0 | 0 | 1 | 1 | 6 | 7 | 7 | 6 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 29.2 | 50.00 | 35.7 | 43.4 |
| 1800 | 52 | 0 | 0 | 1 | 2 | 3 | 12 | 12 | 11 | 10 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 27.0 | 59.62 | 32.7 | 40.9 |
| 1900 | 36 | 0 | 0 | 1 | 2 | 7 | 13 | 9 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23.9 | 69.44 | 28.2 | 34.1 |
| 2000 | 25 | 0 | 0 | 1 | 0 | 5 | 8 | 7 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21.3 | 64.00 | 29.4 | 37.5 |
| 2100 | 12 | 0 | 0 | 0 | 2 | 2 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23.4 | 66.67 | 26.8 | 33.3 |
| 2200 | 6 | 0 | 0 | 0 | 1 | 2 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21.9 | 66.67 | 28.1 | - |
| 2300 | 3 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 19.3 | 66.67 | 31.4 | - |
| 07-19 | 832 | 0 | 5 | 26 | 54 | 111 | 246 | 208 | 122 | 50 | 9 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 25.3 | 55.17 | 29.5 | 36.9 |
| 06-22 | 978 | 0 | 5 | 29 | 61 | 133 | 296 | 242 | 140 | 57 | 13 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 25.4 | 55.52 | 29.5 | 36.9 |
| 06-00 | 987 | 0 | 5 | 29 | 62 | 136 | 298 | 243 | 140 | 58 | 14 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 25.4 | 55.32 | 29.5 | 36.9 |
| 00-00 | 1081 | 0 | 6 | 31 | 65 | 149 | 316 | 267 | 161 | 69 | 15 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 26.3 | 54.39 | 29.7 | 37.1 |

Peak step 8:00 (107) AM Peak step 8:00 (107) PM Peak step 13:00 (70)

ATTACHMENT 5

continued

M.

Thursday, May 5, 2022

| Time | Total | Vbin 0 5 | Vbin 5 10 | Vbin 10 15 | Vbin 15 20 | Vbin 20 25 | Vbin 25 30 | Vbin 30 35 | Vbin 35 40 | Vbin 40 45 | Vbin 45 50 | Vbin 50 55 | Vbin 55 60 | Vbin 60 65 | Vbin 65 70 | Vbin 70 75 | Vbin 75 100 | vPace 10 | Pace% 10 | Mean | Vpp 85 |
|-------|-------|----------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|-------------|-------------|------|-----------|
| 0000 | 4 | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23.4 | 75.00 | 33.6 | - |
| 0100 | 7 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 27.2 | 85.71 | 32.1 | - |
| 0200 | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 18.9 | 100.0 | 26.6 | - |
| 0300 | 5 | 0 | 0 | 0 | 1 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 14.4 | 80.00 | 22.2 | - |
| 0400 | 17 | 0 | 3 | 0 | 1 | 0 | 1 | 3 | 6 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 33.9 | 64.71 | 31.2 | 41.3 |
| 0500 | 58 | 0 | 0 | 1 | 4 | 10 | 18 | 9 | 11 | 3 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 25.8 | 51.72 | 29.6 | 36.7 |
| 0600 | 79 | 0 | 1 | 7 | 4 | 13 | 17 | 21 | 8 | 6 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 25.1 | 50.63 | 28.5 | 37.0 |
| 0700 | 93 | 0 | 0 | 1 | 8 | 19 | 28 | 22 | 12 | 2 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 22.6 | 61.29 | 28.8 | 35.8 |
| 0800 | 97 | 0 | 0 | 4 | 8 | 20 | 27 | 25 | 10 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22.8 | 60.82 | 27.9 | 34.5 |
| 0900 | 102 | 0 | 4 | 4 | 4 | 20 | 31 | 27 | 10 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22.1 | 64.71 | 27.4 | 34.0 |
| 1000 | 94 | 0 | 0 | 3 | 8 | 17 | 31 | 25 | 9 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.2 | 62.77 | 27.8 | 33.9 |
| 1100 | 89 | 0 | 1 | 5 | 8 | 12 | 26 | 28 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.6 | 64.04 | 27.6 | 34.3 |
| 1200 | 63 | 0 | 0 | 0 | 6 | 18 | 22 | 7 | 8 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 19.8 | 65.08 | 27.4 | 37.0 |
| 1300 | 54 | 0 | 0 | 1 | 1 | 6 | 19 | 18 | 7 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 23.3 | 68.52 | 29.7 | 35.6 |
| 1400 | 55 | 0 | 0 | 0 | 3 | 7 | 19 | 17 | 9 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22.4 | 67.27 | 29.4 | 35.5 |
| 1500 | 52 | 0 | 1 | 1 | 1 | 7 | 15 | 15 | 8 | 3 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 25.3 | 59.62 | 30.1 | 36.8 |
| 1600 | 50 | 0 | 1 | 4 | 2 | 5 | 16 | 10 | 11 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.6 | 52.00 | 28.7 | 36.7 |
| 1700 | 42 | 0 | 0 | 0 | 2 | 5 | 7 | 13 | 12 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 27.2 | 66.67 | 31.7 | 37.1 |
| 1800 | 46 | 0 | 0 | 0 | 1 | 3 | 15 | 13 | 13 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 26.9 | 71.74 | 31.2 | 36.7 |
| 1900 | 35 | 0 | 0 | 0 | 2 | 2 | 11 | 13 | 6 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 25.5 | 71.43 | 31.1 | 38.0 |
| 2000 | 21 | 0 | 0 | 1 | 1 | 4 | 8 | 4 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21.4 | 76.19 | 27.7 | 35.1 |
| 2100 | 13 | 0 | 0 | 0 | 2 | 5 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21.9 | 76.92 | 26.5 | 31.8 |
| 2200 | 5 | 0 | 0 | 0 | 1 | 2 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 13.4 | 60.00 | 26.1 | - |
| 2300 | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6.3 | 50.00 | 25.0 | - |
| 07-19 | 837 | 0 | 7 | 23 | 52 | 139 | 256 | 220 | 118 | 19 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 22.9 | 58.90 | 28.6 | 35.5 |
| 06-22 | 985 | 0 | 8 | 31 | 61 | 160 | 297 | 262 | 134 | 27 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 22.9 | 57.97 | 28.7 | 35.5 |
| 06-00 | 992 | 0 | 8 | 31 | 63 | 162 | 297 | 265 | 134 | 27 | 3 | 2 | 0 | 0 | 0 | 0 | 0 | 22.9 | 57.66 | 28.6 | 35.5 |
| 00-00 | 1085 | 0 | 11 | 32 | 69 | 177 | 319 | 283 | 153 | 34 | 4 | 3 | 0 | 0 | 0 | 0 | 0 | 22.9 | 56.22 | 28.7 | 35.8 |

Peak step 9:00 (102) AM Peak step 9:00 (102) PM Peak step 12:00 (63)

* Friday, May 6, 2022

| Time | Total | Vbin 0 5 | Vbin 5 10 | Vbin 10 15 | Vbin 15 20 | Vbin 20 25 | Vbin 25 30 | Vbin 30 35 | Vbin 35 40 | Vbin 40 45 | Vbin 45 50 | Vbin 50 55 | Vbin 55 60 | Vbin 60 65 | Vbin 65 70 | Vbin 70 75 | Vbin 75 100 | vPace 10 | Pace% 10 | Mean | Vpp 85 |
|-------|-------|----------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|-------------|-------------|------|-----------|
| 0000 | 4 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 8.1 | 50.00 | 27.1 | - |
| 0100 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 31.1 | 100.0 | 37.5 | - |
| 0200 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 31.6 | 100.0 | 41.6 | - |
| 0300 | 6 | 0 | 0 | 0 | 1 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 18.5 | 100.0 | 22.6 | - |
| 0400 | 18 | 0 | 1 | 0 | 0 | 3 | 1 | 4 | 3 | 4 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 32.4 | 50.00 | 33.4 | 42.9 |
| 0500 | 48 | 0 | 0 | 0 | 0 | 4 | 11 | 14 | 13 | 3 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 28.2 | 60.42 | 33.4 | 38.9 |
| 0600 | 84 | 0 | 0 | 5 | 9 | 18 | 22 | 20 | 7 | 1 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 23.5 | 58.33 | 27.2 | 33.6 |
| 0700 | 100 | 0 | 0 | 4 | 16 | 23 | 28 | 16 | 8 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 20.7 | 53.00 | 26.7 | 34.3 |
| 0800 | 99 | 1 | 0 | 2 | 8 | 19 | 38 | 20 | 9 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21.8 | 64.65 | 27.3 | 33.3 |
| 0900 | 88 | 0 | 0 | 1 | 4 | 24 | 31 | 21 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22.8 | 70.45 | 27.4 | 32.8 |
| 1000 | 72 | 0 | 0 | 8 | 4 | 12 | 22 | 15 | 10 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.4 | 59.72 | 27.3 | 35.0 |
| 1100 | 77 | 1 | 1 | 6 | 3 | 10 | 28 | 18 | 9 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 24.4 | 62.34 | 27.5 | 34.4 |
| 1200 | 58 | 0 | 0 | 1 | 6 | 5 | 25 | 12 | 5 | 2 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 23.5 | 67.24 | 28.9 | 35.6 |
| 1300 | 59 | 0 | 1 | 0 | 0 | 9 | 20 | 20 | 8 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.1 | 67.80 | 29.6 | 35.5 |
| 1400 | 68 | 0 | 0 | 0 | 2 | 12 | 22 | 22 | 4 | 4 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 23.3 | 75.00 | 30.1 | 35.0 |
| 1500 | 51 | 0 | 0 | 0 | 4 | 8 | 12 | 12 | 13 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22.9 | 54.90 | 30.2 | 37.3 |
| 1600 | 46 | 0 | 1 | 2 | 1 | 5 | 6 | 10 | 16 | 4 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 30.8 | 58.70 | 31.9 | 39.1 |
| 1700 | 43 | 0 | 0 | 1 | 2 | 4 | 8 | 17 | 5 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 24.8 | 60.47 | 32.0 | 40.1 |
| 1800 | 46 | 0 | 0 | 0 | 0 | 4 | 15 | 20 | 5 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 25.4 | 80.43 | 31.0 | 35.0 |
| 1900 | 29 | 0 | 0 | 0 | 1 | 6 | 9 | 6 | 5 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 22.3 | 62.07 | 30.0 | 38.0 |
| 2000 | 21 | 0 | 0 | 0 | 1 | 6 | 3 | 7 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 24.4 | 66.67 | 29.4 | 35.7 |
| 2100 | 14 | 0 | 0 | 1 | 0 | 3 | 5 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 22.5 | 78.57 | 28.0 | 34.7 |
| 2200 | 6 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 5 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 29.5 | 83.33 | 32.6 | - |
| 2300 | 11 | 0 | 0 | 0 | 0 | 0 | 2 | 4 | 2 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 30.8 | 72.73 | 34.8 | 41.9 |
| 07-19 | 807 | 2 | 3 | 25 | 50 | 135 | 255 | 203 | 99 | 24 | 7 | 3 | 1 | 0 | 0 | 0 | 0 | 23.3 | 59.48 | 28.7 | 35.5 |
| 06-22 | 955 | 2 | 3 | 31 | 61 | 168 | 292 | 241 | 117 | 26 | 9 | 3 | 2 | 0 | 0 | 0 | 0 | 23.3 | 59.48 | 28.6 | 35.4 |
| 06-00 | 972 | 2 | 4 | 31 | 61 | 168 | 294 | 245 | 124 | 28 | 10 | 3 | 2 | 0 | 0 | 0 | 0 | 23.3 | 59.05 | 28.7 | 35.6 |
| 00-00 | 1051 | 2 | 6 | 31 | 63 | 179 | 307 | 264 | 141 | 38 | 13 | 5 | 2 | 0 | 0 | 0 | 0 | 23.3 | 57.66 | 29.0 | 36.1 |


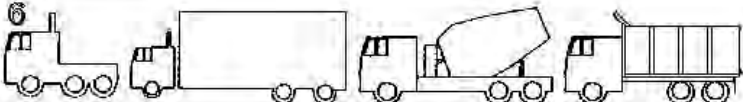
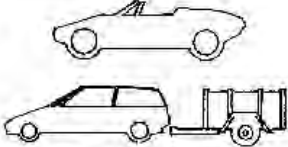
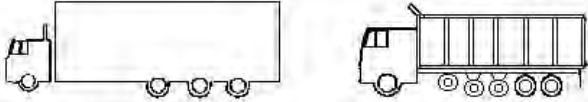
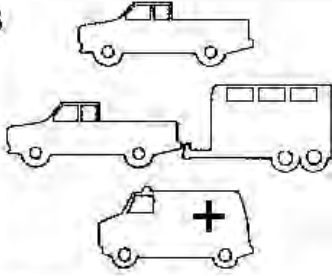
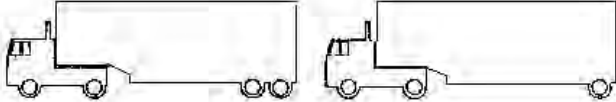
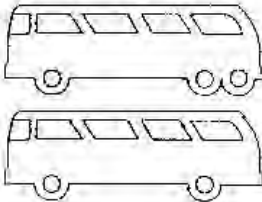
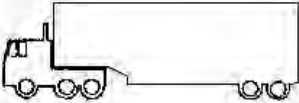
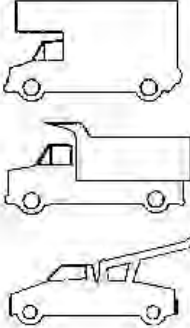
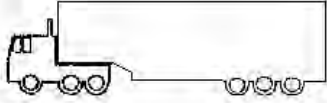
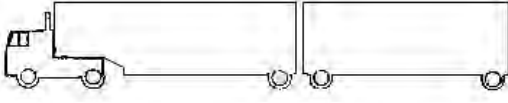
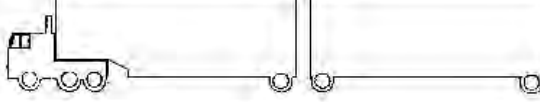
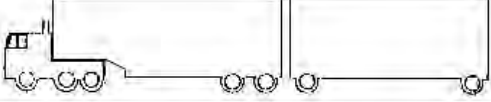
Peak step 7:00 (100) AM Peak step 7:00 (100) PM Peak step 14:00 (68)

* Grand Total

| Time | Total | Vbin 0 5 | Vbin 5 10 | Vbin 10 15 | Vbin 15 20 | Vbin 20 25 | Vbin 25 30 | Vbin 30 35 | Vbin 35 40 | Vbin 40 45 | Vbin 45 50 | Vbin 50 55 | Vbin 55 60 | Vbin 60 65 | Vbin 65 70 | Vbin 70 75 | Vbin 75 100 | vPace 10 | Pace% 10 | Mean | Vpp 85 |
|------|-------|----------------|-----------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|-------------------|-------------|-------------|------|-----------|
| -- | 3217 | 2 | 23 | 94 | 197 | 505 | 942 | 814 | 455 | 141 | 32 | 9 | 3 | 0 | 0 | 0 | 0 | 24.5 | 55.27 | 29.1 | 36.2 |

Attachment C: Tunnel Avenue Hourly Volume Data

Attachment E - FHWA Vehicle Classification Scheme

| | |
|---|--|
| 1  MOTORCYCLES | 6  THREE AXLE, SINGLE UNIT |
| 2  PASSENGER CARS | 7  FOUR OR MORE AXLE, SINGLE UNIT |
| 3  FOUR TIRE, SINGLE UNIT | 8  FOUR OR LESS AXLE, SINGLE TRAILER |
| 4  BUSES | 9  FIVE-AXLE, SINGLE TRAILER |
| 5  TWO AXLE, SIX TIRE SINGLE UNIT | 10  SIX OR MORE AXLE, SINGLE TRAILER |
| | 11  FIVE OR LESS AXLE, MULTI-TRAILER |
| | 12  SIX AXLE, MULTI-TRAILER |
| | 13  SEVEN OR MORE AXLE, MULTI-TRAILER |

- Class 1- **Motorcycles:** All two- or three-wheeled motorized vehicles. Typical vehicles in this category have saddle type seats and are steered by handle bars rather than wheels. This category includes motorcycles, motor scooters, mopeds, motor-powered bicycles, and three-wheeled motorcycles.
- Class 2- **Passenger Cars:** All sedans, coupes, and station wagons manufactured primarily for the purpose of carrying passengers and including those passenger cars pulling recreational or other light trailers.
- Class 3- **Other Two-Axle, Four-Tire, Single Unit Vehicles:** All two-axle, four-tire, vehicles other than passenger cars. Included in this classification are pickups, panels, vans, and other vehicles such as campers, motor homes, ambulances, hearses, carryalls, and minibuses. Other two-axle, four-tire single unit vehicles pulling recreational or other light trailers are included in this classification.
- Class 4- **Buses:** All vehicles manufactured as traditional passenger-carrying buses with two axles and six tires or three or more axles. This category includes only traditional buses (including school buses) functioning as passenger-carrying vehicles. Modified buses should be considered to be trucks and be appropriately classified.
- Note:** In reporting information on trucks the following criteria should be used:
- a. Truck tractor units traveling without a trailer will be considered single unit trucks.
 - b. A truck tractor unit pulling other such units in a "saddle mount" configuration will be considered as one single unit truck and will be defined only by axles on the pulling unit.
 - c. Vehicles shall be defined by the number of axles in contact with the roadway. Therefore, "floating" axles are counted only when in the down position.
 - d. The term "trailer" includes both semi- and full trailers.
- Class 5- **Two-Axle, Six-Tire, Single Unit Trucks:** All vehicles on a single frame including trucks, camping and recreational vehicles, motor homes, etc., having two axles and dual rear wheels.
- Class 6- **Three-axle Single unit Trucks:** All vehicles on a single frame including trucks, camping and recreational vehicles, motor homes, etc., having three axles.
- Class 7- **Four or More Axle Single Unit Trucks:** All trucks on a single frame with four or more axles.
- Class 8- **Four or Less Axle Single Trailer Trucks:** All vehicles with four or less axles consisting of two units, one of which is a tractor or straight truck power unit.
- Class 9- **Five-Axle Single Trailer Trucks:** All five-axle vehicles consisting of two units, one of which is a tractor or straight truck power unit.
- Class 10- **Six or More Axle Single Trailer Trucks:** All vehicles with six or more axles consisting of two units, one of which is a tractor or straight truck power unit.
- Class 11- **Five or Less Axle Multi-Trailer Trucks:** All vehicles with five or less axles consisting of three or more units, one of which is a tractor or straight truck power unit.
- Class 12- **Six-Axle Multi-Trailer Trucks:** All six-axle vehicles consisting of three or more units, one of which is a tractor or straight truck power unit.
- Class 13- **Seven or More Axle Multi-Trailer Trucks:** All vehicles with seven or more axles consisting of three or more units, one of which is a tractor or straight truck power unit.

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 04/14/2022

SUBJECT: **Modification of Interim Use Permit 2021-UP-3; 600 Tunnel Avenue;** C-1 Commercial District (Baylands); allowing for continued staging of up to 90 Google Commuter buses on an approximately 3-acre vacant site on the Baylands; Eric Aronsohn, applicant; Oyster Point Properties Inc, applicant/owner. Alternatively, consider revocation of Interim Use.

REQUEST: Modification of Interim Use Permit 2021-UP-3 is requested by the property owner Oyster Point Properties, Inc. on behalf of Google to allow for the continued utilization of the subject site as a staging site for up to 90 Google buses for transporting Google employee commuters. The requested modification is to the scheduling of bus trips.

During its March 10, 2022 meeting, the Planning Commission indicated that it would consider modifying the interim use permit, if the applicant submitted an application for modification. Alternatively, the Commission would consider revoking the interim use permit. Both options are before the Planning Commission at tonight's hearing.

RECOMMENDATION: Conditionally approve modification of Interim Use Permit 2021-UP-3, via adoption of Resolution 2021-UP-3-M with Exhibit A containing the findings and conditions of approval.

ENVIRONMENTAL DETERMINATION: This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301 of the CEQA Guidelines. The exceptions to this categorical exemption, referenced in Section 15300.2, do not apply.

APPLICABLE CODE SECTIONS: Brisbane Municipal Code Chapter 17.41 establishes procedures and required findings for the approval of interim uses in the Baylands subarea. Required findings are set forth in BMC Section 17.41.060. Interim use permit revocation procedures are provided in BMC Section 17.41.100.

BACKGROUND:

Interim Use Permit 2021-UP-3 was approved on November 16th, 2021 and was a renewal of Interim Use Permit UP-4-19, at the end of its 2-year term. The approved interim use permit allows for parking of 90 Google commuter buses, to serve Google employees. During the public hearing in November 2021, concerns were raised about certain of Google's operations and whether those operations complied with the permit. Two operational concerns were raised. One was whether bus movements were in compliance with the schedule provided by Google and the second was whether some of the buses were using the roadway south of the site, instead of all

buses coming and going along the northbound route. A condition of approval was included, both in the original approval in 2019 and in the 2021 renewal, which prohibits bus trips south of the site and so all trips are required to be to and from the north.

At the time of approval of the renewal on November 16, 2021, the Commission added a condition of approval that Google was to monitor bus movements and provide a report to staff, for presentation to the Commission after another 90-days of operation. The report was presented to the Planning Commission on March 10, 2022. An additional report of bus movements has since been provided by Google for the month of February. These four months of reports, from November 2021 through February 2022, are provided in Attachment D.

The reporting for the four months showed that out of a total of 8,270 trips, 14 of them were on the southern route. The most recent, February 2022 report showed that out of a total of 2,066 trips, only two trips were on the southern route. These were attributed to training issues with new bus drivers.

Additionally, the original use permit application included information outlining the expected hours of operation. However, operational hour limitations were not established as project conditions of approval. Nevertheless, the bus trip data provided by the applicant showed that a number of buses were running during midday hours, outside the operational hours stated in the application materials. Google attributed this to changes in its employees' needs following the onset of the COVID-19 pandemic in early 2020 and that its requested schedule to include midday hours was not accurately updated for the 2021 renewal application to capture those actual needs. During the March 10th meeting, in response to the Commission's questions, Google's representative indicated that practically it would not be able to comply with the schedule provided at the time of the original application but requested flexibility in the operational times.

During the meeting of March 10th, the Planning Commission directed staff to schedule a hearing on revocation of the permit. At the same time, the Commission indicated that it would consider a request by the applicant to modify the permit, to fit its actual operations.

On March 25th, the applicant submitted an application for modification of the Interim Use Permit.

REQUESTED MODIFICATION

Time of Day for Scheduling Bus Trips

The applicant has provided an updated project description, including a revised estimated schedule of bus trips, which is included as Attachment B. The revised schedule does not increase the number of vehicle trips per day, but it spreads the trips over a longer period by utilizing mid-day hours. In essence, the concentration of trips to the early morning and evening hours would be reduced. Also, the bus count is noted as currently being 58, for approximately 116 trips (one out and one in each day). That is projected to eventually increase to the previously approved maximum count of 90 buses, for a total of 180 bus trips per day, as in-office usage by Google employees increases over time. The applicant has noted that these trip numbers, by time of day, are intended as average estimates and requests flexibility as Google's needs may vary somewhat over time,

within the general operational parameters being between 4 am to 10 pm, with most trips occurring after 5 am and before 9 pm.

Directional Routing

The applicant has not requested a change in the standard of routing buses to and from the north. They noted in the attached project description, *“Travel south on Tunnel Ave is prohibited. Signage is posted to this effect, however, as travel data shows there are rare instances of buses traveling south which is attributed to inadvertent and unintended human error, primarily due to new or substitute driver activity. We are requesting a small degree of flexibility to account for these errors which will be reported out as part of our regular data submissions to the City.”*

ANALYSIS AND FINDINGS: There are two sets of findings for the Commission to consider. The first set is the standard interim use permit findings under BMC Sections 17.41.060.A-F, as were made on November 16, 2021; these findings would support the modification requested. Alternatively, the Commission may deny the modified application and instead make the required finding to revoke Interim Use Permit 2021-UP-3. Staff is recommending the Commission approve the requested modification and adopt Resolution 2021-UP-3-M that reflects staff's recommendation (Attachment A)

Staff consulted with the City Engineer and the Police Department to determine whether either had concerns with continuation of the use with the proposed modification to the schedule and both responded that they did not. The City Engineer noted that the use of buses is needed to keep single occupant vehicles off the roads. He also indicated that the occasional errant buses traveling south of the site are not concerning. However, he indicated that knowing how to distinguish between these occasional trips and problematic use of the southern portion of Tunnel Ave may be difficult. Based on anecdotal accounts during the Planning Commission's previous meetings and Google's own accounts, it appears that the events have been the rare exception, at less than one-tenth of one percent for the four-month period and even less for the last two months. This appears to reflect Google's commitment to better communicate with new drivers to prevent the southern trips.

Although not recommended by staff, should the Planning Commission choose to adopt a zero-tolerance position on southern bus trips, that would be the basis for revocation, versus time-of-day trips, since prohibiting trips south was a condition of approval. This is reflected in the alternative draft Resolution 2021-UP-3-R (Attachment B).

Regarding time-of-day operations, with the original application, staff had requested the time-of-day scheduling/trip counts to characterize the use and that was provided by Google for presentation to the Commission with both the 2019 and 2021 applications. However, the time of day for bus trips was not intended to reflect an outright prohibition on any trips outside Google's submitted schedule, but rather to characterize typical operations. Google's requested changes in operations aside for a moment, it would be difficult if not impossible for Google to comply with a fixed schedule of when buses would be operating, given the uncertainty of traffic conditions on the roads. Thus, there was not a condition of approval outright prohibiting certain time-of-day operations. Conversely, one would expect an applicant to generally comply with its provided schedule, or request modifications in advance. In essence, operations that are significantly outside the proposed schedule should be the exception and not the norm.

Google, during the March 10th meeting, indicated that it was unable to comply with the schedule that it provided last Fall and has now provided a revised schedule for the Commission's consideration. As they noted, in the description, Google intends that the trips be considered an average and have requested some flexibility there as well. It should be noted that the proposed revised schedule allows for the vehicle trips to be spread through the daytime hours. This should be less impactful on local traffic by spreading the bus trips over a longer period each day.

Adding to the City Engineer's comment about keeping single occupant vehicles off the road, Google has indicated that each bus has a rider capacity of 68 people. Assuming these riders would otherwise be in single occupant vehicles, at the maximum capacity of 90 buses, this could theoretically remove over 6,000 single occupant vehicles from the roadways on a given day. While one would not anticipate this maximum capacity on a daily basis, the public benefits for this use are substantial.

The project, including the conditions of approval, would meet the findings required to grant the requested modification.

Interim Use Permit Findings

- a) The interim use will not be detrimental to the public health, safety or welfare, or injurious to nearby properties or improvements;
- b) the interim use will not create any significant environmental impacts;
- c) the interim use will not obstruct redevelopment;
- d) all required public utilities and other infrastructure are or will be available;
- e) the use will benefit the property and/or the public;
- f) encourage the employment of Brisbane residents to the extent it is reasonably possible to do so.

The revocation provisions for interim use permits are established in BMC Section 17.41.100, which states that, "*An interim use permit may be revoked upon a determination by the authority granting the original permit (either the planning commission or the city council) that the holder of such permit has failed to comply with any of the conditions thereof or has violated any applicable provision of this title.* " In this case, that authority is the Planning Commission.

If the Commission decides that the findings for a modified Interim Use Permit that are outlined above cannot be made, the Commission may instead choose to revoke Interim Use Permit 2021-UP-3. This would be based on the determination (or finding) that Google failed to comply with Condition 4, which states, "*Routing of Google buses shall be to and from the north along Tunnel Ave and Beatty Ave to connect to U.S. 101. Buses shall not use Tunnel Avenue south of the site.*"

While the Planning Commission has previously indicated concerns over non-compliance with the time-of-day routing, given that this was not a stated condition of approval, a finding for revocation

should be focused specifically on the prohibition on using Tunnel Ave south of the site, should the requested modification be denied.

If the Commission approves the proposed modification, the findings and conditions of approval are provided with the attached resolution and remain largely unchanged from the previous approval. Note that the condition regarding reporting bus movements to the Commission after the first 90 days has been removed. Google will still be required to provide monthly reports on bus movements to staff.

Finally, per the conditions of approval, as carried forward from interim use permit 2021-UP-3 in 2021, the permit is set to expire in 8 months, on November 23rd, 2022, unless that expiration date is also modified by the Commission. A decision of the Planning Commission to either approve the requested modification to the Interim Use Permit or deny the modification and revoke the permit may be appealed to City Council.

ATTACHMENTS:

- A. ~~Draft Resolution 2021-UP-3-M~~
 - B. ~~Draft Resolution 2021-UP-3-R~~
 - C. Google's revised project description
 - D. ~~Route Map~~
 - E. Google's bus routing reports (November 2021 – February 2022)
 - F. ~~November 16, 2021 Agenda Report~~
 - G. ~~Adopted Resolution 2021-UP-3~~
- Removed items have been superseded or provided elsewhere.

Ken Johnson

Ken Johnson, Senior Planner

John Swiecki

John Swiecki, Community Development Director

Project Description - Google Shuttle Bus Parking

March 25, 2022

Sunquest Properties in partnership with Google is requesting a modification to its Interim Use for 3-acres (130,680 sf of land) ("**Site**") currently operating as a bus parking location for Google.

The tenant, Google, is a leading global technology company with tens of thousands of employees based locally. Google is headquartered in Mountain View, CA with offices in San Francisco, San Bruno, and Sunnyvale. With employees and offices spread across the region, the Google Bus operation has become a major component of the **company's strategy for managing their workforce's transportation needs. The Google Bus operation also supports the** Companies efforts to reduce congestion and emissions caused by single-occupant cars, especially during peak commuting times.

The Google Bus, also known as "**GBus**", **program has expanded its operation** and in 2018, provided more than 4 million rides – picking up at 262 shuttle stops across nine Bay Area Counties. In aggregate, the shuttle program has helped Google employees avoid over 100 million vehicle miles per year.

The Brisbane location is ideal for the use given its central location and convenient and direct access to 101 and other regional highways. GBus will be able to come and go with the least amount of impact on local commuters due to the near-by on and off ramps which puts buses on the highway, in route to their shuttle stops in 2-5 minutes.

FACILITY OPERATION AND VEHICLE ROUTING

Since initial approval of the use permit in 2019, the Covid-19 Pandemic has dramatically changed the office work **day. As the entire business community adjusts to the "hybrid" work environment, we also require flexibility in the use** of the lot to accommodate this new and evolving environment.

Monday-Friday

- Up to 90 buses may be parked at any given time. The peak parking demand time is overnight from 10:00pm to 5:00am.
- Normal Operations:
 - On average, buses leave the site starting at 5:00am and return before 10:00pm
 - On average buses are parked from around 10:00 pm to 5:00am.
 - Up to 90 buses will be parked overnight until the shift begins at 5am the following day.
 - In rare instances, light maintenance may need to occur and this would include battery jump starts, emergency tire repair, etc.
 - Up to 90 personal vehicles to be parked when buses are in service. Personal vehicles would belong to bus drivers and other support staff

Saturday-Sunday and holidays:

- Up to 90 buses may be parked at any given time
- A minimal number of trips may happen on weekends, holidays, and overnight for unanticipated maintenance and operational needs.

Routing:

- Routing to/from the lot will continue to be via north on Tunnel Ave and Beatty Ave.
- Travel south on Tunnel Ave is prohibited. Signage is posted to this effect, however, as travel data shows there are rare instances of busses travelling south which is attributed to inadvertent and unintended human error, primarily due to new or substitute driver activity. We are requesting a small degree of flexibility to account for these errors which will be reported out as part of our regular data submissions to the City.

For additional clarity, below illustrates current activity and a projection for future activity starting from when Google has announced their return to office starting in early April with a notable decline in midday trips. As noted earlier, flexibility of the distribution of trips is subject to change based on hybrid and evolving work schedules. Changes will be communicated through required monthly trip data reporting.

| | Current (~58 buses) | | Max Capacity (90 buses) | |
|-------------------|---------------------|-------------------|-------------------------|-------------------|
| Time Periods | Percent of Trips | Avg Trips Per Day | Percent of Trips | Avg Trips Per Day |
| 12:00am - 03:59am | 0% | 0 | 0% | 0 |
| 04:00am - 05:59am | 2% | 2 | 10% | 18 |
| 06:00am - 08:59am | 28% | 33 | 35% | 63 |
| 09:00am - 11:59am | 21% | 24 | 5% | 9 |
| 12:00pm - 02:59pm | 12% | 14 | 5% | 9 |
| 03:00pm - 05:59pm | 22% | 25 | 10% | 18 |
| 06:00pm - 08:59pm | 14% | 16 | 32% | 58 |
| 09:00pm - 09:59pm | 2% | 2 | 3% | 5 |
| 10:00pm - 11:59pm | 0% | 0 | 0% | 0 |
| | | 116 | | 180 |

ON-SITE PERSONNEL

There shall be no permanent on-site personnel. Google will utilize a contracted security officer, who monitors and patrols the Companies assets in South San Francisco and San Bruno.

VEHICLE MAINTENANCE

There will be absolutely no vehicle maintenance, other than emergency needs, performed on this site. Bathrooms will be pumped out at an offsite facility.

FENCING, SECURITY, AND SITE LAYOUT

Perimeter fencing as shown in the site plan has been installed and requires little maintenance. A manually operated security gate is located at both the entrance and the exit which is locked by the last driver nightly. Lighting and security cameras are located on the site for additional security. Lighting is on timers which are adjusted regularly to limit their light pollution impacts, only being in use when drivers are on site. Gates servicing the site from Tunnel Avenue are setback to allow busses to fully pull off the road without causing traffic.

GRADING

Grading work is complete and is being maintained on a regular basis to ensure safe and minimally impactful operations.

February 2022

Trip Data

| | 2/1/22 | 2/2/22 | 2/3/22 | 2/4/22 | 2/7/22 | 2/8/22 | 2/9/22 | 2/10/22 | 2/11/22 | 2/14/22 | 2/15/22 | 2/16/22 | 2/17/22 | 2/18/22 | 2/21/22 | 2/22/22 | 2/23/22 | 2/24/22 | 2/25/22 | 2/28/22 | Total |
|-------|--------|--------|--------|--------|--------|--------|--------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-------|
| 5:00 | 1 | 1 | 1 | 1 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | | 2 | 1 | 1 | 2 | 1 | 30 |
| 6:00 | 13 | 9 | 10 | 11 | 10 | 11 | 11 | 9 | 10 | 13 | 11 | 12 | 10 | 9 | | 9 | 12 | 11 | 10 | 11 | 202 |
| 7:00 | 13 | 15 | 18 | 20 | 17 | 16 | 19 | 20 | 16 | 16 | 16 | 16 | 18 | 19 | | 16 | 16 | 19 | 16 | 16 | 322 |
| 8:00 | 6 | 6 | 3 | 4 | 4 | 3 | 3 | 4 | 4 | 4 | 5 | 6 | 3 | 6 | | 7 | 4 | 4 | 4 | 4 | 84 |
| 9:00 | 11 | 15 | 13 | 12 | 12 | 10 | 13 | 8 | 12 | 17 | 9 | 7 | 12 | 12 | | 8 | 11 | 9 | 12 | 13 | 216 |
| 10:00 | 3 | 7 | 6 | 4 | 4 | 5 | 6 | 9 | 8 | 3 | 7 | 9 | 6 | 5 | | 8 | 6 | 12 | 7 | 5 | 120 |
| 11:00 | 3 | 4 | 3 | 4 | 1 | 2 | 4 | 3 | 2 | 4 | 5 | 4 | 3 | 3 | | 5 | 2 | 6 | 1 | 5 | 64 |
| 12:00 | 1 | | | 1 | | 4 | 2 | 3 | 3 | 2 | 1 | 1 | 2 | 1 | 1 | | 1 | | 3 | 1 | 27 |
| 13:00 | 3 | 3 | 3 | 1 | 2 | 4 | 3 | 3 | 1 | 2 | 5 | 4 | 4 | 5 | 1 | 6 | 4 | 5 | 1 | 4 | 64 |
| 14:00 | 12 | 12 | 12 | 10 | 9 | 9 | 11 | 10 | 13 | 10 | 10 | 9 | 10 | 11 | 1 | 14 | 11 | 9 | 10 | 7 | 200 |
| 15:00 | 6 | 7 | 7 | 6 | 10 | 7 | 8 | 7 | 6 | 8 | 5 | 5 | 6 | 5 | | 5 | 7 | 5 | 6 | 6 | 122 |
| 16:00 | 3 | 8 | 3 | 6 | 6 | 6 | 6 | 7 | 7 | 6 | 8 | 5 | 4 | 5 | 1 | 5 | 4 | 5 | 5 | 6 | 106 |
| 17:00 | 13 | 10 | 13 | 15 | 15 | 13 | 11 | 13 | 16 | 11 | 10 | 15 | 9 | 16 | | 14 | 15 | 13 | 11 | 15 | 248 |
| 18:00 | 11 | 10 | 11 | 8 | 10 | 11 | 12 | 10 | 8 | 14 | 11 | 9 | 15 | 5 | | 10 | 10 | 8 | 11 | 9 | 193 |
| 19:00 | 3 | 3 | 3 | 1 | 1 | 2 | 3 | 3 | 2 | 1 | 2 | 4 | 3 | 3 | 1 | 2 | 2 | 4 | 3 | 2 | 48 |
| 20:00 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 1 | 1 | | 1 | 1 | 1 | 1 | 1 | 20 |
| Total | 103 | 111 | 107 | 105 | 104 | 106 | 115 | 112 | 111 | 114 | 109 | 108 | 108 | 108 | 5 | 112 | 107 | 112 | 103 | 106 | |

Routing Violations

| Date/Time | Bus ID | Location | Description | | | | | | | | | | | | | | | | | | |
|---------------------|--------|----------------------------------|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|--|
| 2022-02-21 17:39:04 | 397 | Tunnel Ave and Lagoon Rd - South | Non-Brisbane based driver covering run | | | | | | | | | | | | | | | | | | |
| 2022-02-28 11:33:18 | 217 | Tunnel Ave and Lagoon Rd - South | Non-Brisbane based driver covering run | | | | | | | | | | | | | | | | | | |

January 2022

Trip Data

| | 1/3/22 | 1/4/22 | 1/5/22 | 1/6/22 | 1/7/22 | 1/10/22 | 1/11/22 | 1/12/22 | 1/13/22 | 1/14/22 | 1/18/22 | 1/19/22 | 1/20/22 | 1/21/22 | 1/24/22 | 1/25/22 | 1/26/22 | 1/27/22 | 1/28/22 | 1/31/22 | Total | | | |
|--------------------|--------|----------------------------------|--------|--------|--------|---------|---------|--|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|-------|--|------|-------|
| 5:00 | | 1 | 1 | 2 | 3 | 3 | | 1 | 4 | 2 | 3 | 3 | 4 | 4 | 1 | 3 | 4 | 4 | 4 | 2 | 49 | | | |
| 6:00 | | 21 | 21 | 19 | 17 | 16 | 9 | 8 | 14 | 20 | 21 | 21 | 21 | 18 | 19 | 19 | 17 | 18 | 19 | 16 | 334 | | | |
| 7:00 | | 18 | 15 | 18 | 17 | 19 | 21 | 23 | 16 | 17 | 11 | 13 | 15 | 13 | 13 | 14 | 16 | 16 | 19 | 13 | 307 | | | |
| 8:00 | | 7 | 8 | 8 | 5 | 6 | 4 | 5 | 7 | 7 | 7 | 6 | 6 | 9 | 8 | 6 | 6 | 4 | 4 | 11 | 124 | | | |
| 9:00 | | 9 | 9 | 6 | 6 | 9 | 8 | 9 | 7 | 8 | 6 | 7 | 3 | 4 | 7 | 8 | 9 | 6 | 8 | 3 | 132 | | | |
| 10:00 | 3 | 1 | 3 | 1 | 3 | | 4 | 4 | 1 | 3 | 2 | 6 | 9 | 7 | 3 | 5 | 2 | 5 | 8 | 7 | 77 | | | |
| 11:00 | 1 | 1 | 2 | 1 | 1 | 1 | 3 | 1 | 5 | 1 | 3 | | 1 | 1 | 2 | 2 | 1 | | | 1 | 28 | | | |
| 12:00 | | | | 1 | 1 | | | 2 | 1 | | | | 2 | 1 | | | | | | | 8 | | | |
| 13:00 | | | 1 | | 1 | 2 | 2 | 1 | | 1 | | 1 | | 1 | 1 | | 2 | 1 | 3 | | 17 | | | |
| 14:00 | | 3 | 2 | 3 | 2 | 2 | 14 | 13 | 3 | 2 | 3 | 5 | 2 | 4 | 2 | 4 | 2 | 1 | 4 | 5 | 76 | | | |
| 15:00 | | 5 | 8 | 6 | 6 | 6 | 5 | 8 | 6 | 8 | 7 | 7 | 8 | 8 | 8 | 9 | 8 | 7 | 6 | 8 | 134 | | | |
| 16:00 | | 12 | 11 | 11 | 13 | 8 | 9 | 6 | 6 | 6 | 6 | 6 | 4 | 6 | 8 | 6 | 5 | 5 | 7 | 7 | 142 | | | |
| 17:00 | | 14 | 14 | 10 | 12 | 15 | 13 | 15 | 9 | 12 | 14 | 8 | 13 | 11 | 15 | 12 | 9 | 10 | 10 | 12 | 228 | | | |
| 18:00 | | 11 | 9 | 14 | 12 | 13 | 8 | 6 | 18 | 16 | 10 | 14 | 10 | 15 | 9 | 16 | 18 | 19 | 13 | 12 | 243 | | | |
| 19:00 | | 3 | 7 | 6 | 3 | 6 | 2 | 4 | 8 | 6 | 9 | 8 | 12 | 9 | 6 | 9 | 8 | 10 | 8 | 9 | 133 | | | |
| 20:00 | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 2 | 1 | 2 | 1 | 2 | 1 | 1 | 1 | 2 | 1 | 1 | 23 | | | |
| Total | 4 | 107 | 112 | 107 | 103 | 107 | 103 | 107 | 106 | 111 | 103 | 107 | 111 | 113 | 103 | 114 | 108 | 108 | 114 | 107 | | | 2055 | |
| | | | | | | | | | | | | | | | | | | | | | | | 1970 | |
| | | | | | | | | | | | | | | | | | | | | | | | 2181 | 0.19% |
| Routing Violations | | | | | | | | | | | | | | | | | | | | | | | | |
| Date/Time | Bus ID | Location | | | | | | Description | | | | | | | | | | | | | | | | |
| 2022-01-03 9:48:05 | 458 | Tunnel Ave and Lagoon Rd - South | | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | | | |
|---------------------|-----------|----------------------------------|-----------|---------|---------|---------|--|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-------|
| December 2021 | | | | | | | | | | | | | | | | | | | | | |
| Trip Data | | | | | | | | | | | | | | | | | | | | | |
| | 12/1/2021 | 12/2/2021 | 12/3/2021 | 12/6/22 | 12/7/22 | 12/8/22 | 12/9/22 | 12/10/22 | 12/13/22 | 12/14/22 | 12/15/22 | 12/16/22 | 12/17/22 | 12/20/22 | 12/21/22 | 12/22/22 | 12/23/22 | 12/28/22 | 12/29/22 | 12/30/22 | Total |
| 5:00 | 4 | 2 | 2 | 3 | 3 | 4 | 4 | 3 | 4 | 2 | 4 | 2 | | | | | | | 1 | | 38 |
| 6:00 | 21 | 20 | 20 | 17 | 21 | 18 | 17 | 14 | 14 | 21 | 17 | 20 | | 8 | 10 | 8 | 9 | 9 | 7 | 10 | 281 |
| 7:00 | 13 | 17 | 17 | 17 | 16 | 15 | 17 | 19 | 16 | 18 | 17 | 18 | | 14 | 13 | 16 | 16 | 17 | 17 | 16 | 309 |
| 8:00 | 7 | 7 | 7 | 5 | 6 | 7 | 4 | 3 | 7 | 7 | 9 | 9 | 3 | 6 | 4 | 5 | 8 | 4 | 8 | 6 | 122 |
| 9:00 | 11 | 9 | 8 | 6 | 7 | 7 | 6 | 8 | 7 | 8 | 5 | 6 | | 10 | 12 | 8 | 8 | 7 | 9 | 6 | 148 |
| 10:00 | 4 | 5 | 3 | 6 | 6 | 4 | 5 | 2 | 1 | 4 | 9 | 4 | 1 | 3 | 8 | 7 | 5 | 2 | 3 | 5 | 87 |
| 11:00 | 2 | | 1 | 0 | | 1 | | 1 | 5 | | | 4 | 1 | 1 | 2 | 3 | | 1 | | 7 | 29 |
| 12:00 | 1 | 1 | | 2 | | | | 0 | 1 | 2 | | 1 | | | 2 | | 2 | | 1 | 1 | 14 |
| 13:00 | 1 | | 1 | | 1 | 2 | 1 | | | 1 | 2 | 1 | | | 1 | 2 | 3 | 3 | 5 | 2 | 26 |
| 14:00 | 3 | 4 | 2 | 3 | 5 | 2 | 1 | 2 | 3 | 3 | 5 | 2 | 1 | 13 | 9 | 9 | 9 | 8 | 6 | 7 | 97 |
| 15:00 | 7 | 6 | 8 | 6 | 7 | 9 | 7 | 5 | 6 | 7 | 5 | 3 | | 3 | 4 | 6 | 5 | 4 | 5 | 5 | 108 |
| 16:00 | 8 | 5 | 6 | 8 | 6 | 5 | 5 | 7 | 6 | 8 | 5 | 10 | | 7 | 7 | 11 | 12 | 9 | 9 | 9 | 143 |
| 17:00 | 15 | 8 | 12 | 12 | 8 | 9 | 10 | 10 | 9 | 11 | 11 | 6 | 1 | 12 | 11 | 10 | 13 | 12 | 11 | 10 | 201 |
| 18:00 | 10 | 15 | 16 | 16 | 16 | 19 | 19 | 15 | 18 | 18 | 16 | 19 | | 9 | 7 | 5 | 5 | 5 | 4 | 5 | 237 |
| 19:00 | 12 | 11 | 6 | 7 | 8 | 8 | 10 | 6 | 8 | 5 | 10 | 7 | | | 2 | 1 | | 1 | 2 | 1 | 105 |
| 20:00 | 1 | 2 | 2 | 0 | 2 | 1 | 2 | 2 | 1 | 1 | 2 | 2 | | 1 | 1 | 1 | 1 | 1 | 1 | 1 | 25 |
| Total | 120 | 112 | 111 | 108 | 112 | 111 | 108 | 97 | 106 | 116 | 117 | 114 | 7 | 87 | 93 | 92 | 96 | 83 | 89 | 91 | |
| | | | | | | | | | | | | | | | | | | | | | |
| Routing Violations | | | | | | | | | | | | | | | | | | | | | |
| Date/Time | Bus ID | Location | | | | | Description | | | | | | | | | | | | | | |
| 2021-12-06 10:31:25 | 268 | Tunnel Ave and Lagoon Rd - South | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |
| 2021-12-10 20:11:00 | 322 | Tunnel Ave and Lagoon Rd - South | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |
| 2021-12-13 10:56:08 | 309 | Tunnel Ave and Lagoon Rd - South | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |
| 2021-12-15 9:58:43 | 367 | Tunnel Ave and Lagoon Rd - South | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |
| 2021-12-28 14:42:40 | 319 | Tunnel Ave and Lagoon Rd - South | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | | | | | | | | |
|---------------------|---------|----------------------------------|---------|---------|---------|---------|---------|--|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-------|--|
| November 2021 | | | | | | | | | | | | | | | | | | | | | | |
| Trip Data | | | | | | | | | | | | | | | | | | | | | | |
| | 11/1/21 | 11/2/21 | 11/3/21 | 11/4/21 | 11/5/21 | 11/8/21 | 11/9/21 | 11/10/21 | 11/11/21 | 11/12/21 | 11/15/21 | 11/16/21 | 11/17/21 | 11/18/21 | 11/19/21 | 11/22/21 | 11/23/21 | 11/24/21 | 11/29/21 | 11/30/21 | Total | |
| 4:00 | | | | | | | | | 1 | | | | | | | | | | | | 1 | |
| 5:00 | 3 | 3 | 4 | 4 | 4 | 3 | 4 | 4 | 4 | 4 | 3 | 5 | 3 | 4 | 4 | 1 | 1 | 2 | 1 | 2 | 63 | |
| 6:00 | 21 | 19 | 21 | 18 | 19 | 21 | 19 | 19 | 20 | 21 | 18 | 21 | 19 | 20 | 21 | 8 | 10 | 10 | 17 | 20 | 362 | |
| 7:00 | 11 | 14 | 15 | 13 | 19 | 11 | 13 | 13 | 15 | 16 | 13 | 14 | 14 | 16 | 13 | 19 | 15 | 17 | 19 | 15 | 295 | |
| 8:00 | 7 | 6 | 6 | 9 | 4 | 6 | 6 | 7 | 7 | 8 | 9 | 10 | 6 | 5 | 4 | 4 | 1 | 5 | 5 | 8 | 123 | |
| 9:00 | 6 | 8 | 3 | 4 | 8 | 11 | 8 | 6 | 8 | 6 | 9 | 7 | 6 | 8 | 11 | 8 | 4 | 5 | 11 | 11 | 148 | |
| 10:00 | 2 | 5 | 9 | 7 | 8 | 3 | 6 | 5 | 6 | 8 | 4 | 6 | 4 | 8 | 9 | 5 | 4 | 4 | 4 | 2 | 109 | |
| 11:00 | 3 | 2 | 1 | 1 | | 1 | 2 | | | | 1 | 2 | 2 | 2 | 2 | 1 | 2 | 2 | 1 | 1 | 26 | |
| 12:00 | | | 2 | 1 | | 1 | | | | 1 | 1 | 1 | 1 | | 1 | 1 | | 3 | | | 13 | |
| 13:00 | | | | 1 | 3 | | | 1 | 1 | | | | | | | 2 | 3 | 1 | 2 | 2 | 16 | |
| 14:00 | 3 | 4 | 2 | 4 | 4 | 2 | 3 | 4 | 4 | 5 | 2 | 4 | 3 | 3 | 3 | 4 | 5 | 4 | 4 | 3 | 70 | |
| 15:00 | 7 | 9 | 8 | 8 | 6 | 7 | 12 | 8 | 9 | 8 | 8 | 10 | 9 | 8 | 8 | 6 | 7 | 7 | 7 | 5 | 157 | |
| 16:00 | 6 | 6 | 4 | 6 | 7 | 7 | 5 | 4 | 6 | 5 | 14 | 5 | 4 | 9 | 10 | 6 | 3 | 5 | 8 | 7 | 127 | |
| 17:00 | 14 | 12 | 13 | 11 | 10 | 11 | 11 | 11 | 11 | 13 | 9 | 13 | 13 | 8 | 9 | 8 | 9 | 11 | 10 | 12 | 219 | |
| 18:00 | 10 | 16 | 10 | 15 | 13 | 10 | 14 | 14 | 11 | 15 | 11 | 14 | 9 | 13 | 13 | 12 | 11 | 11 | 18 | 11 | 251 | |
| 19:00 | 9 | 9 | 12 | 9 | 8 | 11 | 11 | 10 | 10 | 8 | 9 | 13 | 14 | 13 | 9 | 2 | 1 | | 6 | 12 | 176 | |
| 20:00 | 1 | 1 | 1 | 2 | 1 | 1 | 1 | 1 | 3 | 2 | 1 | 1 | 2 | 1 | 1 | | | | 1 | 1 | 22 | |
| 21:00 | | | | | 1 | | | | | 1 | | | | | | | | 1 | | | 3 | |
| 22:00 | | | | | | | | | | | | | | | | | | | | | 0 | |
| Total | 103 | 114 | 111 | 113 | 115 | 106 | 115 | 107 | 116 | 121 | 112 | 126 | 109 | 118 | 118 | 87 | 76 | 88 | 114 | 112 | | |
| Routing Violations | | | | | | | | | | | | | | | | | | | | | | |
| Date/Time | Bus ID | Location | | | | | | Description | | | | | | | | | | | | | | |
| 2021-11-01 16:41:24 | 391 | Tunnel Ave and Lagoon Rd - South | | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |
| 2021-11-01 18:26:59 | 397 | Tunnel Ave and Lagoon Rd - South | | | | | | New driver training | | | | | | | | | | | | | | |
| 2021-11-02 16:51:50 | 390 | Tunnel Ave and Lagoon Rd - South | | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |
| 2021-11-03 16:36:56 | 330 | Tunnel Ave and Lagoon Rd - South | | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |
| 2021-11-15 11:54:24 | LUX651 | Tunnel Ave and Lagoon Rd - South | | | | | | New driver training | | | | | | | | | | | | | | |
| 2021-11-24 10:28:04 | 393 | Tunnel Ave and Lagoon Rd - South | | | | | | Non-Brisbane based driver covering run | | | | | | | | | | | | | | |

DRAFT MINUTES

Staff noted the City Engineer reviewed the sign program for sight distance and language within the program stipulates final approval of the location of the entry monument sign lies with the City Engineer. Staff also noted the Commission has discretion to limit the color palette of signage but indicated the City cannot prohibit signage that utilizes trademarked logos, even if the color was precluded under a sign program.

Barbara Ebel, Brisbane resident, spoke about a future dark skies ordinance in progress by the Open Space and Ecology Committee.

With no one else wishing to address the Commission, a motion by Commissioner Lau, seconded by Commissioner Sayasane to close the public hearing was approved 4-0.

After deliberation, a motion by Chairperson Gooding, seconded by Commissioner Sayasane to approve the application via adoption of Resolution 2021-SR-9, amended to require programmable, automated dimmers on all illuminated signs, was approved 4-0. Chairperson Gooding read the appeals procedure.

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

Note, item removed from the agenda; see the [memorandum to the Planning Commission regarding this removal](#).

- H. PUBLIC HEARING: 600 Tunnel Avenue; Modification of Interim Use Permit 2021-UP-3; C-1 Commercial District (Baylands); allowing for continued staging of up to 90 Google Commuter buses on an approximately 3-acre vacant site on the Baylands, with a modified schedule; Eric Aronsohn, applicant; Oyster Point Properties Inc, applicant/owner. Alternatively, consider revocation of Interim Use Permit 2021-UP-3.**

Senior Planner Johnson gave the staff presentation and answered questions about applying conditions of approvals and the Commission's past request to issue citations for violations of the interim use permit.

Chairperson Gooding opened the public hearing.

Eric Aronsohn, applicant, and Ross Benson, Google's representative, addressed the Commission and answered questions about the volume and timing of bus trips from the site.

Michelle Salmon, Brisbane resident, spoke about traffic safety on Tunnel Ave.

Mary Rogers, Brisbane resident, expressed her opposition to allowing the use to continue and spoke about Google's history at the site.

Randall Venerable, Brisbane resident, spoke in favor of the benefits that buses provide and hoped the Commission will find a solution that would allow the use to remain and operate safely.

With no one else wishing to address the Commission, a motion by Commissioner Lau, seconded by Commissioner Patel to close the public hearing was approved 4-0.

After deliberation, a motion by Commissioner Patel, seconded by Commissioner Sayasane, to deny the modification of Interim Use Permit 2021-UP-3 and revoke the permit via adoption of Resolution 2021-UP-3-R was approved 3-1 (Gooding). Senior Planner Johnson read the appeals procedure.

ITEMS INITIATED BY STAFF

Director Swiecki and Senior Planner Johnson noted progress on the Housing Element update continues and a public hearing on it is expected at the end of May.

ITEMS INITIATED BY THE COMMISSION

Commissioner Patel asked staff to agendize a Commission training session on code enforcement authority and the drafting of resolutions at a future meeting date.

ADJOURNMENT

Chairperson Gooding declared the meeting adjourned to the next regular meeting of April 28, 2022 at approximately 10:15 p.m.

Attest:

John A. Swiecki, Community Development Director

NOTE: A full video record of this meeting can be found on the City's YouTube channel at www.youtube.com/BrisbaneCA, on the City's website at <http://www.brisbaneca.org/meetings>, or on DVD (by request only) at City Hall.

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 10/28/2021

SUBJECT: **Interim Use Permit 2021-UP-3; 600 Tunnel Avenue;** C-1 Commercial District (Baylands); Interim Use Permit, renewal of UP-4-19, to allow continued staging of up to 90 Google Commuter buses on an approximately 3 acre vacant site on the Baylands. Sam Khodja, applicant; Oyster Point Properties Inc., applicant/owner.

REQUEST: An Interim Use Permit is requested by the property owner Oyster Point Properties, Inc. on behalf of Google to allow for the continued utilization of the subject site as a staging yard for up to 90 Google buses for transporting Google employee commuters. This is requested as a renewal of UP-4-19 and the requested term of the Interim Use Permit is for 5 years. No site improvements are proposed by the applicant with this proposed continued use.

RECOMMENDATION: Conditionally approve Interim Use Permit 2021-UP-3, with modifications, via adoption of Resolution 2021-UP-3 with Exhibit A containing the findings and conditions of approval.

ENVIRONMENTAL DETERMINATION: This project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Section 15301 of the CEQA Guidelines. The exceptions to this categorical exemption, referenced in Section 15300.2, do not apply.

APPLICABLE CODE SECTIONS: Brisbane Municipal Code Chapter 17.41, adopted June 10, 1996, establishes procedures and required findings for the approval of interim uses in the Baylands subarea. Required findings are set forth in BMC Section 17.41.060, and mandatory conditions of approval are listed in BMC Sections 17.41.060.F and 17.41.070.

BACKGROUND/PROJECT DESCRIPTION:

Site Description:

The site is approximately 3 acres in size and is located south of Golden State Lumber, between the CalTrain rail-lines and Tunnel Avenue, on the westernmost edge of the former municipal landfill. Interim use permit UP-4-19 and grading permit EX-3-19 were approved in October 2019, which allowed for site preparation and the staging of Google buses for a two year period, which will end on October 31, 2021.

The yard has been graded and surfaced with gravel and enclosed with a chain link fence. Entry and exit driveways with gates have been provided at the north and south ends of the site,

respectively. The entry and exit drives are paved. Eleven portable, solar powered light standards are located on the site. No independent trash service or restrooms are provided on the site. Trash is collected off-site and the buses contain lavatories. Vehicle maintenance is prohibited on the site.

Operations:

Google began its operations in late 2019. However, following the onset of the Covid-19 pandemic in early 2020, Google suspended its operations and removed the buses from the site. They restarted operations in the summer of 2021.

Proposed site operations include parking, or staging, of the buses up to 24 hours a day, seven days a week, although generally buses are out on rounds, transporting Google employees to and from work, during the weekday daytime hours. The buses are picked up and dropped off by contracted Google bus drivers Monday through Friday, between 3 and 7 am and 3 and 9 pm. Drivers arriving by personal vehicle park on the site. The total vehicle trips per day is estimated at 360, with the peak hours being between 4 and 6 am at a rate of 60 trips per hour and between 7 and 8 pm at a rate of 50 trips in that hour. Note that a trip is counted for each time either a personal vehicle or bus would enter or exit the yard. Buses generally do not return to the yard between the morning and evening commute hours. Per the Planning Commission's conditions of approval under UP-4-19, the buses are routed to the north to and from U.S. 101 and not south towards the Brisbane Lagoon or Central Brisbane. The Commission further suggested that Google should provide trip and routing data with any future applications.

As indicated above, the yard is fenced and gated to provide for security. Additionally, security personnel periodically patrol this site along with two other nearby Google sites 7 days a week. Portable, solar-powered lighting standards with security cameras are located on the site to provide light during early morning and evening vehicle transfers. Lighting is set for the weekday mornings beginning at 4:00 am and in the evenings ending at 11 pm.

The operational description provided above is consistent with current operations of the facility. No modifications are proposed to the site or operations with this current application. The applicant's project description and Google's bus routing and schedule are attached.

Operational Issues and Permittee Responses to Date:

In early 2020, after Google began its operations, City staff received complaints regarding dust generation from bus movements on site and lighting at night. Staff communicated the complaints to the permittee/property owner and requested that these issues be addressed.

Regarding the dust concern, the property owner followed up with staff in early 2020, reporting that they had added paving to the two driveways leading up to the gates from Tunnel Avenue and were using a water truck to suppress dust generation on the interior of the site with the intent of creating a harder packed surface. Soon afterward operations were suspended due to the Covid-19 pandemic and the buses were removed from the site. The site was reopened in the summer of 2021 and has been in operation for the past few months.

Since reopening, the similar complaints have been raised and the applicant has indicated that they have now added asphalt grindings to the ground surface in an effort to address the dust issue.

Regarding the lighting, in 2020, the applicant indicated that they had their lighting contractor adjust the lights to face more downward onto the site in an effort to reduce off-site impacts. In 2021, they have reported that they have further adjusted the lighting (see letter in Attachment C).

A complaint has also been raised alleging that the drivers were coming and going via southbound Tunnel Avenue, instead of the required northbound route. The applicant has responded that the drivers are using the required northbound route and has requested routing data from Google. At the time of this report, that information is not yet available.

Staff Suggested Project Modifications:

Generation of dust was prohibited in the original use permit conditions of approval and is likewise prohibited for interim uses on the Baylands, per BMC Section 17.41.030.F.1. It does not appear that the base rock or the recently placed asphalt grindings will provide an adequate surface to prevent further dust issues. It is therefore recommended that the parking area be required to be fully paved. Installation of an impervious surface will also require stormwater capture and treatment on site, to comply with the State Water Board's Municipal Regional Permit (MRP) NPDES requirements, as provided in MRP Section C.3. Conditions of approval are included along with suggested timelines for compliance.

Regarding the lighting, the applicant has indicated that the lights have been adjusted downward. However, staff has continued to receive complaints. In order to address the concern about lighting, a condition of approval is recommended that the applicant provide the Planning Director with details showing how the lights are shielded and directed downward to eliminate direct visibility from Brisbane's residential neighborhoods and/or from nearby street views. The applicant shall further provide photometric data demonstrating that that light spillage beyond the site is not occurring. In the event these standards cannot be satisfied, the lighting shall be removed from the site. Removal may necessitate added Google security patrols. Additionally, a condition has been recommended to limit the programmed lighting hours to no earlier than 4 am and no later than 9 pm on weekdays. Weekend lighting has not been requested, since the buses only run during the weekdays.

At this time, staff has not confirmed whether or not Google bus drivers are utilizing southbound Tunnel Ave, in violation of the condition of approval regarding routing. The Police Dept. has reported that they have not observed Google's buses south of the site and, as indicated above, the applicant has reported that Google drivers are using northbound routes and has reached out to Google to see if supporting data is available to verify compliance. It is recommended that the previously included condition of approval carry forward, with a modification that Google provide a monthly report to the Planning Director documenting bus movements. A clarification is suggested that the condition be modified to specify "Google buses" versus "vehicles", to make it clear this prohibition does not apply to the drivers private vehicles.

If the above outlined issues cannot be resolved to staff's satisfaction or there are other violations to the terms of the interim use permit, the permit would be referred back to the Planning Commission for revocation procedures established in Brisbane Municipal Code Chapter 17.48.

ANALYSIS AND FINDINGS: The required findings under BMC Sections 17.41.060.A-F and project analysis are provided below. The project, including the suggested conditions of approval, with site modifications, would meet the findings.

Interim Use Permit

a) The interim use will not be detrimental to the public health, safety or welfare, or injurious to nearby properties or improvements;

The proposal continuation of the use would **comply** with this finding, given the proposed modifications to the site.

The site is within an industrial area of Brisbane and the proposal is not anticipated to have detrimental or injurious effects, given the modifications provided in the conditions of approval. These modifications include paving the site and modifications to prevent off site glare from lighting, per the conditions of approval.

Adjacent uses include vacant lands to the south and the CalTrain rail line, which runs north-south rail adjacent to the site immediately to the west. The Golden State Lumber storage yard is located approximately 200 feet to the north. To the east, across Tunnel Avenue, are the Brisbane Recycling Company and Brisbane Soil Processing operations. There are no anticipated detrimental impacts to these nearby uses, given the site modifications provided in the conditions of approval.

b) the interim use will not create any significant environmental impacts;

The proposal **complies** with this finding.

The use is a continuation of an existing use and the use would have negligible or no permanent effects on the environment, with minor modifications considering the conditions of approval. As such it is categorically exempt from the provisions of CEQA, per Sections 15301 of the CEQA Guidelines. The exceptions to this categorical exemption, referenced in Section 15300.2, do not apply.

c) the interim use will not obstruct redevelopment;

The proposal **complies** with this finding.

In considering approval of the Interim Use Permit, the Planning Commission must find that the use "...will not obstruct, interfere with, or delay the intended redevelopment of the property..." (BMC Section 17.41.060.C). Given the short duration of the proposed use and that fact that it will not include any permanent structures, there would be no obstruction

to redevelopment plans. A condition of approval is included to address vacation of the site should redevelopment be advanced during the permit period.

d) all required public utilities and other infrastructure are or will be available;

This proposal **complies** with this finding.

The infrastructure of the roadway is provided via Tunnel Avenue with nearby U.S. 101 freeway access via Beatty Avenue or farther north just over the San Francisco border. Per the condition of approval, the applicant will be required to provide paving on-site and on-site stormwater treatment prior to discharge. No other infrastructure or utilities are required for this continued use.

e) the use will benefit the property and/or the public;

The proposal **complies** with this finding.

The use would benefit the public in that the bus yard would support the use of commuter buses and thereby reduce greenhouse gas emissions for the region.

f) encourage the employment of Brisbane residents to the extent it is reasonably possible to do so.

The proposal **complies** with this finding.

The applicant has indicated that their employment recruitment program includes directed outreach to Brisbane residents, to the extent possible. Google utilizes vendor partners for bus driver services and has indicated that they will encourage those vendors to post job openings in the City's Chamber of Commerce publication, the Luminary.

Finally, note that this application was routed to the City Engineer/Public Works Director, Fire Dept., Police Dept., San Mateo County Environmental Health, Regional Water Quality Control Board and CalTrain JPB for review and comment. The City Engineer commented on the issues of dust and lighting, which are discussed above and addressed in the conditions of approval. No other issues were raised. The proposed conditions of approval are provided with the attached resolution.

ATTACHMENTS:

- | | |
|--|---|
| <ul style="list-style-type: none"> A. Site and Vicinity Map/Aerial Photograph B. Staff's Site Photographs 10/8/21 C. Applicant's Submittal <ul style="list-style-type: none"> i. Project Description 2021 & 2019 ii. Applicant's Trip Routing iii. Daily Schedule | <p>Removed items have been superseded, provided elsewhere, or not a subject of this appeal.</p> |
|--|---|

- iv. ~~Yard Surface Photograph~~
- v. ~~KingSolarman letter~~
- D. ~~Draft Resolution 2021-UP-3~~



Ken Johnson, Senior Planner

John Swiecki, Community Development Director

Days and hours of operation:

- Monday - Friday: 4am-11pm, no activity between 10am-7pm as all buses will be out in service.
- Buses park midday in Mountain View, CA

ON-SITE PERSONNEL

There shall be no permanent on-site personnel. Google will utilize a contracted security officer, who monitors and patrols the Companies assets in South San Francisco and San Bruno.

VEHICLE MAINTENANCE

There will be absolutely no vehicle maintenance performed on this site. Bathrooms will be pumped out at an offsite facility.

FENCING, SECURITY, AND SITE LAYOUT

Proposed perimeter fencing and vehicle barriers {e.g., concrete K-rail} will be added as shown in the attached site plan. A manually operated security gate will also be installed at the entrance. These additions will enhance the existing perimeter elements and mitigate the potential for unwanted access to this portion of the site. Two ingress/egress gates servicing the site from Tunnel Avenue with adequate clearance to accommodate the vehicle and bus operations will also be provided as shown on the site plan.

GRADING

The existing topography of the site will remain essentially as-is while grading will serve to level out soil piles and clear brush and debris. A crushed rock overlayer will sit above any exposed dirt to mitigate the potential of airborne dust resulting from the operations at the site.



M.

ATTACHMENT C.2**Applicant's Project Description 2021**Published on *City of Brisbane* (<https://www.brisbaneca.org>)[Home](#) > [Electronic Planning Application](#) > [Webform results](#) > Submission #52**Submission information**Form: [Electronic Planning Application](#) [1]

Submitted by Visitor (not verified)

Wed, 09/08/2021 - 5:30pm

69.181.231.35

Application Type:

Use Permit

Use Permit Type:

Interim Uses on the Baylands

Does the project location have a street address? Yes**Project Address:** 600 Tunnel Ave. Brisbane**Assessor's Parcel Number (APN):** 005340040**Do you have another APN?** Yes**Assessor's Parcel Number (APN):** 005350080**Assessor's Parcel Number (APN):****Assessor's Parcel Number (APN):****Zoning District:** C-1**Habitat Conservation Plan:** No**Flood Zone:** No**Slope:** Under 20%

Project Description: Applying for a 5-years interim use permit renewal UP-4-19 for google bus operation at 600 Tunnel Ave. On March 12, 2020 we had a plan to add more improvement to the site by installing a virgin base rock or asphalt grinding to control the dust issue as a long term solution, however, once the pandemic hit, google bus operation was shut down and buses moved out of the site, until last July, 01, 2021 when google decided to resume their operation, we had a water truck in there 3 days per week to dampen down the base and dirt materials, this could be a potential longer-term solution since we noticed a huge difference. Over time it will compact the surface. Finally, on September 2, 2021 we decided to install an asphalt grinding material over the entire site as a permanent and a long term solution to the dust issue. See Pictures attached showing the current site conditions on September 07, 2021. Additionally, "KingSolarman", the contractor for the "Solar Lighting Towers" did make an adjustment to the lighting per the city of Brisbane request by placing them downwards onto the site, this can mitigate the light pollution, furthermore they have programmed all the lighting towers on a timer so it will turn-on only Monday through Friday between the hours of: (8:00pm-11:00pm & 4:00am-6:00am) and turn-off on Saturday & Sunday. This hours can be adjusted any time upon request. See attached a letter From KingSolarman dated September 07, 2021.

*We also regularly sweeping Tunnel Ave at least once a week.

Google Bus Parking: Proposed Route Mapping

Red represents inbound buses
Blue represents outbound buses

*Cars belonging to drivers will be instructed to use this routing as well



ATTACHMENT C.4
Vehicle Trip Schedule
Private Vehicles and Buses

ATTACHMENT 5
continued

Google Buses - Interim Use Application

| Buses <u>Inbound to</u> and <u>Outbound from</u> Brisbane (Average) | | | | | | | |
|---|--------|---------|-----------|----------|--------|----------|--------|
| Cars <u>Inbound to</u> and <u>Outbound from</u> Brisbane (Average) | | | | | | | |
| | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday |
| 2400-0100 | | | | | | | |
| 0100-0200 | | | | | | | |
| 0200-0300 | | | | | | | |
| 0300-0400 | 30 | 30 | 30 | 30 | 30 | | |
| 0400-0500 | 30/ 30 | 30/ 30 | 30/ 30 | 30/ 30 | 30/ 30 | | |
| 0500-0600 | 30/ 30 | 30/ 30 | 30/ 30 | 30/ 30 | 30/ 30 | | |
| 0600-0700 | 30 | 30 | 30 | 30 | 30 | | |
| 0700-0800 | | | | | | | |
| 0800-0900 | | | | | | | |
| 1000-1100 | | | | | | | |
| 1100-1200 | | | | | | | |
| 1200-1300 | | | | | | | |
| 1300-1400 | | | | | | | |
| 1400-1500 | | | | | | | |
| 1500-1600 | 10 | 10 | 10 | 10 | 10 | | |
| 1600-1700 | 10/10 | 10/10 | 10/10 | 10/10 | 10/10 | | |
| 1700-1800 | 20/10 | 20/10 | 20/10 | 20/10 | 20/10 | | |
| 1800-1900 | 20/20 | 20/20 | 20/20 | 20/20 | 20/20 | | |
| 1900-2000 | 30/20 | 30/20 | 30/20 | 30/20 | 30/20 | | |
| 2000-2100 | 30 | 30 | 30 | 30 | 30 | | |
| 2100-2200 | | | | | | | |
| 2200-2300 | | | | | | | |
| 2300-2400 | | | | | | | |

Chairperson Gooding opened the public hearing.

Eric Aronsohn, applicant, addresses the Commission and answered question about leveraging resources from Mission Blue Nursery, the types of trees expected to be grown at the nursery, and the timing of growing trees for the Baylands at the proposed location.

Barbara Ebel, Brisbane resident, spoke in favor of the project but raised concerns about the project's water usage.

Michele Salmon, Brisbane resident, spoke in favor of the project but raised concerns about nearby seasonal wetlands and invasive flora onsite.

Mary Rogers, Brisbane resident, raised concerns about lighting and potential benefits to Brisbane residents, if any.

Jason Nunan, spoke in favor or the project but raised concerns about non-native tree species being grown at the nursery.

With no others wishing to address the Commission, Commissioner Patel moved to close the public hearing. Commissioner Funke seconded the motion and it was approved 5-0.

After deliberation, Commissioner Funke moved to approve the application via adoption of 2021-UP-5 with an additional condition that prior to the applicant commencing operations, the limits of the seasonal wetlands shall be verified by a qualified biologist to ensure the interim use does not encroach upon the wetlands. Commissioner Gomez seconded the motion and it was approved 5-0.

- C. PUBLIC HEARING: 600 Tunnel Avenue; Interim Use Permit 2021-UP-3; C-1 Commercial Mixed Use (Baylands);** Proposed Interim Use Permit for the continued staging of up to 90 Google commuter buses on an approximately 3-acre site between Tunnel Avenue and the Caltrain rail line to serve Google employees on the peninsula for up to a 5-year term. Sam Khodja, applicant; Oyster Point Properties, Inc. (Baylands Development Inc.), owner.

Senior Planner Johnson informed the Commission that the applicant has requested to continue this item to the next scheduled meeting to discuss proposed conditions of approvals with staff.

Director Swiecki added that while the applicant's current interim use permit will expire before the next meeting, the use may continue until the Planning Commission acts on this item and they will be subject to the boundaries and conditions under the existing interim use permit.

Chairperson Gooding opened the public hearing.

Mary Rogers, Brisbane resident, spoke against the project.

Michele Salmon, Brisbane resident, spoke against the project.

Kim Follien, Brisbane resident, spoke in favor of the project provided the lot is paved and lighting is properly shielded.

Barbara Ebel, Brisbane resident, spoke in favor of the project provided the applicant follow through on mitigating dust and glare and provide the route and trip data per the new recommended conditions of approval.

Chairperson Gooding closed the public hearing and Commissioner Funke moved to continue the application to the next Planning Commission meeting of November 16, 2021. Commissioner Gomez seconded the motion and it was approved 5-0.

D. PUBLIC HEARING: Zoning Text Amendment 2021-RZ-2; Various zoning districts; Zoning text amendments to Title 17 of the Brisbane Municipal Code to City of Brisbane to establish objective design and development standards for housing development projects; establish residential density requirements for the NCRO-2 Zoning District; allow multiple family dwellings in the SCRO-1 District by right and multiple family dwellings as part of a mixed use in the NCRO-2 Zoning District by right; reduce guest parking requirements; and establish procedures and requirements for an administrative Housing Development Permit for qualifying housing development projects. City of Brisbane, applicant; Citywide.

Director Swiecki introduced Contract Senior Planner Beggs.

Contract Senior Planner Beggs and project consultants Aaron Akin and Nicholas Hamilton of Good City gave the staff presentation and answered questions about the criteria for certain development regulations, including step-backs, which zoning districts are impacted by the proposed amendments, the timing of approval required by the State, and if additional visualization and/or simulation materials of the proposed amendments could be provided.

The Commission asked staff and the consultants to further explain the proposed reduction in guest parking, including how the proposed standard was determined and whether the Housing and Community Development (HCD) would permit Brisbane to retain its current and more stringent standard.

Director Swiecki explained the State views parking as a constraint on housing availability and is regulating municipalities to reduce governmental constraints. Mr. Akin further indicated that HCD's review will include ensuring the feasibility of the proposed amendments are not financially burdensome, i.e., a limiting factor to the construction of housing, and leaving the guest parking standard unchanged may necessitate a subsequent change in the future.

Commissioners Funke and Gooding requested clarification on the approval process for new mixed-use and multifamily projects and the role of the Zoning Administrator. Director Swiecki informed the Commission that without any discretionary standards, the Zoning Administrator's role is to

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 11/16/2021

SUBJECT: **Interim Use Permit 2021-UP-3; 600 Tunnel Avenue;** C-1 Commercial District (Baylands); Interim Use Permit, renewal of UP-4-19, to allow continued staging of up to 90 Google Commuter buses on an approximately 3 acre vacant site on the Baylands. Sam Khodja, applicant; Oyster Point Properties Inc., applicant/owner.

SUPPLEMENTAL REPORT

BACKGROUND: This application was continued from the meeting of October 28th, 2021 at the request of the applicant, to address issues of dust control, lighting and bus routing. Since there were members of the public present who wished to speak on the application, the Commission opened the public hearing and then continued the item to tonight's meeting.

During the public comment, the applicant expressed concern about the draft conditions of approval suggested by staff, which would modify the project by requiring the site to be paved and shortening the interim use permit to 2 years versus the requested 5 year term. Conditions were also suggested regarding the lighting and reporting by Google to the City on the actual bus routing and the applicant indicated their willingness to comply with those conditions.

Also, during the public hearing, Brisbane residents Mary Rogers and Michelle Salmon spoke in opposition to the continued use. Brisbane residents Kim Follien and Barbara Ebel spoke in favor of the continued use, including the suggested conditions of approval.

As a follow up, the applicant provided a response letter, which is provided as Attachment A. The applicant has indicated that they have adjusted the lighting to reduce the brightness by 50 percent, lowered the towers from 26 to 10 feet and further adjusted how the lights are directed onto the site, in an effort to reduce off-site light impacts. They have also provided an example report from Google on bus tracking, to demonstrate their commitment to comply with the condition prohibiting south bound bus trips. They have also provided a modification to their bus schedule and estimated trip count, which is included as part of Attachment A. Google has indicated that their anticipated combined passenger and Google bus trips would be reduced from their previous estimate of 180 in both the morning and late afternoon to evening down to 130 trips for each, morning and evening. Also, the hours would be to start after 4 am instead of 3 am and after 5 pm instead of after 3 pm. The ending times of 7 am and 9 pm would remain as previously proposed.

On the matter of dust and the suggested condition of approval that the site be paved, the applicant contends that the recent addition of asphalt grindings to the ground surface is adequate

to address this issue. The applicant has also indicated that paving is a disruptive and expensive endeavor, especially given the suggested condition limiting the use to a 2 year term instead of the 5 year term requested. Considering that the placement of the asphalt grindings was recently done and the dust issues appear to have been occurring prior to its placement, the Commission may consider allowing for the continued use without requiring paving. In that case, it is recommended the use permit term be limited to one year. This would allow the project to demonstrate through the dry season that the current surfacing is adequate to suppress dust generation.

Note that the draft resolution has not been revised to reflect these possible revisions to the conditions. If that is the Commission's desire, condition #18 would be edited to state 1 year instead of 2 years. Draft condition #1, which would require paving, would be removed and replaced with a condition stating that, "The yard's ground surface shall be maintained to prevent airborne dust generation."

RECOMMENDATION: Conditionally approve Interim Use Permit 2021-UP-3, with modifications, via adoption of Resolution 2021-UP-3 with Exhibit A containing the findings and conditions of approval.

ATTACHMENTS:

- A. Applicant's letter, dated Nov. 9, 2021
- B. ~~Planning Commission Agenda Report of October 28, 2021~~
- C. Correspondence from Mary Rogers, dated Aug. 26, 2021
- D. ~~Draft Resolution 2021-UP-3~~

Removed items have been superseded or provided elsewhere.

Ken Johnson

Ken Johnson, Senior Planner

John Swiecki

John Swiecki, Community Development Director



November 08, 2021

Planning Commission

City Of Brisbane

Subject: Interim Use Permit 2021-UP-3: 600 Tunnel Ave. Interim Use Permit, renewal of UPC-4-19, to allow for the continued staging of up to 90 Google commuter buses on approximately 3 acres. Graded and fenced site to serve google employees on the Peninsula, for up to a **5-year term**.

Supporting Documents Addressing the Most Recent Concerns About Google Buses Operation:

Concern #1. Light pollution: On Monday, November 1, further adjustments to the lighting system was made to limit the light pollution. The system was installed and adjusted by KingSolarman. *(Please see **attachment #1** a letter from Kingsolarman. **Attachment# 2** Photo comparison of the Google bus lot lighting versus neighbors: Golden State Lumber & Recology).*

Concern #2. Dust mitigation: In early September we installed an upgraded pervious asphalt grinding material at the site, which is specifically formulated to control dust while still allowing water to infiltrate naturally through the soil. Guidance from the San Mateo County Water Pollution Prevention Program (flowstobay.org) clearly states that pervious surface material is the preferred material for uncovered parking lots, bike lanes, and driveways. We believe the dust complaints the City has received are more likely emanating from the Golden State Lumber site, and not from the Google bus lot. *(Please see **attachment #3** a letter from Team North Construction Services).*

Concern #3. Buses traveling south on Tunnel Ave: As far as the landlord is aware, the tenant has conformed to the traffic and routing requirements imposed in the use permit approved in 2019. It has come to our attention that the routing protocol may not have been followed as commented on by members of the Planning Commission and the public. In order to address this issue, the tenant has put in place geofencing on Lagoon Rd and the portion of Tunnel Ave south of the intersection with Lagoon Rd. All buses are equipped with GPS that will flag any bus that enters the fenced area and record the time spent in the area. This information can either be

compiled in a report and sent to the City on a regular basis, or the tenant can help the City build out an API to access the data. Please let us know what the preferred method is for monitoring the bus routing. **NOTE:** we sent 4 buses south to test and not part of a typical route. (Please see **attachment # 4 Watched Area Testing Report: 11/01/2021 - 11/05/2021**).

Concern #4. Buses new schedule: As it relates to traffic, the pandemic has caused the tenant to adjust their operations which have meant that the schedule of buses entering and leaving the parking lot has changed. Based on current and expected operations, we are attaching an updated trip count and schedule (Please see **attachment# 5 a new proposed schedule with trip counts**).

ATTACHMENTS:

1. ~~Letter from Kingsolarman.~~
 2. ~~Photo comparison of google lighting versus Golden State Lumber and Recology.~~
 3. ~~Letter from Team North Construction Services.~~
 4. Watched Area Testing Report (11/01/2021 - 11/05/2021)
 5. New proposed schedule with trip counts.
- Removed items are not a subject of this appeal.

Thank you

Sam Khodja

Sam Khodja | Property Manager

Baylands Development, Inc.

Attachment# 04:**ATTACHMENT 5
continued**

| Vehicle | Day/ Time | Area | Description | Enter/ Leave | Time in Area (sec) | Reason | Corrective Action |
|---------|-------------------------|--|--|-----------------|-----------------------------|--|----------------------|
| 391 | 11/1/2021 4:41:24 PM | C:befa6cb3-96da-4ffb-bbe0-cacb19cc31f9 | Tunnel Ave and Lagoon Rd - Brisbane | Enter | | | |
| 391 | 11/1/2021 4:43:10 PM | C:befa6cb3-96da-4ffb-bbe0-cacb19cc31f9 | Tunnel Ave and Lagoon Rd - Brisbane | Leave | 107 | system/network validation - vendor a | |
| 397 | 11/1/2021 6:26:59 PM | C:befa6cb3-96da-4ffb-bbe0-cacb19cc31f9 | Tunnel Ave and Lagoon Rd - Brisbane | Enter | | | |
| 397 | 11/1/2021 6:29:15 PM | C:befa6cb3-96da-4ffb-bbe0-cacb19cc31f9 | Tunnel Ave and Lagoon Rd - Brisbane | leave | 137 | system/network validation - vendor b | |
| 390 | 11/2/2021 4:51:50 PM | C:befa6cb3-96da-4ffb-bbe0-cacb19cc31f9 | Tunnel Ave and Lagoon Rd - Brisbane | enter | | | |
| 390 | 11/2/2021 4:53:24 PM | C:befa6cb3-96da-4ffb-bbe0-cacb19cc31f9 | Tunnel Ave and Lagoon Rd - Brisbane | Leave | 95 | system/network validation - vendor c | |
| 330 | 11/3/2021 4:36:56 PM | C:befa6cb3-96da-4ffb-bbe0-cacb19cc31f9 | Tunnel Ave and Lagoon Rd - Brisbane | enter | | | |
| 330 | 11/3/2021 4:38:33 PM | C:befa6cb3-96da-4ffb-bbe0-cacb19cc31f9 | Tunnel Ave and Lagoon Rd - Brisbane | leave | 98 | system/network validation - vendor d | |

Attachment# 05:

ATTACHMENT 5
continued

Google Buses - Interim Use Application

| Buses Inbound to and Outbound from Brisbane (Average) | | | | | | | | |
|---|----------------|--------|---------|-----------|----------|--------|----------|--------|
| Cars Inbound to and Outbound from Brisbane (Average) | | | | | | | | |
| | | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday |
| 2400-0100 | | na | na | na | na | na | na | na |
| 0100-0200 | | na | na | na | na | na | na | na |
| 0200-0300 | | na | na | na | na | na | na | na |
| 0300-0400 | | na | na | na | na | na | na | na |
| | | na | na | na | na | na | na | na |
| 0400-0500 | inbound cars | 15 | 15 | 15 | 15 | 15 | na | na |
| | outbound buses | 10 | 10 | 10 | 10 | 10 | na | na |
| 0500-0600 | inbound cars | 25 | 25 | 25 | 25 | 25 | na | na |
| | outbound buses | 25 | 25 | 25 | 25 | 25 | na | na |
| 0600-0700 | inbound cars | 25 | 25 | 25 | 25 | 25 | na | na |
| | outbound buses | 30 | 30 | 30 | 30 | 30 | na | na |
| 0700-0800 | | na | na | na | na | na | na | na |
| 0800-0900 | | na | na | na | na | na | na | na |
| 1000-1100 | | na | na | na | na | na | na | na |
| 1100-1200 | | na | na | na | na | na | na | na |
| 1200-1300 | | na | na | na | na | na | na | na |
| 1300-1400 | | na | na | na | na | na | na | na |
| 1400-1500 | | na | na | na | na | na | na | na |
| 1500-1600 | | na | na | na | na | na | na | na |
| 1600-1700 | | na | na | na | na | na | na | na |
| 1700-1800 | Inbound buses | 6 | 6 | 6 | 6 | 6 | na | na |
| | outbound cars | 4 | 4 | 4 | 4 | 4 | na | na |
| 1800-1900 | Inbound buses | 14 | 14 | 14 | 14 | 14 | na | na |
| | outbound cars | 14 | 14 | 14 | 14 | 14 | na | na |
| 1900-2000 | Inbound buses | 17 | 17 | 17 | 17 | 17 | na | na |
| | outbound cars | 17 | 17 | 17 | 17 | 17 | na | na |
| 2000-2100 | Inbound buses | 28 | 28 | 28 | 28 | 28 | na | na |
| | outbound cars | 30 | 30 | 30 | 30 | 30 | na | na |
| 2100-2200 | | na | na | na | na | na | na | na |
| 2200-2300 | | na | na | na | na | na | na | na |
| 2300-2400 | | na | na | na | na | na | na | na |

AM Totals

in

65

out

65

PM Totals

in

65

out

65

BRISBANE PLANNING COMMISSION
Action Minutes of November 16, 2021
Virtual Special Meeting

CALL TO ORDER

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

ROLL CALL

Present: Commissioners Funke, Gooding, Gomez, Patel, and Sayasane

Absent: None

Staff Present: Director Swiecki, Senior Planner Johnson, Contract Senior Planner Kelly Beggs,
and Associate Planner Robbins

ADOPTION OF AGENDA

Commissioner Funke moved to adopt the agenda. Commissioner Gomez seconded the motion and it was approved 5-0.

CONSENT CALENDAR

Commissioner Patel moved to adopt the consent calendar (agenda item A). Commissioner Gomez seconded the motion and it was approved 5-0.

ORAL COMMUNICATIONS

There were no oral communications.

WRITTEN COMMUNICATIONS

Chairperson Gooding acknowledge three letters were received pertaining to agenda item C.

OLD BUSINESS

- B. PUBLIC HEARING: 600 Tunnel Avenue; Interim Use Permit 2021-UP-3; C-1 Commercial Mixed Use (Baylands);** Proposed Interim Use Permit for the continued staging of up to 90 Google commuter buses on an approximately 3-acre site between Tunnel Avenue and the Caltrain rail line to serve Google employees on the peninsula for up to a 5-year term. Sam Khodja, applicant; Oyster Point Properties, Inc. (Baylands Development Inc.), owner.

Note: This item was continued from the October 28, 2021 Planning Commission meeting.

Senior Planner Johnson gave the presentation and answered questions from the Commission about the original complaints pertaining to fugitive dust and light glare, the timing of modifications made

by the applicants to the onsite lighting, and the scheduling and movements of the buses, including what the GPS data related to bus movements would indicate.

Chairperson Gooding opened the public hearing.

Eric Aronsohn, applicant, addresses the Commission and spoke about how bus routing and scheduling has changed post Covid-19, a geofence was set up to monitor bus movements and notify the City of violations, and dust control mitigation and lighting adjustments have been made recently, including dimming the lights and adding a layer of asphalt grindings. He also clarified both the subject matter and source of the attachments and photos included with the staff report.

Michele Salmon, Brisbane resident, spoke against the project. Staff played [two videos](#) at this time, recorded early 2020 by Ms. Salmon and submitted at the beginning of the meeting, showing fugitive dust coming from the project site and two buses entering the lot from the south, in violation of the conditions of approval from the original interim use permit.

Edward Mason, San Francisco resident, spoke about San Francisco's burden from Google buses and suggested the Commission and City of Brisbane consider electrical charging infrastructure for medium and long-term planning solutions.

Ross Dykes, Brisbane resident, spoke in favor of the benefits of the project.

Mary Rogers, Brisbane resident, spoke against the project, indicating the project sponsor is untrustworthy.

Randell Veribell, Brisbane resident, spoke in favor of the benefits of the project.

Roland Lebrum, South San Jose resident, echoed Mr. Mason's comment about planning and providing for electrical charging infrastructure.

With no others wishing to address the Commission, Commissioner Patel moved to close the public hearing. Commissioner Sayasane seconded the motion and it was approved 5-0.

After deliberation, Commissioner Funke moved to approve the application via adoption of 2021-UP-3, with the following modifications:

- The Interim Use Permit shall be for a term of one year;
- The applicant shall provide reliable bus movement data to the satisfaction of the Community Development Director within 30 days of the effective date of the permit;
- The bus yard will not have to be paved, but the yard's ground surface shall be maintained to prevent airborne dust generation; and
- The Planning Commission will review applicant's compliance with the new terms and conditions of approval within 90 days of the effective date of the permit.

Commissioner Patel seconded the motion and it was approved 5-0. Chairperson Gooding read the appeals procedure.

RESOLUTION 2021-UP-3

ATTACHMENT 5
continued

**A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING INTERIM USE PERMIT 2021-UP-3
TO ALLOW THE USE OF A VACANT SITE ON THE BAYLANDS TO BE USED FOR
A GOOGLE BUS STAGING YARD**

WHEREAS, Sam Khodja applied to the City of Brisbane for an Interim Use Permit 2021-UP-3 to allow continued outdoor staging of Google buses on an approximately 3 acre vacant site on the Baylands, at 600 Tunnel Avenue, between Tunnel Avenue and the CalTrain rail lines; and

WHEREAS, on October 28 and November 16, 2021, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

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

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; pursuant to Section 15304 of the State CEQA Guidelines and the exceptions to this categorical exemption, referenced in Section 15300.2, do not apply; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Interim Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of November 16, 2021 did resolve as follows:

Interim Use Permit 2021-UP-3 is approved per the conditions of approval attached herein as Exhibit A.

ADOPTED this sixteenth day of November, 2021, by the following vote:

AYES: Funke, Gomez, Gooding, Patel, and Sayasane
NOES: NA
ABSENT: NA



Douglas Gooding
Chairperson

ATTEST:

JOHN A. SWIECKI
Community Development Director

EXHIBIT A

ACTION TAKEN: Conditionally approved Interim Use Permit 2021-UP-3 per the staff memorandum with attachments, via adoption of Resolution 2021-UP-3.

FINDINGS:

- A. The proposed interim use and the conditions under which it would be operated will not be detrimental to the public health, safety or welfare, or injurious to properties or improvements in the vicinity, as described in the staff memorandum;
- B. The proposed interim use is categorically exempt from environmental review pursuant to Section 15301 of the California Environmental Quality Act (CEQA) Guidelines and will not result in any significant adverse environmental impacts;
- C. The proposed interim use will not obstruct, interfere with, or delay the intended redevelopment of the property in accordance with the uses anticipated in the General Plan or any adopted specific plan applicable to the site, inasmuch as there are no permanent structures proposed.
- D. There are no required public utilities since the use is for bus staging only. The infrastructure of Tunnel Avenue provide for roadway access and lavatories and recycling are contained on the buses, so that the interim use will operate in a safe, sanitary, and lawful manner.
- E. The use will benefit the property and/or the public in that it would be used to facilitate bus ridership for Google employees thereby reducing greenhouse gas emissions that will benefit the public throughout the region.
- F. The use would encourage the employment of Brisbane residents to the extent it is reasonably possible to do, inasmuch as Google utilizes vendor partners for bus driver services and has indicated that they will encourage those vendors to post job openings in the City's Chamber of Commerce publication, the Luminary

CONDITIONS OF APPROVAL: (Redlined conditions are as added or modified by the Planning Commission on November 16, 2021.)

- 1. The applicant shall provide the Planning Director with details showing how the lights are shielded and directed downward to eliminate direct visibility from Brisbane's residential neighborhoods and/or from nearby street views. The applicant shall further provide photometric data demonstrating that that light spillage beyond the site is not occurring.

This shall be provided to the Planning Director within 21 days of the effective date of this use permit and lighting modifications shall be made within 45 days of the effective date of this permit. The time period may be extended beyond 45 days only upon written request to, and approval by the Planning Director and on the condition that the on site operations have ceased or lighting is no longer operational pending completion of the work.

Operational Conditions

2. Lighting shall be programmed to turn on no earlier than 4 am and to turn off no later than 9 pm.
3. The yard's ground surface shall be maintained to prevent airborne dust generation.
4. Routing of Google buses shall be to and from the north along Tunnel Ave and Beatty Ave to connect to U.S. 101. Buses shall not use Tunnel Avenue south of the site.
 - Google shall provide reliable, daily bus movement data to the Planning Director. Data shall be provided in a form and frequency to the satisfaction of the Planning Director beginning no later than one month from the effective date of this permit; and
 - A report of movement data shall be provided by staff to the Planning Commission after 90 days following the effective date of this permit.
5. No storage is permitted on site other than the Google bus parking and parking of the drivers' vehicles used to retrieve buses.
6. The site shall be maintained free of trash and debris. Trash and recycling shall be contained on the buses for disposal at an authorized off site location.
7. Per the City Engineer, all vehicles utilizing the yard shall be in compliance with vehicle weight requirements specified in California Vehicle Code Sections 35550-35558. Storage of any vehicles over these weight requirements shall be subject to approval by the City Engineer, who may impose additional conditions.
8. The site and surrounding area shall be maintained for the duration of the use in compliance with North County Fire Authority requirements. This includes, flammable vegetation must be kept a minimum of 30 feet away from the property line, around the exterior of the lot being used, to provide a fuel break from the Baylands vegetation, except that vegetation within the nearby wetlands areas shall not be removed without approval by the project biologist.
9. Maintenance of vehicles is not permitted on the site.

10. Per the Bayshore Sanitary District requirements:

- No onsite wastewater facilities, other than those on the buses are permitted.
- No SFPUC water connection is permitted without prior approval.
- No wastes from the buses into the District's wastewater collection system shall be permitted.

11. If the City determines that the interim use would interfere or obstruct planned public improvements, within a 90-day written notice by the City the permittee shall abandon the interim use and remove improvements at its own expense.

12. The operator shall maintain a business license through the City's Finance Dept.

Mandatory Conditions, per BMC Section 17.41.070:

13. Since the use is being operated by a person other than the owner of the property, the owner and the operator are furnish the city with an agreement (or a copy of a lease containing such agreement) that: (i) the operator's right to possession of the premises for the purpose of conducting the interim use is dependent upon the interim use permit having been granted and maintained in full force and effect; and (ii) the operator's right to possession of the premises for the purpose of conducting the interim use will terminate upon any expiration or revocation of the interim use permit; and (iii) it shall be the responsibility of the owner to terminate the operator's possession of the premises upon any expiration or revocation of the interim use permit if the operator continues to utilize the premises for the conduct of such interim use.

14. The permittee shall be jointly and severally liable for all costs and expenses, including attorneys' fees, the city may incur to enforce the conditions of the interim use permit upon any breach thereof by the permittee, or to abate and remove the interim use upon any failure by the permittee to discontinue such use, or to evict the operator of such use, upon the expiration or revocation of the interim use permit.

Other Conditions and Project Close Out:

15. Vehicles, fencing and lighting shall be removed from the site by the close of the interim use permit period or upon other vacation of the use.

16. This Use Permit is subject to the revocation procedures established in Brisbane Municipal Code Chapter 17.48.

17. Minor modifications to this use permit may be approved by the Planning Director upon written request.
18. This Interim Use Permit shall expire **one year** from the effective date of the interim use permit. **That expiration date is November 23rd, 2022.**

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission

For the meeting of 10/24/19

SUBJECT: **Interim Use Permit UP-4-19 & Grading Review EX-3-19; 600 Tunnel Avenue;** C-1 Commercial District (Baylands); Interim Use Permit to allow staging of up to 90 Google Commuter buses on an approximately 3 acre vacant site on the Baylands. The proposal further involves approximately 4,075 cubic yards of site preparation grading. Eric Aronsohn of Universal Paragon Corporation (Oyster Point Properties Inc.), applicant/owner; Assessor's Parcel Numbers 005-340-040 & 005-350-080.

REQUEST: An Interim Use Permit and Grading Review is requested by Universal Paragon Corp. on behalf of Google to allow for utilization of the subject vacant site as a staging yard for up to 90 Google commuter buses. Prior to parking buses on the site it would be prepared by grading of approximately 4,075 cubic yards with placement of base rock.

The requested term of the Interim Use Permit would be for 5 years. Parking, or staging, of the buses would be allowed 24 hours a day, seven days a week. A schedule of projected trips in and out of the yard is provided in the project description section below and in the applicant's project description.

No utilities or office facilities are proposed with this use.

RECOMMENDATION: Conditionally approve Interim Use Permit UP-4-19 and Grading Review EX-3-19, recommending City Engineer approval of the proposed grading, via adoption of Resolution UP-4-19/EX-3-19 with Exhibit A containing the findings and conditions of approval.

ENVIRONMENTAL DETERMINATION: This project, a minor temporary use of land having negligible or no permanent effects on the environment, is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) per Sections 15304 of the CEQA Guidelines. The exceptions to this categorical exemption, referenced in Section 15300.2, do not apply.

APPLICABLE CODE SECTIONS: Brisbane Municipal Code Chapter 17.41, adopted June 10, 1996, establishes procedures and required findings for the approval of interim uses in the Baylands subarea. Required findings are set forth in BMC Section 17.41.060, and mandatory conditions of approval are listed in BMC Sections 17.41.060.F and 17.41.070.

BMC Section 17.32.220 requires Planning Commission review of a grading permit when more than 50 cubic yards of material is to be removed from the site and/or when more than 250 of material are involved.

SITE DESCRIPTION: The site is approximately 3 acres in size and is located south of the Golden State Lumber storage yard, between the CalTrain rail lines and Tunnel Avenue, on the westernmost edge of the former municipal landfill. Most of the parking area will be set back from Tunnel Avenue by approximately 78 to 100 feet and set back from CalTrain by approximately 40 to 115 feet.

The subject area is vegetated with Coyote brush scrub and grasses that have grown on the soil cap over the landfill following cessation of the landfilling in this area in the mid-1900's. The City's biological consultant for the Baylands has previously identified seasonal wetlands in the areas east and west of this site, but the proposal site would not encroach into those areas.

The attached photo by staff taken in September 2019 shows the general state of the site.

PROJECT DESCRIPTION: The proposed operations as described by the applicant are summarized as follows:

Site Preparation The site would run parallel to Tunnel Avenue with a one-way entrance from Tunnel Avenue at the north end and a one-way exit at the south end of the site.

Prior to occupying the site with the buses, the site would be prepared by grubbing the vegetation and laying base rock across the site. The total grading volume would be approximately 4,075 cubic yards. Approximately 400 cubic yards of the grubbed material would be exported from the site and approximately 3,675 cubic yards would be imported base rock to provide a parking surface.

A six foot high chain link fence would be placed around the perimeter of the site, with a manually operated, lockable gate at the driveway entrance and exit. Solar powered temporary light standards would be placed at eleven locations across the site for safety and security, as shown on the applicant's site plan.

Per a draft condition of approval, prior to preparing the site for the proposed use, the nearby wetlands would be marked by the project biologist, to the satisfaction of the Community Development Director, to prevent inadvertent disruption of those areas during the site preparation work.

Proposed Use As indicated above, the site would be used for staging up to 90 Google buses for transporting Google employee commuters. The buses would be picked up and dropped off by contracted Google bus drivers Monday through Friday, between 3 and 7 am and 3 and 9 pm. Drivers arriving by personal vehicle would park those vehicles on the site, in place of the Google buses. The total vehicle trips per day is estimated at 360, with the peak hours being between 4 and 6 am at a rate of 60 trips per hour and between 7 and 8 pm at a rate of 50 trips in that hour.

Note that a trip is counted for each time either a personal vehicle or bus would enter or exit the yard.

Vehicle maintenance would not be conducted on the site.

No permanent employees would be located on the site, since the site would only serve as a staging location to store, pick up and drop off buses. The buses are equipped with lavatories and trash receptacles and so no restroom or trash collection facilities are planned for the site. All waste products would be handled off-site, outside of Brisbane.

As indicated above the yard would be fenced and gated for security. Additionally, security personnel would periodically patrol this site along with two other nearby Google sites 7 days a week. Portable solar-powered lighting standards with security cameras would be located on the site for security and safety during early morning and evening vehicle transfers. Lighting would be on in the mornings at 4:30 am and in the evenings to 11 pm. The Police Department reviewed the applicant's proposal and had no objections.

ANALYSIS AND FINDINGS: The required findings under BMC Sections 17.41.060.A-F and project analysis are as follows:

Interim Use Permit

a) The interim use will not be detrimental to the public health, safety or welfare, or injurious to nearby properties or improvements;

The proposal **complies** with this finding.

The site is within an industrial area of Brisbane and the proposal is not anticipated to have any detrimental or injurious effects. The area is largely surrounded by vacant lands, and the CalTrain rail line. CalTrain's north-south rail lines run adjacent to the site immediately to the west. The Golden State Lumber storage yard is located approximately 200 feet to the north. To the east, across Tunnel Avenue, are the Brisbane Recycling Company and Brisbane Soil Processing operations. To the south are vacant lands of the Baylands. Note that CalTrain has indicated that their fiber line runs on the property and appears to be immediately to the west of the proposed yard. To ensure that there is no damage to the nearby fiber line, a condition of approval is included to coordinate locating it in the field prior to grading.

Given the site's location, the closest residential uses are approximately 1/3 mile away, to the southwest, at the Northeast Ridge, and slightly more distant to the west and north in Daly City and San Francisco, at approximately 1/2 mile. Given those distances, and the operational conditions of approval, including the number of vehicle trips per hour, the use is not anticipated to have any detrimental effects on the residential areas. Despite that, since the CalTrain Bayshore station is located approximately 1/4 mile to the north on Tunnel Avenue, due to the anticipated increase in bus traffic, CalTrain has requested that

prior to the start of operations, outreach be made by Google to the nearby residential neighborhood. This would be to inform the nearby residents that the Google buses, to be housed on the subject site, will be operating near that station.

b) the interim use will not create any significant environmental impacts;

The proposal **complies** with this finding.

The use is temporary in nature with no permanent structures or utilities and the use would have negligible or no permanent effects on the environment. As such it is categorically exempt from the provisions of CEQA. As indicated above, there are wetlands in the vicinity of the site, but these are outside the area of proposed use. A condition of approval is included for a qualified project biologist to delineate the wetlands in the field and that they be marked with temporary orange fencing to prevent inadvertent damage during grading.

The use of buses for Googles employees will serve to remove single occupancy vehicles from the roadways and thereby reduce greenhouse gas emissions for the region, reducing environmental impacts that would otherwise result from single occupant vehicles.

c) the interim use will not obstruct redevelopment;

The proposal **complies** with this finding.

In considering approval of the Interim Use Permit, the Planning Commission must find that the use "...will not obstruct, interfere with, or delay the intended redevelopment of the property..." (BMC Section 17.41.060.C). Given the short duration of the proposed use and that fact that it will not include any permanent structures, there would be no obstruction to redevelopment plans. A condition of approval is included to address vacation of the site should redevelopment be advanced during the permit period.

d) all required public utilities and other infrastructure are or will be available;

This proposal **complies** with this finding.

The infrastructure of the roadway is provided via Tunnel Avenue with nearby U.S. 101 freeway access via Beatty Avenue. No utilities are required for this use.

e) the use will benefit the property and/or the public;

The proposal **complies** with this finding.

The use would benefit the public in that the bus yard would support the use of commuter buses and thereby reduce greenhouse gas emissions for the region.

f) encourage the employment of Brisbane residents to the extent it is reasonably possible to do so.

The proposal **complies** with this finding.

The applicant indicates that their employment recruitment program will include directed outreach to Brisbane residents, to the extent possible. Google utilizes vendor partners for bus driver services and has indicated that they will encourage those vendors to post job openings in the City's Chamber of Commerce publication, the Luminary.

Grading

In 2003, the Planning Commission adopted guidelines and findings for reviewing grading applications based on General Plan policies.

- a. The proposed grading is minimized and designed to reflect or fit comfortably with the natural topography.
- b. The proposed grading is designed to avoid large exposed retaining walls.
- c. The proposed grading is designed to conserve existing street trees.
- d. The proposed grading complies with the terms of the San Bruno Mountain Area Habitat Conservation Plan Agreement and Section 10(a) Permit, if and as applicable.

The proposal either **complies or is not applicable to** these findings. The only applicable finding is the first and the grading will not appreciably change the relatively flat topography of the site, except to even out the surface of this relatively flat site and provide a layer of base rock. There would be no retaining walls, no effected trees and the site is not within the HCP. It should be noted that technical issues such as soil stability, erosion control and site drainage are under the purview of the City Engineer, as a separate grading permit.

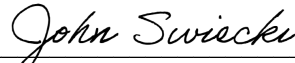
Finally, note that this application was routed to the City Engineer/Public Works Director, Fire Dept., Police Dept., San Mateo County Environmental Health, Regional Water Quality Control Board, Bayshore Sanitary District, San Francisco Water and CalTrain JPB for review and comment. There were no objections to the proposed use. Proposed conditions of approval are provided with the attached resolution.

ATTACHMENTS:

- A. ~~Vicinity Map~~
B. ~~Site Photograph~~
C. Applicant's Project Description
D. Applicant's Vehicle Trip Estimates
E. ~~Applicant's Proposed Plans~~
F. ~~Draft Resolution UP-4-19/EX-3-19~~
- Removed items have been superseded, provided elsewhere, or not a subject of this appeal.



Ken Johnson, Senior Planner



John Swiecki, Community Development Director

JUN -3 2019

Comm. Dev. Dept. Brisbane

Project Description - Google Shuttle Bus Parking

May 31, 2019

Sunquest Properties in partnership with Google is requesting a new 5-year Interim Use for 3-acres (130,680 sf of land) ("Site") intended as a bus parking location so Google can consolidate three separate parking locations in San Francisco and South San Francisco.

The purposed tenant, Google (GOOG), is a leading global technology company with tens of thousands of employees based locally. Google is headquartered in Mountain View, CA with offices in San Francisco, San Bruno, and Sunnyvale. With employees and offices spread across the region, the Google Bus operation has become a major component of the company's strategy for managing their workforce's transportation needs. The Google Bus operation also supports the Companies efforts to reduce congestion and emissions caused by single-occupant cars, especially during peak commuting times.

The Google Bus, also known as "GBus", program has expanded its operation year after year with 2018 being a record year in terms of ridership. In 2018, GBuses provided more than 4 million rides – picking up at 262 shuttle stops across nine Bay Area Counties. In aggregate, the shuttle program saved more than 40 thousand metric tons of CO2 and has helped Google employees avoid over 100 million vehicle miles on the year.

The Location is ideal for the use given its central location and convenient and direct access to 101 and other regional highways. GBuses will be able to come and go with the least amount of impact on local commuters due to the near-by on and off ramps which puts buses on the highway, in route to their shuttle stops in 2-5 minutes.

USE AND LOCATION

Google is pursuing the ability to use this site on a temporary basis, while they continue to pursue a permanent location in the region. Google has toured the site and based on the professional opinions of those interviewed, the tenant is confident they can make the site work economically, physically, and ecologically with minimal improvements. The project site will be graded, and gravel will be placed on the site to the City's standards, to allow for up to 90 buses to be temporarily parked and returned/retrieved with minimal dust in the air and dirt on the road. Lighting and security equipment will be powered by self-contained PV and storage systems which will power the necessary equipment for running the site safely and securely. Access will be provided through two gates along Tunnel Ave which will help streamline the flow of buses into and out of the property. Reducing idling time and minimizing traffic impacts on the public right of ways are of paramount importance.

FACILITY OPERATION AND VEHICLE ROUTING

Monday-Friday

- Up to 90 buses may be parked at any given time. The peak parking demand time is overnight from 10:00pm to 5:00am.
- Normal Operations:
 - Buses leave the site starting at 4:00am and return around 7:00pm
 - Buses are parked from around 7:00pm to 4:00am.
 - Up to 90 buses will be parked overnight until the shift begins at 4am the following day.
 - ~~In rare instances, light maintenance may need to occur and this would include battery jump starts, emergency tire repair, topping off fluids, etc.~~
 - Up to 90 personal vehicles to be parked when buses are in service. Personal vehicles would belong to bus drivers and other support staff

Saturday-Sunday and holidays:

- Up to 90 buses may be parked at any given time

Days and hours of operation:

- Monday - Friday: 4am-11pm, no activity between 10am-7pm as all buses will be out in service.
- Buses park midday in Mountain View, CA

ON-SITE PERSONNEL

There shall be no permanent on-site personnel. Google will utilize a contracted security officer, who monitors and patrols the Companies assets in South San Francisco and San Bruno.

VEHICLE MAINTENANCE

There will be absolutely no vehicle maintenance performed on this site. Bathrooms will be pumped out at an offsite facility.

FENCING, SECURITY, AND SITE LAYOUT

Proposed perimeter fencing and vehicle barriers {e.g., concrete K-rail} will be added as shown in the attached site plan. A manually operated security gate will also be installed at the entrance. These additions will enhance the existing perimeter elements and mitigate the potential for unwanted access to this portion of the site. Two ingress/egress gates servicing the site from Tunnel Avenue with adequate clearance to accommodate the vehicle and bus operations will also be provided as shown on the site plan.

GRADING

The existing topography of the site will remain essentially as-is while grading will serve to level out soil piles and clear brush and debris. A crushed rock overlayer will sit above any exposed dirt to mitigate the potential of airborne dust resulting from the operations at the site.



Google Buses - Interim Use Application

| Buses <u>Inbound to</u> and <u>Outbound from</u> Brisbane (Average) | | | | | | | |
|---|--------|---------|-----------|----------|--------|----------|--------|
| Cars <u>Inbound to</u> and <u>Outbound from</u> Brisbane (Average) | | | | | | | |
| | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday | Sunday |
| 2400-0100 | | | | | | | |
| 0100-0200 | | | | | | | |
| 0200-0300 | | | | | | | |
| 0300-0400 | 30 | 30 | 30 | 30 | 30 | | |
| 0400-0500 | 30/ 30 | 30/ 30 | 30/ 30 | 30/ 30 | 30/ 30 | | |
| 0500-0600 | 30/ 30 | 30/ 30 | 30/ 30 | 30/ 30 | 30/ 30 | | |
| 0600-0700 | 30 | 30 | 30 | 30 | 30 | | |
| 0700-0800 | | | | | | | |
| 0800-0900 | | | | | | | |
| 1000-1100 | | | | | | | |
| 1100-1200 | | | | | | | |
| 1200-1300 | | | | | | | |
| 1300-1400 | | | | | | | |
| 1400-1500 | | | | | | | |
| 1500-1600 | 10 | 10 | 10 | 10 | 10 | | |
| 1600-1700 | 10/10 | 10/10 | 10/10 | 10/10 | 10/10 | | |
| 1700-1800 | 20/10 | 20/10 | 20/10 | 20/10 | 20/10 | | |
| 1800-1900 | 20/20 | 20/20 | 20/20 | 20/20 | 20/20 | | |
| 1900-2000 | 30/20 | 30/20 | 30/20 | 30/20 | 30/20 | | |
| 2000-2100 | 30 | 30 | 30 | 30 | 30 | | |
| 2100-2200 | | | | | | | |
| 2200-2300 | | | | | | | |
| 2300-2400 | | | | | | | |

1. **PUBLIC HEARING: Interim Use Permit UP-7-19 (Continuation of UP-4-18); Baylands, East of Bayshore Boulevard, between Icehouse Hill and the Caltrain rail lines; C-1 Commercial Mixed Use District;** Interim Use Permit to allow the previously approved interim use to continue through December 2020, to allow outdoor staging of construction materials and equipment and assembly of work trains and rail track segments on an approximately 3.5-acre vacant site with an existing rail spur, to support improvements along the Caltrain rail-line corridor; Zach Mayes, applicant; Universal Paragon Corp., owner.

Senior Planner Johnson gave the staff presentation and answered Commissioner questions regarding metering of the temporary water connection and the lack of noise complaints.

Chairperson Sayasane opened the public hearing.

Zach Mayes, applicant, addressed the Commission in support of the application.

Seeing no others wishing to speak, Commissioner Mackin moved and Commissioner Gomez seconded to close the public hearing. The motion was approved 5-0.

Commissioner Mackin moved to adopt resolution UP-7-19. The motion was seconded by Commissioner Patel and approved 5-0.

2. **PUBLIC HEARING: Interim Use Permit UP-4-19/Grading Review EX-3-19; 600 Tunnel Avenue, in the Baylands subarea, a vacant site south of the Golden State Lumber storage yard, between Tunnel Avenue and the Caltrain rail lines; C-1 Commercial Mixed Use District;** Interim Use Permit to allow staging of up to 90 Google commuter buses to serve Peninsula Google employees on an approximately 3-acre vacant site for up to 5 years, including preparatory site grubbing and approximately 4,500 cubic yards of grading with base rock; Eric Aronsohn, applicant; Oyster Point Properties Inc. (Universal Paragon Corp.), owner.

Senior Planner Johnson gave the staff presentation and answered Commissioner questions regarding proposed on and off-site circulation, potential impacts to the capped landfill and adjacent wetland habitat, truck travel patterns of other businesses in the area, lighting, dust control, and stormwater management.

Chairperson Sayasane opened the public hearing.

Eric Aronsohn, representing owner Universal Paragon Corp, and Ross Benson, representing proposed tenant Google, addressed the Commission in support of the application.

Mary Rogers, Brisbane resident, addressed the Commission in opposition to the application.

Tamara, employee of Golden Gate Lumber, addressed the Commission regarding the timing of lumber yard operations within the vicinity of the proposed parking lot.

Seeing no others wishing to speak, Commissioner Patel moved and Commissioner Gooding seconded to close the public hearing. The motion was approved 5-0.

After deliberation, Commissioner Gooding moved to adopt resolution UP-4-19/EX-3-19, modified to reduce the term of the interim use permit to two years and to require that routing of vehicles be to the north to connect to U.S. 101. It was also advised that any application to extend the use permit beyond 2 years should include traffic circulation and trip count data. The motion was seconded by Commissioner Gomez and approved 4-1 (Mackin).

I. STUDY SESSION

RESOLUTION UP-4-19/EX-3-19

A RESOLUTION OF THE PLANNING COMMISSION OF BRISBANE
CONDITIONALLY APPROVING INTERIM USE PERMIT UP-4-19 AND GRADING
REVIEW EX-3-19
TO ALLOW THE USE OF A VACANT SITE ON THE BAYLANDS TO BE USED FOR
A GOOGLE BUS STAGING YARD

WHEREAS, Eric Aronsohn applied to the City of Brisbane for an Interim Use Permit UP-4-19 and Grading Review EX-3-19 to allow outdoor staging of Google buses on an approximately 3 acre vacant site on the Baylands, at 600 Tunnel Avenue, between Tunnel Avenue and the CalTrain rail lines; and

WHEREAS, on October 24, 2019, the Planning Commission conducted a hearing of the application, at which time any person interested in the matter was given an opportunity to be heard; and

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

WHEREAS, the Planning Commission finds that the proposed project is categorically exempt from the provisions of the California Environmental Quality Act; pursuant to Section 15304 of the State CEQA Guidelines; and

WHEREAS, the Planning Commission of the City of Brisbane hereby makes the findings attached herein as Exhibit A in connection with the Interim Use Permit.

NOW THEREFORE, based upon the findings set forth hereinabove, the Planning Commission of the City of Brisbane, at its meeting of October 24 2019 did resolve as follows:

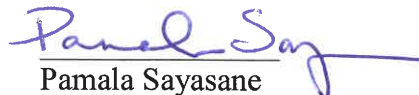
Interim Use Permit UP-4-19 is approved, with modifications as noted in the conditions of approval, and the recommendation of City Engineer approval of the proposed grading EX-3-19 is approved per the conditions of approval attached herein as Exhibit A.

ADOPTED this twenty-fourth day of October, 2019, by the following vote:

AYES: Gomez, Gooding, Patel, Sayasane

NOES: Mackin

ABSENT:


Pamala Sayasane
Chairperson

ATTEST:


JOHN A. SWIECKI, Community Development Director

EXHIBIT A

ACTION TAKEN: Conditionally approved Interim Use Permit UP-4-19 and Grading Review EX-3-19 per the staff memorandum with attachments, via adoption of Resolution UP-4-19/EX-3-19.

(Note: Modifications imposed by the Planning Commission on October 24, 2019 are shown in redline/strikeout.)

FINDINGS:

1. The proposed interim use and the conditions under which it would be operated will not be detrimental to the public health, safety or welfare, or injurious to properties or improvements in the vicinity, as described in the staff memorandum;
2. The proposed interim use is categorically exempt from environmental review pursuant to Section 15304(e) of the California Environmental Quality Act (CEQA) Guidelines and will not result in any significant adverse environmental impacts;
3. The proposed interim use will not obstruct, interfere with, or delay the intended redevelopment of the property in accordance with the uses anticipated in the General Plan or any adopted specific plan applicable to the site, inasmuch as there are no permanent site improvements proposed.
4. There are no required public utilities since the use is for bus staging only. The infrastructure of Tunnel Avenue will provide for roadway access and lavatories and recycling is contained on the buses, so that the interim use will operate in a safe, sanitary, and lawful manner.
5. The use will benefit the property and/or the public in that it would be used to facilitate bus ridership for Google employees thereby reducing greenhouse gas emissions that will benefit the public throughout the region.
6. The use would encourage the employment of Brisbane residents to the extent it is reasonably possible to do so.
7. The proposed grading is minimized and designed to reflect or fit comfortably with the natural topography.
8. The proposed grading would not include retaining walls.
9. The proposed grading would not impact trees.
10. The proposed grading is not within the San Bruno Mountain Area Habitat Conservation Plan area.

CONDITIONS OF APPROVAL:**Site Preparation**

- A. The applicant shall obtain a grading permit from the City Engineer prior to start of grading and shall complete grading to the satisfaction of the City Engineer.
- B. Grading shall comply with stormwater NPDES requirements, including Best Management Practices, to the satisfaction of the City Engineer.
- C. Prior to grading, the applicant shall coordinate with CalTrain to locate and mark the location of the CalTrain fiber line that runs near the proposed site.
- D. Prior to grading, the project biologist shall clearly mark out the extents of the wetlands area in the field and temporary orange safety fencing shall be placed at least 20 feet from the wetlands perimeter, to prevent damage to these areas during grading.
- E. Applicant shall notify the County and Water Board at least 72 hours prior to grading operations and shall comply with any conditions imposed by these agencies.
- F. Portable security lighting shall be placed and maintained downwards onto the site and not up or outwards, such that it would present a hazard or significant glare to off-site properties. Any modification to the lighting plan shall be subject to Planning Director approval.
- G. Security fencing shall be placed to the satisfaction of the Planning Director. Entry gates shall be set back from Tunnel Avenue, such that buses will not back up onto Tunnel Avenue while gates are being opened or closed.
- H. Per the Fire Department:
 - a. Minimum 4 inch tall address numbers shall be posted at each entrance gate.
 - b. All flammable vegetation must be cut and removed from the interior of the lot.
 - c. Flammable vegetation must be cut and removed a minimum of 30 feet away from the property line, around the exterior of the lot being used, to provide a fuel break from the Baylands vegetation, except that vegetation within the wetlands areas shall not be removed without approval by the project biologist.

Prior to Bus Yard Operation

- I. The prospective operator shall maintain a business license through the City's Finance Dept.
- J. Prior to start of operations, Google shall coordinate with CalTrain to provide residential outreach to inform them of the Google buses to be operating in the area.
- K. Per the County Environmental Health Services, the operator shall provide to the County a maintenance and monitoring program to maintain the base rock surface and to minimize surface ponding of the storm water. A copy shall also be provided to the City Planning Director.

Operational Conditions

- L. No storage is permitted, other than the Google bus parking and parking of the drivers' vehicles used to retrieve buses.
- M. The site shall be maintained free of trash and debris. Trash and recycling shall be contained on the buses for disposal at an authorized off site location.
- N. The project shall comply with stormwater NPDES requirements on an ongoing basis to the satisfaction of the City Engineer.
- O. Per the City Engineer, all vehicles utilizing the yard shall be in compliance with vehicle weight requirements specified in California Vehicle Code Sections 35550-35558. Storage of any vehicles over these weight requirements shall be subject to approval by the City Engineer, who may impose additional conditions.
- P. Routing of vehicles shall be to the north along Beatty Avenue to connect to U.S. 101 to and from the site.
- Q. The site and surrounding area shall be maintained for the duration of the use in compliance with North County Fire Authority requirements, per condition H.
- R. Maintenance of vehicles is not permitted on the site.
- S. The gravel site surface shall be maintained to prevent water from ponding on the site and to provide for dust control to the satisfaction of the City Engineer.
- T. This site shall not be paved with an impervious surface. Any such proposal would be subject to further review and approval by the Planning Director and City Engineer and review under the Water Board C.3 provisions.
- U. Per the Bayshore Sanitary District requirements:
 - No onsite wastewater facilities, other than those on the buses are permitted.
 - No SFPUC water connection is permitted without a permit amendment.
 - No wastes from the buses into the District's wastewater collection system shall be permitted.
- V. Minor modifications to this use permit may be approved by the Planning Director upon written request.
- W. If the City determines that the interim use would interfere or obstruct planned public improvements, within a 90-day written notice by the City the permittee shall abandon the interim use and remove improvements at its own expense.
- X. This Use Permit is subject to the revocation procedures established in Brisbane Municipal Code Chapter 17.48.

Mandatory Conditions, per BMC Section 17.41.070:

- Y. Since the use is being operated by a person other than the owner of the property, the owner and the operator are furnish the city with an agreement (or a copy of a lease containing such agreement) that: (i) the operator's right to possession of the premises for the purpose of conducting the interim use is dependent upon the interim use permit having been granted and maintained in full force and effect; and (ii) the operator's right to possession of the premises for the purpose of conducting the interim use will terminate upon any expiration or revocation of the interim use permit; and (iii) it shall be the responsibility of the owner to terminate the operator's possession of the premises upon any expiration or revocation of the interim use permit if the operator continues to utilize the premises for the conduct of such interim use.
- Z. The permittee shall be jointly and severally liable for all costs and expenses, including attorneys' fees, the city may incur to enforce the conditions of the interim use permit upon any breach thereof by the permittee, or to abate and remove the interim use upon any failure by the permittee to discontinue such use, or to evict the operator of such use, upon the expiration or revocation of the interim use permit.

Project Close Out:

- AA. Vehicles, fencing and lighting shall be removed from the site by the close of the interim use permit period or upon other vacation of the use.
- BB. This Interim Use Permit shall expire ~~five years~~ **two years** from the effective date of the interim use permit.
- CC. **Reapplication for use permit renewal should include actual traffic routing and trip count data.**

File Attachments for Item:

N. Authorize the City Manager to Enter into an Agreement with Flock Safety Group for the installation of Automated License Plate Readers within the City of Brisbane

(If approved, the agreement with Flock Safety Group will be in the amount of \$39,700 for FY 2022-2023. The funding this year and moving forward will be funded from the Police Department's budget.)



CITY COUNCIL AGENDA REPORT

Meeting Date: July 7, 2022

From: Lisa Macias, Chief of Police

Subject: Agreement with Flock Safety Group for the installation and maintenance of Automated License Plate Readers as additional investigative tools to assist the Police Department in their investigations.

Community Goal

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

Purpose

To assist the Police Department in their investigations and ensure personal safety, protection of property and continued enhancement of the quality of life for those who live, work and visit our community.

Recommendation

Authorize the City Manager to enter into agreement with Flock Safety Group for the installation and maintenance of twelve Stationary Automated License Plate Reader units (ALPR) and one mobile mountable ALPR, as additional investigative tools to assist the Police in investigations.

Background

With the advent and advancement in technology, ALPR's are becoming common tools for numerous law enforcement agencies throughout San Mateo County. This advanced and ever-evolving technology can assist the Brisbane Police Department in providing a professional level of public service, ensuring personal safety, protection of property, and continued enhancement of the quality of life for those who live, work, and visit in the community. Due to the limited routes of ingress and egress within Brisbane, ALPR cameras can be effectively placed in strategic locations to monitor all vehicles entering and leaving Brisbane. It is also easy to integrate a mobile mounted portable ALPR in areas where crime trends have been identified such as the Crocker/Industrial Business Park areas as these areas are isolated and quite often targeted.

The City continues to experience an increase in property crimes along with the entire county. This increase in criminal activity has led to community inquiries about the Police Department's efforts to deter crime within the city. The increase in crime, coupled with the limited personnel and the Brisbane Police Department's commitment to providing an excellent level of service to the community necessitates the use of additional technological options to detect, solve,

prevent, and deter crime. The implementation of an ALPR program will aid the Brisbane Police Department in its investigative efforts in the following ways:

- Locate stolen, wanted and subject of investigation vehicles
- Provide leads to assist with investigation into crimes committed within the city
- Detect vehicles associated with missing persons and at-risk persons, including those on active Amber Alerts
- Detect vehicles associated with subjects with outstanding arrest warrants or otherwise lawfully sought by law enforcement

Brisbane is particularly vulnerable to crime as is its neighboring big City's where violent crime has increased tremendously. The City also has a major thorough fare, Bayshore Blvd., where criminals may traverse, making Brisbane an opportune target. The Police Department has identified a significant pattern associated with the rise in property crimes which indicates Brisbane is being targeted by out of town criminals. Most of these criminals use vehicles to enter and exit Brisbane. These cases can often be solved using ALPR's because they capture suspect vehicle information which often provides critical information to further investigations.

Discussion:

The proposed ALPR program consists of the deployment of 12 stationary ALPR's throughout the City of Brisbane at key ingress and egress locations. These locations will be strategically identified with the assistance of the Flock Safety Team as to the best suited locations which provide the optimum effectiveness in capturing ALPR data from public right of ways. An ALPR is a computer-based high speed camera systems designed to capture images of vehicle license plates using optical character recognition (OCR) technology. The license plate images are compared against local, state and federal law enforcement data bases containing vehicles of interest, stolen vehicles, amber alerts, missing persons, felon vehicles, etc. Any matches against the vehicle of interest generates an alert to notify police officers. Under strict regulations and audit procedure, the data may only be accessed for lawful law enforcement investigative purposes and can provide critical evidence in the identification and location of suspects. ALPRs provide police with the data needed to assist in the identification and capture of criminals.

The Flock Safety ALPR system is being utilized by more than 1200 Police Departments in the United States. Within San Mateo County alone, Atherton, Belmont, Burlingame, Colma, Daly City, Foster City, Hillsborough, Menlo Park, Millbrae, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco are all utilizing ALPR's in their cities. A list of those jurisdictions within San Mateo County utilizing ALPR equipment is included in this staff report as Attachment 1.

Flock Safety Group provides customizable ALPR systems that are designed to meet the needs of budgets of agencies of all sizes. An added benefit is that Flock cameras are solar powered, which negates the need for a close proximity power source. Flock cameras will integrate with a police department's local list of stolen vehicle license plates, and license plates associated with ongoing investigations. One significant benefit is that City staff would not be burdened with the installation or maintenance of the Flock cameras. Flock cameras are replaced every 3 years, thereby ensuring that the cameras would stay current with this rapid changing and evolving technology. Flock builds its own hardware, writes its own software, and provides full service for the life of the contract, with everything included in the price. In addition, Flock cameras are the only wireless, infrastructure-free, license plate reading cameras on the market. Flock Safety's required data retention period is 30 days. There is a hard deletion of the data at 30 days unless a plate is flagged for criminal prosecution; then it will be held as long as needed as evidence for prosecution of the case. Once the data is purged, it cannot be retrieved. The Flock Safety Group Quote and Terms of Conditions has been reviewed by our city attorney and is attached to this staff report as Attachment 2.

The ALPR data will not be stored or retained by the Brisbane Police Department or Flock Safety Group, beyond 30 days. The Brisbane Police Department will utilize the strictest industry standards and maintain compliance with California law with respect to how the data is accessed and stored. Access to the data will be strictly regulated and is for law enforcement personnel only. The system will only be accessed under the following guidelines:

- Persons gaining access must have completed training on the system use, system security and issues surrounding the need to know and right to know.
- Upon completion of the training, personnel will be issued individual access codes so all of their uses of the system are tracked.
- There must be legitimate law enforcement purposes which must be documented in the system before accessing the system.
- Access is allowed only when there is an active investigation or criminal case number from a law enforcement agency as a way to further verify and track its use.

The ALPR system does not identify any individual or access anyone's personal information through its analysis of license plate characters. The data captured by the ALPR unit itself is entirely anonymous. Officers can only identify the registered owner of a vehicle by querying a separate secure state government data base of vehicle license plate records, such as DMV, to obtain the owner information. The government data base is restricted, controlled and audited for its inquiry. Information obtained by ALPR cameras will be closely safeguarded and protected by both procedural and technological means. The information will be stored in a private data base which is only accessible to authorized Brisbane Police Department personnel

for the reasons mentioned above. The information will only be shared with other law enforcement agencies if there is an active criminal investigation or other law enforcement need. Senate Bill 34, codified at California Civil Code sections 1798.90.51-1798.90.55, requires that all law enforcement agencies utilizing ALPRs, implement and maintain security procedures as well as usage and privacy policies to protect the data collected. The Brisbane Police Department has created a webpage explaining its commitment to privacy and strict procedures in the use of ALPRs and the Department has already drafted the required policy to be in compliance with the law. The Department's Policy is attached to this staff report as Attachment 3.

Additionally, Senate Bill 34 requires that public agencies intending to operate an ALPR system, must allow an opportunity for public comment at a regularly scheduled public meeting of the governing body of the public agency which we have complied with by presenting at tonight's meeting. On June 29, 2022, we held a virtual community engagement meeting to allow for public comment and address any community concerns. The Department posted the video from the virtual meeting on the City's website for public viewing. The Department also posted a notice of the intent to acquire ALPR's in the City Manager's Blast, monthly STAR, and on the City's and Police Department's Social Media websites. The Department received from residents one phone call and two emails in support of the Police Department acquiring ALPR's; and one phone call in opposition to the Department's acquiring ALPR's.

Fiscal Impact

By approving the Automated License Plate Reader Program, the City Council will approve the agreement with Flock Safety Group in the amount of \$39,700 for FY 2022-2023 which includes a one-time installation fee per fixed ALPR, and \$35,500 annually. The funding this year and moving forward will be funded from the Police Department's budget.

Attachments:

- Attachment 1 – Jurisdictions within San Mateo County utilizing ALPR equipment
- Attachment 2 – Flock Quote and Terms of Conditions
- Attachment 3 – Brisbane Police Departments' ALPR Policy 470

Lisa Macias

Lisa Macias, Police Chief

Clayton L. Holstine

Clay Holstine, City Manager

San Mateo County Agencies utilizing Automated License Plate Readers

- Atherton
- Belmont
- Burlingame
- Colma
- Daly City
- East Palo Alto
- Foster City
- Hillsborough
- Menlo Park
- Millbrae
- Redwood City
- San Bruno
- San Carlos
- San Mateo
- South San Francisco
- Woodside

**FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Agency**”) (each of Flock and Customer, a “**Party**”). This order form (“**Order Form**”) hereby incorporates and includes the “GOVERNMENT AGENCY AGREEMENT” attached (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the “**Agreement**”). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

| | |
|--|--|
| Agency: CA - Brisbane PD Legal Entity Name: | Contact Name: Mario Garcia |
| Address: 50 Park Place, Brisbane, CA 94005 | Phone: (415) 508-2178 E-Mail: mgarcia@ci.brisbane.ca.us |
| Expected Payment Method: | Billing Contact: (if different than above) |

| | |
|--|---|
| Initial Term: 24 months Renewal Term: 24 months | Billing Term: Annual payment due Net 30 per terms and conditions |
|--|---|

| Name | Price | QTY | Subtotal |
|---|------------|-------|-------------|
| Professional Services - Falcon, Standard Implementation | \$350.00 | 12.00 | \$4,200.00 |
| Falcon Camera | \$2,500.00 | 12.00 | \$30,000.00 |
| Flock Safety Advanced Search <25 Falcons | \$2,500.00 | 1.00 | \$2,500.00 |
| Falcon Flex | \$3,000.00 | 1.00 | \$3,000.00 |

(Includes one-time fees)

Year 1 Total \$39,700.00

Recurring Total: \$35,500.00

Special terms:

- N/A

I have reviewed and agree to the Customer Implementation Guide on Schedule B at the end of this agreement.

By executing this Order Form, Agency represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

FLOCK GROUP, INC.

Agency: City of Brisbane

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

flock safety

GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the City of Brisbane (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

RECITALS

WHEREAS, Flock offers a software and hardware solution for automatic license plate detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Services are capable of capturing audio, image, and recordings data of suspected vehicles (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (“**Notifications**”);

WHEREAS, Agency desires access to the Flock Service on existing cameras, provided by Agency, or Flock provided Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock Service (where there is an investigative or bona fide lawful purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

WHEREAS, Flock deletes all Footage on a rolling thirty (30) day basis, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

WHEREAS, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations by police departments, and archiving for evidence gathering (“**Purpose**”).

AGREEMENT

NOW, THEREFORE, Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 "**Agency Data**" will mean the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2. "**Agency Hardware**" shall mean the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term "**Agency Hardware**" excludes the Embedded Software

1.3 "**Authorized End User(s)**" shall mean any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.4 "**Documentation**" will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.5 "**Embedded Software**" will mean the software and/or firmware embedded or preinstalled on the Agency Hardware.

1.6 "**Flock IP**" will mean the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.7 "**Footage**" means still images captured by the Agency Hardware in the course of and provided via the Services.

1.8 "**Hardware**" or "**Flock Hardware**" shall mean the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term "**Hardware**" excludes the Embedded Software.

1.9 "**Implementation Fee(s)**" means the monetary fees associated with the Installation Services, as defined in Section 1.10 below.

1.10 "**Installation Services**" means the services provided by Flock including any applicable installation of Embedded Software on Agency Hardware.

1.11 "**Non-Agency End User(s)**" shall mean any individual, entity, or derivative therefrom, authorized to use the Services through the Web Interface, under the rights granted to pursuant to the terms (or to those materially similar) of this Agreement.

1.12 "**Services**" or "**Flock Services**" means the provision, via the Web Interface, of Flock's software application for automatic license plate detection, searching image records, and sharing Footage.

1.13 “**Support Services**” shall mean Monitoring Services, as defined in Section 2.9 below.

1.14 “**Unit(s)**” shall mean the Agency Hardware together with the Embedded Software.

1.15 “**Usage Fee**” means the subscription fees to be paid by the Agency for ongoing access to Services.

1.16 “**Web Interface**” means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

2. SERVICES AND SUPPORT

2.1 Provision of Access. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Service Term (as defined in Section 6.1 below), solely for the Authorized End Users. The Footage will be available for Agency’s designated administrator, listed on the order form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username (“**User ID**”). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User’s use of the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which makes the Services available to Agency and Authorized End Users. Warranties provided by said third party service providers are the agency’s sole and exclusive remedy and flock’s sole and exclusive liability with regard to such third-party services, including without limitation hosting the web interface. Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

2.2 Embedded Software License. Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

2.3 Documentation License. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term to Agency’s in connection with its use of the Services as contemplated herein, and under Section 2.4 below.

2.4 Usage Restrictions.

a. Flock IP. The purpose for usage of the Unit, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture (“*Permitted Purpose*”). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Unit, Documentation or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency’s rights under Sections 2.1, 2.2, or 2.3.

b. Flock Hardware. Agency understands that all Flock Hardware is owned exclusively by Flock, and that title to any Flock Hardware does not pass to Agency upon execution of this Agreement. Agency is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Notwithstanding the notice and cure period set for in Section 6.3, Agency agrees and understands that in the event Agency is found to engage in any of the restricted actions of this Section 2.4(b), all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination (without opportunity to cure) for material breach by Agency.

2.5 Retained Rights; Ownership. As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock’s sole discretion. There are no implied rights.

2.6 Suspension. Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency’s and any Authorized End User’s access to any portion or all of the Flock IP or Flock Hardware if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency’s or any Authorized End User’s use of the Flock IP disrupts or poses a security risk to the Flock IP or any other Agency or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock’s provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock’s access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to,

utilizing the Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a “**Service Suspension**”). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock’s registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency’s direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency’s account that have been impacted.

2.7 Installation Services.

2.7.1 Designated Locations. For installation of Flock Hardware, prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. Flock may consider input from Agency regarding location, position and angle of the Units (each Unit location so designated by Agency, a “**Designated Location**”). Flock shall have final discretion on location of Units. Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency’s delay in confirming Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. The deployment plan will confirm the Designated Location. After installation, any subsequent changes to the deployment plan (“**Reinstalls**”) will incur a charge for Flock’s then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like. Flock Safety shall have full discretion on decision to reinstall Flock Hardware.

2.7.2 Agency Installation Obligations. Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. Although the Units are designed to utilize solar power, certain Designated Locations may require a reliable source of 120V AC power, as described in the deployment plan. In the event adequate solar exposure is not available Agency is solely responsible for providing a reliable source of 120V AC power to the Units, if necessary. Additionally, Agency is solely responsible for (i) any permits or associated costs, and managing the

permitting process of installation of cameras or AC power; (ii) any federal, state or local taxes including property, license, privilege, sales, use, excise, gross receipts or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Hardware, its use (excluding tax exempt entities), or (iii) any other supplementary cost for services performed in connection with installation of the Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, State DOT-approved poles, etc., if necessary), such costs to be approved by the Agency (“**Agency Installation Obligations**”). In the event that a Designated Location for a Unit requires permits, Flock will provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Units from the temporary alternate location to the permitted location at no additional cost. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Any fees payable to Flock exclude the foregoing. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has all necessary right title and authority and hereby authorizes Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Flock is not responsible for installation of Agency Hardware.

2.7.3 Flock’s Obligations. Installation of any Flock Hardware shall be installed in a workmanlike manner in accordance with Flock’s standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are confirmed. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock’s obligation to perform installation work shall cease; however, for the sole purpose of validating installation, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure of quality control. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor may be provided by Flock or a third party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware.

2.7.4 Security Interest. Flock Hardware shall remain the personal property of Flock and will be removed upon the natural expiration of this Agreement at no additional cost to Agency. Agency shall not perform any acts which would interfere with the retention of title of the Hardware by Flock. Should Agency default on any payment of the Flock Services, Flock may remove Hardware at Flock’s discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock’s rights to any damages Flock may sustain as a result of Agency’s default and Flock shall have the right to enforce any other legal remedy or right.

2.8 Hazardous Conditions. Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

2.9 Support Services. Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at support@flocksafety.com. Flock will use commercially reasonable efforts to respond to requests for support.

2.10 Special Terms. From time to time, Flock may offer certain "Special Terms" related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement, upon Agency's consent. To the extent that any terms of this agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

2.10 Changes to Platform. Flock may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock's products or services to its Agency s, (b) the competitive strength of, or market for, Flock's products or services, (c) such platform or system's cost efficiency or performance, or (ii) to comply with applicable law.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Agency Obligations. Flock will assist Agency end-users in the creation of a User ID. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person's name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining

any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2 Agency Representations and Warranties. Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; AGENCY DATA

4.1 Confidentiality. To the extent allowable by applicable FOIA and state-specific Public Records Acts, each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units ("**Agency Data**"). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, such as when a car exits Agency's neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or

otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Agency hereby expressly grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to disclose the Agency Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

4.2 Agency Data.. As between Flock and Agency, all right, title and interest in the Agency Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and perform all acts with respect to the Agency Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

4.3 Feedback. If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.4 Aggregated Data. Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data input into the Services (the “**Aggregated Data**”). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein. Flock shall not sell Agency Data or Aggregated Data.

5. PAYMENT OF FEES

5.1a Wing Fees. For Wing products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as described on the Order Form attached hereto, together the “*Initial Fees*”) as set forth on the Order Form on or before the 30th day following the Effective Date of this Agreement. Flock shall have no liability resulting from any delay by the Agency in installing the Embedded Software on the Agency Hardware. If applicable, Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (30) days in advance of each payment period. All payments will be made by either ACH, check, or credit card.

5.1b Falcon Fees. For Falcon products during the Initial Term, Agency will pay Flock fifty percent (50%) of the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form attached hereto, together the “Initial Fees”) as set forth on the Order Form on or before the 30th day following receipt of initial invoice after Effective Date. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of the Initial Fees, and Agency shall pay on or before 30th day following receipt of invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 30th day following receipt of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For a Renewal Term, as defined below, Agency shall pay the entire invoice on or before the 30th day following receipt of invoice.

5.2 Changes to Fees. Flock reserves the right to change the fees or applicable charges and to institute new charges and fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s Agency support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

5.3 Invoicing, Late Fees; Taxes. Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (30) days after the mailing date of the invoice. If Agency is a non-tax exempt entity, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock’s net income.

6. TERM AND TERMINATION

6.1a Wing Term. Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). The Term shall commence upon execution of this Agreement. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a “Renewal Term”, and together with the Initial Term, the “Service Term”) unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

6.1b Falcon Term. Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). The Term shall commence upon first installation and validation of a Unit. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms for the length set forth on the Order Form (each, a “Renewal Term”, and together with the Initial Term, the “Service Term”) unless either party gives the other party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.*

6.2 Termination for Convenience. At any time during the agreed upon Term, an Agency not fully satisfied with the service may self-elect to terminate this Agreement for convenience. Termination for convenience will result in a one-time fee of \$500 per Flock Hardware. Upon termination for convenience, a refund will be provided for Falcon Cameras, prorated for any fees for the remaining Term length set forth previously. Agency will remain liable to pay the full outstanding fees for any Wing product on the effective date of termination of that Order Form. Flock will invoice, and Agency will pay, any unbilled fees and any unpaid fees covering the remainder of the term of that Order Form had it not been terminated. Termination for convenience of the Agreement by the Agency will be effective immediately. Flock will provide advanced written notice and remove all Flock Hardware at Flock’s own convenience, within a commercially reasonable period of time upon termination.

6.3 Termination. Notwithstanding the termination provisions in Section 2.4(b), in the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty (30) day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock’s material breach, Flock will refund to Agency a pro-rata portion of the pre-paid fees for Services not received due to such termination.

6.5 No-Fee Term. For the Term of this Agreement, Flock will provide Agency with complimentary access to ‘hot-list’ alerts, which may include ‘hot tags’, stolen vehicles, Amber Alerts, etc. (“**No-Fee Term**”). In the event a Non-Agency End User grants Agency access to Footage and/or Notifications from a Non-Agency End User Unit, Agency will have access to Non-Agency End User Footage and/or Notifications until deletion, subject to the thirty (30) day

retention policy. Non-Agency End Users and Flock may, in their sole discretion, leave access open. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days' notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days' notice.

6.6 Survival. The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 Remedy. Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Agency must notify Flock’s technical support as described in Section 2.9 above. If Flock is unable to correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a known Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Agency may request that Flock replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Hardware.

7.2 Exclusions. Flock will not provide the remedy described in Section 7.1 if Agency is found to have misused the Flock Hardware, Agency Hardware or Embedded Software in any manner.

7.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY ’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE

SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF GEORGIA.

7.5 Insurance. During the term of this Agreement, Flock shall maintain at all times insurance coverage as set forth below. Flock shall provide to Agency certificates of insurance with endorsements as provided herein.

(1) Workers' Compensation:

Statutory coverage as required by the State of California.

(2) Liability:

Commercial general liability coverage in the following minimum limits: Bodily Injury: \$1,000,000 each occurrence

\$2,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence

\$2,000,000 aggregate

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury: \$1,000,000 each occurrence

Property Damage: \$1,000,000 each occurrence

(4) ADDITIONAL INSURED:

The City of Brisbane, its City Council, boards, commissions, officials, employees, and volunteers shall be included as an additional insured under all insurance coverages, except worker's compensation.

7.6 Force Majeure. Flock is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User.

8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY

8.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) **FOR** ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY, AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE OF CALIFORNIA.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Parties acknowledge and agree that the essential purpose of this Section 8.2 is to allocate the risks under the No-Fee Term described in Section 6.5 and limit potential liability given the aforementioned complimentary service, which would have been substantially higher if Flock were to assume any further liability other than as set forth herein. Flock has relied on these limitations in determining whether to provide the complimentary No-Fee Term. The limitations set forth in this Section 8.2 shall not apply to claims or damages resulting from Flock's other obligations under this Agreement.

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own

officers, agents, or employees that occur within the scope of their official duties. Agency will not pursue any claims or actions against Flock's suppliers.

8.4 Indemnity. Agency shall indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from an alleged violation of Section 3.2, a breach of this Agreement, Agency's Installation Obligations, Agency's sharing of any data in connection with the Flock system, Flock employees or agent or Non-Agency End Users, or otherwise from Agency's use of the Services, Flock Hardware, Agency Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third party right. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 3.2 or this Agreement. Flock shall indemnify and hold harmless Agency against any damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from any of Flock's alleged negligence or willful misconduct arising out of this Agreement.

9. RECORD RETENTION

9.1 Data Preservation. The Agency agrees to store Agency Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to preserve the Agency Data, Flock will notify Agency of the requirement and applicable retention period, and Agency agrees to preserve and securely store this data on Flock's behalf so that should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

10. MISCELLANEOUS

10.1 Severability. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 Assignment. This Agreement is not assignable, transferable or sublicensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement without consent.

10.3 Entire Agreement. This Agreement, together with the Order Form(s), the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

10.4 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

10.5 Governing Law; Venue. This Agreement shall be governed by the laws of the State in which the Agency is located. The parties hereto agree that venue would be proper in the chosen courts of the State of which the Agency is located. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

10.6 Publicity. Upon prior consent from Agency, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

10.7 Export. Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services, the Hardware, the Embedded Software and Documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software

documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10.8 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

10.09 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

10.10 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

Automated License Plate Readers (ALPRs)

470.1 POLICY

The Policy of the Brisbane Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are the official use of this department. Because such data may contain confidential information, it is not open to public view.

470.2 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

470.3 DEFINITIONS

- (a) **Automated License Plate Reader (ALPR):** A device that uses cameras and computer technology to compare digital images to lists of known information of interest.
- (b) **ALPR Operator:** Trained Department members who may utilize ALPR system/equipment. ALPR operators may be assigned to any position within the Department, and the ALPR Administrator may order the deployment of the ALPR systems for use in various efforts.
- (c) **ALPR Administrator:** The Commander or the Chief's designee, serves as the ALPR Administrator for the Department.
- (d) **Hot List:** A list of license plates associated with vehicles of interest compiled from one or more databases including, but not limited to, NCIC, CA DMV, Local BOLO's, etc.
- (e) **Vehicles of Interest:** Including, but not limited to vehicles which are reported as stolen; display stolen license plates or tags; vehicles linked to missing and/ or wanted persons and vehicles flagged by the Department of Motor Vehicle Administration or law enforcement agencies.
- (f) **Detection:** Data obtained by an ALPR of an image (such as a license plate) within public view that was read by the device, including potential images (such as the plate and description of vehicle on which it was displayed), and information regarding the location of the ALPR system at the time of the ALPR's read.
- (g) **Hit:** Alert from the ALPR system that a scanned license plate number may be in the National Crime Information Center (NCIC) or other law enforcement database for a specific reason including, but not limited to, being related to a stolen car, wanted person, missing person, domestic violation protective order or terrorist-related activity

Automated License Plate Readers (ALPRs)

470.4 ADMINISTRATION

The ALPR technology, also known as License Plate Recognition (LPR), allows for the automated detection of license plates along with the vehicle make, model, color and unique identifiers through the Brisbane Police Department's ALPR's system and the vendor's vehicle identification technology. The technology is used by the Brisbane Police Department to convert data associated with vehicle license plates and vehicle descriptions for official law enforcement purposes, including identifying stolen or wanted vehicles, stolen license plates and missing persons. It may also be used to gather information related to active warrants, homeland security, electronic surveillance, suspect interdiction, and stolen property recovery.

All installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the ALPR Administrator. The ALPR Administrator will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

470.4.1 ALPR ADMINISTRATOR

The Commander shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Working with the Custodian of Records on the retention and destruction of ALPR data.
- (g) Ensuring this policy and related procedures are conspicuously posted on the department's website.

470.5 OPERATIONS

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used in conjunction with any routine patrol operation or criminal investigation; reasonable suspicion or probable cause is not required before using an ALPR.
- (c) Partial license plates and unique vehicle descriptions reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

Automated License Plate Readers (ALPRs)

- (d) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (e) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert. Once an alert is received, the operator should confirm that the observed license plate from the system matches the license plate of the observed vehicle. Before any law enforcement action is taken because of an ALPR alert, the alert will be verified through a CLETS inquiry via MDC or through Dispatch. Members will not take any police action that restricts the freedom of any individual based solely on an ALPR alert unless it has been validated. Because the ALPR alert may relate to a vehicle and may not relate to the person operating the vehicle, officers are reminded that they need to have reasonable suspicion and/or probable cause to make an enforcement stop of any vehicle. (For example, if a vehicle is entered into the system because of its association with a wanted individual, Officers should attempt to visually match the driver to the description of the wanted subject prior to making the stop or should have another legal basis for making the stop.)
- (f) Hot Lists. Designation of hot lists to be utilized by the ALPR system shall be made by the ALPR Administrator or his/her designee. Hot lists shall be obtained or compiled from sources as may be consistent with the purposes of the ALPR system set forth in this Policy. Hot lists utilized by the Department's LPR system may be updated by agency sources more frequently than the Department may be uploading them and thus the Department's LPR system will not have access to real time data. Occasionally, there may be errors in the LPR system's read of a license plate. Therefore, an alert alone shall not be a basis for police action (other than following the vehicle of interest). Prior to initiation of a stop of a vehicle or other intervention based on an alert, Department members shall undertake the following:
 - 1. **Verification of status on a Hot List.** An officer must receive confirmation, from a Brisbane Police Department Communications Dispatcher or other department computer device, that the license plate is still stolen, wanted, or otherwise of interest before proceeding (absent exigent circumstances).
 - 2. **Visual verification of license plate number.** Officers shall visually verify that the license plate of interest matches identically with the image of the license plate number captured (read) by the LPR, including both the alphanumeric characters of the license plate, state of issue, and vehicle descriptors before proceeding. Department members alerted to the fact that an observed motor vehicle's license plate is entered as a Hot Plate (hit) in a specific BOLO (be on the lookout) list are required to make a reasonable effort to confirm that a wanted person is actually in the vehicle and/or that a reasonable basis exists before a Department member would have a lawful basis to stop the vehicle.
 - 3. Department members will clear all stops from hot list alerts by indicating the positive ALPR Hit, i.e., with an arrest or other enforcement action. If it is not obvious in the text of the call as to the correlation of the ALPR Hit and the arrest, then the Department member shall update with the Communications Dispatcher and original person and/or a crime analyst inputting the vehicle in the hot list (hit).

Automated License Plate Readers (ALPRs)

4. Hot List from the Stolen Vehicle System will be automatically downloaded into the ALPR system a minimum of once a day with the most current data overwriting the old data.
5. All entries and updates of specific Hot Lists within the ALPR system will be documented by the requesting Department member within the appropriate general offense report. As such, specific Hot Lists shall be approved by the ALPR Administrator (or his/her designee) before initial entry within the ALPR system. The updating of such a list within the ALPR system shall thereafter be accomplished pursuant to the approval of the Department member's immediate supervisor. The hits from these data sources should be viewed as informational; created solely to bring the officers attention to specific vehicles that have been associated with criminal activity

All Hot Plates and suspect information entered into the ALPR system will contain the following information as a minimum:

- Entering Department member's name
 - Related case number
 - Short synopsis describing the nature of the originating call
- (a) Training. No member of this Department shall operate ALPR equipment or access ALPR data without first completing Department-approved training.
 - (b) Login/Log-Out Procedure. To ensure proper operation and facilitate oversight of the ALPR system, all users will be required to have individual credentials for access and use of the systems and/or data, which has the ability to be fully audited.

Permitted/Impermissible Uses. The ALPR system, and all data collected, is the property of the Brisbane Police Department. Department personnel may only access and use the ALPR system for official and legitimate law enforcement purposes consistent with this Policy. The following uses of the ALPR system are specifically prohibited:

- (a) Invasion of Privacy: Except when done pursuant to a court order such as a search warrant, is a violation of this Policy to utilize the ALPR to record license plates except those of vehicles that are exposed to public view (e.g., vehicles on a public road or street, or that are on private property but whose license plate(s) are visible from a public road, street, or a place to which members of the public have access, such as the parking lot of a shop or other business establishment).
- (b) Harassment or Intimidation: It is a violation of this Policy to use the ALPR system to harass and/or intimidate any individual or group.
- (c) Use Based on a Protected Characteristic. It is a violation of this policy to use the ALPR system or associated scan files or hot lists solely because of a person's, or group's race, gender, religion, political affiliation, nationality, ethnicity, sexual orientation, disability, or other classification protected by law.
- (d) Personal Use: It is a violation of this Policy to use the ALPR system or associated scan files or hot lists for any personal purpose.

Automated License Plate Readers (ALPRs)

- (e) First Amendment Rights. It is a violation of this policy to use the ALPR system or associated scan files or hot lists for the purpose or known effect of infringing upon First Amendment rights.

Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists may be subject to:

- Criminal prosecution,
- Civil liability, and/or
- Administrative sanctions, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and Department policies.

470.6 DATA COLLECTION AND RETENTION

The Commander is responsible for ensuring systems and processes are in place for the proper collection and retention of ALPR data.

All ALPR data downloaded will not be stored or retained by the Brisbane Police Department or any vendor beyond 30 days, nor will it be warehoused or co-mingled with any private company data. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a discovery request or other lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

ALPR vendor, (Flock Safety) will store the data (data hosting) and ensure proper maintenance and security of data stored in their data towers. (Flock Safety) will purge their data at the end of the 30 days of storage.

Restrictions on use of ALPR Data: Information gathered or collected, and records retained by (Flock Safety) License Plate Readers will not be sold, accessed, or used for any purpose other than legitimate law enforcement or public safety purposes.

470.7 ACCOUNTABILITY AND SAFEGUARDS

All data will be closely safeguarded and protected by both procedural and technological means. The Brisbane Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) All ALPR data downloaded to the mobile workstation and in storage shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52). Passwords are required to be changed periodically. Employees that leave the City will have all access immediately revoked.
- (b) All non-law enforcement requests for access to stored ALPR data shall be processed in accordance with applicable law.

Automated License Plate Readers (ALPRs)

- (c) Members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action.
- (d) Such ALPR data may be released to other authorized and verified law enforcement officials and agencies for legitimate law enforcement purposes.
- (e) ALPR system audits should be conducted on a monthly basis.
- (f) Every ALPR Detection Browsing Inquiry must be documented by either the associated Brisbane Police case number or incident number, and/or a reason for the inquiry.

For security or data breaches, see the Records Release and Maintenance Policy.

470.8 ALPR DATA DETECTION BROWSING AUDIT

It is the responsibility of the Commander or the Chief's designee to ensure that an audit is conducted of ALPR detection browsing inquiries at least monthly during each calendar year. The audit shall randomly select at least 10 detection browsing inquiries conducted by department employees during each month..

The audit shall be documented in the form of an internal department audit form. The audit form shall include any data errors found so that such errors can be corrected. After review by the Chief of Police or designee, the audit and any associated documentation shall be filed and retained in a secured location.

470.9 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - 1. The name of the agency.
 - 2. The name of the person requesting.
 - 3. The intended purpose of obtaining the information.
- (b) The request is reviewed by the Commander/Chief or the authorized designee and approved before the request is fulfilled.
- (c) The approved request is retained on file.
- (d) The Chief of Police or the authorized designee will consider the California Values Act (Government Code § 7282.5; Government Code § 7284.2 et seq), before approving the release of ALPR data. The Brisbane Police Department does not permit the sharing of ALPR data gathered by the City or its contractors/subcontractors for purpose of federal immigration enforcement, these federal immigration agencies include Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CBP).

Automated License Plate Readers (ALPRs)

- (e) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

470.10 TRAINING

The Training Sergeant should ensure that members receive department-approved training for those authorized to use or access the ALPR system (Civil Code § 1798.90.51; Civil Code § 1798.90.53).